A Regular meeting of the Oxford City Council was called to order by Mayor Richard Keebler on Tuesday, April 20, 2010 at 7:30 p.m. Those members present were Kate Currie, Greig Rutherford, Bob Blackburn, John Harman and Kevin McKeehan. Ken Bogard was excused.

Staff members present: Mr. Doug Elliott, City Manager; Mr. Mike Dreisbach, Service Director; Mr. Steve Schwein, Police Chief; Mr Joe Newlin, Finance Director; Mr. Jung-Han Chen, Community Development Director; Mr. John Detherage, Fire Chief; Ms. Gail Brahier, Parks and Recreation Director; Mr. Alan Kyger, Economic Development Director; Mr. Steve McHugh, Law Director and Ms. Mary Ann Eaton, Clerk of Council.

PLEDGE OF ALLEGIANCE

Mayor Keebler called for the Pledge of Allegiance.

APPROVAL OF AGENDA

Mr. Blackburn moved to approve the agenda. Mr. Harman seconded. The motion passed 6-0-0.

PUBLIC PARTICIPATION

PROCLAMATION 'NATIONAL VOLUNTEER WEEK'

Mayor Keebler read the Proclamation and advised Ms. Currie would present it on Friday at the Oxford Senior Center's Volunteer Luncheon.

PROCLAMATION 'NALC FOOD DRIVE DAY'

Mayor Keebler read the Proclamation regarding the National Association of Letter Carriers Food Drive Day.

NOTICE TO LEGISLATIVE AUTHORITY

Notice to Legislative Authority – New permit for Chipotle Mexican Grill of Colorado LLC DBA Chipotle 1 West High St 1st Floor Suite 101 Oxford, Ohio 45056.

Ms. Currie moved to receive the Notice to Legislative Authority without comment. Mr. Rutherford seconded. The motion passed 6-0-0.

PUBLIC COMMENTS

Mr. Cal Conrad, 5226 Westgate Drive, addressed Council with regard to the relationship between City Council and the Planning Commission. Mr. Conrad advised for many years into the late 1970s or early 1980s the City Charter was presumed to say that for Council to overthrow a decision by the Planning Commission it required a ¾ majority or 6 of the 7 Council members to vote for it. Mr. Conrad advised in the late 1970s or early 1980s the City Attorney ruled that it only took a simple majority of Council to overthrow a decision by the Planning Commission. Mr. Conrad expressed concern that Council might overthrow a decision by the Planning Commission this evening. Mr. Conrad noted the Planning Commission members worked very hard to develop a Comprehensive Plan which Council ultimately adopted and they opposed such things as spot zoning. Mr. Conrad advised Council established the Planning Commission and asked them to give careful consideration to a very special subject and they had spoken. Mr. Conrad noted his hope Council would not destroy the relationship between themselves and the Planning Commission. Mr. Conrad encouraged Council to work with the City Attorney to consider the possibility of requiring a ¾ majority of Council to overthrow a decision by the Planning Commission as it would give the Planning Commission more strength and it would make them a more powerful body.

Mr. Matt Ciccone, Secretary, Off Campus Affairs, advised the Spring Clean event took place last weekend with 450 students participating in the initiative. Mr. Ciccone noted $47,000 was raised during the American Cancer Society's Relay for Life event on April 10, 2010. Mr. Ciccone reminded everyone that ShareFest was coming up and members of the Associated Student Government were doing all they could to market the initiative to students living on and off campus.

CONSENT AGENDA

MINUTES

Minutes of the April 6, 2010 City Council Meeting. (Mary Ann Eaton, Clerk of Council)

REPORTS

Report regarding the April 7, 2010 Historic and Architectural Preservation Commission Meeting. (Jung-Han Chen, Community Development Director)

RESOLUTION
CONTRACT FOR HEATING
AND AIR CONDITIONING

A Resolution No. 4530 accepting the bid and authorizing the City Manager to enter into a contract with Inloes Heating and Air Conditioning, Inc. for the replacement of heating and air conditioning units at the Oxford Senior Citizens Center at a cost not to exceed $22,714.00 provided Council adopts Supplemental Budget Number 3. (Gail Brahier, Parks and Recreation Director)

Mr. McKeehan moved to approve the consent agenda. Ms. Currie seconded. The motion passed 6-0-0.

RESOLUTION
PORSCHES2OXFORD
EVENT

A Resolution No. 4530 amending Resolution No. 4520 authorizing the City Manager to permit the Oxford Visitors and Convention Bureau in conjunction with the Oxford Lions Club to hold an event on July 30, 2010 from 6:00 p.m. to 9:00 p.m. in the Oxford Memorial Park. (Doug Elliott, City Manager)

Ms. Diana Durr, Oxford Visitors and Convention Bureau, advised the only revision to the original Resolution was in Section 2 on page 33 of the agenda to allow the sale of wine in addition to beer at the event. Mayor Keebler advised he understood there were to be some exhibits that evening. Ms. Durr noted some vehicles would be on display on East and West Park Place and on Main Street under a separate Right-of-Way Permit. Ms. Durr advised the Resolution was strictly for the event in the Memorial Park. Mayor Keebler noted he felt the addition of vehicles on display that evening was an improvement to the overall event.

Mr. Blackburn moved to adopt Resolution No. 4530. Mr. Harman seconded. The Resolution was adopted by the following roll call:

AYE: Mr. Harman, Mr. McKeehan, Mr. Rutherford, Mr. Blackburn, Mr. Keebler (5)

NAY: Ms. Currie (1)

ABS: None (0)

ORDINANCES
FIRST READING

None.

ORDINANCES
SECOND READING

ORDINANCE
ZONING MAP AMENDMENT

An Ordinance Accepting The Recommendation Of The Planning Commission To Deny The Zoning Map Amendment Application To Rezone Property Located At 5990 Contreras Road From R1B (Single-Family Medium Density Residential) District To RO (Office Residential) District. (Jung-Han Chen, Community Development Director)

Mayor Keebler advised comments and arguments from the previous Council Meeting and Planning Commission Meeting were part of the record and Council had received a number of emails and reviewed them before tonight's meeting. Mayor Keebler asked that if anyone wished to further address this matter or if anyone had not yet spoken to Council regarding this matter to limit their comments to new information and not re-state what had already been argued. Mayor Keebler advised adoption of the proposed Ordinance was to accept the recommendation of the Planning Commission to deny the rezoning and a majority yes vote would deny the rezoning. Mayor Keebler advised a tie or a majority no vote would not approve the rezoning but would require a first and second reading of a new Ordinance to approve the rezoning.

Mr. Chen advised he had no new information regarding the proposed legislation. Mr. Chen noted Council had received additional letters and emails from concerned citizens regarding the matter. Mr. Chen advised Council received a legal opinion from the Law Director regarding the request for a zoning map amendment.

Mr. McHugh advised he reviewed Council's deliberation and the applicant's testimony and PowerPoint presentation provided on April 6, 2010. Mr. McHugh noted in an effort to be as open and fair procedurally to the applicant he felt it was appropriate to view the documentation and statements of the applicants in a manner most favorable to the applicants. Mr. McHugh advised based on his review of the matter and the evidence presented in the case law, Ohio Supreme Court decisions and Court of Appeals decisions it was his opinion that the rezoning request as proposed amounted to spot zoning as was defined by the Ohio Supreme Court in the Village of Beechwood case and to grant the request was something not provided for by law. Mr. McHugh noted rezoning with conditions or deed restrictions was outside of the purview of Council and the evidence did not support a finding that Decision Standards C or D had been met. Mr. McHugh noted rezoning the property as proposed would in his opinion single out the parcel for special treatment which equated to spot zoning and would be contrary to the law in Ohio.

Ms. Connie McCarthy, 5990 Contreras Road, noted Mr. McHugh had done a great deal of research regarding the rezoning issue. Ms. McCarthy advised Mr. Jay Bennett, Attorney at Law provided them with an opinion regarding the matter which Council had before them. Ms. McCarthy summarized sections of the letter which indicated Mr. Bennett's opinion was that the proposed rezoning of the parcel in question did not exhibit the necessary elements or characteristics to be considered 'spot zoning'.

Mr. Brian McClain, Jacqueline Drive, noted the property in question was directly behind his property. Mr. McClain advised he would not have bought his property if he knew the property in question would become commercial. Mr. McClain encouraged Council to uphold the Planning Commission's recommendation to deny the request.

Mr. Donald Nelson, Joseph Drive, asked Council to voted on the issue as if they owned property immediately across or adjacent to the property in question.

Ms. Marsha Haffey, 5106 Bonham Road, noted there was no way to guarantee how the property in question would be used if it were rezoned. Ms. Haffey noted this would be a precedent setting decision and inquired how Council could say no to another resident with a similar request. Ms. Haffey encouraged Council to uphold the Planning Commission's recommendation to deny the request.

Mr. Bob Benson, 6090 Contreras Road, noted he appreciated Mr. McHugh's comments. Mr. Benson noted the Oxford Zoning Code and Comprehensive Plan were law and anytime someone asked for a variance to that law the operating issue was if Council was giving privilege to one property owner over all others in that district. Mr. Benson encouraged Council to uphold the law.

Ms. Vanessa Cummings, 125 Marti Court, advised she would not like Council to support the rezoning request. Ms. Cummings noted for her the property was the entrance to the neighborhood that surrounded it. Ms. Cummings advised she concurred with comments made by others regarding spot zoning and other issues. Ms. Cummings noted when the entrance to a neighborhood was changed the neighborhood changed. Ms. Cummings noted the residents lived in the neighborhood because they liked it as it was and did not want to have it changed into something different.

Ms. Rosalyn Benson, 6090 Contreras Road, noted at the last Council meeting several citizens focused on preserving the house and advised she felt it was very important to note that the zoning change proposed had nothing to do with preserving the house. Ms. Benson noted a Councilor was quoted as saying 'I see no compelling reason not to rezone the property' and noted she felt this was backwards as there needed to be a compelling reason to rezone. Ms. Benson requested that Council not rezone the property.

Ms. Kathy Ellison, 37 Meadow Circle, thanked Council for their deliberation of the rezoning request two weeks ago and noted Council raised a lot of interesting questions which she conveyed to Stuart Meck. Ms. Ellison advised Mr. Meck responded to Council in an attempt to answer those questions. Ms. Ellison noted after she read Mr. Meck's response she felt the implications of what might happen would have a far more profound effect on the neighborhood than has been suggested by the applicant's notion of converting the property to a low focused professional office. Ms. Ellison advised she had lived in her house for 20 years and noted her hope she could spend her retirement years there in the nice neighborhood that it was.

Mr. Stan Toops, Joseph Drive, advised he and his wife were former business owners and noted his feeling the proposed rezoning would not help the business climate in Oxford as there would be despair in areas not at all integrated in commercial zoning. Mr. Toops encouraged Council to support the Planning Commission's recommendation and to keep in mind the parking and traffic issues associated with new zoning of a commercial nature in this area. Mr. Toops noted it would be very problematic considering the school bus stop and children getting on and off buses at various times during the day. Mr. Toops advised as a resident of the neighborhood he would like to see the neighborhood maintained as a residential neighborhood.

Ms. Kathleen Zien, 6060 Joseph Drive, advised it appeared that Mr. Harman must recuse from the proposed rezoning request as a licensed local realtor. Ms. Zien noted Mayor Keebler and Mr. Harman as Council representatives on the Planning Commission could explain why the property did not meet the decision standards and why it should not be rezoned. Ms. Zien noted her feeling if Mr. Harman had not misunderstood what substantial change in area conditions meant it would have been a unanimous denial at Planning. Ms. Zien noted if Council revoked the recommendation of the Planning Commission it would undermine the work of the Planning Commission and City staff. Ms. Zien advised the substantial change in area conditions standard was written and intended to mean the change must be physical and there had been no physical changes to area conditions. Ms. Zien noted her feeling the only reason the current owners were requesting the rezone was for the inflated sale price which came with office verses residential zoning. Ms. Zien noted there was no assurance that doctors or lawyers would occupy the property and Council should make their decision with funeral homes, tattoo parlors and day care centers in mind because those uses would be allowed. Ms. Zien advised a rezone at this location would grant an incredible and irrevocable change impacting multiple residential neighborhoods while owners had no obligation to produce the promised results.

Mr. Blackburn discussed various ideas he had thought about with regard to the property such as utilizing a historic easement or asking the Planning Commission to create a zoning district that helped preserve old houses.

Mr. McKeehan advised he was disappointed at the last meeting due to the personal attacks many residents made against the applicants noting he did not feel that was necessary or relevant to the issue. Mr. McKeehan noted he felt a doctor's office might be a very good use for the home but whether or not Council could do it was another question.

Mr. Rutherford inquired if there was a difference between a zoning classification and a zoning designation and Mr. McHugh advised it depended on what the applicant was asking for. Mr. McHugh noted ultimately the applicant in this case was asking for RO zoning which was a change from residential zoning. Mr. Rutherford advised Mr. McHugh stated in his opinion to Council that spot zoning had been deemed prohibited by the Ohio Supreme Court and inquired if Mr. McHugh was saying the Ohio Supreme Court had legislated that spot zoning was prohibited. Mr. McHugh advised spot zoning as the Ohio Supreme Court had defined it was not within the purview of a municipal jurisdiction to grant because it bestowed certain rights or took away certain rights from a property owner.

Mr. Rutherford noted his feeling the zoning code failed Council and advised if Council wanted RO to be contiguous to another RO district the zoning code should say that and if Council wanted RO to be in a certain geographical area of the City the zoning code should say that and it did not. Mr. Rutherford advised there was not a scrap of land available in the RO district and he believed Decision Standard D. was met.

Ms. Currie advised she did not see a need for additional RO zoning and noted there was a lot of office space in other places that could be utilized. Ms. Currie advised she was not a planner or a lawyer and that was why Council appointed a Planning Commission and a Law Director. Ms. Currie noted she could follow the rules set before her and listen to the people Council had hired or appointed to advise them. Ms. Currie noted that advice was so clear in this matter since the Planning Commission strongly recommended that Council deny the request as did the Law Director. Ms. Currie noted Council should make decisions based on rules in the code and advice received from their advisors.

Mr. Harman noted for the record that he had never shown the property in question and would not allow himself to be involved in the sale of the property. Mr. Harman encouraged Council to review the video of the Planning Commission meeting of March 9, 2010 and noted only 25% of the information was provided to the Planning Commission regarding the rezoning request and the majority of the information was provided to Council on April 6, 2010. Mr. Harman noted the Planning Commission could only vote based on the information provided to them. Mr. Harman referred to decision standard B. and noted the Comprehensive Plan was the policy instrument for zoning and economic development and it supported office space expansion, mixed development and redevelopment. Mr. Harman referred to decision standard C. and noted there had been significant zoning changes within a stone's throw of the property in question since 2000. Mr. Harman referred to decision standard D. and noted there was no office space greater than 2500 square feet available in any historical building and there was no land available in the RO District to be built upon and this information was not provided to the Planning Commission. Mr. Harman advised he felt the request met three of the four decision standards.

Mayor Keebler advised he respectfully disagreed with Mr. Harman. Mayor Keebler noted he felt the proposed rezoning met none of the codified decision standards that would permit the rezoning. Mayor Keebler advised the proposed rezoning was not supported by the Comprehensive Plan because it did not propose or support simply rezoning properties of this size. Mayor Keebler noted the proposed rezoning did not in any way assure that the historical home would be preserved nor was there currently any mechanism in the Zoning Code to assure it. Mayor Keebler advised given that the proposed rezoning did not assure the preservation of the home and Council could not make that part of the rezoning and given no one had established a real need for additional office space in the community he did not see how Council could substantiate that anyone benefited except the applicants. Mayor Keebler noted if more RO was necessary the City needed to be looked at as a whole to see where it made sense to expand the zones. Mayor Keebler advised the Law Director had provided his opinion that rezoning the property would constitute spot zoning and would not be sustainable in court which was not a battle the City needed to get into. Mayor Keebler advised he could not support the rezoning request and encouraged his fellow Councilors to do the same.

Ms. Currie moved to adopt the Ordinance. Mr. McKeehan seconded. The motion was a tie vote by the following roll call:

AYE: Mr. McKeehan, Ms. Currie, Mr. Keebler (3)

NAY: Mr. Rutherford, Mr. Blackburn, Mr. Harman (3)

ABS: None (0)

Mayor Keebler advised the Law Director to prepare legislation for the next meeting to rezone the property.

ORDINANCE
NEW SECTION 1143.10

An Ordinance No. 3109 Repealing Zoning Code Section 1143.10 Of The Codified Ordinances Of The City Of Oxford, Ohio, Entitled Uptown District, And Adopting New Section 1143.10, Entitled Uptown District. (Jung-Han Chen, Community Development Director)

Mr. Chen advised at the last meeting Council asked staff to meet with Mr. Rutherford to discuss potential language to address difficulties with this section of the Zoning Code. Mr. Chen noted at that time staff offered a remedy which was to strike 1143.10(b). Mr. Chen noted staff had concerns with some of Mr. Rutherford's proposed amendments.

Mr. Rutherford advised he crafted new language to address many issues in the Uptown District and hoped to send it to the Planning Commission for consideration.

Mayor Keebler advised he would like Council to adopt the proposed Ordinance this evening and provide Mr. Rutherford's amendments to the Planning Commission for further review.

Ms. Currie moved to strike section 1143.10 (b) as presented on page 128 of the agenda and renumber accordingly. Mr. Rutherford seconded. The motion passed 6-0-0.

Ms. Currie moved to adopt Ordinance No. 3109 as amended. Mr. Blackburn seconded. The Ordinance was adopted by the following roll call:

AYE: Mr. Rutherford, Mr. Blackburn, Ms. Currie, Mr. Harman, Mr. McKeehan, Mr. Keebler (6)

NAY: None (0)

ABS: None (0)

ORDINANCE
SUPPLEMENTAL BUDGET

An Ordinance No. 3110 Amending Ordinance No. 3089. Supplemental Budget Ordinance Number 3 To Make Supplemental Appropriations For Fiscal Year 2010.

Mr. Newlin advised he made adjustments to the staff report for clarification purposes per Council's request. Mr. Newlin summarized the staff report as presented on pages 139-146 of the agenda.

Mayor Keebler noted concern with the decrease in appropriations for the urban paving project which Mr. Dreisbach addressed.

Mr. McKeehan moved to adopt Ordinance No. 3110. Ms. Currie seconded. The Ordinance was adopted by the following roll call:

AYE: Ms. Currie, Mr. Harman, Mr. McKeehan, Mr. Rutherford, Mr. Blackburn, Mr. Keebler (6)

NAY: None (0)

ABS: None (0)

ANNOUNCEMENTS

Mr. Elliott updated Council with regard to a meeting he and Mr. Dreisbach had with local attorneys to discuss an erosion issue with a property owner on Melissa Drive. Mr. Elliott noted he and Mr. Dreisbach would meet with members of the Oxford Cemetery Association to discuss some of their concerns and then report back to Council. Mr. Elliott encouraged everyone to participate in the 2010 Census.

Chief Schwein advised litter had been cleaned up along Brookville Road and Contreras Road from the railroad tracks to Joseph Drive by community service workers. Chief Schwein noted the passing of Oxford's Police Dog Simon who had been with the Police Department for 8 years.

Mr. Kyger updated Council with regard to two Requests for Proposals noting meetings with the CIC and members of the community would take place the week of May 10, 2010 for the RFP regarding the Demographic/Marketing Study.

Ms. Currie requested clarification regarding the notion that it took a ¾ majority of Council to overturn a Planning Commission recommendation which Mr. McHugh addressed. Ms. Currie reminded everyone that the Bicentennial Kinetic Sculpture Race would take place this Saturday at 11:00 and encouraged people to come Uptown and cheer on the participants.

Mr. Harman commented on the many events that took place in Oxford over the weekend and thanked staff for their assistance with the events. Mr. Harman reminded everyone that Saturdays in May from 1:00 to 2:00 p.m. guided walking tours would be provided covering a different area of the Uptown Oxford Historic District each week. Mr. Harman noted the walks started at the Oxford Visitors and Convention Bureau. Mr. Harman advised the Historic Awards Ceremony would take place on May 13, 2010 from 5-7 p.m. at the Oxford Community Arts Center.

Mr. Blackburn welcomed Mr. Elliott back after his recent surgery. Mr. Blackburn advised Ms. Susan Kay, Chair of the Planning Commission was in attendance this evening. Mr. Blackburn noted his feeling the Planning Commission did a good job and Council appreciated their efforts. Mr. Blackburn reminded everyone the Kiwanis Pancake Day would take place Saturday at the Talawanda High School and noted Mr. McKeehan would be accepting donations for the Summer Harvest effort during the event.

Mr. McKeehan advised the Summer Harvest sponsored by the Masons, Lions, Kiwanis and Rotary clubs were collecting food and monetary donations to benefit the Oxford Community Choice Pantry. Mr. McKeehan noted donations to the food pantry dropped significantly when the school year ended.

Mr. Rutherford noted Mayor Keebler attended the Earth Day event in the Uptown Park over the weekend. Mayor Keebler advised he was asked to speak about the sustainability efforts of the City and Mr. Dreisbach and the Environmental crew provided him with a great deal of information to share with the public in terms of conservation and energy management. Mayor Keebler noted Earth Day was a nice event with a lot of people in attendance. Mr. Rutherford advised the public was very appreciative that the Mayor was there making a strong statement with regard to conservation.

Mr. Rutherford encouraged Council and members of the public to attend the Institute of Environmental Sciences conservation presentations on April 22, 2010 at 8:00 p.m. at Boyd Hall.

ADJOURNMENT

Mr. Blackburn moved to adjourn at 9:22 p.m. Mr. Harman seconded. The motion passed 6-0-0.