

May 31, 2006

Deane Sarber
18568 6th Road
Plymouth, IN 46563

Re: Formal Complaint 06-FC-87; Alleged Violation of the Access to Public Records Act by the Marshall County Plan Commission

Dear Mr. Sarber:

This is in response to your formal complaint alleging that the Marshall County Plan Commission (“Commission”) violated the Access to Public Records Act by giving you a tape recording which was not audible. I find that the Commission did not violate the Access to Public Records Act.

BACKGROUND

You complain that the Commission gave you a copy of an audiotape of the December 13, 2005 meeting of the Board of Zoning Appeals. You allege that the tape was not audible, and that the inaudibility was a denial of the record under the Access to Public Records Act.

I sent a copy of your complaint to the Commission. I received a letter from Jan Quivey, Marshall County Auditor. Mr. Quivey explained that the official form of memoranda and minutes for meetings involving Marshall County government offices, including the Commission, are the summaries of proceedings in hard copy form. Those minutes are posted on the web. The audiotape is created and maintained primarily to use as a resource when constructing the minutes. If an individual requests a copy of the audiotape, the Commission complies, but in most cases the high speed recording on the County’s recording devices are not playable on most home tape players.

When this occurs, the Commission offers the person the opportunity to come in to the office and listen to the recording played back on the County’s machine. The person is also

afforded the opportunity to bring in his or her own equipment to record the actual playback from the County's machine. Still, the recording is not high quality when copied in this way.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency shall either provide the requested copies to the person making the request or allow the person to make copies on the agency's equipment or on the person's own equipment. IC 5-14-3-3(b). If a person is entitled to a copy of a public record under the APRA and the public agency that is in possession of the record has reasonable access to a machine capable of reproducing the public record, the public agency must provide at least one (1) copy of the public record to the person. IC 5-14-3-8(e). However, if the public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access, the person is only entitled to inspect and manually transcribe the record. IC 5-14-3-8(e).

From the Commission's explanation, the Commission's equipment will allow only playback at normal speeds, not reproduction. From my reading of the APRA, the Commission is not required to obtain the equipment that will copy a tape at a speed that will permit playback on ordinary equipment. It is sufficient under IC 5-14-3-8(e) that the Commission allowed you to listen to the audiotape and make notes from it. The Commission also has averred that it allows individuals the opportunity to attempt to copy the tape as it is played on the County's equipment. Hence, it is my opinion that you have not been denied access to the audiotape.

CONCLUSION

For the foregoing reasons, I find that the Marshall County Plan Commission has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jan Quivey