

A workshop was held by the Town Board of the Town of Moreau on March 8, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of reviewing and discussing a proposed Zoning Law Amendment re: Inhabitants of Motels, Inns, etc.

Supervisor Jenkins called the workshop to order at 8:20 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 arrived at 7:10 p.m.; John P. Joseph, Owner of Town & Country Motel; Ed Tracy, Town Resident; Adele Kurtz, Town Resident arrived at 7:10 p.m.; Lance Hillman, Owner of the property where current court facilities are located arrived at approximately 7:30 p.m.; Harry G. Gutheil, Jr., Village Resident arrived at 8:00 p.m.; Paul Post, Reporter for the Saratogian; Nick Reisman, Post Star Reporter

Supervisor Jenkins announced that this workshop was to discuss zoning law changes that are being proposed regarding motels and inns, etc. Motels have been renting out rooms to people as a place of domicile and not just transient lodging. The Town Board is going to consider clarifying the definition of “transient”. He asked Attorney Auffredou to explain the proposed changes to the Zoning Law.

Attorney Auffredou stated that he reviewed the definitions in the Zoning Law and some were found to be in need of updating and he found the need for additional definitions.

He referred to the current definition of “Hotel, Inn, Tourist Cabin, Auto Court or Motel” and stated it includes the phrase “transient guests” and “transient guests” is not defined in the code currently. This is not fatal he said, because if it is not defined in the Town Code then NYS Law says you go to the ordinary dictionary meaning of “transient guests”. He stated that the term “Auto Court” is outdated and obsolete and isn’t indicative of the times. We still have “Tourist Cabins” so he included this term in his recommendations. He stated that the definition of “Tourist Home” references transient guests, but he couldn’t find it on the use schedule. The definition of “Bed and Breakfast Establishment” includes the phrase “transient occupancy” and the definition of “Dwelling”, which is not a bad definition overall. His approach to this was to figure out how can we come up with an enforceable law to prevent or preclude motels, hotels and the like from having permanent residents and from letting people use these as a permanent domicile irrespective of who is living there. It is his understanding that in the Town there are motels that have been converted to apartment complexes some perhaps arguably with the permission of the Town and some without the permission of the Town. He recapped the changes he was proposing as follows:

- Revise the definition of “Dwelling”
- Add the definition of “Domicile”
- Add a specific definition of “Transient”

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- Revise the definition of “Hotel, Tourist Cabin and Motel”
- Add some other provisions

Attorney Auffredou stated that the definition of “Dwelling” could be improved by adding the following language: “Shall not be deemed to include a hotel, inn, tourist cabin or motel. A dwelling is commonly referred to as an abode, which is a residence where a person resides permanently and is the permanent domicile of that person”.

Attorney Auffredou found the following definition of “Domicile”:

“The permanent legal residence of an individual where they physically reside and intend to continue to physically reside.”

Therefore he stated, a domicile is a dwelling, but a dwelling can’t serve as a motel, hotel or inn.

Attorney Auffredou stated that he added a definition of “Transient” as follows:

“Is used to describe the meaning of transient overnight occupancy for guests – temporary occupancy; transitory, staying for only a short period of time, not permanently settled.”

In the definition of “Hotel, Inn, Tourist Cabin or Motel” from which he removed “Auto Court” and in the definition of “Bed and Breakfast Establishment” he changed “transient guest or occupancy” to “transient overnight occupancy for guests”.

He also added to the definition of “Hotel, Inn, Tourist Cabin or Motel” the following:

“A hotel, inn, tourist cabin or motel cannot serve as a dwelling, except as may be occupied by the owner thereof and his/her immediate family members.”

He stated that he knows of business people in Moreau who actually reside at the motel they own and knowing this he added the above exception and whether or not the board agrees with this is up to them.

The important key language is “Transient Overnight Occupancy for Guests” going back to the new definition of “Transient”, “Domicile” and revised definition of “Dwelling”. Attorney Auffredou said that we still have “Hotel, Inn, Tourist Cabin or Motel” as allowable uses, we still have “Bed and Breakfast” as an allowable use in the Town, but what would be allowed within these uses is “Transient Overnight Occupancy for Guests” and they cannot serve as a dwelling and a dwelling is where you are domiciled.

Attorney Auffredou also added a provision concerning the facilities that are not in compliance to come into compliance, which reads as follows:

“Any hotel, inn, tourist cabin or motel or any similar structure or facility which, was originally intended for use or used as a hotel, inn, tourist cabin or motel which, upon the effective date of this section is not in compliance with this chapter, shall be afforded a period of six (6) months from the date of being provided written notice of the provisions of this chapter to come into compliance with this chapter and with any other applicable sections of this chapter. Failure to do so shall constitute a violation of this chapter.”

In regards to violations, Attorney Auffredou stated that under NYS Town Law Section 268 it is very specific as to the penalties and fines that can be assessed by a municipality for violation of a Zoning Law. Right now the Town Code reads \$50.00 per violation and each week it continues there is another \$50.00 fine and in his opinion that is woefully inadequate. NYS Town Law Section 268 authorizes a

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municipality to move up to \$350.00 per violation and \$350.00 per violation as each week continues and if those violations continue to happen during the next 6 month period it can go up to \$750.00 and ultimately \$1,000.00. Therefore, he provided a provision in the Zoning Law to beef up the penalty provision to be consistent with Town Law.

Councilman Kusnierz asked under our current code how many citations have we issued whereby somebody has had to pay \$50.00 per week for a violation.

Joe Patricke replied none.

Councilman Kusnierz stated that it sounds like it is not an issue in our Town.

Joe Patricke replied that people have paid more than that, but not on a weekly basis.

Councilman Kusnierz asked how they could pay more when our code reads \$50.00 and each additional week constitutes a separate violation.

Attorney Auffredou replied that on a number of occasions we have resolved zoning violations through Orders on Consent with consent of the property owner and the court and those fines have accumulated. We proposed fines and they were accepted by the property owner and the court as a settlement.

Councilman Kusnierz stated that we really don't need these fines in here then.

Attorney Auffredou stated we need the fines in there and \$50.00 in his opinion is grossly inadequate and the Town should take full advantage of the fact that NYS Town Law authorizes the Town to do what he is suggesting.

Councilman Kusnierz asked if it hasn't been a problem then why change it.

Attorney Auffredou said that he thought his directive from the Town Board was to look at the Town Code from the motel/hotel perspective and enforcement perspective and draft language to address the particular situation in a way that would be appropriate and reasonable and in his research and review he concluded that the fine amount currently on the books is inadequate and if the Town Board is going to seriously consider enforcing the law then the Town should do something that is more consistent with NYS Law and not reflective of 1970.

Councilman Kusnierz asked why they couldn't add language of "imprisonment" rather than the "financial aspect".

Attorney Auffredou said again that the Town of Moreau should have a penal provision that is authorized by NYS Law.

Ed Tracy added that if they added imprisonment then they would be opening the books up to when a person would be entitled to a public defender. In his opinion the increase in fines would serve the purpose.

Attorney Auffredou said it does raise that issue, but if a person is indigent they could apply for public defender status.

Supervisor Jenkins asked if they owned a motel would they be indigent. He didn't think so.

Councilman Kusnierz stated that he was having difficulty following the line of reasoning provided, because if you increase the penalty by 700% and you have people who are less likely to be able to afford

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it then aren't we pushing them towards a jail sentence that goes to the point of it being more expensive for the taxpayer, because they would have to be provided with a public defender.

Attorney Auffredou told Councilman Kusnierz that the reality is that a \$50.00 fine in this day and age is ridiculously low and they could disagree on this and that is fine. He has been doing this for 22 years and it is ridiculously low and that was all he was going to say on it and the Town Board could decide on it.

Councilman Kusnierz stated for the record that he thought a 700% increase on the first offense is a ridiculous increase.

Councilman Kusnierz asked how this would apply to seasonal migrant workers. He stated that there are Ag Districts across the state and in Moreau the Ag District covers almost ½ of our land mass. When they come in there aren't a lot of spots for them to stay and they don't have any place to stay in the Ag District unless they stay in trailers.

Attorney Auffredou replied that in his opinion they wouldn't be transient overnight guests. It depends upon how long they stay. If they are here for five, six or seven weeks that is acceptable, but if they are going to be here and they don't have a permanent domicile to go back to that is the key. He used the example of a construction worker that comes to work in the Town of Moreau and they know they are going to be here for five, six or seven weeks and their domicile is in the State of Texas then that is okay. However, if a person doesn't have a domicile someplace else and they are here for six or seven weeks and they don't have any place to go then that isn't what this law is drafted for.

Adele Kurtz stated that a lot of migrant workers don't have a domicile. They move from Town to Town and go south in the winter time so they would have a problem under this law.

Attorney Auffredou replied they might very well have a problem, but that is the way the law is drafted. A transient guest is someone who has a domicile somewhere other than that particular location.

Supervisor Jenkins asked Councilman Kusnierz to give them an example of a business in Town that uses migrant workers right now.

Councilman Kusnierz stated that there are Mexicans that are working in the Town. He added that the dairy farms across the State of New York and Town of Moreau are having trouble getting laborers. The Mexicans in many instances across the State and in our Town are working on the dairy farms. They are willing to do that kind of work and they have expertise in it and have been educated by Cornell to work on dairy farms. He hated to see a labor issue be compounded as the result of this local law and negatively impact our dairy farms that are already struggling to get laborers.

Supervisor Jenkins asked Councilman Kusnierz how long they stay and Councilman Kusnierz said it depends. Anywhere from one month to six months and maybe a year he wasn't sure. He would have to ask each individual farmer.

Supervisor Jenkins asked him to gather this information for the board and Councilman Kusnierz said it would be informal, but he could talk to the owners of dairy farms.

John Joseph the owner of Town & Country Motel asked if they were precluding Salvation Army people or Community Action people staying at facilities in the Town and was the board trying to limit them to staying in apartments and what about homeless people? He understood that this law was an attempt to try and address the problem of sex offenders staying in the Town in motels. He found that people who stay for a long time tend to want to own the place and really need to move on and he was all for people not

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living in that environment permanently, but there are people who cannot move into an apartment and generally they are not bad people. He said there is a bigger issue with drugs in the Town rather than sex offenders. He said there is a lot of cocaine in the Town that is affecting us and we don't want that either. He didn't understand how the Town would get a permanent address out of a person and he didn't think they could. His business depends on weekly rentals. The motel industry has changed such that there aren't a lot of nightly travelers. People have to be able to stay and work in the area for a reasonable amount of time and not have a home someplace else.

Supervisor Jenkins stated that there isn't a single motel in this Town that could go before the Planning Board and say that these are apartment units. They would never be approved.

Mr. Joseph stated that he doesn't have apartment units.

Supervisor Jenkins stated that is the way they are being used now.

Mr. Joseph replied that he doesn't have kitchens in his motel units. He said like other motels/hotels there may be a small refrigerator and microwave in some units. He asked if the board was saying that there couldn't be a refrigerator and microwave in motel/hotel units and Supervisor Jenkins replied no.

Councilman Kusnierz referred to the following proposed language: "Any hotel, inn, tourist cabin or motel or any similar structure or facility which, was originally intended for use or used as a hotel, inn, tourist cabin or motel, must come into compliance within six month." He asked if somebody on Route 9 has what used to be a motel, but doesn't use it for that now and uses it for storage do they have to come into compliance with this new law.

Attorney Auffredou replied no. It is the intent of this law that if they are using it for occupancy purposes such as an apartment they have to come into compliance. If they converted the use to an otherwise conforming use, for storage or it is vacant then they don't have to come into compliance with this law.

Councilman Kusnierz asked if that language could be added.

Attorney Auffredou said they could, but the interpretation is that if you are using it in connection with these modifications, that he has made, then that is when this provision applies.

Adele Kurtz asked if the fines are just related to this provision or all parts of the Zoning Law and Attorney Auffredou replied for all zoning violations.

Adele Kurtz asked about a sign violation and she was told that there is a separate law for signs.

Councilman Kusnierz asked what about someone who exceeds the number of allowed "registered motor vehicles" on their property.

Joe Patricke stated that isn't the Zoning Law that is covered by the Property Maintenance Code.

Councilman Prendergast stated that workers coming into the area are a legitimate issue and we shouldn't make a law that isn't workable. He asked if it would be unworkable to require them to show proof that they are employed by a contractor and he used the example of the dredging project.

Attorney Auffredou stated that he didn't want to over-complicate the matter and not require the motel owner to show cause or proof. We understand that with construction projects or the dredging project there may be workers coming into the area and staying for four months, but who have a domicile someplace else. This isn't where the problem lies. We want to try to encourage that type of occupancy. It

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is guaranteed, consistent, revenue that motel owners look for. They are using it as a motel, hotel, inn and not as an apartment.

Supervisor Jenkins stated that transient workers who pick apples in Argyle or dig potatoes or taking care of cows and are here for two, three or four months they must have a home somewhere. We have to look at the purpose of them being here.

Mr. Joseph asked what about a mother and her child who are victims of domestic abuse and they have to have a place to stay. He asked if the board is saying that they can't stay in his motel.

Supervisor Jenkins stated not permanently. He stated that the Town is going to tell social services that there are apartment units that are empty. He wasn't saying they couldn't stay in a motel for a few days. We are trying to say that apartments are apartments and motels are motels.

Councilman Kusnierz asked Mr. Joseph what he charges per day and week at his motel and Mr. Joseph replied \$50.00 per day and \$165.00 per week plus tax. Mr. Joseph then said \$10.00 or \$20.00 per day depending on the number of people.

Councilman Kusnierz asked Mr. Joseph if he was in violation of this code and the penalty was \$100.00 how it would affect him.

Mr. Joseph replied that \$50.00 would "kill him". He stated that he is borrowing money on his credit card to stay open December, January, February and March.

Councilman Prendergast asked Joe Patricke what the first step was that he took on any violation and Joe Patricke replied that he speaks to the property owner.

Councilman Prendergast asked Joe Patricke if he tells the owner what the problem is, what he needs to do to correct it and if they don't want to pay a fine they have to correct the problem and Joe Patricke stated this was correct.

Councilman Kusnierz stated that he doesn't have to though.

Councilman Prendergast replied that was what he does though.

Joe Patricke stated that if we don't ask for compliance first the Town Court won't hear the case.

Attorney Auffredou concurred with Joe Patricke on this and said that has been his experience in Town Court also. The judges do ask if this has been done and if it hasn't then they ask that it be done.

Councilman Prendergast stated that if Joe Patricke came to his house and told him he was in violation of a Town Code he would fix it.

Joe Patricke stated that 95% to 98% cooperate and comply.

Adele Kurtz stated that practically speaking is Joe Patricke going to check the registry at the motels and how is he going to know if there is a violation.

Supervisor Jenkins replied yes on a test basis and then he said that they have to work this out.

Harry Gutheil asked if motel owners have a landlord/tenant relationship. If they have a guest staying for a month is there an eviction issue if they want somebody to leave.

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Mr. Joseph replied no. If they don't rent by the month then they can say "good-bye" and if they don't leave they call the Sheriff. That is why he doesn't rent by the month.

Adele Kurtz stated that 90% of Joe's work is done by complaints so he isn't going to know, because the owner isn't going to complain, because it is income to them.

Attorney Auffredou said the neighbors may complain.

Adele Kurtz stated "Really"?

Joe Patricke and Attorney Auffredou said sure and Adele asked if they have had any complaints and the reply was yes and she asked if they were about the Clearview and Joe Patricke replied that the Clearview is not in the Town of Moreau it is in the Village. She then asked if there have been complaints about the Graylyn and the answer was yes. Adele stated the complaints were just about sex offenders right and Joe and Attorney Auffredou replied no they have had other complaints.

Mr. Joseph asked why they couldn't limit it to sex offenders.

Attorney Auffredou stated that he doesn't like the approach that other municipalities have taken that are focused on that issue alone. He is not comfortable advising the Town to go in that direction. The intent here was to address the specific concern of the permanency of residency in the motels. That was the concern whether we are talking about sex offenders or not. He didn't look at it from that perspective.

Ed Tracy stated that in his 22 years when he was Town Justice the Code Enforcements Officers for the Town always used common sense in enforcing the law. They usually talked to the violators first and usually after multiple visits and when there wasn't compliance they ended up in court.

Adele Kurtz asked if Joe Patricke responds to a complaint at a motel and he asks the people to leave and the next day he goes back in response to another complaint and there are different people involved would that be considered a separate violation. Is it per situation or per premises?

Joe Patricke replied, per incident.

Harry Gutheil asked if it would be considered an invasion of privacy if a person was asked where their domicile was.

Attorney Auffredou replied no, because we are saying it is not a domicile.

Attorney Auffredou emphasized that this is very preliminary. He just drafted this language for the board to consider. It is a zoning change and would require a referral to the Saratoga County Planning Board under GML 239m and would require a public hearing. It does have town-wide significance.

Councilman Kusnierz asked if the fines for violations would apply across the code and Attorney Auffredou replied the Zoning Law only.

Attorney Auffredou stated that penalties for non-compliance of the Zoning Law are addressed in 149-67 and comprehensively the entire Zoning Law currently stipulates a \$50.00 fine and \$50.00 a week and what he was proposing is to be consistent with what a municipality is authorized to do on NYS Town Law that the board increase it to \$350.00. He stated that the Town Board could do with it what they wanted. This was his recommendation.

Supervisor Jenkins asked if there were any other comments. There being none he asked for a motion to adjourn the workshop.

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A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to adjourn the workshop at 9:00 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