

June 5, 2002

Ms. Brenda J. Yonts
4675 W. 700 N
Fairland, IN 46126

Re: *Advisory Opinion 02-FC-20*;

Alleged Violation of the Open Door Law by the Shelby County Plan Commission.

Dear Ms. Yonts:

This is in response to your formal complaint, which was received on May 20, 2002. You have alleged that the Shelby County Plan Commission ("Plan Commission") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Plan Commission held a meeting on May 9, 2002 without providing notice to the public or allowing the public to attend in violation of the ODL. Mr. Cameron Morgan, attorney for the Plan Commission, provided a written response to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that there was no violation of the ODL because the persons who met on May 9, 2002 did not constitute a governing body under the ODL.

BACKGROUND

According to your complaint, you learned that a meeting was held in the Plan Commission's Office on May 9, 2002. You believe that this meeting included the developers of a planned 500-house subdivision and their attorney and engineers and the county engineer, a Plan Commissioner and at least one Shelby County Commissioner. The purpose of the meeting was to discuss drainage issues and the planned route of the drain for the planned development. When you contacted the Plan Commission office the next day to ask why the public was not informed of this meeting, you were told it was a "private" meeting and that the public did not have to be informed. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Morgan stated that there was a meeting held on May 9th, but that this meeting was not subject to the requirements of the ODL. The persons who attended the meeting were two developers and two engineers for Victoria Trace¹, the developers' attorney, the two county engineers, County Commissioner David Mohr and Mark Mills, the Executive Director for the Plan Commission. The purpose of the meeting was to discuss engineering issues related to the development so that the developers could make their final designs to be submitted for review by the appropriate committees. Mr. Morgan states that, under the ODL, the actions of the group that met on May 9th were not official action so there was no violation. According to his response, on May 16, 2002 a technical committee meeting was held, in compliance with the ODL, and these issues were fully discussed at that meeting.

ANALYSIS

The intent and purpose of the ODL is 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." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1.

A "meeting" for the purposes of the ODL is defined as 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). A "governing body" is defined, in relevant part, as follows:

"Governing body" means two (2) or more individuals who are:

1. a public agency that:
 - A. is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - B. takes official action on public business;
2. the board, commission, council, or other body of a public agency which takes official action upon public business; or
3. any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Indiana Code §5-14-1.5-2(b). The Plan Commission is a public agency and a governing body subject to the requirements of the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b). As a threshold matter, there must be a majority of the members of a governing body present in order for the ODL requirements to apply to a meeting.

Clearly, when a majority of the members of the Plan Commission are present to take official action on public business, those meetings are governed by the requirements of the ODL. Under the facts presented, however, there was no majority of any governing body present at the meeting held on May 9, 2002 in the Plan Commission's office. There was a County Commissioner present, but two (2) members constitute a majority of that board. Further, the county engineer and the executive director of the Plan Commission do not constitute a majority of the membership of any governing body.² For these reasons, it is my opinion that the May 9, 2002 meeting held in the Plan Commission office was not a meeting subject to the requirements of the ODL, and therefore, the failure to post notice or permit the public to attend did not constitute violations of the ODL.

CONCLUSION

It is my opinion that the Shelby County Plan Commission did not violate the ODL as the meeting held on May 9, 2002 did not involve the majority of the members of any governing body subject to the requirements of the ODL.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Cameron Morgan, Attorney for the SCPC w/o enclosure

¹ The development referenced in your formal complaint.

² According to information I received from Mr. Mills, the Technical Committee that met on May 16, 2002 is comprised of eight (8) members, only two (2) of whom were present in the May 9th meeting, himself and one of the county engineers. While the Technical Committee is a governing body under the ODL, there was not a majority of the members of that governing body present at the May 9th meeting.