

## Court soon may rule on Mesa records lawsuit

By Kristi Pihl, Herald staff writer

Mesa residents soon may find out if their town will have to declare bankruptcy.

A 7-year-old public records lawsuit against the town of 440 may move toward a decision after a recent state Supreme Court ruling in another public records case.

Former Mayor Donna Zink was awarded \$239,000 in 2008 after a Superior Court judge found the city guilty of improperly withholding public documents.

Both Zink and Mesa have appealed the decision. She feels the penalty isn't steep enough. Mesa wants the court to take into account the city's size in setting the amount.

The current fine amounts to about 25 percent of the city's \$1 million annual operating budget.

The city has said paying that amount may force it to disincorporate or declare bankruptcy.

The case has been on hold in the Court of Appeals while the state Supreme Court re-issued a decision in the precedent-setting Yousoufian case cited in the Zinks' appeal.

Armen Yousoufian sued King County for public records act violations and won an award of \$124,000 after a 12-year legal battle. However, the Supreme Court ruled the fine wasn't enough and returned the case to the trial court for reconsideration.

After ruling, the Supreme Court had to rehear the case. Justice Richard Sanders, who wrote the majority ruling, had a public records lawsuit pending in Thurston County while he participated in the Yousoufian case.

The Supreme Court decided 5-4 on March 25 to award Yousoufian \$371,340 in penalties, according to the majority opinion.

That opinion was released more than a month ago, but Zink said the Court of Appeals has not removed its stay on the case.

Zink said she would have expected the case to have resumed by now.

"The Court of Appeals is really dragging their feet," she said.

Lee Kerr, the Kennewick attorney representing Mesa along with Everett attorney Ramsey Ramerman, said the aim "is to minimize the impact of the damages and its effect on the city."

The majority opinion from the Yousoufian case confirms that penalties in a public records case are meant to deter improper denial of public records.

The penalty needed to deter a small entity compared with a larger government may not be the same, according to the high court's opinion.

But the opinion's guidelines for awarding penalties don't specifically mention size.

Zink's appeal challenges the exclusion of 842 days when she did not have the records requested. That period of time represents the duration between Superior Court Judge William Acey's 2005 decision in Mesa's favor and the Court of Appeals decision overturning his initial ruling.

The dispute began in 2002 when Zink and her husband Jeff began requesting public records after the city said a building permit to repair their fire-damaged home had expired.

Acey found the city incorrectly handled 172 public records requests the Zinks made in a 21/2-year period.

The city hasn't paid the judgment pending the Court of Appeals' decision.

Zink said she calculates about \$45,000 to \$55,000 worth of interest has accrued on the amount Acey awarded.

The Court of Appeals will need to determine what interest is owed, Kerr said.

Zink said she and her husband will have to refile their appeal brief, and the city will get a chance to respond. She hopes to have the arguments scheduled by Christmas.

But none of that can happen until the stay is lifted, she said.

Read more: <http://www.tri-cityherald.com/2010/05/24/1026266/court-soon-may-rule-on-mesa-records.html#ixzz0otFqQg7W>