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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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TOM J. TERRY,  
*Complainant,*

v.

MARSHALL CNTY. PROP. TAX ASSESSMENT BD. OF  
APP.,  
*Respondent.*

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Formal Complaint No.  
19-FC-120

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Marshall County Property Tax Assessment Board of Appeals violated the Open Door Law.<sup>1</sup> Marshall County Assessor Debra A. Dunning filed a response on behalf of the county. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint

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<sup>1</sup> Ind. Code § 5-14-1.5-1, to -8.

received by the Office of the Public Access Counselor on November 1, 2019.

### **BACKGROUND**

On October 3, 2019, the Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) convened in regular session.

Tom J. Terry (“Complainant”) appeared before the board for a hearing on his petition appealing the 2018 assessed value for two parcels of property he owns.

Both Terry and the county had the opportunity to present testimony and evidence regarding the issues on appeal. The PTABOA adjourned the hearing without a determination on issues on appeal.

The PTABOA reconvened later the same day and concluded that Terry was not a party to the appeal because he filed after the taxes were due. Further, the PTABOA observed that even if Terry had standing, he failed to provide any evidence to change the 2018 assessed value of the parcels in question.

Terry argues that the PTABOA violated the Open Door Law because the board president, in the middle of the meeting, adjourned the proceeding and said the PTABOA would deliberate and decide on the issue in the future. Terry contends that he protested the PTABOA continuing the proceeding. Terry says he told the board that would need to be at the “continuation meeting” while presenting the PTABOA president with a copy of Indiana Code section 5-14-1.5-5, which governs notice requirements for public meetings.

Terry claims the PTABOA refused to give him the time and date of the meeting. As stated above, the PTABOA reconvened later the same day to take final action on his appeals.

As a result, Terry filed a formal complaint with this office on November 1, 2019 alleging, in part, that the Marshall County PTABOA violated Open Door Law. In essence, Terry argues that the PTABOA violated the ODL's provisions governing public notice and executive sessions.

Additionally, Terry argues that the Marshall County Assessor Debra A. Dunning ("Assessor") violated the Access to Public Records Act ("APRA") by denying him access to public records. Terry sent an email to the Assessor on October 26, 2019, requesting the following:

Request 1: I need a copy of the minutes from the October 3, 2019 PTBOA meeting I attended with you.

Request 2: I need a copy of the minutes from the October 4, 2019 meeting of the PTBOA where the decision was formulated and decided on for my appeals.

Request 3: I need a copy of the Gross Rent Multiplier for the subject properties. I was told you do have this as outlined by Indiana regulations. (This is the second request for this.)

Request 4: I need a copy of the written permission received so the [sic] you and PTABOA would not be in violation of Indiana Law for conducting official action on my appeals without my permission.

On October 30, 2019, the Assessor responded to Terry's email by attaching a copy of the minutes from the PTABOA meeting on October 3, 2019, which he requested.

She also informed Terry that the PTABOA did not meet on October 4, 2019; and thus, there are no meeting minutes. Additionally, the Assessor provided Terry with information regarding Marshall County's gross rent multiplier.

Finally, the Assessor asserted that she was not aware of any requirements stating a petitioner must give a county PTABOA written permission allowing it to meet and take action on his case.

In sum, Terry argues that the Assessor's response on October 30, 2019, constitutes a denial under the Access to Public Records Act.<sup>2</sup>

As it pertains to Terry's ODL complaint, the Assessor contends that the county posted public notice of the date, time, and place of the PTABOA meeting in various locations in the Marshall County Building at least 48 hours prior to the meeting.

The Assessor disputes Terry's claim that the PTABOA president adjourned the hearing the middle of the proceeding. Instead, the Assessor asserts that the PTABOA stated on the record that a determination would be made at a later time. She says Terry questioned the board, off record, when

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<sup>2</sup> Based on Terry's request and the Assessor's response on October 30, 2019, Terry lacks sufficient grounds to complain of an APRA violation because his request was not denied by the Assessor. Thus, the APRA complaint is dismissed and will not be addressed further in this opinion.

the decision would be made the PTABOA president stated it would be made a later time.

Notably, the Assessor concedes that the PTABOA “discussed subject petition and all other petitions later on that day in their work session and in its quasi-judicial function.” She observes that the PTABOA tries to make determinations on the same day as the hearing if time allows.

### **ANALYSIS**

The primary issue in this case is whether the Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) violated the Open Door Law by adjourning its public session on October 3, 2019, convening privately to deliberate, and reconvening publically to take final action on appeal petition.

#### **1. The Open Door Law**

It is the intent of the Open Door Law (“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* Ind. Code § 5-14-1.5-1. Except as provided in section 6.1, 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. Ind. Code § 5-14-1.5-3(a).

There is no dispute that Marshall County is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the county Property Tax Assessment Board of Appeals (“PTABOA”) is a governing body of the county for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception

applies, all meetings of the PTABOA must be open at all times to allow members of the public to observe and record.

## **2. Public Notice**

In general, under the ODL, a governing body is required to provide public notice for all meetings.<sup>3</sup> *See* Ind. Code § 5-14-1.5-5. More specifically, Indiana Code section 5-14-1.5-5(a) provides:

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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

The Assessor contends that the county posted public notice in accordance with the ODL. Terry argues that the PTABOA did not comply with ODL's requirements for reconvening a meeting without providing additional notice as set out in Indiana Code section 5-14-1.5-5(a).

Notably, the Assessor concedes that the PTABOA adjourned and reconvened later that day "in their work session

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<sup>3</sup> "Meeting" means 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).

and in its quasi-judicial function” to discuss the subject petition and all other petitions. The Assessor also asserts the PTABOA stated on the record that a determination would “be made at a later time.” The Assessor also acknowledges that the PTABOA “tries to make their determinations on the same day as the hearing if time allows,” which is what the Assessor says happened on October 3, 2019, as it relates to Terry’s appeals.

Plainly enough, the ODL authorizes a governing body to reconvene a meeting, without posting additional notice, if the governing body does three things: (1) announces the date, time, and place of the reconvened meeting during the original meeting; (2) records it in the memoranda and minutes; and (3) does not change the agenda. Ind. Code § 5-14-1.5-5(a).

Based on the information presented, the PTABOA did not announce the date, time, and place of the reconvened meeting as required under the ODL.

### **2.1 Indiana Code section 6-1.1-15-1.2**

Under Indiana Code section 6-1.1-15-1.2(i), a county PTABOA may adjourn and continue a hearing to a later date in order to make a physical inspection or consider the evidence presented.

Here, the Assessor asserts that the PTABOA adjourned, discussed the petitions before it on appeal, and reconvened the same day to make its determinations.

Even though this statute is part of the state’s tax code, it intersects with ODL here because it, in relevant part, sets

parameters for how a PTABOA may adjourn and continue a public hearing.

In construing this provision in harmony with the ODL, this office concludes that Indiana Code section 6-1.1-15-1.2(i) authorizes a PTABOA to adjourn and reconvene a hearing to a later date.

The determinative factor here is the unique way PTABOAs do business. First, a board gathers during “sessions” pursuant to Indiana Code section 6-1.1-28-0.7, and publishes notice according to Indiana Code section 5-3-1-4(e). The Department of Local Government Finance also recommends it follow the Open Door Law and provide an additional 48 hours’ notice of those sessions at the physical location of the meeting. This office agrees, however, that does not seem to be the issue in question.

PTABOAs are not in “continuous session” per se, however, they typically hold session and have multiple “hearings” during a single session or meeting. Individual petitioners are provided individualized 30 days’ notice of those hearings consistent with Indiana Code section 6-1.1-15-1.2(d).

The law does not provide how those hearings are to be conducted other than the assessing official and the petitioner present evidence and the petitioner may appeal the PTABOAs findings to the Indiana Board of Tax Review. Additionally, a PTABOAs findings must be voted upon and issued in writing as a majority. *See* Ind. Code § 6-1.1-15-1.2(j).

Nothing in the Indiana Code requires findings to be issued contemporaneous with the fact-finding assessment hearing.



Therefore while an individual *hearing* may be adjourned or recessed, the *session* does not end. Minutes in the form of findings are issued later affirming the assessing official's determination or ratifying the taxpayer's petition and reducing an assessment.

Notably, a determination was eventually made on the same day of the hearing – October 3, 2019. It appears as if the Terry's main contention is that he was not present and did not know when the findings were issued.

This would all be legal save for the fact that the PTABOA then held a closed, off record "work session" after the hearing and excluded Terry from that gathering. Therefore the issue is not so much the continuation of the meeting, but the exclusion from the continuation.

This office was unable to find a provision in Indiana Code authorizing a PTABOA to hold a closed "work session". Thus, the public was excluded and a violation took place. While this office does not, and cannot, scrutinize the PTABOA's ultimate determination in Terry's case, there does appear to be a procedural defect in the way they deliberated.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Marshall County Property Tax Assessment Board of Appeals violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor