

TOWN OF POMFRET
Zoning Board of Adjustment
Findings and Decision

Appeal by the Town of Pomfret of the “Determination regarding log storage and firewood processing on lands of the William A. Russell Jr. Trust (Parcel ID #0500-A) west of Pomfret Road” issued by Pomfret Zoning Administrative Officer Preston Bristow.

A. Introduction

This matter has come before the Pomfret Zoning Board of Adjustment (ZBA) on an appeal of the January 6, 2017, “Determination regarding log storage and firewood processing on lands of the William A. Russell Jr. Trust (Parcel ID #0500-A) west of Pomfret Road” issued by Zoning Administrative Officer (ZA) Preston Bristow (the “Determination”).

ZA Bristow issued the Determination in response to a request by Chippers, Inc. for “clarification” of the Zoning Board of Adjustment’s May 19, 2016, decision on Chippers, Inc.’s application to allow storage of logs and processing of firewood on the William A. Russell Jr. Trust property. The Determination sets forth the location, maximum volume of storage, and maximum level of activity for the storage and disposition of logs and processing of firewood on that portion of the property located on the west side of Pomfret Road.

The Town of Pomfret, by its January 20, 2017, Notice of Appeal, has requested that the Zoning Board of Adjustment declare that ZA Bristow lacked authority to issue the Determination and declare that the Determination is void and without effect.

B. Hearing

The Zoning Board of Adjustment held a hearing on the Town’s appeal on February 23, 2017. ZBA members Alan Blackmer, Hunter Ulf, and Shaun Pickett were present. Member Loie Havill has recused herself from this matter for a conflict of interest and was not present. Member Michael Reese, who is also a member of the Pomfret selectboard, recused himself for a conflict of interest.

Chair Blackmer opened the hearing at 6:35 P.M. Those present and participating in the hearing were ZA Preston Bristow, attorney Amanda Lafferty (representing appellant Town of Pomfret), attorneys Ryan Kane and Stephen Coteus, (representing interested person Chippers, Inc.), attorney Peter Vollers (representing interested persons Hudson and Margaret Holland), and attorney James Barlow (counsel to the ZBA). Kristen Maxham¹ and Douglas Tuttle were granted interested person status and offered testimony. Selectboard members Michael Reese and Emily Grube offered testimony on behalf of appellant Town of Pomfret. Employees Jason Eaton, Greg Greene, and Sean Smith testified on behalf of Chippers, Inc. Reference is made to the minutes of the hearing for a summary of the testimony offered by the hearing participants.

¹ Kristen Maxham filed a notice of appeal with the ZBA on January 20, 2017, but did not include the required filing fee with her notice of appeal or set forth any alleged grounds for her appeal in her appeal notice.

Eighteen documents were distributed at the hearing and entered into the record without objection. Reference is made to the minutes of the hearing for the list of these documents. Judge Thomas S. Durkin's *Decision on Motion for Summary Judgment*, issued on January 26, 2017, in the matter of *Chippers, Inc. Conditional Use App.*, 51-6-16 Vtec, was received by the ZBA and entered into the record without objection.

After receiving testimony from the parties and interested persons, and receiving comments from members of the public, the Zoning Board of Adjustment closed the hearing at 7:52 P.M. The parties were directed to submit additional documents by March 3, 2017. Atty. Lafferty submitted Chippers Inc.'s *Motion for Summary Judgment* and the Town's *Opposition to Motion for Summary Judgment* on February 24, 2017. These additional documents are also considered part of the evidence and record for this hearing.

C. Findings and Decision

Based on the evidence and the testimony provided at the public hearing, the Zoning Board of Adjustment finds, concludes, and decides the following:

1. In February 2016, Chippers, Inc. submitted Application #ZP16-05 for storage of logs and processing of firewood on the William A. Russell Jr. Trust property. The Zoning Board of Adjustment held a hearing on this application and issued its decision on May 19, 2016. Chippers, Inc. appealed this decision to Environmental Division of the Superior Court on June 6, 2016.

2. The Environmental Division has exclusive jurisdiction to hear and determine appeals of decisions of the Pomfret Zoning Board of Adjustment. 10 V.S.A. §8504(b)(1); 24 V.S.A. §§4471(a), 4472. To invoke the Environmental Division's jurisdiction, an interested person who has participated in a matter before the Pomfret ZBA must file a notice of appeal in accordance with Rule 5(b)(1) of the Vermont Rules for Environmental Court Proceedings.

3. The notice of appeal transfers the case to the Environmental Division, thereby invoking the Environmental Division's appellate jurisdiction. *Badger v. Rice*, 124 Vt. 82, 84-85 (1963). See also, *Moran v. Vermont State Retirement Board*, 2000 VT 119 ¶ 14; *Casella v. Department of Taxes*, 2005 VT 18 ¶ 6. An interested person who files a timely notice of appeal is entitled to a *de novo* trial before the Environmental Division. 24 V.S.A. 4472(a). V.R.E.C.P. Rule 5(g).

4. Within 20 days after filing a notice of appeal, the appellant must file a statement of questions. The statement of questions lists the issues that the appellant desires to have determined by the Environmental Division. V.R.E.C.P. Rule 5(f). The statement of questions defines the scope of the Environmental Division's jurisdiction. That jurisdiction includes the issues directly raised in the statement of questions and those matters that are intrinsic to the statement of questions. *In re LaBerge NOV*, 2016 VT 99 ¶15.

5. Jurisdiction is important because it defines who in the development review process has authority to make a decision or take an action. If those vested with such authority, including the Pomfret Zoning Board of Adjustment and Pomfret Zoning Administrator, exceed their jurisdiction, or otherwise do not exercise their jurisdiction properly, confusing and potentially conflicting decisions are a likely outcome.

6. The Zoning Board of Adjustment's May 19, 2016, decision denied the application for storage of logs on the William A. Russell Jr. Trust property located east of Pomfret Road.

7. However, the Zoning Board of Adjustment also found that "Chippers is grandfathered for the level of use taking place on Parcel ID #0500-A in 2001 under the Vermont statute of limitations of 15 years." On the basis of this finding, the Zoning Board of Adjustment restricted any storage of logs and processing of firewood on the William A. Russell, Jr. Trust property located on the west side of Pomfret Road "to a volume and level no greater than was in use in 2001."

8. Having made this finding, the Zoning Board of Adjustment also authorized ZA Bristow "to work with applicant Chippers, Inc. to determine through historic aerial imagery or other means, the volume and level of storage and disposition of logs and processing of firewood in 2001 on the lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) for the purpose of implementing this condition."

9. Chippers, Inc. appealed the Pomfret ZBA's decision on June 7, 2016. Chippers, Inc.'s notice of appeal included its statement of questions. By filing its notice of appeal, Chippers, Inc. invoked the jurisdiction of the Environmental Division.

10. The Zoning Board of Adjustment concludes that the Environmental Division presently has jurisdiction over this case. The Environmental Division's jurisdiction specifically includes the issue of grandfathering (Question 5 of Chippers, Inc.'s statement of questions), as well as the authority to decide the matters ZA Bristow sought to resolve in his Determination, i.e., the location, maximum volume of storage, and maximum level of activity for the storage and disposition of logs and processing of firewood on the William A. Russell Jr. Trust property. See *Decision on Motion for Summary Judgment, Chippers, Inc. Conditional Use App.*, 51-6-16 Vtec (1/26/17).

11. The Zoning Board of Adjustment therefore also concludes that ZA Bristow was without jurisdiction to issue his January 6, 2017, Determination and that, as a result, ZA Bristow's January 6, 2017, Determination is void.

The Zoning Board of Adjustment approves these Findings and Decision, dated at Pomfret, Vermont this 20 day of March 2017.



Alan Blackmer, Chair
Pomfret Zoning Board of Adjustment

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

NOTICE: This decision may be appealed to the Environmental Division of the Vermont Superior 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 this decision, pursuant to 24 V.S.A. §4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.