

Westfield Township Trustees

Public Hearing-Outdoor Wood Fired Boilers

August 20, 2012

6:30pm

Trustee Harris opened the Public Hearing to consider a text amendment to the Westfield Township Zoning Resolution Article VI. Section 606. A. 23. Outdoor Wood Fired Boilers at 6:30pm.

Trustees Present: Gary Harris, Ron Oiler, and Jim Likley

Please see attached Sign In Sheet

Trustee Harris opened the meeting up to the public for comments or questions.

Heather Sturdevant- Ms. Sturdevant wanted to speak to the Board this evening in order to explain the decisions made by the Zoning Commission and the reasons for those decisions. She stated that the Zoning Commission chose to add Outdoor Wood Fired Boilers as a Conditional Use. She stated that the reason for that was specifically because of the stack heights of these systems. In speaking with other townships, reviewing current language in other areas and talking with the Prosecutor's office, it has been very difficult to come up with a stack height that can be justified because of elevation differences between each applicant's property and neighboring properties as well as the specific situation in Westfield Township where in certain areas every morning the air and fog just hangs and is very still until sometime between 10:00am and noon. If a property owner in that area wanted to have an outdoor wood fired boiler, dependent on the stack height, the smoke would just hang in that area causing a nuisance to surrounding property owners as well as create a potential hazard to drivers on the roads. The reason for making Outdoor Wood Fired Boilers a Conditional Use was to be able to determine and justify stack height requirements on an individual basis based on each applicant's specific set of circumstances. The Zoning Commission felt this was the best possible option for language for this use instead of having Outdoor Wood Fired Boilers as a permitted use with a standard stack height that would work fine in some areas and not work at all in others. Sturdevant also pointed out to the Trustees that the Zoning Commission placed all of the conditions for Outdoor Wood Fired Boilers under specific conditions rather than under general conditions as all of the things being considered would only apply to this specific use. Sturdevant stated that the Zoning Commission put a lot of thought into this project and determined that it was necessary to add Outdoor Wood Fired Boilers, as this type of heating system is currently prohibited in Westfield Township, there are at least two of this type of system in the township currently and due to the current economic climate, homeowners are looking for ways to reduce their annual heating costs. This type of system can potentially allow for that type of cost savings. Sturdevant also reminded the Trustees that the information received from the EPA although NOT approved official regulations, are available at the Westfield Township Hall for viewing. They are just suggestions as the EPA has not been able to get any regulations passed regarding Outdoor Wood Fire Boilers.

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Trustee Oiler asked if the Zoning Commission received and had an opportunity to review the response from the Medina County Prosecutors office regarding the proposed language.

Sturdevant stated that they sent the language to the prosecutor's office several months ago but moved ahead with the review from Planning Services as they did not receive anything back from the Prosecutor's Office. She did speak with Bill Thorne some time ago regarding the subject and was told that Mr. Thorne felt that language on this topic would be very hard to enforce. She stated that Mr. Thorne was the one to notify the township that the EPA did not have passed regulations on this topic. Other townships were encouraged to use proposed regulations in their language by the EPA but Mr. Thorne advised against this as he did not feel they would be enforceable.

Trustee Oiler stated that a response came in from the Prosecutor's Office last week.

Trustee Harris asked if there were any Outdoor Wood Fired Boilers in Westfield Township at the current time.

Matt Witmer, Zoning Inspector stated that he was aware of two such systems in Westfield Township at this time.

Martha Evans, Fiscal Officer stated that she was aware of Outdoor Wood Fired boilers in the Township at this time as well.

Trustee Likley stated that he had several questions that he hoped that Ms. Sturdevant could answer. He asked what the basis was for the fifteen (15) foot distance from all structures. Sturdevant stated that the reasoning behind that was for safety reasons. She added that these systems are very large and being closer to a structure than fifteen feet could pose a fire hazard as well as smoke nuisance issues. She also mentioned that as a family member of hers owns and operates one of these systems she has a personal knowledge that when they run low on wood or if the wind is blowing in just the right direction, they smoke a lot not only covering the entire property but also oftentimes filling the house with smoke. These systems can quickly become a nuisance to not only neighboring property owners, but also to the Outdoor Wood Fired Boiler owners themselves. Trustee Likley asked if the manufacturers recommended a certain distance from structures in the installation of these products. Sturdevant replied that every manufacturer that she looked at or spoke to was different. The distance of fifteen feet came from another township's current Zoning Code that was presented at a training session in Akron last summer.

Trustee Oiler stated that in his research of this type of system, he was made aware that they can be a fire hazard as well.

Trustee Likley stated that he was concerned that the 200 foot distance requirement off of a property line would not be feasible considering that looking at a three acre minimum lot and the minimum frontage of 250 feet. He felt that this could be an enforcement issue. He felt that the distances could be

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essentially making obtaining an Outdoor Wood Fired Boiler too difficult or even ban the system on some parcels. He used his own property dimensions as an example.

Sturdevant replied that the distances that the Zoning Commission came up with came from other Townships. They were adopted in order to protect against neighbor disputes from the nuisance that this type of system can and does create. The Commission felt that those situations would be the exception and not the rule and that those property owners could apply for a variance. The reason for the distances is the extreme nuisance conditions that these systems could create for neighboring properties. This was also one of the reasons that the Zoning Commission made this a Conditional Use.

Trustee Likley stated that he was concerned that while one could measure and meet the two feet above all structures regulation on their own property; they could not necessarily meet that requirement for neighboring properties structures within 300 feet especially if that individual did not get along with their neighbor.

Sturdevant stated that if that Outdoor Wood Fired Boiler System's stack was not above all of the structure within 300 feet that the smoke from that system would go right into their windows. She stated that the Commission had to come up with a distance to protect against neighbor disputes. Even if a property owner did get along with their neighbor, if the stack on their system wasn't above the neighbor's house and the smoke filled their house just once that relationship would turn into a dispute. She stated that one of the primary reasons for Zoning is to reduce neighbor disputes. Sturdevant did say that the Commission did not have the added benefit of reviewing the Prosecutor's Office report which may have been helpful in determining the language for this type of system. Sturdevant added that as the language was written as a Conditional Use, the Township could possibly get away with taking out some of the distances so long as the BZA at all given times was extremely conscious of neighboring property owners and was willing to rule on stack heights that would protect the neighbors. The Zoning Commission felt it was optimal to set minimums and to let the BZA determine where those minimums needed to be increased instead of not giving any guidance based on the research.

Trustee Likley then asked what the basis was for the Steep Slope regulation.

Sturdevant stated that again came down to stack height. If your property is on a slope and your neighbor's property is above yours on the slope, that would need to be considered in determining stack height as if set too low, the smoke would again go right into the neighbor's windows. She stated that most of the regulations considered by the Zoning Commission came back to stack height as that is the hardest part of outdoor Wood Fired Boilers to regulate yet it is the most important issue to be considered. Sturdevant stated that in her research she found that other states were trying to outlaw these systems all together because they have had so many problems with Zoning, Disputes, Air Quality and other issues but have been unsuccessful to date. The smoke issues that can arise from these systems can cause a severe health hazard to certain individuals such as asthmatics and people with COPD or other lung disease. She admitted that this language was very difficult to write due to the issues

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associated with this use. She stated that while the Commission felt that the language was strict that it was worth moving forward with if the Township was going to allow these systems at all.

Trustee Likley stated that he read the Planning Services Guidelines as to what could be burned in the units but then was notified that the EPA doesn't have guidelines. He was concerned with the limitation of fuels and felt that the Zoning Inspector should not have to go around and check wood piles.

Sturdevant stated that Planning Services stated that the fuels should be based on the manufacturer's recommendations and the fuels listed are those that the manufacturers currently recommend. She said that the big thing to look at with this regulation is trash. Many people burn trash in these units. She stated that the Zoning Commission in all honesty wasn't certain that they wanted to allow these systems at all but as they are extremely cost efficient and there are already some in the Township and more to come that they had to allow them in some way. She stated that while people were happy with the fact that they were on the electric aggregation program, they were extremely unhappy with the fact that Ohio Edison took a 14% increase before the start of the program sending many individual's electric bills extremely high. In addition the cost of petroleum based fuels and natural gas has continued to rise over the last few years making heating an extremely costly expense. Outdoor Wood Fired Boilers can reduce these expenses as has been shown in the manufacturer's data and property owners are taking note and making the switch. Sturdevant added that the Zoning Commission did add a nuisance definition and language and that the definition came straight from the Planner's Dictionary. Sturdevant also mentioned that in her discussion with Bill Thorne that he stated that short of allowing this use as permitted with no additional restrictions, that this use would be very difficult to enforce. The Zoning Commission was aware of this from the start but felt the chance was worth taking to protect the residents of Westfield Township.

Trustee Oiler stated that in the Prosecutor's comments that they stated that in authorizing Outdoor Wood Furnaces, they were not authorizing nuisances. This statement was in regards to the regulation that no property owner would operate an outdoor Wood Fired boiler in such a manner as to create a nuisance. He stated that there was also a lengthy paragraph regarding the definition of a nuisance.

Sturdevant replied that the definition of a nuisance came directly from the Department of Planning Services. They obtained it from the Planner's Dictionary which is the trusted source for Zoning and Planning Definitions nationwide. Sturdevant then added that Planning Services has stated several times as has Bill Thorne that sometimes what is good code for Planning and Zoning may not be good code for the Prosecutor and vice versa. The questions then becomes which side does the Township want to take in the writing of their code. She stated that this use is one that particularly makes this statement true.

Trustee Likley stated that in the comments from the Prosecutors Office that they looked at updating the definition and areas allowed to include non-residential uses especially in the HC, I and LC areas.

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Sturdevant responded that the current Local Commercial areas of the Township are also residential areas and are suited to this type of use. The reason the Commission did not allow non-residential uses was because in the HC and I areas of the township, the topography is such that those areas are not well suited for these types of systems. They are areas where typically the smoke and fog hangs for long periods of time and with their close proximity to the highway, allowing these systems could create hazardous driving conditions for motor vehiclists.

Trustee Oiler stated that he felt that the language should be revisited by the Zoning Commission and that they should be given the opportunity to review the comments from the prosecutor's office.

Trustee Likley stated that the only way to do that would be for the Board of Trustees to deny the language. The Zoning Commission could then start over with the language and resubmit it at a later date. He stated that his feeling was that if the Township could not enforce the language that it should not be written that way. Likley also stated that the Township should create a file with all research, training sessions etc. where the language came from.

Ms. Sturdevant gave the example of Internet Cafes and how the Zoning Commission tried to write language for them and the Prosecutor's Office stated that at the township level there are not many regulations that can be enforced on the use. The Commission therefore aborted the project and left that regulation up to the State of Ohio. She stated that it may be beneficial to have the Prosecutor's office come in for a work session on Outdoor Wood Fired Boilers.

Trustee Oiler made a motion to deny the proposed language for Outdoor Wood Fired Boilers section 606. subsection 23. Trustee Likley seconded the motion.

ROLL CALL: Trustee Likley-yes, Trustee Oiler-yes, Trustee Harris-yes.

Trustee Harris made a motion to close the Public Hearing for the consideration of proposed language on Outdoor Wood Fired Boilers. Trustee Likley seconded the motion.

ROLL CALL: Trustee Likley-yes, Trustee Oiler-yes, Trustee Harris-yes.

Approved September 6, 2012