



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

January 19, 2016

Mr. Tom L. Mathis
3433 West 900 North
Wheatfield, Indiana 46392

Re: Formal Complaint 15-FC-271; Alleged Violation of Public Access Laws by the Jasper County Planning and Development Department (Amended)

Dear Mr. Mathis,

This advisory opinion is in response to your formal complaint alleging the Jasper County Planning and Development Department ("Department") violated Ind. Code § 36-7-4-915. The Department responded via Counsel, Mr. William T. Sammons. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 7, 2015. This opinion has been amended.¹

BACKGROUND

Your complaint dated September 30, 2015, alleges the Jasper County Planning and Development Department violated Ind. Code § 36-7-4-915 by not creating findings of fact as required by law.

On September 11, 2015, you requested to inspect findings of fact the Department was required to make under Ind. Code § 36-7-4-915. You contend members of the Department informed you they do not follow that provision of Indiana law, but failed to inform you of their justification for such failure.

On December 3, 2015 the Department responded. The Department notes it does create findings of fact, which are incorporated into the meeting minutes. They are not a separate document, but are in fact available for public inspection.

¹ This opinion was originally issued on November 18, 2015. On December 3, 2015 Counsel responded and requested an amended opinion.



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ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Jasper County Planning and Development Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Ind. Code § 36-7-4-915 states “[t]he board of zoning appeals shall keep minutes of its proceedings and record the vote on all actions taken. All minutes and records shall be filed in the office of the board and are public records. The board shall in all cases heard by it make written findings of fact.”

The Planning and Development Department is required under this statute to make written findings of fact. The Department notes it does indeed make written findings of fact which it incorporates into the meeting minutes. Upon request, you would be entitled to receive a copy of the minutes with the findings of fact incorporated. This Office is not the regulatory agency which governs the form of BZA proceedings. As long as the information required to be contained in traditional findings of fact are incorporated and ratified in meeting minutes, there is unlikely to be a violation of state law. A plain reading of the statute does not mandate two (2) separate documents for minutes and findings of fact.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Jasper County Planning and Development Department has not violated the Access to Public Records Act.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name and title.

Luke H. Britt
Public Access Counselor

Cc: Mr. William T. Sammons, Esq.