



Answers to

**FREQUENTLY ASKED QUESTIONS**

*ABOUT THE POTENTIAL PARTNERSHIP WITH FUND OF JUPITER  
FOR ENVIRONMENTAL REMEDIATION OF THE  
PRIME TANNING SITE*

**TOWN MEETING DATE:** November 4, 2014



## Table Of Contents

<b>Basic Background .....</b>	<b>3</b>
The Warrant Article/Ballot Question .....	4
Informed Decisions Through Robust Public Information .....	4
<b>Introduction to Frequently Asked Questions .....</b>	<b>5</b>
What is the Town contemplating? .....	5
Why is the Town contemplating such a partnership?.....	6
<b>Fund Of Jupiter Related Questions .....</b>	<b>8</b>
What is the Fund Of Jupiter? .....	8
<b>Grant Specific Information .....</b>	<b>9</b>
Are matching funds required?.....	9-10
Can required match amounts be provided in in-kind contributions? .....	10
<b>Environmental/Cleanup .....</b>	<b>11</b>
What is a Brownfield? .....	11
Do we know what environmental concerns exist today?.....	12
<b>Bankruptcy &amp; Legal Ownership .....</b>	<b>13</b>
Who owns the Prime site? .....	13
Why hasn't Fund Of Jupiter taken possession of the property yet? .....	14
<b>Partnership .....</b>	<b>14</b>
What steps has Fund of Jupiter begun in anticipation of a partnership? .....	15
Has this sort of process ever been used successfully before? .....	16
<b>Financial Details .....</b>	<b>17</b>
Where would the Town's financial contribution come from? .....	17
How much is owed to the Sewer District?.....	18
<b>Warrant Specific Information .....</b>	<b>19</b>
Why does the Town have to act so quickly?.....	20
How is this project different from the Sullivan School project?.....	21
<b>The Vision/Comprehensive Plan .....</b>	<b>22</b>
How will the Town have control of what is redeveloped on the Prime Tanning site? .....	22
What assurances will the Town have that development is consistent with vision? .....	23
<b>Additional/Follow-up questions and comments .....</b>	<b>24</b>
Is there a chance the Town will be stuck owning a piece that Fund Of Jupiter doesn't want? .....	24

## I. BASIC BACKGROUND

The Board of Selectmen is contemplating a partnership with a private company known as Fund of Jupiter to facilitate eventual redevelopment of the abandoned Prime Tanning site in the heart of downtown Berwick. It is anticipated redevelopment will be more likely after environmental cleanup of the site takes place, and the Town is able to assist in obtaining federal funds to pay for such cleanup. If authorized, the agreement as contemplated would entail Town acquisition of the so-called “Prime” property by foreclosure for back taxes, as well as a financial contribution toward the cleanup effort, prior to conveyance of the site to Fund of Jupiter following cleanup for eventual redevelopment directly or through sale to other interested development firms or business interests.

Acquisition would occur by a process of consensual tax lien foreclosure, whereby the Fund of Jupiter—a secured creditor for the now bankrupt Prime Tanning and the primary party-in-interest with respect to the site—will permit the Town to acquire the property for back taxes owed pursuant to and contingent upon an agreement that the property ultimately be transferred to Fund of Jupiter after necessary environmental remediation occurs. The remediation would occur through what the Town and Fund of Jupiter are hopeful will be a series of federal grants from the U.S. Environmental Protection Agency (EPA) intended for cleaning up so-called “brownfield” sites, like the Prime property.

The necessity and benefit of the Town’s involvement in this process stems from at least two places: EPA cleanup grants are not available to private entities, like Fund of Jupiter, but they are available to eligible parties, like the Town; and Fund of Jupiter has indicated a financial contribution from the Town in the amount of 20% of any grant monies awarded will be helpful to eventually marketing the site at a rate supported by present market conditions. In essence, the Town is being asked to consider whether reinvesting back taxes owed directly toward the future development of the property on which they are owed—as opposed to simply collecting them for general use—is a good and acceptable idea.

In order to execute an agreement of the sort and for the purposes described above, the Town—acting through its Board of Selectmen and Town Manager—must receive delegated authority from Town Meeting. “Town Meeting” is more than a meeting of the townspeople. By law, it is the legislative body of the Town, like a city council in larger municipalities, and possesses authority to enter or refrain from entering contracts which bind the Town. On November 4, 2014, registered voters in Town will be asked to act upon the following warrant article and ballot question which would provide the necessary delegated authority for the Selectmen and Town Manager to enter a contract on the Town’s behalf:

## **II. WARRANT ARTICLE/BALLOT QUESTION FOR NOVEMBER 4, 2014**

*Shall the Town authorize the municipal officers and town manager to enter into and perform on behalf of the town an agreement with the Fund of Jupiter in substantially the form presented to the meeting calling for the acquisition of the so-called Prime Tanning site by the town, application for grants or other funds to rehabilitate the site, and the conveyance of the property to the Fund of Jupiter, and to expend the sums in their judgment required to perform the same, and to take or refrain from taking all other actions they determine to be necessary to carry out the agreement according to its purposes? (A copy of this Agreement is posted with this Warrant).*

The language giving rise to the potential delegation of authority in this question is intended to be specific enough to convey an understanding of its intent, yet also broad enough to permit flexibility to negotiate a workable contract to reach the intended result. By the time of the Town Meeting, a copy of the agreement which is substantially complete will be available for public inspection. As of early October, that potential agreement is still being negotiated.

## **III. INFORMED DECISIONS THROUGH ROBUST PUBLIC INFORMATION**

In an effort to ensure the voting public is able to make an informed decision on what is possibly a confusing subject, the Board of Selectmen has directed the creation of, and Town Administration and the Envision Berwick Committee have gathered, a list of questions frequently asked about the potential partnership described above. The answers to these questions, which are provided below, are offered from the perspective of the Town with input from Fund of Jupiter and others for accuracy; they should be used as a starting point for gathering any further information desired by voters. With any further questions generated by this document, members of the public are encouraged to contact Patrick Venne, Berwick Town Manager, at 207-698-1101, or [townmanager@berwickmaine.org](mailto:townmanager@berwickmaine.org). This list of questions will periodically be updated as appropriate if additional questions arise.

#### **IV. FREQUENTLY ASKED QUESTIONS**

**Question: What is the Town contemplating?**

Answer: The Town is contemplating entering a partnership with a company named Fund of Jupiter pursuant to an agreement that would allow the Town to acquire certain property for a temporary period. Once acquired, application for environmental cleanup grants would become possible. Following cleanup, the property would be turned over to private interests (Fund of Jupiter) in a more development-ready state.

The property at issue is that of the former site of Prime Tanning in the downtown. The company involved is a secured creditor of the now bankrupt Prime Tanning, and is a primary party in interest in the bankruptcy proceedings. The method by which the Town is contemplating acquisition of the property is consensual foreclosure on liens for back taxes owed. In addition to merely applying for grants following acquisition by this process, the Town is also contemplating contributing a portion of taxes owed for the site toward the required match amount for such grants (20% of any funds received, assuming no waiver is granted). The Town also intends to request a waiver of such match contribution from the grantor (United States Environmental Protection Agency).

**Question: What is the (simplified) step-by-step process?**

Answer: As contemplated, the Town and Fund of Jupiter would request the bankruptcy court with jurisdiction over the Prime Tanning bankruptcy to permit a consensual foreclosure by the Town on the property for the amount of back taxes owed. The Town would then own the property. The Town would apply for cleanup grants this November/December and wait to see the results this spring.

If awarded, the Town would contribute 20% of the grant award, if its requested waivers are denied. This would be in either money directly or “in-kind” contributions of staff and committee time spent managing the grant. If a financial contribution as opposed to in kind contribution is paid, it may come from money advanced by Fund of Jupiter and not from the Town’s present funds. Alternatively it will be paid from the Town’s savings and replenished upon conveyance of the property to Fund of Jupiter post-cleanup.

Because there will likely be seven Prime Tanning parcels, the grant application process may or may not be repeated next year, to permit maximum grant awards, if necessary. Once cleanup is complete, the Town would convey the property to Fund of Jupiter for the first time.

As a fee for the transfer, Fund of Jupiter would pay all back taxes owed for the site, minus any money that it advanced to the Town in order to pay grant match requirements. If any funds remain between required grant matches and the amount owed, the Town would receive such funds. Fund of Jupiter would then continue to pursue private development interests, as it has been and is still doing, with knowledge that the site is then more marketable due to removal of a major barrier to development investment (environmental contamination).

All of this would be subject to the controlling terms of a negotiated agreement.

**Question: Why is the Town contemplating such a partnership?**

Answer: The Town is contemplating this partnership to facilitate a productive return to use of the 11.7 acres formerly occupied by Prime Tanning that now dominate the downtown. Based on the downtown vision report appended to the Town's comprehensive plan in 2014, the Town believes downtown redevelopment and economic development in general are priorities. The Town's role in this specific matter stems from the fact that the market for redevelopment of a potentially contaminated site near sales tax-free New Hampshire is believed to be very poor and disadvantageous to the Town's expressly stated goals of redevelopment.

On the belief that a clean site will be more marketable and therefore likely to generate positive growth in the future, the Town believes grant applications for cleanup funding from the federal government have merit and will be successful. In order to apply for such funding for the Prime Tanning site, however, that property must be held by an eligible party. Private interests are not eligible to receive federal cleanup funds, but public bodies, such as the Town, are.

Therefore, the Town is able to potentially assist a major private interest in its downtown in a manner that may simultaneously contribute to its own future success by a productive reuse of, and return to tax-positive status for, an abandoned property by temporarily acquiring the property for the sole purpose of grant applications. Whether the Town in fact takes this approach will depend on the outcome of a Town Meeting vote on the matter scheduled for November 4<sup>th</sup>.

**Question: How did we get here?**

Answer: In 2008 Prime Tanning closed its doors in Berwick. In 2010 it filed for bankruptcy signifying what may have already been obvious: that the closure was permanent. The site, formerly home to Berwick's economic and part of its cultural and civic identity, has sat vacant for more than half a decade. This has had a profound effect on the Town ranging from a fiscal detriment in the form of lost tax revenue to a decrease in readily available on-call firefighters in the immediate downtown. It has also led to an overall lack of activity in and around the Town's core village area, with resultant quality of life concerns. In response, the Town proactively began to re-envision its future.

In 2012 or earlier, a citizen-led initiative began to think of ways to reimagine downtown. This effort eventually led to the formation of the Downtown Vision Committee, tasked by the Selectmen with working jointly with Town staff and others toward creation of a new vision for downtown funded by a Town Meeting-approved economic development account. Between 2012 and 2013 the Town worked with a hired consultant to understand the input of a number of community input forums, surveys, and charrettes regarding what a reinvigorated downtown should look like. These thoughts were distilled in a downtown vision report. In 2014 the Town Meeting voted to approve this report as an appendix to the 1991 Comprehensive Plan with a specific focus on the downtown area and particularly re-use of the Prime Tanning site. Specific action steps were included in that plan, and it created a basis for amendments to existing land use ordinances.

While the Town moves along with regulatory adjustments, it is clear that broader external economic forces are also at play and have a significant impact on the likelihood of Prime Tanning being redeveloped. The site, for instance, is believed to or known to have contamination to one degree or another. This creates redevelopment difficulties in an already challenging market where undeveloped sites without such complications exist nearby.

As a result, in 2013 the Town assisted with an application for federal environmental contamination assessment funding in hopes that it would have assisted with selective demolition of the site to study its

existing footprint and gain a better understanding of any site challenges. The intent of this application was to facilitate redevelopment by removing a degree of uncertainty and therefore investment risk from the site. The application was impressive and received high marks from the reviewing authority, but it faced stiff national competition and was ultimately unsuccessful.

In July 2014 the Board of Selectmen listed ‘economic development’ as its first policy-level priority. That same month, an environmental consultant who assisted with the assessment grant application process described above notified the Town Manager of a similar process for actual cleanup funding (as opposed to simply assessment funding). The Town’s interest in such funding stems from the same place it did with respect to assessment funding: a belief that removing uncertainty and contamination lessens the risk of investment and will lead to a greater likelihood of tax-positive redevelopment.

The Board of Selectmen was informed that—unlike the assessment application from 2013—in order for a cleanup grant application to proceed the Town or other “eligible party” would have to take ownership of the now privately owned site. Private interests, like Fund of Jupiter, are simply not eligible for EPA cleanup funding. Public ownership, on the other hand, indicates a level of public benefit that warrants federal funding if the project is otherwise eligible.

The Selectmen directed the Town Manager to work toward negotiating an agreement for a partnership which could be presented to the Town Meeting for consideration to allow for this (Town ownership for grant application purposes) after input from the Town Attorney and others suggested this approach would be a workable and legal option. The Selectmen are interested in providing the Town Meeting an option to consider for facilitating redevelopment.

Meanwhile, the Fund of Jupiter—a secured creditor for the now bankrupt Prime Tanning which is hopeful this application process as contemplated will take place—has taken steps to place the property in a more advantageous form. Specifically, because grant funding, if awarded, is allotted on a per parcel basis, it makes sense to increase the number of parcels present within the boundaries of the site prior to application. For this reason, Fund of Jupiter began the process of basic no-use and no-construction, lot line-only subdivision in September when an application for this concept was presented to the Berwick Planning Board.

That same month, the Selectmen approved a warrant article related to an agreement that would allow the Town to temporarily acquire the property by foreclosure and then convey it to Fund of Jupiter post-cleanup for an amount to equal back taxes less any amounts contributed toward the effort by Fund of Jupiter (the approach outlined above). The agreement continues to undergo negotiations and will soon be ready in a substantially complete form for review prior to Town Meeting.

**Question: Who does this matter concern?**

Answer: This matter concerns all residents and taxpayers of the Town of Berwick, the Berwick Sewer District, and anyone generally interested in the future of the downtown area and Town as well as region as a whole.

**Question: Who does this matter directly involve?**

Answer: This matter directly involves the Town of Berwick represented by its Board of Selectmen, Envision Berwick Committee, Town Manager, Town Attorney, Town Planner and other staff, board and committee members; the Fund of Jupiter, represented by Mark Kehaya, Ronan Kennedy, and attorneys Roger Clement and Scott Anderson; volunteer neutral Environmental Consultants Rip Patten and Rick Vandenberg; Southern Maine Planning & Development Commission (SMPDS); and the United States Environmental Protection Agency (U.S. EPA).

**Question: What is the Fund of Jupiter? Where did the name come from?**

Answer: The Fund of Jupiter is a limited liability company formed for the purpose of making loans to the Prime/Irving family of companies.

**Question: Who is involved with Fund of Jupiter?**

Answer: Mark Kehaya, Ronan Kennedy, and attorneys Roger Clement and Scott Anderson.

**Question: Who represents Fund of Jupiter?**

Answer: From a legal perspective, Roger Clement and Scott Anderson, both partners with the Portland, Maine law firm of Verrill Dana, represent Fund of Jupiter. Both have been involved in the subdivision application process, along with Civil Consultants, and attorney Clement has also been involved with the Town since at least the early downtown vision committee meetings in 2012.

**Question: Is the Fund of Jupiter (FoJ) associated with Jupiter Asset Management of Great Britain?**

Answer: No.

**Question: If the Fund of Jupiter was formed in 2010, and Prime Tanning foreclosed in 2010, how did they acquire the property?**

Answer: FoJ was formed for the purpose of making loans in 2010. Those loans were secured by a mortgage on the Prime property.

Regarding how Fund of Jupiter acquired rights to the Prime Tanning property, please review the Q&A related to status of bankruptcy proceedings, below.

**Question: Does Fund of Jupiter ever have to pay any of its taxes? Why isn't Fund of Jupiter required to pay its taxes before getting help from the Town?**

Answer: Yes. Taxes are presently assessed to the bankruptcy estate of Prime Tanning, and not Fund of Jupiter. Fund of Jupiter has an option to buy the property subject to a condition that its tax liens are satisfied. As an alternative, Fund of Jupiter is proposing to pay a sum equal to those liens to acquire the property after first having the Town play a role to assist in its clean up. In essence, Fund of Jupiter will be paying all of the back taxes, and it has simply asked the Town to earmark a portion of them for use toward securing environmental cleanup grants.

The Town is contemplating this approach subject to proper protections because it views it as a potential investment opportunity, whereby expenditure of the 20% match funds in the short term will lead to more likely development (and added tax value and downtown vibrancy) in the long term. Fund of Jupiter has also offered to advance the Town the funds for the match, with a stipulation that the advance be credited toward the eventual conveyance fee after cleanup.

In effect, this would be the same as paying the back taxes upfront and then asking the Town to contribute a lesser portion of them toward a one-time economic development approach. The alternative is Fund of Jupiter pays all of its taxes, the Town does not contribute to the match and does not acquire the property for grant application, and the property sits as is until the private market finds enough demand to naturally redevelop the site.

The Selectmen have made a policy decision that it is worth at least asking the public if there is merit in taking a more active role in the redevelopment of this site by subsidizing its cleanup and preparation for reintroduction to the marketplace.

**Question: Who would provide the cleanup funding?**

Answer: The simplest answer is that the United States Environmental Protection Agency (U.S. EPA), a federal agency, would provide the funding. A more extensive answer is that those who pay federal tax dollars, including those raised in the State of Maine and Town of Berwick, will provide the funding.

**Question: How is funding determined and allocated?**

Answer: Funding is determined through a competitive process of grant application review by a national committee of brownfield experts located outside of the subject area to ensure neutrality in ranking. Factors considered include whether the Town has a vision for the area, an identified need for cleanup, certainty with respect to what needs to be cleaned up, community impact, and actual ideas for redevelopment.

On these bases, the Town believes it has a good chance of securing funding from EPA for this site. The EPA awards grant funding according to a system of allocation based on parcels, with up to three grants each year available for any party with at least three eligible parcels.

**Question: How many parcels may an eligible party apply for funding for in any given year? And what is an “eligible” party anyway?**

Answer: In any given year, an eligible party may apply for up to three grants. Eligible parties are government entities (Town of Berwick is a form of local government) and qualifying non-profits. Private for-profit businesses and entities do not qualify for grant funding. Grants are awarded on a per-parcel basis.

**Question: Would creation of a local development corporation or other non-profit entity allow the Town and/or Fund of Jupiter to apply for more than three grants in any given grant cycle/year?**

Answer: If the Town was involved in creation of a local development corporation, EPA has expressed it would be considered one and the same as the Town itself, meaning the entity applying would still be the “Town” for purposes of calculating maximum allowable applications in any given year. Fund of Jupiter’s own creation of a non-profit would be distinct from the Town but it would likely not constitute a “qualifying” non-profit entity for purposes of grant awards.

**Question: When are grant applications due, and when are grant application decision notifications made?**

Answer: Grant guidelines come out in October, and grant applications are due in late November or early December. It differs each year. Grant award decisions are typically made in May each year.

**Question: Are matching funds required for any grant(s) awarded?**

Answer: Yes. A grant match of 20% of the total award is required. In Berwick’s case, a grant of up to \$200,000 for each of up to three parcels would require a grant match of up to \$40,000. This is 20% of \$200,000. This requirement is per lot, meaning the total grant match contribution would be \$120,000 in a

scenario where the Town receives the maximum grant award possible per parcel for the maximum number of possible parcels in any given year.

The Town's contribution would also grow to include 20% of any other parcels for which grant funding is awarded in the future, if the contemplated agreement with Fund of Jupiter extends more than one year for the purpose of funding remaining cleanup of the parcels beyond those for which funding is available the first year.

Berwick's required match would likely be paid for by money advanced by Fund of Jupiter, which would then be taken off from the purchase price when the land is later conveyed to that entity after cleanup. Because the purchase price in any such conveyance is expected to be the amount Prime Tanning's bankrupt estate presently owes the Town in back taxes, the Town's contribution would amount not to a disbursement of existing funds, but rather to a forgiveness of debt. The Town's contribution is analogous to receiving all back taxes for the Prime Tanning site, and then determining that all or a portion of those taxes should be used for the specific purpose of cleaning up the tannery site itself.

**Question: Can the Town request a waiver of its required match funds if funding is awarded?**

Answer: Yes. The Town may ask for a partial or total waiver of the match requirement based on financial hardship. There are no defined standards for this sort of a request, but EPA will consider such a request based on a general pleading of financial hardship. The Town intends to make a persuasive case why it is entitled to this if the grant application process moves forward. With the loss of some revenue sharing from the State, mounting tax liens, tough competition for economic development with sales tax-free New Hampshire, and most notably the loss of one very major employer (Prime Tanning), the Town believes it has an excellent case for financial hardship. The source of the Town's match contribution requirement, if not eventually waived by EPA (back taxes from the subject property), itself speaks to the financial woes Berwick has experienced in recent years.

If the Town is successful in receiving such a waiver, the impact will be that the Town will come closer to receiving, or actually receive, all of the taxes now owed by the bankrupt Prime Tanning estate.

**Question: Can required match amounts be provided in in-kind contributions?**

Answer: Yes. The Town may also request, and plans to request, that its staff and committee time spent managing the grant be counted as an in-kind contribution toward the necessary grant matches if they are not waived. That is, the value of human hours spent implementing any grant received has a dollar associated with it, and the Town is able to and plans to count that toward its financial match requirements if it must. This will lower the actual dollars spent/forgiven, and thereby increase the portion of back taxes ultimately received.

Beginning after award of the grant(s), the Town may begin to count the value of human resources it expends toward grant administration as an in-kind contribution capable of satisfying any portion of the required match(es) which is not otherwise waived in whole or in part.

**Question: What is a “brownfield”?**

Answer: According to the U.S. Environmental Protection Agency, the term “brownfield” has a very specific meaning defined in federal law.

With certain legal exclusions and additions, the term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

As can be seen, this is a very broad definition. The title of the law in which it is defined arguably gives clarity to the sort of properties to which this term is intended to be applied. That is the "Small Business Liability Relief and Brownfields Revitalization Act." Therefore, brownfield sites are those which have been developed in the past, and which are desirable to return to active use but which may have barriers associated with environmental problems preventing successful revitalization. Contrast this term with the less often cited term “greenfield,” which applies to undeveloped land with no previous uses or environmental complications to contend with in the development process.

**Question: How long will cleanup take?**

Answer: It is difficult to say with any certainty. It is a distinct possibility that the cleanup will take more than one year because of the limitation on receiving more than three grants for three parcels in any one grant cycle (grant cycles occur on an annual basis). This possibility becomes even more evident when one considers that the competitive nature of any grant application process means the potential to receive fewer than the maximum grants possible—or no grants at all—the first or even second time around also exists.

Regardless of how long final cleanup takes, the final contract may state a definite minimum or maximum time period for Town ownership, or it may be left open-ended with the understanding that as long as it makes sense to do so the Town will keep ownership in order to keep applying for maximum grant funding. If at any time it becomes undesirable for either party for the Town to retain ownership, both parties will have options to force a conveyance upon satisfaction of a condition: payment of the specified amount.

**Question: If the EPA will only grant money for up to three parcels in any given year, what happens to the remaining four lots of the original seven subdivided parcels?**

Answer: This will depend on the agreement. They will either be left without federal funding and in need of private investment for cleanup prior to redevelopment, or the Town may continue to hold the property to apply again in a future grant cycle.

**Question: When is the soonest the property may be transferred back to Fund of Jupiter if acquired and grant funds are received?**

Answer: Once a grant is received, the Town must retain ownership of the property until cleanup is complete. It may transfer the property to Fund of Jupiter the day after this process concludes, according to EPA, but not before.

**Question: Do we know what environmental concerns exist on the site today?**

Answer: The site has been studied in the past, with minor soil and other issues noted, but some areas of the site remain to be assessed, largely due to the presence of buildings on and over a large portion of the site.

Based on phase 1 and phase 2 environmental assessments that have been performed, current environmental conditions at the site include chemical and petroleum contamination of existing structures and soils as a result of the long history of industrial uses at the site.

**Question: Does the Town stand to incur any risk of liability if it acquires a contaminated site?**

Answer: According to the Town's Attorney, when property is acquired by a means such as foreclosure, as opposed to a normal purchase, environmental liabilities do not follow. That being said, the Town will have an obligation to make sure that it does not make any existing environmental contamination or condition on the site worse than when it acquires the property.

**Question: What physical property does this concern, and where did it come from?**

Answer: The site commonly referred to as Prime Tanning relates to the downtown area dominated by former tannery, factory, and other spaces between Wilson, School and Sullivan streets, and certain surrounding parcels. The business known as Prime Tanning closed its doors in Berwick for good sometime between August 30, 2008 and September 7, 2008. Prime Tanning-Hartland then filed for Chapter 11 bankruptcy in Bangor on November 15, 2010.

The real estate involve includes the following parcels with the following sizes and uses (in parentheses) in the Town of Berwick:

29 Sullivan Street (vacant 0.25 acre lot),  
35 Sullivan Street (9,144 square foot warehouse on a 0.68 acre lot),  
34 Sullivan Street (parking lot on 2.8 acres),

20 Sullivan Street (346,461 square foot complex consisting of multiple adjoining structures and former uses, including a 4,200 square foot office building, a 248,761 square foot first floor plate, a 620 square foot garage, a 91,898 square foot upper story floor plate, and a 982 square foot utility/storage area on a 7.7 acre lot), and

27 School Street (7,514 square foot residence on a 0.26 acre lot).

In total, this amounts to 11.7 acres with 363,119 square feet of gross floor area.

**Question: What does "clean up" mean – will there be demolition, or simply reconditioned buildings?**

Answer: The site has been assessed through a variety of so-called "phase one" environmental assessments. At the present time, it looks as though there are some soils on the site that may need to be taken away or capped, say by new asphalt. This would bring the areas of the site where it happens into a developable site for most purposes. There may also be selective demolition, where it is incidental to the remediation of soils found underneath certain structures.

All grant-funded demolition, if any, will be incidental to cleanup activities. Fund of Jupiter has also discussed demolition in the context of redevelopment more broadly, because some of the structures are not as structurally sound or therefore worth preserving as others. All of these plans, however, are tentative so the eventual outcome is subject to change. Cleanup for the most part refers to soil remediation which could take a number of forms in terms of actual visual appearance to the public, some of which are outlined in this document.

**Question: Who owns the Prime Tanning Site ?**

Answer: The Prime Tanning site is still with the bankruptcy estate of Prime Tanning. Fund of Jupiter as a secured creditor is a primary party in interest regarding the site when it emerges from bankruptcy if the Town does not earlier foreclose upon it for outstanding taxes with or without Fund of Jupiter's consent, but Fund of Jupiter does not own the site in the sense of holding fee simple title to it.

**Question: What is the status of the Prime Tanning Bankruptcy Proceedings?**

Answer. According to the Fund of Jupiter, the various Prime Tanning and Irving Tanning entities are debtors in possession in a jointly administered bankruptcy cases pending in the United States Bankruptcy Court for the District of Maine. The Court has entered an order confirming a Plan of Reorganization for the debtors. The Plan contemplates that the Prime Tanning property in Berwick will be sold to The Fund of Jupiter or its designee. The court has also entered a separate order authorizing the sale. The bankruptcy cases remain open while the debtors attempt to liquidate other assets (such as litigation claims against third parties) unrelated to the Prime Tanning property.

As far as the Town can tell, the back story to the Prime Tanning bankruptcy proceedings and additional points about its present status are as follows:

Prime Tanning and a number of other companies each filed Chapter 11 bankruptcy proceedings in the District of Maine in November 2010 which were jointly administered. One of the companies previously filed Chapter 11 bankruptcy proceedings in 2005 and in emerging from bankruptcy through a confirmed Chapter 11 Plan, another company purchased 100% of that company's stock.

Then, in 2010, the second company borrowed money from the Fund of Jupiter. The loan was secured by all of its assets. Prime Tanning guaranteed the loan and granted a first mortgage on the real estate it owns in Berwick. The borrower thereafter borrowed additional amounts from Fund of Jupiter. In addition, the Fund of Jupiter provided a sum in cash collateral to yet another company to secure the borrower's obligations to that company.

In 2011, the Debtors entered a deal which required this last company to release any liens it had on the assets and to return any cash collateral in its possession, including the sum provided by Fund of Jupiter to secure the borrowing company's obligations to this company (referenced in the paragraph above). A dispute ensued regarding the entity entitled to the returned cash collateral. To resolve the dispute the parties entered into a comprehensive settlement whereby the cash collateral was divided among the various interested parties, and the parties agreed that Prime Tanning would enter into a purchase and sale agreement with the Fund of Jupiter to sell all the real property Prime Tanning owns in Berwick other than the parking lot located at 34 Sullivan Street.

The purchase price was a "credit bid" of \$750,000 minus the amount of all other liens on the property. In bankruptcy, a credit bid refers to the right of a secured creditor to control the sale of their collateral. When collateral that secures a loan is proposed to be sold at auction, a secured creditor with outstanding

loans potentially worth more than the value of the collateral itself is allowed to bid the amount of the debt it is owed as a credit bid as opposed to a cash bid for that collateral.

The Bankruptcy Court approved the proposed sale of the Berwick properties in January 2012. A Chapter 11 Plan was confirmed in October 2012 and references a potential sale pursuant to the terms of the approved purchase and sale agreement. No sale has yet occurred. At the time the Town last checked, the bankruptcy proceedings remained pending, with an automatic stay in effect precluding normal foreclosure processes for back taxes.

**Question: Why hasn't Fund of Jupiter taken possession of the property yet?**

Answer: Fund of Jupiter has made a business decision not to acquire the Prime Tanning site yet. It has been working with the Town for over a year trying to brainstorm about ideas for potential redevelopment options. Prior to this time, there has been no reason for the company to enter the chain of title directly.

Further, according to Fund of Jupiter, it has refrained from taking ownership of the property because of challenges involved in redevelopment, including environmental issues. The economics in redeveloping this site are very challenging. FoJ desires to have a plan in place with the town for the cleanup and redevelopment of the property before taking title.

**Question: How would the Town acquire the property? Would the Town buy the property?**

Answer: The Town would not buy the property. As contemplated, the Town would acquire the property by foreclosure for outstanding tax liens. When property owners neglect to pay municipal taxes, the Town has leverage in the form of liens and ultimate foreclosure to compel payment. If payment is not received in a certain time period, the Town provides notice to other creditors and parties of interest so that they can step in and pay the taxes owed, thus preventing foreclosure if they desire, after which the Town automatically acquires title to the property for use or disposition unless full payment is made. In a sense, the Town has "bought" the property in such cases for the amount of money it is owed, but while this is a useful concept to understand the financial impact of a foreclosure it does not mean the Town actually buys foreclosed properties on the open market.

**Question: When the property is transferred to Fund of Jupiter, would Fund of Jupiter buy the property from the Town?**

Answer: Fund of Jupiter would pay the amount of back taxes presently owed, less any money previously advanced, for the right to acquire the property. This is similar to buying the property, but it is not a purchase on the open market. It is a negotiated transaction which would not come to be aside from the present partnership discussions.

**Question: Without a partnership governed by an agreement, would Fund of Jupiter have to let the Town take the property by foreclosure? Why not just let Fund of Jupiter pay the back taxes and then buy the property for a dollar at a later date for grant application purposes prior to conveying it back to Fund of Jupiter?**

Answer: No. At present, the property is still technically in bankruptcy, and as such there is a so-called "stay" at work, which prevents the Town from foreclosing on the property. If the Town was able to work around the stay, Fund of Jupiter would be provided notice of the foreclosure intent, and would likely pay the back taxes owed.

In that case, the Town would have additional revenue and the Prime Tanning site would be owned by Fund of Jupiter, who would then be unable to apply for grants meaning the site would remain contaminated unless and until Fund of Jupiter expended its own money to clean it up. This would be a market driven decision and there would be little ability to predict when, or if, it would happen.

Under this scenario, the Town would not be able to enter into a similar arrangement with Fund of Jupiter post-tax payment and lien satisfaction, because Town acquisition at that point would have to be by a purchase rather than foreclosure. For tax foreclosed properties environmental liability is minimal, but when property is purchased environmental liability concerns become a factor.

**Question: Does the Town have the right to refuse selling the property back to the Fund of Jupiter?**

Answer: As presently written, the potential agreement would not allow for this. Important to note is that the Town would not likely be able to acquire the property at all except for its agreement to exclude this outcome as a possibility. The Fund of Jupiter would have the right to acquire the property for the amount of taxes owed less any match funds provided and/or with any credit for money advanced for match purposes, and this is a primary basis for its willingness to allow a “consensual” foreclosure resulting in temporary Town ownership.

If the Town wished to foreclose on the property without an agreement, it may have to litigate to lift a “stay” presently in place preventing the foreclosure due to ongoing bankruptcy status, and it would also probably result in Fund of Jupiter simply paying the back taxes with no further progress at this site for the foreseeable future. In this case, the Town would have more than \$200,000 in taxes owed to it, but it would not be able to positively influence the marketability of the Prime Tanning site for future re-use.

**Question: Why isn't Fund of Jupiter paying the match contribution?**

Answer: Fund of Jupiter was a lender to the bankrupt Prime Tanning. The back taxes owed to the Town are owed by the bankruptcy estate of Prime Tanning. Therefore, both Fund of Jupiter and the Town lost financial interests when Prime Tanning went defunct. The direct answer to this question is that Fund of Jupiter has indicated in order to make eventual development plans feasible on the Prime Tanning site, in a difficult market, assistance from the Town is necessary. The Town has no way to verify this for certain, but it is true that years have passed where the economic market alone has not generated sufficient interest in the site to develop it in even a minor way. Another observation worth noting is that lower upfront investment costs for Fund of Jupiter (because of a Town contribution toward required matches) regarding cleanup and development translates directly into an ability for it to offer more competitive rents and/or purchase options to future tenants or purchasers of the site. This, in turn, increases the likelihood that the site will be returned to productive use sooner than later, by making it more competitive with surrounding development sites.

**Question: What steps has Fund of Jupiter begun in anticipation of a partnership with the Town, and why?**

Answer: Fund of Jupiter has begun to subdivide the property via application to the Berwick Planning Board. It has also contacted the Bankruptcy Court to see what a consensual foreclosure agreement would entail in that venue. Subdivision application is appropriate because Fund of Jupiter has sufficient right and interest in the property as a secured creditor to afford it “standing” even though it does not have title to the property yet. Instead, the company has a purchase and sales agreement for the property. The company’s subdivision application has been defined as a “skeleton subdivision,” with no development or use of the site contemplated without further and complete review by the Planning Board. This is also

noted expressly on the subdivision plan itself. The Planning Board has been reviewing the company's application throughout September and October and is anticipated to make a final determination on the matter in mid-October. The company's subdivision plan submission has been posted on the Town's website since mid-September for public inspection. Contact the Town Planner at 207-698-1101 for complete details on the application process and applicable hearing dates.

**Question: Can Fund of Jupiter apply for subdivision approval without owning the site?**

Answer: Yes. As a secured creditor with primary party of interest status in the bankruptcy proceedings granted through a credit bid resulting in a purchase and sales agreement, Fund of Jupiter has sufficient right and interest to afford it "standing" to apply to the Planning Board for subdivision approval, in the Planning Board's own apparent determination, despite the fact that the company does not yet hold title to the property.

**Question: Is it legally permissible to subdivide property just to maximize grant funding?**

Answer: Yes. The motives for dividing a piece of property are largely if not entirely irrelevant to its legality under Berwick's land use ordinance. Moreover, EPA has been directly informed of this intended course of action and the reasons for it, and has indicated it is acceptable.

**Question: Is it permissible to enter a real estate transaction and involve the Town as an acquiring party just to apply for grants prior to conveying the property to a private party which would itself be ineligible for grant application purposes?**

Answer: Yes, both EPA and the Maine Department of Environmental Protection (DEP) have confirmed that this is accepted practice and commonly used as a technique to redevelop brownfield sites. Presumably, this is because public acquisition and a public role in the redevelopment effort indicate that it related projects are of considerable public importance and benefit as opposed to purely driven by private interests.

**Question: Has this sort of a process ever been used successfully before?**

Answer: Yes. The process of conducting a real estate transaction for the purpose of creating eligible party status in order to apply for grants to facilitate brownfield cleanup processes has been used before and is endorsed by the U.S. EPA. It has been used successfully before to facilitate environmental remediation of several sites in both Maine and New England. According to Maine Department of Environmental Protection (Maine DEP), other places to have engaged in this sort of a process include at least the following:

- Moosehead Manufacturing/Mayo Mill in Dover-Foxcroft, ME;
- Eastern Fine Paper in Brewer, ME;
- Belfast Boatyard Properties in Belfast, ME;
- Apollo Tanning in Camden, ME;
- Columbian Factory in Lubec, ME;
- Old Town Canoe in Old Town, ME; and
- Stultz Motors in Westbrook, ME.

It has also been used on portions of mill redevelopment projects in the cities of Lewiston, Biddeford, and nearby Sanford, ME.

When a community inserts itself into a position of ownership it creates eligible party status because the level of commitment demonstrates to EPA a corresponding level of importance and public interest. Public-private partnerships in the cleanup process are important to EPA.

For more information on this specific process, contact:

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**Question: Why would the Town sell the property post-cleanup to Fund of Jupiter or any other party merely for the amount of back taxes owed and not the fair market value of a cleaned site in the middle of downtown?**

Answer: Willingness to convey the property to Fund of Jupiter for back taxes owed is a condition precedent to the Town's acquisition of the property. That is, the Town's acquisition of this property will only be able to occur if the Town agrees ahead of time that it will convey the property back to Fund of Jupiter as stated in the contemplated agreement. Otherwise, foreclosure would not be possible absent a lifting of the stay imposed by pending bankruptcy proceedings, and even if it was the Fund of Jupiter would in all likelihood simply pay its back taxes upon notice of intended foreclosure. In that case, the Town would also be unable to facilitate environmental remediation or therefore a speedier redevelopment process.

**Question: How is the Town protecting itself to ensure it does not end up stuck with a piece of potentially contaminated property that it may not want?**

Answer: As contemplated, the Town would have a contractual ability to force acquisition by Fund of Jupiter and compel payment of back taxes owed on the site. This is the so-called "put" option. Fund of Jupiter would also have the ability to acquire the site upon payment of the back taxes less any amounts advanced for match contribution(s) or otherwise. This is the so-called "call" option.

**Question: Where would the Town's financial contribution come from?**

Answer: The Town has been asked to contribute a sum of money amounting to the federally required match component of any grant(s) awarded. That means if the Town is awarded the maximum per-parcel grant award of \$200,000 for each of the maximum three lots per year, in year one it will contribute \$120,000 because the required match funds are 20% of any awarded amount. Because the Fund of Jupiter will, as contemplated, pay the amount of back taxes owed for the site upon acquisition of the property following cleanup, the Town's contribution in this regard is more akin to a partial forgiveness of a debt. Therefore, the Town's contribution(s), if any, will come from willingness to utilize back taxes for this purpose.

**Question: What is the exact amount owed in back taxes?**

Answer: As of October 2014, the Prime Tanning site(s) have an outstanding municipal tax bill of \$263,949.24. It is the revenue from this outstanding tax obligation, and not money from the fund balance (Town savings), the Town is contemplating using to help secure the cleanup grants through any match funds required (up to the level of taxes owed). This may occur either through a temporary use of fund

balance funds which would be replenished upon conveyance of the property to Fund of Jupiter or, more likely, through an advance of the funds directly from Fund of Jupiter which would be credited toward the conveyance fee when the property is eventually transferred to Fund of Jupiter in the future.

The alternative to this approach is to pursue the tax money through conventional means and, once received, have it applied to the Town's overall fund in a general rather than specifically-designated manner.

**Question: What is owed to the Sewer District? Is the Sewer District going to receive money owed, is that part of the deal?**

Answer: According to the Berwick Sewer District, it has liens on some or all of the Prime Tanning parcels totaling or approximating \$117,000.00. The Sewer District's liens are not considered part of the Town's contemplated agreement with Fund of Jupiter and, if the Town forecloses, it wipes out other interests in the property—including the Sewer District's liens. Fund of Jupiter and the Sewer District, which is a separate entity from the Town, may negotiate a separate compromise settlement if it suits their respective needs, but the Town is not playing any role in such a process. If the Town foreclosed on this property without an agreement, the same result would be reached.

**Question: How would the contemplated partnership with Fund of Jupiter impact the Berwick Sewer District and any liens it has on the Prime Tanning property?**

Answer: If the Town enters this partnership as contemplated, it will consensually foreclose upon the Prime Tanning site, thus wiping out other interested parties' interests in the site, including the Berwick Sewer District's. The Sewer District has a number of liens on the Prime Tanning properties, but the Town's contemplated partnership would do nothing to change the status of those liens beyond what a normal municipal tax lien foreclosure process would already do.

The Berwick Sewer District presently has \$117,564.77 in liens on various Prime Tanning accounts. If the Town were to refrain from this partnership as contemplated, its greatest leverage to ensure payment of its own back taxes in a timely manner would still be foreclosure, in which case the same outcome would be reached with respect to the Sewer District's liens. Fund of Jupiter could pay the Sewer District liens and Town liens upon acquisition of the property pursuant to its purchase and sales agreement stemming from the credit bid explained in the bankruptcy proceedings status update portion of this Q&A, but it is not clear when this would happen, or how it would influence the ultimate development potential of the subject site(s).

If the Town were to negotiate payment of the Sewer District's liens as part of the overall agreement it is now contemplating, it would be contributing up to \$120,000 from its own liens toward grant match funds (which is the required 20% for each of three annual grants totaling \$200,000) assuming no waiver is granted by EPA, and at the same time requiring nearly the exact same amount be given to the Sewer District. In this case its contribution would or could do very little to help the financial feasibility of future redevelopment opportunities, and would in effect be a contribution of tax dollars to the Sewer District rather than one geared directly toward redevelopment of the downtown.

Fund of Jupiter has reached out to the Sewer District to invite negotiation of a compromise settlement, but that process is separate and distinct from the Town's own negotiations with Fund of Jupiter.

**Question: Why is a Town Meeting vote being held for this Agreement? Why doesn't the Board of Selectmen or Town Manager simply enter a contract?**

Answer: Under Berwick's form of government, Town Meeting possesses the only legal authority to enter binding contracts, not the Board of Selectmen or Town Manager. Town Meeting may, however, delegate that authority to the Board and/or administration, and may do so either expressly or implicitly.

Where funding is approved in the annual budget for a specific purpose, implicit authority to enter a contract necessary to achieve that purpose arguably exists. For this matter, express authority is being sought due to the importance of the site and its relevance to the future of the Town.

Town Meeting authority is also necessary whenever appropriation of money is involved. A previous warrant article approved by Town Meeting does allow the Selectmen to apply for and accept grant funding and other contributions to the Town, but due to the amount and significance of the specific grants sought in this context, express authority is preferred to ensure the Town as a whole endorses the contemplated approach before proceeding.

**Question: Does the Town have to enter an agreement if Town Meeting approves the relevant ballot question on November 4<sup>th</sup>?**

Answer: No. Town Meeting is being asked to delegate the authority to contract regarding this matter to the Board of Selectmen and Town Manager. By the time of the Town Meeting an agreement in substantially complete form will be ready for inspection by the public. This agreement will be subject to minor changes in order to accomplish its intended result, if necessary, but the primary substance should be agreed upon by the time of the Meeting.

At the present time, the Town Manager and Town Attorney are working out most of the specifics of an agreement through a process of negotiation with Fund of Jupiter in anticipation that this article will be approved by Town Meeting. If authorized by Town Meeting, the Selectmen will be asked to consider its merits thereafter. If mutually agreeable terms cannot be reached, the Selectmen are not obligated to enter an agreement with Fund of Jupiter just because they are authorized to do so, any more than a particular Town department is required to expend all of its budget just because it is authorized to do so.

If the article passes, all it will mean is that the Town Meeting will have delegated its contracting authority to the Selectmen for a specific purpose, thus granting them discretion to move forward if in their opinion it would be wise and in the public interest to do so.

**Question: Does Berwick have to follow its Tax-Acquired Property Ordinance to dispose of the Prime Tanning property after it forecloses on that property?**

Answer: Not if Town Meeting delegates authority to the Board of Selectman and Town Manager to work out a separate deal in this case for transfer of the property. The Tax Acquired Property ordinance is a local law adopted by Town Meeting. Town Meeting is now being asked to approve a separate process for this specific piece of property. With Town Meeting approval, the Town will be free to make an exception to the ordinance. Under normal circumstances, the ordinance would be followed.

**Question: Can the Town of Berwick redevelop the Prime site if it forecloses?**

Answer: The best answer to this question is that while it is possible it is not contemplated by either party and not presently permissible absent further authorization. As an owner, the Town could do anything with the site which is not prohibited by the governing agreement, within the bounds of governing law.

The Town does not intend to redevelop the site as it is not in the business of real estate development. Moreover, a separate vote of Town Meeting authorizing expenditure of funds for actual redevelopment would be necessary to take this route.

The Town merely intends to facilitate the productivity of the private market by removing barriers to private redevelopment. The Fund of Jupiter would still be able to productively use/develop the property during the course of Town ownership, under the terms of the draft agreement being contemplated.

**Question: Why does the Town have to act so quickly by having to vote on a warrant article in November?**

Answer: The Town has been working closely with Fund of Jupiter representatives for at least two years. Fund of Jupiter was involved in some of the early downtown vision committee meetings in 2012, and has stayed actively engaged in the process as it pertains to the Prime Tanning site since that time.

Numerous meetings in Portland at the law firm of Verrill Dana, and in Sanford at Southern Maine Planning and Development Commission, in addition to meetings at Town Hall both public and in executive session, have occurred in the last year. Throughout this time, all interested parties have been discussing ways to facilitate a return for this property to productive use, and regular updates about the progress of these discussions have been provided to the Board of Selectmen at public meetings.

The idea of achieving this goal through the specific partnership now under consideration was first raised in July 2014 by a neutral environmental consultant, following what was last year an unsuccessful grant application process to EPA for assessment (as opposed to actual cleanup funding). After the Selectmen approved following this path toward a potential plan forward in September (following discussing throughout the month of August), the remainder of the process became governed by applicable grant application deadlines and an already-scheduled Town Meeting date that coincides with Election Day.

The Town's alternative option is to wait to a point after November, but this would mean at least an additional year of inaction at the Prime Tanning site due to the annual nature of grant cycles. The short answer is that while this particular approach may seem to be taking place quickly, the broader effort to redevelop Prime Tanning has been unfolding for years.

**Question: How can the Town reduce the risk of ending up with something that was not envisioned for the site once it is developed?**

This is an important question but also premature. This partnership does not involve a development proposal. It is simply intended to remove barriers to potential future redevelopment by clearing up any environmental uncertainty and simultaneously cleaning up the site for public benefit. In the future, the form development takes may be controlled directly through application of existing or amended land use regulations. The Town Planner and Planning Board are presently conducting workshops aimed at ensuring the regulatory framework in Berwick matches its intended vision for growth.

**Question: What are the differences and definitions of "comprehensive plan," "vision plan amendment," "land use ordinance (LUO)," "subdivision regulations," and "low impact design (LID)" regulations?**

Answer: A comprehensive plan is a required procedural element of growth management for any Town which has zoning. Zoning, to be valid, must be pursuant to and consistent with a comprehensive plan. A comprehensive plan is a policy document intended to guide, not to regulate. The vision plan amendment to Berwick's particular comprehensive plan is simply a specific section of the overall plan, also intended to guide not regulate. Zoning is intended to regulate and creates the directly applicable rules for guiding

growth. Subdivision regulations are also intended to regulate, and do so in conjunction with as opposed to in a manner exclusive from zoning. Whereas zoning must be adopted by the Town Meeting, subdivision regulations are adopted by the Planning Board. Low impact design regulations are an instance of home rule regulatory power exercised to achieve a particular result where desired: Low Impact Design, an oft-cited approach to sustainable development.

**Question: How is this project different from the Sullivan School project, and how can the Town prevent its morphing into something not approved?**

Answer: The Sullivan School project was an actual development proposal. All involved hope that someday the Prime Tanning site will be productively redeveloped in a manner which is as closely aligned with the downtown vision plan as possible, which applicable land use regulations at that time will ensure; but right now this step in the process does not constitute a development project. It is step one of many in what is the Town's potential way to overcome dismal market realities in order to rejuvenate its inner core.

The potential partnership, therefore, is fundamentally different from the Bateman project or any other development proposal. Fund of Jupiter's subdivision application to the planning board is purely for the purpose of dividing a "superblock" into smaller parcels in order to maximize grant funding opportunities which are awarded on a lot by lot basis. As such, it has specific notes on the plan indicating that a full scale review by the Planning Board is necessary again in the future before any redevelopment or construction would be possible on the site.

In addition, the Town has hired a professional urban planner with a master's degree in community development, as well as a land use attorney as its Town Manager. Both positions and employees were envisioned as important at this time in Berwick's history in part because of the challenges presented by the Prime Tanning site and in light of previous development challenges the Town has faced. Moreover, both employees resolutely are and have been intimately involved in the present partnership discussion from the beginning.

And, importantly, the Town retained the services of attorney Bryan Dench as its new Town Counsel. If his name sounds familiar, it's because attorney Dench first represented the Town during its successful litigation over the Sullivan School Project, and he is therefore intimately aware of what went wrong with that project and how to avoid that in the future. He has also been involved in other instances of public-private partnerships like that contemplated for Berwick, aimed at redevelopment of brownfield sites, most notably in the nearby York County city of Sanford. Attorney Dench has been and is counseling the Town at every step along the way during this project, and is the person who drafted a majority of the agreement presently being negotiated for presentation to Town Meeting in November.

All of these steps were taken deliberately to avoid further real estate development controversies, or to address them as swiftly as possible in the event they arise.

**Question: Will the Fund of Jupiter be considering preserving some elements of the tannery (Prime Tanning) that are important to Berwick heritage and culture, such as the chimney stack?**

Answer: The Town cannot speak for Fund of Jupiter. Presumably all options are being considered, but because no development plans are presently confirmed—aside from potential demolition of certain sections of the building for necessary cleanup—nothing may be said at this point with any certainty or guarantees. In the Town's estimation, whether certain elements of the site are retained for historic value will be a purely business-driven decision of Fund of Jupiter or any other entity it later partners with or sells to post-cleanup.

**Question: According to a Foster's Daily Democrat article, Fund of Jupiter will not pay more than \$200,000 in back taxes. What if Berwick's share is more than the \$200,000?**

Answer: If any such comment was made by the Foster's Daily Democrat it is based on incomplete information.

As contemplated, the Town may contribute up to 20% of any required match funds for each of three parcels a year up to \$40,000 per parcel (meaning the Town's contemplated contribution is up to \$40,000 x 3 per year for the length of the partnership). It is not the Town's intent to contribute, in an absolute sense, more than is presently outstanding in back taxes.

Right now, it is not clear whether the Town would qualify for a waiver of required match funds on the basis of financial hardship, or how long this potential agreement may need to last in order to achieve maximum cleanup. It may take more than one cycle (more than one year) because the U.S. EPA only allows three grant awards each year, and Fund of Jupiter has pursued subdivision approval for a total of seven lots. Three awards, or one year/grant cycle, may be enough to clean up the site sufficiently, but it may also be the case that additional round(s) of grant funding would be beneficial to both parties to pursue.

If Town Meeting approves the proposed partnership, when the cleanup is complete and conveyance of the property occurs Fund of Jupiter will pay its amount of outstanding taxes which are presently in excess of \$200,000 by approximately \$63,000.00. Subtracted from this amount will be any funds Fund of Jupiter advanced to the Town for purposes of satisfying the above-mentioned match requirements.

It is not the Town's intention at this time to contribute money beyond what is presently owed to it by Fund of Jupiter. Instead, the Town is contemplating the merits of reinvesting the outstanding tax obligation toward the specific purpose of redevelopment of the site through cleanup measures. This is as opposed to simply collecting the back taxes for general use on other expenditures.

**Question: How will the Town have control of what is redeveloped on the Prime Tanning site?**

Answer: The Town has the ability to control development proposal outcomes through use of the police power, which in states like Maine allows the enactment of local land use ordinances which do not conflict with State law. Berwick has adopted a Land Use Ordinance, as well as subdivision regulations, to ensure growth is compatible with its vision for the future as stated in its amended comprehensive plan.

Ensuring its growth control ordinance provisions are up to date in terms of their relation to the comprehensive plan, and then adhering to relevant ordinance provisions when reviewing development proposals, is how the Town is able to exercise control over redevelopment of the Prime Tanning site directly.

Indirectly, the Town can also play a role attracting or discouraging growth at the site and elsewhere by taking or refraining from taking such steps as the presently proposed partnership or exploration of concepts like tax-increment financing. It may also at some point get more involved through use of a local development corporation, or LDC, which would allow catalyst-like involvement in the redevelopment of Prime Tanning and elsewhere.

**Question: What assurances will the Town have that the site redevelopment is consistent with the Vision Plan and the Comprehensive Master Plan as amended in 2014?**

Answer: At this time, no redevelopment is proposed. The Town is contemplating an initial role in the redevelopment process which consists purely of grant funded environmental contamination remediation in order to facilitate future market-driven development of the site.

The Town has at its disposal the tremendously important “police power,” which legitimizes land use regulations, supported by the judicial system, as assurance that its appropriate regulations will be followed at any time in the future when redevelopment is economically feasible and actually proposed.

Whether a regulation is “appropriate” in this context relates to whether it is in basic harmony with a comprehensive plan. Berwick’s comprehensive plan was amended to incorporate a new vision for the downtown area in May 2014. Therefore, between now and the point when redevelopment is actually possible on the Prime Tanning site the Town has the ability to tailor its land use regulations in a manner which will preserve its vision. The challenge will, as always, be doing so in a manner which does not unreasonably stifle economic growth.

Ultimately, it will be the zoning and other land use regulations in place at the time of a potential development proposal, and not the comprehensive plan or vision amendment, that controls the outcome of what is or is not permissible at the Prime Tanning site. The importance of a comprehensive plan and its amendments is that it/they set the stage for eventual regulatory adjustments. Berwick is in the process of working with its Town Planner and Planning Board at the present time to usher in a series of land use ordinance amendments, and is considering subdivision amendments as well, many if not all of which are intended to codify the Town’s vision for downtown in accordance with the plan.

**Question: What ordinances are in place? What ordinance changes need to be voted on by the Town Meeting?**

Answer: Ordinances are local law and must be followed the same way any other laws are. They are adopted by a Town’s legislative body, and in Berwick this is the annual or special Town Meeting. At present, the Town has a number of ordinances in place, the most relevant of which to development which might be catalyze by this potential partnership is the Land Use Ordinance. Also important are the Town’s subdivision regulations. With few exceptions, all ordinances need to be voted upon by Town Meeting before they can be enacted or amended or therefore applied.

The specific process for how this unfolds in the land use regulatory context is prescribed by both State law and local ordinance (the Land Use Ordinance itself specifies how certain proposed amendments make their way to Town Meeting). The Board of Selectmen sets the “Warrant” which is a notice to the public of the ballot questions on which Town Meeting acts. Therefore, in a sense both the Board and Town Meeting “vote” on land use ordinance enactments and/or amendments, although the Board plays a mostly gatekeeping role and it is Town Meeting which provides final approval.

Subdivision regulations, by contrast, are voted on by the Planning Board and do not require Town Meeting approval. They must, however, conform to standard principles of legality.

**Question: Should the Town take steps to establish a 501(c)3 entity to allow for contributions and donations to the Town?**

Answer: The option or alternative of creating a local development commission or corporation (LDC) was discussed with the Town Attorney. Ultimately, he was of the opinion that while that option may have merit in the longer-term, a quicker way to proceed for this particular purpose—in light of the pending grant deadlines—is to simply foreclose on the property, which would achieve the same result as an LDC (creation of eligible party status for grant application purposes) with the added benefit that the risk of potential environmental liability would remain at a minimum.

**Question: Should the Town consider forming a separate entity, such as the Berwick Tomorrow Cooperative, LLC, to oversee the redevelopment of the Prime parcels?**

Answer: The Town may consider this in the context of an LDC (mentioned above), but its role would likely not be overseeing redevelopment of the site, which will be governed by market conditions and applicable land use regulations as administered by the Planning and Appeals boards as well as code enforcement officers.

**Question: Fund of Jupiter first mentioned applying for subdivision approval for four lots, but now it is seeking approval for seven lots – which is it and what explains any change?**

Answer: Fund of Jupiter suggested four lots during its initial introduction to the Planning Board, but that was when it was discussing a concept rather than an application. Its application has from the beginning referenced seven lots. As this process progresses, it has been and will continue to be refined. The intent is to maximize available cleanup funding, and seven lots creates more eligible property than would four.

Moreover, the lots are drawn to roughly correspond with potential future uses, and as a better understanding of market realities is gained plans for potential uses will likely evolve. It is highly likely that Fund of Jupiter, therefore, will come back to the Planning Board for amendment of its subdivision plan at some point in the future when development possibilities come closer to reality.

**Question: Is there a chance the Town will be left owning a piece of property that it has to clean up if funding isn't provided and Fund of Jupiter doesn't want the property back?**

Answer: While anything is possible, this is not a significant risk. As contemplated, the agreement will allow the Town to “put” the property back to Fund of Jupiter after a certain amount of time has elapsed, for the price of the back taxes less any negotiated credits, like those for match funds. That is, the Town is negotiating the right to force Fund of Jupiter to pay the required sum and acquire the property. Likewise, Fund of Jupiter has the right to “call” the property upon payment of the required sum, meaning it can take the property. If some unforeseen circumstance or oversight were to result in the Town being stuck with this piece of property, it would not be liable for any environmental contamination on site because of the manner in which it was acquired (foreclosure as opposed to a sale). Town ownership of the site has been discussed, but it is not the intended outcome nor is it likely to be a possible outcome even if it was desired.