

Minutes of the  
TOWN OF JOHNSBURG PLANNING BOARD  
August 24, 2015

Meeting called to order by Chairperson Cork Nester at 7:01p.m.

**Roll Call:** showed the following persons present: Cork Nester, Curt Richards, Gretchen Millington, Danae Tucker ZEO, Joann Morehouse Secretary, and ATTY Justin Grassi. Absent: Tim Record **Guests:** Brian Donohue, Jeff Dickinson, David Millington, Pete & Susan Lenseth, Joyce Monthony, Sterling Goodspeed, Dale Monthony, Emmaline Mc Carthy, and Mr.& Mrs. Kulikowski

**Public Hearing: SUB-03-2015-Leslie Clement-Tax Map# 30.-1-68:**

Mrs. Millington made a motion to open the public meeting seconded by Mr. Richards all in favor. Mr. Nester offered to show anyone interested the map. Mr. Lenseth asked for sale price and Mr. Nester said that is not something he can give out, and not something required by the Board. Mr. Lenseth has concerns about Shields Rd. and Mr. Nester said that the property being transferred by Mrs. Clement has a very small amount of footage on Shields Road and it would be very difficult to make a driveway on it due to the topography right there. In addition, there are no plans to try to make an entrance that he knew of and the property owner already has a driveway on Cemetery Road. Mr. Lenseth stated that he has no objection to the property transfer but he would like to have a stipulation put on it that Mrs. Clement use the money from the sale to finish fixing Shields Road as it is her responsibility due to a prior commitment she made from a previous subdivision. Atty Mr. Grassi said that the Board could not do that without some substantial nexus tying it to this sale. Mr. Lenseth would like to have it plowed by the town Mr. Nester said he would have to discuss this with the highway superintendent. Mr. Richards made a motion seconded by Mrs. Millington to close the public hearing all in favor.

**Approval of Minutes:** Mr. Nester asked if everyone had an opportunity to look over the minutes from the July 27, 2015 meeting and everyone said that they had. Mr. Richards made a motion to accept the minutes seconded by Mrs. Millington all in favor.

**OLD BUSINESS: SU-03-2015-Leslie Clement-Tax Map# 30.-1-68:**

Mrs. Clement is transferring 2.66 acres of property to her neighbor Mrs. Duetsch, The Board did part II of the SEQRA form Mr. Richards made a motion to accept the negative declaration seconded by Mrs. Millington all in favor. Mr. Nester suggested that it might be good to condition the signing of the Mylar for this subdivision on the completion of Shields Rd as was done on Mrs. Clément's prior subdivision. Mr. Richards said he was not sure he was comfortable with doing that, when Mrs. Millington was asked she stated she was in the same quandary as Mr. Richards. Mr. Richards felt to put this condition on would make it too difficult for Mrs. Clement to sell the property to her neighbor and that he feels giving Mrs. Clement approval would do more toward getting the road finished. Mr. Richards made a motion to approve the subdivision

without any restrictions seconded by Mrs. Millington, motion passed vote was 2 to 1 with Mr. Nester voting nay.

**NEW BUSINESS: SUB-04-2015-Shawn Post-Tax Map#133.-1-73**

Shawn Post has 98 acres and want to subdivide and sell 73 acres to adjoining property owners Mr. & Mrs. Zarr. Mr. Post has appointed Mr. Goodspeed to represent him in this matter. There is an APA application pending because of the stream running through the property. Mill Creek which runs through the property, will be used as a natural dividing line. Mr. Richards made a motion, seconded by Mrs. Millington to bring it back September 28, 2015 for public hearing all in favor.

**Site Plan Amendment Melissa Freebern-Tax Map#66.10-2-12:**

No one showed up to represent the request.

**ZEO Report:** Mrs. Tucker no report to make. Mrs. Tucker said that she will be meeting with the Town Atty Mr. Fuller on Thursday regarding several different things and she will be making her determination of the 192 Edwards Hill Rd issue before the Planning Board convenes again.

**Privilege of Floor:**

Mr. Donohue spoke about Mr. Pierson's DBA and Mrs. Tucker said that is irrelevant to her determination of whether he needs a site plan review. Mr. Donohue mentioned he had been at the last Town Board meeting and discussed his concerns regarding 192 Edwards Hill Rd. He also asked that his version of a timeline of events pertaining to 192 Edwards Hill Rd from a letter his lawyer put together be entered into the minutes.

**Motion to Adjourn:**

Mr. Richards made motion to adjourn, seconded by Mrs. Millington all in favor.

Respectively submitted:

Joann M. Morehouse

Johnsburg Planning Board Secretary

***Next Planning Board Meeting –Monday, September 28, 2015  
at the Tannery Pond Community Center– 7 p.m.***

1. [U.S.](#)
2. [Bakers Mills, NY](#)
3. [Construction](#)
4. [Logging](#)
5. [Logging Companies](#)
6. [Chad Pierson](#)

## Chad Pierson

*Chad Pierson Logging & Trckg*

Chad Pierson

Bakers Mills, NY 12811 - [View Map](#)

Phone: (518) 251-0186

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[tree-service.homeadvisor.com](http://tree-service.homeadvisor.com)

Chad Pierson

A privately held company in Bakers Mills, NY. *Is this your business? Claim This Profile*

### **More Details for Chad Pierson**

Categorized under Logging Companies. Our records show it was established in 2005 and incorporated in New York. Current estimates show this company has an annual revenue of 590000 and employs a staff of approximately 7.

### **Company Contacts**

*Is this your business? Claim This Profile*

- [Chad Pierson](#)  
President  
[Search for more contacts](#)



FitzGerald Morris  
Baker Firth

Thomas A. Ulasewicz  
tau@fmbf-law.com

October 6, 2014

Certified Mail/Return Receipt

James Townsend, General Counsel  
NYS Adirondack Park Agency  
1133 NYS Route 86  
P.O. Box 99  
Ray Brook, New York 12977

Richard Weber, Deputy Director of  
Regulatory Affairs  
NYS Adirondack Park Agency  
1133 NYS Route 86  
P.O. Box 99  
Ray Brook, New York 12977

Re: Chad W. Pierson  
dba Chad Pierson Logging  
& Chad Pierson Logging and Trucking  
Jurisdiction Determination J2010-420 and J2010-420A  
Enforcement File E2014-0053  
Tax Map Parcel 116.1-1-32 (earlier APA documents refer to this # as 40-1-1)  
Town of Johnsburg, Warren County

Dear Gentlemen:

This firm represents Brian Donohue whose wife owns property adjacent to the parcel identified above and owned by Chad Pierson. It is the position of Mr. Donohue that the logging and trucking activities conducted by Mr. Pierson at 192 Edwards Hill Road, Town of Johnsburg, Warren County is a commercial activity subject to APA jurisdiction as a Class A regional project. In addition, it appears that "Chad Pierson logging" and "Chad Pierson Logging Trucking" are in violation of the Town of Johnsburg Land Use Zoning Ordinance for not getting site plan review approval for a "home-based business."<sup>1</sup> Furthermore, Mr. Donohue is of the opinion that APA staff are relying on misleading and contradictory information being provided to them by Mr. Pierson. This letter is intended to convince you that a serious violation of the APA Act continues to go on at the Pierson property and that the site needs to be brought into full compliance with the applicable laws administered by the APA.

<sup>1</sup> The Town of Johnsburg has an APA approved local land use program.

### FACTS

Mr. Pierson bought this residential property (hereinafter "Pierson parcel") by deed dated October 30, 2001. The street address of this parcel is 192 Edwards Hill Road, Johnsburg, N.Y. 12843.<sup>2</sup> He since then has apparently rented a post office box with the address "P.O. Box 29, Baker Mills, N.Y. 12811." The residence on the Pierson parcel was constructed in 1972 with a one car garage attached to the house having been added in 1978. The Pierson parcel is 1.67 acres in size (non-shoreline) and is located in a Rural Use land use area on the Adirondack Park Land Use and Development Plan map.

The Agency received a Jurisdictional Inquire Form ("JIF") dated June 17, 2010 from Mr. Pierson (attached hereto as **ATTACHMENT 2**). That document describes the proposed project as:

"Construction of a commercial, industrial or public building resulting in 5400 square feet of floor space (total of all floors)."

Question no. 10 of the JIF instructs the inquirer: "Your sketch should show the size and type of vegetation to be removed relative to the size and type which will remain." Mr. Pierson's "sketch map" not only failed to do this, it also failed to comply with almost all of the sketch map requirements set forth at "E" of the JIF.<sup>3</sup> Upon information and belief, Mr. Pierson has largely, if not entirely, denuded the project site of all trees and other vegetation. (Pictures of the site are attached as **ATTACHMENT 3**)

On July 14, 2010, APA Project Administrator Rita Quinn replied to the Pierson JIF essentially stating:

"A permit is required from the Agency for the project proposed...  
... Pursuant to §810 of the Adirondack Park Agency Act, the construction of a new commercial use in excess of 2500 square feet in size constitutes a Class A regional project, and requires an Agency permit as such.

Although the Town of Johnsburg administers an Agency-approved local land use program, the Adirondack Park Agency retains its authority over Class A regional projects, wetlands projects and rivers projects, and incorporates local regulations and consults with the local planning board in its review of these projects."  
(complete letter attached hereto as **ATTACHMENT 4**)

On July 23, 2010, Mr. Pierson wrote to Rita Quinn essentially stating:

"I understand that in Part D of the JIF, I incorrectly indicated that the proposed structure was a commercial building. I now understand that my characterization of the building as a commercial use structure, was a mistake. **Please be advised that I intend on using the structure solely for storage of my personal vehicles and property**; I will not be using the building for a "commercial use" as that term is used in the Adirondack Park Agency Act."

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<sup>2</sup> The "Recording Sheet" and deed are attached hereto as **ATTACHMENT 1**.

<sup>3</sup> Mr. Pierson's sketch map is the last page of the JIF at Attachment 2.

(emphasis added; complete letter attached as **ATTACHMENT 5**)

On July 30, 2010 Rita Quinn responded to Mr. Pierson's July 23, 2010 letter and concluded:

"In your letter dated July 23<sup>rd</sup>, received by facsimile on July 26<sup>th</sup>, you confirmed that the information provided on the Jurisdictional Inquiry Form on which J2010-420 was based is incorrect.

We can now advise that the proposed project as described in the materials submitted does not require a permit from this Agency, **provided the facts submitted are accurate and complete, and provided there is compliance with the restrictions below.**" (emphasis added)

The Quinn letter went on to say (pg. 2, para. 4 under "Description"):

"You propose to construct a 5400± square foot detached garage, to be located as shown on the sketch map submitted with your Jurisdictional Inquiry Form. You confirmed that **the proposed garage will be for your personal use only and you will not conduct any commercial activity associated with the proposed garage.** Thus **the proposed garage is an accessory structure to the existing single-family dwelling** and not a commercial use as previously indicated... If any of the above is incorrect, please contact the Agency as a different determination could result."

(emphasis added; a complete copy of the Quinn letter is attached as **ATTACHMENT 6**)

By letter dated May 22, 2014, APA Environmental Program Specialist Fritz Aldinger advised Mr. Pierson that staff had commenced an investigation on his property ("192 Edwards Hill Road, Town of Johnsburg, Warren County") as follows: "Wetland fill without the necessary Adirondack Park Agency Permit." (letter attached as **ATTACHMENT 7**)

By letter dated June 12, 2014, APA Environmental Program Specialist 2 John Burth wrote to Mr. Pierson recommending site work to be completed "in order to avoid further enforcement action related to this matter." Then, Mr. Burth went on to advise Mr. Pierson:

"As also discussed with staff, **it appears the garage currently constitutes a forestry use structure as that term is defined under the Adirondack Park Agency Act.** Accordingly, continued use of the structure for storage and maintenance of vehicles and equipment **related to your logging business** will not require an Agency permit. However, please note that any change in use of the structure may require Agency review."

(emphasis added; a complete copy of Mr. Burth's letter is attached as **ATTACHMENT 8**)

The enforcement matter was apparently closed by letter from John Burth to Mr. Pierson dated July 14, 2014. (Attached hereto as **ATTACHMENT 9**)

On July 1, 2014, Danae Tucker, the Zoning Enforcement Officer for the Town of Johnsbury wrote to Mr. Pierson stating:

"I have received a copy of the letter determining the Adirondack Park Agency classification of your garage as a forestry use structure. As I noted during the site visit for the purpose of the Town of Johnsbury your business would be classified as a home based business with vehicles and equipment which is a permitted use only after review and approval by the Planning Board.

Enclosed please find the site plan application. The planning board will meet on July 28, 2014. We need your application in by July 22, 2014."

On August 26, 2014, Mrs. Tucker advised my client by electronic mail:

"Mr. Pierson disagrees with my determination and does not feel he needs to submit site plan to the planning board. He has the right to appeal my determination to the Zoning Board of Appeals who's next meeting is September 8th due to the first Monday in September being a holiday. If he does not appear at the ZBA meeting or reach out to myself or Shannon (PB Secretary) to be placed on the Planning Board agenda for site plan review my next step would be to issue a notice of violation to him."

(Both Mrs. Tucker's July 1, 2014 letter and the August 26, 2014 e-mail are attached hereto as **ATTACHMENT 10**)

Recently, my office contracted for a search of corporate records at the NYS Department of State and business certificates at the Warren County Clerk's office and discovered that Mr. Pierson filed a Certificate of Conducting Business under an Assumed Name with Warren County dated March 26, 1999. We were advised by Colby Attorneys Service Co., Inc., who did the search, that Mr. Pierson has not filed any amendments or discontinuance with the County which means the company is still active. (See **ATTACHMENT 11**) Mr. Pierson bought the 192 Edwards Hill Road property approximately 2 ½ years later.

Finally, we "googled" Chad Pierson Logging (the logo on his trucks) and received several pages documenting the business. This information identifies Chad Pierson Logging being registered with the U.S. Department of Transportation #1581899. Chad Pierson Logging is also doing business under the name "Chad Pierson Logging and Trucking." Both names appear to be licensed as an "Intrastate Non-Hazmat Carrier." [TruckDriver.com](http://TruckDriver.com) shows the trucking company operating out of 192 Edwards Hill Road, Bakers Mill, N.Y. 12811 with a phone number and fax number of 518-251-0186. [It is worth noting that this phone number is the same number Mr. Pierson listed on the 6/17/10 the APA JIF. (see Attachment 2. Page 1)] The "cargo types" for this trucking company are listed as "logs, poles, beams, lumber." The statistics for Mr. Pierson's trucking company are "from the U.S. Department of Transportation public records effective date 10/6/2013." (This googled information is attached hereto as **ATTACHMENT 12.**)

I was notified on October 2, 2014 by Johnsburg Zoning Enforcement Officer Tucker that she has issued a Notice of Violation<sup>4</sup> to Mr. Pierson and discussed the matter over the phone after Mr. Pierson was served. She has not yet received anything in writing or a completed site plan application from Mr. Pierson. (See ATTACHMENT 13)

### ISSUE

Is Mr. Pierson, doing business as Chad Pierson Logging aka Chad Pierson Logging and Trucking, undertaking a commercial use at his residential property (192 Edwards Hill Road, Baker Mills, N.Y.) requiring a permit from the Adirondack Park Agency as a Class A regional project?

### LEGAL ANALYSIS

“Commercial use” is defined in the APA Act as:

“any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee other than any such uses specifically listed on any of the classification of compatible uses lists.” [§802.17]

According to the information I have provided herein, Chad Pierson Logging and Chad Pierson Logging and Trucking sell goods in the form of logs, poles, beams & lumber (see Attachment 12). These two companies also distribute goods and services through their intrastate carrier registration for trucking operations (also see Attachment 12). Upon information and belief, all of these operations are being conducted out of 192 Edwards Hill Road, Bakers Mills (Town of Johnsburg). 192 Edwards Hill Road has an APA pre-existing single family dwelling and a 5400 square foot commercial building on its 1.67 acres of designated Rural use land. These commercial operations are clearly being run out of the 5400 square foot “garage” and, quite possibly to a much more limited extent, the residence.

In the second Rita Quinn jurisdictional determination (Attachment 6) where she determined no permit was required for the 5400 sf structure, Mrs. Quinn based her determination on the following:

“You confirmed that the proposed garage will be for your personal use only and you will not conduct any commercial activity associated with the proposed garage. Thus the proposed garage is an accessory structure to the existing single-family dwelling and not a commercial use as previously indicated.”

“Accessory structure” is defined in the APA Act as:

“any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development,

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<sup>4</sup> I have filed a Freedom of Information Law request for a copy of the Notice of Violation and any other associated documents.



including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling.” [§802.5]

This 5400 sf structure with logging equipment, trucking equipment, over 2000 gallons of stored diesel fuel,<sup>5</sup> advertising on the outside doors of trucking equipment and much more are hardly “customarily incidental and subordinate to a principal land use such as a single family dwelling. Mr. Pierson’s overtures to Mrs. Quinn in his July 23, 2010 letter to her (Attachment 5), i.e., “Please be advised that I intend on using the structure solely for storage of my personal vehicles and property; I will not be using the building for a ‘commercial use’ as that term is used in the Adirondack Park Agency”, are no longer the case, if they ever were. The building is not being used “solely for storage” AND has nothing to do with “personal vehicles and property” since he is registered in Warren County to do business pursuant to a Certificate of Conducting Business under an Assumed Name (see Attachment 11).

In John Burth’s June 12, 2014 letter to Mr. Pierson (Attachment 8), he states:

“it appears the garage currently constitutes a forestry use structure as that term is defined under the Adirondack Park Agency Act.”

You cannot determine that a structure is a “forestry use structure” unless you first determine that, in fact, a forestry use is occurring.

“Forestry use” is defined in the APA Act as:

**“any management including logging of a forest, woodland or plantation and related research and educational activities, including the construction, alteration or maintenance of woodroads, skidways, landings, fences and forest drainage systems.”** (emphasis added; §802.21)

“Forestry use structure” is defined in the APA Act as:

**“any barn, shed, garage, research, educational or administrative building or cabin directly and customarily associated with forestry use.”** (§802.22)

First, there is no evidence that Chad Pierson Logging or Chad Pierson Logging and Trucking are involved in the management of a forest, woodland or plantation. We know that 192 Edwards Hill Road is not a forest, woodland or plantation.

Second, if there is no established “forestry use,” you cannot have a “forestry use structure.”

Third, it is apparent that Chad Pierson Logging and Chad Pierson Logging and Trucking use their 5400 sf structure for other commercial purposes such as the sale of goods (logs, poles, beams & timber) AND the distribution of goods and services through their trucking operations. (see Attachment 12)

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<sup>5</sup> It is our understanding that DEC is investigating a potential violation of its Bulk Petroleum Storage laws and regulations in this regard. Should this site be considered a Petroleum Bulk Storage area, this too is indicative of commercial use and certainly not customarily incidental and subordinate to the principal land use, i.e., a single family dwelling.

### CONCLUSION

Mr. Pierson is conducting a commercial business doing business as Chad Pierson Logging also known as Chad Pierson Logging & Trucking. His business is registered with the U.S. Department of Transportation. He has filed a Certificate of Conducting Business with the Warren County Clerk. He advertises his business. He has employees. He has over 2000 gallons of diesel on the site plus a large assortment of trucks and other equipment.

Mr. Pierson's commercial activities at 192 Edwards Hill Road are not customarily incidental and subordinate to the residential principal use associated with that parcel since 1972.

There is no evidence that Mr. Pierson manages a forest, woodland or plantation. Therefore, he does not appear to be undertaking of forestry use as that term is defined in the APA Act. Furthermore, he is conducting a trucking business out of 192 Edwards Hill Road and is therefore involved with a commercial business in a Rural land use area.

Finally, the Town of Johnsbury Zoning Enforcement Officer has determined that Mr. Pierson is conducting a home-based business on his 192 Edwards Hill Road parcel and has cited Mr. Pierson with a Notice of Violation.

Some of the adverse impacts associated with this unregulated commercial business include:

- For parking room, Mr. Pierson has filled road side ditches and natural drainage areas with run of bank fill, tires & old structures/debris;
- For all practical purposes he has removed all natural vegetation on the site and brought in substantial fill which have significantly changed land contours resulting in unstable steep and eroding easterly slopes;
- The 5400 sf "garage" has an impermeable roof surface, resulting in intensified storm water effects onto inadequate erosion control measures.
- When one considers such impermeable surfaces as the 5400 sf new "garage" roof, the house roof, the paved driveway and shed roofs, over 10% of the Pierson property acts as a stormwater funnel that channels water onto neighboring property;
- Given the massive removal of natural vegetation combined with the sandy areas used as parking lots, unimpeded channel water is flowing down the road to the low land beaver flow pond area to the east of Edwards Hill road; and
- the filling of ditches and creation of a substantial driveway have caused stormwater to flow onto the east side of Edwards Hill Road causing the undercutting of road pavement.

The immediate issues that need to be addressed through the regulatory permitting process include:

- stormwater retention ponds sized to hold stormwater for all structures on this 1.67 acre site, including the home's paved driveway;
- Spill plan/safety measures in place for all diesel fuel stored on the site, including storage in one designated area away from culverts directed at neighboring property;
- Replant/maintain water absorbing, soil stabilizing ground cover;
- Remove unused septic tank from site, until an engineered septic plan is in place;
- provide designated areas for snow storage on the property; and
- when cleaning off any petroleum-based materials on active equipment, it should be done at a different site OR ground water testing wells need to be installed with biannual reports provided to all regulatory agencies and neighbors.

It is respectfully requested that the Agency immediately commence investigation of this matter resulting in a determination that Mr. Pierson is conducting a commercial business in a Rural land use area and therefore needs a Class A regional permit pursuant to the APA Act. If Mr. Pierson fails to timely cooperate in this determination, the Agency must exercise its authority to issue a cease and desist order. In addition, the Agency should implement its interagency notice and coordinated review policy with both the NYS Departments of Environmental Conservation and Health.

My client looks forward to a favorable response from your offices with regard to this unfortunate, yet self-perpetuated, situation.

Sincerely,



Thomas A. Ulasewicz  
*Signed Electronically*

TAU/v

cc: Danae Tucker, Town of Johnsburg Zoning  
Enforcement Officer w/attachments (via reg. mail)  
Brian Donohue w/attachments (via reg. mail)