

**WESTCHESTER COUNTY CHARTER REVISION COMMISSION  
MINUTES  
May 9, 2013**

Members in Attendance: Richard Wishnie, Jeff Binder, Alfred Gatta, Herman Geist, John Mattis, Steve Mayo, Anne McAndrews, Jane Morgenstern, Vincenza Restiano, Bertrand Sellier, Matthew Thomas, Paul Windels, Gary Zuckerman

Absent Members: Raymond Belair, Julie Killian, Derickson Lawrence, Florence McCue, David Menken, Guy Parisi, Ronald Volino

County Staff in Attendance: Chris Crane, Stacey Dolgin-Kmetz, Justin Adin

Commission Counsel: Lester Steinman, Dr. Gerald Benjamin

**MINUTES**

With a quorum present, Chairman Wishnie called the meeting of the Charter Revision Commission to order at 6:15pm. The first item on the agenda was the approval of the minutes of March 7, 2013 and March 21, 2013. With a motion by Mr. Zuckerman seconded by Mr. Mayo, the minutes were voted on and approved unanimously with a vote of 13-0.

Chairman Wishnie introduced the guest for the evening, Dr. Gerald Benjamin who will be serving in an advisory role to the Commission from now on.

Dr. Benjamin began with a PowerPoint presentation on a county-wide reassessment. He opened with a discussion on the localities reliance on the property tax as a more important source of revenue than the County. He continued by giving an overview on the order of the magnitude of the property tax for both municipalities and the County. He cited various figures comparing and contrasting reliance on property taxes and showed a formula for calculating tax revenues.

Dr. Benjamin then discussed the administration of the property tax, noting that while it was a common revenue source for municipalities, it dispersed decision-making based on relative needs of the municipalities. However, a non-centralized assessment function sometimes posed problems and the administrative costs were not shared.

He continued discussing the assessment process and assessing jurisdictions, noting that many towns are responsible for village assessment, with seven villages within Westchester relying on this. Additionally, Westchester municipalities do not rely on elected assessors, noting that this is a unique issue to Westchester County. The Commission asked about the difference between the taxing and assessing jurisdiction, to which Dr. Benjamin replied that the taxing jurisdiction had the right to levy the tax, while the assessor was a subset of the taxing jurisdiction. He commented that New York was ranked F for property taxes. He commented that while NYS mandates uniform assessment within jurisdictions, there is no standard for that assessment. Furthermore, according to a 2011 report, only the towns of Pelham and Rye, and the Village of Bronxville have been reassessed in the past decade.

Dr. Benjamin went on to discuss the coefficient of dispersion, a tool used to measure the ratio of assessed property value to the market value compared to the median value within a jurisdiction. Ideally, that figure should stay within 15% of the median value, something that unfortunately many Westchester municipalities didn't adhere to, essentially valuing many residents' properties unfairly. He spoke about how the equalization rate helps this balance out the various municipalities' assessment practices within the County. Pelham and Rye had a rate very close to zero which translated into fair market property values.

Mr. Windels asked to what extent dispersion can reflect the volatility of the housing market, given that often assessments are done when properties change hands. Dr. Benjamin stated that generally, more established residents in a community are assessed at a smaller proportion of the market value of their property compared to newer residents in the community; in essence this issue was present before the downturn and will likely remain after. Administratively, if a municipality has an equitable base, the adjustments are manageable, otherwise the inequities persist.

Dr. Benjamin went back to discussing equalization rates, emphasizing that it's needed to assure financing of entities that include properties in more than one assessing jurisdiction, such as a school district. He showed a slide of the State's equalization rates for municipalities in Westchester, pointing out that the vast majority are only assessing at a fraction of the value, an uncommonly bad practice in New York.

He then went on to discuss the findings of the Collaborative Assessment Report from 2011, which essentially stated Westchester's assessment practices needed to be significantly improved; specifically a regularly updated, computerized system that was complete and accurate would help in improving the accuracy of assessments which in turn would help improve taxation practices.

Dr. Benjamin then went on to list the pros and cons of a County-wide assessment. The pros included first, a single assessing authority was more likely to produce greater intermunicipal equity within the County. Second, almost all of the need for equalization would be eliminated, excluding certain school districts. Finally, it would result in a net savings in administrative costs. The cons included first, a diminished accessibility and responsiveness. Second, a tax burden shift would occur, something that was politically unpopular. Finally, there's the argument that savings might not occur. He discussed instances in New York when county-wide assessment was attempted and the political issues which proved difficult for it to be accomplished.

Dr. Benjamin discussed the County's Tax Commission, delving into its authority, structure, and functions. Moving on he discussed The County Real Property Tax Agency. Normally, it is to be appointed by the executive with advice or consent, or by the legislature. The Executive Director of the Tax Commission is appointed in this manner; a unique, bi-partisan body made up of five members created to overcome issues the Board of Supervisors had with setting the equalization rate back in the 1970s. The exception in State law is for Westchester which acknowledges the existence of the Westchester Tax Commission. The Commission has review authority but does not set the standards for internal equity.

He addressed the issue of if County-wide assessment was desired but not provided for by law, looking at Dutchess County. The state CAP Program provides that municipalities (excluding villages) may enter into an agreement with the county for assessment services, with a State requirement that assessment be on a "uniform percentage of value" within each assessing unit. They must agree to maintain the same uniform percentage of value and equalization rate for the term of the agreement. However, this program isn't widely utilized across the State.

Dr. Benjamin added that certain responsibilities, described in the Collaborative Assessment Report, may be taken by the County such as database sharing, to which Mr. Gatta noted they undertook several of these, but stopped short of centralization. He pointed out Schulyer County, the eight town's contract with the County for assessment. The County uses two assessors for its 13,400 parcels. Committed under contract, the County maintains all roles at 100% of value, presently charging \$13/parcel. Mr. Steinman commented on the legality of this provision in the state constitution.

The Commission discussed the effort in the 2000s at the attempt for County-wide assessment. A discussion ensued on re-evaluation efforts via contracting one or more of the assessment functions out. Mr. Windels referenced the situation in the 2000s when it was killed off as corporations were strongly against this re-evaluation effort, and

threatened to leave the County. A public referendum might be a way to help mitigate this problem by removing the relevant provision. Mr. Sellier said that combining methods might be less confrontational and easier to implement.

Mr. Zuckerman said it is crucial for the Commission to address whether they leave it the way it is, or if they want to change the system, whether by contract, referendum, or by the CAP system. Mr. Sellier quoted former Legislator William Burton's opinion of the current system as the "definition of insanity". Mr. Sellier brought up the issue of the political realities, and the issue of the "wealthy stranger", but noted that today things were much more transparent and they should be County-wide re-evaluation at fair market value. Mr. Gatta noted that the main thing voters cared about was whether they were treated fairly or equitably. Mr. Steinman stated that this system has endured for so long is that it is a system built on the fear of change, noting that newspapers in the past have added to the fear mongering. Chairman Wishnie stated that historically in Westchester, any time an elected official spoke about re-evaluation; they were typically voted out of office. Mr. Zuckerman stated that education is the key, and that they weren't just speaking about re-evaluation, but also a County-wide assessment.

Chairman Wishnie stated that they would take a short break and then move on to the next subject. He noted that they had some correspondence from the League of Women Voters if any of the Commission members wanted to look at it, it would be on the website. He brought up possible meeting dates for the next meetings for June 6, 2013 or June 20, 2013.

Chairman Wishnie then moved onto the next topic of the Charter Change Process, presented in another PowerPoint presentation by Dr. Benjamin. The first issue was that change processes are essential elements of basic governing documents, often necessary for fixing a law, or a change in the socioeconomic and political realities of the time. Dr. Benjamin noted the difference between an amendment and a revision in the change process: an amendment altered a single provision, being focused in character and narrow in scope, whereas a revision was a broad, extensive review and reconsideration of the entire document. He went on to discuss the role of those in power, and change through existing governmental institutions versus bypassing the existing governmental institutions. He went on to discuss the rationale behind implementing a change and the necessary steps in doing so at the state level, and in the present scenario, at the county level.

Dr. Benjamin described some examples of other charter change processes that have occurred in nearby counties such as Putnam or Ulster County. Mr. Zuckerman pointed out that their focus group report looked to some examples such as Ulster County. He

continued that they were debating the effectiveness of the 10 year timeline between Charter Commissions or if it should be an ongoing process. Dr. Benjamin stated that the issue with an ongoing process is that it is difficult to produce solutions when there are sometimes no issues addressing the County, whereas if something came up the Commission could point to a future date and state that they were going to address it then.

The Commission discussed membership on the Commission and Mr. Zuckerman stated that one proposal they came up with was having members of the majority and minority parties in the legislature appoint a specified number of members onto the Commission, in addition to the other qualified electors who would be on the Commission. Mr. Gatta also went back to the issue of an ongoing charter review process is that again; partisan politics often got tied in and mixed up with the real issues.

Dr. Benjamin discussed another provision that allowed for the Commission to bypass the legislative body in certain instances. It would allow for them by direct ballot access to reach out to the public in a referendum to address certain issues that might be difficult to reach a consensus on. He explained the logic behind such a provision and how it would function in reality.

The next slide discussed the limits of what could be changed in the Charter change process, and it was the opinion of Dr. Benjamin that there was no singular process for change specified in the Charter. The major issues were the draft design elements of the Charter change process. Mr. Mayo pointed out that the county fell under the State guidelines for Charter change.

Chris Crane asked how the transfer of function would occur between departments if there was a charter change. A discussion ensued on how change could occur within the bounds of existing local law, and how would a department function if it was part of the charter. Additionally, it was debated whether or not the legislature has the ability to change the charter by local law, if the state has the ability to change parts of the charter, and a referendum would impact the process.

Mr. Zuckerman pointed out that some things in the charter were passed by local law along with provisions of the administrative code, both passed by local laws. Dr. Benjamin pointed out that the provisions that require a mandatory referendum are different than legislation because they must be approved by the public. Dr. Benjamin returned to the presentation and discussed how the referendum process partially circumvents the existing government institutions, but eventually must return to the governing body. The discussion on the mandatory referendum for permissive government continued.

Ms. Restiano brought up the point that a governing body can pass a law and then in the future one can change the law if they don't like it. She continued and stated that if something is changed in the charter by referendum it changes the charter and one can't change it by local law. Dr. Benjamin stated that the local government wasn't sovereign under the law, thus subject to the home rule provision of the constitution making the local government empowered by the State.

The discussion continued on altering departments under the charter, and what was needed to be done by referendum. Mr. Gatta stated that one could abolish departments created in the charter. Mr. Adin commented that it was distinguished that the laws in the 100 chapter was part of the charter, and all of the laws in the 200 chapter was part of the administrative code. Ms. Dolgin-Kmetz cited the example of combining the Department of Transportation and the Department of Public works into the Department of Public Works & Transportation; even though it wasn't in the charter it had to go to referendum in order to make the change. Mr. Steinman responded to the Commission's request of giving an example of how a permissive referendum works.

Dr. Benjamin opened the discussion on the third topic he was asked to speak about: the selection of department heads within County Government. He first commented on the mode of selection, whether by appointment or election, along with term lengths and other relevant points. He gave a brief history on the process that began with appointment of County Officials by the state and is now a mixed system of appointments by the County Executive subject to confirmation by the legislative body, along with certain elected positions such as County Judges, District Attorney, County Clerk, etc. The adoption of the County Charter eliminated certain positions such as Sherriff, Coroner, and Treasurer.

Dr. Benjamin discussed the change process for making elective offices appointive along with the corresponding limitations in law. He noted certain qualifications or requirements for some positions set out in state law, such as election Commissioners being appointed by parties under state law. Mr. Binder asked if there was a way, regarding the election Commissioners, to prevent politics from influencing the decision, in structuring charter change. Dr. Benjamin said it was unlikely because you can't get around the state law. Mr. Steinman went back to the point he was making about getting a change in state law to allow specific charter change in Westchester. Mr. Binder clarified his question to specify the change in dates of when they officially took office to minimize the impact on sitting elected officials. Mr. Adin referenced the local law mentioning term limits. Chairman Wishnie also commented that many of these local laws changing term limits didn't go into effect immediately.

Dr. Benjamin discussed the use of manager systems in Charter Counties. In this system the manager appoints positions with legislative advice and consent, and is held accountable to the Board. A question was raised to clarify the meaning of advice and consent to which Dr. Benjamin replied a majority vote or in effect a consensus. There were, however, exceptions such as Board staff or positions reporting directly such as the County Attorney.

Dr. Benjamin discussed the separation of powers in this system, beginning with appointments of the elected executive, noting that legislative advice and consent was again required, although not within the executive office, with the other main exceptions were Board staff or otherwise specified, giving two examples of Broome & Chemung County. A discussion on the current executive's staff ensued along with the issues of succession specific to Westchester County.

Dr. Benjamin addressed consolidation and transition processes in Charter Counties. In some instances the executive can serve themselves as department head without advice and consent and/or could appoint one person as head of two departments, listing Oneida, Erie, and Westchester as several examples. A discussion ensued on the clarity of the language in the charter and how this has been an issue for Westchester in the past few years. Additionally they spoke about how the process has been politicized and what can be done to try and rectify this issue. Dr. Benjamin stated that this has been a major issue on the national level over whether the succession can include the legislative side of government.

Dr. Benjamin talked about the specific charter provision about the powers of the County Executive, including the appointment process. A discussion ensued on the syntax of the language and how the first phrase clouded the specificity of the rest of the provision. The Commission agreed that this was one of the most pressing issues that the Commission needed to look at in order to help reduce confusion in the future. Mr. Geist added that this was very important and gave some history regarding the issue. On another issue, Mr. Geist requested Dr. Benjamin research the appointments process for the Medical Center.

Dr. Benjamin discussed the timely filling of vacancies in various charter counties. In Albany & Ulster County, the executive must make an appointment within 30 days of a vacancy. In Chemung, Erie, & Putnam they must notify the legislative clerk within 10 days of an appointment, and provide to the legislature two weeks in advance of the next scheduled meeting in Ulster County. Depending on the county, the legislature must act on the appointment anywhere from 30 days (Erie) to 60 days (Rockland) after the appointment has been filed with the legislative clerk.

Dr. Benjamin said in the failure of timely action by the legislature, the nomination is confirmed by default and in the event that the executive fails to appoint someone within 30 days, the legislature may make the appointment. In the event that the legislature cannot agree to confirm or deny the appointment within 45 days the appointment is confirmed. For reconsideration after failure of consent, a specified time must elapse before the same person can be reconsidered. One provision in Rockland that Dr. Benjamin wanted to look into further was “When an appointment is rejected by the Legislature, the same appointment may not be resubmitted by the County Executive without approval of the Legislature.” In Ulster County, a rejected appointee may not be re-nominated during the executive’s term, for *that position*, after clarification.

Dr. Benjamin stated that in Charter Counties removal by the appointing authority may be done with advice and consent in Chautauqua County, however it may occur without advice and consent in Nassau, Schenectady, Tompkins, and here in Westchester. The default removal as a result of end of appointing authority’s term is very clear cut, although they may continue performing duties until someone else has been nominated.

A lengthy discussion ensued on the appropriate language and processes regarding job protection and removals in Westchester. The Commission debated job protection of the Commissioners relative to the powers of the County Executive. Dr. Benjamin commented on the fixed terms of specific appointed positions, and the reasoning behind why certain positions should be protected. Generally speaking he believed that the language could be improved. They discussed specifically the Budget Director, the Commissioner of the Department of Health, the Commissioner of Social Services, and several others not specifically in Westchester. It was agreed further discussion was needed on the issue.

Chairman Wishnie thanked Dr. Benjamin for his time and discussed the next meetings in June. With no other issues, the Chairman asked for a motion to adjourn, given by Mr. Mayo and seconded by Mr. Zuckerman. With all members in favor, the motion passed and the meeting of the Charter Revision Commission was adjourned at 8:49pm.