

BOARD OF ZONING APPEALS
July 24, 2009

A. Roll Call

Present:

Mr. William Watkins
Ms. Barbara Moody
Mr. Mark Wenger
Mr. Jack Fraley
Mr. Marvin Rhodes

Others Present:

Ms. Melissa Brown, Zoning Administrator
Mr. Brian Elmore, Development Management Assistant

Mr. Mark Wenger called the meeting to order at 5:10p.m.

B. Minutes

1. December 18, 2008

Mr. Jack Fraley moved for approval of the minutes as presented, with a second from Mr. Marvin Rhodes.

In a unanimous voice vote, the minutes were approved (5-0).

2. January 30, 2009

Mr. Fraley moved for approval of the minutes as presented, with a second from Ms. Barbara Moody.

In a unanimous voice vote, the minutes were approved (5-0).

3. March 5, 2009

Mr. Fraley moved for approval of the minutes as presented, with a second from Mr. Rhodes.

In a unanimous voice vote, the minutes were approved (5-0).

C. Public Comment

Mr. Wenger opened the public comment session.

There being none, Mr. Wenger closed the public comment section.

D. Old Business

Mr. Fraley stated that at the January 30, 2009 Board of Zoning Appeals special meeting, the BZA appointed Mr. Rhodes and himself to a committee to select outside legal counsel, according to the funds appropriated by the governing body, relating to the appeals against the BZA in the December 18th Verizon tower case. He said at the February 5, 2009, the BZA voted to approve a request for the Board of Supervisors to expend funds for the BZA's counsel in upcoming court actions. At the February 10th, 2009 Board of Supervisors meeting, they approved the funding request for only certain situations. The current legal issues do not warrant expending of funds in accordance with the adopted Board policy. Mr. Donald Patten, Esq., from Patten, Wornom, Hatton, and Diamondstein agreed to provide *pro bono* legal counsel.

Mr. Fraley moved for approval of Mr. Patten to represent the BZA during upcoming legal action. He said *pro bono* work would not be contrary to the Board of Supervisors' resolution. Mr. Rhodes seconded the motion.

In a unanimous voice vote, the Board approved Mr. Patton as legal counsel (5-0).

Mr. Fraley stated that under the State Code of Virginia, Section 2-2, 37-11, 8.7, a public body may hold closed meetings with legal counsel regarding litigation.

Mr. Fraley moved to recess into closed session for discussions with the BZA's legal counsel pertaining to legal filings against the Board, with a second from Ms. Moody.

In a unanimous voice vote, the Board recessed into closed session (5-0).

After going into closed session the Board reconvened at 6:57pm.

Mr. Wenger requested Ms. Brown read the resolution.

Ms. Brown stated now, therefore be it resolved that the Board of Zoning Appeals of James City County, Virginia, hereby certifies that, to the best of each member's knowledge; (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, made pursuant to Section 2.2-3711 (A)(7), to receive legal counsel.

Mr. Wenger made a motion to approve the resolution, with a second from Mr. Fraley.

The motion was passed unanimously by voice vote (5-0).

E. New Business

There was no new business.

F. Matters of Special Privilege

There were no Matters of Special Privilege

G. Adjournment

The meeting was adjourned at 6:25 p.m.



Mark Wenger
Chairman



Melissa C. Brown
Secretary