

A workshop was held by the Town Board of the Town of Moreau on January 12, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a draft law on Outdoor Hydronic Heaters (OHH).

Supervisor Jenkins called the workshop to order at 6:30 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; Martin D. Auffredou, Attorney for the Town; Town Residents: Adele Kurtz and Reed Antis; at 6:50 p.m. the following people entered the workshop: Paul Joseph, Highway Superintendent; Nancy Ryan, Transfer Station Clerk; John Telisky, Town Resident; at 6:58 p.m. Peggy Jenkins, Assessor entered the workshop; at 7:02 p.m. Nick Reisman, Post Star Reporter entered the workshop

Supervisor Jenkins began by stating that only a couple of words changed since copies of the draft law were given to the Town Board Members and he was comfortable with the way it is worded.

Joe Patricke referred to page 4 of the draft law, the first paragraph, 5<sup>th</sup> line. It is his opinion that this line **should read: “Chapter all the specific requirements of § 76-4 hereof, except § 76-4 (A), (B), (C), (F)”. Delete (D).** He thinks it was an error.

No objections were raised from the Board to this suggestion from Joe Patricke.

Joe Patricke referred to page 3, §76-4 (F), Height of Stack, and said in his opinion this section should read “The minimum height of the stack for any OHH shall be per the manufacturers installation instructions.”

Councilman Prendergast agreed. The way it reads now you would be telling a person who purchases an outdoor hydronic heater to run it efficiently, because the manufacturer recommends these things for maximum efficiency of the unit and now we would be telling them to run it a different way and don't run it efficiently. The other thing is that if you have a residence and 190 feet away there is a structure that the OHH services and it does not service the residence and this says it has to be two feet higher than the peak of the roof line of any residence not served by the OHH.

Joe Patricke agreed and said they should word it “per the manufacturer’s installation instructions”.

Councilman Prendergast stated that we started out allowing outdoor heaters as long as they were in the agricultural area and they didn't have to meet EPA standards and now we are saying they have to be EPA certified. How restrictive do we have to make it? Someplace in the Town there should be an area where these units can be used. It is pretty restrictive if you recommend the height of the stack.

Supervisor Jenkins said if we change it to “manufacturer’s installation instructions” and strike the words “two feet”, the new ones are still going to have to meet the setback requirements. Any that are existing and creates a problem can be dealt with. We have a local public health board that could address the

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problem and they can either make them comply with certain standards or shut them down for health reasons.

Councilman Cumm asked what happens with units that are already on properties and they don't have the stack height and are just so far above the unit.

Joe Patricke said we have one in Town and the owner has raised the stack twice as high as the manufacturer's specifications and it hasn't improved the efficiency any.

Councilman Cumm stated that the Hearth and Patio Association has tried to address the stack height so that the smoke goes above the roof line of the building not being served and we are negating that.

Councilman Kusnierz stated that New York State has been working on a law since 2005 and put bills before both houses of the legislature and just this past week it was before the assembly and the senate to regulate outdoor wood burning furnaces and if you look at the language they include as far as installation is concerned two key features. One is in regards to the installation of the chimney and they say it should be in accordance with applicable building standards and two the installation and operation of the device should be in accordance with the manufacturer's written instructions and in compliance with the local ordinance. They have been working on this much longer than we have and they recognize the significance of installing them with what the manufacturer recommends and we can't go wrong with the law enforcement aspect if we follow suit.

Supervisor Jenkins said that is basically where we are at and that is what Joe is saying.

Councilman Kusnierz said they didn't need the stack height requirement in there to do that.

Joe Patricke said that we can delete §76-4 (F), Height of Stack. Everything we do is per the manufacturer's installation instructions and everything else is in the building code.

Councilman Prendergast asked Joe if they deleted that section and somebody installs a unit and doesn't follow the manufacturer's installation instructions would we be able to enforce them to do it.

Joe Patricke stated that every time you get a building permit you have to get a certificate of compliance or certificate of occupancy. If they don't comply with the manufacturer's installation instructions they won't get a certificate of compliance. They would be in violation of the law.

Councilman Cumm stated that yesterday he was happy with the draft law and now he is hearing changes that he doesn't agree with.

Joe Patricke stated it isn't a change only a suggestion on his part.

Councilman Cumm stated the only saving grace here is that all manufacturers are recommending two feet higher than the residence not served. He can live with the draft law if they keep that language in there.

Councilwoman LeClair asked if he meant the wording "as per the manufacturer's installation instructions".

Councilman Prendergast said he could live with it being left in or taken out. He was talking about manufacturer's installation instructions.

Joe Patricke said that isn't what he was hearing. He asked Councilman Cumm if he was suggesting that they take out the wording "two feet higher than the peak of the roof line" and Councilman Cumm said no. He was suggesting they remove the wording "per the manufacturer's installation instructions, whichever is more restrictive".

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Councilman Kusnierz referred to page 3 of the draft law, §76-4 (E), Months of Operation, 3<sup>rd</sup> line “non-seasonal use exemptions may be granted by the Building Inspector/Code Enforcement Officer provided the requirements of §76-4 (B) and (C) are complied with, or as may be deemed appropriate by the Building Inspector/Code Enforcement Officer.” He asked Joe for an example of where he would permit a non-seasonal use of one of these devices.

Joe Patricke replied Mr. Johnson, for example, who came before them who wanted to heat his riding stable and barn with one of these units. His barn and stable are out in the middle of a field and there is nothing near it. If he came into him and said he had to install one of these units to keep the building warm he would probably respond by saying it was okay all year long. It wouldn't have any impact on anyone. There isn't anyone within 500' to 600' of the building.

Councilman Kusnierz agreed, but said this wording is very subjective. He said if Joe Patricke retires the person who takes his place may not feel the same way. **He said he would like to see spelled out in the code “agricultural use exemption”.**

Joe Patricke asked if they should include this wording or have the person come before the Town Board.

Supervisor Jenkins said we talked before about having a person come before the Town Board and Attorney Auffredou suggested we not add that. He said the decision could come from the Town Board upon recommendation from the Building Inspector.

Joe Patricke asked if he was saying that the 3<sup>rd</sup> line of 76-4(F) should read “non-seasonal use exemptions shall be granted by the Building Inspector after review by the Town Board” or “approved by the Town Board upon recommendation by the Building Inspector”.

Attorney Auffredou told Joe Patricke that the problem with that is if he makes a positive recommendation and the Town Board doesn't want to follow his recommendation then it puts the Town Board in an awkward position. How about wording it “approved by the Town Board”.

Joe Patricke responded that previously Attorney Auffredou said we shouldn't do that.

Councilman Prendergast asked why it would have to come before the Town Board.

Councilman Kusnierz said they could take it completely off the table by **including the wording “such devices operated on land used in agricultural production or farm land shall be exempt from that”**. It wouldn't be open to interpretation by code enforcement and the Town Board wouldn't have to be involved in it unless the Town Board wanted to change the code.

Councilman Prendergast asked if doesn't the Building Inspector/Code Enforcement Officer do this on a daily basis. He goes out and inspects something and reviews it and knowing the codes he makes these interpretations every day.

Joe Patricke said it isn't as subjective. He agreed with Councilman Kusnierz. Predominately everything they do is based upon black and white. They can show why they did it.

Supervisor Jenkins stated that he thought Toadflax used one to heat their greenhouses. Would that be considered agricultural use and Joe said no, it is commercial.

Councilman Kusnierz asked if didn't they have a provision in the draft law for existing devices.

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Supervisor Jenkins said "it is all part of the same". We were also going to say that people who used it for hot water we were going to let the Building Inspector approve it assuming it wouldn't impact the neighbors based on change in temperature and less movement of the air. Now this draft is allowing that.

Joe Patricke said he didn't know of anyone, outside the agricultural district, who operates one all year-round. Most stop using them in April or May.

**Councilman Kusnierz said they could include language referring to primary source of hot water for their residence.**

Supervisor Jenkins said they would still base it on what makes sense and not just automatically allow it.

Joe Patricke added that before it was discussed about how they would go out and interview them and if the neighbor didn't have a problem and there is no impact then an exemption would be granted.

Supervisor Jenkins said that is where they left off last time. That is sort of covered the way the draft law is worded now.

Councilman Kusnierz said it puts sole authority in the code enforcements hands and that goes back to his earlier point and that is if a person replaces Joe Patricke they may not share his interpretation of the law.

Joe Patricke agreed with him and said he didn't like anything that was that vague.

Attorney Auffredou cautioned Joe to be careful on the use of the word "vague". It isn't "vague". What this does is it gives Joe Patricke discretion. He exercises discretion every day.

Joe Patricke said yes, but over black and white issues. There is nothing black and white over exempting a farmer who is using it to heat his barn. There is nothing that tells him which farmer could use it and which one couldn't.

Supervisor Jenkins said we only have three or four that would be affected by this clause and none that would come about in the future that would be affected by this clause. He didn't see why this was such a big issue and why we can't leave it as it is. If we replaced Joe Patricke and the new person didn't have the same attitude and they didn't want anybody to have them he assumed the sitting Board would act on it.

Councilman Kusnierz stated that the Town Board plays a significant role in making the jobs of their Town employees easier and one way to do that is put it in black and white.

Supervisor Jenkins said they should let it come here with a recommendation from the Building Inspector.

Councilman Cumm asked Joe Patricke if he felt more comfortable letting the Town Board decide or making the decision himself.

Joe Patricke said he has no doubt in his decision making capability, but he isn't going to be here forever and he has to agree with Councilman Kusnierz and you may not be happy with the next guy. If the building inspector says no then who do they appeal to?

Attorney Auffredou said they could add "they can appeal to the Town Board".

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Supervisor Jenkins agreed with this and said they could add an appeal clause. If a person isn't happy with the decision then they can appeal to the Town Board.

Councilman Prendergast and Councilwoman LeClair agreed with this.

Councilman Kusnierz said he wouldn't support that.

Supervisor Jenkins told Councilman Kusnierz it would take care of what he said and Councilman Kusnierz said he didn't think it did and Supervisor Jenkins asked why not.

Councilman Kusnierz said it puts another layer of bureaucracy in there for one, because the code enforcement officer can make a recommendation, but the public will still come to the Town Board looking for a decision. If you have it in black and white Joe doesn't have to go any further and the Town Board doesn't have to go any further.

Attorney Auffredou said the appeal does sort of add to another layer of bureaucracy, but how many times would this come to the Board? It seems to be a reasonable compromise. If it comes to the Board once a year so be it.

Councilman Prendergast referred to §76-8, Enforcement. He referred to the fines in this section and read the sentence "each day that a violation occurs shall constitute a separate offense". What happens if a person acknowledges that they did something wrong, but to correct it they can't get a part for seven days?

Joe Patricke said he wouldn't fine somebody for that.

Attorney Auffredou said there is a similar provision in most of the chapters in the Town Code and most of the chapters in local codes with all municipalities and what it is used for is that let's say 20 days go by and in court the lawyer is going to seek the maximum fine, but in reality in most cases there is a settlement and a reasonable fine is negotiated. It is a tool that is used by municipal attorneys, in municipal courts, throughout the state.

Joe Patricke added that when the violation occurs they wouldn't be convicted. They would be given time to fix it. He would write an order to remedy and give them a time period and then go back and check. They usually let them set the date of how long it is going to take them to remedy.

Councilman Kusnierz said he was surprised, because at the last workshop we talked about fines and he thought they were all in agreement that they were awful excessive and now he looks at the new draft and they were bumped up even higher. Did somebody change their mind?

Supervisor Jenkins said they were \$500.00 and \$1,000.00 and then \$1,000.00 and \$250.00 and now it is back to \$250.00 and \$500.00.

Attorney Auffredou told Councilman Kusnierz that he disagreed with him and said these fines aren't excessive at all. He represents a lot of municipalities and he thinks these fines are if anything for this type of a law a little bit low.

Councilman Kusnierz disagreed. He referred to the bill before the legislature that is in committee and they have three levels of fines for violation of this outdoor wood burning act if adopted. The first time is a warning and the second time there is a warning and they are required to be supplied with educational

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materials stating they are in violation of the law and the detrimental health affects and that is why the law is in place. The second time they violate the statute there would be a civil penalty of \$75.00. The third

time the court would have the discretion to establish a penalty of not less than \$100.00 and but not more than \$250.00. He thinks we should be in line with this.

Attorney Auffredou said he was looking at the Town's sewer and water codes and "for any violation you are looking at \$1,000.00 or imprisonment, there is one water, sewer \$500.00 for each violation". These numbers are more justified due to the nature of the law and the nature of the violations that can occur here and more consistent of what is throughout the Town's code. You go to court for a water violation and get a \$1,000.00 fine and you go to court for an OHH violation and you get a warning with a \$50.00 fine doesn't make any sense.

Councilman Kusnierz said he wasn't comparing apples to apples and Attorney Auffredou said yes he was.

Councilman Kusnierz said from an environmental standpoint there is a big difference between violating this law and smoke crossing a line versus the health impact from somebody who has sewage that is contaminating a public water system. There is a big difference and not even in the same league as far as the potential to health impact.

Attorney Auffredou said they could disagree with that and Councilman Kusnierz said that was fine he was known to disagree.

Councilman Cumm and Councilwoman LeClair said they were okay with the \$250.00 and \$500.00 fines.

Councilman Prendergast said he was surprised to hear what the state was proposing for fines. Why wouldn't somebody violate the law with those fines? First you get a warning and then some educational material.

Joe Patricke said we wouldn't issue a ticket at that point. We would only issue a ticket if we couldn't get compliance.

Supervisor Jenkins asked if they could move on and asked if there were any other comments.

Councilman Prendergast referred to §76-5, page 5, "Replacement of non-conforming OHH. Any major repair.....". He said that we wouldn't even know if a unit is repaired. Replacement we would know about.

Joe Patricke said they could **reword that phrase as follows: "Replacement of non-conforming OHH. Replacement of a non-conforming OHH shall comply with this law in its entirety."**

Councilman Prendergast said he would agree with this suggestion.

Supervisor Jenkins stated that they may talk about scheduling a public hearing in the regular meeting of the Town Board to follow.

Councilman Kusnierz said he wouldn't support setting a public hearing until another draft was before the Board of what they would be voting on.

Adele Kurtz said that at one of the previous meetings it was said that people who have these units or who were interested in installing one would be notified of the next workshop and she didn't see any of those people in attendance and she asked if the notice went out.

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Supervisor Jenkins said he didn't have an answer to her question. They will get one for the public hearing when it is scheduled.

Councilman Cumm said this goes for the people who don't have them too and don't want them. If we are going to send out notices to the people who have them then we should send out notices to everybody who doesn't have them. He doesn't care if the notice has to be sent out to the whole Town.

The workshop was concluded at 7:06 p.m.

Respectfully submitted,

Jeanne Fleury  
Town Clerk