

**WESTCHESTER COUNTY CHARTER REVISION COMMISSION  
MINUTES**

**SEPTEMBER 12, 2013**

Members in Attendance: Richard Wishnie, Alfred Gatta, Herman Geist, Derrickson Lawrence, John Mattis, Steve Mayo, Anne McAndrews, Florence McCue, Paul Meissner, David Menken, Bertrand Sellier, Matthew Thomas, Paul Windels, Gary Zuckerman

Absent Members: Jeff Binder, Raymond Belair, Julie Killian, Jane Morgenstern, Guy Parisi, Vincenza Restiano, Dr. Ronald Volino

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

Commission Counsel: Lester Steinman

Commission Consultant Dr. Gerald Benjamin

Guests Beverley Sved, League of Women Voters

**MINUTES**

The meeting of the Charter Revision Commission was called to order at 6:06 PM. Chairman Wishnie thanked the commission members for coming and briefly went over the agenda for the evening. Chairman Wishnie noted that they would hold off on reviewing the minutes from the meeting of June 20, 2013.

Chairman Wishnie first recounted his conversation with Westchester District Attorney, Janet DiFiore regarding the prosecution of government corruption in Westchester County. District Attorney DiFiore described the process her Office uses to investigate corruption allegations and noted that there would not be any charter changes that would aid her Office's prosecutorial efforts. He then moved on to briefly discuss the letter submitted to the Commission from Legislator Shimsky regarding the lack of confirmation of several of the County Executive's appointees to various positions. It was noted that they would be discussing this later on in the evening.

Chairman Wishnie began by addressing the nine items that they would be discussing and voting on this evening. He requested that everyone abide by the rules and follow proper protocol so that they could get through everything that they needed to cover. Mr. Thomas pointed out the number of members in attendance and asked what would constitute a majority, to which Chairman Wishnie stated that a simple majority would; noting that the minutes would reflect what had transpired in the meeting.

He stated that a draft report would be prepared in the next several weeks and a public hearing held sometime after Election Day, in order to avoid the process becoming politicized. He added that the commission's findings would be presented to the out-going board to which, Mr. Zuckerman asked if it would make more sense to address the new board, to which, Chairman Wishnie stated they would consider this.

Chairman Wishnie thanked Dr. Benjamin for coming and Dr. Benjamin began by discussing his presentation for the evening. He briefly discussed the disclaimer on the first page that would serve as a guide for the presentation. Following the order of business, he began by discussing the resolution pertaining to the establishment of a Parks District, and the subsequent section of the Charter that would need to be amended. Chairman Wishnie added some background on this proposal. A discussion ensued on the item's merits and Chairman Wishnie then asked for a motion to support this. With a motion by David Menken, seconded by Paul Meissner, the motion was defeated ten to two, with Mr. Menken and Mr. Meissner voting in the affirmative.

Dr. Benjamin went onto the second order of business, presenting a proposal regarding the reconstitution of the Playland Commission. The recommendation provided that the Playland Commission be reconstituted and re-empowered to operate Playland Park. Counsel gave some background on the history of the Playland Commission, noting that the County has not acted on the State enabling authority conferred on the County to reconstitute the Playland Commission since 1983. Ms. McCue raised an objection to the language and questioned what its impacts would be and that priority had to ensure the County continue operation of the Park, and not turn control of it over to someone else. Mr. Zuckerman began a discussion on the present situation with Sustainable Playland and the County, with the failings of the Medical Center being noted by Chairman Wishnie. Mr. Sellier asked how the officers of the Playland Commission would be appointed to which Counsel clarified and stated there would be five County Executive appointees and four Board of Legislators appointees. Chairman Wishnie stated that they may want to defeat this and replace the resolution. Mr. Thomas asked how the signing of the contracts would affect this and Mr. Windels asked if there is anything that prevents the Board of Legislators from reconstituting the Playland Commission in the future, to which both inquires were responded to in the negative. Mr. Zuckerman asked what was wrong with keeping the status quo to which Ms. Dolgin-Kmetz and Mr. Adin stated that the Charter isn't clear. A discussion ensued on how they might amend it, and after a discussion Chairman Wishnie asked for a motion. Mr. Windels suggested they table it for now. With a motion to table by Ms. McCue, seconded by Mr. Windels, the commission unanimously agreed to table the item.

Dr. Benjamin moved onto the next topic of the Council of Governments, going over the questions that were raised regarding this, and the related resolution. A brief discussion ensued on the questions raised by Dr. Benjamin in his presentation. Chairman Wishnie asked for a consensus on whether they believed there should be a Council of Governments to which Mr. Steinman addressed some of the reasons for its establishment. Mr. Zuckerman asked how it would affect about the Municipal Officials Association to which Mr. Steinman replied that it wouldn't. The details over leadership of the Council

were debated, with the general consensus leaning towards Mr. Gatta's recommendation of alternating chair positions being held by the County Executive and a representative of the Municipal Officials Association. The frequency of meetings along with the need for emergency meetings was addressed by commission members. Mr. Sellier expressed his opinion that this was an opportunity to facilitate communications on various governmental levels. Chairman Wishnie then asked the commission to address the issue of leadership, to which Mr. Gatta responded there should be alternating co-chairs composed of the County Executive along with a representative of the Municipal Officials Association. With a motion by Mr. Gatta, seconded by Mr. Zuckerman, the resolution was adopted as amended with 10 votes in favor of it and 3 against it (Mr. Thomas, Mr. Mattis, and Mr. Windels being opposed). Dr. Benjamin noted that regarding the frequency of meetings, the current chair might have a vested interest in not holding a meeting so as to avoid discussion on a particularly controversial topic for example, thus potentially disadvantaging municipalities. Chairman Wishnie asked for a motion to further amend the resolution calling for a minimum of two meetings per year. With a motion by Mr. Gatta, seconded by Mr. Sellier, the resolution passed with 11 votes in favor and 2 votes against it (Mr. Menken and Mr. Mayo opposed).

The next item up for discussion was the resolution recommending the position of County Clerk be changed from an elective office to an appointive office. Chairman Wishnie briefly covered current County Clerk, Tim Idoni's testimony before the Commission. Mr. Menken asked if this was a common practice in New York State to which Dr. Benjamin stated that this would be the first instance in the state. Although Dr. Benjamin was concerned about the legality of such a recommendation, Mr. Steinman believed this to be an achievable endeavor. Mr. Steinman gave some further background information and a discussion on whether this was a Home Rule issue or was under the purview of the state. Dr. Benjamin stated that it was a ministerial, not policy-making position. Mr. Windels expressed some concern about the wording and Mr. Thomas expressed his concern about the Commission possibly over-reaching its authority. Chairman Wishnie asked for a consensus if the Commission thought making this recommendation was a good idea. Mr. Steinman agreed with Mr. Windels' desire for clarification, although the Board of Legislators may end up simply putting this to referendum. Mr. Adin stated for such a change to occur in the County the Board of Legislators would still have to submit a home-rule request. Mr. Menken believed the language was appropriate as is and Chairman Wishnie noted that he believed the state would probably not allow this and they shouldn't spend too much time on this. Dr. Benjamin stated that the Clerks Association supports the principle that they're constitutional officers and would not likely support a change. Ms. McAndrews and Mr. Sellier expressed some doubt to the resolution's merits and Mr. Zuckerman stated that members should vote simply on whether they believe this to be the best process, as their job is to simply offer the best solution. Mr. Windels discussed separating the functions of the County Clerk and a discussion ensued. A motion to adopt the resolution as stated was made by Mr. Menken and seconded by Mr. Lawrence. With 11 votes in favor and 3 votes opposed the resolution passed. (Mr. Windels, Mr. Sellier, and Ms. McCue opposed). Mr. Menken noted recommendations shouldn't be based on whether it would succeed or fail and the office would work similarly to how the budget director is appointed for a fixed term.

With a motion by Mr. Menken that the County Clerk be appointed by the County Executive for a fixed term of four years with consent by the Board of Legislators, seconded by Mr. Gatta, the amendment unanimously passed.

The Commission took a short recess and the meeting was called back to order at 7:24 PM. Dr. Benjamin began with the resolution regarding the appointments process. The commission discussed the letter submitted by Legislator Shimsky detailing various County Officials whose appointments have not been confirmed by the Board of Legislators but were still serving, illustrating the need for clarification. Mr. Thomas asked for Chairman Wishnie's experience on the matter although he declined to answer to avoid swaying members' opinions. Mr. Thomas asked if there was a consequence for the CE failing to fill a position and Dr. Benjamin has seen default appointment process although this varied by County. A discussion on whether or not an appointment might be seen as necessary, thereby removing the need to appoint someone to it arose. When questioned, Dr. Benjamin stated that he would defer to Mr. Steinman who stated that the main issue rested with the unconfirmed officials currently serving. Chairman Wishnie believed that they should skip the first part of the proposal and moved onto the second part. Mr. Windels noted that assuming the present political climate with the conflicting branches of government, an appointee who is not yet confirmed would not likely leave their current job for a tenuous appointment. Ms. McCue agreed with Mr. Zuckerman's earlier concerns and believed that they couldn't completely omit the first section as it would directly impact the second. A discussion ensued on the topic with the consensus being reached that the first two provisions were irrelevant if they appropriately addressed the other points. Mr. Adin suggested a time limit be placed on the submission of an appointee, whereby the appointment would become effective once they take their oath of office and a discussion ensued. A motion was made by Mr. Sellier to specify the appropriate language, by adding that no person appointed can act until the letter of appointment has been submitted by the board, seconded by Ms. McAndrews which passed unanimously. Mr. Meissner asked for clarification and the consensus was reached for a ninety day timeframe requiring the Board of Legislators to act once the letter was submitted to the board. Additionally, the consensus was reached that if an individual's appointment was rejected, that person could not be recommended for the same position during the same legislative session. With a motion by Mr. Zuckerman, seconded by Mr. Sellier the resolution was unanimously adopted as amended, although the final wording would be revised by Mr. Menken and Mr. Steinman.

The Commission moved onto the next topic up for debate: Disability of the County Executive. Dr. Benjamin briefly reviewed the proposal and Chairman Wishnie stated that there is no procedure in place for a recall. The problem was theoretically, the County Executive could show up on the first day of his term then not come in until the last day. Dr. Benjamin and Mr. Steinman gave some background on procedures in place at other levels of government. A discussion on who would submit the charges arose and a discussion ensued. Dr. Benjamin stated that the main issue is that disability is not defined by the charter, and if the Commission believed it didn't need to be addressed then it should be left alone, with a discussion ensuing and the consensus of disability being recommended to the legislature, who could then take the appropriate action. Ms.

McAndrews cautioned that defining disability may not cover something in the future that they could not have predicted. With a motion by Mr. Zuckerman, seconded by Mr. Meissner the resolution was adopted 13 to 1 with Mr. Windels voting in the negative. Dr. Benjamin then moved onto the next issue of vacancies in legislative office prior to the expiration of the term and keeping partisan continuity. Currently, the provision states that a temporary appointee cannot run for office and is essentially for keeping continuity. The question arose on the appointing authority of whether it would be the political party, the Caucus, or some combination thereof. Mr. Windels stated that party would be best as the individual was running on that line and it was decided they remove “nominee of the party caucus” from the language. Mr. Steinman commented that the nominee would be put forth by the party and the majority of the full board would vote to confirm them. Mr. Thomas asked where the deficiency lies with the present situation. Chairman Wishnie explained that in order to maintain the balance of power a person can’t be appointed from the other party but noted that it’s possible for the remaining legislators of the party wanting an “office-holder” not a candidate. It was decided that they should go with the original language but add “Legislative” between party and caucus. With a motion by Mr. Zuckerman, seconded by Mr. Windels the proposal was adopted unanimously.

The Commission then moved onto the issue of determining the value of real property for the purpose of taxation. Mr. Zuckerman noted this wasn’t the original recommendation by the focus group, but they made this proposal as it narrows the scope and empowers the county. A discussion ensued and Mr. Steinman stated that from the State’s perspective it was a good idea as Westchester is viewed as a “nightmare” assessment-wise. Chairman Wishnie asked for any changes to the proposal and Mr. Gatta asked if the language should be more pedestrian. Mr. Sellier asked about the idea of an opt-out clause, noting that they have a good system in place in Pelham and worried about good practices in place being messed up in the transition. Ms. McAndrews stated that they’re faced with the problem that a municipality’s assessment potentially going down but result in County Taxes being raised because of the equalization rate. Mr. Gatta stated that with one county-wide authority there would be no need for an equalization rate. Chairman Wishnie noted that at the end of the process, anyone on the commission would be able to write a minority opinion which would be attached to the report. Mr. Zuckerman agreed with Mr. Sellier’s earlier concerns but believed this would be in the County’s best interests. With a motion by Mr. Gatta, seconded by Ms. McAndrews the proposal was adopted unanimously

The next proposal provided for the revision of Ethics section in the Charter. Mr. Menken asked to insert County in front of government in all 4 places. With a motion by Mr. Zuckerman, seconded by Mr. Gatta the proposal passed unanimously. The next proposal called for a comprehensive review and revision of the County Code of Ethics addressing the issues identified along with the proposals for changes submitted by Mark Davies. The question was on if they wanted to specifically name Mark Davies in the recommendation, or rather simply changing it to an expert. Mr. Windels suggested they add a period after undertaken and strike the rest with which Mr. Zuckerman agreed. Ms. Dolgin-Kmetz stated that the County undertook an examination of the ethics code, although it never went anywhere. Mr. Steinman asked for some clarification on Mr. Windels suggestion

and with a motion by Mr. Windels, seconded by Mr. Lawrence the proposal was adopted unanimously.

The Commission then addressed the final proposal for the night, on whether the Board of Legislators should have their own Legislative Counsel, independent of the County Attorney. Mr. Gatta and Chairman Wishnie both spoke against the proposal stating that there should only be one County Attorney and that this was an unnecessary expense. Mr. Thomas asked for some clarification on what functions the position served. Ms. Dolgin-Kmetz at this point reiterated that the purpose of the Board having their own counsel was to advise legislators on matters that the County Attorney might not have time or a desire to handle. Chairman Wishnie asked about the Board's current legal team and Ms. Dolgin-Kmetz stated that the Board wished to create a position. At this time various Commission Members began to question Mr. Crane, on his title and functions served as an employee of the Board. After some discussion, a motion to adopt was put forth by Mr. Sellier, seconded by Mr. Mattis. With a vote of two in favor (Mr. Menken & Ms. McCue) and eleven against, the proposal was defeated.

Chairman Wishnie briefly discussed the upcoming meetings and asked for a motion to adjourn. With a motion by Mr. Mattis, seconded by Mr. Zuckerman, the meeting of the Charter Revision Commission was adjourned at 8:55 PM.