

January 4, 2008

William Kutschera
Killbuck Concerned Citizens Association
PO Box 143
Chesterfield, Indiana 46017

Re: Your informal inquiry regarding the Madison County Board of Zoning Appeals

Dear Mr. Kutschera:

This is in response to your informal inquiry dated August 16, 2007. I apologize for the delay in the response. I took office July 1 of this year and found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to the inquiries, pursuant to I.C. §5-14-4-10(5).

BACKGROUND

In your inquiry you ask whether the Madison County Board of Zoning Appeals (“BZA”) violated the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) by conducting an executive session with no notice to the public. You include copies of several letters between you and the attorney for the Madison County Planning Commission (“Commission”), Gerald Shine. You allege that at the April 24, 2007 meeting of the BZA, Mr. Shine asked the BZA for approval to hire an attorney to represent the county due to an impending legal event. You contend that the BZA’s lack of discussion on the issue before voting indicates a secret meeting must have been held at which Mr. Shine discussed the matter with the BZA.

In Mr. Shine’s correspondence to you dated July 9 and August 3, he contends no executive session was held to discuss the issue. While I am uncertain whether Mr. Shine engaged outside counsel prior to or after the April 24 meeting, that fact is irrelevant to the issue at hand.

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. I.C. §5-14-1.5-1. 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. I.C. §5-14-1.5-3(a). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. 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. I.C. §5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. §5-14-1.5-2(g).

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. I.C. §5-14-1.5-5(a). Public notice of executive sessions must state the subject matter by reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). I.C. §5-14-1.5-6.1(d).

You contend that the BZA must have held an executive session to discuss hiring outside counsel. As evidence of your assertion, you point to the lack of discussion by the BZA at the April 24 meeting when Mr. Shine raised the issue. I do not find sufficient evidence to support this assertion. Nothing in the ODL prohibits some discussions by members or between the attorney and individual members outside of a public meeting. When a majority of members of a governing body gather for the purpose of taking official action on public business, the gathering is a meeting. I.C. §5-14-1.5-2(c). Aside from the serial meeting law (I.C. §5-14-1.5-3.1), which does not appear to be at issue here, nothing in the ODL provides that a meeting occurs when less than a majority of the members gather or otherwise discuss an issue, for instance by telephone. Further, nothing in the ODL prohibits the attorney for the Commission from speaking to members on an individual basis regarding issues to come before the BZA.

For the foregoing reasons, it is my opinion the BZA has not violated the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Gerald P. Shine, Jr., Attorney, Madison County Planning Commission