

<b>ZBA Members</b>
<input type="checkbox"/> Charles Merriman, Chair
<input checked="" type="checkbox"/> Charlene Bohl, Vice Chair
<input checked="" type="checkbox"/> Doug Lombard
<input checked="" type="checkbox"/> Roger Hirt
<input checked="" type="checkbox"/> John Demeter

**MIDDLESEX ZONING BOARD OF ADJUSTMENT**  
**Wednesday, April 29, 2015**  
**5:00 PM**  
**Middlesex Town Clerk's Office**  
**5 Church Street**  
**Middlesex, Vermont 05602**  
**(802) 223-5915**

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**MINUTES**

**Present:** ZBA Vice Chair Charlene Bohl, Doug Lombard, John Demeter, Roger Hirt, and Zoning Administrator Cindy Carlson

Members of the public: Travis Kingsbury, Dean Zoecklein, Ian MacKenzie, Jim Gallagher, Richard Saudek, Dexter Lefavour, Carl Dupont, Michael Levine, Sandra Levine, Amy Rothman, Michael Mandle, Dennis Nealon, Susan Comen and David Smith.

**Site Visit: 58 Center Road, Middlesex**

The Board visited the property of Kingsbury Company with members of the public at 5:30 p.m.

Charlene instructed those present that there would be limited questions allowed during the site visit and questions should be asked once the meeting convenes at the Town Hall. Charlene stated that anyone who wished to participate by asking questions would need to be sworn in and it is noted that everyone agreed.

Representatives of Kingsbury Company explained the proposed site plan for location of the proposed building, parking, well, waste water and driveway. James Gallagher identified the stream that he uses for a water source which flows through the Kingsbury property. He noted its proximity to the proposed waste water site.

**Meeting Reconvenes from 4/14/2015 at Town Hall**  
**Interested Parties Defined**

Charlene called the meeting to order, reviewed the rules of procedure and explained the definition of applicant and interested persons. She asked if anyone other than Jim Gallagher and the abutting property owners was an interested person. Sandra Levine said she was an interested person because she resides in town and drives by the property. Carl Dupont, an abutting land owner, said he was also representing his mother and father who are abutting land owners. Charlene said that ten people present could become interested persons even if they weren't abutting land owners. However, there could be only one spokesperson for the group and the ten had to be present at the meeting. Charlene explained that an "interested person" could file an appeal once a decision has been made. Charlene explained that the 10 interested residents have to be present as it has to go on record at this meeting who the interested persons are.

Charlene accepted the Kingsbury zoning permit application, two letters dated 4/12/2015 and 4/28/2015 from attorney Dick Saudek on behalf of James Gallagher, and a 13-page document presented by Ian on behalf of Kingsbury Construction.

Charlene read the definition of an interested person as included in the Zoning Board of Adjustment rules of procedure. The rules state there has to be a signed petition presented to the Board. Based on this, Michael Levine asked if all 10 persons had to be present at the meeting. Charlene said if the group wanted to put together a statement and gather as many signatures as possible during the meeting, the Board would determine if such a petition could be accepted under the regulations.

Charlene swore in Dean Zoecklein, Ian Mackenzie, Travis Kingsbury, James Gallagher, Dexter Lefavour, Carl Dupont, Dennis Nealon, Sandy Levine, Michael Levine, Susan Comen and Amy Rothman.

Richard Saudek said the Board had an obligation to determine if the application was complete. Charlene said the Board would take testimony from the applicant and that Mr. Saudek could make his presentation at the appropriate time. Dick stated that according to his letters he felt the application was incomplete. Dick confirmed he had the recent letter from Kingsbury.

**Kingsbury's Presentation**

Ian MacKenzie posted the site plan for the proposed project and explained the following:

- Contours of the property
- That there is no set traffic plans for parking.
- The proposed well site.
- That an application for a waste-water permit had been submitted to the State of Vermont and a site visit had been completed.
- Areas of proposed grading.
- A driveway permit from the Town of Middlesex that had been granted.
- The State of Vermont requires that the plan include an over-shadowing area for any nearby potable water sources. Ian said this was in the process of being completed as they were not aware of the water source for James Gallagher's property because it was not a registered well.

Dean Zoecklein provided an overview of the history of Kingsbury Companies. Kingsbury Construction is a separate company owned by Travis Kingsbury's parents. The Board will provide an electronic copy of the presentation. They are a general contractor, they have professional engineers on site and civil engineers. This company is part of mixed use development in the Town of Waitsfield. Their site in Waitsfield is shared with community used fields. This information is being presented to give an idea of their vision. Travis Kingsbury discussed Kingsbury Companies: Kingsbury Companies works in New England, 98% of their work is bonded, mostly municipal work, and 40% of their work is subcontracted out.

**ZBA Questions**

The Board asked the following questions:

John asked the size of the company, its plans for the future and vision for the site. Travis said they have three dump trucks, six excavators, three-to-four bucket loaders, and one bulldozer. The company would relocate from Waitsfield.

What percentage of time are the above vehicles at the proposed site? Travis stated on average the vehicles might be on site for approximately 30 days per year. The equipment goes from job to job.

What level of repairs would be done on site? General oil changes, maybe some welding inside. Will there be storage of hazardous materials? There will not be any exterior holding tanks; they currently use a waste oil burner to heat their building. Antifreeze is not stored and at a minimum they may have a 55-gallon tank.

What do they anticipate for truck deliveries? Parts for a project, FedEx and UPS. There will not be any dump trucks coming to the site delivering materials as they are delivered to sites.

With regards to the office there are 75 employees at the top of the season, with approximately twelve employees at the office, including project managers and clerical staff. The balance are construction employees and they do not go to the office; some employees live out of state. How many employees go to the Waitsfield office? Currently 12. Kingsbury expects gradual growth over the next 5-7 years with maybe up to 25 employees at the end of 7 years. The office is used during the season between the hours of 7 a.m. and 7 p.m.

Doug asked about the proposed building: There are not specific plans drawn yet, but the intended size is 60x100 x 28' high. They haven't determined a design for the building as they believe that would be part of a site plan review conducted by the Planning Commission. The vision is for a steel-framed building with wood siding and a metal roof. There will be three garage bays. The office will be one story and built to accommodate up to 25 employees. They will rent part of the building as a professional office for possibly a surveyor or engineer.

Doug asked Kingsbury to explain why they applied for a conditional use permit in the Commercial/Retail category. Kingsbury said they are not planning any retail from this permit request, but the zoning application did not include a category for mixed use or office. The Board discussed the mixed use definition as there will be some equipment storage, some equipment repairs and professional office. Ian clarified that that they will not be operating a professional garage. They are asking to be considered under professional office. Ian states that they have equipment related to surveying that is stored in the office, not just heavy equipment.

#### **Richard Saudek's Questions**

Dick Saudek said the use is clearly industrial use, not mixed use. He said there are 39 vehicles registered to Kingsbury and probably more vehicles that are not registered. He presented a document from the State of Vermont showing how many vehicles were registered to Kingsbury Companies. Dick said it would be naive to believe there are not going to be more vehicles at this site than as represented. He asked the Board to disregard Kingsbury's presentation on the green space as this was not applicable to this site.

Dick asked the following questions:

Why are they are moving from Waitsfield? Travis said the Middlesex site's close proximity to the interstate will make commuting to the office more convenient. Travis further explained that during the winter most people are laid off but some of the trucks are kept by employees. There will be some equipment serviced at this site. They would change oil, wash vehicles, and perform some mechanical maintenance. No loads of material other than piping-type materials such as precast concrete structure would be delivered to the site. No gravel.

How would they flush out the oil/grease from the building? It would be collected into a container and burned in the waste oil burner intended to heat the building on site.

How large will the building be? 60x100 single story.

What type of lighting would there be? They are not that far along on the design process.

Dick asked if they feel the site work they have done is justified. Charlene told Kingsbury they do not have to answer this question.

Dick said it is being presented as a professional building but he feels the use will be more than that.

Charlene outlined the areas that the Board is required to review as part of this project.

Dick said he does not feel that project fits into the current zoning district. He also said he knows Roger Hirt, who worked on his vehicle many years ago. Ian asked if Roger should have recused himself.

Dick said he has tried to make the case that the application is incomplete. He then asked if Dexter Lefavour can share his observations of the project and what he feels are some of the deficiencies and then give James Gallagher the opportunity to speak.

#### **Dexter Lefavour's Questions and Testimony**

Dexter said the Board should review the project as the Planning Commission would under site plan review and as the Board would review under conditional use review and suggests that this be done during the deliberation process.

Dexter asked for the area of the silt fence bump out. Ian said that as they were stumping and there was still snow on the site, they used this horseshow to put the snow and material where it was allowed to melt and settle down. He stated that this was not shown in the site plan, as there was no disturbance of materials in this area. Dexter said that in the video there were no pictures of the garage and that is significant to the project. Dexter felt there was missing information in the application and there are no dates shown on the site plan.

The Board said it appears that Dexter was reading from Dick Saudek's letter and they would take only new testimony. Dexter addressed James Gallagher's spring/water site. Dexter hadn't seen the water site before the site visit but feels that it does qualify as a water source under the State's regulations. He said the source of water is James's only source on the property. Dexter discussed the protection area of the spring. It is his opinion that the mound setbacks don't meet the requirements for the spring/water source. Dexter said he believes the site has been graded/alterd from its original state. He felt that at least eight feet of grading has been done where the building is being proposed. Dexter discussed the comment made at the site visit concerning a drop of water and that he felt it would run into the water source of James Gallagher.

Dexter stated he feels the project is intended to be a contractors' yard based on testimony given tonight and that the proposed use is not consistent with the zoning regulations. Dexter discussed washing of vehicles and said there are specific regulations that are required to be in place that are not being addressed.

He also reviewed the subdivision of the property: Kingsbury purchased 9.7 acres and the remaining acres are being held by the original owners. The permit was granted on 12/9/14 and the deed was created on 12/15/14. He wondered if this was done to avoid an Act 250 review. He felt that a full storm water permit was not required due to the size of the building, but that this could also be intentional to avoid any review.

#### **Jim Gallagher Testimony**

James Gallagher said he has lived on his property 30 years and fears his property will be overshadowed by sewage with this project. James asked if there will be any floor drains and where will they run off. James was concerned that any runoff will drain into the stream that passes through the properties and he does not want to see the water contaminated. He did get a list of registered vehicles from the Department of Motor Vehicles showing 39 registered vehicles. He feels the project is industrial use, a contractors' yard and that trucks and trailers will affect traffic on the road. James feels the stream should be protected.

The Board asks if there will be floor drains in the building. It is stated proper permits would be applied if the project was approved for storage of floor drains run off.

Carl Dupont said he doesn't feel they have done a lot of grading to the site for their stumping of the project and the Town should thank them for cleaning up the property. He further said that a spring is not a hole in the ground where you dip water out of.

James Gallagher said that the prior property owners cleaned the property.

#### **Sandra Levine Testimony**

The Board accepted statements from Sandra Levine who spoke on behalf of residents who want to be considered interested parties. There were six signatures on the petition and Sandra and Michael Levine had emails and texts from other residents who were not present at the meeting. The emails and texts were to be provided after the meeting. Charlene said the Board would hear the information and then the hearing would be closed for deliberations. Charlene said she did not know if the Board would grant the request for interested-party status.

Sandra said that if the Board did not accept the comments as interested persons, then she would ask the Board to accept them as public comments.

Sandra stated the following:

- The application was not complete and the Board should not accept the application as it fails to address building specifications, lighting and other important information necessary for a site plan review.
- This is a mixed use district and the regulations state commercial uses should be in a compacted mater and compatible with residential uses. She felt the project was not compatible with the abutting property owner.
- The project did not meet the definition of light industry and that warehouse is not allowed in this district. She felt that the description of the project provided was of a contractor yard.
- The regulations state that subdivisions shall be reviewed as a planned unit and doesn't feel the subdivision was reviewed with those standards.
- A site plan review is required under the regulations.
- The project was not reviewed as a unified whole.
- It appeared that significant site work was completed in anticipation of the project which is not allowed under the regulations or under State laws.
- The application was incomplete, the request should be denied and the Planning Commission should review with a new complete permit.

#### **Other Comments**

Amy stated that she was concerned about the impact of traffic and she worries it will destroy the beauty of the town.

Dennis Nealon said most of his concerns had voiced and noted that while the while the septic and water permits were in administrative review, that did not mean that the permits have been approved.

Michael Levine said he appreciates all the work of the volunteer boards and that Kingsbury wants to expand to Middlesex. He felt that the project was not suited to this district. He also asked Kingsbury why they did preliminary site work without a permit in place. Ian said it was to their advantage to do the work during the winter months. He added that minimal earth movement was done as part of the stumping project. Michael asked if a town official granted permission for Kingsbury to do this work. Charlene said they do not have to answer this question.

Carl asks when the decision would be posted. Charlene said she hopes a decision will be made soon and that the Board has 45 days to respond. The decision will be available at the Town Clerk office as a public document.

Sandra said she will email the Board the emails and texts from Middlesex residents who wish to be considered as interested parties.

Doug moved to enter deliberative session. Roger seconded. The motion carried.

The Board went into deliberative session at 8:32 p.m.

Meeting was adjourned at 9:50 p.m.

Respectfully submitted,

Cindy Carlson, Zoning Administrator