

ENFORCEMENT FINES

Administrative officers are required to enforce land use regulations. They must take any action to “prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation.” 24 V.S.A. § 4452. When an administrative officer ignores violations, or when a selectboard fails to support the administrative officer’s actions, apathy towards the land use regulations and program may be the consequence.

In any enforcement action brought by the administrative office, the goal is typically compliance with municipal bylaws. In most cases, the enforcement action ends once violations are corrected and compliance is achieved. However, administrative officers spend a portion of their time enforcing violations. In addition, a town may hire an attorney to assist with enforcement. This is a drain on town resources for which the town has a remedy as laid out in the law.

Vermont law authorizes towns to recover expenditures related to enforcement under 24 V.S.A. § 4451. Any person who violates adopted bylaws may be fined \$100 for each offense; each day a violation continues is a separate offense. After the violation is cured, towns may proceed with an action in court to recover fines for the period of time that a violation existed and recoup cost associated with litigation even after compliance is achieved. This authority is explored in the Environmental Court case *Town of Calais v. Barbara Noordsji* 142-6-06 Vtec.

The Town of Calais brought an enforcement action against the defendant, Barbara Noordsji, for not complying with a setback for construction of a barn as indicated on the issued zoning permit. The administrative officer alerted Noordsji to the possible violation one day after framing began on the barn, December 20, 2005. A notice of violation was sent on December 21, 2005. Noordsji had a seven-day warning to cure the violation, but construction of the barn proceeded contrary to the permit.

A year and a half later, the development review board granted approval for the “as built” location of the barn. Even though the property owner achieved compliance with the bylaw, the town pursued penalties that accrued over the 566 days of the violation. The court concluded that “a penalty must be calculated to remove the economic benefit and the avoided costs achieved by the Defendant from the violation, as well as to compensate the enforcement entity generally for the legitimate costs of bringing the enforcement action, and to consider other relevant factors.”

The penalty granted was \$24,695. This included the administrative officer’s time in enforcing the bylaw (\$695.76) and the attorney’s fees and other costs incurred by the town (\$23,999.16). This penalty is not the full amount authorized under state law and represents \$43.63 per day of the 566 days of violation. The court acknowledged that “[t]o fail to impose an appropriate penalty on a defendant who proceeds with a project after being notified of the violation makes a mockery of the great majority of citizens who apply for and abide by zoning permits and other municipal land use approvals.”

This case points out that municipalities can prosecute to recoup the costs associated with enforcement of land use regulations. Enforcement costs, which may deter a town from carrying out meaningful enforcement, does not have to be the burden of taxpayers. The court has placed this burden on the violator, thereby strengthening a town's position to uphold its land use regulations and implementation of a town's development plan.

To read the entire decision, go to <http://www.vermontjudiciary.org/tcdecisions/06-142ze.Noordsij.rcn.pdf>

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