

TOWN OF POMFRET  
ZONING BOARD OF ADJUSTMENT

Hearing Minutes of October 6, 2016 with  
Findings and Decision

MEMBERS PRESENT: Alan Blackmer (Chair), Hunter Ulf, Shaun Pickett

MEMBERS RECUSED: Michael Reese, Loie Havill

OTHERS PRESENT: Attorney Paul Gilles (representing Chippers), Jason Eaton (Chippers VP of Sales), attorney Peter Vollers (representing Hudson and Margaret Holland and Brian Alderfer), Hudson Holland, Margaret Holland, Preston Bristow (Administrative Officer), and 27 additional attendees listed on an attached attendance sheet.

A hearing was convened for the following appeal:

**Appeal by Chippers Inc.** of a Notice of Violation dated August 22, 2016 regarding storage and processing of logs on lands of the William A. Russell Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A).

HEARING:

The hearing was opened at 6:40 PM by chair Alan Blackmer. Chairman Blackmer explained that the limited purpose of this hearing was to consider the appeal of a Notice of Violation that was issued against Chippers Inc. on August 22, 2016 and appealed by Chippers on August 23, 2016. The Zoning Board of Adjustment (ZBA) will take no testimony and consider no comments regarding the ZBA's decision of May 19, 2016 to deny application #ZP16-05 for the storage and processing of logs on Parcel ID #0500-A.

Chairman Blackmer read the notice for the hearing. No conflicts of interest or ex officio conversations were disclosed. Chippers (represented by Paul Gilles and Jason Eaton) and Hudson Holland, Margaret Holland and Brian Alderfer (represented by Peter Vollers) were granted status as interested persons. Paul Gilles, Jason Eaton, Peter Vollers, Hudson Holland, Margaret Holland and Preston Bristow were sworn in. The hearing was not recorded.

Documents received were the Notice of Violation dated August 22, 2016, the Appeal of NOV by attorney Paul Gilles dated August 23, 2016, and a letter to the ZBA from attorney Peter Vollers dated September 27, 2016.

A summary of the testimony received is as follows:

Administrative Officer Preston Bristow's testimony:

- The ZBA's decision of May 19, 2016 denied "storage of logs" and ordered that "any logs and related debris ... be removed within 45 days."
- Chippers appealed that decision to Environmental Court on June 7, 2016. Chippers also requested that the Court issue a stay of the ZBA's order.

- Chippers' motion to stay the ZBA's decision was denied by the Court on August 9, 2016. The Court's denial cited a lack of an enforcement action by the Town of Pomfret against Chippers.
- With the logs still being stored on the property, the stay denied, and the Court citing a lack of an enforcement action, Administrative Officer Bristow issued a notice of violation (NOV) to Chippers stating that "to date you have not complied" with the ZBA's decision on August 22, 2016.
- Chippers appealed the NOV to the ZBA on August 23, 2016.

Attorney Paul Gillis' testimony on behalf of Chippers Inc:

- The filing of the stay was a prophylactic motion to reduce pressure and provide peace of mind to Chippers while they pursue their right to appeal.
- An unforeseen consequence of the filing of the stay is that it triggered the Town to file an enforcement action.
- Chippers concedes that the log pile is still present on the property. It would be economically destructive to their business to move the log pile.
- The ZBA should not consider the filing of this appeal as an offense or an act of disrespect by Chippers.
- Chippers requests that the ZBA suspend the NOV or deny the NOV while reserving the right to resume enforcement when the Court makes its decision.
- Chippers requests that the ZBA consider whether the weight of a \$200 a day fine is fair while they pursue their right of appeal.

Attorney Peter Voller's testimony on behalf of interested persons Hudson Holland, Margaret Holland and Brian Alderfer:

- The Court's denial of the stay means that the ZBA's order of May 19, 2016 continues.
- The filing of an NOV by the Town was entirely correct and necessary.
- The appeal of an NOV while conceding that the violation is ongoing is odd.
- The ZBA should consider that the continued activity of storing and processing logs presents an ongoing hardship on the Hollands and Brian Alderfer.
- A suspension or denial of the NOV would set a bad precedent.
- The Hollands and Brian Alderfer urge the ZBA to adhere to their order of May 19, 2016 and deny this appeal.

Attorney Gillis further testified that the ZBA should not be overly concerned about precedence because no two circumstances are exactly alike and the log pile has been in active use since 2011.

By unanimous vote, the ZBA closed the hearing at 7:20 PM.

#### FINDINGS AND DECISION:

Following deliberation, the ZBA makes the following findings and conclusions:

1. By letter dated December 18, 2015, the Administrative Officer determined that the storage of logs, the cutting of firewood, and other wood processing activities on the

property on the east side of Pomfret Road are a part of the Chippers business operations, do not meet the forestry exemption from local regulations, and require a zoning permit. No one appealed these determinations.

2. By application #ZP16-05 dated February 22, 2016, Chippers applied for approval for the temporary but continual storage and processing of logs on Parcel ID #0500-A located east of Pomfret Road. The ZBA, by a decision dated May 19, 2016, denied that application and ordered that any logs and related debris so stored on the property on the east side of Pomfret Road be removed within forty-five (45) days of the date of the decision. To date, Chippers has not complied.
3. The Administrative Officer is legally obligated to enforce the decisions of the ZBA and the Pomfret Zoning Ordinance.
4. No testimony was heard to the effect that the NOV was improperly issued, or was flawed or inaccurate.

The appeal by Chippers Inc. of a Notice of Violation dated August 22, 2016 regarding storage and processing of logs on lands of the William A. Russell Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A) is therefore DENIED. Appellant's request that the ZBA suspend the NOV or delay enforcement is DENIED.

The Zoning Board of Adjustment approves this Decision dated at Pomfret, Vermont, this 4<sup>th</sup> day of November, 2016.



Alan Blackmer, Chair, Zoning Board of Adjustment

Voting in favor of these Hearing Minutes with Findings and Decision were ZBA members Alan Blackmer, Hunter Ulf and Shaun Pickett. ZBA members Michael Reese and Loie Havill were recused. The ZBA is appointed as a 5-member board.

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.