TOWN OF WARNER, NEW HAMPSHIRE
Disposition of Town Real Estate Property

I. General Provisions

These provisions shall apply to all Town-owned real estate property. The Select Board, as authorized by Article 14 of the 1994 Town Meeting, shall have the authority to convey tax deed properties by public action, or as justice may require. Specific requirements for the acquisition and disposition of tax deeded parcels are governed by New Hampshire RSA 80:1 et seq., are herein incorporated. Further, any property acquired, developed, or disposed of pursuant to RSA 162-G, Acquisition, Development and Disposal of Industrial Land and Facilities, or RSA 162-K, Tax Increment Finance District, shall be done in accordance with the applicable statute, which is also incorporated herein. All other property shall be disposed of in accordance with RSA 41:14-a, which has been adopted pursuant to RSA 41:14-c, and is herein incorporated. It is the intent of these procedures to provide an orderly process for disposition of real property to be included in revenues for each budget year.

A. On an annual basis the Assessor's office shall generate an updated map/maps indicating all Town-owned parcels. These maps shall be available to the Town Administrator no later than July 1 of each year. A master file of Town land shall be prepared and submitted to the Town Administrator for review and recommendation to the Select Board for disposition.

B. Once Town land is catalogued in the master file, a description of the property shall then be transmitted by the Town Administrator to all interested Town departments, boards and committees for their review and recommendation. In all cases the Planning Board, the Economic Development Committee, and the Conservation Commission shall be notified, and their recommendation requested as to retaining the property for Town use.

C. Individuals interested in purchasing a parcel of Town-owned land may submit a request to the Town Administrator at any time during the year. If a request is received, the Select Board, at its discretion, may hold a session to consider the request. However, no disposition will be permitted without a public hearing, if required by the applicable statute.

D. Nothing in these provisions shall prevent a citizen from petitioning the Town for sale of Town-owned land.

E. Town property to be considered for sale shall be maintained in a master file in the Town Administrator's office and made available to the public.

F. The provisions of this section shall not apply to the sale of and the Select Board shall have no authority to sell:

(1) Town-owned conservation land which is managed and controlled by the Conservation Commission under the provisions of NH RSA 36-A.

(2) Any part of a Town forest established under NH RSA 31:110 and managed under NH RSA 31:112.

(3) Any real estate that has been given, devised, or bequeathed to the Town for charitable or community purposes.

(4) Any real estate otherwise prohibited from being sold by federal or state law.

II. Procedure prior to sale of properties

A. The Town shall review and conform to the procedure set forth in the applicable statutes prior to the sale of any Town owned property.

B. The motion to place the real property up for sale shall include any special conditions of sale, including if it is being sold to a specific individual(s) or by bid, auction, or unsolicited proposal.

C. Upon voting to sell properties acquired through tax lien, and/or tax deed, the Select Board shall vote to either sell these parcels by public auction.

III. Procedure at time of sale

A. The sale of Town property, including those acquired through the tax deeding process, shall adhere to the following procedures in addition to those set forth in the applicable statutes.

B. The Town Administrator shall request proposals from qualified real property auctioneers, or licensed real estate agents for the management and conduct of the sale of Town-owned properties.

C. The date and time of the public auction, shall be posted at the Town Hall and shall be advertised in a newspaper of general circulation in the Town at least seven days prior to the date of the auction. All properties to be sold shall be identified by address, tax map, and lot numbers.

D. Prior to the public hearing, the Town shall post, on any property which is being considered for sale that has street frontage, a "For Sale" sign. Such sign shall be legible from the street and shall contain a telephone number or web address to be contacted to gain additional information about the Town land and the procedures to be followed in the sale of Town land.

E. The Select Board, or its designee, may require either a cash deposit or treasurer's check in an amount equal to 10% of the sale price. The successful bidder shall submit the balance within 45 days of the sale unless an extended time period is agreed to in writing by both the Town and the bidder. The Select Board, or its designee, shall establish a date by which the property transfer from the Town to the successful bidder must be completed. If the transaction is not completed by this date, the deposit will be retained by the Town as liquidated damages.

F. The successful bidder shall be responsible for all fees incurred by the Town relative to transfer of the property. These fees shall include, but not be limited to, legal fees, survey costs, subdivision costs and registry fees.

IV. Guidelines to be followed by Town

A. It shall be the intent of the Town of Warner, through its Select Board, to return all parcels acquired through the tax deeding process back into the tax rolls of the Town except where the Town's best interest would be served by retaining a specific parcel of real estate.

B. Examples of circumstances where the Town is better served by retaining a particular piece of property include, but are not limited to, the following:

(1) Land which is suitable for conservation or historic purposes. In cases where these lots are sold, the Select Board shall give serious consideration to attaching a conservation or historic easement to the property prior to sale rather than retaining it in Town ownership.

(2) Land which is suitable for active public recreation.

(3) Parcels of land where retention in public ownership may be considered in the best interest of public health and welfare, such as watershed protection, or future septic field development.

(4) Land that provides rights-of-way for access to ponds and other bodies of water.

(5) Land required for other public rights-of-way for utility use, or projects included in the adopted Master Plan.

(6) Land which aligns with the Town's economic development goals.

C. Notwithstanding any of the above guidelines, the Select Board is hereby authorized to dispose of tax deeded properties under the provisions of NH RSA 80:80 as "justice may require." To use as "justice may require" to dispose of tax-deeded property, the Select Board must first make an affirmative finding that disposal other than by sealed bid or public auction is in the public interest (RSA 80:80, III).

Examples of instances where "justice may require" may include, but not be limited to, the following:

(1) Where the Town commits an error in the actual deeding process such as notification problems; or

(2) Engage a real estate agent or broker to list and sell the property, including a sale conditional on the buyer's obtaining development approvals; or

(3) Sell undeveloped parcels to abutters for consolidation into adjoining lots for the purpose of affordable housing development, preserving open space, or reducing development density; or

(4) Convey the property to a former owner, or to a third party for benefit of a former owner, upon such reasonable terms as may be agreed to, in writing, including the authority of the municipality to retain a mortgage interest in the property, or to reimpose its tax lien, contingent upon an agreed payment schedule, which need not necessarily reflect any prior redemption amount. Any such agreement shall be recorded in the registry of deeds. This subsection shall not be construed to obligate any municipality to make any such conveyance or agreement; or

(5) Where the owner of the property shows clear intention of redeeming the properties prior to deeding, but due to unique circumstances is unable to do so. It shall be the intent of the

Town of Warner to adhere to the provisions of RSA 80:88 and RSA 80:89, or any amendment thereto, with regard to the distribution of proceeds from the sale of tax-deeded property and the notice to former owner and opportunity for repurchase where applicable.

(6) Warner will return excess proceeds from the sale of tax-deeded property to the former owner(s) as required under RSA 80:88, regardless of the length of time that has passed since the recording of the tax deed. (Please note that the 3-year limit for the return of excess proceeds in the statute has been ruled unconstitutional.)

V. Adoption.

These provisions shall be construed to be the official guidelines for the disposition of Town real estate property of the Town of Warner, and have been adopted by the Select Board on this XXXX day of MONTH, YEAR.

VI. Amendments.

These provisions may be amended from time to time by the Select Board provided the proposed changes are considered in accordance with applicable statute.

BOARD O F SELECTMEN

_____
Chair

_____
Member signature

_____
Member signature

Recorded with the Town Clerk on month day year:

_____
Town Clerk

Adopted. month day year

ATTORNEYS
DTC
AT LAW
DONAHUE, TUCKER & CIANDELLA, PLLC
225 WATER STREET, PO BOX 630
EXETER, NEW HAMPSHIRE 03833
TELEPHONE (603) 778-0686 ◆ WWW.DTCLAWYERS.COM
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Tax Deed Acquired Properties: An Opportunity and a Burden

Legal Issues for Municipalities

By: **Katherine B. Miller, Esq.**

I. **The Opportunity:** The Intersection of Municipal Economic Development, Housing & Welfare and Green Space Goals

A. Develop a Plan for Handling Tax Deeded Properties

1. Municipalities do not choose which properties will come to them through the tax deeding process (except for the option to choose NOT to accept an otherwise eligible property due to concerns about environmental contamination of the property or taking on other "undesirable obligations or liability risks" .... RSA 80:76, II and II-a.).
2. For communities with more than a few isolated tax deeded properties which can be dealt with on a case-by-case basis, there needs to be a plan for handling these properties. The plan needs to be flexible enough to accommodate the various properties that will come along but general enough to provide guidance and allow the municipal officials to handle the properties efficiently, without needing to "reinvent the wheel" each time.

B. Questions to Consider:

1. Should commercial and residential properties be handled differently? Does the community want to provide stability for businesses by retaining ownership of commercial properties? Is it willing to be a landlord for either commercial or residential buildings, or is that something the municipality is not equipped or inclined to undertake? What would the carrying costs be?
2. If there is a Master Plan, how do these properties fit into it?
3. Are there municipal uses to which this property could be put? As a structure or as green space, a park or a community garden?

4. Are there redevelopment or other projects underway, for example in a down town core or in a recreational/park area?
5. Are there other municipal entities that should be involved, such as school districts?
6. What are the property tax and other tax consequences to the municipality of the decision to retain or sell the property?

C. Retain or Sell? Need legal authority either way.

1. Sell: RSA 80:80, I and IV: require Town Meeting or City Council majority vote to authorize sale of property, and that authority will be good for only one year unless the vote contains the following magic language: "indefinitely, until rescinded," or similar language.
2. Retain: RSA 80:80, V: "Towns and cities may retain and hold for public uses real property the title to which has been acquired by them by tax collector's deed, **upon vote of the town meeting or city council approving the same.**"
3. Regardless of whether the decision is to retain or to sell the property, the municipality will own it for some period of time, either (1) indefinitely, in the case of retention, or (2) in the case of properties that will be sold, for at least three months, since there is a required period in RSA 80:89, I of 90 days prior to the offering of the property for sale by the municipality during which the municipality must notify the former owner of the property of the terms of the offering and the right of the former owner(s) to repurchase the property, as specified in RSA 80:89; II.
4. Therefore, there will be at least three months, at a minimum, that the municipality will need to manage the property, plus whatever time is needed before the closing on the sale.

II. **The Burden:** Consequences of Municipal Ownership of Property

A. Legal Liability/Insurance

1. Most tax deeded properties are "distressed" – if the owner has been unable to pay the taxes, he/she or it will have probably not been spending money on repairs or maintenance.
2. There may be significant safety issues, potentially exposing the municipality to some legal liability.
3. **The municipal insurer or liability trust should be notified immediately if necessary. Some policies will cover newly-acquired properties but check to be sure what needs to be done to bring the tax deeded properties under the municipal insurance coverage.**

B. Commercial/Residential Tenants

1. Once the municipality has decided whether it wants to act as landlord for commercial and/or residential properties, it must carry out that decision.
2. Notify tenants of new ownership of property and plan on retention (or not) of property and need to pay rent (or not). This can be done at the same time as a Notice to Quit, if that is used.
3. If the property is going to be sold, does the municipality want to evict the tenants first? It may be easier to sell residential properties that are empty and commercial properties that have existing tenants.
4. If tenants are going to be evicted, the statutory process in RSA Chapter 540 must be **strictly** followed. Lavoie v. Szumiez, 115 N.H. 266 (1975). Residential tenants in properties that have been tax deeded are often extremely vulnerable and need to be treated fairly. Courts are particularly protective of such tenants. Additional City or Town departments may need to be involved to assist displaced tenants: housing, welfare, and schools.
5. The eviction process is really worth an additional seminar, but a couple of points to consider for restricted, residential properties:

    1. Grounds for eviction can include "any legitimate business or economic reason," which could include new ownership.
    2. Be aware of whether there was a lease. If there was, AIMCO Properties, LLC v. Dziewisz, 152 N.H. 587 (2005) held that the end of the lease terms does not constitute "other good cause" for eviction.

6. There is also the option for a common law action for ejectment and entry.

C. Securing Property/Safety

1. Tax deeded properties are often dilapidated and may need immediate attention, even if the municipality intends to sell them.
2. Occupied properties should be inspected as soon as possible after the tax deeding, with notice to occupants, to determine whether there are fire safety, structural, building and/or sanitary code issues.
3. Any properties that pose an immediate threat to occupants should be vacated immediately, pursuant to an order of the Code Enforcement or Health Officer or the Fire Chief, pursuant to RSA 147:16-a, RSA 154:21-a, or RSA 674:52-a.
4. If occupied properties do not need to be immediately vacated, then attention should be paid to any code violations, and such

immediate, interim steps as are necessary for health and safety should be taken.

5. Utilities for occupied properties that are in the name of the former owner should be switched to the municipality and continued as long as the municipality owns the building.
6. Vacant buildings should be secured to prevent them from becoming a haven for vagrants, a target for arsonists, a home to vermin, etc. This may involve boarding up windows, installing locks, etc. Rubbish and debris should be removed to prevent arson and to improve the safety and attractiveness of the property.

III. **Conclusion**: Tax Deeded Properties – On Balance a Benefit for Communities

1. The tax deeding process provides obligations for municipalities but also the chance to turn neglected properties into attractive, productive assets to the community, either through new ownership of buildings that are returned to the tax rolls, or in a new incarnation, as open space, parks or new structures.
2. Municipalities are suddenly thrust into multiple demanding roles:

   a. Tax collectors and municipal officials must properly notify owners and former owners of the tax deeding process and their opportunities to repurchase. They must do this in the context of a convoluted statute (RSA Chapter 80), federal and state Constitutional Due Process requirements and compliance with a body of case law that is constantly evolving. They must also make sure their records will satisfy a potential buyer and/or the potential buyer's title insurance company that the process was legally done and the municipality can transfer title to the property of it is to be sold.
   b. Communities must have the vision to imagine the best uses to which tax deeded properties can be put, the wisdom to decline properties too contaminated or laden with liabilities to take on and the decisiveness to develop a plan to deal efficiently with the properties as they come along.
   c. Municipal officials must become, at least temporarily, responsible for some of the most dilapidated properties around, including taking on the responsibility for any occupants, who are likely to be very vulnerable. They need to manage the physical property, at least until it is sold, and deal fairly with the tenants, if any.

3. At the end of the process, municipalities will have less blight and a stronger community to show for their efforts.

From: Legal Inquiries <legalinquiries@nhmunicipal.org>
Sent: Tuesday, February 17, 2026 1:38 PM
To: Harry Seidel - Select Board <hseidel@warnernh.gov>
Subject: Warner: Disposition of Acquired land

Hello Harry,

It looks as though the Select Board has all the authority it needs from town meeting under RSA 80:80 and RSA 41:14-a, which is great. The policy looks good, with two cautions.

First, in Section IV(C), please note that RSA 80:80, III requires that whenever the board uses its "as justice may require" authority to dispose of tax-deeded property, it first make an affirmative finding that disposal other than by sealed bid or public auction is in the public interest. It might help to include that standard in the policy in that location.

Second, I know the policy says that the board is required to follow all of the various statutory procedures that apply to whatever situation applies (sale of town-owned land under RSA 41:14-a, disposal of tax-deeded property under RSA 80, etc.), and that is good. However, some of those procedures are pretty specific and require a long lead time (such as the 90-day notice to former owners before selling tax-deeded property within the first 3 years after acquisition). To increase the chances of success, you may want to include something in the policy (Section II(A)?) specifying that the board will review the applicable statutory procedures for the sale of that particular property before doing anything else. This is an obvious step but if it isn't in the policy, I can foresee it being skipped.

I hope these thoughts help!
Regards,

Christine

C. Christine Johnston
Legal Services Counsel
New Hampshire Municipal Association
25 Triangle Park Drive Concord, NH 03301
603.224.7447 | legalinquiries@nhmunicipal.org | nhmunicipal.org