

## **CITIZENS WIN A VOICE ON PHONE TOWERS**

By William Nicoson

The wireless convenience of a phone in your pocket may produce a tower-blighted vista in the picture window of your home-owning neighbors. Calls to and from a mobile phone must be transmitted to or from an elevated antenna within the phone's range. The exploding demand for wireless phones in Fairfax County has engendered urgent pressure for the erection of ever more transmission towers (called monopoles).

In 1996, wireless subsidiaries of Bell Atlantic and AT&T concluded lease agreements with the Virginia Department of Transportation (VDOT) permitting the erection of 30 monopoles on VDOT property within Fairfax County. As part of their rent, the private companies agreed to purchase and install on the towers, for VDOT's use, equipment for televised traffic monitoring, radio advisories, and emergency call boxes.

The first monopole was erected at VDOT's maintenance facility on the eastern outskirts of Reston between the Dulles Toll Road and Sunset Hills Road. The County Planning Commission was briefed on the tower, but VDOT concluded that no finding by the Commission on conformity with the County's comprehensive plan was required. Uses of state property have generally been regarded as immune from county regulation.

After organized opposition from neighbors near the McLean site of the next monopole, the County sued the wireless subsidiaries in September, 1997, for failing to seek or obtain a Planning Commission finding of conformity with the County plan, a process which would have required comments of citizens to be considered. The Circuit Court held that no such finding was needed, but this month the Virginia Supreme Court reversed that decision. The Supreme Court concluded that, since the monopoles were owned by private companies, VDOT could not preempt County review and regulation.

This is a major victory for citizen participation in the regulation of advanced communications installations proposed by public utilities. Deputy County Attorney J. Patrick Taves, who argued the case, confirmed to me that it will have a broad impact far beyond the initial monopole near Reston. The Supreme Court decision will be binding in all Virginia counties and will certainly be consulted as a precedent by courts facing similar issues in other states and the District of Columbia.

What next? The wireless subsidiaries have thus far erected or are erecting in Fairfax County 14 monopoles ranging in height from 80 to 164 feet. Obedience to the Virginia Supreme Court will require that each of these projects now be submitted to the County's Planning Commission for a finding of conformity with the comprehensive plan and that each of the 16 prospective projects be submitted, in advance of erection, for such a finding.

While the wireless subsidiaries bear a theoretical risk of costly resiting, my impression is that most erected monopoles are well located, including the original tower near Reston. Certainly VDOT's concept of combining safety features and traffic advisory equipment with the monopole's primary voice-transmission objective is admirable. County planning regulation will add marginally to the erection timetable, but, as in other development decisions, in the long term citizen participation will prove to be worth the delay. The monopole court battle has now made that painfully clear to Bell Atlantic and AT&T.

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