

TOWN OF POMFRET  
ZONING BOARD OF ADJUSTMENT

DRAFT Minutes of Hearing  
June 22, 2017

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

MEMBERS RECUSED: Michael Reese, Loie Havill

OTHERS PRESENT: James Barlow (attorney for ZBA), Michael Reese and Scott Woodward (for Select Board), Ryan Kane (attorney for Chippers), Jason Eaton, Neil Lamson, William Emmons, John Moore, Jim Havill, Loie Havill, Brian Alderfer, Mary Blackmer, Preston Bristow (Zoning Administrator)

A hearing was convened to consider the following:

**Appeal by the Town of Pomfret** of the zoning administrator's determination letter of April 28, 2017 regarding the storage and processing of logs by Chippers, Inc. on lands of the William A. Russell Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A).

HEARING:

The hearing was opened at 6:35 PM by chair Alan Blackmer. No conflicts of interest or ex officio conversations were disclosed. Jason Eaton was granted status as interested person on behalf of Chippers, Inc. Jason Eaton, Preston Bristow, Michael Reese and Scott Woodward were sworn in.

The following documents were entered into the record:

- Letter from attorney Peter DesMeules on behalf of Chippers, Inc. to Preston Bristow entitled "Chippers/Dismissal of Environmental Division Action/Request for Determination" dated April 14, 2017.
- Letter from Preston Bristow to Peter DesMeules entitled "Determination regarding log storage and firewood processing on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) west of Pomfret Road" dated April 28, 2017.
- Notice of Appeal to the Pomfret Zoning Board of Adjustment of the Administrative Officer's determination letter of April 28, 2017 by the Town of Pomfret dated May 12, 2017.
- Town of Pomfret's Proposed Findings of Fact and Conclusions of Law as submitted by attorney Amanda Lafferty for the Town of Pomfret dated June 17, 2017.
- Letter from attorney Ryan Kane for Chippers to Alan Blackmer of the Pomfret Zoning Board of Adjustment entitled "Chippers, Inc. and the William A. Russell, Jr. Trust" dated June 20, 2017.
- Response by Preston Bristow to the Town of Pomfret's Appeal before the Zoning Board of Adjustment dated June 20, 2017.

Chair Alan Blackmer provided a brief history of this appeal. Zoning Administrator (ZA) Preston Bristow determined by letter dated December 18, 2015 that Chippers' storage and processing of logs on the east side of Prosper Road constituted an expansion of a non-conforming use which required approval by the ZBA. Chippers applied to the ZBA (Application #ZP16-05) for log storage and processing east of Prosper Road which was heard on April 5, 2016 and denied by the ZBA in a decision dated May 19, 2016. However, in the ZBA's May 2016 decision the storage and processing of logs on the west side of Pomfret Road was found to be grandfathered and ZA Bristow was authorized to work with Chippers to determine the grandfathered level of use in 2001 (15 years earlier under the Vermont statute of limitations). Chippers appealed the ZBA's May 2016 decision to Environmental Court. Then, on December 27, 2016, Chippers sent a letter to ZA Bristow stating Chippers' intent to comply with the ZBA's May 2016 decision and asked for clarification on the location and the level of activity that would be permitted. ZA Bristow responded with a determination letter dated January 6, 2017 which clarified the location and level of activity that would be allowed for the log pile. ZA Bristow's January 2017 determination letter was appealed by the Town of Pomfret through its Select Board, and by a decision dated March 20, 2017 the ZBA concluded that ZA Bristow was without jurisdiction to issue his January 2017 determination. Chippers withdrew its Environmental Court appeal and requested by letter dated April 14, 2017 that ZA Bristow re-issue his determination letter which ZA Bristow did on April 28, 2017. The Town of Pomfret through its Select Board appealed the re-issued determination letter and that is why we are here. This is the fourth time that the ZBA has held a hearing on this matter.

A summary of the testimony follows:

Zoning Administrator Preston Bristow testified that his break with the Select Board was when they did not accept Chippers' offer to comply in December of 2016 but instead instructed him not to respond and indicated they would continue to pursue the Environmental Court appeal. The Select Board's position that the ZBA erred in finding the log pile west of Pomfret Road to be grandfathered, and the Select Board's intent to request in Environmental Court that Chippers must apply for a new permit, constituted to ZA Bristow an overstepping of the Select Board's role and an inappropriate interference by the Select Board with a zoning decision. Because Chippers had not withdrawn its Environmental Court appeal, ZA Bristow's January 2017 determination letter was found to lack jurisdiction. Now that Chippers has withdrawn its Environment Court appeal, ZA Bristow believes the Select Board's May 2017 appeal lacks standing. ZA Bristow encouraged the ZBA not to doubt its May 2016 decision, not to allow itself to be second-guessed by the Select Board, and to deny this appeal because the Select Board lacks the standing to bring it.

Michael Reese, aided by Scott Woodward, spoke on behalf of the Select Board. Attorney Amanda Lafferty was not present at this hearing to reduce the expense to the Town. Michael Reese stated the decision to appeal by the five-member Select Board was unanimous, and that the Select Board's sole concern was that the zoning ordinance be properly followed. He stated that harm is caused when the zoning administrator takes action that is not allowed. He stated that ZA Bristow improperly defined a new location for the log pile without authorization. The ZBA's May 2016 decision authorizes ZA Bristow to determine volume and level of storage but not

location. The Select Board supports the ZBA and argues ZA Bristow bypassed the ZBA when he approved a location for the log pile. Michael Reese urged the ZBA to require that Chippers apply for the new location of the log pile. That way the location of the log pile can be reviewed in public and approved by the ZBA.

Attorney Ryan Kane, aided by Jason Eaton, spoke on behalf of Chippers. Ryan Kane testified that court precedence has made it clear that the Select Board is very limited in its standing to bring this appeal. He stated that a literal reading of the ZBA's May 2016 decision was that the log pile could be located anywhere on the property so long as the volume and level of storage did not exceed what was grandfathered in 2001. He stated that ZA Bristow's determination of location was in part to ensure that the log pile was located outside of floodplain. He stated that attorney Amada Lafferty's proposed Findings of Fact and Conclusions of Law represent an attempt by the Select Board to second-guess the ZBA and was a collateral attack on the ZBA's May 2016 decision. He urged the ZBA to find that the Town has no standing to appeal ZA Bristow's determination because it does not involve an interpretation of the Pomfret Zoning Ordinance or Vermont Law.

Michael Reese, Scott Woodward, Ryan Kane, Jason Eaton, and Preston Bristow each offered rebuttals.

John Moore urged the ZBA to uphold the appeal and hold a new hearing.

Michael Reese indicated that Amanda Lafferty may wish to respond to Ryan Cane's claim of collateral attack and asked if post-hearing legal briefs would be accepted.

By unanimous vote, the ZBA closed the hearing at 7:40 PM subject to the submission of additional documents from the parties by 5:00 PM on Tuesday, June 27, 2017.

These minutes approved at Pomfret, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Alan Blackmer, Chair, Zoning Board of Adjustment