

February 27, 2007

Sent Via Facsimile

Christopher D. Folland
52 Lake Drive, Clear Lake
Fremont, IN 46737

*Re: Formal Complaint 07-FC-46; Alleged Violation of the Open Door Law by the
Clear Lake Town Council*

Dear Mr. Folland:

This is in response to your formal complaint alleging that the Town of Clear Lake Town Council ("Council") violated the Open Door Law by holding an executive session without posting notice. I find that the Council did not violate the Open Door Law because the Council did not meet to remove you from the Board of Zoning Appeals.

BACKGROUND

You filed a formal complaint with the Office of the Public Access Counselor on February 20, 2007. You alleged that you intend to seek a court order to invalidate the action that the Council took in the executive session, pursuant to IC 5-14-1.5-7. Hence, you requested priority for your complaint. Because you alleged circumstances for which priority treatment of your complaint is required, I am issuing this Opinion within seven days of receiving your complaint. *See* IC 5-14-5-10; 62 IAC 1-1-3.

You allege that sometime prior to your dismissal as a member of the Clear Lake Board of Zoning Appeals on February 6, 2007, the Council must have met to decide to dismiss you. However, no notice of this meeting or executive session was ever posted. You were appointed to the Clear Lake Board of Zoning Appeals until December 31, 2008. The unapproved minutes of the January 8 Council meeting showed that your appointment was reconfirmed by the Council.

I sent a copy of your complaint to the Council. I enclose the response of W. Erik Weber, the attorney for the Town of Clear Lake. He denied on behalf of the Council that there was any meeting or executive session regarding your status on the Board of Zoning Appeals. Rather, the Council President alone determined that you would be removed, pursuant to Indiana Code 36-7-4-906(f). The President as appointing authority has the authority to remove a member that he appoints to the Board of Zoning Appeals. Therefore, the Council did not violate the Open Door Law.

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). "Meeting" means 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).

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)].

The basis of your complaint is the implication that if you were dismissed following the Council's approval of your reappointment on January 8, your dismissal must have occurred with Council approval or action. You enclosed a copy of the letter notifying you of your dismissal from the Board of Zoning Appeals. It is signed by the Council President Jack McArdle, and states that "I am removing you from the Clear Lake Board of Zoning Appeals."

In addition, Mr. Weber confirmed that Mr. McArdle acted on his own to remove you. Pursuant to IC 36-7-4-906(f), an appointing authority may remove a member of the Board of Zoning Appeals for cause. Three citizens are appointed by the executive of a municipality or county to the Board of Zoning Appeals. IC 36-7-4-902(a)(1). The executive of a town is the president of the town council. IC 36-1-2-5(4). The minutes of the January 8 meeting show that you are one of the executive appointees to the Board of Zoning Appeals.

The Council has denied meeting at all with respect to your removal. I find that there is no evidence that the Council met in executive session concerning your removal from the Board of Zoning Appeals. The Council has not violated the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that the Town of Clear Lake Town Council did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: W. Erik Weber