

Pennytown Purchase **Frequently Asked Questions**

Why purchase Pennytown?

There are three reasons why the Township Committee is considering buying Pennytown: first, because it is available; second, because it is a unique site in the township in that it has its own sewage treatment plant and is part of a sewer service area; and third, because it can help the Township meet its pressing need to build affordable housing. Each of these reasons will be addressed more fully below.

Are we paying fair market value for the property?

Yes, we are paying fair market value for the property. Three appraisals have been done on the property, each by a state-certified appraiser. Two of the appraisals were commissioned by the Township and one was commissioned by the seller. The two Township appraisals valued the property at \$6,100,000 and \$6,000,000, while the seller's appraisal valued the property at \$5,825,000. All three appraisals were consistent with the assessed value of the property for tax purposes, which is \$6,100,000, a number that was affirmed by the Tax Court in 2007 after the owner filed a tax appeal. The price the Township would pay is \$6.1 million.

Why is the property available now?

The property has not been maintained by its current owner, and is in foreclosure. The holder of the mortgage anticipates taking title and has shopped the property to different commercial buyers. He also approached the Township and asked whether we would be interested in purchasing the property.

What is the development potential of the property?

The property is in the SC-1 shopping center zone. This zoning permits retail sales, personal services, offices, clinics, theaters, banks, night clubs, bars, restaurants, motels, and other uses. Given the limits on development imposed by the size of the treatment plant, a commercial development could be between 112,000 and 140,000 square feet, depending on the use. By way of contrast, the existing development – two houses, an office, two restaurants, a motel and retail stores -- fill approximately 60,000 square feet, which is just half of what could be built at the site.

What is unique about having sewers at the property?

Hopewell Township has limited sewage treatment capacity. There is no large-scale treatment plant in the Township, and the Township is not a full member of a regional treatment authority like the Stony Brook Regional Sewerage Authority (SBRSA) or the Ewing-Lawrence Sewerage Authority (ELSA). In fact, the EPA has said that Hopewell cannot build a treatment plant because of concerns about water quality in the Delaware

River. In the southern portion of the township some neighborhoods, such as Brandon Farms, have tied into the ELSA system, but approximately 90% of the land in the Township still has no access to sewer service and must rely on septic systems for waste treatment. Other than Princeton Farms, which was forced to tie into the SBRSA system in 1989 after its small treatment plant failed, and the BPG site on Carter Road, which has its own limited treatment potential, the only area north of the Pennington Circle that has sewage treatment capacity is Pennytown. Without sewers, the township is unable to develop at the density needed to meet its affordable housing requirement.

Why do we have a pressing need to build affordable housing?

Two reasons. First, the New Jersey Supreme Court's Mt. Laurel decisions in 1975 and 1983 established that municipalities have a constitutional obligation to provide real housing opportunities for low and moderate income households, and that towns cannot enact exclusionary zoning that prevents affordable housing from being built. The Council on Affordable Housing (COAH) was created in 1985 to help towns meet this constitutional obligation. As a state agency, COAH develops formulas for determining what a municipality's "fair share" of affordable housing will be, and if a municipality complies with COAH rules, it is immune from lawsuits from developers who claim that the town has not meet its affordable housing obligation.

Second, since 1985, COAH has enacted three separate sets of fair share calculations for each of three separate rounds of review. The most recent, known as the "Round Three" rules, were adopted in June, 2008. However, COAH's third round actually began in January, 2004. The town's fair share obligation that accumulated from 2004 until this year, when the new rules were finally adopted, must be filled within two years of COAH certifying the township's affordable housing plan. As a result, Hopewell must plan to meet this "retroactive" need immediately.

Who qualifies for affordable housing?

The guidelines for qualifying for affordable housing are set by the Council on Affordable Housing. "Low income housing" is housing that can be afforded by a household earning up to on half of the median income for a household of that size in the region. At present, a family of four with a gross income of \$42,283 would qualify for low income housing. "Moderate income housing" is housing that can be afforded by a household earning between 50 and 80% of the median income for a household of that size in the region. At present, a family of four with a gross income of \$67,653 would qualify for moderate income housing.

What is our affordable housing requirement?

The COAH rules are complex, but we have calculated Hopewell's current affordable housing requirement to be 419 units. Of that, approximately 130 units are required to meet Hopewell's retroactive need.

What is the deadline for meeting our Round Three requirements?

We must submit a Round Three compliance plan by December 31, 2008. The compliance plan provides for phasing the construction of affordable housing over the next 10 years, through 2018.

What happens if we fail to meet our affordable housing requirement?

If a town does not meet its affordable housing requirement, it loses its immunity from lawsuit, and a developer would then be permitted to sue the town and ask the court to allow the developer to build the affordable housing. These lawsuits, known as “builder’s remedy” lawsuits, are costly to defend, but more importantly, they can cause the town to lose control of its zoning and planning process. In a builder’s remedy lawsuit, the planning process takes place in the courtroom, rather than at the Planning Board and Township Committee. Furthermore, developers that build affordable housing are entitled to build market-rate housing as well. By including these market rate units in the development, a developer could be permitted to build five times the amount of housing that would otherwise be required. Finally, if we fail to meet COAH’s deadlines, COAH can seize the funds that the township has been collecting from developers for its affordable housing trust fund under the theory that if the town won’t use the money to provide affordable housing, the state will.

Is a developer’s remedy lawsuit realistic in this economy?

Yes. As residents, we know Hopewell to be a wonderful place to live. We take pride in our beautiful landscape and our unique rural-suburban mix. Hopewell is appealing to developers for these very same reasons. Right now, developers and their attorneys are looking closely at towns like Hopewell. One prominent law firm’s website says, “Towns that are subject to this [December 1, 2008] deadline and who fail to file with COAH by that date lose their immunity from exclusionary zoning until they do file. Because these towns have an urgent need to prepare and adopt new housing plans over the next ten weeks, this is an opportune time for property owners and builders to propose projects that include both residential and mixed use low and moderate income housing.” Developers understand that the best way to force towns to accept development is to claim that they are meeting an unmet affordable housing need. For Hopewell, risking a developers-remedy lawsuit is the ultimate gamble: the town has spent ten years and hundreds of thousands of dollars formulating and defending its 6 and 14 acre zoning, all of which could be overturned by a developer who successfully argues that the township has not met its constitutional obligation to provide for affordable housing. Such a lawsuit could easily result in high density development throughout the Township.

How would development at the Pennytown site affect firefighting in the area?

Development of affordable housing at Pennytown would have no adverse impact on firefighting in the area. Currently, the pond at the site provides water that can be used

for firefighting, and that would not change. On the contrary, if the pond is dredged as part of the development, it will become a better fire protection resource.

How would development at Pennytown affect wells in the area?

We have asked Matt Mulhall, the hydrogeologist whose research formed the basis for the Township's current zoning, to look at the groundwater resources at the site. Mr. Mulhall reported that "the Pennytown site has unique attributes with respect to water supply and wastewater treatment that make the property favorable for converting from existing commercial operations to affordable housing." He noted that the reported yields from the existing wells at the site were more than enough to meet anticipated residential demands; and that in addition, the site is located near a fault zone that is a significant groundwater resource, and is above a rock formation that is the best water supply aquifer in the township.

How would development at Pennytown affect traffic in the area?

A detailed traffic study will be performed as part of the detailed site planning process. However, the estimate of the total trip load for a 70-unit residential development is significantly less than the trip load for a commercial development that could be built at the site under the current zoning. Seventy affordable units at the site would generate 474 total daily trips. This is 13% of the 3,612 total daily trips the site as it currently exists is calculated to generate, and 27% of the 1,728 total daily trips the site would generate if it were converted to a 140,000 square foot office use.

How is the township protected against environmental damage at the site?

Under the agreement of sale, the township has the right to perform Phase I and Phase II environmental audits and a groundwater assessment. If the results of the audit are unsatisfactory to the township, it has the right to declare the agreement null and void.

Who would demolish the existing buildings, and when?

The seller must demolish the existing buildings before closing, with the exception of the office building on Route 654 and the HI Ribs restaurant. The restaurant lease runs through April 30, 2010, and therefore the restaurant property will be subdivided from the remainder and then deeded to the Township after the lease expires.

What is the timeline for development of the site?

The Township would close on the property (with the exception of the HI Ribs parcel) by June 30, 2009. The site is slated for development between 2011 and 2012, according to the Township's proposed affordable housing implementation phasing plan.

Pennytown is isolated and located on a state highway. Is this a reasonable location for affordable housing?

Pennytown is actually next to residential zoning districts or land uses on all sides, except for a small portion on the southern end near the pond and across Pennington Hopewell Road (Route 654) at the Kooltronics/Pennwell site. That adjacent Kooltronics/Pennwell site has been designated as a “hamlet” in the township’s zoning ordinance, meaning that a small compact development with a mix of uses could be built there. The use of Pennytown for residential purposes fits well with this “hamlet” concept. Also, Pennytown’s access to Route 31, its location between two traffic signals, and its proximity to Hopewell Borough (which is four minutes away) and commercial services to the south make it a reasonable site for affordable housing. We also anticipate that by the time the site is developed, it will be served by New Jersey Transit.

Building affordable housing at the Pennytown site also has the advantage of distributing the township’s affordable housing obligation in a fair and equitable manner. The township’s affordable housing should not be concentrated in any single area of the township.

What would the houses look like?

It’s too soon to tell. Affordable housing can take many different forms. The township would work with the selected developer to ensure that the end product is aesthetically pleasing, fits the character of the area, and enhances this stretch of Route 31.

Will the houses be sale or rental units?

Again, it’s too soon to tell. We will work with the developer to come up with a product that makes the most economic sense and provides stability for the site.

How will the township pay for the property?

We have proposed that the Pennytown property be purchased with a combination of affordable housing funds (which are only available if the property is used for affordable housing) and municipal borrowing. The down payment would be from the Township Affordable Housing Trust Fund, while the balance will be financed over 40 years. It is anticipated that this financing will be reimbursed through the trust fund as that fund is replenished by developers paying development fees.