

DUKES COUNTY CHARTER STUDY COMMISSION
Box 2526, Oak Bluffs, MA 02538

FINAL REPORT

May 29, 2008

DEDICATION

The Charter Commission dedicates its final report to the memory of Commissioner Arthur Flathers, who passed away on April 10, 2008. Art believed passionately in many things, but none more so than this Island. He knew, said, and wrote more than most about its workings and foibles, and had a vision for what he thought it could and should be. He contributed much to our deliberations, and we miss his insight, tenacity, and knowledge. He provoked us to think.

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Executive Summary

After meeting in full session approximately forty times over a period of seventeen months, the 2006 Dukes Charter Study Commission recommended on May 1, 8, and 15, 2008 that:

1. County government be retained.
2. County Commissioners be elected at-large.
3. Seven Commissioners, no more than two from a town, be the legislative branch of County government.
4. The length of term for Commissioners be two years.
5. The form of governance be the *County Manager Form*, as per Massachusetts General Laws (cited herein as "MGL") ch. 34A §18.
6. Special legislation be requested exempting Dukes County from the provisions in MGL ch. 34A §18, stating that the County Manager "shall serve for an indefinite term" and "that the position is and shall be a full-time position."
7. The new charter takes effect on January 1, 2009.
8. The County Commissioners adopt an extensive set of administrative recommendations.

These eight recommendations, made by super-majorities or unanimously, by those present and voting, reaffirm the findings of the 1990 Charter Commission in all respects except for the length of term of the Commissioners. The one change in the charter recommended by 2006 Charter Commission that will require voter approval is to reduce the term of office of County Commissioners from four-year, staggered terms to two-year, concurrent terms, thereby increasing the direct accountability of the County Commissioners to the voters.

The ballot question for the November 5, 2008 election will read:

Shall the County Manager Plan be adopted for Dukes County, with the provision for a board of commissioners of seven members for concurrent two-year terms and elected at large?"

Assuming the voters adopt the new charter, its provisions will be implemented on January 1, 2009. Three Commissioners will be elected for four-year terms in November 2008 under the provisions of the current charter. These three Commissioners will serve their four-year terms through 2012. Four Commissioners will be elected to two-year terms in November 2010. Therefore, beginning in January 2012, all seven seats on the County Commission will be elected every two years. Failure to approve the recommended change in the charter will leave the current charter in place with its four-year terms of office.

The recommendation to seek special legislation exempting Dukes County from the provisions of MGL ch. 34A §18, has already been accepted by unanimous vote of the County Commissioners on May 7, 2008. This recommendation is independent of the outcome of the ballot question in November, and will be pursued by the County Commissioners with the Legislature

This Commission has also decided not to pursue the adoption of a custom charter for Dukes County, which was an available option, although some Commissioners felt a custom charter would better meet the needs of the County. The lengthy and cumbersome process of writing such a charter, and obtaining the necessary prior approval of the Legislature, would delay a vote on charter change until at least November 2010. Our elected state representatives also recommended against such a course of action.

The Charter Commission has opted for minimal change in the charter because in the course of its work it became apparent that governance structure was not the underlying cause of the problems that gave rise to the creation of the Commission. Issues relating to the actions of the County Commissioners, their relationships among themselves, with their appointees, the approach of County Managers to their positions, and poor public relations in general have in the aggregate been responsible for hindering relations with the towns, and the poor public perception of County government

These issues do not lend themselves to easy solution through legislation or a restructuring of County governance. As a result, the Charter Commission has chosen instead to make a series of administrative recommendations designed to address the functions and functioning of the County. These recommendations are consistent with the provisions of MGL ch. 34A which allows a Charter Commission to make recommendations to improve the efficient and effective administration of the County.

The Charter Commission has approved an extensive set of non-binding administrative recommendations to be adopted by the Dukes County Commission as soon as possible. These recommendations address a large number of concerns that have been voiced by the public. They affect the County Commission's accountability to the voters, its relationships with the various towns and other regional entities, county finances, the appointment process, and measures designed to broaden the availability of candidates for election as County Commissioners. Building on the decision to reduce County Commissioners' terms of office to two concurrent years, the measures designed to improve the accountability of the County Commission to the voters call for a periodic review of the County Charter every eight years and clarify the provisions supporting the recall of a County Commissioner.

The Dukes County Commissioners are not bound by these recommendations. They may adopt them in whole or in part, regardless of whether the new charter is approved by voters. However, the current County Commissioners participated actively both in drafting the initial recommendations and in securing their approval by the full Charter Commission. As a result, these recommendations offer the promise of far more impact on the actual performance of County government than structural changes.

The Commission is mindful of voices in the community calling for the abolishment of County government. As a result this option was studied in detail by a sub-committee, and was rejected by a near unanimous vote, twice, by the full Commission. Maintaining local control of considerable county assets, providing a ready mechanism for Island-wide cooperation to solve common problems, and strong recommendations against abolishment from our state

representatives as well as from representatives of abolished counties, persuaded all but two Commissioners to oppose abolishment.

The ultimate success the Charter Commission's recommendations will be determined by the spirit, enthusiasm and competence with which they are implemented. These recommendations have the unanimous approval of all 7 current County Commissioners and the overwhelming endorsement of the full Charter Commission. However, for these recommendations to be truly effective, it will be the responsibility of the citizens of the County to approve the proposed charter revisions; to step forward and serve, where needed; and to hold the County's elected representatives accountable for ensuring their full and complete implementation.

Introduction

Historical Perspective – The 1990 Commission:

During the late 1980s a concerted effort arose by the then Governor and the Legislature to abolish county governments in the Commonwealth. These efforts ultimately led to the abolishment of seven county governments, half the total number of counties. It was feared that a similar involuntary loss of Dukes County government would be detrimental to the Island. There were also concerns that the existing Dukes County Commission, with three Commissioners, had an inadequate administrative structure for managing county assets. These fears and concerns led to the creation of the first charter commission in November 1990, which existed until December, 1992.

Until January 1, 1995, Dukes County had no charter, and no home rule, which made it particularly vulnerable to abolishment by the Legislature. Such an arrangement also required frequent special home-rule legislation to facilitate cooperative efforts between the towns. The task of the first charter commission was to provide Dukes County with a charter and home rule that would serve as a measure of protection from hostile actions in the Legislature and the Executive. Secondly it needed to create or adopt a governance structure that would encourage mutual cooperation between the towns on the Island as well as facilitate an Island-wide approach to problem solving.

MGL ch. 34A, signed into law in 1985, provides for the creation of charter commissions, and describes, not always with total clarity, the powers and options available to such a body. In general terms, a commission has eighteen months to make no recommendations, recommend abolishment, recommend a custom charter (which it has to write), or recommend one of three pre-approved statutory forms of county governance. Both abolishment and a custom charter require pre-approval by the Legislature before the voters have an opportunity to adopt (or not) the recommendations.

Selecting a pre-approved form requires the charter commission only to decide which form of governance, how many commissioners, whether they should be elected at large or by districts, how long their terms should be, and whether those terms should be staggered or concurrent. MGL ch.34A also empowers a commission to make non-binding administrative recommendations to the county commissioners regardless of its other actions, except in the case where it recommends abolishment.

The first charter commission, led by Ed Logue, proceeded to carefully review all the options available to it. After considerable deliberation it decided to recommend adoption of the *County Manager* form of governance because it was a form that implied such a manager would be a professional administrator, and defined the separation between the legislative branch (the county commissioners) and the executive (the professional county manager).

They further recommended that a county commission of seven members (no more than two from a town), elected at-large for four-year staggered terms as the best way forward. The

voters in November 1992 agreed, and the charter was implemented on January 1, 1995, after a slate of commissioners was elected in November 1994.

By all accounts, the new county governance structure had considerable public support, although not always in the Island press, and managed early successes especially with regard to the construction of a modern airport terminal, expansion of the airport business park, and rehabilitation work at the county courthouse in Edgartown.

The 2006 Commission

The most immediate cause of the creation of the 2006 Charter Study Commission was a protracted dispute between the County Commissioners themselves, and their appointed Airport Commission regarding primacy on employee contracts; and contention over the appointment process for the Airport Commission. The first dispute ultimately was partially resolved in court, not in favor of the County Commissioners, and along the way incurred a great deal of legal expense. The second dispute was resolved after a spate of resignations from the Airport Commission resulted in new members. A large pool of interested and qualified citizens emerged, and only one County Commissioner, as opposed to three formerly, was appointed a member.

Much negative publicity before, during, and after these disputes cultivated the perception that County government had lost its way. By early 2006 the County Commissioners realized that there was citizen interest in re-examining County government. They then set in motion the creation of a new charter commission by placing a question on the November 2006 ballot. The voters approved its creation, and at the same election elected fifteen commissioners, as provided in MGL ch. 34A.

The new Commission, a total of 23-members¹, was sworn-in in early December 2006.

Charter Study Process

The initial task of the Commission was to decide how it would pursue its work, and how it would make decisions. The workplan adopted initially relied heavily on studying the actual functioning of all aspects of the County, and this involved six subcommittees each one delegated to study a particular aspect of County government:

- 1) The County Manager
- 2) The Sheriff's Department
- 3) The County Treasurer
- 4) The Airport
- 5) The Courthouse and Registry
- 6) The County Commissioners

Seven major options for the future of County government emerged from the early discussions and largely from MGL ch. 34A §12 (A). The Commission could recommend:

¹ The seven County Commissioners, and the Chairperson of the County Financial Advisory Board, are all designated by statute as members of a charter commission as well as the fifteen elected members.

- 1) Making no changes to County government
- 2) Abolishing County Government with no replacement
- 3) Abolishing county government and replacing it with an alternative form of regional government
- 4) Creating a custom form of County government
- 5) Changing to a County Executive form of County government
- 6) Changing to a Board Chairperson form of County government
- 7) Keeping the County Manager form of County government with modifications

To meet the requirements of MGL ch. 34A §11 (A), which states:

“The charter commission shall hold public hearings, sponsor public forums and otherwise provide for the widest possible dissemination of information and the stimulation of public discussion respecting the purposes and progress of its work.”

The Commission held public meetings both down and up-Island in spring 2007, and hosted a series of public symposia for three successive weeks in July. The symposia were designed to hear from representatives of other counties that either had different forms of County government or had been abolished either voluntarily or by an act of the Legislature. Five counties participated: Barnstable, Nantucket, Plymouth, Hampshire, and Franklin.

Several meetings were held with Representative Eric Turkington, and with Senator Robert O’Leary to discuss the processes should the Commission decide to pursue an option requiring involvement by the Legislature.

A second round of study with three different sub-committees was established to address:

1. The consequences of abolishing Dukes County government.
2. County finances.
3. The legal, statutory and political issues affecting charter change.

By fall 2007 sufficient study and input had occurred for the Commission to begin making preliminary decisions, and to narrow the available options to those needing further study. The seven original options were reduced to three by eliminating the first four (above). This work proceeded through the fall.

Outreach efforts to the public and political establishment were intensified as the subcommittees finished their work. Public informational meetings were held both early on and in the spring of 2008, in Vineyard Haven, Chilmark, Oak Bluffs, Edgartown and West Tisbury. Liaisons were appointed to meet more informally with Selectmen. A delegation of the Commission traveled to Gosnold during the summer of 2007 to seek their input and participation. Public participation was minimal.

MVTV was used extensively to connect with the public and to advertise our various forums. All forty of the full Commission meetings were televised, and all had a provision for

public comment. Televising the meetings may in itself account for the general lack of public participation in our meetings. Anecdotal evidence suggests that something of a TV audience has existed, but there is no way to evaluate the size of this audience. Most of the feedback received by the Commission derived from personal contact between the Commissioners and their families, friends and acquaintances.

In addition a full meeting of the Commission was scheduled with representatives of the Martha's Vineyard Commission, which is currently in the midst of *The Island Plan*. This is a multi-year effort to identify future Island needs and possibilities in the areas of energy, housing, the natural environment, transportation, and its economy in general. This led to a discussion of what was termed "*blue sky possibilities*" for the role of County government in the Island's future.

At every turn where possibilities for a larger County role were presented the insular nature of the Island was also discussed. A major disconnect exists between those who see the regionalization of services and initiatives as positive, if not necessary and essential to the future of the Island, and those who see such regionalization as negative. While a strong county government and municipal sovereignty are not mutually contradictory, the prospect of a cooperative partnership between the two is often met with considerable resistance, at least in part because of a lack of confidence in County government. In the view of the Charter Commission, this hinders efforts to pursue more unified regional initiatives.

Findings

Phase 1 – Existing County Government

Dukes County government is not a monolithic entity operating under the authority of a single elected body. It is five semi-autonomous departments presided over either by independently elected officials (the Sheriff, the Treasurer, the Register), or appointed officials like the County Manager, and the Airport Commission. Moreover, several of these departments have direct responsibilities to the Commonwealth, and in the case of the Airport Commission to both the FAA and the Massachusetts Aeronautical Commission (MAC). The one entity they all have in common is the County Treasurer.

The Commonwealth of Massachusetts franchises towns not counties, but structures counties, and their abolition, through the provisions within MGL ch. 34A & B. It further regulates counties through MGL ch. 64D §12, which created the County Government Finance Review Board (CGFRB) housed in the Executive Office of Administration & Finance, an appointed committee. Final appropriations for county expenditures are authorized only by the CGFRB. Also county advisory committees (CABs) have more budget control than the elected County Commissioners or their appointed county manager. As a consequence, a great deal of control over counties is retained by the Commonwealth, and to a lesser extent the towns. That is not the case in most other states where counties are a powerful intermediary level of government between the state and municipal level.

The County Manager:

The County Manager is appointed by the seven elected County Commissioners. Since 1995, when the current charter was implemented, there have been four county managers whose tenure has varied between three weeks and over five years, with the last two managers serving for approximately 70% of the time period through September 2007. There have also been four acting county managers for periods lasting between one and ten months, including the period between September 2007 and April 2008 when the County Treasurer acted as County Manager while a search was underway for a new manager. The newly installed County Manager has been in place since April 2008.

MGL ch.34A §18B grants broad authority to the County Manager to organize and supervise all county functions. However, in practice, there is a disparity between the County Manager's responsibilities and his/her authority. The customary benchmarks for administrative control are management of budget and personnel. Seen from this perspective the County Manager has limited authority to affect budgets and personnel outside of the immediate programs reporting directly to him.

In the course of discussions with the prior County Manager (who resigned in September 2007), and after some subsequent inquiries at the town level, it became apparent to the subcommittee that ties between the County Manager and the towns were not strong, and in at least two cases somewhat antagonistic. Aside from differences in approach, and inter-personal problems, this particular County Manager did not live on the Island, which is required by the

statute, charter and the manager's contract. This situation was deemed by the subcommittee as a significant impediment to the proper functioning of a County Manager. However, this requirement was waived (legally) by the County Commissioners early on in the tenure of the manager.

In summary, while the charter and job description of the County Manager provides the position with a great deal of responsibility, the actual authority granted to the County Manager is not consistent with those responsibilities. Five departments relate in limited administrative ways to the County Manager, who has limited authority over them. The County Manager, in reality, has direct jurisdiction only over a very limited number of programs and personnel.

Moreover, when the present or previous county managers have tried to exercise their executive authority, it appears that other power centers within the towns and/or the County Commissioners resist, push back, or pull in a different direction. It appears that the actual power of the County Manager is effected primarily through the power of persuasion and consensus building. Consequently, successful implementation of the County Manager position is much more dependent on the skills of the incumbent than on either the provisions of the charter or the statute.

If the County were abolished the County Manager and the Executive Assistant-Personnel Director positions would cease to exist, the programs operating out of that department would either cease, be supported directly by the Towns, or possibly (but not probably) the Commonwealth. The disposition of personnel, programs, and assets would be part of the abolishment petition to the Legislature, and subject to negotiation.

The Sheriff's Department

The Dukes County Sheriff's Office operates under the General Laws of Massachusetts. These provisions are largely independent of the County Commission.

The principal functions of the Office of the Sheriff include the operation of the County Jail/House of Correction, the Communications Center, the Community Correction Center and a series of related activities.

The Sheriff's Total Budget for FY 07 is \$3,673,900, of which 61% is funded by the State.

The County Commission's funding of the Sheriff's Office is less than \$500,000, which represents 13% of the Sheriff's Total Budget. Most of the balance (24%) comes from County Excise Taxes.

Through their funding of the County Commission's Budget, the Towns contribute close to \$200,000 or only 5% of the Sheriff's Total Budget.

To put the Town's contribution in perspective, the Communications Center alone costs \$660,500, in other words, more than 3 times what the Towns pay for all of the services provided by the Office of the Sheriff.

Expressed another way, the Communications Center alone represents more than 85% of the Towns' total approved FY07 assessment of \$769,500 for all of the operations of the County.

While the Sheriff is elected by the voters of Dukes County and must ultimately live up to their expectations, virtually all of the formal mechanisms of accountability are to the Commonwealth.

If the County Commission is abolished, this accountability to the Commonwealth will be reinforced. While the Sheriff would continue to be elected by the voters of Dukes County, all employees of the Office of the Sheriff, including the Sheriff, will become Commonwealth employees.

It should be noted that attempts are currently being made by the Governor through the Legislature to place the Sheriff's Department directly under the control of the Commonwealth, which would have the same effect on that Department as abolishment of the County.

The Treasurer

MGL ch. 35, §10 requires the County Treasurer to collect, receive and keep securely all money belonging to the county, and to disburse it according to law. MGL ch.32 specifies that the County Treasurer act as the chair of the County Retirement System and also supervises that office.

The Treasurer is responsible for cash receipts, cash disbursements, general ledger, payroll and benefits administration for all county departments and employees as defined in MGL ch. 35. Since counties do not have a county accountant, the County Treasurer's office performs both functions.

The Dukes County Treasurer currently serves as Chairman of the Cape Cod Municipal Health Group (CCMHG) and works with the CCMHG's wellness coordinator for Martha's Vineyard. The Treasurer must understand all benefit plans offered to coordinate annual benefits for all employees of county, towns, commissions and districts.

The Treasurer's Office interacts with:

- The County Advisory Board
- The Advisory Council for Retirement System expenditures (Treasurer from each unit)
- The CCMHG
- Legislators
- The Department of Revenue
- Auditors – Powers & Sullivan
- Selectmen
- Police Chiefs
- The Trustees of Reservations (with regard to Norton Point Beach)

In addition the Treasurer's office interacts with the Martha's Vineyard Land Bank. As per legislation creating the Land Bank, the Treasurer must:

- Review all bills and sign expense and payroll checks
- Review deposits
- With Office Manager, transfer investment funds as needed
- Authorize wire transfers for bond payments
- Review Official Statement when going out to bond (\$80,000,000.00)
- Research investment opportunities
- Suggest office procedures to improve audit trail

Although the independently budgeted departments of the County (Sheriff, Registry of Deeds, and Airport) pay the Treasurer's Office for the services provided to them, The Land Bank does not pay the Treasurer for performing these services.

The Treasurer's Office also administers the Dog Fund. This work entails:

- Recording monthly reports from Town Clerks regarding licenses sold
- Collecting license fees from town
- Paying for injured animals and livestock
- Disbursing funds for dog tags and licenses.
- Paying the towns their proportionate share of the fund balance for the benefit of the public library or school
- Submitting bulk order of tags and licenses for savings to all town

The Office of the Parking clerk is also under the Treasurer's Office, but it is separately budgeted. One regional office provides collection of parking tickets for all six Island towns.

In Counties that have been abolished, treasurers were allowed to finish their terms to help with the "orderly transfer" as described in MGL ch. 34A. In three former Counties, the Treasurer was made Director of the Retirement System under the new non-county system. There is no provision within MGL ch. 34B to carry on the functions of a county treasurer even though some of the office's functions continue indefinitely.

Several functions described above would have to be taken over by the individual towns. The Land Bank legislation would need to be revised to provide for other accounting services since it is now required to use the services of the Treasurer's office.

The Airport

The Martha's Vineyard Airport together with its associated business park is the County's most valuable asset and represents a square-mile carved from the state forest. Its appraised value represents 81% of all County assets, including the County Courthouse and the beaches, and straddles the municipal boundary between West Tisbury and Edgartown.

The Martha's Vineyard Airport is presently governed by an airport commission, in accordance with state statutes. This Commission is composed of seven members appointed by the Dukes County Commissioners, of whom one is a sitting County Commissioner. Each member serves without pay and is appointed to a three-year term.

Since the late 1940s, the day-to-day management of the Airport has been conducted by an Airport Manager, who – under the terms of MGL ch. 90 – is required to be “qualified by general management experience and aeronautical knowledge.”

Day-to-day airport operations are carried out by seventeen (17) paid employees. They include an airport manager, assistant airport manager, two supervisors, and other full and part-time employees who often serve more than a single function (such as aircraft fueler and firefighter).

Although it is a department of County government, the airport is the only existing entity of the County that is currently financially self-sufficient. It presently receives no financial assistance from the Commonwealth of Massachusetts, the Federal Government, Dukes County, or any of the six Island towns for its annual operational expenses. Those expenses, including payroll, are paid for by the revenues generated by the airport, primarily through three sources: leases, airport user fees, and fuel sales. The user fees are collected from the 300,000 people who pass through the airport annually, the 75,000 aircraft operations that use the airport, and the more than 70 tenants operating private businesses on leased properties at the airport.

Since the 1992 Charter Commission Report was issued to the voters, a number of operational deficiencies have been corrected. The Airport Commission (which has included members of the County Commission) has received funding to construct new terminal buildings and a sewer plant, and to remove WWII facilities, as well as construction of a business park, the revenue of which offsets operational expenses.

The County retains responsibility should the airport (now thriving and financially secure) face an operational deficit. County Commissioner's concerns regarding the negative impact of an operational deficit on the County, and ultimately the towns, have influenced the County's relationship with the Airport Commission.

The airport also remains financially dependent on the County to issue bonds.

During the last fifteen years, much energy has been consumed by two issues of contention between the Airport Commissioners and their appointing authority, the County Commissioners. The first issue was whether the Airport Commission, separate from the Dukes County Board of Commissioners (DCC), has the authority to appropriate funds, and to sign contracts and set salaries, specifically for its manager and assistant manager. The second issue is whether the process by which the Dukes County Commissioners appoint members of the Airport Commission is an open, fair, and consistent process, and whether it is wise to have Dukes County Commissioners appoint themselves as members of the Airport Commission, as permitted by Chapter 243 of the Acts of 1988.

Resolution of these issues has involved the FAA, the MAC and the courts. Currently there is a working relationship between all the parties involved.

Disposition of the airport in the event the County is abolished is not clear. Dukes County is the only county in the Commonwealth that owns an airport, and the Commonwealth, which would normally assume the assets of an abolished county, is forbidden by statute from directly owning and operating an airport. Ownership and operation of the airport would be a matter of some negotiation with the Legislature, the MAC and the FAA regarding an entity to assume control. That new organization, whether based on- or off-Island, could be the towns of West Tisbury and/or Edgartown, Massport or an entity created specifically for this purpose.

The Courthouse

The Dukes County Courthouse is located at 81 Main Street in Edgartown. It is owned by the County of Dukes County and at this time is unencumbered. The original portion of the building was completed in 1859 with an addition completed in 1955. The building is included in the boundaries of the designated Edgartown Village Historic District. It is one of six (6) public (government owned) buildings within the district. It is listed on the National Register of Historic Places. The Town of Edgartown places the assessed value of the property at over \$4,000,000.

Since the takeover of the courts in 1978 by the Commonwealth, the County has been functioning as a landlord for the 81% of the Courthouse occupied by the state. The County, however, is hampered by the fact that the Commonwealth has written the laws governing its own lease. The Commonwealth is also the arbiter over disagreements and is not compelled to pay the full rent if it does not fit into its own internal budget. There is no schedule for repairs and there is no budget for capital improvements. There is no long term capital plan, and repairs are done on an "as needed" basis. Currently the County has no revenue sources available to fund a major renovation, even if the Commonwealth were to pay an 81% share.

The condition of the Courthouse reflects this lack of planning and funds. The building and grounds are in need of improvements. The historic main courtroom is both grand and fraying. The ornate woodwork is in need of refinishing and repair, the benches are damaged, the carpet is old and worn, and the windows are in need of replacement. The handicap access system is limited and needs modernizing. As with all old buildings, the exterior and interior need constant upkeep to prevent deterioration.

In addition, the facility is overcrowded and there is a definite need for additional space for staff, storage and parking as well as conference areas for attorneys and their clients and prisoner detention. The Commonwealth currently leases off-site office/courtroom space (at fair market value) for the Juvenile Court and its offices. It also frequently leases space (at fair market value) at the Whaling Church and Edgartown Town Hall for Court proceedings when the court schedules overlap. The County is the only landlord which does not receive fair market rates from the Commonwealth. The space issue must be addressed by the state, but the overcrowding impacts the condition of the building.

If Dukes County is abolished the ownership of the courthouse and its land would probably be transferred to the Commonwealth according to MGL ch. 34B § 6:

“Notwithstanding the provisions of any special or general law to the contrary, all rights, title and interest in real and personal property owned or held by an abolished county immediately before the transfer date, including without limitation, all courthouses, registries of deeds, registries of probate, and all other county buildings, and the land on which they are situated and any parking facilities, fixtures and improvements located thereon or appurtenant thereto, shall be transferred to the commonwealth as of the transfer date.”

This section of the statute also contains a provision allowing the Hampshire Council of Governments to retain ownership of its historical courthouse, with certain provisions. It is therefore possible to negotiate an alternate disposition with the Legislature.

The Registry of Deeds

The Registry of Deeds has been keeping land records for Dukes County since 1641. It is one of Dukes County’s oldest departments, and is charged with the responsibility of collecting, indexing, reproducing and preserving the land records for the County of Dukes County.

The Registry also collects fees for recording documents and collects a deeds excise tax (a tax on filed deeds set by the Legislature), thus functioning as a source of revenue for the County and the Commonwealth.

MGL ch. 36 and ch. 64D govern the Registry, which consists of the Register of Deeds, an Assistant Register, and two clerks. The Register of Deeds is an elected office with a term of six years. Chapter 36 outlines the election qualifications and tenure for this post, and spells out the duties of the Register and his/her assistants. The Register must be a resident of Dukes County.

Compensation for the Register is determined by the Register, based on salaries granted in Registries of similar size throughout the Commonwealth. Compensation for the Assistant Register and staff is determined by the County Personnel By-law. The Register, Assistant Register and staff are all County employees although the Register is not governed by the County Personnel By-law.

The Registry does not make appointments to, or provide or receive assistance from any other Island agencies or organizations. Revenue from the Registry is distributed partly to the County and to the Sheriff’s Department, which is mandated by MGL, and is not under the control of the Registry.

The office of Registry of Deeds is not accountable to the County Commissioners. Accountability primarily rests every six years with the voters, when the Register stands for election.

The Registry has two primary sources of income: deeds excise fees and filing fees for all documents. The current excise rate is \$4.56 per thousand dollars of the sales price. Document

fees are set by the Commonwealth, a specific fee for each type of document. The Registry has no control over the fee amounts. In FY06 the total income to the Registry was \$4,379,620.49

From 1952 until 1993 all revenue from Deeds Excise fees went to the Commonwealth. In 1993 MGL ch. 64D created a formula in which 42.5% of Deeds Excise fees were returned to the County, which was allocated in the following manner:

- 75% to the Sheriff's Department
- 15% to the County
- 10% to the Registry of Deeds.

The revenue received from filing fees for recording documents is also disbursed to several places. The current \$125 fee to record a deed, which was set in 2003, is allocated in the following way:

- County - \$25
- Community Preservation Act - \$20
- Technology Fund - \$5²
- Commonwealth - \$75

The changes in 2003 also prevented the County from raising the fee rates on their own to increase their own revenue.

If Dukes County were abolished, the Registry of Deeds would become totally a Commonwealth function. The Register would continue to be elected every six years. The location would probably remain the same, depending on the disposition of the courthouse. The monies held in reserve in the Registry's Deeds Excise Fund and the Technology Fund would go to the Commonwealth. No money would stay with the County or with the Registry of Deeds. According to MGL ch. 34B §10:

*"an abolished county's Registers of Deeds shall become employees of the Commonwealth under the supervision of the Secretary of the Commonwealth...
The functions of the registries of deeds shall be transferred to the office of the Secretary of State".*

The County Commissioners

This subcommittee focused on the three statutory duties assigned to the County Commissioners: appointment of the County Manager; approval of the County budget, and making appointments. Because of widespread Island concern, it examined in detail the appointment process to other boards and commissions.

All seven sitting Commissioners were interviewed. Their length of service ranged from one year, in the case of two, up to twenty-five years for the one serving the longest. All had

² "Technology Fund" is a fund created to help the Registries pay for their increasingly expensive technological equipment.

different understandings of what the County of Dukes County represents, and offered differing viewpoints on most of the topics discussed. All appear to have the Island's best interests at heart, a sentiment echoed by the County Manager.

Two primary areas of concern were identified by all the Commissioners. The first is the resistance of individual towns to many County initiatives and efforts. A second area is the County's statutory inability to raise revenue on its own. The current funding method requires approval by two-thirds of the towns for funding in excess of the statutory assessment³. These two realities are synergistic in their impact on County initiatives.

Underlying the statutory limitations on County government, and the insular culture of the Island, is a complex relationship between individual Commissioners. At times their actions as individuals reveal a fiercely independent dynamic, which was particularly evident in the appointment process of Airport Commissioners in 2003 and 2006. On occasion this behavior also leads to gridlock, and an inability to act in a timely manner, for example, in not evaluating the job performance of the recently retired County Manager, and in not acting on his expired employment contract.

The Commissioners appoint the Island's representative to Steamship Authority governing board; a representative to the Martha's Vineyard Commission (a sitting County Commissioner); the seven Airport Commissioners (including one sitting County Commissioner); the 32-member Dukes County Health Council; the eight-member Dukes County Regional Housing Authority; the Emergency Management Director; the Dukes County Clerk⁴.

In addition the Commissioners may appoint as many Associate Commissioners as they think appropriate. Currently there are six: one each for Handicapped Access, Public Health, and Elder Affairs; and three for Youth (one adult and two youths).

The subcommittee did not study the relationship between the County Commission and past County Managers going back to 1995. It did, however, interview the recently retired manager twice: once before his resignation, and then after he made his intentions public. These interviews revealed an uneven relationship, as seen by the manager, between himself and the Commissioners. He expressed concerns about micromanagement, and the need for insulation from political considerations in order for him to effectively manage the County on a day-to-day basis.

In the event of abolishment the County Commissioners would cease to exist.

³ This means five of the seven towns in Dukes County would have to agree to an override. However, since Gosnold does not participate in any significant way in County programs, it effectively requires approval of five of the six Island towns.

⁴ By tradition this person is the elected Clerk of the Superior Court at the County Courthouse.

Outreach to the Public and Boards of Selectmen

The following public information sessions were held by the Charter Commission beginning in March 2007:

DCCSC Public Information Sessions

March 20, 2007 Listening Meeting Vineyard Haven Katharine Cornell Theater
March 21, 2007 Listening Meeting Chilmark Public Library
April, May 2007 – Dissemination of written information at Annual Town Meetings
July 12, 2007 Bristol, Nantucket, Plymouth
July 19, 2007 Franklin, Hampshire
July 26, 2007 Barnstable
Sept 5, 2007 West Tisbury Selectmen
Sept 13, 2007 Martha's Vineyard Commission and the Island Plan
Sept 27, 2007 Tisbury Senior Center Public
Oct 17, 2007 Individual Meeting Chilmark Selectman
Nov 20, 2007 Chilmark Selectmen
April 14, 2008 Meeting with Edgartown Selectmen
April 23, 2008 Public Meeting in Chilmark
April 29, 2008 Meeting with Oak Bluffs Selectmen
April 30, 2008 Meeting with West Tisbury Selectmen

The Summer 2007 Symposia

In an effort to learn from the experiences of other counties, the Commission sponsored three successive symposia with officials and representatives of other counties across the Commonwealth as featured speakers. These were the best-attended meetings the Commission held. Five counties participated, each with a unique perspective and set of circumstances. Barnstable and Nantucket each have custom charters, but Barnstable has fifteen towns and Nantucket has one. Plymouth has no charter. Both Hampshire and Franklin have been abolished and have reorganized themselves as Councils of Government (COG), which is a voluntary arrangement between some of the towns in the geographic county.

It should be noted that seven of the fourteen counties in the Commonwealth have been abolished, either voluntarily or by act of the Legislature. Of the remaining seven only four have charters. Those without charters operate with a board chairperson form of governance, as was the case in Dukes Country prior to 1995.

Neither Barnstable nor Nantucket has a County Manager form of county governance as part of their custom charters. Indeed, Dukes County is unique in the Commonwealth for having chosen one of the statutorily pre-approved forms. Barnstable has a large elected representative council in addition to county commissioners. The five Selectmen and County Commissioners on Nantucket are the same individuals, but with different members serving as the chairperson of the respective boards.

The representatives from Hampshire and Franklin both expressed dissatisfaction with the process of abolishment. In Hampshire County's case abolishment was imposed, and in Franklin County's case the negotiations with the Legislature and the Executive produced unexpected and less than satisfactory results. The strong recommendation from both representatives, based on their experiences, was for Dukes County not to pursue abolishment.

What became evident from their descriptions of life after the abolishment of county government was that an accountable and public-oriented entity, such as a voluntary council of government, was still needed. Hampshire, for instance, became an energy broker for its members, and buys electricity on the wholesale market in an effort to mitigate high energy costs.

Barnstable County, with a custom charter, has fifteen towns and a population of approximately 240,000. Its annual budget is in excess of \$20,000,000, which is funded, in large part, by a real estate transfer tax. It operates with an elected assembly of delegates from the towns, and three county commissioners.

Nantucket's experience with creating a custom charter was the most positive, and much of that was attributable, according to its representatives, to the island being a single town. Provisions were made in the charter for the county to own all the roads, and have the power of eminent domain.

Plymouth County⁵ has 27 towns, with numerous villages within those towns, and a population of almost 500,000. It has no charter and operates with three county commissioners and a town appointed assembly of delegates. The chairperson of that board was quite candid in describing the problems facing the county. These largely mirrored those of Dukes County. He specifically mentioned budget limitations, insular attitudes, public apathy, and a general lack of awareness regarding the county.

Meetings with State Representatives

Early on it was recognized that there existed a real possibility, depending on what conclusions the Commission reached, of involvement with the Legislature. MGL ch.34A requires that a charter commission petition the Legislature first if they wish to have a custom charter or pursue abolishment. Also any deviation from the provisions of MGL ch.34A in regard to the three pre-approved forms of county governance also requires special legislation. In the case of a custom charter, the charter commission must write the proposed charter and submit it as part of their petition to the Legislature. In the case of abolishment, a charter commission must write the terms of abolishment, and provide for all the functions and assets of the county. In both cases approval is not automatic, and requires hearings and negotiations with both the leadership in the Legislature and the Executive branch.

Representative Turkington met with the Coordinating Committee and the entire Commission. Senator O'Leary met with the subcommittee on legal, statutory and political concerns, and both representatives were informative, helpful, and supportive. Both strongly

⁵ As opposed to the Town of Plymouth, which currently has a charter commission.

recommended against abolishment, if for no other reason than it was irrevocable. Both also made clear that pursuing a custom charter that provided a dedicated revenue stream or county taxing authority would be a waste of time and effort. Specifically, authority for a real estate transfer tax, such as Barnstable County has, would not be forthcoming from the Legislature.

From those discussions it also became clear that timing issues would drive the Commission's work. The Commission chose not to extend its life for an additional two years in order to get legislative approval of a custom charter. Such would be the case if the August 2008 deadline for the November ballot was not met, and also very likely given the steps involved.

Representative Turkington did say that small changes, which might exempt Dukes County from one or more provisions of MGL ch. 34A, would probably go through the Legislature even if filed quite late. These small changes relate to modifying the County Manager form of governance to remove the requirement that the manager serve an "indefinite term" and be full-time.

Meeting with Representatives of the Martha's Vineyard Commission and the Island Plan

Under MGL ch. 34A, the County is empowered to offer services that can be provided more effectively regionally than by the Towns individually, and the Charter Commission is encouraged to review these functions.

The Charter Commission therefore asked representatives of the Martha's Vineyard Commission, the planning organization for Dukes County, and of the Island Plan⁶ to attend a regularly scheduled meeting on Sept. 13, 2007 to discuss areas of possible regional functions. The MVC was represented by Mark London, Director of the MVC, and the Island Plan group was represented by James Athearn, the Chairman of its steering committee. Other members of both organizations also attended.

Three broad areas of possible County-wide functions were discussed:

- Specialized Expertise – expertise and equipment not viable on a town-by-town basis. Examples: innovative wastewater systems, energy inspections, engineering, grant writing, computer functions, and water-testing.
- Regional Planning Implications – planning and development implications of having multiple towns on the Island. Examples: transfer of development rights, fiscal redistribution, mitigation funds.
- Other Possible Functions – Examples: electric utility, integrated waste treatment, education, communications infrastructure, economic development, agriculture, open space and recreation.

⁶ The Island Plan is a community-based group seeking to produce a comprehensive plan for the Island's future

Phase II Reports

A second set of three subcommittees was established to build on the work of the first six. These subcommittees had very specific questions:

- 1) What are the consequences of abolishing Dukes County with no replacement?
- 2) What is the financial structure of Dukes County, including its potential sources of new revenue?
- 3) What are the statutory, legal, and political considerations relating to charter change?

The Implications of Abolishing County Government with No Replacement

Abolishing county government with no replacement would have far-ranging effects, some of which would be immediate and readily apparent, others more subtle and long-term. These consequences are substantial and extend well beyond impacts on the activities under the direct purview of the County Commissioners and a County Manager:

If the County were abolished, under state law the ownership of valuable County real estate, improvements and equipment currently assessed at more than \$15,000,000 (excluding the Airport) would be transferred to the State with no compensation. The State could then elect to transfer or sell the properties, such as the County-owned beaches, or alternatively transfer their management to the Towns where they are located or to some other Island entity. There is no guarantee, however, that such an agreement could be reached. Finally, the Charter Commission could propose legislation to the Commonwealth providing for the ownership of County properties to remain on the Island. Again, given the varied experiences of other abolished counties and the difficulty predicting the policies of the executive branch, it is impossible to determine the outcome of such proposals.

While not a saleable asset, the loss of local ownership and control of the Airport, the County's single largest asset (assessed at \$63,676,160), cannot be ruled out.

The County Manager's and County Treasurer's Offices would cease to exist. Setting aside the value of the services they perform, the residents of the County would face the additional loss of at least \$375,000 in revenue, which would go to the Commonwealth. There can be no assurance that such revenue to the Commonwealth would be used to offset the operating expenses of the remaining functions of the County, such as the Sheriff's Office.

The Towns may be expected to pay for certain functions of the Sheriff's Office, especially discretionary functions. The FY07 operating budget for the Communications Center was \$660,000. That amount represents more than 85% of the total assessment of \$770,000 paid by the Towns in FY07 for ALL of the operations of the County.

While the transfer to the Towns of operational responsibility for regional services, such as the Communications Center, is unlikely the towns could be assessed the cost of operating discretionary regional services in addition to any proportional assessment for the other functions of the Sheriff's Office. To put this in perspective, the towns currently contribute less than

\$200,000, or only 5% of the Sheriff's total budget. Additional assessments to cover discretionary regional services provided by the Sheriff's Office could expand well beyond \$200,000.

There would be a loss of a number of regional services, many invisible to the average County resident, such as engineering, health care access, public health, rodent control, the Veterans' Agent and the MV Parking Clerk, among others. The cost to the Towns⁷ of replacing these regional services is likely to be greater than the current arrangement. In the case of several services, like the Health Care Access Program, the loss of office space and secure County funding would threaten their existence.

If the Commonwealth did not take over all county retiree obligations upon abolishment of the County, the Towns' assessments for the County Retirement System could increase.

In summary, despite the widely-held perception that town assessments would decrease if County government were abolished, the increased cost of non-regionalized services, the funding of a larger share of the cost of the Sheriff's Office, and additional funding of the County Retirement System, when taken together, are likely to exceed the towns' current assessments. This has been the experience of other abolished counties.

The new Correctional Facility, currently planned for the grounds of the Airport, would not be reviewed by either the County Commission or by the Martha's Vineyard Commission since state facilities are exempt from local review. This would remove a significant obstacle to the Commonwealth's ability to build a facility based on needs other than our own.

The residents of the County would also lose a bonding capability (rated A++) to fund regional initiatives and a safety net for towns that reach their bonding limits.

Other consequences of abolishing the County are less tangible, but by no means less real. These are likely to involve the transfer of control over the operations (and perhaps the assets) of the County to authorities on the mainland, in most instances at the state level. As a result, accountability for services would be dispersed throughout departments and semi-autonomous agencies in the Commonwealth, and there would cease to be a single, local government authority for the towns and residents of the County to hold accountable.

Finally, there would be subtle, yet important, changes over time that could diminish the ability of the County's residents to control their own future. The Island would lose a formally-chartered organization to speak with a single, coordinated voice in dealing with federal and state agencies as well as an important vehicle for providing regional services.

While the County includes the Elizabeth Islands, as a practical matter, it is the residents of Martha's Vineyard who would experience virtually all of these impacts. In effect, abolishing County government with no replacement could fundamentally change the exercise of "home rule", and eliminate the only local authority chartered to provide Island-wide leadership and regional services for the residents of Martha's Vineyard.

⁷ Unless stated otherwise, the word "towns" in this report refers to all 7 County towns, including Gosnold.

The Finances of the County and Potential Sources of Revenue

Based on information provided by the County Treasurer, the current total net assets according to the most current report conducted by Powers and Sullivan on the basic finances of Dukes County put the total net assets at cost at \$27,575,963, including the airport. The total assessed value of these assets is \$78,706,888.

Based on the Powers and Sullivan report, the total airport assets are \$21,961,546 at cost. The total assessed value of the airport property, including land, land improvements and equipment is \$63,676,160.

The County's share of the retirement system's unfunded liability as of 1/1/07 is \$3.7 million. This system will be fully funded by 2028. The airport has an additional liability of \$600,000.

Existing revenue sources are listed on the FY 2008 budget summary provided in Group 2's report. Town assessments make up 42.93% of the County's funding, not including the Sheriff or Airport. FY 07 Town assessments were \$769,531, as follows:

Aquinnah	\$28,040
Chilmark	\$147,764
Edgartown	\$252,801
Gosnold	\$8,901
Oak Bluffs	\$117,499
Tisbury	\$106,372
West Tisbury	\$108,152

Additional potential sources of revenue:

- Alarm fees that are paid to the County for alarms that come into the communications center are \$125,000. Additional fees could be obtained for business or entities using the County Communications Center, but not paying for such use.
- There is a current memorandum of agreement between the Trustees of Reservations and the County of Dukes County, which may be under-realized in income potential.
- The rodent control officer, engineering services, Cape and Island license plates, Sheriff department alarm fees, parking fees (tickets) all have existing "good" bases to extend the projected revenue streams further.
- Property leases should be explored for County owned property, for example cell tower leases on current County property. One member of the Charter Study Commission believes the County should charge the airport 2.5% per year of the assessed land value based on a land valuation of \$30 million dollars, i.e. \$750,000 in lease payments. This proposal has been strongly contested as illegal by other members of the Charter Study Commission. In the absence of assurances from counsel that such lease payments would

be legal, given loan assurances with the FAA and MAC, this proposal for lease payments is currently viewed as a minority position.

- Creating an inter-municipal agreement between several towns for the purpose of caring and housing of animals in the form of a Regional Animal Control facility. Similar agreements might also cover: parking for a fee along County controlled beaches, regional efforts of the Boards of Health, joint purchasing, license fees for State Beach vendors and the deeds excise tax.
- A County Room Tax or Hotel/Vacation Rental fee. This percentage would be added to the current state and local room tax which currently totals 9.7%. Additionally, a rental tax on rental homes could provide additional revenue.

The Statutory, Legal, and Political Issues Association With Charter Change

MGL ch. 34A describes the structure and responsibilities of a charter study commission in some detail. This Commission exists either until it recommends that no changes be made in our charter, or until one month after the election at which its recommendations are considered by the voters. For this Commission the likely end of its term is December 2008.

The Commission may recommend no changes (no voter approval required), adoption of one of three statutorily pre-approved forms of county governance, a custom charter, or abolishment of county government with or without a replacement. Rejection of the recommendations by the voters continues the current structure of county government. Abolishment of county government can occur only upon recommendation of a charter commission with the consent of the Legislature and voters, or it can be initiated and implemented by the Legislature.

A custom charter, or abolishment, would go into effect, at the earliest, on January 1, 2011. Implementation dates are set by the Commission, but subject to state election law. General elections occur in even-numbered years.

The Commission may also submit to the County Commissioners whatever recommendations it deems appropriate for the efficient administration of the County, and such recommendations are not subject to the election schedule.

The three statutorily pre-approved forms are: an elected County Executive, which no county has adopted; an appointed County Manager of which Dukes County is the sole adopter; a rotating Board Chairperson, which several counties utilize without charters. A custom charter requires pre-approval by the Legislature before the voters decide. Both Nantucket and Barnstable have custom charters.

Legislative involvement for either a custom charter or abolishment requires the active support of our Representative and Senator. Both have signaled their willingness to cooperate, with certain conditions. The sub-committee recommended against any action involving the

Legislature for several reasons, one of which is concern over timing and the possible delay involved.

Political concerns are numerous: many Island residents are discouraged, and perhaps disillusioned, by the role of County government in recent events, especially with regard to the airport; intermunicipal cooperation has not flourished as some hoped it would when the current charter was adopted; and the interpersonal dynamics on the County Commission have become an issue. Nevertheless, the sub-committee has identified reasons for retaining county government. Not least among them is the irrevocability of abolishment.

Key Issues Facing County Government

Upon the conclusion of our Phase II studies, the Commission began formulating its recommendations for the future form of county government. Emerging from this work was a recognition by the Charter Commission that it would need to exercise its statutory right to make administrative recommendations to the County Commission. In doing so, it explored ways for the County Commission to fulfill the mission and purpose of county government, as outlined in MGL ch. 34A §16:

- 1) To develop effective services to meet problems which cross city or town boundaries and which cannot be met effectively on an individual basis by the cities and towns, or the state,
- 2) To establish innovative programs, and
- 3) To perform such regional services as the Constitution of the Commonwealth of Massachusetts and the General Laws permit.

This overarching concern led the Charter Study Commission to make recommendations designed to:

- 1) Rebuild the trust of the voters
- 2) Develop more positive and supportive working relationships with town governments
- 3) Strengthen the County's relationship with other regional organizations
- 4) Create a healthier and more stable financial structure
- 5) Encourage a broader range of candidates for the Dukes County Commission

Conclusions and Recommendations

Retain County Government

The implicit, if not explicit, question facing this Charter Commission was whether County government should be retained. This issue was clearly on the minds of many voters in 2006 when they voted in a large majority to establish the Commission. In the pre-election period commissioner candidates were frequently approached with, “Where do you stand on County government?” Some of the questioners were interested in abolishment, others not. There was a clear divide. However, secondary issues surrounding the binary choices were not generally expressed by voters or necessarily understood by the candidates. However, many Commissioners for themselves, and from their contact with voters, expressed a generalized frustration with the performance of County government.

A second important question was whether the contentiousness and controversies swirling around the County Commissioners, the Airport Commission and the County Manager were a result of structural problems created by the 1995 charter or an outgrowth of the interpersonal dynamics of the individuals involved. This question was stated very clearly by one of the Charter Commissioners: “Is it the car, or the drivers?”

Neither question lends itself to either a quick or simple answer. Thus the Charter Commission undertook a thorough review of all aspects of County government, charter change, and the implications and consequences as well as the process of abolishment.

It became clear to the Commission after the Phase I reports were completed and presented that Dukes County faced some long-term challenges, especially budgetary. It also became clear that the loss of home rule, and a ready mechanism to address Island-wide problems without special legislation were dire consequences of abolishment. Moreover, the transfer of assets valued at \$73,000,000 to the Commonwealth without compensation would represent a major financial loss to the citizens of Dukes County.

A word about the abolishment process: A county cannot be abolished by citizen petition. Abolishment of a county is accomplished in one of two ways only: the Legislature may initiate and implement the abolishment without the consent of the voters in that county; or a charter commission may petition the Legislature for abolishment. In the latter case the charter commission proposes terms of abolishment in its petition to the Legislature. A negotiation with the Legislature and the Executive follows with unpredictable outcomes.

The Legislature eventually approves terms of abolishment, which may be very different from those originally proposed, and then the voters decide at the next general election whether they wish to proceed with abolishment. This very political process was a parallel track to all six Phase I subcommittee deliberations, each of which was specifically tasked with establishing what would happen to the various departments of the County in the event of abolishment.

When all the facts were assembled, the Commission was persuaded to recommend maintaining County government. Several Commissioners who had earlier indicated support for abolishment changed their minds. A preliminary vote in August and a final vote in May, by near unanimous majorities, reaffirmed the need for County government to continue.

Retain County Manager Form

A thorough review of County government's structure has led the Commission to reaffirm the other conclusions of the 1990 Charter Commission in almost all respects. The need for professional management, and a clear separation between the legislative and executive functions are, in the judgment of the Commission, still the best structure, but with two modifications: the County Manager should not serve an "indefinite term" or necessarily be a full-time employee, as required by MGL ch. 34A §18. The Commission recommends filing special Legislation for a waiver of these requirements for Dukes County.⁸

These two recommendations answer the question concerning whether the "car" or the "drivers" are responsible for the operational and public relations problems of the County. By not recommending major changes in structure the answer is the "drivers". This finding is responsible for the extensive recommendations to the County Commissioners for the "efficient administration of the county", as provided in MGL ch. 34A §12.

There was considerable discussion, and some support, for petitioning the Legislature for a custom charter, which both Barnstable and Nantucket have. None of the three statutorily pre-approved charters is a precise fit for Dukes County. Aside from its small population, its geography presents unique circumstances for governance not shared by the other urban, suburban and rural counties in the Commonwealth.

The process for securing a custom charter is similar to abolishment. The Charter Commission must first write the custom charter in its entirety, present it as a petition to the Legislature, which has to approve it (most likely with unpredictable changes) before the voters have an opportunity to adopt or reject it. The Commission concluded that there were no compelling reasons to pursue a custom charter. Furthermore, there was insufficient time to complete the process in the current legislative cycle. As a result this option was removed from consideration.

Election of the County Commission

Several meetings of the Charter Commission considered how County Commissioners should be elected. MGL ch. 34A §12 specifies that a charter commission may determine the number and term of county commissioners, whether they serve concurrent or staggered terms, and whether they are to be elected at-large or by districts.

The 1990 Charter Commission also considered these options, and the current seven-member County Commission, elected at large (no more than two serving from any one town) for four-year staggered terms is the structure recommended and adopted by the voters in 1994. In all

⁸ The County Commissioners adopted a resolution by unanimous vote on May 14, 2008 to file such legislation.

respects except two, this Charter Commission eventually recommends keeping the same system. The exceptions being a recommendation that in the future Commissioners serve two-year and concurrent terms.

Discussion and debate centered around accountability to the voters (two-year terms) vs. continuity and stability (four-year staggered terms). Three-year terms are not possible since MGL ch. 34A requires election of county commissioners at a general election, which occur in even-numbered years. Two-year terms also means all the seats on the County Commission are elected every two years, which means staggered terms are not possible. Some Commissioners also felt that shorter terms would not only encourage accountability to the voters, but would lead to more candidates standing for election.

Election At-large

Both the 1990 and the 2006 Charter Commissions attempted to find ways to elect county commissioners by district rather than at-large. Election by district requires attention to the one-person-one-vote requirement. While there are various methods of respecting this requirement, e.g., weighted voting, drawing district lines to equalize populations, and combining towns, such methods can prove cumbersome, be unacceptable, and may even seem un-democratic in practice.

This Commission found, as did the 1990 commission, that voting by district was not a realistic alternative, and not in the interests of promoting an Island-wide approach to County government. It therefore reaffirmed retaining electing county commissioners at-large.

Keep Seven Commissioners

The subject of the number of county commissioners produced a great deal of discussion and debate. There were those who argued for three, five or seven commissioners, each with a justifiable rationale. The 1990 charter commission also had this discussion and decided that seven commissioners, no more than two from a town, provided for the greatest Island-wide representation without creating a overly large and cumbersome county commission. With seven commissioners, no more than two from a town, a guarantee of representation from at least four towns is established. Therefore this also guarantees one commissioner from at least one up-Island town. Ultimately, the 2006 Charter Commission agreed with the 1990 commission, and voted to continue seven commissioners.

Implementation Date

The Commission voted unanimously to recommend implementation of the proposed new charter on January 1, 2009. This date makes it possible for the four seats on the County Commission expiring in 2010 to become two-year terms as provided in the new charter, if the voters agree. This in turn means that all seven seats on the Commission would become two-year terms beginning with the 2012 election.

Administrative Recommendations

In the eyes of many Charter Study Commissioners, the issue facing the Commission was never one of form, but instead of substance, namely how the affairs of the County are conducted. The performance of County government does not lend itself to easy solution through legislation or a restructuring of County governance.

As a result, the Charter Commission has recommended few major changes in the current form of County government. Instead, it has chosen to make administrative recommendations addressing the functions and functioning of the County, as well as the selection of County Commissioners. These recommendations are consistent with the provisions of MGL ch. 34A, which permits such recommendations. In the course of its deliberations the Commission discussed and debated a series of administrative issues.

Specifically, should the Charter Commission recommend:

- Revisions in the DCC Appointment Process
- Revisions in the terms of employment of a County Manager under the County Manager form of government?
- Mechanisms to improve the accountability of the County to the voters (in addition to term lengths)?
- Measures to strengthen the County's relationship with other regional organizations?
- Mechanisms to improve the accountability of the County to the Towns?
- Options to enhance county revenues and/or reduce operating expenses?
- And finally, actions designed to encourage a broader range of candidates for election as County Commissioners?

The Dukes County Commissioners are not bound by these recommendations. They may adopt them in whole or in part, regardless of whether the new proposed charter is approved by voters. However, the current County Commissioners participated actively both in drafting the initial recommendations and in securing their approval by the full Charter Commission. As a result, these recommendations offer the promise of far more impact on the actual performance of County government than major structural changes would.

See Appendix for the full set of administrative recommendations approved by the Charter Commission. The following are highlights of these recommendations:

The Accountability of the Dukes County Commission to the Voters

While a number of recommendations were made, several stand out as particularly important. One would require that a question calling for the creation of a Dukes County Charter Study Commission be placed on the County/State ballot every eight years beginning from the election of November, 2008. This would ensure that at least every eight years the voters will have an opportunity to express their confidence in the County Commission, without being forced to initiate a citizen petition to formally reopen an examination of county government.

The second would incorporate provisions for voter-initiated recall of county commissioners into the Administrative Code and pursue special enabling legislation, if needed. While recourse to the option of recalling a County Commissioner may never be needed, this provision, coming on the heels of the decision to limit the length of terms of office for County Commissioners to two years, is intended to shift the balance of power in the direction of the voter.

The County Commission's Relationships with Town Governments.

Counter-balancing its recommendations concerning the accountability of County government to the voters at large, and its responsibilities for addressing unmet regional needs, the Charter Commission made a series of recommendations designed to strengthen the relationship between the County Commission and the Towns.

First, it recommended that the County Commissioners formalize their current practice of engaging the County Advisory Board in establishing County objectives and in preparing the annual budget. It also recommended that the County Commissioners work directly with Town Selectmen to strengthen the All-Island Selectmen organization as a forum for addressing issues of multi-town and regional concern. Finally it recommended a series of measures designed to build relationships, on a peer-to-peer level, between the County Commissioners and the County Manager on the one hand and the Selectmen and Town Administrators, on the other.

The goal of all these recommendations is to ensure that the County is seen not as another layer of government, but instead as a complement to town government charged under MGL ch. 34A, §16 with the responsibility to develop "innovative programs" and "effective services to meet problems which cross city or town boundaries and which cannot be met effectively on an individual basis by the cities and towns, or the state".

The County Commission's Relationship with Other Regional Organizations.

These regional organizations include the Martha's Vineyard Commission (MVC), the Island's Public Schools, MV Regional Transit Authority, MV Refuse Disposal District, Dukes County Housing Authority, and other functions that might be more efficiently provided on a regional basis.

The Charter Commission's recommendations would place new burdens on the County Commissioners to assume a direct liaison responsibility with one or more specific inter-municipal/regional organizations, including Planning (MVC), Affordable Housing, Water Protection (including Waste Water Management), Solid Waste Management, Economic Development (including Agriculture), Energy, Transportation, Public Safety, and Health & Human Services.

The recommendations also create expectations with respect to how the County Commissioners should work with the other regional organizations, first and foremost, the MVC. The collaboration envisioned is particularly pressing given the work of the MVC to formulate an "Island Plan" designed to have a significant impact on the future of Martha's Vineyard in a wide

range of areas such as water quality, housing, traffic and transportation, open space, growth and economic development.

Finally, the Charter Commission commended the County Commission for its current efforts to open a dialogue with the Wampanoag Tribe of Gay Head (Aquinnah) and urged the Commission to identify “mutually agreeable” mechanisms for creating a productive partnership.

Opportunities to Enhance County Revenues and/or Reduce Operating Expenses.

Building on the findings of the Phase II Sub-Committee charged with the responsibility of analyzing the County’s finances, the Charter Commission urged the County Commissioners to pursue a series of income-generating opportunities including fee-based services; full State funding of the State’s portion of the Courthouse assessment; aggressive pursuit of Federal, State and private grants, including Federal grants for the preservation of historic buildings; fees for use of County properties; the sale or leasing of County assets, participation in a regional power or other utility as well as other innovative and creative ways for raising revenue, including a County room’s tax.

The Charter Commission also recommended that the Department of Revenue (DOR) be asked to conduct an operational assessment of the County, similar to the DOR studies performed for several Vineyard Towns.

Revisions to the County Manager Form of Government

Two major recommendations were made. The first and most far ranging of these was to recommend that the County Commission seek special legislation that would exempt Dukes County from the language in MGL ch. 34A, §18 that states that the County Manager “shall serve for an indefinite term” and “that the position is and shall be a full-time position”. This recommendation has already been approved by the County Commissioners, and the special legislation will be requested in January 2009 when the new session begins.

The second recommendation would require that the County Manager reside on Martha’s Vineyard after the incumbent’s initial probationary period without allowing a waiver by the County Commission.

Revisions to the Dukes County Commission’s Appointment Process

These recommendations include limiting to one the appointment of a County Commissioner to a given organization, unless otherwise restricted by MGL. For example, the Steamship Authority member cannot be a DCC Commissioner. They would also prohibit the appointment of any County Commissioner to an agency that compensates its members (e.g. the Retirement Board).

There are also a series of recommendations designed to delay the consideration of appointments from January until March, except where specified to the contrary by MGL. The intent of these recommendations is both to eliminate the practice of advertising and considering

candidates during the holiday season and to give new Commissioners the opportunity to evaluate all candidates.

Finally, the recommendations would impose reporting requirements on all appointees and organizations appointed by the County Commission and a two-way sharing of issues and concerns.

Broadening the Range of Candidates for the Dukes County Commission

To be successful, all of the Charter Commission's recommendations, both structural and administrative, will depend on the quality of the candidates willing to stand for election as County Commissioners.

The Charter Commission, therefore, recommended that the County Commission assume direct responsibility for publicizing no later than the beginning of April of each state/county election year, the requirements, schedule and deadlines for seeking election as a Dukes County Commissioner. They also recommended that a wide variety of communication vehicles be used, including (but not limited to) the County website, press releases, advertisements, community announcements, and other tools to widely communicate the information. Finally, the Charter Commission recommended that the County Commissioners ensure that all of the forms that must be completed by potential candidates be provided in readily available locations at the County Administrative Office, the Courthouse and the offices of all Town Clerks.

Looking to the Future

As the members of the 2006 Dukes County Charter Study Commission complete our 18-month task, we offer some final thoughts about the future of County government.

The County exists to serve the needs of its citizens and its town governments. It will be successful if people of good will – County officials, Town officials, voters, and residents – work together to achieve important Island goals.

It is essential for the Dukes County Commissioners and the County Manager to lead effectively. They must:

- Rebuild the trust of voters through thoughtful, well-communicated actions that are relevant to Island life.
- Develop and nurture more positive and supportive working relationships with town governments.
- Strengthen the County's relationship with other regional organizations.
- Create a healthier and more stable financial structure for the County.

Success will also depend upon thoughtful, supportive voters, who:

- Stay informed about County issues and share constructive opinions and ideas.
- Encourage a broad range of candidates to run for the Dukes County Commission.

- Support candidates for the Dukes County Commission by giving financial support and working on candidates' campaigns.

Finally, the late Art Flathers was fond of saying:

“Martha’s Vineyard is not a single Island. It’s actually six islands connected by land.”

Every resident of Dukes County would do well to ask why this is and whether it needs to stay that way. Indeed, the ultimate success the Charter Commission’s recommendations will be determined by the spirit, enthusiasm and competence with which they are implemented. However, for these recommendations to be truly effective, it will be the responsibility of the citizens of the County to approve the proposed charter revisions; to step forward and serve, where needed; and to hold the County’s elected representatives accountable for ensuring their full and complete implementation.

Members of the 2006 Dukes County Charter Commission:

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Les Leland

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