

A workshop was held by the Town Board of the Town of Moreau on March 30, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing a draft law to regulate outdoor hydronic heaters.

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; Jim Coutant from NYS DEC in Warrensburg; Town Residents: Jason & Shannon Kenny, Karen Spoor, G. Robert Baker, Reed & Mary Antis, Robert Lyons, Chris Jackson, Adele Kurtz, Bill Jeremias, Lori & Walter, Larry Chapman, Stacy & Owen Bruce, Terri Jo & Jeffrey Nicholson, Scott Newell; David Rogge, owner of Lamplighter Acres Mobile Home Park and Laurie LaFond representing her mother Kay LaFond a Town Resident

Supervisor Jenkins began the workshop by welcoming everyone to the workshop and explaining that this was a workshop and that the Town Board would be discussing the issue of outdoor hydronic heaters. The Town Board has the option to open the workshop up to public comment and that they would be exercising that option and would be allowing everyone a chance to speak at some point during the workshop. He asked that anyone wishing to speak give their name and address for the record and that they direct their comment to the Town Board and not amongst themselves. He also asked that only new information be brought forward. The Town Board has discussed this issue before and heard from people for or against outdoor hydronic heaters.

Supervisor Jenkins then read into the record a letter from Martha Winsten who resides at 150 Old West Road as follows:

"I hope that the Town will ban these furnaces as we have nothing if we do not have our health. No one denies that these boilers/burners put particles into the air that irritate our throats and lungs. Asthma can be life-threatening and more and more people are developing the condition. Using the 1800's as a point of reference we are now exposed to more than 80,000 new chemicals. And all these new chemicals have to be detoxified by our bodies. And they do not come from a rare source. Everyday plastic bags, for instance, issued at Supermarkets or used for trash will put dioxins into the air we breathe when they are burned. Let us protect our quality of life and the air we breathe by banning these outdoor furnaces."

Ray Fischer who resides at 119 Fort Edward Road was unable to attend the workshop, but stopped into Town Hall and asked for his comments to be made known, which are concerning the stack height. A free standing stack at the proposed height would be unsafe and he was also concerned about the cost to extend the stack.

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Supervisor Jenkins also reported receiving a phone call from a person who lives in an R2 zone and owns eight acres of land and wants to know why they couldn't have one in that zone with that much acreage.

Supervisor Jenkins asked if any of the Board Members had any comments.

Councilman Kusnierz suggested the Board Members go page by page through the draft law and at the end of each page or each section of law stop and allow public comment.

Councilman Kusnierz began with Section 76-2 Legislative Intent. He stated that the Board has heard from people on both sides of the issue and the way the intent is written it is somewhat biased. It was his recommendation that the intent include the benefits of outdoor hydronic heaters when used properly and in the right place. He suggested wording to the effect "Although, outdoor hydronic heaters provide an economical alternative to conventional heating systems concerns have been raised to their safety and environmental impact." This would show that the Board is cognizant of both sides of the issue.

Supervisor Jenkins said he didn't have a problem with this and Councilwoman LeClair said she didn't either.

Councilman Prendergast said this was fine with him. He stated that a few meetings ago he made a point that the legislative intent the way it was written a few drafts ago didn't state what the intent was, it stated what an outdoor hydronic heater was. That isn't the intent it is a fact. He still doesn't know why we state in the intent facts about hydronic heaters. A legislative intent explains what the law is for to "protect, preserve and safeguard the public safety and welfare of the residents of the Town of Moreau". That is the intent. The title is why we are doing it.

Councilman Cumm stated that Rich Morris pointed out at the public hearing that the proposed law is subjective. Councilman Cumm recommended they strike out from Section 76-2 Legislative Intent the first sentence "Outdoor Hydronic Heaters, hereinafter "OHH", (e.g. outdoor wood burning furnaces) can generate heavy smoke, offensive odors, dangerous particulates and emissions and can present potential adverse impacts to human health and air quality." He then said some of it could be left in, but some should be stricken. It is subjective.

Councilman Kusnierz suggested starting out with the language he suggested "Concerns have been raised regarding the safety and environmental impacts of these heating devices particularly with production of offensive odors and potential health affects from uncontrolled emissions." Then add: "This chapter is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance, is not detrimental to the health, safety and general welfare of the residents of the Town."

Supervisor Jenkins said that is basically what we are trying to. We can allow them in areas that won't cause problems.

No objections were raised to this suggested wording from Councilman Kusnierz.

Supervisor Jenkins went on to Section 76-3 Definitions.

Councilman Kusnierz stated that the wording in Section 76-3 (C) was subjective. If we are going to enforce this we need objective wording. Who makes the determination? It needs to clearly state what constitutes a nuisance condition.

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Supervisor Jenkins said our "Health Committee" would do that then he said that we would have DEC come in and do a test and make a determination as to whether it was creating a health hazard.

Councilman Kusnierz suggested they use what is already in State statute as far as what constitutes a level of emission and quote it specifically and then rely on DEC, because it would be a violation of their codes and regulations. We would have jurisdiction under our local law. They have opacity standards in 22.71.3B and we could reference that.

Councilman Cumm stated that Section 76-3 (C) was taken right out of the Maine Law.

Councilman Kusnierz said he would like to see us reference New York State Law.

Councilman Prendergast agreed and said he would like to discuss it with Attorney Auffredou.

Councilman Cumm stated he was comfortable with the wording as is.

Councilman Kusnierz asked Councilman Cumm to give him an example of what would be a nuisance.

Councilman Cumm stated smoke that is of constant or intermittent duration over a long period of time. We have cases in Town where these furnaces are turned on and people are feeling the ill affects from them. He did agree that it was subjective. Our "Health Officer and Committee" can judge every instance on its own merit.

Councilman Kusnierz said the definition of "Nuisance Condition" doesn't even describe where the smoke would be coming from. It could be coming from a factory or outdoor fire.

Councilman Cumm replied that we are referencing an outdoor wood burning furnace law not a commercial building.

Councilman Kusnierz said you have to specify that it relates to an outdoor hydronic heater.

Jim Coutant from DEC stated there is a provision in their regulations that is similar to this section. It also exists in their draft version of outdoor wood boiler regulations, pretty much word for word. It is troublesome to enforce. They have developed ways of evaluating each situation based on the specifics of that situation as to whether or not it is interfering with a person's reasonable enjoyment of property. They have to look at the details and make a determination.

Jim Coutant also stated that DEC has forms for people to fill out how they are impacted and other information to give them some support if they decide to go to enforcement. Their draft attempts to identify examples of a nuisance. They are currently being reviewed by regulatory reform. The Governor's Office still needs to hold a public hearing and go through the rule making process before it becomes a rule.

Councilman Kusnierz stated that DEC staff is certified to judge and evaluate opacity. That is an expertise we don't have at the Town level. That is why we should be putting together a local law and try to make it as objective as possible. If you reference current DEC regulations there can't be any question. It is open to an expert to evaluate. If DEC was to say yes it exceeds the regulations then there is a violation, no question about it. If you leave it subjective then it won't stand up in court as well.

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Councilman Prendergast said he also heard from Mr. Coutant that it is a judgment call. They aren't even specific. They go to the site and based on their knowledge, education and certification and based on facts gathered they make a judgment call.

Jim Coutant said there is an opacity standard, but it is separate from the nuisance provision. The nuisance provision is more of a judgment call, whereas with the opacity standard they are certified to judge the opacity of a plume of smoke.

Councilman Prendergast said that he thought this section was good as written.

Supervisor Jenkins stated that they could make reference to effect that we will follow what is in the current DEC regulations.

Jim Coutant said 76-3(C) the way it is written is pretty much identical to DEC's.

Section 76-3 – Definitions

(E) - Prohibited Fuels was reviewed next.

Councilman Kusnierz thought this section could be simplified. He suggested a general statement as to what is acceptable and take out what is prohibited. He said that firewood would be acceptable and they could spell out what constitutes firewood. Under prohibited fuels would be "untreated lumber" and everything outside of that would not be acceptable. If you go down through the list it is specific and general terms would be better.

Councilman Prendergast asked if the manufacturer of each unit recommends what fuels can be used in the unit and if so why not word it "what the manufacturer recommends".

Councilman Kusnierz said we could do that too.

Councilman Cumm stated this section was taken almost directly from Part B of Section 247.3(B) that DEC has drafted and is proposing before the Governor.

Councilman Kusnierz said the problem with taking wording from a draft is that it could be a while before that regulation is adopted.

Councilwoman LeClair stated it was fine the way it was written. She likes that it is specific.

Jim Coutant stated that in their regulations they have the wording "any other fuel not recognized by this section". It is a catchall.

Councilman Cumm didn't think there was any reason to change this section.

Supervisor Jenkins suggested adding an item #18 and adding the wording that Jim Coutant stated about a catchall.

Councilman Prendergast said how about adding "you can't burn anything not recommended by the manufacturer" and the wording from Jim Coutant.

76-4 – Specific Requirements

(B) – Allowed Zones

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Supervisor Jenkins stated that he was okay with adding R-2 and R-3 as long as there is a minimum of four acres and a 200 foot setback. He said there isn't a parcel in R-1 that could meet the minimum lot size of four acres.

Councilman Prendergast agreed as long as the acreage is the same as in R-4 and R-5.

Councilman Kusnierz clarified that if a person owned four acres or more in an R-2 zone and could meet the 200 foot setback they would be set to go and Councilman Prendergast and Supervisor Jenkins replied, yes and Supervisor Jenkins added that the new technology would make this workable. He said they would restrict it in R-1 only.

Supervisor Jenkins asked if everyone was comfortable with this change.

Councilman Cumm said not really.

Councilman Prendergast said yes.

There was no other verbal response.

76-4 – Specific Requirements

(F) – Months of Operation

Councilman Kusnierz suggested an exemption for domicile use for hot water heat.

Supervisor Jenkins said they could do that. When it is more humid the smoke becomes a real issue. The worst one was the one in the R-1 zone where the smoke barely got off the ground and affected houses 600' to 700' away.

Councilman Kusnierz asked about the agricultural district where somebody may have a greenhouse or business and it would be cost effective to heat with one of these units and they can meet the setbacks and have the acreage.

Supervisor Jenkins said they could apply for an exemption and it would have to be approved by the Town Board and the Building Inspector.

No objections were raised to adding to 76-4(F) an exemption provision.

Section 76-4 – Specific Requirements

(G) – Height of Stack

Supervisor Jenkins said the stack height should reference an adjoining residence not the residence served.

Councilman Kusnierz asked why they couldn't go with what the manufacturer recommends. Setbacks don't take into account topography and wind direction.

Councilman Cumm said he could go along with manufacturer's recommended stack height.

Jim Coutant said the State has a minimum regulation for stack height of 18 feet.

Supervisor Jenkins was agreeable to going with what the manufacturer recommends.

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Councilman Kusnierz suggested that they add a requirement that a copy of the manufacturer's handbook needs to be submitted with the application for a permit.

Supervisor Jenkins said he was okay with adding that.

Section 76-5 – Existing Hydronic Heaters

Councilman Kusnierz said he doesn't want to require any modifications to existing units that were installed legally. If they have to run new lines it could be a significant expense or relocation could be costly. He wants the people who have spent money on a unit to be able to recoup their cost. He suggested wording to the effect that they would have had to have had the furnace in use for a given number of years something that is reasonable and if they have to do a repair prior to that time period then they wouldn't be subjected to that provision. If they have to do a major repair after a given period of time then he wouldn't have a problem having them relocate it.

Councilman Prendergast suggested listing it as "replacement" or "new installation" would have to conform and take out "major repairs".

Supervisor Jenkins said he didn't have a problem with that.

Councilman Kusnierz said he didn't have a problem with that either.

No other verbal objections were given from the other Board Members.

Councilman Cumm read from the draft legislation from DEC that reads that effective October 1, 2010 (that date being subject to a lot of variables) all existing outdoor wood boilers shall be fitted with a permanent stack extending a minimum of 18 feet above ground level. He wanted the Board to be aware that if the State adopts these regulations then what happens to the people who have done what we required and it wasn't stringent enough to conform to their regulations.

Councilman Kusnierz stated that it happens all the time. They can go to the State.

Councilman Prendergast said if they have to follow State Law they have to follow State Law. It would be out of our hands.

Councilman Kusnierz stated that a lot of reference has been made to draft regulations. He didn't know if everybody knows how draft regulations work or not, but there is a public hearing process and during that process there is a public comment period and as a result of public comment the draft regulations can be modified. Therefore, we should be careful not to continue to hang our hat on proposed draft regulations, because they may never come to fruition in the form they are currently in.

Supervisor Jenkins said this is true, but they are a good guidance on what we are trying to do.

Section 76-7- Revocation of Permit

(A) The emissions from the OHH are or may be harmful to human or animal health or harmful to the use or enjoyment of real property

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Supervisor Jenkins said that is standard language.

Jim Coutant stated that DEC uses the word “unreasonably” interferes with the use or enjoyment, etc. It is very subjective. This provision has always been frustrating to them.

No change was made to this section.

76-8 – Enforcement

Councilman Cumm stated that the fines are excessive.

Supervisor Jenkins didn’t think that imprisonment should be part of the enforcement.

It was the consensus of the Board Members to lower the fines to \$100.00 for the first offense and \$250.00 for subsequent offenses and take out the imprisonment enforcement provision.

The workshop was opened up for public comment.

Earl Ruff from Old Bend Road stated that he has had an outdoor wood burning furnace for five years and there have been no complaints. He raised the stack height himself to six feet. He has asthma and it doesn’t affect him. There isn’t a lot of smoke that comes out of the stack. He uses it to heat his water also. He heats with this method, because he can’t afford the cost of oil. He estimates that he saved \$5,000.00 in fuel bills over the last couple of years. He is on a fixed income. Now the Board is saying he can’t have one. It would cost \$400.00 to put a three foot extension on the stack.

Supervisor Jenkins told Mr. Ruff that the Board just said they aren’t going to require an 18 foot stack. If the State says he has to then there is nothing the Board can do about it.

Earl Ruff said he can’t meet the setbacks. The unit is 50 feet from his house and 25 feet from his neighbor. If he has to replace it he won’t be able to. He feels the affects from carbon monoxide and noise from the cars on the Northway more than from outdoor wood burning furnaces.

Councilman Kusnierz said that maybe they could build in a mechanism to cover existing units that need to be replaced. Maybe the Code Enforcement Officer could evaluate it and maybe the owner could get a non-conforming use permit through the Planning Board or an additional use permit from the Building Inspector. He wasn’t sure how to word it though.

Scott Newell 1695 West River Road said the way he reads Section 76-5 is that an existing unit may be allowed to remain as a non-conforming use as long as it meets code. How can he move his unit 200 feet from the property line when it is already there?

Supervisor Jenkins said at the last meeting this was discussed, but the draft hasn’t been changed yet. We aren’t talking about costing people money by moving things.

Councilman Prendergast stated it was said tonight that we don’t want to cost people with an existing unit any money.

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Scott Newell stated he has 14 acres and his unit is less than 200 feet from the property line and he can't put the unit 200 feet from two of his property lines, so he couldn't replace it. Property lines are irrelevant in his case, because on one boundary line is a railroad track and the other is the river. He didn't have a problem with the stack height. The constitution provides us equal protection under the law and this is being violated here. He can put this unit in his house and then what is the difference. It will operate the same way. He has EPA documentation that it makes no more particulates than any other wood/stick burning appliance (fireplace, woodstove, wood furnace). It is only different, because it is outdoors. He asked about Moreau Lake State Park and how that is different. It is unequal protection under the law. You are enforcing it differently on me, because my unit is outside vs. someone burning wood inside over the same reasons. It isn't legal. What about Moreau Lake State Park. He has friends on Mountain Road and they can't sit out in their backyard, because of the smoke from campfires from the park. He wants the Board to think about why they are creating these laws and how is it equal protection. It is not.

Anne Towne from 1095 Route 9 has a unit that burns year-round. They throw in two logs a day. They don't get any significant smoke. It gets up to where it is supposed to be very quickly and then it shuts off. No one has ever complained. They also wouldn't be able to meet the setbacks. Now they have to apply for a permit and have someone tell them if they can burn in the summer or not.

Councilman Prendergast said there was discussion tonight about this.

Supervisor Jenkins said we talked about an exemption for non-seasonal use assuming the site is suitable.

Gregg Towne said that when they have to replace it they won't be able to meet the setbacks so they won't be able to replace it.

Councilman Prendergast said that situation was discussed. We talked about allowing individuals to apply for a variance.

Supervisor Jenkins said if a person has had one for fifteen years without any problems he would assume the Planning Board would issue approval to replace it.

David Rogge owner of Lamplighter Acres asked about the zone changes and asked if they considered adding commercial zones to the list.

Supervisor Jenkins replied that the only zone that would be restricted would be R-1 and the rest would have to meet setback requirements.

David Rogge suggested rather than dates for months of operation he suggested they word it by temperature. The end of April we could be facing 30 to 40 degrees and people may want to heat with one of these units. He has seen frost in September.

Councilman Prendergast said another option would be to add a month on each end such as September to May.

Supervisor Jenkins said the Board could review that. He didn't have a problem with September through May.

Councilwoman LeClair stated she preferred the dates rather than temperatures.

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Councilman Cumm stated that September 30th through April 15th is in the draft law now. Sometime in the future the State is going to come up with a regulation that we are going to have to comply with.

Jeff Nicholson from 202 Bluebird Road said that his outdoor furnace is the only source of heat he has. If he has to shut his off April 15th and it gets cold then what does he do?

Councilman Kusnierz said this was a good point. Why can't we do a hardship waiver?

Supervisor Jenkins didn't have a problem with this, but he said they didn't have time to come up with language tonight.

Councilman Prendergast said they didn't want to shut off people's heat.

Supervisor Jenkins stated that they weren't trying to control what people use for heat, but what we are trying to control is that some people have suffered from these systems, because of locations and conditions, etc. It is their intent to try and come up with something that everybody can come out of without a major problem and provide protection for some people.

Laurie LaFond referenced a 2005 Attorney General's and EPA report regarding outdoor wood burning boilers and how many particulates they emit vs. conventional woodstoves and oil and

gas furnaces. She talked about respiratory illnesses, heart disease and cancer reportedly associated with these units.

Supervisor Jenkins told Laurie LaFond that they have been all through these facts and figures.

Councilman Kusnierz asked if she had any new information.

Laurie LaFond said it is new information for some of the people present.

Adele Kurtz asked if they changed Section 76-4A.

Supervisor Jenkins replied that they only added requiring a manual from the manufacturer to be filed with the permit applied for.

Adele Kurtz read the following line from Section 76-4A "Only those OHH that are certified to meet current emission standards promulgated by the United States EPA." She stated there aren't any. She suggested they use the standards in the voluntary program. The word "promulgated" needs to be taken out. The word "promulgated" gives the impression that they adopted these standards.

Adele Kurtz read from the seventh line of Section 76-4A "At such time when the EPA's Phase II Standards for OHH emissions become effective" they became effective in October 2008. It should read "those in effect at this time".

Adele Kurtz stated that linking the EPA's certification to the environmental technology verification program (third line from bottom of Section 76-4A) that is a program that manufacturers go to. There is also in the voluntary program a round of independent testing that the manufacturers can take as long as they meet the voluntary standards of the EPA. If you link it to the environmental technology verification program it isn't accurate. There is voluntary independent lab testing out there that would qualify.

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The workshop was concluded at 8:30 p.m.

Respectfully submitted,

Jeanne Fleury
Town Clerk