

The meeting of the Pocomoke City Mayor and Council was held in Council Chambers on Monday, November 20, 2023. The meeting was called to order at 6:36 pm.

Present: Mayor Todd J. Nock  
First Vice President: Esther Troast  
Council Members: R. Scott Holland,  
Diane Downing and Monda Marsh  
City Attorney: Andrew Illuminati  
City Clerk: Michelle Beckett-El Soloh

Pledge of Allegiance, Prayer by Councilmember Downing and Call to Order

Approval of Minutes from Meeting of November 6, 2023:

Motion to approve minutes for November 6, 2023 as written (Holland, Marsh passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Review and Approval Current Bill List:

Motion to approve the bill list (Troast, Downing passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Council Appointment & Swear in Ann Meyers Copeland:

Mayor Nock said Ms. Ann Meyers Copeland is a resident of District 5 and was nominated by Councilmember Troast to serve on the Board of the Planning & Zoning Commission. She accepted the nomination.

Motion to appoint Ann Meyers Copeland to serve a 5-year term on the Board of Planning & Zoning Commission (Marsh, Troast passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Ms. Meyers Copeland was sworn in by Mayor Nock.

Council Approval of Speed Bump Pilot Program:

Motion to approve implementation of Chief Hancock's speed bump pilot program (Marsh, Troast passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Public Hearing & Adopt Resolution No. 588, Declare Police Cars as Surplus Property, 2nd Reading:

Mayor Nock read:

**Resolution No. 588  
Declare Police Cars as Surplus Property  
Pocomoke City, Maryland**

Public Hearing opened. There were no comments or objections from the public. Public Hearing closed.

Motion to adopt Resolution no. 588, Declare Police Cars as Surplus Property (Troast, Holland passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Public Hearing & Adopt Ordinance No. 462, Zoning Map Amendment for 823

Second Street for Be More Beautiful Properties, LLC, 2nd Reading:

Planning Director, Dan Brandewie read:

**Ordinance No. 462**

**Zoning Map Amendment for 823 Second Street  
For Be More Beautiful Properties, LLC  
Pocomoke City, Maryland**

Mr. Brandewie had four supporting documents, including a staff report and maps, to serve as exhibits. Mayor Nock asked that, next time, all documents related to the agenda item be submitted in the meeting packet so that the Mayor & Council have time to properly review the information.

Public Hearing opened.

Mr. Martinez Blake came forward as a representative for Be More Beautiful Properties, LLC. He believes that the property was built as a multi-family duplex and would serve the community better if zoned as a multi-family dwelling. The property already meets the requirements for multi-family R-3 zoning with regard to frontage, multiple driveways, square footage and electrical elements. There is no access to the second floor from the first floor without using external entry way. The property meets all the zoning requirements for the county to be a duplex. Prior records no longer exist so there is no way to know how the original building was intended but according to all the structural clues he believes that a duplex was the intent and would better serve to remain that way.

Dr. William Johnson said when he purchased his intent was to provide affordable housing for local families. As an educator, he is familiar with the problems that children and families have to find affordable housing. A lot of families would not be able to afford to maintain a dwelling of this size as a single-family home. The property has lost its status as a multi-family dwelling but previously existed as such. He is not asking for anything that hasn't already been done for the property.

Councilmember Marsh read an email from resident John Haynie, in opposition of rezoning the property to a multi-family dwelling as apartments and duplexes can negatively affect property values.

Public Hearing closed.

Councilmember Troast said she attended the Planning & Zoning meeting for this subject and states that she supports the findings of the Planning & Zoning Commission to deny the request. Councilmember Marsh also attended the Planning & Zoning meeting and concurs with Councilmember Troast. Mayor Nock called for a motion.

Motion to deny request for zoning map amendment for 823 Second Street for Be More Beautiful Properties, LLC (Marsh, Troast passed)

Acclamation: Troast-aye, Holland-aye, Downing-nay, Marsh-aye; 1 opposed, motion carried



Councilmember Holland said there has been some confusion regarding documents that were submitted for the case not being accurate or the most recent documents. He wanted the applicants to know that the case can be brought back before the Planning & Zoning Commission.

Public Hearing & Adopt Resolution No. 585, Creation of an Arts Committee,

2nd Reading:

Mayor Nock read:           **Resolution No. 585**  
                                  **Creation of an Arts Committee**  
                                  **Pocomoke City, Maryland**

Public Hearing opened.

Mayor Nock said he toured the golf course and got to play frisbee golf and realized how many people in Pocomoke actually play. During that tour, a conversation came up about arts and things that could be improved in the city. Pocomoke has a lot of talent in different kinds of arts and citizens have shown an interest in having a place to showcase their talent. The MarVa Theater cannot be the only place to cater to the arts in the community. Salisbury has the Community Players and it would be nice to see the same sort of thing in Pocomoke. Recreation is important but so are the arts.

Councilmember Holland's concern was is this the best route to take having a committee tied to government which probably doesn't need to be regulated by government. Councilmember Marsh agreed that some kind of committee could be beneficial to the city but shouldn't be government regulated. Mayor Nock said with that kind of thinking, most committee should be abolished. Committees need structure and the government environment and hosting can help keep that structure and interest. Councilmember Troast said that she agrees with Councilmembers Holland and Marsh that it doesn't need to be under a governing body but the city should support the committee and even provide meeting places and participation.

Nola Tullar agreed that to give a committee a start and get it off the ground. A committee might need assistance to write or be eligible for grants.

Councilmember Troast suggested posting something on social media so that people could express their interest in a committee. Councilmember Marsh said she has had experience with the arts festival in Annapolis. It started small and grew quickly.

Motion to table Resolution No. 585, Creation of an Arts Committee with direction to the City Clerk to post on social media and determine specific interest areas of an Arts Committee (Marsh, Troast passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Comments from Council

Councilmember Holland wished everyone a Happy Thanksgiving. He reminded everyone to check the event calendar because there are a lot of events scheduled. He went to visit kids during American Education Week. It was nice seeing everyone.



notice provided no time for the September 25 meeting, only the date. The Act expressly states that, “[w]henver reasonable, a notice . . . shall . . . include the date, time, and place of the session.” § 3-302(b)(2) (emphasis added). While the Council denies in its response that a violation occurred, it does not argue that it would have been unreasonable for the notice to state a time; and the notice did include the date and place of the session. Thus, the failure to include a time for the meeting violated § 3-302(b)(2). Second, the notice did not sufficiently make clear that the Council would be meeting in open session before voting to convene in closed session. The notice appeared under the subheading “Closed Sessions” and indicated—by saying that the Council “has determined [it] to be necessary”—that the Council had already voted to convene in closed session. Although the notice also indicated

#### B. September 27, 2023, City Council Meeting

The Complainant next alleges that the City Council violated the Act by failing to give adequate notice that it would discuss a particular item of business at its September 27, 2023, meeting.

Section 3-302.1(a) of the Act requires, before a public body meets in open session, that the body “make available to the public an agenda . . . containing known items of business or topics to be discussed.” § 3-302.1(a)(1)(i). “The purpose of the agenda requirement is to provide members of the public ‘information that will help them decide whether to attend a particular meeting.’” 16 OMCB Opinions 62, 62 (2022) (quoting 15 OMCB Opinions 1, 3 (2021)). As for when a public body must provide this information, the Act provides that, if the agenda has been determined at the time the public body gives notice of the meeting, the body shall make the agenda available at the same time. § 3-302.1(a)(2). If the agenda has not been determined when the public body gives notice, the body shall make the agenda available “as soon as practicable after the agenda has been determined but not later than 24 hours before the meeting.” *Id.*(a)(3).<sup>4</sup>

Once an agenda has been made available to the public, the public body may still alter the agenda to include items of business that were not known when the agenda was first published. § 3-302.1(e); 14 OMCB Opinions 42, 43 (2020). “Whether a particular item of business was ‘known’ to the public body when it made its agenda available is a question of fact.” 14 OMCB Opinions 102, 103 (2022).

Here, the Complainant alleges that the City Council initially issued an agenda indicating that the Council would be discussing a property known as the “fish farm” at its September 27 meeting. Less than 24 hours before this meeting, the Council amended the agenda to indicate that the Council would also be discussing “city-owned property on old Virginia Rd.” The Complainant argues that this late change violated the Act. The Council acknowledges that it amended the agenda on the day of the meeting to add an additional topic of discussion. But the Council asserts that this topic was not a known item of business when the initial agenda was set. Based on the limited facts before us, then, we have no basis to find a violation of the Act’s agenda requirements. But we reiterate that “public bodies should be aware that last-minute and unexplained changes in meeting agendas often lead the public to conclude that the public body is trying to rush a matter through without public scrutiny.” 14 OMCB Opinions 75, 77 (2020). And because “[a]gendas published with a meeting notice can make the difference in whether a member of the public attends the meeting or not,” “public bodies should adhere as closely” to an original posted agenda “as circumstances allow.” 14 OMCB Opinions 89, 91 (2020).



C. September 27, 2023, Planning Zoning Commission Meeting

Finally, the Complainant alleges that the Planning and Zoning Commission violated the Act by failing to provide reasonable advance notice of a meeting on September 27, 2023. A link to the agenda—next to the date September 27, 2023—was posted to the City's website, on a page devoted to the Planning and Zoning Commission. But it appeared under the heading "Meeting File Archives." Above that, appeared the following:

**PLANNING AND ZONING COMMISSION**

Planning and Zoning meetings are usually held on the third (3rd) Wednesday of each month at 5:00 PM. Meetings are held inside City Hall at 101 Clarke Avenue, Pocomoke City, Maryland.

The webpage further stated, in bold capital letters:

**NEXT SCHEDULED MEETING**

**WEDNESDAY, AUGUST 16, 2023 AT 5:00 P.M. IN COUNCIL CHAMBERS**

The Planning and Zoning Commission does not dispute these facts but says that it does not control the city website. According to the response, the City Clerk requested that, when the agenda was posted online, the information about the next scheduled meeting also be updated. But the website manager said that a coding error prevented any updates to the text above.

Although we are sympathetic to the technical challenges involved, we nonetheless find that the Commission failed to provide reasonable advance notice of the September 27 meeting. To know that the Commission planned to meet at 5 p.m. September 27, a member of the public would have had to visit the webpage described above, look past the boldface message in all capital letters announcing that the "next scheduled meeting" had already happened, look under the heading "Meeting File Archives," and open the linked agenda next to the date September 27, 2023. We think it unlikely that a member of the public would have gone through all these steps. As we have previously said, "we understand that sometimes forces beyond a public body's control might prevent it from giving notice by its usual method." 16 OMCB Opinions 47, 50 (2022). But in that situation, "it is incumbent upon the public body to then undertake extra efforts to ensure that the interested public is notified in some other way." *Id.* (citing 8 OMCB Opinions 76, 80 (2012) ("A deficiency in one regard may sometimes be ameliorated by the public body's extra efforts in another, as when a public body takes extra measures to publish a last-minute notice of an urgently called meeting.")). Here, upon learning that its website text could not be updated, the Commission should have taken additional steps—other than posting an agenda on the webpage described above—to alert the public of its September 27 meeting. The Commission could have, for example, posted on social media, alerted the press, or sent notice through email subscriber lists. Under the circumstances here, we find that the Commission's failure to take any such steps was a violation of § 3-302(a).

Conclusion

We conclude that the City Council violated §§ 3-301 and 3-302 by not making clear in a meeting notice that the public could attend an open session at which the Council would vote to enter closed session. The Council did not, however, violate the Act by altering an agenda the same day of the meeting to add a topic of discussion that was not a known item

of business when the Council first made the agenda available to the public. Finally, we conclude that the Planning and Zoning Commission violated § 3-302(a) by failing to provide reasonable advance notice of a meeting. This Opinion is subject to the acknowledgement and announcement requirements of § 3-211.

Comments from City Manager

N/A

Motion for 5-minute recess (Holland, Troast passed)

Acclamation Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Motion to enter back into open session (Troast, Downing passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Comments from Audience

Both Dr. William Johnson and Martinez Blake said that they were not in agreement with Planning & Zoning and Mayor & Council decision to not allow multi-family zoning for his property. Mr. Blake said that you have to look at the history of the city's zoning. There are areas where R3 buffers the R2 Districts. He asked the Council to look at certain areas of town and the conditions. Districting is not benefiting the town. They are trying to do the process according to law. Things need to be looked at on a case by case basis. Mayor Nock said it is incorrect to say that Council doesn't care about citizens having affordable housing. That is offensive. They apologized and said nothing was meant to be offensive and that they are simply pointing out facts of the community. Councilmember Marsh said that the decision has been made and they are welcome to appeal.

Motion to adjourn meeting (Marsh, Troast passed)

Acclamation: Troast-aye, Holland-aye, Downing-aye, Marsh-aye; none opposed, motion carried

Approved: Michelle Beckett-El Soloh  
City Clerk