



STATE OF INDIANA

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December 17, 2012

Mr. Michael Kostasie
97 Hillcrest Road
Ogden Dunes, Indiana 46368

*Re: Formal Complaint 12-FC-359; Alleged Violation of the Open Door Law by
the Ogden Dunes Town Council*

Dear Mr. Kostasie:

This advisory opinion is in response to your formal complaint alleging Ogden Dunes Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Charles Parkinson, Attorney, responded in writing on behalf of the Council. His response is enclosed for your reference. I have granted your request for priority status pursuant to 68 IAC 1-1-3.

BACKGROUND

In your formal complaint you provide that the Council was scheduled to hold a public meeting on December 10, 2012 to have a second reading of an ordinance establishing a "deer management fund." The meetings of the Council traditionally begin at 7 p.m. and since the posted agenda for the meeting did not contain the required starting time, you allege that the citizens of the Town assumed that the meeting was to commence at 7 p.m. However, the meeting held on December 10, 2012 began at 6 p.m. You note that the only persons in attendance were individuals related to members of the Council and a local reporter. You believe that the Council violated the ODL by failing to provide proper notice for the December 10, 2012 meeting.

In response to your formal complaint, Mr. Parkinson advised that the Council scheduled a meeting for December 10, 2012 to consider several items. On December 5, 2012 at 8:31 a.m., Ogden Dunes Clerk-Treasurer Jean Manna sent electronic notice of the meeting to the members of the Council as well as the three media outlets that had previously requested notice. The notice provided that that Council meeting was to be held on Monday, December 10, 2012 at 6 p.m. at the Ogden Dunes Town Hall, 115 Hillcrest Road, Ogden Dunes. Subsequently, the location of the meeting was changed to the Ogden Dunes Firehouse and at 9:16 a.m. on December 5, 2012, Ms. Manna sent a corrected notice to the respective media outlets. On the afternoon of December 6, 2012, Ms. Manna posted notice of the meeting on the bulletin board at the Ogden Dunes Town

Hall and at the Ogden Dunes Firehouse, the location of the meeting. The notice provided the same information that was submitted to the members of the Council and the media outlets who had requested notice be provided. Council President Allen Johnson prepared an agenda for the meeting, which was made available to the public on December 10, 2012 at 5:45 p.m.

Mr. Parkinson provided that the Council followed all notice and agenda requirements under the ODL in regards to the December 10, 2012 meeting. The ODL does not require that the agenda contain a meeting time. The agenda was further made available to the public prior to the meeting and contained the matters to be discussed during the meeting, all within compliance of the ODL. The notice that was posted and submitted to the media contained the required information, specifically the time, date, and location of the meeting. The notice was provided at least forty-eight (48) hours prior to the start of the meeting and was posted at the Ogden Dunes Town Hall and the Ogden Dunes Firehouse, which is where the meeting took place.

ANALYSIS

It is the intent of the 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* I.C. § 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* I.C. § 5-14-1.5-3(a).

A “meeting” is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. 5-14-3-2(e).

The ODL requires that 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. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing, requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2). The notice requirements found under the ODL are separate and distinct from the agenda requirements. A governing body of a public agency is not required to use an agenda, but if it chooses to utilize one, the agency must post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. *See* I.C. § 5-14-1.5-4(a). The ODL does not require that an agenda utilized by a governing body include the time the meeting is to occur.

As applicable here, the Council provided in its notice the time, date, and location of the meeting held by the Council on December 10, 2012. The notice was posted on December 6, 2012 at the Ogden Dunes Town Hall and at the Ogden Dunes Firehouse, the location the meeting took place. Lastly, the notice was provided to all members of the media who had made the appropriate request pursuant to I.C. § 5-14-1.5-5(b)(2). As such, it is my opinion that the Council provided proper notice to its December 10, 2012 meeting. Further, the ODL requires that the agenda, if utilized, be posted at the entrance to the location of the meeting prior to the meeting's commencement. Here, the Council provided that the agenda was posted at December 10, 2012 at 5:45 p.m. at the Ogden Dunes Firehouse, the location where the meeting took place. The ODL does not require that the agenda utilized by a public agency include the time in which the meeting commenced. As such, it is my opinion that the Council did not violate section 4 of the ODL in regards to the agenda that was posted for the December 10, 2012 Council meeting.

CONCLUSION

Based on the foregoing, it is my opinion that the Council did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Robert Parkinson