

CITY OF OAKWOOD

STATE OF OHIO

APRIL 4, 2011

The Council of the city of Oakwood, State of Ohio, met in a work session at 6:00 p.m. in the conference room of the city of Oakwood, 30 Park Avenue, Dayton, Ohio, 45419. Council then met in a regular session at 7:30 p.m., in the council chambers of the city of Oakwood.

The Mayor, Mr. William Duncan, presided, and the Clerk of Council, Mrs. Cathy Gibson, recorded. Mayor Duncan opened the meeting by asking all present to participate in the Pledge of Allegiance.

Upon call of the roll, the following members of council responded to their names:

MR. WILLIAM D. DUNCAN PRESENT
MR. STEVEN BYINGTON PRESENT
MR. STANLEY CASTLEMAN PRESENT
MR. ROBERT P. STEPHENS PRESENT
MRS. ANNE S. HILTON PRESENT

Officers of the city present were the following:

Mr. Norbert S. Klopsch, City Manager
Mr. Robert F. Jacques, City Attorney
Mr. Jay A. Weiskircher, Assistant City Manager
Mrs. Cindy Stafford, Finance Director

The press this evening was represented by the editor of the *Oakwood Register*, Mr. Lance Winkler and *DDN* staff writer, Mr. Jeremy Kelley.

The following visitors registered:

Rodger Gamblin and Kathleen Burch, 8 Springhouse Road
Jeff Lutz, 555 Acorn Drive
Mary Bane, 5 Volusia Avenue
Marlene Johnson, 171 E. Hyde, Yellow Springs
James Broz, 244 East Drive
Stephen Hawkins, SMCLGE
Tommy Routsong, 494 Lookout Ridge
Martha Haley, 400 Irving Avenue
Doug Kinsey, 315 Triangle Avenue
Eric Weber, 4340 Schrubbs Drive
Mike Ruetschle, 124 Wisteria Drive
Ann Snively, Wright Library
Kenneth Bandarak, 600 Oak, 45410
Jackie and Laurie Stueve, 5380 Cynthia Lane
Linda and Ralph Froehlich, 350 Shafor Boulevard
Bev Black
Steve Marcum, 2461 S. Patterson
Kathryn Koehler, 1412 Westwicke Place
Tom Hardy, 133 Hadley Road
Sandy Mudry, 312 Collingwood Avenue
Doug Crosby, 201 Winding Way
Ron Alban, 3313 Lenox Drive
Rob Scott, Kettering
State Representative Jim Butler

Mrs. Hilton, Chair of the Council Committee on Minutes, advised council she had read the minutes of the regular and work sessions of council held March 7, 2011 and of the work session held March 21, 2011. Mrs. Hilton reported she found the minutes correct and complete. Therefore, it was moved by Mrs. Hilton and seconded by Mr. Castleman that the minutes of the sessions of council aforementioned be approved as written and the reading thereof at this session be dispensed with. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

STATUS REPORTS

Proclamation. Mayor Duncan proclaimed April 10-16 as National Library Week and recognized Ann Snively, Wright Library. Mrs. Snively thanked council for the proclamation, encouraged everyone to use the library and invited the community to the Big Read event tomorrow evening.

First Suburbs. Mr. Byington reported on the group's recent meeting and discussion on the difficulties and challenges raised by the proposed state budget cuts. He indicated both Mr. Klopsch and Kettering Manager Mark Schweiterman led the discussion.

Historical Society. Mrs. Hilton invited the community to the spring Open House on Sunday, April 17, 1:30-4:30 for a celebration of "American Life in the 1930's". She indicated students will be participating, admission is free, and donation of a canned good for the local food bank is encouraged.

VISITORS

South Montgomery County Liberty Group. Mayor Duncan welcomed members of the audience in regard to estate tax which is a national and state issue. In December, Congress passed a law increasing the exemption from \$1M to \$5M and also addressed gift tax rules as well as estate planning. In January, the new Ohio House presented HB 3 to repeal the estate tax in Ohio. On February 9, he and Mr. Klopsch went to Columbus and attended the House & Ways Committee meeting and he provided testimony, which he read for the record:

Good afternoon Chairman Stautberg and Honorable Members of the House Ways and Means Committee.

My name is William D. Duncan. I am a Certified Public Accountant in Dayton Ohio with 36 years of public accounting experience. I am a member of the American Institute of Certified Public Accountants and the Ohio Society of Certified Public Accountants. I have served on Oakwood City Council since May 2003 and was elected Mayor in January 2010.

I oppose House Bill 3 in its present form. I read the testimony from the proponents of the bill who testified last week before your committee. They believe that when you die the government should be done with you. It is a compelling argument.

They also believe the Ohio estate tax is causing our state to lose population to the south and southwest United States. This argument is not compelling. I submit the invention of air conditioning is more responsible for migration from the Midwest to the South and Southwest over the last generation than the Ohio estate tax.

I also oppose the position of the Ohio Society of Certified Public Accountants who wants to repeal this tax. I believe the exemption amount should be increased and the tax rate should be reduced. I also believe any state estate tax paid should be a dollar for dollar credit instead of a deduction from their federal estate tax. As Warren Buffett said, "A very rich person should leave his kids enough to do anything but not enough to do nothing."

My purpose for testifying today is to describe how the elimination of this tax will affect our community. Oakwood was incorporated in 1908 and is the premier residential community in the Dayton and Miami Valley Region. We are a bedroom community and first-tier suburb of Dayton, and we have the sixth highest rated school district in Ohio. Our 9,200 plus citizens are community leaders in industry, education, medicine and the arts.

Over the past ten years we have averaged about \$2.6 million annually in estate taxes. This has allowed us to construct a much needed municipal service center building, renovate our aging City administrative and public safety building and purchase a parks and recreation facility from NCR Corporation prior to their relocation to Georgia. All of these investments were heavily supported by our citizens and were made possible without the need to raise taxes.

The estate tax revenue is presently about 20% of our city budget. It helps to pay for many important public services and for the maintenance of our roadways and other public infrastructure. If we lose this revenue, we would have to increase our city income tax rate from 2.5% to 3.75% or increase our real estate taxes by about 10 mills. If we do not increase taxes, we will have to reduce our personnel costs by about 35%. One can argue that public sector personnel costs need to be reduced, but I am sure none of you believe our public sector personnel are overpaid by 35%.

This bill needs to be considered in tandem with the biennial budget, pension reform, collective bargaining, prevailing wage and right to work rules. I agree with Speaker Batchelder that this bill should be delayed until our Governor can present his budget. I also agree with our Governor who believes that movement from Ohio is due more to the state income tax than the estate tax.

Attached to my testimony is a letter sent to Governor John Kasich by Oakwood City Manager Norbert Klopsch regarding the Ohio estate tax.

Thank you for the opportunity to address you regarding this matter and thank you for your service to the citizens of the great state of Ohio.

Mayor Duncan reported the committee voted to repeal the tax, but changed the effective date from January 1, 2011 to January 1, 2013 and the bill has not been forwarded to the House. He indicated the Senate proposed a like bill and Vice Mayor Byington presented similar testimony. He welcomed visitors, asked that they give their name/address and limit comments to three minutes.

Kathleen Burch, resident for 27 years, is a member of the South Montgomery County Liberty Group, a chapter of the Dayton Tea Party with almost 600 members who uphold principles of: respect for the Constitution, fiscal responsibility, smaller government and support for free markets. She presented to council copies of her statement and testimony. They became aware of an initiative called "The Council to Protect Ohio Communities" (CPOC) which they don't believe is intended to protect Ohio communities. She believes the CPOC seeks to have local governments fund lobbying efforts to maintain taxing and spending that has destroyed Ohio businesses, makes Ohioans pay more than citizens of other states and aims to lobby against the repeal of the estate tax. Ms. Burch referenced correspondence she had with Mr. Klopsch that Oakwood has spent \$5000 of taxpayer's money on the repeal initiative and the decision to disburse funds was made by the manager alone with no objection from council. There was no resolution or efforts to communicate to residents and businesses. She indicated the citizens of Ohio spoke at the polls last November insisting government curtail overspending and overtaxing and have seen, at every government level, how spending has increased. She indicated Governor Kasich won his election with repeal of estate tax being part of his platform therefore it seems entirely inappropriate for Oakwood to use taxpayers' money on this issue.

Ms. Burch believes the practice of funding municipal budgets with estate tax that is unpredictable, unstable, inefficient and economically damaging is unwise. She referenced Mr. Klopsch's statements in the 2011 budget and opined that the city has spent estate tax windfalls on projects that seem imprudent and without another estate tax windfall, how the city will be out of money at the end of next year and will have to raise income taxes, real estate taxes or both. Ms. Burch indicated the practice of overspending and overtaxing cannot end well and Ohio has lost population and representation in Congress to states that provide more favorable tax situations. She believes the leaders of Oakwood seem to be moving in the wrong direction, trying to squeeze more money out of residents rather than attracting business and investments. Ms. Burch indicated the residents have been uninvolved in local government trusting council to act in their interest, and now it appears they cannot do so. She advised them that it is necessary for citizen watchdogs to monitor the activities of council. Ms. Burch recognized Eric Webber, President of the South Montgomery County Liberty Group and Ron Alban; Citizens United to End Ohio's Estate Tax; both Kettering residents and hopes they can be heard. Mayor Duncan indicated anyone is welcome.

Rodger Gamblin, 8 Springhouse, husband of Kathleen Burch expressed concern with the \$5,000 given to Shaker Heights to partially reimburse their expenditure of \$150,000 for lobbying efforts to oppose the repeal of the estate tax. Although estate tax has brought money to Oakwood, he believes it is an antisocial and destructive means due to the sale or shut down of small businesses and loss of capital. He noted those in position to lose money to the tax from their estates tend to move elsewhere prior to their death and he would expect the city to be more interested in the long-term welfare of its citizens. He referenced communications between his wife and Mr. Klopsch about concern of the \$5,000 expenditure yet five days thereafter, a check was cut. Mr. Gamblin referenced the large estate tax in 2007 and the amount of that money that was dispersed to support Pointe Oakwood which he believes is a crime, the city should not be in the real estate business, especially if they are in a dire financial situation. He noted taxes on their home have risen about \$5,000 over the past four years which means value in their property has also been lost. He wondered why the city wants the tax rate higher, perhaps because city caretakers that citizens elected have not been good stewards.

Ron Halpin, Lenox Drive in Kettering, indicated he previously lived in Oakwood and presented two documents of his testimony that was presented to the Ways & Means Committee. He commended Mayor Duncan on his testimony which although he disagrees with in part, he agreed with concerns relating to prevailing wage. He is co-founder of the Citizens United to End Ohio's Estate Tax, represents 1,600 who have invested over 1,500 volunteer hours on gathering 84,000 signatures on a petition to end the estate tax in 2012. He is not against government but wants to restore Ohio from the catastrophic exodus of people, jobs, money and talent and believes estate tax is one factor for that loss. He indicated this is a losing battle. Mr. Halpin indicated there are 14 Oakwood residents who have volunteered and assisted in supporting this bill. He referenced an Ohio community whose law director is researching the legal means to refund families their estate tax money. He noted

candidate Kasich pledged to repeal the estate tax. Mr. Halpin indicated he supports HB 3 and commends the House & Senate for working slowly on this issue. He has been present at all the sessions, communicated with legislators and is pleased with other legislative actions, i.e., labor law, etc. He referenced Shaker Heights appropriating \$150,000 to defeat the estate tax issue, a very sad event. He indicated Shaker Heights's objective was to repeal the bill, they appropriated money and then recruited other local governments to reimburse them. He believes the use of tax dollars for this is improper and reviewed the number of jurisdictions listed who assisted as well as communities who decided not to give money based on the advice of their law director. Mr. Halpin commended council on their public service but indicated they have to turn Ohio around.

Eric Weber, President of the South Montgomery County Liberty Group, and on behalf of its 600 members, thanked council for the opportunity to speak. They are an active citizens group that has become disenchanted and have positive ideas to turn around Ohio. They have tried not to be confrontational which is only counterproductive. He believes the government has confiscated the wealth of the deceased, destroyed the free market and is having problems with spending. He indicated the accumulation of wealth is not necessarily from a silver spoon but created by families who have worked hard and honestly, something they want to remain in the future. He doesn't believe they should punish hard workers with elected officials and employees spending tax dollars to fight the estate tax issue. He noted the government doesn't create a wealthy entrepreneur, that is a result of private employment which in turn creates a tax base. Mr. Weber indicated the estate tax is not just bad for the rich. Ohio has one of the lowest exemptions and there are a lot of citizens who aren't savvy or do not have the means for estate planning. He believes many leave the state for six months to declare another residency which is not only a loss in estate tax but volunteer talents and philanthropic assistance. He indicated services and infrastructures need to be maintained, the government doesn't have a funding but a spending problem and he doesn't believe elected officials understand that. Mr. Weber thanked council for the opportunity to speak since he is not a resident of the city, but of Ohio. He indicated they need leaders to govern rather than candy coat.

Doug Kinsey, 315 Triangle, has a business on Far Hills and is a financial planner. He was unfamiliar with the impact the estate tax had on Oakwood and thanked those who testified at the state level. He indicated he is not part of the tea party and doesn't believe this is the right time to repeal the tax and further impact the middle class which could create another exodus and impact property values. Mr. Kinsey doesn't believe the estate tax is a deterrent to having a business in Ohio, nor has he seen too many leave Ohio. He believes there should be some relief at the federal level and that anything should be done on a phased-in approach so there isn't such a dramatic impact on cities. He extended thanks to the city manager for bringing this to the citizen's attention.

James Broz, 244 East, questioned the legality of whether the city could fund Shaker Height's lobbying effort even though he is a fan of Cleveland, the Cleveland Browns, etc. He referenced the city manager's information that in 2007 there was \$8M in estate tax funds with restrictions on how the city would spend that money so wondered where the reserve is. He is disappointed they are funding Pointe Oakwood where only one home has possibly been sold. He indicated they lost a lot when NCR left and believes if that hadn't happened; they wouldn't have the shortfall that is evidenced with the number of homes for sale. Mr. Broz believes they shouldn't fund this opposition that won't work, council should look at the future since they missed it at Pointe Oakwood.

Rob Scott, Kettering resident, challenged the Mayor's statement that Oakwood is a premiere community, since he believes Kettering is. He is an attorney in estate planning and does a lot of work on creating trusts so citizens aren't taxed and doesn't believe that is the message they should send to citizens. Although many of his friends have left the state to go some place warmer, he has chosen to stay here. He believes council is part of what is changing Oakwood; the government needs to do more with less. Mr. Scott indicated he has worked in the state legislature and the \$5,000 the city spent just got a young student to call the state representative, an expensive bill. He commended the Mayor on his testimony. Mr. Scott indicated this matter will go to litigation and he doesn't believe Oakwood wants to be associated with that.

Tommy Routsong, resident for 55 years, knows as a funeral director the importance of listing on the death certificate the legal residence to avoid estate tax, particularly for those with part-time residences in Florida. He indicated the problem is not only Pointe Oakwood but people are moving out of Oakwood. He was also unhappy that \$5K was sent to another city on this tax repeal issue. Mr. Routsong reminded council when he was here several months ago he urged them to look at the loss of money, yet they gave an increase to city employees – the wrong statement to citizens. He suggested they undertake a study on how to retain citizens rather than on a windfall estate tax. He indicated they need to spend time and efforts on getting people back to Ohio. Mr. Routsong indicated he has been opposed to using any estate money for operating expenses, only for projects.

State Representative Jim Butler stated he hopes to make regular visits to council for updates from Columbus. He reported on HB1, Jobs Ohio 1, a public/private partnership with the Ohio Department of Development. HB 2 relates to performance and how efficiently agencies are operating. The Voter ID Bill will require a photo ID when someone votes and the state will provide a free ID to those unable to purchase one. Representative Butler referenced SB 5 which the Governor signed and is pleased with the fair share regulation so that someone doesn't have to pay for their union dues; however, believes those individuals should not have any benefits or representation. He indicated the budget was introduced, local government funds reviewed and the estate tax issue discussed. As a citizen of Oakwood, Representative Butler believes the \$5,000 was probably a waste of money and referenced the controversy about using funds in that manner. He commended Oakwood on not renewing a levy or choosing to raise taxes and also commended the Liberty Group. He was pleased everyone remained civil and although he is in favor of repealing the estate tax, they all need to factor in the competitiveness of the state since citizens are leaving. Representative Butler referenced recent Census figures which resulted in Ohio going from 24 to 16 seats. He believes the estate tax is a bad tax, it only taxes one segment of the population and it's a tyranny. He explained the original repeal made it restorative to January 1, 2011 but that has been pushed back to 2013 but could be later. That gives the city two years to get ready to cut costs and one of those tools includes SB 5 and prevailing wage. Mayor Duncan thanked him for his presentation and indicated as a local government, council believes SB 5 will help manage costs unless it becomes a referendum and then they might not see immediate benefits. He agrees they have two years to plan and hopes prevailing wage rules could be eliminated on projects such as annual road maintenance.

A resident of Springboro and member of the Springboro Tea Party indicated a lot of people are tired of bureaucracy, citizen feedback is important and this is a great step forward. He believes Obama Care will do more damage than the estate tax and encouraged everyone to read all aspects of legislation to see how it impacts the local level.

Mary Bane, 5 Volusia, referenced the \$5,000 tax dollars that was spent and questioned how an official vote wasn't needed by the people the citizens have voted in. She also asked if the money can be returned if need be and reiterated tax dollars should not have been spent for lobbyists, she would hate to see Oakwood end up in a lawsuit.

Jeff Lutz, 555 Acorn, referenced the \$5,000 of taxpayer's money spent for the lobbyists and questioned whether Council voted on that or if it was discretionary spending. Mayor Duncan explained when council approved the 2011 budget it included a \$10,000 item for general government consulting, so this was from that fund. Mr. Lutz wondered if council was asked about that expenditure. Mayor Duncan indicated council appropriated the money and it was at the discretion of the city manager to spend this with no objection from council.

Mayor Duncan thanked everyone for their input and comments. He asked if there were any other visitors with business. There were no comments.

ORDINANCE

BY MR. BYINGTON

NO 4724

TO AMEND SECTION 301, TERMS DEFINED, OF THE OAKWOOD ZONING ORDINANCE TO CLARIFY THE DEFINITION OF "FAMILY."

A copy of the ordinance, having been placed on the desks of each member of council prior to introduction, was read by title. Mr. Byington reviewed the ordinance and explained this clarifies the definition of family. This amendment went through a public hearing before the Planning Commission with recommendation for approval.

Thereupon, it was moved by Mr. Byington and seconded by Mr. Stephens that the ordinance be passed without two readings.

Mayor Duncan opened the public hearing. Mr. Broz asked if this is fulfilling a federal government guideline. Mr. Jacques explained last year the Montgomery County Fair Housing Agency undertook a study of all local regulations relating to supported living facilities and this clarifies that issue.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. WILLIAM D. DUNCAN YEA
MR. STEVEN BYINGTON YEA
MR. STANLEY CASTLEMAN YEA
MR. ROBERT P. STEPHENS YEA

MRS. ANNE S. HILTON YEA

There being five (5) yea votes and no (0) nay votes thereon, said ordinance was declared duly passed and it was so ordered.

RESOLUTION

BY MR. STEPHENS

NO 1732

DECLARING THE NECESSITY OF REPAIRING SIDEWALKS AND APPURTENANCES THERETO ON ABERDEEN AVENUE AND CERTAIN OTHER STREETS BETWEEN CERTAIN TERMINI IN THE CITY OF OAKWOOD, OHIO, PROVIDING THAT ABUTTING PROPERTY OWNERS REPAIR THE SAME.

A copy of the resolution, having been placed on the desks of each member of council prior to introduction, was read by title. Mr. Stephens explained this project is from Aberdeen to Far Hills to Patterson and to Shroyer. Mayor Duncan explained every four years the city goes around and marks walks that need attention with an orange “x”.

Thereupon, it was moved by Mr. Stephens and seconded by Mrs. Hilton that the resolution be passed.

Upon call of the roll on the question of the motion, the following vote was recorded:

- MR. WILLIAM D. DUNCAN YEA
- MR. STEVEN BYINGTON YEA
- MR. STANLEY CASTLEMAN YEA
- MR. ROBERT P. STEPHENS YEA
- MRS. ANNE S. HILTON YEA

There being five (5) yea votes and no (0) nay votes thereon, said resolution was declared duly passed and it was so ordered.

There was no staff or city manager’s report.

COUNCIL COMMENTS

Mrs. Hilton referenced the Historical Society Open House and indicated other information is available at the website www.oakwoodhistory.org

Mr. Stephens invited the community to the “That Day in May” festivities on May 21.

Mr. Byington indicated this is his first year, after 30+ years, to win a college basketball pool.

Mayor Duncan referenced the recent *Dayton Business Journal* listing of 40 under Forty high achievers and commended Law Director Robert Jacques and State Representative Jim Butler on the honor. He also recognized City Manager Norbert Klopsch on receiving the YMCA of Greater Dayton Teen Services Volunteer of the Year award. Mayor Duncan recalled at the January 16, 2011 WSU Raiders basketball game, WSU beat the Butler Bulldogs, a team playing tonight for the national championship.

Council adjourned. The public meeting concluded at 8:55 p.m.

MAYOR

ATTEST:

CLERK OF COUNCIL