



AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: NOVEMBER 21, 2007

DEPARTMENT: NEIGHBORHOOD SERVICES

DIRECTOR: STEPHEN K. HASSLER

Consent Discussion

SUBJECT:

ABEYANCE #177 - Discussion and possible action regarding the Disposition and Development Agreement (DDA) between the City of Las Vegas and Tapestry Group, Inc. for the construction of 274 affordable housing units located north and east of the intersection of Westcliff Drive and Tenaya Way - Ward 1 (Tarkanian)

Fiscal Impact:

- No Impact Augmentation Required
- Budget Funds Available

Amount:

Funding Source:

Dept./Division: Neighborhood Services/Neighborhood Development

PURPOSE/BACKGROUND:

On June 21, 2006, the City Council approved the Exclusive Negotiation Agreement with Tapestry Group, Inc. to complete the DDA for the construction of two hundred and seventy-four (274) affordable housing units. Tapestry Group, Inc. would be responsible for constructing and marketing the units for lease to families earning 80-percent or less of area median income (AMI). The City's contribution is to convey the land from the Bureau of Land Management for the purpose of providing affordable housing.

RECOMMENDATION:

Staff is prepared to execute the DDA upon City Council approval, authorizing the Mayor to execute any and all related agreements and documents upon approval as to form from City Attorney.

BACKUP DOCUMENTATION:

1. Disposition and Development Agreement
2. Submitted at meeting Information packet from Councilwoman Tarkanian's staff by Councilman Wolfson

Motion made by STEVE WOLFSON to Approve as recommended

Passed For: 4; Against: 3; Abstain: 0; Did Not Vote: 0; Excused: 0
LARRY BROWN, OSCAR B. GOODMAN, GARY REESE, STEVE WOLFSON; (Against- RICKI Y. BARLOW, LOIS TARKANIAN, STEVEN D. ROSS); (Abstain-None); (Did Not Vote-None); (Excused-None)

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NOTE: The initial motion by Tarkanian for denial failed with Brown, Goodman, Reese and Wolfson voting NO.

Minutes:

DEPUTY CITY MANAGER ORLANDO SANCHEZ gave a brief background on this item by reading a detailed document. In 1998, the federal government, through the Southern Nevada Public Land Management Act (SNPLMA), provided the means for local governments to request land from the Bureau of Land Management (BLM) for the purpose of developing affordable housing at a discount rate of 95 percent. In 2006, the Tapestry Group approached the City to develop affordable housing within the City through SNPLMA. Tapestry presented their packet of information. The City requested additional necessary information and entered into a six-month Exclusive Negotiation Agreement (ENA) with the Tapestry Group on June 21, 2006, with an effective date of July 17, 2006. Due to redistricting, the site moved from Ward 2 to Ward 1. The ENA expired on January 12, 2007; however, staff continued to work in good faith with Tapestry Group.

The final negotiated Disposition and Development Agreement (DDA) was placed for consideration before the City Council on May 2, 2007. According to the ENA, the developer may exercise the option term by requesting in writing to extend the term by 90 days. The developer did not submit the request to the City staff or the developer on notice. The 90-day extension would have extended the ENA to March 21, 2007, at which time an item would have to have been placed on the agenda for Council consideration of an extension. On August 17, 2007, a letter was sent to SENATOR BRYAN, copying MR. WILCZEWSKI of the Tapestry Group, informing him that the City was in the process of developing a competitive request for a proposal and encouraged them to participate in the process, along with other interested non-profit housing developers. MAYOR GOODMAN requested that an item be placed on the agenda regarding the DDA. A letter was sent to SENATOR BRYAN that the item would be heard on November 7, 2007, and he, in turn, requested an abeyance to November 21, 2007.

SENATOR RICHARD BRYAN, 300 South Fourth Street, and GENE WILCZEWSKI, 3608 South 74th Street, Omaha, Nebraska, appeared on behalf of the Tapestry Group. SENATOR BRYAN stated that the DDA was negotiated over a long period of time. He pointed out the need for affordable housing, and that the City has recognized the need for workforce housing. The City continues to partner with non-profit housing developers, such as Tapestry, a 501 Non-Profit Organization.

SENATOR BRYAN added that the 271-unit project would be located at Westcliff Drive and Tenaya Way, and Tapestry is seeking no financial contribution from the City. He emphasized this is not a Section 8, federally-subsidized project. This project will serve those people making between \$30,000 and \$48,000 a year; such as entry level teachers, firefighters and others.

He stated the Tapestry Group has been organized for the past seven years and MR. WILCZEWSKI has been a developer for 45 years, developing 5,600 residential units. Recently, they were approved for developments in two cities in the State of Florida; Springfield and Panama City.

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SENATOR BRYAN mentioned COUNCILWOMAN TARKANIAN'S concern about the lack of a Request for Proposal (RFP). He stated this has been a long process and that the ENA has expired. He asked for the opportunity to move forward and then apply for a General Plan Amendment and Rezoning.

COUNCILWOMAN TARKANIAN asked if the units are detached houses or apartments. SENATOR BRYAN replied this would be a rental apartment complex.

COUNCILWOMAN TARKANIAN asked DEPUTY CITY MANAGER SANCHEZ if an expired ENA would come back before the Council and he replied that an extension of the ENA was not requested nor did staff follow through. However, ultimately, it is the developers responsibility to file for an extension. SENATOR BRYAN responded that during that time negotiations were on-going and it took a little more time. They negotiated in good faith with the City, and, additionally, others have not stepped forward as interested in this project.

COUNCILWOMAN TARKANIAN remarked that she was not criticizing staff. She believes they conducted the process well. Her concern is that the Tapestry Group did not want to participate in an RFP.

MAYOR GOODMAN acknowledged receipt of a request from SENATOR BRYAN to place the item on the agenda. SENATOR BRYAN concurred and added that if they are allowed to move forward, they will apply for other applications which have to go through the Planning Commission process and neighborhood meetings. In fact, they already had a neighborhood meeting and, generally speaking, the reaction was positive.

COUNCILWOMAN TARKANIAN stated she cannot find documentation supporting the claim about the number of units that the Tapestry Group developed in Arizona, Nebraska, Kansas, Missouri and Iowa. MR. WILCZEWSKI responded that he has 45 years of experience as a developer and one of his companies is on the New York Stock Exchange. His company did only developed regional shopping centers. He has been personally involved in building over 5,000 apartments units. He stated he is not a contractor, but he brings professional architects and engineers together and he puts the plan out for bonded bid; but he is the last and final voice for approval or rejection.

COUNCILWOMAN TARKANIAN reiterated her concern about not being able to substantiate the facts. MR. WILCZEWSKI pointed out they have been approved for workforce housing in Florida, as well as the Bay area. The Councilwoman repeated her concern that the numbers are still in the process of being approved, but she cannot find where the Tapestry Group has built. MR. WILCZEWSKI clarified this will be the Tapestry Groups first involvement with a new project. Over the past seven years, they have acquired existing projects that were in the process of being foreclosed by the Department of Housing and Urban Development (HUD) and turned them around. He has done over 5,000 units of new construction, and that is why he is the construction manager.

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The Councilwoman was still concerned that the Tapestry Group has not built this type of project. MR. WILCZEWSKI rebutted that when financing is done through HUD, they require a single asset entity as the owner, but they look to the professionals that are behind the project to determine if it is going to be viable. There are a number of regulations and people who must approve anything that the Tapestry Group does from a performance standpoint. HUD looked at their construction estimates, rents and indicated they should proceed with an application.

COUNCILWOMAN TARKANIAN stated she understands the difference between the construction and financing. Her staff put together an information packet, a copy of which was submitted for the minutes, relating to the Tapestry Group. Included are newspaper articles related to problems the company has had in the past and the Dunn and Bradstreet report.

SENATOR BRYAN indicated that the approvals the Tapestry Group received for the two projects in Florida have occurred within the last 60 days. HUD supported those 60 days ago.

MAYOR GOODMAN asked if there is any documentation that would address the Councilwoman's concerns. MR. WILCZEWSKI replied in the affirmative.

COUNCILWOMAN TARKANIAN's primary concern is the reluctance of the Tapestry Group to enter into an RFP process. The land is worth approximately \$15 million and the discount would be between 90 and 95 percent, making it attractive to many developers. She believes local developers desire a similar package.

SENATOR BRYAN pointed out this is a non-profit developer and required to abide by the guidelines. Other developers have not expressed an interest in workforce housing. The Councilwoman rebutted that she received letters from interested developers. If there is no one interested, why is the Tapestry Group concerned with going forward with an RFP. Both MR. WILCZEWSKI and SENATOR BRYAN responded they began the process on the basis of the ENA. The City in good faith continued to negotiate on the premise of the ENA.

COUNCILWOMAN TARKANIAN felt very strongly that the perception would not be the best in the public interest. SENATOR BRYAN stated this is a grandfathered situation. They have been in this process for two years. Those who negotiated under a different set of facts and circumstances ought to be grandfathered without the RFP process. The Councilwoman opined that that ended when they failed to reapply for the ENA.

COUNCILMAN WOLFSON verified with SENATOR BRYAN that he had not had a chance to see the packet. COUNCILWOMAN TARKANIAN added that the packet was only available late last night, 11/20/2007.

COUNCILMAN WOLFSON asked how it is determined how much interest was expressed for this piece of property. Property in the Las Vegas Valley is limited and precious. Usually, if somebody shows interest in developing a piece of property owned by the City, a call or a letter is received. He asked what interest has been shown on this piece of property. DEPUTY CITY MANAGER SANCHEZ responded there were other non-profits interested, and the Tapestry Group was not asking for any subsidies, such as HOME or CDBG funds, from the City, unlike the usual practice of most non-profits. SENATOR BRYAN pointed out that this land was not purchased in secrecy.

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COUNCILMAN WOLFSON mentioned that this property used to be in Ward 2 before the redistricting. He asked the applicant if he would be interested in participating in an RFP process. SENATOR BRYAN responded that they were not.

COUNCILMAN BROWN was confused about the program. He opined that this is not a City-owned land program but a federal program. The City of Las Vegas came out with an aggressive statement for affordable housing. This program was marketed and his understanding was that any developer, nationally or internationally, could come to the City, go through a BLM program, to develop affordable housing never precluding anybody. But no one was interested because there is no profit in affordable housing in Southern Nevada.

DEPUTY CITY MANAGER SANCHEZ explained that the program is called Interim Guidance for Affordable Housing, which falls under the Southern Nevada Public Land Management Act, and it was adopted in August of 2006. SENATOR BRYAN added that Section 7B of the Southern Nevada Public Land Management Act specifically authorizes land to be made available upon nomination from a local entity for the purpose of providing affordable housing.

COUNCILMAN BROWN confirmed that the city or the City to nominate parcels and the development community to the advantage started in 1998. COUNCILWOMAN TARKANIAN countered that she was under the impression that it came about two years ago. DEPUTY CITY MANAGER SANCHEZ clarified that the regulations were not adopted for use until 2006. COUNCILMAN BROWN noted discussion in 1998 amongst the developers that they could not afford to get through the bureaucracy to build affordable housing projects. JIM LEWIS, Deputy City Attorney, explained that in 1998 legislation enabled the BLM to create regulations for the disposition of BLM property for affordable housing. These regulations were made available to governmental entities in 2006.

MAYOR GOODMAN interjected regarding the need for affordable housing continues, and was concerned about the Council being mired on the technicality of the ENA lapsing. He asked if it would be fair to deduce that the due diligence in this matter would require research into the principals. DEPUTY CITY ATTORNEY LEWIS indicated that staff could not find that this developer had any substantial experience constructing multi-family housing projects.

MAYOR GOODMAN then questioned staff's recommendation, to which DEPUTY CITY MANAGER SANCHEZ replied that staff had no recommendation and was seeking the recommendation of the City Council. But, as STEPHEN HARSIN, Director of Neighborhood Services, confirmed, no other developers, including non-profits, have expressed interest in this property for the purpose of constructing affordable housing.

COUNCILMAN ROSS expressed his utmost respect for this developer. However, he remarked that the Tapestry Group made a commitment to him regarding a park in Ward 6, but nothing transpired; perhaps due to a communication breakdown. Also, he recognized the need for workforce housing, but the Tapestry Group's reluctance to participate in the RFP process concerned him. He would not want to close the door to others. For integrity, the proper thing to do would be to open the RFP process.

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COUNCILMAN REESE stressed that the ENA was approved by the Council more than one year ago, and he opined that the only reason for the Council to exercise the option of entering the RFP process would be if the Council were to be dissatisfied with Tapestry's proposal, at which time the Council could deny it. DEPUTY CITY MANAGER SANCHEZ pointed out that the DDA includes requirements that, if not met, would terminate the DDA. MAYOR GOODMAN added that the DDA should include due diligence and experience requirements. DEPUTY CITY ATTORNEY LEWIS advised that the Council could not add requirements once this DDA is approved. MAYOR GOODMAN questioned what precluded the Council from doing that. On behalf of MR. WILCZEWSKI, SENATOR BRYAN agreed to such stipulations being added to the DDA. COUNCILMAN BROWN noted that according to the agreement, staff has done its due diligence and found Tapestry to be qualified.

COUNCILWOMAN TARKANIAN noted that she became very concerned about Tapestry's qualifications after COUNCILMAN ROSS informed her of the problem he had with the developer in Ward 6. She also asserted that some staff members informed her that had they been supportive of this matter the recommendation would have reflected that. She refused to mention any staff names in order to avoid repercussions.

After agreeing with COUNCILMAN BROWN'S description regarding Tapestry's qualifications, COUNCILMAN WOLFSON felt obligated to move forward on projects, such as this one, that would provide affordable housing. Clark County leads the country in foreclosures, and it is in a housing-rental crisis. He noted his strong support for this project.

COUNCILWOMAN TARKANIAN noted that not moving forward with this would not prevent development of affordable housing. The City proceeds to act as a pass-through for BLM property, and to act as a safeguard to ensure the best and highest use in the public's interest, so that the public purpose doctrine is met. Therefore, she expressed her opposition to this matter and urged the support of entering into the RFP process, noting that she did not understand why the Tapestry Group refused to participate in the RFP process; the Housing Authority had some reservations and Clark County was also refused in their RFP process. The City of Las Vegas was drafting an RFP policy to ensure that the public purpose doctrine is served and all transactions are transparent. She reiterated her concern regarding the credibility of the Tapestry Group.

MAYOR GOODMAN pointed out that CITY ATTORNEY JERBIC assured him that approval would not impact the public purpose doctrine and that, should the Council find the Tapestry Group to be unqualified, the DDA could only be terminated through a lawsuit on the part of the City.

COUNCILMAN BROWN expressed his support of moving forward with this DDA, as the ultimate beneficiary would be the public who will have access to affordable housing. He also noted that there is no evidence to question the credibility of this developer. He would fully support an RFP, but that is not what this matter pertains to. The Council unanimously approved entering into an ENA with the Tapestry Group, so there is reliance on both sides. The only way he could support denial of this DDA is if a law were to be broken by moving forward, because of a deadline not met, either by the City not notifying the developer or the developer not contacting the City. DEPUTY CITY ATTORNEY LEWIS advised the Councilman that there was nothing in the law prohibiting the Council from moving forward due to the expiration of the ENA. But,

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since it expired, the City could accept other proposals, to which COUNCILMAN BROWN replied that there is already a 30-month history of discussions with Tapestry, that should not be impacted by the new RFP policy being drafted. DEPUTY CITY MANAGER SANCHEZ pointed out that, due to the expiration of the ENA, the Council had the discretion to enter into the RFP process.

COUNCILMAN BROWN commented that innuendos about inconsistencies of staff briefings were raised a year ago, but measures were taken to achieve consistency between staff and the Council. But, if staff gave different impressions in briefings about this developer, he certainly would have liked to be made aware of it. The resurgence of the innuendos greatly bothered him, because the credibility of the developer and staff were at stake.

MAYOR GOODMAN emphatically stated that he does not want another Lily Walters situation and demanded to know if anyone on staff was pressured to get this approved or rejected. DEPUTY CITY MANAGER SANCHEZ, former Director of Neighborhood Services, and STEPHEN HARSIN, current Director of Neighborhood Services, affirmed that no one on staff had any opposition to this matter or was pressured to get any potential opposition.

COUNCILWOMAN TARKANIAN stated that often times staff is influenced by the Mayor's, or the Council's, strong desire to make projects happen. DEPUTY CITY MANAGER SANCHEZ asserted that every request staff receives from the Mayor/Council is treated very seriously, but, in every case, staff only presents the facts and leaves the ultimate decision to the Council, as was the case with this matter. Staff made no recommendation, because the Council had the option to go either way.

COUNCILWOMAN TARKANIAN asked DEPUTY CITY MANAGER SANCHEZ if staff is intimidated by the position of the Council, to which he replied that staff is not intimidated; staff merely states the facts. As far as this matter, the Mayor simply asked staff to put it on the agenda for the Council to consider it and make a decision.

COUNCILMAN WOLFSON clarified with DEPUTY CITY MANAGER SANCHEZ that the term of the ENA became effective July 1, 2006, and expired January 2007.

COUNCILMAN WOLFSON then asked if the Council would have been obligated to act on a DDA had the ENA not expired. DEPUTY CITY ATTORNEY LEWIS answered that the ENA only ensured negotiations between this developer and the City; the Council was not required to approve the DDA.

COUNCILWOMAN TARKANIAN noted that staff sent a notification letter to Tapestry that the City would be entering the RFP process, due to the expiration of the ENA, and she had MR. HARSIN attest to this.

CITY ATTORNEY JERBIC interjected that the City has an obligation to negotiate in good faith when it enters into any ENA. Due to elections, sometimes there is a change of mind or circumstances. Nevertheless, staff has to continue to negotiate until the Council decides otherwise. In this situation, staff continued to negotiate until the ENA expired. The agreement is legally sound and was negotiated in good faith. The final decision is up to Council.

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COUNCILMAN BARLOW questioned Tapestry's reasoning for not participating in the RFP process. SENATOR BRYAN answered that Tapestry invested significant time, effort and money, and the agreement was fully negotiated. It was put on hold several months, because Tapestry requested it on more than one occasion and also because COUNCILWOMAN TARKANIAN requested it due to her absence.

COUNCILMAN BARLOW then questioned why the Tapestry Group or the City allow the ENA to expire if both were working in partnership. SENATOR BRYAN indicated that negotiations were ongoing and it was understood that both parties would continue to negotiate in good faith. So, the expiration of the ENA did not mean anything to the Tapestry Group.

MR. WILCZEWSKI explained that he opted out of the RFP process once after being contacted by Clark County. He continues to opt out, because he is not interested in wasting his time at taking a chance, when the process requires a team, a lot of time and a lot of effort. He would rather put together a proposal that will reflect the desires and needs of a community.

In response to COUNCILMAN BARLOW'S query about what happened at the County, MR. WILCZEWSKI answered that he was contacted by HUD three years ago and asked to come into this community to develop workforce housing, an HUD had not been successful in getting it done with the assistance of a for-profit developer. After repeated requests, he finally gave in and put together a team of professionals to work on affordable housing.

COUNCILMAN REESE stated that, like COUNCILMAN BROWN, he supported the ENA, and there was no evidence to not continue to support the project. Each member of the Council can make his/her own decision.

