

Late Night at the Zoning Hearing Board

The Bethlehem Gadfly 2 W. Market St., Serious Issues September 12, 2019

(83rd in a series of posts on 2 W. Market St.)



It was tedious last night at the Zoning Board Hearing in which the Market St. neighbors are challenging the validity of the ordinance that enables a professional office at 2 W. Market.

Procedural stuff.

Even Gadfly's video camera pooped out before the nearly 4-hour hearing was over.

A tip o' the hat to a couple Gadfly followers who attended for some or all of the proceedings.

Gadfly stuck it out. That's why gadflies get the big money.

But, actually, Gadfly found the issues interesting. He's pretty nerdy, you know.

He'll summarize what went on, highlighting the issues, and then you'll find video links so that you can taste the action.

First, remember that there were four long hearings on “[2 W. Market](#)” — two at the Planning Commission, two at City Council — at which probably over two-dozen people spoke (gave “testimony”) multiple times — and these are well covered on Gadfly with transcripts, audio , and video.

The process was paradise for Gadfly. All that citizen commentary! Totally aphrodisiac. Empowered residents voicing their opinions. How sweet it was!

What the Neighbors attorney (Stevens) wanted to do was “streamline” the proceedings before the Zoning Hearing Board by introducing a transcript of all of that testimony directly into the record. The attorneys for 2 W. Market (Preston) and the City (Deschler) objected.

For two reasons.

First, none of it was given under oath, and there was no cross-examination.

Second, the testimony was irrelevant.

Huh?

Yes, because — forcefully argued the Marketers attorney — what led up to the text amendment approved by Council doesn't matter. All that matters is the amendment itself, and the effect it has or will have. The basis of Council's approval does not count, only the fact of that approval embodied in the text amendment itself. The Zoning Hearing Board should not look backward, only forward.

That Marketer attorney is pretty shrewd. Have seen him in action before.

The Neighbors attorney said their case was based on the fact that Council made its decision on irrelevant considerations and did not do due diligence on the impact of the amendment. So how will the Board know that without the transcript.

You will see Gadfly's camera nodding yes at these points.

But the ZHB voted not to include the testimony, meaning that the Neighbors attorney now has to "recreate" that testimony before the Board by bringing people in now under oath and subject to cross-examination.

Gadfly will testify under oath.

In fact, perhaps a dozen people for the Neighbors case will be called back.

Yuck.

So much time elapsed with these procedural matters that the Neighbors attorney could call only one witness to begin his case: Mary Rose Wilson.

She answered a few questions from the attorneys, Mrs. Vergilio from the public, and a Board member.

The hearing was continued till Oct 24.

It might be Christmas before this is over.

Was the opposition to accepting a transcript of prior testimony a legitimate legal concern or a stall tactic?

The wheels of justice . . .

But at least our words will get in there. Gadfly was very worried about that. You might remember that the core of Gadfly's belief was precisely that the testimony on which it appeared Council made its decision was misguided — focusing on the character of the 2 W. Market people and the money and care they poured into the house. They are good people and they spent a lot of money, but that can't be a reason to bend the law.

Video 1: Neighbors attorney Stevens makes his case to bring the transcript of testimony from four prior meetings into the record to streamline the process.

Video 2: See City attorney Deschler at min. 3:31 but especially see Marketer attorney Preston for 4 mins. at 11:35 making the case for the irrelevance of the public testimony. This makes all “our” ideas irrelevant for this phase of the legal process. Preston is reluctant to even call it testimony. And he says what might be quite true, that the Neighbors are “seeking to investigate the legislative motives and methodologies,” which he thinks is a “wildly irresponsible undertaking”: “focus on the

amendment itself”; “it stands or falls on its own terms”; “It doesn’t matter if there was an impure motive”; “The ordinance speaks for itself”

Video 3: Listen to the first 3 mins. especially as attorney Preston continues his argument for the irrelevance of “our” words: he finds “bizarre” that the ZHB is asked “to engage in a critique of City Council’s actions.” “The presumption is that the legislation is valid.” It doesn’t matter why a Councilperson voted. The focus should not be on what they were thinking but the effects of the ordinance. And there are rules “out there” to evaluate ordinances. Neighbors attorney Stevens presents his objections to those ideas here as well.

Video 4: And here look especially at mins. 4:05-6:14 for Preston’s reference to “standards the Court has developed” for judging such cases that do not include this testimony.

Video 5

Video 6

Video 7: Interesting that here you can get a bit of a taste about what those testifying will face. Mary Rose Wilson was, of course, a Neighbor witness. Look at the rather lame efforts of attorney Deschler to make her look inadequate. And the bit of a head-to-head with a neighbor holding the opposing view.