

The Policy of Taking

The borough is set to enact a new policy that will change the way it governs forever. Decades ago, the borough pursued a junkyard owner in court and eventually won after spending many thousands of dollars. The owner still didn't remove his junk or fence it in. The mayor at the time decided not to bring in the police and legally remove the property; it was decided that our borough wouldn't go down that dark path.

The property the borough currently takes is through tax foreclosure or animal control, i.e. when someone has actually done something wrong. The new policy that is up for a vote next Thursday will usher in a new era of regulatory taking. Instead of burn bans during air quality incidents, the new ordinance will not allow owners of a wide range of heating devices to use them at all, no matter whether they have an alternative or not. The ordinance will force the owners to change out those stoves, even though some were acquired through the wood stove change-out program, and many are operated meticulously by their owners, who have sometimes put many tens of thousands of dollars into making sure the heaters were installed correctly.

So while I'll get into the details next, remember that the larger issue is that the borough will now get into the taking business, taking whatever a majority of the assembly feels they need to without boundary or proof of actual wrongdoing.

This specific taking will be based on a stove being a hydronic heater, which generally means that it heats water, which then heats space. More specifically, for the borough, hydronic heater only encompasses solid fuel devices. It's an extremely broad category, since there are many devices that use water to heat space. A good example that highlights how broad is that currently there are four proposed exceptions to the rules, just to allow some of the specific devices to keep operating.

The problem is that there are a huge amount of technologies out there, and that the taking isn't based on a level of PM 2.5 that is actually output, but only on the type of device it is. Hydronic heaters have been demonized by those who believe we need heavy government regulation, some even claiming that most of the PM 2.5 comes from these devices, but that is incorrect. In fact, in a 2013 study, one of the few city monitors had more PM 2.5 coming from oil than wood, and another monitor was within 4 percent of oil — and that is wood coming from all stoves, not just hydronic heaters.

What's also important to note is that if someone had a stove they were operating poorly, or it was outputting poorly despite operation, there is already an air quality ordinance in place that they can be ticketed through. This ordinance will only punish those who are operating correctly, since the existing ordinance would already punish those who weren't.

Another detail about the ordinance is that \$2.2 million will be transferred from the general fund to the wood stove change-out program, and then the program will be restricted to these heaters. So this will come at a huge cost to the taxpayers for little benefit. There are a number of problems with thinking

that recompensing them \$10,000 for the usual changeout will help much. First, most of these units cost more than that to install, so most owners will still end up paying thousands of dollars. Second, there are a few that won't qualify for the change-out program. You can't use the change-out program if all the owners of a property don't agree, or if your stove has been changed out and is too clean to be changed out a second time, or if you owe any back taxes. There is also a 90-day window to get the stove, many of which have to be ordered, and install it. Note that in our present day fiscal crises, there are some people who at one time were able to afford to install the heater, but now their job situation has changed and they can't afford it.

Public testimony was completed on the April 14, but you can still email testimony to assembly@fnsb.us. It's hard to think of a much more important ordinance to weigh in on, since this changes the direction the borough takes forever. Remember, as history has shown, this type of agenda never stops. Exceptions will be removed in the future, and one day they'll go after wood stoves themselves and eventually regulate oil burners. Please stand up and help your neighbor before the target gets put on your back.