

July 4, 2013

Ronald Bergstrom, Chairman
Suzanne McAuliffe, Vice-Chair
Barnstable County Charter Review Committee
First District Court House-Assembly of Delegates Chamber
Main Street, Route 6A
Barnstable, MA 02630

County Charter Review Committee:

**RE: County Charter Review Committee: Request to Establish Municipal Cape Cod
Commission Withdrawal Mechanism**

As part of its continuing county charter review process, it is hereby respectfully requested that the *Barnstable County Charter Review Committee* study, review, discuss the merits and drawbacks of, hold public comment about, and deliberate upon the issue of amending the *Barnstable County Home Rule Charter* by establishing a formal mechanism and procedure whereby a municipality within Barnstable County could withdraw itself from the *Cape Cod Commission* (established by *Chapter 716 of the Acts of 1989, as amended, the Cape Cod Commission Act*) if a town deems such action to be warranted and appropriate to do so. As a rationale, such a proposed amendment to the *County Home Rule Charter* would be solidly grounded upon the *First Amendment to the United States Constitution* and "*the right of the people...to petition the Government for a redress of grievances.*"

Thank you.

Sincerely yours,

Ronald Beaty
245 Parker Road
West Barnstable, MA 02668
Phone: (508) 362-2043
Email: ronbeaty@gmail.com

From: Ned Hitchcock, Wellfleet representative to the Barnstable County Assembly of Delegates

To: the Charter Review Committee of the Assembly of Delegates

7/4/13

My purpose is to offer recommendations to the Charter Review Committee (CRC) as it deliberates possible changes in the county charter particularly those proposed by the Special Commission on County Governance.

Two recommendations of the Special Commission are of primary concern. They are the section on governance, recommendation number 14, and number 2 which focuses on wastewater. The governance recommendation is particularly troubling. It reads "that Commissioners and Assembly merge into one entity with 5 locally elected members and 2 county-wide members."

Many people with whom I have spoken believe, as I do, that this proposed change reduces the voices of the small towns. The proposal also increases the centralization of county government functions. Neither is desirable in my opinion.

The present structure provides that each town, however small, can be heard in every deliberation. Some argue that having the Assembly based on the 15 towns violates the "one person, one vote" principal. While this may be argued, we should remember that the framers of the US Constitution devoted considerable thought to creating a bicameral government and made sure that the smaller states had voices equal to the larger states in the Senate. In much the same way, in the Assembly our charter allows each town both a representative and also provides for weighted voting. This structure combines useful aspects of both the US House and the US Senate (our legislative bodies), and the commissioners serve as the executive. Those bringing up the issue should consider the outcome of the US Supreme Court case "Board of Estimate of City of New York v. Morris (1989).

The present structure of the Assembly allows some checks and balances and some protection of the minority from the majority. The idea of blending legislative and executive functions in one body eliminates any checks or balances. It might be added that, were the county government to be restructured in the way recommended by the Special Commission, this more centralized government could more easily than presently mandate that the smaller Cape towns pay taxes supporting the infrastructure needs of the more populous towns. This possibility has been suggested in at least one presentation by consultants to the county but is not often openly discussed.

Further, I believe that a move to increasingly centralize government may reduce the likelihood of active citizen participation in governance. There is good evidence of this from a number of sources. In addition, the minutes of the Special Commission (Wed 2/29/12) indicate that there is more than a passing interest in eliminating town lines as representative "districts" are set up and they suggest the gradual elimination of town government and town meeting altogether.

The AOD is a small but vital link to the practice of direct democracy in our towns and the Commonwealth. It should not be scuttled in the service of some presumed efficiency to make it easier for county officials and agencies to increase their regulatory authority.

Also in the governance section, Recommendation #13 refers to a possible "advisory board," meeting quarterly and advising the county. I find it difficult to imagine how such a board could be effective or well enough informed to offer much in the way of useful suggestions. It apparently would have no authority or responsibility and, consequently, would be a needless addition to the county governmental structure. It's apparent that when consultation is needed, the present agencies and officers find ways to get such help.

The wastewater recommendation would establish a Cape Cod Wastewater District comprised of all 15 towns. Among other things, it would be an "independent, separate unity" with authority to develop "fair, broad-based funding mechanisms." In other words, it could be something like the Massachusetts Water Resources Authority (MWRA) with independent powers of taxation. The special commission's recommendation assumes that the authority would be more cost effective than 15 separate solutions and that town based systems would be "less effective" than regional solutions proposed by a county level planning group. While this may be true in some areas and groups of towns, it may not be true for all towns. Although there is an effort to get input from the various towns, the approach seems ultimately "top - down" and likely to encourage resistance in various areas on the Cape.

The concept of regionalism comes up in this recommendation and often in the language of the Special Commission and the Cape Cod Commission. The concept seems to have a floating definition depending on what the goal of the moment is. Sometimes it means the entire county; other times, it means individual watersheds; and still other times it means a collection of watersheds grouped to make a politically manageable area. We need a much more consistent and clear definition and use of the term.

Recommendations:

Maintain the present governmental structure of three county commissioners (executive) and an assembly of delegates (legislative) with both groups having the roles assigned in the current charter. This ensures at least a modest balance between legislative and executive branches.

If a Cape-wide water district is to be formed, it should not have independent taxing authority and any regulatory authority should be subject to town and county as well as state legislative review. It should also reflect in its organization and process the substantial differences among all the towns of the county.

I have shared this document with the Wellfleet Board of Selectmen and have requested their endorsement.

Respectfully submitted, Ned Hitchcock

(2013) Barnstable County Charter Review Committee
Assembly of Delegates Chamber - First District Court
PO Box 427
Barnstable, MA 02630

Charter Review Committee:

RE: Charter Review & Issue of Constitutionality of the County Assembly of Delegates

At their meeting on Wednesday, June 26, 2013, the Barnstable County Commissioners made the audacious, obstinate, off-the-wall, misinformed and obfuscated claim that the County Assembly of Delegates is presently "inherently not a constitutional body," and suggest and/or threaten that they may file an official complaint with the Attorney General's Office for a determination on the matter. However, among other statements, Paul Niedzwiecki, Executive Director of the Cape Cod Commission, warned the County Commissioners that the Assembly of Delegates could then potentially file a federal lawsuit based upon issues grounded in the Fourteenth Amendment to the United States Constitution.

Such action by the County Commissioners would in reality be an avenue and tactic to attempt to circumvent the ongoing County Charter Review process if it does not produce the outcome doggedly being pursued by the County Commissioners (and previously by the Special Commission on County Governance) --- the complete elimination of the Assembly of Delegates along with the 'checks and balances' that it provides.

One bizarre point that glaringly comes to mind when one reflects upon the whole nonsensical legal logic that the County Commissioners appear to try is espouse makes it even more peculiar when one considers the fact that they themselves seem to have an inherent inability to comply with the *Massachusetts Open Meeting Law* on a regular basis...

As a former West Texas resident (with some real world experience regarding Texas political institutions), I feel compelled to briefly comment about the legal case referred to by County Commissioner Sheila Lyons at the Barnstable County Commissioners' Meeting (Wednesday, 06/26/2013). Commissioner Lyons attempted to utilize a misreading of the following case as grounds upon which to base her statement that the Barnstable County Assembly of Delegates is NOT a constitutional body: **Avery v. Midland County**, 390 U.S. 474 (1968); 88 S. Ct. 1114; 20 L. Ed. 2d 45.

The case, amateurishly pointed to by County Commissioner Lyons, addresses a topic and issue which actually has very little, if any, direct bearing upon the current efforts by the County Commissioners to bring about the eradication of the Assembly of Delegates (or in their words...to "merge" it with the Board of County Commissioners).

To begin, the legal case in question does not logically or sensibly apply to the current situation involving the present structure of the Barnstable County/Cape Cod Regional Government.

In Texas, the Midland County Commissioners' Court is a unique form of government, because it combines at least portions of a county's executive, legislative and judicial functions into one body. This can make for a wide variety of issues the Court must address.

The (Texas) County Commissioners' Court is the policy-making body for a county, just as a city council is for a city or the Legislature is for the state. It consists of four Precinct Commissioners, elected by the residents of four distinct areas of the county, and a County Judge, elected by the voters of the county at large. The Court's duties encompass a variety of tasks, from reviewing and approving a county budget to reviewing subdivision plans to planning for the county's infrastructure needs, along with directly supervising all the non-elected department heads in the county.

The County Judge is the chief administrative officer and the chief budget officer for the county, and presides over the County Commissioners' Court, which is the policy-making body of Midland County government.

A (Texas) County Commissioners' Court is a quite different type of public body, from a structural perspective, in comparison to the current makeup of our County Assembly of Delegates. It is like comparing apples and oranges. It does not correlate!

In a much more recent U.S. Supreme Court Case, **Board of Estimate of City of New York v. Morris**, 489 U.S. 688 (1989), it was unequivocally decreed that an elected public body which is not structured upon the principle of 'one man, one vote' is inconsistent with the Equal Protection Clause of the Fourteenth Amendment because if a particular civil, governmental or political district/entity (like a city or town) possesses widely disparate populations, then each such district must possess proportional representation based upon its respective population (like the weighted vote system employed by the County Assembly of Delegates). With that federal court decision and information in mind, then the Barnstable County Assembly of Delegates mostly certainly is a constitutional public body (in direct contradiction to the mistaken claims made by our County Commissioners at their June 26 meeting).

More specifically, the court unanimously declared the New York City Board of Estimate was unconstitutional on the grounds that the city's most populous borough (Brooklyn) had no greater effective representation on the board than the city's least populous borough (Staten Island), in violation of the Fourteenth Amendment's Equal Protection Clause pursuant to the high court's 1964 "one man, one vote" decision (Reynolds v. Sims). The Board was disbanded.

The Board of Estimate's structure was inconsistent with the Equal Protection Clause of the Fourteenth Amendment because, although the boroughs had widely disparate populations, each had equal representation on the board, which was not in compliance with the doctrine of "one man, one vote." Thank you.

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Janice O'Connell

From: Elaine Smith <elain smith1971@comcast.net>
Sent: Tuesday, June 25, 2013 1:24 PM
To: \Assembly of Delegates" <aofd@barnstablecounty.org>
Subject: Charter Review Committee Comments

Cape Cod Regional Government, Charter Review Committee Barnstable County Complex Route 6A
Barnstable, MA 02630

Dear Members:

First, thank you for serving on a committee charged with an important regional task.

Under no circumstances should the Barnstable County legislature be merged with the Executive Board of County Commissioners. The Assembly of Delegates should remain a viable and independent body of the regional government of Cape Cod.

Half of the world's population now lives in democratic societies, but government neglect, corruption and lack of transparency continue to hinder efforts to implement policies needed to improve people's lives.

To ensure that governments protect the rights of all people and are responsive to their needs, we must support community-driven efforts to improve the transparency and integrity of government institutions and processes; encourage broad participation in establishing public priorities and policies; and promote effective implementation and oversight of public programs, including Barnstable County government programs and services.

The chief strength of our existing County Assembly of Delegates is that it ably represents the diverse interests of the regional Cape Cod community and proficiently provides for overlap of knowledge bases and the self-checking between both its members and the County Commissioners. Another one of the Assembly's strengths is that the negative forces of potential corruption and bribery are diluted by the number of members making up our current county legislature. Elimination of the County Assembly, accompanied by a slight increase in the size and composition of the Board of County Commissioners, is an open invitation to the all-to-real risks of corrupt, unaccountable and non-transparent regional government here on Cape Cod.

Thank you and good luck with your continuing deliberations on the county government issues you are discussing.

Sincerely yours,

Elaine Smith
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East Sandwich MA 02537