

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
APRIL 25, 2000

A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 7:30 p.m. by Mayor John A. Buckley.

1. Pastor Curtis A. Deming, Vineyard Christian Fellowship, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Ed Palmer	Vice Mayor – Dist. #2
	Priscilla M. Poole	Council Member – Dist. #3
	Grace Walker	Council Member – Dist. #4
	Cheryl Palmer	Council Member – Dist. #5
	Loretta Isenberg-Hand	Council Member – Dist. #6
	Henry J. Hill	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Peggy Braz	Planning and Zoning Administrator

4. PROCLAMATIONS AND PRESENTATIONS

“Nurses Week,” May 6 – 12, and “Healthcare Week,” May 7 – 13, accepted by Keith Slaughter, Chief Operating Officer, Holmes Regional Medical Center.

The Mayor displayed a resolution from the Brevard County Board of County Commissioners recognizing Melbourne’s participation in preparation of the Space Coast Local Mitigation Strategy, which establishes a comprehensive, coordinated planning process to identify and eliminate disaster vulnerabilities.

Mayor Buckley presented a plaque to Steve Beltz, former District 1 Council Member, in recognition of Mr. Beltz’s public service from November 1996 through April 2000.

Mayor Buckley recognized Director of Finance Amy Elliott for the award presented to the city from the Government Finance Officers Association of the United States and Canada for Excellence in Financial Reporting (fiscal year ended September 30, 1998). Ms. Elliott thanked the Finance staff for their contributions to the award.

5. APPROVAL OF MINUTES – Regular Meeting – March 28, 2000

Moved by C. Palmer/E. Palmer for approval of the March 28 minutes. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Hill informed Council that proposals were received from eight firms to provide underwriter services for the Water and Sewer Revenue Bonds, Series 2000. Four of the firms will be interviewed in the Council Chamber on April 27 beginning at 1:00 p.m.

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Following that, a recommendation will be made to Council.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2000-24 (Annexation Request AR-2000-128): (Public Hearing/ Second Reading) A proposed ordinance to annex three parcels and a portion of the Jones Road right-of-way, located west of I-95, south of Lake Washington Road, north of White Pine Drive (Aurora Road) and east and west of Jones Road. (Owner/Applicant – J. W. Woodson/William D. Woodson/City of Melbourne) (First Reading 4/11/00)

Attorney Gougelman read Ordinance No. 2000-24 by title. There were no comments from the public.

Moved by E. Palmer/Walker for approval of Ordinance No. 2000-24.

Mrs. Poole stated that although this item indicates that it will have a favorable impact on the budget, she can't vote for it because sanitary sewer is not available and septic tanks will be used close to our water supply.

Mrs. Hand said she is also concerned about the location of septic tanks and flooding; however, she will support this item because Council has no choice. Mrs. Walker agreed.

The question was called. The roll call vote was:

Aye: Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: Poole

Motion carried.

9. ORDINANCE NO. 2000-25 (Annexation Request AR-2000-129): (Public Hearing/ Second Reading) A proposed ordinance to annex a developed industrial office building located east of North Drive, south of Sarno Road and north of Dow Road. (Owner/Applicant – Trio Industrial LLC /Craig Rathbun) (First Reading 4/11/00)

Attorney Gougelman read Ordinance No. 2000-25 by title. There were no comments from the public.

Moved by Poole/Hand for approval of Ordinance No. 2000-25. The roll call vote was:

Aye: Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

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NEW BUSINESS

10. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/C. Palmer for approval of the consent agenda, items “a – g.” Motion carried unanimously.

The consent agenda was approved as follows:

- a. Purchase of a Game Time® Pagoda Tree House Playground System, Dominica Recreation Products, Longwood, FL - \$29,923.76.
 - b. Contract for treatment for aquatic weed control of 84 waterway locations, Coastal Science Associates, Inc., Jacksonville, FL - \$26,254.80.
 - c. Contract for Pirate Lane Turn Lane Improvements, Project No. 99602, Wm. Turnbaugh Construction, Inc., West Melbourne, FL - \$36,285.80.
 - d. Change Order No. 1 for D.B. Lee Wastewater Treatment Plant Exploratory Monitor Well, Project No. 94310, Jaffer Associated, Ltd., Miami, FL - \$5,800.00.
 - e. Subordination Agreement with FDOT for Parcel No. 142.4 for U.S. 1 Widening Utility Relocation, Project No. 99-325.
 - f. Acquisition of nine lots along Dove Street in North Melbourne for construction of stormwater treatment pond - \$30,390.00.
 - g. Change Order No. 1 to Wharton-Smith, Inc. contract for D. B. Lee and Grant Street Wastewater Treatment Plants O&M Improvements, Project No. 97321, for rehabilitation of existing Dorr-Oliver Flocculator, \$24,399.00.
11. ORDINANCE NO. 2000-28 (CU-2000-02/Coptic Orthodox Church): (Public Hearing/First Reading) A proposed ordinance to implement a conditional use for a church in an R-2 (One-, Two-, and Multiple-Family Residential) zoning district on seven lots totaling 1.4 acres located on Guava Avenue, south of Law Street and north of Creel Street. (Owner/Applicant – Archangel Michael Coptic Orthodox Church and the Estate of Margie C. Allen, Trustee) (Representatives – Odette Girgis, Nazieh Yacomb and Mark J. Allen) (P&Z 4/13/00)

Attorney Gougelman read Ordinance No. 2000-28 by title.

Ms. Braz briefed Council. There has been a church at this location since 1959. The existing Nazarene Church occupies four of the lots used as a church and accessory parking. The property does not currently have a conditional use because the church use preceded the requirement for the conditional use. The property is zoned R-2 (Cap 6) (One-, Two- and Multiple-Family Residential with a cap of six units per acre). The land use is low-density residential.

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The existing church is located on the three north lots with off-street parking provided on an unpaved lot on the west side of Guava Avenue. This request will afford the applicant additional lots for a future expansion of the church on property adjacent to and south of the existing church site. There will be no expected increase in traffic, and it will not be disruptive to the adjoining residential areas. The presence of viable churches in a neighborhood contributes to the economic health of the community. Additionally, area streets are capable of accommodating traffic to/from this site.

Expansion of the church will require construction of paved parking and retention. Since the site has not been vacant for more than 90 days, no property upgrades are required. This conditional use formally recognizes the existing use and provides for the protection of this use under the law. The applicants have indicated their intent to improve and upgrade the property.

The applicants have received an exemption from providing an Environmental Impact Assessment Report since the property is substantially developed and located in a developed area. The only environmental issues of concern are the trees. As indicated in the applicants' letter, no substantial construction is proposed at this time. Any impact to trees will be evaluated when development plans are submitted.

The Planning and Zoning Board and staff recommended approval of the request with the findings listed in the package.

Mayor Buckley opened the public hearing. There were no comments.

Moved by Walker/C. Palmer for approval of Ordinance No. 2000-28. Motion carried unanimously.

12. ORDINANCE NO. 2000-29 (A&V #232): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate two feet of a 20-foot wide public utility and drainage easement along the south property line of Lot 37, Rio Villa Subdivision. (Requested by Richard L. and Barbara S. Young)

Attorney Gougelman read Ordinance No. 2000-29 by title.

Mr. Hill explained that this is the first reading of an ordinance to abandon and vacate two feet of a 20-foot wide public utility and drainage easement along the south property line of Lot 37, Rio Villa Subdivision, at 411 Rio Casa Drive North.

Mr. and Mrs. Richard Young are the owners of the property. They have contracted to install a screen enclosure around their existing swimming pool. The enclosure will be installed on the outside of the concrete decking, which will create the two-foot encroachment into the easement.

There were no objections from city departments, local utility companies or the Rio Villa Homeowners Association. The recommendation is for approval.

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There were no comments from the public.

Moved by C. Palmer/Hand for approval of Ordinance No. 2000-29. Motion carried unanimously.

13. COUNCIL ACTION RE: A request for Council to reconsider its vote and withdraw the resolution censuring Council Member Poole. (Requested by Mr. Tom Porcella)

From the agenda report: Mr. Tom Porcella has submitted a request that Council reconsider its adoption of Resolution No. 1633 censuring Council Member Poole. He states, *“The action of Council to consider the repercussions for voting to censor a Council Member on nothing more than hearsay. Hearsay evidence is not admissible in courts.”*

Tom Porcella, 1696 PGA Boulevard, asked Council to reconsider the resolution censuring Mrs. Poole for expressing her views on naming a street in Melbourne after Martin Luther King, Jr. He stated that the controversy began with a March 21 Florida Today article. He added that a comment is nothing more than an observation or remark expressing opinion or attitude; the Constitution grants the right of free speech. Expressing an opinion does not violate existing resolutions, ordinances or statutes.

Continuing, Mr. Porcella said a resolution relates to an administrative action and free speech is not a matter of administration. He said he believes that the people who felt offended should have filed a petition and presented a grievance to City Council. If Council found it was warranted, a letter of reprimand should have sufficed. He added that Mr. Beltz got into the act when his intentions all along were to resign as the District 1 Council Member. He implored each Council Member to put their differences behind them, correct the wrongdoing, and reconsider the resolution.

Mr. Porcella concluded by questioning whether Mrs. Poole had a fair hearing when each Council Member announced to the press how they intended to vote on this issue.

Sophy Lynch, 1715 Elizabeth Street, stated that she has known Mrs. Poole for over 35 years; she does not feel Mrs. Poole is a racist. Mrs. Lynch commented that free speech can't be muzzled; it has to be equal for everyone. She added that she supports Mrs. Poole's honesty and reconsideration of the censure resolution.

Bennie Hopkins, 624 Williams Street, said that this issue has nothing to do with free speech. He added that when you exercise free speech, you have to reap the consequences. He noted that Mr. Porcella has previously stated that we have to get this issue behind us, yet he returned to Council with this issue. Mr. Hopkins recommended Council stop and get on with the business of the city.

Patty Ernest, Palm Bay, stated that Pat Poole has always been there for her.

Mrs. Poole stated that a Council Member is elected by the people; censure should be in the form of being voted out of office. She asked where Council's censure was when Mr. Beltz asked the Library Board and School Board to remove books or when he confronted

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Blockbuster Video on the removal of videos. She noted that Council had no proof of what was said between her and the reporter. Council based its vote on hearsay.

Continuing, Mrs. Poole said that it was a violation of the Sunshine Law for each member to indicate to the newspaper how they intended to vote (see Petitions and Remonstrances for continuation of this discussion).

Mrs. Poole said members made up their minds based on an edited article written to arouse the NAACP. She added that Florida Today has launched an attack to pit Blacks against Whites. Council's censure was to appease the NAACP, the MLK Coalition, the South Brevard Civic League and other Black citizens who make up 6% of our voters. She recommended each member read the facsimiles and e-mails and listen to her answering machine recordings to learn what the majority of voters think about this issue.

Mrs. Poole continued and stated that Robert's Rules of order provides that an accused member has the right to due process. She said she was not given time to prepare a defense and the resolution to censure was changed during the course of the meeting; she was not offered an opportunity to review the changes.

Mrs. Poole concluded by saying that she doesn't expect Council to rescind the censure. However, she stressed that her freedom of speech was violated and Council has allowed other people and minorities to call her a bigot and a racist.

Mrs. Palmer referenced Mr. Porcella's agenda item, which states he is asking for Council to reconsider the vote to "censor" Mrs. Poole. Mrs. Palmer stressed that Council did not vote to "censor." Council's vote to censure was an expression of disagreement. Mrs. Poole has a right to free speech; however, Council wanted to show the community that it disagreed with comments or the tone of comments that were made. She added that she did not make up her mind about the vote until she saw a continuation of the tone of comments made in the paper at the meeting.

Additionally, Mrs. Palmer referenced Mrs. Poole's comment about defending only 6% of the voters. Mrs. Palmer said it would be sad if members failed to support all voters. She concluded by saying she respects Mrs. Poole but disagrees with her comments.

Mrs. Hand said this item was taken care of several weeks ago. With regard to the Sunshine Law reference made by Mrs. Poole, Mrs. Hand stated that Mrs. Poole has indicated her vote to the newspaper and radio for years.

Mrs. Walker agreed that Mrs. Poole has revealed to the press for years how she will vote on an item. Mrs. Walker added that she based her decision on the vote to censure on comments and attitudes that she observed in the meeting.

Mr. Palmer stated that the issue is the right guaranteed by the Constitution to express an opinion without fear of government pressure – regardless of whether you agree with the content of the expression. He added that he had a problem with this because he believes Council tried, convicted and sentenced Mrs. Poole on hearsay evidence; she was not given an opportunity to defend herself.

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That concluded Council's comments. No action was taken.

For procedural reasons, Council considered Item 15 prior to Item 14. (Ordinance No. 2000-32 repeals and reserves the section of the City Code relating to lawsuits and claims. Ordinance No. 2000-30 provides for a "strike through" of the reserved language and inserts the new language.)

14. ORDINANCE NO. 2000-30 (Settlement of Litigation): (First Reading) A proposed ordinance relating to the settlement of lawsuits and claims against the city.

Attorney Gougelman read Ordinance No. 2000-30 by title.

Due to repeal of previous legislation, it is recommended that Council adopt a policy defining when and under what circumstances litigation must be presented to the Council before it can be settled. The recommendation is to delegate this authority to the City Manager or his designee (the Risk Manager) as outlined in the agenda package.

The city's insurance carrier has, by contract, full authority to settle claims. However, since the city is "self-funded" for amounts up to \$25,000, the carrier coordinates with the city.

The proposal is to classify claims into the categories of "major" and "minor". It is suggested that the City Council delegate to the City Manager responsibility for settlement of "minor" claims. "Major" claims would still require Council action. Any claims settled would be reported to City Council. We believe this arrangement will allow for expeditious and economical resolution of actions, which may be made against the city.

Attorney Gougelman read Ordinance No. 2000-30 by title.

Mr. Gougelman and Mr. Hill responded to procedural questions.

Mr. Palmer asked if there is a requirement that Council be informed about all claims, regardless of whether Council is involved in the settlement. Attorney Gougelman said he and the Risk Manager have been compiling a master list; the idea is to distribute that comprehensive report to Council periodically.

Moved by E. Palmer/Walker to direct the City Attorney to provide Mayor and Council with a regular report on all claims. Motion carried unanimously.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2000-30. Motion carried unanimously.

15. ORDINANCE NOS. 2000-31 AND 2000-32: (First Readings) Proposed ordinances implementing Code Review Committee recommendations, Section 3, to City Code, Chapters 1 and 2. (Requested by Council 3/14/00)

Attorney Gougelman read Ordinance Nos. 2000-31 and 2000-32 by title.

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The City Code Review Committee, Section 3, formally presented proposed changes to Chapters 1 and 2 of the City Code at the February 22 meeting. Council reviewed those changes at the March 14 meeting and directed staff to return with enacting ordinances.

Ordinance No. 2000-31 amends Chapter 1 by providing a definition of board member and clarifying the word "shall."

Ordinance No. 2000-32 amends Chapter 2 by providing for review and update of the Mayor and Council salary; revising fingerprinting and bonding requirements for employees; defining how board vacancies occur; clarifying that a board member may be removed for reasons including non-attendance; repealing the outdated board "term" language; revising the travel section to reflect the current practice; revising and reorganizing the purchasing section; recognizing the purchasing manual; re-titling the purchasing agent to purchasing manager; increasing the purchase threshold amounts; and adding a new section to recognize and codify the special activity permitting process.

Additionally, the City Clerk and City Attorney are recommending that Section 2-25, *Addressing Council*, be revised by removing the requirement that persons addressing the Council must be taxpayers or residents of the city. They believe a compelling argument could be made that this section violates the concepts of procedural due process and the Sunshine Law. An information opinion in the Sunshine Manual provides that "it is not readily apparent how the residence of the speaker or his/her ownership of property in a certain area would be relevant to the orderly conduct of a meeting."

The Code Review Committee considered staff's recommendation; however, by consensus they decided to leave the section as is. Several of the members felt that Melbourne residents should be recognized before non-residents. It has been the current Council's practice to allow citizens to speak at meetings; therefore, we do not believe a change in this section would impact the length of meetings.

Additionally, the City Attorney is recommending that Section 2-216, *Fees*, be repealed. A resolution providing for adoption of the fees will be prepared for the May 9 meeting to coincide with second reading of the ordinance. This change would allow fees to be revised in the future at one meeting (adoption of a resolution as opposed to an ordinance).

Mr. Hill referenced the memorandum distributed to Council indicating the following changes to Ordinance No. 2000-32:

Section 2-63: Revised to reflect that the director of finance shall provide an annual report (as opposed to a monthly financial report). This change will reflect the current practice and will not impact the monthly budget status reports provided by the Budget Division.

Section 2-231: Revised to include a definition of professional services.

Section 2-233: Revised to include that professional services are excluded from the Purchasing Code. Currently professional services are exempt in the Code. Professional

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services should not be obtained via the Purchasing Code because it is important for the city to have the flexibility to hire the best-qualified firm for these services. Services would include auditor, financial advisor, underwriter, city attorney, bond counsel, etc.

Mrs. Hand referenced the word “he” in Section 2-63 and recommended it be changed to “director.” Mr. Hill explained that Chapter 1 of the Code clarifies that words implying the masculine gender only are applied to females, firms, partnerships, and corporations, as well as to males.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2000-31. Motion carried unanimously.

Council discussed Ordinance No. 2000-32 and recommended the following changes:

- Add a provision to the general section on boards providing that each board shall elect one of its members to serve as chairman and vice chairman. The term of the chairman shall be for a one-year term; however, a chairman and vice-chairman may be re-elected.
- Section 2-63 – Revised as recommended above.
- Section 2-231 – Revised as recommended above.
- Section 2-233 – Revised as recommended above.

Additionally, Mr. Palmer asked staff to review the language in Section 2-237 to determine if clarification is needed. Mr. Hill noted that this section provides that a contract may be awarded without formal contract when the purchase is from a governmental entity, is a sole source procurement, or is considered surplus property. However, staff will review the section to determine if a change is needed.

Recessed: 8:55 p.m.
Reconvened: 9:06 p.m.

Moved by Hand/E. Palmer to approve Ordinance No. 2000-32 with the changes outlined above.

Attorney Gougelman referenced staff’s recommendation to revise Section 2-25 (addressing Council). He asked if Council wished to consider a change.

Mrs. Hand, Vice Mayor Palmer, and the Mayor each commented that Council currently allows input from people who are not residents. Mrs. Palmer said she believes the current system has been working well. She added that we would have longer meetings if we allow input from people who don’t own property in the city.

Mayor Buckley said staff is indicating that if we are challenged on this issue, we would have to make a change.

By consensus, Council agreed to amend this section per the City Attorney’s memorandum in the package.

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Mr. Palmer asked staff to investigate why the terms of the Library Board members are five years.

The question was called on the motion, including the change to Section 2-25. Motion carried unanimously.

16. COUNCIL ACTION RE: A request for Mayor Buckley to attend the installation of Chief Chandler as President of the Florida Police Chiefs Association, June 14-15, 2000, Sanibel Island, Florida.

Police Chief Chandler will be installed as the President of the Florida Police Chiefs Association at their annual conference June 11-15, 2000 in Ft. Myers, Florida. The Chief asked Mayor Buckley to install him during the swearing in ceremony. The Mayor's travel dates will be June 14 and 15. Funding in the amount of \$326 is available from the Mayor and Council training and education account.

Moved by Hand/E. Palmer for approval. Motion carried unanimously.

17. COUNCIL ACTION RE: Board Appointments

- a. Babcock Street Redevelopment Committee – three regular members

Moved by Poole/Walker to reappoint Hank Porcher. Motion carried unanimously.

Moved by E. Palmer/Poole to reappoint William Koehne. Motion carried unanimously.

Moved by C. Palmer/Walker to reappoint James Whaley. Motion carried unanimously.

(Terms: May 4, 2000 – May 3, 2002)

- b. Citizens' Advisory Board – two regular members

Mayor Buckley called for nominations for the seat with a term ending November 11, 2002.

Moved by Hand/Walker to appoint Franklin Peter Galley. Motion carried unanimously.

Mayor Buckley called for nominations for the seat with a term ending November 11, 2001.

Moved by E. Palmer/Poole to appoint Cathleen Pai. Motion carried unanimously.

Moved by C. Palmer/Walker to appoint Camela Stella as the first alternate (term ending November 11, 2001). Motion carried unanimously.

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18. COUNCIL ACTION RE: Proposed revision to the Leisure Services Financial Assistance Program – Summer Day Camps.

In 1997 Council approved a Financial Assistance Program for children of low income Melbourne resident families participating in the city's recreational programs. The Leisure Services Department is now proposing modification to the program to allow for a family discount for multiple children participating in the Summer Day Camps. A 20% discount to the basic fee is proposed for families that have more than one child paying full price. This discount is similar to practices of private day care facilities. We do not believe the discount would result in significantly reduced revenues and could be an incentive for individual children to participate who are presently not in the program.

Moved by E. Palmer/C. Palmer for approval. Motion carried unanimously.

19. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Palmer asked the attorney to comment on Council Members revealing their vote to the newspaper on a non-quasi judicial item. Attorney Gougelman replied that if the item is non-quasi judicial, an early 1980 opinion from the Attorney General has indicated that this would not be a violation of the Sunshine Law. However, if the item were considered quasi judicial, a member would potentially be violating due process by revealing a vote.

Additionally, if a Council Member attends, for example, a Planning and Zoning Board meeting and takes a public position on a quasi judicial item that is going to later come before Council for a vote, the member has placed themselves and the city in a liability situation. It could be compared to a judge making a decision before the trial and would therefore deny due process and a fair hearing.

Mrs. Poole added that items before the Zoning Board of Adjustment would not appear before Council. An aggrieved person can only go to court. However, she said what bothers her is that a developer receives approval from Council and then applies to the Board of Adjustment for variances. If the variances had been in place, Council might not have approved the development. She asked if the board could refer an item to Council instead of taking action at its meeting.

Attorney Gougelman said generally no. He added that Council has appointment authority over the Board of Adjustment. Additionally, through the Code, Council establishes the standards that guide the board's discretion. It then becomes the members' job to apply the standards.

Mr. Hill offered that once a board member is appointed, Council needs to trust them; they have been asked to give up their time and energy and the system is premised on that trust.

Mrs. Poole recommended Council Members attend meetings to observe who has been appointed to the boards. Mr. Hill said that is different than members interjecting themselves in the process.

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Mrs. Palmer asked about two Council Members attending a board meeting and interjecting an opinion. Mr. Gougelman said again, if it relates to a quasi judicial item that will later appear before Council, that presents all kinds of problems.

Mr. Palmer said he does not believe it is prudent to reveal to reporters how you intend to vote. Mrs. Walker asked if anything could be done about decisions made by the Board of Adjustment, besides appointments. Mr. Gougelman said Council can a) carefully screen applicants; b) amend the standards; or c) appeal a decision of the board to the Circuit Court.

Mrs. Palmer asked if there is a method to remove a board member if Council determines he/she is not behaving in a manner that Council approves of. Mr. Gougelman replied that a member can be removed for malfeasance, misfeasance, neglect of duty, drunkenness, felony conviction, etc.; however, a member may not be removed simply because Council does not like the way they vote. That, however, would be a reason for not reappointing the member.

20. ADJOURNMENT

Moved by Walker/E. Palmer to adjourn. Motion carried unanimously.

The meeting adjourned at 10:02 p.m.

City Clerk – 5/10/00

Approved by Council: _____