

February 20, 2007

*Sent Via Facsimile*

Edward P. Dumas  
119 W. Harrison Street  
Rensselaer, IN 47978

*Re: Formal Complaint 07-FC-14; Alleged Violation of the Open Door Law by the  
Jasper County Board of Zoning Appeals*

Dear Mr. Dumas:

This is in response to your formal complaint on behalf of Richard A. Hughes alleging that the Jasper County Board of Zoning Appeals (“BZA”) violated the Open Door Law by holding an executive session prior to a final hearing on December 27, 2006. I find that the BZA may not meet in executive session unless notice is posted and the executive session is for a purpose provided in the Open Door Law.

#### BACKGROUND

You filed a formal complaint with the Office of the Public Access Counselor on behalf of Richard Hughes. You allege that Mr. Hughes is the owner of a subdivision next to a parcel of real estate for which an Application for Special Exception was filed. The final hearing on the Application for Special Exception was Wednesday, December 27, at 7:00 p.m. at the Jasper County Fairgrounds. Mr. Hughes heard that Mike Kozich, one of the members of the BZA, was invited to attend a closed door session of the BZA on Wednesday afternoon, December 27, 2006. You also state that Mr. Hughes requested that his attorney (which I assume to be you) speak directly with Mr. Kozich as to the validity of the assertions made in the closed door session. To date, permission has not been granted to speak with Mr. Kozich or any other member of the BZA with respect to the allegations.

I sent a copy of your complaint to the BZA. I have received no response from the BZA as of today.

## ANALYSIS

It is the intent of the Open Door Law 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. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. IC 5-14-1.5-3(a). Section 6.1 of the Open Door Law provides the specific purposes for which an executive session may be held. IC 5-14-1.5-6.1(b). An executive session is a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. IC 5-14-1.5-2(f).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Ind. Code 5-14-1.5-5(a). Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under [IC 5-14-1.5-6.1(b)].

I have not received any response to your complaint. If a majority of the BZA met in executive session on the afternoon of December 27, the BZA was required to post notice of the executive session in accordance with IC 5-14-1.5-5(a). The BZA also was required to state in the notice the subject matter by specific reference to the instance for which an executive session may be held. Finally, the BZA could hold an executive session only for a purpose enumerated in IC 5-14-1.5-6.1(b). The BZA violated the Open Door Law to the extent that it held a closed door session on December 27 without complying with the Open Door Law.

The other allegations in your complaint, that Mr. Hughes's attorney was not permitted to speak directly with a Board member about the matter or was not given information about the allegations does not come within the ambit of the Open Door Law. Therefore, I express no opinion concerning those allegations.

## CONCLUSION

For the foregoing reasons, I find that the Jasper County Board of Zoning Appeals was required to comply with the Open Door Law if it held an executive session on December 27, 2006.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Edward P. Dumas