



## Agenda Commentary

**Item Title/ Subject:** Westhaven MOU agreement

**Staff Source:** City Manager, Steve Hewitt

**Date:** October 4, 2011

**History/Background Information:** Council authorized staff to develop a MOU (memorandum of understanding) with Zerby Interests regarding the property behind Bank of the West (28<sup>th</sup> & Modelle). Zerby is willing to develop 52 residential properties. Zerby would like the City to provide the public improvements (Water, Sewer, Roads) Zerby would then manage the development.

**Item/Subject Summary:** I informed you last meeting that staff's cost estimates based on Shawn Driver's information (Zerby) are estimated at \$300,000. Staff put together a MOU that would cap our costs at \$300,000 and define each of our roles. Driver couldn't accept any agreement that caps the costs at \$300,000. We disagree in the scope of services regarding the improvements. Driver wants to provide his engineering specifications. As City Manager I felt that final specifications should be subject to City approval. If the City is going to invest public funds to a project, the City should have final approval or a investment cap.

Staff supports the project; however there must be a dollar amount that values the City's investment. Investing \$300,000 and receiving a return of \$104,000 (\$2000 per sale of each lot), was feasible from a budgeting position. Driver (Zerby) would like to keep it open ended and expects improvements to be over \$450,000. Driver informed me that any cap would need to be closer to \$500,000 for their protection.

**Price/Cost:** unknown according to Zerby, estimated \$450,000-500,000.

**Recommendation:** Staff does not recommend this agreement. Staff agrees and supports a development that brings new homes to Clinton. As your City Manager, I strongly believe City investment in public improvements needs to happen to see new homes develop. However, I cannot give our recommendation with these financial numbers. I realize we need more homes. After multiple conversations with people, the community smaller homes with more affordable lots. I could recommend more funding if the develop was different.

This has created more conversation in the community about housing and I expect Zerby to make some adjustments or another developer to have a plan. We are in need of housing. Mr. Driver and staff disagree with the agreement with a cap. Staff will support whatever the Council direction is.

(the attached MOU is what the City proposed and Zerby rejected)

### **MEMORANDUM OF UNDERSTANDING**

WHEREAS Zerby Interests (Developer) has an agreement with Elk Supply Co. (Owner) in order to develop 12.45 acres within the City limits of the City of Clinton (City), described more specifically below.

WHEREAS all parties desire to enter into an informal agreement whereby parties can secure a commitment to negotiate in good faith and continue the initial planning and development of the subject property.

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

1. Description of subject property.

[legal description]

2. Responsibilities.

a. Owner agrees to make available the above described land, at all times, as necessary for the performance of Developer's and City's responsibilities.

b. Owner will allow City to take a security interest in the subject property for all work performed on the subject property. The security interest shall be for 25% of the construction costs associated with the City's responsibilities.

c. Owner and/or Developer will engage in a conversion of the commercial property to a residential use as required.

d. Owner and/or Developer will plat the property to include utility easements designed for the City's use.

e. Owner and/or Developer will engage and pay for all architects and engineers necessary to provide construction ready plans and specifications. All plans and

specifications developed by Owner/Developer shall be reviewed by City for compliance with the City requirements and to determine the most cost effective manner to complete City's responsibilities.

f. Owner and/or Developer will engage and compensate a surveyor and provide all construction and property staking.

g. Upon completion of the design, platting, and engineering; Owner will dedicate all roads and easements to the City for completion of City's responsibilities and maintenance.

h. Owner and/or Developer will construct fencing as described in the site development plan for the Westhaven Addition attached hereto as Exhibit A.

i. Owner and/or Developer will install an irrigation system with the capacity to irrigate all common areas located parallel to Hayes Avenue.

j. Owner and/or Developer will provide the landscaping to include the trees, plants, sod, and mulch, for the common areas along Hayes Avenue.

k. Owner and/or Developer will market the subject property and will incur all expenses associated with the promotions, fees, commissions, and sales related expenses.

l. Owner and/or Developer will prepare and establish a homeowner's association including the drafting of all protective covenants and other such documents, planning and logistics, and miscellaneous expenses associated with the development of a first class residential development.

m. Owner and/or Developer shall pay to the City an amount calculated with the following formula upon the closing of each residential lot within Westhaven Addition, as identified on Exhibit A, in satisfaction of the City's security interest. (Security Interest divided by the number of residential lots on final plat.)

n. City will provide construction services for the construction of streets, within the Westhaven Addition, as platted in the final architectural and engineering specifications. Said streets shall be constructed in conformance with the City's specifications and requirements. Provided that the City's costs shall not exceed \$300,000.00.

o. City shall provide adequate water service for the Westhaven Addition, including access to City water on each lot.

p. City shall provide sanitary sewer service for the Westhaven Addition, including access to the City sanitary sewer upon each lot.

Parties agree to engage in this mutual project in good faith, and take all action reasonably necessary to draw this project to an appropriate conclusion. Nothing herein shall be construed as creating a partnership, or any other business relationship, between the City and Developer or Owner.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

THE CITY OF CLINTON

By: \_\_\_\_\_  
Its \_\_\_\_\_

ZERBY INTERESTS

By: \_\_\_\_\_  
Its \_\_\_\_\_

ELK SUPPLY CO.

By: \_\_\_\_\_  
Its \_\_\_\_\_