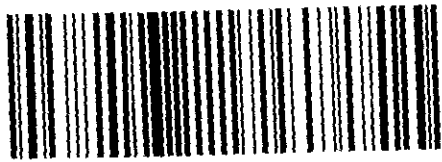


Town of Whitestown  
P.O. Box 325  
Whitestown, Indiana 46075

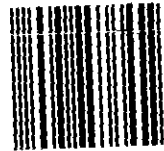
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46077

U.S. POSTAGE  
PAID  
WHITESTOWN, IN  
46075  
FEB 22, '07  
AMOUNT

**\$4.88**  
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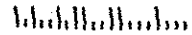
RETURN RECEIPT  
REQUESTED

2/23

MR.

Zionsville, IN. 46077

46077+4402 R003



Whitestown Town Hall  
P.O. Box 325  
Whitestown, Indiana 46075  
(317) 769-6557

February 22, 2007

k

Zionsville, Indiana 46077

RE: Formal Complaint 07-FC-15

Dear Mr.

This is a copy of all the paperwork I provided to the Public Access Counselor in regard to the multiple complaints you filed. If you have any further questions or concerns please don't hesitate to contact me directly and we can work any problem you feel we need to address in a more efficient manner.

Thank You in Advance,  
Debra Zachelmeyer

Town of Whitestown

P.O. Box 325

Whitestown, Indiana 46075

(317) 769-6557

February 21, 2007

Indiana Public Access Counselor

402 W. Washington Street Room W460

Indianapolis, Indiana 46204

Formal Complaint 07-FC-15

Dear Mrs. Davis,

We have made it a priority to accommodate Mr. [redacted] with his hearing impairment. We have offered him a seat in the front row on several occasions and he refused to move to the front. He stands as far back in the Town Hall as possible. We have recently bought a PA system to use to help with this. We have moved the last few meetings to the Fire Station to accommodate for the large turnout and the handicapped. As far as the deficiencies that were reported, here is what we have on what has been reported and what we have found. Exhibit A

Sincerely,



Debra Zachelmeyer

Clerk-Treasurer

Town of Whitestown

## Exhibit A

Whitestown Town Hall's response to the Formal Complaint filed with the Office of the Public Access Counselor on 1/22/2007, complaint #07-FC-15 from Mr. \_\_\_\_\_, Zionsville, IN 46077. We received by fax on 1/23/2007.

Complaint relates to the Town Council Meeting held on 12/28/06 and states that the meeting was held in violation of Public Access Indiana Code 5-14-1.5-8 "Accessibility To Individuals With Disabilities". Below are the responses to the different areas Mr. \_\_\_\_\_ listed on his complaint:

1. Deficiencies in the Doorway Clearance Width:

ADA4.13.5 states the doorway must have a clearance width of at least 32 inches and open at least to 90 degrees. The Town Hall door is 36 inches in width and has a clearance opening of 33 inches and opens slightly more than 90 degrees.

2. Maneuvering Clearances at the Doorway:

ADA4.13.5 as stated above the door opens slightly more than 90 degrees which is what is required to be in compliance.

3. Thresholds at Doorways:

ADA 4.13.8 states that they shall not exceed ½ inch for regular opening doors and that raised thresholds and floor level changes shall be beveled with a slope no greater than ½ inch per ADA4.5.2. The Town Hall threshold enters off an even height sidewalk and is less than ½ inch in height as it enters the room the same level of height as the sidewalk. In other words it is a flat entry from the sidewalk into the Town Hall.

4. Door Hardware:

ADA4.13\* states that handles and other operating devices should have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching or twisting of the wrist to operate. The Town Hall currently does have a regular type door knob however, the door does not latch unless locked and therefore only requires that you push on the door to open it. The Town Hall will be replacing the current door knob with a lever type opening unit so that it meets the full requirement.

5. Restroom Facilities:

ADA4.16\* Town Hall is currently at a rented building and we are working with the owner of the building to see how the restroom can be modified to meet the requirements, currently the restroom can not be accessed by a wheelchair.

6. Accessible Parking Facilities:

The parking around the Whitestown Town Hall is all accessible to the sidewalk in front of Town Hall. There are no curbs to be concerned with and the alleyway beside the Town Hall is flat and level with the sidewalk that runs in front of the door to the Town Hall.

I believe that this answered all of the concerns Mr. \_\_\_\_\_ addressed in his formal complaint. If there are any other specific areas we need to look at, please advise us.

**Office of the Indiana Public Access Counselor—Facsimile**

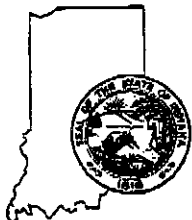
402 W. Washington Street, Room W460  
Indianapolis, IN 46204  
(317) 233-9435 or (800) 228-6013  
FACSIMILE: (317) 233-3091

<b>To:</b>	Town of Whitestown Town Council	<b>From:</b>	Karen Davis
<b>Fax:</b>	317-769-6871	<b>Pages: (including cover)</b>	3
<b>Phone:</b>		<b>Date:</b>	Feb.20, 2007
<b>Re:</b>	Formal Advisory #07-FC-15	<b>CC:</b>	

Urgent    For Review    Please Comment    Please Reply    Please Recycle

---

• **Comments:**



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

402 West Washington Street Room W460  
Indianapolis Indiana 46204-2745  
Telephone: (317) 233-9435  
FAX (317) 233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

February 20, 2007

Zionsville, IN 46077

*Re: Formal Complaint 07-FC-15; Alleged Violation of the Open Door Law by the  
Whitestown Town Council*

Dear Mr. :

This is in response to your formal complaint alleging that the Whitestown Town Council ("Council") violated the Open Door Law by holding a meeting in a location that is not accessible to persons with a disability. I find that the Town has not responded to your allegations, but may not hold its meetings in the Town Hall if the Town Hall does not meet the standards for accessibility contained in federal law.

### BACKGROUND

You filed two complaints following meetings of the Council on December 28, 2006, and January 6, 2007. The Council met in the Whitestown Town Hall. You allege that the Town Hall has numerous deficiencies in the design of doorway widths, maneuvering clearances at the doors, doorway thresholds, door hardware, restroom facilities, and parking facilities. This list is not inclusive, you state.

Although I sent a copy of your complaint to the Town of Whitestown, I have not received a response.

### 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. Ind. Code 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. IC 5-14-1.5-3(a). A public agency may not hold a meeting at a location that is not accessible to an individual with a disability. IC 5-14-1.5-8(d). "Accessible" means:

"...the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

Indiana Code 5-14-1.5-8 mandates that public agency hearings must be held in facilities that permit barrier-free physical access to the physically handicapped. *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (Ind. Ct. App. 1998).

You have provided information about clearance widths and other specific criteria contained in the federal guidelines. Of course, I cannot determine whether the Town Hall meets these criteria. I offer only the opinion that if the Town Hall does not meet the applicable standards, the Council may not meet in the Town Hall. A meeting may not be held in a location that does not meet the standards for accessibility, even if no one from the public has requested an accommodation. See *Town of Merrillville v. Blanco*, 687 N.E.2d at 198.

You have asked that all items discussed or voted on at the meetings be voided until an accessible location is used for the meetings. A court may declare void any policy, decision, or final action taken at a meeting held in a location in violation of section 8 of the Open Door Law. IC 5-14-1.5-7(a)(3)(D). In any action filed under section 7 of the Open Door Law, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing plaintiff where the plaintiff first sought and received an advisory opinion from the public access counselor. IC 5-14-1.5-7(f).

#### CONCLUSION

For the foregoing reasons, I find that the Whitestown Town Council may not meet in a location that is not accessible to individuals with a disability.

Sincerely,



Karen Davis

Public Access Counselor

cc: Sam Sorter

action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the Public Access Counselor concerning a violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section. (*As added by Acts 1977, P.L. 57, § 1. Amended by Acts 1979, P.L. 39, § 5; P.L. 67-1987, § 6; P.L. 38 1992, § 1; P.L. 70-1999, § 1; P.L. 191-1999, § 1.*)

#### **COMMENTARY:**

*A party challenging the action of a public agency need not prove special damage that is different from the public at-large in order to obtain an injunction under this section of the Open Door Law. Common Council v. Peru Daily Tribune, Inc., 440 N.E.2d 726 (Ind. Ct. App. 1982).*

*A city resident was entitled to file a taxpayer's action and initiate proceedings to force the city council's compliance with the Open Door Law. Reichhart v. City of New Haven, 674 N.E.2d 27, 32 (Ind. Ct. App. 1996).*

*Whether to invalidate any policy, decision, or final action taken by a public agency in violation of the Open Door Law is left to the court's discretion. Town of Merrillville v. Blanco, 687 N.E.2d 191 (Ind. Ct. App. 1998).*

### **INDIANA CODE 5-14-1.5-8: ACCESSIBILITY TO INDIVIDUALS WITH DISABILITIES**

Section 8. (a) This section applies only to the following public agencies:

(1) A public agency described in section 2(a)(1) of this chapter.

(2) A public agency:

(A) described in section 2(a)(5) of this chapter; and

(B) created to advise the governing body of a public agency described in section 2(a)(1) of this chapter.

(b) As used in this section, "accessible" means the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

(c) As used in this section, "individual with a disability" means an individual who has a temporary or permanent physical disability.

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability. (*As added by Acts P.L. 38-1992, § 2.*)

#### **COMMENTARY:**

*Indiana Code 5-14-1.5-8 mandates that public agency hearings must be held in facilities that permit barrier-free physical access to the physically handicapped; the statute does not make allowances for agencies who plan to accommodate disabled individuals only when those individuals express interest in attending the meetings. Town of Merrillville v. Blanco, 687 N.E.2d 191, 198 (Ind. App. 1998).*

### **SECTION THREE:**

## **OVERVIEW OF THE INDIANA ACCESS TO PUBLIC RECORDS ACT INTRODUCTION**

The Access to Public Records Act (Act), originally passed by the Indiana General Assembly in 1983, was enacted to permit the citizens of Indiana broad and easy access to public documents. By providing the public with the opportunity to review and copy public documents, the citizens of Indiana



**OFFICE OF THE PUBLIC ACCESS COUNSELOR  
FORMAL COMPLAINT**

State Form 49407 (R2 / 7-01)  
Indiana Government Center South  
Indianapolis, IN 46204  
Telephone: (317) 233-9435 or 1 (800) 228-6013  
Facsimile: (317) 233-3091

FOR OFFICE USE ONLY	
Date received (month, day, year)	
Complaint number	

**INSTRUCTIONS:** This form is to be used only when filing complaints under Indiana Code 5-14-5. All information provided is disclosable under the Access to Public Record Act. **PLEASE TYPE OR PRINT.**

**COMPLAINANT INFORMATION**

Address (number and street)

**INFORMATION ABOUT PUBLIC AGENCY DENYING ACCESS**

Name of public agency  
**Town Of Whitestown - Town Council - Boone County**

Address (number and street) <b>3 South Main Street</b>	City <b>Whitestown</b>	State <b>IN</b>	ZIP code <b>46075</b>
Telephone number <b>317-769-6557</b>	Facsimile number	E-mail address	

Name of Elected / Appointed Official or Presiding Officer responsible for the denial  
**Sam Sorter Council President, Carla Jackson & Celia Follmer Council Members**

**COMPLAINT (Check All That Apply)**

<input type="checkbox"/> <b>Open Door Law Violation</b> <input type="checkbox"/> Executive Session <input type="checkbox"/> Notice <input type="checkbox"/> Other _____	<input type="checkbox"/> <b>Public Records Access Violation</b> <input type="checkbox"/> Denial of Access <input type="checkbox"/> Copy Fee <input type="checkbox"/> Denial of Electronic Access <input type="checkbox"/> Other _____
<b>IMPORTANT</b> Date denied access to public record:  Date notified of denial of access to meeting:	<input type="checkbox"/> <b>Request for priority status [See Indiana Admin. Code (62 IAC 1-1-3)]</b>

Please describe denial of access to meeting or public records below. Attach additional sheets if necessary. (Required)  
Specific complaint relates to Town Council Meeting Held on 12/28/06. This meeting was held in violation of Public Access Indiana Code 5-14-1.5-8 "Accessibility To Individuals With Disabilities". Town Hall has numerous design deficiencies from the guild lines listed in the Americans with Disabilities Act (ADA Act). Deficiencies include Doorway Clear Width, Maneuvering Clearances at Doors, Thresholds at Doorways, Door Hardware, Accessible Restroom Facilities, Accessible Parking Facilities. This is not an inclusive list. See attached 3 sheets with the requirements for doors from the USDOJ web site for the ADA Act as a small example. Council had legal counsel present at this meeting. All items discussed or voted on at this meeting should be voided until an accessible location is used for meeting.

**\*\*NOTE - used the only complaint form listed on the PAC web site. If this is wrong form please consider complaint timely and send correct form to address above.**

**PLEASE ATTACH COPIES OF ANY WRITTEN DENIAL OR DOCUMENTATION CONCERNING DENIAL**

**4.13.5 Clear Width.** Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the opposite stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).

EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in (510 mm) minimum.

**4.13.6 Maneuvering Clearances at Doors.** Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

**4.13.7 Two Doors in Series.** The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

**4.13.8\* Thresholds at Doorways.** Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

**4.13.9\* Door Hardware.** Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate.

Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. Hardware required for accessible door passage shall be mounted no higher than 48 in (1220 mm) above finished floor.

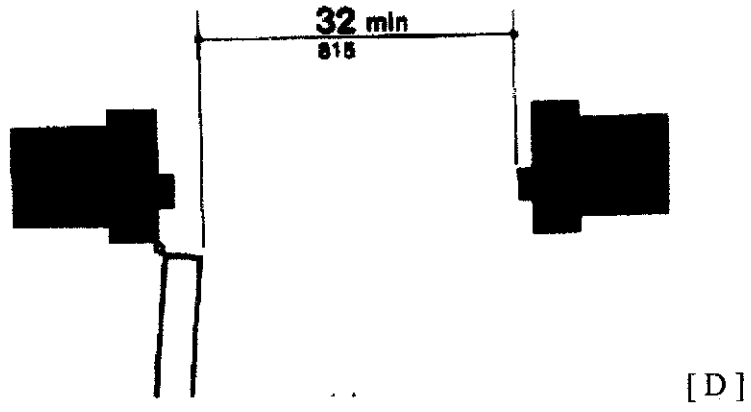


Fig. 24(a)  
Detail

Return

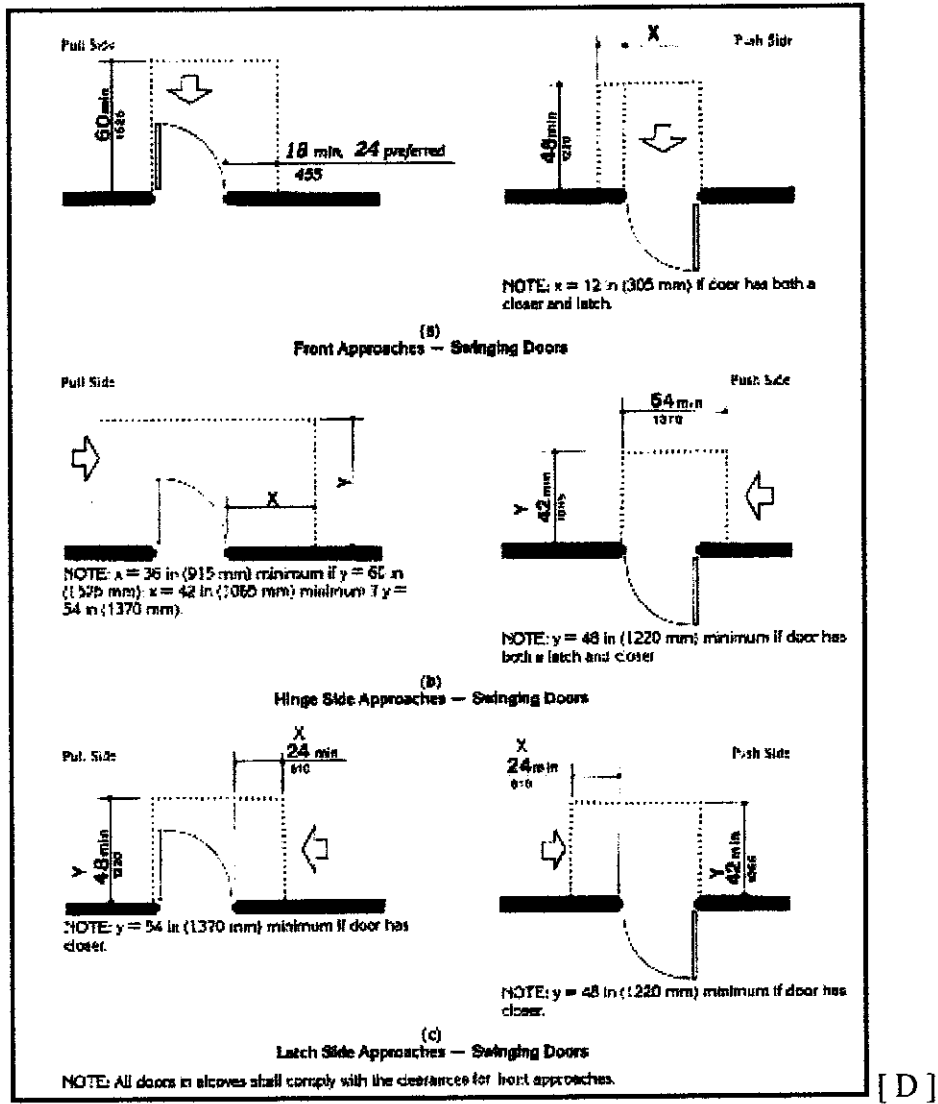


Fig. 25  
Maneuvering Clearances at Doors

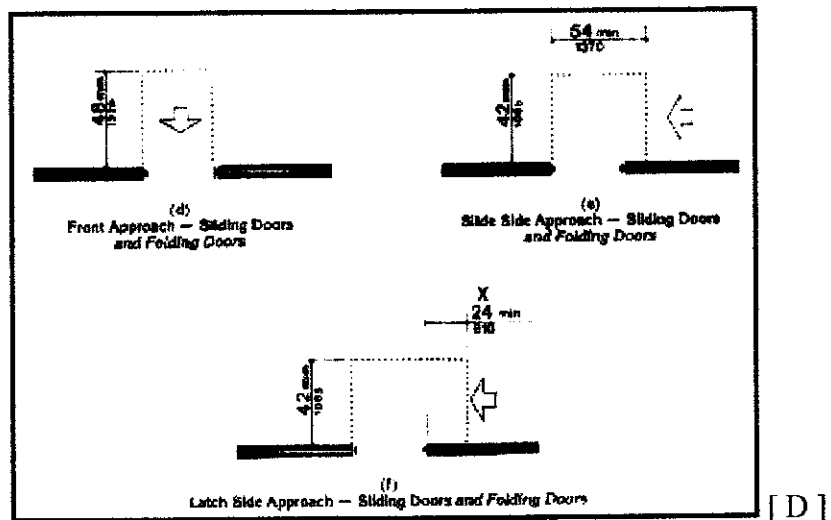


Fig. 25  
Maneuvering Clearances at Doors (continued)