

5. The gathering on March 14, 2022 was supposed to be a so-called “hybrid” meeting, which means that some members of the plan commission were physically present (in person) and some attended by using a connection to a video conference platform. The term used by Indiana’s Open Door Law to describe such a meeting is an “electronic meeting.”
6. Attending in-person on March 14, 2022 were plan commissioners Jillian Kinzie, Andrew Cibor, Tim Ballard, and Karin St. John. Participating via Zoom video conference were Flavia Burrell and Chris Cockerham. Absent were Ron Smith, Israel Herrera, and Brad Wisler. Also absent was a tenth non-voting member, Trohn Enright-Randolph.
7. A requirement of Indiana’s Open Door Law for “electronic meetings” [IC 5-14-1.5-3.5(g)] reads as follows: “At least fifty percent (50%) of the members of the governing body must be physically present at a meeting.”
8. On any good-faith reading, the phrase “at least fifty percent (50%) of the members of the governing body” is unambiguous.
9. For at least the last eight and a half months, Indiana’s public access counselor has been promulgating guidance on the revision to the Open Door Law that was enacted by Indiana’s General Assembly and signed into law by the governor in 2021, and which included IC 5-14-1.5-3.5(g) with its phrase “at least fifty percent (50%) of the members of the governing body.”
10. The public access counselor’s guidance on IC 5-14-1.5-3.5(g) relies on the unambiguous character of the phrase “at least fifty percent (50%) of the members of the governing body” in concluding that it is no just merely important,

but should be considered the “lynchpin” of the new law on electronic electronic meetings. The public access counselor’s guidance reads (emphasis in original):

“The lynchpin to electronic participation by local governing body members is the physical presence of at least 50% of *sitting* board members, i.e. total membership of the board at the time of the meeting. Ind. Code §5-14-1.5-3.5(g). If less than 50% cannot attend in-person, the meeting must be canceled or postponed. This is an important fail-safe to ensure transparency.”

11. Because four of nine is less than 50%, it was not the case that at least 50% of Bloomington Plan Commission members were physically present at their March 14, 2022 gathering.
12. Therefore, the Bloomington plan commission’s gathering on March 14, 2022 gathering was not a lawful meeting, because it violated IC 5-14-1.5-3.5(g).

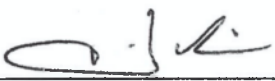
WHEREFORE, Plaintiff David Askins prays that the Court:

- grant a declaratory judgment against the Bloomington plan commission that on March 14, 2022 the commission violated IC 5-14-1.5-3.5(g) of the Open Door Law by conducting business at an electronic gathering when fewer than 50% of its members were physically present;
- declare void all actions taken at the March 14, 2022 of the Bloomington plan commission;
- and impose whatever additional punishments as the Court deems fitting and proper.

Verification

I AFFIRM UNDER PENALTIES FOR PERJURY THAT THE ABOVE
REPRESENTATIONS ARE TRUE.

Respectfully submitted,

Name: 

Date: MARCH 21, 2022