



STATE OF INDIANA

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November 7, 2013

Mr. Brent Snow
6159 W. 100 S.
Tipton, IN 46072

Re: Formal Complaint 13-FC-291; Alleged Violation of the Open Door Law by the Tipton County Planning Department and Tipton County Commissioners

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Planning Department ("Department") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Department, by John H. Brooke, Esq., responded to your complaint. His response is enclosed for your review. Your complaint requested this issue be treated with priority status under 62 IAC 1-1-3 *et. seq.* It has not been granted, as you had not filed an action for injunctive relief at the time of your complaint. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 8, 2013.

BACKGROUND

Your complaint alleges the Tipton County Planning Department and the Tipton County Commissioners violated the Open Door Law by failing to give sufficient notice of a meeting and also by soliciting the presence of another public agency.

You allege that during the September 9, 2013 Board of Commissioners meeting, you received an indication the County Commissioners may have met behind closed doors to discuss the extension of any improvement location permit. Mr. Steve Edson, the Plan Commission Director, relayed to the Board in an open meeting he was given the unilateral authority to extend the permit. Mr. Edson also confirmed the existence of a memorandum memorializing the authorization, which was provided to you on September 19, 2013.

Furthermore, you allege the permit granted by Mr. Edson included a \$5,000.00 incentive. You claim the incentivize package would need to be made by a quorum of the Board of Commissioners. Your concerns were reiterated in a supplemental letter to this Office by former Tipton County Commissioner, Jane Harper. In her letter, Ms. Harper asserts that the

fee schedule or waiver of fees is the responsibility of the entirety of the Board of Commissioners and is not the sole administrative function of one individual.

The Department, by Mr. Brooke, argues Mr. Edson, as Executive Director of the Planning Commission and the Building Commissioner, has sole discretion as to the issuance of an extension of a permit. He cites to the Tipton County Zoning Ordinance as evidence of that fact. The Department submits the actions of Mr. Edson were not required to be authorized by the final action of a separate board, but may be performed as part of his official duties.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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. *See* Ind.Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* Ind. Code § 5-14-1.5-3(a).

Article 9, Section 901.02 of the Tipton County Zoning Ordinance states one of the duties of the Zoning Administrator is to issue Improvement Location Permits. The dispute at hand is not the fact the extension was issued, but whether the decision was made or discussed behind closed doors by the majority of a public agency.

Much has been made over the language in the referenced memorandum. In relevant part, Mr. Edson writes:

“I have been authorized to offer...an extension of the expired existing Improvement Location Permit...

“Commissioner Cline has authorized me to convey the County is willing to cover the first \$5000.00 in potential billing from the State for mechanical inspections.”

Additionally, both Ms. Harper and yourself allege Mr. Edson made the statement in a September 9, 2013 meeting, in that, “I did not act on my own accord” when referencing the extension.

I am not troubled by the memorandum and it does not appear it would trigger an Open Door Violation. It appears the document was prepared by Mr. Edson himself and the Zoning Ordinance does give him the authority to unilaterally make decisions as to issuing Improvement Location Permits. His statements regarding his “authorization” to do so may simply be referencing the Ordinance itself and not the actions of a board. He is indeed authorized to make such decisions. As to the substantial completion of the project, that would fall under Mr. Edson’s discretion and is not an Open Door Law issue.

The more troubling aspect of the complaint; which may point to a violation, is the assertion Mr. Edson said he did not make the decision by his own accord. This could possibly refer to an official action, deliberation, or discussion made behind closed door. That would be a violation as defined in Ind. Code § 5-14-1.5-2(d). What Mr. Edson meant by that particular

assertion is a matter of speculation, although it would seem to indicate he had input from someone else.

Similarly, I do find it curious a waiver of fees and an incentive package would be extended without a vote of a County fiscal board. You have not provided information as to a local ordinance or rule that would require such authorization by another board; however, it stands to reason if the cost to the County is truly upwards of \$25,000.00, then it would be taken to vote. But again, without the benefit of an authority stating that concretely, I cannot make a definite determination. It should be noted; however, the Zoning Ordinance Schedule of Fees is set by the Tipton County Commissioners and not the Zoning Administrator's Office under Section 906.

Under the ODL, 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. Discussions or deliberations are considered official action under the ODL. What is unclear in the current case is if any discussion or authorization was exercised by a *majority* of a Tipton County public entity. The only Commission mentioned in the materials is Commissioner, Mike Cline. If Mr. Cline and Mr. Edson were discussing the matter themselves, and if the two of them did not constitute a quorum, then no violation took place.

CONCLUSION

I cannot determine definitively if a violation of the Open Door Law has taken place in regard to the Tipton County Planning Department or the Board of Commissioners. As I am not a finder of fact, I do not have enough evidence before me to make a final conclusion. Speaking in the hypothetical, if a quorum met to discuss the matter or to prepare documentation or to authorize an individual to take official action, then a violation would occur. If not, then there would not be violation.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: John H. Brooke, Esq.