

Expert witness “untouched” believes the Gadfly

The Bethlehem Gadfly 2 W. Market St., Neighborhoods, Northside January 8, 2020

 92nd in a series of posts on 2 W. Market St. 

So the neighbors’ expert witness Karen Beck Pooley made, as we saw last time, two conclusions about the text amendment relating to a business at 2 W. Market St. in a neighborhood zoned residential.

1) “The amendment didn’t clearly articulate the planning priorities set out in the Comprehensive Plan.”

Doing the course of the long series of meetings on this case that has generated 92 posts dating back before The Flood, Gadfly realized something about himself. He’s a “strict constructionist,” a “constitutionalist.” He saw the City Comprehensive Plan and the Zoning code as “constitutions” and wanted arguments to be based in them, to flow from them. He did not see that from the 2 W. Marketers.

2) “It was very unclear as to how the recommended adjustment would affect properties throughout the City.”

The Marketers presented a list of 8 properties that would be affected by their amendment, the City 142 properties. And there was no duplication! The lists had no properties in common! *What the *!?!?* To Gadfly, it was obviously unclear to what properties this amendment would apply. One wonders how the amendment could have passed the hurdles it did without clarity on this matter. Unbelievable.

Now it’s one thing to make such unchallenged public comments at City Council, quite another to face cross-examination by lawyers from the

City and from the Marketers in the trial-like proceedings before the Zoning Hearing Board. Gadfly knows. He did not do particularly well under his cross-examination two meetings before. Ugh.

Not so with Beck Pooley. Gadfly invites you to sample the skill she showed under cross-examination. In Gadfly's opinion the cross-examining attorneys succeeded only in giving her the opportunity to once again and more strongly state and elaborate her position.

In this following clip of cross-examination by the City attorney, note, for instance, how Beck Pooley avoids the attempt to make confusion about the amendment *her* problem. No, she says, it is not *my* confusion but the confusion of others that is clearly on the record, and as a specific example she cites again the lack of commonality in the property lists submitted by the City and by the marketers. Precisely one of her main points. To which the attorney can only say, "Ok." In fact, he says it twice.

Note also what Gadfly would consider a crude lawyerly attempt to discredit Beck Pooley as an expert witness by testing her, by asking her the meaning of "text amendment": "Do you understand what a text amendment is?" Rather than give a definition that the attorney could worry her over, Beck Pooley replies that's it's not her term but one used by others to describe the amendment in question — thus eluding a potential trap by avoiding the need to define it.

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In this next clip from her cross-examination, Gadfly invites you to see Beck Pooley avoid similar traps set by the Marketer attorney in questions about the definitions of "spot zoning" and "non-conforming," as well as her ability to avoid answering key questions "yes" or "no" as the attorney urges — rather, turning her answers into mini-lectures that effectively amplify her conclusions and show her grasp of the subject.

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Thus, in Gadfly's opinion, the cross-examination did not "touch" the two main conclusions in the testimony of the neighbors' expert witness.

Now the testimony of other neighbor witnesses (with whom Gadfly followers will be familiar) the night of December 11 did not go as well for reasons that might surprise you.

to be continued . . .