

**VILLAGE OF DRESSER
PUBLIC WELFARE COMMITTEE MEETING
OCTOBER 14, 2019
MUNICIPAL BUILDING**

Richard Durand called the meeting to order at 4:03 PM. Roll Call: Richard Durand, Elina Kuusisto, and Jeff Gutzmer. Also present Jodi A. Gilbert/Clerk, Attorney Tim Laux, and Bryan “Fatboy” Raddatz. This meeting was posted that a majority of the board members could be present for this meeting. No other public or press was in attendance.

Discussion was held regarding the wording of the definition of Home Occupation Municipal Code Section 17.28(17). Laux stated the recommendation was to take a look at the definition of residence/premise/property/dwelling – definition of Home Occupation 17.28(17). I am pretty sure that is all we are suppose to do. We are not to relitigate the Plan Commission Hearing where section 17.28(17) was the main focus. The definition of Home Occupation. The dispute or question/answer was centered on “within their place of residence”. Basically, Home Occupation is a Conditional Use and allowed if the applicant meets all of the criteria. You can do this and here are the conditions you need to follow. But ultimately the application was denied. It was a back and forth on what “within their place of residence” means. Two ways of looking at this. On one hand your home - within means inside the home. On the other hand, would be a broader definition like premise or lot which could mean within the whole R1 District. So, what I did with you all is do what any Judge does. Right in front of the court I have seen it time and time again - a lawsuit that talks about some definition. The court looks in the dictionary – that is the first place to start. There is the “Black’s Law Dictionary – Online” that had information on Residence and I have printed that for you and highlighted it. In the Standard Merriam Dictionary 1974 assuming this hasn’t changed much in 50 years there is definition for Home, Dwelling, and Premises. Residence – “Living or dwelling in a certain place permanently or for a considerable length of time. The place where a man makes his home, or where he dwells permanently...” “Residence means a fixed and permanent abode or dwelling-place for the time being, as contradistinguished from a mere temporary locality of existence...” “residence is the place of a man’s fixed habitation”. The Residence concept of dwelling, abode, home and there is definitely the concept of permanency versus temporary. Home – “family’s place of residence – House”. Dwelling – “Building...in which people live: House”. Premises – “a tract of land with the buildings thereon”. The 3rd definition which is ranked according to common meaning. When you look at that in my opening comments it seems to me there is no inherit ambiguity using the word Residence. It might be worthwhile to try to make “within their place of residence” more specific. If that would help to make it cleaner. To add a definition if that would help make things cleaner. Kuusisto stated at that meeting a few people included that we should be reviewing why we wanted this to occur within their home. Could we open it up to other options - would that be helpful? Gutzmer looked for clarification on why it was denied. They wanted to run a business out of detached shed. Some people think why should you not be able to do a Home Occupation in a detached building versus the home. Do we change the wording to allow it? Gutzmer stated do we need additional definitions if this would go to a court of law. Laux stated you have what you need. Laux stated if you are looking for another rational carefully read the covenants. In our zoning code covenants is where there is another layer of land use regulation instead of just regular zoning districts. In that first general paragraph of the covenants I believe there is a distinct intention that basically it be a main dwelling/residential dwelling where people live. There is distinct language prohibiting accessory buildings. So, the rational is to try to preserve the property values in that development. There is the concept that

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accessory buildings can crowd property lines etc... Gutzmer asked do you look at the covenant or the code. Laux stated the covenant is more restrictive. When you look at a R1 district section 17.09 it is pretty simple. I don't know if there is a separate area for accessory buildings. Gilbert stated there is a section in the code that talks about the number of accessory buildings you can have. Gutzmer asked do we need to change any wording. Laux stated in my opinion there is consistency with the dictionary definition and the restrictive covenants. It says home, dwelling, it is anti-temporary and anti-accessory building. Gutzmer stated the next question I have is what is if this petitioner files an appeal are we open to litigation. Laux stated obviously the person can appeal and it would go to Zoning Board of Appeals. If they don't like the outcome of the Zoning Board of Appeals then it would go to the Circuit Court. They will look to see if there was an understanding with the Plan Commission and Zoning Board of Appeals. I don't think there will be a problem. Gutzmer stated so we are covered. We have done our due diligence. Kuusisto stated if the type of structure kept them from getting this permit do we look at that. Laux stated if it was inside the house it was good. If they built an addition on the house it was good. Do it out of your house. That is not what they wanted to do. There is a way to get a permit and a shed on skids is not the way to get a permit. There has been a change in the law – a conditional use was at one point not automatically allowed. If you met a whole bunch of conditions the WI Supreme Court said a Conditional Use is a permitted use. You get it by meeting certain criteria. One of the main criteria for your Home Occupation is you comply with the existing Ordinances and because of those regulations you can't do it in a temporary structure. That part of town is even more anti-temporary because of the covenants. Laux stated I have served on the Board of Zoning Appeals. When you point out to an applicant a way to do it without changes in the law and they don't take a hint it is a good way to be denied. It is reasonable to look at your definition. Are they adequate? I don't know if you need to tinker with the definition. Kuusisto stated a huge part of that night was this definition. I would have liked to have seen her do her business. Durand stated but she could do it in the house. Motion Gutzmer/Kuusisto to recommend to the Village Board that we this committee agree that the within the Home Occupation definition the phrase within the residence means within the house. Durand stated we are leaving the wording as is. No changes needed. All in Favor. Motion Carried.

Other items for discussion – nothing was stated.

Motion Kuusisto/Gutzmer to adjourn at 4:35 PM. All in Favor. Motion Carried.

Jodi A. Gilbert - Clerk/Treasurer

These minutes have not been approved.