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VETO

2015 OCT -5 PM 4: 23

With all due respect to the Clinton City Council members. I am vetoing the following resolution and the related NAI Ruhl Exclusive Right to Sell or Lease Commercial Listing Agreement.

Resolution No. 2015-380 "Resolution approving a commercial listing agreement with NAI Ruhl Commercial and appointed agents Charlie Armstrong and Ray Oczak.

In doing so, I submit the following reasons to the City Council members:

- 1) First and foremost, I want to make this perfectly clear. This Veto does not mean that I am opposed to new jobs in Clinton or that I am opposed to a broker agreement. However, my veto does mean that I believe the interested parties, City of Clinton, Clinton Regional Development Corporation (CRDC) and NAI Ruhl, should engage in further discussion and due diligence before the City decides to approve and enter into an agreement with NAI Ruhl.
- 2) It was clearly stated in the Broker RFP on page 4 under Timeline and Oral Presentation item number 4; The selected broker or firm will be approved by the City Council and, in turn, by the Board of the (CRDC). There must be agreement by both entities before a contract may be offered. This was further detailed in the time table that I emailed to all City Council members and members of the CRDC interview group listing the broker interview dates and times. It was clearly stated that after the interviews both the City and CRDC in separate meetings would discuss the interviews and make a selection of the broker they each preferred. Then a joint meeting between the City and CRDC would take place to discuss the final selection of broker. The City never discussed brokers that were interviewed. A motion was made to select NAI Ruhl and the City Attorney was directed to enter into negotiations and have the contract on the next Council Agenda. Council members were not given any opportunity to discuss the merits of any of the interviewees and the CRDC was not given the opportunity to jointly discuss with the Council their selection of a broker. This clearly went against the agreed upon process in the RFP.
- 3) The final agreement was not provided to the Mayor and Council until September 21, 2015. The day before the Council meeting. The agreement was put on the Council agenda for approval instead of being placed on the Committee of the Whole (COW) for discussion. I emailed all Council members and City Attorney about the bypassing of the COW. It has been past practice that all agreements go to the COW

for discussion and review prior to being placed on a Council agenda for approval.

- 4) At the Council meeting on September 22nd. City Attorney O'Connell stated that this was the best agreement he could negotiate in good faith in the allotted time frame and with the information available. This is a big RED flag, in my opinion. After reviewing the NAU Ruhl agreement I feel there are additional terms that should be added and other terms that need to be better defined. As I said in my email on September 21st to the Council. "What is the rush?" This is a very important agreement and great care needs to be taken that the agreement is the very best the City can get.
- 5) Items that I feel need to be included in the NAI Ruhl agreement or that need to be refined are:
 - a) The agreement I am vetoing is only between the City and NAU Ruhl. The RFP contemplated one listing agreement. What if the City and Ruhl agreement is inconsistent with the CRDC and Ruhl agreement? Two separate agreements could be an obstacle if a prospect was interested in a parcel of land including acres of both owners. Moreover, the NAI Ruhl agreement does not state the City may void its agreement if CRDC and NAI Ruhl are unable to agree on a separate listing contract. In my opinion, I think it should.
 - b) I feel the City and CRDC would be better served by continuing their collaborative effort to jointly market the Railpark under one listing contract. This currently has not been possible to date because the City Council has insisted on accelerating the process.
 - c) Another item that has been mentioned and not discussed is the McClure agreement. This agreement should be reviewed. The proposed listing agreement grants NAI Ruhl the "sole and exclusive right" to procure buyers or (tenants) for the Railpark. The two agreements may have a duplication of services and it should be determined if there is overlap of services and how best these two companies will work together before an agreement with NAI Ruhl is signed.
 - d) The RFP did state a reduced commission would be paid to the broker if sales "are sourced" by several listed entities rather than the Broker. NAI Ruhl's agreement sets such a partial commission at 3%. Is this standard in the industry of commercial and industrial property sales? If not, it seems high if the CRDC

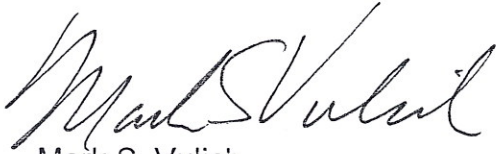
or another source listed in the RFP procures a sale with no contribution at all from NAI Ruhl. Moreover, the NAI Ruhl agreement sets conditions which must be met to prevent NAI Ruhl from collecting a full commission from a sale sourced by another entity. No such conditions were set out in the RFP.

- e) The NAI Ruhl agreement requires the City to “refer all inquires” concerning the Railpark to NAI Ruhl “immediately”. The City and CRDC are at times required to keep the identity of a prospect confidential; Neither the City nor CRDC can disclose the prospect to NAI Ruhl without the prospect’s consent. This should be addressed in the listing contract.
- f) Price Per Acre: I am concerned that listing the price as no less than \$42,500.00 may not be the best way to represent the sales price. Either the minimum price should be deleted or perhaps the Railpark be divided into regions and individually price the regions based upon being rail served or not rail served etc. This item should at least have further discussion.
- g) Qualified Buyer: I feel that any purchaser of land in the Railpark must use the property for an activity which will produce a reasonable number of jobs in order to qualify to purchase property. For example, a purchaser wanting 50 acres of land to build a two million dollar warehouse and only employing 20 people may not be the best use of our land. There is no language in the agreement addressing the owner’s right to reject unqualified buyers. I feel a qualified buyer provision should be included.
- h) Right to Repurchase: The agreement with NAI Ruhl should contain a statement of the seller’s right to repurchase at the original sales price any land upon which the agreed development has not occurred within 12 months following a sale.
- i) I also agree with Councilmember Determann that further negotiation of the 6% commission should be pursued. I feel there would be merit in further discussion of reducing the overall commission percentage or an opportunity to vary the commission depending upon the dollar amount of the sale.

The above reasons, conclusions and opinions are the basis for my veto of Resolution No. 2015-380 “Resolution approving a commercial listing agreement with NAI Ruhl Commercial and appointed agents Charlie Armstrong and Ray

Oczak and the related NAI Ruhl Exclusive Right to Sell or Lease Commercial Listing Agreement.

The City and the CRDC are separate entities but both are working cooperatively toward a common goal of creating and retaining jobs in the community. Job creation benefits everyone. I believe that the City, CRDC and NAI Ruhl all having good faith dialogue will be able to achieve consensus. The final result will be a listing agreement that creates jobs and builds our tax base for the future.

A handwritten signature in black ink, appearing to read "Mark S. Vulich". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark S. Vulich

Mayor

City of Clinton, Iowa

October 5, 2015