

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

DEPARTMENT OF PUBLIC HEALTH

Sally Huyser
c/o Kevin McSherey, Esq.
38 Fairview Avenue
Naugatuck, Connecticut 06770

CM RRR #9171082133393445749577

Patrice Sulik, MPH, RS
Director of Health
Trumbull-Monroe Health District
5892 Main Street
Trumbull, Connecticut 06611

CM RRR #9171082133393445749584

Re: Sally Huyser v. Trumbull-Monroe Health District-Docket #080422EH
Property located at 8 Old Pinewood Trail, Trumbull

Dear Attorney McSherey and Ms. Sulik:

Enclosed please find a copy of the Amended Proposed Memorandum of Decision in the above referenced matter rendered by Hearing Officer Olinda Morales.

Pursuant to the Connecticut General Statutes Section 4-179, you have the opportunity to file briefs and exceptions, and present oral argument to the Commissioner of Public Health. If no such request is received by the Commissioner by **November 24, 2008**, the Commissioner shall consider these rights to be waived and shall render a final decision in this matter.

All filings shall be sent to:

Public Health Hearing Office
Department of Public Health
410 Capitol Ave. MS#13PHO
P.O. Box 340308
Hartford CT 06134-0308

Sincerely,

Pohn Kwee
Hearings Liaison
Department of Public Health
Public Health Hearing Office
410 Capitol Avenue, MS #13PHO
P.O. Box 340308
Hartford, CT 06134-0308
860-509-7648 Fax 860-509-7553

c: J. Robert Galvin, M.D., M.P.H, M.B.A., Commissioner
Olinda Morales, Hearing Officer

Phone:



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**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Sally Huyser

Docket No. 080422EH

v.

Trumbull Monroe Health District

November 10, 2008

AMENDED PROPOSED MEMORANDUM OF DECISION

Procedural Background

On April 16, 2008, Patrice A. Sulik, M.P.H., R.S., Director of Health for the Trumbull Monroe Health District ("Local Health"), issued a Notice of Violation ("the Notice") to Sally Huyser ("appellant"), owner of the property located at 8 Old Pine Wood Train in Trumbull, Connecticut ("the property"). The Notice found the existence of a nuisance injurious to public health consisting of the discharge of smoke plume that crossed the property line, and ordered appellant to abate the violation by April 21, 2008.

On May 2, 2008, appellant submitted a written appeal, claiming that (1) she was told by Local Health that she did not have to comply with the Notice; (2) the wood stove had been approved by the Town of Trumbull ("the Town"); (3) appellant uses the wood stove as her primary heat source; (4) appellant only uses dry seasoned wood and fire starter; and, (5) appellant is unable to control the wind.

On June 16, 2008, the Commissioner of the Department of Public Health ("the Department") designated the undersigned as the Hearing Officer in this matter to preside at the hearing, to rule on all motions, and to recommend findings of fact and conclusions of law.

A hearing on the appeal was held on August 19, 2008. Appellant was present and was represented by Kevin McShery, Esq.; Local Health was represented by Patrice Sulik. Both parties were given the opportunity to present evidence and argument on all issues and to conduct cross-examination.

This Amended Proposed Memorandum of Decision is based entirely on the record and sets forth the Hearing Officer's proposed findings of fact, conclusions of law, and order.

Findings of Fact

1. Sally Huyser is the owner of the property located at 8 Old Pine Wood Trail in the Town of Trumbull, Connecticut. Appl. Exh. 1; Tr. pp. 3, 10-11.
2. Sometime in 2007, the property owner was granted a permit to install a wood stove inside the living space to heat the property. LH. Exh. 1.
3. The property is located at a lake-side where all neighboring properties are very close together. Tr. p. 43.
4. The property has two sources of heat, a propane tank, and the wood stove. Tr. p. 21.
5. On January 04, 2008, an inspection was conducted at the property in response to a complaint. The inspection revealed that the property had a discharge of smoke plume from the wood-burning stove that crosses the property line creating a health nuisance. LH Exh. 1.
6. The smoke emitted by the wood stove at the property causes a danger to public health in that the smoke is acrid, irritable to the respiratory system. Tr. p. 36.

Discussion and Conclusions of Law

Appellant has the burden of proof in challenging the action of the Health District. *Red Hill Coalition, Inc. v. Conservation Comm.*, 212 Conn. 710, 718 (1989). The burden of proof required in this matter and applied in this decision is by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995); *Bridgeport Ambulance Serv. v. Connecticut Dept. of Health Serv.*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989); *Steadman v. SEC*, 450 U.S. 91, 101 S.Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980),

Section 19a-206 of the Statutes provides in relevant part:

(a) Town, city and borough directors of health or their authorized agents, shall within their respective jurisdictions, examine all nuisances and sources of filth injurious to the public health, cause such nuisances to be abated and cause to be removed all filth which in their judgment may endanger the health of the inhabitants. (b) When any such nuisance or source of filth is found on private property, such director of health shall order the owner or occupant of such property, or both, to remove or abate the same within such time as the director directs. . . .

On January 4, 2008, an inspection was conducted at the property in response to a complaint. The inspection revealed that the property had a discharge of smoke plume from a wood-burning stove that crosses the property line creating a health nuisance. Since wood smoke can be acrid, and irritate the respiratory system, it is “injurious to the public health . . . and may endanger the health of the inhabitants.”


Appellant does not deny the facts that formed the basis for the Notice. Instead, appellant contends that, pursuant to §22a-174k of the Statutes, the Local Health Director does not have the authority to order the removal of the wood stove because it was installed after appellant received a permit by the town. However, §22a-174k of the Statutes only applies to “outdoor wood-burning furnace,” and appellant’s wood stove is not located outside the living space. Therefore, the statute does not apply. Furthermore, the issue in this case is whether the plumes coming out of the stove constitute a public health nuisance injurious to public health. Appellant failed to sustain her burden of establishing that the plume is not a public health nuisance, and Local Health presented evidence that such plumes are hazardous to respiratory systems. Therefore, Local Health has the authority to issue the Notice.

Appellant’s remaining claims that that (1) she was told by Local Health that she did not have to comply with the Notice; (2) appellant uses the wood stove as her primary heat source; (3) appellant only uses dry seasoned wood and fire starter; and, (4) appellant is unable to control the wind, are all insufficient to vacate the Notice.

Amended Proposed Order

Based on the record in this case, the above findings of fact and conclusions of law, this Hearing Officer respectfully recommends to the Commissioner that this appeal be DISMISSED, and that Local Health's Notice of Violation dated April 16, 2008, be AFFIRMED.

Respectfully submitted,



Olinda Morales, Esq.
Hearing Officer

Dated: 11/10/08