

November 16, 2005

Shondra Zaborowski  
12128 N. CR 1250 E.  
Seymour, IN 47274

*Re: Formal Complaint 05-FC-218; Alleged Violation of the Open Door Law by the Jackson County Board of Zoning Appeals*

Dear Ms. Zaborowski:

This is in response to your formal complaint alleging that the Jackson County Board of Zoning Appeals (“Board”) violated the Open Door Law by holding an executive session, where the Board failed to ensure that the public could observe and record a meeting.

#### BACKGROUND

You complain that the Board held an October 11, 2005 executive session, ostensibly as a public meeting, but the public who were present were unable to hear the discussions. This was chiefly because the venue for the meeting, a gymnasium, and an inadequate public address system, resulted in the public being unable to hear the proceedings. Also, you alleged that after a tie vote was taken on the special exception under consideration at the meeting, the members of the Board proceeded to have side conversations with one another, which you called a “huddle.” You specifically allege that you observed a member of the Board getting up from his seat to gather close to the other three members. You state that this huddle occurred over the course of twenty minutes. At one point, you claim that the attorney representing Jennings Water Company went to the public microphone and told the Board that the public could not hear their discussions. Nevertheless, after coming out of the huddle, the Board made another motion and cast a second vote on the special exception. The special exception carried.

The Board’s attorney, Mr. John F. Rothring, sent a letter responding to the complaint. Mr. Rothring explained that the gymnasium venue was not ideal, but was necessitated in order to accommodate the large crowd that had appeared at the September meeting on the same special

exception. In a nutshell, Mr. Rothring denied that the members of the Board met in a huddle after the tie vote. He stated that the crowd noise and acoustics of the gym made discussion among the Board difficult, and he conceded that one Board member left his seat to come closer to the other members of the Board. The Board did not intend to deprive the public of the right to hear the meeting.

## ANALYSIS

The intent and purpose of the Open Door Law (“ODL”) 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. The provisions of the ODL are to be “liberally construed with the view of carrying out its policy.” IC 5-14-1.5-1. All meetings of a governing body of a public agency must be open at all times for the purpose of permitting members of the public to observe and record them, except as provided in section 6.1. IC 5-14-1.5-3(a). A "meeting" is defined as a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." IC 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." IC 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. IC 5-14-1.5-2(d).

An executive session is defined as a meeting from which the public is excluded. IC 5-14-1.5-2(f). A governing body may hold an executive session only for the purposes stated in IC 5-14-1.5-6.1(b). Further, notice of an executive session must be given at least 48 hours prior to the start of the executive session and must include specific reference to the enumerated instance or instances for which the executive session may be held. IC 5-14-1.5-6.1(d) and IC 5-14-1.5-5. A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection. IC 5-14-1.5-6.1(e).

The Board denies that it met in a huddle, or otherwise meant to deprive the public of the right to hear the members’ discussions. This office cannot resolve disputes of fact; only a court may determine how the October 11 meeting occurred. If the Board engaged in a discussion designed to not permit members of the public to hear or record the meeting, the meeting would constitute an executive session in violation of the Open Door Law, since discussions on special exceptions are not among the purposes for which an executive session may be held. Also, if the facility in which the meeting was held was simply not adequate or conducive to allowing the public to observe and record a meeting, the Board would have violated the Open Door Law by proceeding to meet under those conditions.

Although it is laudable that the Board sought a meeting place that would accommodate a large audience, the need to accommodate the number of observers cannot justify holding the meeting in a facility with inadequate means to allow members of the public to hear or record the discussion among the Board members.

## CONCLUSION

If the Jackson County Board of Zoning Appeals met in a facility that was inadequate to allow members of the public to hear and record the meeting, or if the Board members met in a huddle that was designed to hold a discussion outside the hearing of the public, then the Jackson County Board of Zoning Appeals violated the Open Door Law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John F. Rothring