

ARLINGTON CITY COUNCIL
MEETING MINUTES
FEBRUARY 4, 2008

The meeting was called to order at 6:30 p.m., Mayor Kreft presiding.

Members present: Mayor Kreft, Griep, Reetz, Vrklan, Wills

Members absent: Borchert

Also present: Administrator Jaunich, City Attorney Arneson, Police Chief Rovinsky, Allan Dose

Motion by Griep, seconded by Wills, and passed by unanimous vote to approve the agenda with the following changes/additions:

7B) Building Permit Report.

Motion by Reetz, seconded by Vrklan, and passed by unanimous vote to approve the consent agenda as follows:

- 1) Approval of the January 22nd Regular Meeting Minutes
- 2) Approval of the Bills.

Mayor Kreft noted that there were no citizens present to address the Council.

Adm. Jaunich noted the following announcements:

- 1) Legislative Meeting Thursday, February 7th in Henderson;
- 2) City Offices will be closed Monday, February 18th for President's Day Holiday;
- 3) Next Regular Council Meeting will be Tuesday, February 19th;
- 4) MMUA Winter Legislative Conference March 12th-14th.

Motion by Reetz, seconded by Wills, and passed by unanimous vote to contribute \$500 to the Southern Minnesota Initiative Foundation for 2008.

The Council reviewed a donation request from the Arlington Green Isle Women of Today organization. No action was taken.

The Council reviewed the January Building Permit Report from Building Official Haslip.

Police Chief Rovinsky presented his monthly police report. He stated that the Police Department had been awarded a computer from the Target Corporation.

Chief Rovinsky commented that a small committee had met with the Sheriff's Department about changing the hours of coverage between the two departments, which would allow for Police Department to have some day coverage and Sheriff's Department some evening coverage. He commented that their proposal was not very well received by the Sheriff's Department as they do not have the staffing in the evenings as they do during the day. The Committee was recommending contracting with the Sheriff's Department for additional (20 hours per month) patrol coverage during the day.

Motion by Vrklan, seconded by Wills, and passed by unanimous vote to contract with the Sheriff's Department for the additional (20 hours per month) patrol coverage during the day as recommended by the Police Committee.

Discussion on the proposed annexation of the Highland View Addition was held. It was noted that Allan Dose, a resident within the Addition was present. Mayor Kreft noted that there were 18 residents within the neighborhood and that in order for annexation to occur, 50% of them must petition the City for annexation (per the Orderly Annexation Agreement). It was noted that deadlines had been set and extended several times to accept petitions for annexation. Mayor Kreft stated that the City received six petitions. Adm. Jaunich stated that he and staff had been doing some research to see if there were any funding opportunities available to help reduce costs associated with putting in city water and sewer. It was noted that a representative from the University of Minnesota Extension Service would be willing to come out and meet with the residents within the neighborhood about their current systems. It was suggested to provide the property owners with the contact information and let them follow up on their own.

Motion by Griep, seconded by Vrklan, and passed by unanimous vote to deny the petitions for annexation from the six residents in the Highland View Addition due to lack of resident interest. Adm. Jaunich will send out letters to all the residents informing them of the City's decision.

Discussion was held on possibly annexing the two properties within the Highland View Addition that are immediately adjacent to the city boundary line, who were included in the 6 petitions denied above. Attorney Arneson commented that there was a clause within the Orderly Annexation Agreement that allows for annexation of individual properties as long as they are adjacent to the boundary line. He stated that if the property owners were still interested in annexation they would have to submit new petitions.

The second reading was held of Ordinance No. 220 – An Ordinance Repealing and Replacing Section 14 of Ordinance 169, the Arlington Zoning Ordinance, Relating to Non-Conforming Uses Within the City.

Motion by Reetz, seconded by Griep, and passed by unanimous vote to approve Ordinance No. 220 – An Ordinance Repealing and Replacing Section 14 of Ordinance 169, the Arlington Zoning Ordinance, Relating to Non-Conforming Uses Within the City as follows:

ORDINANCE NO. 220

AN ORDINANCE REPEALING AND REPLACING SECTION 14 OF ORDINANCE 169, THE ARLINGTON ZONING ORDINANCE, RELATING TO NON-CONFORMING USES WITHIN THE CITY

I. THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC SAFETY, HEALTH AND WELFARE, HEREBY ORDAINS SECTION 14 OF ORDINANCE 169 BE REPEALED AND REPLACED AS FOLLOWS:

SECTION 14: NON-CONFORMING USES

SUBD. 1. PURPOSE AND INTENT.

1. It is the purpose of this section to provide for the regulation of non-conforming uses of land, non-conforming structures and non-conforming lots of record and to specify requirements, circumstances and conditions under which non-conforming uses of land, non-conforming structures and non-conforming lots of record may be operated and maintained.
2. This Section is intended to accomplish the following:
 - A. Recognize the existence of non-conforming uses of land and non-conforming structures which were lawful when established but which no longer meet all ordinance requirements;
 - B. Discourage the enlargement, expansion, intensification or extension of any non-conforming use of land or non-conforming structure or any increase in the impact of a non-conforming use of land or a non-conforming structure on adjacent properties;
 - C. Regulate the repair, replacement, restoration, and improvement of non-conforming uses and structures to prevent and abate nuisances and to protect the public health, safety, or welfare;
 - D. Encourage the elimination of non-conforming uses of land and/or non-conforming structures or reduce their impact on adjacent properties;
 - E. Eventually bring all non-conforming uses of land and non-conforming structures and uses into conformity.

SUBD. 2. DEFINITIONS.

For the purposes of this section, the following terms and phrases have the meanings given to them.

1. "Legal non-conformity" or "non-conforming use" means any land use, structure, physical form of land development, lot of record or sign legally established before the effective date of this ordinance or subsequent amendment to it that would not be permitted by, or is not in full compliance with, the regulations of this ordinance. A non-conformity or non-conforming use is one of three types: non-conforming land use, non-conforming structure or non-conforming lot of record.
2. "Non-conforming land use" means an activity using land, buildings, and/or structures for a purpose that was legally allowed when established but that is not currently allowed as a use in the zoning district in which it is located.
3. "Non-conforming structure" means a legal non-conformity other than a non-conforming land use that complied with ordinance standards at the time it was established but that does not currently conform to an ordinance standard such as height, setback, or size.

4. "Non-conforming lot of record" means an existing base lot of record at the time of approval of this Ordinance that is non-conforming in terms of lot area or lot width or depth and that has not at any time been the site of a principal use/structure.
5. "Expansion," "enlargement," or "intensification" means any increase in a dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any improvement that would allow the land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of the non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city. The addition of a site feature such as a deck, patio or fence may be allowed provided a conditional use permit is issued.
6. "Improvement" means making the non-conforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement, or intensification.
7. "Replacement," "reconstruction," or "restoration" means construction that exactly matches pre-existing conditions.

SUBD. 3: STANDARDS.

1. Non-Conforming Uses of Land.
 - A. A nonconforming use of land and conforming structures used for a non-conforming use of land may be used and continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion.
 - B. There may be no expansion, enlargement, or intensification of any non-conforming use of land.
 - C. Change of Non-Conforming Use of Land. A non-conforming use cannot be changed to another non-conforming use. Whenever a non-conforming use has been changed to a conforming use it shall not thereafter be changed to a non-conforming use of a less restricted district.
 - D. Discontinuance of Non-Conforming Use of Land. If a non-conforming use of land is discontinued or ceased for a period of one (1) year or more, or if a nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value and no building permit has been applied for within 180 days of when the property is damaged; then, the subsequent use of such building or land shall conform thereafter to the uses allowed in the district in which it is located.
 - E. If a non-conforming use is superseded or replaced by a permitted use, the non-conforming status of the premises and any rights which arise under the provisions of this section terminate.
 - F. If replacement, reconstruction, or restoration of a legal non-conforming land use is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed. Work that would not meet this requirement and any work that would be an improvement to a non-conforming land use may not be undertaken unless a conditional use permit has been issued for the property. The city may impose conditions in a conditional use permit to protect the public health, safety, or welfare, and to mitigate any newly created impacts on adjacent property
 - G. Notwithstanding the prohibitions contained in the foregoing paragraphs of this subdivision, if approved by the City Council a non-conforming use may be changed to another non-conforming land use of less intensity if it is in the public interest and a conditional use permit is issued. In all instances the applicant has the burden of proving that the proposed land use is less intense than the exiting nonconforming land use.
2. Non-Conforming Use of Structures.
 - A. A nonconforming structure may be used and continued, including through repair, replacement, restoration, maintenance, or improvement.
 - B. Expansion, Enlargement, or Intensification of a Non-conforming Structure. A non-conforming use of a building may not be expanded, enlarged or intensified by adding onto the building. Except that expansion, enlargement or intensification of conforming aspects of a non-conforming structure are exempt from this requirement. For example, if a structure has a non-conforming front setback, it may be expanded on the sides that do meet setback requirements as long as the expansion itself meets ordinance requirements.
 - C. Non-Conforming Structure, Structural Change. An existing non-conforming structure devoted to a non-conforming use may not be enlarged, extended, reconstructed, moved, or structurally altered except in changing the use of the structure to a conforming use.
 - D. Maintenance of Non-Conforming Structure. Maintenance of a building or other structure will be permitted when it includes necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming building or use.

- E. Residential Alterations. Alterations may be made to a residential building containing non-conforming residential units when they will improve the livability and safety of such units provided, however, that they do not increase the number of dwelling units in the building. The construction and alteration of garages and accessory buildings is also permitted, as long as the improvements conform with the zoning requirements for both the zoned use of the property, and the non-conforming use.
 - F. Continuation of Non-Conforming Use of Structure. The lawful use of a non-conforming structure existing at the time of the adoption of this Ordinance may be continued although such use does not conform with the district provisions herein, unless the use ceases for a period of one (1) year or the non-conforming structure is destroyed by fire or other peril to the extent of greater than 50 percent of its market value and no building permit has been applied for within 180 days of when the property was damaged.
 - G. Restoration Of Non-Conforming Structure After Destruction. Any non-conforming building or structure damaged greater than fifty (50) percent of its market value by fire, collapse, explosion or acts of God, or public enemy, shall not be restored or reconstructed and used as before such destruction if no building permit is issued within 180 days after the damage occurred; but, if fifty (50) percent or less of its market value is damaged it may be restored, reconstructed or used as before provided that it is done within twelve (12) months of the happening.
 - H. If replacement, reconstruction, or restoration of a legal non-conforming structure is allowed, it may occur without any land use approval from the city if the resulting use does not create any new adverse impacts on adjacent property and matches exactly the conditions that existed before the work was undertaken or before the use was damaged or destroyed, except for internal improvements and improved materials used to replace roof surfaces, siding, windows, doors, and similar components. Work that would not meet this requirement or any other improvement to a non-conforming development may not be undertaken unless a conditional use permit is issued. The city may impose conditions in its approval to protect the public health, safety, or welfare, and to mitigate any newly created impacts on adjacent property.
 - I. Signs. Signs pertaining to or advertising products sold on the premises of a non-conforming building or use may be continued only when the non-conforming use is permitted to continue and such signs shall not be expanded in number, area, height, or illumination. New signs shall not exceed the maximum allowed under the City's sign ordinance, and may be erected only after all other signs existing at the time of the adoption of this Ordinance have been removed. The accumulated square footage of new signs installed shall not exceed the square footage of signs previously on site, or the amount allowed in the City's sign ordinance, whichever is less. New signs may not be illuminated unless the previous sign was illuminated, but flashing intermittent or moving illumination shall not be permitted.
 - J. Buildings Under Construction and Building Permits Granted Prior to Adoption of Ordinance. Any proposed structure which will, under this Ordinance, become non-conforming but for which a building permit has been lawfully granted prior to the effective date of this Ordinance, may be completed in accordance with the approved plans; provided construction is started within sixty (60) days of the effective date of this Ordinance, is not abandoned for a period of more than one hundred twenty (120) days, and continues to completion within two (2) years. Such structure and use shall thereafter be a legally non-conforming structure and/or use.
3. Non-Conforming Lots of Record.

An existing lot of record that is non-conforming and that is not improved with a principal use is entitled to be developed with a principal use providing setbacks can be achieved; unless the subject parcel has been in common ownership with an abutting lot or parcel of land, or if it has been part of a larger parcel of land, at any time after adoption of the standard that causes the lot or land to be non-conforming in which case the non-conforming lot of record is not entitled to be developed with a principal use. This provision shall apply even though a lot entitled to a principal use fails to meet the zoning requirements for area or width, or both, that are generally applicable in the district. If, two (2) or more contiguous lots in any district are under the same ownership, and any individual lot does not meet the area and width requirements of this Ordinance, the lot must not be considered as a separate parcel or land for the purpose of sale or development. The lot must be combined with the one (1) or more contiguous lots so they equal one (1) or more parcels of land, each meeting the area and width requirements of this Ordinance.

SUBD. 4 BURDEN OF PROOF.

A person who wishes to take advantage of the rights granted to a legal non-conformity has the burden of proving the status as a legal non-conformity by clear and convincing evidence.

II. EFFECTIVE DATE. This Ordinance is effective upon its adoption and publication as prescribed by law.

Adopted by the City Council of the City of Arlington on the 4th day of February, 2008.

/s/ James R. Kreft
James R. Kreft, Mayor

ATTEST: /s/ Matthew Jaunich
Matthew Jaunich, City Administrator

Councilmember Vrklan introduced the following resolution and moved for its adoption:

RESOLUTION NO. 11-2008

A RESOLUTION APPROVING ORDINANCE 220, ENTITLED “AN ORDINANCE REPEALING AND REPLACING SECTION 14 OF ORDINANCE 169, THE ARLINGTON ZONING ORDINANCE, RELATING TO NON-CONFORMING USES WITHIN THE CITY” AND APPROVING SUMMARY PUBLICATION THEREOF

WHEREAS, the City of placed Ordinance 169 into effect several years ago; and

WHEREAS, the Arlington City Council finds portions of Section 14 of Ordinance 169 are not up to date; and

WHEREAS, the City of Arlington initiated a request to repeal Section 14 of the Arlington Zoning Ordinance replacing it with language included in Ordinance 220 relating to the regulation of non-conforming uses within the City of Arlington; and

WHEREAS, the Arlington Planning Commission reviewed and studied the request and developed text to be included in Ordinance 220; and

WHEREAS, a public hearing was properly noticed and held on December 6, 2007 by the City of Arlington Planning Commission; and

WHEREAS, the proposed ordinance is itemized in Exhibit A which is attached to this resolution (*see above for copy*); and

WHEREAS, the City Council approved the first reading of Ordinance 220 at its regular meeting on January 22, 2008; and

WHEREAS, the City Council approved second reading and the adoption of Ordinance 220 at its regular meeting on February 4, 2008; and

WHEREAS, The City Council of the City of Arlington has determined the publication of the title and a summary of Ordinance 220 would clearly inform the public of the intent and effect of the Ordinance 220; and

WHEREAS, Prior to the publication of the title and summary, the Council has read and approved the text of the summary and determined that it clearly informs the public of the intent and effect of the Ordinance.

NOW THEREFORE BE IT RESOLVED that the City Administrator shall cause a summary of Ordinance No. 220 to be published in the City’s official newspaper at the earliest practicable date.

BE IT FURTHER RESOLVED, the summary publication shall read as follows:

“On February 4, 2008 the City Council of the City of Arlington approved Ordinance 220, entitled, ‘An Ordinance Repealing and Replacing Section 14 of Ordinance 169, the Arlington Zoning Ordinance, Relating to Non-Conforming Uses Within the City.’ The Ordinance in its entirety is available for review and/or photocopying during regular office hours at the City of Arlington, 204 Shamrock Lane, Arlington, Minnesota 55307. The Ordinance establishes standards for uses, structures and lots deemed non-conforming with current zoning regulations. Amortization of non-conforming uses is prohibited.”

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Reetz and upon poll being taken thereon the following voted in favor thereof: Griep, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Borchert.

Adopted by the City Council of the City of Arlington this 4th day of February, 2008.

Signed: /s/ James R. Kreft
Mayor

Attest: /s/ Matthew Jaunich
City Administrator/Treasurer/Clerk

Whereupon the resolution was declared duly passed and adopted and was signed by the Mayor whose signature was attested by the City Administrator.

The second reading was held of Ordinance No. 221 – An Ordinance Amending Ordinance 168, The Arlington Subdivision Ordinance to Allow for Administration of said Ordinance Relating to Premature Subdivisions, Denial of Plats, Variances and General Ordinance Administration by Adding Section 11.

Motion by Reetz, seconded by Vrklan, and passed by unanimous vote to approve Ordinance No. 221 – An Ordinance Amending Ordinance 168, The Arlington Subdivision Ordinance to Allow for Administration of said Ordinance Relating to Premature Subdivisions, Denial of Plats, Variances and General Ordinance Administration by Adding Section 11 as follows:

ORDINANCE NO. 221

AN ORDINANCE AMENDING ORDINANCE 168, THE ARLINGTON SUBDIVISION ORDINANCE TO ALLOW FOR ADMINISTRATION OF SAID ORDINANCE RELATING TO PREMATURE SUBDIVISIONS, DENIAL OF PLATS, VARIANCES AND GENERAL ORDINANCE ADMINISTRATION BY ADDING SECTION 11.

I. THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC SAFETY, HEALTH AND WELFARE, HEREBY ORDAINS ORDINANCE 168 SHALL BE AMENDED BY ADDING SECTION 11 AS FOLLOWS:

SECTION 11: ORDINANCE ADMINISTRATION

SUBDIVISION 1. FINDINGS OF FACT.

- A. Planning Commission Recommendation. The Planning Commission upon making its formal recommendation to the City Council under this Title and pertaining specifically to the request for subdivision of land shall make said recommendation through resolution of the Commission. The recommending resolution shall contain findings of fact pursuant to this Ordinance.
- B. City Council Action. The City Council upon taking a formal action under this Title and pertaining specifically to the request for subdivision of land shall do so by resolution of the City Council. The resolution shall contain findings of fact pursuant to the following and as outlined in this Title.
- C. Recommendation/official action pertaining to requests for variance from this Title shall include findings of fact pursuant to those identified in this Title.
- D. Premature Subdivisions. Any preliminary plat of a proposed subdivision deemed premature for development shall be denied by the City Council. A subdivision may be deemed premature should any one or more of the conditions set forth in the following provisions exist. The burden shall be upon the applicant to show that the proposed subdivision is not premature.
 - 1. Lack of adequate drainage: A condition of inadequate drainage shall be deemed to exist if:
 - a. Surface or subsurface water retention/detention and runoff is such that it constitutes a danger to the structural security of the proposed development or flood of the subdivision or downstream property.
 - b. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 - c. The proposed site grading and development will cause siltation on downstream land.
 - d. Factors to be considered in making these determinations shall include, but shall not be limited to: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.
 - 2. Lack of Adequate Water Supply: A proposed subdivision shall be deemed to lack an adequate water supply if:
 - a. There is inadequate capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Arlington Comprehensive Plan, as may be amended.
 - b. The orderly extension of municipal drinking water is not feasible or is not proposed as part of subdivision improvements.
 - 3. Lack of Adequate Roads or Highways to Serve the Subdivision: A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - a. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of the City Engineer, Sibley County Highway Engineer and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use; or

- b. The traffic volume generated by the proposed subdivision would create unreasonable traffic congestion or unsafe conditions on roadways existing at the time of the application or proposed for completion.
 - 4. Lack of Adequate Waste Disposal Systems: A proposed subdivision shall be deemed to lack adequate waste disposal systems if:
 - a. There is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Arlington Comprehensive Plan, as may be amended.
 - b. The orderly extension of municipal sanitary sewer is not feasible or is not proposed as part of subdivision improvements.
 - 5. Provision of Public Improvements/Services: If public improvements, such as recreational facilities, electrical facilities, streets and utilities and/or public administration and/or public protection services such as police and fire service reasonably necessitated by the subdivision and which must be provided at public expense, cannot be reasonably provided within the next two (2) fiscal years the proposed subdivision shall be deemed premature.
 - 6. Threat to Environmentally Essential Areas: The proposed subdivision is inconsistent with policies and standards of the City, the County, the State, or Federal Government relating to environmentally sensitive areas and protections thereof.
 - 7. Inconsistency With Comprehensive Plan: The proposed subdivision is inconsistent with the purposes, objectives and recommendations of the duly adopted Comprehensive Plan of Arlington, as may be amended.
 - 8. Inconsistent with Capital Improvement Plans. A proposed subdivision shall be deemed inconsistent with capital improvement plans when improvements and/or services necessary to accommodate the proposed subdivision have not been programmed in the City, County or other regional capital improvement plans. The City Council may waive this criterion when it can be demonstrated that a revision to capital improvement programs can be accommodated.
- E. Disqualification/Denial of Plats. The City Council may deny the subdivision if it makes any one or more of the following findings:
- 1. That the proposed subdivision qualifies as a premature subdivision under Section 11.1(D) of this Title.
 - 2. If deemed a 'premature subdivision' the proposed subdivision shall be denied.
 - 3. That the proposed subdivision is in direct conflict with adopted applicable local control (e.g. Zoning Ordinance; Subdivision Ordinance) and/or general or specific official plans of the City, County or Region.
 - 4. That the physical characteristics of the site, including but not limited to, topography, percolation rate, soil conditions, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development, design, or use contemplated.
 - 5. That the site is not physically suitable for the proposed density of development.
 - 6. That the design of the subdivision or the type of improvements are likely to cause serious public health concerns.
 - 7. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage.
 - 8. That the design of the subdivision or the type of improvements will conflict with easements of record or with easements established by judgment of a court.
 - 9. That the proposed subdivision, its site, or its design adversely affects the flood-carrying capacity of the floodway, increases flood stages and velocities, or increases flood hazards within the floodway fringe or within other areas of the City.
 - 10. That the proposed subdivision is inconsistent with the policies and standards for defined shoreland and/or wetland.

SUBDIVISION 2. CONDITIONAL APPROVAL.

- A. The City may condition approval on the construction and installation of sewers, streets, electric, gas, drainage and water facilities, and similar utilities and improvements or, in lieu thereof, on the receipt by the municipality of a cash deposit, certified check, irrevocable letter of credit, or bond in an amount and with surety and conditions sufficient to assure the municipality that the utilities and improvements will be constructed or installed according to the specifications of the municipality. The City may also condition approval on compliance with other requirements reasonably related to the provisions of the regulations and to execute development contracts embodying the terms and conditions of approval.
- B. The City may not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee.

- C. This paragraph must not be construed to preclude the municipality from conditioning approval of any proposed subdivision or development on an agreement to waive a challenge to the cost associated with City installed improvements of the type described in MN. Statute 429.

SUBDIVISION 3. VARIANCES, CITY COUNCIL APPROVAL, STANDARDS.

- A. Findings: The City Council may approve a variance from the minimum standards of this Ordinance (not procedure provisions) when, in its opinion, exceptional and undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable to the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A variance shall only be approved when the City Council finds that each and every one of the following apply:
1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his/her land.
 2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which the property is situated.
 3. That the granting of the variance will not increase the flood hazard or flood damage potential.
 4. That the use proposed by the applicant would not result in a stage increase violating Minnesota Statute 103F, as amended from time to time, and any applicable requirements imposed by FEMA.
 5. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
 6. Hardships relating to economic difficulties shall not be considered for the purpose of granting a variance.
 7. That the hardship is not a result of an action or actions by the owner, applicant, or any agent thereof.
 8. The variance sought is the least variance required.
- B. Procedures:
1. Request for variances, as provided within this Section, shall be filed with the City on an official application form. Such application shall be accompanied by a fee as provided for by City Council ordinance. Such application shall also be accompanied by five (5) large scale copies and ten (10) reduced scale (not less than 11" x 17") copies of detailed written and graphic materials fully explaining the proposed change, development, or use. If, in the opinion of the Zoning Administrator, reduced scale drawings are determined to be illegible, the submission of larger scale materials shall be required. The scale of such materials shall be the minimum necessary to endure legibility. The request for variance shall be placed on the agenda of the Planning Commission meeting occurring after the date of submission of the application. The request shall be considered as being officially submitted when all the information requirements are complied with.
 2. Proof of Ownership or Authorization: The applicant shall supply proof of title and the legal description of the property for which the variance is requested, consisting of an abstract of title or registered property abstract currently certified together with any unrecorded or equitable ownership interest and, if applicable, supply documented authorization from the owner(s) of the property in question to proceed with the requested variance.
 3. Upon receipt of said application, the City shall set a public hearing following proper hearing notification as applicable. Notice of said hearing shall consist of a legal property description and description of request, and be published in the official newspaper at least ten (10) days prior to the hearing. Written notification of said hearing shall be mailed to surrounding area property owners at least ten (10) days prior to the hearing. Requests affecting and located within platted areas of the City shall be noticed to all property owners at least ten (10) days prior to the hearing. Requests affecting and located within nonplatted areas of the City shall be noticed to all property owners within three hundred fifty (350) feet of the outside boundary of the property in question. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the record of the proceeding.
 4. For properties within the Shoreland Overlay Districts and/or the Floodway or Flood Fringe Overlay Districts, the City shall submit to the Minnesota Department of Natural Resources Area Hydrologist a copy of the application for proposed variances sufficiently in advance so that the Department will receive at least ten (10) day's notice of the hearing.
 5. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Section provided a bona fide attempt has been made to comply with the notice requirements of this Section.
 6. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the Planning Commission.

7. The Planning Commission, City Council and/or Zoning Administrator shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relations to all pertinent sections of this Ordinance. Failure of an applicant to supply all necessary supportive information may be grounds for denial of the request.
8. The applicant or a designated representative thereof shall appear before the Planning Commission and/or City Council to answer questions concerning the proposed variance.
9. The City Council shall reach a decision within sixty (60) days after the receipt of a complete application.
10. The City Council shall not act upon a variance or appeal until they have received a staff report, with findings of fact and a recommendation, and a Planning Commission recommendation to the City Council.
11. Whenever an application for a variance has been considered and denied by the City Council, a similar application and proposal for the variance affecting the same property shall not be considered again by the City Council for at least one (1) year from the date of its denial except as follows:
 - a. Applications are withdrawn prior to the City Council taking action on the matter.
 - b. If the City Council determines that the circumstances surrounding a previous application have changed significantly.
 - c. If the City Council decides to reconsider the matter by a majority (3/5ths) vote of the entire City Council, whether present, absent, or abstaining.

SUBDIVISION 4. AMENDMENTS.

The provisions of this Ordinance may be amended by the City Council following a legally advertised public hearing before the Planning Commission and in accordance with the law, including the rules and regulations of any applicable state or federal agency.

SUBDIVISION 5. FEES.

- A. Fees and charges, as well as expenses incurred by the City for engineering, planning, legal, and other services related to the processing of applications under this Ordinance shall be established via ordinance approved by the Council and collected by the City Administrator for deposit in the City's accounts. Fees shall be established for the processing of requests for platting, major and minor subdivisions, review of plans, and such other subdivision-related procedures as the Council may from time to time establish. The Council may also establish charges for public hearings, special meetings, or other such Council actions as are necessary to process applications.
- B. Such fees, charges and estimated expenses (as well as a deposit, if so required by the Zoning Administrator) shall be collected prior to City action on any application. All such applications shall be accompanied by a written statement between the City and the applicant/landowner (when the applicant is not the same person or entity as the landowner, both the landowner and the applicant must sign the agreement) whereby the applicant/landowner agrees to pay all applicable fees, charges and expenses as set by the Council as provided above, and which allows the City to assess the above fees, charges and expenses against the landowner if such monies are not paid within thirty (30) days after a bill is sent to the applicant/landowner.
- C. These fees shall be in addition to building permit fees, inspection fees, trunk storm water facility costs, zoning fees, charges, expenses and other such fees, charges and expenses currently required by the City or which may be established in the future.

SUBDIVISION 6. VIOLATION/ENFORCEMENT.

- A. Any person violating any provision of this Title shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not exceeding ninety (90) days, or both. Each day a violation is allowed to continue, it shall be construed as a separate offense. Compliance with the terms of this ordinance may be obtained by injunctive relief in proceedings instituted by the City in a court of competent jurisdiction.
- B. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including but not limited to, the issuance of administrative citations as authorized by the City of Arlington.

II. EFFECTIVE DATE. This Ordinance is effective upon its adoption and publication as prescribed by law.

Adopted by the City Council of the City of Arlington on the 4th day of February, 2008.

/s/ James R. Kreft
James R. Kreft, Mayor

ATTEST: /s/ Matthew Jaunich
Matthew Jaunich, City Administrator

Councilmember Reetz introduced the following resolution and moved for its adoption:

RESOLUTION NO. 12-2008

A RESOLUTION APPROVING ORDINANCE 221, ENTITLED “AN ORDINANCE AMENDING ORDINANCE 168, THE ARLINGTON SUBDIVISION ORDINANCE TO ALLOW FOR ADMINISTRATION OF SAID ORDINANCE RELATING TO PREMATURE SUBDIVISIONS, DENIAL OF PLATS, VARIANCES AND GENERAL ORDINANCE ADMINISTRATION BY ADDING SECTION 11” AND APPROVING SUMMARY PUBLICATION THEREOF

WHEREAS, the City of Arlington placed Ordinance 168 into effect several years ago; and

WHEREAS, the Arlington City Council finds portions of Ordinance 168 are not up to date; and

WHEREAS, the City of Arlington initiated an amendment Ordinance 168, the Arlington Subdivision Ordinance to allow for administration of said Ordinance relating to Premature Subdivisions, denial of plats, variances and general Ordinance administration by adding Section 11; and

WHEREAS, the Arlington Planning Commission has reviewed and studied the issue and developed text to be included in Ordinance 221; and

WHEREAS, a public hearing was properly noticed and held on January 10, 2008 by the City of Arlington Planning Commission; and

WHEREAS, the proposed ordinance is itemized in Exhibit A which is attached to this resolution (*see above*); and

WHEREAS, the City Council approved the first reading of Ordinance 221 at its regular meeting on January 22, 2008; and

WHEREAS, the City Council approved second reading and the adoption of Ordinance 221 at its regular meeting on February 4, 2008; and

WHEREAS, The City Council of the City of Arlington has determined the publication of the title and a summary of Ordinance 221 would clearly inform the public of the intent and effect of the Ordinance 221; and

WHEREAS, Prior to the publication of the title and summary, the Council has read and approved the text of the summary and determined that it clearly informs the public of the intent and effect of the Ordinance.

NOW THEREFORE BE IT RESOLVED that the City Administrator shall cause a summary of Ordinance No. 221 to be published in the City’s official newspaper at the earliest practicable date.

BE IT FURTHER RESOLVED, the summary publication shall read as follows:

“On February 4, 2008 the City Council of the City of Arlington approved Ordinance 221, entitled, ‘An Ordinance Amending Ordinance 168, The Arlington Subdivision Ordinance to Allow for Administration of Said Ordinance Relating to Premature Subdivisions, Denial of Plats, Variances and General Ordinance Administration by Adding Section 11.’ The Ordinance in its entirety is available for review and/or photocopying during regular office hours at the City of Arlington, 204 Shamrock Drive, Arlington, Minnesota 55307.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Wills and upon poll being taken thereon the following voted in favor thereof: Griep, Reetz, Vrklan, Wills; and the following voted against the same: None; and the following abstained from voting: None; and the following were absent: Borchert.

Adopted by the City Council of the City of Arlington this 4th day of February, 2008.

Signed: /s/ James R. Kreft
Mayor

Attest: /s/ Matthew Jaunich
City Administrator/Treasurer/Clerk

Whereupon the resolution was declared duly passed and adopted and was signed by the Mayor whose signature was attested by the City Administrator.

The Council reviewed an email from Librarian Homme about renovating the Library. Adm. Jaunich will work with Building Official Haslip to put some information together to hand out to contractors who want to bid for the project.

Mayor Kreft commented that the Charter Commission has been approved by the District Court Judge. Attorney Arneson explained that the Charter Commission, once appointed by the Judge, is active for 4 years (from date of appointment), unless terminated sooner by a judge's order. The following items were suggested changes:

- 1) gender neutral language (including changing Alderman to Councilperson);
- 2) change Administrative Code (which was never adopted) to City Code (ordinances);
- 3) change Clerk/Treasurer to City Administrator;
- 4) Chief of Police appointment (reports to City Administrator);
- 5) change ordinance procedure;
- 6) change Charter Commission size;
- 7) City Assessor appointment;
- 8) update city boundaries.

Adm. Jaunich asked the Council to provide their list of proposed changes to him and he would draft a letter to the Charter Commission in hopes that they will be able to hold their first meeting in March.

Adm. Jaunich reviewed some information regarding an energy audit for the City's infrastructure (public buildings, street lights, etc.) from Johnson Controls. He explained that they come out and do a preliminary audit for free. Vrklan commented on the energy audit that had been in the public school a few years back. Griep questioned if the hospital would be included in the audit. Adm. Jaunich was going to contact some of the references he had been given by Johnson Controls to see what they felt about the process. The Public Buildings Committee was recommending that the City enter into the first (preliminary) phase of an energy audit with Johnson Controls.

Motion by Vrklan, seconded by Wills, and passed by unanimous vote to enter into a preliminary energy audit with Johnson Controls.

Vrklan and Adm. Jaunich commented that the Public Buildings Committee discussed the current (unwritten) policy regarding renting the Community Center. Reetz expressed his concern about treating all renters fairly. It was agreed that a policy needs to be put in writing.

Wills commented that the Parks Committee had met and was looking at purchasing new play equipment for Fairview Park. He added that the Trails Committee would be meeting at the end of the week in Gaylord.

Adm. Jaunich commented that he would be contacting the Streets and Utility Committees to set up a meeting to discuss several different issues.

Griep commented that the Hospital Board held a closed meeting to interview an internal employee for the open Administrator position. He stated that a conditional offer was made to Rhonda Matz, acting Interim Administrator, which was verbally accepted and very well accepted by the Hospital Staff. Attorney Arneson was working out the details of the Contract with Matz. Mayor Kreft commented that the Hospital Board was also looking at creating an Employee Relations Committee to go along with their current grievance policy. Brief discussion was held on revising the ordinance governing the Hospital Board to clarify the language regarding compensation for said Board. Griep commented that the Hospital Board will continue to hold open meetings, but has elected not to televise the meetings at this time due to some sensitive issues being discussed and there being competition in Winthrop.

Motion by Vrklan, seconded by Wills, and passed by unanimous vote to adjourn the meeting at 7:48 p.m.