

A public hearing was held by the Town Board of the Town of Moreau on March 10, 2009 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of considering the adoption of Local Law No. 2 of 2009 that if adopted would enact Chapter 76 of the Moreau Town Code to regulate the location and use of outdoor hydronic heaters.

Supervisor Jenkins opened the public hearing at 6:45 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
Gina LeClair	Councilwoman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

Town Board Members Absent:

Bob Prendergast	Councilman
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Also Present: Jeanne Fleury, Town Clerk and the following Town Residents: Larry Chapman, Ramona Bearor, Shannon & Jason Kenny, James Hooper, Owen & Stacy Bovee, Gregg & Ann Towne, Bill Jeremias, Reed & Mary Antis, Robert Lyons, Adele Kurtz, Greg Slywka, Peter Phair, Chris Jackson, Richard Morris, Eugene J. Raimo, Sr., Bob Kory, Scott Newell, Jeff Nicholson, Ray Fischer, Chris Phair, Bob Warrington, Melvin W. Jacobie, Jr., David Rogge, G. Robert Baker; Members of the General Public: Laurie LaFond, Bob Ferris, Gordon Strong, Claude Himelrick, Cody Himelrick and the Post Star Reporter, Alex Nunes

The following Notice of Public Hearing was advertised in the legal ad section of the Glens Falls Post Star Newspaper on February 28, 2009:

TOWN OF MOREAU
NOTICE OF PUBLIC HEARING
TO CONSIDER ADOPTION OF A LOCAL LAW
ESTABLISHING REGULATIONS FOR THE INSTALLATION, USE OR OPERATION OF
OUTDOOR HYDRONIC HEATERS

NOTICE IS HEREBY GIVEN pursuant to Section 20 of the Municipal Home Rule Law and Section 264 of the Town Law of the State of New York, that a public hearing will be held by the Town Board of the Town of Moreau on Tuesday, March 10, 2009 at 6:40 p.m. at the Town Hall, located at 61 Hudson Street, South Glens Falls, New York for the purpose of considering the adoption of Local Law No. 2 of 2009. If adopted, Local Law No. 2 of 2009 would enact Chapter 76 of the Moreau Town Code to regulate the location and use of outdoor hydronic heaters and require persons who maintain such heaters to obtain a permit from the Town. The proposed local law would allow outdoor hydronic heaters certified to meet current emissions standards promulgated by the United States Environmental Protection Agency as accessory uses upon issuance of a permit only in the R-4, R-5 and RP Zoning Districts of the Town. A minimum lot size of four (4) acres is required. Provisions for setback from property lines, height of the stack, and months of operation (October 1 thru April 30) are also established. The local law includes a mechanism to permit existing outdoor hydronic heaters as a non-conforming use provided the owner applies for and receives a permit from the Town and brings the outdoor hydronic heater into compliance with the Chapter 76 within 180 days of the effective date of the local law. If

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adopted, Local Law No. 2 of 2009 would amend the use schedules of the R-4, R-5 and RP Zoning Districts to reflect the accessory use. Written comments on Local Law No. 2 of 2009 may be submitted to the Town Clerk. A copy of proposed Local Law No. 2 of 2009 can be obtained at the Moreau Town Hall.

Jeanne M. Fleury Town Clerk

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Supervisor Jenkins asked if any of the Board Members had any comments. They had none at this point. Supervisor Jenkins opened up the public hearing for comments from the public.

Larry Chapman of 415 Fortsville Road owns an 18 acre farm and has had an outdoor hydronic heater for 16 years and it is an important part of his life. He heats everything with it. He stated that the stack height proposed in the draft law is unnecessary, especially in an agricultural district.

Ann Towne of 1095 Route 9 has owned an outdoor hydronic heater for fifteen years and has never had to obtain a permit. She uses the unit to heat her hot water so she uses it year round and it has never been an issue. There is more smoke from the campgrounds nearby than from her heater. She stated that the proposed law is arbitrary.

Bill Jeremias of 299 Fortsville Road owns an 85 acre farm and has owned an outdoor heater since 1993. His nearest neighbor is $\frac{1}{4}$ of a mile away and he has never received a complaint from anyone over his heater. He doesn't have a problem with parts of the law, in particular, the seasons they are allowed to be used, but the way he reads the proposed law is that he will have to purchase a new \$12,000.00 unit within 180 days or be fined.

Peter Phair of 365 Reynolds Road is thinking about buying one of these units and currently has three woodstoves. He asked the Board Members if they were going to vote on this law tonight.

Supervisor Jenkins replied that he sensed that it would be tabled. The Board is getting more information than in the past. DEC is looking into doing something at the State level.

Councilman Kusnierz stated if that is the case in an effort to save time and truthfulness the people gathered here tonight should get a sense of where the Board is on it. If we are just tabling it, because we have a roomful of people who are opposed to it that is not the right reason to table it. If we are tabling it, because we are going to make significant changes after working with people who have these wood burning furnaces so that it is a compromise that meets the needs, then okay. He thought the Board was in agreement that there are certain areas of the Town where there shouldn't be outdoor wood burning furnaces. If we are tabling it just do it another night without any explanation then we are doing a disservice to the people.

Councilman Cumm replied to this by saying that he received from NYS DEC draft legislation that they have before the Governor right now and the reason he feels our draft should be put on hold is because DEC is going to dictate through their draft legislation and hopefully subsequent legislation what we do anyway and we won't have any control over it other than to make it more

stringent. They do include a stack height of eighteen feet and we won't have any say over lowering it.

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Councilman Kusnierz stated that what Councilman Cumm received from DEC was a proposed rule change to NYS DEC Rules & Regulations for the State. What the agency is seeking is approval to put it to a public comment period. It is not legislation. However, there has been legislation in the past that has been introduced in the State Assembly, which would call for regulations state-wide for these furnaces and in those regulations it does not call for stack height.

Councilman Cumm stated that in the information he had before him it did address stack height and it was going before the Regulatory Reform for review.

Supervisor Jenkins stated that he thought it should be the Board's goal to schedule another workshop to look at this. He wasn't going to throw this on an agenda some night for vote hoping nobody shows up. That isn't the way he does things. He had phone conversations that told him that what they have for a draft isn't very good. He heard comments tonight that indicate there may be problems with the way it is written. The stack height refers to the person using it and most legislation refers to the stack height to a neighbor's house. So there are a lot of reasons to have another workshop. He didn't think that anybody was in favor of putting one of these units in a development where there are houses 15 feet from the property boundary lines. At the same time we have to respect the opinions of people who already have them and the health issues. He didn't think they were ready to move on this particular draft.

Richard Morris owner of Toadflax Nursery on Route 9 owns an outdoor wood burning furnace and stated the Board has been working on a draft law since 2006 and it doesn't seem to go anywhere. He stated that Councilman Cumm would like to see them outlawed in the Town and every one of them removed. He said that obviously there is opposition to these units and one reason probably is that there has been abuse of these units in the past and people not being responsible using them and upsetting neighbors. There should be a permitting process, but the language in the draft law re: bringing people into compliance is absurd, in particular, he mentioned the fines and imprisonment language. He asked the Board if they have read this law.

Councilman Cumm replied yes and that he also read the New Hampshire and Maine laws.

Richard Morris stated that in Vermont and New Hampshire laws they require 50 feet from the property line and 70 feet from a residence. The new EPA standards are only standards. The EPA doesn't certify any outdoor wood boiler furnaces only woodstoves. This is a voluntary program that some of the manufacturers decided to follow to try to improve their units. There should be reviews and allocations for units that are extremely efficient. If you see smoke then fuel is being wasted. Legislation needs to accommodate units of the future that become more efficient. He agreed with the section that regulates types of fuels that can be burned in these units. He has never heard about anybody dying of cancer from operating a woodstove or wood boiler. Some of the language is subjective. For example, he said define "offensive odors". "Heavy smoke", "dangerous particles", these are all subjective language that is opinionated.

Councilman Cumm stated that this is one of the reasons he has been in contact with Central Boiler and that is one of the statements that the representative from Central Boiler came out and made to him that, that statement is very subjective. He read from the New Hampshire law: "no person shall install an outdoor wood burning hydronic heater that is not a Phase 1 or Phase 2 unless it is located at least 200 feet from the nearest abutting residence and has a permanent attached stack that is at least two feet higher than the peak of the roof of the residence or place of

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business not served by the outdoor wood burning hydronic heater if that residence or place of business is located within 300 feet of the unit.” He said Maine law is very similar.

Richard Morris stated that as a group the Town Board has to be very responsible for their rights as citizens and they can’t draft something that is unconstitutional, the Board serves the people.

Councilman Cumm asked Mr. Morris where are the rights of the other 16,000 people in the Town of Moreau. There are 19 units that are in the Town of Moreau.

The people present clamored “where are they, where are these people, they aren’t concerned”.

Councilman Cumm stated speaking of that he wanted to point out that Councilman Kusnierz sent out a letter to every homeowner that has one of these, that is why there are so many people here tonight.

Councilman Kusnierz replied that it is a good thing he did that, because the agenda wasn’t even available to the public on the website until this morning and if he hadn’t done that it would have been a done deal tonight.

Councilman Cumm replied, no it wouldn’t. He was ready to table it.

Councilman Kusnierz asked where the transparency is with this Board.

Councilman Cumm stated there was no way he was going to vote on this tonight.

Councilman Kusnierz said that there is no way Councilman Cumm was going to vote to allow any proposal unless it was an outright ban.

Councilman Cumm said that Councilman Kusnierz was the exact opposite and he wanted them all.

Councilman Kusnierz said there was a public hearing process and draft legislation that the whole Board agreed on and he was ready to vote on it that night and then it was tabled and they started all over again.

Councilman Cumm said new information came forward.

Councilman Kusnierz said he read it all and it is not new.

Laurie LaFond spoke about the research she has done for two years on the health affects from outdoor wood burning furnaces and how she lived three blocks from one and became sick with allergies and sinus infections.

Jim Hooper from 46 Reynolds Road (Route 197) owner of Haven Oaks Farm has owned one for six or seven years. He asked who on the Board was qualified to make the environmental judgment. He told Councilman Cumm that he was passing judgment like he was an environmental engineer and Councilman Cumm replied that he wasn’t and that was why he was so confused over this. Every time he goes on the internet there is something different.

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Jim Hooper said his experience for twelve years was in the nuclear navy sampling air all over the world. All he reads in the articles that Councilman Cumm and Laurie LaFond are referring to talk about particulate and nobody is talking about the difference between particulate emissions and gaseous emissions and the balance of burning oil over wood. Particulate is only a problem if it is ingested or inhaled. You would have to be right in the plume of smoke. If you are three blocks away that stuff has fallen out. Particulate drops to the ground and becomes carbon and is as natural as fire. Gaseous activity is difference and can be a problem and is what causes acid rain and it comes from burning petroleum products. He takes his ashes and mixes it with leaves to make compost.

Jim Hooper asked how many complaints have been received against these units and the answer from Supervisor Jenkins was three.

Shannon Kenny has lived at 123 Fort Edward Road for nine years and she talked about her neighbor's unit that is sixty feet from her home and it smells all the time. She and her children have developed asthma and she has to pay for asthma medicine for the three of them. They came to the Board when the problem first started. Her neighbor has tried to accommodate them and there is nothing he can do to help them short of moving it to the other side of his house. Non-stop they have been told there is nothing the Town can do for them. No matter what the Board does it isn't going to help them one bit, her neighbor grand fathered in. All those who have them aren't going to be affected by the law until they have to replace them.

Ray Fischer from 119 Fort Edward Road said he is the neighbor that Shannon Kenny is talking about and they complain about his boiler yet they have bon fires periodically through the fall months.

Councilman Kusnierz said he isn't disagreeing that smoke is harmful. However, he thinks they lost sight of the big picture. There is recourse through NYS DEC. The Town of Moreau doesn't have the expertise or any Town in the State to go through and determine the opacity of smoke, the particulates that are falling out and the gas emissions that may be harmful. That is why we have NYS DEC. They have the expertise and resources to enforce it. That is why it should be at the State level for enforcement. He read from Part 211.2 of the Conservation law as follows: "prohibits any person from causing or allowing emissions of air contaminants that unreasonably interfere with the comfortable enjoyment of life or property."

The second regulation he quoted was "limits the opacity from stationery combustion installations not greater than 20% over 6 minute average in an hour". He said it is in black and white, if someone has a problem they should pick up the phone and call DEC. They have the expertise. If they find a violation they have to do something about it. To expect the Town to have the level of expertise to enforce what they want to see in a local law isn't workable.

Jason Kenny advised that they had DEC out to their house and what they did was take a walk out back, the unit wasn't operating so they said there wasn't any opacity and left.

Councilman Kusnierz asked if they called them back when it was operating.

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Jason Kenny stated that they didn't come to the Town and write letters everyday. They talked with Joe Patricke to see if there was anything they could do to resolve it themselves and that was it. They weren't trying to make their issue everybody else's issue. He said it is happening all over, every State, Town and County. It isn't a Town of Moreau issue only.

Jason Kenny asked what Queensbury did and Councilman Kusnierz said they changed their zoning and they allow them.

Scott Newell from 1695 West River Road said his stack would have to be sixty feet in order to be two feet above the peak of his house. Why does it have to be two feet above the peak of his house?

Councilman Cumm stated because it is recommended by the manufacturer and the purpose is to get the smoke above the peak of the house.

Scott Newell stated that his house is between his stove and his neighbor's. He asked if the Board measured how many cords of wood are burned at the Moreau State Park during summer. What about the people who live near there. There are no stacks there and no regulations and they throw plastic in the fires. He stated he cooks in his unit. He smokes turkeys and hams.

Councilman Cumm read from a manufacturer's regulations that references "two feet above the peak of the house".

Jason Kenny stated that there are a lot of people present who live in areas where it won't affect anyone. What about the middle of Town where three neighbors could get together and decide to pop one of these in each of their back yards and the smoke is rolling. Then you would have a real problem and there would be twenty people that don't want them and not a personal phone call to twenty people that have them. Then what would the plan be.

Supervisor Jenkins stated his opinion is that they don't belong in Zones 1 & 2.

Melvin W. Jacobie, Jr. from Moreau Rec Road stated there are a lot of mom and pop garages around the area with the stove pipe stuck out of the garage wall, what is going to be done about them.

Supervisor Jenkins said nothing and again said that they don't belong in Zones 1 & 2.

Melvin Jacobie said that is a double standard.

David Rogge owner of Lamplighter Acres on Route 9 asked why they wouldn't be allowed in the commercial zone. He has a wood boiler and needs one. Why should he spend thousands of dollars a year on oil when he does tree cutting every year, hardwood, softwood and he burns it in the boiler. Once it gets going there isn't any smoke. He didn't know if a twenty foot stack was legal. His manufacturer said it would void the warranty on his. It is meant to burn out. They aren't meant to keep in all the creosote that would be kept in the tall stacks. There is going to be more problems with a tall stack than a short one.

Gordon Strong from the Town of Northumberland has a plumbing and heating business and services some of the boilers in the Town of Moreau. He acknowledged what Councilman Cumm said about the stack regulation of two feet above the peak of the roof and said that has to do with efficiency. He spoke with Chris Williams from Central Boiler and he has a tremendous amount of information (Councilman Cumm said he has the information).

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Mr. Strong said if you are going to say that the outdoor boilers are contributing to lung disease then you have to look at what we have in the area to regulate. If you look at DEC and what they regulate, they regulate the mills in the area. If they do cause emphysema or breathing disorder where are the statistics or the basis for it? It is shocking the approach the Board wants to take against the boilers and they can't go back on the existing ones and make them comply with something that is absolutely ridiculous.

Supervisor Jenkins said that wasn't their goal or his anyway. It wasn't going to be voted on tonight.

Councilman Cumm stated that the Greenwood manufacturer doesn't have any problem with the stack height in the proposed law. He wants to table this. Legitimate concerns have been brought up that he isn't comfortable with. Today he received the DEC memo from John Barnes. He read as follows: "Attached is a current draft of 6NYCRR Part 247 outdoor wood boilers a regulation currently under development by the NYS DEC for regulating outdoor wood boilers." He stated that he is willing to forego any law right now and let this take its' course.

Councilman Kusnierz stated he is too, but we should let the moratorium sunset. Right now nobody in this Town can install a unit anywhere under our moratorium.

Councilman Cumm stated that is a good thing right now, because we don't have any regulations in place.

Councilman Kusnierz said it isn't a good thing. We are violating the law on moratoriums. We can't have a moratorium unless we are making forward progress and doing a permanent law.

Bob Warrington from 2 Paris Road had a woodstove before he purchased his \$11,000.00 wood burning furnace. For the 39 years that he operated his woodstove he never had one complaint until he started operating his wood boiler. He thinks a lot of his neighbors. They had bon fires in the summer time and he never complained about them. When they break the law he looks the

other way. That's the way he wants to be. His boiler came with a two foot stack and he added another six foot stack to it. The smoke goes down through the Finch, Pruyn property.

Supervisor Jenkins thanked everyone for their input and stated a workshop will probably be held and it will be published.

Councilman Kusnierz asked that if the Board holds a workshop that all the people that will be impacted (everybody in this room) be notified.

Supervisor Jenkins said if everybody will sign the sign in sheet then they will be notified about the workshop.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to close the public hearing at 7:29 p.m.

Roll call vote resulted as follows:

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

Respectfully submitted,

Jeanne Fleury
Town Clerk