



Abridged 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

I. BASIC BACKGROUND

In the middle of downtown Berwick sits a large vacant factory space which used to be used by Prime Tanning. The site is contaminated with pollutants and hard to develop. The Town is thinking about whether it makes sense to help the company with control of the site, called Fund of Jupiter, cleanup the site so that it can be turned into something better in the future. Once new development is possible, new taxes will also be possible. In addition, new activity in the form of people walking and businesses operating in the downtown will help reach the goals of the Town's plan for downtown.

The Town will be asked to vote on this possible partnership through Question 4 on the Town Meeting ballot November 4th. Because of the importance of the Prime site, and because the help the Town is thinking about providing to Fund of Jupiter would require spending some money, many people have questions about how this help would be provided. The pages after this one try to answer some of those questions.

First, here is what the actual ballot question will look like:

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?

III. FREQUENTLY ASKED QUESTIONS

Question: What is the Town thinking of doing?

Answer: The Town is thinking about working with a company with an interest in the Prime Tanning site. It would sign a contract allowing the Town to take over the property for some time. Once the Town owns the property it would ask the government to provide money that can be used to clean up the property's pollution. After that, the Town would sell the property to the company. The price would include all back taxes. The reason the Town would have to own the property is because private companies cannot ask the government to help pay for cleaning up pollution.

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

Answer:

The Town would acquire the property for no cost because taxes have not been paid. The Town would then apply for money from the government to clean up the site. If the Town gets money from the government, it will have to pay 20% of the total. Fund of Jupiter would pay for this amount ahead of time. After the site is cleaned up, the Town would give the property back to Fund of Jupiter for a price. The price would equal the amount of back taxes owed on the site right now, minus any money given by Fund of Jupiter toward the cleanup process. All of this would be controlled by an agreement signed by

the Town and Fund of Jupiter which protects the Town's interests and is available for the public to read before voting.

Question: Why is the Town thinking about this?

Answer: The Town is trying to help turn the Prime Tanning site back into a business area. More taxes will be paid if the site is used instead of not being used. This agreement could help economic development in an important location where development is hard because of sales-tax free New Hampshire.

Question: How did we get here?

Answer: In 2008 Prime Tanning closed. In 2010 it filed for bankruptcy. The site has been unused for years. Starting in 2012 the Town started to think about a new future for downtown. In 2014 Town Meeting approved a new vision for downtown with a specific focus on re-use of the Prime Tanning site.

Some obstacles stand in the way of the vision. The site is contaminated and sits in a difficult market for development.

Because of these problems, the Town applied for money from the government in 2013 to study the site further and maybe take some of the buildings down. The application was good but not good enough to receive money.

In July 2014 a consultant who assisted with the grant application to study the site told the Town about a process just like that that was for cleanup instead of just studying the site's pollution. This request for money is different from the first one. To apply the Town has to own the property.

The Selectmen told the Town Manager to reach an agreement for a partnership with the company controlling the Prime Tanning site that can be presented to Town Meeting to vote on. The Town Attorney recommended the Town could obtain ownership by taking the site for back taxes. The company agreed to this and said they would pay the back taxes in order to get the property back later. The company also asked the Town to use part of the back taxes to contribute toward the cleanup.

The company subdivided the Prime Tanning site into 7 pieces of property because cleanup money from the government is given out for each piece of property. The more pieces of property there are, the more money the Town can ask the government for. The company does not have permission to build anything on the site right now. It will have to ask the Town to do this later.

The Selectmen approved a Town Meeting warrant article about this agreement and the agreement was finalized on October 28th. The public can view the agreement online and with the posted warrant. The public can ask for the agreement from the Town Manager at townmanager@berwickmaine.org. The Town cannot sign the agreement unless Town Meeting approved Question 4 on the Town Meeting ballot.

Question: Who is this matter important to?

Answer: It is important to all residents and taxpayers, and the Berwick Sewer District.

Question: Who is involved?

Answer:

It involves the Town, a company called Fund of Jupiter represented by Mark Kehaya and his attorneys Roger Clement and Scott Anderson, two volunteer consultants Rip Patten and Rick Vandenberg, and Southern Maine Planning & Development Commission (SMPDC), as well as the federal government.

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

Answer: It is a company that was created to loan money to Prime Tanning.

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: Lawyers Roger Clement and Scott Anderson.

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: The company has not yet acquired the Property. It was formed to make loans in 2010 and the loans had collateral. In the bankruptcy case for Prime Tanning, an option to have the Prime property was given to the company.

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, but the company doesn't have any back taxes right now. That's because it doesn't own the property. Prime Tanning's bankruptcy estate owes the taxes. If the company takes the property it will have to pay all back taxes first. This agreement is another option that would allow the Town to use the back taxes that are owed to help clean up the site.

Question: Who would provide the cleanup funding?

Answer: The government and the Town. The Town would pay 20% of the cleanup money and the government would pay the other 80%. The Town's 20% would be paid by the back taxes owed by Prime Tanning, when they are paid to the Town before the company takes the property over.

Question: How is funding determined and allocated?

Answer: The government will look at the application and compare it to others from towns across the country. If it is competitive it might get the Town some money. The government will look to see what kind of impact the cleanup will have on the community and will also look to see if there is any plan to guide redevelopment sometime in the future.

Question: How many lots can be funded by the government in a year?

Answer: Three.

Question: Would creation of a non-profit entity allow the Town or anyone else to apply for more than three grants a year?

Answer: No.

Question: When are grant applications due?

Answer: December 18th.

Question: when are grant application decision notifications made?

Answer: Usually in the month of May.

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

Answer: Yes. 20% of the total award is required to be paid as a match by the Town. For a \$200,000 grant award this would mean \$40,000 paid by the Town. In one year this means if the Town is awarded all three grants it would pay \$120,000. The payment would be paid out of the back taxes owed by Prime Tanning and would be paid in advance by the company.

Question: Can the Town request not to have to pay the match?

Answer: Yes, and it intends to ask for this permission.

Question: Can required match amounts be paid for by services instead of money?

Answer: Yes. The Town's staff time can be counted toward the required payment.

Question: What is a "brownfield"?

Answer: A brownfield is property that is complicated to develop because of pollution or other hazards.

Question: How long will cleanup take?

Answer: It depends on how much funding is given by the government. It could take more than one year. The agreement would allow the Town to end the partnership after one year or choose to continue it.

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: The Town can continue to apply in the future or it can choose to end the agreement and leave the other lots with the company to clean up later when it can afford to.

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

Answer: After the cleanup funded by the government is complete.

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

Answer: yes. Conditions include chemical and petroleum contamination of the buildings and the land.

Question: Can the Town get in legal trouble if it owns this contaminated site?

Answer: The Town Attorney has said that the Town has no liability for pollution on the site if it takes the property for back taxes. But it must make sure that it does not make the pollution worse.

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

Answer: The Prime Tanning site is downtown and includes former tannery buildings between Wilson, School and Sullivan streets. Prime Tanning went out of business in 2008. It then filed for bankruptcy in 2010.

Question: What does “clean up” mean – will there be demolition, or simply reused buildings?

Answer: There are some soils on the site that may need to be taken away or paved over. This would make the area able to be developed. There might also be some demolition when it is required to clean the land below a building.

Question: Who owns the Prime Tanning Site?

Answer: The Prime Tanning site is still with the bankruptcy estate of Prime Tanning. The company called Fund of Jupiter loaned money to Prime, but it does not own the site yet.

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

Answer. The bankruptcy case is still going. A company called Fund of Jupiter is part of that case because it loaned Prime money. Fund of Jupiter was given an option to get the Prime property after it pays off its Town and sewer liens.

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

Answer: Fund of Jupiter has made a business decision not to take the Prime site yet, because it has been working on a partnership potential with the Town that could make it easier to develop the site.

Question: How would the Town get the property? Would the Town buy it?

Answer: The Town would not buy the property. The Town would take it for back taxes. Then the company would buy it from the Town after pollution is cleaned up for a price which is the same as the amount of back taxes. The Town would contribute 20% of the price toward the cleanup and anything left over would come back to the Town as new tax money.

Question: When the property is “sold” 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 owed, minus any money it gave the Town ahead of time, as the price for “buying” the property. It will be a sale for money the Fund of Jupiter already owes the Town. It will not be a normal sale on the open market. It is an agreed upon process that will not take place unless there is a contract approved by Town Meeting in place.

Question: Without a partnership governed by an agreement, would Fund of Jupiter have to let the Town take the property for back taxes?

Answer: No. The property is in bankruptcy court. The Town can't take it unless it asks the Court for permission. If the Court says yes the Town will have to tell Fund of Jupiter that it is taking the property. Fund of Jupiter could then pay the back taxes and keep the property. It would not be possible to apply for money from the government in that case because the Town would not own the property and Fund of Jupiter cannot ask the government for the same money. If the Town bought the property after this, instead of taking it for back taxes, it could be liable for the pollution. Taking the property for back taxes makes sure that is not a problem and allows the Town to ask for government money to clean the site up.

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

Answer: Under this agreement, it would not.

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

Answer: The Town has been asked to pay 20% toward the government cleanup funding. Fund of Jupiter could pay this but it would have to charge higher rents to its tenants if the site is developed. The Town is thinking about paying this money to help develop the site to allow for business growth.

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

Answer: the company subdivided the property into seven lots in October. Each lot is able to ask for government funding separately. The more lots there are, the more money there is available from the government to help clean up the pollution.

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

Answer: Yes. The company has enough legal interest in the site to allow it to ask for land use permits even though it doesn't own the property.

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

Answer: Yes.

Question: Is it OK to take the property for a short time just to seek government funding?

Answer: Yes. This has been done many times before and a federal agency and the State have both said this is OK.

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

Answer: Yes, here:

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 mill redevelopment projects in the cities of Lewiston, Biddeford, and Sanford, ME.

For more information on this specific process, contact:

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Question: Why would the Town sell the property after cleaning it up to Fund of Jupiter or any other party for only the amount of back taxes owed and not a much higher amount?

Answer: Under the proposed agreement, the Town would not be able to get this property unless Fund of Jupiter allows it to. Fund of Jupiter would not allow it to have the property if the Town demands a higher price.

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: The proposed agreement will allow the Town to force the company to pay for the site and take the property. It also requires that the company guarantee it has a quarter of a million dollars set aside to buy the site when the Town wants it to.

Question: Where would the Town's portion of the cleanup funding come from?

Answer: The Town would use a portion of the back taxes that are owed to help pay for the cleanup. This money would be given ahead of time to the Town by the Fund of Jupiter.

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

Answer: The site(s) have a tax bill of \$263,949.24 including interest for the whole year. The agreement has a required tax payment of approximately \$253,000, which includes interest only through November instead of for the whole year. The agreement also requires either taxes to continue during Town ownership or a payment in the place of taxes in an amount the Selectmen will determine. After the Town takes a property for back taxes, it is not usually able to continue to collect taxes on that property, but this agreement would allow for that.

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

Answer: The District is owed about \$117,000.00. This is not considered part of the Town's agreement but Fund of Jupiter has made a separate offer to the District to settle on a compromise.

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 it will foreclose upon the Prime Tanning site and wipe out other interests in the site including the Sewer District's liens.

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: Berwick's form of government requires it.

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

Answer: No. But it will be authorized to.

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

Answer: Not if this agreement is approved by Town Meeting, which would make a specific exception to that ordinance.

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

Answer: It is possible the Town could develop the site if it were talked about further, but this is not the plan and is not part of the agreement. It is also not recommended because a municipality is not skilled in real estate development.

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 on different options, including most recently this one, for at least two years. This option may seem rushed because applications for money from the government to help clean the site are due in December.

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

Answer: The Town's power to control the outcome of new construction is through its zoning code and other local laws. The Planning Board and Town Planner have been working on strengthening those laws to make sure the Town is protected.

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 required by law before adopting a zoning code. The Town's vision plan is just an addition to the comprehensive plan. The plan does not control growth, it just guides what development laws should be like. The zoning code separates certain land uses to promote public health. Subdivision regulations contain additional requirements beyond the zoning code for major development proposals. Low impact design regulations are about environmentally sustainable approaches to land 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: This project is not a development proposal. The Sullivan School project was. There is no chance that this could change into something not approved because no development is approved. If something gets built without approval the Town's code enforcement officer would be notified the same way he would in any other case.

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. It may be possible. It will depend on Fund of Jupiter's plans.

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 this was said, it is not true. Berwick will pay up to 20% of government funded cleanup, but it will be funded out of money provided by Fund of Jupiter. The tax bill will be lowered by the amount provided, and if the amount provided is higher than the tax bill then it will be Fund of Jupiter's own money not the Town's.

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

Answer: Through its zoning code and other local laws.

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. When it is, the Town can use its zoning power to control the outcome.

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

Answer: Ordinances are local law and most of the time must be adopted by Town Meeting. There is presently a zoning ordinance which will be important to this site's development. There are also subdivision regulations which are adopted by the Planning Board.

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

Answer: This option was discussed with the Town Attorney. He thought that for this purpose foreclosure was a better idea.

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: This option was discussed with the Town Attorney. He thought that for this purpose foreclosure was a better idea. This could happen in the future but its role would not be overseeing redevelopment of the property because the property will be privately owned.

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: The company has applied for and received permission to subdivide 7 lots. The company first referenced 4 lots before it filed its first application. Since its first application was filed, there have been no changes in the number of lots.

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: No. The Town has retained the right to force the company to take the property and to pay for it in an amount equal to all back taxes and interest. The Town has also required that a set aside of a quarter of a million dollars is made in order to make sure the money is available to pay for this outcome.