

# Zoning collusion?



JESSICA NELMS | THE JOURNAL

On April 5, every member of the Oconee County Council was served a copy of a Freedom of Information Act request asking for emails on both their computers and government computers related to the North Fairview and North Cane Creek zoning requests. County Attorney Tom Martin said at time that FOIA requests must be made of the body politic, calling the letters given to individual council members "moot" and characterizing the presentation of the letters by process server Margaret Thompson (right) as "grandstanding."

## Foot-dragging, denial accompany email requests

BY DRETT McLAUGHLIN  
THE JOURNAL

WALAHLLA — Despite campaign trail rhetoric and repeated endorsements for greater transparency, getting official documents from Oconee County related to a pair of controversial rezoning petitions has been like pulling teeth.

To make matters worse, the county has not fulfilled its obligation under the Freedom of Information Act as it relates to documents requested more than three months ago.

While providing — without cost — 280 pages of email correspondence, many attachments referred to in those emails are missing. Further, the county has flatly refused to provide the dates and parties associated with an undisclosed number of emails being withheld under a claim of attorney-client privilege.

The issue at hand is the correspondence that took place between elected and appointed county officials and private parties having interest in the contested North Fairview and North Cane Creek rezoning petitions that were filed in

December 2009.

The lack of transparency, however, dates well past the last three months to an informal request by Michelle McMahan for "correspondence between Council, Planning Staff, Planning Commission, AQD, Mountain Lakes Communities and FOLKS" made on Dec. 31, 2010.

McMahan, her husband, David, and Jean Jennings contend that there was collusion between county officials and private interest groups that resulted in their rezoning request (North Fairview) being altered and a form of zoning imposed on them that they do not want. They believe the key to proving their claims lies in "public business being conducted outside a public forum through electronic communication ..."

To that end, McMahan reiterated her request with the county on Feb. 19.

On March 1 she received a response from County Administrator Scott Moulder in which he expressed the county's desire to comply fully. He told her at the time that it would take 35 hours at \$24.07 per hour to search and copy records. He also estimated that there

would be 160 copies at 25 cents each for a total of \$882.45.

Faced with those costs, McMahan approached The Journal about joining her request, which the paper did. On April 5, each member of County Council, Moulder and Council Clerk Beth Hulse were served individual copies of that request.

County Attorney Tom Martin called the service, done during the public comment portion of the Council's meeting, "grandstanding." He also said at the time that FOIA requests must be made of the body politic, calling the letters given to individual council members 'moot.'

Jay Binder, general counsel for the South Carolina Press Association, disagrees. Records produced by public officials in the course of the public's business are subject to the FOIA, regardless of whether the computer is public or privately owned or where it is located, Binder said this week.

On April 19, Moulder responded to the renewed request for public records, outlining the same costs and asking for payment in advance.

# ZONING: The county has not fulfilled its obligation under FOIA

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In that same letter, Moulder said, "Oconee County's willingness to (comply) not only stems from its desire to adhere to the Act, but because Oconee County wishes to provide full disclosure of this matter to the public so that any unfounded accusations of collusion or behind-the-scenes dealing with regard to this matter may be put to rest."

He also said the county has "no right or ability" to access any individual private computers.

On June 15, the county provided 280 pages of emails. Seventy-two pages were duplicates and six others pertained to an unrelated pollution issue in a lake development. Some of the remaining pages contained references to attachments that were not provided.

The following day, The Journal submitted, to the county, a partial list of the attachments and documents alluded to in the emails requesting that they be provided. "As this material is associated with our first request, we do not believe a second FOIA is required," the paper wrote in an email to Moulder. Further, it was requested that the county provide the dates of emails withheld under the claim of

attorney-client privilege, as well as the writer and recipient of those emails.

On July 1, The Journal received a letter and disc from the county. In the letter Moulder stated that "every relevant, non-exempt document" had been provided and were being provided again on the disc. Some of those documents were included on the disc.

As to the paper's request for non-content information related to the attorney-client emails, Moulder said the county was under no obligation to provide that information. Again, Binder disagrees.

"They are not entitled to shelter the entire email" Binder said, "only that portion which includes information made exempt by the act. It is their responsibility to make non-exempt material known."

"It sounds to me that you have not been given what your are entitled to under the law," Binder added.

Beginning Saturday, The Journal will begin 6 days of exclusive reporting on the McMahan/Jennings' claims of collusion. The basis for these stories will be the emails provided, other documents the paper has obtained, interviews and public records.