

Minutes of a Public Hearing held by the Town Board of the Town of Riverhead at Town Hall, Howell Avenue, Riverhead, New York on Monday, March 29, 1999, at 11:12 a.m.

Present:

Vincent Villella,	Supervisor
Mark Kwasna,	Councilman
James Lull,	Councilman
Philip Cardinale,	Councilman
Christopher Kent,	Councilman

Also Present:

Barbara Grattan,	Town Clerk
Adam Grossman, Esq.,	Town Attorney

Public Hearing opened: 11:12 a.m.

Barbara Grattan: "I have affidavits of publishing and posting for a public hearing to be held at Riverhead Town Hall, Riverhead, New York at 10:00 on March 29, 1999 to hear all interested persons who wish to be heard regarding the consideration of the adoption of regulations for the implementation and administration of Chapter 14 entitled Community Preservation (Real Estate Transfer Tax) of the Riverhead Town Code."

Supervisor Villella: "Would you like to speak on-- "

Adam Grossman: "Sure, I would. The purpose of this public hearing this morning is adoption of rules and regulations in connection with the Community Preservation Fund in the Town of Riverhead. The rules and regulations that are the subject of this public hearing are going to guide realtors, attorneys and others in the community in implementing what they have to procedurally do at a closing and what they have to prepare prior to closing in terms of properties that are going to have to be paying into the Community Preservation Fund, that is properties-- sales of real property improved that is greater than \$150,000 or unimproved real property in the Town of Riverhead of an amount of greater than \$75,000.

These rules and regulations have been approved by state, county and local officials in each of the five east end towns with the

possible exception of Southold, and they are meant to be uniform. They are meant to model the existing transfer tax legislation in the State of New York and this-- the rules and regulations that we will be discussing today are meant to guide and assist individuals involved in these transactions to make certain that these transactions are implemented properly at closings of title. That's pretty much the gist of it."

Supervisor Vilella: "Short."

Adam Grossman: "I think so. Anything anyone would like to add?"

Supervisor Vilella: "Anyone else like to speak on this? Damian?"

Damian Rollins: "I have a question."

Supervisor Vilella: "Go ahead, come up here."

Adam Grossman: "State your name for the record."

Damian Rollins: "Damian Rollins, Traveler Watchman."

Supervisor Vilella: "All right."

Damian Rollins: "Is there-- are any of the rules different in terms of your set of rules and any of the other towns or is it--"

Adam Grossman: "The five east end towns, the towns of Shelter Island, Southampton, East Hampton and Riverhead are adopting the same rules and regulations. What exactly the Town of Southold is adopting I'm not certain but my understanding is that there are certain differences in the Town of Southold in addition to the effective date being March 1st rather than April 1st of the Community Preservation in Southold Town. I know that there is at least one difference in that rather than in terms of trying to get refunds of either overpayment or payment in error of the transfer tax, in the Town of Southold the full Town Board makes a determination as to whether a refund is due; in the other east end towns, it is the Town Supervisor that makes that determination."

Councilman Kent: "There's also differences in the East Hampton and Southampton rules that the property exempt is a higher amount."

The threshold amount I believe is-- "

Adam Grossman: "I think it's \$250/100-- "

Councilman Kent: "250 for improved property-- \$250,000 for improved property and \$100,000 for vacant property."

Adam Grossman: "Yes."

Damian Rollins: "Are there any rules that are just (inaudible) to Riverhead?"

Adam Grossman: "No."

Damian Rollins: "Thank you."

Councilman Lull: "Adam, (inaudible) that question-- "

Adam Grossman: "Yes."

Councilman Lull: "The same question I asked before we got started. When our Planning Board evaluated this plan, their recommendation was to the Town-- to the Town Board, that any property which is to be entered into this program on a voluntary basis which is in an area which is a receiving area for either our TDR program or the pine barrens development rights receiving area, any areas that are in the receiving area that are to be entered into this program should be replaced with areas-- property-- of approximately equal value and equal size somewhere else in town. Is that part of this law or is that-- as I said, that was a recommendation-- "

Councilman Kent: "I would believe that if you wanted to have that type of policy, that that policy would be in the TDR program law not in this law. This law is only relative to the preservation of property. The law that's relative to designation of properties as receiving areas would be under the TDR law not this preservation law. So you wouldn't reference in the preservation law those properties which would be designated as-- "

Councilman Lull: "Well, we have areas that are receiving areas that are designated as preservation areas."

Councilman Kent: "Yes, right."

Councilman Lull: "And it would seem to me that it would be necessary."

Councilman Kent: "Not under the preservation law though because there's a difference."

Councilman Lull: "I mean I understand that-- "

Supervisor Villella: "You're right in what you're saying, Jim."

Councilman Kent: "Yes, I agree with you, but I think it should be referenced in the law which gives us the power to designate properties as receiving areas under the TDR program but we should say in that law, maybe we should amend that law with the passage of this law-- "

Supervisor Villella: "We've already done that already."

Councilman Kent: "That the properties are taken out-- designated receiving areas are removed, we should designate other areas within the town as receiving areas. That should be in the TDR."

Supervisor Villella: "That came up with the pine barrens-- the TDR and everything but that has to be done. I think they already done that-- Rick already did some work on that."

Councilman Lull: "I know he's done work on it but I-- "

Councilman Kent: "I was just thinking this through, Jim, as you were talking just now, but we wouldn't designate under our preservation law. We would designate under our TDR law. So if you lose property to another program that was included in our TDR program, we should provide under our TDR law or our receiving area law-- I don't know what section of the code that is-- that if properties are lost, that other properties may be designated by the Town Board-- "

Supervisor Villella: "We have to have that balance."

Councilman Lull: "Yes. My question is, should it be such the property cannot be lost, cannot be designated for this purpose unless it is compensated by further receiving area or an expanded receiving area."

Councilman Kent: "You say on the list, the inventory of

properties that are available for preservation-- I think we did that list-- "

Councilman Lull: "Yes."

Adam Grossman: "We did that list-- but part of the adoption-- "

Councilman Lull: "I know we did the list, but I'm still saying that a considerable number of those properties on the list are already in the receiving areas."

Adam Grossman: "Right. And I believe that the list cannot be changed for a certain period of time. In other words, we can't amend it right now. I believe that-- "

Councilman Lull: "I'm not saying we've amended it. I'm simply saying that we have-- there's a condition of this, there has to be a condition of this and that is that we don't decrease the value of our farm preservation program and of the pine barrens preservation program by decreasing the amount of receiving area that there is available in our town."

Supervisor Villella: "Jim, what you're saying is right. It's a different program. So, we'll correct that with-- "

Councilman Kent: "I think we have to amend the code where we identify the properties as receiving areas. We should say if any property is included in this section of the code is lost to preservation or under any other section of the code, that we should provide for other properties to be designated as receiving areas."

Supervisor Villella: "Actually, that's being done automatically from here on in because we met with the Pine Barrens Committee, with Rick, and we went over the map and what Jim is saying is correct."

Councilman Kent: "Adam, could you prepare a code amendment to the TDR program?"

Adam Grossman: "Absolutely."

Councilman Kent: "I think that's where the-- "

Adam Grossman: "I'll discuss with both of you exactly what I need to put in to it and we'll address this issue."

Supervisor Villella: "We'll take care of that with a different issue but not on this one today. Thank you."

Adam Grossman: "And I just want to add a piece of follow up to what Damian was asking about. There isn't anything in the rules and regulations that are specific to Riverhead. However, all five town attorneys worked on the adoption of the rules and regulations with Fred Thiele, the Assemblyman from the south fork. So, in fact, actually, I did have input in what we're going to be, hopefully, adopting today. And so there are some of my thoughts that were put into this."

Councilman Cardinale: "What was the thinking behind the four town that elected to go with the Supervisor rather than the Town Board to hear appeals?"

Supervisor Villella: "That was Fred-- with the state."

Adam Grossman: "I think the concept is that the Town Supervisor is the chief financial officer of the town and that because it's a decision that's related to a financial issue which is the refund of possible tax monies that were maybe collected in error, that it would be appropriate that the Supervisor be the designee rather than the full Town Board although there's no prohibition against doing it the other way, doing it similar to what's done in Southold. And, of course, we can also amend these rules and regulations if the Town Board in the future decides that they would like the full Town Board to make that decision rather than just the Supervisor."

Councilman Cardinale: "I have another question, Adam. In the summary that I'm looking at of this law, one of the indications of amount of consideration to be taxed is in the case of a controlling interest in an entity, 50% or more that owns real property, consideration is the fair market value of the real property or interest apportioned to the percentage of ownership interest transferred or acquired. For example, a person purchases 60% of the stock of ABC Corp. which owns real property with a fair market value of \$300,000. The transfer tax would be imposed on consideration of \$180,000, 60% of the \$300,000 and the applicable exemptions would apply."

And then you say later on-- the summary says later on-- one interesting line-- it says that the key is not to get the document recorded but to survive an audit. Now, who audits-- I guess-- I know

from past experience that when you try to get something recorded, you have to face the issue of whether you have to pay the tax, but on a practical basis, who's going to-- who's going to audit whether a corporation's shares are sold and whether you're going to get your fair-- "

Adam Grossman: "Okay. What's going to happen is in real estate transactions where the money is collected, ultimately documentation of that collection of money is going to end up back at the town because it's going to go into a town fund designated for that purpose. Because the money is going to end up in a town fund, it will part of our audit, our annual audit in the town that it will be included in our audit, to make certain that the numbers are correct and make certain that it was done properly."

Councilman Kent: "But how do we discover that shares of a corporation have been transferred?"

Councilman Cardinale: "That's what I'm getting at."

Adam Grossman: "Some of these issues may be-- "

Councilman Kent: "They're not recorded."

Adam Grossman: "Right, right, you know, I think the burden is going to be on the person who's designated to pay the tax. If it turns out that there's an audit and, for example, the audit comes out that there's money that shouldn't have been collected-- that should have been collected and wasn't collected at closing, then I would, as Town Attorney on behalf of the Town, commence, you know, first write a letter but then, if necessary, commence a lawsuit to collect the tax if, in fact, we found that it should have been collected and it wasn't. Or not enough was collected."

Supervisor Villella: "There is a-- what's the form letter at the closing? There's going to be a form letter at the closing-- "

Adam Grossman: "Well, it's actually a document. There's going to be a Community Preservation form transfer tax return-- "

Supervisor Villella: "Everything is spelled out."

Councilman Cardinale: "Yes. I think Chris has got it but everybody else has missed the point. I'm saying, I know that when

they fill the form out, just as with the gains tax, you are going to get caught or not get caught at the County Center. But when you're selling stock shares, there's no way that you're going to get caught and, therefore, nobody is going to pay this tax, is my point. Because there's no audit procedure and I don't know how you would devise one. If I own a corporation which has a million dollars worth of real estate and I'm conveying 51% of it to someone, I would owe a tax, If it was East End Realty. I don't think it's going to get paid and I don't think there's any real audit potential to see that it was paid. That's one observation. Anybody has thought of how to get that paid, let me know.

The second point is you say getting it recorded isn't the real challenge in the summary but surviving the audit."

Adam Grossman: "Yes."

Councilman Cardinale: "Now, when the stuff goes-- that which is recorded that goes to the County Center and comes back to us, here's your money, here's the documentation, is anybody really going to audit that? Is anybody really going to look at that?"

Adam Grossman: "In a situation where you have a corporation, I think, there could be a problem. However, I would also state that besides the town's concerns, it is a misdemeanor to sign off on a document, the Community Preservation form, saying that no tax is due when, in fact, one should have been due. So, if people want to take the risk of dealing with a possible criminal prosecution, because I'll tell you, if my office finds out that someone tried to evade the tax and should have paid it, I'm going to report it to the District Attorney's office."

Councilman Cardinale: "Okay. I have no-- I understand what you're saying under the form. But the form doesn't get-- unless you have a recording, if you're dealing with stock shares, the form doesn't get-- doesn't enter in. There is-- the form is not necessary because you're not recording."

Adam Grossman: "Right, right."

Councilman Cardinale: "So in that instance I wouldn't hold out a lot of faith that you're going to get paid."

Adam Grossman: "Right. You're-- "

Councilman Cardinale: "Although it is good now that now Damian is here, it would be good to point out to the public that whether or not they get caught, the law does address those-- the sale of shares of stock in an entity that owns East End Real Estate when you're getting a controlling interest this tax applies. And it's a misdemeanor not to pay it, I assume."

Adam Grossman: "Yes, when it should have been paid."

Councilman Cardinale: "So you would be committing a misdemeanor, albeit I don't think you would ever get caught for it unless somebody snitches to the Town Attorney. That's what I-- and I don't think it's a solution to the problem-- I don't know the solution."

Councilman Kent: "Actually there is a solution."

Councilman Cardinale: "Tell me."

Councilman Kent: "It will be ultimately it will be discovered when the corporation itself conveys out the property, if someone else is then signing as the officer or the majority shareholder, at that point they would be caught. And the purchaser of the property would be paying a tax but they might also then discover that no tax was paid when the property was transferred. I don't know; it's not-- the likelihood of being caught is not very good."

Councilman Cardinale: "No, but I think one of the things-- what they did here which is also worthwhile for the public to know, what they did here is they say that the tax is the responsibility of the purchaser."

Councilman Kent: "That's correct."

Councilman Cardinale: "But if the purchaser doesn't pay it, the seller is responsible. So that will avoid any collusion between purchaser or seller either in the recorded real estate or in the sale of shares. And I assume most of this is patterned upon the-- what I see in it is patterned upon the gains tax, the New York State gains tax."

Adam Grossman: "That's correct, yet."

Councilman Kent: "It's the honor system."

Adam Grossman: "And just one other point for Damian, just so you understand. The reason that we talk about it being looked at at the audit rather than on collection at the County, is that the County just is going to take forms, they're not going to take a look and examine whether everything was done properly, they just want to make sure they were properly signed. The County really is just a collection agent in connection with the transfer tax, as they are with all other taxes that are paid in connection with a real estate transaction. So it is later in the process that if there is something that was done improperly, it will be later after the closing takes place that the auditors may catch it but, of course, if a document is filed, then, in fact-- "

Supervisor Villella: "I thought that-- Adam, I thought the County-- depends on the amount of money that's at the closing that they're going for. If it's over the amount, automatically they're going to deduct it."

Adam Grossman: "Oh, no, it's not going to be deducted."

Supervisor Villella: "Then it's up to the seller or the corporation to give them the information that they should be paying. So they're going to have to come up with more information-- "

Adam Grossman: "Well, they're going to have to come up with information but as far as the County's role in all of this, they're just going to be collecting the documentation. That's the point I wanted to bring out."

Supervisor Villella: "Yes, Damian."

Damian Rollins: "Is there some type of audit schedule? I mean, how does that work? Or is it just random?"

Adam Grossman: "It's going to be part of the annual audit of everything that's done here at Town Hall."

Damian Rollins: "I see."

Supervisor Villella: "Okay. Anyone else want to speak? No. Jack, do you want to speak? You like you're ready to fall asleep."

Councilman Kent: "He looks like he's ready to fall asleep, yes."

Supervisor Villella: "This public hearing is closed: 11:29
a.m."

Public hearing closed: 11:29 a.m.

*Barbara Lutton
Town Clerk*