

March 23, 2007

Jeffrey L. Hughes
1702 Yodel Odel Lane
Lawrenceburg, IN 47025

Re: Formal Complaint 07-FC-47; Alleged Violation of the Open Door Law by the Dearborn County Plan Commission

Dear Mr. Hughes:

This is in response to your formal complaint alleging that the Dearborn County Plan Commission (“Plan Commission”) violated the Open Door Law by holding a closed door meeting prior to a meeting of the advisory land use committee on January 31, 2007. I find that the Plan Commission held a meeting prior to the committee meeting because it took official action on public business of the Plan Commission.

BACKGROUND

You are a member of the Dearborn County Commissioners. You allege that on January 31, 2007, the Plan Commission held a pre-meeting at 6:00 p.m. prior to the advisory land use committee meeting scheduled and held at 7:00 p.m. that same evening. The subjects discussed included the hiring of a new employee, discussion of the northwest quadrant, and discussion regarding who and how the public session would be facilitated and how the working groups should be changed or consolidated. There was no notice posted and the public was not invited to attend, since the door where the meeting was held was closed. Included in the documentation of your complaint was an agenda titled “Administrative Meeting Agenda.” It is on Plan Commission letterhead. This appears to have been an agenda that followed the discussion described below. The time noted on the agenda is 6:00 p.m.

I sent a copy of your complaint to the Plan Commission. The enclosed response was prepared and submitted by Mr. Mark R. McCormack, Director of Planning for the Plan Commission. Mr. McCormack stated that the Plan Commission and staff were in attendance at the planning and zoning office prior to the scheduled land use advisory committee meeting. A

majority of the Plan Commission members were available to staff prior to the 7:00 p.m. meeting to announce or discuss the following items, which involved no official action:

- Staff discussed the unusually large number of applications that had been submitted for the upcoming February Plan Commission meeting. Staff requested that the members of the Plan Commission present comments on whether it was feasible to address all of the upcoming cases in one public hearing or whether additional hearings should be scheduled. The door was open for this discussion;
- Next, the Plan Commission staff discussed the facilitation of the following committee meeting. There was a discussion outline that had been formulated for the meeting and moderators/facilitators were assigned among the Plan Commission members. This item was also discussed at length at the committee meeting that followed. The door remained open for this discussion;
- Staff announced the recent release of both the final version of the Dearborn County Regional Sewer District Study on Consolidation of Wastewater Systems as well as the draft version of the Dearborn County Capital Management Plan. These items would also be announced at the committee meeting of that evening;
- As general discussions were nearing an end, staff reviewed upcoming weekend dates to determine the availability of the Plan Commission members for public open houses and workshops that are in the planning stages. At this point in the discussion, the door was closed as a result of noise in the adjacent hallway. The door was closed for only a short time;
- Finally, staff concluded general discussions by acknowledging that it was nearing a secondary interview process for a newly-created assistant community planner position. This position currently remains unfilled. In this regard, staff sought volunteers to sit in on interviews to assist in the evaluation of potential candidates.

At this point, all discussion ceased and all members proceeded to the County Commissioners' Room for the land use advisory committee meeting. The Plan Commission and staff state that no official action upon public business was taken. As no cases, applications, or ordinance modifications were discussed, or were even anticipated, a public hearing was not advertised. The information exchanged during the open discussions outlined in the Plan Commission's response is available to any interested party. The Plan Commission would appreciate any comments or suggestions of the public access counselor's office.

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).

"Official action" means to 1) receive information; 2) deliberate; 3) make recommendations; 4) establish policy; 5) make decisions, or 6) take final action. IC 5-14-1.5-

2(d). "Deliberate" means a discussion which may reasonably be expected to result in official action. IC 5-14-1.5-2(i). "Public business" means any function upon which the public agency is empowered or authorized to take official action. IC 5-14.1.5-2(e).

It is my opinion that the Plan Commission did take official action on its public business during the hour prior to the land use advisory committee meeting. Although the Plan Commission believes it did not take official action on public business, all the items that were discussed included subject matter that was within the Plan Commission's public business, since it was empowered to take official action on those items. In addition, official action is very broad and includes receiving information. From the description of the meeting supplied by the Plan Commission, staff did give information to the assembled members of the Plan Commission, and therefore they were receiving information. It is apparent that there was discussion that was reasonably expected to result in official action, i.e., a decision.

I often hear from governing bodies that they believe official action does not occur where no final decisions are made, or where subsequent meetings will cover the same ground. Perhaps the agenda that called this gathering an "administrative meeting" provides a clue to the thinking of the Plan Commission: that a meeting involving what is perceived as mere administrative matters is not official action.

However, none of these circumstances allows a governing body to meet without public notice and behind closed doors. The danger in these "pre-meetings" is obvious: the governing body will reach consensus outside of public viewing, and the public will be deprived of the give and take by which that consensus was achieved.

In any case, the text of the Open Door Law leaves no doubt that the 6:00 p.m. gathering of a majority of the Plan Commission for the purpose of taking official action (including receiving information) on the public business of the Plan Commission was a meeting. The Plan Commission should have provided notice and allowed the public to attend and record the meeting.

CONCLUSION

For the foregoing reasons, I find that the Dearborn County Plan Commission met at 6:00 p.m. on January 31, 2007 without posting notice and permitting members of the public to attend and record the meeting, in violation of the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mark R. McCormack