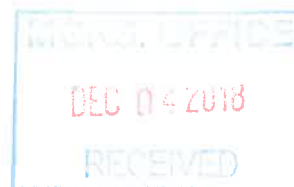




Town of Middlebury  
 DEVELOPMENT REVIEW BOARD  
 77 Main Street  
 Middlebury, VT 05753



Via Certified Mail

December 4, 2018

KANA, Inc.  
 362 North Main Street  
 Barre, VT 05641

Town of Middlebury  
 Attn. Kathleen Ramsay  
 77 Main Street  
 Middlebury, VT 05753

**Findings of Fact, Conclusions of Law, and Order**

RE: Complaint pursuant to Section 753.II, file # 2018-08:146, regarding abandonment of Blue Spruce Motel, 2428 Route 7 South, Middlebury, VT, parcel ID #08:146

The Middlebury Development Review Board (DRB) held a public hearing on November 5, 2018 to consider the complaint of the Town of Middlebury, through its agent and Town Manager, Kathleen Ramsay, pursuant to Section 753.II. of the Middlebury Zoning and Subdivision Regulations (the "Regulations"). Specifically, the Town lodged a formal complaint asserting abandonment and the lack of maintenance of the Blue Spruce Motel property has given rise to on or more of the following conditions:

1. A threat to public health and safety,
2. An undue adverse impact on the aesthetics of the neighborhood and surrounding area, and/or,
3. Caused an undue adverse impact on neighboring property values.

After review of the application, the DRB unanimously determined that the Blue Spruce property, since the fire in July 2017, has been abandoned and inadequately maintained as provided for in Section 753.II of the Regulations. Further the DRB orders the owners of the Blue Spruce property to remove all fire damaged materials and cover over or fill excavation or basement to normal grade and secure the remainder of the structures at the expense of the owners. Listed below are the Findings of Fact, Conclusions of Law, and Order approved by the DRB.

**FINDINGS OF FACT**

1. The property that is the subject of this proceeding is the former Blue Spruce Motel property located at 2428 Route 7 South, Middlebury, Vt., designated as parcel no. #08:146 (the "Property"). The current owner of record of the Property is KANA, Inc.
2. On September 4, 2018, the Town, acting as a Municipality and through its agent Kathleen Ramsay, Town Manager, filed a formal complaint requesting the DRB to hold a hearing regarding the status of abandonment of the Property. In addition to the formal complaint the Town provided pictures of the burned out Motel on the Property.
3. Others attending the hearing included Sam Sharma (representative of KANA, Inc.) and Bernard Quesnel.

4. The Blue Spruce Motel burned on July 12, 2017 and has been unoccupied since that date. Based on representations by Sam Sharma, the owners have not resided on the property since the fire.
5. The owners have made no effort to comply with Section 753.I, which requires that within three months after destruction by fire, “the owners shall remove all structural materials, and shall cover over or fill any excavation or basement to normal grade”.
6. Mr. Sharma stated that he hopes to start cleanup of the property within 30 days and will have the fire damaged debris removed and site secured within 90 days. According to Mr. Sharma, as of this date no hazardous materials testing has been completed.

**7. 753.II- Threat to public health and safety:**

It is unknown what environmental hazards remain on site. The VT Department of Health has contacted Zoning Staff regarding site cleanup, specifically with regard to the need for asbestos testing and abatement. The Owners have made no visible effort to secure the site. There is no presence of owners on site. There is no tape, snow fence or other visible barriers restricting the public from the burned out Motel structure.

**8. 753.II- Undue adverse impact on the aesthetics of the neighborhood and surrounding area:**

No visible effort has been made to secure the site. The property remains an unsightly accumulation of burned debris that appears to be accessible to anyone. There have been numerous complaints from the public that the remaining burned building and debris adversely impacts the appearance of this gateway into Middlebury.

**9. 753.II- Undue adverse impact on neighboring property values:**

The property remains an unsightly accumulation of burned debris that significantly detracts from the scenic quality of the area. As of this date neighbors have not requested a reduction in their property assessment.

**CONCLUSIONS OF LAW**

1. Middlebury Zoning and Subdivision Regulations Section 753.II allows the Development Review Board to hold a hearing and determine whether a structure has been abandoned. The DRB has the authority, pursuant to Section 753.II, to order the abandoned structure to be secured, repaired, or removed at the owner’s expense.
2. The Town of Middlebury is considered an “Interested Person” pursuant to 24 VSA 4461(B) and MAPA and has standing to bring a complaint under Section 753.II.
3. The structures on the Property pose a threat to public health and safety due to the potential for environmental hazards as well as the unsafe physical condition of the unsecured burned structures.
4. The structures on the Property impose an undue adverse impact on the aesthetics of the neighborhood and surrounding areas, and has the potential to impose an undue adverse impact on property values if not remedied promptly.

5. The structures on the property have been abandoned within the meaning of Section 753.II because they have been unoccupied for more than one year, and, for the reasons stated above, they are inadequately maintained.
6. In order to mitigate the undue adverse impacts caused by the current condition of the Property, it is necessary and appropriate that the owner of the Property be ordered to remove all fire damaged structures and materials from the Property, cover over or fill any excavation or basement to normal grade, and secure the remainder of the structures.

### ORDER

Based on the foregoing, it is hereby **ordered** by the Middlebury Development Review Board that the owner of the Property, KANA, Inc., shall, at its own expense and no later than 90 days from the date of this Order, remove all fire damaged structures and materials from the Property, cover over or fill any excavation or basement to normal grade, and secure the remainder of the structures. All work shall be completed in accordance with all applicable laws and regulations, including but not limited to applicable environmental, health, and safety regulations. Failure to comply with any provision of this Order shall constitute a violation punishable by fines and injunctive relief pursuant to Section 1210 of the Regulations and all other applicable laws and regulations.

In accordance with 24 V.S.A. §4471, any Interested Person who has participated in this proceeding may appeal this decision within 30 days by filing a notice of appeal by certified mail, sent to the State Environmental Court with a copy to the Town of Middlebury. Pursuant to 24 V.S.A. § 4472, upon the failure of any Interested Person to appeal within the 30-day period, all Interested Persons affected shall be bound by this decision and shall not thereafter contest, either directly or indirectly, the decision in any proceeding, including an enforcement proceeding.

Sincerely,



Kevin Newton, Chair  
Middlebury Development Review Board

cc: Planning Office  
Town Clerk for recording