

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Supervisor Jenkins opened the workshop at 7:00 p.m.

The Town Clerk called the roll, which resulted in the following Town Board Members being present or absent:

Town Board Members Present:

Tom Cumm	Councilman
Bob Prendergast	Councilman
Gina LeClair	Councilwoman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

Town Board Members Absent:

None

Also Present: Jeanne Fleury, Town Clerk; Joe Patricke, Building Inspector/Code Enforcement Officer; Martin D. Auffredou, Attorney for the Town; Town Residents: Shannon Kenny, Ray Fischer, Adele Kurtz who arrived at 7:35 p.m.; and Laurie LaFond, former Town Resident

Supervisor Jenkins welcomed everyone to the workshop.

Joe Patricke, Building Inspector/Code Enforcement Officer, distributed at this meeting a draft revised law regulating outdoor wood burning furnaces.

Councilman Prendergast began by stating that Joe Patricke did a good job preparing the draft law, but he wasn't sure the legislative intent covered what the Board's intent was. He thought it was the Board's intent to protect the safety and welfare of the public and the legislative intent didn't really cover that.

Attorney Auffredou agreed that the legislative intent could be expanded upon.

Joe Patricke pointed out that the legislative intent in this draft only has three words that are different from all the other versions.

Councilman Prendergast referred to Page 2, G – Prohibited Fuels - #10 that reads "coal". He asked if coal could be burned in any of EPA approved units.

Councilman Cumm replied no, just wood pellets, corn or propane.

Councilman Prendergast referred to Page 3, Section 75-5 – Existing Hydronic Heaters. He asked if this section gives people who have existing/installed heaters 180 days to come in for a permit and Attorney Auffredou replied this is how he reads it. If they have to conform to any of the other regulations in this law then how long do they have?

Joe Patricke replied that this was a good question. Normally a building permit is good for one year. This reads they have to get a permit within 180 days and then the permit is good for one year.

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Supervisor Jenkins pointed out that the first sentence under Section 76-5 reads "Any OHH in existence on the effective date of this Chapter shall be deemed to be a non-conforming use and permitted to remain etc. It doesn't read "in operation" in the Town of Moreau.

Joe Patricke noted that 3rd line from the bottom of Section 76-5 reads "Existing or in existence means that the OHH is in place on the site and is operable".

Supervisor Jenkins agreed, but it is a long way between the first sentence of that section and the bottom of that section. There is quite a separation in language.

Attorney Auffredou suggested the following wording: "Any OHH in existence as defined below on the effective date of this.....".

Supervisor Jenkins said that would clarify it.

Councilman Prendergast referred to Section 76-6 – Revocation of Permit – (A) that reads "Malodorous air contaminants from the OHH are detectable outside the property of the person on whose land the OHH is located;". He asked if isn't it almost impossible to have no air contaminants? The wording that he was questioning was "detectable outside the property" then it is in violation period.

Supervisor Jenkins stated that if that was the position then they should eliminate A, B and C. Perhaps we only need D & E under Section 76-4.

Joe Patricke stated that if they went ahead with the EPA Phase II units then those things shouldn't be existing anyhow and if they are then they will be minimal, because those are the units that burn at 2,000 degrees.

Joe Patricke asked if he was hearing to strike A, B and C from Section 76-4 and Supervisor Jenkins said he thought so.

Joe Patricke asked if they could go back and talk about Section 76-5 and the 180 days. The point made by Councilman Prendergast is valid. A building permit is good for one year. Is it the Board's intent to give a person 18 months to get in compliance?

Councilwoman LeClair stated that she thought they talked about getting them in compliance by the next heating season.

Attorney Auffredou asked if it would be too much to ask a person to make the stack modification in order to get a permit within the 180 day period. It seems to him that the Board could do that.

Councilwoman LeClair stated that she thought they talked about sending everybody a letter so that they know.

Joe Patricke asked Attorney Auffredou if they could modify the permit that we have and make one for existing furnaces and have a 6 month period on it.

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Attorney Auffredou said yes. He stated that if that was done in this law then it would be specific to outdoor wood burning furnaces and they could put a footnote referencing the building permit and that for the purposes of existing outdoor wood burning furnaces this takes control over that.

Councilman Prendergast said the only other thing he wanted to go over was the availability of the units. He referred to a point made by Adele Kurtz at a previous meeting about when their certification or qualification runs out on the units and then they no longer meet code. He said the only way to answer this was to include in the law that at the time it was permitted by the Town and met those certifications. That way if a year later the EPA no longer certifies those units then a person that has one wouldn't have to remove it.

Joe Patricke said he read the NESCAUM information and what they are talking about is the same as in the building industry. If you have certification and put it in legally you are there and can't be made to take it out. However, they have to be re-certified every so often for everything. A mobile home is an example. Once you buy it you can put it in, but they have to get renewed every "x" number of years. That is how they get their license to put it out. What they are saying is that these furnaces are good right now for five years, but then they have to be re-certified to make sure they are still burning clean to be able to continue selling them. It is possible that if they aren't burning clean anymore you won't be able to buy them, but those that are in place would be allowed to stay. That is how it works in everything else he does.

Councilman Prendergast asked about availability.

Councilman Cumm said he spent no less than thirty hours going over this the past two weeks. As of yesterday two distributors in this area got an e-mail and letter from Wood Doctors saying that their HE8000 is available for sale and delivery this week. There are orders coming in now. The Aspen 175 from Greenwood is available through Wallace Johnson Contracting in Delanson, New York. Central Boiler has three units. The Maxim N250 which burns pellet and corn will be available this year. They also sell the EClassic 2200 wood only and EClassic2300 wood and propane. Jack Croft in Schaghticoke and North Creek Auto in Little Falls, New York sells these units. Hardy Manufacturing out of Philadelphia, Mississippi doesn't have any dealers in this area, but expect one in 2010 and they would sell the KBP270 that is EPA Phase 2 approved and is a pellet stove. Northwest Manufacturing, Wood Master, AFS900 a corn only unit and they are coming out this year with an EPA approved model that will be imported from Europe that has been used over there for ten years and there will be five dealers in the area of this unit (Amsterdam, Saratoga Springs, Averill Park, Crown Point and Danby, Vt.) Silver Winds Metal, the Wood Doctor, and the HE8000 that will be available. There are six dealers in this area of this model (Galway, Lake George, Warrensburg, Clemons, Schroon Lake and Schenectady).

Councilman Kusnierz asked which ones burn wood. He wanted to remind everyone that the Phase II Program includes bio-mass other than wood and includes outdoor and indoor furnaces.

Councilman Cumm replied every one he listed is an outdoor furnace. The ones that burn wood are the Aspen175, EClassic one is wood and wood or propane, the Wood Doctor HE8000.

Councilman Kusnierz said the reason he brings this point out is that the whole purpose of why individuals are moving to consider outdoor wood burning furnaces is to save money. In the

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

latest draft law revised 1/13/09 we are limiting and regulating outdoor wood burning furnaces approved under the Phase II EPA Program and the cheapest one he could find to purchase without installation is \$9,950.00. The real issue we have is not the clean burning furnaces it is the ones that are in place now or could be placed out there at a lower cost. It is essentially an outright ban and if that is what the Board was trying to accomplish then they should go with the outright ban, because you aren't offering our residents an alternative for low cost fuel. The whole reason we went to two wars is because of petroleum and we are trying to reduce our dependence on foreign oil. The way to do that is with our renewable resources, which is wood. There are parts of the Town where you can't have these devices, because of population density. There are other parts of the Town where outdoor wood burning furnaces are a viable cheaper alternative. When installed and used properly and with some regulation from the Town you can have a trade off that affords our residents and optional heating source. This draft that we are on here doesn't allow that. It doesn't allow it if you are going to force someone to pay \$10,000.00. You need to reconsider where we are at on this issue. He thought when he started this process with the new Board that we were moving in the right direction. He thought they had a workable draft and he was ready to adopt it. It was a good compromise that addressed everyone's concern. This goes too far and he personally won't support a document that is going to require individuals outside of stack height to invest money in legally installed outdoor wood burning furnaces and he won't support legislation that essentially requires residents who want to do this to spend in excess of \$10,000.00 especially in these tough economic times. We should reconsider some of the early drafts out there, put it in place, remove the moratorium and move on. This issue should be regulated at the state and federal level. Towns across New York State don't have the expertise to regulate these devices. We are looking at opacity and emissions standards and we don't have that expertise. We should be waiting for the New York State Building Codes to be updated and include them. He thought that was going to happen in a year or year and a half.

Supervisor Jenkins stated that won't stop people from installing them in an R1 or R2 zone where it doesn't make any sense whatsoever. We don't have any rules right now.

Councilman Kusnierz replied that is why he supported a draft where we prohibited that.

Councilman Prendergast asked Ray Fischer how much his unit cost and Ray responded about \$8,000.00.

Supervisor Jenkins asked if it included installation and Ray replied it cost him \$500.00 to get it installed.

Shannon Kenny asked what year that was and Ray replied 2001.

Councilwoman LeClair asked if it is an EPA approved stove and Ray replied yes it was from Central Broiler.

Councilman Cumm stated the cheapest one he could find was about \$6,200.00 and that wasn't a Phase I or Phase II boiler. That could be bought today. It was a phase out model, plus installation.

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Laurie LaFond stated this doesn't stop people from burning wood. Her brother looked at outdoor wood boilers and he found problems with them and ended up getting an EPA certified woodstove that heats his whole house and emits 1 gram of fine particulate per hour. For \$1,500.00 if you have a big house you get two and save money and emissions.

Councilman Kusnierz asked Laurie if she was a resident of the Town and Laurie replied that she is speaking for her mother who is resident in the Town.

Councilwoman LeClair stated that she and Councilman Cumm called a lot of places to see if they sold these units and the comment was that they pollute and they don't sell them. Pete at Matchless Stove and Chimney said that there is no such thing as clean boilers. He doesn't carry them at all even the EPA ones, because of that.

Ray Fischer stated that in Section 76-5 it mentions B, C and D under 76-4 and there isn't any B.

Joe Patricke said he knows that and that is one of the things they were going to talk about tonight. B would be a description of what the Phase II units are.

Councilman Prendergast referred to Page 3, Section 76-4 (G) – Height of Stack – if this law was passed as is would the stack height have to be 2 feet higher than the peak of the residence served if we go with the EPA approved units.

Joe Patricke replied he was going with the latest version of everything we have and that is what is recommended.

Councilman Kusnierz asked how we would regulate the residence served. Why would we dictate to the owner how high the stack would be for his residence if he didn't have anybody around him? Wouldn't we be more concerned with the nearest structure off the property?

Joe Patricke stated he couldn't argue with this logic. It is the same with the building code they are making the determination that this person would sell it and the new owner would be protected. He didn't have any other explanation.

Councilman Kusnierz stated he was also concerned that what we are putting down here is very confined and not applicable to different situations. One way around this is to include in the legislation that they would have to go before the Planning Board for approval. Notice would be provided to surrounding property owners within 500 feet by registered mail. They could come to a public meeting and comment on it and offer input. Somebody living in R5 with no neighbors is a different situation than a person in R3 that may have three or four neighbors around them. It allows common sense to come into play. They aren't bound by a rigid document. It would show we are even more responsive to the residents that way.

Joe Patricke responded saying that it could be a minimum of 60 days before they could get a permit if they had to go to the Planning Board.

Attorney Auffredou stated it would probably be done by special use permit process and right now the Zoning Board of Appeals is the one who handles special use permits. The Planning Board has special use permit authority as long as the Town Board grants it that authority and the Town

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Board could, for this particular use, grant them that authority. It could be at the discretion of the Planning Board whether to hold a public hearing or not.

Councilman Cumm said the draft before them was what he thought was a compromise he could live with. He started out with the opinion that there should be a total ban and after doing a lot of Research, on his part and the part of Councilwoman LeClair and Joe Patricke, he thought they came up with a draft that he could live with and with the few modifications brought up tonight they should go with this one.

Councilman Kusnierz said he had the same thoughts about a previous draft that they came up with that was a compromise and that they went through line by line.

Supervisor Jenkins said his concern is over the fact that there are about thirteen units out there operating now and we have no control over them and we need to restrict where they go. It sounds to him that the main difference is the Phase II issue. Based on the standards he has been reading he would prefer to go with that. He is prepared to move on something.

Councilman Cumm asked Councilman Prendergast if this draft law was something he could live with.

Councilman Prendergast asked Joe to show him on the map where the R3 and R4 zones are and Joe did this.

Councilman Prendergast stated that he could foresee development in the R3 zone before the R4 zone and this concerns him.

Supervisor Jenkins reminded him that a person would still have to have three acres of land.

Joe Patricke asked about the RP zone where you need a minimum of ten acres.

Councilman Prendergast said he didn't have a problem adding the RP zone. He wouldn't have a problem not allowing them in R4, R5 and RP.

Councilman Cumm and Councilwoman LeClair were agreeable to this also.

Councilman Kusnierz asked what would happen if a person owned 200 acres in an R3 zone.

Joe Patricke replied that the biggest tracts of land in the R3 zone are about 40 acres or close to that.

Councilman Cumm asked Councilman Prendergast again if this draft law is something he could live with.

Councilman Prendergast replied that what he is hearing is that units are available and close to being affordable. Two people in attendance think the EPA units are good. If we allow and prohibit in the right areas, protect the air quality in the Town and with the changes we talked about tonight he could show an interest in this.

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Ray Fischer pointed out that Section 76-5 doesn't cover (E) in Section 76-4.

Joe Patricke replied that 76-5 should read "exempt from Section 76-4 (B), (C), (D) and (E)".

Councilwoman LeClair thanked Ray Fischer for coming to the meetings. He and Mr. Cross and Mr. Johnson have opened her eyes to a lot of things that she didn't realize were out there.

Joe Patricke asked Councilman Kusnierz if what he said was that he wouldn't support it at any cost other than stack height. There aren't any other requirements for existing that he could see.

Councilman Kusnierz said he was concerned about how it reads that with the effective date of this legislation all will be deemed non-conforming and must be permitted and the owner must apply for and receive. Why wouldn't they receive a permit?

Joe Patricke stated they can apply, but if it doesn't comply with the regulations they won't get a permit and Councilman Kusnierz replied stack height right and Joe replied right.

Joe Patricke stated stack height is the only thing that he knows of that they are controlling.

Councilman Kusnierz asked if don't we regulate stack height now and that it has to be installed according to manufacturer's recommendations.

Joe Patricke replied according to manufacturer's installation instructions.

Councilman Kusnierz said he heard hear tonight that it tells you it has to be two feet higher than the eave.

Councilwoman LeClair and Joe Patricke replied that is on the new stoves approved by the EPA.

Joe Patricke asked Ray Fischer how high his was and Ray replied 18 feet.

Ray Fischer said some of them come with an eight inch lip in the center. His came with a four foot stack on the back. You are basically saying that mine is okay and the new ones would have to meet the regulations.

Councilman Prendergast stated in our discussions we talked about the stack having to be two feet above the peak of the residence served. That is the only real affect it was going to have on existing units.

Joe Patricke added other than prohibited fuels.

Councilman Kusnierz asked if they were going to provide a cost sharing mandate and Supervisor Jenkins said no.

Adele Kurtz talked about how the Phase II units were good for five years and then the manufacturer has to reapply in order for them to be a qualified unit. She stated that Councilman Prendergast had previously mentioned that he though it would be appropriate to add language

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

such as, "at that time or at the time the law is enacted if it meets the Phase II then it would be a qualified unit". The draft language before the Board tonight doesn't take this into account.

Joe Patricke replied that throughout the building industry once they are installed they are valid, but they have to be re-certified.

Adele Kurtz asked if wouldn't it make it clearer if they added "it meets the Phase II standards at the time of installation" and Joe Patricke replied yes and they could do that.

Adele Kurtz asked why the definition of opacity was in there. It wasn't referenced anyplace in the draft law.

Joe Patricke realized this and Attorney Auffredou said they would go through it.

Shannon Kenny stated she knows that Councilman Kusnierz is concerned over the cost of the units for people who may want to purchase one, but the main thing for the Board to take into consideration is the majority of the Town. She didn't think they would run into a problem with the majority of the Town wanting to install these. We shouldn't worry about regulating things by being afraid to offend somebody who is already looking to spend that much money anyway. You have the majority of the Town to be taken care of.

Councilman Kusnierz said all of our decisions are made on a majority of votes, but when he evaluates issues that come before the Town he considers the rights of the individuals and how they are impacted.

Shannon Kenny said she realizes that. Ray Fischer has added stacks to try and accommodate them and has more than tried to accommodate them. Unfortunately it is out of his control. He can't control how much it smells and he can't control how it affects their quality of life. They brought this to the Town to try and help protect other people. She told Councilman Kusnierz that she understood he was trying to protect the people who are going to be spending the money, but she wanted it on record that he should be trying to protect everybody.

Councilman Kusnierz said he was doing more than protecting the people who were going to spend the money. He was trying to protect an industry in our Town. Half of our Town is in an agricultural district and agriculture is a #1 industry in New York State and it plays a major role in our economy. Those who are involved in production agriculture are constantly striving to become more efficient in maintaining their viability and their two largest costs are energy costs and feed costs and he isn't going to stand up here and not give somebody an opportunity to decrease their energy costs when the end result isn't going to impact their neighbors. The way this legislation is drafted you need an EPA certified Phase II unit even in the R5. He guarantees that if this legislation is adopted there won't be one sold in this Town and installed. Cost prohibitive. Effectively this is an outright ban. If that is the Board's intent then they should go ahead and do it, because that is what this is accomplishing.

Shannon Kenny didn't agree that would be the case, because Ray spent \$8,000.00 on his.

Councilman Kusnierz said it was a good thing he did, because he wouldn't be able to do it under this legislation.

A workshop was held by the Town Board of the Town of Moreau on January 15, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a proposed law regulating outdoor wood burning furnaces.

Councilman Cumm stated for the record that, that was Councilman Kusnierz's opinion not the other members of the Board.

Councilman Kusnierz said he was speaking for himself and he never speaks for the other members of the Board ever and everything he stated was not his opinion it was fact.

Supervisor Jenkins said if there aren't anymore comments he would accept a motion to close the workshop.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to adjourn the workshop at 8:05 p.m.

Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	Yes
Councilwoman LeClair	Yes
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

Workshop adjourned.

Respectfully submitted,

Jeanne Fleury
Town Clerk