

**Public Hearing**  
**Proposed SFTF/Zoning Ordinance 2007-02**  
**August 7, 2008**

The North Middleton Township Supervisors held a public hearing concerning proposed Ordinance 2008-03 on August 7, 2008 at the Township Municipal Building, 2051 Spring Road, Carlisle PA. Chairman Richard A. Bucher called the public hearing to order at 7:00 p.m. Board members present were Supervisor Dennis Hurley, Supervisor Harry Kelso, Supervisor Robert Reisinger, Solicitor Mark Allshouse, Manager Deborah Ealer and Recording Secretary Lori A. Coleman. Supervisor Robert H. Shearer was not in attendance.

Visitors: See August 7, 2008 attendance sheet.

Solicitor Allshouse noted this was the date and time set for the NMT public hearing regarding the ordinance of the township amending and revising the code of North Middleton chapters 76, 92, 93, 134, 164, 170, 180, and 196 together with the North Middleton zoning ordinance chapter 204 of the township code Sections 204-01 through 204-13, and tables 1 through 14. Essentially, this is the revisions to the code of NMT for both subdivision and land development, zoning, water, sewer, wood burning ordinance, small flow treatment, and other associated chapters.

Solicitor Allshouse reviewed the exhibits:

- a. On June 25<sup>th</sup>, 2008, the manager of NMT forwarded to The Sentinel a request for publication of the proposed ordinance together with a complete copy of the ordinance and a complete copy of the proposed revisions.
- b. A copy of the notice that was advertised in The Sentinel.
- c. On July 21<sup>st</sup> a copy of the proof of publication attested to by Erica Peterge advised the Township that the ordinance was advertised the week of July 14<sup>th</sup> and July 21<sup>st</sup> of 2008.
- d. A copy of the proposed ordinance and proposed revisions to the code book were attested to as a true and correct copy and lodged with the Cumberland County Law Library by Codes Officer Paul Fegley on June 30, 2008.
- e. During the formulation of the code book, a committee was formed. Discussions from the Board of Supervisors and staff, along with revisions made by the codes department were documented into a file. The notes of the revisions and discussions from the file were lodged as an exhibit.
- f. A letter from Kirk D. Stoner of the Cumberland County Planning Commission dated July 17, 2008 and received by the township on July 21, 2008 which outlines their comments as to the proposed changes to the code book.
- g. Minutes from the NMT Planning Commission dated August 5, 2008. The NMT Planning Commission's final recommendation was to recommend to the Board of Supervisors that they pass the code book revisions as advertised and without change.
- h. A copy of the proposed changes as provided to The Sentinel and available at the Township, online at the Township and provided to the Cumberland County Law Library in the form of a hardbound blue book.
- i. A proposed ordinance that would be executed if the board chose to pass the proposed changes.

**Public Comment**

**Mike Keiser** of 2220 Circle Road wanted to address Chapter 92 concerning outdoor burning. In review of the section, he could not find a definition of a recreational or ceremonial fire. He has lived at his property for 21 years and has utilized an outdoor fire pit that is used for camp fires. It is not 40ft from the property line or 50ft from his buildings. He had a concern if it was a violation or a permitted use. If a camp fire or recreational fire, then he would be in violation of subsection 92-4 (b), and would be required to call county 911 and the zoning officer every time he had a fire. He asked how the township deals with the outdoor chimneys and outdoor lawn furniture. He felt the ordinance does not address the concerns he has presented. Mr. Keiser felt language could be developed to rectify his concern. Supervisor Kelso asked if 94-4(c) would cover his concern. Supervisor Reisinger felt it would not cover the distances mentioned in 94-4(b). Secondly, Mr. Keiser discussed Section 204-16 of the suburban residential zoning district. He noted it pertains to his shed issue and any other sheds in the township. Mr. Keiser presented an exhibit to the board to review. He wanted to discuss Section 204-16(f) 2b and 2c and address structures 200ft or less along with Table 4. The photos he handed out were photographs that he used in his case presented to the ZHB. The nineteen photographs represented 24 sheds that are within 10 minutes walking distance of his property that are all in violation of the current zoning ordinance. He mentioned checking on a few of the permits and pointed out staff incorrectly issued some permits. Many of the photos depict sheds that are in violation of the front yard, side yard or backyard requirements. While the problem he and his wife are facing is a larger problem, he stressed that they are by no means complaining about his neighbors. He was before the board to request a solution to the issue. He suggested grandfathering sheds by the passage of the ordinance or changing the setbacks to further lessening the restrictions as a resolution. In addition, he pointed out a discrepancy between the verbiage and Table 4. It specifically relates to Section 204-16 f 2(c) for the rear yard setback. The verbiage in the proposed ordinance lists 10ft and all the previous discussions at the board meetings have suggested a 5ft setback. He noted the second to last use in the table for accessory structures under 200 sq ft or smaller lists the sides as 5ft and rear as 5ft. Under Section 204-16 f2(c), it is listed as 10ft for the rear yard. He thought the intent was to be 5ft for accessory structures under 200 sq ft. Overall, Mr. Keiser was seeking a policy decision to either correct the ordinance as they had envisioned by lessening the setbacks, or rectify the situations that are visible throughout the township.

**William Fry** of 3421 Waggoners Gap Road noted he presented his concern to the board in May concerning Chapter 93. He reviewed his concern of Chapter 93-2(f) that the boiler cannot be used as a waste incinerator and (k) in which the use of the boiler shall not cause a nuisance to a neighboring or other property. He mentioned health and environmental concerns. In addition, he noted the boiler would not be used from May 1 through October 1. He would like to be called back when the location of the boilers are discussed. Mr. Fry felt it would become an issue if a boiler is placed next to a resident's home. He stressed location was an important issue. Mr. Fry noted contacting people that complete boiler installations and questioned them about the height of the chimney. They recommended the height of the chimney be set at a height that would best utilize the furnace for efficiency which had nothing to do with location or neighbors. He stressed the boilers should not be cut off during the winter months and should only burn wood. Overall, he appreciated what the Board of Supervisors has done and hopes the draft ordinance is adopted as written.

**Kim Raraidh** of 7 Gordon Drive asked if the board has received a letter from his attorney on the issue. Mr. Raraidh presented a copy of the letter to the board. Solicitor Allshouse noted the Township had not received a copy of the letter. Mr. Raraidh read the letter, “*Dear Board of Supervisors: I represent the interest of several North Middleton Township residents who have contacted me regarding the Ordinance being considered by the Board in reference to outdoor wood fire boilers. The residents have asked that I contact you regarding this matter to discuss the extremely serious concerns that each of them have. Please accept this letter on their behalf.*”

*“I have had an opportunity to review the proposed Ordinance as outlined in Chapter 93, “Outdoor Wood Fire Boilers”. The primary concern is the prohibition under 93-2(I), which would limit the use of these boilers from October 1<sup>st</sup> to May 1<sup>st</sup>. As you know, the primary reason that most residents purchase and install outdoor wood fire boilers is to create a steady, reliable and inexpensive stream of hot water for their homes. Many residents also use them to heat their homes. With the cost of electricity soon to skyrocket, the cost of propane, natural gas and oil already skyrocketing, these residents are utilizing these boilers to limit the impact on their families by cutting down on energy costs. Hot water generation is the single highest cost for most homeowners and consequently, any possible way to reduce these costs will save money for them as well as reduce overall energy consumption. Local government, I believe has an obligation to encourage continued energy savings and the use of an outdoor wood boiler is an appropriate way for many families to reduce these costs. It certainly is within your legal right to regulate the use of the boilers but restricting the use during the summer months makes no sense. Families rely on the ongoing hot water created by the boiler system to provide hot water for laundry, dishwashing, bathing, etc.”*

*“If the Board of Supervisors would merely remove the time restriction on the use of the boilers the Township would not be harmed in that any nuisance created by such use could be immediately mitigated by the Township under both this ordinance and your general nuisance ordinance.”*

*“On behalf of the many affected residents, I sincerely appreciate your consideration and understanding of this very simple request. To penalize a homeowner who has spent thousands of dollars to save his or her family from the escalating energy costs would be an inappropriate use of local government power. Rather, by appropriately regulating these boilers and allowing their year-round use, North Middleton Township would be sending a statement to its residents in favor of energy saving and would continue to be a leader in local government in Central Pennsylvania.”*

Mr. Raraidh noted he had no complaints from neighbors in his neighborhood. He would like to see the time limit changed; actually shorten because sometimes it is cool in May. He mentioned having a business in his residence in which he heats his hot water via the boiler, and it would cause a hardship to him because he would be forced to purchase oil. Mr. Raraidh referenced a statement from Mr. Fry of how wood pollutes the air. He pointed out that wood is generated from the earth and does not hurt the environment. He stressed many of the residents were doing their best to try and save money by not using oil. Overall, Mr. Raraidh would like to see the time changed from October 1 to June 1. He stressed the residents were trying to conserve on energy.

**Jim Stine** of 221 Cornman Road was before the board to address the wood burning issue. Mr. Stine quoted some of the headlines in the local newspaper the day he found about the ordinance: *“Fuel costs drain fire company budget, Paving projects pinch costs almost 300% over last year, Energy costs affecting food prices, Americans must drill more oil, Gas prices slam breaks on drivers, Expect grocery bills to keep climbing, Gas at the pump is down but winter fuel prices this winter will likely be 30% higher than last year, and Low income seniors must decide between fuel and heat”*. He felt everyone must do their part to save oil consumption and find alternative fuels. He felt he has done his share by saving over \$20,000 over the last 5 years with his wood stove. He did not understand why the township wants to punish everyone that has a stove because of one complaint. He lived in the country and North Middleton is in the country. He knows that it is growing up with development and little acre lots, but it is still country. Mr. Stine does not own a hot water heater, and one is not installed in his house. If he had to get one, he would have to change the amp service in his home and it would cost him over \$1500. His wife has lung problems and on oxygen for 12 hours from late evening to daylight. She sits outside on the front porch in the morning, noon and evening and he utilizes the wood burning stove during those times of the day to heat his water. He has not received any complaints about his wood stove which produces no smoke. He stressed the township has not received any complaints from his system or many of the other systems within the township. He felt a clause to limit when you can burn was necessary, and the nuisance clause would cover any of the problems. Otherwise, he had no other concerns with the ordinance. With his wife’s health problems, they did have oil heat in their basement. The number one reason he starting using the wood burner was because of the cost of oil and secondly due to the fumes rising up throughout the house from the oil. The change has saved him numerous dollars over the years. In closing, Mr. Stine stated if a complaint occurred over someone speeding on the road way in the summer months, the Township wouldn’t close the entire highway down because something occurred in the summer. The township should encourage the reduction of oil consumption instead of putting the burden on the residents, and let one complaint shut everyone down for the summer. Mr. Stine hoped the board would take into consideration that he heats his hot water in the summer, and it would be a large expense to him to install a hot water heater. Supervisor Bucher verified that Mr. Stine would like to see no time limit on the ordinance. Mr. Stine felt if a problem existed the issue could fall under the nuisance ordinance. Supervisor Hurley asked Mr. Stine what he thought would be a solution for a nuisance such as smoke going into someone’s home. Mr. Stine recommended giving a warning. After two warnings, they have to shut down for the summer. Mr. Stine questioned if the township had received any other complaints. Supervisor Bucher could not recall any others. Mr. Stine felt it was not fair to shut everyone down because of one complaint.

**Paul Monosmith** of 3134 Waggoners Gap Road stated his stove was the burner in question. He agreed with the previous testimony that residents should be able to burn all year long. If a complaint occurs, then the residents should try to rectify the situation. The Mr. Fry had no issues with him burning in the winter time, and Mr. Monosmith added he would have no issues with shutting down his stove in June, July and August. He added Middlesex Township had the same dates as North Middleton and they just changed their dates from Memorial Day to Labor Day. Mr. Monosmith felt he should be able to heat his home with the wood stove if he needed heat in May. Mr. Monosmith mentioned two supervisors visiting his home to view his wood burner. He has spent money on the system to try and rectify the situation. Mr. Monosmith mentioned a timer set on his system to control the burning. He noted his other neighbors complained a few times

but after installing the timer, they had no other complaints. Mr. Monosmith stressed why penalize everyone because of one complaint. He felt something could be worked out if a problem existed with a neighbor. Mr. Monosmith noted he would like to be able to burn all year long, but would make an exception if it affected a neighbor. Mr. Monosmith added his furnace is in a building and not outside. He added he would even try to burn coal instead of turning on the electric. Supervisor Kelso thought Middlesex changed their ordinance to permit the usage from seven days before Memorial Day and 7 days after Labor Day.

Mr. Fry noted he does not know where Mr. Stine lives, what he does or where his closest neighbor is located. He stressed that was not his concern, and had no problem with burning clean dry wood during the winter months. He had a serious problem with what is being done to the environment. He pointed out the municipal building permits no smoking inside as well as other places, and noted the country has really begun to address second hand smoke. He stressed having a strong concern about second hand smoke. In addition, he added that he heats his home with oil because he has no alternative source to heat his home. Overall, Mr. Fry asked to leave the ordinance as is which permits no burning from May 1<sup>st</sup> through October 1<sup>st</sup> which would be very fair to everyone.

Mr. Raraidh wanted to clarify that he was not burning tobacco in his wood stove but rather wood.

The public comment portion of the hearing was closed at this point of the meeting.

### **Supervisors Comments / Discussion**

Solicitor Allshouse noted the board could vote to (1) pass the code as advertised, (2) amend the code, set forth specific amendments on record, readvertise the amendments, conduct an additional public hearing at a later date to be advertised and thereafter take further action or (3) vote down the code and revisions. Since only 4 members were present, Solicitor Allshouse noted any passage of the code must occur with a 4-0 or 3-1 vote. A 2-2 vote would result in a nonpassage or the board could table the vote for further discussion of which the code would have to be readvertised.

Supervisor Hurley noted to get the changes off the ground the ordinance would have to be passed. He pointed out the Township has been working on the ordinance for three years. He indicated the board could pass the ordinance and begin working on the revisions. Supervisor Hurley felt the burners should be permitted to burn 365 days a year. However, he felt then that hard teeth need to be enacted in the nuisance act. He felt as long as you could keep your smoke off a neighbor's property it could be permitted, and any violations could be enforced through the nuisance act. Overall, he felt the ordinance needs some work but at this point in time it needs to be passed. Supervisor Bucher verified that Supervisor Hurley would be willing to tweak the ordinance at a later date. Supervisor Hurley agreed.

Supervisor Kelso agreed with Supervisor Hurley that the ordinance had to be passed realizing it should be tweaked at a later time. In particular, the boiler ordinance which would keep it from being placed in a high residential area. He agreed some of the issues pointed out by the public comment could be addressed later on and changed by amendment.

Supervisor Reisinger asked Solicitor Allshouse to review his second option. Solicitor Allshouse discussed option two. He asked if the changes to Table 4 could be made this evening since it was a minor change. Solicitor Allshouse agreed it was a minor change due to an inconsistency that would not require a readvertisement. Supervisor Reisinger asked if the ordinance is passed this evening and he holds his ceremonial fire on October 30<sup>th</sup> at the end of his driveway and the zoning officer comes by, will he be cited. Solicitor Allshouse noted only if county control and the zoning officer is not notified. Supervisor Reisinger pointed out that it makes no difference since it has to be within the guidelines. He stated he would not vote for an ordinance that he knows everyone violates. Solicitor Allshouse noted the board could decide on what activities constitute recreational fires and what activities constitute ceremonial fires. Supervisor Reisinger noted Sections c through e would not apply. As for the wood burning issue, he would like to see what Middlesex is doing before he passes the ordinance. And the shed issue, Supervisor Reisinger noted that numerous sheds existed in the Township that are out of compliance. He stressed he had a hard time voting for an ordinance knowing that numerous structures in the Township violate. He felt a grandfathering policy could be an option. Solicitor Allshouse stated grandfathering could be a policy, but legally any preexisting nonconforming shed is grandfathered. The question becomes to what extent is it grandfathered. If it never complied with the original ordinance, it is still out of compliance. He stressed a shed could not be grandfathered in if it was in noncompliance.

Supervisor Bucher stated there is no perfect ordinance book. He verified with Solicitor Allshouse that the minor revision on Table 4 was permitted. Solicitor Allshouse agreed as long as the motion is clear of the internal inconsistency, then it would not require readvertising. Supervisor Bucher noted he was not comfortable making a policy change at this point as far as grandfathering. As for the ceremonial fire issue, he felt a change was needed and could be addressed down the road. In reference to the wood burning, he referenced the PSATS article. Supervisor Bucher felt the board recognizes the changes, but has to also lookout for the overall good of the community. He stressed the wood burning ordinance was not perfect, but it was time to get something down and pass it this evening. He pointed out it could be tweaked later. Then, Supervisor Bucher moved to approve the SFTF/Zoning Ordinance as written with the pen and ink change so the code and table will reflect 5ft in the appropriate Table 4 and Section 204-16 (f) 2b and 2c. Supervisor Kelso seconded the motion. The motion carried with a 3-1 vote in which Supervisor Reisinger voted against the motion.

The public hearing was concluded at 8:04p.m.

Respectfully submitted,

Deborah A. Ealer  
Township Secretary

Lori A. Coleman  
Recording Secretary