



STATE OF INDIANA

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April 27, 2015

Mr. Michael Hutt
2123 East 10th Street
Jeffersonville, Indiana 47130

*Re: Informal Inquiry 15-INF-11; Jefferson Redevelopment
Commission*

Dear Mr. Hutt:

This is in response to your informal inquiry regarding the legality of the Jefferson Redevelopment Commission's use of an executive session. On March 16, 2015, the Commission chose two (2) developers and voted to negotiate with these developers in an executive session.

You question whether an executive session can be used to negotiate the sale of public land and the type of development on the property.

It is the intent of the Open Door Law ("ODL") 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. *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).

Executive sessions, which are meetings of governing bodies which are closed to the public, may be held only for one or more of the instances listed in Ind. Code § 5-14-1.5-6.1(b). Negotiations for the sale of public land do not specifically appear on the list. However, Ind. Code § 5-14-1.5-6.1(b)(4) does allow an executive session for...

[i]nterviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, the ports of Indiana, an economic development commission, the Indiana state department of agriculture, a local economic

development organization (as defined in Ind. Code 5-28-11-2(3)), or a governing body of a political subdivision.

In this instance, Jefferson Redevelopment Commission is a governing body of a political subdivision under Ind. Code § 5-28-11-2(3), therefore, the executive meetings for the development of the land may be proper. The Counsel for the City of Jefferson notes such a determination would be in line with a prior Public Access Counselor *Informal Opinion, 13-INF-38*.

However, the ODL only allows an executive session with regard to the “purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.” See Ind. Code § 5-14-1.5-6.1(b)(2)(D). Noticeably absent from the provision is any mention of the sale of real property. The previous Public Access Counselor opined in *Advisory Opinion 13-INF-38* “if the discussions held pursuant to I.C. § 5-14-1.5-6.1(b)(2)(D) included the sale of real property by the Commission, such discussions would have been contrary to section 6.1 of the ODL.” It should be noted this provision contemplates strategy discussions *between board members* and does not include the actual negotiations with the developer of the land. The strategy discussion to sell the property is a condition precedent to negotiations and ostensibly occurred sometime prior to the executive sessions.

Ind. Code § 5-14-1.5-6.1(b)(2)(D) and Ind. Code § 5-14-1.5-6.1(b)(4) are mutually exclusive. The former does not prohibit executive session negotiations with potential developers regarding the sale of property.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a stylized flourish extending from the bottom.

Luke H. Britt
Public Access Counselor

Cc: Mr. Les Merkley, Esq.