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## November Meeting Minutes

November 17, 2016

Attending were Mark Deshon (chair and resident), Karl Hassler (resident), Susan Grasso (resident), Al Porach (resident), Brian Bahnson (resident), Lauri Webber (resident), Paul Moser (DelDOT), John Bare (Bike Delaware), Joe Charma (Downtown Newark Partnership), and Tom Coleman (Newark Public Works and Water Resources).

Regrets: James Wilson (Bike Delaware), Heather Dunigan (WILMAPCO and Newark Bike Project), Ban Phommachanh (University of Delaware Parking), Karen Rosenberg (resident),

Guests present: Grace Pederson (UD Student Gov't) and Gerard Weir (UD Student Gov't)

- *Report and recommendations from ad hoc NBC organizational subcommittee*

Karl Hassler began by giving an overview of NBC's major objectives noted in our previous meeting's discussion, around which NBC wants to formalize as a group and which the ad hoc subcommittee used as a basis for its recommendations (full subcommittee report attached at the end of these minutes).

- Need liability protection (individual and collective)
- Not a lobbying entity
- Potential for handling money
- Any revenue must be tax-exempt

The subcommittee looked at the business models that fit this criteria and, based on these, recommends the following:

- Organize as a non-profit corporation in Delaware, making sure that specific language is added to the application form to meet federal requirements as a 501(c)(3) federally tax exempt organization.
- Do not apply for a formal federal tax-exempt status determination from the IRS until we determine that such recognition is required to allow us to do business (i.e., if we

expect revenues to exceed \$5k, if we desire to apply for government grants, or if donors would like to deduct donations on their tax returns).

- Move forward with recommended next steps outlined below.

501 (c)(3) status would allow us to lobby for issues but not specific candidates for elected office. One of the advantages to 501 (c)(3) status is that it would allow us to accept tax-deductible contributions. If we write our entity description in such a way and take in less than \$5,000 a year, we would be able to use the federal Form 1023EZ.

Annually, we would be subject to completing a 990N form (done online at no cost) and paying \$25 annually to the State of Delaware, which Karl said is basically a “franchise fee.”

Ruled out were the following organizational approaches:

- Unincorporated nonprofit community group (lacks liability protection)
- Unincorporated nonprofit organization with fiscal/liability sponsorship (risk of lack of control, less nimble—it was noted we’re doing more *now* than this would likely allow)
- Become a local affiliate of Bike Delaware (same reason as above)
- Incorporate as a taxable nonprofit (not tax exempt plus other related costs involved)
- Tax-exempt nonprofit 501(c)(4) organization (this type of lobbying group would likely restrict some liaison members’ participation)

Next steps for the subcommittee:

- Explore options for membership
- Propose a decision-making process
- Propose draft bylaws for committee consideration
- Start the application process by collecting information and filing appropriate forms for chosen organization structure.
- Investigate costs/benefits of enrolling in a general liability policy through League of American Bicyclists as an advocacy organization to mitigate risk to individuals involved in the NBC. Consider additional liability protection (such as Directors & Officers) based on current activities of the organization.
- Explore fundraising options to support the creation and management of the business entity and to provide liability protection.

Joe Charma suggested we also talk to an attorney. He also suggested looking into becoming an LLC, but Lauri Webber said that we couldn’t be tax-exempt and be an LLC.

Mark Deshon thanked Karl, Brian Bahnson, and Susan Grasso for their research work and recommendations.

Susan asked if we wanted to talk about an official name change. All present liked changing the group’s name to BikeNewark when we actually file as corporation. BikeNewark makes sense, as we are already using it as our Facebook and Twitter handles, and John Bare remarked that it signals a coalition, which is in keeping with what we are. The ad hoc committee was asked to file for incorporation under this name.

Susan then sought comment on the logo design drafts that the UD Visual Communications students have provided with their initial civility campaign project feedback. These were met with rather mixed reviews, and it was determined that Susan should ask the students not to pursue a new design at this time.

- *Quick subcommittee updates*

- *Communication subcommittee*

There was no formal report given, but Mark mentioned that he and Bike Delaware have to get together to discuss the domain name *BikeNewark.org* that Bike Delaware currently owns. Mark said that one of two things has to happen, either Bike Delaware releases the domain name so that we can purchase it, or Bike Delaware agrees to maintain the domain but “point” it to our new website.

Mark indicated that the new website is nearly ready to be launched. It is currently at *bikenewark.wordpress.com*. Mark has received constructive suggestions from Susan and Karl, which have already been implemented.

- *Education/Encouragement subcommittee*

Susan reported the following:

With regard to the Safe Routes to School project at John R. Downes, DelDOT has finalized estimated costs. There is a meeting just before Thanksgiving to discuss further. Heather Dunigan will be attending. UD Engineers Without Borders students will be examining other routes that will help the student population at Downes.

The next First Friday Ride will be held on Friday, Dec. 2, at 5:30 p.m. This will be an easier, shorter ride and will coincide with the City of Newark’s Winterfest. The post-ride venue next month will be Caffé Gelato. The November ride saw 43 attendees, as compared to the 63 in October. This was somewhat expected because of the darkness factor.

- *Engineering subcommittee*

Mark reported that Heather gave a presentation on bike boxes. Bike boxes are green-painted boxes that create a space in front of traffic-stop lines at an intersection for the purpose of allowing bicycles to queue up there and make appropriate turns ahead of cars. Federal permission is needed to experiment with use of bike boxes. The state of Delaware has interim approval for bike box experimentation, but the Delaware MUTCD must be changed.

The Newark Police Department (NPD) currently doesn’t like the contraflow option on Main Street between North College Ave. and South College Ave. DelDOT had been ready to implement a protected contraflow lane with bollards. Complicating matters further is that, whereas DelDOT is OK with a contraflow lane, it does not want a bike

box treatment on North College Avenue (SB) because of a queue-length issue. We'll need to work more with Newark Police Department with regard to this intersection. We agreed that we need to prioritize our work on low-stress bikeways and ensure public outreach. The City feels we should present our ideas and plans to the Traffic Committee and let it take responsibility for public outreach, which was fine with the subcommittee.

A few streets that we had suggested were identified, which don't currently appear as "low-stress routes" in the Proposed Bicycle Network map in the Newark Bicycle Plan. These were Radcliffe Dr.-Lafayette Rd., Briar Lane, UD's Farm Lane, and Library Ave. from Del. Ave. to Main St.

With respect to the "Old Newark Bikeway," survey work was done, and mini-circles are indeed viable along Orchard Rd. at Kent Way, Winslow Rd., and Sunset Rd. It was decided that we want to do a Photoshop mock-up of these intersections that will help during public outreach.

We discussed the importance of branding for a bicycle network. Other concerns that were discussed were as follows:

- Engage in discussion with UD with regard to its current Farm Lane through traffic prohibition.
- Add in Courtney St. to Ashley St. to South Chapel as a low-stress alternative to East Park Place.
- Potentially re-route the East Coast Greenway from Elkton Rd. onto Gravenor Lane through the perimeter residential streets in the Binns to the Hall Trail.

○ *Safety and Enforcement subcommittee*

There was no report, but we entered into a lengthy discussion.

Our two guests from the University of Delaware came with the mindset that on-campus bicycle traffic needs to be separated from pedestrian traffic. Gerard Weir suggested a timed ban for the most congested areas, particularly during class changes. Grace Pederson echoed this and went further by saying she thinks bicycling ought not to be allowed on the pathways on The Green.

Brian asked if this is being done on other campuses. The UD students said that there are examples of this on-campus separated-mode approach. Brian suggested they look at the bigger picture, saying it is better to balance better quality of life with enforcement, rather than resort to prohibition. Susan said that we're interested in approaching this issue from an infrastructure-with-education standpoint. Whereas Susan said that the idea of creating a perimeter for bicycle use is a decent idea in principle, a timed prohibition will be too hard to enforce. She insisted that we step back and see all viewpoints and work together to improve safety for *all*, without discouraging a mode of travel.

Paul Moser said that, operationally, The Green functions well with what he called “organized chaos,” which is comparable to and much cheaper than employing officers for enforcement. Joe summarized that it all comes down to “respect and courtesy.” Mark and Susan felt that we need to involve John Morgan and representatives of UD student government on our Safety and Enforcement subcommittee. Grace agreed to participate; Gerard felt he would like to be invited to participate in the Education and Encouragement subcommittee. [Unfortunately, no representative from either of our two local law enforcement groups was present to comment on this issue.]

- *Formation of an Evaluation subcommittee*

This agenda item was tabled due to time constraints.

- *One talking point to feed Mayor Sierer for December City Council meeting*

The committee felt that Mayor Sierer can provide a progress update from DelDOT (Sarah Coakley) on the Safe Routes to School (SRTS) project at John R. Downes Elementary School. [The most recent SRTS meeting was held on November 21 and was attended by Heather, Tom, and Mark.]

- *Old or new business / announcements*

- *Thanks*

Mark took a moment to extend his personal thanks to all for everyone’s contributions this year to our corporate mission of making bicycling better in Newark. A lot has happened, and he is grateful.

- *Upcoming meetings*

The Delaware Bicycle Council will hold a meeting on Dec. 7 at the DelDOT administration building in Dover at 5 p.m. Paul will be speaking briefly to provide an update on the Wilmington-Newark Trail project.

Tom mentioned that there he was heading from the meeting a little early to be at a public information meeting at UD’s Clayton Hall from 6-8 p.m. to discuss contaminated ground water in the Newark area. He also mentioned that the Newark Traffic Committee will be discussing a prohibition of use of cell phones while riding a bicycle.

Our next meeting will be on Thursday, December 15, at 4 p.m. at WILMAPCO.  
Call-in #302-737-6205 x126.

## NBC Organizational Structure Ad Hoc Subcommittee

**Assumptions/goals to be satisfied by new structure:**

- Liability protection for individuals/members for actions within the normal scope of activities of our organization – e.g., education, advocacy, recreation, programs, events, etc.
- Ability to collect, raise and hold funds (initially below IRS reporting threshold of \$5,000 annual revenue, but with option to increase later)
- At this point in time, no expectation that the organization will have employees
- No lobbying for political candidates (fundraising, campaign donations, campaigning, etc.)
- No expectation that scope of work/activities will extend beyond Newark
- Exemption from state and federal taxes

**Recommendations:**

- Organize as a non-profit corporation in DE, making sure that specific language is added to the application form to meet IRS requirements as a 501(c)(3) federally tax exempt organization.
- Do not apply for a formal federal tax-exempt status determination from the IRS until we determine that such recognition is required to allow us to do business (i.e., if revenues exceed \$5k, if we desire to apply for government grants, or if donors would like to deduct donations on their tax returns).
- Move forward with recommended next steps outlined below.

**Business models evaluated:**

Note that the type of business structure our organization intends to adopt is established at the state level (Department of State, Division of Corporations). Exemption from federal taxes is accomplished through the IRS.

**Table 1  
Description of Business Types Evaluated**

	<b>Description of Business Type</b>
<b>Community Group (Unincorporated Non-profit Organization)</b>	This is basically our current structure – an association of individuals working to benefit the public. However, this business type has no separate legal existence apart from its members. Because it is not respected as a separate legal entity, its members generally can be personally liable for its debts and liabilities. Unincorporated non-profit organizations can apply for tax-exempt status (or may function as a 501(c)(3) without applying for IRS recognition of its status if its annual revenue is less than \$5k) without being incorporated.

<p><b>Unincorporated Non-profit Organization with Fiscal and/or Liability Sponsorship</b></p>	<p>This involves entering into agreements with other organizations to provide liability protection, the ability to apply for grants or to manage donations. This could be done as a community group to address the liability and fiscal management issues.</p>
<p><b>Bike DE Affiliate</b></p>	<p>Same as above, with Bike DE being our fiscal and liability protection agent. Details would be negotiated with Bike DE. Such an arrangement could serve to benefit statewide bicycle advocacy efforts.</p>
<p><b>Incorporation in DE as a non-profit, but not as federal tax exempt</b></p>	<p>DE does not have a separate non-profit corporations statute. Delaware non-profits are governed by the applicable provisions of the Delaware General Corporation Law (“DGCL”). The non-profit entity is created by filing a Certificate of Incorporation for an Exempt Corporation with the Delaware Department of State. This form is used for both non-profits wishing to seek federal tax exempt status (charitable nonstock corporation, per Title 8, Chapter 1) and those who do not (nonprofit nonstock corporation, per Title 8, Chapter 1). An annual report is required, which is filed online with a \$25 submission fee. We would be exempt from state taxes (but not from federal ones). There would be a fee of \$75 to reserve our entity name and a fee of \$89 plus \$9 each additional page to submit the application form.</p> <p><a href="http://corp.delaware.gov/newentit09.shtml">http://corp.delaware.gov/newentit09.shtml</a>  <a href="http://corp.delaware.gov/Inc_Exempt.pdf">http://corp.delaware.gov/Inc_Exempt.pdf</a></p>
<p><b>Incorporation in DE as federally tax exempt (recommended initial course of action)</b></p>	<p>In order to also be exempt from federal taxes, the form referenced above is completed, but using specific language provided by the IRS to help it determine that we meet the conditions for federal tax-exemption specified in IRS 501(c)(3) regulations. Annual reporting is required. We would be exempt from state and federal taxes. Same fees as above.</p>
<p><b>Incorporation in DE as LLC</b></p>	<p>We did not explore this option as it is designed for for-profit entities that wish to pass federal and state tax treatment through to individuals while enjoying personal liability afforded to corporations</p>

**Table 2**  
**Description of Applicable IRS Designations for Federal Tax Exemption**

	<b>Applicable IRS Designations to Secure Federal Tax Exempt Status</b>
<p><b>Tax-Exempt Non-profit (501(c)(4)) - NBC satisfies criteria as a social welfare organization.</b></p>	<p>If our organization is not organized for profit and will be operated primarily to promote social welfare to benefit the community, we must provide notice to the Internal Revenue Service within 60 days of your establishment if we wish to be considered a 501(c)(4). This is done by completing Form Form 8976, Notice of Intent to Operate Under Section 501(c)(4). It will ask for the following information:</p> <ul style="list-style-type: none"> <li>• Business name</li> <li>• Address</li> <li>• EIN</li> <li>• Date organized</li> <li>• State and country organized</li> <li>• Filing year/month</li> <li>• Statement of purpose of the organization</li> </ul> <p>If an organization does not submit the notification within 60 days, a penalty of \$20 per day for each day the failure continues, up to a maximum of \$5,000, will be assessed. We may also file Form 1024 to apply for recognition of exemption from federal income tax under section 501(c)(4). There is not a threshold below which this requirement is waived. An important consideration is that contributions to civic leagues or other section 501(c)(4) organizations generally are not deductible as charitable contributions for federal income tax purposes. Another important consideration is that this designation can allow for more extensive political lobbying than a 501(c)(3) organization.</p>
<p><b>Tax-Exempt Non-profit (501(c)(3)) - NBC satisfies criteria as charitable organization</b></p>	<p>If annual revenue is below \$5k, then the entity is not required to apply for a formal determination of tax-exempt status from the IRS (Form 1023 or 1023-EZ). Once our average revenue exceeds this threshold, we are required to seek an official IRS determination of tax-exempt status. Even if revenues are below</p>



	<p>the \$5k threshold, we would still be required to file an annual Form 990-N e-Postcard with the IRS (no fee required). To do this, we would need to call the IRS at 1-877-829-5500 and ask that your organization be set up to allow for the filing of the annual e-Postcard. In order to do this, the entity would need to apply for an EIN (IRS designated Employer Identification Number). Please note that in order for tax contributions to be tax deductible, we would need to complete Form 1023 (or 1023-EZ). Cost to complete 1023-EZ (for gross annual revenue less than \$50k) – a form we qualify for.</p>
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### Bases for Recommendation

**Table 3  
Evaluation of Available Business Structures**

	<b>Rationale for Elimination</b>
<b>Community Group (Unincorporated Non-profit Organization)</b>	Lack of liability protection
<b>Fiscal and/or Liability Sponsorship</b>	Risk of lack of control over activities; poses potential delays/complications in organizing events/activities (could make us less nimble)
<b>Bike DE Affiliate</b>	Risk of lack of control over activities; uncertain benefits; concern that partners may not be able to participate in regular meetings due to nature of Bike DE activities
<b>Incorporation in DE as a non-profit, but not as federal tax exempt</b>	Under this structure, we would still be liable for federal taxes.
<b>Incorporation in DE as federally tax exempt</b>	<b>Recommended.</b> It is easy to be recognized as a federally tax-exempt organization IF our revenue is less than \$5k. (We would use the same form as above, with the addition of specific language to meet IRS 501(c)(3) requirements.) In addition, it provides us with the option to expand our fundraising efforts in the future if we choose to do so.
<b>Tax-Exempt Non-profit (501(c)(4)) - NBC satisfies criteria as a social welfare organization.</b>	This structure is an option for us, but if we choose to self-identify as a 501(c)(4), then we are required to notify the IRS immediately (within 60 days) of our activities and contributions are not tax deductible for donors.

<p><b>Tax-Exempt Non-profit (501(c)(3)) - NBC satisfies criteria as charitable organization</b></p>	<p><b>Recommended.</b> Organizing at the state level as an exempt non-profit corporation with language added to it that would allow for an eventual IRS formal determination as a 501(c)(3) (through a 1023 or 1023-EZ application) in addition to holding revenues below \$5k, will provide us with de facto 501(c)(3) status. If revenues exceed \$5k OR we wish to apply for government grants OR we wish to allow potential donors to deduct their contributions (an important consideration for large donations), then we recommend moving forward with requesting a formal IRS determination by filing a Form 1023 or 1023-EZ.</p>
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**Next steps:**

- Explore options for membership
- Propose a decision-making process
- Propose draft bylaws for committee consideration
- Start the application process by collecting information and filing appropriate forms for chosen organization structure.
- Investigate costs/benefits of enrolling in a general liability policy through League of American Bicyclists as an advocacy organization to mitigate risk to individuals involved in the NBC. Consider additional liability protection (such as Directors & Officers) based on current activities of the organization.
- Explore fundraising options to support the creation and management of the business entity and to provide liability protection.

Respectfully submitted by committee members:

Brian Bahnson

Susan Grasso

Karl Hassler