

June 5, 2005; Alleged Violation of the Open Door Law by the Hendricks County Area Plan Commission

June 5, 2005

*Via Facsimile*  
Ms. Jan M. Carroll  
BARNES & THORNBURG, LLP  
11 South Meridian Street  
Indianapolis, IN 46204

*Re: Informal Inquiry Response; Alleged Violation of the Open Door Law by the Hendricks County Area Plan Commission*

Dear Ms. Carroll:

You have requested an informal opinion from the Office of the Public Access Counselor. Pursuant to Ind.Code 5-14-4-10(5), I am issuing this letter in response to your request. You represent Rieth-Riley Construction Co., Inc., which had applied for approval of a primary development plan in a hearing before the Hendricks County Area Plan Commission.

Specifically, you allege that the Hendricks County Area Plan Commission (Commission) violated the Open Door Law by meeting outside of the public, and without notice of a meeting. You base your allegations on the deviation in the findings of fact adopted by the Commission at a special May 31, 2005 meeting, which followed an initial hearing on May 12. You state that the Commission must have met sometime after May 31 to adopt new findings of fact that differ from those adopted at the May 31 meeting. The difference between the findings of fact adopted at the May 31 meeting as represented in your Exhibit 1 and those issued on June 9 following the May 31 meeting as represented in Exhibit 2, is a concluding paragraph about traffic considerations.

I sent a copy of your complaint letter to Commission attorney Greg Steuerwald. He assured me that the Commission did not meet after May 31, 2005 to discuss or take any other official action with respect to the matter of Rieth-Riley's development plan. Further, he provided me with the minutes of the May 31, 2005 meeting. The minutes reflect a different version of the negative findings than are contained in your Exhibit 1. The minutes reflect that the Commission adopted on May 31 findings that included a concluding paragraph about traffic considerations. However, the May 31 findings as shown in the minutes still deviate in one respect from those in your Exhibit 2. The findings adopted in the May 31 minutes do not include one clause that was apparently added after May 31; the clause "*...and negatively influences property values in the area*" appears in the version of the negative findings that you sent to me as Exhibit 2. I believe that your Exhibit 1 version are the draft findings submitted by the staff to the

Commission for its consideration at the May 12 hearing, because the findings bear the date of May 12 and are labeled “draft negative findings.”

In a telephone call with me, Mr. Steuerwald explained that the Commission staff prepares draft findings for consideration by the Commission at its public meetings. In the present case, the Commission adopted negative findings that deviated from the draft negative findings submitted by the Commission staff. According to Mr. Steuerwald, the adopted findings incorporate comments made by the Commissioners during the deliberations at the public meeting. The final negative findings are issued to the parties after they are finalized by staff and submitted to the President and Secretary of the Commission for approval. Hence, it is not unusual for the Commission’s final findings to deviate from the draft findings submitted at the public meeting by Commission staff, to account for points of discussion made by Commissioners. Mr. Steuerwald contends that it was not necessary for the Commission to gather in a meeting in order for the issued findings to deviate from those submitted as draft, and that the Commission did not, in fact, gather after May 31.

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. Ind. Code 5-14-1.5-3(a). A meeting is a gathering of a majority of a governing body for the purpose of taking official action on public business. IC 5-14-1.5-2(c).

Here, you allege that members of the Commission must have met after May 31 in order to adopt the version of the findings that are contained in Exhibit 2, which differ from the May 31 findings, albeit in a different way than you contend. Based on Mr. Steuerwald’s assurances and explanation, I do not find evidence that must lead one to the conclusion that the Commission met after May 31. Also, I find that the version of the findings in your Exhibit 1 is not the same as the findings that were officially adopted in the May 31 meeting. However, there is still a discrepancy between the May 31 findings as adopted by the Commission and those contained in Exhibit 2. The additional clause in Exhibit 2 concerns property values in the area, not traffic considerations. There may be some other basis for attacking the findings where the clause concerning property values did not appear to have been adopted by the Commission as reflected in the Commission’s May 31 minutes. However, I express no opinion regarding this issue, as it does not concern the Open Door Law.

Please feel free to contact me if you have any questions about the foregoing informal inquiry response.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Greg Steuerwald