

The Daily Gazette

Tuesday, December 8, 2015

<http://www.dailygazette.com/>
See HTML Version of article

Judge rules for Dolomite over town of Ballston

By Stephen Williams



Work crews from Callanan Industries build sidewalks in Schenectady in 2010. Dolomite is a division of Callanan.

A state Supreme Court judge has ruled in favor of Dolomite Products in a lawsuit against the town of Ballston over efforts to block the company's planned asphalt-batching plant at the Curtis Lumber Industrial Park.

Judge Robert Chauvin found that the town of Ballston unnecessarily has delayed Dolomite, which first applied for project approval in 2011, and those delays mean that a restrictive 2014 industrial zoning law doesn't apply to the controversial application.

The town "clearly engaged in an ongoing course of actions that inordinately delayed the application of (Dolomite) and effectively prohibited (Dolomite) from initiating the project," Chauvin wrote in the Dec. 1 decision.

The ruling came in the second lawsuit that Dolomite has filed against the town of Ballston, seeking judicial support for its position.

The current lawsuit was filed in 2014 after the Ballston Town Board passed a new law limiting uses in the town's industrial zone to "light industry." That law was passed after an earlier court ruling annulled a similar 2013 law on procedural grounds.

Also in 2014, Dolomite sought a Zoning Board of Appeals ruling that the project constituted an "improvement" to the Curtis property, rather than being a "use" governed by zoning law. But the ZBA that August found Dolomite's plan should be considered a "use," subject to the new zoning law.

Chauvin ruled the ZBA decision was "arbitrary and capricious" and annulled it.

The town is still deciding how to respond to the decision.

The Ballston Town Board was to enter executive session with its attorney tonight to discuss its options.

"It's not the outcome we were looking for," Town Supervisor Patrick Ziegler said.

The Dolomite application has been controversial since it was filed in 2011, with several people who live near the Curtis Industrial Park concerned about the traffic and health impacts the plant could have.

Dolomite contends that the public opposition led directly to the town board's efforts to change the allowed uses in the town's industrial area to block the plant, and it has the right to move forward with its plans.

"We've always contended we were a permitted use," said Adam Schultz of Couch White, the law firm representing Dolomite, a division of Schenectady's Callanan Industries, which supplies paving materials and construction services.

If the court decision stands, the only approval Dolomite will need will be site-plan review from the town Planning Board, which has reviewed the plans off and on for years, postponing action because of the pending court cases.

"The Planning Board has been moving in fits and starts, and we expect to conclude with them in the next one or two months," Schultz said.

A separate lawsuit in which Dolomite alleged its civil rights were violated remains pending in federal court in Albany.

Reach Gazette reporter Stephen Williams at 395-3086, swilliams@dailygazette.net or [@gazettesteve](https://twitter.com/gazettesteve) on Twitter.