

VI. VISUAL AESTHETICS, SCENIC BEAUTY

A. Proposed Findings of Fact Regarding Visual Aesthetics and Scenic Beauty

509. David Raphael testified before the Court. Mr. Raphael constantly has the issue of compatible land uses come up in his work as a land use planner. The goal of land use planning is to group compatible uses and segregate incompatible uses.
510. A proposed use is incompatible with existing uses if the proposed use will adversely affect an existing use.
511. A proposed activity adversely affects neighboring properties and uses if it does not fit with existing uses or interferes with existing uses.
512. In order to determine if the proposed quarry would be in harmony with its surroundings, the Court must first determine what those surroundings are. If the proposed quarry would be surrounded by existing quarries, it would be easier to show harmony with surrounding uses. If the quarry will impact nearby residential and recreational uses, it would be much harder to demonstrate harmony with its surroundings.
513. The surrounding properties and land uses in this case include two significant equestrian facilities owned by the McMullin and Sainsbury families, with their associated residences, barns, working landscapes, and trail networks. There are 16 other rural

residences within a half-mile radius of the proposed quarry site and another 28 within a mile of the site. The area sees moderate to heavy recreational use from bikers and other recreational users of Route 100B and people who enjoy the Mad River for swimming, fishing, and canoeing.

514. It might be possible for a small-scale “Mom and Pop” gravel pit that is hidden, quiet and reclaimed after operations are concluded to be in harmony with these surrounding uses, especially if such a gravel pit did not involve blasting. If the neighbors don’t see it, and aren’t impacted by it, then it would possibly fit with the surrounding uses. The quarry proposed by Rivers, however, is not at all in harmony with the surrounding properties and uses because of the noise, the visual impact, the inherent danger of blasting and the increased traffic.

515. The proposed quarry will adversely affect the character of this residential area by changing its peaceful soundscape into an awful din of industrial noises. Neighbors and persons who live, walk or bicycle along the Moretown Common Road will clearly hear truck engines going up and down the access road and accelerating onto Route 100B. They will also hear the clang of metal on metal as the empty truck beds pound upon the truck frames going up the access road and the startling crash of stone on metal as the trucks are loaded and whenever the excavator bucket or backhoe hits rock. Screeching back-up beepers from the trucks will be clearly audible. The hissing of “jake brakes” and grinding of gears will become common sounds in this part of the valley and in town. The loud rumble from the crusher will carry over the neighboring properties and across the valley, as will the industrial sounds of drilling and blasting. The bang and clang of heavy

trucks and machinery and the roar and boom of drilling and blasting are out of character with the existing soundscape and will be impossible to ignore.

516. The proposed quarry would negatively affect the Neighbors in both general and specific ways.

First, the proposed quarry would transform the existing rural residential neighborhood into an industrial area. There is not presently any industrial noise or activity in this part of the valley. This is not a situation where a proposed industrial use would be slotted in among other industrial uses. The noise, vibrations, dust and traffic generated by the proposed quarry will drastically alter the way neighboring property owners perceive their surroundings.

Second, more specifically, the quarry, if permitted, will interfere with the typical land uses that the Neighbors make of their land by making those uses less enjoyable. For example, the repeated and recurring industrial noise of the quarry will disturb and disrupt common summertime residential activities including barbecues, picnics, sitting on the deck, walking in the woods or along the river, reading a book or napping in a hammock.

517. The Applicant's expert, T.J. Boyle, conducted a visual impact assessment only. Other aspects of aesthetics were not analyzed. (T.J. Boyle testimony on February 19, 2008, R-8, David Raphael testimony on February 20, 2008 and N-7)
518. The Applicant's expert, T. J. Boyle, did not read any of the Applicant's other expert's reports before producing his report and reaching his conclusions, nor had he read them prior to testifying. (T.J. Boyle cross exam by Geoff Hand)
519. The Applicant's expert, T.J. Boyle, did not analyze horizontal view impact. (R-8)

520. The Applicant's expert, T.J. Boyle, did not analyze recreational use impact. (T.J. Boyle testimony on February 19, 2008, R-8, N-7 and David Raphael February 20, 2008 testimony)
521. Applicant's expert T. J. Boyle admitted under cross exam that he had not considered any aesthetic category other than visual. He admitted that aesthetics involve all of the human senses. (T.J. Boyle cross exam by Geoff Hand)
522. The Applicant's expert, T.J. Boyle, did not conduct a worse-case scenario analysis (e.g., if trees around quarry would be lost). (T.J. Boyle testimony on February 19, 2008, R-8, David Raphael testimony on February 20, 2008 and N-7)
523. The Route 100B corridor is visually sensitive land. (David Raphael testimony February 20, 2008)
524. The extensive landscape alteration associated with the proposed quarry will irrevocably alter and permanently scar the current visual assets of the region, which include the open, agrarian character, forests, rolling hills, mountains, and river corridor. (N-7)
525. Noise impacts associated with the quarry will impose an undue adverse impact on neighboring properties, negatively affecting property values and salability, business activities (e.g., equine), and the peaceable enjoyment of their land now appreciated by residents and visitors. (N-7)
526. The proposed quarry will significantly alter the character of the area by introducing heavy industrial activities that currently do not occur in this area, including increased heavy truck traffic, as well as consistent noise and vibration from blasting, drilling, crushing and other related activities. Construction and operation of this heavy industrial activity directly conflicts with the surrounding character of the area, and the clear, written

community standards expressed by the Moretown Town Plan and Zoning Regulations.

(N-7)

527. Land uses present on the ground today include three significant equestrian facilities owned by the McMullin, Gould and Sainsbury families, with their associated residences, barns, working landscapes, and trail networks. There are 16 other rural residences within a half-mile radius of the proposed quarry site and another 28 within a mile of the site. These residences are either part of historic homesteads and farm sites, or nestled within the forested edges of the river valley. Few residences, or man-made intrusions, mar or interrupt the valley sides and ridgelines, contributing to the classic, quintessential Vermont landscape that is so celebrated and so integral to the state's quality of life. **No industrial or commercial development currently exists in this area.** (N-7)
528. This portion of the Mad River Valley is marked by low-density rural residential and agricultural uses, with a strong recreational component that has historically developed along the river. The area is particularly notable for its intactness and lack of intrusive, incompatible, undesirable development patterns. (N-7)
529. The proposed Rivers Quarry will significantly and irrevocably alter the character of the area and disrupt the surrounding historic land uses with its physical presence and with the long-term visibility of the attendant landscape alteration. At a minimum the project will create a 19-acre hole in the landscape along with approximately 3.2 acres of access road. These physical changes will be visible from residences and roads in the surrounding valley, including Route 100B, the Moretown Common Road, and the Mad River itself. (N-7 and David Raphael February 20, 2008 testimony)

530. The project will also generate new, ongoing noise in the area. The shape of the quarry and valley will cause the noise to reverberate throughout the valley. These acoustic impacts will contribute to a significant degradation of the aesthetic quality of the entire area, but will be particularly intrusive for adjacent property owners and Moretown Common residences. (N-7)
531. This project will create an overt, heavy industrial land use that is out of character with the surrounding environment. This proposed land use is an incompatible development that does not fit, but rather directly conflicts with the current rural qualities of the area. (N-7)
532. The analysis prepared by LandWorks provides the potential extent of visibility with and without tree cover. Again, winter views without foliage will be more extensive, and, if tree cover is lost or removed, this will add to the visible area of the project. Conducting a view impact analysis without trees is a reasonable analysis to do since the health and longevity of trees cannot be guaranteed. You need to rely primarily on topography to screen a project. (N-7 and David Raphael February 20, 2008 testimony)
533. The Common Road area will have views of the full face of the quarry and the quarry floor, exposing residents and recreational users to the full scope (visual and noise) of the heavy industrial activity and machinery on the project site. (N-7 and David Raphael February 20, 2008 testimony)
534. The Project also fails to comply with the provisions relevant to the land use district in which the Project is located. The Town Plan states that the AG-RES district “is intended to provide for medium density residential development, to permit the continuance of agricultural operations... to preserve open space, and to preserve the significant resources of the District. The overall goal of the district should remain largely rural and the

continuation of farming and preservation of open space is strongly supported... In addition, it is important that non-agricultural and non-residential uses, such as light industry, do not adversely impact neighboring properties” (page 66 in R-33). (N-7)

535. The heavy industrial activities and potential impacts of the proposed quarry, which include noise, traffic and loss of landscape, will undeniably disrupt the rural character, peaceable enjoyment, and aesthetic qualities of the AG-RES district, and will violate a clear written standard of the Town Plan. . (N-7 and David Raphael February 20, 2008 testimony)
536. There is a litany of citations from the Moretown Town Plan that do not support this project. It is often a struggle in Act 250 cases under Quechee to find clear written community standards. This Town Plan has the language that constitutes a clear written community standard in several locations. (N-7 and David Raphael February 20, 2008 testimony)
537. The project directly conflicts with the purpose of the AG-RES district and the clearly written definition of rural character as defined in the Town Plan, which includes a *rural lifestyle* marked by relative privacy, peace and solitude....” R-33 at 21. (N-7 and David Raphael February 20, 2008 testimony)
538. The Town Plan clearly indicates that it must preserve those landscape features that define Moretown’s character. Route 100B and the Mad River Corridor are specifically identified as areas of critical importance to the town’s rural character and scenic landscape, and among the most beautiful in Vermont. (N-7 and David Raphael February 20, 2008 testimony)

539. The project will appear shocking and offensive to recreational users of the Mad River and its corridor, who, according to the Applicant's own analysis, will have direct views of the quarry face from the river itself. Given the sensitivity of views from this regionally significant recreational resource, the type of visual change contemplated here will be particularly offensive to the average person using the river. (N-7)
540. The Applicant failed to consider any traffic and noise impacts in his aesthetic evaluation. Ongoing activities and operations associated with the project include increased truck traffic and excessive noise from on site activities including drilling, sirens, blasting, and ongoing crushing. These aspects of the Project, along with the visual impact, will unquestionably contribute to the aesthetic impact of the project, and will result in a shocking and offensive impact to the average person. (N-7)
541. Route 100B is a scenic roadway that visitors and residents travel not only to reach a destination, but to access and enjoy the pastoral, aesthetic, and recreational qualities of the region. Furthermore, many people will experience this quarry, not from their car on 100B, but rather more personally from the edge of the Mad River, while biking along the scenic corridor and the Common Road, while fishing or canoeing on the river, or from their home. The introduction of incompatible activities associated with this heavy industrial rock quarry will shock and offend the average person living, working, playing and traveling in this area. (N-7)
542. There is not a wide range of mitigation measures that can successfully reduce the adverse visual, auditory and landscape character impacts that will accrue from the type of heavy industrial use proposed. (N-7)

543. The Applicant has failed to develop a comprehensive vegetative management and replacement plan to ensure sufficient screening will be retained to partially hide the project. There is no representation at all that presents an accurate estimation of the type and extent of vegetative screening that will be left around the pit itself as well as at the entry point and along the access road. (N-7)
544. The project will unduly and harmfully impact the existing uses in the project environs, particularly the horse farming and equestrian activities, which are preexisting and valuable to the community. (N-7)
545. The recent 100B Scenic Byway designation reflects the values of the community and goals of the Moretown Town Plan. This designation reaffirms and confirms the corridor's scenic, historic, recreational, and cultural significance and the need to maintain the integrity of the roadway. The support and approval by the Moretown Selectboard and local community for this initiative confirms the importance of the roadway as a scenic corridor and is consistent with the goals of the Moretown Town Plan. This designation is simply another reflection of and commitment to the clear community standards stated in the Town Plan. This designation should not have special influence in the regulatory review process. (N-7)
546. This project cannot conform to adopted standards, violates the intent of the community and will be shocking and offensive to townspeople, neighbors, travelers and those seeking recreation along the Mad River corridor. (N-7 and David Raphael February 20, 2008 testimony)
547. The publication *Vermont's Scenic Landscapes* was the result of a year long effort by the Design Issues Study Committee appointed by the Secretary of the Agency of Natural

Resources. David Raphael was one of the members of the committee. (N-7 and David Raphael February 20, 2008 testimony)

548. There are several noteworthy points and considerations from this work which are germane to the proposed application to develop a quarry in the scenic landscape of the Mad River Valley in Moretown. The scenic qualities of this landscape and the environs of the proposed quarry site are well established and clearly evident to both residents and visitors. (N-7)
549. The study and publication identify several important themes with regard to these landscapes including the fact that they “are important to its (the state’s) economic, social and environmental well being” and that “A community can develop clear written standards that protect its resources”. (p. 7). Here, the Town of Moretown has developed clearly written community standards which identify areas important to the community and has included in those standards provisions to protect the character of the neighborhood and to avoid any permanent scars resulting from the development of a project such as a quarry. The areas identified in the Town plan include areas affected by this Project, including Moretown Common Road, and the Route 100B Corridor. The guide emphasizes the importance of the process of identifying the resource and its sensitivities and prescribing the protection. Moretown undertook exactly this process in developing the Town Plan as well as the Route 100B Byway Management Plan. (N-7)
550. The study goes on to identify key qualities which comprise a scenic landscape. Those that are germane to this project are listed and discussed below (N-7):

Landscapes

- *Steep slopes and ridgelines seen from public vantage points:* This project is proposed below a ridgeline on some slopes that are of a steep grade.

- **Foregrounds of distant views seen from public vantage points:** From Moretown Common Road this project will be in a foreground/midground relationship to the more distant view of Camel's Hump.
- **Historic Places and Gateways to them:** This area can be considered not only the gateway to the Mad River Valley, but the gateway to Moretown's historic agrarian landscape as well as its historic village.

Visual Qualities

- **Intactness:** Does the landscape retain its original pattern and forms? Scenic landscapes must be protected in a manner that retains their intactness; in this case the proposed project will permanently scar the landscape altering its original pattern forever.
- **Form:** Does the development respect and harmonize with patterns in the surrounding area? In this case, the quarry does not harmonize with its surroundings, given the surrounding areas' visual qualities and the nature of the project's visual and acoustic impacts.
- **Order and Harmony:** Is there a discernible and harmonious pattern to the landscape with fields, forest, farms and river? Here, there is a distinct and settled historic development pattern which is pleasing and harmonious to the eye and ear: the development of the quarry does not cultivate this pattern- rather it will interrupt, contrast with and undermine the existing uses and historic order and pattern of conservation, agriculture and settlement.

B. Proposed Conclusions of Law Regarding Visual Aesthetics and Scenic Beauty

Neighbors' Question #8 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec asks: "Does the proposed quarry fail to comply with 10 V.S.A. § 6086(a)(8) because it will have an undue adverse effect on aesthetics, including the scenic or natural beauty of the area, due to noise, trucks, blasting, crushing, drilling, dust, and an industrial scar on the landscape, a scenic landscape that currently supports residential and recreational uses and several horse farms?" We must conclude that the proposed quarry will have an undue adverse effect on the visual aesthetics.

In Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order (Nov. 4, 1985), the former Environmental Board articulated a "process" for determining whether a project will have an undue adverse effect on aesthetics.

Quechee Lakes at 17. That process is a two-step test, under the first step of which we must determine whether the quarry's effect on aesthetics is adverse. We must conclude that the quarry will have an adverse effect on aesthetics, because the proposed quarry does not fit with its surroundings and is not compatible with neighboring land uses.

In order to determine if the proposed quarry would be in harmony with its surroundings, the Court must first determine what those surroundings are. If the proposed quarry were surrounded by existing quarries or other heavy industrial uses, it would be easier to show harmony with surrounding uses. Here, however, the quarry is proposed to be located in a highly scenic area characterized by residences, horse farms, and outdoor recreational pursuits including walking, biking, and flyfishing. The surrounding properties and land uses in this case include two significant equestrian facilities owned by the McMullin and Sainsbury families, with their associated residences, barns, working landscapes, and trail networks. There are 16 other rural residences within a half-mile radius of the proposed quarry site and another 28 within a mile of the site. The area sees moderate to heavy recreational use from bikers and other recreational users of Route 100B and people who enjoy the Mad River for swimming, fishing, and canoeing. There are no past or present quarries in the surrounding area, and no industrial or commercial uses (aside from the afore-mentioned horse farms and a few home based businesses, which do fit with the residential and agricultural character of the area). Because the proposed quarry would be a new, out-of-character industrial use, it does not fit with its surroundings and would therefore have an adverse aesthetic effect on the surrounding area.

We must further conclude that the adverse effect of the quarry would be undue. The word "undue" is a term of art in the context of Act 250. A project's adverse impacts on aesthetics are undue if the project violates any clearly written community standards, if the project appears shocking or offensive to the average person, or if the applicant fails to take all available

and reasonable steps to mitigate the identified adverse impacts of the project as proposed. Quechee Lakes at 19–20. 529.

The quarry pit, quarry face, and sight-line cut would constitute a “permanent scar” as that term is used in the Town Plan. In response to the Neighbors’ motion for summary judgment on this issue, Rivers asserted that only a portion of the quarry face, and no part of the quarry floor, would be visible from surrounding locations including the Moretown Common Road. Rivers based this assertion upon the aesthetics evaluation conducted by Rivers’ aesthetics expert, Mr. Boyle, admitted at trial as Exhibit R-8. However, Mr. Boyle admitted during cross examination that his line of sight diagrams and his photo-simulation of the quarry from the Moretown Common Road were inconsistent. He admitted there was an error in his analysis, but did not know which of the exhibits was incorrect, or whether both were incorrect.

Because the assessment of visual impacts prepared by Rivers’ expert was admitted by that expert to be unreliable, we rely on the visual assessment prepared by the Town’s and Neighbors’ aesthetics expert, Mr. Raphael, and admitted at trial as Exhibit N.7/T.7. “Line of Sight Section 5 of 5” in Attachment 7 to N.7/T.7 shows a line of sight to the quarry floor and quarry face from the VanHeuven residence on the Moretown Common Road. The quarry face and sight-line cut will be visible from many other locations in Moretown. We must conclude that the quarry pit, face and sight-line cut will constitute a scar that will remain on the land permanently, in violation of the clear written community standard set out in the Moretown Town Plan at 35: that this Court, on appeal, “shall, through the conditional use process, ensure that the extraction of gravel and other mineral resources does not permanently scar the landscape[.]” Because the proposed quarry would create a permanent scar, thus violating a clear written

standard of the Moretown Town Plan, the adverse visual impacts of the quarry must be considered undue.

Moreover, the proposed quarry, if permitted, would appear shocking and offensive in this location. The extensive landscape alteration associated with the proposed quarry will irrevocably alter and permanently scar the current visual assets of the region, which include its open, agrarian character and the surrounding forests, rolling hills, mountains, and scenic river corridor. We must conclude that a 19-acre hole in the hillside, together with man-made exposed rock benches creating a face 210 feet high, an access road approximately 1,400 feet long with a cleared area between 90 feet and 160 feet in width, and a man-made exposed rock ledge sight-line cut 895 feet long and up to sixteen feet high would constitute a shocking and offensive scar on the landscape where now there is a scenic river valley dotted with homes and horse farms, with rolling hills giving way to stunning views of Camel's Hump in the distance.

Because the quarry would have an undue adverse effect on the visual aesthetics of the surrounding area, we must conclude that the proposed quarry fails to comply with 10 V.S.A. § 6086(a)(8) and consequently rule in favor of the Neighbors on Question #8 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec.

Neighbors' Question #10 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec asks, in part: "Does the proposed quarry fail to comply with 10 V.S.A. § 6086(a)(10) because Rivers has failed to prove that the proposed quarry conforms to Moretown's Town Plan and the specific policies therein, including but not limited [...] the command at page 35 that the DRB "shall, through the conditional use review process, ensure that the extraction of gravel and other mineral resources does not permanently scar the landscape, adversely impact ground or surface waters, or unreasonably impact adjacent neighbors.?" (footnote omitted). As discussed

above in the context of Criterion 8, we conclude that Rivers has failed to prove that the proposed quarry conforms to specific policies of Moretown's Town Plan, including the command that the extraction of gravel and other mineral resources not permanently scar the landscape. We therefore must rule in favor of the Neighbors on Question #10 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec.

Neighbors' Question #7 of their Statement of Questions in Docket No. 7-1-05 Vtec asks, in part: "Whether, under MZR Section 3.5(C)(1)-(4), the application and proposed quarry will have an undue adverse effect on (1) neighboring properties and uses; [and] (4) the scenic or natural beauty of the area, other aesthetic values, historic sites or rare or irreplaceable natural resources or areas?" Neighbors' Question #16 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: "Whether, under Moretown Town Plan dated August 27, 2002 page 35 #8, the [Court] shall, through the conditional use review process, ensure that the extraction of gravel and other mineral resources does not permanently scar the landscape, adversely impact ground or surface waters, or unreasonably impact adjacent neighbors?" We must conclude that under the local standard, as under Act 250, the proposed quarry would have an undue adverse effect upon neighboring properties and uses and aesthetics in violation of MZR §§ 3.5(C)(1) and 3.5(C)(4) and the Town Plan, and therefore rule in favor of the Neighbors on Questions #7 and #16 of their Statement of Questions in Docket No. 7-1-05 Vtec.

Neighbors' Question #14 of their Statement of Questions in Docket No. 7-1-05 Vtec asks, in part: "Whether, under MZR Section 5.2(C), the application and proposed quarry will not adversely affect [the conditional use criteria, including the character of the area and the bylaws in effect]?" We must conclude that Rivers' proposed quarry would have a substantial and material adverse effect on the character of the area by creating a visible 19-acre hole in the hillside,

together with man-made exposed rock benches creating a face 210 feet high, an access road approximately 1,400 feet long with a cleared area between 90 feet and 160 feet in width, and a man-made exposed rock ledge sight-line cut 895 feet long and up to sixteen feet high, together with the other adverse impacts discussed elsewhere in this Decision. We therefore must rule in favor of the Neighbors on Question #14 of their Statement of Questions in Docket No. 7-1-05 Vtec.