

ARLINGTON CITY PLANNING & ZONING BOARD
MEETING MINUTES
MARCH 9, 2006

The meeting was called to order at 7:00 p.m., Chairman Nagel presiding.

Members present: Chairman Lowell Nagel, Dwight Grabitske, Dan Hislop, Councilmember Curt Reetz
Members absent: Steve Geib, Arden Kreft, Wayne Kramer, Mike Scharping
Also Present: Mayor Czech, P&Z Administrator Jenness

Motion by Reetz, seconded by Grabitske, and passed by unanimous vote to approve the minutes from the February 9, 2006 meeting as presented.

Chairman Nagel called to order the public hearings related to amending the R-1 and R-2 Zoning Districts of the Zoning Ordinance and the implementation of a drug cleanup ordinance. It was noted that there was no one present and no written or verbal comments had been received either for or against said amendment. P&Z Jenness explained that a catch-all clause was being added to both the R-1 (Section 5, Subd. 3 Conditional Use) and R-2 (Section 6, Subd. 3) zoning districts. He stated that this clause was being added so that the Planning & Zoning Board and City Council would have the discretion to allow a Conditional Use Permit for something low impact or non-detrimental to the area even though it was not permitted under the current zoning, or discretion to deny a CUP that would normally be permitted under the current zoning if they deem it unsafe or an unreasonable request for the area (the ordinance would not have to be amended all the time).

P&Z Administrator Jenness handed out a proposed drug cleanup ordinance. He stated that he had obtained the ordinance from the League of MN Cities and revised it to fit the City of Arlington with the help of Attorney Arneson. He explained that the ordinance defines what is to happen if a clandestine drug lab property is detected within city limits and who is responsible for the cleanup.

Chairman Nagel adjourned the public hearings and reconvened the regular meeting.

Motion by Hislop, seconded Grabitske, and passed by unanimous vote to accept and recommend to the City Council to adopt the amendment to the R-1 Zoning District, Section 5, Subdivision 3 - Conditional Use Permits as follows:

8. Any use determined by the Planning & Zoning Commission to be of the same general character as the Permitted or Conditional Uses and found not to be detrimental to the general health, safety, and welfare of the city.

Motion by Reetz, seconded by Grabitske, and passed by unanimous vote to accept and recommend to the City Council to adopt the amendment to the R-2 Zoning District, Section 6, Subdivision 3 – Conditional Use Permits as follows:

7. Any use determined by the Planning & Zoning Commission to be of the same general character as the Permitted or Conditional Uses and found not to be detrimental to the general health, safety, and welfare of the city.

Motion by Hislop, seconded by Reetz, and passed by unanimous vote to accept and recommend to the City Council to approve the following proposed drug cleanup ordinance:

AN ORDINANCE REGULATING THE CLEANUP OF CLANDESTINE DRUG LAB SITES AND CHEMICAL DUMP SITES WITHIN THE CITY OF ARLINGTON, SIBLEY COUNTY, MINNESOTA AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF SUCH REGULATIONS.

The City Council of the City of Arlington hereby ordains:

1.01 Purpose and Intent. **The purpose of this Section is to protect the public health, safety and welfare and to reduce public exposure to health risks where law enforcement officers have determined that**

hazardous chemicals from a suspected clandestine drug lab or chemical dumpsite may exist. These conditions present health and safety risks to occupants and visitors of such structures and land through fire, explosion and skin and respiratory exposure to chemicals. The City Council finds that such sites may contain hazardous chemicals, substances, or residues that place people, particularly children or adults of child-bearing age, at risk of exposure through inhabiting the property, visiting the property or using or being exposed to contaminated personal property.

1.02 Definitions. For the purpose of this section, the terms defined herein shall have the following meaning ascribed to them. These definitions are intended to also include any applicable definitions under Minnesota State Law.

“Child” means any person less than 18 years of age.

“Chemical dump site” means any place or area where chemicals or other waste materials have been located.

“Clandestine drug lab” means the unlawful manufacture or attempt to manufacture controlled substances.

“Clandestine drug lab site” means any place or area where law enforcement has determined that conditions associated with the operation of an unlawful clandestine drug lab exist. A clandestine drug lab site includes any dwellings, accessory structures, buildings, a chemical dump site, a vehicle, boat, trailer or other similar appliance or any other area, land or location.

“Cleanup” means proper removal and/or containment of substances hazardous to humans and/or the environment at a clandestine drug lab site or chemical dump site.

“Controlled substance” means any drug, substance or immediate precursor in Schedules I through V of Minnesota Statutes Section 152.02. The term does not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

“Owner” means any person, firm, corporation, or other entity who owns, in whole or in part, the land, building, structure, vehicle, boat, trailer or other location associated with a clandestine drug lab site or chemical dump site.

“Public Health Nuisance” means a nuisance as defined under Minnesota Statute Section 145A.02, subdivision 17.

“Remediation” means methods such as assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, and/or removal of contaminated materials from a clandestine drug lab site or chemical dump site.

1.03 Declaration of Property As a Public Health Nuisance.

Subd. 1. Any property containing a clandestine drug lab or chemical dump site will be declared a public health nuisance.

Subd. 2. No person may occupy, enter or allow occupancy or entrance to property declared a public health nuisance under this Section until such declaration is vacated or modified to allow occupancy.

1.04 Law Enforcement Notice to Other Authorities. Upon identification of a clandestine drug lab site or chemical dump site deemed to place neighbors, visiting public, or present and future occupants of the affected property at risk for exposure to harmful contaminants and other associated conditions, law enforcement officials shall notify the City Health Official and other appropriate municipal, child protection, and public health authorities of the property location, the property owner if known, and conditions found.

1.05 Seizure of Property.

Subd. 1. If a clandestine drug lab or chemical dump site is located inside a vehicle, boat, trailer, or other form of moveable personal property, law enforcement authorities may immediately seize such property and transport it to a more secure location.

Subd. 2. Personal property may not be removed from a clandestine drug lab site or a chemical dump site without the prior consent from the City Health Official.

1.06 Action by City Health Official.

Subd. 1. Upon notification by law enforcement authorities, the City Health Official or other appropriate municipal or public health authority will issue a Declaration of Public Health Nuisance for the affected property and post a copy of the Declaration at all probable entrances to the dwelling or property.

Subd. 2. Removal of the posted Declaration of Public Health Nuisance by anyone other than the Health Official, law enforcement authorities, or their designees, is prohibited.

Subd. 3. The City Health Official shall also attempt to notify the following parties of the Declaration of Public Health Nuisance:

- A. Owner of the property;
- B. Occupants of the property;
- C. Neighbors within close proximity that can be reasonably affected by the conditions found;
- D. The Sibley County Sheriff's Department; and
- E. Other state and local authorities, such as the Minnesota Pollution Control Agency and the Minnesota Department of Public Health, which are known to have public and environmental protection responsibilities applicable to the situation.

Subd. 4. Any rental license issued by the City for the property is immediately suspended upon issuance of the Declaration of Public Health Nuisance. Such license will be reinstated only after full compliance with an abatement order.

Subd. 5. After issuance of the Declaration of Public Health Nuisance, the City Health Official will issue an order to the property owner to abate the public health nuisance. The abatement order will include the following:

- A. A copy of the Declaration of Public Health Nuisance;
- B. An order to immediately vacate those portions of the property, including building or structure interiors, which may place the occupants or visitors at risk;
- C. Notification of suspension of the rental license, if applicable;
- D. A summary of the owner and occupant's responsibilities;
- E. Information on locating professional services necessary to remove and abate the public health nuisance status as provided in this Ordinance and Minnesota Statute Section 145A.04; and
- F. Information about the potentially hazardous condition of the clandestine drug lab site or chemical dump site.

1.07 Responsibilities of Owner.

Subd. 1. Upon receipt of an abatement order by the City's Health Official, the property owner must, at the owner's expense:

- A. Immediately vacate those portions of the property, including building or structure interiors that may place the occupants or visitors at risk. This includes dwellings, buildings, motor vehicles, trailers, boats, appliances or any other affected area or location. No person shall occupy, enter or allow occupancy or entrance to a building or structure declared a Public Health Nuisance until such declaration is vacated or modified to allow occupancy;
- B. Properly secure and post warning signs on the perimeter of any contaminated areas on the property in an effort to avoid exposure to unsuspecting parties;
- C. Promptly contract with one or more acceptable environmental hazard testing and cleaning firms (acceptable firms are those that have provided assurance of appropriate equipment, procedures, and personnel, as determined by the Minnesota Department of Health) to accomplish the following:
 - 1. A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;
 - 2. Soil testing of the site and testing of all property and soil in proximity to the site that the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;
 - 3. A complete cleanup of all property and soil at the site and in proximity to the site that is found to be affected by conditions found at the site (including but not limited to, the cleanup or removal of contaminated plumbing, ventilation systems, fixtures and contaminated soil) or a demolition of the site and a complete cleanup of the demolished site;
 - 4. Remediation testing and follow-up testing to determine all health risks are sufficiently reduced, according to the Minnesota Department of Health guidelines, to allow safe human occupancy and use of the site and use of the personal property therein.
- D. Regularly notify the City of actions taken and reach agreement with the City on the cleanup schedule. The City shall consider practical limitations and the availability of contractors in approving the schedule for cleanup; and
- E. Provide written documentation to the City of the cleanup process, including a signed, written statement that the property is safe for human occupancy and that the cleanup was conducted in accordance with Minnesota Department of Health guidelines.

Subd. 2. The property may not be re-occupied or used in any manner until the City has obtained the written statement in Subdivision (1) (E) and has confirmed that the property has been cleaned in accordance with the guidelines established by the Minnesota Department of Health.

1.08 Owner's Responsibility for Costs. The owner is responsible for all costs associated with nuisance abatement and cleanup of the clandestine drug lab site or chemical dump site, including, but not limited to, costs for:

- A. Emergency Response;
- B. Posting and physical security of the site;
- C. Notification of affected parties;
- D. Expenses related to the recovery of costs, including the assessment process;
- E. Laboratory Fees;

- F. Cleanup services;
- G. Administrative fees; and
- H. Other associated costs.

1.09 City Authority to Initiate Cleanup and Recovery of Costs.

Subd. 1. If, within ten (10) days after service of notice of the Declaration of Public Health Nuisance, the City is unable to locate the property owner or if the City Health Official determines that the owner refuses to, or cannot pay the costs, or arrange timely assessment and cleanup that is acceptable to the City, the City Health Official is authorized to proceed in a prompt manner to initiate the on-site assessment and cleanup.

Subd. 2. The City may abate the nuisance by removing any hazardous structure, building, or otherwise, in accordance with Minnesota Statutes Chapter 463, or by any other means provided under law.

Subd. 3. If the City abates the public health nuisance, in addition to any legal remedy, it is entitled to recover all costs associated with such abatement plus an additional 25% of the City's costs for administration. In addition to any other legal remedy, the City may recover costs by civil action against the person or persons who own the property or by assessing such costs as a special tax against the property in the manner that taxes and special assessments are certified and collected pursuant to Minnesota Statutes Section 429.101.

1.10 Authority to Modify or Remove Declaration of Public Health Nuisance.

Subd. 1. The Health Official is authorized to modify the Declaration conditions or remove the Declaration of Public Health Nuisance.

Subd. 2. Such modifications or removal of the Declaration shall only occur after documentation from a qualified environmental or cleaning firm stating that the health and safety risks, including those to neighbors and potential dwelling occupants, are sufficiently abated or corrected to allow safe occupancy of the dwelling.

1.11 Penalties.

Any person violating any provision of this Ordinance is guilty of a misdemeanor and upon conviction shall be subject to the penalties set forth in Minnesota Statute Section 609.02, subdivision 3.

1.12 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.

1.13 Amendment or Replacement of State Statutes.

All references to state statutes in this ordinance shall be considered to include any future amendments or replacements enacted by the legislature for such statutes.

This ordinance shall become effective immediately upon publication.

For the City of Arlington

It's Mayor, David Czech

It's City Administrator, David L. Krueger

The Planning & Zoning Board reviewed the permits issued in February. No action was needed.

Jeness stated that he was working on an ordinance that covers cell phone towers within city limits and would present it at the next meeting.

Mayor Czech commented that progress was being made on the Good Samaritan Center expansion project. They were working with Bolton & Menk about the existing water line that lies in the proposed expansion area and how this can be corrected.

Nagel questioned how things were progressing with the Schneider property (Auto Body Shop) cleanup. Jenness stated that he is working at it slowly (making an effort).

Jeness commented that he had heard from Craig Bullert on his building on Main Street. Bullert informed him that if he is able to move his business to the building across the street from the Community Center, he will sell the building (2nd one in from the corner next to Bob Meyers property) on Main Street to Meyers, who will in turn tear it down. If he is unable to move his business he will tear it down and construct some type of shed for his catering vehicles.

Nagel commented on the progress of the 2 houses on West Adams Street (former Moeller house and Green/Custer house) and the old sawmill property owned by Ron Soeffker on 4th Avenue NE.

Mayor Czech invited the members to attend the Town Meeting being held at the Community Center on March 11th. He stated that Rep. Laura Brod and Senator Tom Neuville will be there. He also invited the members to a Global Warming Seminar being held at the Catholic Church the same afternoon.

Motion by Hislop, seconded by Grabitske, and passed unanimous vote to adjourn the meeting.

P&Z Administrator Harry Jenness

Chairman Lowell Nagel