

It may come down to which precedent the Zoning Hearing Board chooses to apply to the 2 W. Market case

The Bethlehem Gadfly 2 W. Market St., Neighborhoods, Northside January 13, 2020

 98th in a series of posts on 2 W. Market St. 

Gadfly has downsizing work to do. He keeps hoping for resolution of the 2 W. Market case. At least at the local level. Whatever happens here, the case will no doubt fly into the court system. And we'll lose sight of it for a while.

His eyes are focused on tonight. Can we get to closing arguments, please?

But Gadfly thinks there is one more piece that you will be interested in, you who see this case as important to such questions as whether you have any control over your neighborhood, whether zoning laws matter, whether City Hall is for or agin' you.

And you who are kind of nerdy like he is.

Remember that in skeletal form what's happening here in this phase of a longstanding argument is that neighbors are questioning the validity of an amendment to the zoning code that enables the owners of 2 W. Market to operate a financial service office in a residential neighborhood.

Now this case has generated a truck load of testimony.

You who are more recent Gadfly followers should look at this chart of testimony of just one meeting done when Gadfly was much younger and intoxicated with his power to help people come to a decision about the controversy: [Chart of 11-20-18 testimony](#) . It's from a post entitled

[Gadfly's Study Guide to the 11/20 Council Hearing on 2 W. Market.](#) A post that won an honorable mention at the northeast regional conference of The Gaddies, our national organization.

So the neighbors' attorney wanted to use a large portion of such testimony — our voices — in the attempt to invalidate the amendment favorable to the Marketers.

The neighbors' attorney had a document of several hundred pages (Gadfly's testimony itself took 12 pages) of transcribed testimony — our voices — over several Planning Commission and City Council meetings that he wanted to introduce into the ZHB record.

The marketers vigorously objected. And it would seem to Gadfly that the Zoning Hearing Board is on the side of the Marketers.

As Gadfly understands it, the Marketers want to exclude all (or as much as they can) of the negative testimony that led up to the approving vote on the amendment by City Council. That would exclude all (or mostly all) of the resident voices — our voices — testifying against the Marketers.

The past does not matter, say the Marketers, a past that the neighbors would argue is full of problematic aspects that call into question the very basis on which Council passed the amendment.

It does not matter whether the amendment was immorally or illegally passed, according to this position. It was passed. That's it. Get over it. (Hmmm, where in the national dialogue has Gadfly heard that phrase before?) Move on to subsequent events.

The Marketers argue that the clock starts anew with the passage of the amendment, that the reasons and motives on which the amendment was passed are not relevant. The Marketers would start this case with the notion that the amendment as passed is valid.

Now we have seen in a recent post what the impact of such a ruling can have, the post in which we see Mr. Haines sparring with the opposition attorneys AND the ZHB over the relevance of the influential role the Mayor played in passage of the amendment. Such testimony is not acceptable according to this position.

Another example of this view of the restricted legal basis of neighbor testimony — our voices — is what happened to Gadfly #2 Bill Scheirer.

Scheirer was “precluded” from testifying. Precluded! He came to the big dance dressed up with a prepared statement and was refused admission at the door.

A usually gentle and calm but now exasperated Mr. Scheirer (you know him, you’ve seen him in action) had one word for the proceeding as he exited the arena! One word! [Click here](#) to find out what it was.

We are pleased to include here for history the full text of Mr. Scheirer’s precluded testimony: [Statement of Bill Scheirer](#)

So each side has its legal precedent. For the Marketers, it’s [Streck v. Lower Macungie Township Board of Commissioners, 1804 C.D.2011, 1809 C.D.2011. \(2012\)](#), in which we find “the court will not inquire into the motives [reasons] of a municipal legislative body in making zoning changes.”

The neighbors have [Baker v. Chartiers Tp. Zon. Hearing Bd., 677 A.2d 1274](#) , in which we find as a reason an amendment was invalidated “the failure of the Board of Supervisors to provide a full and fair examination of the impact which the rezoning would have on adjacent properties.”

Which will the ZHB go with? Gadfly feels the ZHB has already shown strong leaning to the Marketer’s case.

Gadfly finds this back-and-forth legal arguing fascinating and invites you to hear the lawyers lay out their cases. In the following video clip, the

ZHB solicitor raises the question of what kind of testimony the ZHB should listen to, and then the attorneys for the City/Marketers and for the neighbors respectively make their pitches.

<https://youtu.be/GruW1n4teN4>