

The 2021 Wicomico County Charter Review Committee met on September 2, 2021 at 5:00 p.m. in the DaNang Room of the Civic Center, Salisbury, Maryland.

Members Present: Dallas Baker, Julie Bellamy, Mike Dunn, Doug Gosnell, Katherine Jones, Sharon Morris, David Plotts, Michelle Chesnik, Anthony Sarbanes, Wayne Strausburg, Philip Tilghman, and Blair Todd. Bob Benson, Mat Tilghman, and Sonya Whited were absent.

Staff Present: Laura Hurley, Recording Secretary, and Andrew Illuminati, Esquire.

**Approval of Agenda:**

**On motion by Mr. Strausburg and seconded by Mr. Phil Tilghman, the Agenda was unanimously approved.**

**Approval of Minutes from July 15, 2021:**

**On motion by Ms. Sarbanes and seconded by Ms. Bellamy, the Minutes from the meeting of August 19, 2021 were unanimously approved.**

**Review of Article VII. Budgetary and Fiscal Procedures:**

**Section 706:**

Mr. Dunn said Mr. Strausburg did some independent work on Section 706, which addresses the revenue cap in Wicomico County. He said the revenue cap is extremely complicated, and it is well known in Wicomico County that they have a revenue cap. He said a long time ago there was a forum held at Salisbury University, which Mr. Strausburg was a part of.

Mrs. Hurley then handed out a packet of information that was provided by Mr. Strausburg, who said he will walk them through the history and how the revenue cap impacts County finances.

Mr. Strausburg explained, the first page gives them a sense of what comprises the County general fund revenue based on the current fiscal year budget. He said their current real property taxes are projected to be \$61.3 million dollars, which is 39 percent of their general fund revenue. He said their local income taxes are \$56.4 million, which is 35 percent of their total revenue. He said use of prior year fund balance, which is really just operational savings, is \$4 million, which is 2.5 percent of general fund revenue. He said, when they take those three components, that is 76.5 percent of their general fund revenue, so they are at the State's maximum allowable local income tax rate, which is 3.2 percent, and they do not have the ability to raise the local income tax rate, which, from his standpoint, they would not want to do because he thinks that would be economically and fiscally counterproductive.

Mr. Strausburg said he went back five decades to see how the rates of inflation have behaved. He then reviewed averages, highs and lows by decade starting with 1970 up until 2010. He said they have the past five decades in detail and can see that the number of years where the inflation rate was above 2 percent was 37 out of 50 years, the number of years that it was 2 percent or less was 13, and the five year decade average rate was 3.9 percent.

Mr. Strausburg said he selected Counties that are their approximate size to try to give the Committee a sense of how their real property revenue and local income tax revenue behaved. He then went over

those numbers for the Committee and said Wicomico has the lowest real property revenue yield of any of the Counties he reviewed and also the lowest local income tax yield of any of the four Counties.

Mr. Strausburg clarified, he is just presenting this to the Committee as data, and he is not opining. He said the other thing he wants to pass along is, looking at their housing market, the movement and the average prices of homes sold year to date in Wicomico County, the average value of a home sold has risen by 10.2 percent, and he points that out because, when they have a 2 percent revenue cap, that natural buoyancy in their base is suppressed by the revenue cap. He said, without the revenue cap, a third of the County would be reassessed and the values would probably move 10 percent.

Mr. Strausburg clarified, again, he is not taking a position, he is just pointing out that this is how the math works and he thought that would be helpful in terms of any discussion the group wants to have with regard to the revenue cap and any recommendation the group might want to make.

Ms. Chesnik said she thinks, before they do anything overall, they need a very good, very wise comprehensive tax study to look at all avenues available before they hit the tax cap. She said the voters voted for the tax cap and they voted for a specific reason, and that was to try to keep things under control. She then talked about how she thinks inflation will be going up.

Mr. Strausburg said he will point out that, since the revenue cap was imposed, for the past 20 years they have had a relatively low inflation environment. He said, in that regard, he does not believe the revenue cap over the past two decades has really done the County damage in terms of increased costs to the County exceeding the amount of revenue.

Councilman Joe Holloway came to the microphone and asked why raising the property tax rate is just as counterproductive, to which Mr. Strausburg responded, he is not taking a position, he is simply trying to present the group with the financial fiscal history and the inflation rates that they have experienced as a country over the past 50 years. Mr. Holloway said he understands Mr. Strausburg is not taking a position, but he made the statement that it would be counterproductive to raise the income tax rate because they are at their limit anyway, which is fine, but what would be the difference? He said, in both situations, they are taking money out of citizens' pockets, to which Mr. Strausburg responded, there are certain things the County is going to have to pay for in the future, and they are going to have to find revenue to do it. He said he has heard a lot of talk about water and sewer, and that is going to be enormously expensive, and they are going to have to find the money to pay for it if they want to build it.

Dr. Jones said there is a question from the Council as to whether a provision should be added to clarify how the 2 percent is calculated, and should there be special exceptions allowed to go over the revenue cap, such as financing a new Sheriff's Office.

Mr. Strausburg said the County already has the ability under State law to exceed the revenue cap for the Board of Education.

Mr. Dunn said Mr. Benson, who is not here tonight, prepared some research in regards to this topic and the other Counties that put forth Charter amendments for the voters to consider, which all passed.

Mr. Dunn said there is no bigger controversy in Wicomico County than the revenue cap. He said it went to the voters a long time ago, and every time there is discussion on it, it is a pretty heated discussion. He said he is of the belief that the Charter Review Committee should see this as a serious political hot

potato, and does not think it is their role to go down this path. He clarified, that is just his personal opinion, and he appreciates the data Mr. Strausburg and Mr. Benson put together, but he thinks this Committee would be better served by leaving this political hot potato to the Elected Officials.

Ms. Chesnik agreed with Mr. Dunn.

Ms. Bellamy asked if it will be on the record that the Committee is making no recommendation or prioritizing this at all, to which Mr. Dunn responded, just like anything else, if someone wants to make a motion, he will gladly entertain that motion. He clarified, he is saying that this is a big issue that is a political issue and probably should be left to the political Elected Officials to handle, and that might be their comment on this Section.

Mr. Phil Tilghman said he agrees with Mr. Dunn. He said it might be worth pointing out that in the years in the budget when it was possible to raise taxes and stay within the revenue cap provisions, the Elected Officials failed to do that, so the base keeps dwindling. He said, if this Committee suggests a change, they would be asking the same Elected Officials who have never opted to raise the taxes to put it on the ballot to raise the taxes, which he does not think they will do, so he thinks it is almost a moot question. He said the atmosphere and public opinion regarding the revenue cap is that it is a good thing for Wicomico County. He clarified, some do not agree with that, and he was personally involved when the revenue cap was imposed, and the voters spoke overwhelmingly to have a revenue cap. He said he agrees that they can spend a lot of time on this, but he thinks they would be wasting their time.

Mr. Strausburg said he agrees with the sentiment on this because he thinks this is a decision for their elected leaders, but he will follow up on what Ms. Chesnik suggested. He said he thinks they could suggest a tax study for the County in terms of how they better position themselves to raise revenue. He said he has no intention of getting involved in a campaign to do anything with the revenue cap, but he thinks a study of County tax policy is a very good idea, and maybe the Committee should suggest that.

Mr. Dunn said he is more comfortable letting the Elected Officials decide if a tax study is warranted.

Ms. Bellamy said, if the Committee does nothing on Section 706, historically, it means they are okay with it like it is, to which Mr. Dunn responded, they have never needed a motion to not change anything. He clarified, it is not necessarily saying they are okay with the way it is, they are just trying to be pragmatic that some of the recommendations this Committee will make are not going to go anywhere, so this all comes back to prioritizing what they are doing. Ms. Bellamy said she just wants to make it clear that the Committee is not shirking their responsibilities.

Ms. Morris added, she agrees with what has been said, but her interpretation of the Charter Review Committee is to ensure that processes are in place, and she thinks that is what they are doing.

There was no further discussion.

#### **Section 707:**

Mr. Dunn asked Mr. Illuminati to read the change that Mr. Wilber worked on for this Section.

Mr. Illuminati said it currently reads that the County Council may, by Resolution, change any of the dates set forth in Section 704 and 705 herein. He said Mr. Wilber's suggestion based on the previous comments is to keep everything after that the same, but insert as follows:

***The County Council may, by Resolution, change any of the dates and corresponding hearing dates set forth in Sections 704 and 705 herein, provided that said Resolution states the reasons for said change or changes. Such Resolution shall be effective only during the fiscal year in which the Resolution is adopted, subject to the restrictions set forth in Section 705.***

Mr. Dunn reminded the group, the CIP often gets postponed at the beginning of the calendar year, and the Committee agreed that the Public Hearing dates should perhaps correspond with the postponing of the CIP, so this language would say that. He clarified, when the CIP deadline date is due, both the Council and the Executive in recent years have postponed that date, and this would say that, if the date gets postponed, the corresponding Public Hearings would also get postponed.

**There being no further discussion, on motion by Mr. Phil Tilghman and seconded by Ms. Morris, the recommendation to use the proposed language for Section 707 was unanimously approved.**

**Section 712:**

Mr. Dunn said they will pass on this Section until Mr. Wilber returns. There was no further discussion.

**Discussion of Article VIII. Purchasing:**

**Section 801:**

There was no discussion.

**Section 802:**

Mr. Baker said 802.A states that contracts for purchase shall be awarded to the lowest responsible bidder, but he is wondering if it should be changed from the lowest responsible bidder to the most qualified bidder. He said he thinks a lot of times the lowest priced thing does not really seem to work out, and he is just wondering if most qualified might be a better fit. He said, from experience in Public Works, they would get stuck with the lowest bidder, but then have change order after change order after change order trying to get the job done they wanted done. He said, by the time they were done, they had spent as much or more than the company or piece of equipment they were originally trying to get. He then suggested it could also say lowest and most qualified bidder. He said, when they base a bid selection solely off price, it becomes challenging to make sure they are getting what they actually need.

Mr. Todd said, when the Charter talks about responsible bidder who has complied with the specifications and standards set forth in the bid, it seems as though that means they are qualified. He said just having the word qualified is not going to 100 percent guarantee they do not still get that lowest bidder who does not do the best job. Mr. Baker clarified, maybe the best qualified is not the best term, and maybe there is a better term to use.

Ms. Morris suggested saying the lowest qualified bidder.

Ms. Chesnik asked what the difference is between qualified and responsible, to which Mr. Baker responded, responsible is based on what the bidder provides. He clarified, if they are asked to provide ten different pieces of documentation with the bid, they provide all pieces of documentation. He then gave an example of a situation where there were five bidders who met all of the qualifications, but they had to go with the lowest bidder because, if they went with the highest bidder, they could get sued by the lowest bidder based on the language.

Ms. Chesnik suggested calling it the lowest responsible qualified bidder.

Mrs. Hurley pointed out, there is an exception to this in letter B that they can come before Council to get permission to award it to someone who is not the lowest responsible bidder.

Mr. Holloway came back to the microphone and said he remembers one time when the Council took the advice of the Public Works Department to not accept a lower bid for paving because they did not think they had enough equipment to do it in a timely fashion, so the Council overrode and gave it to the next lowest bid.

Mr. Dunn said, to that point, the Council does not just take the lowest bid, they have the opportunity to have a conversation about the bids. Mr. Holloway clarified, the Council does not usually approve the bids, it is done through the Executive's Office, but, if there is a conflict, that is when it comes before the Council, and they rely greatly on the expertise of the Public Works Director and the Executive's Office.

Mr. Strausburg said, to follow up on Mr. Todd's comment, when they put something out to bid, they have to have a really comprehensive spec. He said he understands what Mr. Baker is saying, but he does not think they should modify the Charter. He said he thinks they should look at the operational performance and operational policies and procedures to ensure that they are writing as tight and comprehensive specs as they can, and then, when they review their bid processes, that they are doing as good a job as possible in reviewing the specs to make the best decision. He said this is really an operational matter that needs to be tightened up, and he thinks that is where they need to address it.

Ms. Chesnik said she did not see anything in the requested changes from the Council on this at all, to which Mr. Baker responded, this is purely from experience he had.

Mr. Dunn reminded everyone that the Committee is not just reacting to the recommendations of the Council, they have the opportunity to look at the Charter independently without necessarily looking at the Council's comments.

Mr. Gosnell said he thinks requiring a bid for \$5,000 is awfully low. He said they probably cannot get tires for a piece of equipment for \$5,000 and he does not think they should have to get bids for that.

Mrs. Hurley said it also says, or such amount set by Legislative Act, to which Mr. Baker responded, he thinks they raised it to \$25,000 for competitive bidding and a threshold of \$10,000-\$25,000 for three quotes. Mr. Dunn said it does not say that in the Charter, but it sounds like it has already been handled.

Mr. Dunn said he is going to oppose this because he is not sure it is possible to qualify or quantify the phrase "most qualified." He said he realizes that the lowest responsible bidder covers it based on what he has heard here tonight, he just has trouble quantifying or qualifying what defines most qualified.

**Mr. Baker made a motion to change 801.A to revise the language to state contracts for the purchase shall be awarded to the lowest and most qualified responsible bidder, which was seconded by Ms. Morris. The motion failed with 5 in favor and 7 opposed.**

Mr. Sarbanes said Section 801.B is about the school system and says that the provision in A applies to schools, but school construction is not in that. He said, as he recalls, school construction deals directly with the Board, it is State funding and has nothing to do with the Council, and he does not know if this

blocks that out. He said he thinks they ought to clear that up a little bit because, when he reads B, it sounds like school construction falls in that same category, so maybe they should address that.

Ms. Morris said they may need to look at the electronic version of the Charter because, if you click on a section, it will give an explanation, so it might already be addressed there.

Mr. Holloway came back to the microphone. Mr. Dunn asked if school construction has ever been an issue that the Council has had, to which Mr. Holloway responded, they have a Councilmember who serves on the School Construction Committee. He said, other than paving of parking lots, he does not know, but there is a lot of intermingling of purchases that would go on as far as construction of the schools, such as if the County and schools needed new laptops at the same time.

Mr. Dunn asked Mr. Strausburg if this might be a problem, to which Mr. Strausburg responded, he suspects this was intended to impose the same requirement on the Board of Education if in fact the materials were being paid for directly by the County. He said, in terms of school building construction, the County's only role, at least during his time in the Executive Office, has been to appropriate the funds necessary to build the school. He clarified, the Administration does not get involved, but the School Building Commission does, and the County Executive has a representative on that Commission as does the County Council. He said the School Building Commission does an excellent job, and he has never seen a problem in that regard.

Mr. Dunn suggested someone look at the online version, as Ms. Morris mentioned, and then they can come back and discuss this further.

There was no further discussion.

**Section 803:**

There was no discussion.

**Article IX. Miscellaneous Provisions:**

**Section 901:**

There was no discussion.

**Section 902:**

There was no discussion.

**Section 903:**

Mr. Sarbanes said often times if someone wants to look at a record, they are able to come in and look at it, but if someone wants two pages copied, there is a cost. He said this is a way to avoid complying with a citizen, so he would like to see them add "reasonable time and cost."

Ms. Bellamy said Section 903 has a footnote stating it will follow the Maryland Public Information Act. She said, if they are going to use that document, they certainly do not want to overstep by adding anything here, so they should check on the details of the Public Information Act.

Mr. Illuminati said the Public Information Act allows the government to set a reasonable cost, which factors in supplies, time, and energy. He said it is usually about 50 cents per page and then there is a certain cost for CDs. He said the State Law does not set a cost, so they could make a recommendation for the Council to set a cost.

Mr. Strausburg said it is currently addressed by State Law.

There was no further discussion.

**Section 904:**

Dr. Jones said the Council has requested the Committee look at this Section to see if it should be expanded to provide the Council oversees the external audits.

Mr. Strausburg said he thinks that is a bad idea. He said getting the audit done is a really cumbersome task. He said the auditors are hired by the Council, the auditors present the full audit and financial statements to the Council, so he does not see the need for changing the process.

Dr. Jones agreed with Mr. Strausburg.

Ms. Morris said she agrees as well. She said that process is a day to day operation, and it falls under the Executive because he is available every day.

There was no further discussion.

**Section 905:**

There was no discussion.

**Section 906:**

There was no discussion.

**Section 907:**

There was no discussion.

**Article X. Manner of Terminating this Charter and Making Amendments Thereto:**

**Section 1001:**

Mr. Sarbanes said this refers to County Commissioners, but prior to the Executive form of government, it was the County Council, so he thinks it should say County Council.

Mr. Dunn said it may have been a typo, but it is one that they probably should address.

Ms. Bellamy said Section 1201 addresses this.

**Mr. Strausburg made a motion to change any mention of County Commissioners in this Section to County Council, which was seconded by Mr. Sarbanes.**

Ms. Morris said this could be included in definitions and rules, which is Section 1101. She said they could add a rule, and that way it would not have to go to the voters, it would be part of the definitions rule.

**Mr. Strausburg withdrew his motion.**

Mr. Dunn said this Section states that the Council can vote to terminate this Charter and return to the previous form of government with 5 votes, and he is a little uncomfortable with that. He clarified, that would have to then go to the voters.

Mr. Phil Tilghman said Section 1002 also says the Council can amend the Charter by five votes.

There was no further discussion.

**Section 1002:**

There was no discussion.

**Article XI. Definitions and Rules:**

**Section 1101:**

**Ms. Morris made a motion to change the word Commission when it appears throughout the Charter to County Council, which was seconded by Mr. Phil Tilghman.**

Dr. Jones said, just to make sure this is in line with all of the other changes, they should add a number 15 to state the words County Commissioners shall refer to County Council. Ms. Morris said she is okay with that language.

**There being no further discussion, on motion by Ms. Morris, seconded by Mr. Phil Tilghman, and unanimously approved, the recommendation was made to add number 15 to state the words County Commissioners shall refer to County Council.**

Ms. Chesnik said, as the Committee goes back and looks at things again, she noticed in this Section it states that the word shall is to be construed as mandatory, and that the word may is to be construed as permissive, so perhaps that would apply to other suggested changes the Committee has made.

**Article XII. Transitional Provisions:**

**Section 1201:**

There was no discussion.

**Section 1202:**

There was no discussion.

**Section 1203:**

There was no discussion.

**Section 1204:**

There was no discussion.

**Section 1205:**

There was no discussion.



Mr. Strausburg said this Article is Transitional Provisions, which is history. He clarified, this is how they transitioned from the County Council form of government to the Executive form of government. He said revisiting history is a moot point.

**Chairman Comments:**

Mr. Dunn said they have gotten through the entire Charter, but they still have some Sections that were going to be researched by Committee members who are not here tonight, so they will get a report on those at the next meeting. He said otherwise, moving forward, they will have their completed scorecard reflecting their recommendations, and they will go through that. He then suggested they all look at that before the next meeting to be ready to rank them and ready to revisit each one of them.

Mrs. Hurley said there are a couple more items on the list of questions from the Council, so they can look at those at the next meeting.

**Public Comments:**

Mr. John Palmer came to the microphone and congratulated the Committee on finishing in such a quick time. He said he is sure the citizens will all enjoy that. He said he is so glad Mr. Dunn mentioned history earlier when he first started to talk. He said he remembers at about the second meeting Mr. Sarbanes mentioned about the revenue cap and he said it was done by the people and it should only be changed by the people, and he thoroughly agrees with that. He said he was one of the originators of that Legislation, and he remembers why it started, and he thinks history should remember some pretty distinct things. He said it was down at the Ward Museum when it was announced that there was going to be a 24 percent property tax increase that year, but what a lot of people did not hear right after that was the section where they said they were also going to add an 11-14 percent increase the following year, and that is when people really got into an uproar. He said that got his attention, and, in fact, he was at the meeting at Salisbury University that Mr. Strausburg attended. He said he was invited, and has no idea why he was invited, but the meeting went very well, so that is a part of history he would like to remember. He said Mr. Strausburg spent a lot of time on the figures he presented tonight, and he appreciates that and will take that home and read it over a couple of times and take in what it says. He said some people might think it is boring, but he thinks it is pretty interesting.

Mr. Palmer said, if anyone wants to know some history and what really fired people up, he has a piece of history in his hand. He said the Daily Times in June normally every year had a page of properties for sale. He said, after that 24 percent increase, the Daily Times had 12 pages of places where people simply could not afford that extra amount, and that was what really got people fired up. He said it gets him fired up to this day because they are not a rich County, they have people who are simply living on the edge, and increasing property taxes the way this was done back then is simply not acceptable. He then thanked the Committee for sticking with what Mr. Sarbanes said earlier, and wished them luck.

Ms. Chesnik said she had just gotten into her property in 1988 and they bought the farm and the house they lived in, and this just about decimated them.

Mr. Robert Taylor came to the microphone and said it has been a while, and he has a little bit of a cough in his throat, but it is not COVID, and he has been double vaccinated.

Mr. Taylor said he thinks the Committee's decision not to change anything substantively on the revenue cap is a good decision, and the reason he thinks that is somewhat similar to the decision not to consider the County Executive, and they are either right on both scores or wrong on both scores, but at least in terms of not recommending substantive changes, he thinks it is a good idea. He said he thinks the better reason for not doing it is because he thinks a broad tax study should be made. He clarified, even if they feel like maybe they should do away with the CPI limitation so that it is just a 2 percent cap max, look at the full tax story before they start tapering around with parts of it. He said, as he said in his memo he sent the Committee, there are other tax mechanisms that can be used, and one they do not use that was mentioned is the transfer tax. He said he has a list that he will pass out that was published by the State that shows the revenue on all the different Counties and their transfer tax rate, and he agrees with Mr. Strausburg that Cecil is probably the most comparable. He said Cecil has a 0.5 percent transfer tax and their revenue expected this year is \$1,674,000, but some Counties have 1 percent and that would be twice that amount. He said the recordation tax is another one, and Wicomico County is at the lower half in terms of the rate in the State, so that could be increased as well. He said Cecil's is higher than Wicomico's and they are expecting \$5.4 million off that tax, and Wicomico is expecting \$3.7 million, so there are other ways of raising revenue besides changing the tax revenue cap.

Mr. Taylor said Mr. Strausburg's figures are interesting, and he would say, in terms of the percentage of inflation in the different ten-year periods in Mr. Strausburg's study, it comes down, of course. He said the highest is the first one 50 years ago, and he thinks part of that is because of the fact that for the last 15 to 20 years the fed's desired goal has been 2 percent inflation. He clarified, they have not always met it, and right now it is all over the place, but that is one reason that has happened and why those earlier figures do not really mean very much. He clarified, of course that was before the tax cap anyway.

Mr. Taylor said he suggests one change in the cap and it is not substantive, but it is the third item that Talbot changed, and that was to clarify how the constant yield applies. He said, in Mr. Benson's materials it is the 2<sup>nd</sup> page and question B on Talbot's changes, and it is technical. He said he thinks maybe Mrs. Hurley and County staff should look at it and see if maybe that is what Wicomico does now because, from his experience as the Council Attorney, he believes it is. He said it would be very hard to just sit down and do the math for the tax cap, so what they do is the constant yield, which is the information they get from the Department Assessments and Taxation. He said Talbot modified their Charter last year to specifically say this is how they do it, and he thinks that would be a good idea.

Mr. Taylor said Mrs. Hurley made the comment that there is material from bond counsel, and they have not looked at that yet. He then suggested the Committee take another look at that because those provisions are very complex and he thinks it would be wise to look at some other County Charters because they are all in the same boat in terms of this. He said one aspect of it in particular is the timing of the CIP, and he understands the change that was recommended by Mr. Wilber, but he thinks it might be better off to just provide they are going to adopt them at the same time, and they can have the Public Hearings any time they want to, and he thinks most Counties do that already. He said he thinks that might be a better change than the change that was proposed because it really does not make sense to adopt the CIP budget long before they adopt the general budget because they are so integral.

Mr. Taylor said, as far as the matter Mr. Baker brought up, it may be worthwhile to take a look at some of the other Charters on purchasing because there might be some other language. He clarified, he is not suggesting there is anything wrong with what is there, but he understands his concern.

Mr. Dunn clarified, for the record, the Committee has by and large concluded their first passthrough of the Charter, but, as Mr. Taylor pointed out, and he hopes he has made it clear, that is a general statement and they still need to go back and do some things.

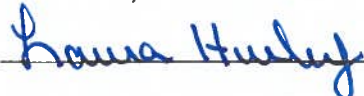
Mr. Dunn thanked Mr. Holloway for the information he shared tonight.

There was no further discussion.



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Mike Dunn, Chairman



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Laura Hurley, Recording Secretary

