

A workshop was held by the Town Board of the Town of Moreau on October 19, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the draft law on Outdoor Hydronic Heaters.

Supervisor Jenkins opened the meeting at 7:35 p.m.

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; and the following Town Residents: Richard W. Morris, Adele Kurtz, Chris Jackson, David Rogge, Scott Newell, Bill Jeremias, Howard & Cheryl Cross and Reed Antis who entered meeting at 7:55 p.m.

Supervisor Jenkins began by saying that the workshop was for discussion amongst Board Members. He stated they had a draft law that was prepared prior to a meeting they had six or seven weeks ago. The Board will review this draft and then the Board would open up the workshop to public comment and he asked the public to keep their comments to about five minutes and he didn't want any communication between the public.

Councilman Prendergast began by stating that if there aren't three votes that will permit outdoor hydronic heaters in the Town then he would like to know now as it would save all of them a lot of time.

Councilman Kusnierz asked him if he was talking about a blanket ban and Councilman Prendergast said yes.

Councilman Kusnierz said he wouldn't support a blanket ban.

Councilman Cumm said there aren't three votes for that.

Supervisor Jenkins stated his position is that this draft law is very close to what he would like to see adopted. He wouldn't vote for an outright ban either.

Councilman Prendergast said he doesn't support an outright ban either. It is possible to protect the areas that need it and within certain parameters we can allow them in certain areas. We still need to talk about what zones, months and times of operation and stack height.

Councilman Kusnierz said he would like to know how the two silent Board Members feel about a ban on these devices.

Councilwoman LeClair stated that originally she was for a ban on these devices until she found information through NESCAM and she and Councilman Cumm worked hard on a compromise. It was important to her that people in zones who live closely to their neighbors are protected. She can't support allowing them in the zones in the proposed law after hearing advice from counsel stating that we basically have no rule and anybody can come in and appeal before the Zoning Board and get variance to allow one in R-1 zone on a lot that doesn't fit our requirements and we all received communication from Attorney Auffredou that states this. She feels that we went from absolutely no to and pushed it too far and we won't have any law if we go with what is before us. We need to work on the zones to protect the people in those neighborhoods.

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Supervisor Jenkins stated that no matter what you put in the zones the same language applies as Attorney Auffredou said and the only way to avoid that is an outright ban.

Councilwoman LeClair said "in those zones".

Supervisor Jenkins said it has nothing to do with zones. It doesn't matter if you say one, two, three or four zones. They shouldn't be allowed in R-1. He understands what Attorney Auffredou is saying, but he doesn't see the difference between that or if we put down R-2, R-3 and R-4 and only allow in R-5. It is the same thing by definition.

Councilwoman LeClair referred back to what Attorney Auffredou said.

Supervisor Jenkins said he discussed this with him and it makes no sense. If that is true for R-1 then it is true for all of them.

Councilwoman LeClair stated that what Attorney Auffredou said was by allowing them in those zones we are allowing them in zones where the lots aren't compatible or not sufficient to begin with. She said why go into this knowing we are putting the Zoning Board in a spot where they have to consider variances.

Supervisor Jenkins stated that all these changes we made do the same thing. He used the example of the section where we said we would allow our Code Enforcement Officer to allow them to go past the April 30th date as long as he approved it.

Councilman Cumm said the only issue for him was what zones to allow it in. He didn't know how it went from zones R-4 and R-5 to R-2, R-3, R-4 and R-5 in this August 20, 2009 draft.

Supervisor Jenkins stated that they would have to have four acres and meet all the setback requirements.

Councilman Kusnierz said their Code Enforcement Officer provided the Board tonight with a draft dated August 19th and he said it was the same as the August 20th draft and incorporated all the changes made to the June 20th draft. He found a significant difference in Section 76-4 (A) 4th line in the "Specific Requirement" section. **The sentence in 76-4 (A) in the August 20th draft reads "Only those OHH that are certified to meet current emission standards promulgated by the United States Environmental Protection Agency (EPA) shall be eligible for a permit.** This sentence was stricken from the June 20th draft and now it is back in the August 20th draft. This essentially only makes one unit eligible for a permit and this concerns him.

Councilman Prendergast recalled discussion on this and the difference between Phase 1 and Phase 2 units and what would happen if one phase went out and another one came in. He said to Adele Kurtz who was present that he thought she was involved in that discussion.

Adele Kurtz stated that she thought Phase 1 was gone and Phase 2 was set to expire in October 2008. The word **promulgated** was a problem for her also. They are only guidelines not standards from the EPA and the word **certified** is a problem also. The EPA isn't certifying these units and it actually reads this way on their website. They only meet the standards that they suggest.

Howard Cross stated that this should be in the lap of the EPA and not the Town.

Councilman Cumm said that is the reason we should ban them until somebody knows what is going on.

Howard Cross asked what would happen to those who already have them and Councilman Cumm said they would have to write a law to grandfather them in.

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Howard Cross asked what about fireplaces and Councilman Prendergast and a couple other Board Members said they weren't talking about them.

Councilman Prendergast also stated that the EPA isn't stopping them. Just because they don't doesn't mean we don't have to.

Councilwoman LeClair stated that 50 Towns in the State and many of them small upstate Towns are moving on these regulations. She mentioned Jay, Essex, Peru who have enacted regulations or are in the process of enacting regulations to protect their communities.

Councilman Prendergast said why have other Towns stopped them? Answer: "To protect the people."

Supervisor Jenkins asked for no further discussion from the floor unless asked for from the Board. The Board has to move on.

Adele Kurtz suggested the following wording: "Only new outdoor hydronic heaters that meet current emission standards set forth by the United States EPA shall be eligible."

Councilman Kusnierz asked if they should remove the word "promulgated".

Adele stated they aren't "promulgated" but they are "set forth".

Councilman Kusnierz said the only problem he has with the sentence is that he doesn't know what it means. Is it all the new ones or one of the new lines coming out? He knows the standards aren't going to be promulgated by the EPA and they haven't been yet so this is an effective ban right here. So it has to be changed somehow.

A resident present referred to 76-4 (G) "Height of Stack" which reads "The minimum height of the stack for any OHH shall be at least two (2) feet higher than the peak of the roof line of any residence not served by the OHH and within 200 feet of the OHH." He said that he doesn't know of any outdoor wood boiler that has any recommendations of this type.

Councilman Cumm said Greenwood does.

Councilman Prendergast stated that he doesn't see that section as being workable or reasonable. Whatever the manufacturer recommends is what it should be.

Councilman Kusnierz stated that they lined this out in the June 20th draft and it is back in this draft.

Councilwoman LeClair stated that they did strike it, but then Attorney Auffredou stated the following: "Changing the height of the stack requirements to those recommended by the manufacturer rather than having a specific standard in the regulation is problematic. Deferring to the recommendations of the manufacturer is also problematic because it can lead to inconsistent stack height throughout the Town or from neighborhood to neighborhood and, again, is just creating future problems for the Town."

Two residents said that if they had setback requirements what difference does it make if the manufacturer recommends a specific height.

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Councilwoman LeClair read further from Attorney Auffredou's opinion: "Deferring to the manufacturer is simply not advisable as presumably stack height can differ by manufacturer. What controls if there is no recommended height from the manufacturer."

Councilman Prendergast said the reason he didn't have a problem going with the manufacturer stack height is because of the other controlling factors such as setbacks and acreage.

Councilman Kusnierz added that they need to keep in mind that we will be dealing with newer generations of heaters that burn more efficiently.

Councilman Cumm stated that the draft from the State of New York that is before the Governor now calls for a minimum stack height of 18 feet above-ground.

Councilman Kusnierz said it isn't before the Governor it is before the committee and always has been. It has to be passed by the legislature first.

Councilman Cumm read "NYS DEC has not yet received approval from Gore".

Councilman Kusnierz said he was talking about two different things. That is a regulation. He told Councilman Cumm that he said the law was on the Governor's desk.

Councilman Cumm said "this draft, and pointed to a document, was on the Governor's desk".

Councilman Kusnierz said the Governor has nothing to do with that. The commissioner of DEC has sole authority to promulgate regulations. Once the commissioner proposes a regulation there is a public hearing and comment period and then the agency can take action on it. If they give preliminary approval it has to go to Gore for approval.

Councilman Cumm asked if the public comment period expired and he assumed it did since it was dated March 5, 2009.

Councilman Kusnierz said no. Gore has to sign off on it, that the regulation in fact is workable, before they put it out to public hearing and it hasn't been approved by DEC.

Supervisor Jenkins said we shouldn't allow these in R-1 zone. If the moratorium ends somebody can apply for a permit and put one next door to him and that shouldn't be allowed to happen.

Councilman Kusnierz said under this proposal you need four acres.

Supervisor Jenkins said as for the setback requirements if you have four acres then more than likely you would meet the setback requirements.

Scott Newell commented on the setback requirements. He has 12 acres of land and he has no place to put his boiler that would be more than 200 feet from every property line. He has railroad tracks behind him, the road in front of him and the river. He doesn't see why he would have to be setback 200 feet from railroad tracks. The four acre minimum requirement is fine with him and 200 feet from a nearest **resident** would be fine, but to have to be 200 feet from a 1,700 acre farm isn't. **He asked them to address it from the nearest residence instead of property line.** As for the stack height, you are saying that it has to be 200 feet from a property line and it can't be 200 feet from another residence. If he has another residence on his property he asked what the Town would care. We addressed this last time and it comes back the same way.

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Rich Morris said he knew they weren't talking about fireplaces and he knew they were talking about outdoor wood furnaces and he wasn't at the meeting to complain about neighbors or problems, but his mom has emphysema and there is a stack 20 feet from her house. He asked why they were zeroing in on outdoor wood furnaces and they weren't dealing with other issues.

Councilwoman LeClair said it was because that is what they are dealing with. The amount of pollutants that are put in the air by these furnaces is dramatically more than the pollutants that are put in the air by current woodstoves that are sold

Scott Newell stated he has EPA studies that read they are the same. He turned in a copy of these studies to Councilwoman LeClair.

Rich Morris stated that if he owns four acres of property and he puts his house way in the back 50 feet from his property as allowed he wouldn't have any place to put a boiler except in front of his house. He asked how they defined "front yard"

Councilman Prendergast said that was a question for Joe Patricke.

Councilman Kusnierz asked the Board Members how they felt about wording it 200 feet from another residence rather than property line.

Councilman Prendergast said it makes sense. Then we get into the definition of what is a residence and we have to make sure we have that.

Councilman Kusnierz stated they could word it "residential structure".

Supervisor Jenkins referred to months of operation. The August 20th draft laws reads October 1st through April 30th and exemptions could be granted by the Building Inspector/Code Enforcement Officer provided that the requirements of Section 76-4 (C) and (D) are complied with or as may be deemed appropriate by the Building Inspector/Code Enforcement Officer.

Councilman Kusnierz stated that DEC just promulgated regulations on the 14th to ban all outdoor residential burning of waste, limbs and garbage in what used to be an exemption for Towns with populations of 20,000 or less, but within the exemption they provided for burning up to March 15th and he asked the board if they wanted to use that as one of their bookends for period of operation.

Councilwoman LeClair said we would still be in the heating season then and the audience agreed.

Supervisor Jenkins said April 30th would take care of most people using it for heating. There are a few people who said they use it to heat their water and maybe the greenhouses.

Rich Morris said by that time they are slowing down and their heating season is almost over.

Councilman Kusnierz asked him what he thought about the start date of November 1st.

Rich Morris didn't seem to have a problem with that date. He asked if anyone was heating before that date.

Scott Newell stated he did this year. His house was at 57 degrees on the 28th.

Councilman Kusnierz said it appears that section is okay, because of the exemption provision.

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Councilwoman LeClair said she had to again refer to the comments from Attorney Auffredou in which he stated about months of operation “months of operation essentially renders this provision meaningless”.

Councilman Kusnierz stated that while he usually listens to Attorney Auffredou’s legal advice the Board Members are elected to represent the public and he has heard differently than what counsel is recommending.

Supervisor Jenkins stated that they have had this discussion about those issues. What does it mean? If somebody doesn’t like it they are going to sue us and take us to court and say that we shouldn’t allow anybody to have them and they shouldn’t be issued a permit? If they are being offended then we wouldn’t issue it. He didn’t think that every concern of the attorneys creates a legal issue, but he may be right on a technicality.

Councilman Prendergast stated that Attorney Auffredou has other Boards to deal with and he wants to make it as easy on them as he can and when it comes to the allowed zones and his comments that was his point exactly that you are going to have people going before the Zoning Board for a variance and using our law as a reason why they should be granted. He has other concerns that we pay him to have for this Town and he has taken care of those.

Supervisor Jenkins asked how many do we have in Town now? How many issues are we really going to have?

Councilwoman LeClair said it only takes one.

Supervisor Jenkins said it may only take one, but does that mean we do nothing? His concern is about the ones we already have that are causing problems and that was only one or two and we don’t have any regulations at all.

Howard Cross asked why the NYS DOH can’t get involved in this seeing how we are concerned about health. They should be able to put an injunction on it to stop it.

Supervisor Jenkins stated that we have a Consolidated Board of Health for the Town and Village and under the right circumstances they could stop it. It isn’t always easy to prove. He said there hasn’t been a complaint in a long time. The one in the R-1 zone isn’t being operated anymore he didn’t think.

Supervisor Jenkins recapped what the Board had done so far during this workshop and that was:

- **Specific Requirements section needs to be cleaned up.**
- **Allowed zones – R-1 zone is excluded and they shouldn’t be allowed in an R-1 zone.**
- **In the other zones they would need a minimum of four acres.**
- **Setbacks are 200 feet from residential not property line. That language has to be changed.**
- **Months of operation are okay. Supervisor Jenkins will discuss this with the attorney and go over his concerns.**

Councilwoman LeClair stated she was not in favor of the non-seasonal exemptions.

Councilman Cumm said he wrote down in his notes that the language regarding that isn’t good and needs to be cleaned up.

Supervisor Jenkins asked how the Board Members felt about stack height.

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Councilman Prendergast said the way it was written it wasn't workable.

Councilman Kusnierz suggested modifying it to read that if there isn't any residence within 200 feet then it could be installed by manufacturer recommendations. Word it so it is either/or.

Supervisor Jenkins stated that the way the draft law reads is that if there isn't any residence within 200 feet you don't need any stack.

Councilman Kusnierz said it was a non-issue then.

Rich Morris said that if a stack is put up 39 feet then the wind is going to take the smoke into a neighbor's house. The higher the stack the further it will carry. Not to mention that they are ugly.

Councilman Cumm stated that industry is regulating themselves. He asked for information on the E-Classic 2300 series from Greenwood and they faxed him their chart for stack height.

Rich Morris stated that they are trying to get business into an area where that law may be already enacted.

Councilman Cumm said if he was a manufacturer he would want a stack height a lot less than what they were recommending.

Rich Morris said they are providing a unit for an area that has a stack height requirement.

Councilman Cumm said it came from the Hearth, Patio and Barbecue Association not Greenwood.

David Rogge stated there is no difference between them and oil and gas furnaces. There is a stack requirement on any boiler or hot air furnace that says unless you have a forced hot air system then it has to be so high above the peak or you will have a problem.

Councilman Cumm stated they give no reference to the house being serviced by the hydronic heater.

David Rogge stated that if you look at the code book for any type of furnace it gives you that.

Councilman Prendergast stated we went from any outdoor hydronic heater to EPA certified, which reduced the pollutants he was told significantly.

Joe Patricke, Building Inspector/Code Enforcement Officer entered the meeting and he was asked about changing the wording to "residence" from "property line" for the setbacks and Joe asked what would happen if there wasn't any residence next door.

Councilman Prendergast referred to Section 76-5 (A) that reads as follows: "Replacement of non-conforming OHH. Any major repair, as determined by the Building Inspector/Code Enforcement Officer or replacement of a non-conforming OHH shall comply with this law in its entirety." He thought this was supposed to be removed from the June 20th draft and it was only going to read "replacement".

Councilman Kusnierz said it was supposed to be changed.

Councilwoman LeClair said they never decided on zones. She asked if they were going with R-4 and R-5 where the lot sizes comply with the requirements.

Councilman Kusnierz said they were going to be outlawed in R-1 and allowed in the others if they meet the other requirements.

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Councilwoman LeClair disagreed with that. It isn't right to say that one lot is okay and one lot is not okay within the same zone when most of the people within the zone can't meet the requirements and she referred back to the attorney's comments whereby he said it was bad practice to allow something that is incompatible within the zone.

Supervisor Jenkins said we have a couple of R-1 lots that do meet the requirement of four acres so it applies to the same thing.

Councilwoman LeClair stated that if you have that lot and I do not then the attorney said I could come before the Zoning Board and ask for a variance and the Zoning Board would be hard pressed to not give me that variance. This means that my quarter acre lot or somebody else's quarter acre lot may end up with a wood furnace on it.

Supervisor Jenkins said we could have no law and they could put one in any day they want to.

Councilwoman LeClair stated that with this we don't have any law.

Supervisor Jenkins asked her what she suggested then.

Councilwoman LeClair stated they should allow them in zones where they can meet the four acre minimum lot size and where they can meet the setback requirements.

Supervisor Jenkins said he would review this with Attorney Auffredou.

Councilwoman LeClair said she wanted to put this in perspective. We have approximately 15,000 people in this community and if we say 5,000 live in agricultural zoning then that brings us down to 10,000 people. If we have 10,000 people and 15 wood furnaces now we are working with .0005% of the population that has these stoves. A huge percentage of the population does not. We are trying very hard to make this fair for everyone and trying hard to make this fair for a very, very small percent of the population.

Councilman Kusnierz said if she really wanted to put it in perspective in the almost eight years he has been on the Board and time and money they have wasted on this law, because we received three complaints out of 15,000 people in this Town that is the perspective.

Councilwoman LeClair said she would not complain against her neighbor. She has seen what happens when neighbors complain. It causes hard feelings. There are many who suffer through it rather than have bad relations with their neighbors. She dealt with Mary and Reed Antis on this and Bob and Joyce Warrington and she knew how upset the Warrington's were when Mary and Reed Antis spoke out about it being an issue for them.

Councilman Kusnierz replied that he was just putting it in perspective and told Councilwoman LeClair that she was talking about perspective and the reality is the perspective he just laid out.

Councilwoman LeClair said she disagreed with him.

Councilman Cumm said he has yet to be out in the public where anybody has said to him that they are in favor of outdoor wood burning furnaces except at the public meetings. Most of the comments he has had come from the public saying just ban them.

Councilman Kusnierz said he hasn't gotten any correspondence /comments like that.

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Councilman Cumm said he must travel in different circles and Councilman Kusnierz said he does travel in different circles he travels in the public interest.

Supervisor Jenkins said in order to address what Councilwoman LeClair is talking about maybe we should allow them anywhere as long as they meet the requirements.

Councilwoman LeClair said she wouldn't vote for a law that allows them anywhere.

Supervisor Jenkins told Councilwoman LeClair that he wasn't sure what she meant then, because she just said leaving R-1 in there changes it. If you take it out it allows them anyplace.

Councilwoman LeClair said it shouldn't be allowed in zones where the lot sizes don't meet the requirements. If you can building on a ¼ of acre then you shouldn't be allowed to get a woodstove permit. If you can build on a ¼ of an acre that zones requirements for building do not meet the requirement for putting a woodstove in so that zone shouldn't be allowed to have woodstoves.

The remark was made that she was right woodstoves shouldn't be allowed. Councilwoman LeClair said they knew what she meant.

Supervisor Jenkins thanked everyone for their participation. He said they would make an effort to come up with a new draft, set a public hearing and vote on it.

Councilman Kusnierz said he wanted to see a draft before they set a public hearing date.

Supervisor Jenkins said he would go over it with Joe and have him get a draft to them.

The question was asked from the public if weren't they on a mailing list to be notified when these meetings were held.

Councilman Kusnierz said they had people sign in and he thought they were going to be notified.

Supervisor Jenkins said they could do that.

Workshop adjourned at 8:35 p.m.

Respectfully submitted,

Jeanne Fleury
Town Clerk

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