

ARLINGTON CITY COUNCIL  
MEETING MINUTES  
NOVEMBER 19, 2007

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, Attorney Arneson, P&Z Administrator Smith-Strack, Sue Morrisette, Jim Morrisette, Ronald Otto-Sibley SWCD, Darin Mielke-Arlington Fire Relief Assn., Kurt Menk

Motion by Griep, seconded by Reetz, and passed by unanimous vote to approve the agenda as presented.

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

- 1) Regular November 5<sup>th</sup> & Special Joint Council/EDA/Planning & Zoning Workshop November 8<sup>th</sup> Meeting Minutes
- 2) Approval of the Bills
- 3) Acceptance of Kristina Mechtel's resignation from Ambulance
- 4) Acceptance of Ralph Wacker's resignation from Fire Department.

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

Adm. Jaunich reminded the Council that the City Office would be closed on Thursday, November 22<sup>nd</sup> and Friday, November 23<sup>rd</sup> in observance of the Thanksgiving Holiday. He also reminded the Council of the upcoming Comprehensive Plan SWOT Meeting on November 26<sup>th</sup> and the Truth-in-Taxation Hearing on December 3<sup>rd</sup>.

The Council reviewed the following communication items:

- 1) Statement of Funds for October
- 2) October Building Permit Report
- 3) Thank You from Ho Ho Area Shrine Club
- 4) MnDOT Response to Hwy 5 Resurfacing Project. (Adm. Jaunich will contact MnDOT to address some of their questions.)

Engineer Hawbaker reviewed the sanitary/storm sewer smoke testing and jetting reports that he had been given and pointed out the problem areas. It was agreed that the Utility Committee should get together to prioritize what needs to be done and when.

Discussion was held on the West Elgin Alley Drainage Issue. Engineer Hawbaker stated that they had surveyed the alley to determine what the problem was and how it could be fixed. He stated that the area is relatively flat with no direction for flow. He stated that one option they came up with was to put in dual 6" under drain/drain tile lines that sloped to the west and would connect into an existing storm sewer. Hawbaker explained that a dual line is proposed so that water can be captured on both sides of the sanitary sewer line that currently runs through the alley. Some discussion was held on if the cost of the project should be assessed partially or 100% to the adjacent property owners. Attorney Arneson commented on what liability and/or responsibility the City has with regards to the structures encroaching on the easement area. It was suggested to have the entire area marked to see what utilities, if any, there are within the easement, imprint them and any obstructions/structures onto a map to determine if there is room for a tile line. Once the mapping was done, the City could meet with the property owners to review the findings and determine what, if anything can be done to resolve the issue. Sue & Jim Morrisette passed around some pictures that they had taken of the alley with standing water in it.

Motion by Vrklan, seconded by Griep, and passed by unanimous vote to hire Bolton & Menk to re-survey the alley with assistance from Gopher State One Call (mark all utilities).

Arlington Fire Relief Association Treasurer Darin Mielke was present to discuss the possible increase of the City's contribution to the Fire Relief Association. He stated that the City has contributed to the Relief Association \$100 per active member each year for approximately 20 years, even though it is not required to do so by State law. He stated that due to State Aid and inflation, they would like to have the annual contribution increased by the same percentage that the State Aid increases each year, which is about 3%. It was noted that the Association has been very cautious and done well in the past with its investment practices.

Motion by Reetz, seconded by Vrklan, and passed by unanimous vote to increase the annual contribution to the Fire Relief Association by 3%.

Considerable discussion was held on GIS (interactive) mapping systems and the different options Bolton & Menk had put together. Mayor Kreft commented that this type of mapping system would be very helpful with putting the Comprehensive Plan together. Sibley County Engineer Darin Mielke commented on what the County was doing as far as mapping at this time. Some discussion was also held on the idea of the City and County using the same program and splitting the costs. Reetz expressed concern about the City spending any amount of money on a mapping system only to be charged from the County in the future for the same work because the 2 systems cannot be integrated. Mielke commented that as long as the information is kept up-to-date and the City uses the same coordinate system as the County, it won't matter what program is used. It was the consensus of the Council to authorize City Staff to review the 2007 budget to see if there is any money available to initiate the GIS mapping system.

It was noted that the City had sent letters out in September stating that a public hearing was going to be held with regards to the Wellhead Protection Plan; however it was inadvertently omitted from the agenda and would be put on the December 17<sup>th</sup> meeting. Mayor Kreft apologized for the City's oversight on this matter.

Engineer Hawbaker presented a revised proposed assessment for the Highland View Addition. It was reiterated that the numbers presented were just estimates. Administrator Jaunich noted that the changes included: assessing gravel roads at 100%, adding the lift station based on area, and the water and sewer main assessed per acre along County Road 69 and front frontage for properties on the loop. Adm. Jaunich also presented information with regards to creating a debt service for this project and how it would affect the tax levy for the next 11-15 years. The Council authorized Adm. Jaunich to send a letter to the residents reiterating the City's position on this matter.

The second reading of Ordinance No. 215 – An Ordinance Repealing and Replacing Ordinance 196 Regarding the Regulation of Telecommunication Towers, Antennas and Related Facilities within the City of Arlington and Providing for Administration and Enforcement of such Regulations was held.

Motion by Vrklan, seconded by Griep, and passed by unanimous vote to approve Ordinance No. 215 - An Ordinance Repealing and Replacing Ordinance 196 Regarding the Regulation of Telecommunication Towers, Antennas and Related Facilities within the City of Arlington and Providing for Administration and Enforcement of such Regulations as follows:

#### **ORDINANCE NO. 215**

#### **AN ORDINANCE REPEALING AND REPLACING ORDINANCE 196 REGARDING THE REGULATION OF TELECOMMUNICATION TOWERS, ANTENNAS AND RELATED FACILITIES WITHIN THE CITY OF ARLINGTON AND PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF SUCH REGULATIONS**

**WHEREAS**, the City of placed Ordinance 196 into effect several years ago; and

**WHEREAS**, the Arlington Planning Commission finds portions of Ordinance 196 are not up to date; and

**WHEREAS**, the City of Arlington initiated a request to repeal Ordinance 196 and replace it with Ordinance 215 relating to the regulation of telecommunication towers, antennas and related facilities within the City of Arlington; and

**WHEREAS**, the Arlington Planning Commission has reviewed and studied the request and developed text to be included in Ordinance 215; and,

**WHEREAS**, a public hearing was properly noticed and held on November 1, 2007 by the City of Arlington Planning Commission; and

**WHEREAS**, the Planning Commission at its meeting on November 1, 2007 approved a resolution recommending the City Council approve Ordinance 215; and

**WHEREAS**, the City Council approved the first reading of Ordinance 215 at its regular meeting on November 5, 2007; and

**WHEREAS**, the City Council approved second reading and the adoption of Ordinance 215 at its regular meeting on November 19, 2007.

**NOW THEREFORE, BE IT RESOLVED THAT TO PROMOTE THE PUBLIC SAFETY, HEALTH AND WELFARE, THE CITY COUNCIL OF THE CITY OF ARLINGTON HEREBY ORDAINS:**

## **SECTION 1. FINDINGS AND PURPOSE**

### **Subdivision 1. Findings.**

1. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (“the Act”) governs the construction, placement, and modification of personal wireless service facilities.
2. Consistent with the Act, the general purpose of this section is to manage the placement, construction, and modification of telecommunication towers, antennas and related facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city.

### **Subdivision 2. Purpose.**

1. In furtherance of the goals of the city and within the framework of the Act and state law, the city will give due consideration to the city’s comprehensive plan, zoning districts, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas. Specifically, the purposes of this section are:
  - A. To provide for wireless telecommunication services for the residents and businesses of the City;
  - B. To minimize adverse visual impacts of telecommunication towers and facilities through design, siting, landscaping, and innovative camouflaging techniques;
  - C. To promote and encourage shared use and collocation of telecommunication towers and antenna support structures so as to reduce the number of towers needed to serve the area;
  - D. To avoid damage to adjacent properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound.

### **Subdivision 3. Severability.**

Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part thereof, other than the part held to be invalid.

## **SECTION 2. DEFINITIONS**

### **Subdivision 1. Definitions.**

For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning:

- A. **“Antenna”** means any device which is designed to transmit or receive any electromagnetic, microwave, radio, television, or other frequency energy waves including but not limited to directional and omnidirectional antennae such as microwave dishes, satellite dishes and whip antennae.
- B. **“Antenna support structure”** means a building, water tower, or other structure, other than a telecommunication tower, which can be used for location of telecommunication facilities.
- C. **“Applicant”** means a person who applies for a permit to develop, construct, build modify or erect a tower or antenna under this section.
- D. **“Application”** means the process by which the owner of a plot of land within the city or other person submits a request to develop, construct, build, modify or erect a tower or antenna upon that land.
- E. **“Commercial wireless telecommunication services”** mean licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and television similar services that are marketed to the general public.
- F. **“Engineer”** means an engineer licensed by the state of Minnesota.
- G. **“Person”** means any natural person, firm, partnership, association, corporation, company, or other legal

- entity, private or public, whether for profit or not for profit.
- H. **“Stealth”** means design features that blend a structure into the surrounding environment; examples of stealth facilities include, without limitation, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to appear other than as a tower, such as light poles, power poles, and trees or other vertical structures as they normally appear in their existing environments.
  - I. **“Telecommunications facilities”** means cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of telecommunications located or installed on or adjacent to a tower or antenna support structure. The term does not include:
    - 1) A satellite earth station antenna two meters in diameter or less located in an industrial or commercial district;
    - 2) A satellite earth station antenna one meter or less in diameter, wherever located; or
    - 3) A tower.
  - J. **“Telecommunications tower”** or **“tower”** means any ground or roof mounted pole, spire, structure or combination thereof taller than 15 feet including supporting lines, cables, wires, braces and masts intended primarily for the purpose of mounting an antenna or similar apparatus above grade.

### SECTION 3. GENERAL REGULATIONS

#### Subdivision 1. Development of towers; approvals required.

- A. Towers supporting amateur radio antennas and conforming to all applicable provisions of this Ordinance shall be allowed in rear yards of residentially zoned parcels under a conditional use permit is issued and no more than one tower exists at any one time on one residential parcel.
- B. Commercial telecommunications towers shall be allowed in industrial zoning districts provided a conditional use permit is issued.
- C. **Building permit required.** Towers may not be constructed in any zoning district unless a building permit has been issued by the building official.
- D. **City property.** The city may authorize the use of city property for towers in accordance with the procedures of this code. The city has no obligation to allow the use of city property for this purpose.
- E. **Right-of-way.** Except as approved by the city, no part of any telecommunications tower or telecommunications facilities, nor any lines, cable, equipment, wires or braces shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk or property line.
- F. **Proof of insurance coverage required.** The applicant shall provide evidence satisfactory to the city that its tower and telecommunication facilities thereon are adequately insured for personal injury and property damage liability. Upon request, the holder of a conditional use permit issued under this chapter shall submit to the city clerk a photocopy of a certificate of insurance showing that the tower or antenna facility is insured for that calendar year.

#### Subdivision 2. Exemptions.

No permits are required for the following:

- A. Household television antennas extending less than 15 feet above the highest point of a residential structure.
- B. Satellite dish receiving antennas two meters or less in diameter.
- C. Adjustment, repair or replacement of the elements of an antenna, provided that such work does not constitute a clear safety hazard.
- D. Antennas and antenna support structures used by the city for city purposes.
- E. Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or replacement of transmitters, antennas, or other components or previously approved facilities which do not create a significant change in visual impact or an increase in radio frequency emission levels, and provided that such work does not constitute a clear safety hazard.
- F. Two-way communication transmitters used on a temporary basis by a “911” emergency services, including fire, police and emergency aid or ambulance service.
- G. Radio transceivers normally hand-held or installed in moving vehicles, such as automobiles, watercraft, or aircraft. This includes cellular phones.

### SECTION 4. PERFORMANCE STANDARDS.

#### Subdivision 1. Co-location capability.

- A. A proposal for a new commercial wireless telecommunication service tower shall not be approved unless the Council finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within one mile of the proposed tower because:
  - 1) The planned equipment would exceed the structural capacity of the existing or approved tower or

- building, or
  - 2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment as documented by a qualified and licensed professional engineer.
  - 3) Existing or approved towers and buildings within one mile of the proposed tower cannot accommodate the planned equipment at a height necessary to function reasonable as documented by a qualified and licensed engineer.
  - 4) Other unforeseen reasons that make it not feasible to locate the planned equipment upon an existing or approved tower or building.
- B. A new tower may not be built, constructed or erected in the city unless the tower is capable of supporting additional telecommunications facilities other than what the applicant proposes.

#### **Subdivision 2. Setback requirements.**

A tower must comply with the following setback requirements:

- A. A tower shall not interfere with arrival/departure corridors for the Sibley Medical Center heliport as mapped by the Minnesota Department of Transportation Aeronautics Division.
- B. Setback requirements for towers are measured from the base of the tower to the property line of the parcel on which it is located.
- C. Amateur radio towers when not rigidly attached to a building shall be setback a distance equal to the height of the antenna and tower. Amateur radio towers when rigidly attached to a building may exceed the required setback by an amount that is equal to the distance from the point of attachment to the ground.
- D. Commercial wireless telecommunication service towers shall have a minimum setback from any property line equal to the height of the tower plus 10 feet, unless otherwise provided in this section.
- E. Commercial wireless telecommunication service towers located next to a residential zone shall have a setback equaling the height of the tower plus 100 feet.
- F. The minimum spacing between commercial wireless telecommunication service tower locations is one mile.
- G. A tower setback may be reduced by variance to allow for the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device or similar structure.

#### **Subdivision 3. Engineer certification.**

Towers must be designed and certified by a licensed and qualified professional engineer to conform to the latest structural standards and wind loading requirements of the Building Code and the Electronics Industry Association and the provisions of the National Electric Code.

#### **Subdivision 4. Construction standards.**

- A. **Tower design.** A tower shall be designed to ensure that visual intrusiveness and impacts on nearby properties is mitigated to the greatest extent feasible.
- B. Every tower affixed to the ground shall be protected to discourage climbing of the tower by unauthorized persons.
- C. **Height Restrictions.**
  - 1) Commercial wireless telecommunication service towers may not exceed the lesser of 195 feet in height or the minimum height necessary to provide adequate coverage in the city by the provider of wireless service. Measurement of tower height must include the tower structure itself, the base pad, and any telecommunications facilities attached thereto. Tower height is measured from grade.
  - 2) Amateur radio towers in residential areas shall not exceed a height equal to the minimum height necessary to provide adequate service but shall in no case exceed seventy (70) feet in height.
- D. **Lighting.** Towers may not be artificially lit except as required by the Federal Aviation Administration or as required by the City for heliport safety. If so required, lighting shall be of a type, color and intensity so as to minimize visual intrusiveness, particularly at night.
- E. **Exterior finish.** Towers not requiring Federal Aviation Administration painting or marking must have an exterior finish as approved in the site plan.
- F. **Fencing.** Fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities must be constructed as approved in the site plan.
- G. **Landscaping.** Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with landscaping requirements as approved in the site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet such setback requirements as are compatible with the actual placement of the tower. Ground mounted equipment must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood.
- H. **Associated equipment and accessory buildings.**

- 1) Ground equipment associated with a tower or commercial wireless telecommunication service facility shall be screened by vegetative or other screening compatible with the surrounding environment.
  - 2) No more than one accessory building is permitted per commercial wireless telecommunication service tower unless collocation requirements require a second structure. Said accessory structure may be no more than 200 square feet in size, shall meet the setback requirements of the underlying zoning district and be architecturally designed to blend in with the surrounding environment.
  - 3) All support structures shall be reasonably protected against climbing.
- I. **Security.** Commercial wireless telecommunication service towers must be reasonably posted and secured to protect against trespass. All signs must comply with applicable sign regulations.
  - J. **Design.** Commercial wireless telecommunication service towers must be of stealth design as approved in the site plan unless the city determines that such design is infeasible due to the lack of vertical structures in the vicinity of the proposed site.
  - K. **Signs and advertising.** The use of any portion of a tower for signs other than warning or equipment information is prohibited.
  - L. **Types of towers.** Towers must be self-supporting without the use of guys, wires, cables, beams or other means.
  - M. **Tower materials.** All metal towers shall be constructed of, or treated with, corrosion-resistant material. Wooden structures shall be impregnated with rot resistant substances.
  - N. **Equipment housing.** Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall meet the requirements of Section 4, Subd. 4(H) of this Ordinance.

## **SECTION 5. APPLICATION PROCESS.**

### **Subdivision 1. Building Permit Required.**

A person desiring to construct a tower must submit an application for a building permit and a conditional use permit, to the zoning administrator.

### **Subdivision 2. Application Requirements.** An application to develop a tower must include:

- A. Name, address, and telephone number of the applicant;
- B. Name, address, and telephone numbers of the owners of the property on which the tower is proposed to be located;
- C. Legal description of the parcel on which the tower is proposed to be located;
- D. Written consent of the property owner(s) to the application;
- E. A scaled site plan indicating the location, type and height of the proposed tower, the existing land uses and zoning of the subject parcel, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, drawings of the proposed tower showing elevation and other structures, topography, parking, and depicting the proposed tower design;
- F. A landscape plan showing specific landscape materials, method of fencing, and finished color and, if applicable, the method of camouflage and lighting;
- G. Documentation such as coverage maps showing the need for a tower at the proposed site in order to close a gap in the applicant's wireless telecommunications service, or a gap in the service provided by a person intending to place telecommunications facilities on the tower;
- H. An inventory of existing towers, antennas, or sites approved for towers or antennas, that are either within the city or are sited in a location from which the applicant could provide service within the city, including specific information about the location, height and design of each tower and documentation showing that such existing facilities are unavailable or unsuitable to meet the applicant's need for a tower;
- I. Separation distance of the proposed tower from the other towers described in the inventory of existing sites;
- J. A structural engineering report certifying the ability of the tower to accommodate co-location of additional wireless service provider facilities and a statement by the applicant regarding accommodation for co-location of additional antennas for future users;
- K. The setback distance between the proposed tower and the nearest platted residential property, and unplatted residentially zoned properties;
- L. Proof that all necessary consents or approvals have been applied for from appropriate federal, state or other local agencies;
- M. An application fee established from time to time by resolution of the city council. In the event the city elects to consult with its attorney or a radio frequency (RF) engineer in review of the application, the applicant shall be required to fully reimburse the city for all such expenses;
- N. Other information deemed by the zoning administrator to be necessary.

## **SECTION 6. NON-TOWER FACILITIES.**

**Subdivision 1.** Commercial wireless telecommunication service antennae on roofs, walls and existing towers are a conditional accessory use in the industrial districts and city property, provided that the owner of such telecommunications facilities, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:

- A. That the height from grade of the telecommunications facilities and antennae support structure does not exceed the maximum height from grade of the roof, walls, or other antenna support structure by more than 20 feet;
- B. That a qualified and licensed professional engineer submits a written report indicating the existing roof, wall or other antenna support structure is suitable to accept and support the commercial telecommunications accessory antenna and the proposed method of affixing the antenna to the roof, walls, or other antenna support structure; and that the proposed telecommunications facilities and support structure comply with the Uniform Building Code; and
- C. That telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof; such antennas may not protrude more than six inches from the side of the antenna support structure.

## **SECTION 7. REMOVAL OF TOWERS OR COMMERCIAL TELECOMMUNICATION SERVICE FACILITIES.**

Abandoned or unused towers and associated above-ground facilities must be removed within 90 days of the cessation of operations of the telecommunications facility at the site unless an extension is approved by the City Council. Any tower and associated telecommunications facilities that are not removed within 90 days of the cessation of operations at a site are declared to be public nuisances and may be removed by the City and the costs of removal assessed against the property pursuant to state law and the code. The conditional use permit shall establish an amount to be posted by bond, letter of credit, cash or equivalent by the applicant that will cover the projected cost of removal of towers or telecommunications facilities in the event of abandonment.

## **SECTION 8. ADDITIONAL REQUIREMENTS.**

### **Subdivision 1. Structural inspections.**

- A. The City may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the Uniform Building Code and other construction standards provided by the City Code, federal and state law. The City's expense related to such inspections will be borne by the tower owner or property owner. Based upon the results of an inspection, the building official may require repair, modification or removal of a tower.
- B. Deviation from original construction for which a permit is obtained constitutes a violation of this Section.
- C. Notice of violations will be sent by postal mail to the owner and the owner will have thirty days from the date the notification is issued to make repairs.

**Subdivision 2. Radiation Emission Inspections.** The owner of a telecommunications facility shall provide the City with current, technical evidence of compliance with FCC radiation emission requirements at the City's reasonable request.

**Subdivision 3. Maintenance.** Towers and telecommunication facilities must be maintained in accordance with the following provisions:

- A. Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.
- B. Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the National Electric Safety Code and all Federal Communications Commission, state, and local regulations, and in such a manner that they will not interfere with the use of other property.
- C. Towers, telecommunications facilities, and antenna support structures must be kept and maintained in good condition, order, and repair.
- D. Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.
- E. All tenants on towers must comply with radio frequency emissions standards of the Federal Communications Commission.
- F. If the use of a tower is discontinued by the tower owner, the tower owner must provide written notice to the city of its intent to discontinue use and the date when the use will be discontinued.

## **SECTION 9. VARIANCES.**

**Subdivision 1.** The applicant may apply for a variance from the provisions of this section to the extent expressly indicated herein.

**Subdivision 2.** A variance may be granted if the applicant shows by clear and convincing evidence that it or its tenants cannot meet reasonable service quality needs of end users in the city without a variance from the requirements of this section.

**Subdivision 3.** If the applicant makes the showing required by Subdivision 2 the City Council must consider the following additional factors in determining whether to grant a variance:

- A. Whether there are exceptional or extraordinary circumstances that apply to the property because of lot size or shape, or topography, or other circumstances over which the owners of the property have no control;
- B. Whether special conditions or circumstances exist that were not created by the applicant or the owner of the property or their predecessors;
- C. Whether the variance would be detrimental to the public or to the owners of other property in the vicinity; and
- D. Whether the variance requested is the minimum variance that would alleviate the hardship.
- E. Whether the variance is in keeping with the spirit and intent of this ordinance.
- F. Whether the variance, if granted, will not alter the essential character of the locality.

**Subdivision 4.** A variance will be granted only in instances where the strict enforcement of the requirements of this section would cause undue hardship. Economic consideration alone will not constitute an undue hardship if reasonable use of the property exists under the terms of this section.

#### **SECTION 10. VIOLATION AND PENALTY.**

**Subdivision 1. Violation.** If the permittee fails to comply with any provision of the city code, federal or state law or the conditional use permit requirements, the city may impose penalties for noncompliance, or it may revoke the permit in accordance with the following provisions.

- A. Except as provided in subdivision 1(B) below, a permit revocation shall be preceded by written notice to the permittee of the alleged violation(s), the opportunity to cure the violation(s) during a period not to exceed 30 days following receipt of the written notice and a hearing before the city council within 15 days after receiving written notice of the hearing. The hearing shall provide the permittee with an opportunity to show cause as to why the permit should not be revoked.
- B. If the city finds that exigent circumstances exists requiring immediate permit revocation, the city may revoke the permit and shall provide a post-revocation hearing at least 15 days after permittee's receipt of written notice of the hearing.
- C. Any decision to revoke shall be in writing and supported by substantial evidence contained in a written record.

#### **Subdivision 2. Penalties.**

Any person violating any provision of this Ordinance is guilty of a misdemeanor and upon conviction shall be subject to the misdemeanor penalties set forth in Minnesota Statute Section 609.02, Subdivision 3, or any laws amending or repealing such law.

#### **SECTION 11. REPEALER.**

This ordinance shall repeal all previous rules and regulations relating to commercial telecommunication service structures.

**SECTION 12. EFFECTIVE DATE.** This Ordinance is effective upon its adoption and publication as prescribed by law.

Adopted by the City of Arlington on the 19<sup>th</sup> day of November, 2007.

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

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

The second reading of Ordinance No. 216 – An Ordinance to Amend Ordinance 177, Authorizing the City Council to Establish Street Sign Locations and Regulate Parking and Snow Removal within City Limits was held.

Motion by Reetz, seconded Wills, and passed by unanimous vote to approve Ordinance No. 216 – An Ordinance to Amend Ordinance 177, Authorizing the City Council to Establish Street Sign Locations and Regulate Parking and Snow Removal within City Limits as follows:

## ORDINANCE NO. 216

### AN ORDINANCE TO AMEND ORDINANCE 177, AUTHORIZING THE CITY COUNCIL TO ESTABLISH STREET SIGN LOCATIONS AND REGULATE PARKING AND SNOW REMOVAL WITHIN CITY LIMITS.

WHEREAS, to promote the public safety, health and welfare of the City of Arlington;

THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA, DOES ORDAIN AS FOLLOWS:

Ordinance 177 is amended to read as follows:

1. The City Council of the City of Arlington, Minnesota, in the interest of public safety and convenience, hereby ordains that the city employees, at the order of the City Council, may place street signs for the control of traffic flow and parking, at locations designated by the Council from time to time.
2. The provisions of Minnesota Statutes 169.32, 169.34 and 169.35 (parking rules), 169.342 (Good Samaritan parking exceptions), and 169.345 and 169.346 (physically disabled parking rules), are adopted into this City ordinance. It shall be a violation of this ordinance to park a vehicle within 10 feet of a fire hydrant, within 20 feet of a crosswalk at an intersection, or within 30 feet of a flashing beacon, stop sign, or traffic control signal device located at the side of a road-way. Any curbing painted yellow at the direction of the City Council shall be considered a no parking zone at all times. The presence or absence of such yellow curbing shall, however, not affect the enforcement of the parking setoff regulations contained in this section.
3. The registered owner of any vehicle violating this ordinance shall be charged with the violation by means of a citation, and it shall not be a defense to a parking violation to show that a party other than the owner actually placed the vehicle in the location. This shall apply in all cases except where the vehicle has been stolen and reported as such prior to receiving the citation. Anyone violating this ordinance shall be guilty of a petty misdemeanor, punishable by a fine of not more than the maximum monetary fine for petty misdemeanors as set out in Minnesota Statutes 169.89.
4. Vehicles violating this ordinance, which pose a danger to the public, interfere with City maintenance activity such as street sweeping, snow plowing, or street repair, or pose a nuisance to any citizen by reason of blocking access to or from the citizen's private driveway, may be towed at the owners expense. The vehicle may be impounded until all parking fines, towing, and storage charges have been paid. Any vehicle, which is not claimed after abandoned vehicle notice procedures required by state law have been accomplished by the city, shall be sold at the discretion of the city.

Subd. 1 Winter Parking Regulations. Except in compliance with the directions of a law enforcement officer or in compliance with regulatory parking signs placed by law enforcement officers or employees of the City, no vehicle(s) shall be parked on any street or highway in the City during the period of time commencing 2 hours after the accumulation thereon of two or more inches of snow and continuing thereafter until snow removal or plowing has been completed. If vehicle(s), trailer(s), or other obstacle(s) are not removed within two (2) hours of the first two (2) inches of snow, said obstruction will be ticketed. If said vehicle(s) or obstruction is not removed within twelve hours (12) of being ticketed, said vehicle(s) or obstruction(s) will be towed and impounded at the owner's expense.

Subd. 2. Business parking lots. Except in compliance with the directions of a law enforcement officer, or in compliance with regulatory parking signs placed by law enforcement officers or employees of the City, snow shall not be moved from the property of a private business onto a city street. A private business may contract with the City to place snow onto a city street. The City will set conditions and a fee, based on the size of the property, to remove such snow. It is unlawful for any private business, not acting under contract with the City, to place or deposit any snow or ice onto a City street. Private businesses violating this section may be subject to a fine for time spent by the City to remove the snow at \$150 per hour with a one half (1/2) hour minimum charge. Future fines shall be set by resolution.

5. The City and its agents shall not be liable for any damage or loss to a vehicle or its contents if said vehicle is towed and impounded for reason of a violation of this ordinance.
6. The incorporation of state statutes within this ordinance shall also include any amendments of or replacements for said statutes.

This Ordinance shall become effective immediately upon publication.

Adopted by the City Council of the City of Arlington on the 19<sup>th</sup> day of November, 2007.

/s/ James R. Krefl  
James R. Krefl, Mayor

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

The second reading of Ordinance No. 217 – An Ordinance to Amend Ordinance 94 and 207, Regulating Meetings of the City Council was held.

Motion by Griep, seconded by Reetz, and passed by unanimous vote to approve Ordinance No. 217 – An Ordinance to Amend Ordinance 94 and 207, Regulating Meetings of the City Council as follows:

**ORDINANCE NO. 217**

**AN ORDINANCE TO AMEND ORDINANCE 94 AND 207, REGULATING MEETINGS OF THE CITY COUNCIL**

**WHEREAS**, to promote the public safety, health and welfare of the City of Arlington;

THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA, DOES ORDAIN AS FOLLOWS:

Ordinance 94 and 207 are repealed and replaced with the following:

Section 1. *Regular Meetings*. Regular meetings of the City Council shall be held on the first and third Monday of each calendar month at 6:30 p.m. Any regular meeting falling upon a legal holiday shall be held on the next following business day at the same hour and place, or at a date, time and place decided by the Council with at least one published notice in the designated official newspaper. All meetings, including special and adjourned meetings, shall be held in the Council Chambers at the Community Center, or as designated by the City Council with notice of the place of meeting to be posted in the designated posting places as defined in Section 7.

Section 2. *Special Meetings*. Special meetings of the City Council may be called by the Mayor or by any two council members by writing filed with the City Administrator, who shall notify the Mayor and all council members of the time and place of meeting at least three days before the meeting. Said notice shall be in written form, delivered to the Mayor and council members either by mail or personal delivery. The mayor, or in the Mayor's absence, the Vice-Mayor, shall preside at special meetings.

Section 3. *Special Meeting Notices*. At least three days before the meeting, written notice shall be posted in the designated posting places as defined in Section 7 and shall be mailed or otherwise delivered to each person who has filed a written request for notice of special meetings. As an alternative to mailing or otherwise delivering notice to persons who have requested notice, notice may be published once at least three days before the meeting in the official newspaper.

Section 4. *When to call a special meeting*. The routine business of the City shall, whenever possible, be addressed at regular scheduled council meetings. Special meetings shall be called only if urgent business must be addressed in circumstances where it would be detrimental to the City to delay discussion or action until the next regular council meeting. Special meetings may also be called if the council needs to address a particularly complicated or lengthy issue which deserves special attention, and which would impede the conduct of routine business at a regular council meeting.

Section 5. *Public Meetings*. All Council meetings, including special and adjourned meetings and meetings of Council committees, shall be open to the public, except the Council may close a meeting as provided for by the Open Meeting Law, M.S. Chapter 13D as it may be amended from time to time.

Section 6. *Compensation*. There shall be no limit on the number of paid special council meetings or committee meetings in any calendar year. The attendance fee to be paid to the Mayor and council members for each special meeting or committee meeting shall be \$35.00. These attendance fees shall be paid at the end of each calendar quarter. The attendance fee may be amended in the future by City resolution.

Section 7. *Designated Posting Places*. The official designated posting places of notices for all meetings of the Arlington City Council and Council Committees shall be the City Office bulletin board, Post Office bulletin board, and Library bulletin board.

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

This ordinance shall be come effective immediately upon publication.

Adopted by the City Council of the City of Arlington on the 19<sup>th</sup> day of November, 2007.

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

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

Administrator Jaunich presented Ordinance No. 218 – An Ordinance Adopting the Minnesota State Building Code. This Ordinance: Provides for the Application, Administration, and Enforcement of the Minnesota State Building Code by Regulating the Erection, Construction, Enlargement, Alteration, Repair, Moving, Removal, Demolition, Conversion, Occupancy, Equipment, Use, Height, Area and Maintenance of All Buildings and/or Structures in this Municipality; Provides for the Issuance of Permits and Collection of Fees Thereof; Provides Penalties for Violation Thereof; Repeals All Ordinances and Parts of Ordinances that Conflict Therewith. This Ordinance shall Perpetually Include the Most Current Edition of the Minnesota State Building Code with the Exception of the Optional Appendix Chapters. Optional Appendix Chapters Shall Not Apply Unless Specifically Adopted for its first reading. He commented that the City had adopted the State Building Code a few years back, but it did not include the perpetual language. He explained that by adding the language, will allow the City to refrain from having to create new ordinances every time the State Code is changed. He added that one more change was that future permit fees will be set by resolution. Brief discussion was held on current permit fees and property valuations on building permits. Adm. Jaunich will speak with Building Official Haslip regarding valuations on building permits.

The Council reviewed a draft letter to business owners regarding snow removal and implementing a fee (small-\$10, medium-\$15, large-\$25) for such removal, which said fee would be charged per time of snow removal. It was noted that this had been recommended by the Streets Committee.

Motion by Griep, seconded by Wills, and carried (Reetz opposed) to approve the letter to the business owners for snow removal, including the fees as set forth above.

Attorney Arneson reviewed the process for establishing a Charter Commission. He stated that State law does not provide for alternates with regards to Charter Commissions. The Council had comprised a list of 16 names, which the current ordinance allows for 15. He stated that Lowell Nagel has agreed to be an alternate. Arneson suggested that Nagel should still attend (and participate) the meetings so that if someone drops out he would be up to speed and ready to fill the vacancy. Arneson stated that he would then approach the Courts with a quick motion asking to appoint Nagel as a substitute member on the Commission.

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

### **RESOLUTION NO. 33-2007**

#### **A RESOLUTION ESTABLISHING A CHARTER COMMISSION**

**NOW, THEREFORE, BE IT RESOLVED**, That the City Council has determined that it is in the best interest of the city to request the Chief Judge of the District Court, First Judicial District, to appoint a 15 member Charter Commission for the City of Arlington. The last previous Charter Commission served in 1981 and the City Charter was last reviewed at that time. It has been determined that there are a number of charter changes that should be considered, and the appointment of a new Charter Commission would be appropriate to review such possible changes. The City Council hereby nominates to the Chief Judge the following 15 persons, all of whom are voters in the City of Arlington, and all of whom have indicated a willingness to serve on the Charter Commission:

Rick Koepp  
Patrick Vossen  
Daniel Tackmann  
Juanita Kube  
Melba Meffert  
Alberta Sander  
Pauline Wiemann  
Lorraine Neubarth

Frances Ferch  
Karen Kroells Archer  
Jeff Hardel  
Wayne Quast  
Susan Pinske  
Morris Messenbring  
Gerald Ebersviller

**BE IT FURTHER RESOLVED**, that The City Attorney is hereby authorized and directed to petition the Chief Judge accordingly.

The undersigned attest this is a true and correct copy of the resolution adopted on the above stated date.

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 19<sup>th</sup> day of November, 2007.

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.

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

**RESOLUTION NO. 34-2007**

**A RESOLUTION AUTHORIZING SUMMARY PUBLICATION OF ORDINANCE 215, ENTITLED “AN ORDINANCE REPEALING AND REPLACING ORDINANCE 196 REGARDING THE REGULATION OF TELECOMMUNICATION TOWERS, ANTENNAS AND RELATED FACILITIES WITHIN THE CITY OF ARLINGTON AND PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF SUCH REGULATIONS”**

**WHEREAS**, the City of placed Ordinance 196 into effect several years ago; and

**WHEREAS**, the Arlington Planning Commission finds portions of Ordinance 196 are not up to date; and

**WHEREAS**, the City of Arlington initiated a request to repeal Ordinance 196 and replace it with Ordinance 215 relating to the regulation of telecommunication towers, antennas and related facilities within the City of Arlington; and

**WHEREAS**, the Arlington Planning Commission has reviewed and studied the request and developed text to be included in Ordinance 215; and,

**WHEREAS**, a public hearing was properly noticed and held on November 1, 2007 by the City of Arlington Planning Commission; and

**WHEREAS**, the Planning Commission at its meeting on November 1, 2007 approved a resolution recommending the City Council approve Ordinance 215; and

**WHEREAS**, the City Council approved the first reading of Ordinance 215 at its regular meeting on November 5, 2007; and

**WHEREAS**, the City Council approved second reading and the adoption of Ordinance 215 at its regular meeting on November 19, 2007; and

**WHEREAS**, The City Council of the City of Arlington has determined the publication of the title and a summary of Ordinance 215 would clearly inform the public of the intent and effect of the Ordinance 211; 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. 215 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 November 19<sup>th</sup> 2007 the City Council of the City of Arlington approved Ordinance 215, entitled, ‘An Ordinance repealing and replacing Ordinance 196 regarding the regulation of telecommunication towers, antennas and related facilities within the City of Arlington and providing for administration and enforcement of such regulations.’ 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 purpose of the Ordinance is to provide for non-commercial and commercial telecommunication services and facilities within the City of Arlington.”

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 19<sup>th</sup> day of November, 2007.

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.

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

#### **RESOLUTION NO. 35-2007**

#### **RESOLUTION TRANSFERRING CITY FUNDS**

**WHEREAS**, the City Council of the City of Arlington deems it expedient under the circumstances to transfer the following funds:

\$ 30,500.00	from the Sewer Fund to the Wastewater Sinking Fund
\$ 70,500.00	from the Sewer Fund to the '04 Water & Sewer Refund Bond Fund
\$165,000.00	from the Water Fund to the '04 Water & Sewer Refund Bond Fund
	- To cover debt service payments
\$ 45,000.00	from the General Fund to the Community Center Fund
\$ 62,000.00	from the General Fund to the Fire Fund
\$ 10,000.00	from the General Fund to the Ambulance Fund
\$ 9,500.00	from the General Fund to the Cemetery Fund
\$ 10,000.00	from the General Fund to a Capital Outlay Fund (for Ambulance)
	- To cover Special Revenue fund deficits & contribute to a Capital fund
\$ 40,000.00	from the Water Improvement Fund to the Water Fund
	- To reimburse for Capital expenditures this year & cover fund deficit
\$ 42,756.75	from the Capital Outlay Fund to the Ambulance Certificate Fund
	- To transfer City's existing funds towards new 2007 Ambulance vehicle
\$ ~47,000.00	from the Electric Improvement Fund to the Ambulance Certificate Fund
	- Borrowing funds to cover 2007 Ambulance vehicle purchase, to be paid back by townships over the next 4 years.

**NOW THEREFORE BE IT RESOLVED**, that the aforementioned funds are hereby transferred to said funds of the City of Arlington.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Wills and upon vote 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 19<sup>th</sup> day of November, 2007.

Signed: /s/ James R. Kreft  
Mayor

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

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

Mayor Kreft commented that the Exploratory Comprehensive Plan Task Force was in agreement that the actual Comp Plan Task Force should consist of nine members. Mayor Kreft presented the following list of names for appointment to the Comprehensive Plan Task Force: Mike Vrklan, Curt Reetz, Darin Mielke, Dwight Grabitske, Trisha Rosenfeld, Michelle Battcher, Pete Arneson, Holly Kreft, and Anne Karl. Mayor Kreft commented that there are 18 meetings scheduled over the next 13 months.

Motion by Griep, seconded by Vrklan, and passed by unanimous vote to appoint the following to the Comprehensive Plan Task Force: Mike Vrklan and Curt Reetz representing the Council; Darin Mielke and Dwight Grabitske representing the Planning & Zoning Committee; Trisha Rosenfeld representing the EDA; Michelle Battcher representing the Parks Committee; Pete Arneson, Holly Kreft and Anne Karl at large.

Mayor Kreft noted that the Comp Plan Task Force is scheduled to meet on Monday, November 26<sup>th</sup> at 6:00 pm. He also noted that the Comp Plan "kick off" meeting is scheduled for 7:00 pm the same night, to which City Staff, Committees, Council, Arlington Township and County Commissioners have been invited to attend.

Administrator Jaunich talked about electronic storage for city documents. He presented information from a few different companies that handle electronic storage. He stated that this is a good idea, but not sure if it is the right time for Arlington to pursue at this time. It was his intent to bring this to the Council's attention to see if there was any interest in it. Vrklan commented that the school has gone to electronic storage, which it has been successful for them. Adm. Jaunich stated that he received some very good feedback on this topic and will proceed with researching the different options that are available further.

Discussion was held on employee overtime. It was agreed that all overtime should be approved through the City Administrator's Office (per the Employee Policy Handbook).

Reetz commented that the Employee Relations Committee has been going over the Personnel Policy and should have it ready for the Council's review at the next meeting. They have also been discussing the City's health insurance; it will be increasing by 22% in the next year (the risk factor is as high as it can go). Adm. Jaunich will be looking into some different options and bring them to the next meeting for the Council's consideration. Mayor Kreft questioned if the City's plan could encompass the SMC staff (increase the size of the group) as the hospital is municipally owned. Adm. Jaunich commented that he was aware that some cities have been able to pool together for this reason also.

Discussion was held on setting a date to review the proposed 2008 Budget. Adm. Jaunich commented that he would like to see a meeting both before and after the Truth In Taxation hearing on December 3<sup>rd</sup>. It was the consensus of the Council to meet on November 30<sup>th</sup> at 1:00 pm.

Adm. Jaunich reminded the Council of the upcoming Sibley County Municipalities meeting in Winthrop on December 6<sup>th</sup>.

Wills commented on the number of antennas on the water tower and questioned if the City has been collecting rent for them. Adm. Jaunich will check into this.

Brief discussion was held on pressure washing and/or painting the water tower.

Mayor Kreft recessed the regular meeting in order to hold a closed meeting.

Mayor Kreft called the closed portion of the meeting to order to discuss potential/threatening litigation against the City. Adm. Jaunich will send Tim Berger a letter that states he will be responsible for all fees incurred; the City will not waive any charges.

Mayor Kreft adjourned the closed meeting and reconvened the regular meeting.

Motion by Wills, seconded by Vrklan, and passed by unanimous vote to adjourn the meeting at 9:30 p.m.

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Administrator Matthew Jaunich

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Mayor James R. Kreft