

[Steve Trefethen & a. v. Town of Derry](#), Submitted: February 7, 2013 Opinion Issued: April 12, 2013

This is a fairly simple and straightforward case regarding filing deadlines that fall on a weekend or legal holiday.

The Derry ZBA granted a special exception and the abutters, Trefethen, filed a motion for rehearing which the ZBA denied on January 6, 2011. Trefethen then filed an appeal in superior court on Monday, February 7, 2011, 32 days after the date the ZBA denied the motion for rehearing. The superior court rejected the appeal citing lack of jurisdiction because it was filed 32 days after the action of the ZBA, 2 days beyond the 30 day window set forth in RSA 677:4. Trefethen appealed to the supreme court.

The supreme court reversed the superior court and remanded the case back to the ZBA. In doing so, the court relied on the plain language of RSA 21:35, II which states, "If a statute specifies a date for filing documents or paying fees and the specified date falls on a Saturday, Sunday, or legal holiday, the document or fee shall be deemed timely filed if it is received by the next business day." Since the 30 day window for filing an appeal fell on Saturday, February 5th, an appeal filed on the next business day, Monday, February 7th, was timely filed.

The town had relied, in part, on [Radziewicz v. Town of Hudson](#), 159 N.H. 313 (2009), where the Supreme Court held that 30 days was 30 days as far as RSA 677:4 was concerned and if the 30th day fell on a weekend or holiday, there was no extension to the next business day. Radziewicz had relied on Superior Court Rule 12(l) which the court said did not apply to appeals under RSA 677:4. "*The trial court ruled that notwithstanding Rule 12(1), the plain language of RSA 677:4 does not allow for filing an appeal beyond thirty days when the thirtieth day falls on a Saturday. We agree.*" The second paragraph of RSA 21:35 was added by the legislature in 2008 and became effective on January 1, 2009, well after Radziewicz had filed their appeal.

The lesson: if the last day for "filing documents or paying fees" falls on a Saturday, Sunday or legal holiday, they will be deemed timely filed if received by the next business day.

Chris.