

**CITY COUNCIL MEETING OF**  
*April 18, 2007*

**VERBATIM TRANSCRIPT ITEM 59**

**Discussion and possible action regarding an Amended and Restated Exclusive Negotiation Agreement (Amended ENA) with Frank Wright Plaza, LLC, (FWP) to negotiate a Disposition and Development Agreement (DDA) for parcels located at 4<sup>th</sup> Street and Stewart Avenue totaling approximately 5.49 acres (Site) (APNs 139-34-501-004, 007 and 008) Ward 5 (Williams)**

**Appearance List:**

OSCAR GOODMAN, Mayor

SCOTT ADAMS, Director, Office of Business Development

ANDREW DONNER, Manager of Frank Wright Plaza, LLC

BRAD JERBIC, City Attorney

GARY REESE, Councilman

STEVEN ROSS, Councilman

BRENDA J. WILLIAMS, Councilwoman

20 minutes

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**MAYOR GOODMAN**

And we're gonna move onto Item 59. Fifty-nine is discussion and possible action regarding an amended and restated exclusive negotiating agreement, an amended ENA, with Frank Wright Plaza, LLC, to negotiate a disposition and development agreement for parcels located at 4th Street and Stewart Avenue, totaling approximately 5.49 acres. This is in Ward 5. Mr. Adams?

**SCOTT ADAMS**

Okay. This item respects the extension of an ENA that's currently in place. It's been in place between the City and Frank Wright Plaza, LLC, since June of 0-5. The ENA had been extended, and a current extension expires today. So, we're here to, before you today to consider a potential extension.

What you have before you is a, an extension that staff drafted that contains certain conditions in it that we felt, at the time, important that we recommend to you before we could recommend an extension and move forward.

And, let me just kind of review what those are. It's a standard ENA extension. All it is is an extension of time for an additional one hundred and eighty days. But, there were conditions in it that I just wanted to quickly outline, and then I wanted to just comment on those. There, we've had concern, throughout our past negotiations, about the existence of the Third Street Bridge.

There's a bridge that connects their two hotel towers, on Third Street, that, in our consultant's opinion, who's working on the Post Office project, obstructs the view of the Post Office from Fremont Street Experience. So, one of the conditions we put in here, that, before any disposition of site occurred under a DDA, that that bridge would be removed.

The other condition is we, they've talked about closing at least one of the streets, Stewart, and possibly even Ogden, in some of their master planning. And so, we've made one condition, that the streets not be closed. And then, finally, because they had started the Lady Luck and then stopped in the middle of construction, we had concern about getting that project restarted again. So, we thought that there at least ought to be evidence of their restart of the Lady Luck before we got into any development agreement with them on the new site.

During this last week or two, I've had my staff look into the construction issue, and we've determined that one of the conditions we put in, it would almost be impossible for them to accomplish, and that is, they virtually have to restart their building-permit process, and get their project under construction. So, they couldn't, it would be virtually impossible to restart construction in 60 days. So, I'm okay with the elimination of that condition in the agreement.

The condition of street closures, I mean I, that's one that we could either put in the ENA or we just leave it for the DDA. We believe we're not going to approve any master plan, we would not recommend to you any master plan that includes a street closure. This is a downtown. We believe we need the streets for circulation and traffic flow, and we could live without that being in the agreement. But, the fundamental issue that's in this agreement that we don't seem to be able to get over is this Third Street Bridge, and I'm not sure how we resolve that at this point in time.

And, I would, certainly, defer to you, Mr. Mayor, and the other members of the Council for ideas, and where to go from here. I'm okay with going forward with an ENA extension, as we proposed, from a time standpoint, with the removal of those other conditions. They're willing to provide evidentiary material that would show they can get their project restarted by the end of an ENA period, and that's okay with us. Because they've given us enough information to assure us that they're gonna be getting this project back on track and moving forward. I think the outstanding issue, at this point, is fundamentally the Third Street Bridge.

**MAYOR GOODMAN**

All right. Well, as I understand it, and I would like Mr. Donner to address this particular issue. In our discussions, I was definitely under the impression that you understood, at least where I come from, that that Third Street Bridge is non-negotiable. That it's going to be taken down or designed

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in a fashion where it won't impede the Post Office, and that was part of our discussion. I also advised you that City staff would recommend, under no circumstances, would we be vacating any streets. And, in our discussion, just so we're clear, I don't want to have any misunderstanding on this, you have to engage, in order for you to reach your dream, you have to engage in discussions with the National Park Service as to what can or cannot take place at Frank Wright Park. And, basically, that's what will be taking place, as far as you're concerned, during the extension, if the Council would grant it; is that accurate?

**ANDREW DONNER**

It's accurate. I would like to comment on your comments.

**MAYOR GOODMAN**

Okay, you, I'm sure you would, but I

**ANDREW DONNER**

It's accurate that I understand that's what your position is.

**MAYOR GOODMAN**

Okay, but, I wanna be very clear before I vote on any extension here that we are not waiving that position, at least from my perspective. If we grant an ENA extension, are we in any way conceding that, the issue on the bridge or the closure of streets?

**SCOTT ADAMS**

No. Actually, I wanna remind you that an ENA is simply an exclusive right to negotiate a DDA. It, and I don't, Ill let maybe the attorney to weigh in here. I don't believe that grants them any property rights

**MAYOR GOODMAN**

Mr. Jerbic?

**SCOTT ADAMS**

like a DDA would.

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**BRAD JERBIC**

That's correct. That's my understanding, too. The , if, by voting on an extension today, it would simply defer the discussion about the bridge to these negotiations. And, either well bring back a DDA that addresses your concerns, Mayor, or it won't.

**MAYOR GOODMAN**

All right. Fine. That's fine. What I wanna do is I wanna give Mr. Donner the opportunity to try to make progress, as far as the Federal authorities are concerned, and the, their position, as far as the park. But I dont wanna give up any rights concerning, what I believe is the appropriate position, on the part of the City. But, if you wanna comment on my comments, go ahead.

**ANDREW DONNER**

I think its important to. For the record, Andrew Donner. Im the manager of Resort Gaming Group, which manages Downtown Resorts as well as Frank Wright Plaza, which is the ENA that were discussing today.

In November of 2006 we submitted to the City an entire prospectus on the master plan as it would be incorporated to submit to the appropriate authorities. In that prospectus that we submitted, it specifically states we are attempting to create alternatives to reduce the visual impact and intrusive character of the existing Lady Luck pedestrian bridge in front of the Post Modern Museum. Weve began financial studies to select the most appropriate alternatives. One of the most viable and likely options is the minimization of the existing structure combined in an all-glass bridge as depicted on Exhibit M. We will continue to work diligently with the City on this issue. We went ahead and submitted an Exhibit M and for five months, Your Honor, we have not had any feedback from the City or staff.

Additionally, to really understand the bridge issue, I think it's important to understand why we have remaining obstructions in removing the bridge. We dont have the legal right to remove that bridge. Currently, as we sit here today, in two thousand and three, the City of Las Vegas accepted a overall master plan from a previous owner of the property. That previous owner put in a time-share element into his property. There were five hundred and forty-three property owners in the West Tower on the other side of Third Street. So the property is bifurcated in its ownership. In addition to that, there were easement rights prior to our acquisition of the property that were recorded against the property that doesn't allow us to take away the access. Those rights were further enhanced by a reciprocal easement agreement which was recorded. As you know, time share is highly regulated by the Department of Real Estate. Part of that is full disclosure and at the time there was never a contemplation of removing their access rights to the bridge. So even if I wanted to meet the request, I legally cannot meet the request, getting, because of their rights.

And if you go one step further, the ownership of the West Tower is different than the ownership of the East Tower, coupled with the fact that you have separate banks that have lent monies on those towers. The bridge is owned by the east side of the street and the west is granted access. We have specific language in our financing documents that, even if we were able to get over the five hundred and forty-three other owners that own rights to the west tower and access to the east, we still would not be able to circumvent the liability and the responsibility have and fiduciary obligation to our lenders.

And then if you go one step further, there's the issue, if you could get beyond the five hundred and forty-three owners and if you could get beyond the financial repercussions, then you get into life safety.

And then the third is that there's privity. The ownership is not going to be congruent on the north, which is Frank Wright Plaza, to the development of the Lady Luck. And I'm happy to address the construction and the progress of the Lady Luck, because there's some exciting news that's going to be coming forward. But because there's non-congruent ownership, Frank Wright Plaza, that's developing potentially the north, can't dictate of what's going on to the south. The dynamics are

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totally different of the developments, the lenders are totally different and the ownership potentially is different. So that's why we have been reluctant.

That being said, we have always maintained the position, and I say it here today, is that we are willing to work with the City, at our cost, to seek any sort of alternatives to the design of that bridge to make it aesthetically pleasing, number one; and number two, we're still willing to look into the possibilities of either lowering or raising that bridge. But we don't have the information back on that issue.

Be that as it may, the likelihood of a bridge being removed and a condition precedent to a potential ENA extension, I could never agree to because I would be breaking the law.

**MAYOR GOODMAN**

I would never want you to break the law, Mr. Donner.

**ANDREW DONNER**

Well, but that's where we are on that issue.

**MAYOR GOODMAN**

I mean I would never ask you to break the law. You know that.

**ANDREW DONNER**

Okay, now, I want to address the vacation, Sir.

**MAYOR GOODMAN**

Okay.

**ANDREW DONNER**

On the vacation of the street, it is not the development's position today, us, as owners, as the developer, that we are requesting for that street to be vacated. All we're saying is that we want us, as well as staff, as well as the City, to make an intelligent decision. None of us can sit here today and say definitively of what could be developed on the park and the bus terminal. We have, unlike other ENAs, a very complex transaction. We're dealing with NDOT. We're dealing with the RTC. We're dealing with consultants of the Museum. We're dealing with Parks and Recreation. We're dealing with Public Works. And, ultimately, if we get beyond all of those hurtles, we theoretically could be influenced by what the Feds want or don't want. What we have said to you, and I will discuss traffic as we submitted to you in November of two thousand and six, a detailed traffic and parking study has been prepared by Kimley Horn and describes the parking demands and traffic impact of the master plan. Due to the voluminous size, it's enclosed rather than incorporated as an exhibit. Again, Your Honor, we've received no feedback for five months after numerous requests by the City on this potential vacation. All we want to do is look at all the possibilities, get all of the independent reports, on our dime, present it to the City so everyone can give input and then all make an intelligent decision on what's the best plan to submit to the proper federal authorities.

**MAYOR GOODMAN**

And I want to give you that opportunity, as I've indicated to you. Who owns the building?

**ANDREW DONNER**

Who owns which building?

**MAYOR GOODMAN**

Who owns the property?

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**ANDREW DONNER**

The property's owned by three separate entities and has separate lenders on each entity. There's actually three bankers

**MAYOR GOODMAN**

Who you're speaking for?

**ANDREW DONNER**

I'm speaking for all of the property owners.

**MAYOR GOODMAN**

Do you have the authority to do that?

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**ANDREW DONNER**

Yes, I do.

**MAYOR GOODMAN**

I wasn't aware of multiple ownership over there until this morning, but that could be my oversight.

**COUNCILMAN REESE**

(inaudible)

**MAYOR GOODMAN**

Yes

**COUNCILMAN REESE**

Who owns the bridge?

**ANDREW DONNER**

The bridge is owned by the owners of what's called today Downtown Resorts, which is the east side of the property.

**COUNCILMAN REESE**

Mr. Jerbic, is it, he's saying, what hes saying is true, that we have no control over that bridge?

**BRAD JERBIC**

I will accept the representations made by Mr. Donner. I don't know that I will agree with him at the end of the day, but I think that the arguments that he is making sound like the kind of arguments that should be made during the discussion toward a DDA. And if staff evaluates those arguments and says we agree, then we can bring that to the Council and you can decide whether or not it's a deal killer. But with respect to resolving those issues now in granting the ENA, it doesn't seem likely that we're going to be able to do that. And I would recommend that you pass on those arguments, give direction to staff as to what you would like to see as the outcome and go with the extension.

**MAYOR GOODMAN**

When will you start some kind of construction project on the property that you presently have control over?

**ANDREW DONNER**

Okay. Let me answer that a little bit around about. I understand from the perception of what we've put out in the marketplace is that the project is delayed and possibly not moving forward. If we were to have imploded the property and put out a three or four year development plan, we probably would not be under any sort of criticism. We have gone inside and instead of imploding the outside we've basically done that with the inside. The entire development took a right turn. And other than these

**MAYOR GOODMAN**

Don't use right turn around this Council.

**ANDREW DONNER**

Left turn.

**MAYOR GOODMAN**

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All right.

**ANDREW DONNER**

All right. It's, I have never given a public announcement other than in these public environments on the development of the project, because I never wanted to over-promise and under deliver. That being said, within the next 60 days, I think realistically it's 30, we will be making our first public announcement.

We have received approval from an international public, one of the largest hotel companies in the world, to put a flag downtown. We are in final negotiations on that franchise agreement, which we will be bringing forward as a status and announcing it into the public. With that being said, it is, we have an obligation to receive all of their feedback on now their specification and design. I feel that, to answer your question specifically, we will have that feedback over the next 60 or 90 days. At which time we will be moving forward for both the Towers as well as the permitting stage for the hotel aspect as well as the retail aspect. We will probably receive permits from, in the last quarter of two thousand and seven or the first quarter of two thousand and eight.

Too, our hotel company has a contractual obligation, we have made the commitment that we will have the facility open by the fourth quarter of two thousand and eight. Our construction timeline and documentation suggests with our bankers and there is financing in place, that it would be the third quarter of two thousand and eight.

**MAYOR GOODMAN**

All right. Well, what I would like to do, if we're going to extend the ENA, Councilwoman Williams, I would like to extend it for another 90 days, so we can bring these folks back and get another progress report. I think to extend it, even though it may be impractical, as far as you're getting any kind of answer from the federal authorities by that time, I think it's important that the public gets these periodic reports and this is the best way to do it.

**ANDREW DONNER**

And we would be happy, in 90 days, to, over that 90 days to certainly work with staff on the development plan, work with all the Council members to make sure their input is taken into, what could be submitted to the feds. And then as well, we'll be able, at that time, to publicly disclose all of the developments that are going on with our construction on the Lady Luck.

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**MAYOR GOODMAN**

All right. And I appreciate that. You know how I feel about this. There are two projects that are in the downtown, Neonopolis being one of them and the Lady Luck being another, that I refer to them as albatrosses at this point in time. It's like having a carcass outside my window when I look down there and don't see anything happening with the Lady Luck.

**ANDREW DONNER**

I will only comment to this is that I understand and typically, like you, we sprint. But this development is a marathon. And where other folks have gone home, we've drawn our line in the sand and we continue to make our investment. For the first time in a long time, we've completed a joint venture partnership as well as an international hotel company, which is exciting, really, for downtown. And I think that in, you know, once we announce and once there's forward movement, all of the past criticisms and perception of a stalled project will go away.

**MAYOR GOODMAN**

And I agree with you, having a bit of an idea of what you're talking about, I agree with you. But I would like to have that announcement made sooner than later. So

**ANDREW DONNER**

So would I, Sir.

**MAYOR GOODMAN**

so we could look at that carcass will take on some life.

**ANDREW DONNER**

And I promise you we're not leaving until we do it.

**MAYOR GOODMAN**

All right. Fair enough. Any other comments or questions? Yes, Mr. Jerbic?

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**BRAD JERBIC**

Just a couple of comments and, one comment and a question. I just wanted to remark that any failure of staff to respond in this five month period if not assent to the bridge construction or any other issue and I think Mr. Donner knows that, but I wanted to put that on the record. The second is a question I have for Mr. Donner. Given the timelines that you just outlined for the Council, have you taken steps to preserve your gaming license at that site?

**ANDREW DONNER**

Of course.

**BRAD JERBIC**

Okay.

**MAYOR GOODMAN**

All right. Thank you. Any other comments or questions? Councilman Ross.

**COUNCILMAN ROSS**

Your Honor, I do.

**COUNCILMAN ROSS**

Mr. Donner, you've stated that you got no response from the City whatsoever in five months on a couple of issues. I'm a little concerned about that.

**SCOTT ADAMS**

Let me correct the record on that. And is, I was not going to drop down to the level and respond to that. They gave us a master plan. We gave them extensive comments and questions regarding that master plan. We've heard nothing from them during that period. In fact, just in January, I finally received their check list of all their comments, in check list format, in response to our collective comments. Our staff gathered comments from our Public Works Department, our consultants who are working on the Post Office, various groups provided that to them. So I had to bristle a little when I heard that. And I'm not going to stand here and debate that issue. We did respond. I pride our Department, I pride myself on our Department being responsive and moving at the speed of business. So I needed to correct that for the record.

**ANDREW DONNER**

And Councilman, I don't think it serves any one purpose to debate that issue. We have a different perspective. We feel that the City has been a little bit lethargic in the response to our new plan. All of the comments were to an old plan. But, be that as it may, it's in the benefit of all parties to move forward. It's a great development for the City of Las Vegas and we are committed to working with staff on the new plan and getting the feedback from all the Council members.

**MAYOR GOODMAN**

All right. But I'll throw in my two cents now. To have an attitude, okay, and I don't, be the City of an attitude, I have an attitude, and, but it's not good for you to have an attitude. Let's get it done.

**ANDREW DONNER**

We totally agree.

**MAYOR GOODMAN**

Okay. All right. Councilwoman?

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**COUNCILWOMAN WILLIAMS**

After all the discussion, I move that we move ahead to extend the negotiation period.

**MAYOR GOODMAN**

For 90 days?

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**COUNCILWOMAN WILLIAMS**  
**For 90 days.**

**MAYOR GOODMAN**  
Thank you. Let's vote on that please, yes. Post. **(Motion carried unanimously.)** Motion carries.  
Good luck.

**ANDREW DONNER**  
Thank you.

**MAYOR GOODMAN**  
You're welcome.

(END OF DISCUSSION)

gpb/vwd;ac