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Pamela Minor

OFFICE OF THE CITY ATTORNEY
City of Rockville

June 27, 2024

Open Meetings Compliance Board
c/o Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
Opengov.@oag.state.md.us

Dear Ms. Simmons,

Please accept this letter as the Mayor and Council of Rockville's response to the Open Meetings Complaint filed by Max A. van Balgooy on May 26, 2024.

Complaint Summary

Mr. van Balgooy alleges four specific violations of the Open Meetings Act (OMA) stemming from a Mayor and Council meeting held Friday, May 24, 2024. He asserts the following:

1. Lack of Adequate Public Notice – Mayor and Council appointed Barack Matite, as Acting City Manager, effective immediately without providing adequate public notice.
2. Unusual Meeting Time – The Mayor and Council held a meeting on a Friday morning instead of the regular Monday night meeting.
3. Delayed Posting of Revised Agenda – The revised agenda was posted at 10:24 after the meeting ended.
4. Introduction of New agenda Item – During the meeting the Mayor added an agenda item to adopt the resolution appointing the Acting City Manager which was not on the original agenda.

Facts

- Article II of the Rockville City Charter establishes a Mayor and Council consisting of a mayor and six (6) councilmembers. It goes further to state that meetings of the Mayor and Council shall be held at a convenient public place and that all meetings together with the agenda be given reasonable public notice.

- During a Mayor and Council Meeting on May 20, 2024, the Mayor and Council discussed holding a meeting on or before May 24, 2024, to consider and possibly approve a Moderately Priced Dwelling Unit (MPDU) Rental Program Agreement for Phase 1 of the Twinbrook Quarter Development. During the discussion, the Mayor specifically mentions concern with waiting until the June 3rd regularly scheduled meeting to consider and approve the Twinbrook Quarter Development MPDU Rental Program Agreement and suggests the body complete a Doodle Poll to determine availability. The discussion takes place around 3:38:23 on the May 20th meeting recording.
- The meeting was urgent as the City was accommodating the developer's request to expedite approval of the MPDU agreement so the developer could begin leasing.
- On Wednesday May 22, at 7:56 pm, the City Attorney sent an email to the Mayor and Council with draft documents, stating it was his understanding that the governing body would hold a brief meeting on Friday, May 24 to approve MPDU documents for the Twinbrook Quarter Development and authorize the Acting City Manager to execute them and to appoint the Deputy City Manager as the Acting City Manager. (Exhibit A)
- On Wednesday May 22, at 9:46 pm, Mayor Ashton confirmed that there would be a 10:00 am meeting "on this topic". (Exhibit B)
- Notice of the meeting was posted on the City Website Thursday, May 22 at 10:04 am. (Exhibit C)
- On Thursday, May 23, around 4:30 pm Mayor Ashton called the City Clerk/Director of Council Operations several times requesting the appointment resolution agenda item not be added to the agenda because the Mayor and Council were planning to hold an Administrative Function session Friday morning before the special meeting to discuss the appointment. The Mayor and Council were planning to hold this session to administer Article VI of the City Charter which vests the governing body with appointment authority for the City Manager.
- There was confusion regarding whether to post the agenda with the appointment resolution item and the Clerk posted the agenda (which included the appointment resolution agenda item) on Thursday evening, around 6:14 pm at the direction of the Deputy City Manager, believing he had been cleared to post that item. (Exhibit D)
- On Thursday around 6:19 pm, the customary email was sent to the Mayor and Council indicating that the agenda packet had been posted to the City website. (Exhibit E)
- An announcement that the agenda had been posted was sent to over 500 interested people by the email marketing platform, mailchimp. Mr. Van Balgooy is registered to receive this notification. (Exhibit F) (Exhibit G)
- The Mayor and two council members immediately called the City Clerk to determine why the agenda was posted with the appointment resolution, since the governing body had not directed her to do so. Around 6:30 pm, the agenda packet without the appointment resolution was uploaded and posted to the website. (Exhibit H)

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- On Friday, May 24, at 9:00 am, the Mayor and Council met in an Administrative Function session to discuss the appointment of the Acting City Manager.
- At 10:00 am the Mayor and Council convened in open session, the Mayor announced the addition of an agenda item and the appointment resolution was added to the agenda. The resolution to appoint Barack Matite as Acting City Manager was adopted by the Mayor and Council.
- At 10:34 am the agenda was updated to include the resolution appointing Barack Matite as Acting City Manager. (Exhibit I)

Analysis/Response

The City acknowledges that there was confusion regarding this special meeting. As noted above, the MPDU agenda item was urgent, and there wasn't a regularly scheduled meeting until June 3rd, two weeks from the last regularly scheduled meeting on May 20th. As such a meeting on short notice was understandable.

Although Mr. Van Balgooy has divided his complaint into four concerns, the real Open Meetings issue seems to be whether the meeting notice was adequate and posted reasonably in advance of the meeting.¹ Since there is some latitude to add items to a posted agenda, the focus on the appointment of the Acting City Manager seems misplaced.

The City posted notice of the meeting on the calendar Thursday morning, May 23rd at 10:04 a.m. once the Mayor confirmed that there would be a meeting to approve the MPDU agreement late Wednesday night. This initial notice was simply a notice of the meeting and stated "Mayor and Council Meeting No. 14-24 Virtual Only by Webex – May 24, 2024." This notice coupled with the discussion at the May 20th meeting provides sufficient notice that a meeting regarding the MPDU agreements will take place.

While the calendar notice of the meeting was posted soon after the date and time were confirmed, if the Compliance board concludes that this calendar notice, without the agenda, was not adequate, the City concedes that notice, along with the agenda, should have been posted sooner. With that in mind, the City attempts to address the enumerated concerns in the complaint below.

Lack of Adequate Public Notice - Mayor and Council appointed Barack Matite, as Acting City Manager, effective immediately without providing adequate public notice.

As noted earlier, at approximately 6:14 pm on May 23rd, the agenda for the May 24th meeting was posted to the City's website which included the appointment resolution agenda item. Because the Mayor and Council were holding an Administrative Function session the morning

¹ The General Provisions Article (GPA) §3-102(c) states in part ... *it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies...*

GPA §3-302(a) states, *Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.*

Page 4

of the meeting and there was no decision regarding whether this item would go forward at the May 24th meeting, members of the Mayor and Council asked that it be removed from the agenda.

The OMA requires that the public body make available to the public an agenda with “known items of business or topics.”² Arguably, the appointment of a new Acting City Manager, although contemplated, was not a known item of business due to the pending Administrative Function Session at 9:00 a.m. the day of the May 24th meeting. The Mayor and Council were administering Article VI of the City Charter which vests the governing body with appointment authority for the City Manager. Instead, the Mayor announced a change to the agenda at the meeting, which is permissible, since the OMA allows changes to the agenda after the agenda has been made publicly available.

Finally, since the Administrative Function Session was held at 9:00 am and the meeting was held at 10:00 am, there was no opportunity to post a revised agenda until after the meeting.

Unusual Meeting Time – The Mayor and Council held a meeting on a Friday morning instead of the regular Monday night meeting.

As noted above, the scheduling of this meeting was on short notice due to the urgency to approve the MPDU agreement. Waiting for the next regularly scheduled Monday night meeting on June 3rd would impact the developer’s ability to move forward to lease the property. The fact that the meeting was held at an unusual time is not a violation of the OMA. The Friday morning time was the most convenient time for the working Councilmembers to conduct business.

The meeting was posted on the City website calendar and then the agenda was posted later that day with a notice sent to over 500 people who have expressed an interest in receiving meeting notification through the email marketing platform mailchimp. Also note, that all versions of the agenda are readily available on the City website.

Delayed Posting of Revised Agenda – The revised agenda was posted at 10:24 after the meeting ended.

The OMA allows changes to the agenda after the agenda has been made publicly available. The Mayor announced the change to the agenda at the beginning of the meeting. The timing of the Administrative Function session and the meeting delayed the posting of the revised agenda until after the meeting.

² GPA §3-302.1 (a) (1) states in part ...*Subject to subsection (b) of this subsection, before meeting in an open session, a public body shall make available to the public an agenda:*

(i) containing known items of business or topics to be discussed at the portion of the meeting that is open;

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Introduction of New agenda Item – During the meeting the Mayor added an agenda item to adopt the resolution appointing the Acting City Manager which was not on the original agenda.

Again, there is nothing that prohibits a change to the agenda and the Mayor announced that change at the beginning of the meeting.

Conclusion

The City acknowledges there was confusion with noticing the meeting and posting the agenda. Since the meeting was urgent and decided on short notice, the City posted a meeting notice on the calendar Thursday morning. The agenda was not posted until Thursday evening. The City asserts that the meeting was noticed as soon as the date and time were confirmed, but concedes that the agenda could have been posted earlier.

However, the addition of the appointment resolution agenda item is not a violation of the act. This item, although contemplated, was not a known item of business when the agenda was first posted. There was still discussion regarding the appointment at the 9:00 am Administrative Function session. Once the decision was finalized, the Mayor and Council convened in open session where the Mayor announced the additional agenda item and the resolution to adopt Barack Matite as Acting City Manager was adopted.

For these reasons the City does not believe the addition of the resolution to appoint Mr. Matite as Acting City Manager violates the OMA, but concedes that the initial calendar meeting notice, without the agenda, may not have been adequate.

Cynthia Walters

Cynthia B. Walters
Deputy City Attorney
City of Rockville, MD

Robert Dawson

From: Robert Dawson
Sent: Wednesday, May 22, 2024 7:56 PM
To: Monique Ashton; Kate Fulton; Barry Jackson; David Myles; Izola Shaw; Marissa Valeri; Adam Van Grack
Cc: Sara Taylor-Ferrell; Barack Matite
Subject: Mayor and Council Meeting - May 24, 2024
Attachments: Twinbrook Quarter - MPDU Rental Program Agreement (For M&C Approval) v3 - OWNER.docx; Twinbrook Quarter - MPDU Rental Program Agreement (REDLINE comparing v2 and v3).docx; Twinbrook Quarter - Restrictive Covenants (For Mayor and Council Consideration - May 24, 2024)).docx; Mayor and Council Resolution - Appointing B. Matite as Interim City Manager (May 2024).docx

Members of Mayor and Council:

Please find attached for your consideration revised drafts of the MPDU Rental Program Agreement and the related Deed of Declaration of Restrictive Covenants and Conditions for Phase 1 of the Twinbrook Quarter development. Also attached for your reference is a redlined draft of the MPDU Rental Program Agreement marked to show the latest changes.

It is my understanding that the body will hold a brief open meeting Friday morning to consider a consent agenda item that will approve (i) the MPDU documents for Twinbrook Quarter and authorize the Interim City Manager to execute the documents on the body's behalf, and (ii) a Resolution appointing the Deputy City Manager to serve as the Interim City Manager. The Resolution is also attached for your review.

If my understanding is correct, I will work with the City Clerk to notice Friday's meeting and post the appropriate agenda and documents.

Kind regards,

Robert

ROBERT E. DAWSON | City of Rockville - Office of the City Attorney | 111 Maryland Avenue, Rockville, MD 20850
rdawson@rockvillemd.gov | (T) 240.314.8150 | (F) 240.314.8863 | (TTY) 240.314.8137 | www.rockvillemd.gov

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If you have received this email in error, please notify the sender immediately and delete the email from your inbox, sent items and deleted items. The receipt by any unauthorized person does not constitute a waiver of these privileges. Thank you.

Exhibit B

Robert Dawson

From: Robert Dawson
Sent: Wednesday, May 22, 2024 9:49 PM
To: Monique Ashton; Kate Fulton; Barry Jackson; David Myles; Izola Shaw; Marissa Valeri; Adam Van Grack
Cc: Sara Taylor-Ferrell; Barack Matite
Subject: Re: Mayor and Council Meeting - May 24, 2024

A firm NO! But it didn't hurt to ask.

Get [Outlook for iOS](#)

From: Monique Ashton <mashton@rockvillemd.gov>
Sent: Wednesday, May 22, 2024 9:46:58 PM
To: Robert Dawson <rdawson@rockvillemd.gov>; Kate Fulton <kfulton@rockvillemd.gov>; Barry Jackson <bjackson@rockvillemd.gov>; David Myles <dmyles@rockvillemd.gov>; Izola Shaw <ishaw@rockvillemd.gov>; Marissa Valeri <mvaleri@rockvillemd.gov>; Adam Van Grack <avangrack@rockvillemd.gov>
Cc: Sara Taylor-Ferrell <sferrell@rockvillemd.gov>; Barack Matite <bmatite@rockvillemd.gov>
Subject: RE: Mayor and Council Meeting - May 24, 2024

Thank you. Appreciate the drafts.

We are proceeding for a 10 a.m. meeting on this topic.

Any luck on the ask related to the MPDU term to align with the longer period for affordability?

----- Original message -----

From: Robert Dawson <rdawson@rockvillemd.gov>
Date: 5/22/24 7:56 PM (GMT-05:00)
To: Monique Ashton <mashton@rockvillemd.gov>, Kate Fulton <kfulton@rockvillemd.gov>, Barry Jackson <bjackson@rockvillemd.gov>, David Myles <dmyles@rockvillemd.gov>, Izola Shaw <ishaw@rockvillemd.gov>, Marissa Valeri <mvaleri@rockvillemd.gov>, Adam Van Grack <avangrack@rockvillemd.gov>
Cc: Sara Taylor-Ferrell <sferrell@rockvillemd.gov>, Barack Matite <bmatite@rockvillemd.gov>
Subject: Mayor and Council Meeting - May 24, 2024

Members of Mayor and Council:

Please find attached for your consideration revised drafts of the MPDU Rental Program Agreement and the related Deed of Declaration of Restrictive Covenants and Conditions for Phase 1 of the Twinbrook Quarter development. Also attached for your reference is a redlined draft of the MPDU Rental Program Agreement marked to show the latest changes.

It is my understanding that the body will hold a brief open meeting Friday morning to consider a consent agenda item that will approve (i) the MPDU documents for Twinbrook Quarter and authorize the Interim City Manager to execute the documents on the body's behalf, and (ii) a Resolution appointing the Deputy City Manager to serve as the Interim City Manager. The Resolution is also attached for your review.

If my understanding is correct, I will work with the City Clerk to notice Friday's meeting and post the appropriate agenda and documents.

Kind regards,

Robert

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Anita McCombs

From: Sara Taylor-Ferrell <sferrell@rockvillemd.gov>
Sent: Thursday, June 27, 2024 11:29 AM
To: Cynthia Walters; Anita McCombs
Subject: 5.24.24 M&C Meeting
Attachments: Website Calendar Notification - MC Meeting 5.24.244.PNG

- | | | |
|--|---|------------------------|
| <input type="checkbox"/>  | Mayor and Council Meeting No. 14-24 - Virtual Only by Webex - May 24, 2024 - Note: Community may join the audio conference only by dialing 1-408-418-9388 Meeting number (access code): 2632 800 7095 Meeting password: OPENSESSION | 5/23/2024 10:17 AM 5/2 |
| <input type="checkbox"/>  | Mayor and Council Meeting No. 14-24 - Virtual Only by Webex - May 24, 2024 - Note: Community may join the audio conference only by dialing 1-408-418-9388 Meeting number (access code): 2632 800 7095 Meeting password: OPENSESSION | 5/23/2024 10:16 AM 5/2 |
| <input type="checkbox"/>  | Mayor and Council Meeting No. 14-24 - Virtual Only by Webex - May 24, 2024 | 5/23/2024 10:04 AM 5/2 |



MAYOR AND COUNCIL

Meeting No. 13-24

Friday, May 24, 2024 - 10:00 AM

VIRTUAL WEBEX

AGENDA

Mayor and Council Meeting Virtual WebEx Only

Note: Community may join the audio conference only by dialing 1-408-418-9388

Meeting number (access code): 2632 800 7095

Meeting password: OPENSESSION

The recording of this meeting will be available and posted the next day in the agenda center at <https://rockvillemd.gov/agendacenter>

Drop-In Schedule**Participating in Mayor and Council Drop-In (Mayor Ashton and Councilmember Jackson)**

The next scheduled Drop-In Session will be held by phone or in-person on Monday, June 3 from 5:30-6:30 p.m. with Mayor Ashton and Councilmember Jackson. Please sign up by 10 a.m. on the meeting day using the form at: <https://www.rockvillemd.gov/formcenter/city-clerk-11/sign-up-for-dropin-meetings-227>

1. Convene**2. Consent Agenda**

- A.** Appointment of Barack Matite, Deputy City Manager, to serve as the Acting City Manager for the City of Rockville, Maryland.
- B.** Approval of a Moderately Priced Dwelling Unit (MPDU) Rental Program Agreement for Phase 1 (residential) of the Twinbrook Quarter development, and Authorize the Acting City Manager to execute, on behalf of the Mayor and Council, the MPDU Rental Program Agreement for Phase 1 (residential) of the Twinbrook Quarter development and the related Deed of Declaration of Restrictive Covenants and Conditions, subject to approval as to legal form by the City Attorney.

3. Adjournment

Exhibit E

From: Sara Taylor-Ferrell

Sent: Thursday, May 23, 2024 6:19:18 PM

To: Monique Ashton <mashton@rockvillemd.gov>; Kate Fulton <kfulton@rockvillemd.gov>; Barry Jackson <bjackson@rockvillemd.gov>; David Myles <dmyles@rockvillemd.gov>; Izola Shaw <ishaw@rockvillemd.gov>; Marissa Valeri <mvaleri@rockvillemd.gov>; Adam Van Grack <avangrack@rockvillemd.gov>

Cc: Robert Dawson <rdawson@rockvillemd.gov>; Barack Matite <bmatite@rockvillemd.gov>; Danny Winborne <dwinborne@rockvillemd.gov>; Judy Penny <jpenny@rockvillemd.gov>

Subject: Mayor and Council Virtual/WebEx Meeting - Friday, May 24, 2024 (Meeting No. 13-24)

Dear Mayor and Councilmembers,

The briefbook for tomorrow Friday, May 24, 2024, is ready for review and posted to the City's website in the (Agenda Center).

Thank you.

Sara Taylor-Ferrell

City Clerk/Director of Council Operations

City of Rockville

111 Maryland Avenue

Rockville, Maryland 20850

Office 240-314-8283

EFax 240-403-9283

"In order to be in compliance with the open meetings act, please do not reply to all. If you would like to discuss a matter in an open meeting, please let me know and we can have the matter placed as an agenda item for discussion"



Cynthia Walters

From: City of Rockville Meeting Agendas <cityclerk@rockvillemd.gov>
Sent: Thursday, May 23, 2024 6:23 PM
To: Cynthia Walters
Subject: Mayor and Council Agenda - Packet for Friday, May 24, 2024

WARNING - External email. Exercise caution.



Agenda Packet

The Mayor and Council Agenda Packet has been posted.

Agenda Center

111 Maryland Avenue, Rockville, Maryland 20850



City Hall
111 Maryland Ave.
Rockville, MD 20850

Phone: 240-314-8280

Cynthia Walters

From: Sara Taylor-Ferrell <sferrell@rockvillemd.gov>
Sent: Friday, June 21, 2024 4:07 PM
To: Cynthia Walters
Subject: COR Subscriptions

Results: 5

 **max.vanbalgooy@gmail.com** max.vanbalgooy@gmail.com
City of Rockville Newsletters **Subscribed**

 **Max van Balgooy** max.vanbalgooy@gmail.com
Agendas **Subscribed**

 **Max van Balgooy** max.vanbalgooy@gmail.com
City Projects **Subscribed**

 **Max van Balgooy** max.vanbalgooy@gmail.com
Zoning Updates **Subscribed**

 **max.vanbalgooy@gmail....** **Archived** max.vanbalgooy@gmail.com
Temporary Sends

Sara Taylor-Ferrell
City Clerk/Director of Council Operations

City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
Office 240-314-8283
EFax 240-403-9283

"In order to be in compliance with the open meetings act, please do not reply to all. If you would like to discuss a matter in an open meeting, please let me know and we can have the matter placed as an agenda item for discussion"





MAYOR AND COUNCIL

Meeting No. 13-24

Friday, May 24, 2024 - 10:00 AM

VIRTUAL WEBEX

AGENDA

Mayor and Council Meeting Virtual WebEx Only

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Meeting password: OPENSESSION

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Drop-In Schedule**Participating in Mayor and Council Drop-In (Mayor Ashton and Councilmember Jackson)**

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- 1. Convene**
- 2. Consent Agenda**
 - A.** Approval of a Moderately Priced Dwelling Unit (MPDU) Rental Program Agreement for Phase 1 (residential) of the Twinbrook Quarter development, and Authorize the Acting City Manager to execute, on behalf of the Mayor and Council, the MPDU Rental Program Agreement for Phase 1 (residential) of the Twinbrook Quarter development and the related Deed of Declaration of Restrictive Covenants and Conditions, subject to approval as to legal form by the City Attorney.
- 3. Adjournment**



MAYOR AND COUNCIL

Meeting No. 13-24

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- 3. Appointment of Barack Matite, Deputy City Manager, to serve as the Acting City Manager for the City of Rockville, MD**
- 4. Adjournment**