

Fire Chief's Requirement of Residential Sprinklers Upheld; Civil Penalties for Land Use Violations Explained

[Atkinson v. Malborn Realty Trust](#) No. 2011-085, August 17, 2012

This opinion provides interesting guidance regarding the new statutes prohibiting towns from requiring residential sprinklers and clarifying the imposition of civil penalties for land use violations.

The homeowner obtained a variance to convert a seasonal camp to a year-round use with a new home. One condition of the variance was that access to the property had to meet the requirements of the police and fire departments. Because the property was steep and had poor access to the road, the fire chief required that a sprinkler system be installed. Although there was some discussion about improving access with a new driveway instead of using a sprinkler system, the homeowner never submitted a satisfactory plan to the fire chief. The home was built without a sprinkler system and with an unacceptably steep driveway. The building inspector refused to issue a certificate of occupancy, but the homeowner moved in and occupied the home for 200 days after the town issued a notice of violation. The homeowner moved out only after the trial court issued a permanent injunction requiring the installation of a sprinkler system before the home could be occupied.

On appeal to the Supreme Court, the homeowner challenged the injunction on a variety of grounds. The issue of greatest interest was the requirement for the sprinkler system itself. In 2010, and again in 2011, the Legislature amended the law so that towns and cities are prohibited from requiring the installation of fire sprinkler systems in one and two-family homes through their land use regulations. ([Laws 2010, chapter 282:4](#); [RSA 674:36, IV](#); [RSA 674:51, V](#).) In this case, the sprinkler requirement came not from the land use boards, but from the fire chief. However, [RSA 153:5](#) was also amended in 2012 ([Laws 2012, chapter 242:5](#)) to prohibit the state fire marshall from adopting rules that “require automatic suppressant or sprinkler systems in detached one-or 2-family” residences.

The homeowner argued that the fire chief had violated this law by requiring a sprinkler system in the one-family home. Interestingly, the court disagreed, noting that except for the sprinkler issue, the law still permits the state fire marshall to “adopt the most recent edition of (...) the National Fire Protection Association (NFPA) code” as rules. The court found that the state had indeed adopted the most recent NFPA code as rules for New Hampshire. Despite the prohibition of [RSA 153:5](#), the rules permit a fire chief to require sprinklers when “site conditions or unique structure designs . . . result in a fire department access road design that does not meet the specific requirements” of the NFPA Fire Code. It appears, therefore, that if the local fire chief finds specific site conditions that make access difficult, sprinklers may be required for one and two-family structures despite the prohibition in [RSA 153:5](#) against such a requirement.

The other issue of particular interest is the calculation of civil penalties under [RSA 676:17, I](#). Courts may impose a penalty on any person who violates a requirement or condition of a permit or decision issued by a local official or land use board. The penalty is “\$275 for the first offense, and \$550 for subsequent offenses, for each day that such violation is found to continue . . .” after notice of the violation from the town. In [Amherst v. Gilroy](#), 157 N.H. 275 (2008), the court found that a continuing violation was a single

offense. In response, the Legislature added a sentence to the statute to clarify that “each day that a violation continues shall be a separate offense.” The trial court, interpreting this new sentence, found that the first day of the offense was a first offense, at \$275, and the 199 succeeding days were each a separate subsequent offense, at \$550 each. The Supreme Court disagreed, finding that because the town issued only one notice of violation, the entire continuing offense was a “first offense”, and the penalty should have been assessed at \$275 for each day.

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