



Portsmouth Concerned Citizens

NEWSLETTER

“Information is the currency of Democracy”

- Thomas Jefferson

www.portsmouthconcernedcitizens.org

Editor: Joe Robicheau

May 1, 2007

Volume III, Edition 2

From the President -- Larry Fitzmorris

Web Site – We are operational on the PCC Web site. I invite you to visit our new site at:

www.portsmouthconcernedcitizens.com

Fundraising – Our efforts to raise donations to support our Caruolo legal costs were very successful and we raised all of the money we needed to pay our legal bills. The total was \$17,460. I would like to extend to Forest Golden and his team our congratulations for an excellent effort. The PCC’s legal efforts had a profound effect on the trial and the contributions we received allowed this to happen. Thank you.

The Budget Cycle Begins – the Portsmouth budget cycle has begun with the submission of the school department budget on April 9 to the Town Administrator. This year’s budget development is the first under the new Paiva-Weed Act. The law will require the property tax levy to conform to a series of caps that begin in the next fiscal year at 5.25% and decline to a rate of 4.0% in 2013.

In This Issue:

PCC Opinion Survey – Your opinion counts. Please fill out our survey, included in this issue, and return it to us.

Caruolo Trial Results – The trial came to an end in early March. This article discusses the results and assesses what was achieved in Portsmouth’s tax revolt.

Amending the Charter – The Council has begun a process to change the Town Charter to limit the ability of the people to conduct oversight of its budget powers.

School Budget – The preliminary school department budget was submitted to the Town Administrator in early April. The budget process has been dramatically affected by the new Paiva-Weed Act.

Open Meetings Act Violation – One of the PCC’s goals is to foster governmental operations, which are open and available to all Town citizens. The recent ruling by the Attorney General that the School Committee violated the law may begin to change this regrettable trend to secrecy in Portsmouth.

Administrator’s Contract – The Portsmouth Administrator’s contract is currently being negotiated. This article addresses why this contract with the Principals and Assistant Principals is so important to the budget and the resulting taxes.

Caruolo Trial Results

The Portsmouth tax revolt of 2006 ended in the Courtroom of Judge Indeglia in early March of this year. The PCC efforts to resist unreasonable tax increases in Portsmouth were followed by many people throughout the state and in the end were largely successful.

What happened in the Trial. The judge overruled the Town Meeting. This was the major achievement of our School Committee’s majority. The right of the people of Portsmouth to reject Council budget decisions regarding the school budget was badly damaged.

Initially, the judge rejected our request for standing in the case, but granted “Friend of the Court” status to the PCC. In this he did the PCC a favor as we avoided the costs of direct participation in the trial. This was an important win and allowed the PCC’s lawyers, Tom Wigand and Keith Kyle, to make our case that the town meeting provision of the Town Charter prevails over the Caruolo Act because of the wording of each law. Our arguments are now part of the trial record.

Prior to trial, Judge Indeglia, in the jurisdictional hearing he ordered to hear our views, rejected our request to throw out the school department’s case. We argued that the School Committee lacked standing to bring the suit because of the wording of the two laws involved: the Caruolo Act and the Town Charter. It was our contention that the portion of the Town Charter governing Town Meetings, passed by the Assembly as a Special Act, prevailed over the Caruolo Act, passed as a General Law. This hierarchy is a component of Rhode Island law. While he agreed that we had a strong case on the letter of the law, he believed that the Assembly had not paid attention to the Charter amendment when it was passed and that had they done so, they would not have approved the wording upon which we were making our case on standing. This rules, in effect, that the law does not mean what it says. Judge Indeglia was unwilling to throw out the case even though the law was clearly on our side. In this action he ruled in support of the establishment.

On the other hand, Judge Indeglia clearly agreed with our contention that collusion existed between the Council and the School Committee and that the interests of the citizens who attended the Town Meeting were not being served. We

believe that issue clearly became an important factor in his eventual decision.

Regrettably, when it came to the Town's defense, the lawyer for the town supported the school department's case. While that may seem implausible, the actions of the defense clearly revealed their intentions: the defense asked the court to order an award for more money than the school department requested. The defense also asked the court to order a supplemental tax increase. This was done to increase the school department's tax base for next year's budget. Additionally, the Council's defense advocated for a court ordered Financial and Program audit required by the Caruolo law. Previously, the School Committee had always opposed any audit not controlled by the school administration. But now, seeing the obvious support of their position by the Town's auditor, they reversed their position. They agreed to the audit. We believe they made this move because they now viewed the Town's auditor as sympathetic to their cause.

The Council voted, although by a slim margin, to mount a vigorous defense of the Town. In the end, however, elements of the Council and the Town Solicitor appear to have subverted the defense's case and supported the school department. To date, the Council has not explained why this very serious failure happened. The people of Portsmouth were sued directly by the school department and were deprived of an adequate defense.

What we achieved. Our actions in the case prevented a much more expensive settlement. We prevented a stipulated agreement between the Council and the School Committee before the trial. A Council motion for a settlement of \$988,000 was made at the last meeting before the trial. Following the rejection of this motion by the Council, on the weekend before the trial was to begin, the school administration quickly reduced its demand of \$988,000 to \$778,000.

In the end a trial was held and the school department had to defend the merits of its case. This would not have been likely without our resistance. Our participation in this case helped convince the judge that he should take a close look at the details of the school department's claims.

During the trial the only defense of the Town was provided by the PCC, through our role as "Friend of the Court."

In the trial, although not opposed by the Town's lawyer, the judge further reduced the award to \$544,000, which was later increased to approximately \$570,000, to include court costs. Thus the original \$1.1 million reduction of the school department budget at the Town Meeting ended up a reduction of \$530,000, or about half. The reduction of \$633,000 in the municipal budgets was not involved in this case and remains in place.

The final budget adopted by the Council in June of 2006 mandated a 9.1% property tax increase. The Town Meeting reduced that to 4%. The Caruolo Trial increased that to about 5%. In short, the majority of the reductions survived.

Resistance was important. Our school department is being pressed very hard by employment contracts that it cannot afford. Judge Indeglia commented to that effect at the beginning of the trial as he outlined the dynamics of the case.

The natural tendency of local government in these circumstances is to increase property taxes. The sad reality of local government is that increasing taxes is the easiest thing to do. That is often their first resort. Increasing management efficiency of departments is occasionally sought, but it is a rather distant second choice. Reworking the labor contracts remains forbidden ground, yet it is the only long term solution.

As these forces work on our elected officials, the true role of government - to serve the people - gets lost. The Town Meeting was a *clear and exact* expression of the desires of the citizens of Portsmouth. The School Committee rejected that judgment and moved to dismantle the people's decision on the school budget. That was a decision that had to be opposed.

When our Council and School Committee sides with the special interests, it is left to the people to resist the tendency to manage government through tax increases. That is why we have a provision for Town Meetings in our Charter. The school establishment in Rhode Island rejects the concept of local control of schools, even though the members of the School Committee are elected locally and the vast majority of school budgets come from local property taxes. In effect, we are expected to pay up and shut up.

In 2006 we said no.

Changing the Charter

(Larry Fitzmorris) – As a result of the August Town Meeting, a majority of the Town Council are determined to change the charter, regardless of the ethical issues involved. They have decided to use their control over the charter revision process to manage the outcomes of the upcoming special election.

The charter is the document by which the people of Portsmouth define how their government works, and what authority it exercises. Home Rule Charters are authorized under the State Constitution to provide to our citizens the form of local government that they may choose to adopt. Our charter specifically defines the powers of the Council. It does not, unfortunately, define a process for changing the charter, and that is where the trouble lies.

The Council's practical authority over the process for modification of the charter is almost unlimited. That may seem to be a strange statement, but it is unfortunately true. This is, in part, because of the lack of a defined process for changing the charter, but also because the formal state organizations, which are tasked with monitoring the actions of public officials, refuse to get involved. The Attorney General, Ethics Board, and the Board of Elections all refuse to get caught up in charter issues. That leaves the citizens, when faced with a Council in violation of its own Town Charter, nowhere to go except the state courts. All you need is twenty thousand dollars and a lawyer you can trust. That is the point where you will find out that Rhode Island courts tend to play rather loose with the letter of the law and are biased toward the establishment.

Past Councils have abused the charter amendment process to a considerable degree. In the 2004 election the people of Portsmouth approved a number of changes to their charter. The new Council, which took office following the election,

did not agree with the previous body's support of two of the amendments. When they submitted the amendments to the Assembly to be passed as law, as they are required to do, they proceeded to inform the Assembly that they did not want them adopted. The two proposed amendments died in Committee, exactly as the Council desired. That was a flagrant abuse of power.

This Council is now involved in changing the charter in a situation where they have a profound conflict of interest. They are proposing changes to the people's charter which will reduce the rights of the people and increase their own power over the budget. And they control the process. They have decided to circumvent the traditional practice of using a charter revision committee made up of citizens because they do not trust the outcome. They have placed on the ballot proposed changes to the charter, but have prevented the people from voting to retain the current process for Town Meetings. That is, in effect, changing the charter directly; an act for which they lack the authority. The Council will be eliminating the offending clause and presenting only options that change the charter.

The ethical obligations of the Council are clear. They have all sworn an oath to uphold the Charter. It has been my observations over six years of experience with the Council and the School Committee that most elected officials, when presented with limitations to their authority, search for excuses in state law to relieve themselves of their duty to the Charter. Often the option presented in state law as 'may' is used to overcome the 'must' of the Charter. The parts of the Charter that govern the Council's authority to tax, however, remain rigid in their enforcement. Nothing must be allowed to interfere with the flow of money.

We in Portsmouth must have a formal process for modifying our Charter, one that is not subject to the political whims of the Council and that provides procedures that ensure the people regain control over their own charter.

The New School Budget

(Larry Fitzmorris) – The 2007 – 2008 school department budget was approved by the School Committee and delivered to the Town Administrator on April 9. This is an annual event, but this year it is different. The new Paiva-Weed Act has changed the process in very important ways. The budget document also arrived from the School Committee with a threat attached.

The budget is a 3.96% increase over the current year's budget, as adjusted by the courts in the Caruolo trial. The apportioned tax increase will be 5.25%, the maximum permitted by law. The budget numbers for next fiscal year, which begins on July 1, are:

Operational budget	\$33,451,958
Restricted budget	\$1,528,733
Total	\$34,980,691

There will be one significant difference this year in the funds available to the school department. It has been the practice to

include two new warrants to support the school department each year in the Council's budget. These warrants are in the amount of \$350,000 each for technology and building maintenance. Due to the instability in the Town side budget, resulting primarily from funding recent school department shortfalls, the Council is considering eliminating those warrants in the budget in order to replenish reserves. This is a problem for the school department as they have been moving operational budget items off of their books and into the warrants for the last two years. Now they are caught short.

The new budget process under Paiva-Weed has dramatically reduced the level of new taxes that can be used to fund the school department budget. The annual school department budget increases have been high in recent years and have driven the tax increases strongly. This year, for the first time, the school department's budget is directly limited in its impact on property taxes. The new law requires that the tax levy be apportioned to the town and the school department, based on amount of property taxes used in this year's budget. They are then limited to how much their portion of the property tax levy can increase. This year the limit is 5.25%. As the other revenue received from Little Compton and the state and Federal governments all increase at substantially below the 5.25% rate, the actual budget increase will be less than the maximum tax rate permitted. This year, new property is added to the total tax levy before the tax cap calculation, and that in effect uses revenue from new property to lower the tax rate, which is the intent of the Paiva-Weed property tax relief law.

This year's school department budget arrived with a letter containing a threat directed at the Council, and ultimately at the people of Portsmouth. The Council has not even acknowledged the threat; apparently hoping it will just go away. A threat, this early in the process, strongly suggests that the school department faces its third straight year in which additional funds are necessary to complete the year. The letter to the Council mentions the need to fund the entire budget, including the two warrants, or the department will be unable to meet the requirements of the basic education plan, labor contracts and state and Federal mandates. This is the core language of the Caruolo act and a clear implication that if all the funds are not forthcoming, there will be another suit against the town.

In addition to the threatened Caruolo suit, the school administration - with the support of the Council's majority - has begun the appeal process to exceed the new property tax limitations. They are exploring with state agencies the possibility of additional taxing authority to replace the \$321,000 in Medicaid funds used, as ordered by the judge in the Caruolo ruling, to correct the current year's shortfall. The School Committee maintains that this is a loss of revenue. The revenue was not lost, of course, because the school department will spend it during this fiscal year.

We are not off to a good start on next fiscal year. The Council is continuing its passive response to the continuing funding problems in the school department. That likely means that they will simply pass the cost on to the taxpayers, without acting to stabilize the school department's obvious spending problems.

Open Meetings Act Violation

(Larry Fitzmorris) The Portsmouth School Committee has been abusing their power to meet in secret. To many of us, who have been attending meetings this past year, it has seemed that the Committee was making many of their important decisions away from the public eye. Now that has been confirmed.

On April 18 the Portsmouth School Committee was found in violation of the Open Meetings Act by the Attorney General. PCC member, Kathy Melvin, filed the complaint with the Attorney General's office in November. The Committee voted to award a contract to the B&E auditing firm in Executive Session on August 29 to support their Caruolo suit and failed to report the subject of the vote when they came into public session. They contended, in their response to the Attorney General, that the issue was related to their decision to sue the Town and was, therefore, a vote they had authority to take in secret. They claimed the litigation exception in the Open Meetings Act. The Attorney General's office found that they withheld the nature of the vote at a time when it was commonly known they were considering a Caruolo suit.

The PCC has as one of its goals ensuring open access to government by all of our citizens. This includes the twin requirements of public business done in public and access to all public documents. It is, I think, obvious to all that without access to information, the electors will be denied an accurate understanding of the performance of their government. Secrecy works in the opposite direction. While very few people like to be criticized, the tendency to take hard decisions into the back room is counter to all of our interests.

Many of this past year's important decisions in Portsmouth have been made by our elected officials in secret. The law, of course, allows a number of exceptions to the requirement for public meetings: litigation, personnel issues and the purchase of property. While many subjects are perfectly appropriate for private discussion, the problem lies in the School Committee's loose interpretation of a law that is very specific.

The making of decisions and the awarding of contracts in secret, are highly corrosive to the process of government. The lack of recourse is the primary problem. What we do not know we are unable to challenge. Given the opportunity, the ethically challenged will chose the closet for decisions that hazard the public good.

When elected officials choose to debate and make decisions away from the public eye we should all be concerned. Contracts should never be approved in secret, and the fact that state law permits it, at all, is a matter of great concern. This is where the money is spent and public officials should be publicly accountable for those decisions.

Administrator's Contract

(Larry Fitzmorris) – The School Committee began negotiations with the Portsmouth principals and assistant principals in secret sometime in March. This negotiation

brings with it the opportunity for the Committee to begin to solve the department's chronic budget problems.

Unfortunately, this negotiation continues the practice by the School Committee of conducting its important business away from the eyes of the electorate. This process began without a public vote by the Committee to begin negotiations and without the appointment of negotiators. There wasn't even an announcement.

The Administrator's Contract is a very important agreement, even though it involves only a few school employees; our principals, vice principals and a few administrators. The negotiation with the Portsmouth Administrators is the beginning of the negotiation process that leads into the teacher's contract negotiations. Historically, the Administrator's Contract is used by the NEA negotiators to obtain equivalent concessions. What is granted in the former is likely to be reflected in the latter; and it is a much larger contract.

The negotiations are constrained this year by the limitations imposed by the new Paiva-Weed Act. Any new agreements are subject to the limitations of the law, which imposes restrictions on the growth of the property tax levy. This year the limit is 5.25% and declines to 4.0% over the next 5 years. The new law does not directly limit negotiations in municipal labor contracts, but as 75% to 80% of the school budget is dedicated to salaries and benefits, those costs are clearly affected. Any labor agreements made by the School Committee will clearly dominate annual budget increases. As these labor agreements have traditionally been for three years, the Committee must ensure the new contracts do not push the school's portion of the levy over the 5.0% limit for next year, and the 4.75% and 4.5% limits for the following two years.

It has been the PCC's experience that the two most important elements in labor negotiations with public employees are: expert negotiators and financial impact statements.

Portsmouth officials must do better than they have in the past. They must assemble a professional and imaginative team to successfully negotiate public employee contracts. To avoid conflicts of interest, this team should composed of people who do not have local relationships and ties to the unions. The team should also have the experience necessary to negotiate with seasoned professionals armed with considerable resources.

A failure by the individual members of the School Committee to understand the total cost of a contract, prior to approval, is an abject failure in their fiduciary responsibilities. The need for a financial impact statement is absolutely critical as it will clearly identify the costs of the contract under consideration. It is our strong belief that the last NEA contract was voted on by the School Committee without an estimate of its costs. It is incumbent upon our elected officials to represent our interests in these negotiations. It is hard to understand how they can do so without a clear understanding of the cost of the agreement they are signing.

It is the custom of the school administration and the School Committee to refer to labor contracts as fixed costs over which

PORTSMOUTH.....

ARE YOU AWARE THAT:

- Despite voter rejection of sewers a request to approve a Sewer Bond will be on the November Ballot?
- Installation of sewers will enable construction on smaller and currently unbuildable lots and throw the door wide open for expanded and denser development?
- There will be only ONE proposal for a Charter Amendment on the November ballot, which will all but eliminate ability of residents to challenge excessive budget and tax, increases?
- To avoid the new State tax cap, the Town Council is preparing to charge residents for use of the DUMP? Isn't this just another tax?

WHAT'S IMPORTANT TO YOU?

What **YOU** think about Portsmouth issues is important.

- It is important for **YOU** be heard and to be listened to.
- Knowing how **YOU** feel about the direction of the community is critical
- Please rank the following issues in order of importance to **YOU**, and we will ensure **YOUR** voice is heard. Use the blank lines to add issues not listed.

<u>Issue</u>	<u>Ranking</u>
Annual property tax increases	<input type="checkbox"/>
Property taxes spent on open space	<input type="checkbox"/>
Glen used to full advantage	<input type="checkbox"/>
School Department budget growth	<input type="checkbox"/>
Unrealistic union salaries and benefits	<input type="checkbox"/>
Cost of sewers	<input type="checkbox"/>
Development density that sewers will bring	<input type="checkbox"/>
\$100/yr fee for dump to circumvent tax cap	<input type="checkbox"/>
_____	<input type="checkbox"/>
_____	<input type="checkbox"/>
_____	<input type="checkbox"/>

Please fold and mail your response to Portsmouth Concerned Citizens, P.O. Box 686, Portsmouth, RI 02871.

Thank you



Portsmouth Concerned Citizens
P.O. Box 686
Portsmouth, RI 02871

they have no control. This is simply not the case. The negotiations with the Administrators, and the NEA contract to follow, are where the Committee and the administration must exercise financial control. If subsequent budgets are unaffordable, it is because the primary costs of those budgets are driven by contracts the department can't afford. This is why the school budget remains in a state of crises year after year.

We in the PCC wish the School Committee negotiators well, whoever they are.

**WE MAKE A
DIFFERENCE!**

**JOIN
PORTSMOUTH CONCERNED
CITIZENS**

HELP US HELP YOU

**Call Drena Robicheau at 847-1098
Or use the membership form in this
Newsletter**



**A Lot is at RISC...A
Membership Plea**

As Portsmouth Concerned Citizens have learned, much can be accomplished by a group of people united in purpose. RISC is proud of its affiliate, PCC, for the fight against high taxes in 2006.

But, the fight is not over. Much is yet to be done to accomplish real change in the Ocean State. RISC's activities are financed by *individual memberships*. If it is to continue its efforts on behalf of Rhode Island taxpayers, more individuals and families must join. If you have found RISC a valuable resource and its email communications beneficial, please consider membership.

www.risc-ri.org 401-213-6316

PCC fundamental goals are: limited 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...

BECOME A PCC MEMBER TODAY!

**PORTSMOUTH CONCERNED CITIZENS
MEMBERSHIP FORM**

NAME _____ DATE _____

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
499 Wapping Rd.
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