

225 Water Street
Exeter, New Hampshire 03833

Advertising

We're on the web at
www.DTCLawyers.com

DTC Municipal Practice Group



Established in 1985, Donahue, Tucker and Ciandella, PLLC is a full-service law firm with 15 attorneys and offices in Exeter and Portsmouth, New Hampshire. ©2008 Donahue, Tucker & Ciandella, PLLC.



Attorney Robert D. Ciandella
Email: rciandella@dtclawyers.com
Tel: (603)778-0686 Ext. 503



Attorney Michael J. Donahue
Email: mtonahue@dtclawyers.com
Tel: (603)766-1686 Ext. 684



Attorney Robert A. Battles
Email: rbattles@dtclawyers.com
Tel: (603)766-1686 Ext. 691



Attorney Christopher L. Boldt
Email: cboldt@dtclawyers.com
Tel: (603)766-1686 Ext. 573



Attorney Douglas M. Mansfield
Email: dmansfield@dtclawyers.com
Tel: (603)778-0686 Ext. 519



Attorney Christopher T. Hilson
Email: chilson@dtclawyers.com
Tel:(603)778-0686 Ext. 509



Attorney John J. Ratigan
Email: jratigan@dtclawyers.com
Tel: (603)778-0686 Ext. 505



Attorney Charles F. Tucker
Email: ctucker@dtclawyers.com
Tel: (603)778-0686 Ext. 502



Attorney Robert Derosier
Email: rderosier@dtclawyers.com
Tel:(603)778-0686 Ext. 516



Attorney Sharon Cuddy Somers
Email: ssomers@dtclawyers.com
Tel: (603)778-0686 Ext. 508



Attorney Katherine B. Miller
Email: kmiller@dtclawyers.com
Tel:(603)778-0686 Ext. 509



Attorney John L. McGowan
Email: jmcgowan@dtclawyers.com
Tel:(603)778-0686 Ext. 507

For more information contact one of the following attorneys in our **municipal practice group**:

The materials contained in this newsletter are for informational purposes only and not for the purpose of providing legal advice or a comprehensive summary of recent developments in the law or treat exhaustively the subjects covered. For advice about a particular problem or situation, please contact an attorney of your choice. © 2008 Donahue, Tucker & Ciandella, PLLC

For back issues of this newsletter please go to our website at www.dtclawyers.com.

DTC LAWYERS - DONAHUE, TUCKER & CIANDELLA, PLLC



A Professional Limited Liability Company

Volume 5, Issue 1 / Summer 2008

Exeter Office:
Water Street Professional Building
225 Water Street
PO Box 630
Exeter, NH 03833
(603) 778-0686

Portsmouth Office:
Kearsarge House,
104 Congress St., Suite 304
Portsmouth, NH 03801
(603) 766-1686

www.dtclawyers.com

To **Subscribe** to future issues of the newsletter, Municipalis, visit our website at www.dtclawyers.com and send us an email.



Inside this issue:

Going Green - with Building Construction.	1
Upcoming Events.	1
Tax Deeding Tune- Up for Cities and Towns.	2-3
Updating Employee Handbooks.	3
Contact us.	4

Going Green - with Building Construction.

The green building movement is not coming to New Hampshire. It is already here. Throughout the state,



building owners reap the benefits of these high-performance "green" buildings. Municipalities own, manage and develop property like the private sector. Municipalities, as property owners and land use regulators, play a key role in how we retool and rethink our built environment. Whether a municipality is an active or a passive participant in the green

building movement, it should bear in mind the following:

Incentives vs. Mandates. As land use regulators, municipalities must be wary of adopting green building zoning ordinances, subdivision regulations or building codes that seek to regulate beyond the power granted by the state. Appropriate incentives may include expedited review of applications, area waivers, density bonuses or other innovative land use controls. Always consider the enabling legislation. As property owners, municipalities increasingly mandate green standards as a condition of the award of a building contract.

Getting the Job Done. Integrated Design Process (IDP) is a hallmark of green building. IDP encourages a design-build approach that spreads

responsibilities and obligations early in the process among development team members (architects, engineers, project managers, general contractor) to encourage communication and collaboration. In practice, IDP can pose liability problems if a project stalls, or is not completed on time or on budget – who, precisely, is to blame, how is that determined, and how do we keep the job moving forward? Municipalities, as regulators and property owners, want to see documentation or a plan from the development team that addresses these issues. It is in everyone's best interest, including the municipality, for these projects to be successful.

Don't Get Green-washed. Without third party verification and cer- Cont.

Upcoming Events:

Local Government Center's 67TH ANNUAL CONFERENCE - NOVEMBER 12th – 14th, 2008

Donahue, Tucker & Ciandella, PLLC will be an exhibitor at the LGC Annual Conference being held November 12th–14th, 2008 at the Radisson Hotel in Manchester, NH. Please stop by to see our booth, speak with our municipal attorneys, and obtain copies of our writings of legal interest to municipalities. We will also be raffling a \$500.00 gift certificate to Wentworth by the Sea Hotel and Spa in New Castle, NH and you are invited to participate in the raffle. The Municipal section of the NH Bar Assoc. is hosting a seminar at the LGC Annual Conference entitled "Green" Zoning Ordinances and Building; the Role of the Municipality. Sharon Cuddy Somers is the Chairman of the Municipal Section and John McGowan will be one of the panelists at the seminar.

Going Green - with Building Construction Cont.

tification, a developer's claim of green could just be lipstick (green) on a pig. The U.S. Green Building Council is the leader in verification with the Leadership in Energy and Environmental Design (LEED) Green Building Rating Sys-



tem. Municipalities that craft their own energy and environmental design metrics must remember that they bear the responsibility of ensuring compliance and certification.

The New Hampshire town of Epping's successful Energy Efficiency and Sustainable Design Ordinance is an excellent case-in-point.

Don't Cut and Paste. Ordinances are always examples, never models. Municipalities must resist the temptation to copy popular green ordinances from Boulder, CO, Babylon, NY or Boston, MA. Municipalities operate in different legal systems and economic markets. A municipality should tailor its green building initiative to what the market will bear, the community's present and future needs and the community's administrative and en-

forcement capabilities.

Businesses, institutions and residents look to their local governments for leadership in the promotion and execution of the exciting sustainable design and construction methods that the market now offers. Municipalities can confidently lead the way by keeping in mind the above and by asking the right questions. Creating a healthier, more sustainable and more affordable built environment for our residents is a challenge worth embracing.

For additional information or questions, please contact **Attorney John L. McGowan**.

Tax Deeding Tune-Up for Cities and Towns.

With economic hard times hitting some sectors of New Hampshire's economy, towns and cities may be faced with more delinquencies of property taxes. The tax deeding requirements are complex, so this is a good time to review them. On top of a complicated statutory process, there are layers of common law (i.e. case law), bankruptcy law and constitutional re-



quirements.

A municipality must comply with "due process of law" in order to obtain good title to real property through a tax deed. What does this mean as a practical matter? It means that municipalities must do what is "reasonable under the circumstances" to notify the owner before a property is tax deeded.

First, tax collectors should comply strictly with the requirements of RSA 80:77, Notice to Current Owner: 1) send the notice to the current owner by certified mail, return receipt requested; 2) if the receipt is returned and the letter accepted, good, but; 3) if the letter is not ac-

cepted by the owner, the tax collector must follow up with additional steps to ensure notice, such as: Sending the notice again by regular mail; Posting the notice on the property; Checking other municipal records for a more current address, and sending the notice again.

Second, tax collectors must notify all mortgagees pursuant to RSA 80:77-a. Municipalities are well served to notify all those who have recorded liens on the property in the last 35 years, not just mortgagees. Many older liens, attachments and mortgages are no longer enforceable, but it takes little time or effort to send the notice, and if

Tax Deeding Tune-Up for Cities and Towns Cont.

this results in the payment of back taxes, that is good.

Third, tax collectors should also keep track of all bankruptcy notices received. If an owner is in bankruptcy, creditors, including municipalities owed real estate taxes, water or sewer fees, etc. are subject to an "automatic stay" meaning they cannot take any action against the bankrupt or the property of the bankrupt to collect the amount owed. To be sure the municipality has not misfiled a bankruptcy notice, we recommend that, shortly before properties are tax deeded, all municipalities check bankruptcy court filings, in New Hampshire

and in the State where the bankrupt has resided, domiciled, has a principal place of



business or has had their principal assets for the greatest period of time in the 180 days before filing.

Municipalities should undertake all these steps before tax deeding property. Likewise, if municipalities intend to sell tax deeded property, they should take all the same steps outlined above in com-

plying with RSA 80:89, Notice to Former Owner, including sending notice to all lienholders and checking for bankruptcy court filings.

These strategies are an expense and effort, but they can buy peace of mind and avoid much greater costs and headaches, whether municipalities wish to retain a tax deeded property or sell it. Our office can assist you with making sure your notices and procedures are up to date. We can also check bankruptcy court filings.



For additional information or questions, please contact **Attorney Katherine B. Miller**.

Updating Employee Handbooks.

Having an employee handbook that is out of date can be more dangerous than not having one at all. No state or federal law mandates an Employee Handbook, but laws do require the presence of written employment policies. To ensure legal compliance and the protections afforded by having an Employee Handbook, it is considered a best practice to annually review an Employee Handbook and update, when necessary.

Areas to address in a review of an Employee Handbook include:

Recent Changes in the Law. New Hampshire recently implemented a mandatory unpaid leave of absence for employees who are victims of crime. Such a policy should

be added to an employer's description of leave policies. In 2009, a new federal law will take effect adding genetic status to those groups af-



forded protection under the federal anti-discrimination law. In New Hampshire, an employer should ensure that its anti-discrimination policies properly list all protected

classes including physical and mental disabilities, as well as sexual orientation.

Electronic Communications. Employers should ensure that their Employee Handbook has an electronic communications policy addressing issues of privacy; different forms of technology; and what uses are considered appropriate and inappropriate.

Improper Docking of Employee Wages. Employers should carefully review policies to ensure that they comply with the salary basis test under the FLSA and that exempt employees' salaries are not subject to impermissible "docking." The FLSA permits employers to limit exposure to impermissible docking of wages through the use of a "Safe Harbor Policy." Such a

policy affords employers a brief period of time to correct any inadvertent improper deductions made to an exempt employee's salary. To take advantage of such protection, the employer must have a clearly communicated policy prohibiting improper pay deductions; reimburse employees for any such deductions; and make a good faith commitment to future FLSA compliance.

Having an up to date Employee Handbook helps to limit future liabilities, as well as limit the legal costs associated with the defense of such claims.

For additional information or questions, please contact **Attorney Douglas M. Mansfield**.