

ZONING PERMIT CHALLENGE ALLOWED

The Vermont Supreme Court has held that the decision by a zoning administrator that a sawmill does not violate a land use permit is an appealable decision. *In Re Charlotte Farm & Mills*, Vt. Entry Order No. 2000-007 (Aug. 2, 2001)

In 1998, Charlotte Farm applied for a zoning permit allowing an “agricultural operation” and “forestry.” The permit was issued in February and there was no appeal. In the summer Charlotte Farm began the operation of a portable sawmill business on the site. In November a neighbor asked the zoning administrator (ZA) to determine whether the commercial sawmill activity on the property violated the town’s zoning. The ZA wrote a letter saying that the sawmill operation was “consistent with the permit which I issued for that use.”

In December the neighbor and others appealed the ZA’s decision to the zoning board of adjustment (ZBA). The ZBA ruled that the sawmill operation did violate the zoning bylaws because it was not “forestry.” Charlotte Farm appealed the ZBA decision to the Environmental Court. First it moved for summary judgment based on the argument that neither the ZBA nor the Environmental Court had jurisdiction because the ZA’s letter was not an appealable decision or act of the ZA, as contemplated in 24 V. S. A. § 4464(a). That Court ruled that it did have jurisdiction and that Charlotte Farm was in violation of its permit because it was not authorized to operate a sawmill, which processed logs and other materials brought in from off-site.

This appeal to the Vermont Supreme Court followed. The basis of the appeal was the argument that when the ZA had issued the permit in February and no one appealed within the statutory appeal period, the ZBA and the Environmental Court had no jurisdiction to consider a collateral attack. This argument is based on 24 V.S.A. § 4472 (d), which says that if interested persons fail to appeal from a decision or act of the ZA, they will be forever bound by that decision or act.

The Supreme Court said that the argument had no merit. The permit issued to Charlotte Farm allowed forestry and agricultural operations, not a sawmill. When the neighbors asked the ZA about the sawmill, the ZA responded with a letter, which constituted a separate decision or act, which was appealable under 24 V.S.A. § 4464(a).

In addition, the Court said, nothing precludes an interested person from taking action to ensure compliance with the conditions of a permit or from appealing the ruling of a ZA after the ZA has looked into the matter. It cited several earlier cases pertinent to this ruling.

The point here is that anything that is a *decision or act* of the ZA may be subject to appeal. Just because someone gets a permit, it does not mean that they then have *carte blanche* to do whatever they want on the property. They may still be subject to decisions or acts of the ZA and review by the courts.

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