



Portsmouth Concerned Citizens

NEWSLETTER

“Information is the currency of Democracy”

-Thomas Jefferson

www.portsmouthconcernedcitizens.org

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From the President – Larry Fitzmorris

This is the tenth year of operations by the PCC - Most local reform/taxpayer groups do not last that long and in fact the PCC is the state's second oldest organization. We believe that a celebration is in order and a dinner is being planned. Come help us toast our accomplishments at the Green Valley Country Club on May 6. We will be sending out a letter to all members with the details.

Our organization led the petition and resulting Tent Meeting during the 2006 – 2007 budget season in Portsmouth. In the end, the decisions made by the voters at the tent meeting were partially reversed by the Superior Court in the Caruolo case and subverted by the town's government. This was an important event in town history and demonstrates what happens when the rights of the citizens come in conflict with the spending desires of Town Government. We publish our analysis in this issue so that everyone can review what we discovered.

In This Issue:

Tent Meeting Subverted – The PCC researched this event extensively and requested assistance from two offices in state government – all to no avail. In this issue we have included the full text of the letter we sent to the state government's Office of Municipal Affairs.

The Purge – Kathy Melvin provides an account of one the worst decisions by any recent Council: the unseating of Helen Mathieu from the Portsmouth Redevelopment Agency.

Credit Rating at Risk – Mary Jean Laraway addresses the problems associated with the depletion of the town's fund balance – Portsmouth's financial reserve – and the likely consequences to our bond rating.

Budget Options – The budget process for next year has begun. Some of the options under consideration are discussed, including the sale of town property to generate funds for the budget. Isn't this the approach that worked so well for the state?

How the Tax Cap is Working – The Pavia-Weed property tax cap law is in its second year. This is a discussion of the law's successes to date, its impact and the forces trying to unravel this important legislation.

Tent Meeting Subverted

(Larry Fitzmorris & Joe Robicheau) – In May of 2007 members of the PCC discovered that additional funds were added to the municipal and school budgets for the 2006 – 2007 fiscal year, beyond those awarded by the court in the Caruolo suit. The PCC has contended with the Council ever since over its budget authority. The Council's majority, Dennis Canario, Lenard Katzman, James Seveney and William West insist that they have authority to increase total expenditures at any time, even if the total has been set by a vote of the people at a Tent Meeting. The power to over ride the voters would also apply to any special election setting expenditure totals, as the new Charter amendment allows. This point is in essence academic; however, as the new Charter provision is unworkable.

While the Council's asserted power to increase spending at any time does not extend to the power to increase taxes directly, it does eventually result in increased taxes. The additional funding to increase Town budgets has come mostly from the Fund Balance and, as a consequence, that fund has been depleted, resulting in warnings on our bond rating. These funds will have to be replaced and we expect an argument soon to increase taxes above the cap to replenish the Fund Balance. So, in the end, we will pay additional taxes even though the Council has not yet asserted authority to raise taxes any time it sees fit.

In this dispute the Council refused to investigate events surrounding the addition of funds and has embarked on a cover-up of events and the Council's lack of control over the budget process. The following is the text of the PCC's letter to the Office of Municipal Affairs. It is an analysis of the events that led to the subversion of the budget decisions made by the voters at the August, 2006 Tent Meeting. - Ed.

Introduction

The events that led to budget increases over the totals approved at the Portsmouth Town Meeting in August of 2006 are complex, but involve two basic issues: legal authority of the Council to take such action and the interpretation of the Caruolo case ruling by the Superior Court. We in the PCC believe that a close examination of these two areas and the

Council meetings in which the actions took place will reveal activities that are in variance with the Town Charter of Portsmouth, Portsmouth Ordinance #2005-4-11-A and the order of Justice Indeglia in the Caruolo case. We also believe that the quarterly report to the Office of Municipal Affairs of October 19, 2006 reports actions by the Council that did not take place.

A. The Town Charter's Limitations on Council budgetary authority. The Portsmouth Town Charter (Paragraph 208 – 6 and 7) reserves to the electors authority over the final totals of the school department, total of the municipal departments and total town budget expenditures, in years in which a duly constituted Town Meeting occurs. Paragraph 208-6 of the Portsmouth Charter is quoted below:

6. Within two (2) weeks of the adoption of the final Town Budget, a Town Meeting of the duly qualified electors of the Town may be called, by petition of not less than ten percent (10%) of said duly qualified electors presented to the Town Clerk who forwards the petition forthwith for further action by the Canvassing Board; the purpose of said Town Meeting shall be limited to a reconsideration of the final budget of the Town as adopted by the Town Council and said Town Meeting may increase or decrease the total amount of either the School Department Budget, or the Town Budget, or both. (Amended November 2, 2004; eff. date same.)

It is clear that the Town Meeting has authority to change Council approved final Town budgets. It is the contention of the Portsmouth Town Administrator and the Portsmouth Town Financial Director that the Council does have the authority to increase budget totals following a Town Meeting. This assertion fails the reasonability test on two accounts: first it is directly contrary to the wording of the Charter and second calls into question the utility of a Town Meeting, which by its very nature is punitive relative to the Council. It is clear that Portsmouth electors would not approve a Town Charter that invokes a process, complex and arduous in its execution, which has no lasting effect.

In addition to the limits cited above, the Town Charter limits Council authority to raise budget totals in all years, subsequent to the June adoption of the final budget. The relevant sections of the Portsmouth Town Charter, paragraph 208 – 5 and paragraph 207-i (emphasis added) are quoted below:

*5. Within one (1) month following the completion of the public hearings on the provisional budget at a regular Town Council meeting in June, **adopt the final Town budget by ordinance**, forwarding one (1) copy to the Town Clerk for public inspection and, as soon as possible, have **the final budget** (departmental total amounts) published in a*

newspaper having general circulation in the Town. (Amended November 2, 2004; eff. date same.)
207. Powers. The Town Council shall be the policy-making body of the Town, and shall exercise all the powers of the Town, except as otherwise provided by this charter, or by the constitution and laws of this state. Among the powers of the Council, to be exercised in accordance with relevant provisions of the Charter and of the constitution and laws of this state, shall be the power:

*i. To transfer appropriations within the Town budget (exclusive of the School Department budget) **not to exceed the total appropriated:***

In paragraph 208-5 the budget process is defined as final. We believe that the intent is obvious and that it clearly means final. In paragraph 207 – i the Council's authority to increase budget totals, following final approval in June of each year, is also clearly prohibited. When the sections of the Portsmouth Town Charter quoted above are added to those providing for a Town Meeting the meaning is clear: The Council lacks authority over budget totals following a Town Meeting and its increases in FY 06 – 07 are illegal.

B. Past Town Solicitor concludes that the Council lacks funding authority following a Town Meeting. The PCC's analysis supports past Town Solicitor Vernon Gorton's written opinion, of June 3, 1998, on the Council's budget authority following a duly constituted Town Meeting. Mr. Gorton's opinion was prepared at the request of the Council and is included as Enclosure 5.

C. The Council meeting of September 13, 2006 did not authorize an increase in the Municipal budget Totals. The Council meeting of September 13, 2006 is cited by the Financial Director, in his letter to the Council of September 13, 2007, as the meeting in which the Council authorized withdrawal of \$200,000 from the Fund Balance and a redirection of funds from the Open Space fund to the general fund to correct a deficit in the school department. No evidence exists in minutes, enclosures thereof or in the video tape of the meeting to indicate that the Council took such action. This action would have been considered a major decision by the Council as the Fund Balance had been depleted in the previous two years. The withdrawal of \$200,000 from the Fund Balance on September 13, 2006 reduced the fund to \$1.8 million, 45% of the required \$4 million, and yet there was no discussion by the Council or recommendation by the Financial Director during the meeting. The minutes are included as Enclosure 10. A DVD of the meeting is included as Enclosure 11. Funds were withdrawn from the Fund Balance, using this meeting as authorization.

It is this budgetary action which increased the municipal department's total budget amount, as well as the total budget for the town by \$255,000 above the totals authorized by the Town Meeting, as modified by the Caruolo decision.

D. The report to the Office of Municipal Affairs Misrepresents the Use of Fund Balance funds. The Financial Director's report to Office of Municipal Affairs of October 19, 2006, reporting deficit corrective action under RIGL 45-12-22.2 declares a budget deficit in the School Department as justification for the withdrawal from the Fund Balance and submittal of a municipal corrective action plan "in the form of a revised municipal budget." These funds, however, were never transferred to the school department, and were in fact deposited in the municipal department's general fund.

E. The Withdrawal of funds from the Fund Balance violates Portsmouth Ordinance #2005-4-11-A. This ordinance, included as Enclosure 9, makes it unlawful to reduce the Fund Balance below 8 percent of the current period's budget expenditures. At the time the minimum allowable Fund Balance was \$3,949,194. The \$200,000 withdrawal reduced the Fund Balance to approximately \$1,800,000. This situation appears in conflict with the Town Solicitor's assertion that the related corrective action plan is in compliance with State and local law.

F. The Council Exceeded its Authority under the Caruolo Decision. The Council meeting of March 26, 2007 considered the budget adjustments and a supplemental tax increase required to conform to the Caruolo decision. In the process of passing an increase to the total School Department budget, the Council exceeded the directive of the court by \$250,000. The Council voted to increase the School Department budget from the Town Meeting approved amount of \$31,928,066 to \$32,178,738; an increase of \$819,723. Paragraph 43 (page 18) of Justice Indeglia's decision (included as Enclosure 12) [emphasis added] states:

"While the Court generally accepts the opinions of the various experts that additional funding beyond that of the tent meeting is necessary to meet the requirements of federal and state laws, the BEP and school contracts, *it nevertheless finds that the proposed amount offered by the School Committee of \$787,051 is excessive* and that between *budget cuts and additional revenues*, the amount necessary to properly fund the Portsmouth School Department for the remainder of this fiscal year is \$544,051."

It should be noted that the above ruling was modified on March 29 by Justice Indeglia, adding \$25,000 to the total award, bringing the total authorized budget increase to \$569,051.

The \$819,000 added to the School Department budget by the Portsmouth Council on March 26, 2007 exceeds the total authorized by the Superior Court by \$250,000. This total, appropriated by the Council, even surpasses the original request by the school department in the Caruolo case of \$787,051, a request rejected by the court.

The Town Solicitor, Kevin Gavin, has recently produced a written opinion that asserts the Charter does not mean what it

says. This opinion can only be characterized as a carefully crafted, politically motivated, baseless cover for the administration's and Council majority's long standing position and would not stand the test of a legal challenge.

The Purge

(Kathy Melvin) – The Portsmouth Town Council meeting of January 28th, the last opportunity for the Portsmouth Redevelopment Agency to retain any vestige of independence was ended with the Council's unfortunate unwillingness to reappoint former State Senator Helen M. Mathieu to the Agency. Under Ms. Mathieu's guidance the Agency had fulfilled its obligation to develop a broad plan for the development of the West Side that would be in Portsmouth's long term best interests, and would, hopefully, influence the Navy to turn that valuable property over to the Town. The Agency met regularly, hired a secretary to take minutes and retained legal counsel. At the conclusion of the two year development period, they had a plan that all members of the Agency supported. The Plan focused on economic development by expanding on the existing marine trades industry, as well as providing opportunity for accommodating high-tech business providing jobs and much needed economic growth. The plan provided for open spaces, fishing and opportunities for family recreation facilities.

While the Plan received accolades when it was presented to the Council, problems soon began. Councilman Seveney wasn't happy that there wasn't an area clearly identified and set aside for affordable housing. The Portsmouth Economic Development Committee agreed. As pressure mounted on the Redevelopment Agency, efforts were made to try to resolve everyone's concern, but it soon became apparent that there really wasn't any way to lock in an area for affordable housing and still have the viability to carry out the economic goal of the plan. The die was cast and Councilman Seveney was successful in securing another individual who applied for the appointment and on a 4-3 vote, Helen Mathieu was ousted. Those voting to remove Ms. Mathieu were Council members Seveney, Katzman, West and Canario. Supporting Helen Mathieu were Council members McIntyre, Gleeson and Little.

The vote is important. It is a strong indicator that those who support the developer, O'Neill Properties, are now going to control the disposition of the tank farm property should the Navy give up that land. With property values sharply declining is the development of low-income housing in Portsmouth's best interest? Kudos to former State Senator. Helen Mathieu, who while serving in the Assembly, successfully shepherded the bill to remove taxes on boats resulting in the successful growth of the boat building industry in Portsmouth. She put the needs of Portsmouth first during her service, and she put the best interests of Portsmouth first during the two year period she served on the Portsmouth Redevelopment Agency. Councilmen Seveney, Katzman, West and Canario's unfortunate vote to unseat her was in my opinion a low point in this Council's term of office.

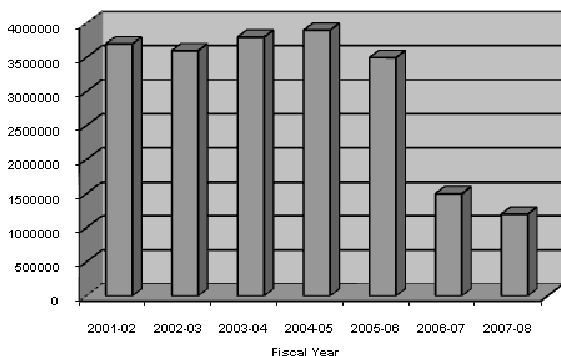
Credit Rating at Risk

(Mary Jean Laraway) - As the annual budgeting process gets underway in the Town of Portsmouth, it is important that taxpayers realize a troubling situation currently exists regarding a basic financial concept: “reserves”. Reserves are sometimes referred to as the unrestricted general fund, or the rainy day fund, and are the monies set aside to pay for unanticipated situations.

According to ordinance # 2005-4-11-A posted on the Town’s website, the Council is required to maintain a minimum of 8% of the Town’s total annual expenses. This minimum amount is \$4 million, the equivalent of four weeks of expenses. The high end of the requirement is eight weeks of expenses, or \$8 million. In 2006, we had a relatively healthy \$3.5 million in our reserves. Today, we have \$1.2 million – about eight days worth of expenses. When the Council approved the decisions that depleted our reserves below the minimum, however noble the reasons, these were short-sighted and risky decisions. Because they did not have a plan to replenish these required reserves, the risk became untenable, in my opinion.

Consequently, Moody’s, the agency that grades the bonds that the Town issues, stated in a warning in April, 2007: “PORTSMOUTH, RI, RECENTLY NARROWED FINANCIAL POSITION DUE TO SCHOOL DEPARTMENT OVER-SPENDING.” (Moody’s capitalization, not this writer’s.) They went on to report: “Moody’s expects that while the Town’s General Fund maintained a satisfactory balance prior to fiscal 2005 with an average total fund balance of \$3.6 million, the town will remain challenged to restore structural balance in the near term.” A downgrade of Portsmouth’s bond rating would mean we pay a higher interest rate to borrow money, a far greater cost over the term of the bond and a blow to our Town’s quality rating.

Fund Balance Decline



When asked about the financial vulnerability of a reserve account with only a one week expense cushion, rather than the required four weeks minimum, one of the members of the Council indicated that “municipal finance doesn’t work like that.” This view contradicts the Fund Balance Ordinance. All economic entities, from household to nation, should have a

healthy reserve to deal with unexpected expenses. It appears the Council majority considers its taxing authority as the answer to overspending. Rather than make the difficult, responsible decisions to cut expenses, they take the reckless approach of raiding the reserve fund.

The level of our reserves is an important aspect of the overall health of Portsmouth’s financial landscape. As property owners in Portsmouth, we have a responsibility to be aware of the risks being taken with our Town’s fiscal well-being and reputation, and to call on those Council members who are making these risky decisions for us.

Budget Options

(Larry Fitzmorris)

- Mr. Driscoll presented a very good summary of the important budget elements.
- Mr. Faucher warned the Council that the bond rating of the town is very likely to be downgraded.
- Dr. Lusi asked the Council to consider exceeding the Paiva-Weed tax cap in the upcoming year.
- Mr. Driscoll advocated selling town assets to generate money to support the budget.

Budget Elements Summary

Mr. Driscoll’s summary was concise and identified important points in the upcoming budget development process. While some of his recommendations are in my view unwise, he did a good job on his summary. This summary was presented to educate the members of the Council on the dynamic decisions which it must make for next year to deal with new constraints and past financial missteps.

Mr. Faucher Warns

The town’s Financial Director formally warned the Council that the town’s bond warning is very likely to be downgraded. Some members of the Council seemed a little shocked. This is the point that the PCC has made during the special election and at recent Council meetings. Mr. Driscoll emphasized in his comments and general budget approach that the Fund Balance must be restored, while attempting to put the best face on the depletion of these funds.

Dr. Lusi Encourages the Council to Exceed the Tax Cap

Dr. Lusi, speaking without a vote or guidance from the School Committee, advocated that the Council consider exceeding the tax cap in next year’s budget. This should have stimulated a response, but no one on the Council made any comment. I suspect they were too surprised.

Selling Town Assets to Support Spending

Mr. Driscoll advocated the selling of town property to generate revenue to support the operational budget. This is the general approach that led state government to its current budget crises. The proceeds from the sale of property allow the town (or state) to spend more money than annual revenue would support. While the Town Charter requires the sale of all property of one acre or more to be approved by the voters, Mr. Driscoll did not mention this limitation. Recent evidence

of the Council's disregard for the Charter indicates that this may not be a limiting factor for the Council.

How the Tax Cap is Working

The Pavia-Weed property tax cap is working well in Portsmouth, despite attempts by our Portsmouth government to circumvent its intent.

Enacted two years ago this landmark law was intended to restrict the rapid growth in property taxes imposed by local governments in Rhode Island. The law established a limit on the growth in the total tax levy of 5.25% in the current year, the first year in which it has been in effect. In each of the following years the law reduces the levy increase by a quarter of a percentage point until it reaches 4% in July of 2012. Total tax levy is not the same thing as the mil rate applied to the value of property. Because new property that comes on the tax rolls is included in the levy limit, the actual rate of tax increase on our property will be somewhat less than the limit on the levy. In other words, in the coming year, with a levy increase limit of 5%, our taxes will increase at a rate that is somewhat less than the cap. If there was no new property entering the tax rolls the increase percentages would match. So, new property pays down our annual property tax increase.

The effect of the tax cap in Portsmouth has been dramatic.

The table below demonstrates the effect on budgets, which drive taxes directly:

Portsmouth Operational Budget Increases

Year	02-03	03-04	04-05	05-06	06-07	07-08
Incr.	3.70%	3.83%	6.19%	6.43%	7.41%	3.71%

The tax cap is a law, and laws can be changed. To date, attempts to do so by the state teacher's union have failed, largely because of support for the law among the State Assembly's leadership. Both Senator Pavia-Weed, the principal sponsor and Senate Majority Leader and House Speaker, William Murphy are opposed to changes. On the other side, our town administrator, Mr. Driscoll, and our Superintendent, Dr. Lusi, have advocated at the state level for modifications to allow higher taxes in order to increase local spending. So far they have been unsuccessful.

Like all laws, the tax cap is not perfect and the Devil is in the details. Our town Administrator, and a number of Council members, are aggressively looking for ways to circumvent the limitations. Among these are an increase in fees (which we have seen with the Compact Station), the use of borrowing to increase revenue for the operational budget and the use of Town savings to supplement the operational budget. Recent use of the latter has resulted in severe depletion of the Fund Balance.

To this point, the Council has not moved effectively to resist these initiatives, nor has it moved to restrict our administrators in their advocacy for dismantling the law.

PCC has a number of fundamental goals: limited and moderate property tax increases, open, efficient and responsive town government, access to decision makers and the deliberative process and superior public schools.

If you are of the same mind...

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PORTSMOUTH CONCERNED CITIZENS MEMBERSHIP FORM

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ADDRESS _____

CITY/TOWN _____

HOME PHONE _____ OFFICE PHONE _____ E-MAIL _____

ANNUAL DUES: \$20 (Single) \$25 (Family) \$100+ (Founder's Club)

Call: 683-6127, or mail this form and your contribution to: Portsmouth Concerned Citizens
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