TOWN OF RANDOLPH, VERMONT
DEVELOPMENT REVIEW BOARD

MEMORANDUM OF DECISION

(Findings of Facts, Conclusions of Law, and Decision)

APPLICANT: Sprague Farms, LLC
1333 College Parkway, #333
Gulf Breeze, FL 032563-2711

PERMIT NO.: Z07-96

PROPERTY OWNER: Applicant

I. INTRODUCTION

On August 29, 2007, 2008, Robert Townsend, PE, of American Consulting Engineers and Surveyors, on behalf of **Sprague Farms, LLC** ("Applicant") filed an application for a zoning permit for a project generally described as a ledge quarry with stone crushing. The subject property is parcel number **108072.010** which is **210 acres** in size and located on **Ridge Road**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on September 11, 2007.

Under the Randolph Zoning Regulations ("Regulations"), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer ("Administrator") may grant a permit, the Board must find that the project complies with all applicable criteria and approve the site plan, the conditional use and/or provide any other approval, as required.

Also under the Regulations, the Board is authorized to undertake local Act 250 review of Criteria 6, 7 and 10 for all projects that require a new land use permit or an amendment to an existing land use permit under 10 VSA Chapter 151 ("Act 250").

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the public hearings held[1] on September 25, 2007 and January 29, February 26 and March 25, 2008;
2. Documents contained in this application's file, the Regulations, Town Plan dated December 21, 2004 ("Plan") and the Randolph municipal records.

The Board closed the public hearing on March 25, 2008 and deliberated on this matter on several occasions. This written decision is required pursuant to 24 VSA ch. 36 §1209 and is the result of those deliberations.

[1] Hearings were also held on October 30, November 27 and December 18, 2007, however, no evidence was taken on those dates.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Rural Use 3-Acre and Rural Use 5-Acre (RU3 and RU5, respectively) Districts. The entire quarry is in the RU5 District and the access road traverses the RU3 District to Ridge Road.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The quarry is not a use listed on the Chart of Permitted and Conditional Uses nor is it included in §5.15 "Removal of Top Soil, Sand and Gravel." Therefore, approval for the quarry pursuant to §2.4.3 is required.
4. The project requires a land use permit ("Act 250") and therefore a determination of compliance with the locally-reviewed Act 250 criteria 6, 7 and 10 is required.

On September 11,2007, the Administrator referred the application to the Board for review and approval as determined. Note: In regards to determination #3 above, "Stone Crusher" is listed as a Conditional Use on the aforementioned chart and the Board determined that conditional use approval is also required (see Section IV, Fact #7).

III. PARTICPANTS

For the purposes of this application, "interested persons" are those who fulfill the requirements of 24 VSA ch. 117 §4465. The attached Service List for this project includes the Applicant's representatives and experts, and persons[2] who participated at the public hearing and/or submitted written comments on the application and their expert.

Participating Board members were John Becker, J. Kenneth Currier, Christopher Recchia, Frank Reed[3], Krista Rumrill and Joel Tillberg.

IV. FINDINGS OF FACTS

The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact.

A. Scope of Project

1. The applicant has filed an application for a ledge rock quarry with stone crushing operations as shown on Exh. #10. The quarry will extract a total of 433,000 cubic yards (CY) over 17.3 acres and will take place in four phases as follows:

   Phase I – 115,000 CY over 5.6 acres

   Phase II – 128,000 CY over 4.5 acres

   Phase III – 160,000 CY over 3.3 acres

   Phase IV – 30,000 CY over 3.9 acres

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[2] By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as "interested persons" as defined in the above-referenced state statute.

[3] Member Reed was not present on February 26, 2008 but has listened to the audio recording and has reviewed the evidence submitted on that date.

2. The quarry is proposed to be open on weekdays only from 7AM to 5:30 PM, however, some maintenance work on equipment may occasionally be required on weekends. The quarry will be closed during the winter months, typically between October 15 and April 15. (application and testimony of R. Townsend and R. Tucker)

3. The stone crushing operations will take place in the Phase I area, regardless of which phase is currently open for quarrying. (testimony of R. Townsend)

4. It is anticipated the quarry will generate an average of 25 trucks per day (round trips, for a total of 50 truck trips). However, based on the cycle time to load trucks, the quarry could have a maximum of 96 trucks a day. (testimony of R. Tucker)

B. Required Approvals

5. As the project is not either a one- or two-family dwelling, site plan approval is required for the entire project. (application and the Regulations)

6. The quarry is not a use listed on the Chart of Permitted and Conditional Uses nor is it included in §5.15 "Removal of Top Soil, Sand and Gravel." Therefore, approval for the quarry pursuant to §2.4.3 is required. (application and the Regulations)

7. "Stone Crusher" is a use on the aforementioned Chart and is listed as a conditional use, therefore conditional use approval is also required for the stone crusher only. (application and the Regulations)

C. §2.4.3 Review for the Rock Quarry

The proposed use is not injurious, obnoxious or offensive.

8. The quarry will involve blasting operations which will produce vibration. The vibration will not be detectable at any of the property lines with the neighboring residences. (application and testimony T. Harrington)

9. Blasting at the proposed quarry is not a concern for structural damage or sound. (testimony of L. Copley)

10. There is no measurable noise from the blasting operation as the explosions are small, controlled and well below ground. (Exh. #9)

11. The drilling equipment used in the blasting operation will not be pneumatic and shall have noise and dust controlling elements. (testimony of T. Harrington)

12. No dust is produced from the stockpiled materials. (testimony of R. Tucker)

13. At a maximum, the amount of equipment, not including the trucks used for hauling materials, on site for the quarrying operation will be two loaders, one excavator and one drilling rig. (testimony of R. Tucker)

14. Noise from a drilling rig that has noise-reducing provisions is minimal such that normal conversations can take place next to it. (testimony K. Isham)

15. The quarry operation will be regulated by the state and will meet the state's air pollution standards. (testimony of R. Tucker)

16. The sound from the back-up beepers is likely to be the most annoying noise due to its distinctive tonal and intermittent character. (testimony of L. Copley and Exh. #36)

17. Back-up beepers are not required on excavators. (testimony of R. Tucker)

18. Trucks are loudest when they are starting up, accelerating or climbing a hill. (testimony of P. Tartiglia)

19. The access road is fairly level for approximately the first 250 feet. (Exh. #10)

The proposed use is in keeping with the Character and permitted uses in the Zoning District.

20. The proposed quarry is in the RU5 District. (application and Regulations)

21. The following industrial-type uses are allowed in the RU5 District per the Chart of Permitted and Conditional Uses: firewood and timber production, auto and vehicle wrecking and junkyards, auto-body repairs, canning operations, concrete mixing plants, distribution and storage facilities, heavy contractors equipment and sawmills. Additionally, §5.15 of the Regulations allows the removal of top soil, sand, gravel and clay. (Regulations)

D. Conditional Use (CU) Review for the Stone Crusher

The proposed use is consistent with the objectives of the Town Plan and the purposes of the Randolph Zoning Regulations. (CU criterion A)

The proposed use will not adversely affect the bylaws in effect. (CU criterion K)

22. The minimum lot size in the RU3 and RU5 Districts are 3 and 5 acres, respectively. The subject property is 210 acres. (Regulations and application)

23. The quarry itself is in the RU5 District and only the access road traverses the RU3 District. (Exh. #10 and the Regulations)

24. As no structures are proposed, the setback and building coverage requirements are not applicable. (Regulations and application)

25. The required off-street parking shall be as set by the Board. A maximum of four employees are anticipated to be on-site. However, parking is not required for the quarry. (Regulations and application)

26. "Resource extraction" is defined on page 40 of the Plan (General Consideration #1) and is noted as being allowed or not being anticipated in 6 of the 8 proposed zoning districts. The Plan indicates the proposed property is to be zoned Rural Agriculture. This zone is one of the two that does not mention resource extraction at all. (Plan)

27. Although there are several recommendations and goals in several chapters of the Town Plan that this proposed project could be interpreted as supporting, there is no clear and unambiguous language in the Plan that relates directly to this proposed project. (Plan and Exh. #34)

28. The RU3 and RU5 Districts have the same stated purpose. (Regulations)

The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances. (CU criterion B)

29. The stone crusher will generate noise and dust. The crusher will have a water-based dust suppression system at dust points and will be electric using a generator that is in a van body. Other mitigating measures, such as use of calcium chloride and water sprinkler trucks and limitations on the location and duration of the use of the crusher are available and would attenuate the level of noise and dust generated. (application and testimony of R. Tucker)

30. The crushing equipment could have decibel levels as high as 92.5 dBA. Using the general rule of thumb that noise levels drop 6 dBA every time the distance is doubled, that would mean the

noise level would be 62.5 dBA at a distance of approximately 320 feet from the crusher. Normal conversation is in the range of 62 – 65 dBA. The closest residence is over 1,000 feet from the Phase I area. (Exhs #9 and 10)

31. The blasted material will not be sized-down for the crusher. No jackhammer will be used at all. (testimony of R. Tucker)

32. No chemicals are used in the stone crushing operation except perhaps calcium chloride for dust control. (testimony of R. Tucker)

33. The stone crusher will not generate any of the following: traffic, odor, glare, or radiation. (application)

34. Ridge Road sees a low volume of pedestrians. (testimony of C. Wise)

The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity. (CU criterion C)

35. Ridge Road is a Class 2 town highway and state aid road with a posted speed limit in the vicinity of the quarry of 40 miles per hour. It is paved and in need of reconstruction. (application, testimony of C. Wise and Exh. #41)

36. It is estimated that 90 - 95% of the traffic to and from the proposed project will be from the south. (Exh. #35)

37. A traffic study was conducted by Chuck Wise of Two Rivers-Ottauquechee Regional Commission in September of 2007 on the Ridge Road in front of the Brookfield School, which is approximately 2 – 3 miles north of the proposed quarry access. There are only two other roads that intersect with Ridge Road between the Brookfield School and the proposed quarry access. (testimony of C. Wise)

38. The average daily traffic on Ridge Road on weekdays was 980 vehicles and the peak day saw 1,098 vehicles. The volume of traffic on Ridge Road is typical of its type of road, as anything between 1,000 – 1,500 vehicles is within its range. (Exh. #32)

39. The peak hour for traffic on Ridge Road is between 7 and 8 AM. (Exh. #32)

40. The percentage of vehicles that are trucks on Ridge Road is between 8 – 10%, but the study did not record which type of trucks they were, only that they were not pick-up trucks. The state average of truck traffic is about 10% not including interstate traffic. (testimony of C. Wise)

41. With the weekly average and daily peak traffic counts stated in #39 above, the proposed average truck traffic (50 round trips) would increase the volume on Ridge Road by 5% to 1,030 and the maximum truck traffic (192 round trips) would increase the volume by 17% to 1,290. An additional 64 round trips (or 8 round trips per hour for a typical 8-hour work day) would increase the volume by 6% to 1,044. All of which are within the acceptable range stated in Fact #38 above. (application, testimony of R. Tucker and Exh. # 32)

42. March is not typically the highest truck traffic time of year but, rather, the warmer summer months. (testimony of C. Wise)

43. Ridge Road can sustain the existing traffic easily due to its sight distances. It's greatest weakness at this point is not its alignment, but, rather, it's current condition. (testimony of C. Wise)

44. The Town will be applying for a Class 2 road grant to secure funding to rebuild Ridge Road. In the meantime, it will repair it as needed. Once it is properly reconstructed, the

maintenance will be minimal and preventative. Due to the condition of the road, any additional traffic may hasten its demise, but that would not be unreasonable. (Exh. #41)

45. As reconstruction of the road is not anticipated for several years, if the applicant reconstructs that portion of Ridge Road that is the frontage of the parcel then 25 - 50 round-trip truck trips will not create an unreasonable burden on the Town's ability to maintain the highway. (Exh. #41)

46. Ridge Road is a critical road for Brookfield residents and is a text-book commuter facility. (Exh. #43)

The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed. (CU criterion D)

47. The proposed project does not involve any new roads to be adopted by the Town. (application)

The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic. (CU criterion E)

48. There is only one location to access/exit the quarry. It will meet VTrans Standard B-71. (application)

All unsightly uses of the proposed project shall be properly screened. (CU criterion F)

49. There were no unsightly uses identified for the proposed project. (application)

An adequate system of surface runoff control is required. (CU criterion G)

50. The crushing operation will not affect the surface run-off. However, the applicant has applied for state stormwater permits for quarry. (testimony of B. Washburn)

A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped. (CU criterion H)

51. All crushing shall take place in the area designated as Phase 1. The "strip" between Ridge Road and the closest part of Phase I is over 1,200 feet wide. No development other than the access road is proposed for this "strip." (Exh. #10)

The proposed use will not adversely affect the capacity of existing or planned community facilities. (CU criterion I)

52. See facts under subsection F below.

The proposed use will not have an undue adverse effect on the character of the area affected. (CU criterion J)

53. As only 5-10% of the anticipated truck traffic will travel Ridge Road north of the access road, most of this part of the area will not be significantly affected by the proposed project. (Fact #37)

54. The area around the quarry is a mixture of residential and agricultural. However, Ridge Road is a text-book commuter facility in part because it is used not just by the residents along it but is a critical road for Brookfield residents. (Exhs. #15 and 43)

55. The manifestations of the proposed use include vibration, noise, odor and dust from the blasting, crushing, stockpiling and loading of material into haul trucks and from the trucks

themselves. If proper limitations are placed on the proposed use, these manifestations are not eliminated but attenuated. (Exh. #16)

56. The Plan proposes that the subject property, the surrounding area and all of Ridge Road except for the residential lots most nearly adjacent to the intersection of Ridge Road and VT Route 66 be zoned Residential Agricultural ("RA"). Page 44 of the Plan states this about the RA District:

"Anticipated uses in this district include farming, forestry, supporting retail and service providers, residential development on non-agricultural soils, clustered development on prime or important agricultural soils, home occupations, recreation, agriculture- and tourism-related cottage industries. Residents in this zone should expect to encounter the sights, sounds, smells and other activities typically associated with a working landscape. Commercial and industrial uses, however, should be conditional, if allowed, to preserve the rural character of the zone."

57. Permitted uses in the RU5 District include: commercial kennels, farm machinery sales and repair and firewood and timber production. As permitted uses, they are allowed as of right and would only be reviewed for site plan which considers only the adequacy of traffic access, circulation and parking and landscaping and screening. (Regulations)

58. Acceptable agricultural practices are exempt from zoning and includes the housing of a the following minimum number of animals: fifteen swine, fifty turkeys, one hundred laying hens, two hundred and fifty broilers, etc. As an exempt use, the manifestations of agriculture go unregulated. (judicial notice of the Vermont Accepted Agricultural Practice Regulations)

59. The surrounding area is a mixture of residential and agricultural uses.

The proposed use will not adversely affect the utilization of renewable energy resources. (CU criterion L)

60. The proposed use will not affect the utilization of renewable energy resources. (application)

E. Site Plan (SP) Review for the Entire Project

The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and the Town Plan. (SP criterion A)

61. See facts #22 – 28.

The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points. (SP criterion C)

62. It is estimated that 90 - 95% of the traffic to the proposed use will be from the south, thereby maintaining fairly consistent turning movements onto and off of the Ridge Road. (Exh. #35).

63. See Fact #49.

64. No pedestrian traffic is anticipated. (application)

The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area. (SP criterion B)

65. The proposed quarry is approximately 1,100 feet from the nearest residence and will not be visible from Ridge Road due to topography. (Exhs. #10 and 36)

66. Although "resource extraction" is not mentioned as being allowed or disallowed in the proposed RA District, page 44 of the Town Plan states the following: "Residents in {the RA} zone should expect to encounter the sights, sounds, smells and other activities typically associated with a working landscape." A "working landscape" is not defined in the Plan, but, taken in context, refers to land used for farming or forestry. (Plan)

67. Mitigation of noise, dust and vibration impacts are possible and will be undertaken. (conditions of approval)

The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use. (SP criterion D)

68. No buildings, walls, fences, parking or landscaping is proposed for this project. (Exh. #10)

69. The loading area is within the quarry itself, which is 1,100 feet to the nearest residence. (Exh. #10)

70. The only part of this quarry that will be near a residence is the access road. Screening would help mitigate any adverse visual affect of the traffic on the access road. (Exh. #10)

F. Local Act 250 Review for Entire Project (the three criteria of 10 VSA ch. 151 over which the Board has jurisdiction are summarized)

Capacity of educational services (criterion 6)

71. The proposed project will not add any additional students to the school district. (Brent Kay, Superintendent)

Capacity of municipal services (criterion 7)

72. The subject property is outside of the Randolph Police District therefore this service is not provided by the municipality. (Randolph municipal records)

73. The subject property is in the Randolph Center Fire District. The Randolph Center Fire Department has the capacity to provide fire protection to the subject property without undue burdens. (Albert Floyd, Randolph Center Fire District Chief)by the municipality. (Randolph Municipal Records)

74. The subject property takes access from a town highway. The Randolph Highway Department has the capacity to provide the proposed project with road maintenance without undue burdens. (Facts #36, 39, 45 and 46)

Compliance with Town Plan (criterion 10)

75. See Facts #26 – 27.

V. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, it is the conclusion of the Board that the project described in the application referred to above and including the Applicant's representations at the public hearing, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the following criteria *(additional Board comments are italicized)*:

1. <u>§2.4.3 Criteria – quarry</u>

A. The proposed use is not injurious, obnoxious or offensive if the amount of truck traffic is curtailed, measures are taken to limit the noise and dust generated by the quarry, blasting is not spread out throughout the week but is limited to one day a week, and the neighbors are given advanced notice of when blasting will occur.

There are several techniques available for attenuating the effects of the noise and dust that will be produced by the quarry. They include reducing the noise and dust at the source and reducing the duration. The Board concludes that a combination of both of these techniques will not necessarily eliminate all noise and dust but will reduce them to levels such that they will not be injurious, obnoxious or offensive.

Although concern was expressed regarding the effects on houses from the vibration from truck traffic on Ridge Road, no evidence was presented to indicated that such vibration causes structural damage.

B. The proposed use is in keeping with the character and permitted uses in the zoning district.

In re: French et al, Docket No. 98-7-01Vtec (Vt. Envtl. Ct., March 4, 2002), the Court held that the term "permitted uses" in §2.4.3 refers to allowed uses which would include conditional uses as well ("Section 2.4.3 of the Zoning Regulations provides that any use not specifically permitted in the Regulations, that is, not specifically listed as an allowed use, shall be prohibited.") Therefore, the character of the zoning district is best defined by the uses that are allowed within it. Uses similar to a quarry that are allowed in the district include firewood and timber production, auto and vehicle wrecking and junkyards, blacksmith, concrete mixing plants, to name a few. Many of the allowable uses may have manifestations that are far more intensive and less able to be mitigated – and therefore, more likely to be offensive – than the proposed quarry. Consider, for instance, the noise from barking animals that are typical of a commercial kennel or the dust and truck traffic noise from an active gravel pit.

2. Conditional Use Criteria[4] - stone crusher

A. The proposed use is not inconsistent with the objectives of the Town Plan and is consistent with the purposes of the Randolph Zoning Regulations.

It was contended by some that access for a use in one zoning district could not traverse through another zoning district, however no evidence was presented that demonstrated that the Regulations do not allow this. In fact, there are several zoning districts in the Regulations that are delineated such that they are strips along major transportation thoroughfares. If the contention were valid, it would lead to an absurd result as it would either effectively create many landlocked parcels or would render many parcels that could not be developed outside of the strip that is along such thoroughfare. In this instance, also, it is worth noting that the purpose of the two zoning districts – RU3 and RU5 – are identical.

B. The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances if measures are taken to limit the noise and dust generated by the crushing, limit the area within which the crushing may take place, limit crushing to one day a week so that it is not spread out throughout the week, and requiring that the neighbors be given advanced notice of when crushing will occur.

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[4] Criteria A – H are from the Randolph Zoning Regulations. Criteria I – M are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

As with #1A above, mitigating measures will not necessarily eliminate noise, vibration and other nuisances, but will reduce them to levels such that they will not cause hazard to health or property.

With respect to traffic, a traffic count was taken by two abutters in March 2008 that showed significantly less traffic on Ridge Road than the one taken by the regional planning commission. It also showed significantly fewer trucks (as a percentage). As this count was taken in a month when the quarry would not be open and when truck traffic is not typical of the months when the quarry would be open, it is not applicable

C. The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity.

Ridge Road has a capacity in the range of 1,000 to 1,500 vehicles per day, with a typical 10% being trucks in the warmer months. With a current volume of approximately 1,000 vehicles, the additional generated by the quarry will not increase the volume beyond its range.

D. The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed.

E. The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic.

F. The criterion regarding screening of unsightly uses is not applicable as no unsightly uses of the proposed project were identified.

G. An adequate system of surface runoff control is required and will be regulated by the state.

H. A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped or, in this instance, left in a natural state (i.e. undeveloped).

I. The proposed use will not result in an undue adverse affect on the capacity of existing or planned community facilities.

J. The proposed use will not result in an <u>undue</u> adverse affect on the character of the area affected if there are restrictions and limitations imposed as indicated in #1A above and limitation are imposed on the number of trucks allowed.

Many opinions were expressed indicating that the character of the area should be defined by the entire eight miles of Ridge Road. This criterion clearly indicates that it applies only to the area <u>affected</u>. As 90-95% of the traffic to and from the quarry will be southerly and given the restriction imposed on the number of truck trips, the portion of Ridge Road that is to the north of the quarry is not affected by the quarry and therefore its character not considered germane to this criterion. However, even if it were considered, with the limitations on the number of trucks, it is anticipated that the quarry would add only 6 trucks per day on the northern end of Ridge Road and such an increase is not significant and therefore not adverse.

Many residents in the area of the quarry have characterized the area as a quiet residential neighborhood with some agricultural uses. While this is true to a point, Ridge Road is a commuter road that see much of its traffic from the Town of Brookfield and has a posted speed limit of 40 miles per hour Commuter traffic with such speed limits are not

characteristics usually attributed to a quiet residential street. These characteristics of Ridge Road affect the character of the area as much as the uses along it.

Many residents in the area of the quarry would like to have no development other than residences and farms on Ridge Road and therefore would have the Board decide that <u>any</u> new development that is not residential or agricultural is out of character with the area. However, not only is that not what this criterion requires, the current zoning does not contemplate such restrictions. There are, in fact, commercial and industrial uses that are listed as permitted in the RU5 District and therefore are allowed as of right. Further, this standard for this criterion is not that development cannot be out of character with the area, nor it is that development cannot have any adverse impacts, but, rather, development cannot have any undue adverse impacts on the character of the area affected.

It is not disputed that the quarry will generate noise, dust and vibration. In determining that adverse affects are not undue, the Board utilized the "Quechee test"[5] and concludes the following with regard to the three guidelines:

1. *No evidence was presented to demonstrate that the adverse affects violate a clear, written community standard intended to protect or preserve a certain quality of the area. The only clear, written standard intended to protect or preserve a certain quality of the area is in the Plan, which indicates that the adverse affects of a working landscape are to be expected by residents in the proposed RA District.*
2. *With adequate limitation imposed on the proposed use, the adverse affects don't offend the sensibilities of the average person, especially given that the proposed use is not out of scale nor character with other current uses (including agricultural and other allowable uses) and the volume of traffic that currently exists on this commuter road.*
3. *The applicant has taken steps to mitigate the adverse affects by not allowing the use of jackhammers, having an electric crusher with an enclosed generator, using equipment with built-in dust-controlling elements, to name a few. Additionally, the Board imposes other restrictions to mitigate further the adverse impacts.*

K. The proposed use will not result in an undue adverse affect on the traffic on roads and highways in the vicinity.

Although the stone crushing operation itself will not generate traffic, the Board applied this criterion to the entire project.

L. The proposed use will not result in an undue adverse affect on the bylaws and ordinances in effect.

M. The proposed use will not result in an undue adverse affect the utilization of renewable energy resources.

3. <u>Site Plan Criteria – entire project</u>

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[5] The "Quechee test" was established as a guideline in an Act 250 hearing to determine whether a project had an undue adverse effect and is in commonly use. According to the "test", an effect is considered "undue" if it meets any of the following:

1. It violates a clear, written community standard intended to protect or preserve a certain quality of the area; or
2. It offends the sensibilities of the average person; or
3. The applicant has failed to take generally available steps to mitigate the adverse impact.

A. The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and is not contrary to any specified policy in the Town Plan.

B. The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area.

In Re: Blakeman Site Plan, Docket No. 274-11-06 Vtec (Vt. Envtl. Ct., July 30, 2007), the Court held that the appropriate and orderly development of the surrounding area is defined by the Town Plan and not the existing development in the area. The Town Plan clearly indicates that the main purpose of the RA District is to maintain and provide for working landscapes (farming and forestry) and anticipates these uses will create sounds, sights and smells that may be objectionable to residents in the District. A working landscape may, in fact, generate sights, sounds and smells that are far more objectionable than the ones that are will be generated by the quarry and which are required to be mitigated.

C. The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points.

D. The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use.

4. <u>Act 250 Criteria[6] - entire project</u>

A. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide educational services (criterion 6).

B. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide municipal or governmental services (criterion 7).

C. The proposed project is in compliance with the Randolph Town Plan which was adopted in accordance with 24 VSA ch. 117 on December 21, 2004 (criterion 10).

VI. DECISIONS[7]

Based upon the foregoing Findings of Facts and Conclusions of Law, the Board makes the following decisions regarding the proposed rock ledge quarry with stone crusher as applied for in zoning permit application #Z07-96 and including the evidence and testimony entered into the record as Findings of Fact:

A. Use approval pursuant to §2.4.3 is granted for the quarry with the following conditions:

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[6] This conclusion/decision regarding local Act 250 review is a rebuttable presumption under the provisions of 10 VSA Ch. 151 and this presumption may be overcome in proceedings under 10 VSA Ch. 151

[7] An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of $225 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.

1. The quarry shall be limited to operating Monday through Friday between the hours of 8 AM and 5 PM. Trucks shall not arrive at the property before this time.
2. The access road to the quarry shall be gated during non-business hours. However, maintenance of the site or equipment may take place outside of the above-stated days and hours.
3. The maximum number of round-trip truck trips shall be 32 per day.
4. If approved by the Town, the permittee shall pay for the fabrication and installation of at least two signs on Ridge Road requesting that truck drivers refrain from using engine brakes.
5. Blasting shall take place only one day per week.
6. Owners of properties that abut the quarry shall be notified at least 2 hours prior to the first blast of the day, but preferable at least the day before the scheduled blasting day. It shall be the property owners responsibility to provide the correct contact information to the quarry operator.
7. The back-up beepers shall be on motion-sensors or shall be replaced with strobe lights or other such device that does not produce as much noise and is allowed by regulation (e.g. Occupational Health and Safety Administration or Mine Safety and Health Administration, etc.).
8. Sprinkler and water trucks shall be on-site when the quarry is in operation and used as needed to control the dust both in the quarry and on the access road.
9. The first 100 feet of the access road (that is, 100 feet in from Ridge Road), shall be hardpack or other material that does not generate dust.
10. State stormwater permits shall be obtained as applicable.
11. Within 6 months of the conclusion or closure of each working phase, suitable landscaping shall be installed to prevent erosion and damage to adjoining properties and reclaimed as shown on Exh. #10.
12. At the request of the current property owners most nearly adjacent to the proposed access road (N/F Chester Abbot and Elizabeth Scheindel), screening shall be provided in the form of natural vegetation that would provide year-round screening or some other form of screening acceptable to the abutting property owners such as fencing. Such screening shall not be located in the town right-of-way for Ridge Road and shall not extend beyond the back of the existing barn structure that is to the north and west of the residence.
13. All loaded trucks shall travel with a cover to mitigate dust.

B. Conditional use approval is granted for the stone crusher with the following conditions:

1. Crushing operations shall take place only one day per week.
2. All crushing operations shall be done in the area shown as Phase I on Exh. #10 and located within that area so as to maximize noise attenuation.
3. Residents who live within 1,000 feet of the crusher shall be notified at least 2 days before the day when crushing is to occur.
4. Crushing equipment shall have operational water-type suppression systems at dust points.

5. Crushing equipment shall have noise controls where available.
6. No jack-hammering shall be allowed to reduce the size of blasted materials prior to being crushed.
7. The permittee shall reconstruct the full width of Ridge Road for 150 feet on either side of the access road. Such reconstruction shall meet the standards for a Class 2 state aid road.
8. Any expansion of the use shall require approval pursuant to the regulations in effect at the time of re-application.

C. The site plan approval is granted with the following conditions:

1. The quarry shall be as operated in phases and as shown on Exh. #10.
2. A certificate of occupancy shall be required at the closure of each phase.
3. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
4. Any significant modifications to the approved site plan shall require re-approval by the Board pursuant to the regulations in effect at the time of re-application.

Dated at Randolph, Vermont this 8th day of May, 2008.

RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members:

/s/ Joel Tillberg, Chair
/s/ John Becker
/s/ Krista Rumrill
/s/ Frank Reed
/s/ Christopher Recchia

Dissenting Board Member:

/s/ J. Kenneth Currier