'Deny and dismiss'

Defense lawyers attack Oconee zoning lawsuit

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WALHALLA — The defense mantra in response to a zoning lawsuit filed against Oconee County is "deny and dismiss."

A cadre of attorneys representing the county, the administrator, elected and appointed officials and private citizens took aim this week at trying to find holes in the lawsuit filed by North Fairview neighbors Jean Jennings and David and Michelle McMahan.

The defense filings were in lockstep in signaling reasons why the court should throw out the lawsuit.

In one voice defendants deny that email communication between them was an attempt to conspire against rezoning request made by Jennings and the McMahans.

The plaintiffs used emails obtained through a Freedom of Information request to claim that county officials acted in collusion with members of Advocates for Quality Development Inc. to undermine their rezoning petition.

Jennings and the McMahans asked to have their property zoned Traditional Rural District. However, their request overlapped that of Jim Codner, an AQD member representing Cane Creek on Lake Keowee, who petitioned for Lake Residential District.

SEE **ZONING**, PAGE **A5**

ZONING: Defense filings in lockstep

FROM PAGE A1

County Council resolved the conflict by assigning Jennings and the McMahans a new Agricultural Residential District designation.

Attorney James D. Jolly, representing Administrator Scott Moulder, admits in his filing that there was communication regarding the zoning issues in question "among members of council and their constituents."

However, Jolly argues there was no ex parte communication as the lawsuit alleges because council was engaged in a legislative and not a judicial or quasi-judicial function.

"Therefore, such communications were neither improper nor prohibited," Jolly claimed in the filings.

Lawyers for the county and its officials also claim immunity from the lawsuit based on the South Carolina Tort Claims Act.

Attorneys for all the defendants claimed in unison that the lawsuit is flawed because Jennings and the McMahans failed to exhaust their administrative remedies by not appealing to the Board of Zoning Appeals.

Clerk of Court Beverly Whitfield would not venture to say when the case would be placed on the docket. She said the court still has a number of old cases that have yet to be heard.

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