



Portsmouth Concerned Citizens

NEWSLETTER

“Information is the currency of Democracy”

- Thomas Jefferson

www.portsmouthconcernedcitizens.org

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From the President -- Larry Fitzmorris

Selecting the New Town Administrator – In a sign that Portsmouth government may be growing up, the Council presided over a modern and effective selection process for the Town Administrator. For the first time, the Council hired a professional search consulting company to manage the advertising, collection of applications and the review of requirements. The company specializes in searches for municipal managers and has considerable experience in this area. That approach marks a departure from the concepts of hiring from within Town government or hiring from somewhere else in the State; a process which clearly limits the quality of applicants. This approach gave the Council the opportunity to select based upon ability and experience, instead of a process driven by political relationships. Councilwoman Staven led the initiative to use the professional search company and Councilman Kesson made sure the procedure kept going when the professional and citizen reviews began. The Council’s selection vote for the administrator was unanimous, and I salute all involved.

In This Issue:

Changing Course – The new Town Administrator is making his mark on the budget process. His proposals, if adopted into the budget for next year, as the Council plans to do, will mark an important change of direction from a largely haphazard and completely imbalanced process. The Council faces hard choices and a once-in-a-decade opportunity to change direction and reset priorities.

East Bay Energy Consortium – Ted Czech takes a look at a proposal to create yet another government agency – one that intends to construct a wind farm in Tiverton. Our Portsmouth Council has voted to support the concept and is considering joining this Consortium. The devil is in the details, and this proposal is changing quickly under opposition from a number of the State’s taxpayer and reform groups.

Board of Elections v. Free Speech – The Little Compton Taxpayers Association has won a big victory in Court for all those who believe that a full discourse in political life is necessary and that the First Amendment means what it says. They have done this against a formidable State agency that has lost its way.

Changing Course

The opportunity to change the approach to budgeting in our cities and town’s comes along once in ten or twenty years. This year, Portsmouth has an opportunity to change directions; to in effect get our financial house in order. As the Council considers the budget for next year, it faces a fundamental choice, which has been starkly presented by the new Town Administrator, John Klimm. He has brought an outsider’s view to our budget and he does not like what he sees. In the end it is always a question of budget priorities, and we have been neglecting financial stability in favor of salaries and benefits.

Our financial fundamentals are not obvious in the annual budget documents. In the past we in the PCC have used four financial fundamentals to judge the stability of the Town: The Fund Balance, the Town Pension Plan, the two retiree health care plans and the amount of town debt. The Town Administrator has added two more: roads and capital spending. The stability of these programs is calculated outside of the budget and is therefore easily ignored. The recent crises in the pensions and health care programs maintained by the State have brought new emphasis to these types of stability issues.

A review of the status of these financial fundamentals is instructive:

The Fund Balance The town’s reserves, or Fund Balance, is the primary measure of financial well-being. When it is down, a municipality is usually in trouble. Ours is down quite a bit at \$2,563,838; which is about half of the minimum standard of \$4.7 million, according to the last audit. It decreased about \$700,000 last year due to the FY 2010 - 2011 deficit, funds that are expected to be replaced in the current year. The shortfall should be corrected as fast as possible; new funding should be at least \$1 million in the next budget, after last year’s withdrawal is replaced.

Town Debt The good news in our financials is a relatively low debt of \$28 million, but it increased by \$2.4 million over the past year - a 9.5% increase and a bad trend in a good area. No corrective action is required in the next budget.

Pensions The Council reduced the assumed return on investment (ROI) for the assets in the Town Pension Plan fund

from 8% to 6.75% on May 7, 2012: a hard, but honest decision. That change modified the unfunded liability to a realistic \$32.9 million from \$22.1 million. An estimated \$1.2 million in additional funding will be required in the 2013 – 2014 budget. An increase in funding of at least \$600,000 should be included in next fiscal year's budget.

Retiree Benefits (Healthcare) This is as serious a problem as the pension plan. It could be potentially worse, if we get surprised on costs. There are two locally maintained health care plans for retirees in Portsmouth, one for the municipal departments and another for the school department. Both are pay-as-you-go plans. While both have investment funds, very little has been deposited in them to date. The audited June 30 2011 unfunded liability in the two funds is \$23.5 million. An additional \$575,000, above the annual payments, must be contributed to the two funds in the next budget if we want to pay down the unfunded liability in twenty years.

Roads This is an area of obvious problems. We have spent an average of \$156,000 each year for the last ten budgets. A professional road maintenance team made a recent presentation to the Council and from their data it is clear we should have been spending at least \$750,000 per year to keep up. One million dollars is required in the next budget, and many future budgets, if we are to restore our roads.

Capital Plan This is the building replacement, major building repair and vehicle purchase plan, often referred to as infrastructure spending. We have been spending a good deal in this area, and funding primarily comes from short term warrants and bonds. A rough draft of a five year plan has been completed, and indicates that next year cost is about \$3.3 million in new funding. The Council understands that this is an impractical amount of increased spending. Next year, \$780,000 is already being spent, from existing bonds and warrants. Monies from the 2008 recreation bond are included in this amount.

Totals. While difficult to estimate accurately, it looks like these six areas require an additional \$3.1 million in funding each year.

Portsmouth is operating a \$62 million government on a \$59 million budget. The shortfall in financial fundamentals is a measure of how imbalanced spending in the Town has become and a strong indication of the very critical need for restructuring Town expenditures. The transfer of funding from fundamental needs into salaries and benefits has been gradual, but has left us with a difficult problem. The taxpayers have been paying their fair share in Portsmouth. The solution is clear: we must reprioritize spending or hazard the future.

East Bay Energy Consortium: We Will Pay Dearly For Green Energy

(Ted Czech) - The Portsmouth Council received a presentation on the East Bay Energy Consortium from its advocates at its meeting on April 25, 2012. The PCC vigorously opposed the concept during public discussion; however the Council passed

a resolution of support for the proposed legislation on a four to three vote. The concept has also received considerable opposition from a number of reform groups in the area, including East Bay Patriots. Concerns about this legislation in the affected communities and in the Assembly have resulted in a number of major modifications to the proposed legislation. In addition the host community, Tiverton, reversed its support for the project in a Council vote on May 21.

Apparently there has been new legislation (Senate bill S 2870 SUBSTITUTE A) proposed to establish the EBEC without the requirement for eminent domain powers – a major issue with several town councils in the East Bay communities. The new legislation would make the EBEC a “subsidiary” of the Economic Development Corporation (EDC) similar to Quonset Point/Davisville. Once enabling legislation is passed, the goal of the EBEC is to kick off a series of actions culminating in the building of up to ten 2.5-megawatt wind turbines in Tiverton. What is the PCC's objection to this project? Here is a summary of the risks and concerns we have.

1. **Subsidiary Corporation of the EDC.** This is a key part of the legislation. The EDC would issue bonds to fund the EBEC's projects. We all know how well the EDC oversees projects based on their track record with the loan guarantees provided to 38 Studios.
2. **Participation.** The nine cities and towns in the East Bay would have the option to participate in the EBEC and would have to pass an ordinance to do so. It is not clear how a city or town could withdraw from participation without incurring some liability.
3. **Representation.** The EBEC would have a board of up to ten persons: the Executive Director of the EDC or his representative, and one per participating city/town. Each city/town council would submit three names to the Governor who would select one person for the board. The Consortium would essentially be a government run by unelected officials, not directly answerable to the citizens.
4. **No Business Plan.** While there is no doubt a plan somewhere in the EBEC's offices, no such plan has been offered to the general public. Feasibility studies that generally describe the specifications of the turbines and a possible range of generated energy do exist. Spokespersons throw out the annual “profit” of \$200K per town/city without giving any backup as to how this is to be accomplished.
5. **Potential Town Liability Language** in the proposed legislation would exempt both the state and participating cities and towns from any liabilities of the EBEC, such as failure to pay back the bonds. However, the state (via the EDC) and participating cities and towns may still be liable for debts of the EBEC if it eventually goes bankrupt. Key to this issue is that such a determination will be made in Federal Court, not a state court.
6. **Bond Issue Interest.** Our calculations indicate that the EBEC will have to pay around 5% interest on the bonds that the EDC issues to fund the project. So if the EBEC borrows \$51 million it could require annual principal and interest payments between \$5.1 and \$5.5 million in the first year, depending on the interest rate. This payment must be covered

in addition to other EBEC expenses before any payouts to the cities/towns.

7. Revenue. Revenue will come primarily from the sale of renewable electricity to National Grid, supplemented by the sale of Renewable Energy Certificates (REC's).

We have done some preliminary analysis (in the absence of any realistic information provided by EBEC) that concludes that EBEC will need to negotiate a much higher rate per kilowatt-hour than that currently being received by Portsmouth for electricity generated by its wind turbine. How will National Grid be forced to pay an excessive rate to EBEC? The same way that they will have to pay for the wind project off Block Island: Legislation.

8. Costs to the Ratepayer. The excess cost of renewable energy is passed along to the ratepayers. National Grid is required to purchase increasing amounts of renewable energy by law. Apparently they have located a source of renewable energy in Maine that is higher than what they pay for electricity generated at Brayton Point in Somerset, MA, but much cheaper than what they will pay for Block Island renewable energy. A recent quote in the *Patch* from an EBEC board member concluded: "The Public Utilities Commission (PUC) regulates rates, and they ultimately regulate the cost NGrid will pay for any electricity it purchases. Because they have to buy from renewables, don't we want NGrid to buy a Rhode Island product and keep the money in state for our taxpayers?" This statement ignores the burden placed on ratepayers when excessive payments are required in order to meet state mandates. National Grid should purchase the most economical renewable energy to meet state requirements and lessen the burden on ratepayers.

In summary, we are urging the Portsmouth Town Council to reverse their support for the EBEC enabling legislation pending on Capitol Hill. Our town's experience with the wind turbine at the high school over the past two years should be reason enough to slam the door on the EBEC.

Board of Elections v. Free Speech

The Little Compton Taxpayers Association endorsed candidates in their newsletter published just before the 2010 elections. What followed was an absorbing tale of government abuse and a strong lesson for all citizens about the necessity to resist the encroachment of our political rights by an overreaching government.

The Little Compton Taxpayers Association (LCTA) has routinely posted endorsements for political candidates in their newsletter. A local citizen did not like the endorsement by the group in their October, 2010 newsletter of Congressional candidate John Loughlin and for local candidates. The citizen filed a complaint with the Rhode Island Board of Elections and separately with the Federal Election Commission. The FEC, having just been pulverized by the US Supreme Court in the famous *Citizens United v Federal Election Commission* decision would not touch the case, but the Rhode Island Board of Elections was happy to jump in to punish those out of control citizens in Little Compton.

The complaint letter from the Board was received December 29, 2010 and accused the tax group of violating regulations on reporting requirements for coordinated and independent

expenditures. In short this was a complaint that LCTA had made contributions in kind to one of its Board members, Joseph Quinn, by endorsing him in its newsletter. The Board presumed that because he was a board member of LCTA, the contribution was coordinated. In other words, the Board presumed LCTA guilty. In fact LCTA, like the PCC, does not permit candidate members to participate in the endorsement process.

We all know that the government is supposed to prove guilt, not assume it, but the Board of Elections apparently operates under different views. It should also be pointed out that LCTA expended almost no money on the endorsement, when the cost of the newsletter was divided by the number of candidates and space allotted to the endorsement. So this was not really about money, which the Board claims the power to regulate, it was about political speech.

So, the LCTA was off to a hearing conducted by the Board of Elections to prove their innocence. The Board rejected LCTA's arguments that the endorsement of Mr. Quinn was constitutionally protected and found LCTA guilty of violating Rhode Island laws and enjoined the LCTA from ever engaging in this allegedly unlawful conduct in the future. During the hearing Chairman Rego was reported by attendees to have said "This is political speech and we are going to regulate it," while waving a copy of the LCTA newsletter in question. The next day the LCTA requested a copy of the audio tape of the hearing. The Board of Elections responded that the audio tape was inaudible and provided a copy of a tape in which remarks could not be understood.

The Board clearly believed that they could bully the LCTA at will, without consequences. They, however, severely underestimated the tax group. On June 22, 2011 the LCTA and Mr. Quinn filed a Civil Rights action against the Commissioners of the Board of Elections in US District Court. In its Complaint, the LCTA alleged that the Commissioners, under color of state law, denied the taxpayer group its First Amendment right to independently endorse whichever candidates it wishes to endorse, including Mr. Quinn. Just as the case was to begin with pretrial briefs, the Attorney General's office, which represents departments of State government in court, folded its legal tent and informed the Court that the Board of Elections had withdrawn its legal complaint against Mr. Quinn and the LCTA. US District Court Judge McConnell signed a consent order that resolved the case on January 25, 2012. In the consent order the Board of Elections acknowledged that the proceedings of the hearing did not support the finding of actual coordinated activity between the LCTA and Mr. Quinn. The Court also awarded court costs of \$45,000 to LCTA.

This case proves that citizens are the only ones in our society who are going to defend our basic rights. It is the people who are going to defend political speech and the ability to band together for our own political advantage. While the US Supreme Court reasserted those rights in *Citizens United v FEC*, in this case an agency of State government decided that they knew better and that the people involved lacked the intelligence and assets to defend themselves. We all owe the members of LCTA a tremendous debt for their courage and determination.

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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 APPLICATION FORM

NAME _____ DATE _____

ADDRESS _____ CITY/TOWN _____

HOME PHONE _____ OFFICE PHONE _____ E-MAIL _____

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

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