

Upper Delaware Council
OPERATIONS COMMITTEE MEETING MINUTES
November 28, 2023

Committee Members Present: Aaron Robinson, Harold Roeder, Dennis Bernitt, Al Henry, Fred Peckham (Zoom), Ginny Dudko (Zoom), Larry Richardson

Committee Members Absent: Andy Boyar, Jeff Dexter

Staff: Laurie Ramie, Kerry Engelhardt (Zoom), Stephanie Driscoll

NPS Partner: Lindsey Kurnath, Don Hamilton (Zoom), Alex Garcia-Maldonado (Zoom)

Guests: Bill Dudko (Zoom), Jason Ohliger, Esq. (7pm, Zoom), Richard Eckersley, CPA

The UDC's Operations Committee held its monthly meeting at the UDC office in Narrowsburg, N.Y. on Tuesday, November 28, 2023. Robinson called the meeting to order at 6:31 pm.

FY2023 Financial Presentation by Richard Eckersley, CPA: Eckersley passed out the draft financial statements and IRS Form 990 for the Upper Delaware Council. He explained the first handout is a request for management representation. Each year at the end of the year he gives the council the engagement letter for the last year, in case they change the language. He also handed out the new engagement letter for 2024. The letter tells the UDC: what we are going to do, what we're responsible for, and what it will cost. The council will review that letter to decide whether or not to retain Eckersley & Davis, LLP's services next year. There will be two documents to go over tonight. One is the Financial Statement and the other is a Form 990 needed for a tax return when an organization is exempt from income tax.

Pages 2 and 3 in the packet are the Independent Accountant Review Report. The UDC is on a three-year cycle of review, review, audit. A review is called negative assurance; nothing looks out of the ordinary. An audit is when everything is correct.

Exhibit I of the packet is the Statement of Financial Position; in other words, a balance sheet. It is on an income tax basis. On the Statement of Financial Position there are current assets; plant, property and equipment; with total assets of \$222,719. There are two columns on the page, one is blank and one is filled in under NPS. When money comes in to the UDC, it is restricted until you use it the way the UDC agreed with NPS it would be used. NPS has a reversionary right on all of the physical assets of the UDC. Below total assets are liabilities and net assets. ("Net assets" is the current term for non-profits meaning equity.) The total of net assets is less than total assets. At the end of this year the UDC had \$19,063 in liabilities (monies owed to 3rd parties). The UDC had equity (ownership of the assets) of \$203,656. There is \$30,756 of NPS equity in properties after depreciation, and the rest is in unrestricted assets with our equity being \$172,900 at the end of the year. The beginning of the year was approximately \$161,000, so it has improved. The main difference this year is the Vanguard account in current assets for \$121,885. The decision was made last year to open the Vanguard account that is federally insured, with no risk of loss, to yield a better return. Eckersley said the UDC has what he calls "free assets" of \$172,900 of which \$121,885 is in a Vanguard account, \$24,932 is in savings, \$2,316 is in litter cleanup, and \$42,730 is in the checking account. He commented that the UDC doesn't owe much money to 3rd parties, only \$19,063, that is mostly owed to NPS.

Exhibit II is the Statement of Activity and Changes in Net Assets, or in other words a loss statement. He said the grants section is blank since UDC used up Pennsylvania grants about a year or two ago. In the NPS funds column there is \$300,000 that couldn't be moved until it was spent the way it was supposed to be. After that, the \$300,000 is moved into "without donor restrictions". The UDC also had interest income of \$1,938 and other income of \$23,097; a total income of \$325,035. UDC expenditures totaled \$319,393 putting the UDC ahead of the game of a little over \$600. Eckersley pointed out the "depreciation expense" is \$6,000 this year, meaning everything is pretty well exhausted this year besides the building. The building was recognized over a period of time (~39 years); reducing NPS equity. The NPS equity reduced by the amount of depreciation. Looking at "without donor restrictions" there is the personnel cost, special projects, operating expenses, etc. Net assets improved by \$1,689.

Exhibit III is where the expenses listed on exhibit II are put it functionally. How did the UDC use salaries, etc.? Categories included Public Affairs, Water Use and Resource Management, Project Review, Technical Assistance Grants (TAGs), Substantial Conformance, Fundraising, etc. These get divided up. It's primarily divided by compensation. Most of the expenses get allocated on that basis, some get allocated very specifically such as TAGs.

The next page is called "Statement of Cash Flow". It says the UDC had net income of \$5,642, depreciation was \$6,047 and it's adjusted by how accounts payable increased or decreased. All of the activities generated a positive cashflow of \$13,959. The UDC didn't buy any property or equipment and didn't pay off any debt, so the \$13,959 all went into the bank. The cash went from \$178,004 to \$191,963.

Next is the "Notes to Financial Statements". This explains what the UDC does; accounting, who we are, what the risk areas are, what the summary of property and equipment is, building improvements, how we account for contributions and grant revenue, etc. The UDC is tax exempt and has been since February 18, 1988. The UDC has a Cooperative Agreement with the NPS. Every five years we enter into the Cooperative Agreement, which is the contract that governs what the UDC does. Note 4 is the employee retirement plan, Note 5 is the functional allocation of funds, and Note 6 is the definition of funds. Note 7 is liquidity and available resources, \$191,963 is all liquid. Lastly Note 8 is subsequent events, which there were none. There is a letter included summarizing the financial aspects listed.

Form 990 Return of Organization Exempt From Income Tax, includes lots of financial numbers. They are the same as the financial statement. Eckersley said there is nothing alarming. The most important thing is the pages of yes or no questions. He asked everyone to go over them to make sure they are all answered correctly. He commented it helps that the board is very involved with the organization. He asked Ramie to go through the list of members to make sure everyone is listed and in the right columns. The UDC is a publicly supported organization since 99% of our budget comes from a public institution.

Robinson asked if the UDC needed to have a building improvement or change, that is distinguished from expenses? Eckersley said yes, most of the time improvements come out of NPS interest. The physical assets stay with the NPS. Henry asked about the money that's in unrestricted funds. Are they government appropriated funds? Eckersley said not anymore, they came from interest, earnings, lots of things. He said that you can't use money as a non-profit to lobby. You can tell people what the UDC does and how we do it, explain what we had to give up doing. He used the TAGs as an example, since that has been decreased a lot. Robinson said we have a contractual arrangement with partners that establishes benchmark numbers. They have set responsibilities that organizations have to fill. He doesn't think it's lobbying to ask the organizations for what they promised through the RMP. Eckersley said it all comes back to the RMP; it's the UDC's job to monitor it. Lobbying is about advocating for a particular political result; you can't do that using federal funds or your own funds. You can inform people. Richardson said we are just asking to fulfill what the original agreement was, so it's a different situation. Eckersley agreed that the

states have never met their obligation. Ramie said on page 11 of the draft it states that the current Cooperative Agreement expires in December 2024, so we didn't get the full five years out of it. Eckersley said he assumes there will be another one in process. Ramie said we'll need to look into that. Eckersley said he doesn't say five years, he says "a period". Ramie said it has always been a five-year period. She said we will review the draft and let him know if there are any changes. Everyone thanked Eckersley and he left the meeting.

Approval of the October 24, 2023 Meeting Minutes: A motion by Richardson seconded by Bernitt to approve the October 24th meeting minutes carried.

Executive Director's Monthly Report: Ramie reported the amount of the November abstract was \$23,145.98, which was withdrawn from the ASAP account on Monday. That leaves a balance of just over \$107,000 of the \$150,000 that we had from our federal allocations through March 31st. The next step is to put in our SF 424 application to get the balance of the funding for FY2024 under our Cooperative Agreement.

She was able to file the Federal Financial Report (FFR) for Fiscal Year 2023 on November 28th via Grant Solutions. She notified NPS Administrative Officer Tara Harbert. The next phase is to do the Performance Progress Report; a narrative annual report that is due by January 28th.

We've always used somewhat of an arbitrary date for our personnel evaluations. Engelhardt had made the suggestion to tie it to employee work anniversary dates. Previously they were done around May and no later than June 15th. We haven't been great at observing that since people start at different times of the year. It used to be associated with the annual budget preparation so we'd know if there were any salary changes. That is now irrelevant since the budget happens in spurts. If the Personnel Subcommittee would entertain this, we would start immediately using the work anniversary dates to trigger the annual reviews. Engelhardt just had her two-year anniversary on November 22nd, Ramie's is in April and Driscoll's is in July. In Driscoll's case she hasn't been here six months yet; her probationary period ends in January with consideration of permanent employee status. Ramie asked if that makes sense to move to that system. Everyone agreed. Ramie said then the subcommittee will soon receive a copy of her evaluation for the Resource Specialist from her. A motion to change employee evaluations to their work anniversary dates made by Henry, seconded by Richardson, carried.

Ramie was authorized to make the decision about the accountant's computer upgrade. Ultimately, Mike Poska and the IT specialist Chris Marshall were satisfied with the hard drive and RAM upgrade, totaling \$464. We needed one other IT task done by Kristt Kelly; to reconnect the scanner to Poska's computer after the upgrade totaling \$60.

The last update of the Local Officials Directory was done in 2020. It used to be a collaboration between the NPS and the UDC. She commented she refers to it a lot for contact information and that it's helpful with listings for all of the 15 towns and townships. She's been handwriting changes in her copy since 2020. Driscoll has agreed to update the directory for 2024. Kurnath thanked Driscoll for doing that, and thinks the NPS has an updated copy. The issue NPS had was that the directory was shared and there was concern about collecting personal identified information (PII) and then posting it. Chris Hollenbeck from NPS made an updated copy for Kurnath back when she started as Superintendent. Kurnath thinks if we keep the directory between NPS and UDC, it shouldn't be an issue. She thanked Driscoll for updating the directory and asked her to reach out to Hollenbeck about her updated version. Driscoll said she has her email and will reach out this week. Kurnath said maybe Driscoll and Hollenbeck can go through to make sure there is no PII included. Ramie said all of the contact information is on town and township's websites generally, and therefore already public. Kurnath will let Hollenbeck know we talked about the

directory. Being official federal partners, contact information can be shared for business. She agreed that it is a very useful tool. Ramie said we planned to update it digitally to make it easier to maintain.

The Fall/Winter edition of the newsletter was due on November 27th to Courier Printing and was sent on Friday, November 24th. Ramie started working on the newsletter around November 12th and spent approximately 53.5 hours on interviews, editing, designing, composing, proof-reading, etc. The proof was back that Sunday, November 26th and she approved it on Monday, November 27th. The final step is to send Courier the updated mailing database, which Driscoll did today. The delivery due date is on or by December 11th. The newsletter is already posted on the UDC website.

There were two news releases during this period. One was on the UDC t-shirts as a holiday reminder that they are available for a \$15 donation. The other news release was about the presentation by the Sullivan Broadband Development officials at the December 7th UDC meeting. There was a popular Facebook post of historic photos of the Fort Delaware Museum of Colonial History's construction that received a lot of attention.

New Business

NPS Solicitor re: Lobbying – Consultation with Jason Ohliger, Esq.: Ramie said there is a handout included in the packet of information Kurnath had provided to us, which is the NPS Solicitor's opinion. Ramie asked how Kurnath framed the question to the solicitor. The UDC originally asked if we were able to hire a lobbyist, but the answer seems broader by getting into the letter writing campaign on the website. Kurnath said she didn't ask about the UDC hiring the lobbyist; she asked if the UDC could advocate/lobby for state level funding using federal funds. What she heard from the council was that UDC is not lobbying the federal government for money, they are lobbying the states. Her question was asking if the UDC could do that at all. She pointed out that the letter writing campaign is linked, hoping that it would be as easy as removing the federal representatives from the list. Robinson said the UDC is trying to secure the money from the partners (New York, Pennsylvania, and the federal government) that comprise the River Management Plan along with the DRBC. At the time of the agreement and everyone's participation in it, there was an expectation of a certain amount of funds to fund the UDC's responsibilities as stated in the RMP. He doesn't know how that means lobbying when you go after the funds that were agreed upon back in 1988, and no more. Ohliger said he never envisioned the letters to the governors to be called lobbying, since they don't advocate for any change in laws or policy. It's a reminder of the commitments made in the RMP. Kurnath said the DOI Solicitor doesn't know anything about the letters the UDC sent. It was a bigger question picture. Henry asked if this response was from Tony Conte. Kurnath said no, it's from the current DOI Solicitor Andrew Tittler directly referencing the code that was noted from Tony Conte. Henry quoted from the IRS: "Lobbying only refers to the legislative branch." We sent the letters to the executive branch. It says, "It does not include actions by executive, judicial or administrative bodies." Henry said we did not send this to the legislature; we sent it to the governors of both states within the executive branch. If you look at the IRS lobbying section, it's simple to find. A 501(c) may engage in some lobbying, but not too much lobbying. The IRS is in charge of the 501(c) program. Kurnath said if the UDC wants to draft a letter from our attorney to the DOI solicitor, she will shuttle them back and forth. She doesn't feel we're in a place where she's telling the UDC what they can and can't do. She would like to help with the issue, in an appropriate way. Henry said from the Center of Effective Government there is a question on whether the discussion of policy is considered lobbying. There are several types of communications that are excluded from tax law definition of lobbying. It excluded discussion with government officials concerning legislation impacting an organization's existence, powers, duties, tax exempt status or right to receive tax exemptible contributions. He said the letters are basically a discussion with a government official, and that's not lobbying. Ohliger said he sees the disconnect; on the one hand we're talking about how the IRS defines lobbying for purposes of 501(c) tax exemption, and on the other hand what constitutes lobbying for

purpose of use of Congressionally appropriated funds. One would assume that there would be almost entire overlap between what the IRS thinks lobbying is and what Congress thought it was when they enacted the code Section 1913 that's cited. There may be a little disconnect between the definitions, a more restrictive definition in terms of what we can do with Congressionally appropriated funds then what would disqualify from tax exemption.

Robinson said when rereading the RMP as far of funding, it's explicit that we're all partners. Each partner has a role to play to make it functional. The UDC was established after COUP and its purposes and responsibilities are defined. We need funding to do that. In the original framework, there was the \$300,000 in federal funds and each state respectively was \$100,000. He asked, "If we are all partners, why can't the federal government tap the shoulder of the state?" Let them know they are deficient in the partnership. If the UDC doesn't fulfill one of our obligations, someone will be letting us know, whether it's the towns/townships, state or the federal government. How can we have a partnership, but the partners aren't willing to advocate for each other? The agreement is concrete. There is a pattern set up that we don't advocate, and the pattern needs to change. The time use of the UDC staff and board members to pursue funds is "ludicrous". He doesn't see what the argument would be by the NPS to advocate for the UDC. In a true partnership, that's how it should be. Kurnath doesn't know if that's where the UDC should focus their energy. If the NPS budget gets cut, she's in the same boat. She can provide information on what the impacts would be; she can't advocate for funding. They are restricted on what they can do because they are funded by federal money. Robinson asked, "Going through the federal channels, who is not restricted in the bureau? Who has the authority to look at funding?" Kurnath responded Congress. Robinson asked if there was a department within the Department of Interior that then goes to the NPS. Kurnath said no, Congress lines up every park and how much money each gets. Richardson said they are talking about unfunded mandates. He thinks there are still some questions and at another meeting the committee can gather them to ask our attorney, so there isn't wasted time. Robinson encouraged everyone to reread the RMP; it's explicit on how the agreement should work.

Richardson said in light of Kurnath's response, there may be a way to reword the questions to get different answers. Robinson said if funding is a line item by Congress, and the UDC is prohibited to approach Congress, we can't go to the money source. Kurnath said unless you have a partner that can do that, like NPS has National Park Foundation or NPCA. That is why those different organizations are set up for NPS. Maybe UDC has an option of having a different account of money that could go toward advocacy. Robinson said the legislation provided funds through the Department of Interior so if that's the case, isn't it the DOI that's the approachable entity? Kurnath said yes, if you're trying to increase the amount of money the UDC gets through NPS. What she can legally do is take information and let the appropriate channels know what is or could happen, such the UDC dropping staff numbers and not meeting substantial conformance reviews, to show the impact. From there, the NPS budget team could put in a request to Congress, but that is a multi-year process. It would be all education, outlining what the impacts would be if the UDC doesn't receive proper funding. Richardson said the council has been told many times that we can explain and educate to anyone about what we do and what we're not able to do because of lack of funding. Nobody will listen. Roeder said this is the first time he's ever heard this type of advocacy from a Superintendent at the NPS. Richardson said Michael Crane's fiscal report listed a lot of activities that we should be doing if we had the funding. We need to pull those out and clarify it. Roeder said the partners (NPS and UDC) should work that out. Peckham said if it's educational it's not considered lobbying, you can do that to any branch of government as long as you are educating about the RMP and the commitments the states have made. Robinson said if a partner owes the other partner and you're asking for it, he doesn't think it's lobbying. Peckham said you need to educate them that they aren't coming through. NPS isn't going to increase the amount they give. There hasn't been an increase since 1988 and they won't put it in their budget. Ramie said to her the difficulties are in the messaging. She feels as if her hands are tied and she doesn't know what she can say or how to phrase it. We thought

the letter writing campaign on the website was okay, but if the opinion is that we can't spend federal money on that, how do you separate that out of the budget to say you spent X amount of time writing a letter to a government official? It's impractical. She understands educate and inform, she's been doing that for years, but it's unclear what the wording can and can't be. Robinson said there's a stated number in the RMP laying out how the UDC is funded. If you reach out to people and ask them to write letters to the governors to make them aware, he doesn't think that's lobbying. Ramie said you would think there would be a distinction between the federal and state level, so she was surprised that on the state level the DOI Solicitor said it's not allowed. Robinson said this is the reason why he thinks the DOI Solicitor is wrong. The UDC has to function and it is a partnership and the NPS is not an exclusive agency to the partnership. They are part of the RMP. If we can't use federal funds to reach the other partners, it becomes a dysfunctional RMP. G. Dudko asked if we could hear a little more from Ohliger. Does he think we're not allowed to reach out to the public? Ohliger said there is a legislative history, section 1913. It is designed to prohibit the use of federally appropriated money specifically by federal employees who will then go and drum up support for particular legislative effort. For example, Ramie couldn't ask the general public to write letters to Members of Congress for more NPS funding. The large-scale lobbying effort is designed to be avoided by the statute. The statutory language possibly could be stretched into a grey area, which would include writing federal legislators to ask them to honor their commitment. He thinks that's a real stretch. He doesn't see a problem with the strategy of informing or requesting the prior commitment be honored. G. Dudko said then what's been done isn't really a problem. Ohliger doesn't see it as a problem; someone could stretch the language and pose it as a problem. The UDC is not advocating for a special interest outcome. If the UDC was saying that there was a proposed development that's coming in and we want more funding so we can fight that, that would be geared toward a political outcome. When the UDC is asking to meet commitments already made, that isn't a political outcome. Everyone thanked Ohliger and he left the meeting.

Robinson said the DOI Solicitor's message said we shouldn't use federal funds to engage in activities not directly related to federal interests. We shouldn't use federal funds and expend money to write letters to the governors. Kurnath suggested, after hearing what we did from the UDC attorney, the UDC could put in writing what the issue is. Robinson said if we have to go to the partners so they fulfill their obligation so the UDC can fulfill our federal obligation, that ties it back into the plan. He thinks efforts have to be made from other partners. The reason for the funding deficiency is our partners. Why can't we use the funds we do get to request the committed funding? Kurnath asked the committee to gather specific questions that she could send back to the DOI solicitor. She thinks Robinson has a valid point, the funds were agreed to and the commitment hasn't been met, so what is the UDC supposed to do? Henry asked everyone to read 18USC code 1913 and section 1352. It tells you violations of sections and limitations of appropriated funds. If you write a letter to any of the other branches, according to the IRS, that's not lobbying. If the UDC isn't lobbying, we can use federal funds. There are exceptions. The IRS says you are not lobbying if you aren't sending it to a legislative branch. Kurnath asked again for the council to put in writing exactly what we're looking for. Richardson said we haven't separated out the UDC's federal and state related duties. We may need to do that to explain as the funding goes down, what state activities will need to be eliminated. Robinson said the RMP says the UDC is overseeing is the intertwining of county, municipal, state and federal law. This is what the UDC is being funded to do, so you can't separate it. If you review a project, all of those are intertwined. Richardson said we review projects in our towns in our states, we need to say that we won't be able to do that to the states. Robinson said the towns could walk away and then have to deal directly with the NPS. The UDC not being able to function properly should be a concern for the NPS, the states, and the DRBC. Kurnath asked what our town and township supervisors are communicating to their county leadership and state leadership. That's another avenue to look into. That is what will be asked if the UDC asks the NPS for more money; why does the UDC need it to do what we do. She said she will send the most recent guidance to justify an increase. Robinson said it's supposed to be a cooperative effort, that's the problem. The UDC shouldn't be

spending time begging for money. \$300,000 in 1988 is not the same in 2023. Kurnath said if the UDC could get the information together, she wants to help however she legally can. Robinson said the UDC will provide whatever is necessary.

Summary of Pending Bills 11/27/23: Motion by Henry seconded by Roeder to approve the bills and pay them in the normal fashion carried.

Financial Statement 11/30/23: Robinson said the financial statement is for information purposes that can be reviewed.

Other: None.

Old Business

Status of Memorial Donations: Ramie gave an update on where the UDC stands on memorial donations. She had said at the November UDC meeting, Phyllis MacKinney of New Jersey had passed away October 25th and the UDC was named as a beneficiary for memorial contributions. We have received contributions by PayPal and checks totaling \$332.52 (an odd number due to PayPal fees) from 5 donors to date. She had reached out to the funeral home for a contact person for the family, and they hadn't gotten back. One of MacKinney's daughters happened to call the UDC for a list of donors to acknowledge, and Ramie put together a chart to send her. The UDC has been sending individual appreciation letters as well.

She went back to the beginning of 2023 as it was an exceptional year for donations. It started in November of 2022 with a donation from an individual in Matamoras who gives an annual \$100 donation that was for 2023. In January 2023 there was a donation from the charitable trust that opts not to be named for \$10,000. One donation on behalf of Diane Banach who was a former UDC board member was for \$50. Another was to help clean plastics after reading in our newsletter about litter cleanups of \$100. The Upper Delaware Scenic Byway donated a generous \$1,500 this year. A second charitable trust foundation donation of \$5,000 was received in November. And just this past Monday we received a donation from a Damascus resident of \$150. In 2023 donations have totaled \$17,228.03, which Ramie commented is amazing. Henry asked if they have been deposited into the Vanguard account. Ramie said she had deposited the \$10,000, \$5,000 and \$1,500 the other donations need to be transferred from PayPal. The Vanguard account year to date has had \$2,432.58 in interest.

Housing Solutions in the Upper Delaware River Region Advisory Group: Ramie suggested moving this into the WU/RM Committee. She started it at Operations to see if they felt it was worth the UDC's participation in the group, but at this point it is more of a resource management issue since WU/RM deals with economic impact issues. Richardson said he doesn't think the UDC should spend a lot of time on the group. We should be kept in the loop, but we don't deal with zoning and housing. Robinson agreed that it's a good recommendation.

Other: None.

There was no Public Comment.

Adjournment: A motion by Henry seconded by Bernitt to adjourn the meeting at 8:08 p.m. carried.