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Controversial Oconee zoning appeal on hold

Ray Chandler, Special to Independent Mail

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WALHALLA — A controversial zoning appeal by one of the county's oldest churches is on hold while officials try to resolve questions of jurisdiction and legal standing.

The Oconee County Board of Zoning Appeals on Thursday postponed until next week any decision concerning property owned by St. John's Lutheran Church in Walhalla off Biggerstaff Road, on Lake Keowee near Seneca, that was included in a zoning petition initiated by nearby residents.

County staff members will use the time to address a claim by the church's attorney, Larry Brandt of Walhalla, that the zoning appeals board does not have jurisdiction in the appeal. Among the other issues to be resolved is whether the death of one of the original petitioners means the petition no longer has the signatures of at least 51 percent of the involved landowners.

The property of the petition signer, Danny Leone, would have passed immediately to Leone's heirs upon his death last summer, Brandt said.

County staff also grouped together many separate petitions with separately gathered batches of signatures, Brandt said. That meant that the separately acquired signatures did not necessarily indicate at least 51 percent agreement of the signers with the whole zoning package that was eventually sent to the Oconee County Council.

Brandt said deciding whether a zoning petition met the 51 percent requirement had been determined by county staff when the determination was itself a legislative act that required the direct decision of the elected county council.

"I believe that's an unlawful delegation of authority," Brandt said.

Josh Stephens, county zoning administrator, told Brandt that Tom Martin, Oconee County's attorney, had offered the opinion that the Board of Zoning Appeals had jurisdiction over the matter because the appeal contests a decision of county staff, not the county council.

But Anderson attorney Michael Glenn, representing opponents of Brandt's appeal, joined Brandt in contesting the board's jurisdiction.

Brandt also raised questions of due process and of equal treatment under the law.

The issue arose in the spring, when the church's 5-acre property on Lake Keowee was included in 457 parcels totaling about 570 acres in the vicinity of Biggerstaff Road. Nearby residents, including Mike Smith, the petitioner of record, said they sought to preserve the residential integrity of the area.

Brandt argued for exclusion of the church's property from the petition. He said the church's plans for the acreage, which include a 60-bed retreat house with meeting and worship areas and a boat house and beachfront area on Lake Keowee, would be put in jeopardy by zoning of the property as residential.

The request for exclusion was denied, and the zoning package has had a first reading before the Oconee County Council.

Brandt said he had no problem with fractional petitions but also questioned the practice of grouping petitions of contiguous requests, which would result in zoning plans to which 51 percent of the signers had not in fact endorsed. He noted that some of the separate petitions involved in the Biggerstaff request were dated October 2008 when the county's zoning ordinance was not even given final adoption until Nov. 6, 2008, to go into effect May 1, 2009.

Sam Lee, chairman of the Board of Zoning Appeals, said he believed "this board has no jurisdiction at this moment."

Lee suggested that the question go to the County Planning Commission or the County Council.

Lee asked board member Marshall McKee and county planner Yancey Green to revisit the jurisdiction question over the next week with the county attorney. They are also to examine the issues raised and present a written finding Aug. 23 about jurisdiction and about whether county staff made a mistake in validating the petition on which one of the signers had died, perhaps giving it less than 51 percent endorsement.

"Ya'll have your decision to make," Brandt told board members. "And then I'll know what I'll have to do."



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