
OPINION OF THE PUBLIC ACCESS COUNSELOR

DAVID B. HINER,
Complainant,

v.

RUSH COUNTY BOARD OF COMMISSIONERS
Respondent.

Formal Complaint No.
17-FC-158

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Rush County Board of Commissioners (“Commissioners”) violated the Open Door Law (“ODL”). Ind. Code §§ 5-14-1.5-1 to -8. The Commissioners responded to the complaint through attorney Leigh Morning. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 5, 2017.

BACKGROUND

On June 26, 2017, at a regularly scheduled meeting, the Commissioners approved an amendment to the county zoning ordinance—favorably recommended by the Area Plan Commission—repealing, in relevant part, what is known as the “Chicken Ordinance.” This ordinance governs the presence of chickens in primarily residential districts.

David B. Hiner (“Complainant”) filed a formal complaint against the Commissioners alleging an ODL violation because there was no agenda or public notice of the ordinance issue posted prior to the Commissioners’ meeting. In addition, Hiner contends the ordinance amendment was not properly certified to the Commissioners before its adoption.

The Commissioners dispute the Complainant’s allegation of an ODL violation. Specifically, the Commissioners contend that the board was not required to hold a public hearing on the amendment to the zoning ordinance; and thus, were not required to provide any special notice prior to the board’s regular meeting on June 26, 2017. The Commissioners also note that the board does not operate with an agenda and are not required to use an agenda under the ODL.

Furthermore, the Commissioners point out that the Rush County Area Plan Commission (“APC”) published notice of the public hearing on amending the zoning ordinance in *The Rushville Republican* on June 6, 2017. The Commissioners provided a copy of the legal advertisement and the publisher’s affidavit with their response. Eight days later, the

APC held its public hearing to receive public input regarding the proposed amendment to the zoning ordinance. At the conclusion of the public hearing, the APC voted to send the proposed amendment to the Commissioners with a favorable recommendation. The next day, the APC provided a Certificate of Adoption to the Commissioners verifying the APC's vote to send the proposed amendment to Commissioners with a favorable recommendation.

ANALYSIS

It is the intent of the Open Door Law (“ODL”) that 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 Indiana Code § 5-14-1.5-1.

Under Indiana law, the governing body of a public agency—in some situations—is required by statute to hold a public hearing prior to taking a particular action. In these situations, a public hearing guarantees constituents the opportunity to provide either written or oral feedback in support of, or in opposition to a proposed measure.

The statutory language that mandates public hearings in certain circumstances is not set out in the Open Door Law. Instead, these various statutes are scattered throughout the Indiana Code. For legislative and executive bodies of counties—of which Rush County Board of Commissioners exemplify both— these statutes are often found in Title 36, colloquially known as ‘home rule.’

Toward that end, a public hearing is required by statute when a county proposes to amend or partially repeal a zoning ordinance. *See* Ind. Code §§ 36-7-4-601 to -616. Specifically, Section 602 requires a county Area Plan Commission to hold a public hearing where there is a proposal to amend or partially repeal the county zoning ordinance.

So too is the case here. The Rush County APC proposed an amendment to the text of the county's zoning ordinance; thus triggering the requirement of a public hearing on the proposal. The APC published public notice of the hearing in *The Rushville Republican* on June 6, 2017. Next, the APC held the public hearing as required by statute to receive public input on the proposed changes. At the conclusion of the public hearing the APC voted to certify the proposed amendment with a favorable recommendation and sent the certificate of adoption to the Commissioners as required by statute. As a result, the Commissioners were required to vote on the APC's favorable recommendation within 90 days after the proposal is certified. *See* Ind. Code § 36-7-4-607(d). In this case, the APC certified the proposal on June 14, 2017. The Commissioners approved the measure during the board's regular meeting on June 26, 2017, well within the required time frame.

Critically—as it pertains to this complaint—the Commissioners were not required to hold an additional public hearing on the proposed amendment to the zoning ordinance. Even so, the minutes from the Commissioner's meeting on the day the board approved the APC's recommendation indicate that the Commissioners still accepted public comment and feedback on the issue. It appears the proper procedure

was appropriately followed to the letter of the law and the public was afforded the opportunity for input via the APC. Since the Commissioners were not required under Indiana law to hold an additional public hearing to approve the APC's favorable recommendation on the ordinance, I find no ODL violation for improper notice.

As for any agenda to be posted, the Open Door Law or any other statute does not require an agenda if an agenda is not used. The Commissioners claim an agenda is never used. Because the use of an agenda it is not a requirement for a public meeting, the Commissioners may choose not to utilize one. *See* Ind. Code § 5-14-1.5-4.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the Rush County Board of Commissioners has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the right.

Luke H. Britt
Public Access Counselor