

TOWN OF POMFRET
ZONING BOARD OF ADJUSTMENT

DRAFT Minutes of Hearing
April 7, 2016

MEMBERS PRESENT: Alan Blackmer (Chair), Michael Reese, Loie Havill, Hunter Ulf, Shaun Pickett

MEMBERS ABSENT: None

OTHERS PRESENT: Mundy Wilson, Peter Vollers, Brian Alderfer, Krit Maxham, Susan Cross, Cyrus Benoir, Lolly Murray, John Snyder, George Turner, Steven Horton, Kathleen Dolan, Mark Van Holden, Anne Bower, Sharlene Kelly, James Havill, Kati Savage (Vermont Standard), Preston Bristow (Zoning Administrator)

A hearing was convened for the following application:

Application #ZP16-05 by Chippers Inc. for storage of logs and processing of firewood 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. Preston Bristow read the notice for the hearing. No conflicts of interest or ex officio conversations were disclosed. Krit Maxham (abutter), Hudson and Margaret Holland (appearance by attorney Peter Vollers)(abutter), Brian Alderfer (neighbor), Lolly Murray (Brian Alderfer's tenant)(neighbor), and Susan Cross (neighbor) were granted status as interested persons. Applicant Mundy Wilson and the interested persons were sworn in. The hearing was not recorded.

Documents received from the applicant include a 2-page application, a 2-page narrative letter dated February 23, 2016, a 1-page proposed draft decision, and a 2-sheet site map.

A summary of the discussion follows:

Zoning Administrator Preston Bristow explained that Chippers Inc. has been in business for 30 years at this location (since 1986) and is grandfathered as a non-conforming use within a Rural Residential zoning district. Grandfathered uses may continue indefinitely, but any expansion of a grandfathered non-conforming use requires review and approval by the Zoning Board of Adjustment (ZBA). Chippers use of the field east of Pomfret Road for storage and processing of logs and woody materials was determined to be an expansion of a non-conforming use that required review and approval by the ZBA by letter dated December 18, 2015.

Mundy Wilson, President of Chippers Inc. and Trustee of the William A. Russell Jr. Trust, described the nature of Chippers' business and the need to use the field east of Pomfret Road as a place to store dying, ailing or damaged trees collected from various clients and to divide them into piles to be processed as saw logs, pulp, chips, bark and firewood. In response to neighbor

concerns, Chippers has adopted Log Yard Rules effective November 1, 2015 (copy provided) that specify operating hours as 8 am to 5 pm, Monday-Friday, and state “minimize backing (use circle), no burning, no chipping, no processing, minimal chainsaw use, no weekend activity.” Material that was formerly burned is now being transported to Dirt Doctors in New Hampshire where it is recycled and composted.

Questions asked by the ZBA included:

- Does Chippers have sufficient legal access through school property to access the current log yard. Preston Bristow responded that this was not an issue for the ZBA to decide but a matter between Chippers and the school.
- How often will trucks be delivering materials to the log yard? Mundy Wilson responded 2-3 times per week.
- How often will materials be trucked away from the log yard? Mundy Wilson responded twice a month, and that materials go to 4 different processors.
- Are there currently any permit limitations on access or use of the log yard imposed by the town? Preston Bristow responded that there were not.
- Are there permits for Chippers development of a tree nursery, greenhouse and sugarhouse west of Pomfret Road? Preston Bristow responded that those uses have been determined to be exempt agricultural uses.
- When will firewood be processed? Mundy Wilson responded that this will now be done in the springtime, with a subcontractor using machinery, for one week out of the year.

Comments made by interested persons included:

- Lolly Murray questioned whether Chippers has been following its own Log Yard Rules. She has heard chainsaw work even on weekends after November 1.
- Krit Maxham said Chippers makes promises they don't keep and that they are distrusted by neighbors. She said Chippers continues to grow and grow and their size has become inappropriate for the neighborhood. She also said Chippers causes runoff and pesticides to go into the brook.
- Susan Cross said Chippers is a commercial use within a formerly quiet farm community that does not benefit neighbors. She can hear the noise at her home one-half mile up the road.
- Brian Alderfer expressed frustration that the school has not responded to his inquiries about Chippers legal access over school land to use the log landing. He feels the ZBA should require Chippers to show proof of access.
- Attorney Peter Vollers representing Hudson and Margaret Holland and Brian Alderfer presented a letter to the Pomfret ZBA dated April 5, 2016 (copy provided) with two main points, that use of the log landing should be denied because (1) it constitutes a “public nuisance” and (2) it does not conform to the town plan. Peter Vollers also brought up the concern that permitting use of the log landing would set a precedence for other commercial activities on residential properties.

Mundy Wilson responded that she is sorry if Chippers has been viewed as a public nuisance and that they have always tried to be good neighbors and are committed to Pomfret and to its rural and scenic character. She said this is their 30th year in the neighborhood and that they are a good

employer that provides jobs for many area people. She submitted four photographs dated April 5, 2016 (copies provided) showing their cleanup of the log yard site.

By unanimous vote, the ZBA closed the hearing at 7:42 PM.

A second hearing was convened for the following application:

Application #ZP16-06 by Purple Crayon Productions for adaptive reuse of the former Teago Grange Hall as a community theater at 65 Stage Road (Parcel ID #0123).

HEARING:

The hearing was opened at 7:46 PM by chair Alan Blackmer. Preston Bristow read the notice for the hearing. No conflicts of interest or ex officio conversations were disclosed. Sharlene Kelly (abutter) and Anne Bower (for the Abbott Library)(abutter) were granted status as interested persons. Applicants George Turner, Steven Horton and Kathleen Dolan and the interested persons were sworn in. The hearing was not recorded.

Preston Bristow expressed surprise that he had not heard from abutters Eleanor Pizzani or William Arkin as they have both expressed interest in this application.

Documents received from the applicant include a 4-page application, a 2-page narrative letter dated April 1, 2016, a site plan by Michael Engineering dated February 18, 2016, and 6 architectural drawings by River Town Design dated April 4, 2016.

A summary of the discussion follows:

Architect George Turner presented plans for adaptive reuse of the former Teago Grange hall as a community theater. He considers this to be a continuation of an existing use that was established in 1912 and questions if it needs a change of use permit. In fact, the use will become more limited because the grange hall formerly served food and the future use of this site will not include serving food. The second floor will be removed from the existing structure and it will be converted into an 80-100 seat theater. Except for the addition of a porch, which will include a handicap access ramp, the footprint of the building will not change. No exterior lighting is planned except for ceiling lights in the porch.

Sixty places for parking already exist between the grange site itself (8 spaces), Artistree with overflow, and the Stage Road lot across from the Teago Store. Kathleen Dolan stated that there would not be coinciding events scheduled for both the former grange hall and Artistree theaters. The theater at the former grange hall will be used for smaller classes as well as larger productions.

The theater will receive acoustic treatment and black-out window treatments and should be no louder or brighter than customary residential use. The water supply to the Abbott Library, which currently comes from the Artistree property, will not be affected.

Abutter Sharlene Kelly would like to be assured that there will be landscaping behind the former grange hall that will shield her property from any activities there.

The intended uses of the former Wendling property, which forms a bridge between the Artistree property and the grange property, were discussed. There will be a footpath across the property, for which no plan was provided, and it may also be used for overflow parking. Traffic patterns with regard to parking use of the Wendling property and the Teago village area in general were discussed.

It was agreed that the hearing needed to be recessed so the applicant could provide further information. At George Turner's request, the DRB agreed to send him a letter specifying what further information was requested.

By unanimous vote, the ZBA recessed the hearing at 9:11 PM, to be reconvened on May 12, 2016 at 6:30 PM.

Respectfully submitted,
Preston Bristow, Zoning Administrator

TOWN OF POMFRET
Zoning Board of Adjustment
Findings and Decision

Application #ZP16-05 by Chippers Inc. for storage of logs and processing of firewood on lands of the William A. Russell Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A).

PROCEDURAL HISTORY:

1. The above referenced application was considered by the Zoning Board of Adjustment (ZBA) at a public hearing on April 7, 2016 which was closed on April 7, 2016. Minutes of that hearing are available in a separate document.
2. At the outset of the hearing the ZBA afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4406(b) to demonstrate that the criteria set forth in the subsection are met. Kristen Maxham (abutter), Hudson and Margaret Holland (appearance by attorney Peter Vollers)(abutter), Brian Alderfer (neighbor), Lolly Murray (Brian Alderfer's tenant)(neighbor), and Susan Cross (neighbor) were granted status as interested persons.
3. During the course of the hearing the following exhibits were submitted to the ZBA:
 - Letter dated December 18, 2015 from Zoning Administrator Preston Bristow to Mundy Wilson Piper, President and CEO of Chippers, Inc., which determined the storage of logs and processing of firewood on lands east of Pomfret Road to be an expansion of a non-conforming use that required review and approval by the ZBA.
 - Completed Zoning Permit Application #ZP16-05 dated February 22, 2016 with a 2-sheet Site Plan consisting of Exhibit A (overview) and Exhibit B (enlargement of log landing)
 - Letter dated February 23, 2016 from Mundy Wilson Piper, President Chippers, Inc. and Trustee, William A. Russell, Jr. Trust to Pomfret Zoning Board of Adjustment with written narrative explaining the application and including a "Proposed Draft Decision for William A. Russell, Jr. Trust and Chippers, Inc. by the Town of Pomfret ZBA."
 - A document entitled "Log Yard Rules, Effective November 1, 2015" submitted by Mundy Wilson Piper.
 - Five color photographs of the log yard dated April 5, 2016 submitted by Mundy Wilson Piper.
 - Letter dated April 5, 2016 from attorney Peter Vollers representing Hudson and Margaret Holland and Brian Alderfer to the Town of Pomfret ZBA as a Memorandum of Law in opposition to the application and including 11 attached color photographs.
4. After the hearing was closed the following documents were received by the ZBA:
 - Letter dated April 18, 2016 from attorney Paul Gillies representing Mundy Wilson Piper, the Russell Trust, and Chippers requesting that the hearing be reopened and providing reasons why the hearing should be reopened.
 - Email dated April 25, 2016 from attorney Peter Vollers to Preston Bristow for the ZBA in opposition to attorney Paul Gillies' motion to reopen testimony.
5. Participating at the April 7, 2016 hearing were the following ZBA members: Alan Blackmer (Chair), Michael Reese, Loie Havill, Hunter Ulf and Shaun Pickett.

FINDINGS:

1. The public hearing on application #ZP16-05 by Chippers, Inc. was opened on April 7, 2016 and closed on April 7, 2016.

2. Attorney Paul Gillies representing Chippers requested by letter dated April 18, 2016 that the hearing be reopened and provided reasons why the hearing should be reopened.
3. The ZBA finds that insufficient new evidence was submitted for the ZBA to reopen the hearing.
4. Chippers is a land enhancement service that includes turf care, garden management and maintenance of “treescapes” both in neighborhoods and on larger forest and field tracts.
5. Chippers operates on land owned by the William A. Russell, Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A).
6. Parcel ID #0500-A consists of land located on both the west side and east side of Pomfret Road.
7. Parcel ID #0500-A on which Chippers operates is zoned as a Rural Residential District, as is the entire Town of Pomfret.
8. Chippers was established in 1986 as a home business.
9. Chippers is now a non-conforming use under Part 7 of the Pomfret Zoning Ordinance because no occupied residence is currently associated with the business.
10. Chippers temporarily stores logs removed from individual client jobs in a log pile until there is enough of a stockpile to take a full truckload to the mill.
11. This storage and disposition of logs was originally performed at a location on the west side of Pomfret Road adjacent to the Chippers’ buildings.
12. This storage and disposition of logs was relocated to a site on the east side of Pomfret Road (hereafter, the ‘Southeast Parcel’) in 2011.
13. Chippers submitted a zoning permit application on February 22, 2016 at the request of the Zoning Administrator (application #ZP16-05) which stated under the description of proposed work: “Continue to use the ‘Southeast Parcel’ for temporary but continual storage of logs. Process firewood on ‘Chippers’ side of the road.”
14. Testimony was received from interested persons that the volume and level of logs stored and disposed has greatly increased since 2011.
15. Testimony was received from interested persons that in association with the storage and disposition of logs on the ‘Southeast Parcel,’ log trucks enter and exit and reverse direction with the sounding of back up alarms, that heavy equipment sort logs with the sounding of back up alarms, and that burning, chipping and chainsaw use occur with associated smoke and noise.
16. Testimony was received from interested persons that the storage and disposition of logs on the ‘Southeast Parcel’ is a commercial and industrial use that is loud, unsightly and offensive which adversely affects the character of the area and is a public nuisance as defined in the Pomfret Zoning Ordinance.
17. Chippers indicated in testimony and the submission of written “Log Yard Rules” that future storage and disposition of logs on the ‘Southeast Parcel’ would not include burning or chipping, that chainsaw use would be minimal, that backing up would be minimized through use of a turning circle, and that there would be no weekend activity.
18. Before authorizing a permit under Part 7 of the Pomfret Zoning Ordinance, the ZBA shall find that the proposed use conforms with the Town Plan and will not “create a public nuisance or adversely affect the character of the area as well as the comfort, convenience and general welfare of the community” (section 11.3.5).
19. The Pomfret Town Plan makes numerous references to protecting, preserving, maintaining, not detracting from, and not negatively affecting rural character and scenic beauty.
20. Public nuisance is defined in the Pomfret Zoning Ordinance as follows: "PUBLIC NUISANCE": comprises all of the elements of meaning generally understood by the legal use-of this term, including without limitation, any business, amusement, activity or land use

which creates or results in any sight, sound, smell, pollution or interference with the occupations, amusements or living conditions of people in the neighborhood to such a degree of unpleasantness or in any manner to such an extent that the Board of Adjustment deems it necessary to prevent or abate the alleged nuisance because it constitutes or threatens to become a hazard to health, a danger to persons or property or to have an adverse impact on the convenience, comfort or general welfare of members of the community (section 4.24).

21. The ZBA finds that the continued use of the 'Southeast Parcel' for storage and disposition of logs does not conform with the Town Plan or with the criteria under section 11.3.5 of the Pomfret Zoning Ordinance.
22. The ZBA finds that the community garden and the community wood bank located on the 'Southeast Parcel' are conforming uses and do not require review and approval by the ZBA.
23. The ZBA further finds that no permit has been applied for or granted for the storage and disposition of logs by Chippers at any location on Parcel #0500-A.
24. The ZBA finds 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.

CONCLUSIONS, DECISION AND CONDITIONS:

Based on the application, testimony, exhibits and other evidence the Zoning Board of Adjustment **denies** application #2016-05 by Chippers, Inc. for storage of logs on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) located east of Pomfret Road, and **orders** that any logs and related debris so stored on the east side of Pomfret Road be removed within forty-five (45) days of the date of this decision. The Zoning Board of Adjustment further **restricts** any storage of logs and processing of firewood anywhere on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) to a volume and level no greater than was in use in 2001. The Zoning Administer is authorized 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.

This decision of the Zoning Board of Adjustment regards only the application by Chippers, Inc. for the storage of logs and processing of firewood on lands of the William A. Russell Jr. Trust. The conformity of other aspects of the Chippers, Inc. operation was not considered or addressed in this decision.

Members Alan Blackmer, Michael Reese, Hunter Ulf and Shaun Pickett voted in the affirmative. Member Loie Havill abstained.

Dated at Pomfret, Vermont, this 19th day of May, 2016.



Alan Blackmer, Chair
Pomfret Zoning Board of Adjustment

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings 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.

Town of Pomfret

5218 Pomfret Road
North Pomfret, VT 05053

Via Certified Mail, Return Receipt Requested

August 22, 2016

Chippers, Inc.
c/o Mundy Wilson Piper, Registered Agent
1241 Pomfret Road
Woodstock, VT 05091

RE: Notice of Violation: storage and processing of logs on lands of the William A. Russell Jr. Trust at 1241 Pomfret Road (Parcel ID #0500-A)

Dear Mundy Wilson Piper:

Please be advised that you have commenced land development on the above referenced property, without obtaining a zoning permit from the Town of Pomfret, as required by Section 12.1 of the Pomfret Zoning Ordinance and 24 V.S.A. section 4449(a)(1).

Specifically, you have added and/or changed the use of the portion of the above-referenced property on the east side of Pomfret Road, without a zoning permit. By letter dated December 18, 2015, I 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 that are a part of the Chippers business operation do not meet the forestry exemption from local regulations and require a zoning permit. That determination was not appealed.

By application #ZP16-05 dated February 22, 2016, Chippers, Inc. applied for the temporary but continual storage of logs on Parcel ID #0500-A located east of Pomfret Road. The Zoning Board of Adjustment, 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, you have not complied.

In accordance with 24 V.S.A. §4451, you have seven (7) days from the date of this notice to correct this violation by removing any and all logs, firewood and related debris stored on Parcel ID #0500-A on the east side of Pomfret Road. If you fail to correct this violation as described within seven days, the Town of Pomfret may pursue this matter in court, where the Town may seek appropriate injunctive relief and fines of up to \$200 per day for each day the violation(s) continues beyond the seven days provided in this letter.

If you repeat the violations described in this letter after the seven-day notice period and within the succeeding 12 months, you will not be entitled to receive a further Notice of Violation before the Town of Pomfret commences further enforcement proceedings.

In accordance with 24 V.S.A. §4465, should you disagree with this Notice of Violation you may appeal to the Zoning Board of Adjustment within fifteen (15) days of the date of this letter. Your appeal, sent to the address above, must give the reasons for your appeal and be accompanied by a hearing fee of \$135 payable to the Town of Pomfret. Failure to file a timely appeal will render this Notice of Violation the final decision on the violations addressed in this notice.

Please feel free to contact me should you have any questions

Sincerely,

Preston Bristow
Administrative Officer
prestonbristow@gmail.com
603.359.5243 cell

cc: Amanda Lafferty, Esq.
Pomfret Selectboard

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 4th 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.

Town of Pomfret

5218 Pomfret Road
North Pomfret, VT 05053

January 6, 2017

Mundy Wilson Piper
President & CEO
Chippers, Inc.
1241 Pomfret Road
Woodstock, VT 05091

Determination regarding log storage and firewood processing on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) west of Pomfret Road

Dear Mundy:

The Pomfret Zoning Board of Adjustment, through its Findings and Decision of May 19, 2016, denied the storage of logs and processing of firewood on the east side of Pomfret Road but allowed the storage of logs and processing of firewood on the west side of Pomfret Road at a volume and level no greater than was in use in 2001. The ZBA further authorized me to determine 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) west of Pomfret Road for the purpose of implementing this condition.

I am in receipt of your letter of December 27, 2016, stating Chippers' intention to comply with the ZBA's May 19, 2016 decision once clarification has been received from me as to an acceptable location of the log storage and firewood processing activities and the volume of material and level of activity of log storage and firewood processing at that location.

You may consider this letter to be my determination of the location, maximum volume of storage, and maximum level of activity for the storage and disposition of logs and processing of firewood on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) west of Pomfret Road. My determination is as follows:

1. The location at which the storage of logs and processing of firewood may occur is depicted on an annotated Google Maps aerial photo and on a Rockwood Land Services survey, which annotated map and survey were provided with your letter to me dated December 27, 2016 and are attached to this determination letter and incorporated herein.
2. Three types of wood may be stored and processed: firewood, mill wood and mulch wood. The maximum volume of storage of these three piles are as follows: the firewood pile will not exceed 100' long by 25' wide by 20' tall, the mill wood pile will not exceed 100' long by 25' wide by 20' tall, and the mulch wood pile will not

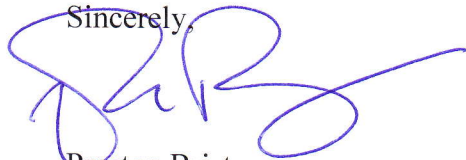
exceed 30' by 30'.

3. There will be no burning, chipping or grinding of logs or wood on the property.
4. The hours of operation will be Monday through Friday from 7 AM to 5 PM with no delivery, loading, or processing of logs or firewood, including chainsaw operation, on weekends.
5. Backing-up of log and delivery trucks will be minimized through use of a loop or circular access drive.

The above-referenced two-page letter of December 27, 2016, from Mundy Wilson Piper, President & CEO of Chippers, Inc. to Preston Bristow, Town of Pomfret Zoning Administrator, with annotated Google Maps aerial photo and Rockwood Land Services survey, is attached to this determination and all representations contained in the letter and on the map and survey are incorporated into this determination.

This determination may be appealed to the Zoning Board of Adjustment by you or an interested person by sending a written notice of appeal to the address above within 15 days of the date of this determination. The notice of appeal must give the reasons for the appeal and be accompanied by a hearing fee of \$135 payable to the Town of Pomfret. If no appeal is received within this 15-day appeal period, this determination will become final.

Sincerely,



Preston Bristow
Zoning Administrator

cc: Interested persons: Kristen Maxham, Susan Cross, Lora Murray, Brian Alderfer, Hudson Holland, Margaret Holland
Attorneys: Paul Gillies, Peter Vollers, Amanda Lafferty



December 27, 2016

Preston Bristow, Town of Pomfret Zoning Administrator
5218 Pomfret Road
North Pomfret, Vermont 05053
Re: ZBA's decision of 5/19/2016 (Chippers Log Pile Application)

Dear Preston:

Pursuant to your e-mail of 12/16/2016 (attached) this is to state Chippers' intention to comply with the ZBA's decision of 5/19/2016 when clarification has been received from you as to an acceptable location of the pile on the west side of the Pomfret Road and "the volume of material and level of activity for the log pile and firewood processing" which is approved for that site.

In furtherance of such clarification, Chippers proposes the below described level and volume of activity on the site identified on the attached plan and drawing. The drawing shows the available space for the log landing OUTSIDE the flood plain area (marked in white) and Chippers' access and egress to the pile formations marked in black.

There will be three distinct groups of wood, one for firewood, one for mill wood and one for mulch wood. The firewood and mill wood is depicted by the parallel black lines on the attached document 'Chippers Proposed Log Landing 27 December 2016', the mulch wood by the black circle.

In 2001 the log storage was 2 piles 100' long by 25' wide by 25' tall, or 125,000 cubic feet in total. That year Chippers processed 150 cords of firewood and burnt a 30' X 30' pile of waste wood.

For 2017 and henceforth Chippers propose significantly less: 2 piles 100' long by 25' wide by 20' tall, or 100,000 cubic feet in total, with a mulch pile of 30' X 30' (this was the wood we used to burn). Chippers will process approximately 30 cords of wood a year.

The hours of operation will be Monday through Friday from 7am to 5pm and no weekends. Activity on the site is limited to wood being unloaded by Chippers from job sites and wood being picked up by vendors for transporting the materials to their final mill destination. As in the past chain saws must be used to get the wood into proper shape for the pile. (As has been the practice for over two years there will be no burning, chipping or grinding onsite.)

The attached survey by Rockwood Land Services, LLC (named as 'Chippers West Side Survey by Rockwood Land Services December 2016') shows the flood plain boundaries-as noted above, the proposed relocated log pile site is OUTSIDE of and respects the flood plain boundaries.

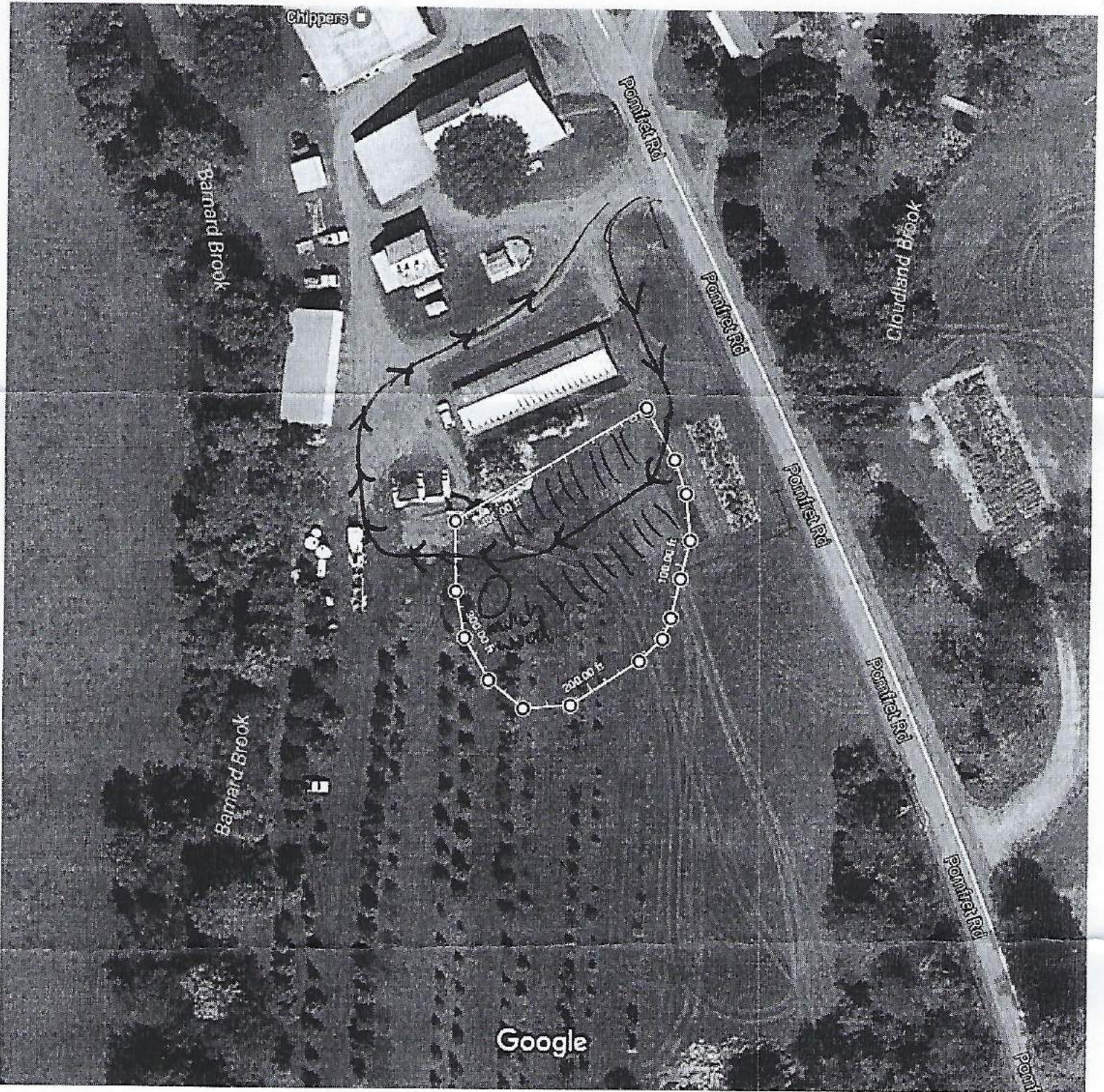
Chippers would appreciate your review and approval/clarification (on behalf of the Town) of the proposed/requested site and the level and volume of activity to be conducted thereon. Chippers is prepared to begin to effect the log pile relocation, weather permitting, as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Mundy Wilson Piper". The signature is written in a cursive, flowing style.

Mundy Wilson Piper
President & CEO

Google Maps



Imagery ©2016 DigitalGlobe, Map data ©2016 Google 50 ft

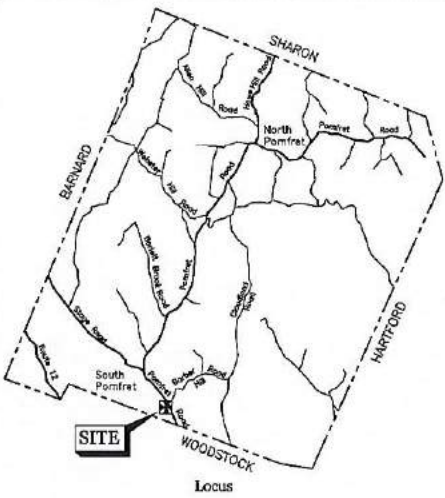
Measure distance

Total area: 18,025.09 ft² (1,674.59 m²)

Total distance: 508.87 ft (155.10 m)

attachment to chippers letter of 12/27/16
 to pomfret zoning Administrator
 (Preston Bristow)

Attachment to chippers letter of 12/27/16 to pomfret zoning administrator (preston brislow)



Corner Monument Descriptions
All SET Monuments have an Orange Plastic Cap Labeled "ROCKWOOD VT 537 NH618" monument sizes are O.D.

- No.1 Found a 8"x6" Stone Bound firm, straight and in good condition with 12" of reveal;
- No.2 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal;
- No.3 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal at the top of the Brook bank;
- No.4 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the corner in the water;
- No.5 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the boundary corner at the edge of high water;
- No.6 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the corner in the water;
- No.7 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the corner in the water;
- No.8 SET a 5/8x36" blue Rebar firm and straight with 11" of reveal at the end of the stone wall;
- No.9 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal in the stone wall;
- No.10 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal;
- No.11 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal;
- No.12 SET a 5/8x36" blue Rebar firm and straight and flush in the paved road;

Legend

- Found Iron Pipe or Rebar ○ as described
- Set Capped Rebar ⊙ as described
- Stone Bound □ as described
- Computed Point ●
- Boundary Line ———
- Stone Wall ————
- Setback Limits - - - - -
- Easement Limits - - - - -
- 1% Flood Limits - - - - -
- Edge of Brook - - - - -
- Deed Reference Book, Page
- Plan Reference Plan Slide

Parcel 0107
Cama Family Limited Partnership
Book 70, Page 401
Plan: Map Slide 75B

Parcel 0107
Cama Family Limited Partnership
Book 70, Page 401
Plan: Map Slide 86

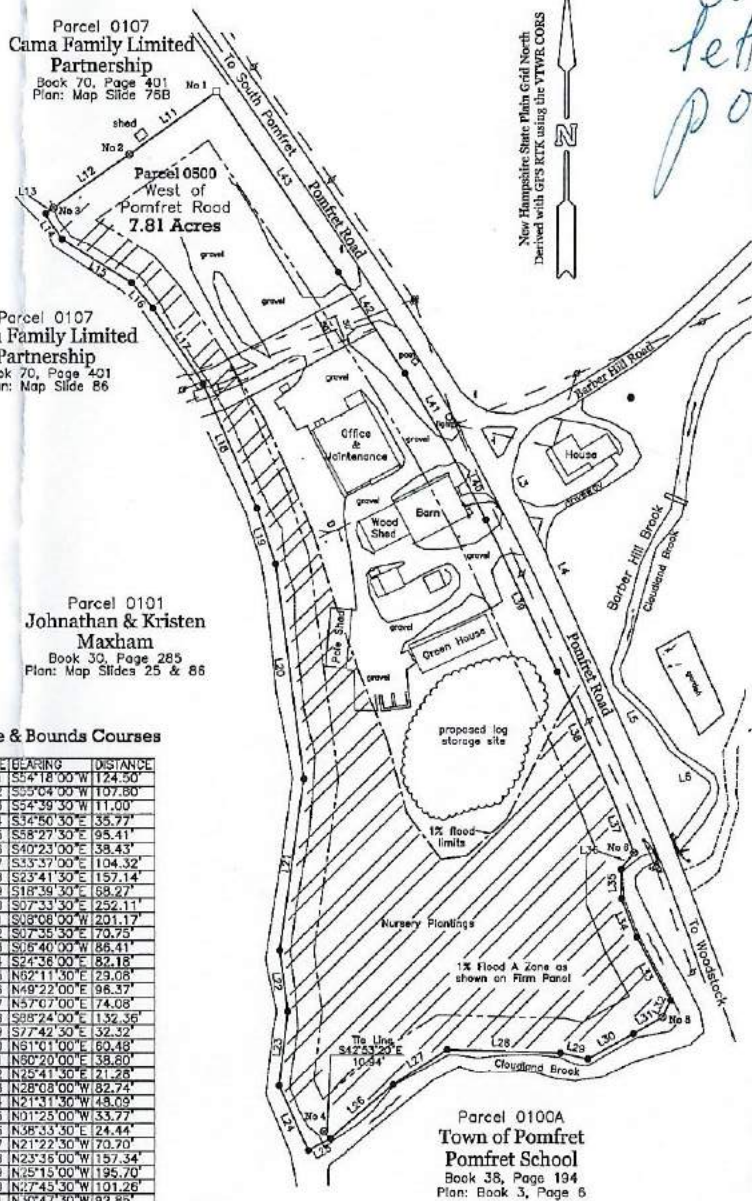
Parcel 0101
Johnathan & Kristen Maxham
Book 30, Page 285
Plan: Map Slides 25 & 86

Mets & Bounds Courses

LINE	BEARING	DISTANCE
L11	S54°18'00"W	124.50'
L12	S55°04'00"W	107.80'
L13	S54°39'30"W	111.00'
L14	S34°56'30"E	35.77'
L15	S58°27'30"E	95.41'
L16	S40°23'00"E	38.43'
L17	S33°37'00"E	1104.32'
L18	S23°41'30"E	157.14'
L19	S18°39'30"E	58.27'
L20	S07°33'30"E	252.11'
L21	S08°08'00"W	201.17'
L22	S07°35'30"E	70.75'
L23	S06°40'00"W	88.41'
L24	S24°36'00"E	82.18'
L25	N02°11'30"E	129.08'
L26	N49°22'00"E	98.37'
L27	N57°07'00"E	74.08'
L28	S85°24'00"E	132.36'
L29	S77°42'30"E	32.32'
L30	N91°01'00"E	60.48'
L31	N80°20'00"E	38.80'
L32	N25°41'30"E	121.28'
L33	N26°03'00"W	82.74'
L34	N21°31'30"W	148.09'
L35	N01°25'00"W	33.77'
L36	N98°33'30"E	24.44'
L37	N21°22'30"W	70.70'
L38	N23°36'00"W	157.34'
L39	N25°15'00"W	195.70'
L40	N27°45'30"W	101.26'
L41	N30°47'30"W	92.85'
L42	N33°27'00"W	138.58'
L43	N34°23'30"W	252.32'

I hereby certify that to the best of my belief and knowledge a Vermont Rural Class Survey was completed on the portion of Pomfret Parcel 0500 in accordance with the requirements of 27 VSA 1403(b)-(8) and, except as noted within the Survey Notes, are consistent with the deeds, plans, and notes referenced on this plat which are the basis for this surveyor's opinion of the boundary line locations.

New Hampshire State Plane Grid North
Derived with GPS RTK using the VTWER CORRS



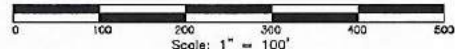
Survey Notes and Report

- The purpose of this Boundary Survey Plat is to identify the Boundary Lines and monument boundary corners for Pomfret Parcel 0500 on the Southwesterly side of Pomfret Road.
- Surveyor's Report: Southwesterly side of Pomfret Road: This parcel is junior in title to Parcels 0107 and 0101. Both abutting parcel were sold out of the subject parcel. The NORTHERLY boundary line common with Parcel 0107 is consistent with the referenced survey plans and deeds. The EASTERLY boundary line is common with Parcel 0101. The referenced plans and deeds conflict as to the boundary's location along Barnard Brook. In the deed from Moxham to Russell recorded in Book 33 page 60, Parcel No. 1, describes this boundary as "a northerly direction along the centerline of the brook." The Survey Plan recorded at Map Slide 86 by Bruce is not consistent with this description as it indicates the abutter's boundary along the easterly edge of the brook. The subject parcel's boundary only extends to the brook's centerline. The SOUTHERLY boundary line which is common with the Pomfret School. The referenced Bruno Plans and respective deeds conflict as to the boundary's location along the Cloudland Brook. The subject parcel's deed describes this boundary line as "thence proceeding along the center line of the brook." The School's boundary line deed describes the same boundary line as "thence proceeding easterly along the northerly side of said brook." An overlap of Title exists and a boundary line agreement is recommended. The WESTERLY boundary line follows the easterly limits of the Pomfret Road. See note 3 to the highway layout information.
- The Highway layout for the Pomfret Road is found in Pomfret's Proprietors Book at Pages 23 and 24 dated August 27, 1781. The Highway is 4 Rods or 65 ft wide. The layout may vary from the Highways current position. The 4 Rods was established based on the Highways current centerline location.
- The subject parcel is burdened by the 30 ft wide utility recorded in Book 61 at page 68 which crosses the parcel.
- The subject parcel is burdened by the 50 ft wide Right-of-Way which crossed the parcel.
- Corner monuments noted as SET are were placed in December 2016. All monument dimensions are outside diameters.

PARCEL 500
Owner of Record
William A. Russell, Jr Trust u/t/a October 27, 2000
1241 Pomfret Road
Pomfret, VT
Mundy Wilson Piper, Trustee
1241 Pomfret Road
Woodstock, VT 05091
Deed Reference: Book 66 , Pages 344
Parcel No. 5
Plan Reference: Plan Slide 25

Boundary Survey Plat for
William A. Russell, Jr Trust

1241 Pomfret Road, Pomfret, Vermont



Project No.1372 Date: December, 2016
Rockwood Land Services, LLC
PO BOX 347
Hartland, VT 05048
(802)436-1039
rockids@vermont.net

TIMOTHY W. ROCKWOOD
LLS NO. 537

TOWN OF POMFRET
ZONING BOARD OF ADJUSTMENT

DRAFT Minutes of Hearing
February 23, 2017

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

MEMBERS RECUSED: Michael Reese, Loie Havill

OTHERS PRESENT: James Barlow (attorney for ZBA), Amanda Lafferty (attorney for Select Board), Ryan Kane and Stephen Coteus (attorneys for Chippers), Peter Vollers (attorney for Hudson and Margaret Holland), Michael Reese, Jason Eaton, Sean Smith, John Keefe, Cameron Couture, Kristen Maxham, Douglas Tuthill, Greg Greene, Elaine Chase, Emily Grube, Mike Anderson, David Moore, Mary Blackmer, Virginia Shaw Dean (Vermont Standard), Preston Bristow (Zoning Administrator)

A hearing was convened to consider the following:

Appeals by the Town of Pomfret and Kristen Maxham of the zoning administrator's determination letter of January 6, 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. Kristen Maxham, Jason Eaton and Douglas Tuttle were granted status as interested persons and were sworn in.

The following documents were entered into the record:

12/8/2105	Determination letter by ZA Bristow
5/19/2016	ZBA Decision on Application #ZP16-05 by Chippers
6/10/2016	Appeal of ZBA Decision of 5/19/16 to E-Court by Chippers
8/22/2016	NOV by ZA Bristow for Chippers' failure to comply with ZBA Decision
8/23/2016	Appeal of NOV to ZBA by Chippers
11/4/2016	ZBA Decision on Chippers NOV Appeal
12/5/2016	Appeal of ZBA Decision of 11/4/16 to E-Court by Chippers
12/27/2016	"request for clarification" letter from Chippers
1/6/2017	Determination letter by ZA Bristow
1/18/2017	Appeal of Determination letter by Kristen Maxham
1/20/2017	Appeal of Determination letter by Town of Pomfret
1/26/2017	Denial of Chippers' Motion for Summary Judgement by E-Court
1/30/2017	"at own risk" warning letter to Chippers from ZA Bristow
2/14/2017	Letter to ZBA from attorney Paul Gillies
2/22/2017	Letter to ZBA from attorney Peter Vollers

2/22/2017 Letter to ZBA from attorney Ryan Kane
2/22/2017 Response to Appeal by Preston Bristow
2/22/2017 Proposed Findings and Conclusions from Town of Pomfret

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 and asked the Court to stay the ZBA's May 2016 decision which the Court denied on August 9, 2016. ZA Bristow then filed a Notice of Violation (NOV) on August 22, 2016 for Chippers' lack of compliance with the ZBA's May 2016 decision. Chippers appealed the NOV to the ZBA and the appeal was heard on October 6, 2016 and the appeal was denied by the ZBA on November 4, 2016. Chippers appealed the ZBA's November 2016 decision to Environmental Court as well. 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 has been appealed by neighbor Kristen Maxham and the Town of Pomfret through its Select Board. This is the third time that the ZBA has held a hearing on this matter.

A summary of the testimony follows:

Zoning Administrator Preston Bristow testified that the ZBA found in its May 2016 decision that the log pile west of Pomfret Road has been grandfathered at its 2001 level of use and that the ZBA authorized him to work with Chippers to determine the volume and level of storage and disposition of logs and processing of firewood in 2001. He learned in mid-December that a settlement agreement had been reached between Chippers and neighbors Hudson and Margaret Holland and Brian Alderfer. On December 27, 2016, he received a letter from Chippers stating their intention to comply with the ZBA's May 2016 decision and requesting clarification on the location and level of activity that would be permitted. He responded on January 6, 2017 with a determination letter which stated the location and level of activity that would comply with the ZBA's May 2016 decision. It was his understanding that if his January 2017 determination letter had not been appealed, Chippers would have withdrawn its appeals before the Environmental Court and the matter would be concluded. He maintains that he carried out what the ZBA wanted and authorized him to do.

Attorney Amanda Lafferty for the Town of Pomfret (through its Select Board) testified that ZA Bristow lacked authority to act as he did because a permit was required and the ZBA in its May 2016 decision denied Chippers' permit application. ZA Bristow's determination letter of

December 2015 required that Chippers get a permit for its log pile, that determination was not appealed, and Chippers acknowledged they needed a permit by applying for one. Even if Chippers has a grandfathered use west of Pomfret Road, which the Town disputes, Chippers cannot return to it because a greenhouse now sits at that location. Grandfathering includes location. The ZBA's May 2016 decision authorizes ZA Bristow to determine only volume and level of use and does not mention location. ZA Bristow had no authority to change or determine a different location for a grandfathered use. ZA Bristow also lacked authority to act on the ZBA's May 2016 decision because that decision was and is under appeal to the Superior Court, Environmental Division.

Attorney Ryan Kane for Chippers testified that it was implicit in the ZBA's May 2016 decision where the grandfathered log pile would be located. Because the Environmental Division denied a motion for a stay the ZBA's May 2016 decision remains in effect and can be implemented. The interested persons have reached a settlement agreement and a resolution is eminent. Chippers seeks to resolve this appeal by abiding by the ZBA's May 2016 decision by relocating their log pile to the east side of Pomfret Road at a location outside of floodplain and consistent with their historic operations. All Chippers is asking for is its level of use grandfathered in 2001 to continue.

Amanda Lafferty responded that grandfathering is dependent on location and Chippers cannot return to its 2001 location because a greenhouse now sits at that location. She stated that comments regarding a settlement or resolution are not relevant. The Select Board and not an unelected official should settle litigation that they are involved in.

Ryan Kane responded that if the ZBA's May 2016 decision was ambiguous with regard to location then the implied location should be read in favor of the landowner. He stated the issue of grandfathering is not before this hearing and the ZBA has to abide by the decision it made in May of 2016.

Attorney Peter Vollers for interested persons Hudson and Margaret Holland testified that a settlement agreement has been reached, his clients support ZA Bristow's January 2017 determination, and he believes that ZA Bristow had full authority under the ZBA's May 2016 decision to issue that determination. His clients are ready to join in withdrawing the appeals before the Environmental Division. He doesn't understand why the Select Board has thrown this wrench in the process.

Jason Eaton, a Vice President at Chippers, urged common sense and asked that the parties be allowed to move forward with a resolution. He said that between floodplain and other uses of the property there is only one practical location for the log pile on the east side of Pomfret Road.

Michael Reese, Select Board chair, said it was the unanimous decision of the Select Board to appeal ZA Bristow's January 2017 determination. He said that ZA Bristow's determination took Chippers' requested use outside of the process. He said that ZA Bristow's opinion of grandfathering is overly expansive and because the ZBA relies on ZA Bristow's advice their May 2016 decision was incorrect. He said the log pile is not grandfathered. He said the Select

Board appealed ZA Bristow's January 2017 determination because a permit is required and Chippers must go through the permitting process.

Douglas Tuttle testified that he has long been affiliated with Chippers and that their log pile has been in various places on and off this property over the years. He heard the ZBA mention location three times and he is sure the ZBA meant to include location in their decision. This appeal is wasting time and costing taxpayer money.

Kristen Maxham testified that Chippers is a commercial use in a residential zoning district and the town zoning ordinance is not being enforced. She said that Chippers has been getting away with operating without a permit for many years. She has lived adjacent to Chippers since 1979 and disagreed with Douglas Tuttle that the log pile has been in various places on the property.

Gregg Greene, a former school board member and Chippers employee, expressed his disappointment with the Select Board's pursuit of this appeal and the cost to the taxpayer.

Emily Grube, a Select Board member, said that Chippers approached the Select Board's attorney asking for a permit to move the log pile from the east side to the west side of Pomfret Road, which the Select Board doesn't have the right to give, but which implies that Chippers knew they needed a permit to do this. (Ryan Kane objected to this statement as hearsay.)

Sean Smith, a Chippers employee, said that the log pile in 2001 was bigger than the greenhouse and extended into the area south of the greenhouse where the log pile is now proposed to be, and that the areas overlap.

By unanimous vote, the ZBA closed the hearing at 7:52 PM subject to the submission of additional documents from the parties by the end of next week.

Respectfully submitted,
Preston Bristow, Zoning Administrator

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.

DESMEULES, OLMSTEAD & OSTLER

GENERAL PRACTICE OF LAW IN
VERMONT AND NEW HAMPSHIRE

2 BEAVER MEADOW ROAD
POST OFFICE BOX 1090
NORWICH, VERMONT 05055
(802) 649-2001

PETER J. DESMEULES*
FRANK H. OLMSTEAD
GEORGE H. OSTLER
CHRISTOPHER A. DALL
CABOT R. TEACHOUT

* ADMITTED IN VERMONT ONLY
TELECOPIER (802) 649-2232

April 14, 2017

Preston Bristow, Zoning Administrator
Town of Pomfret
5218 Pomfret Road
North Pomfret, VT 05053

**Re: Chippers/Dismissal of Environmental Division Action/
Request for Determination**

Dear Preston:

I am writing on behalf of Chippers, Inc.

Attached is the Environmental District's Dismissal of Docket No. 162-12-16 Vtec. The Environmental District no longer has jurisdiction over this matter.

As determined by and set forth in the March 20, 2017 Findings and Decision of the Zoning Board of Adjustment (attached), jurisdiction over this matter has reverted to you as Zoning Administrator.

Accordingly, this letter requests, now that you have the necessary jurisdiction and authority, that you reissue your January 6, 2017 "Determination" (copy attached), as previously requested by Chippers (see letter from Mundy Wilson Piper to you dated December 27, 2016 attached).

I point out the following:

The Findings and Decision of the Pomfret Zoning Board of Adjustment dated May 19, 2016 are now final and binding on all parties because the only appeal has been dismissed;

The lands and premises on the easterly side of the Pomfret Road, where Chippers' log pile was formerly located, have been sold by the William A. Russell Trust to Hudson Holland.

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. DesMeules". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter J. DesMeules

PJD:apc

Enclosures

cc: Ryan Kane, Esq. (w/o enclosures)
Paul Gillies, Esq. (w/o enclosures)

g:\p\russell\pb4-14.let

Town of Pomfret
Zoning Administrator
5218 Pomfret Road
North Pomfret, VT 05053

April 28, 2017

Peter J. DesMeules
DesMeules, Olmstead & Ostler
P.O. Box 1090
Norwich, VT 05055

Determination regarding log storage and firewood processing on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) west of Pomfret Road

Dear Peter:

I am responding to your letter to me of April 14, 2017 written on behalf of Chippers, Inc., requesting that I reissue my Determination of January 6, 2017 as previously requested by Chippers through a letter from Mundy Wilson Piper dated December 27, 2016.

The Pomfret Zoning Board of Adjustment, through its Findings and Decision of May 19, 2016, denied the storage of logs and processing of firewood on the east side of Pomfret Road but allowed the storage of logs and processing of firewood on the west side of Pomfret Road at a volume and level no greater than was in use in 2001. The ZBA further authorized me to determine 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) west of Pomfret Road for the purpose of implementing this condition.

As you note in your letter of April 14, 2017, the appeal before the Vermont Superior Court, Environmental Division has been dismissed and jurisdiction over this matter has reverted to me as Zoning Administrator. Further, Chippers' log pile is now on the westerly side of Pomfret Road and the lands on the easterly side of Pomfret Road where Chippers' log pile was formerly located have been sold by the William A. Russell Trust to Hudson Holland.

I hereby reissue my Determination regarding the location, maximum volume of storage, and maximum level of activity for the storage and disposition of logs and processing of firewood on lands of the William A. Russell, Jr. Trust (Parcel ID #0500-A) west of Pomfret Road. My Determination is as follows:

1. The location at which the storage of logs and processing of firewood may occur is depicted on an annotated Google Maps aerial photo and on a Rockwood Land Services survey, which annotated map and survey were provided with your letter to

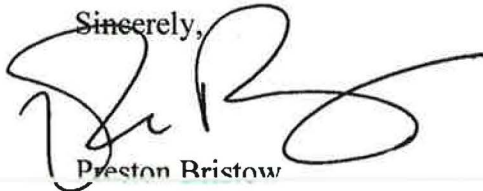
me dated December 27, 2016 and are attached to this Determination letter and incorporated herein.

2. Three types of wood may be stored and processed: firewood, mill wood and mulch wood. The maximum volume of storage of these three piles are as follows: the firewood pile will not exceed 100' long by 25' wide by 20' tall, the mill wood pile will not exceed 100' long by 25' wide by 20' tall, and the mulch wood pile will not exceed 30' by 30'.
3. There will be no burning, chipping or grinding of logs or wood on the property.
4. The hours of operation will be Monday through Friday from 7 AM to 5 PM with no delivery, loading, or processing of logs or firewood, including chainsaw operation, on weekends.
5. Backing-up of log and delivery trucks will be minimized through use of a loop or circular access drive.

The above-referenced two-page letter of December 27, 2016, from Mundy Wilson Piper, President & CEO of Chippers, Inc. to Preston Bristow, Town of Pomfret Zoning Administrator, with annotated Google Maps aerial photo and Rockwood Land Services survey, is attached to this Determination and all representations contained in the letter and on the map and survey are incorporated into this Determination.

This Determination may be appealed to the Zoning Board of Adjustment by you or an interested person by sending a written notice of appeal to the address above within 15 days of the date of this Determination. The notice of appeal must give the reasons for the appeal and be accompanied by a hearing fee of \$135 payable to the Town of Pomfret. If no appeal is received within this 15-day appeal period, this Determination will become final.

Sincerely,



Preston Bristow
Zoning Administrator

cc: Interested persons: Kristen Maxham, Susan Cross, Lora Murray, Brian Alderfer, Hudson Holland, Margaret Holland
Attorneys: Ryan Kane, Paul Gillies, Peter Vollers, Amanda Lafferty



December 27, 2016

Preston Bristow, Town of Pomfret Zoning Administrator
5218 Pomfret Road
North Pomfret, Vermont 05053
Re: ZBA's decision of 5/19/2016 (Chippers Log Pile Application)

Dear Preston:

Pursuant to your e-mail of 12/16/2016 (attached) this is to state Chippers' intention to comply with the ZBA's decision of 5/19/2016 when clarification has been received from you as to an acceptable location of the pile on the west side of the Pomfret Road and "the volume of material and level of activity for the log pile and firewood processing" which is approved for that site.

In furtherance of such clarification, Chippers proposes the below described level and volume of activity on the site identified on the attached plan and drawing. The drawing shows the available space for the log landing OUTSIDE the flood plain area (marked in white) and Chippers' access and egress to the pile formations marked in black.

There will be three distinct groups of wood, one for firewood, one for mill wood and one for mulch wood. The firewood and mill wood is depicted by the parallel black lines on the attached document 'Chippers Proposed Log Landing 27 December 2016', the mulch wood by the black circle.

In 2001 the log storage was 2 piles 100' long by 25' wide by 25' tall, or 125,000 cubic feet in total. That year Chippers processed 150 cords of firewood and burnt a 30' X 30' pile of waste wood.

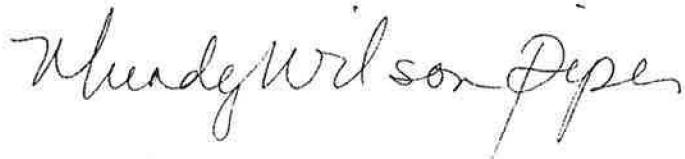
For 2017 and henceforth Chippers propose significantly less: 2 piles 100' long by 25' wide by 20' tall, or 100,000 cubic feet in total, with a mulch pile of 30' X 30' (this was the wood we used to burn). Chippers will process approximately 30 cords of wood a year.

The hours of operation will be Monday through Friday from 7am to 5pm and no weekends. Activity on the site is limited to wood being unloaded by Chippers from job sites and wood being picked up by vendors for transporting the materials to their final mill destination. As in the past chain saws must be used to get the wood into proper shape for the pile. (As has been the practice for over two years there will be no burning, chipping or grinding onsite.)

The attached survey by Rockwood Land Services, LLC (named as 'Chippers West Side Survey by Rockwood Land Services December 2016') shows the flood plain boundaries-as noted above, the proposed relocated log pile site is OUTSIDE of and respects the flood plain boundaries.

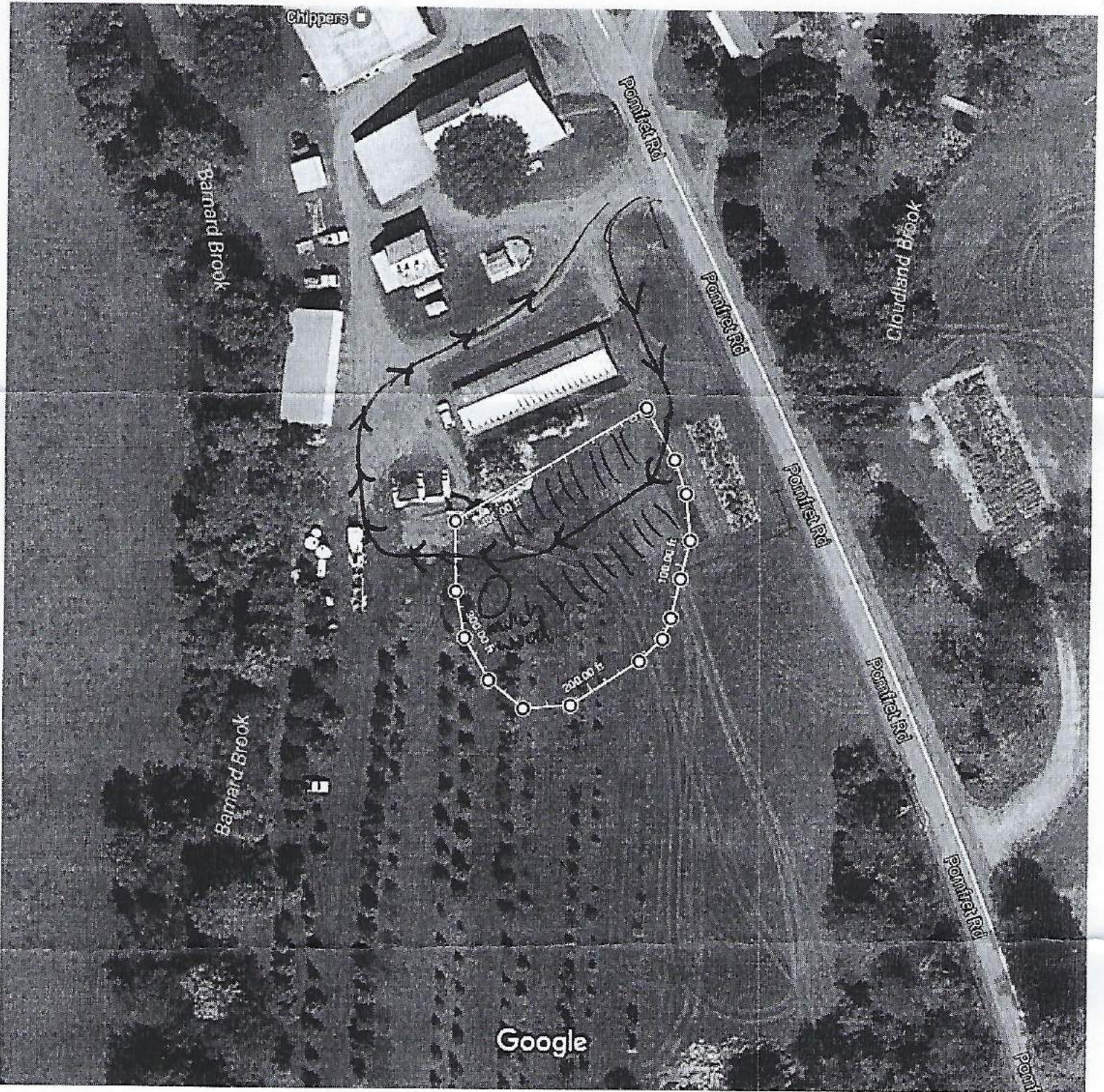
Chippers would appreciate your review and approval/clarification (on behalf of the Town) of the proposed/requested site and the level and volume of activity to be conducted thereon. Chippers is prepared to begin to effect the log pile relocation, weather permitting, as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Mundy Wilson Piper". The signature is written in dark ink and is positioned above the printed name.

Mundy Wilson Piper
President & CEO

Google Maps



Imagery ©2016 DigitalGlobe, Map data ©2016 Google 50 ft

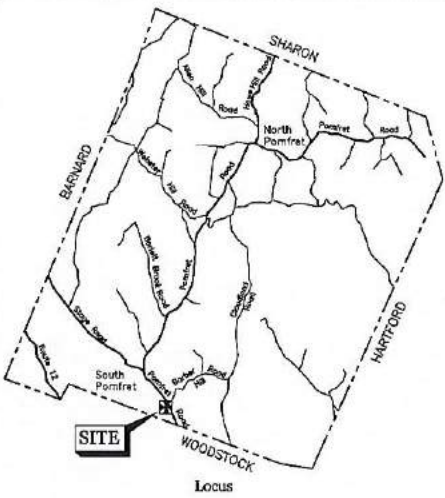
Measure distance

Total area: 18,025.09 ft² (1,674.59 m²)

Total distance: 508.87 ft (155.10 m)

attachment to chippers letter of 12/27/16
 to pomfret zoning Administrator
 (Preston Bristow)

Attachment to chippers letter of 12/27/16 to pomfret zoning administrator (preston brislow)



Corner Monument Descriptions
All SET Monuments have an Orange Plastic Cap Labeled "ROCKWOOD VT 537 NH618" monument sizes are O.D.

- No.1 Found a 8"x6" Stone Bound firm, straight and in good condition with 12" of reveal;
- No.2 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal;
- No.3 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal at the top of the Brook bank;
- No.4 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the corner in the water;
- No.5 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the boundary corner at the edge of high water;
- No.6 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the corner in the water;
- No.7 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal at the top of the Brook bank as a witness to the corner in the water;
- No.8 SET a 5/8x36" blue Rebar firm and straight with 11" of reveal at the end of the stone wall;
- No.9 SET a 5/8x36" blue Rebar firm and straight with 7" of reveal in the stone wall;
- No.10 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal;
- No.11 SET a 5/8x36" blue Rebar firm and straight with 6" of reveal;
- No.12 SET a 5/8x36" blue Rebar firm and straight and flush in the paved road;

Legend

- Found Iron Pipe or Rebar ○ as described
- Set Capped Rebar ⊙ as described
- Stone Bound □ as described
- Computed Point ●
- Boundary Line ————
- Stone Wall ————
- Setback Limits ————
- Easement Limits - - - - -
- 1% Flood Limits - - - - -
- Edge of Brook - - - - -
- Deed Reference Book, Page
- Plan Reference Plan Slide

Parcel 0107
Cama Family Limited Partnership
Book 70, Page 401
Plan: Map Slide 75B

Parcel 0107
Cama Family Limited Partnership
Book 70, Page 401
Plan: Map Slide 86

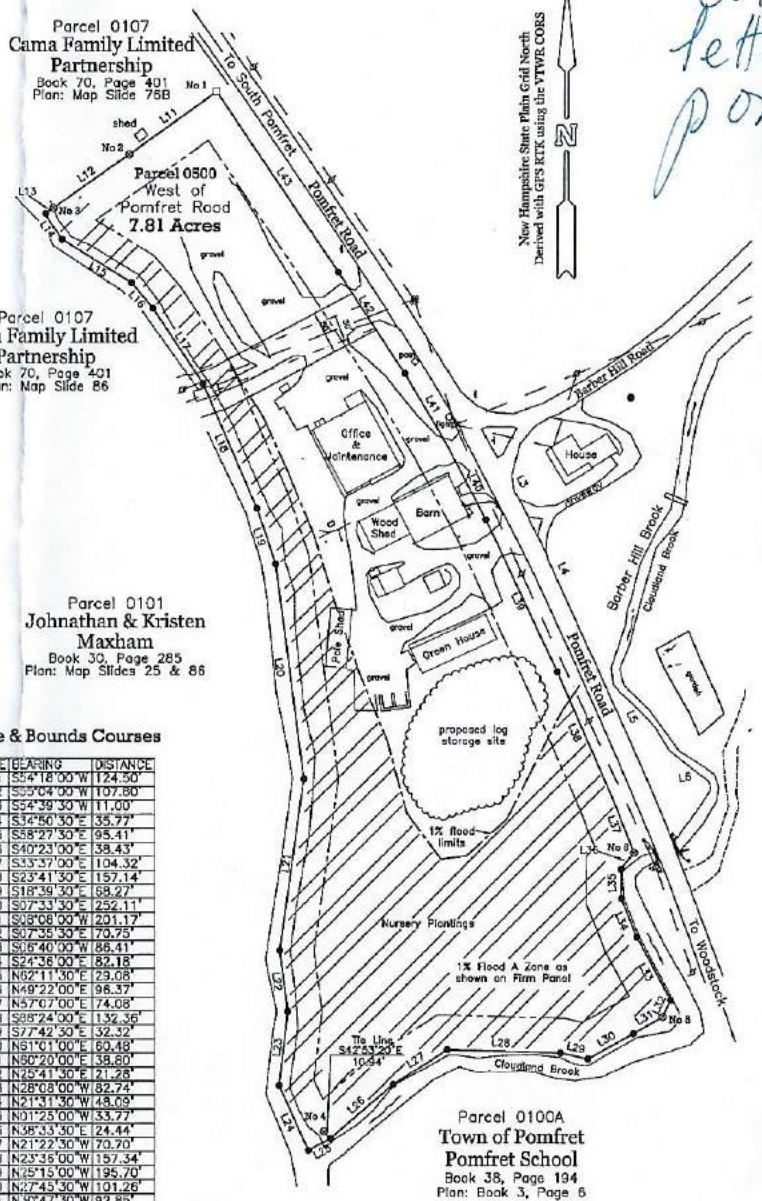
Parcel 0101
Johnathan & Kristen Maxham
Book 30, Page 285
Plan: Map Slides 25 & 86

Mete & Bounds Courses

LINE	BEARING	DISTANCE
L11	S54°18'00"W	124.50'
L12	S55°04'00"W	107.80'
L13	S54°39'30"W	111.00'
L14	S34°56'30"E	35.77'
L15	S58°27'30"E	95.41'
L16	S40°23'00"E	38.43'
L17	S33°37'00"E	1104.32'
L18	S23°41'30"E	157.14'
L19	S18°39'30"E	58.27'
L20	S07°33'30"E	252.11'
L21	S08°08'00"W	201.17'
L22	S07°35'30"E	70.75'
L23	S06°40'00"W	88.41'
L24	S24°36'00"E	82.18'
L25	N02°11'30"E	129.08'
L26	N49°22'00"E	98.37'
L27	N57°07'00"E	74.08'
L28	S85°24'00"E	132.36'
L29	S77°42'30"E	32.32'
L30	N91°01'00"E	60.48'
L31	N80°20'00"E	38.80'
L32	N25°41'30"E	121.28'
L33	N26°03'00"W	82.74'
L34	N21°31'30"W	48.09'
L35	N01°25'00"W	33.77'
L36	N98°33'30"E	24.44'
L37	N21°22'30"W	70.70'
L38	N23°36'00"W	157.34'
L39	N25°15'00"W	195.70'
L40	N27°45'30"W	101.26'
L41	N30°47'30"W	92.85'
L42	N33°27'00"W	138.58'
L43	N34°23'30"W	252.32'

I hereby certify that to the best of my belief and knowledge a Vermont Rural Class Survey was completed on the portion of Pomfret Parcel 0500 in accordance with the requirements of 27 VSA 1403(b)-(8) and, except as noted within the Survey Notes, are consistent with the deeds, plans, and notes referenced on this plat which are the basis for this surveyor's opinion of the boundary line locations.

New Hampshire State Plane Grid North
Derived with GPS RTK using the VTWER CORRS



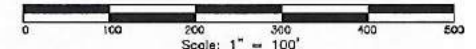
Survey Notes and Report

1. The purpose of this Boundary Survey Plat is to identify the Boundary Lines and monument boundary corners for Pomfret Parcel 0500 on the Southwesterly side of Pomfret Road.
2. Surveyor's Report: Southwesterly side of Pomfret Road: This parcel is junior in title to Parcels 0107 and 0101. Both abutting parcel were sold out of the subject parcel. The NORTHERLY boundary line common with Parcel 0107 is consistent with the referenced survey plans and deeds. The EASTERLY boundary line is common with Parcel 0101. The referenced plans and deeds conflict as to the boundary's location along Barnard Brook. In the deed from Moxham to Russell recorded in Book 33 page 60, Parcel No. 1, describes this boundary as "a northerly direction along the centerline of the brook." The Survey Plan recorded at Map Slide 86 by Bruce is not consistent with this description as it indicates the abutter's boundary along the easterly edge of the brook. The subject parcel's boundary only extends to the brook's centerline. The SOUTHERLY boundary line which is common with the Pomfret School. The referenced Bruno Plans and respective deeds conflict as to the boundary's location along the Cloudland Brook. The subject parcel's deed describes this boundary line as "thence proceeding along the center line of the brook." The School's boundary line deed describes the same boundary line as "thence proceeding easterly along the northerly side of said brook." An overlap of Title exists and a boundary line agreement is recommended. The WESTERLY boundary line follows the easterly limits of the Pomfret Road. See note 3 to the highway layout information.
3. The Highway layout for the Pomfret Road is found in Pomfret's Proprietors Book at Pages 23 and 24 dated August 27, 1781. The Highway is 4 Rods or 65 ft wide. The layout may vary from the Highways current position. The 4 Rods was established based on the Highways current centerline location.
4. The subject parcel is burdened by the 30 ft wide utility recorded in Book 61 at page 68 which crosses the parcel.
5. The subject parcel is burdened by the 50 ft wide Right-of-Way which crossed the parcel.
6. Corner monuments noted as SET are were placed in December 2016. All monument dimensions are outside diameters.

PARCEL 500
Owner of Record
William A. Russell, Jr Trust u/t/a October 27, 2000
1241 Pomfret Road
Pomfret, VT
Mundy Wilson Piper, Trustee
1241 Pomfret Road
Woodstock, VT 05091
Deed Reference: Book 66 , Pages 344
Parcel No. 5
Plan Reference: Plan Slide 25

Boundary Survey Plat for
William A. Russell, Jr Trust

1241 Pomfret Road, Pomfret, Vermont



Project No.1372 Date: December, 2016
Rockwood Land Services, LLC
PO BOX 347
Hartland, VT 05048
(802)436-1039
rockids@vermont.net

TIMOTHY W. ROCKWOOD
LLS NO. 537

Notice of Appeal

The Town of Pomfret appeals to the Pomfret Zoning Board of Adjustment the Administrative Officer/Zoning Administrator's determination letter dated April 28, 2017 (hereinafter the "Determination"), granting a request submitted in a letter from Peter DesMeules on behalf of Chippers (hereinafter the "Applicant") dated April 14, 2017, for the property located at 1241 Pomfret Road. Copies of the Determination and the letter dated April 14, 2017, are attached. The subject property consists of a 7.7-acre parcel of land on the westerly side of Pomfret Road.

Pursuant to 24 V.S.A. section 4465(b)(2), the Town of Pomfret is an interested person with standing to appeal because the Pomfret Zoning Ordinance is at issue and because the Administrative Officer exceeded his authority by making and issuing the Determination.

The Town of Pomfret requests that the Zoning Board of Adjustment grant it the following relief:

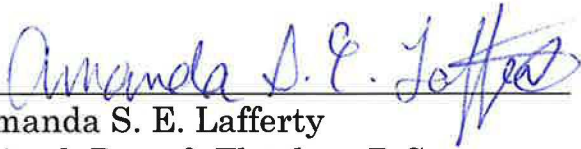
1. Declare the following:
 - A. The Administrative Officer lacked authority to issue the Determination and to make the determinations therein, without first referring an application for the proposed location of the uses, the storage and processing of wood, on the subject property to the Zoning Board of Adjustment for review under Part 7 and Section 11.3 of the Pomfret Zoning Ordinance, as required by Sections 7.1 and 10.2.3 of the Pomfret Zoning Ordinance, and
 - B. The Zoning Board of Adjustment's Findings and Decision dated May 19, 2016, in Application #ZP16-05, which incorrectly states that the uses proposed in Application #ZP16-05 are "grandfathered," does not grant the Administrative Officer any authority to issue the Determination, or to make the determinations therein, without first referring to the Zoning Board of Adjustment an application for the proposed location of the uses on the subject property for review under Part 7 and Section 11.3 of the Pomfret Zoning Ordinance, and

2. Deem the Determination void and without effect, and
3. Deny the Applicant's request in the letter dated April 14, 2017.

DATED at Burlington, Vermont this 12th day of May 2017.

TOWN OF POMFRET,
by and through its attorneys,
Stitzel, Page & Fletcher, P.C.

By:


Amanda S. E. Lafferty
Stitzel, Page & Fletcher, P.C.
P.O. Box 1507
171 Battery Street
Burlington, VT 05402

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.

Alan Blackmer, Chair, Zoning Board of Adjustment

**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, dated April 28, 2017.

A. Introduction

This matter has come before the Pomfret Zoning Board of Adjustment (ZBA) on the Town of Pomfret’s appeal of the April 28, 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 “April Determination”). The April Determination is the second such determination letter issued by ZA Bristow on this application. It was issued in response to a written request from attorney Peter DesMeules, counsel for Chippers, Inc., dated April 14, 2017.

On January 6, 2017, ZA Bristow issued his first determination letter in response to a request by Chippers, Inc. for clarification of the ZBA’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 “January Determination”). On March 20, 2017, the ZBA held that ZA Bristow did not have jurisdiction to issue the January Determination and, as a result, the January Determination was void.

The basis of the ZBA’s holding in March was that the ZBA’s May 19, 2016 decision had been appealed by Chippers, Inc. to the Environmental Division of the Superior Court and that ZA Bristow lacked jurisdiction to issue the January Determination. Chippers, Inc.’s appeal to the Environmental Division has since been dismissed and jurisdiction has reverted to ZA Bristow.

The Town, by its May 12, 2017, Notice of Appeal, has requested that the ZBA declare that ZA Bristow lacked authority to issue the April Determination. Chippers, Inc. and ZA Bristow counter that the Town does not have standing to appeal the April Determination. Chippers, Inc. also asserts that under 24 V.S.A. §4472(d), the ZBA’s May 19, 2016 decision is final and binding and cannot be challenged by the Town through an appeal of the April Determination. Finally, Chippers, Inc. asserts that requiring it to submit a new application for the storage of logs and the processing of firewood on the William A. Russell Jr. Trust property (the “Trust Property”) is inconsistent with the ZBA’s May 19, 2016 decision.

B. Hearing

The Zoning Board of Adjustment held a hearing on the Town’s appeal on June 22, 2017. ZBA members Alan Blackmer, Hunter Ulf, and Shaun Pickett were present. ZBA Member Michael Reese, who is also a member of the Pomfret Selectboard, recused himself from the ZBA for a

conflict of interest. Member Loie Havill has recused herself from this matter for a conflict of interest.

Before the hearing, the Town, through attorney Amanda Lafferty, submitted the *Town of Pomfret's Proposed Findings of Fact and Conclusions of Law*. ZA Bristow submitted a *Response Regarding an Appeal Before the Zoning Board of Adjustment To Be Heard on June 22, 2017*. Chippers, Inc., through attorney Ryan Kane, provided a letter, dated June 20, 2017, presenting its positions regarding the Town's appeal.

Chair Blackmer opened the hearing at 6:35 P.M. Those present and participating in the hearing were ZA Preston Bristow, Selectboard member Michael Reese (representing the Town of Pomfret), attorney Ryan Kane (representing Chippers, Inc.), and attorney James Barlow (counsel to the ZBA). Employee Jason Eaton testified on behalf of Chippers, Inc. Selectboard member Scott Woodward offered testimony on behalf of the Town. Resident John Moore participated to offer his opinion on the matter. Reference is made to the minutes of the hearing for a summary of the testimony offered by the hearing participants.

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 7:40 P.M. The parties were directed to submit any additional written arguments to the ZBA by 5:00 P.M., Tuesday, June 27, 2017. On June 27, 2017 the Town, through attorney Lafferty, submitted a supplemental memorandum. ZA Bristow also submitted a supplemental memorandum.

C. Findings and Decision

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

1. The Town's Standing to Appeal ZA Bristow's April Determination

Chippers, Inc. and ZA Bristow assert that the Town lacks standing to appeal the April Determination. By law, standing to appeal a zoning administrator's decision is only conferred upon interested persons. 24 V.S.A. 4465(a). Interested persons are defined to include, among others, "[t]he municipality that has a plan or bylaw at issue in an appeal..." 24 V.S.A. §4465(b)(2). Together these statutes would give the Pomfret Selectboard (acting on behalf of the Town) the right to appeal the April Determination if the Pomfret Zoning Ordinance is "at issue" in a case. See *Sanbourn v. Town of Essex*, 146 Vt. 419, 420 (1985).

The Vermont Supreme Court has instructed that a zoning ordinance is only "at issue" when the municipality claims that the zoning administrator has exceeded his authority or misconstrued the zoning ordinance. See *Rosetti v. Chittenden County Transportation Authority*, 165 Vt. 61, 66 (1996); *In re 232511 Investments Ltd.*, 2006 VT 27, ¶ 5. If the municipality simply disagrees with the zoning administrator's application of its zoning ordinance, the municipality does not have standing to appeal the zoning administrator's decision, for such an appeal would amount to a challenge to the wisdom of the zoning administrator's decision and invade the zoning administrator's exclusive area of authority. See *Rosetti*, 165 Vt. at 66; *In re 232511 Investments Ltd.*, 2006 VT 27, ¶ 5.

Here, the Selectboard has clearly challenged the authority of ZA Bristow to issue his April Determination. The Selectboard asserts that under the Pomfret Zoning Ordinance, ZA Bristow was required to refer an application to the ZBA for the proposed location for the storage and processing of wood on the Trust property prior to issuing the April Determination. The Selectboard also asserts that the ZBA's May 19, 2016 decision did not give ZA Bristow the authority to issue the April Determination.

The ZBA finds and concludes that the Town, having claimed that ZA Bristow exceeded his authority, is an interested person as defined by 24 V.S.A. §4465(b)(2) and has standing under 24 V.S.A. §4465(a) to bring the present appeal.

2. ZA Bristow's Authority to Issue the April Determination

As set forth above, the Town claims that ZA Bristow exceeded his authority by issuing the April Determination. The essence of the Selectboard's argument is that the ZBA's May 19, 2016 decision, from which ZA Bristow obtained authority to issue the April Determination, is flawed.

As grounds for this claim, the Selectboard first asserts that the ZBA's May 19, 2016 decision should have been limited to that portion of the Trust property on the east side of Pomfret Road.¹ The Selectboard claims that because Pomfret Road subdivided the Trust property into two separate lots, and because Chippers, Inc.'s original application only addressed use of that portion of the Trust property on the east side of Pomfret Road, the ZBA erred in considering storage of logs and processing of firewood on the west side of Pomfret Road without receiving a zoning application for the Trust property on the west side of Pomfret Road.

Next, the Selectboard asserts that the ZBA's May 19, 2016 decision is flawed because the ZBA found that "Chippers is grandfathered for the level of use taking place on [the William A. Russell Jr. Trust property] under the Vermont statute of limitations of 15 years." The Selectboard asserts that Chippers, Inc. cannot be "grandfathered" for use on the west side of Pomfret Road because it stopped using the Trust property on the west side of Pomfret Road for storing logs and processing firewood in 2011 after constructing a greenhouse in the location where such processing and storage had previously occurred.

It was on the basis of its finding of grandfathering that the ZBA restricted any storage of logs and processing of firewood on the west side of Pomfret Road "to a volume and level no greater than was in use in 2001." Having made this finding, the ZBA 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...*for the purpose of implementing this condition* [emphasis added]."

¹ In its June 17th *Proposed Findings of Fact and Conclusions of Law*, the Town refers to the portion of the Trust property on the east side of Pomfret Road as the "Small Parcel" and that portion on the west side as the "Main Parcel." The ZBA notes that the portion of the Trust property on the east side (i.e., the Small Parcel) was conveyed by the William A. Russell Jr. Trust to Hudson Holland. For consistency with its prior decisions, the ZBA will continue to use the "east side" and "west side" distinctions when describing the Trust property.

Under 24 V.S.A. §§4471(a) and 4472(a), exclusive jurisdiction over appeals from zoning board decisions is vested in the Environmental Division of Superior Court. If an interested person fails to appeal a zoning board's decision, the decision is final and not contestable; all interested persons are bound by decisions of the board and "shall not thereafter contest, either directly or indirectly, the decision or act...in any proceeding." 24 V.S.A. §4472(d).

The exclusivity of 24 V.S.A. §4472(d) is strictly enforced "to require that all zoning contests go through administrative and appellate review process in a timely fashion." *In re Ashline*, 175 Vt. 203, 207 (2003). Section 4472(d) applies to preclude untimely challenge to a zoning board decision, even when it is alleged to have been void *ab initio*. *In re Ashline*, at 207; *City of South Burlington v. Dep't. of Corr.*, 171 Vt. 587, 589 (2000) (mem.); *Levy v. Town of St. Albans Zoning Bd. of Adjustment*, 152 Vt. 139, 142 (1989). See also *In re Musty Permit*, 2012 VT 42 ¶ 6 ("Even if the DRB's approval of the subdivision application was ultra vires...the policy of repose imposed by statute and by this Court does not allow appellant to challenge the subdivision approval at the Environmental Division level because he did not appeal the decision to the DRB.")²

On June 7, 2016, Chippers, Inc. appealed the ZBA's May 19, 2016 decision to the Environmental Division. The Selectboard did not appeal the ZBA's May 19, 2016 decision. Chippers, Inc.'s appeal was dismissed, on Chippers, Inc.'s motion, by the Environmental Division on April 11, 2017.

The ZBA finds and concludes that the Town, having failed to appeal the ZBA's May 19, 2016 decision to the Environmental Division, is now barred under 24 V.S.A. §4472(d) from contesting the validity of the May 19, 2016 decision. In that decision, the ZBA held that the Trust property on the west side of Pomfret Road may be used to store logs and process firewood at a volume and level consistent with the use of the property in 2001. Whether the ZBA was correct in making this holding cannot be challenged by the Selectboard in the present appeal.

The ZBA also finds and concludes that, having failed to appeal the May 19, 2016 decision, the Selectboard is barred by 24 V.S.A. §4472(d) from challenging ZA Bristow's authority to issue the April Determination. In its May 19, 2016 decision, the ZBA authorized ZA Bristow to determine

² In its supplemental June 27th Memorandum, the Town cites to *Town of Bennington v. Hanson-Walbridge Funeral Home, Inc.*, 139 Vt. 288 (1981). *Hanson-Walbridge* arose from a zoning enforcement action brought by the Town of Bennington against a funeral home that had obtained a permit to expand its facilities, including operation of a pathological incinerator "on an intermittent basis for disposal of waste products associated with the regular conduct of the funeral home business." *Id* at 291. The funeral home did not disclose to the zoning administrator that the pathological incinerator would also be used to perform cremations. In fact, cremation of bodies on the property was not discussed. *Id* at 291. When Bennington sought to enforce its zoning ordinance against the funeral home for operation of a crematory without a permit, the funeral home asserted that 24 V.S.A. §4472(d) barred enforcement because its permit for the pathological incinerator had not been appealed. *Id* at 292. The Supreme Court held that with respect to operation of a pathological incinerator, 24 V.S.A. §4472(d) applied, noting that "The use applied for and contemplated by the zoning permit must now stand unchallenged." However, judicial review of "the extension of that use to include the cremation of human bodies, either in connection with the funeral business or as an independent service" was not barred by 24 V.S.A. §4472(d). *Id* at 293. Unlike the applicant in *Hanson-Walbridge*, there is no indication that Chippers, Inc. withheld facts from the ZBA regarding storage of logs and processing of firewood on the Trust property, nor that Chippers, Inc. is conducting a use not contemplated by the ZBA's May 19, 2016 decision. In short, *Hanson-Walbridge* does not require the ZBA to reach a different result in this appeal.

the volume and level of storage and disposition of logs and processing of firewood in 2001 on the Trust property on the west side of Pomfret Road for the purpose of implementing this condition. This has been done. If the Town wanted to challenge the ZBA's grant of this authority to ZA Bristow, it was required under 24 V.S.A. §4472(d) to appeal the ZBA's May 19, 2016 decision. The Town cannot challenge ZA Bristow's authority to make this determination through the present appeal.

Finally, having found in its May 19, 2016 decision that Chippers, Inc's use of the Trust property on the west side of Pomfret Road was grandfathered, the ZBA cannot, as the Town argues, require Chippers, Inc. to submit a new application to determine the location for processing of firewood and storage of logs on the west side of Pomfret Road. Requiring a new application would be inconsistent with the May 19, 2016 decision, which is final and binding on the parties.

The Town's appeal is denied.

The Zoning Board of Adjustment approves these Findings and Decision, dated at Pomfret, Vermont this 6 day of ~~June~~ 2017.

JULY,



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.