

**TOWN OF UNDERHILL - DEVELOPMENT REVIEW BOARD****Appeal of Zoning Administrator Decision Regarding the Firewood Processing Operation at 633 Pleasant Valley Road**

May 6, 2024

Memorandum of Appellants

Nicholas Borrell, Heather Sikorsky, Russell Vogel, and Patricia Vogel (“Appellants”) submit this memorandum as a written supplement to their comments at the Underhill Development Review Board’s May 6, 2024 meeting.

Appellants own property at 611 and 612 Pleasant Valley Road in the Mount Mansfield Scenic Preservation District, which was established to “protect the scenic vistas along Pleasant Valley Road.” Underhill Land Use Regs., at 21. Though the District has a “rural character,” Appellants purchased their property with the understanding that Underhill has in place—and enforces—zoning regulations to protect residents’ “individual property rights” as landowners. Underhill Land Use Regs., at 1, 21.

In 2022, Gordon Williamson began a commercial firewood-processing operation at 633 Pleasant Valley Road, effectively right on Appellants’ doorsteps. As Mr. Williamson acknowledged in a submission to the Interim Zoning Administrator, he hauls full-length logs from other locations to the site, where he processes them into firewood using a 48-inch circular saw. Ex. A. This operation is substantial: Mr. Williams processed and sold over 300 cords of firewood last year. *Id.* The cutting and processing of full-length logs generates a very large amount of noise, and it has significantly interfered with Appellants’ use and enjoyment of their property since its commencement.

On October 16, 2023, Russell and Patricia Vogel submitted a complaint to Town Administrator Brad Holden (serving as Underhill’s Interim Zoning Administrator) regarding the firewood-processing facility. The Vogels noted that sawmills were not a permitted use in the Mount Mansfield Scenic Preservation District and also reported that the sound levels from the operation far exceeded the noise standards in the Town’s Unified Land Use and Development Regulations. Mr.

Holden responded with a decision and findings approximately six months later, on April 1, 2024. Mr. Holden's decision acknowledged that Mr. Williamson's operation constituted a "sawmill" under Underhill's Zoning Regulations, which is "not an allowed use in the Mt. Mansfield Scenic Preservation Zoning District." Ex. B, at 3. Nevertheless, he determined that Mr. Williamson's operation was exempt because it qualified as a "forestry operation" under state law. Ex. A, at 6.

This was an error. As briefly explained below, the Interim Zoning Administrator's decision applied the wrong definition of forestry operation. Mr. Williamson's processing of firewood is *not* an exempt forestry operation within the meaning of the relevant laws—and thus his activities fall subject to Underhill's Zoning Regulations, which unambiguously prohibit operating a sawmill in the Mount Mansfield Scenic Preservation District. The Development Review Board should find that the sawmill is not a permitted use and order Mr. Williamson to cease his operation at 633 Pleasant Valley Road immediately.

A. Mr. Williamson's Operation Is Not an Exempt Forestry Operation

It is true that the Vermont Legislature has limited towns' authority to regulate "forestry operations." 24 V.S.A. § 4413(d)(1)(C) (providing that a "municipal bylaw" cannot regulate "forestry operations"). However, that limitation does not extend to any activity that relates in any way to the harvesting and processing of timber. Rather, the law defines "forestry operations" as "activities related to the management of forests," including "a timber harvest" and "the primary processing of forest products of commercial value on a parcel *where the timber harvest occurs*." 24 V.S.A. § 4413(d)(2)(B); 10 V.S.A. § 2602 (emphasis added). It does not apply to processing of forest products harvested elsewhere—otherwise, every sawmill in the state would be exempt from local zoning regulation.

Mr. Williamson's activities do not qualify as a forestry operation because he is processing logs that are hauled in from offsite. The Zoning Administrator acknowledged as much, explaining that forestry operation is limited to "where the timber harvesting [is] occurring." Ex. B, at 3. Mr. Williamson's processing of logs harvested offsite is clearly not an exempt forestry operation.

In determining otherwise, the Zoning Administrator relied on a statute giving persons engaged in "conventional forestry practice" certain protections from nuisance lawsuits. 12 V.S.A. § 5757. That statute, which employs a separate and

significantly broader definition of forestry, is not applicable here. 12 V.S.A. § 5756(4). The sole question in this appeal is whether Mr. Williamson is exempt from Underhill's Zoning regulations, not whether he is entitled to protection from a nuisance lawsuit. Under the applicable definition, Mr. Williamson's processing of timber harvested offsite is not an exempt forestry operation.

B. Mr. Williamson Is Unlawfully Operating a Sawmill in the Mount Mansfield Scenic Preservation District

The application of Underhill's Zoning Regulations to the operation at issue here is straightforward. The Regulations define "sawmill" as any "yard area[] where logs are stored and processed into lumber and other wood products." Underhill Land Use Regs., at 208. The definition does not include "portable chippers and sawmills used in conjunction with active logging operations." *Id.*

Mr. Williamson's activities fall within the core definition of a sawmill. As noted above, Mr. Williamson is not actively logging at 633 Pleasant Valley Road, but rather is hauling and storing full-length logs onsite so he can process them into firewood. Ex. A, at 1; Ex. C. A sawmill is not a permitted use in the Mount Mansfield Scenic Preservation District, and the DRB should issue a decision requiring the unlawful operation to cease. Underhill Land Use Regs., at 8, 21.