

Executive/Legislative
Relationship
Focus Group Report

WESTCHESTER COUNTY CHARTER REVISION COMMISSION
EXECUTIVE-LEGISLATIVE RELATIONSHIP FOCUS GROUP REPORT

EXECUTIVE-LEGISLATIVE RELATIONSHIP FOCUS GROUP MEMBERS

Al Gatta, Chair
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MEETING DATES OF THE FOCUS GROUP WERE AS FOLLOWS:

November, 15 2011
January 20, 2012
February 28, 2012
March 27, 2012
May 15, 2012
June 26, 2012
September 27, 2012
December 20, 2012 (cancelled)
January 10, 2103 (no minutes taken-report discussed)

The focus group considered many issues involving the relationship between the executive and legislative branches. Some were later determined to be more appropriate for other focus groups to pursue. Others were raised and later addressed in a memorandum from Counsel, such as the enforcement by the executive branch of local laws enacted by the legislative branch, mandatory and permissive referenda, and defense and indemnification of County officers and employees. Such Memorandum is appended as Appendix "C."

After discussion of the many issues that might be brought before the full Commission, it was decided that the issues to be reported on by the Executive Legislative Focus Group would be as follows:

1. Consideration should be given to changing the structure of the County Government. Possible models include a change from the current structure of two branches, Legislative and Executive, where the Executive and Administration become one. Other models include maintaining the current form of two separate branches with the addition of a professional manager or administrator that would be appointed by the County Executive and approved by the County Board of Legislators with qualifications set forth either in the Charter or Administrative Code. Such professional may be either an independent title or a Deputy County Executive.

2. Consideration should be given to centralizing the property assessment functions within the County government and creating a County Assessment Office that would move toward standardizing all property record cards, updating data, establishing values in a uniform manner and perform the daily assessment duties now being performed in 25 separate taxing jurisdictions in the County. This can either be mandatory by County law or, as set forth in current Chapter 125 of the Charter with amendments to make the participation of municipalities voluntary;
3. Change the elected position of County Clerk to an appointed position;
4. The Charter should be amended to make the authority clear that the County Board of Legislators has the responsibility and duty to act on the appointments of all officials made by the County Executive which are subject to confirmation by the Board of Legislators within a specified time period, say 60-90 days. After this period, should the Legislators not act, the appointment would go into effect.
5. A process should be established for the periodic review of charter with structure and time interval to be determined.

Issue 1:

Conflicts between the legislative and executive branches of county government have grown more rancorous over the last few years, leading to an increasing inability to compromise on major issues and resulting in several lawsuits as summarized in an Appendix to this report. Although, some of this is endemic to both a two party system, reflecting an inherent tension between the legislative and executive branches, the Group took a broad look at the relationship before reviewing the structure of the County Government to determine whether a change in the "form" could improve the overall interaction and cooperation between the branches. (Minutes 11/15/2011).

Models reviewed included the following:

A. Combining the Legislative and Executive functions into a single County Board.

- A Chairman/Executive of the County Board could be elected at large by the entire county or, alternatively, could be chosen by the Board and exercise executive powers. He/she would be the Chief Executive Officer of the County.
- A professional Manager or Administrator would be appointed by the Chair/Executive, for a fixed term, subject to confirmation by the Board, to exercise daily operational/administrative powers and would be the Chief Operating Officer but not the Chief Executive.
- Appointment and removal may possibly be by a supermajority (majority + one). The powers inherent in this position would include appointment, budget preparation, budget execution, reporting and overall general administrative authority.

B. Maintaining the basic form of a County Executive and Board of Legislators but

- Creating the position of County Manager, County Administrator or First Deputy County Executive. The position would be filled by appointment by the County Executive, subject to confirmation by the County Board. Professional credentials for this position would be set forth in the Charter or Code;
- The officer would possess the powers inherent in the position of Chief Administrative or Chief Operating Officer;
- Consideration should be given to setting a fixed term for the appointment;
- Removal would be by the same method as appointment, with consideration given as to whether a supermajority would be required;

C. No Change

The Group researched several models within New York State and also outside. Some examples are the counties of Tomkins and Ulster and the City of Newburgh in New York and also Johnson County Missouri, a suburb of Kansas City comparable to Westchester.

Those interviewed included:

Dr. Gerald Benjamin	(1/20/2012)	Chairman of the Ulster County Charter Revision Commission and a professor at SUNY New Paltz
Marty Rogowski	(2/28/2012)	former County Legislator
George Latimer	(2/28/2012)	former Chairman of the Board of Legislators and current Assemblyman
John Nonna	(3/27/2012)	former County Legislator
Bill Ryan	(3/27/2012)	current County Legislator
Tom Abinanti	(5/15/2012)	former County Legislator and current Assemblyman
James Maisano	(5/15/2012)	current County Legislator

Note: No witnesses from the Executive Branch

Discussion:

There are advantages to combining the executive and legislative functions. The conflict between the two branches would be eliminated. The budget and other processes would move more smoothly. Legislators would have more ready access to department commissioners, since they would "work" for the legislative chairman as well as the executive branch.

The Group believes that the appointment of a professional manager could remove some, although not all, politics from daily decision making and separate the policy discussion/disagreements from the County Administration. It will also bring increased efficiency, and therefore cost savings, to the County. The Group recommends that the question of a professional manager/administrator be brought before the full committee whether or not the basic form of government was changed. Interviewees from both sides of the political aisle have advocated that this matter be considered.

Recommendation:

The Group recommends that the issue of the form of government be brought to the full committee for discussion.

Issue 2:

There are 25 separate assessing units county wide. (Collaborative Assessment Report (Gatta, 2009). According to the City-County Task Force Report (Prezioso, 1984) "the property assessment function is now carried out by the cities, towns and villages.... Assessments have long been a source of extreme difficulty, have not been done very professionally and have created extreme inequities among the various property owners". P.96. This was echoed in the County-Town-Village Task Force Report (Prezioso, 1985): "Many of the local assessor's offices in the county are not sufficiently funded, staffed or computerized." Similarly, the recent Collaborative Assessment Study (Gatta, 2009) states that "Inadequate funding causes several systematic problems, one of which is the paucity of electronic data... There is an enormous disparity in both the quality and consistency of the inventory data that is in place in Westchester municipalities."

All reports have refrained from recommending that the County take over the assessment function from the municipalities, despite these systemic problems, although all have specifically cited that as a possible alternative. The City Task Force states that "political pressures make change difficult" (recommendation#14). The Town-Village Task Force points out at page 83, that "The County Charter already contains enabling legislation authorizing a transition to county assessment subject to approval at a referendum prior to becoming effective (Laws of Westchester Chapter 125)."

Alternatives Considered:

- Submit Chapter 125 of the Charter to Referendum without modification;
- Modify Chapter 125 to permit municipalities to "Opt Out";
- County takeover of the assessing function, for County portion of the real estate tax only;
- County to provide assistance to municipalities in the form of mapping and data processing for assessment purposes and to standardize the program for property inventory and the valuation methods used in the 25 separate assessing units.

Discussion:

Assessment is one of the most contentious issues in county and local government. Financially, there seems little question that, overall, taxpayer money can be saved by utilizing the resources of the county to centralize the assessment function. In addition, inequities in local assessment would be eliminated, resulting in a fairness both perceived and actual. Politically, however, this may be a difficult decision, as some municipalities may view this as a usurpation of home rule.

There are alternatives to the "forced" takeover of the assessment function by the County as envisioned by current Chapter 125. For example the Town-Village Task Force Report suggests, at p.53 thereof, that "A county Master Contract for reassessment with local ability to opt in or out seems generally well received." This suggestion is similar to the police arrangements we now see with the County and municipalities, such as with Ossining. It also suggests, in its recommendation #5 at p.55, for assessment "Assistance to towns and villages by the county, including provision of uniform maps and data processing facilities." Again, the County has already taken steps in this direction with the Planning Department and its GIS systems that aid in comprehensive planning.

The Group suggests that the assessment function be transferred to the County, with the municipalities given the opportunity to "opt out." The incentive to become part of the County system would be that all assessment costs would be borne by the County, which would provide the adequate resources and technology that many of the local assessing units are lacking. Also, it would be a cost/beneficial way to fully update and modernize the assessment function in the County. The result would be reduced costs for local municipalities. The centralization and standardization of record keeping should lower overall costs to the county taxpayer and the standardization of assessments should make for a more fair system county wide. An added benefit would be that Tax Certiorari costs should be markedly reduced throughout the County.

Collection of taxes could remain with the municipalities, along with the guarantee of collection, so that the County's bond rating would not be adversely affected. During transition, local assessors could become part of the County centralized assessment system and become county employees.

Recommendation:

The Group recommends that the issue of the County assuming the function of tax assessment be brought to the full committee for discussion.

Issue 3:

The County Clerk, although an elected position, provides mainly ministerial services.

Current County Clerk Tim Idoni addressed the full Commission at its meeting of January 25, 2012. He noted he works under both the State Constitution and the Federal Government for passports and naturalization and under the county charter for electricians and plumbers. Mr. Idoni stated that he is an agent of the state; he operates the land records office under state law, is the clerk of the Supreme Court

and county courts, and is paid by the citizens of the County. He stated he has all 3 levels of government controlling his office.

The Commission asked if the County Clerk is elected by State Law. Mr. Idoni said that it is. He said a prior Charter Revision Commission recommended the county clerk should be an appointed position, but that it is a state decision. Mr. Idoni believed that it should be an appointed position.

In their interviews with the Group, Marty Rogowsky (2/12/2012), Jim Maisano and Tom Abinanti (both 5/15/2012) specifically mentioned the possibility of making the Clerk an appointed position. The issue was further discussed at the Group's meeting of 6/26/2012).

Discussion:

There seems to be little rationale for maintaining the Clerk as an elected position, because of its largely ministerial nature, and support from many officials, including the current officeholder, to make the position appointed.

There was discussion about the method of appointment. There is a question as to whether the appointment should be for a fixed term or at the discretion of the County Executive. The Group believes that the County Clerk should be appointed for a fixed term by the County Executive, with the approval of the Board of Legislators. In addition, professional qualifications should be established for the position.

Recommendation:

The Group recommends that the issue of whether the County Clerk should be an appointed or elected position be brought to the full committee for discussion. The Group further recommends that additional legal research be undertaken to determine the process for effectuating such change.

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Issue 4:

The Charter provides (check Charter provisions) for confirmation by the Board of Legislators of certain officials appointed by the County Executive. The Charter is unclear as to the authority to act by such officials after nomination but before confirmation. There have been circumstances in the past when such officials have not been permitted to act (Marty Rogowsky appearance 2/28/2012). Currently, the County Attorney has determined that such official may act pending confirmation, but such determination is currently the subject of litigation.

Discussion:

It was discussed that the Charter should be amended to make clear that the County Board of Legislators has the responsibility and duty to act on the appointments of all officials made by the County Executive, which are subject to confirmation by the Board of Legislators, within a specified time period. The Group discussed that a proper period might be 60 days, after which, should the legislators not act, the appointment would become effective.

Recommendation:

The Group recommends that the issue of the authority of an appointee to act pending confirmation be brought to the full committee for discussion. The Charter should make clear the appointment and confirmation process as well as the authority to act pending confirmation.

Issue 5:

The County Charter is a living document that should change with changing conditions and reflect current realities. It should not remain stagnant. Prior to the current Charter Revision Commission, there have been two commissions charged with examining and recommending possible changes to the Charter, which was originally promulgated in 1937. The first Commission issued its report in 1959 and the second in 1988.

It should be noted that by the time the Report of this Commission is issued in 2013, 25 years will have elapsed since the previous Report, and it was 29 years before that when the first Commission completed its work, 22 years after enactment of the 1937 Charter.

Former County Executive James D. Hopkins, in his Annual Message of 1957, stated that "We must guard against future entanglement from failure to see ahead." This is no less true today. The Group believes that an independent Charter Review Commission would have the ability to make recommendations to the responsible elected officials that would both help alleviate current "entanglements" and deal with future trends.

Other Counties both within and without New York State provide for periodic review of charter provisions. The Ulster County Charter (2009) provides for revision five years after its enactment and every ten years thereafter by a commission of 11 members. See also Tomkins County §C-31.17.

Suffolk County provides for a periodic review every ten years, with the life of each such new commission lasting two years. The number of members is 15, with five each being chosen by the County Executive and the Presiding Officer of the Legislature and an additional five by both jointly.

Johnson County Kansas, a suburb of Kansas City fairly similar to Westchester, provides in its recent Charter (2000) both (1) that a seven member standing commission be appointed from the 1999 Charter Commission and shall meet at least annually for five years after the effective date of the Charter and (2) that a Charter Commission, composed and appointed as provided by statute, shall be created within thirty 30 days of a date which follows by 10 years the effective date of this Charter, and at least once every 10 years thereafter.

It should also be noted that the City-County Task Force Report (Prezioso, 1984) to the County states as its very first recommendation that the County Charter "Needs to be reviewed and appraised at least every ten years to keep abreast of changing times." When the question arose, most of the Group's interviewees advocated for a periodic review of the Charter.

Discussion:

There was discussion as to whether there should be a "continuing" Charter Review Commission or a "periodic" Charter Review Commission. The appointment of a continuing review commission would alleviate the problem of every new commission becoming freshly acquainted with the charter provisions. On the other hand, a periodic commission would review the Charter with "fresh" eyes.

It is suggested that the Commission not be unwieldy and consist of no more than fifteen members. There are several ways to appoint members. Suffolk County utilizes only the County Executive and the Presiding Officer of the Legislature. Ulster County appoints 11 members and has representation from both the majority and minority parties, as well as the County Executive.

It is also suggested that sufficient staff be provided so that the Commission may operate efficiently.

Recommendation:

The Group recommends that the issue of a "periodic" or "continuing" review of the Charter be brought to the full committee for discussion.

APPENDIX A

Status of Lawsuits filed against the County Administration by certain members of the County Board or the entire County Board since 2010.

Lawsuit Regarding raising the Day Care Parent Share cost to 35% (Judge Neary)

KENNETH W. JENKINS, in his Individual capacity and in his capacity as a Westchester County Resident and Taxpayer, Chairman and Member of the Westchester County Board of Legislators; LYNDON WILLIAMS, in his Individual capacity as in his capacity as Westchester County Resident and Taxpayer, and Westchester Vice-Chairman and Member of the Westchester County Board of Legislators, and PETER HARCKHAM, in his Individual Capacity and in his capacity as a Westchester County Resident and Taxpayer and as Member of the Westchester County Board of Legislators; and MARY JANE SHIMSKY in her Individual Capacity and in her capacity as a Westchester County Resident and Taxpayer and as Member of the Westchester County Board of Legislators, v. ROBERT P. ASTORINO, in his Individual capacity and as Westchester County Executive and Member of the Westchester County Board of Acquisition & Contract, KEVIN McGUIRE, in his Individual capacity and as the Commissioner of the Department of Social Services, and GLADYS CARRION, in her official capacity as Commissioner of the New York State Office of Children and Family Services.

Westchester County, through the Westchester County Department of Social Services (“DSS”) provides a day care subsidy program for low income families. Such program provides financial assistance for day care to eligible low income families to enable a parent or caretaker to work at a job leading to self-sufficiency or to participate in DSS mandated employment related activities while their child is attending a day care facility. In addition to the financial assistance for day care through DSS, each recipient is required to pay a portion of their income or a weekly “family share” toward the cost of day care for their child[ren]. In establishing the family share for Westchester County, the County must select an appropriate percentage from 10% to 35% of a recipient’s income to use in calculating the family share for day care costs.

In December 2011, the Westchester County Board of Legislators (“County Board”) passed and subsequently overrode County Executive Astorino’s veto of the County Board’s addition of \$4.3 million dollars to the family share lines of the 2012 County Budget Act for fiscal year 2012 thereby establishing the County Board’s policy with respect to maintaining the family share for day care for eligible families at 20% of a recipient’s income. The County Board also passed and overrode County Executive Astorino’s subsequent veto of an accompanying Act to the 2012 Budget Act, Act 2011-191, which mandated among other things, that “no changes to policies, programs and services contained in the finally adopted budget shall take place without the prior approval of the County Board of Legislators....” Notwithstanding the foregoing, in

February and March of 2012, the County Executive and DSS Commissioner McGuire announced that budgeted funds would not be adequate to meet projected child day care demand during 2012, and an increase in the family share percentage to 35% would be necessary to continue the child day care subsidy program for the duration of year 2012.

This action, filed in May of 2012, challenges the Administration's attempt to increase the day care parent share cost for eligible low income County residents from 20% to 35% without the approval of the County Board and in violation of the 2012 finally adopted County Budget. Plaintiffs sought and the Court issued a temporary restraining order ("TRO") which prevented the increase in the family share to 35%. The TRO was subsequently lifted when the Court issued a decision granting the Defendants' motion to dismiss the lawsuit. The Defendants argued that the DSS Commissioner had unbridled discretion to raise the family share rate without County Board approval and that the County Board could not set the rate by budget act. Plaintiffs' opposed said motion to dismiss on the basis that the County Board, a necessary party, was not a party to the action and, consequently, the Court lacked jurisdiction to pass on the validity of any part of the 2012 finally adopted County Budget much less the act setting the childcare share rate at 20%. The County Board subsequently filed a non-party motion to vacate the decision. The motion is pending.

Plaintiffs appealed the decision and obtained a TRO from the Second Department when Defendants again attempted to raise the rate effective November 1, 2012. While that TRO was eventually lifted, the appeal is still pending and the childcare rate remained at 20% through the end of 2012 because of Plaintiffs' actions.

Lawsuit Regarding Failure to Accept Applications for Childcare Assistance (Judge Hubert)

In the Matter of KENNETH W. JENKINS, Chairman of the Westchester County Board of Legislators on behalf of the WESTCHESTER COUNTY BOARD OF LEGISLATORS v. ROBERT P. ASTORINO, in his individual capacity and in his capacity as Westchester County Executive, KEVIN McGUIRE in his individual capacity and in his capacity as Commissioner of the Westchester County Department of Social Services, and LAWRENCE SOULE, in his individual capacity and in his capacity as Westchester County Budget Director.

In December 2011, the County Board passed and subsequently overrode Respondent CE Astorino's veto of the County Board's addition of \$3.5 million dollars to the "Indirect Social Services" line and \$800,000 to the "Daycare" line of the County Budget Act for fiscal year 2012 ("2012 Budget Act"). In February and March of 2012, Respondent Astorino and Respondent McGuire announced that the budgeted funds would not be adequate to meet projected child day care demand during 2012. Consequently, the County Board Committee on Community Services met with Respondent McGuire, DSS representatives, and the Respondent Budget Director on several occasions to review concerns on the adequacy of funding of the child day care subsidy program for fiscal year 2012. Committee discussion noted the possibility of additional revenue to alleviate a potential funding shortfall in childcare funding such as:

1. unaccounted revenue from the Child Care Block Grant and 2. any other surplus funds available to DSS from unaccounted revenue in the finally adopted 2012 Budget Act which could be transferred to DSS. Respondent Budget Director had advised the County Board that DSS was forecasting a \$7,519,423 Relief appropriation surplus. Notwithstanding the foregoing, by Public Notice dated September 18, 2012, DSS advised potential applicants for day care subsidies that except for cases in the “guaranteed categories,” no new applications for day care subsidies would be accepted after September 18, 2012, due to lack of funding. As a result of raising the daycare family share percentage, qualified applicants for child care subsidies would very well be unable to obtain affordable day care and, consequently, it would be necessary for such applicants to stop working to care for their children and possibly be required to apply for public assistance.

This action filed in September of 2012, challenges the Administration’s attempt to cut off any new applications for childcare assistance effective November 1, 2012 on the basis that the program was out of money even though the Social Services 2012 Budget contained approximately \$5 million in surplus funds that could be transferred to cover any purported shortfall. Plaintiffs sought and the Court issued a TRO which prevented DSS from refusing to accept day care subsidy applications which remains in place. Defendants moved to dismiss the lawsuit on the basis that the DSS Commissioner has unbridled discretion to use DSS funds as he sees fit. Plaintiffs opposed the motion to dismiss in essence based upon the Laws of Westchester County (“LWC”) and New York State (“NYS”) County Law which provide in part that the County Board has powers with respect to the administration of social services and public assistance and care and that the DSS Commissioner is required to perform duties as directed by the County Board. The motion papers were fully submitted. By Notice of Discontinuance dated January 10, 2013, this matter was discontinued by Plaintiffs. It was discontinued because the issue involved the failure to accept new applications for day care subsidies in 2012, therefore, since the 2012 calendar year has passed, the issue in this matter is now moot.

Lawsuit regarding Capital Projects (Judge Hubert)

KENNETH W. JENKINS, Chairman of the Westchester County Board of Legislators on behalf of the WESTCHESTER COUNTY BOARD OF LEGISLATORS, ROBERT P. ASTORINO, in his capacity as Westchester County Executive and LAWRENCE SOULE in his capacity as Budget Director.

On or about November 9, 2010, the County Executive filed his proposed 2011 County Budget, Appropriations Act and Tax Levy Act with the County Board and County Board Committee on Budget and Appropriations in accordance with LWC Section 167.81. On December 6, 2010, the County Board Committee on Budget and Appropriations filed with the County Board a Memorandum of Additions to the proposed County Budget pursuant to LWC section 167.81. Included in the Memorandum of Additions were various new capital projects. On December 10, 2010, the County Board passed the 2011 County Budget authorizing the capital projects added by the Board in accordance with LWC 167.101(1). After presentation of the Budget Acts to the County Executive, on December 14, 2010, the County Executive issued approximately 260 line item vetoes to the County Budget, including vetoes of the capital projects

added by and subsequently authorized by the County Board. On December 23, 2010, the County Board overrode approximately 246 of the County Executive's vetoes including his vetoes of the capital projects added by and subsequently authorized by the County Board by a two-thirds majority, thereby enacting the finally adopted 2011 County Budget Act. In the past, there has been no objection by the County Executive to the County Board adding capital projects to the proposed capital budget and authorizing them in a similar manner. On January 18, 2011, the Westchester County Attorney issued a formal opinion in which he opined that, among other things, because the County Board did not follow the process that County "departments", "institutions", "offices" and "agencies" must follow according to the LWC, to have their capital projects considered by the County Executive for inclusion in his proposed budget and subsequently authorized by the County Board during the County Budget process, the capital projects added by and subsequently authorized by the County Board could not be included in the 2011 Capital Budget Act. In essence, the County Attorney believes that the County Board is required to follow the same process as other departments, agencies and offices in order to add capital projects to the County Executive's proposed Budget, while the County Board believes that as a separate coequal branch of government, they would not be required to follow such process and need only add capital projects into the County Boards' Memorandum of Additions, that if not deleted by the full County Board or vetoed by the County Executive, would be a part of the Capital Budget. The County Executive and Budget Director, relying on the County Attorney's Opinion did not acknowledge, initiate¹ and/or proceed with any of the capital projects added by and subsequently authorized by the County Board in the 2011 County Budget Act. Moreover, the Budget Director did not include any of the capital projects added by and subsequently authorized by the County Board in the 2011 Capital Budget Act to the printed 2011 Capital Budget book.

On or about November 15, 2011, the County Executive filed his proposed 2012 County Budget, Appropriations Act and Tax Levy Act with the County Board and County Board Committee on Budget and Appropriations. Similarly with regard to the 2012 County Budget, on December 5, 2011, the County Board Committee on Budget and Appropriations filed with the County Board a Memorandum of Additions to the proposed 2012 County Budget, which included various new capital projects. On December 8, 2011, the County Board passed the 2012 Westchester County Budget authorizing the capital projects added by the Board, and on December 15, 2011, the County Executive issued approximately 29 line item vetoes to the 2012 County Budget. No capital projects added by the County Board were vetoed. On December 22, 2011, the County Board overrode the County Executive's vetoes by a two-thirds majority, thereby enacting the finally adopted 2012 County Budget Act. The County Executive and Budget Director, relying on the County Attorney's Opinion refused to acknowledge, initiate and/or proceed with any of the capital projects added by and subsequently authorized by the County Board in the 2012 Capital Budget Act. Moreover, the Budget Director did not insert any of the capital projects added by and subsequently authorized by the County Board in the 2012 Capital Budget Act to the printed 2012 Capital Budget.

¹ All capital projects require approvals for planning, financing, etc., by appropriate County Boards, Committees and the County Board in accordance with New York State law and the Laws of Westchester County.

Accordingly, this action filed in July of 2012, challenges the Administration's failure to recognize the capital projects added by the County Board to the 2011 and 2012 finally adopted County Budgets. Defendants moved to dismiss the lawsuit on the basis that the County Board cannot add projects to the capital budget during the budget process, notwithstanding the fact that capital projects have consistently been added to proposed County Budgets in many years past. The County Board opposed the motion to dismiss the lawsuit on the basis that the court lacked jurisdiction to consider the validity of any of the capital projects because no action had been commenced against the County Board challenging their additions of capital projects to proposed budgets as part of their additions to other portions of proposed budgets. The motion papers have been fully submitted and we are awaiting a decision.

Lawsuit regarding the Board of Acquisition and Contract ("Board of A&C") (Judge Warhit)

KENNETH W. JENKINS, in his Individual capacity and in his capacity as a Westchester County Resident and Taxpayer, Chairman and Member of the Westchester County Board of Legislators, and Member of the Westchester County Board of Acquisition & Contract; LYNDON WILLIAMS, in his Individual capacity as in his capacity as Westchester County Resident and Taxpayer, and Westchester Vice-Chairman and Member of the Westchester County Board of Legislators, and PETER HARCKHAM, in his Individual Capacity and in his capacity as a Westchester County Resident and Taxpayer and as Member of the Westchester County Board of Legislators, v. ROBERT P. ASTORINO, in his Individual capacity and as Westchester County Executive and Member of the Westchester County Board of Acquisition & Contract, JAY T. PISCO, in his Individual capacity and as the purported Commissioner/Acting Commissioner of the Department of Public Works & Transportation and as a purported Member of the Westchester County Board of Acquisition & Contract, and ROBERT F. MEEHAN, in his Individual capacity and as Westchester County Attorney.

According to the LWC, the Board of A&C, consisting of the County Executive, the Commissioner of the Department of Public Works and Transportation ("DPWT") and the Chairman of the Westchester County Board of Legislators ("County Board"), approves all County contracts except for contracts executed by the Bureau of Purchase and Supply and short form contracts under \$20,000 made by heads of Departments. On November 29, 2011, the County Board passed Local Law 4115-2011 (a/k/a "Local Law 6-2012") and presented it to the County Executive pursuant to the LWC. Local Law 6-2012 amended, among other things, the LWC Section 161.01 changing the statutory composition of the Board of A&C by replacing the Commissioner of the Department of Public Works and Transportation ("DPWT") with the County Budget Director and amended other sections of Chapter 161 of the LWC with respect to the operations of the Board of A&C. By correspondence to the County Board dated December 10, 2011, the County Executive vetoed Local Law 415-2011, and on December 22, 2011, the County Board overrode the County Executive's veto. Given that Local Law 415-2011 changed provisions of the LWC relating to "public bidding, purchases or contracts," it was subject to a referendum on petition ("permissive referendum") pursuant to LWC Sections 209.171 and 209.181. No petition "signed and acknowledged by resident qualified electors of the county in

number equal to at least ten per centum of the total number of votes cast for Governor at the last gubernatorial election in the county....” was filed with the Westchester County Board of Elections within 60 days of enactment of such law--- February 22, 2012 --- protesting Local Law 415-2011. Respondent/Defendants believe first that the Local Law is ineffective because the Local Law was subject to a mandatory rather than permissive referendum and further, while the County Board published notice that the Local Law was subject to a permissive referendum, the Board did not follow the requirements of a New York State Law regarding notice and publication for permissive referenda. To date, Respondent(s)/Defendant(s) have refused to implement or comply with Local Law 6-2012 in its entirety and have allowed Respondent/Defendant Pisco, Commissioner of DPWT, to consider and/or vote on more than 50 million dollars of County contracts at A&C meetings held on March 1, 2012, March 8, 2012, March 15, 2012, and March 22, 2012 notwithstanding the written and verbal objections of the Petitioner(s)/Plaintiff(s).

This action filed in April of 2012, challenges the Administration’s failure to enforce Local Law 6-2012 modifying provisions of the LWC concerning the operation of the Board of A&C. Defendants/Respondents moved to dismiss the action claiming the Local Law was not properly enacted and, consequently, they did not have to follow it. The Court denied the motion on the basis that it lacked jurisdiction to consider the Law’s validity because the County Board, a necessary party because it was the body that enacted the law, was not a party to the action and no action had been commenced against such County Board challenging its purported failure to properly enact the Law. Consequently, the Court found that the Defendants did not have any defense to the action and directed them to submit an answer. Defendants submitted an answer and Plaintiffs’ submitted a reply requesting all of the relief sought in their petition including a judgment compelling Defendants to comply with the Law. We are awaiting a decision.

Lawsuit regarding a cancelled Bus Route (Judge Neary)

KENNETH W. JENKINS, Chairman of the Westchester County Board of Legislators on behalf of the WESTCHESTER COUNTY BOARD OF LEGISLATORS, v. ROBERT P. ASTORINO, in his capacity as Westchester County Executive and Member of the Westchester County Board of Acquisition & Contract, JAY T. PISCO, in his individual capacity and as the purported Commissioner/Acting Commissioner of the Department of Public Works & Transportation, JOAN McDONALD, in HER official capacity as the Commissioner of the New York State DEPARTMENT OF TRANSPORTATION, and LIBERTY LINES TRANSIT, INC.

On or about November 15, 2011, the County Executive filed his proposed 2012 County Budget, Appropriations Act and Tax Levy Act with the County Board and County Board Committee on Budget and Appropriations in accordance with the LWC. The proposed 2012 County Budget did not contain funding for the then existing Route 76 Bus Line. On December 5, 2011, the County Board Committee on Budget and Appropriations filed with the County Board a Memorandum of Additions to the proposed County Budget and included an addition restoring funding for the Route 76 Bus. On December 8, 2011, the County Board passed the 2012 County

Budget Act, and following presentation of the 2012 County Budget Act to the County Executive, on December 15, 2011, the County Executive issued approximately 29 line item vetoes to the 2012 County Budget, including a veto of the County Board's addition restoring funding for the Route 76 Bus Line. On December 22, 2011, the County Board overrode the County Executive's vetoes by a two-thirds majority thereby restoring funding for the Route 76 Bus Line and enacting the finally adopted 2012 County Budget Act. The County Board also passed and overrode Astorino's subsequent veto of an accompanying Act to the 2012 Budget Act, Act 2011-191, which mandated, among other things, that "no changes to policies, programs and services contained in the finally adopted budget shall take place without the prior approval of the County Board of Legislators...." Notwithstanding the foregoing, Respondents/Defendants allowed the Route 76 Bus Line to be discontinued or cancelled and thereafter, allowed the Route 13 Bus Line to be amended to cover part of the discontinued or cancelled Route 76 Bus Line. No report was furnished to the County Board by Astorino concerning the renewal, extension or amendment of the Route 76 or 13 Bus Lines, nor was an Act published and passed by the County Board permitting the discontinuance of Route 76 and/or the modification of Route 13 to include portions of the Route 76 line, in accordance with LWC Sections 188.01 or 241.331.

Accordingly, this action was filed in August of 2012, challenging the administration's failure to follow the process set forth in the LWC to modify a County bus route funded by the County Board in the finally adopted 2012 County budget. Only New York State filed any responsive papers moving to dismiss the action against them based on the fact that they are not a necessary party to the action. No decision on this motion has been received. The County Administration's response has not been filed as yet based upon adjournments agreed to by the County Board and the County Administration. The action is pending.

APPENDIX B

MEETING 11/15/11

A meeting of the Focus Group addressing the Executive/Legislative Relationship met on November 15, 2011 at 6:00PM on the 8th Floor of the County Office Building, Herman Geist Library.

Focus Group members in attendance were: Jeff Binder, Vinni Restiano, Gary Zuckerman, and Alfred A. Gatta. Richard Wishnie, Chair CRC, attended along with two County staff: Melanie Montalto and Stacey Dolgin-Kmetz.

Discussion ensued as to how the Group should approach the task and what areas of the Executive/Legislative Relationship should be reviewed. Two focus areas were discussed:

1. The Group would identify and describe four or five issues where the relationship is not working well. The circumstances would be defined and dissected; structural improvements would be recommended to create a context that fosters and encourages working together hopefully leading to a better relationship. Some of the improvements or changes may require amendments to the County Charter. An example of potential issues that impact the relationship would be (i) the Board of Acquisition and Contracts procedure; (ii) the Corporation Counsel and the Budget Director's reporting path and relationship to the Executive and the Legislative branches and (iii) the communication process between the branches of the government including the sharing of information;
2. Secondly, the Group would take a broader look at the relationship by reviewing the structure of the County government to see if a change in the "form" could improve the overall interaction and cooperation among the Executive, Legislature and the County Administration. This amended "form" would seek to be very self evident, clarifying and didactic.

No decision was made on these areas of concern, but it laid out two next steps for the Focus Group:

1. A meeting was scheduled for December 15, 2011 with someone from the New York State Association of Counties (or someone of equal experience and knowledge that could explain options for forms of government). This individual will be asked to compare and contrast the current form of government in the County, which has an elected County Executive with both executive and administrative powers and a Legislative body with full legislative authority with a form of government that contains a Legislative body with full legislative authority with an elected Executive elected county-wide and serve as a member of the legislative body and hold certain executive powers, e.g. Chair of the body with no vote, but possibly a veto (many more examples can be provided) and a professional independent manager or administrator with certain administrative powers to hire and fire and prepare budgets. The entire legislative body of which

the Executive would be a member would appoint this professional.

2. The second step decided was that at the next full CRC meeting which is scheduled for January 25, 2012, a former County Executive be invited to talk about their experience with the Westchester County government structure and whether any structural changes could be made that would improve the overall framework of governance and the service system delivery. This improved framework for governance (form of government) would have to possess the proven elements for success that exist in other forms throughout the State and Country. The form by its very design would be a model where differences can be expressed, politics debated and where various views can flourish. But the end product cannot result in a less effective overall legislative, administrative and service delivery system and governmental performance for Westchester County.

**WESTCHESTER COUNTY CHARTER REVISION COMMISSION
FOCUS GROUP: EXECUTIVE/LEGISLATIVE RELATIONSHIP
MINUTES**

January 20, 2012

Members in Attendance: Alfred Gatta, Herman Geist, Lester Steinman, Matt Thomas, Richard Wishnie, Gary Zuckerman

Absent Members: Jeffery Binder, Vincenza Restiano

County Staff in Attendance: Stacey Dolgin-Kmetz, Melanie Montalto

Guests: Dr. Gerald Benjamin

MINUTES

Mr. Gatta called the meeting to order at 12:30PM on the 8th Floor of the County Office Building, McPoland Conference Room.

Mr. Gatta stated the group had a two-part agenda for the meeting, beginning with Mr. Zuckerman's report regarding discussions he had with legislators from Johnson County, Kansas on the relationship between the legislative and executive branches.

Mr. Zuckerman remarked as a result of the Westchester County Charter, our government resembles the New York State Government, with both an executive branch and a legislative branch. He discussed changing the way we look at government and wondered whether changing the current form could alleviate some of the conflicts between the administration and legislature, if the underlying problems are structural or operational.

Mr. Zuckerman discussed the Johnson County Government, of Kansas and noted relatively similar demographics to Westchester County. He explained that a new charter, passed in 2007, provided for seven county commissioners, six of which are elected in districts, with the seventh serving as the Chairman of the County Board of Commissioners being elected at large. Mr. Zuckerman reiterated his desire to simplify the charter, noting that their charter had seven articles. He further discussed charter provisions that folded some of their elected offices together and changed elective positions into appointed ones. He pointed out that their Charter Revision Commission also meets every ten years, but also annually they have seven members of the existing commission meet to review the provisions of the charter and make recommendations.

Mr. Zuckerman discussed the powers and duties of the Board. He noted the powers vested in the Board of County Commissioners were legislative, fiscal management, land use & zoning, administrative oversight, representation of each ones' districts. The Group

asked if the seventh at large Commissioner has any special powers, to which Mr. Zuckerman replied that he served as Chairman and although not in the charter he only voted to break a tie, but didn't have a veto power.

Mr. Zuckerman noted that their Charter Revision Commission met in 2011, two of the recommendations for change included increasing the number of commissioners from seven to nine, and to give the Chairman Veto power. There was a fringe that tried to put into the Charter any increases in taxes would have to be put to a referendum, which resulted in the Commission not making any changes.

The Group asked how long has this form of government been in place, to which Mr. Zuckerman replied it was in place since 2000. Prior to 2000 they operated under the state having three, then five commissioners along with other elected officials, but no executive officer. There was a seat change in which, the County Manager was appointed. Mr. Zuckerman went on to list the powers and duties of the County Board of Commissioners. He noted that like Scarsdale, it is a non-partisan form of government. He stated that the County Manager had the power as chief administrator and appointed the various heads of the departments, along with other duties. Additionally the County Manager appointed the treasurer, although an independent auditor was hired.

The Group asks how the County Manager was appointed to which, Mr. Zuckerman responded that the County Board of Commissioners elected him and in all likelihood had a contract with the County. Mr. Zuckerman presented this report to show that there are other Counties that are similar to Westchester that utilizes forms of government that the Commission is familiar with. He reiterated that this form of government could be used to increase efficiency between our legislative branch and executive branch but noted that the downside was less checks and balances, being a co-equal form of government. He remarked that the County Executive probably has taken on more executive powers than the Charter originally envisioned.

The Group thanked Mr. Zuckerman for his report and moved on to the second item of their agenda. The Commission introduced Dr. Gerald Benjamin, the Associated Vice President for Regional Engagement and Director for the Center for Research, Regional Education, & Outreach at SUNY New Paltz, along with other various titles and honors. Dr. Benjamin served as Chairman of the Ulster County Charter Revision Commission. He had helped to establish a more representative form of government in Newburgh and helped the County avoid lawsuits pertaining to voting rights.

He noted that in New York, there are a range of different governing styles that make it easy to see the pros and cons of each and how they operate. With regards to the separation of powers systems he discussed two forms, one being the elected executive form and the other being an appointed executive form, although there are very few charter counties in New York that operate using County Managers, and discussed the conditions under they are appointed. He went on to discuss the conditions that govern an elected executive, being bound by the charter. An elected executive brings legitimacy to the executive position, especially when dealing with the state government.

Dr. Benjamin discussed why a legislature will often complain it's been weakened if it is a part of a separation of powers system, and whether that was the legislature's fault or the system's fault. He stated that in Ulster County they made a strong legislature and listed its powers. He stated they empowered people who were used to operating by committee in direct relationship with departments in legislative roles. The three problems preventing a legislature from asserting its power are partisan conflicts, personal conflicts, and institutional overlap of powers. A unified legislature can overcome an executive; however the partisan and personal conflicts can prevent a legislature from doing so, but he stated these are operational, not institutional issues. He stated that the size of a legislature influences its actions, such as when using the override power.

The group asks about the override process, and its maneuverability within the system. The question was how they could structure a government that allows it to operate under the worst of operational issues e.g. between the legislature and executive. Dr. Benjamin stated that there is no perfect structure, but there is a good one for the situation, but amendment and charter provision revisions. He mentioned in recent revision in Ulster an executive and legislative provision that would allow the commission after study to go directly to a referendum in order to bypass the governing body, modeled on the Illinois State Legislature. Chairman Wishnie notes that Westchester Charter Revision Commission doesn't have that power and can only make recommendations to the legislature who would vote for or against them.

The group asks hypothetically if the County wanted to hire the best professional for a position, what would bring them here since a brand new government could be in place in two years time. Dr. Benjamin replied that the presumption is there is greater stability in appointed positions comparative to elected positions and those more qualified appointees might have their careers in one place. A member of the group states that two years of conflict between the executive and legislative branches doesn't justify throwing out a system of government that has been in place for thirty to forty years. It is noted that homogenous places are better served with an appointed executives whereas elected executives serve better in heterogeneous places. The Commission noted that generally larger counties have elected executives, but Dr. Benjamin stated that wasn't always the case.

The Group remarked that the conflict between the two branches over the past two years have been mainly due to personal strains. Dr. Benjamin noted that in situations with fewer resources, the government has to be redistributive, thus there are greater tensions, but mandate relief from the state would help. He made the point that if a legislature let partisanship prevent them from acting, they couldn't complain about the executive overreaching. A group member noted that in a non-separation of powers system people are forced to work together in a legislature, which again raised the issue of the size of the Board. It depended on the dynamics of the situation and the community.

Dr. Benjamin noted that when there was a charter revision decision it is because there was no policy direction or wanted to change something about the relationship between the legislative branch and executive branch. He discussed the internal audit function and suggested the commission look at this.

The Group asked if the County had an elected comptroller, would it be possible to change the position of County Clerk. Dr. Benjamin remarked he would have to look at the law, and agreed that the position of Inspector General was similar in nature. The Legislature, he noted, also has an oversight responsibility that the executive doesn't like, but it is essential to have that type of accountability.

Dr. Benjamin reported being in favor of districting commissions to design legislative districts, and suggested taking a look at the process of how our government handles this. Additionally, he suggested that elected officials adjust compensation frequently, as the public is sensitive to self-serving decision making, with a structure in place that require review on a periodic basis. The Group noted Westchester County has a measure like this in place.

Dr. Benjamin discusses the relationship between local governments where issues could be raised, such as the issue of their share of the tax. The drive for collaboration isn't as successful as it could be is because the County is in charge of this. He noted that agendas not limited to County issues would raise interesting conversation on how people could work together.

Dr. Benjamin noted that the provision on assessing was in the charter but that it needed to be implemented with a referendum. New York is the 48th worst assessed state, and all the County has to do is pull the trigger. The Group noted that this process would take at earliest six to eight years and that the longest established people have been advantaged by inequity and is against it. Dr. Benjamin closed on the point that increased collaboration by local government without County administration would be less threatening and improve the County Government itself.

The Group noted that the Charter Revision Commission has had hundreds of recommendations to work from, but felt that some of the other focus groups were addressing minor issues. They came to the consensus that they need to decide whether to address multiple issues or try and limit their recommendations to something smaller in order to deliver a more effective message. They agreed that the County Government has been in place for a long time and believed that the current conflict between the administration and legislature is more related to personal strains rather than an institutional failure. They agreed that the executive had a lot of power as to the budget process that could potentially circumvent the balance of power. They agreed that thinking outside of the box and bringing in former officials could expand their understanding of the issues, and that realistically they could only bring in people who knew the County's situation firsthand. The commission believed operational, not institutional problems are responsible for the problems the legislature faces.

**WESTCHESTER COUNTY CHARTER REVISION COMMISSION
FOCUS GROUP: EXECUTIVE/LEGISLATIVE RELATIONSHIP
MINUTES**

February 28, 2012

Members in Attendance: Jeffrey Binder, Alfred Gatta, Florence McCue, Matt Thomas, Vincenza Restiano, Bertrand Sellier, Richard Wishnie, Gary Zuckerman

County Staff in Attendance: Stacey Dolgin-Kmetz, Melanie Montalto

Guests: Marty Rogowski, George Latimer

MINUTES

The meeting of the Executive/Legislative Relationship Group of the Westchester County Charter Revision Commission was called to order at 11:00 A.M. Former Board of Legislators Chairman George Latimer addressed the group. He discussed several problems with the group relating to the relationship between the current executive and legislative branches of the County Government.

The Group asked Mr. Latimer to comment on the present relationship and what it was like when he was in office. He discussed the two branches and how the party affiliation played a role in determining the relationship between them, discussing both same-party & opposing-party executive and legislative branches and the effect on the County Government. He discussed how he handled the aforementioned problem and reiterated the need for the two branches to improve and maintain a better relationship, in order to do what was best for the County as a whole.

He discussed how party and personal interests could create problems and stated the need for them to find common ground on the issues, in order to do what was best for the County. He went on to discuss each branch's desire for power in the County Government, but noted that every government needed a strong executive branch. Additionally, the idea behind having a strong legislative branch is to remove some of the pressure from the executive branch and in so doing spread the power in County Government.

Another problem discussed was the overlap of different departments such as budget department and the finance department, especially during the budget process. He noted that although the County Attorney and Budget Department are supposed to remain indifferent in theory, they primarily report to the County Executive.

He further noted the power that the press had, and that it tended to focus on the executive branch, more so than the legislative branch. He noted that the person with the most political power inherently had the greatest financial capability to put forth their agenda. The County Executive was elected by the entire County whereas each legislator was only elected by their respective district. The power to slow down legislation and the veto override are really the only leverage a legislature has to check the power of the executive branch and therefore negotiate a compromise.

Mr. Latimer recommended that the County change their fiscal year to the same as New York State's fiscal year, July 1 – June 30, with an adoption date of June 15 in order for the County to construct a more accurate budget, provide greater transparency, and increased input from the public. The budget should be locked in by July in order to limit its influence on campaigns.

A big issue was that most people don't know or care about the structure or issues in government unless it directly affects them, i.e. the candidate who will do the most for that person with the shortest, most direct explanation to an issue. Mr. Latimer addressed the Groups questions about the need of each branch to recognize the other branch's prerogative power and work together, regardless of operational differences. Mr. Latimer discussed with the group the Board of Acquisitions & Contracts and each member's role. He suggested that the Commission strongly look at the appointments process and clarify each branches' functions and duties.

The Group asked how they could implement significant change and Mr. Latimer stated that popular support from the public was vital and that the Commission needed to understand its market. Additionally, he suggested in simplifying the County Charter so it would be clearer and easier for the public to utilize. He also suggested reducing the number of legislators in order to increase efficiency to a more appropriate number of around 11. He also suggested a fixed term for the County Attorney and Budget Director.

Former Legislator Marty Rogowski addressed the group and his experience dealing with prior Charter Revision Commissions. He discussed with the Group how to turn the Commission's recommendations into actual results and noted that it could take several years. He noted that despite public opinion our County Legislature was relatively efficient. He gave the Group several recommendations, the first addressing the tradeoffs between public hearings and efficiency.

He went on to discuss one success of the Board of Acquisitions & Contracts in providing greater transparency and public input. He noted that in his opinion the Board of Acquisitions & Contracts was more of an administrative function to expedite the process and, once something reached the board, policy and politics were done, and it should be passed. He cited the recent budgetary conflict about Title XX childcare. It was an issue of the power of authorization versus the power of allocation.

He addressed the larger conflict between the two branches, comparing the County Government to a corporation and discussed the respective roles the executive and legislative branches should have according to the charter. He reiterated that the underlying issue was a fight over the balance of powers and went into depth over the current problem over appointments process. Overall he suggested the Commission clarify the powers for each branch in the County Charter. He also discussed the positions of the County Attorney and Budget Director, and mentioned the need for the County to have a single voice when dealing with higher levels of government, with reference to the recent affordable housing lawsuit.

Mr. Rogowski believed that the dysfunction was more rooted because of a structural issue instead of an operational issue, as the Board of Legislators did in fact come into conflict with the Spano administration at times. He gave several examples of counties where the Chairman of the Board of Legislators ran county-wide, which would eliminate the need for a separate executive branch. He claimed it would create a more homogenous government, with fewer legislators (down from 17 legislators to 11-13) which would equate to greater efficiency. He noted at the most recent meeting of the Board of Legislators, the Board's actions of turning down all of the County Executive's appointments could be construed as playing politics to the public.

The Group asked if there was enough communication between the local municipalities and the County Government. Mr. Rogowski discussed the unofficial candidacy of the Chairman of the Board of Legislators for the upcoming race for County Executive, and noted that these two people essentially run the County Government and this was a real problem. They discussed the evolution of the County Government and its beginnings as a Board of Town Supervisors. His point was that the County does more for the municipalities than they do in return for the County. He further stated that people had to buy into the idea of County Government improving the quality of life, but at the same time they had to pay for that improved quality.

Mr. Rogowski's final recommendations reiterated the Group's earlier comments about the need to look at the appointments process, specifically mentioning the County Clerk. He also encouraged the group to look at the findings of the 1986 Charter Revision Commission as some of those recommendations could still be valid today. He suggested a possible revision of the relationship between the County Planning Board and the local municipalities, along with a possible increase in the County's sales tax. He ended on a brief discussion about the relationship between the executive and legislative branch, and suggested possible reasoning for each ones policy making and how that factored into their relationship.

The Group praised and thanked the speakers for their time. They gave closing remarks noting that the speakers both focused on four or five similar topics. It was noted that the next meeting for the Executive/Legislative Relationship Focus Group would be March 27 at 12:30 P.M. Mr. Zuckerman made a motion to adjourn, which was seconded by Mr. Thomas and the meeting was adjourned at 12:55 P.M.

Westchester County Charter Commission

Executive/Legislative Focus Group

Minutes

The Executive/Legislative Focus Group met on Tuesday, March 27, 2012, at the Scarsdale Village Hall. Focus Group members in attendance were Gary Zuckerman, Vinnie Restiano, Jeff Binder and Alfred Gatta. Richard Wishnie the Commission Chair was also in attendance.

The objectives of the Executive/Legislative Focus Group are: (i) look at the full range of the relationships between the Executive and Legislative branches of the County Government which involves the structure of the organization and determine whether a "change in the form" could improve the overall interaction and relationship between the current two branches. ~~For example, whether the County Executive's position could be elected at large and have a seat on the Board of Legislators and serve as the "Board Chair." This would require the establishment of the position of "Professional Administrator" to manage the daily operations of the government.~~ There are many different permutations and models relative to the ~~for this kind of~~ organizational structure of the County; (ii) the second objective is to identify several issues where changes in the current procedure, or in the charter if necessary, to necessitate a better working relationship between the Executive and Legislative branches. Examples would be changes to the Board of Acquisitions and Contract procedure; a better defined reporting relationships involving the Budget Director and Corporation Counsel (County Attorney) with the Executive and Legislative branches.

At the meeting John Nonna and Bill Ryan shared the experiences and beliefs in the context of the objectives established by the Focus Group. Without attributing any specific views the following insights and comments were shared:

4/12/2012

- It may be appropriate to examine the County Charter relative to the County Executive's position where the position would still be elected "at large", but would also have a seat on the Board of Legislators and serve as the "Board Chair";
- The current county structure of two branches of government can be effective and one of the important aspects of it is the checks and balances and natural tension that exists which serves to keep both branches on its toes. There is, unfortunately, a needed bureaucracy to make it work;
- The current budget process is used to make policy changes and there is too short a time for either branch to react to these items which can be significant;
- The capital budget and planning process needs to be clarified to specify the roles and inputs from the Executive and Legislative branches and the role of County Planning Commission in the process must be better defined;
- The Executive's veto over a budget item and the Legislature's override of a veto needs to be more specifically prescribed set forth in the charter to have no doubt as to what action represents the final authority on any budget matter;
- In regard to budget the Charter must clearly prescribe the final authority relative to the final adoption and establishment of the tax rate;
- In regard to budget the Executive veto authority needs to be explored as to whether a veto should only apply relative to increases in expenditures made by the Legislature and whether the veto authority should also apply to decreases made by the Legislature. Currently the Executive can only veto increases made by the Legislature, not decreases;
- The purpose and authority of the Board of Acquisition and Contracts needs to be reviewed and evaluated addressing its overall role, membership and whether it serves strictly as a "ministerial function" to carry out decisions that have been properly made by the government body;

- There needs to be education and/or clarification on what constitutes a policy of the "County Government:" A statement from the County Executive, or a majority vote of the County Board;
- The Charter needs to have concise language on the mechanism for amending the document. Currently, there is conflicting language as to whether certain changes are required to have a "permissive" vs. "mandatory" referendum;
- The code of ethics should be reviewed for changes with specific attention given to reducing the complexity of the financial disclosure form;
- A distinction is needed between a "Resolution" of the Board of Legislators and a "Law" adopted by the Board of Legislators. In essence a resolution should be seen as only an expression of intent and the subject of the resolution is not required to be fulfilled. A law on the other hand is a statutory provision embodied in a "Code of the Law" and the subject of the law is required to be carried out by all parties.

Executive/Legislative Relationship Focus Group

Minutes

May 15, 2012

The Executive/Legislative Focus Group met on May 15, 2012 at the Scarsdale Village Hall. The members of the Focus Group are Alfred A. Gatta, Chair, Gary Zuckerman, Vice Chair, and members Matthew Thomas, Vinni Restiano and Jeff Binder. Present at the May 15th meeting were Gatta, Zuckerman and Thomas.

Guests at the meeting were former County Legislator and present State Assemblyman Thomas Abinanti and Present County Legislator James Maisano.

Chair Gatta set the framework for the presentation from Mr. Abinanti and Maisano. Mr. Gatta indicated that the Executive/Legislative Focus Group was looking at two courses (approaches for possible changes) that would improve the relationship, interaction and the efficiency of governing by the Executive and Legislative branches of the County government. The two approaches are (1) identification of key issues based on the research and the in depth interviews that have been conducted with various government experts, past and current County officials and changes that could create a better environment between the Executive and Legislature. The changes could be either procedural, or require charter amendments; (2) the second approach would be to seek the full range of changes to the structure of the County government, or a change in the form of government.

Presenters that have shared experience and insights with the focus group at various meetings included Dr. Gerald Benjamin, former Director of the Center for the New York State and Local Government Studies at the Rockefeller Institute of Government and currently the Associate Vice President for Regional Engagement and Director of the Center for Research at SUNY New Paltz. Also George Latimer, Marty Rogowsky, John Nonna, Tom Abinanti and James Maisano. In addition Al DelBello, Andy Spano and Tim Idoni appeared before the Full Commission.

In regard to the first approach, recurring key issues and subjects were almost unanimously raised and discussed. The issues were identified independently by the presenters that had no previous interaction with each other. The key issues were: (a) appointment authority and reporting relationship for the County Attorney and the County Budget Director; (b) the capital budget and planning process; (c) the general budget process, calendar and fiscal year; (d) the need to clarify the executive veto involving items that are mandated by charter, e.g. execution of the adopted budget and specific line items; (e) BOL's (Board of Legislators) ability to increase/decrease the Executive's recommended budget in the context of an executive veto and BOL override; (f) role, purpose and authority of the Board of Acquisition and Contracts; (g) clarification on how to change the charter, currently there is confusion on whether some changes need a "mandatory" or "permissive" referendum; (h) need to update and simplify the Code of Ethics as it is currently too lengthy and sections are not relevant; (i) the need for a clear distinction between a resolution of the Board and an adopted County Law in regard to what constitutes a "policy position" of the "County" and what is the "Law of the Land," until overturned by a Court of Law.

The second approach would deal with the full range of the County Charter and would require a change in the organizational structure, or “change in the form” of government. The change in the form of government may in itself foster a better relationship between the Executive and Legislative branches and improve the interaction and overall performance of the government. There are various models for the organizational structure of a government. The form of government that currently exists can be simply described as a Legislative/Executive form, where there is separation of an Elected Executive from an Elected Board of Legislators, but no separation between an Elected Executive and the professional administration. Alternative models and permutations are bountiful and many are generally structured with an elected Board of Legislators together with an Executive or Board Chair that may or may not be a voting member. In such an arrangement the day to day administration of the county is performed with a paid Administrator or Manager. Again there are various permutations dealing with the election process, voting, appointments, etc. all of which can be tailored to the local needs.

At the Focus Group meeting on May 15th Thomas Abinanti and James Maisano presented issues that were remarkably the same as those that were previously presented. Mr. Abinanti presented a detailed outline and, although Mr. Maisano had different thrusts and emphases, he identified many of the same issues.

The issues raised by Abinanti and Maisano which were, again, similar to those presented by others were: (1) the indemnification of the BOL needs to be

clarified, or defined as part of the overall indemnification provided for in the charter for the “County Government;” (2) clarification of the subpoena powers of the BOL; (3) the position of County Executive should be evaluated in the context of other models for a County government structure; (4) the role of County Attorney should be clarified in regard to whom it serves, i.e. “County Executive”, “Board of Legislators” and/or the “County of Westchester;” (5) the Acquisitions and Contract process needs to be restructured by placing the Budget Director on it and removing the Commissioner of Public Works. Also it must be clarified as to whether it serves a “ministerial” function, or whether it can “amend” or “veto” an action taken by the BOL. Further, its role in real estate interests needs to be clarified, e.g. sale of property, approval of License Agreements; (6) relative to the budget process, the “Executive veto” and the “BOL override,” and which prevails in the end needs to be clarified. Finally, consider changing the County Fiscal Year because as it is reported there is not enough time for budget deliberations; (7) explore the appointment of the District Attorney and County Clerk rather than electing those positions at-large; (8) clarify the preparation and finalization of the BOL agenda, i.e. deadlines, adding items after the “published” agenda; clarify how items get referred to committee. Currently the leadership determines referrals and the full body does not vote on them; (9) consider creating an in-house audit team; (10) define precisely in the charter the meaning and the weight given to a charter requirement, code provision, local law, an act and a resolution.

Executive/Legislative Focus Group

Minutes

June 26, 2012

The Executive/Legislative Focus Group met on June 26, 2012 at the Scarsdale Village Hall. The members of the Focus Group are Alfred A. Gatta, Chair; Gary Zuckerman, Co-Chair; Vinni Restiano; Matthew Thomas and Jeff Binder. Present at the June 26, 2012 meeting were Gatta, Zuckerman and Binder. Lester Steinman, Counsel to the Commission also attended.

A detailed agenda was discussed which contained issues involving the operation and organization of the County government as related to the structural relationship between the County Executive position and the County Legislature. The issues identified were recurring items that had been raised at past focus group meetings by presenters that spoke about issues that are essential for a productive interaction between the position of County Executive and the County Legislature as a body.

The issues that were agreed to be part of the Focus Group's final written report were identified while a number of others were eliminated, or left for the Budget and Finance Focus Group to consider.

Items that will be written up for the full commission to consider are:

- A clarification of the use of the executive veto by specifying when and under what circumstances it can be exercised. In addition there must be

clear language in the charter relative to adoption of laws, executive veto and the Board of Legislature's veto override of such laws. This process must be particularly clear in the enactment of laws involved with the adoption of the County Budget;

- The Charter must contain consistent and specific language in regard to actions that require a "mandatory" or a "permissive" referendum;
- The indemnification language in the charter must be more specific in the protection provided to "individual elected officials" and whether the current language indemnifying the "County Government" as the corporate entity is all encompassing;
- The responsibility and broad duties of the County Attorney must be specified in regard to the primary interest served by the office in opinions and legal representation, i.e. County Government as a corporate entity, the Board of Legislators (BOL) or the County Executive;
- A requirement for a periodic review of the County Charter with an organizational structure for the review entity and intervals specified.
- The elected position of County Clerk should be changed to an appointed position by the County Executive with confirmation by the BOL;
- Consideration must be given for changing the structure of the County government from the existing two branches of Legislative and Executive, where the Executive and the Administration are one and the same, to a structure that has a County Administrator or Manager and where the County Executive may be a member of the Board of Legislators and serving as the chair.

The following issues were left to the Budget and Finance Focus Group to consider:

- Change in the fiscal year;
- Clarification of the budget adoption process and in particular the adding and decreasing of various line items by the BOL; the executive veto and the BOL override of vetoes and programs contained in the budget;
- The Capital Planning and Budget Process must be clarified particularly as it pertains to addition and elimination of projects;

- Roll, purpose, need and authority of the Board of Acquisition and Contracts needs to be clearly outlined;

The following items were eliminated from inclusion in the Executive/Legislative Focus Group final report:

- The appointment authority and reporting relationship for the County Attorney and County Budget Director;
- Clarification of the subpoena powers of the BOL;
- Finalization of agendas for BOL meetings;
- Greater specificity in the Charter in the definition of charter requirement, code provision, local law, local act and a resolution.

The Executive/Legislative Focus Group decided that before a final written recommendation on the issues set forth above, that another discussion with the current President of the NYS Association of Counties and a County Manger and/or County Executive from a New York County be scheduled. Further that members of the full commission be invited to attend the Focus Group meeting when the discussion occurs. A meeting has been confirmed for September 27, 2012 at 6:00 P.M. which is prior to the full commission meeting.

Alfred Gatta

From: Alfred Gatta
Sent: Thursday, September 27, 2012 3:29 PM
To: 'Gary J. Zuckerman'
Subject: Draft Agenda for Tonight
Attachments: Exec Leg Focus Group 092712.doc

Gary,

Since our agenda for this evening's Executive/Legislative Focus Group Meeting has evaporated and we are going to look at the final issues to be recommended to the full Charter Commission, I thought I would prepare the attached as a guide. Please make any changes/additions, etc.

AAG

As a result of the June 26, 2012 Executive Legislative Focus Group Meeting, the issues discussed over the past months were narrowed to the following:

- ✦ 1. Appointing Authority and Reporting Relationship for County Attorney and Budget Director;
2. Revision of Indemnification language clarifying whether indemnification runs to the "County Government" and does it include individual elected officials;
3. Change the elected position of County Clerk to an appointed position;
4. Clarification of the use of the "Executive Veto", e.g. items "mandated" by charter and the use of the veto during budget adoption (Lester was to look at this);
5. Clarification of charter language in relation to situations that require a "mandatory" referendum and those that require a "permissive" referendum (Lester was to look at this);
6. A process established for the periodic review of charter with structure and time interval to be determined;
7. Consideration should be given to changing the structure of the County Government and a study group of experts should be established to make recommendations. The current structure of the two branches, Legislative and Executive, where the Executive and Administration are one and the same should be reviewed in conjunction with various other models. For example, a single Legislature where the Executive is elected at large and serves as the chair of the Legislature with an appointed County Administrator. Specific details of various models and recommendations involving appointment authority; the Executive's authority; authority of the Legislature; budget process and related matters should be identified and presented by the study group to the County Executive and Legislature for consideration.

APPENDIX C

From: Steinman, Lester [lsteinman@wkgj.com]
Sent: Wednesday, October 03, 2012 2:43 PM
To: 'agatta@scarsdale.com'
Cc: 'Richard Wishnie'; Zuckerman, Gary; Thomas, Matthew; Restiano, Vincenza; Binder, Jeffrey; Dolgin-Kmetz, Stacey; Crane, Christopher
Subject: Westchester Charter Revision Commission - Executive/Legislative Focus Group Issues

Al,

One of the issues you requested that I address is the obligation of the County Executive to enforce local legislation. Section 110.11(6) of the County Charter provides that it shall be the duty of the County Executive:

"To see that the laws of the state, pertaining to the affairs and government of the county, the acts and resolutions of the County Board and duly enacted local laws are executed and enforced within the county;"

In Council of the City of New York v. Bloomberg, 6 N.Y.3d 380 (2006), the New York Court of Appeals acknowledged that:

"the Mayor does indeed have a duty to implement *valid* legislation passed by the City Council, whether over his veto or not, but he also has a duty to comply with valid state and federal legislation.... Where a local law seems to the Mayor to conflict with a state or federal one, the Mayor's obligation is to obey the latter..."

The Court also reaffirmed its prior decisions holding that "an officer against whom a proceeding for a writ of mandamus is brought (to compel enforcement of legislation) may defend (a refusal to enforce that legislation) on the ground that the legislation he or she has been asked to enforce is invalid."

In Bloomberg, the Mayor declined to enforce the City's equal benefits law, enacted by the City Council over the Mayor's veto, on the grounds that it conflicted with and/or was preempted by the State's competitive bidding laws and the federal ERISA statute and curtailed his powers as Mayor without a referendum in violation of the Municipal Home Rule Law and the City Charter. It should be noted that the Mayor instituted litigation against the City Council to declare the equal benefits law invalid prior to its effective date.

Another issue that you asked me to address is whether the Charter requires clarification regarding actions that are subject to mandatory and permissive referenda. Sections 209.161 and 209.171 of the Charter separately define actions subject to either a mandatory or permissive referendum. In most, but not all, respects, the actions listed in those sections correspond to actions subject to a mandatory or permissive referendum pursuant to Sections 23 and 24 of the State's Municipal Home Rule Law. Where the State and Charter provisions correspond, a considerable body of case law exists regarding their interpretation and application.

A third issue that you asked me to examine involves the defense and indemnification provisions of the Charter and whether it covers individual elected officials. Section 297.31 of the Charter provides for the defense and indemnification of County employees. The term "employee" is defined as "any person holding a position by election, appointment or employment in the service of the county, whether or not compensated..." (emphasis added").

Please let me know whether you have any questions regarding this research.

Regards

Les

Lester D. Steinman
Wormser, Kiely, Galef & Jacobs LLP

APPENDIX D

Chapter 125. DEPARTMENT OF ASSESSMENT

Sec. 125.01. Vote on creation of Department of Assessment.

Sec. 125.11. Department established. [§ 38 of the Laws of 1937, Ch. 617; amended by the Laws of 1940, Ch. 559]

Sec. 125.21. Powers and duties of the department.

Sec. 125.31. Assessment in separate tax districts to be shown.

Sec. 125.41. Completion of assessment roll.

Sec. 125.51. Duration of assessment roll.

Sec. 125.61. Special franchise assessment.

Sec. 125.71. Office of local assessors abolished.

Sec. 125.81. Tax rolls of local units.

Sec. 125.91. Review of assessments.

[This chapter is inoperative unless and until the proposition provided for in § 125.01 is adopted.]

Sec. 125.01. Vote on creation of Department of Assessment.

[§ 37 of the Laws of 1937, Ch. 617; amended by the Laws of 1942, Ch. 624]

At any general election following the adoption of this act there may be submitted to the electors of the county by act of the County Board in the manner hereinafter provided the question, "Shall there be a County Department of Assessment?" If the vote thereon, in accordance with the provisions of Article 9 of the Constitution, shall be in the affirmative, the subsequent provisions of this article shall become effective in the county. If a majority of the votes cast thereon as above provided, be in the negative, the same proposition may be submitted at any subsequent general election, but not more frequently than once in two years. Such question shall be so submitted if a petition praying its submission and signed by resident electors of the county qualified to vote at the last preceding general election equal in number to five percent of the total vote cast in such county for the office of governor at the last general election at which a governor was elected is filed with the officer or board having jurisdiction of elections in such county not less than 60 days prior to the general election at which it is to be submitted.

Sec. 125.11. Department established. [§ 38 of the Laws of 1937, Ch. 617; amended by the Laws of 1940, Ch. 559]

There shall be a Department of Assessment, the head of which shall be the Commissioner of Assessment, who shall also be the County Assessor. He shall be appointed on the basis of his knowledge of the principles and methods relating to the valuation and assessment of property for the purpose of taxation and of his executive and administrative experience, pertaining to the duties of the office. His term of office shall be for six years, to expire at the end of the calendar year.

Cross references—County Tax Commission, Ch. [122](#); Westchester County

Tax Law, Ch. [283](#).

Statutory references—Real property tax, Real Property Tax Law; State Commissioner of Taxation and Finance, Tax Law, § 170 et seq.

[Sec. 125.21. Powers and duties of the department.](#)

[§ 39 of the Laws of 1937, Ch. 617]

It shall be the duty of the County Assessor to assess all property other than special franchises, situated in the county and liable to taxation for state, county, city, town, village, school district and special district purposes in accordance with the following provisions:

1. The County Assessor shall formulate and adopt such rules and regulations for the guidance of his deputy assessors as will establish a uniform and equitable system for assessing all classes and kinds of property for the purposes of taxation. When the rules and regulations have been adopted, they shall be made available in printed form to any taxpayer of the county upon [application](#) to the County Assessor;
2. He shall have the right to demand that all applications for building permits shall be filed in duplicate with such officers as are authorized to issue building permits in the county or any town, city or village therein, and such officers shall, not less frequently than once a month, deliver to the County Assessor a copy of such applications;
3. He shall have the right to demand that an abstract of all conveyances and [mortgages on](#) real property shall be delivered not less frequently than once a month by the County Clerk and/or [Register](#) to the County Assessor;
4. The County Assessor shall be responsible for the preparation of an assessment roll or rolls for each town, city, village, school and all special districts in the county as required by the General Tax Law or any special law and in accordance with the rules of the State Tax Commission for said county, town, city, village, school and special district purpose. The County Assessor shall divide the county into assessment districts and shall have the power to appoint such deputy assessors as the County Executive may deem necessary within the appropriations therefor. He shall assign and reassign one or more deputies to each district and shall supervise and direct their work in accordance with the regulations adopted by him;
5. Upon the completion of the assessment roll, one or more copies of so much of said roll as affects (a) each city and any special districts therein, (b) each village and any special districts therein, (c) each town and the school districts and all special districts therein, whether such school or special districts lie wholly or partly within such city, town or village, shall be placed on file in one or more public places in such city, village or town. The County Assessor shall forthwith cause to be published in a newspaper of general circulation in each such city, village and town a notice stating that the roll has been completed, designating the places where the several portions of the same have been placed on file and where they may be examined during business hours every business day and at least one evening each week for not less than two weeks and giving notice of the times and places not less than 21 nor more than 30 days after

the date of such publication, at which any person aggrieved by the assessment may appear and be heard in relation thereto;

6. The County Assessor shall perform such duties not inconsistent with those enumerated herein as may be required by the County Executive or the County Board;

7. He shall perform all other duties of local assessors by whatever title they are now designated under the laws of this state not inconsistent with the provisions of this act.

Sec. 125.31. Assessment in separate tax districts to be shown.

[§ 40 of the Laws of 1937, Ch. 617]

The County Assessor, in addition to the requirements contained in the General Tax Law, shall make the assessment roll in such form that each separate city, town, village, school district and special district is shown thereon either by proper subdivision of the assessment roll or by separate columns therefor, or by both of such methods, and whenever necessary, make an apportionment of the assessment of the property between or among the tax districts in which such property is located.

Sec. 125.41. Completion of assessment roll.

[§ 41 of the Laws of 1937, Ch. 617]

The assessor shall complete the assessment roll or rolls on or before the first day of July in each year and shall provide in the notice stating that the rolls have been completed and where they may be examined, and that the board or boards of review will meet at a certain time or times and place or places to review the assessment.

Sec. 125.51. Duration of assessment roll.

[§ 42 of the Laws of 1937, Ch. 617]

The assessor shall on or before the first day of November in each year file the new corrected assessment roll with the County Board and copies of so much of said corrected assessment rolls as affects each city, village and town and the school district and all special districts lying wholly or partly therein with the said local units and thereafter such assessment roll shall be used for all purposes of taxation within such local units until a new assessment roll shall be filed in the following year and all taxes to be levied for the next ensuing fiscal year shall be levied and extended and carried out on the assessment rolls so filed with such local units.

Sec. 125.61. Special franchise assessment.

[§ 43 of the Laws of 1937, Ch. 617]

The State Tax Commission shall file with the County Assessor the statement of the equalized valuation of special franchises within the county as fixed by the State Tax Commission in accordance with the provisions of the Tax Law and the valuation of such franchises so fixed and determined shall be apportioned among the several tax districts according to the provisions of the statute in relation thereto and the County Assessor shall enter such apportioned valuations upon the assessment rolls for the several tax districts.

Sec. 125.71. Office of local assessors abolished.

[§ 44 of the Laws of 1937, Ch. 617]

The offices of assessor, board of assessors and tax commissioners in all cities, towns, villages, school districts and special districts in the county are abolished as of December 31, of the second year immediately succeeding the election at which this article is adopted, and all powers and duties of the said offices, except as they may be inconsistent with the provisions of this act, are thereupon transferred to the County Assessor. All records whatsoever of any of such offices relating or pertaining to assessment or assessment procedures shall be transferred and delivered to the County Assessor by each such office immediately upon the completion of the assessment roll of each said office during the second year immediately succeeding the election at which this article is adopted, provided that the County Assessor shall thereafter make available to any local unit of government within the county for the purpose of certiorari or other proceedings such records pertaining to the assessment roll of any such local unit of government as may be necessary for the purpose of any such proceeding or action.

Sec. 125.81. Tax rolls of local units.

[§ 45 of the Laws of 1937, Ch. 617]

The assessment rolls made and completed during such second year immediately succeeding the election at which this article is adopted, in or for any local unit of government within the county shall be the assessment roll upon which taxes are levied and collected by such local unit of government for the next fiscal year, such rolls, however, are to be made up under the direction and supervision of the County Assessor.

Sec. 125.91. Review of assessments.

[§ 46 of the Laws of 1937, Ch. 617]

The County Board shall by act establish a method of procedure designed to insure prompt and equitable determination of applications for the review or correction of assessments, which act shall, among other things, provide that hearings for the review or correction of assessments shall be held at convenient places within the county and which shall further provide a method for fair and equitable apportionment of tax liens as between the county and/or the respective local units of government within the county.

[CHAPTER 123. COUNTY TAXI AND LIMOUSINE COMMISSION](#) **[Top](#) **[CHAPTER 128. DEPARTMENT OF ENVIRONMENTAL FACILITIES](#)****