

# TOWN OF KEEDYSVILLE, MARYLAND

*"Where Northern Thrift and Personality Blend with Southern Charm and Hospitality"*

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*Ken Lord, Mayor*  
*Brandon Sweeney, Assistant Mayor*  
*Judy Kerns, Council*  
*Matthew Hull, Council*  
*Sarah Baker, Council*

## Mayor & Council Minutes November 3, 2021

Approved

The monthly meeting of the Keedysville Mayor and Town Council was called to order at 7:03pm with the following present: Mayor Ken Lord, Assistant Mayor Brandon Sweeney, Council Members Judy Kerns and Matt Hull, Town Attorney Ed Kuczynski, and Town Administrator Lisa Riner.

The minutes for the October 6, 2021 meeting were approved.

General Fund report was \$409,478.60.

The announcements from the agenda were read.

Erin Clark, Audit Manager from SEK CPAs and Advisors, reviewed the Town's FY 2021 audit results with the Mayor and Council.

Deputy Tracey Peyton completed 47 dedicated patrol checks: 11 at Rockingham, 10 at Stonecrest, 8 at Cannon Ridge, 11 at the park, and 7 at the cemetery. He also completed 3 hours of foot patrol and 2 hours of traffic patrol resulting in 3 citations, 4 warnings, and 1 parking citation. He assisted the county with a mental disturbance and a loud party just out of town. He said the shifts are running low on people and he's filling in when he can help, so his hours may change, but the town will not lose any time. For that reason, he may not be able to attend the Open House. He also let us know that NG Gilbert will be on Main Street during the week to trim around the power lines.

An MML chapter meeting was not held in October. The next one will be in Clear Spring on Monday, November 22. It is also their legislative meeting. It will be held at the Clear Spring American Legion.

The alarm and cameras are not installed yet, but they did come to install software on the computer. The software tech discovered that the park cameras had been turned off at some point. Ms. Riner communicated with the library to make sure they would always leave the system on.

Town email discussion was postponed until the next month since Ms. Baker was absent.

The Green Team is leading the effort to hold the Open House on Saturday, November 13 in Town Hall. Ms. Kerns recommended putting a sign up outside of Town Hall. Mayor Lord will take care of it.

Ms. Kerns recommended getting more quotes for the library repairs on the back porch, roof, and cellar. Mayor Lord agreed since the quote is close to the \$10,000 amount, which requires the amount to be bid out. Ms. Riner will get a couple more quotes.

The Town will need to create an action plan for the American Rescue Plan Act. The action plan needs to be complete by April. The Town had discussed using the received funds, which were approximately \$300,000, to re-do the water line under Bedrock. The Appalachian Regional Commission has 50/50 matching grants for infrastructure projects, so the Town could apply for that to add to the ARP funds and fund most of the project. The ARC grant application process begins in February and take about a full year to hear back about the award. Mr. Hull noted that the water line going under and across 34 needs attention, and he believes it is more necessary to replace it than the water line under Bedrock. Mr. Sweeney recommended getting engineering studies done on both areas. He will work with Ms. Riner to bid out those engineering studies. Ms. Riner noted that a separate bank account needs to be created for the ARPA funds, but she will wait until the action plan is complete to find out if it should be set up under the Water Fund or the General Fund.

Simmons Solutions will change the banners on November 15. He'll take down the Hometown Hero banners and put up the Town of Keedysville banners. The Hometown Hero banners will go back up again next year as long as they are in good shape still. The Town should think about getting holiday banners for next year. Hotel/Motel funds could be used to purchase those. Every other pole has electric.

Changing stone color of the monument will not speed up its completion. The company is willing to refund the town. It was decided to keep waiting for the original stone.

The Planning and Zoning Commission is working on looking at changes to the Fees Ordinance.

Mr. Sweeney motioned to introduce an amendment to the water rates ordinance increasing the rates by 8% each year for 5 years, the fixed rate to \$33.00, and the connection fee to \$12,000.00 starting January 1, 2022. Mr. Hull seconded. All voted in favor. Mr. Kuczynski will draft the amendment and Ms. Riner will correct the rates table.

Mr. Kuczynski left the meeting at 7:45pm.

The Town only received one bid for the Project Open Space (POS) Pavilions and Lighting Upgrades, so Ms. Riner will re-bid the project. The new bids will be due on November 30, 2021. Ms. Riner noted that costs have gone up significantly since the POS grant was originally applied for. Ms. Riner spoke to Andrew Eshleman from the county and he advised that the Town can submit to be reimbursed for any amount greater than what was in the original grant application in the next year's grant cycle. He said that since the project has already been approved, it's highly likely that the Town will be reimbursed. There is also a possibility that if there is money left in the program this year, that could be used.

Mr. Sweeney proposed applying for POS funds in FY 2023 to put a gazebo next to the library. He is going to get more information. The POS grant application is due January 4.

The survey will be up on the website this week. Paper copies will be available at the open house and from Town Hall by request. The survey is to get input for the Comprehensive Plan update and the Green Team. The survey is anonymous.

There is still no update on the Streambank Restoration project. We are waiting for final funding approval.

There is a vacancy on the Planning and Zoning Commission since Chairman Greg Carroll left. Two candidates applied to fill the vacancy: Jeff Russell and Matt Powell. The Commission will determine who will become the new chairperson. Matt Rhoads expressed interest in becoming the new chairperson. The Town Charter doesn't allow for alternates on Planning and Zoning, but the council may want to think about changing that in the future. Mr. Sweeney motioned to fill the vacancy with Mr. Powell because of his extensive experience. Mr. Rhoads seconded. Ms. Kerns noted that Mr.

Powell was not always easy to work with during the development of Stonecrest. It was decided to rescind the motion and hold off on making a decision so that the council could meet with the two candidates first.

Ms. Kerns will contact Kelly Ellis about getting the park Christmas tree lit and decorated. It should be done the weekend after Thanksgiving.

The County would like a five-year parks and recreation plan from the Town if there is one. Mr. Hull noted that the Town would like to create a park at 15 S Main St, but the timing is dependent on the streambank restoration project. The gazebo next to the library is also something the Town is working on.

The Green Team is looking into applying to the Maryland Smart Energy Community program. It would help the Town to get grant money for energy efficiency and renewable energy projects. The Town would have to implement two policies that commit the town to increasing energy efficiency and use of renewable energy in the next five years. There was some discussion. The Council would like Ms. Riner to submit the application. They are open to passing those policies.

A resident on N Main St has a shipping container in his yard, but the Town doesn't have anything in their ordinances against it. Mr. Hull said it is just like a temporary shed. The neighbors would like the shipping container removed. The Town has no way to enforce the removal of the storage container. Mr. Hull recommended to look at size limits for temporary sheds. There was much discussion.

Mr. Sweeney read a report on road paving from Ms. Baker. The bill from Craig Paving came in under budget. The budget was \$100,000 and the bill was \$39,000. Ms. Baker recommended that when Craig comes back to Town to pave Mt. Hebron for the County, the Town should have them pave Skyline Ct and Village View Ct, portions of Sumter Dr, as well as patches on Yankee Dr. She also suggested crack fill be done on Taylor Dr, Mallard Ln, and Rebel Ln, depending on how much will fit in the budget. Ms. Baker also put together a schedule for future paving projects. There was some discussion about the speed bumps on Sumter Dr. Ms. Baker would like the Council to give her input and feedback about the plans. It would be nice to get the crack fill done before the weather turns icy. Wyand Dr at the doctor's office may technically be a Town road, but it is more like a private driveway. The Town doesn't maintain it or plow it. The road was made that way at the property owner's request to help with their mail delivery. Ms. Riner will look into the details regarding Wyand Dr. Sumter Dr needs to be re-striped.

At Salem United Methodist Church there are busted up concrete stops. The plows caused that damage last winter, so Bryan Babbington is going to fix it. There is some question about who is responsible to maintain the parking spaces out front. Is it the state or is it the church? The church would also like parking signs to reserve the spaces on Sunday mornings. Ms. Riner is going to get more information and follow up with the church.

Justin Holder asked to make an email from him to Mr. Kuczynski sent on October 12, 2021 part of the meeting minutes. It was a conversation he and Ed were having with another professional, and he felt that the Town should be included in it, and Mr. Holder did not agree. It relates to roads that are in inventory, and roads that have fallen in disuse. Rather than leaving them in question it would be better to officially abandon them. This relates to the wagon road. Mr. Holder asked Mr. Steich for a deposition, but there was a question about whether the Town would represent him.

Eric Matson confirmed that the De-Annexation Hearing is Wednesday, December 1, 2021 at 6:30pm in Town Hall. He also recommended getting some type of bird net on the top of the ceiling of the gazebo.

Meeting adjourned at 8:33pm.

Respectfully Submitted,  
Lisa Riner  
Town Administrator

**Lisa Riner**

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**From:** Justin Holder <jholder2004@gmail.com>  
**Sent:** Tuesday, October 12, 2021 11:18 AM  
**To:** Ed Kuczynski  
**Cc:** Jack Steich; Town Hall; Matt Ruble; Adam Greivell  
**Subject:** Re: Title Report in Keedysville - Question instead of deposition  
**Attachments:** Deposition Richard Bishop 9-14-2021.pdf; 15OMCB46L.pdf

Mr. Kuczynski,

Good Morning and thank you for the input. I will remind you that on the record in deposition you expressly stated that the report was work product and stipulated/conceded the Executive and Attorney Privilege were void/null.

- 1) I had asked Mr. Steich to perform a title opinion of the "wagon road" prior to the Town of Keedysville; whom you represent. Mr. Steich disclosed; the **Very Material to the Instant Case** contents of the Report that is claimed by you as work product; to Adam Greivell and that **Attorney/Client Privilege** has been broken wide open.
- 2) The June 2020 Executive Session of the Mayor and Council in which the "Wagon Road Title Report was used to discuss potential litigation that by your on the record admission the work product was prepared for; was void/null as illegal by the Opinion of the Open Meetings Act Compliance Board. **See Attached Opinion**. Therefore the Executive Privilege is busted wide open.
- 3) I relied on the Town(s) words and actions that they will be **bound by the decision of the Court as to the Wagon Road**, will assert public rights when the dust settles and as you expressly said do not have a "dog in the fight". I believe this is silence when a party is required to speak, to assert rights and by the premise of your email the **Town clearly does have an interest in the instant case**.

I am offended and enraged by the gross mischaracterizations and acquisitions in bad faith you have made in a futile ampt to again bully me from my rights to discovery. You said " is my work product and **protected through attorney client privilege**. " Which is clearly against the statements you made in the Deposition of Richard Bishop see 5:4 - 6:8 *Attached Deposition Richard Bishop 9-14-2021.pdf* and specifically with Mr. Ruble "**The report that was provided is my work product.**" 12:21-22 and generally see 10:14 - 12:24 *Deposition Richard Bishop 9-14-2021.pdf*; and you are hereby **Estopped** from asserting any privilege other than "work product".

I would therefore kindly ask to immediately cease and desist from the **libelous mischaracterizations of my pursuit of the actual "work product"**. I was unambiguous in all included emails, which are attached hereto and incorporated herein by reference, that I **only wanted the Personal Knowledge and/or material evidence; NOT the actual report itself**, we can have that MPIA fight at the appropriate time. Which brings me to my very explicit point; the town does have a "dog in the fight" and interest in the instant case. The Town by and through its **Attorney/Politician Ed Kuczinski is continuing to Obstruct my legal discovery conducted transparently in good faith in order to conceal fraud and malfeasance**. Mr. Steich absolutely has personal knowledge relevant and material to the instant case by his and your own admission. I will kindly remind you that I will not be bullied into submission by a tyrannical and authoritarian regime. I would **appreciate the cooperation of the Town in Good Faith to resolve this discovery dispute**. I do respect the work product doctrine, I do disagree that a title report prepared for the public is privileged when paid for with tax dollars....which should have been prepared to **PROTECT A PUBLIC GOOD**; however I am respectful of Mr. Steich and would prefer not to burden him with the vexatious litigation over the dereliction of the MPIA responsibilities the town has under the "Sunshine Laws" of the State and will leave that challenge for another day.

All that being said, I welcome the Town's desire that the matter be "**addressed accordingly** by the Town", and would Compel the Town to act with integrity in Protecting the Public Good, Provide transparency for its citizens.....but at a sheer minimum, please kindly refrain from the Gross Obstruction of Justice through empty threats and bully tactics.

I wish everyone well, and a great weekend. I thank the Public for my service. I would ask "The Town", since they have now been included **'writ large, to post this email as my comments in the November Mayor and Council meeting with all replies and attached opinion of OMA Compliance Board included.'** (Please keep Deposition Transcript available in Town Hall for Public Reference, and only post pages referenced.

Respectfully Yours,

Justin Holder

On Tue, Oct 12, 2021 at 9:55 AM <[ed.kuczlaw@gmail.com](mailto:ed.kuczlaw@gmail.com)> wrote:

Mr. Holder,

I have been following your email effort to obtain the Title Report from Mr. Steich that you have repeatedly been advised is my work product and protected through attorney client privilege. Although I have no actual control over what Mr. Steich discloses to you, I reiterate that your attempts to obtain the Report prepared at my request is violative of the privilege protecting it and will be addressed accordingly by the Town.

Thank you,

Ed Kuczynski

PRIVILEGED & CONFIDENTIAL

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Edward L. Kuczynski, Esquire

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**From:** Justin Holder <[jholder2004@gmail.com](mailto:jholder2004@gmail.com)>  
**Sent:** Monday, October 11, 2021 8:12 PM  
**To:** Jack Steich <[jsteich@aol.com](mailto:jsteich@aol.com)>  
**Cc:** Ed Kuczynski <[ed.kuczlaw@gmail.com](mailto:ed.kuczlaw@gmail.com)>  
**Subject:** Re: Title Report in Keedysville - Question instead of deposition

Mr. Steich,

My apologies on the autocorrect mis spelling of your name.

Sincerely,

Justin Holder

On Mon, Oct 11, 2021, 8:08 PM Justin Holder <[jholder2004@gmail.com](mailto:jholder2004@gmail.com)> wrote:

Mr. Stench,

Good evening and thank you for your response. I appreciate and respect your wish to keep your distance. I would enjoy a favored relationship status with you as well. I did note you as an expert in the Estes "Creek" case, and will be compensating you further as required, if needed at trial. I thank you greatly for your assistance in that matter on March 4th, 2020.

As to the Young matter. I would insist with the MPIO response and deposition testimony a Motion to Quash made be a challenge. I would much rather work this out in good faith and we are close it sounds like.

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**My Question(s):**

1) In the Report did you determine the "Wagon Road" DID NOT burden property claimed by the Town of Keedysville known as Storm Water Management 2 on plat 8292 of the Stonecrest subdivision?

[I can truly say I do not know the origin, location....]

2) In the Report did you determine the "Wagon Road" was ever terminated/extinguished by an instrument of record?

I can truly say I do not know the origin....status...]

3) In the Report did you provide any material/factual information/evidence and/or personal knowledge; that the "Wagon Road" had been abandoned/terminated/extinguished/adversely possessed?

I can truly say I do not know the origin....status...]

4) In the Report did you provide any information that others may have knowledge; that the "Wagon Road" had been abandoned/terminated/extinguished/adversely possessed?

I can truly say I do not know the origin....status...]

**YOUR RESPONSE:**

"I can truly say I do not know the origin, location or status of the infamous 'wagon road'."

\*\*\*\*\*

I appreciate the response but a simple yes or no would be appreciated and conclusory. As I stated clearly I can not take a chance an expert of your caliber has the silver bullet.

Please just cut and paste the questions and answers into a new email and answer no to any that you can on personal knowledge or material evidence. If you can not answer no, I can not check the box I need to check to eliminate Your expert opinion as material to the case.

I am not asking about the work product, just your knowledge. Please kindly work with me to discover relevant evidence in my defense.

Respectfully,

Justin Holder

On Mon, Oct 11, 2021, 7:31 PM Jack Steich <[jpsteich@aol.com](mailto:jpsteich@aol.com)> wrote:

Mr. Holder,

Not certain why Mr. Kuczynski would suggest you depose me in relation to the adverse possession case with Young since I am not involved in any way. Without revealing too much info. on my report to Ed on another matter I can truly say I do not know the origin, location or status of the infamous "wagon road".

When I was younger this type of project interested me, but now, 30 years later, if someone would ask me to work on the "wagon road" issue I wouldn't touch it with a ten foot pole and the length of that pole grows as each instrument, pleading and motion is filed in this and other cases.

I can understand your problems and issues with this case but please do not waste my or your time to depose me. Also I refer you to my Motion to Quash Subpoena filed in another case.



Thank you,

Jack

In a message dated 10/11/2021 8:00:27 AM Eastern Standard Time, [jholder2004@gmail.com](mailto:jholder2004@gmail.com) writes:

Mr. Steich,

Good Morning and thank you for taking my email. I have a question for you, and in another matter you just answered me in email and we avoided a deposition. This is again a simple straightforward question so I am hopefully to avoid burdening you. I thank you in advance for your cooperation.

In Case C-21-CV-20-000371 the subject matter involves a "Wagon Road". In Deposition last month Mr. Ed Kuzcinski proffered to me on the record that you had done some title work related and he claimed "work product privilege on that report. Mr. Kuzcinski also said I could just depose you if I needed to in relation to the report. So instead I am sending an email with a few questions. The questions relate to the Report you conducted of the "Wagon Road" that allegedly benefits the properties at 25 and 28 Antietam Drive in Keedysville, MD 21756; for Ed Kuzcinski in his representation of the Town of Keedysville. (The Report)

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1) In the Report did you determine the "Wagon Road" DID NOT burden property claimed by the Town of Keedysville known as Storm Water Management 2 on plat 8292 of the Stonecrest subdivision?

2) In the Report did you determine the "Wagon Road" was ever terminated/extinguished by an instrument of record?

3) In the Report did you provide any material/factual information/evidence and/or personal knowledge; that the "Wagon Road" had been abandoned/terminated/extinguished/adversely possessed?

4) In the Report did you provide any information that others may have knowledge; that the "Wagon Road" had been abandoned/terminated/extinguished/adversely possessed?

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If the Answer is NO to all the above questions a simply Reply Confirming the same would be greatly appreciated.

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If however the answer is yes I will request some dates that are convenient for a deposition. Please confer with Mr. Kuzcinski at your leisure, if I do not hear back by October 20th, 2021 I will assume the answer to at least 1 of the 4 questions is yes and will proceed with a Notice of Deposition.

I again thank you in advance and hope this email finds you well. It is my intention to be as brief and direct as possible. I would hope you can appreciate the circumstances; I can not spend substantial resources on a case and not turn over every last stone. The Report could be a silver bullet, or just a "checkmark" to cross off the list as I suspect. Either way the sooner I know the better, and Mr. Kuzcinski did suggest this approach, and I included him in this email for transparency.

Respectfully,

Justin Holder

(240) 356 -2008

LAWRENCE J. HOGAN, JR.  
*Governor*

BOYD K. RUTHERFORD  
*Lt. Governor*



LYNN MARSHALL, ESQ.  
CHAIR

JACOB ALTSHULER, ESQ.  
NANCY MCCUTCHAN DUDEN, ESQ.

STATE OF MARYLAND  
OPEN MEETINGS COMPLIANCE BOARD

*15 Official Opinions of the Compliance Board 46 (2021)*

**Town of Keedysville**

**April 6, 2021**

The complainant alleges that the Town of Keedysville (the "Town") has violated the Act's closed-session provisions by: (1) meeting in a closed session and not providing a summary of that session in the meeting minutes; (2) meeting in closed session on multiple occasions after the public portion of the meeting had ended without disclosing those sessions; (3) holding virtual "meetings" out of public view using the "reply all" function on e-mails; and (4) meeting in a closed session to discuss applicants for vacancies on the Town Council.

The Town, by its attorney, denies these allegations, asserts that any matters requiring an open meeting were discussed in public view, and contends that any "technical" failure to comply with the Act does not amount to substantive noncompliance. For the reasons explained below, we find that the Town violated the Act's disclosure requirements for closed sessions and that these violations are indeed substantive. *See Frazier v. McCarron*, 466 Md. 436, 449 (2019) (noting that violations of the Act's mandates are not merely "technical" in nature).

*1. No summary of closed session*

The complainant alleges that the Town failed to provide a summary of the closed session that occurred on June 3, 2020. The Town responds that the June 3 meeting minutes are sufficient because they show a unanimous vote to enter closed session and indicate that the meeting was closed to consult with legal counsel. Additionally, the Town explains that the minutes of its next open session (held on July 1) show that the June 3 meeting minutes were "read and approved" and that the practice in place at the time was to read minutes aloud verbatim prior to approval.

The Act expressly requires the minutes following a closed session to include four elements. *See 15 OMCB Opinions 19 (2021)*. Those four elements are: (i) a statement of the time, place, and purpose of the closed session; (ii) a record of the vote of each member as to closing the session; (iii) a citation of the authority under § 3-305 of the Act for closing the session; and (iv) a listing of the topics of discussion, persons present, and each action taken during the session. § 3-306(c)(2).<sup>1</sup> Although the Act contemplates that a public body will disclose this information in "the minutes for

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<sup>1</sup> Unless otherwise noted, statutory references are to the General Provisions Article of the Maryland Annotated Code.

## 15 Official Opinions of the Compliance Board 46 (2021)

April 6, 2021

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its *next* open session,” § 3-306(c)(2) (emphasis added), these disclosures may be included in the minutes for the meeting at which the closed session actually occurred—even if the public body does not return to open session that day. *See* 14 *OMCB Opinions* 49, 53 (2020) (“After meeting in closed session, the public body must disclose, in the minutes of its next open session *or of that day’s open session*, four categories of information about what transpired during the closed session.” (emphasis added)); *see also* Open Meetings Act Manual (10th ed., Jan. 2021) 5-2 (“To figure out whether a public body complied with the disclosure requirements, a person should inspect the open-session minutes for the session that was closed and for the next open session, as well as the closing statement.”).

Although the June 3 meeting minutes indicate the purpose of the session (“to consult with counsel”) and record the vote of each member as to closing the session (“[m]otion passed unanimously”), the remaining requirements are not present in either the June 3 or the July 1 meeting minutes. There is no record of the time and place of the closed session, nor is there a citation to the authority for closing the session. *See, e.g.*, § 3-305(b)(7) (allowing a public body to enter closed session to “consult with counsel to obtain legal advice”). There is also no listing of the topics discussed, the persons present, and each action, if any, taken during the session. To be sure, the contents of legal advice are to remain confidential, but the closed-session summary must disclose as much of the required information as it can without compromising the confidentiality of the session, and the discussion during the closed session also may not exceed the scope of the exception. *See, e.g.*, 13 *OMCB Opinions* 68, 69 (2019) (relying on the closed-session summary to conclude that a planning commission had properly received counsel’s advice in a closed session, but then violated the Act when it “remained in closed session to decide on its course of action”); 11 *OMCB Opinions* 38, 40 (2017) (noting that the “legal advice” exception “does not allow for closed discussion among members of the public body merely because an issue has legal ramifications” (internal citations omitted)). In any event, because the meeting minutes at issue were missing some of the required elements, we find a violation of § 3-306(c)(2).<sup>2</sup>

### 2. Undisclosed closed sessions

The complainant alleges that the Town held closed sessions after the public portion of its meetings had ended, without disclosing those closed sessions. More specifically, the complainant speculates that, because the Facebook Live meetings ended prior to some individuals leaving the Town Hall building, those individuals must have held meetings out of public view on September 2, October 7, and November 4, 2020. As to September 2, the Town responds that no closed session occurred. The meeting minutes indicate that the Water Commissioner resigned that evening after many years of service, and thus the Town explains that the delay in leaving may have been because individuals socialized for some time after the meeting ended. As to November 4, the Town again states that no closed session occurred and indicates that the Town Administrator—who is the last person to leave because he secures Town Hall after meetings—left the building just ten minutes after

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<sup>2</sup> It is not clear from the submissions whether the Town expected to enter a closed session on June 3, but the agenda available on the Town website gives no indication that it did. For purposes of guidance, we note that, if a public body expects to close any portion of a meeting, its agenda must also reflect that fact. *See* § 3-302.1(a)(1)(ii).

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April 6, 2021

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the Water Commission meeting ended. From the submissions, we cannot determine that any closed sessions occurred on September 2 or November 4.

As to October 7, however, the Town acknowledges that a closed session occurred to discuss potential litigation, and that it lasted from 7:50 p.m. until 10:00 p.m. The Town asserts that no other business was conducted that would have required an open session. Even if there was no business that required an open session, however, the Act still requires public bodies to take certain actions and disclose certain information before and after closed sessions. Before a closed session, the presiding officer must conduct a recorded vote on the closing of the session and make a written statement of the reason for closing the meeting, including a citation to the authority under the Act, and a listing of the topics to be discussed. *See* § 3-305(d). And after a closed session, as discussed above, the public body must provide a closed-session summary in its meeting minutes that contains the required four elements. *See* § 3-306(c)(2). Both of these are required, yet the Town's submissions do not reflect that either requirement was met. Unlike the June 3 minutes, the October 7 minutes do not indicate that the Town conducted a recorded vote on the decision to enter closed session, nor do the submissions include a written closing statement that identifies, among other things, which of the Act's exceptions the Town relied upon to enter closed session. *See, e.g.,* § 3-305(b)(8) (allowing a public body to enter closed session to "consult with staff, consultants, or other individuals about pending or potential litigation"). We thus find a violation of both § 3-305(d) and § 3-306(c)(2).

### 3. *Virtual "meetings" held via e-mail*

The complainant alleges that the Town has held meetings out of public view on several occasions between March and September 2020. More specifically, the complainant speculates that that e-mails he requested from the Town, which were denied to him under the Public Information Act, would show that the Town held virtual "meetings" via e-mail using the "reply all" function. The Town denies that the e-mails at issue constitute "meetings" subject to the Act and further states its position that "[e]lected officials have the right to internally communicate with each other and those communications do not need to be disclosed." Although we are unable to determine based on the information provided whether the Town held meetings by e-mail, we caution that the position stated in its response is too broad based on the Act's requirements.

A public body "meets" whenever it "convene[s] a quorum . . . to consider or transact public business." § 3-101(g). As we recently explained, the exchange of e-mails can meet that definition:

[W]hen the sequence of electronic communications is such that a collective deliberation among a quorum has occurred, with the opportunity for the quorum to interact on public business subject to the Act, actual interaction, and awareness that a quorum is at hand for a specific period of time, we will deem the public body to have held a meeting subject to the Act.

13 *OMCB Opinions* 39, 46 (2019). In other words, members of a public body may not "internally communicate with each other" via e-mail, as the Town suggests, if the communications are among a quorum of the body and involve public business subject to the Act, because that would constitute a meeting. And, even when there is no violation, given the potential for exchanges via e-mail to develop and grow, both in the number of participants and in the topics discussed, we have generally



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“discourage[d] the exchange of electronic communications on public business, no matter how carefully structured to avoid the presence of a quorum, as violative of the goals that the Act was intended to achieve.” *Id.*

That said, the Town has not provided us with the e-mails, and we cannot determine that the Town in fact held “meetings” via e-mail.<sup>3</sup> From the submissions, all we know is that the Town denied the complainant access to the e-mails on the grounds that they were protected by executive privilege and/or the inter- and intra-agency memoranda exception to the Public Information Act. *See* Md. Code Ann., Gen. Prov. §§ 4-301, 4-344.<sup>4</sup> Even if the stated grounds for denying the complainant access to the e-mails indicate some level of deliberation, we have no information to suggest that a quorum was involved or that they were discussing public business subject to the Act. We thus cannot determine whether the Act was violated.

### 4. Closed session to discuss applicants for Town Council vacancies

The complainant alleges that the Town violated the Act nearly five years ago by meeting in closed session to discuss applicants for two vacancies on the Town Council. In addition, the complainant questions whether that topic falls under the personnel exception to the Act, since it involved “elected officials” rather than “personnel.” *See* § 3-305(b)(1) (allowing a public body to enter closed session to discuss “the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction”). The Town responds that the July 5, 2016 meeting minutes indicate that the three members of the Town Council in place at the time (i.e., the Mayor, the Assistant Mayor, and a Town Council Member) would meet before their next meeting “to discuss the applicants.” The Town then points to an audio recording of the next meeting, on August 1, 2016, where the Mayor explains that the group met in closed session and decided on two new members after having considered eight applicants. The August 1, 2016 meeting minutes, meanwhile, do not reflect that a closed session was held.

Although the submissions reflect a recorded vote on the decision to appoint the two new members of the Town Council, on August 1, 2016, there was no recorded vote on the decision to enter closed session on July 5, 2016, nor was there a written closing statement or closed-session summary in the meeting minutes that cited to the personnel exception or provided other necessary disclosures. We thus find a violation of § 3-305(d) and § 3-306(c)(2).

Finally, we turn to the question of whether the closed session involved a topic that fell within the personnel exception. Although the Town did not explicitly claim that exception at the time, its

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<sup>3</sup> As we noted previously, “[a]lthough a public body must provide sealed minutes of a closed meeting upon request, and we must keep those minutes confidential, § 3-206(b), the Act does not require a public body to provide us with other confidential materials.” 13 *OMCB Opinions* 39, 40 n.2 (2019). Moreover, “it is not clear either that we would have the authority to keep such materials confidential or that, if a public body is required to keep a record confidential, the public body may distribute it to us.” *Id.*

<sup>4</sup> The Public Information Act is not within our jurisdiction, § 3-204, and thus we do not comment on the applicability of the cited privileges and exceptions.

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response explains that § 3-305(b)(1) authorizes a public body to meet to discuss the appointment of an official. More specifically, that exception allows a public body to enter closed session to discuss “the *appointment . . . of an appointee, employee, or official over whom it has jurisdiction.*” § 3-305(b)(1) (emphases added); *see also* 8 *OMCB Opinions* 20 (2012) (concluding that discussion of candidates for appointment to boards fell within the personnel exception even though they were not county employees). The exception thus extends to officials when their appointment is within the jurisdiction of the public body. And the Town Charter confirms that the Town Council itself is responsible for filling vacancies on the Town Council. *See* Charter of the Town of Keedysville, § 38 (providing that “[a]ny vacancies on the council . . . shall be filled by the favorable votes of a majority of the remaining members on the council” and that “[t]he results of any such vote shall be recorded in the minutes of the council”). Accordingly, the discussion of applicants for two Town Council vacancies was properly conducted in a closed session, while the appointments of the new members were made at the next open meeting.

**Conclusion**

We find that the Town violated § 3-305(d) and § 3-306(c)(2) of the Act. Although there is no indication that the Town discussed topics in closed session that are required to be discussed in open session, the Act nonetheless requires public bodies to take certain actions and disclose certain information before and after closed sessions. This ensures that members of the public understand when and why public bodies are meeting in private and also ensures that public bodies do not conduct public business out of public view except when the Act allows. In other words, these procedural requirements are necessary to uphold the substantive purposes of the Act. This opinion is subject to the acknowledgment requirement set forth in § 3-211.

**Open Meetings Compliance Board**

*Lynn Marshall, Esq.*

*Jacob Altshuler, Esq.*

*Nancy McCutchan Duden, Esq.*

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*Ken Lord, Mayor*  
*Brandon Sweeney, Assistant Mayor*  
*Judy Kerns, Council Member*  
*Matthew Hull, Council Member*  
*Sarah Baker, Council Member*

## Mayor & Council and Water Commission Meeting November 3, 2021

All attendees must sign in. Attendee comments will only be heard during the appropriate time in the agenda. Those wishing to be heard must check the appropriate box. Comments will be limited to three minutes each.

NAME	ADDRESS	PHONE	WISH TO BE HEARD
Josh Holden	308 W Chapin St Sharpsburg MD 21782	(240) 354-2008	<input checked="" type="checkbox"/> Yes
Dian Thomson	9 Mt. Vernon	301-305 2296	<input type="checkbox"/>
Sue Gemeny	50 S. Main	301-432 8216	<input type="checkbox"/>
ERIC MATSON			<input checked="" type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

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*Brandon Sweeney, Assistant Mayor*  
*Judy Kerns, Council*  
*Matthew Hull, Council*  
*Sarah Baker, Council*

## Mayor & Council Agenda November 3, 2021

Call to Order

Pledge of Allegiance

Approval of Minutes: October 6, 2021

General Fund Report: \$409,478.60

Announcements: Planning & Zoning Meetings will now be held on the second Thursdays of the month; Door's Open: Keedysville on Saturday, November 13 from 12-3pm; Street Sweeping on Wednesday, November 17; Town Hall closed Thursday, November 11 for Veteran's Day, Friday, November 19 for staff vacation, and Thursday-Friday, November 25-26 for Thanksgiving; Matson De-Annexation Hearing Wednesday, December 1, 2021 at 6:30pm in Town Hall

FY 2021 Audit

Community Deputy Report

Old Business: Banner Town; Alarm; Town Email; Door's Open: Keedysville; Library Porch Repairs; ARPA Action Plan; Banners; Monument; Fees Ordinance; Project Open Space Park Pavilions & Lighting Upgrades; FY 2023 Project Open Space Ideas; Survey

New Business: Planning and Zoning Commission Vacancy; Tree Lighting; 5-Year Parks & Recreation Plan; Maryland Smart Energy Community; ARC Grant; Containers/Storage Units

Comments by Residents

Comments by Council

Adjournment