

# Shenanigans happen at Zoning Hearing Board meetings

The Bethlehem Gadfly City government, Serious Issues August 28, 2019

*(The latest in a series of posts on City government)*

*Al Bernotas is a 36-year resident of Bethlehem, somewhat of a law and order zoning wonk, with many years fighting a ruling by the Zoning Hearing Board, only to find out that they had discretion to do whatever they want to do. So said the Commonwealth Court, with the Supreme Court of the State of Pennsylvania turning down a request to hear the case. Now he just spends much of his time mowing his lawn, while watching tractor-trailers mosey on down the residential street whereupon he lives, Johnston Drive. In his spare time he is a Medicare Advisor, Census Bureau Enumerator, and Landscape Specialist, and All-around Handyman. Or, some other folks would call him a know-it-all.*

The Gadfly blog states, “The last Zoning Hearing Board meeting was livestreamed [sic] and is available on YouTube (not on a City archive yet).”

It would have been great if back on November 10, 2010, the Zoning Hearing Board meeting would have been live-streamed. Then we would not have had to worry about the lost or destroyed transcript. The story is below, in a detailed press release from the Zoning Hearing Board.

The nub of the story is that during the November 10, 2010, meeting the Zoning Officer put his foot in his mouth, to the point where the Zoning Board solicitor asked if he (the Zoning Officer) would like to stop the

meeting so that he could obtain legal counsel. This version of the story cannot be proven, because the transcript was lost or destroyed.

But, I was there. It happened.

Shenanigans happen at Zoning Hearing Board meetings. Videotaping each session will go a long way to disinfecting the meetings. And so will public deliberations!

If you want to know the rest of the story, read the Press Release below.

Al

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#### PRESS RELEASE – BETHLEHEM ZONING HEARING BOARD

On September 30, 2010, the Northampton County Court filed an Order affirming the prior decision of the Zoning Hearing Board of the City of Bethlehem regarding Elias Market located at 3131 Linden Street in the City of Bethlehem. However, the Court remanded the matter back to the Board to address a procedural defect by the City of Bethlehem Zoning Office in the initial appeal. On November 10 and November 29, 2010 the Board held hearings consistent with the Court's Order. The Board unanimously granted the Elias' Market request for Special Exception at the conclusion of the Hearing. On January 13, 2011 the Board filed its Formal Decision.

On February 10, 2011, Al Bernotas, Walter Ward and Guishu Fang filed an appeal in Northampton County. As is standard procedure, the Board was served with a writ to produce the record from the proceedings that includes the original decision, all exhibits, and the transcript from both hearings. Numerous attempts were made to obtain the transcript from

the stenographer. The Board was informed that there was a computer diskette error with the November 10, 2010 transcript. The stenographer informed the Board that it would take two weeks to go back through the “paper tape” produced by the stenographic machine and prepare the transcript. The Board authorized the stenographer to prepare the transcript. Several additional attempts were made to obtain the transcript in the subsequent weeks and the answer was always that “it will take a couple of weeks.”

The matter was scheduled for Argument Court in April and May, 2011. Both dates were continued by the Appellants because the original transcript from the November 10, 2010 hearing had not been produced. Following the June 22, 2011 meeting of the Zoning Hearing Board, the stenographer advised that he lost the paper tape, could not retrieve data from the diskette used at that hearing and could not locate an audio tape from the November 10, 2010 hearing. As a result, he could not complete the transcript. The Board then directed the stenographer to produce either a completed transcript or turn over all records and information pertaining to the November 10, 2010. The Board obtained the

computer diskette on June 27, 2011 and no data, retrievable or otherwise, was found within the diskette. No other notes, tapes or audio records were turned over to the Board.

Section 908(7) of the Municipalities Planning Code requires “\*T+he board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings...” Case law reiterates that failure to comply with this section “is fatal” and such cases must be remanded back to the board for a new hearing (*Penn Tp. Bd. of Supervisors v. DeRose*, 339 A.2d 859, 18 Pa.Cmwlth. 626, Cmwlth. 1975, *Howarth v. Trumbauersville Borough Zoning Hearing Bd.*, 20 Bucks 609 (1971).

As such, the Board will reconvene for the purpose of re-litigating the November 10, 2010 hearing. The Board directed its solicitor to contact the attorneys representing their respective clients, including the solicitor for the Bethlehem City Council. It is our understanding that the parties are in agreement that a rehearing of only the November 10, 2010 meeting is required. At the conclusion of the hearing, the Board will review the prior transcript from November 29, 2010 and will then vote upon the matter in an effort to preserve the record for the ongoing litigation in the Northampton County Court of Common Pleas.

Ultimately, it is the Board's responsibility to preserve the record. We are deeply embarrassed and have taken affirmative measures, along with the City of Bethlehem, to make certain that this situation never happens again. This includes hiring a new stenographer with modernized recording devices and multiple levels of redundancy. We sincerely regret the inconvenience that this has caused to all of the parties involved and will do everything humanly possible to expedite this matter.

Gus Loupos, Chairman

William Fitzpatrick, Member

Kenneth Kraft, Member

Ronald Lutes, Alternate Member