

The Heart of the Matter (33)

The Bethlehem Gadfly 2 W. Market St., Gadfly's posts, Serious Issues November 26, 2018

(33rd in a series of posts on 2 W. Market St.)

Thinking the Nov. 20 meeting was “Crunch Time,” Gadfly ventured how he would vote on the 2 W. Market petition. Denial. With reasons. (Post #26)

Ahhh, but Nov. 20 was not Crunch Time. The petition will get a first reading Dec. 4 and a second reading Dec. 18. (Gadfly is not sure if, except for public comment, there will be time set aside for further testimony.)

Let's call Dec. 4 “Crunch Time (2).”

Some more time for Gadfly (and you) to rethink, consider new evidence, decide again — while City Council is heading for its first decision.

As d'poet says, “time yet for a hundred indecisions, / And for a hundred visions and revisions, / Before the taking of a toast and tea.”

There are many details in this controversy. Gadfly's trying to separate wheat from chaff, major from minor, determinative from non-determinative. Gadfly doesn't see that this “case” should be decided on such details as the future of the Green Buildings or the accuracy of the interior wall paper or how big the backlog of potential buyers in the HD is.

Do you catch my drift?

Mr. Malozzi of the PC said, in supporting his decision, you have to “cut away” some things. Well said.

You have to cut away a lot of things to focus on the heart of the matter. That's hard.

But that's what Gadfly is trying to do: focus on the heart of the matter.

So here are two things Gadfly really hadn't thought about before and, he believes, are trails not followed so far. And that, he thinks, live around the heart of the matter.

1) The City has said several times that a text amendment is not the usual way to go for a single petitioner, but an appeal to ZB is the usual way.

Gadfly doesn't believe anybody has followed up on that. Why isn't the petitioner going to the Zoning Board if that is the usual option? Is it that they have burnt their bridges there? Or is that truly now still an option?

If there was a fork in the road that is clearly less unclear in the extent of impact on other properties, why didn't the petitioners take that one? The City has pointed out the unusual fork that the petitioner took, but I don't believe the City has attempted to “force” or even “urge” them in that

direction. Why? If there was a “usual” path, wouldn’t it make sense to take it first and to take the “unusual” path if denied at ZB and unwilling to end the matter there? Shouldn’t the “unusual” path be absolute last recourse?

2) This one seems closer to the heart of the matter. Atty Preston has argued that it is perfectly ok to petition for your own benefit:

“One of the contentions is that because it’s a landowner proposed amendment, that it benefits a landowner, somehow it smells. But, as you know, citizens have an absolute right to petition their government for a legislative change. And those laws are incorporated in our land use laws and so forth, and of course they are incorporated in your zoning ordinance at article 1326. Which says that ‘Proposals for amendment or repeal may be initiated by City Council on its own motion, by the Planning Commission, or by petition of one or more citizens, subject to the following provisions.’ And I would respectfully suggest that it would be the rare case where someone would propose a zoning ordinance amendment that detrimentally affects their property, the fact that someone would propose a zoning ordinance amendment that would benefit their property should not come as a surprise to anyone.”

Gadfly previously quickly accepted Atty Preston’s point in his analysis of the PC meeting. But now Gadfly would like to see some examples of these citizen petitions and how they were decided. What were the petitions for – sole benefit of owner? City benefit? dual benefit? – and on what basis were these petitions adjudicated – good for the owner? good for the City? (It is possible to imagine a scenario in which an individual is petitioning for something he/she sees as good for the City with no direct personal benefit) good for both?

Let’s poke at Gadfly’s #2 a bit. The more important of these two points. Section 1326 – correctly quoted by Atty Preston above (the zoning ordinance is handily linked on the Gadfly sidebar if you ever want to check the source) – gives no rationale for permitting the citizen to directly initiate a petition that has to be acted on and acted on relatively immediately. What is the rationale? Gadfly could not introduce a petition

that City Council was mandated to act on almost at once in any other area. (Hmmm, is Gadfly right saying this?) Why here?

What prompts a process in zoning that is not available to citizens in other areas except through official channels? (Again, if Gadfly is right.)

Let me put this another way: what is the standard against which a citizen petition is judged?

Hmmm, I think that is the concise question I have been struggling to articulate.

What is the standard against which a citizen petition is judged?

Gadfly does not believe he has heard the petitioner articulate such a standard.

He does believe he has heard the opponents to the petition do so.

Ms. Van Wirt, for instance, said the key question “is this move in the best interests of the city of Bethlehem and its residents?”

Mr. Stevens said that the petitioners have not established good for the City.

Mr. Yoshida also invoked a “standard.”

Can we agree that the heart of the matter is whether this amendment in “in the best interests of the city of Bethlehem and its residents?”

Or should there be some other standard?

Without a standard, I don’t know how there can be judgment.

A standard provides necessary focus in this case with a blizzard of details.

Gadfly has been very rambling. Too rambling. You have watched him think out some things in real time. But he has gone on too long. And will return to this point after a bit of a rest.

As usual, comments, especially contrasting or contradictory, always welcome as we try for a fair conclusion here.