

December 12, 2003

Mr. Daniel Hoagland  
1114 Clear Lake Drive  
Fremont, Indiana 46737

*Re: Formal Complaint 03-FC-121: Alleged Violation of the Open Door Law  
by the Town of Clear Lake*

Dear Mr. Hoagland:

This is in response to your formal complaint, received on November 14, 2003, wherein you allege that the Town of Clear Lake (Town) violated the Indiana Open Door Law (Open Door Law) by not providing notice of its October 20, 2003, meeting wherein it approved an ordinance for zoning changes. The Town has submitted a response to your complaint, and that response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Town did not violate the Open Door Law. While I find that the Open Door Law was not violated, I note that Title 36 of the Indiana Code governing zoning changes imposes specific requirements on governing bodies considering such actions, and provides separate remedies for violation of those requirements. Whether the Town's actions at the October 20, 2003, meeting were illegal under Title 36 requires an interpretation of the state's zoning laws, and the appropriate entity to do that review is a trial court in an action brought under that Title.

#### BACKGROUND

In your complaint and supporting narrative, you note that the regularly scheduled meeting dates for Town meetings occur on the second Monday of each month, with the October meeting scheduled for October 13, 2003. You allege that on November 4, 2003, you saw a public notice indicating that the Town held a meeting on October 20, 2003, and at that time approved an ordinance amending the Town's zoning ordinance. You further allege that, although you may have missed it, you did not see proper notice that the October meeting date had changed to October 20, 2003, or that the October 20, 2003, meeting would include consideration of the ordinance to amend the Town's zoning ordinance.

In response, the Town has provided evidence that it announced and published the notice of the change in meeting dates for the Town's October meeting in advance of the October 20, 2003, meeting. On August 16, 2003, the Clerk Treasurer for the Town notified the Herald Republican of the remaining dates for Town meetings through the end of the year and specifically noted the change in the October meeting in that it would be held on the third

Monday of the month. The Town also submits a copy of the written notice of the Schedule of Town Council Meetings from August through December, which notice provides that the October meeting will be held on October 20, 2003. The Town further responds, through the averment of the Town's attorney, that this notice "noting the change in the regularly [scheduled] October meeting to October 20, 2003, was posted at the Town Hall of the Town of Clear Lake." Counsel also avers that the change in meeting date was announced at the September meeting of the Town, and was posted on the Town's web site. The Town also provides a copy of the Public Meetings section from the Herald Republican, dated October 18, 2003, wherein notice of the October 20, 2003, meeting is provided. The minutes from the October 20, 2003, meeting indicate that in addition to the Town Council, 43 visitors were present for the October 20, 2003, meeting.

### ANALYSIS

The intent and purpose of the Open Door Law is that "the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed." Ind. Code § 5-14-1.5-1. Toward that end, a public agency is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. IC 5-14-1.5-5(a). This notice must be posted outside the principal office or meeting location, and also provided to any news media that has, by January 1 of any calendar year, provided a written request to receive such notices. IC 5-14-1.5-5(b). A public agency need only give notice of its regular meetings once a year, except that additional notice shall be given where the date, time or place of a meeting has changed. The Open Door Law recognizes that the General Assembly has required public agencies to publish notice of meetings or public hearings in certain instances. The notice requirements for a public meeting under the Open Door Law do not apply to any meetings for which notice by publication is required by statute, ordinance, rule or regulation. IC 5-14-1.5-5(e). Where, however, the meeting of the governing body is for the purpose of reviewing the recommendations of a planning commission to amend a zoning ordinance, the notice requirements of the Open Door Law apply. IC 36-7-4-607(e)(1).

It does not appear from this record that the Town violated the notice provisions of the Open Door Law with regard to its October 20, 2003, meeting. The Town posted written notice of the Schedule of Town Council Meetings from August through December, which notice provides that the October meeting will be held on October 20, 2003, and that notice was timely posted at the Town Hall of the Town of Clear Lake. In addition, and in compliance with the Open Door Law, the Town notified the local newspaper of the date change for the October meeting. While the Open Door Law does not require that the town publish notice of its meeting in the newspaper, I note further that the Herald Republican did run an item announcing the October 20, 2003, meeting two days before that meeting was to occur. In light of the fact that your complaint acknowledges that you may not have seen these notices, I view the Town's evidence as uncontested, and find that the provisions of the Open Door Law were not violated.

Although I find that the Open Door Law was not violated, I note that your complaint does raise an issue as to whether the Town complied with the requirements of Title 36. Specifically, Indiana Code 36-7-4-607(e)(1) provides that a legislative body must meet to consider a favorable

recommendation by a planning commission to amend a zoning ordinance within 90 days of the planning commission's action on the proposal, and "shall give notice under IC 5-14-1.5-5 *of its intention to consider the proposal at that meeting.*" IC 36-7-4-607(e)(1) (emphasis added). I do not read this provision to add to the content requirements of notice under the Open Door Law. In my opinion this provision requires the governing body to post notice in the manner required by the Open Door Law. To the extent that Title 36 imposes additional content requirements for the notice of a meeting to consider a zoning change, any deficiency in that additional content would be actionable under Title 36. *See, e.g.,* IC 36-7-4-1003 (providing for judicial review of actions taken by governing bodies in violation of Title 36). Your complaint can be read to challenge the content of the Town's notice under Title 36. It is my opinion that this requires an interpretation of our state's zoning laws and that the appropriate party to do that review is a trial court under the process provided for in that Title.<sup>1</sup>

### CONCLUSION

It is my opinion that the Town did not violate the Open Door Law by failing to timely post notice of its October 20, 2003, meeting. To the extent your complaint raises issues challenging the content of that notice as deficient under the zoning provisions of Title 36, those claims are appropriately for a court of proper jurisdiction and I commend you to pursue your remedies under that Title.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Donald J. Stuckey

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<sup>1</sup> No allegations are asserted here against the planning commission or challenging as deficient the publications announcing the zoning changes under Title 36. I note for completeness that notice of the planning commission meeting with full text of the ordinance to be considered was published by the Herald Republican on September 25, 2003. The planning Commission met on October 6, 2003, to consider the proposal and at that time made a favorable recommendation. A second notice indicating the Town's approval of that ordinance along with the text of the ordinance was published on November 4, 2003.