

STATE OF INDIANA
COUNTY OF FULTON
RICHARD O'NEILL

IN THE FULTON SUPERIOR COURT
CAUSE NO. 25D01-2604-PL-000301

Petitioner,

vs.

FULTON COUNTY AREA PLANNING COMMISSION,
and DATA CENTER ORDINANCE REVIEW
COMMITTEE,

Respondents.

ANSWER AND AFFIRMATIVE DEFENSES

Respondents, Fulton County Area Plan Commission (APC), and the Data Center Ordinance Review Committee (DCORC), by counsel, submit their Answer and Affirmative Defenses to the Complaint for Declaratory Judgment and Injunctive Relief filed by the Petitioner in this matter, stating as follows:

ANSWER

1. Respondents admit the allegations contained in paragraph 1 of the Complaint.
2. Respondents admit the allegations contained in paragraph 2 of the Complaint.
3. Respondents admit the allegations contained in paragraph 3 of the Complaint.
4. Respondents are without sufficient information to admit or deny the allegations contained in paragraph 4 of the Complaint.
5. Respondents admit the allegations contained in paragraph 5 of the Complaint.
6. Respondents admit the allegations contained in paragraph 6 of the Complaint.
7. Respondents admit the allegations contained in paragraph 7 of the Complaint.
8. Respondents admit the allegations contained in paragraph 8 of the Complaint.

9. Respondents admit the allegations contained in paragraph 9 of the Complaint.
10. Respondents admit the allegations contained in paragraph 10 of the Complaint.
11. Respondents hereby incorporate their responses to paragraphs 1-10.
12. Paragraph 12 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings. However, the Respondents agree with the statement that the APC is a governing body under Ind. Code § 5-14-1.5-3.
13. Paragraph 13 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings. However, the Respondents disagree with the statement that the DCORC is a governing body under Ind. Code § 5-14-1.5-3.
14. Paragraph 14 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings. However, the Respondents agree with the statement that there are exceptions to the Open Door Law (ODL), which generally applies to meetings of public agencies' governing bodies, and that Ind. Code § 5-14-1.5-2 provides definitions, including the definition of a "governing body."
15. Paragraph 15 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings. However, the Respondents disagree that paragraph 15 accurately quotes the entire subsection which defines "governing body," I.C. 15-14-1.5-2(b).
16. Paragraph 16 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

However, the Respondents agree that the APC is subject to the ODL, and that a committee formed thereunder is subject to the ODL unless an exception applies.

17. Paragraph 17 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

However, the Respondents agree that the ODL generally requires open meetings of governing bodies public agencies, except where otherwise allowed.

18. Paragraph 18 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings, and the Resolution, *Exhibit 2*, speaks for itself.

19. Paragraph 19 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings, and the Resolution, *Exhibit 2*, speaks for itself.

20. Paragraph 20 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings. However, the Respondents agree that I.C. 5-14-1.5-2(d) defines “Official action” under the ODL.

21. Paragraph 21 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

22. Paragraph 21 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

To the extent that paragraph 22 alleges actions being taken by the DCORC, the Respondents deny that the DCORC has taken any action in violation of the resolution or the ODL, and admit that it has obtained information and

deliberated. Respondents deny that the DCORC has made any recommendations at the time of this responsive pleading.

23. Paragraph 23 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

24. Paragraph 24 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

25. Paragraph 25 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

26. Paragraph 26 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

To the extent that paragraph 26 alleges any facts, Respondents deny that the APC has asked or authorized the DCORC to violate ODL.

27. Paragraph 25 of the Complaint makes a legal conclusion, not a factual statement, and Respondents are not required to respond to legal conclusions in pleadings.

28. Respondents deny that the DCORC met in secret or in violation of the ODL, but admit that the DCORC met on April, 8, 2026, as alleged in paragraph 28 of the Complaint.

29. Respondents admit the allegations contained in paragraph 29 of the Complaint.

30. As to paragraph 30 of the Complaint, Respondents deny that the DCORC held a second meeting on April 8, 2026, but admit that a nonparty, the Fulton County Board of Zoning Appeals, had a meeting in the same building on April 8, 2026.

31. Respondents deny the allegations contained in paragraph 31 of the Complaint.

32. Respondents are without sufficient information to admit or deny the allegations contained in paragraph 32 of the Complaint.

AFFIRMATIVE DEFENSES

33. *Failure to state a claim under which relief can be granted.* Petitioner's Complaint fails to plead facts sufficient to establish the statutory prerequisites for relief under the ODL, including facts showing that DCORC is a “governing body” within the meaning of Indiana Code § 5-14-1.5-2(b) and that any challenged gathering constituted a “meeting” within the meaning of Indiana Code § 5-14-1.5-2(c).

34. *ODL is inapplicable to DCORC.* DCORC is an advisory committee created by resolution for study and reporting, the ODL provides a specific exception under I.C. § 5-14-1.5-2(b), which the DCORC meets because it was created for the sole purpose of receiving information, deliberating and making recommendations, and only one member of the APC serves as a member of the DCORC.

35. *Absence of “meeting” as defined by statute.* Petitioner is not entitled to relief because the ODL’s notice and openness requirements are triggered by a “meeting,” defined as a gathering of a majority of the governing body for the purpose of taking official action upon public business, and Petitioner has not established that the alleged April 8, 2026 gathering satisfies that statutory definition, since no governing body was involved.

36. *Administrative/delegated activity not subject to Open Door Law.* To the extent Petitioner challenges administrative work performed by delegated

representatives rather than official action by a governing body, such administrative actions are not subject to the Open Door Law.

37. *Remedy Limitations.* Even if Petitioner could establish a violation, the Court's decision whether to declare void any policy, decision, or final action is discretionary and must be evaluated under the statutory factors set out in Indiana Code § 5-14-1.5-7(d), including the extent of any impairment of public access or understanding, whether voiding is necessary to substantial reconsideration, and the balance of remedial benefits against prejudice to the public and reliance interests

38. *Laches.* Petitioner's claims are barred, in whole or in part, by laches to the extent Petitioner unreasonably delayed in seeking relief and that delay prejudiced Respondents and/or the public.

39. *Waiver.* Petitioner's claims are barred, in whole or in part, by waiver to the extent Petitioner knowingly failed to timely assert any alleged ODL objection and thereby relinquished any such claim for equitable relief.

40. *Estoppel.* Petitioner's claims are barred, in whole or in part, by estoppel to the extent Petitioner's conduct, representations, or omissions induced Respondents to act in a manner inconsistent with Petitioner's present position, and Respondents would be prejudiced if Petitioner were permitted to proceed.

41. *Reservation of defenses.* Respondents reserve the right to assert additional defenses and affirmative defenses as may become applicable through discovery or further proceedings, consistent with the Indiana Rules of Trial Procedure.

WHEREFORE, the Respondents request that the Petitioner take nothing by way of his Complaint.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document using the Indiana E-filing System (IEFS) and served the foregoing document via the IEFS system upon the following individual(s) 27th day of April 2026:

Laureen White
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T. Andrew Perkins