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NYS Supreme Court Chooses Dolomite over Ballston

DECEMBER 11, 2015 BY [BALLSTON JOURNAL](#) — [2 COMMENTS](#)

BALLSTON — New York State Supreme Court has ruled, for the second time, in favor of The Dolomite Group who has been battling with the Town of Ballston. The business submitted an application three years ago to build an asphalt mixing plant in the Curtis Industrial Park on Route 67.

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"Earlier this month, Judge Robert Chauvin ruled that the 2014 law does not apply to the pending Dolomite proposal because the town "clearly engaged in an ongoing course of action which inordinately delayed the application ... and effectively prohibited" Dolomite from proceeding with its project prior to the adoption of the law," stated a press release submitted on behalf of Dolomite.

It continued, "The "salient inquiry," Judge Chauvin wrote, "is whether the officials willfully withheld and refused to issue a permit and mislead and hindered the applicant in obtaining such permit in time to engage in the project and thereby obtain a vested interest" before the law was passed. The answer, he ruled, was yes".

Dolomite claims to have spent more than \$800,000 since 2011 in their effort to build a plant at the Curtis Industrial Park. The sister company of Callanan Industries supplies concrete, aggregate and asphalt throughout upstate New York and western Massachusetts. The proposed plant would serve Southern Saratoga County and be able to produce up to 200 tons of asphalt per hour.

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Dolomite submitted its application for the plant in 2011 at a time when asphalt plants were allowed in the park under town zoning. While the application was under review, in 2013, the town enacted a local law expressly prohibiting such plants. The law was nullified by the Supreme Court in July, 2014 on procedural grounds. The town then passed a new local law, again expressly prohibiting asphalt plants, in September, 2014.

The company has been steadfast with their claims related to the 2006 town master plan allowing industrial uses at the Curtis Industrial Park is still valid. Additionally, they've said the decision to "spot zone" in 2014 was adopted improperly and outside of acceptable legal procedures.

"While this is obviously not the outcome we would have liked, we are pleased that the Local Law we passed in 2014 limiting heavy industry in the Town still stands. This was a law supported by the vast majority of Town residents and I

remain supportive of that zoning change as well. As for the Town's response, we are awaiting a full report from counsel in regard to the decision and our options prior to making any definitive statements in regard to a possible appeal," said Town Supervisor Patrick Ziegler.

Adam Schultz of Couch White LLP, attorney for Dolomite told the Ballston Journal Online the federal case against Councilman William Goslin and against the Town Board is still pending. This ruling means the Company can proceed with site plan approval, expected from the Ballston Planning Board "in the next few months".

"Councilman Goslin was indeed named personally but in the federal suit which is still pending. The impact this decision and our response will have on the federal case remains to be seen," said Ziegler.

Have you been following this case? Are you a Ballston resident and worried about what this may cost you in the end? Tell us by logging in and posting below.