

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 24, 2004**

1. CALL TO ORDER.

Mayor Anderson called the meeting to order at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

Councilmembers Brad Wiersum, Jan Callison, Terry Schneider, Al Thomas, Tony Wagner, Bob Ellingson, and Karen Anderson were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the addendum, which provided the results of the May 20, 2004 planning commission discussion about the JLT rezoning, item #14B.

Callison moved, Wiersum seconded a motion to accept the agenda with the addendum. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES: May 10, 2004 regular council meeting.

Wiersum moved, Thomas seconded a motion to approve the minutes of the May 10, 2004 Minnetonka City Council meeting as submitted. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of retiring employees Arlen Holland, Sandy Surges and Dale Eggenberger.

Wiersum recognized the contributions of Arlen Holland, who retired from the police department with 25 years of service. Holland thanked the council for the recognition.

Schneider recognized Sandy Surges for 16 years of service to the finance department. Surges thanked the city council and said it was her pleasure to serve.

Callison recognized Dale Eggenberger for 32 years of service to the city, primarily as the finance director. Eggenberger thanked the city council for the recognition, and noted that he had been with the

city for more than one-half of his life. He will miss the city council, the leadership team, his co-workers, and especially the finance department staff. He was grateful to be part of the city's success.

Anderson presented plaques to each retiree.

B. LMCD update by Katy Van Hercke.

Van Hercke serves as the city's Lake Minnetonka Conservation District (LMCD) representative. She provided background information about herself and LMCD. She reviewed the district's budget, which is \$466,953 for 2004, and the city's share is \$48,890. LMCD's 2005 budget will be certified by July 1, 2004.

Van Hercke then reviewed LMCD's mission, and their current projects--boat storage and invasive species (Zebra mussels and Eurasian milfoil).

Van Hercke said that LMCD would distribute a Powerpoint presentation to the mayors of its member cities regarding invasive species.

Van Hercke noted that two additional water patrol deputies were added from 2001 to 2004, thanks to funding from Hennepin County. Future funding of the additional deputies may be a challenge.

Van Hercke noted the city's cooperation in resolving issues at the Gray's Bay Marina. She also noted that the district is installing solar-lighted buoys, and has received positive feedback about them. Because this was her first report as the city's LMCD representative, Van Hercke asked for council feedback.

Anderson thanked Van Hercke for her report and said that the city appreciates her attention to Minnetonka's concerns. She congratulated Van Hercke on being elected LMCD vice-chair.

Thomas asked about upcoming critical issues. Van Hercke said that boat density is critical. She expects the district's policy as to size and storage to be updated. The district will need to be forward thinking because more of the population is moving to the western suburbs. She also said Zebra mussels have the potential to kill the lake. She hopes the city will publish information about Zebra mussels in the *Minnetonka Memo*.

Anderson noted that Minnetonka encompasses only three percent of the lake's shoreline, and the remaining shoreline is in other communities. She said that the city must protect the interests of all

its residents. Van Hercke noted that the shoreline in Minnetonka is among the most highly desired due to its locale.

Schneider complimented Van Hercke on her report, and said that it was the most comprehensive and thorough report he had heard from an LMCD representative.

C. Update from Hennepin County Commissioner Linda Koblick.

Commissioner Koblick represents Minnetonka as part of the Sixth District of Hennepin County. She noted the broad programs and services offered by the county, and explained the responsibilities of board members.

Koblick noted that the county is gearing up for its 2005 budget process, and is looking at the effect of human services cuts. She noted the importance of partnerships, including those with Minnetonka. She looks forward to working for the Sixth District over the next year.

Anderson thanked Koblick for remembering her Minnetonka roots, and for her role with partnerships, especially for public safety. Anderson thanked Koblick for her thorough report.

Koblick then introduced Katie Walker, the representative from the Hennepin County Railroad Authority. Koblick invited the public to visit the county's Web site (www.hennepin.us), and to get involved in the county's boards and commissions.

D. Southwest Rail Study Update by Katie Walker.

Walker talked about the advanced planning process for the Southwest Rail Corridor. The Hennepin County Railroad Authority (HCRA) has been looking for ways to re-route alternate 3A to increase ridership by placing the route closer to employment centers in Hopkins and Eden Prairie. It is still too early in the process to give specifics on possible options.

Their technical advisory committee says that the study should include modification of the 3A alternative, and the advanced planning should be brought to cities to define the exact alignment and develop a hybrid alternative.

Walker said that requests for proposals would be released in June. Staff will review the proposals and make its recommendation to the HCRA. They expect the study to begin in early September, and take about 18 months to complete.

Anderson thanked Walker for her report, and asked about the status of the previous task force. Walker said that task force completed its charge and disbanded. There will be a request for new members for a task force for the next phase.

Callison recognized LuAnn Tolliver, who served as an alternate on the task force. At Callison's request, Walker explained the four alternative routes and said that all four alternatives would be studied in the advanced planning process.

In response to Schneider's question, Walker said that their funding estimates reflect some of the right-of-way costs.

Anderson thanked Walker and asked her to keep the city up-to-date on the advanced planning process. She also said that the city would await the request for another task force representative.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reviewed the schedule of upcoming city council meetings.

6. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.

No one spoke.

9. BIDS AND PURCHASES: None.

10. CONSENT AGENDA (Items Requiring a Majority Vote):

A. Claims for council authorization – May 24, 2004.

Wiersum moved, Callison seconded a motion to approve the May 24, 2004 claims list, including checks numbered 182074 through 182378 totaling \$1,027,975.28. All voted "yes." Motion carried.

B. Approval of THE GLEN townhomes final plat at 14201, 14213, and 14225 Excelsior Boulevard for GL Development, LLC.

Wiersum moved, Callison seconded a motion to approve THE GLEN final plat that was received on March 12, 2004, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.
- 3) The resolution vacating the Kinsel Road public right-of-way must be recorded.

All voted "yes." Motion carried.

C. Resolution accepting plans and specifications and authorizing the advertisement for bids for the Woodland Curve Storm Sewer Improvement project No. 5612.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004-041 accepting plans and specifications and authorizing the advertisement for bids for the Woodland Curve Storm Sewer Project No. 5612. All voted "yes." Motion carried.

D. Memorandum of Understanding with Minnehaha Creek Watershed District and Hennepin County regarding the Headwaters Park.

Wiersum moved, Callison seconded a motion to approve the Memorandum of Understanding with Minnehaha Creek Watershed District and Hennepin County regarding the Headwaters Park. All voted "yes." Motion carried.

E. Resolutions ordering the abatement of nuisance conditions.

Anderson pulled this item from the consent agenda for a staff update on these properties.

Community Development Director Ron Rankin noted the eight properties that still did not comply. In response to Schneider's question, Rankin said that the number of nuisance complaints was likely higher due to the wet spring, and staff's desire to take quicker action, especially on properties with a history of non-compliance.

Schneider moved, Wagner seconded a motion to:

- 1) Adopt Resolution No. 2004-047 ordering the abatement of nuisance conditions existing at 3320 Chippewa Road.
- 2) Pulled - 5804 Covington Terrace.
- 3) Adopt Resolution No. 2004-048 ordering the abatement of nuisance conditions existing at 17621 Creek Ridge Pass.
- 4) Pulled - 13921 Excelsior Boulevard.
- 5) Pulled - 13929 Excelsior Boulevard.
- 6) Pulled - 14225 Excelsior Boulevard.
- 7) Pulled - 3512 Hopkins Crossroad.
- 8) Adopt Resolution No. 2004-049 ordering the abatement of nuisance conditions existing at 4200 Marlborough Court.
- 9) Pulled - 15710 Minnetonka Boulevard.
- 10) Adopt Resolution No. 2004-050 ordering the abatement of nuisance conditions existing at 16612 Minnetonka Boulevard.

- 11) Pulled - 12210 (16) Pioneer Road.
- 12) Adopt Resolution No. 2004-051 ordering the abatement of nuisance conditions existing at 16614 State Highway 7.
- 13) Pulled - 3625 Tonkawood Road.
- 14) Pulled - 3803 Tonkawood Road.
- 15) Adopt Resolution No. 2004-052 ordering the abatement of nuisance conditions existing at 5108 Valley View Road.
- 16) Pulled - 18 Westwood Circle.
- 17) Pulled - 5431 Williston Road.
- 18) Pulled - 5439 Williston Road.
- 19) Pulled 12900 Woodbridge Trail.
- 20) Adopt Resolution No. 2004-053 ordering the abatement of nuisance conditions existing at 5208 Woodhill Road.
- 21) Pulled - 14540 Woodruff Road.
- 22) Adopt Resolution No. 2004-054 ordering the abatement of nuisance conditions existing at 14920 Woodruff Road.

All voted "yes." Motion carried.

F. Approve Assignment and Assumption Agreement and Subordination Agreement for the Beacon Hill senior housing development.

Wiersum moved, Callison seconded a motion to approve the Assignment and Assumption Agreement and Subordination Agreement for the Beacon Hill senior housing development. All voted "yes." Motion carried.

G. Resolutions approving a master utility agreement and cooperative construction agreement with MN/DOT for improvements to I-494.

Wiersum moved, Callison seconded a motion to adopt:

- 1) Resolution No. 2004-055 approving a master utility agreement No. 86294 with the Minnesota Department of Transportation as it pertains to the I-494 Improvement Project, and
- 2) Resolution No. 2004-056 approving a cooperative design-build construction agreement No. 86079-R with the Minnesota Department of Transportation as it pertains to the I-494 Improvement Project.

All voted "yes." Motion carried.

H. Approval of Labor Agreement between the City of Minnetonka and Teamsters Local #320 – Police Officers.

Wiersum moved, Callison seconded a motion to approve the labor agreement between the City of Minnetonka and Teamsters Local #320 – police officers. All voted “yes.” Motion carried.

11. **Items requiring Five Votes:** None.

12. **INTRODUCTION OF ORDINANCES:** None.

13. **PUBLIC HEARINGS:** None.

14. **OTHER BUSINESS:**

A. **Items concerning eleven projects to improve water quality in the Nine Mile Creek Watershed by the City of Minnetonka and the Nine Mile Creek Watershed District:**

- 1) **Final plans and acquisition of easements.**
- 2) **Wetland and floodplain issues.**

Gunyou provided a brief introduction to this item, noting that the first staff report dealt with final plans and acquisition of easements, while the second report dealt with wetland issues.

City Engineer Lee Gustafson provided the report. He also noted the presence of LuAnn Tolliver, Minnetonka’s representative on the Nine Mile Creek District Board; Bob Obermeyer and Mark Jacobson of Barr Engineering (engineers for the district), and Assistant City Engineer Jennifer Posma.

Anderson thanked staff for the incredible work this project required. She also thanked the district, and noted that the project will improve water quality in the southeast section of the city. She noted that there had been lots of neighborhood and individual meetings about the project.

In response to Callison’s question, Gustafson said that the improvements to the water’s quality would mostly likely not be visible to the naked eye, but the project will definitely improve the water quality.

In response to Callison’s question about maintenance of holding ponds, Gustafson said that most ponds have a life expectancy of a decade. There is work required to maintain them, and funding for that maintenance is included in the city’s Capital Improvements Program. He also noted that some ponds will require more maintenance than others.

Anderson then invited public comments.

Jim Thomas, 5215 Rogers Drive, was concerned that as a result of the project, trees would be lost in the ditch near his property. This would reduce his noise buffer, and increase the visibility of properties across Baker Road from his property. He also wanted to ensure that water will find its way to the pipe and will not be reintroduced into his yard.

Gustafson said that a few trees would be removed to lay the pipe in the creek bed. The project would not require much excavation, so root destruction should be minimal. The city is interested in removing as few trees as possible. Gustafson said that catch basins will direct the water into the pipe. Hennepin County does not have any major improvements planned to Baker Road in this area, so there should not be any major changes to the road in the near future. Gustafson said that the city could look for some temporary solutions to address drainage on Baker Road.

Anderson encouraged staff to pursue that, and asked about plans to revegetate the ditch. Gustafson said that there was not a revegetation plan at this time, but staff could work with Jim Thomas if there is a need.

Schneider asked if riprap was considered as an alternative for the ditch. Gustafson said that could be done, but that would require more excavation to ensure soil stability, and the steep slopes would have to be cut back, which could cause more damage. Schneider said that he supports the overall project because it is important to water quality, but he wanted to look at ways to replace trees that are removed.

Jacobson said that the trees in the ditch are cottonwoods, a floodplain species resilient to sediment deposits. He said that only the trees in the bottom of the ditch would likely be removed.

Sandy Faith Lamb, 5227 Minnetoga Terrace, thanked Ellingson for the time he spent with them. She asked how the water level and freshness would be maintained. She did not want to increase mosquito-breeding areas.

Gustafson said that the city could not guarantee that the water level would be maintained in any pond, and residents are told this. The pond near her property will receive runoff from I-494, so the likelihood of its level remaining high were better. Also, it is a larger pond, so the water will likely stay fresher, but the conditions could change during weather cycles.

Bob Ross, 5211 Baker Road, built his home over nine years ago, choosing his lot for its privacy, its access to the water, and space

for his dogs to run. The project will eliminate those features, but he is also concerned about water quality. He contacted the city and MnDOT four years ago with his concerns. He noted that the ditch has now meandered out of the easement, and is eroding. He has been working with Posma and Barr Engineering on options to make the project more palatable to him. He displayed photos of his property.

Anderson asked about a revegetation plan. Gustafson said that the pond is within the existing easement area. Posma noted that staff has met with Ross several times. One of the changes discussed was reshaping the pond to minimize the impact, and grading was being considered on the southwest portion of the pond. An additional area on the west side of the pond was being discussed, as well. Posma did not know the number of trees that would be lost, but said that the district has a revegetation plan. The district has pledged to Ross and other affected residents, to meet with them about their concerns. The district recognizes the large impact to Ross' property and is working with him.

In response to Schneider's questions, Posma explained the tree location, and said that the easement was part of the subdivision that created Ross's lot years ago.

Wayne Johnson, 4841 Diane Drive, was concerned that the project would flood his fire pit area adjacent to the pond. The pond is a facet of his property that he enjoys the most, and he did not want to lose it. He did not want the water level to increase.

Callison assumed that the watershed district would move the items related to his fire pit. Anderson said that his property was one of those mentioned in the staff report that would see an increase in the water level once or twice a year.

Gustafson thought the district should survey Johnson's property, and take elevation shots in relationship to the existing property and the weir. He also said that the district would look at the tree species in that area.

Obermeyer said that they did survey Johnson's property, and that is why they proposed the hydro model. The model allows them to look at various events and the effect on water level.

Gustafson said that there are currently no easements. He said that there would be no change to the 100-year flood elevation, and the normal elevation would remain the same.

Anderson noted that there were differing opinions as to what will happen when the water rises.

Schneider said that trees can handle increased water for a short period. Schneider suggested that if the water level would increase frequently or on a regular basis, that the city should look at options to make the area usable. He did not want to create a maintenance problem. Gustafson said that the issue could not be resolved at the meeting, but suggested that staff work with Johnson to mitigate his issues. The council concurred with that approach.

Jim Thomas noted the different types of ponds. Anderson agreed, and said that the city has chosen not to pipe wetland areas. She said some of the holding pond areas are dry much of the time.

Callison thanked those who worked on this complex project. The project will have a positive effect on water quality. She assumed that the changes the council discussed during the meeting would be incorporated. With those changes, she supported the project.

Thomas agreed with Callison. The changes will help make the project livable for residents without losing the water quality improvements. It is important that the residents cooperate for the good of the community. He asked the city not to lose sight of the project's vision—to improve water quality, which improves the quality of life in the city.

Wiersum said that everyone will benefit from the improved water quality. The project will help the city better deal with stormwater. He supported the project with the mitigation discussed to lessen the impact to residents.

Ellingson thanked everyone involved, and said that he had been attending meetings on this project for the past three years. He was impressed by the cooperation between the city, Barr Engineering and the district. Ellingson noted that Minnetonka is at the top of the district, and water flows downstream from here, so the project will have area wide significance. He thinks the pond near his home will be a big improvement. Ellingson said that Ross is most affected, but he is working with the city, the district and Barr.

Schneider agreed, and noted the strong relationship between the city and Barr over the past 15 years. He looked forward to seeing the results of the project.

Wagner said that the process worked well, and he appreciated the cooperation.

Wagner moved, Thomas seconded a motion to:

- 1) Adopt Resolution No. 2004-057 approving final plans and authorizing the acquisition of easements for the Nine Mile Creek Watershed District.
- 2) Adopt Ordinance No. 2004-19 rezoning three wetlands in the City of Minnetonka as part of the water improvement project for the Nine Mile Creek Watershed District and the City of Minnetonka. This ordinance is based on the following findings:
 - a. The fill is needed in order to provide for a greater water quality benefit to Glen Lake, Minnetoga Lake, Shady Oak Lake, Lone Lake, and Woodgate Pond.
 - b. The water quality improvement strategies are consistent with the city's Water Resources Management Plan.
 - c. The plan meets the criteria required by the WCA and the technical evaluation panel has accepted the plan.

Approval is subject to the following conditions:

 - a. Must be developed in general conformance to the plans date stamped March 15, 2004.
 - b. Implement best management practices and install and maintain erosion control devices during the project.
- 3) Approve the wetland alteration permits for six wetlands, floodplain alteration permit in three wetlands, and Resolution No. 2004 -058 approving a conditional use permit for a trail in a wetland buffer at Kinsel park as part of the Water Quality Improvement Project for the Nine-Mile Creek Watershed District and the city of Minnetonka. These approvals and the resolution are based on the following findings:
 - a. The work is needed in order to provide for a greater water quality benefit to Glen Lake, Minnetoga Lake, Shady Oak Lake, Lone Lake, and Woodgate Pond.
 - b. The water quality improvement strategies are consistent with the city's Water Resources Management Plan.
 - c. The plan meets the criteria required by the WCA and the technical evaluation panel has accepted the plan.
 - d. The proposed trail meets the required conditional use permit standards as specified by the code.

Approval is subject to the following conditions:

 - a. Must be developed in general conformance to the plans date stamped March 15, 2004.
 - b. Implement best management practices and install and maintain erosion control devices during the project.
- 4) Approve the Wetland Conservation Act replacement plan application based on the following finding:

- a. The plan meets the criteria required by the WCA and the technical evaluation panel has accepted the plan.

Anderson gave special thanks to Tolliver for promoting the project for Minnetonka.

All voted “yes.” Motion carried.

B. Ordinance rezoning 5621 Smetana Drive from B-2, limited business, to R-5, high density residential, for JLT Group, Inc., represented by Kurt Williamson.

Planning Director Geoff Olson provided the staff report for this item.

In response to Anderson’s question, Olson explained the area provided for visitor parking. He said that the applicant had not yet determined the future use for the front lot.

Wiersum said that this was a unique project with not much to dislike. He asked about the possibility of adding green space. Olson said that some additional landscaping had been added, and said there might be some potential in the future for more green space in the front lot.

Anderson asked about the possibility of extending the walkway around the pond.

In response to Schneider’s question, Olson said that the intent of the ordinance as to the purpose of fencing was unclear—the fence might be to provide shelter for vehicles from the weather, or it might be for security. This applicant proposes a black vinyl chain link fence for security, and the area might provide some weather shelter. The interpretation of the ordinance was up to the city council’s discretion.

Jay Lindgren, an attorney from Dorsey & Whitney, spoke on behalf of the applicant. He said the applicant agreed with the EDA and planning commission recommendations. With respect to the green space, he noted that there are lots of trails in the area. Anderson said that the trails were somewhat removed, and were created more for the existing residential area. She asked again about extending the walkway around the pond.

Kurt Williamson of the JLT group, said that would be difficult to do because of the elevation on the east side. He said that additional trees and landscaping were being provided.

In response to Anderson's question, Williamson said that they had not yet determined the final use of the front parking area. He said that most visitors will park in the front due to the building's security, which is accessed at the front entry.

Lindgren said that future uses of the property would be subject to review by the city. He noted that the project has excess parking.

Wagner said that the project was reviewed by the EDA. They liked the mixed tier affordability of the project, with the additional indexing.

Schneider said that the project provided a good mix of moderate cost housing. It would appeal to those seeking a maintenance free lifestyle.

Schneider moved, Thomas seconded a motion to adopt Ordinance No. 2004-20 rezoning 5621 Smetana Drive from B-2, limited business, to R-5, high density residential. This ordinance is based on the following findings:

- 1) The rezoning is consistent with the city's Comprehensive Plan.
- 2) The proposed use would generate less traffic than the existing office use.
- 3) The use would be consistent with adjacent land uses.
- 4) The rezoning has no negative effect on public health, safety, and welfare.

Approval is subject to the following conditions:

- 1) Planting of additional trees along Highway 169, subject to review and approval of the city's environmental resources coordinator.
- 2) Add a buffer of native vegetation along the existing pond subject to review and approval of the city's environmental resources coordinator.
- 3) The lower level of the parking ramp must be completely enclosed.
- 4) The applicant must enter into an agreement to pay for the costs of upgrading the lift station, not to exceed \$50,000, payable before issuance of the first certificate of occupancy.
- 5) Thirty-four (34) units must be priced at a cost not to exceed the Metropolitan Council's definition of affordable housing at least 60 days prior to the closing of the affordable units, and that the 16 units priced under \$170,000 have resale prices indexed using 50 percent of the average metropolitan sales price to maintain affordability.

Anderson said that the project would be good for the Opus area because it would provide housing for those who work in that area.

All voted "yes." Motion carried.

- C. Items concerning a new CVS Pharmacy at 11525 Excelsior Boulevard for Bear Creek Capital:**
- 1) Site and building plan review with setback variances;**
 - 2) Resolution approving a conditional use permit; and**
 - 3) Multiple sign variances.**

Olson provided the staff report.

At Callison's request, Olson described the additional green space.

Bill Tillman, Bear Creek Capital, spoke on behalf of the applicant. They are developing 15 to 20 stores in Hennepin County. He was aware of the planning commission's recommendation, but said that they would like two sign variances.

In response to Ellingson's question, Tillman said that he was not involved with the CVS project in St. Paul. Ellingson noted that the neighbors to that project wanted more windows and a taller building. He also noted that a store planned for the former Billy Graham building in Minneapolis would include housing on the upper levels. Tillman said that was not considered for this site.

Wiersum asked how Tillman viewed Minnetonka's sign ordinances in comparison with others around the country. Tillman said that he was not familiar with restrictions on advertising products and services on signs. Wiersum asked if CVS could be successful within the constraints of Minnetonka's sign ordinance. Tillman said that there needs to be a direct correlation between the building and the signs. He did not know how to balance things, but said that they can succeed.

In response to Callison's question, Olson said that directional signs are allowed. Tillman said they were seeking a 24-foot sign at the Excelsior Boulevard entrance, but the ordinance only allows a 15-foot sign. He explained that the property on which CVS will locate has the same owner as the adjacent property, Lowell Zitzloff.

In response to Anderson's question, Olson clarified that the ordinance allows a variance for one sign but the applicant was seeking a variance for two signs.

Schneider was excited about the project, and said it would be a major improvement to that corner. He would like to accommodate the needs of the tenant within reason. It was his feeling that people know how to get into the property, and a monument could actually

be distracting. A pylon sign might be harder to read at that intersection due to its height. He said that the sign for the main building was in proportion to the building's size and character, and the variance for the size of the letters was reasonable.

Wiersum agreed with staff's recommendation. He said that CVS is an excellent growing company that will be a good addition to the community. Their buildings tend to be modern and attractive. The building will be visible. Wiersum preferred to uphold the sign ordinance for fairness and consistency.

Callison agreed, and said that the sign ordinance has served the city well. She saw no compelling reason for change. The neighbors were concerned about the signs. The building will be highly visible. She felt that it would be a disservice to grant a variance for the signs. Callison supported the staff and planning commission recommendations.

Callison moved, Wiersum seconded a motion to:

- 1) Approve the site and building plans, with setback variances, for CVS Pharmacy at 11525 Excelsior Boulevard for Bear Creek Capital. Approval is based on the following findings:
 - a. Apart from requested setback variances, the proposal would meet the required standards and ordinances for a site and building plan approval.
 - b. The proposal would meet the required standards for a variance, because:
 - (1) There is a unique hardship to the property caused by the "corner lot" status of the property. Required setbacks present a functional difficulty in trying to accommodate a commercial building, required parking, and an appropriate drive aisle for the proposed pharmacy pick-up window.
 - (2) The variance would meet the intent of the ordinance because:
 - a) The proposed CVS Pharmacy building would have a smaller footprint and greater overall setbacks than the existing building. The proposal would, therefore, decrease nonconformities
 - b) The proposed variance would have no visual affect on the surrounding area.

Approval of the site and building plans is subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the

following plans, unless modified by the conditions below:

- Site plan dated March 29, 2004.
- Grading plan dated March 29, 2004.
- Landscaping plan dated March 29, 2004.
- Building elevations dated March 29, 2004.

b. The following work must be completed before the city issues a grading permit or before starting any site work:

- (1) Provide the following documents for the city attorney's approval:
 - a) Cross-access and cross-maintenance agreements between the properties at 11525 and 11523 Excelsior Boulevard.
 - b) A driveway easement over 11415 Excelsior Boulevard.
- (2) Submit the following plans for staff approval:
 - a) Final site, grading, drainage, utility and erosion control. Plans must include:
 - i. Two additional catch basins at either side of the entrance drive to Shady Oak Road.
 - ii. If required by the Fire Marshall, a second hydrant at the northeast end of the site in the island, to be served off existing water service.
 - iii. Removal of multiple sewer stubs. One service is allowed to the building.
 - b) Final landscape plan and irrigation plan. Balsam fir trees must be replaced with Austrian or Norway pines or Black Hills spruce.
 - c) Internal circulation plan between 11525 and 11523 Excelsior Boulevard.
 - d) A construction management plan.
- (3) The installation and maintenance of temporary rock driveways, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review by the city's environment resources coordinator
- (4) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
- (5) If required, submit copies of the watershed district permit. The city may require revisions to

- the approved plans to meet the district's requirements.
- (6) Submit copies of county access permit.
- c. The following must be submitted to the city before the city issues a building permit:
- (1) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
- (2) An illumination plan for staff approval
- (3) All required hook-up fees
- d. The property owner is responsible for replacing any required landscaping that dies.
- e. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- g. Construction must begin by December 31, 2005, unless the city council grants a time extension.
- 2) Adopt Resolution No. 2004-059 approving a conditional use permit for a drive-up window at 11525 Excelsior Blvd. This resolution is based on the finding that the proposal meets all conditional use permit standards. Approval is subject to the following conditions:
- a. The site must be developed and maintained in substantial conformance with the site plan dated March 29, 2004.
- b. Public address system must not be audible from any residential parcel.
- c. Record this resolution with the county before the city issues a building permit.
- d. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- e. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- f. The applicant must agree to the above conditions in writing.
- 3) Deny the requested sign variances. Denial is based on the following findings:
- a. An increase in the size, number, and format of allowable sign is not necessary for reasonable identification.

- b. There are no circumstances unique to the property. The signage restrictions applied to this property and business are than same as those applied to all similarly sized commercial buildings in the city
- c. The proposal would alter the character of the neighborhood. The overall size, number, and format of proposed CVS signs would be different than other signs in the area.
- d. Approval of such signs, for a highly visible location and building, may establish a precedent for future similar requests.

Anderson supported the project. She was on the sign ordinance task force, and found that the ordinance had served the city well. The sign ordinance is one of the reasons Minnetonka looks so good. Many businesses have succeeded following the sign ordinance standards.

All voted "yes." Motion carried.

D. Adoption of 2005-2009 Capital Improvement Program.

Gunyou provided the staff report. The only significant change from the study session discussion was the addition of a master plan study of the Minnehaha Creek Corridor from Big Willow Park to I-494.

Callison moved, Thomas seconded a motion to adopt Resolution No. 2004-060 adopting the 2005-2009 Capital Improvement Program. All voted "yes." Motion carried.

E. Administrative hearing regarding the Tobacco License of Minnetonka, Inc., dba Wholey Smokes.

City Attorney Desyl Peterson provided the staff report for this item.

In response to Wiersum's question about the timetable for this matter, Peterson said that it could take four to six weeks for the administrative hearing and the next council consideration. In response to Schneider's question, Peterson said that the matter could also be resolved during that time period, but that was out of the city's control.

Callison supported the expedited process due to the number of alleged offenses.

Schneider moved, Callison seconded a motion to direct that an independent hearing officer conduct the hearing on the alleged

violations by Minnetonka, Inc., dba Wholey Smokes and make a recommendation to the city council regarding whether violations occurred. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment and reappointments to the senior citizen advisory board.

Anderson moved, Wiersum seconded a motion to that

- Ruby Berg, 4614 White Oak Road, be reappointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.
- Al Bundy, 5809 S. County Rd. 101 #303, be reappointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.
- Mickey Ducharme, 10501 Cedar Lake Road, be reappointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.
- Karen Mast, 3625 Sussex Place, be reappointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.
- Diana Nagle, 10451 Greenbrier Road, be reappointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.
- George Perry, 14301 Woodhaven Road, be reappointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.
- Jerilynn Bergeson, 2142 Sheridan Hills Road, be appointed to the senior citizen advisory board to serve a two-year term, effective June 1, 2004 and expiring on May 31, 2006.

16. ADJOURNMENT.

Wiersum moved, Thomas seconded a motion to adjourn the meeting at 10:09 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk