

**Delaware Coalition for Open Government
Virtual Board Meeting by Zoom
March 3, 2022**

CALL TO ORDER: Nick Wasileski, called the board meeting to order at 6:34 p.m.

Pre-board reports:

1. Treasurer's Report of February 28, 2022.
2. Cynthia Smith email link about Electronic Messaging. <https://dcogc.org/blog/coalition-urges-d-c-council-action-on-proposal-addressing-messaging-apps/>.
3. Nick Wasileski email link regarding upcoming book Hal Weitzman, whose upcoming book about DE LLC issues, has written an op-ed in *MarketWatch* about LLC secrecy in relation to what is happening with Russia. See the link below. <https://www.marketwatch.com/story/americas-indulgence-of-corporate-secrecy-like-delaware-llcs-makes-it-harder-to-squeeze-putin-11646149552>
4. John Morgan FOIA request form and response to Newark City Council.

PRESENT: David Breen, Letty Diswood, John Flaherty, Al Jackson, John Kowalko III, John Morgan, Coralie Pryde, Anita Rush, Nick Wasileski,

Absent: Anita Rush and Keith Steck- excused.

DelCOG members: Cynthia Smith, Katherine Ward.

Guest: Rachel Gregiore and Sara Alida (from Delaware Working Families Party)

REGULAR BUSINESS

1. **Introductions:** Wasileski called the meeting to order at 6:34 p.m., welcomed everyone and introduced Rachel Gregiore and Sara Alida.
2. **Meeting Minutes:** Draft #6 of the minutes of February 10, 2022, was approved unanimously. John Morgan suggested that in the future the DelCOG Board members who make reports should send a summary of their report to the Secretary to help her compose the minutes. Nick Wasileski agreed this is a good idea.
3. **Treasurer Report:** Wasileski reported in the absence of Anita Rush for February 28, 2022. The current balance in the checking and savings accounts:
WSFS checking account balance as of February 28, 2022, was \$3,991.55
WSFS savings account balance as of February 28, 2022, was \$2,776.82
Total account balance as of February 28, 2022, was \$6,768.37.
The treasurer's report was adopted as read.

COMMITTEE REPORTS:

1. **Inspector General Update:** John Kowalko, III reported that he gave two draft versions of the bill to Rep. John Kowalko, Jr., who gave it to a legislative attorney, and the bill will go to the Senate attorneys and Sen. David Sokola. There is a long draft and a shorter draft for consideration. Hopefully, a finalized bill will be completed in the next week or two, and it can circulate to other groups for their support. Wasileski said that the legislation will be introduced first in the Senate because the chances are greater for the bill to be passed if Senator Sokola sponsors the bill. Wasileski said that he has not heard back from the Delaware Attorney General about any concerns they may have.
2. **Rep. Paul Baumbach's H.B. 293** requires that meetings of public bodies which are open to the public must provide an opportunity for public comment. John Morgan reported that from 1 to 2 PM on February 28 he had participated in a Zoom meeting to discuss H.B. 293 with several other individuals,

including Javonne Rich of the ACLU, Dustyn Thompson of Delaware United, Patti Davis of the Dept. of Justice, Debbie Gottschalk, a legislative attorney, and Rep. Paul Baumbach and his aide Justin Richards. At this meeting a consensus was reached on how to move forward. John Morgan said that while currently public bodies are allowed to provide opportunities for public comment, H.B. 293 would require them to do so. One public body which would be affected is the U. of Delaware's Board of Trustees, which in recent years has allowed a brief period for public comment at their regular public meetings in May and December, but not at their autumn "retreats" or their other special meetings.

3. **Nepotism:** John Flaherty has spoken with Rep. Eric Morrison who had requested him to participate in this taskforce. He will be updating DelCOG once when more activity takes place.
4. **Sunshine Week program update:** A detailed report is listed at the end of these minutes. Katherine Ward reported that the committee has met twice in this past week, Feb 25 and yesterday 3/2, and requested committee members be in contact for about 5 min at the end of this meeting. They chose to take a look at the Law Enforcement Officer Bill of Rights and think about how greater transparency could be beneficial both to law enforcement officials and to the citizens of Delaware. They are considering on a question for the title to avoid leading of event: **Will Increased Transparency Benefit Both Law Enforcement and Delaware's Diverse Communities?**

Overview of forum: Katherine will give opening welcome and a history of DelCOG, based on PowerPoint made with Wasileski and Flaherty, which should take no more than 15-20 minutes. A Panel discussion moderated by Kowalko, III, with three panelists.

Proposed dates are April 4-7 or 11-12.

Discussion followed regarding S.B 149 and its prospects of passage and the obstacles facing its passage.

Sara Alida reported that her group also works on the Coalition for Fair Policing.

Only about fifteen states have a law enforcement officers' bill of rights.

- o No other agency or employee has these protections.
- o Maryland repealed LEOBOR last year.

SB 149 is a compromise bill that does not repeal LEOBOR

- o Makes disciplinary bill publicly accessible.

Alida would like DelCOG's help to get bill passed. A Digital Toolkit is posted:

https://docs.google.com/document/d/1Vx1KSDsq3re8FmzneKTCT4XPH9UwP_DiGUwZCrpDM2M/edit.

Rachel Gregiore stated that SB 149 is one of the weakest bills in the country on this issue according to a national police reform advocate. She questioned if there has been any publicity on this issue, such as PBS or newspapers? Yes there has been quite a bit of coverage but needs as many people involved by writing letters and posting on social media. Morgan commented that passing this legislation should be a multiyear effort.

5. **Delaware LLC Committee:** Wasileski reported that three years ago Nick met with Hal Weitzman from the University of Chicago's Booth School of business. The meeting's purpose was to gather information in preparation for a book that Mr. Weitzman was planning to write about Delaware's role in corporate anonymity. DelCOG's efforts in raising awareness about the abuses of the Delaware LLC Act were discussed. Documents were also provided to Mr. Weitzman about HB 57 (Rep. Kowalko's 2017 bill), as well as local media articles. Mr. Weitzman has been in frequent contact with Nick as LLC issues have developed, and Nick had the opportunity to read the book's first draft and make comments. The book will be published in May 2022, and Nick will send an email to DelCOG board members with a link about the book. It was suggested that Mr. Weitzman should be invited as a future guest speaker.

6.

UNFINISHED BUSINESS:

1. **Issues Up and Down Delaware:** Following up the issue of redistricting of County Council seats in Sussex County which Keith Steck had raised at the last Board meeting on February 10, with a reference to a

statement made by a member of the New Castle County Redistricting Commission who had urged that “majority-minority” districts be preserved at its meeting on August 24, 2021, John Morgan reported that the person who made that remark is Vince D’Anna, a name well known to Nick Wasileski and Nancy Willing and himself (<https://www.newcastlede.gov/DocumentCenter/View/44307/2021-Redistricting-Commission-8-24-21-meeting-minutes>). In 2013-2014 Vince D’Anna was one of the biggest proponents of the extremely secretive plans to build a large gas-fired power plant on UD’s STAR Campus, and he was also the chairman of the “I Like Polly’s Plan” Political Action Committee which spent \$45,000 to swing the special mayoral election in November 2013 away from Nick Wasileski’s daughter Amy Roe to Polly Sierer, who was perceived to be a supporter of the power plant project. (<http://www.delawareonline.com/article/20131127/NEWS02/311270042/Sierer-wins-Newark-mayoral-race>) John Morgan said that Vince D’Anna is exactly the sort of person whom DelCOG should not align itself with, and added that this is a good example of a little knowledge being a dangerous thing. John Morgan said that he would not presume to talk about issues in Sussex County, and Keith should not have presumed to talk about issues in New Castle County without first thoroughly understanding them.

Delaware General Assembly Email Transparency: John Morgan reported that he has no new information from 3 weeks ago. He had skimmed through the examples from other states collected by John Flaherty, and said one can find in them precedents for whatever one wants. He suggested to not push this issue right now, and develop a pro and con sheet and that DelCOG needs to come to an agreement on the issue. Morgan observed that currently Section 10002(o)(19) of Delaware’s FOIA exempts communications between legislators and their constituents, but there seems to be no legal definition of “constituent”. He made a distinction between constituents communicating with their elected legislators, and lobbyists sending emails to large numbers of legislators. John Kowalko III said that DelCOG should be supporting this opening information, and if there are specific examples or specific language regarding protecting personal information of constituents, then he thinks that could be a beneficial discussion. He said that he is not aware of any cases where problems had arisen from FOIA requests made for emails between constituents and legislators, and he mentioned Governor Markell’s abuse of the exemption by sending cc’s of his emails to legislators. John Kowalko III said DelCOG is an open government organization that is supposed to be fighting for FOIA. John Morgan replied that it’s hard for us to identify what would have been problems in a contrary-to-fact situation, and gave the specific example of written threats of violence made against Rep. John Kowalko, Jr. at the Board of Adjustment meeting in March 2014 because of his opposition to the power plant project, and said he could well imagine that many Newark residents would have been reluctant to communicate their concerns to Rep. Kowalko in email messages if there was a chance that their email messages would have been subject to FOIA requests. He urged that if we are going to do anything, we should start small and be cautious. John Kowalko III said that in 2014 dozens if not hundreds of constituents had been emailing their Newark Councilmembers without it leading to any problems. John Morgan responded that the fundamental reason why there wasn’t a problem in 2014 was that Newark Councilmembers were using their private email accounts for correspondence with their constituents, and in 2011 the Attorney General’s office had ruled that emails sent to and from the private email accounts of Councilmembers were not subject to FOIA (<https://attorneygeneral.delaware.gov/2011/03/16/11-ib02-re-freedom-of-information-act-complaint-against-city-of-newark/>), although in 2018 the Attorney General’s office had reversed its position (<https://attorneygeneral.delaware.gov/2017/10/10/17-ib51-1092017-foia-opinion-letter-ms-amy-cherry-re-foia-complaint-concerning-new-castle-county-council/>). John Morgan added that FOIA is a double-edged sword, and powerful people with lots of money can hire expensive lawyers know how to wield that sword much better than ordinary people do. John Kowalko III challenged John Morgan to provide an example of abusive public record requests. John Morgan replied that there was an example in Virginia about a dozen years ago, when Ken Cuccinelli, the Republican Attorney General of Virginia, tried to force Michael Mann, a climate scientist at the U. of Virginia, to turn over all his email correspondence and research records pertaining to global warming. [*There was also a separate records request made by the American Tradition Institute’s Environmental Law Center for “about 9,000 pages of records”:* (https://www.washingtonpost.com/blogs/virginia-politics/post/u-va-agrees-to-complete-response-to-global-warming-public-records-request-by-august/2011/05/25/AGvG5GBH_blog.html)]

Cynthia Smith sent all the DelCOG Board members information from DCOGC about access to electronic messaging in DC. (<https://dcogc.org/blog/coalition-urges-d-c-council-action-on-proposal-addressing-messaging-apps/>.)

Sarah Alida said that the point of making legislators' emails subject to FOIA was not to put the privacy of constituents at risk, but to bring the legislature in line with the requirements of other state agencies.

NEW BUSINESS

1. **Access to Public Information via Private Vendors:** This topic was moved to the next meeting.
2. **UD Searches for Administrators-Conduct and Transparency:** John Morgan said that in the ongoing search for UD's next Provost there is essentially no transparency and there are plans for the short-listed applicants not to make open visits to UD's campus.
3. **DE Judicial Proceedings During the Covid Pandemic:** Moved to next meeting.
4. **S.B. 155 Update:** Nick Wasileski summarized the situation with Senator Kyle Gay's S.B. 155. Last spring DelCOG took issue with parts of S.B. 155 that would allow state agencies to deny "abusive" FOIA requests, which is a vague and subjective standard. There have been second-hand reports that the bill will not be acted on this year. Pryde would like more information, and also thought DelCOG was going to be in more direct contact with Sen. Gay. John Morgan reported that on February 18 he had sent an email to Rep. Baumbach to try set up a meeting with Sen. Gay, but neither of them has yet responded yet. He added that it's not safe to assume that this bill won't be acted on, because sometimes in the past after a suspension of the rules on June 30 bills have suddenly been acted on. John Kowalko III endorsed this point, and added that the proposed charges for legal review in S.B. 155 could make many FOIA requests unaffordable for most citizens. Sarah Alida noted that if DelCOG has talking points on this bill or any other, she would be willing to pass them on to WFP elected officials.
5. **Delaware Franchise Tax and Federal Tax Filing Minutes Notes:** In the next week or so Wasileski plans to pay DelCOG's Delaware corporate franchise tax, as well as to file DelCOG's federal tax forms (990EZ).
6. **Timely Responses to FOIA Requests:** On February 9 Morgan had requested the application materials for 3 new nominees to the City of Newark's boards and commissions whose confirmations by Council were on the agenda of the February 14 City Council meeting. He received no response to his request for more than 3 weeks until March 3, and then everything in their resumes had been redacted by the City's staff. He plans to file a FOIA complaint with the Delaware Attorney General's Office if by the end of March Newark's City Council does not provide a satisfactory resolution by giving direction to the City's staff to resume the practice from 2014 until October 2021 of posting the application materials on the City's website, possibly with redactions of some sensitive personal information, such as personal telephone numbers and/or personal email addresses.
Flaherty made a motion, which was seconded, to support Morgan's filing a FOIA complaint, if necessary. The motion was approved with six "yes" votes and one abstention.
7. **The next DelCOG Board meeting will be Thursday, March 31 at 6:30 p.m. by Zoom. The date was changed to have the meeting before DelCOG's forum for Sunshine Week. [Subsequently the date was changed again to Wednesday, April 6 at 6:30 p.m.]**

OPEN FORUM

Rachel Gregiore and Sara Alida would like to become DelCOG members.

They discussed S.B. 149 and how it would increase police accountability and asked DelCOG to send a letter of support to all Delaware legislators.

Coralie Pryde made a motion, which was seconded, to send a letter of support for S.B. 149 to all legislators. This motion approved with seven votes.

Adjourned: 8:28 p.m.
Submitted by
Letty Diswood
Secretary

Reports:

Katherine Ward: DelCOG Board Meeting Report Sunshine Week Committee

The committee has met twice in this past week, Feb 25 and yesterday 3/2, and we will be in contact for about 5 min at the end of this meeting., to do the following:

7. Focus on the topic for our Sunshine Week Event. Because of a number of incidents of problems with vulnerable populations and abuse of those who have little or no recourse to address these ills we chose to take a look at the Law Enforcement Officer Bill of Rights and think about how greater transparency could be beneficial both to law enforcement officials and to the citizens of Delaware.
8. Choose a title that will convey the substance of the topic.

We are considering: **Will Increased Transparency Benefit Both Law Enforcement and Delaware's Diverse Communities?**

9. Determine those who will make presentations.
 - o Because I am a member of both DelCOG (on the DC advisory board) and also am the executive director of Delaware Press Association, I have been asked to welcome our audience and to make a brief presentation of highlights of DelCOG and DPA accomplishments. Nick and John F and I are going to prepare a brief PowerPoint.
 - o Because we will have a moderated panel discussion, we asked John Kowalko III to serve as moderator He accepted.
 - o We will have three panelists, each one to represent the voice of the court, the press, and law enforcement.
We have invited Public Defender Misty Seemans, to be the voice of the court, Investigative reporter Xerxes Wilson to be the voice of the press, and State Rep. Franklin D Cooke, who has been an officer with the Wilmington police force, and a former investigator for the Office of Defense Services to be the voice of law enforcement.
 - o Misty Seemans has accepted. We are waiting to hear from the other two

Date: looking at April: 4, 5, 6, 7, 11, and 12 – to be determined by when the panelists are available.

Again, the title could be: **Will Increased Transparency Benefit Both Law Enforcement and Delaware's Diverse Communities?**

We will put publicity together as soon as we have all pertinent information and will send it to all DelCOG and DPA meetings and to other groups and individuals.

Many thanks to everyone on the committee for their time, thought, and suggestions: DelCOG JK3, Cynthia Smith, and Myself and from DPA Mark Fowser, Billie Travalini and me.

Sierra Club for Dustyn

SAVED CHAT:

18:50:02 From Sara, Delaware WFP to Everyone: Javonne is on vacation for the next week fyi

18:51:51 From Sara, Delaware WFP to Everyone: Do you have a whip count (vote count) for this bill? And what help do you need?

18:55:27 From Sara, Delaware WFP to Everyone: LEOBOR toolkit:
https://docs.google.com/document/d/1Vx1KSDsq3re8FmzneKTCT4XPH9UwP_DiGUwZCrpDM2M/edit?usp=sharing

19:06:53 From Rachel Gregoire to Everyone: I have a friend who is a national police reform advocate who helps states pass bills all over the nation. He said that this bill is already the weakest bill he has ever seen during his work, and they are trying to weaken it MORE.

19:12:42 From Rachel Gregoire to Everyone: I talked to a 79-year-old Caucasian anti-war activist in Wilmington yesterday who said the police have been harassing her, consistently, for the past decade (ages 69-79), and her elected officials have not done anything to help her.

19:16:16 From Rachel Gregoire to Everyone: The concern we are hearing from affected families is that the weakened bill might actually be more dangerous than no bill at all.

19:19:11 From Sara, Delaware WFP to Everyone: Thank you all so much! Also, Cynthia has a hand up!

19:38:26 From Sara, Delaware WFP to Everyone: That's a great point, and to follow up as well - making sure that public records piece stays in SB 149 would be really helpful. I have a draft letter to send if anyone would like it.

19:39:50 From Sara, Delaware WFP to Everyone: I am happy to respond to that as well

19:54:40 From Sara, Delaware WFP to Everyone: If you have talking points on this bill Rachel and I would be happy to pass on to our WFP legislators.

20:06:37 From Sara, Delaware WFP to Everyone: Agree! This is exactly what happened with the John Carney/Mike Purzycki FOIA for Rodney Square Bus Hub

20:16:40 From Rachel Gregoire to Everyone: I would love to be a member

20:16:51 From Sara, Delaware WFP to Everyone: Same

20:20:47 From Sara, Delaware WFP to Everyone: of course

20:20:58 From Cynthia Smith to Everyone: Good to have you both Rachele and Sara

20:22:01 From Sara, Delaware WFP to Everyone: Thank you so much!! Happy to send over draft language.

20:23:02 From Sara, Delaware WFP to Everyone:
<https://docs.google.com/document/d/1e5adnJEVMF3w37gJQ3Iz mhZZMI Gmg iLJczNhmtS1wX8/edit>

20:24:50 From Sara, Delaware WFP to Everyone: Sara Alida, s.saralida@gmail.com, 302-304-3251