

**Addenda  
Minnetonka City Council Meeting  
Meeting of December 18, 2023**

**ITEM 6C – Racial Equity Dividends Index Results**

Item has been tabled by staff until the January 8, 2024 meeting.

**ITEM 14D – Request related to 15700 and 15724 Wayzata Blvd**

Walser Real Estate, LLC is requesting the city council consider a similar proposal they intend to submit in the near future. See the attached memorandum and information.

This additional agenda item would change the current agenda item 14D to 14E.

**ITEM 14E – Closed session to conduct city manager performance evaluation; pursuant to Minnesota Statute §13D.05, subd. 3(a)**

Closed session changed from 14D to 14E due to additional business item.



# CITY OF MINNETONKA

14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | minnetonkamn.gov

**TO:** City Council  
**FROM:** Corrine Heine, City Attorney  
**DATE:** Dec. 18, 2023  
**SUBJECT:** Change Memo for Dec. 18, 2023, City Council Meeting

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**Item 14D: Request related to 15700 and 15724 Wayzata Blvd.**

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This additional agenda item would change the current agenda item 14D to 14E.



**City Council Agenda Item 14D  
Meeting of Dec. 18, 2023**

**Title:** Request related to 15700 and 15724 Wayzata Blvd  
**Report From:** Corrine Heine, City Attorney  
**Submitted through:** Julie Wischnack, AICP, Community Development Director  
Mike Funk, City Manager

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**Action Requested:**  Motion     Informational     Public Hearing  
**Form of Action:**     Resolution     Ordinance     Contract/Agreement     Other     N/A  
**Votes needed:**     4 votes     5 votes     N/A     Other

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**Summary Statement**

On Dec. 4, 2023, the city council considered a development proposal, with variances, from Walser Real Estate, LLC. A motion to approve the development failed on a 4-3 vote (5 votes are required to approve variances). The developer has indicated its desire to submit a similar proposal for consideration by the city council. The council is asked to decide a procedural issue regarding that submission.

**Recommended Action**

Based upon the request and the staff report, adopt one of the following motions:

- Option 1: Move to allow the developer to submit a similar development request pursuant to Minn. Stat. § 15.99, subd. 2(b), within the existing application file.
- or
- Option 2: Move to require the developer to submit a new application.

**Strategic Profile Relatability**

Financial Strength & Operational Excellence     Safe & Healthy Community  
 Sustainability & Natural Resources     Livable & Well-Planned Development  
 Infrastructure & Asset Management     Community Inclusiveness  
 N/A

Statement:

**Financial Consideration**

Is there a financial consideration?     No     Yes

## **Background**

On Dec. 4, 2023, the city council considered a development proposal, with variances, from Walser Real Estate, LLC. A motion to approve the development failed on a 4-3 vote (5 votes are required to approve variances). The developer has indicated its desire to submit a similar proposal for consideration by the city council.

The developer's request requires an interpretation of state law, specifically Minn. Stat. § 15.99, subd. 2(b), which provides:

(b) When a vote on a resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request. ***A denial of a request because of a failure to approve a resolution or motion does not preclude an immediate submission of a same or similar request.***

(emphasis added)

The above statute applies only to applications where a motion to approve has failed, and by law, the failure to approve operates as a denial of the application. The highlighted sentence in the statute is open to two interpretations, both of which are reasonable.

Under one interpretation, the developer could submit the same or a similar request within its existing application, without the need to file a new application. This is a reasonable interpretation, because under these circumstances, the council arguably has not taken final action by adopting a resolution to approve or deny. Although the law provides that the failure to approve operates as a denial, this interpretation would allow the developer to continue to work toward a development decision without the need to start over.

Under the second interpretation, the failure to approve is treated in the same manner as if the city council had affirmatively denied the application. That is, the developer may seek approval again, but it must file a new application and start the land use approval process over. The city could reasonably adopt this interpretation of the statute.

The city attorney has consulted with other land use attorneys on this issue, and there is no known court interpretation of the statute. In the absence of a court decision, it is appropriate for the city council to determine, as a matter of policy, how the city should handle requests where a motion to approve fails to obtain the required votes.

The council is being asked to consider a consistent policy that staff will follow on all applications. The question before the council is not how this specific request should be handled, but how all requests under these circumstances should be handled. After the council approves one of the two optional motions at this meeting, staff will automatically handle future requests of this type consistent with the council's decision.

If the council adopts the motion Option 1, the council should direct staff to work with the developer to schedule a date for consideration of the developer's proposal and to notify the properties within the notice area. If the council adopts motion Option 2, the vote taken on Dec. 4, 2023 will stand as the council's final decision on the current application.

# WALSER

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December 15, 2023

Andrew Walser  
Phone: 952-945-7220  
Email: awalser@walser.com

VIA E-MAIL TO:

City of Minnetonka  
Attn: J. Wischnack  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345

**Re: Submission of a Similar Request as Part of the Original Application for the Proposed Walser Kia Project**

Dear Ms. Wischnack:

Walser Real Estate, LLC ("Walser") respects the decision of city council on December 4, 2023, denying Walser's proposal for the Walser Kia project (the "Project") and appreciates the thoughtful discourse during the council meeting.

The Project involves a unique site, specific parking requirements mandated by city ordinance, engaged neighbors, and diverse feedback from city council. As a result, the Project has evolved over the course of the past 16 months since Walser first approached the city.

Because Walser remains optimistic that we can find a way to make the Project work for all stakeholders, Walser seeks to submit a similar (but not the same) request for the Project as part of its original application, pursuant to Minn. Stat. §15.99, subd. 2(b). Walser asks that the city council consider this request at the December 18, 2023, meeting. Our intent would be that this similar proposal for the Project would then be considered by the council at a future meeting in early 2024.

The specifics of this similar proposal are still being finalized, but Walser intends to modify the Project to address the helpful feedback received from multiple stakeholder groups throughout this journey. Specifically, Walser is considering alternative plans for the proposed parking and landscaping on the rear/north portion of the site. No modifications to the building, causeway, or front/south portion of the Project are contemplated at this time.

Walser's excitement for the Project has not diminished, and we are encouraged by how close it seems we are to obtaining council approval. Please let me know of any questions or concerns. Thank you for your consideration.

Best regards,

Andrew Walser  
Chief Executive Officer  
Walser Real Estate, LLC

