



North Canton City Hall, 145 North Main Street, North Canton, Ohio 44720
330/499-3986

May 15, 2003

TO: Council
Mayor

RE: Arrowhead Country Club Rezoning

As you now are aware, Arrowhead Country Club has filed a request for a rezoning of the Country Club to R-70.

It is my understanding that this request has been made as a result of the possible referendum of the Ordinance to purchase Arrowhead Country Club. Until such time as the thirty (30) days from the Mayor's signing of the Ordinance has expired, the Mayor does not have authority to sign the purchase contract and, therefore, until that time there is no contract for the purchase of Arrowhead Country Club.

If a referendum is filed, the Mayor would not have the authority to sign the purchase agreement until some time in November of 2003. Until the Mayor signs the contract either on May 29 if there is no referendum or some time in November of 2003 if the referendum is filed and is unsuccessful, the Mayor does not have the authority to sign the purchase agreement and Arrowhead does not have a binding contract. Therefore, until a binding contract is signed, Arrowhead has the right to sell the property to anyone they choose.

There is no question that Arrowhead wishes to sell their property to the City of North Canton. However, in fairness to Arrowhead, I believe they have to keep their options open and entertain offers for the sale of the Country Club in the event there is a referendum.

In respect to the rezoning issue, I believe that I should inform Council of four Supreme Court cases from the Ohio Supreme Court involving the City of Mayfield Heights.


In those cases which are all entitled Shemo vs. Mayfield Heights, there was a judicial rezoning of the property in question when Mayfield Heights denied the zoning request. The City of Mayfield Heights in the last Shemo case was held responsible for the damages incurred by the property owner for the period commencing with the request for rezoning until the judicial rezoning. It would appear that even though the Shemo property appreciated significantly during this period, the owner/developer sustained significant damage during that same period. The City of Mayfield Heights may be responsible for damages in excess of a seven figure amount.

The fact situation in the Shemo cases was rather extreme. I can make numerous distinctions between the Shemo fact patterns and the Arrowhead fact patterns. I believe it is my obligation to advise the Council and Administration of the existence of the Shemo cases, their precedent and the potential for litigation and damages in the event the City chooses not to rezone the Arrowhead property.

The ultimate potential result is that the City could be confronted with a judicial rezoning and significant damages to be paid to Arrowhead with a third party developer owning the property.

I believe that this highlights how ill advised the present referendum issue is.

Very truly yours,



Roy H. Batista
Director of Law

RHB/mlb