
OPINION OF THE PUBLIC ACCESS COUNSELOR

LINDA J. NAAS,
Complainant,

v.

WESTFIELD REDEVELOPMENT COMMISSION,
Respondent.

Formal Complaint No.
21-FC-6

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Westfield Redevelopment Commission violated the Open Door Law.¹ City Attorney Blake Burgan filed an answer on behalf of the RDC. 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 January 14, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether the Westfield Redevelopment Commission (RDC) violated the Open Door Law (ODL) when it held a virtual meeting that was not accessible to the public.

Linda Naas (Complainant) alleges that on December 21, 2020, she notified members of the RDC, shortly before the meeting began, that the public could not properly access the YouTube link that had been provided on the meeting notice and agenda. And while she had informed the RDC of the technical difficulties, they chose to continue with the meeting without any members of the public present during the meeting. Furthermore, Naas alleges that during this meeting the RDC voted to decline bids submitted on Grand Park management and landscaping. Naas also asserts that the meeting was never recorded, a fact that the RDC was made aware of, the consequence of which being members of the public do not even have access to the meeting after the fact.

Naas also claims that the RDC was given a revised copy of the meeting agenda shortly before the meeting began, and that new agenda was not made available to the public prior to the meeting.

On February 3, 2021, the attorney for the City of Westfield filed a response on behalf of the RDC, denying Naas' claims that there was a violation of the ODL. First, Burgan provided a lengthy narrative, explaining that the reason the public could not access the December 21, 2020, virtual meet-

ing was due to technical error. At first, when it was discovered that the meeting could not be accessed by the public Westfield's Director of Informatics was under the impression that the meeting was being recorded, which is why the meeting continued without public attendance. After attempting to fix the technical problem, the Director realized that the meeting had not been properly recorded. This is all to say that what happened on December 21, 2020, with Westfield's new virtual meeting platforms was a one-time malfunction that was resolved and the city has since implemented new steps to ensure all of the meetings are recorded on three formats in case one should fail again.

Regarding Naas' allegations about the meeting agenda, Burgan explained that pursuant to Indiana Code 5-14-1.5-4(a), the RDC is required to post an agenda, assuming they choose to use one, which is exactly what they did. Burgan contends that the statute does not prohibit the RDC from amending the agenda if necessary.

Naas complained that the RDC took final action during this meeting. Burgan asserts that the commission chose to reject certain responses submitted after the RDC had published a Request for Proposals (RFP) related to the Grand Park Management and Landscaping project. Pursuant to Indiana Code section 5-22-6-1, the RDC is allowed to privately review any proposals submitted because the RFP was issued for a possible service contract, not a public works project. Therefore, the Commission properly complied with the applicable public purchasing laws.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The City of Westfield is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Westfield Redevelopment Commission is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the board must be open at all times to allow members of the public to observe and record.

2. Meeting

Under the ODL, a meeting is “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 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. Ind. Code § 5-14-1.5-2(d).

Moreover, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

3. Live-streaming a public meeting

As an initial matter, it is worth mentioning that the ability to conduct virtual meetings and exclude the public from in-person attendance is a temporary measure initiated by the Governor Holcomb's executive orders addressing the public health emergency during the COVID-19 event.² While still in place at the time of the writing of this opinion, its duration is not permanent and will eventually expire when not renewed. Even so, the legislature is working on alternative plans to codify those orders.

Toward that end, this office reported to the legislature that over 2020-2021 there have been very few – and relatively minor – hiccups when it comes to virtual meetings. If virtual meetings continue, it is the sincere hope of this office that this continues to be the case.

The technological failure described by Naas in this case is one of the concerns this office had when developing guidelines for virtual meetings. Therefore, this situation is a good reminder that agencies should be particularly mindful of the balance between technological opportunity and the public's right to know under the law.

Even if the actions taken during the meeting were appropriate under the public procurement laws, the RDC conducted a meeting nonetheless. The RDC met to take action on public business. The public was not able to observe that meeting. While it may not ultimately have been intentional, steps should have been taken to re-do the meeting with the same agenda when the technical setback had been remedied.

² See Executive Orders 20-04 and 20-09.

Part of the benefit and privilege of the ability to conduct virtual meetings is the responsibility to conduct them without glitches. That must be an absolute in order for transparency to be successful in these circumstances.

Nevertheless, the prejudice visited upon the public by the RDC's actions may not have been in earnest but the complaint is hardly pedantic. Even so, the RDC should be vigilant going forward and it sounds from their response like that will be the case.

Finally, as for the agenda issue, it should have been made available to the public at the start of the meeting even if the original had been amended. While it can indeed be fluid up until the commencement of the meeting, the final itinerary should still be distributed upon request.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the meeting in question should have been recreated after the technical malfunction with the same agenda. While there may not be a point in doing so now, in hindsight, it could have been handled better. Additionally, final agendas should be made available before the commencement of any meeting.



Luke H. Britt
Public Access Counselor