

August 20, 2007

William E. Nangle
The Times of Northwest Indiana
601 45th Street
Munster, Indiana 46231

*Re: Formal Complaint 07-FC-219; Alleged Violation of the Open Door Law by the
Crown Point Development Corporation*

Dear Mr. Nangle:

This is in response to your formal complaint alleging the Crown Point Development Corporation (“CPDC”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5) by denying public access to a meeting and failing to provide public notice of the meeting. A copy of CPDC’s response to your complaint is enclosed. I find that the Crown Point Development Corporation is subject to the Open Door Law and as such violated the ODL by failing to provide notice and denying access to a meeting that should have been open to the public.

BACKGROUND

In your complaint you allege that the CPDC, a private entity created by the Crown Point Redevelopment Commission that acts as a conduit to lend money to private entities, failed to provide public notice to its meeting of July 11, 2007. You further allege the CPDC denied access to the meeting to members of the public. You filed your complaint on July 20.

The CPDC responded to your complaint on July 23, indicating it had decided to re-conduct the disputed meeting and open that meeting to the public. The CPDC still contends, though, it is entitled to conduct meetings in private. The CPDC included in its response an opinion written by an attorney to the CPDC regarding his opinion the CPDC is not likely subject to the ODL or the Access to Public Records Act (Ind. Code §5-14-3).

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. I.C. §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. I.C. §5-14-1.5-3(a).

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. I.C. §5-14-1.5-5(a).

A “public agency” means the following:

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts.

I.C. §5-14-1.5-2(a).

“Governing body” means two or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business . . .

I.C. §5-14-1.5-2(b).

The question here is whether the CPDC is a public agency for the purposes of the ODL. It is my understanding that the CPDC was created by the Crown Point Redevelopment Commission under Section 501(c)(4) of the Internal Revenue Code of 1986 as a private not-for-profit corporation seeking to promote commercial, industrial, and civic development in Crown Point. While it may generally be the case that not-for-profit corporations are not considered public agencies, the ODL defines as a public agency any entity that is subject to audit by the state board of accounts (“SBOA”).

In your complaint, the newspaper accounts of the matter you included, and the letter from the CPDC’s attorney, I find conflicting accounts as to whether the CPDC is subject to audit by the SBOA. I have spoken with the SBOA on this matter to determine whether CPDC is subject to an SBOA audit. If less than fifty percent or more than fifty percent but less than \$100,000 of CPDC’s disbursements are derived from public funds, an SBOA audit is limited to matters relevant to the use of public monies. I.C. §5-11-1-9. If more than \$100,000 of the CPDC’s disbursements are derived from public funds, the entire entity is subject to audit by the SBOA. The SBOA does not always personally audit such entities, but the SBOA contracts with a certified public accountant to perform the audit. As such, if more than \$100,000 of CPDC’s

disbursements are from public funds, it is a public agency for the purposes of the ODL and the APRA.

As noted by Counselor Hurst in *Opinion of the Public Access Counselor 04-FC-03*, the determination whether an entity is subject to an audit by the SBOA is not mine to make. But the ODL is clear that when an entity is subject to an audit by the SBOA, it is a public agency, even if its makeup or actions do not otherwise conform to the definition of public agency in the ODL.

CONCLUSION

For the foregoing reasons, I find that the Crown Point Development Corporation is subject to the Open Door Law and as such violated the ODL by failing to provide notice and denying access to a meeting that should have been open to the public.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Eric Hammond, Crown Point Development Corporation