

ZBA Testimony Re: Pratt/Dennison Schist Mine Proposal

At first blush the notion of a schist mine in a conservation zone sounds absurd; further consideration only strengthens this initial impression.

The town plan reads in pertinent part: "The Conservation District shall be used for agriculture, forestry, open space conservation, strict resource management, recreation, hunting, and residential... dwellings." The list of activities allowed in the conservation zone is affirmative, unambiguous, and exclusive. What's listed is allowed. What's not listed is not allowed. Therefore it is irrelevant the plan does not specifically state that schist mining is not allowed. Likewise it doesn't specifically state that there will be no nuclear power plants built in the conservation district. But neither has to be singled out for the plan to be perfectly clear that neither is allowed in the conservation district.

The zoning regulations, on the other hand, are arguably somewhat ambiguous, though a common sense reading of the regulations in their entirety clearly augurs against the proposed schist mine in the conservation district. Halifax is divided into three districts for zoning purposes. The village district is the least protected from industrial and commercial use, followed by the rural residential district, and finally the conservation district which as the name implies is by far the most restricted. Conditional uses in the rural residential district and village district are numerous, by way of example they both include light industry, farm supply or nursery, and mini-storage. None of these conditional uses are allowed in the conservation district. Common sense dictates that if a nursery or mini storage facility is considered too obtrusive or otherwise inappropriate to even be considered for the conservation district than surely a schist mine has no place there either.

The thinnest thread on which the schist mine proposal arguably merits any consideration whatsoever as a conditional use stems from the definition of resource industry, which is listed as a conditional use in all 3 districts, inexplicably contains the clause "includes earth and mineral extraction" hobbled on at the end of the definition on page 47. But both the village district and the rural residential district sections of the zoning ordinance seem to ignore this added on clause because they both list earth and mineral extraction as a conditional use separate from and in addition to resource industry. Thus the intent to consider earth and mineral extraction in those two districts as a conditional use is unambiguous. On the other hand, the conservation district section lists only resource industry, and does not list earth and mineral extraction separately. Clearly there is no specific intent to include earth and mineral extraction as a conditional use in the conservation district. Consistent with the town plan, and a common sense reading of the zoning plan in its entirety, the conservation district section would seem to be limiting resource industry to forestry and agriculture.

At a previous Act 250 hearing the lawyer for the schist mine proposal pointed out that a schist mine can only be located where schist is actually found, as if this meant that the mining industry was somehow deserving of special consideration. A dam can only be built on water but that doesn't mean that every place where running water is found should be dammed, though, in fact, there was a time in our history when this appeared to be not far from the case. But modernly dam construction has nearly come to a halt in the United States and, in fact, for a host of environmental reasons the clear trend is to dismantle

them. The town plan acknowledges the existence of schist in Halifax, but it doesn't endorse the mining of schist, though it quite clearly endorses the mining of gravel and goes so far as to state that the town should consider buying a gravel pit if an appropriate one could be found. There clearly are substances that might be mined from the ground that produce a public good that need to be weighed against the environmental impact. Schist is not one of them. If not another ounce of schist were ever mined on the face of the earth the Public Good would not be impacted one bit.

Surely it's indisputable that a schist mine in a conservation zone would have an adverse effect on its surroundings in terms of natural beauty, aesthetics, and open space. But in accordance with the Quechee test, an adverse effect alone is insufficient for criterion 8 purposes. One must ask if the adverse effect is undue. There are several tests utilized to determine if the effect is undue. Does it, for instance, violate a clear, written community standard intended to preserve the aesthetics or natural beauty of the area? In the case of the Halifax town plan, the answer is yes as discussed above.

More specifically, the Halifax town plan, for instance, can be distinguished from the Barre town plan found inadequate in the Barre case of 1994 (Re: Town of Barre, #5W1167-EB) because the Halifax town plan is affirmative and specific as to different sections of the town, unlike the Barre plan, a generalized aspirational plan "encouraging" aesthetics and preservation of natural areas for the "community at large." The Halifax town plan more closely resembles the Pittsford zoning ordinance upheld in the 1996 case (Re: Mirkwood Group and Barry Randall, #1R0780-EB) in which "a proposed radio tower was located within a conservation district and the ordinance contained a clear statement of the community policy against use of conservation district lands for anything other than dwellings, forestry and agriculture."

Although this in and of itself is sufficient to lead the commission to conclude that the proposed project does not comport with the aesthetic and natural beauty of the area, the fact is that the proposal arguably falls short under both the other two Quechee tests, that independently disqualify the proposal under criteria 8, namely, that the project is so out of character with its surroundings ...as to be offensive or shocking to the average person, and finally that the applicant "has failed to take generally available steps which a reasonable person would take to improve the harmony of the project with its surroundings" such as radically curtailing the project in terms of scale and methods of operation.

Although there is little doubt that the schist mine proposal meets the Quechee test, the truth is that applying a schist mine proposal in a conservation zone to the Quechee test is a bit like putting a square peg in a round hole. It's not that it doesn't meet the test. It's that it meets the test and then some. There is a deeper and richer aesthetic value at stake here that deserves recognition and respect that far surpasses the aesthetic value of being protected from merely bad taste.

Halifax is a typical small town in that there is no shortage of things to argue over. I wouldn't be Vermont if that wasn't the case. But what's held Halifax together is love and appreciation of our natural environment. That is what attracts new people to Halifax. That is why those born here stay. In effect Halifax has been all about sustainability, long before the word was popularized, and the fact is a schist

mine, plans, ordinances and studies notwithstanding, is wholly inconsistent with this shared, if not often articulated, "aesthetic" value.

The notion that the proposed mine is not a threat because it is in the midst of a relatively large tract of land is problematic for a number of reasons. It is well documented that the public believes in preserving certain discrete natural wonders located in remote regions such as northernmost Alaska despite the fact that few will ever have the opportunity to view such sites themselves. They support these efforts not for themselves, but for the sake of future generations because they think it's the right thing to do. It strikes me that if this is the case, the corollary is probably true as well, that it is worth protecting areas from environmental disruption in our own backyard, even if the disruption occurs on private property, largely hidden from view. Thus even if the operation of the proposed schist mine did not make noise that disturbed its neighbors, or produce dust that irritated the eye and lungs, or produced water run-off that threatened to pollute the streams, or utilized heavy trucks that degraded the roads, the schist mine would still violate an environmental sustainability aesthetic, not to mention that formerly hidden scarred environments rarely stay hidden in perpetuity.

Perhaps the most fundamental environmental precept of modern day environmentalism is that of internalizing externalities, the notion that the reason we have pollution to the extent we do is because private parties have not been forced to internalize (pay for) the externalities (damage from pollution they've caused). The prototypical example is coal powered electric plants which produces toxic substances (pollutes) that make people sick, but the companies don't have to pay the medical bills, the faultless individuals who get sick do. But if the electric power company paid the true cost of burning the coal, including paying for the medical bills from those who have gotten sick, coal would not be an economic way of producing energy. The same is true of the proposed schist mine. It profits a few while the true cost is paid in countless ways, large and small by the many. If the public were to be properly compensated for the losses resulting from the schist mine the schist mine would not make economic sense.

Another fundamental precept of environmentalism is that pristine areas deserve special protection. The Clean Air Act (CAA) might have set its sights on cleaning the air of America's most blighted cities like Los Angeles and New York and the heck with everywhere else. In other words we might have had a system where the whole country was set to one ambient standard, no place would be utterly filthy, but on the other hand, no place would particularly clean. Under this system a coal powered utility might have been allowed next to the Grand Canyon and still be able to meet ambient air standards. But that's not the course the CAA took. Instead pristine areas were held to a higher standard. It was as if a cocoon was wrapped around them giving them immunity from industrial pollution of any kind.

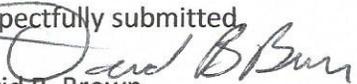
But you might argue that Halifax is a pleasant enough place, but the Grand Canyon it's not. In fact I'd argue it's more not less than the Grand Canyon, for it's not just an environmental wonder for tourists to gawk at and then go on their merry way, it's part of a vibrant living community that sustains locals and tourists alike in one seamless web of interconnectedness. There is growing recognition among our neighbors that what we have is unique and must be preserved. Last summer the Massachusetts town of Leyden, bordering Guilford to the south, put a landscape scale amount of property in trust (Leyden

Working Farm and Forest Conservation Partnership) to preserve the last farm in the town and to protect the waterways that provide the drinking water for Greenfield. Locavore agriculture where meat, dairy, and vegetables come not from a chain store but from our neighbors is thriving in the area. Tourists travel the back roads, and they expect the back roads to be free from congestion and danger; they're heavily invested in the Vermont brand, and the last thing they want to come across is any indication of industry that reminds them of what they came here to get away from.

When my parents bought their vacation home in Halifax some 35 years ago they recognized it as a special place, as did I. However, over the years one can come to take nearly anything for granted. A few years ago a neighbor recently from Massachusetts told me how remarkable he thought it was it was to discover a town with so much open space and wildlife within 3 1/2 hours of Manhattan and two hours of Boston. As time goes by I'm reminded that what was merely special 35 years ago is today precious and rare.

The peace of mind of living in an area where when you turn on the water faucet not for a second do you have to wonder whether or not it might be unsafe because there simply is no upstream industry present that could possibly have polluted it, is priceless. Halifax has no police force to speak of, few of its roads are paved, its entire way of life would be deemed completely foreign to 99% of the American public. On the other hand, Halifax is not a museum, it has changed over the years, and will change in future years, but for over 200 years it has been true to an aesthetic of sustainability. A schist mine in its most pristine part would not just be absurd it would tragically mark the beginning of the end to an endangered way of life.

Respectfully submitted


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