

Thinking about the Mayor's role in how we got "here"

The Bethlehem Gadfly City government, Ethics, Serious Issues December 3, 2019

 *Latest in a series of posts on Ethics and City Government* 

"Here," of course, is the unpleasant situation of a City Councilman marking a City administrator with possible career-damaging wrongdoing and, in effect, charging the Mayor with dereliction of duty.

Ugh.

Not a place we want to be in.

Gadfly has asked you to think about what you would do if you were a City employee concerned about a superior whom you thought was encouraging unethical behavior.

He has asked you to think about what you would do if you were Councilman Callahan to whom a City employee communicated that concern.

We will want to come back to these two topics, especially that of Councilman Callahan. Gadfly is not finished with him! He's kind of fascinating.

But let's go on to think about the two other main figures in this controversy, Mayor Donchez and Alicia Miller Karner.

First, Mayor Donchez.



What do we know and what don't we know about his involvement in this controversy?

- **Mid-September:** the Mayor received a call from Councilman Callahan informing him of the possibility of unethical behavior by the DCED department head in encouraging a slow down in permit approval
- We don't know if the Mayor did anything in response
- **October 17/21:** the Mayor receives an email from BGC asking for an investigation of that possible unethical behavior relating to permits
- We don't know if the Mayor did anything in response
- Somewhere in this time frame the question of going into executive session may have come up, and, if so, the Mayor is against it
- **November 6:** the Mayor is in attendance at the City Council meeting in which BGC unexpectedly addresses a direct provocative question to AMK about her actions involving the

Bethlehem Parking Authority in a context in which BGC is clearly questioning her leadership

- **November 13:** the Mayor is present at a Budget Hearing in which BGC engages in a contentious interchange with another City official in a matter unrelated to the permit or Parking Authority issues
- **November 18:** in a letter to BGC delivered just before a City Council meeting, the Mayor indicates that he has not done the requested investigation of the permit issue but that he might do so if BGC presents his evidence
- **November 19:** in a public statement delivered at the City Council meeting, the Mayor implicitly calls out BGC for the attack on his department head and for BGC's general disruptive behavior — the exoneration of AMK would seem to imply that at least some investigation had been done
- **November 20:** after BGC calls a press conference, the Mayor tries unsuccessfully to arrange a meeting
- **November 25:** before BGC's press conference, the Mayor writes a letter to Council President Waldron arguing the false basis of BGC's Parking Authority issue with AMK but not the permit issue

So with this background information, let's think about the Mayor's actions here.

Can we agree that the Mayor has responsibility to investigate suggestions of wrongdoing in the course of city work on the part of his employees? Probably no disagreement.

Might we further agree that because of their special relationship as elected officials at the head of our City government that the Mayor should be especially responsive to such suggestions of wrongdoing coming from a Councilman? Ha! or do I stretch your willingness to agree

here? Is this but an airy notion from an ivory-towered academic's image of the ideal city government and ignoring on-the-ground realities and relationships?

Councilman Callahan made two claims of possible wrongdoing by AMK — what for shorthand purposes we can call the permit (stalling) issue and the Parking Authority issue. Let's look at them one at a time.

The permit issue

The Mayor waited two months before responding to BGC on the permit issue and responded to say only that he had not done the requested investigation in that two months but might do so under certain conditions. Why did it take the Mayor so long — two months — to respond to BGC if, in fact, nothing was done in that two months to warrant a delay in responding? Seems like a reasonable question. Why couldn't such an answer be given, say, almost immediately? Didn't that two month delay help escalate BGC's blood pressure to the boiling point and help instigate this public flap? Wouldn't it have done the same to your blood pressure?

And how reasonable was the condition the Mayor laid down for a possible investigation after that two month delay? That is, the condition that BGC reveal his sources, do his own investigation? To do so would probably have required BGC to violate confidentiality. If the "informants" didn't feel comfortable going directly to the Mayor or other superiors in City Hall, why would they want BGC to name them? How could BGC in good conscience name them? Seems impossible for BGC to comply to that condition. Moreover, the most important evidence in this case might well be collection of data on a number of permit applications over time, interviewing inspectors as well as applicants, and comparing processing time from start to finish, looking for changes. How would BGC get that information? Another seemingly impossible condition.

The Parking Authority issue

The Mayor handled this issue quite differently. It apparently came to public light for the first time at the November 6 City Council meeting when BGC was questioning AMK's leadership in the context of a proposed study of the Southside. Contrary to the way he handled the permit issue, the Mayor responded quickly and publicly to this suggestion of impropriety by AMK in regard to the Parking Authority. He confronted it dramatically and directly but superficially in his statement at the November 19 City Council meeting. As part of his response at that meeting to that statement by the Mayor, Councilman Reynolds called for full transparency, and, indeed, on November 25, specifically acknowledging the request of said Councilman Reynolds, and now faced with the imminent potentially damaging effects of BGC's press conference, the Mayor provided a 3-page memo, "in the spirit of full transparency," that looks like it positively and effectively resolved BGC's specific question about unethical behavior in this issue. What took about two months to reach an unsatisfactory resolution on the permit issue, now took only about two weeks to come to a satisfactory conclusion in the Parking Authority issue. Why the difference? Curiously, the Mayor responded here quickly to a request by one Councilman, slowly in the other case to a request by another Councilman. Why the difference? And the Mayor responded only when he was forced to by public disclosure. Or that's what it looks like.

Comparing the two issues

The permit issue has yet to have its transparency. It has been called a personnel matter, mandating secrecy. Gadfly is not attuned to the fine legal points here. What makes the permit issue a personnel matter and not the Parking Authority issue? Gadfly needs to be schooled here. On the surface they look the same to him — both about unethical behavior by a City employee. But there might be significant difference here that explains why the Mayor felt comfortable providing public transparency to one and not the other. But that still doesn't explain why apparently the Mayor resisted acceding to the call for executive session, for, as Gadfly

understands it, personnel matters can be discussed there under the expectation of confidentiality — and in this way BGC’s request might have been satisfied completely and much sooner.

But something is glaringly discrepant when one looks at the language of the BGC’s request for an investigation and the Mayor’s November 18 letter denying it. BGC is informal, the Mayor legal. In his October 17 email, BGC describes “hav[ing] heard of a number of concerns,” which, “if true,” would be “most disappointing.” The tone is soft; there is nothing accusatory here. However, the Mayor’s long-awaited reply characterizes BGC as making “allegations.” Huh! Where did that come from? In fact, the Mayor’s letter is full of such legalese: “sufficient cause,” “indicia of corroboration” (O, puleeze!), “good cause.”

It’s obvious the Mayor has lawyered up. Why?

Gadfly is an outsider. He can only see what he can see. But what he sees from a comparison of these two documents is that the Mayor (and his team) for some reason have totally mischaracterized BGC here.

It’s perfectly possible, of course, that BGC’s personal conversations were different than his email and his approach in the press conference.

But from what Gadfly can see, the Mayor may not have handled this situation in the best possible way to avoid the public display of dirty laundry that the City is now experiencing.

What do you think?

Gadfly awaits the slap upside the head.

Ha! Should he lawyer up!

to be continued . . .