



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

JOSH AND MEGAN COBB, et. al.,

Complainants

v.

**WARRICK COUNTY
BOARD OF ZONING APPEALS**

Respondents

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16-FC-296

ADVISORY OPINION

January 12, 2017

This advisory opinion is in response to a formal complaint alleging the Warrick County Board of Zoning Appeals (“BZA”) violated the Open Door Law (“ODL”), Indiana Code § 5-14-1.5-1 et. seq. The BZA responded via Mr. Maurice Doll, Attorney for the BZA. Pursuant to 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 November 23, 2016.

BACKGROUND

Complaint dated November 22, 2016, alleges the Warrick County Board of Zoning Appeals violated the Open Door Law by denying access to a public hearing.

On October 24, 2016, the BZA held a public hearing to consider an application for special use filed by Prime Foods Holdings, LLC. The hearing commenced at approximately 6:15 p.m., and concluded ten (10) hours later at approximately 4:00 a.m.. The hearing room was at full capacity and about half of the individuals seeking access to the meeting were left to stand in an adjacent hallway.



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Based on the information provided, it appears as if the BZA had anticipated a large crowd; therefore, audio was broadcasted into overflow space. Additionally, sign-up sheets were provided for individuals who requested to directly address the BZA in favor or opposition of the special use.

ANALYSIS

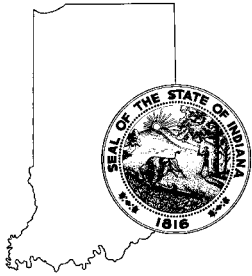
It is the intent of the Open Door Law ("ODL") that official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See Indiana Code § 5-14-1.5-1*. Section 6.1 provides an exception, allowing public agencies to conduct executive sessions which are closed to the public in order to discuss strategies with respect to certain specified topics.

County Boards of Zoning Appeals and hearings are governed by Indiana Code § 36-7-4. County Boards have the discretion to set procedural rules of order for hearings. Much of the Formal Complaint focuses on procedural and due process considerations which may or may not be ripe for judicial review. This Office generally does not regulate the procedures of local boards outside of the Open Door Law.

The only Open Door Law consideration identified in the Formal Complaint is the issue of whether the venue was too small for the anticipated crowd. I have previously held that in cases of anticipated large crowds, a governing body should move to a larger venue or else make preparations to accommodate the larger audience. Instances in the past when I have found violations have been egregious in nature, i.e. the venue was unreasonably small versus the anticipated crowd; no public address system broadcasted the proceedings; or individuals were excluded from the entire building itself and the doors locked.

While it appears as if the BZA did indeed anticipate a large audience, they brought in extra chairs, allowed observers to stand in the aisles and had a broadcast system to project into the hallway overflow. Consider the following prior *Advisory Opinion of the Public Access Counselor 03-FC-138*:

The Open Door Law does not specifically require that a governing body meet in a room of any particular size, or that it meet in a room that can seat or otherwise accommodate every person that desires to attend that meeting. Indeed, such a requirement would be impractical for several reasons. A governing body cannot precisely predict the numbers of persons that will attend its meetings, and even where it can reasonably predict the attendance based on the issues to be presented, a room of adequate size may not be available to the governing body. This would be particularly problematic for those governing bodies that are required by other law to meet within a specific geographic location or in a particular building. Then too, the Open Door law would not be satisfied



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but rather would be undermined by a rule or an interpretation that would require a governing body to cancel a meeting attended by, for example, 101 persons simply because the meeting room could only accommodate 100 of those persons.

While the Open Door Law does not require a specific room meeting size, it nonetheless provides guidance to governing bodies to suggest that the meeting location be adequate to accommodate the public's right to attend the meeting. *See* IC 5-14-1.5-3(a). A violation may be found if there is evidence to suggest that the governing body infringed on that right by meeting in a room or under circumstances that defeated the public's right to observe and record the meeting.

Under the circumstances, I find no evidence to suggest the BZA intentionally planned to exclude a member of the public or make the space so burdensome that an inordinate amount of interested individuals were unable to observe the proceedings.

Any other due process considerations cited in the complaint regarding the opportunity for a remonstrator to be heard should be properly addressed to a trial court with jurisdiction for judicial review of BZA actions.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Warrick County Board of Zoning Appeals did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read "LHB", written over a white background.

Luke H. Britt
Public Access Counselor

Distribution:

Josh and Megan Cobb on behalf of all named complainants



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