

# WILLIAM K. SHAW, JR.

June 13, 2006

Editor, Portsmouth Daily Times  
637 Sixth Street  
P.O. Box 581  
Portsmouth, Ohio 45662

Re: Article titled School board dispels rumors,  
Wednesday June 7

Dear Editor;

I write to take exception to statements and representations made in the June 7 article titled "School board dispels rumors". My wife and I live two doors from McKinley school and have a vested interest in what is to be located on that property. We are genuinely concerned about the proposed change in zoning. We believe the School Board members and Superintendent Broughton are honest people, whom we hope were improperly led to believe the quoted statements regarding the zoning change. While I will give them personally the benefit of the doubt, I believe that the statements are at best incorrect or greatly overstated and at worst utterly false.

While the School Board as owner of the properties may request a change in zoning, once a change is granted and the city ordinances are amended, the change is not easily reversed and would permit much more than was intimated. The process requires a public hearing and consideration by the City Planning Commission, which then makes a recommendation to City Council, which is required to hold a hearing on the recommendation not less 30 days after the publication of a notice. If the recommendation is to make a change in zoning which is approved by Council, it must then draft legislation, which must be read and passed at three separate meetings. Based upon the schedule of meetings in effect for many years, the process alone would take a minimum of 13 weeks.

Why must the Board ask for a change before a sale? If a purchasing developer truly has a "high end" project, which will fit well within the neighborhood, why should they not present their plan together with a proposed zoning change? I for one am not opposed to truly "high end" condominiums or apartments as a neighbor. I am opposed to effectively writing a blank check, which would permit a developer to build virtually whatever they wanted on the property, and having it substantially complete before the zoning can be changed to what it had been. Isn't the Board putting the cart before the horse?

A change from Residence A to Residence C is a drastic modification, not the simple allowance of "facilities like mid-range to high-end condominiums" represented by the Board. The zoning code has Residence Districts A, A-1, AA, B and C. The differences in the Residence Districts are the types of dwellings, the sizes of yards, set backs and population density. Residence A permits single family detached dwellings, the leasing of rooms but not a "rooming house," a Club or nonprofit association, Church, educational use, municipal recreational use, garden, hospital or home or office occupation. Each lesser district permits additional uses,

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smaller lots and yards, lesser set backs, use of a greater percentages of the space built upon and an increased population density.

Residence A-1 Districts permit “one, two and Multi-family dwellings!” Residence B, “large scale neighborhood housing projects” if the Planning Commission approves. What is a “large scale neighborhood housing project” if not a Wayne Hills or Farley Square? Why is a change to C needed if it is not to avoid the impediment of Planning Commission authority? What are high-end apartments or condos if not multi-family dwellings permitted in zone A-1? Why would a “high end” end project wish to limit open spaces by utilizing 40% of the property in a Residence C district as opposed to 30% in a Residence A-1 District. What “high end” housing needs a population density of eighteen families per acre in C as opposed to twelve in an A-1? Do the “high end” people who will live in these condos need or want to be closely together?

I think the answers to the questions are obvious, and certainly do not warrant the proposed change from the highest Residence classification to the lowest. The proposed change would create an island of the lowest type housing permitted, in the sea of neighborhoods, which are currently “high end” and would wish to stay that way. Such spot zoning would violate City Ordinance §1131.07(d)(3) which is titled “General considerations regarding amendments.” It provides that “Council shall give due consideration to the proper relationship of such amendments to the entire Zoning Code, it being the interest to retain the integrity and validity of the zoning districts herein described and to avoid any isolated spot zoning changes on the Zoning Map.” The section limits the ability of Council to spot zone these properties by changing them from A to A-1, much less from A to C.

The only real difference, which I can ascertain by reviewing the ordinances, is that the height of a building is limited to the greater of 35 feet or two and a half stories in all residence districts except Residence C which, permit the greater of 45 feet or three and a half stories. If these “high end” developers and the School District truly wish to preserve the neighborhoods, but want a taller building, why not ask to amend the zoning code to permit taller “multi-family” dwellings in Residence A-1 Districts and limit the change in the properties to that zoning?

I also take exception to the representation that the Board of Education may effectively limit the ability of a buyer of the property’s to use it as he chooses if the choice is in compliance with the zoning code. The disposal of real property by a Board of Education is provided for in Ohio Revised Code §3313.41. The section does provide that real property, must be sold at public auction as was stated. However, I find nothing in the statute, which permits a school board to condition a sale as represented. As an attorney, I am extremely reluctant to accept statements of law for which I can find no statutory support. Has anyone ever attended a real estate auction where the seller attached conditions to the use of the property that were not prior limitations on the title or limitations set by law?

Upon learning of the proposed zoning change, I made a public records request to the Superintendent and Treasurer of the Portsmouth City School District. I requested documents and records relevant to the sale of the properties and their communications with developers or their representatives. I will reserve judgment as to the full nature of the transactions until I receive the documents, which I trust will be provided prior to June 20. I will however, oppose any zoning

Editor Portsmouth Daily Times  
Page 3 of 3, 6/13/2006

change, which is not tied to a specific development plan binding the developer to a specific project suitable for the neighborhood. I would ask that others do the same at the June 20 hearing before the planning commission. I would ask that the Daily Times investigate and join in my request for public records in order to fully inform the public.

Very truly yours,

William K. Shaw Jr.