

October 18, 2007

Lisa Gill
2048 Cardinal Lane
Jeffersonville, Indiana 47130

Re: Formal Complaint 07-FC-285; Alleged Violation of the Open Door Law by the City of Jeffersonville Department of Planning and Zoning

Dear Ms. Gill:

This is in response to your formal complaint alleging the City of Jeffersonville Department of Planning and Zoning (“Department”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5) by failing to provide proper notice for a meeting and by failing to produce minutes of the meeting. It is my opinion the Department violated the ODL if it conducted a meeting of the governing body, whether a public meeting or an executive session, without proper notice. Further, the Department violated the ODL by not making available the meeting memoranda and minutes (if minutes were kept).

BACKGROUND

In your complaint you allege that the Department conducted a “closed door meeting” on August 27, 2007. You allege no notice was posted to notify the public about the meeting. You further allege that final action was taken at the meeting to modify the approved plans for what I understand to be a commercial or residential development. You further allege that when you requested minutes of the meeting, Chester Hicks of the Department indicated no minutes were created. You filed this complaint on September 19.

The Department did not respond to the complaint at my invitation to do so.

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). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

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; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

I.C. §5-14-1.5-2(b).

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).

Here you allege the Department conducted an executive session without notice to the public. If the meeting was attended by a majority of the governing body, notice should have been posted pursuant to I.C. §5-14-1.5-5(a). If, however, the meeting was a meeting of staff members rather than members of the governing body, the meeting would not be required to be open to the public, and notice would not need to be posted. If the meeting was an executive session, notice is still required to be posted pursuant to I.C. §5-14-1.5-6.1(d). An executive session may only be held for the enumerated instances listed in I.C. §5-14-1.5-6.1, so if the meeting of the governing body was held for any other purpose, it should have been open to the public.

Regarding your request for a copy of the minutes of the meeting, the ODL does not require a governing body to produce minutes of a meeting. If minutes are created or the meeting is recorded, those records would be disclosable under the Access to Public Records Act (I.C. §5-14-3) and the ODL. I.C. §5-14-1.5-4(c).

A governing body is required, though, to create meeting memoranda for every meeting and executive session. The memoranda shall include the date, time and place of the meeting, the members present or absent, the general substance of all matters proposed, discussed or decided, a record of all votes taken and any additional information required under statute. I.C. §5-14-1.5-4(b). For an executive session, the memoranda requirements are modified in that the memoranda must identify the subject matter considered by specific reference to the enumerated instance(s) for which public notice was given. I.C. §5-14-1.5-6.1(d). The governing body shall also certify by a statement in the memoranda and minutes that no subject matter was discussed in the executive session other than the subject matter specified in the public notice. I.C. §5-14-1.5-6.1(d). The memoranda are to be available for inspection and copying within a reasonable period of time after the meeting. I.C. §5-14-1.5-4(c).

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the ODL if it conducted a meeting of the governing body, whether a public meeting or an executive session, without proper notice. Further, the Department violated the ODL by not making available the meeting memoranda and minutes (if minutes were kept).

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Chester Hicks, City of Jeffersonville Department of Planning and Zoning