

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