



Portsmouth Concerned Citizens NEWSLETTER

“Information is the currency of Democracy”

- Thomas Jefferson

www.portsmouthconcernedcitizens.org

Editor: Teresa Beirola

Volume VII, Edition 1

July 20, 2011

From the President -- Larry Fitzmorris

Sewers - The sewer fight goes on. No matter what the citizens of our Town do, or whom they elect, this issue will not go away. The people of our Town are now engaged in a close and desperate contest with a DEM that has become a predator upon the people it is supposed to serve. In this edition of our newsletter the members of the PCC attempt to bring clarity to this challenge.

Changes - The last few months have been a period of significant change in Town government. The Town Administrator has submitted his resignation effective in August and the Superintendent departed July 1. These changes in key management positions will inevitably bring new policies to Town government.

In This Issue:

Wastewater Plan Takes a Turn – The citizens of the North End are now faced with a resurgent threat of sewers. We provide our analysis of what has happened to cause this reversal of fortune.

Getting it Wrong – Much of the data used in DEM’s Notice of Violation to justify a North End sewer system, and a rather large fine, turns out to be inaccurate. This article examines what went wrong and how these serious errors were made.

Island Park Landfill – The State once again deals with Portsmouth with a hard hand. For what are clearly financial reasons, DEM has authorized the owner of the former Town dump to add more pollution to the site in order to deal with the site’s contamination. The Council has moved decisively to enter court seeking an official explanation of the health risks.

The Imperial Department – DEM continues to war on Portsmouth, and has demonstrated a complete lack of willingness to see our citizens’ basic rights and point of view.

The New Budget & Taxes – The Council, acting in a hard year for our citizens, produces moderately higher taxes. Unfortunately, local government did not effectively address pension and retiree benefit problems in this budget.

Regionalization Rejected – Both branches of Portsmouth government have decided to end the Town’s participation in the proposed regionalization of Aquidneck Island’s schools. The Town’s leaders decide to leave while they could.

Wastewater Plan Takes a Turn

(Larry Fitzmorris) – In Portsmouth the sewer project keeps coming back to haunt us. Despite the April 12, 2010 unanimous vote by the Council to put an end to sewers and adopt a Wastewater Management District, the Council’s majority has developed a large and expensive engineering plan for the North End. The Council is presenting this plan in an attempt to negotiate a compromise with the Department of Environmental Management (DEM) on what sort of system will be installed in the North End. Successful or not, we will get one or the other of these expensive systems. The Council has taken this course despite a poorly researched Notice of Violation from DEM, which the Council has failed to challenge, containing many ‘facts’ which are now clearly in error.

Negotiations with DEM are the sole objective of the Council’s majority. That majority (President Robicheau and Council members Buddemeyer, Hamilton and Seveney) is attempting to convince an intransigent DEM that the Lombardo plan is acceptable. Ms. Pedro, Ms. Staven and Mr. Kesson remain opposed to this approach. However, the majority is negotiating at considerable disadvantage with an agency that sets the rules of the contest and uses its own employees to conduct the hearing process. The Hearing Officer works for DEM, and he will decide the issue. Yet there appears to be no Council plan to enter Superior Court to defend the Town against DEM’s demands or to challenge the many errors in the Notice of Violation. To date, DEM has been unwilling to deal. It has rejected both proposals developed and presented in turn by the Town’s engineers – Lombardo Associates. In each consecutive proposal, the Town’s representatives make the proposal more acceptable to DEM and offer again, each time moving closer to sewers. In the mean time, the Council has failed to aggressively deal with storm drain leaks in Portsmouth Park, undermining their own position. The July 11 Council meeting produced a new - and welcome - initiative in this area, but the project is still incomplete. In the *nine* months since DEM issued the Notice of Violation, the Council has failed to act aggressively to identify leaking private wastewater systems, correct the problems, and retest.

The ‘Lombardo’ plan presently consists of a series of cluster systems for approximately 70 lots in Island Park. It uses advanced systems for treatment that are located on separate

lots or in trenches under the streets. The rest of the lots would be serviced by individual advanced systems. It also deals with replacement of all cesspools in the affected area, despite the absence of a legal requirement to do so. The cost of the plan is unclear, but appears to be somewhere between \$23 and \$60 million. Detailed costs have not been discussed recently in public, but the Lombardo plan depends upon two components, neither of which seems likely to develop. What is required is a law passed by the Assembly to relieve the set back requirements for private systems on a number of lots in the Notice of Violation area. DEM has refused to grant those variances. The other is the interpretation of 'sewer line' by DEM. The Lombardo plan relies on DEM interpreting the effluent lines associated with the cluster systems, which will be installed in the street, as something other than sewer lines. This interpretation is solely up to DEM, and they are demanding a conventional sewer system for the North End. If DEM considers them sewer lines, all residents located on a street with an effluent line will be required to hook up. DEM is also insisting that any system be publically owned and that means public ownership, public employees and future DEM control.

The Council's majority has adopted a process that has delegated decision making to its environmental lawyer and its engineer.

With a complex and expensive project demanded by DEM, and a counter proposal that is its near equal, the Council has adopted a plan to avoid making public decisions on sewers. The Council's majority has adopted a process that has delegated decision making to its environmental lawyer and its engineer. This process violates the intent of the Town Charter, which requires the Council itself to make decisions for the people. With that approach, they have avoided public votes, the reporting of Executive Session votes as required by law and, informing the people of critical actions that fundamentally affect their lives. They have done this under the guise of the need to keep legal strategies secret.

Our Council continues to try to negotiate the best deal possible with DEM, while failing to understand that they do so from a position of considerable weakness – a position likely to produce an unacceptable outcome for the people of the North End. They do so without any apparent concern for the impact of an expensive system upon the families of the North End. The fact that the Lombardo plan is not technically sewers is largely irrelevant. The impact on the people and their lives will be much the same. Residents of Island Park and Portsmouth Park will be presented with a system they cannot afford and many will be forced to sell and move.

It is time for the people of Portsmouth to demand an open process from this Council. This contest is all about the power of an out of control State agency, grandiose engineering projects and making developers happy. It is increasingly clear it is not about pollution or representing the fundamental interest of the people who elected this Council.

Getting it Wrong

(Larry Fitzmorris) – The Town has been battling the Department of Environmental Management over sewers for a number of years. The basis of this dispute is the contention, represented as fact by DEM and others, that Island Park is now polluting the Sakonnet River and the Cove. That specific assertion of fact is contained in the Notice of Violation the Town received last September 15. The assertion that Portsmouth Park is polluting has been found to be correct, although minor and the Town is correcting those sources.

As it turns out recent biological sampling of the storm drains in Island Park have failed to identify any significant pollution. When so much is at stake, in terms of people's lives, family finances and the Town's future, why is so much of the science wrong? What has happened to DEM's obligation to get its technical measurements right?

Almost everyone involved in the long running technical discussions about pollution in Island Park have maintained that contamination in the storm drains was inevitable, given the nature of the conditions in that community. A long line of engineers, Save the Bay leaders, DEM officials and others have told us that the combination of sandy soil, housing density and the number of cesspools could result in no other outcome than pollution from the Island Park community. We were informed that all the experts were in full agreement. Council President Robicheau also separately maintained that all cesspools fail – in the short term. There is only one problem – *they all got it wrong*.

The Town's recent testing of storm drains in Island Park has failed to detect any pollution above acceptable levels, including all those identified by DEM in the Notice of Violation. What appears to have happened is that the steadily falling levels of pollution, evident in past DEM testing, have finally declined to the point that they are no longer a problem.

DEM had its thumb on the scales

Extrapolation of engineering theories to a prediction of actual conditions is risky, if the models are flawed or the "experts" are not expert enough to predict actual conditions. In this debate over the sewers we are being asked by the Council's majority, (Robicheau, Buddemeyer, Hamilton and Seveney) to trust fundamental engineering projections. These assumptions are also the basic justification of DEM's evaluation of pollution in the area and the order to build sewers. What is important to understand in this project is that Portsmouth taxpayers are expected to bet \$30 to \$60 million on engineering assertions in which one of the two primary assumptions has proved to be false.

In the Woodward & Curran engineering study of 2010, it was stated that all prior engineering studies, except Berger, left only one conclusion – sewers were needed in Island Park.

The reason the engineers went aground on this critical issue is that DEM, and others, were manipulating the outcome of the studies to support their institutional objectives. We have lived

for years under the assertions of experts that the testing was absolute. As it turns out, DEM had its thumb on the scales. Once the Town began to take its own measurements to confirm the DEM assertions in the Notice of Violation, the whole thing fell apart. We continue to fix a problem we don't have.

Island Park Landfill

(Larry Fitzmorris) – Portsmouth's Island Park community has become a depository for contaminated soil from other communities. Portsmouth's long-term antagonist, the Department of Environmental Management (DEM), has broadened our dispute with that agency to include a new area of conflict: capping the former Town dump in Island Park. Polluted soil is being added to the old dump in order to fix what is already a polluted site. Yes, we are adding pollution to correct pollution. After trying a reasoned approach with DEM, and getting nothing but the stone wall, the Council is seeking a formal analysis of the health hazards in Superior court.

DEM has decided to ignore the strong objections of the people in Island Park and the desires of Town government for business reasons. While everyone applauds the capping of the old Town dump, DEM has decided to permit violation of its own pollution standards to ensure that the private company doing the work is financially sound. The ability to receive otherwise prohibited soils will increase revenue to the owner and insure his financial stability and completion of the project.

Arsenic is, of course, a known carcinogen. The problem is that DEM refuses to answer the basic health question of how much of a hazard 42 parts per million of arsenic constitutes to nearby residents. Despite visits by a delegation of citizens to Governor Chafee and DEM head Janet Coit, inquiries from Senator Whitehouse's office and Council requests, the Agency aggressively avoids answering the question. This question was also put to the agency directly by individual citizens who live next to the old dump. The Director of the RI Department of Health canceled a visit by Department of Health arsenic expert Dr. Vanderslice, scheduled in response to those citizen requests. The basic response: it is OK because we tell you it is OK.

On July 18 the Council voted to enter Superior Court to seek an injunction against further soil deposits until a health analysis is provided by DEM and the State Department of Health. Councilwoman Judi Staven proposed this initiative and it was seconded by Liz Pedro. Council members Kesson and Hamilton supported the motion. This is a bold move. However, it comes after repeated actions by the Council, including a formal resolution sent to DEM seeking a scientific explanation, have fallen on deaf ears.

The former town dump, located in the western part of Island Park, has been closed since the 1970's and contains a number of pollutants. The site is listed as one of the many municipal landfills in the State that require capping. Recent testing by DEM indicates that a number of serious chemicals remain at the site, and in these situations, capping of the facility with clean soil is the usual remedy. In our case, that was the original plan, but the owner fell into financial difficulties and

DEM hit on a way to ensure his financial stability: earn income through the receipt of contaminated soil from elsewhere. Developers and governments, burdened with unwanted soils in their neighborhoods, export their pollution problems to Portsmouth and develop their land. Approximately 75 tons of soil, highly contaminated with arsenic at 42 parts per million (ppm) have already been deposited. An additional 1,500 tons of soil from the Naval Base, contaminated with 22 ppm of lead, and a level of arsenic at 27 ppm, is due shortly.

Many of the residents of Island Park, and nearby Portsmouth Park, would like to have their health questions answered. So would the Council. It does not seem an unwarranted intrusion in the operations of DEM to describe those risks in a scientific explanation. The high resistance to doing just that strongly implies that the Agency never bothered to do a study when it made its plans. The people in Island Park are apparently not worth the effort.

The Imperial Department

(Larry Fitzmorris) – The State's Department of Environmental Management (DEM) operates in a democratic system, but in a wholly undemocratic manner. It routinely imposes its will on communities without regard to local governmental processes or in many cases the principles of democratic government.

Portsmouth is doubly blessed by DEM. We have received a Notice of Violation directing construction of sewers in the North End and we are engaged with the Agency over the deposit of contaminated soil at the old landfill in Island Park. The order to build sewers was not accompanied with the funds to pay for the project and will require a very substantial financial obligation (estimated at \$42 million) for the people of our Town. DEM simply does not care about the financial impact on our families and our Town Government. The order to build sewers requires a bond to raise the funds. It is the State Assembly and local voters that authorize bonds, not the unelected officials of state agencies, yet DEM seems unconcerned about that little problem. If that was not enough, DEM decided to enter a business arrangement with the owner of the landfill, granting exemptions for the deposit of contaminated soil to provide additional income to help complete the project – despite strong opposition from the Council and people of our Town.

As Portsmouth residents understand quite well, DEM has become the prime example of overbearing and unresponsive government. The Agency has ordered these actions without regard to the substantial opposition of town government and especially the residents of the North End.

DEM has acted to achieve with force what it could not convince the people and government of Portsmouth to do voluntarily.

With this series of orders directing construction of sewers, and others involving the deposit of arsenic and lead contaminated material at the former Town dumpsite in Island Park, DEM has acted to achieve with force what it could not convince the people and government of Portsmouth to do voluntarily. Moreover, their technical assessment of the situation has proven to be extremely poor, implying a rather arbitrary decision making process is in place at the Agency.

DEM's activities bring forward the question of who runs our society, the government or the people. The principal concern in the Agency's actions is the violence they do to the idea of representative democracy. The dictatorial approach DEM has taken is completely incompatible with the concept of the people as judges of governmental actions and the ultimate authority over their own government. In both Portsmouth cases, DEM has completely circumvented local government. The voters of our town elected a Council opposed to sewers immediately following the receipt of the Notice of Violation in September, but DEM is moving to override that decision. What went wrong that we now have unelected agencies of State government roaming Rhode Island imposing their will on our citizens? Our government's departments, theoretically established to serve the people, apparently consider us unruly children in want of a strong hand.

It is time for the citizens to assert our rightful place in Rhode Island's political order. No law grants DEM the authority to autocratically decide huge financial matters for municipalities and force projects upon people who do not want them. They are doing this, of course, in the name of environmental improvements in the Sakonnet River's water quality and remediation of a contaminated former dump, but the driving forces behind their actions is bureaucratic arrogance and self-interest.

YOU MAKE A DIFFERENCE!

**JOIN
PORTSMOUTH CONCERNED
CITIZENS**

HELP US HELP YOU

**Call 683-6127
Or use the membership form in this
Newsletter**

The New Budget & Taxes

(Larry Fitzmorris) The Council approved the new Town budget on June 27. That budget does not represent a change in approach for the Town, but it does not involve significant tax increases either. Old systemic problems remain unaddressed, especially retirement funds, in what is fundamentally a status quo budget. The budget included four new municipal

employees. That is a historically high increase in one year, matched only by the increase of four in 2005. This year, one marked by high unemployment, increased foreclosures and tax sales by the Town, is a poor year to choose to grow government.

The Council passed a budget that has a tax levy of \$45,808,104 and a budget of \$57,566,837. This is the operational budget only, with the restricted budget an additional \$1.2 million in expenditures. The total budget for the year is \$58,739,995.

The tax increase was 3.8%, \$1,882,287 below the tax cap maximum of 4.25% and an increase of \$1,680,753 over last year. This increase was a total of the changes in all four categories of property taxes. This year was a real estate property revaluation year for Portsmouth and this rate of increase is only approximate for each household. The mil rate will also change, so calculations must compare total taxes paid during a transition to a budget with new valuations.

FY 2011 – 2012 Tax Year

	Levy	Tax Increase	Percentage
Property Taxes	\$45,808,104	\$1,680,753	3.8%

The State budget had no significant impact on the municipal side, although \$190,000 in MAST funding, proposed by the Governor, did not materialize.

Unfunded Retiree Obligations The Council and School Committee did not increase funding for the locally held pension and retiree benefit programs. **This is a major problem.** Initially the School Committee intended to provide increases in the retiree health care program, but that did not survive the budget process. Everyone knows that this is a very serious problem in both the State and local government. For the most part, these agreements were made without effective calculations of future costs. In the time-honored style of Rhode Island government, public officials made these agreements and left the solution to their successors. While this Council and School Committee are reviewing the program costs, effective action is an absolute necessity. Each year these programs cost more and the rate of increase grows. Our unfunded obligations in pensions and retiree benefits are \$45 million. Obviously, this is a huge number. While the School Committee may be able to reduce that number shortly, it remains a very serious liability. Local government is faces with three cost reduction approaches; alter existing agreements, increase payments from the Town and increase contributions from employees. There is, unfortunately, no good year to start dedicating the necessary funds for these programs, but Portsmouth's local retiree obligations are chronically underfunded. We either fix this problem or face being overwhelmed by accelerating pension costs. The Council decided to address this problem after completion of the budget, but by then there will be no funding to support changes.

State education funding went up about \$500,000, but was reduced by increased Teacher Pension Fund payments to the State of about \$200,000. While the State pays 40% of the costs in the pension fund that are not covered by the 9.5% paid

by teachers, the Town pays 60%. In the present year, and especially in coming years, that will accelerate dramatically. In the next fiscal year, the State/Local/teacher cost is expected to reach 45% of the entire expenditures on teachers' salaries statewide - if pension reform by the Assembly this fall is unsuccessful. Much will depend upon this special session.

Regionalization Rejected

(Larry Fitzmorris) –The Town of Portsmouth has formally ended its participation in the school consolidation process. The PCC has opposed regionalization of the Aquidneck Island school districts for some time. We did so because we believe that consolidation would result in decreased quality and increasing costs. While our position goes against current trends in Rhode Island, we have taken that position after a full evaluation of the benefits and disadvantages to our students and taxpayers.

The Portsmouth School Committee formally bowed out of the school district regionalization process at its May 26 meeting. In a unanimous, six to zero vote, the Committee passed a resolution ending its participation in the Aquidneck Island Study Group and any further consideration of regionalization. The Council soon followed the Committee's lead and passed a unanimous resolution in support of the Committee's decision. The resolutions put an end to the District's two-year participation in the study and planning processes to consolidate Aquidneck Island's three school districts.

The vote came as Committee member Tom Vadney, the body's representative to the Aquidneck Island Study Group, proposed a resolution to end the Committee's participation in the planning process, commenting to the Committee that "this is the decision point" for the district. David Croston seconded the motion. Mr. Vadney commented further that the Study Group was transitioning into a more formal proposal stage and that this was the time to withdraw, before the Town entered into agreements that obligated the District to officially endorse consolidation.

Discussion among the members of the Committee and administration was uniform in opposition to regionalization. Members cited the efficiency of the Portsmouth school system, recently identified by the Center for American Progress as Rhode Island's most efficient district. Other members expressed her concern that the district's quality would decline in a regionalized system. Committee Chair, Cynthia Perrotti commented that she was concerned that in a consolidated system, the quality staff would gravitate to the problem areas and Portsmouth students would lose the benefits of the more successful Portsmouth teachers.

Senator Chris Ottiano, R- Portsmouth and Bristol, who attended, cautioned the Committee that the regionalization movement was strong in the Senate and that the Town must be ready to defend its decision and manage its budgets effectively. He also assured the Committee that he understood and supported the Committee's decision and would defend it in the Senate.

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...

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
50 Kristen Ct.
Portsmouth, RI 02871

Portsmouth Concerned Citizens
PO Box 686
Portsmouth, Rhode Island 02871

STDPRSRT
US POSTAGE PAID
NEWPORT RI
PERMIT #286