



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 16, 2011

Bill Lukenbill
Lukenbill & Lukenbill, LLP
Attorneys-at-Law
501 East Jefferson Street, P.O. Box 1508
Plymouth, Indiana 46563-1508

Re: Informal Inquiry 11-INF-42; Committees

Mr. Lukenbill,

I received your responses to my initial inquires this morning. As I provided earlier, it is my opinion that from the information that has been provided that the Technical Review Committee ("TRC") is subject to the Open Door Law ("ODL").

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. *See* 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. *See* I.C. § 5-14-1.5-3(a).

The TRC was established TRC is to provide efficiency in the work load of the Marshall County Plan Commission ("MCPC"), as well as applicants, by establishing a body to make determinations regarding petitions for which the only criteria is consistency with the applicable adopted standards of Marshall County. As provided, the TRC was appointed by the MCPC, a public agency. The TRC has the authority to review Re-Zoning Petitions, Planned United Development Concept Plans, and Planned Unit Development Detailed Plans and approve site development plans as defined by Article 7, Site Development Plans of this Ordinance. All decisions of the TRC may be appealed to the MCPC.

The ODL defines a public agency as follows:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

I.C. § 5-14-1.5-2(a).

The MCPC was formed pursuant to I.C. § 36-7-4-208 and would appear to qualify as a state agency under I.C. § 5-14-1.5-2(a)(2). The TRC was appointed by the Marshall County Plan Commission ("MCPC"). For the ODL to apply to TRC, TRC must be a governing body. A governing body is defined as:

(b) "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. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

I.C. § 5-14-1.5-2(b)

The TRC would qualify as a governing body of the MCPC as provided in I.C. § 5-14-1.5-2(b). "Official Action" is defined very broadly under the ODL, and means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. From what you submitted describing the actions and formation of the TRC, it would appear that they are taking "official action" when meeting to review petitions and unit development plans. As such, they would be required to comply with

the requirements of the ODL (i.e. providing public notice, issuing memorandum, holding executive sessions pursuant to the requirements of the ODL, etc...).

If I can be of any further assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor