



Administrative Assistant to the Selectmen

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To: Selectmen
From: Stu
Re: Fines – Code Enforcement
Date: January 28, 2009

At the previous Selectmen's meeting it was requested to outline at what point a fine is to be collected on an ordinance violation. The Code Enforcement Officer's Manual provides some information on this. Basically there are two avenues to impose a fine – a locally generated consent agreement, or a court ordered fine.

In the current case under Notice of Violation, a number of actions are outlined for the alleged violator to meet. They have not yet been met to our knowledge, but the alleged violator has requested the Board of Appeals to meet on the matter. No fine has been discussed in the notice other than the threat for non-compliance.

There may likely come a point where the town and the alleged violator reach a consent agreement, and that would be one point where a fine could be imposed.

As mentioned above, the other avenue to collect a fine is in court, and if we reach that point, you should be in close consultation with Tony Beardsley.

I hope the following helps answer your question on how and when a fine can be imposed.

At this point, the notice of violation in the case now active reads:

You are hereby ordered to take the following corrective action or measures no later than: November 28, 2008:

1. Submit a restoration plan developed by a licensed Maine Forester. The plan shall include dates for replanting, and a licensed Maine Forester shall certify compliance and completion of the plan. The dates of replanting shall be approved by the licensed Forester to provide the greatest potential for survival of the plantings. The Plan shall include a site sketch depicting at least the following:

- *Boundaries of the lot(s) where the violation occurred, any structures, including roads, on the lot(s),*
- *the upland edge of the non-forested wetland and the location of the shoreland zone extending 250 feet from that wetland edge;*
- *any other natural resources in, on, or adjacent to the lot(s);*
- *distances from the area(s) of violation to these resources;*
- *location of trees removed; location of trees to be replanted;*
- *area(s) where other vegetation was removed;*
- *area(s) to have other vegetation replanted;*
- *any structures, including roads, to be removed.*
- *The Plan shall indicate the number, size, and species of trees removed in violation of the of the Ordinance.*
- *The Plan must indicate the number, size and species of trees to be replanted as well as their location. The location of the replanted trees shall be as near as feasible to the trees they are replacing, and loss a density than one tree per 80 square feet.*



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- *The plan must indicate areas where other vegetation was removed and what type, including but limited to saplings, shrubs, and other ground vegetation, and what species/mixes will be replanted and where.*
- *The Plan must address the replanting of trees that do not survive during the first three years after planting. An 80% survival rate should be guaranteed during the first three years following the planting.*
- *The Plan must include an erosion and sedimentation control plan for any soil disturbance that may be necessary in the replanting process.*
- *The Plan must indicate areas that require stumping/grubbing or other soil disturbance to remove existing stumps for the replanting and survival of the replanted trees. These areas shall be kept to a minimum and shall not occur within 25 feet of the upland edge of the non-forested wetland.*

The replanting shall include at least one tree for each tree cut. The replanted trees must be native species and suited to the soil conditions at the planting site. Specific species may depend on the availability of the nursery stock; however, the ratio of deciduous to coniferous trees shall be similar to the ratio of the trees removed, unless site conditions are prohibitive. The replanted trees shall be as close in diameter and height to those removed as practical, taking into consideration the size available at nurseries, the type and depth of the soils, depth to the water table, slope of the land, exposure to sun and wind, and other factors that may affect the short and long-term survival of the trees as determined by the licensed Forester. Regardless of the size of the tree when planted, it must be a species that will grow to a similar size as would the original tree removed.

The replanting of other vegetation removed shall be of native species that will be effective in preventing erosion and maintaining water quality, will complement the visual screening provided by the replanted trees, and will provide habitat for riparian species. Saplings shall be replanted to replace saplings removed, and shrubs replanted to replace shrubs removed. Upland areas removed of ground vegetation shall be seeded with a conservation mix. Wetland areas removed of ground vegetation shall be seeded with a wetland mix.

2. Complete a wetland delineation conducted by a Professional Wetland Scientist to determine the upland edge of the non-forested wetland and have installed markers 250 feet horizontal distance, from the upland edge of the non-forested wetland. Include this delineation on any future development plans.

3. The restoration plan (Item #1) and wetland delineation (Item #2) shall be completed no later than September 1, 2009.

Failure to comply with this Order may result in court action against you and you may be required to pay a fine. Title 30-A M.R.S.A. § 4452 establishes a fine of \$100.00 - \$2,500.00 for each violation of the Ordinance. (A separate fine will be assessed for each day a violation continues.) The town will seek an order for corrective action, a substantial fine, plus its attorney's fees and costs in such an action.

The following is taken from the CEO manual published by Maine Municipal Association.

Penalty. *Even if the violator agrees to obtain a permit or take other corrective action, the CEO may believe that the municipality also should request payment of a monetary penalty covering the period of noncompliance. This would be especially true where the CEO felt that the granting of a permit after-the-fact would not provide a sufficient deterrent to future violations of local ordinances.*



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The amount of the penalty should be based on the penalty provision in 30-A M.R.S.A. § 4452, which generally establishes a range of \$100-\$2,500 per violation per day for first-time violators and higher penalties for subsequent violations; for violations occurring in an area zoned as Resource Protection, the maximum penalty is \$5,000. (See additional discussion below.)

If the violator refuses to perform the corrective action ordered by the CEO or to pay a penalty voluntarily, the only way to force compliance is by filing a complaint in court requesting a court order.

The following is a section of 30-A MRSA § 4452:

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. Except for paragraph H, monetary penalties may be assessed on a per-day basis and are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

B-1. Notwithstanding paragraph B, the maximum penalty is \$5,000 for any violation of a law or an ordinance set forth in subsection 5, paragraph Q, if the violation occurs within an area zoned for resource protection. [1999, c. 370, §1 (NEW).]

C. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:

- (1) A threat or hazard to public health or safety;
- (2) Substantial environmental damage; or
- (3) A substantial injustice. [1989, c. 727, §1 (AMD).]

C-1.

[2007, c. 92, §1 (RP).]

C-2. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the provisions of this paragraph apply. The court must order the violator to correct or mitigate the violation unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.

- (1) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of a tree or trees must include, but is not limited to, replacement of each tree cut with a tree of substantially similar size and species to the extent available and feasible.
- (2) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of understory vegetation must include, but is not limited to, replacement of the understory vegetation with understory vegetation of substantially similar size and species to the extent available and feasible.
- (3) For violations requiring correction or mitigation pursuant to subparagraph (1) or (2), the



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violator shall submit to the municipality a reforestation plan developed with and signed by a forester licensed pursuant to Title 32, chapter 76 or other qualified professional. The reforestation plan must include consideration of specified site conditions and address habitat and other riparian restoration, visual screening, understory vegetation and erosion and sedimentation control.

For purposes of this paragraph, "timber harvesting" has the same meaning as in Title 38, section 438-B, subsection 1, paragraph C.

For purposes of this paragraph, "understory vegetation" means all saplings that measure less than 2 inches in diameter at 4.5 feet above ground level and all shrubs. [2007, c. 92, §2 (NEW).]

D. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule. [1989, c. 727, §1 (AMD).]

E. In setting a penalty, the court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;
- (3) The extent to which the violation continued following a municipal order to stop; and
- (4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

F. The maximum penalty may exceed \$2,500, but may not exceed \$25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

G. The penalties for violations of a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349. [1997, c. 794, Pt. A, §1 (AMD).]

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements. [1989, c. 727, §1 (NEW).]

[2007, c. 92, §§1, 2 (AMD) .]

4. Proceedings brought for benefit of municipality. All proceedings arising under locally administered laws and ordinances shall be brought in the name of the municipality. All fines resulting from those proceedings shall be paid to the municipality.

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