



TOWN OF BERWICK  
Board of Selectmen

Special Meeting & Public Hearing Minutes  
On a Potential Partnership Agreement  
with Fund of Jupiter

October 29, 2014

The meeting was called to order by Chairman O'Connor, with all members of the Board present, as well as Town Manager Patrick Venne and several members of the public.

Prior to opening the public hearing for comments and questions, Mr. Venne introduced the potential partnership agreement in its final form at the request of Chairman O'Connor.

**The public hearing portion of this meeting began at 6:35PM.**

Comments were as follows:

Ruth Bleau – Ms. Bleau inquired if the Fund of Jupiter will forward the Town money for grant writing and clarified the intent of her question to as one posed to understand whether the Town will have to spend any money upfront.

Ms. Bleau also indicated a belief that the public does not know that the vote on this potential agreement is happening. She followed this remark with one suggesting the finalized potential contract be mailed to all registered voters in Town.

Lastly, Ms. Bleau asked what happens to all of the votes which were cast by absentee ballots prior to the potential agreement's finalization.

Jeanette Lemay – Ms. Lemay stated that everyone wants something done on the Prime Tanning site, but no one wants a repeat of the Town's past problems.

Ms. Lemay asked if the process of selecting an environmental consultant, if it goes forward, would take place outside of the Town's procurement policy

She next asked whether voters would be asked to approve future appropriations under this agreement or whether Question 4 on the November 4<sup>th</sup> Town Meeting would approve current and future expenditures.

Ms. Lemay also inquired about the potential for the Town to be stuck with the property.

Next, she inquired and expressed concerns about the terms “designee” and “nominee” in the agreement, which caused her to wonder who the Town would be doing business with under this agreement.

Lastly, Ms. Lemay inquired about the Fund of Jupiter’s ability to assign its rights in the contract.

Frank Underwood – Mr. Underwood asked Mr. Venne to expand upon who would be paying the attorneys’ fees for the Town in this matter.

He also asked for clarification on who would be paying for the insurance required for the property.

Next, Mr. Underwood asked about phantom taxes and specifically requested an explanation of whether they would be paid during the period of Town ownership.

Lastly, he asked about clarification on an escrow account for the required purchase price.

Eleanor Murphy – Mrs. Murphy stated a concern about the \$117,000 owed by Prime Tanning to the Berwick Sewer District.

She then asked whether our Town Attorney drafted the proposed agreement.

Lastly, Mrs. Murphy implicitly asked a question of whether back taxes could be collected on a property which had been foreclosed upon.

Mr. Underwood returned to make a comment in support of the agreement.

**The public hearing was closed at 6:52 PM.**

Chairman O’Connor requested Mr. Venne to answer the questions posed above, which he did after clarifying his understanding of them with the inquirer.

*Questions from Ms. Bleau*

Regarding Ms. Bleau’s comments and questions, Mr. Venne explained that the grant writing for this process, if approved, will be at no cost because the consultants who hope to bid on the work would help write the grant for free. The Town, Mr. Venne explained, would not expend any money upfront for this project, unless it chose to spend fund balance and be reimbursed as opposed to requiring payment upfront in the form of an advance, which he clarified the Town does not intend to do.

Regarding public knowledge of the vote, Mr. Venne and others explained that there was a FAQ sheet that had been released and there have now been two separate public hearings on the matter. The Board decided to leave the question of a potential mailing of the agreement to all voters in Town to a later point in the meeting.

Regarding votes cast by those using absentee ballots who had not seen the agreement as proposed in final form, Mr. Venne indicated that the warrant says the agreement would be posted with the warrant, not with ballots, and voters who vote before seeing the document are not something that can be controlled.

#### *Questions from Ms. Lemay*

Regarding Ms. Lemay's question about procurement, Mr. Venne explained that this process allows Fund of Jupiter to have an advisory input on the selection of an environmental consultant, but otherwise it must conform to federal grant guidelines, which require competitive bid selection.

Mr. Venne next explained that this vote would authorize expenditure now, as opposed to requiring a future vote.

Regarding Ms. Lemay's question about the potential for the Town to get stuck with the Prime Tanning property, Mr. Venne explained that there is language in the agreement as proposed which would allow the Town to force acquisition of it for payment of all back taxes and interest at virtually any time—with such funding secured in the form of an escrow account

Regarding Ms. Lemay's concerns about the vagueness of the terms "designee" and "nominee" for Fund of Jupiter, Mr. Venne clarified that there is nothing the Town can do to stop Fund of Jupiter from transferring this property as it otherwise would. Ms. Lemay inquired about whether this would be before or after the partnership expires in the form of acquisition of the site by Fund of Jupiter. Mr. Venne explained that the intent is for Fund of Jupiter to remain the partner, meaning if a transfer happens at all it would likely be after completion. Mr. Venne also clarified that if the property and/or contract were able to be transferred, and were transferred, the Town's protections in the agreement would still exist and allow it to consider its position at that time.

#### *Questions from Mr. Underwood*

Regarding Mr. Underwood's question about who would pay for the Town's attorney fees, Mr. Venne clarified that there is a provision in the proposed agreement which states Fund of Jupiter would reimburse the Town for its legal expenses, up to \$15,000.

Mr. Venne next clarified that Fund of Jupiter also agreed to pay for the Town's required insurance upon acquisition of the site through foreclosure.

Mr. Venne also stated that Fund of Jupiter had agreed to continue paying taxes, or some sum in lieu of taxes, during the period of Town ownership.

Lastly, concerning clarification on the required escrow account, Mr. Venne clarified that Fund of Jupiter had agreed to place \$250,000 in escrow to ensure its ability to perform this agreement in the event the Town chooses to force it to acquire the property for the price of back taxes and interest.

*Questions from Eleanor Murphy*

Regarding Mrs. Murphy's question about Sewer liens, Mr. Venne clarified that Fund of Jupiter had been actively negotiating a settlement with the Berwick Sewer District, but that process is distinct from the Town.

He also clarified that it was the Town's attorney, and not Fund of Jupiter's attorney, who wrote that proposed agreement.

Lastly, Mr. Venne clarified that there have been cases in the past where municipalities foreclose on property for back taxes and still attempt to collect the taxes in addition to the property.

The consensus of the Board of Selectmen was to not mail the proposed agreement to all registered voters, both in light of the extensive outreach which has already occurred and also in light of the fact that there is a risk that it could arrive after Election Day.

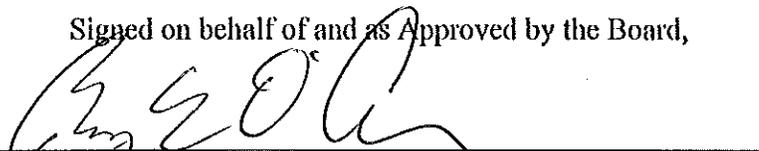
A comment was made that the proposed agreement should be posted at the Library and Post Office as well as made available to those voting on Election Day at Town Hall in hard copy form.

**Adjournment**

Selectman Wright moved to adjourn, and Selectman Ganiere seconded the motion. The Board voted 5-0 to adjourn.

Respectfully Submitted,  
Patrick Venne, Town Manager

Signed on behalf of and as Approved by the Board,

  
Bryan O'Connor, Chairman, Berwick Board of Selectmen