



STATE OF INDIANA

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July 12, 2008

David Snyder
236 East Pendle Street
Roseland, Indiana 46637-3432

*Re: Formal Complaint 08-FC-161; Alleged Violations of the Open Door Law
and Access to Public Records Act by the Roseland Town Council*

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the Roseland Town Council ("Council") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by holding a meeting one day before the date indicated on the public notice and violated the Access to Public Records Act ("APRA") (I.C. 5-14-3) by denying you access to records. It is my opinion the Council has violated the ODL as well as access requirements in I.C. § 36-7-4-918.6. Further, if the Council has approved the petition, it must make the written determination available for inspection and copying.

BACKGROUND

You allege that on June 13, 2008 you read in the *South Bend Tribune* that a meeting of the Council scheduled for June 13 was held on June 12. You provide a copy of the public notice, which indicates the meeting was to be held on June 13. You allege that because of the mistake you were prevented from appearing and making comments regarding the variance. Further, you allege that I.C. § 36-7-4-918.6(d) requires the Council to give notice of its intention to consider the petition. You make a further allegation that the variance is in conflict with Roseland's Master Plan. Finally, you allege that you requested a copy of the determination, and the Clerk could not produce a copy of the determination or approved and signed construction plans.

My office sent a copy of the complaint to the Council and invited the Council to respond. To date I have not received a response to the complaint.

ANALYSIS

It is the intent of the Open Door Law 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 Open Door Law, 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). The Council constitutes a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

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). Here, you allege public notice was posted indicating the Council meeting would be held on June 13; further, you include with your complaint a copy of the notice indicating a meeting of the Council was scheduled for June 13. You then read in the newspaper on June 13 that the meeting had been held on June 12. If no notice was posted regarding the June 12 meeting, or if the Council changed the meeting from June 13 to June 12 without forty-eight hours notice, the Council violated the notice provision of the ODL. *See* I.C. § 5-14-1.5-5(a).

You allege that because of the mistake you were not able to attend the meeting and make comments regarding the variance. Nothing in the ODL requires a governing body to allow public comment or testimony at public meetings. The Council would be required to allow public testimony or comment only if another state statute requires the Council to do so.

Further, you allege that the Council violated I.C. § 36-7-4-918.6(d) by not providing notice it intended to consider the variance petition. If the Council considered the type of petition contemplated by I.C. § 36-7-4-918.6 and did not provide the notice as required by subsection (d), the Council violated this public access provision as well.

You further allege the Council violated I.C. § 36-7-4-918.4 by approving the petition in conflict with Roseland's Master Plan. This allegation relates the substance of the meeting rather than the public access aspects of the meeting. The substantive issues related to the approval of such a petition is outside the purview of the public access counselor's office, and as such I make no determination on this issue.

Finally, you contend the Council has not made the written determination available through the Town Clerk-Treasurer's office. I.C. § 36-7-4-918.6 (f) provides that if the legislative body approves a petition, it must make the determination in writing as required under section 918.2, 918.4, or 918.5 of the chapter or as required by the zoning ordinance. Nothing in the statute excepts the record from disclosure, so it is my opinion that pursuant to the APRA the record should be made available for inspection and copying. *See* I.C. § 5-14-3-3. If the Council has approved the petition, the written determination must be available for inspection and copying.

CONCLUSION

For the foregoing reasons, it is my opinion the Council has violated the ODL as well as access requirements in I.C. § 36-7-5-918.6. Further, if the Council has approved the petition, it must make the written determination available for inspection and copying.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Elizabeth McCombs, Roseland Town Council