



ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other

Prepared By: Curtis P. Cannon *ca* Agenda Item No. 0-3

Reviewed By: City Manager *MMH* City Attorney *AY* Finance *JK* Other N/A

DATE: July 19, 2010

TO: Community Development Commission

FROM: Curtis P. Cannon, Director
Community Development Department

SUBJECT: Adoption of Resolutions of Necessity for Acquisition of Tenancy Interests of Pacific Oaks Credit Union at property located at 1950 North "C" Street, Oxnard; and O'Reilly Auto Parts dba Kragen Auto Parts tenancy interest at 151 West Gonzales, Oxnard

RECOMMENDATION

That the Community Development Commission:

1. Conduct a public hearing concerning whether the requirements for adoption of Resolutions of Necessity for the acquisition of the above-referenced tenancy interests have been met for the redevelopment of Carriage Square.
2. Adopt Resolutions of Necessity authorizing eminent domain proceedings for the purpose of acquiring such tenancy interests, and making certain findings.
3. Approve and authorize the City Attorney to engage suitable eminent domain counsel to file eminent domain legal proceedings and seek immediate possession of the tenancy interests, and to allocate funds for immediate possession.

DISCUSSION

Carriage Square is a retail development located at the northwest corner of Oxnard Boulevard and Gonzales Road. The entire existing development is located within the Historic Enhancement and Revitalization of Oxnard (HERO) amended redevelopment area. By Ordinance No. 2653 adopted by the Commission in 2004, the HERO redevelopment area was amended to include, among other areas, the Carriage Square area. The Commission has retained the power of eminent domain within the amended redevelopment area for redevelopment purposes, until 2016.

The current improvements at Carriage Square, consisting of retail businesses, are out-dated and functionally obsolete. For some time, the Commission has had an interest in revitalizing the development. Property values within the development have been stagnant, there are substantial vacancies in retail space within the development, and further significant appreciation and enhanced retail business is unlikely without redevelopment.

Of the total square footage currently available in Carriage Square only 8% is currently under lease. More than 5 years ago, a Von's grocery store on the property was closed. Litigation ensued between the owner and Von's, and the result of the lawsuit was that a use restriction was placed on the property which essentially forbade a new grocery store on the property until 2025 as long as Von's was operating other grocery stores within a radius of three miles from Carriage Square. This use restriction made it essentially impossible to rent the vacated space to another grocery store, and Carriage Square has languished with large amounts of empty retail space as a result.

The developer of Carriage Square is currently under contract with Lowe's to redevelop Carriage Square. In order to effect the redevelopment, all existing buildings at Carriage Square would be demolished, except for the existing building at the hard corner. The proposed redevelopment would be an asset to the community by virtue of the resulting improved property values, enhanced shopping opportunities, and increased sales tax revenue.

At the direction of the Commission staff, the developer has worked diligently to retain existing businesses at Carriage Square to carry on their businesses within the redeveloped shopping center. Currently, the IHOP restaurant, a donut shop, and a 7/11 convenience store on the property will remain within the redeveloped site.

Also at the direction of Commission staff, the developer has had extensive negotiations with Pacific Oaks and Kragen to rent new space within the redeveloped Carriage Square. A Letter of Intent (LOI) has been signed between Pacific Oaks and the developer, and preparation of a new lease agreement has commenced. Although extensive discussions have been conducted between the developer and Kragen, an agreement has not been reached and is not likely to be reached.

The Commission was formally involved in the above-mentioned negotiations. Commission staff engaged an independent furniture, fixtures and equipment (FF&E) appraiser to value the "fixtures pertaining to the realty" owned by Pacific Oaks and Kragen. Written appraisal reports were provided to the Commission by the FF&E appraiser. The FF&E appraisals were provided to Pacific Oaks and Kragen by letters dated May 4, 2010 (attached). In addition, Commission staff engaged Hamner, Jewell and Associates to assist Pacific Oaks and Kragen with relocation of their businesses, as required by California law. Hamner, Jewell staff have discussed all relocation issues with the tenants' representatives and have offered to supply all mandated relocation benefits, as applicable. The existing lease agreements for both Pacific Oaks and Kragen have provisions which assign the leasehold value to the landlord. Therefore, upon advice of legal counsel, no offer has been made to Pacific Oaks or Kragen to pay anything for the leasehold values, if any. Counsel has advised staff that the only entitlement which the tenants have is to be paid for their fixtures pertaining to the realty and relocation benefits. As indicated above, offers for both of these items have been properly made.

Commission staff believes that it is important that the Commission adopt Resolutions of Necessity at this time. The developer is subject to deadlines with respect to its agreement with Lowe's to pursue redevelopment of Carriage Square. If possession of the premises cannot be provided by February 2011, the transaction with Lowe's would be jeopardized. Current California law mandates a much longer waiting period in order to obtain pre-judgment possession than previously existed in eminent domain cases. In order for this timeline to be met, the Resolutions of Necessity need to be adopted at this time. Although the developer's negotiations with Pacific Oaks have resulted in an executed LOI, a lease agreement has not yet been prepared or finalized. Adoption of the Resolutions of Necessity will allow the redevelopment timeline to stay on track.

PUBLIC HEARING PROCESS

The appropriate Pre-Hearing Notices have been mailed to Pacific Oaks and Kragen.

In order to initiate an action in eminent domain, the Commission Members must at this public hearing establish the following by a two-thirds vote of the entire Commission:

a) Public interest and necessity require the proposed project.

As mentioned above, Carriage Square is currently only 8% occupied. The existing improvements are badly in need of updating. In essence the entire center is functionally obsolete and will remain so without redevelopment. The center is not likely to obtain new retail businesses without redevelopment. As a result of these factors, property values in the center are stagnant. Retail sales are low and sales tax revenues are insignificant as a result of the vacancies. The large retail space formerly used as a Von's grocery store is an eyesore and makes the entire center appear blighted.

It is necessary that all existing tenancy rights be acquired in order for the redevelopment of Carriage Square to occur. Otherwise, the center would remain in the blighted condition it is in currently.

b) The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

As described above, the developer has made substantial efforts to maintain existing tenants within the new center. However, the overall redevelopment cannot occur without Pacific Oaks or Kragen relocating their businesses to a new center or within Carriage Square. It does appear that Pacific Oaks and the developer are close to a finalized agreement so that Pacific Oaks may remain within the center, but a lease agreement has not yet been prepared or signed. It does not appear likely that Kragen and the developer can come to an agreement. Although it would be desirable for Kragen to be able to stay within the new center, Kragen would be allowed to seek all appropriate compensation in the eminent domain proceedings if the Commission adopts the proposed Resolution of Necessity.

- c) The property sought to be acquired is necessary for the project.

The Carriage Square center cannot be redeveloped with the developments as proposed by Lowe's without the Commission acquiring the tenancy rights of Pacific Oaks and Kragen.

- d) The offer of compensation required by Section 7267.2 of the Government Code has been made to Pacific Oaks and Kragen..

Pacific Oaks and Kragen were given the appropriate appraisal data several months ago and negotiations have been conducted. With respect to Pacific Oaks, an LOI has been signed but a lease agreement has not yet been finalized. Negotiations with Kragen are at an impasse.

Upon completion and closing of the hearing, staff recommends that the Commission Members make the findings and determinations listed under a), b) and c) above, make an additional finding that the offer of just compensation required by Section 7267.2 of the Government Code has been made, and adopt separate Resolutions of Necessity to acquire the tenancy rights by eminent domain.

All questions raised at this public hearing must pertain to items (a) through (d) listed above. The amount of the Commission's appraisal of the FF&E is not an issue to be considered at this hearing.

FINANCIAL IMPACT

Based upon information currently available, the total cost of the acquisition will be \$329,385, plus legal fees and litigation expenses. This amount is based upon the appraisals of the fixtures pertaining to the realty for both tenancies. As required by law, the amount of the appraisals will be deposited into the State Condemnation Deposits Fund, to be administered by the court. Costs of this acquisition will be paid by the developer of Carriage Square.

CPC/el

- Attachment #1 - Resolutions of Necessity - Pacific Oaks and Kragen
#2 - Notices to Pacific Oaks and Kragen
#3 - Offer Letters to Pacific Oaks and Kragen
#4 - Photographs of Existing Condition of Carriage Square

Note: Attachments #3, has been provided to City Council under separate cover. Copies for review are available at the Help Desk in the Library after 6:00 p.m. on Thursday prior to the Council meeting and in the City Clerk's Office after 8:00 a.m. on Monday prior to the Council meeting.

CITY OF OXNARD COMMUNITY DEVELOPMENT COMMISSION

RESOLUTION NO. 2010-_____

RESOLUTION OF THE OXNARD COMMUNITY DEVELOPMENT COMMISSION
DECLARING THE ACQUISITION OF CERTAIN TENANCY RIGHTS IN REAL
PROPERTY NECESSARY FOR THE REDEVELOPMENT OF CARRIAGE SQUARE
(Affects Tenancy Rights of Pacific Oaks Federal Credit Union at 1950 North "C" Street,
Oxnard.)

RECITALS

WHEREAS, The City of Oxnard Community Development Commission (the "Commission") wishes to acquire certain tenancy rights in real property described herein below for Commission and redevelopment use by the exercise of the power of eminent domain. The acquisition of such rights is required to redevelop Carriage Square within the Historic Enhancement and Revitalization of Oxnard (HERO) redevelopment area, as amended in 2004. The proposed project is to acquire said tenancy interests for the above-mentioned purposes; and

WHEREAS, Pursuant to Chapter 4, Title 7, Part 3 of the Code of Civil Procedure, written notice of the intent to consider the adoption of this resolution of necessity was sent on June 28, 2010 and July 8, 2010 to Pacific Oaks Federal Credit Union. A written request to appear was received from _____; and

WHEREAS, Due consideration of all oral and documentary evidence introduced has been given.

NOW, THEREFORE, BY VOTE OF 2/3 OR MORE OF ITS MEMBERS, the Commission does find and resolves:

1. The findings and declarations contained in this resolution are based upon the record with respect to the tenancy rights in real property to be acquired before the Commission Members of the Commission at its hearing of July 27, 2010, and the testimony, records and documents produced at the hearing, all of which are incorporated by this reference;
2. The Commission adopted an environmental document in compliance with the California Environment Quality Act (CEQA) at the time the HERO amended redevelopment plan was adopted in 2004.
3. The real property rights to be acquired consist of the tenancy rights of Pacific Oaks in an to the real property commonly known as 1950 North "C" Street, Oxnard, CA, including but not limited to all fixtures pertaining to the real located thereon;
4. The said real property rights are to be acquired for redevelopment purposes, pursuant to the authority granted in California Constitution, Article 1, Section 19; California Health and Safety Code section 33391; Title 7, Part 3 of the Code of Civil Procedure; and other provisions of law;

5. The public interest and necessity require the real property rights sought to be acquired;
6. The project is planned and located in the manner which will be the most compatible with the greatest public good and the least private injury;
7. The real property rights described herein are necessary for the project; and
8. The offer required by Section 7267.2 of the Government Code has been made to Pacific Oaks Federal Credit Union.
9. The Commission's General Counsel, by and through special counsel as authorized by the General Counsel is hereby AUTHORIZED AND EMPOWERED:
 - a. To acquire in the Commission's name, by condemnation, the said real property rights in accordance with the provisions of the eminent domain law, the Code of Civil Procedure and the Constitution of California; and
 - b. To prepare and prosecute in the Commission's name such proceedings in the proper court as are necessary for such acquisition; and
 - c. To deposit the probable amount of compensation based on an appraisal, and to apply to said court for an order permitting the Commission to take immediate possession of said property, to remove all improvements located thereon, and to use said property for said Commission redevelopment uses and purposes.

BE IT FURTHER RESOLVED that the Director of the Community Development Department is hereby authorized and directed, on behalf of the Commission and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

PASSED AND ADOPTED this ____ day of _____, 2010, by the following vote:

AYES:

NOES:

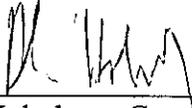
ABSENT:

Dr. Thomas E. Holden, Chairman

ATTEST:

Daniel Martinez, Secretary Designate

APPROVED AS TO FORM:



Alan Holmberg, General Counsel

CITY OF OXNARD COMMUNITY DEVELOPMENT COMMISSION

RESOLUTION NO. 2010-_____

RESOLUTION OF THE CITY OF OXNARD COMMUNITY DEVELOPMENT COMMISSION DECLARING ACQUISITION OF CERTAIN TENANCY RIGHTS IN REAL PROPERTY NECESSARY FOR THE REDEVELOPMENT OF CARRIAGE SQUARE (Affects Tenancy Rights of O'Reilley Auto Parts dba Kragen Auto Parts (Kragen) at 151 West Gonzales, Oxnard.)

RECITALS

WHEREAS, The City of Oxnard Community Development Commission (the "Commission") wishes to acquire certain tenancy rights in real property described herein below for Commission and redevelopment use by the exercise of the power of eminent domain. The acquisition of such rights is required to redevelop Carriage Square within the Historic Enhancement and Revitalization of Oxnard (HERO) redevelopment area, as amended in 2004. The proposed project is to acquire said tenancy interests for the above-mentioned purposes;

WHEREAS, Pursuant to Chapter 4, Title 7, Part 3 of the Code of Civil Procedure, written notice of the intent to consider the adoption of this resolution of necessity was sent on June 28, 2010 and July 8, 2010 to Kragen. A written request to appear was received from _____;

WHEREAS, Due consideration of all oral and documentary evidence introduced has been given.

NOW, THEREFORE, BY VOTE OF 2/3 OR MORE OF ITS MEMBERS, the Commission does find and resolves:

1. The findings and declarations contained in this resolution are based upon the record with respect to the tenancy rights in real property to be acquired before the Commission Members of the Commission at its hearing of July 27, 2010, and the testimony, records and documents produced at the hearing, all of which are incorporated by this reference;
2. The Commission adopted an environmental document in compliance with the California Environment Quality Act (CEQA) at the time the HERO amended redevelopment plan was adopted in 2004.
3. The real property rights to be acquired consist of the tenancy rights of Kragen in an to the real property commonly known as 151 West Gonzales, Oxnard, CA, including but not limited to all fixtures pertaining to the real located thereon;
4. The said real property rights are to be acquired for redevelopment purposes, pursuant to the authority granted in California Constitution, Article 1, Section 19; California Health and Safety Code section 33391; Title 7, Part 3 of the Code of Civil Procedure; and other provisions of law;

- 5. The public interest and necessity require the real property rights sought to be acquired;
- 6. The project is planned and located in the manner which will be the most compatible with the greatest public good and the least private injury;
- 7. The real property rights described herein are necessary for the project; and
- 8. The offer required by Section 7267.2 of the Government Code has been made to Kragen.

The Commission's General Counsel, by and through special counsel as authorized by the General Counsel, is hereby **AUTHORIZED AND EMPOWERED**:

To acquire in the Commission's name, by condemnation, the said real property rights in accordance with the provisions of the eminent domain law, the Code of Civil Procedure and the Constitution of California; and

To prepare and prosecute in the Commission's name such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of compensation based on an appraisal, and to apply to said court for an order permitting the Commission to take immediate possession of said property, to remove all improvements located thereon, and to use said property for said Commission redevelopment uses and purposes.

BE IT FURTHER RESOLVED that the Director of the Community Development Department is hereby authorized and directed, on behalf of the Commission and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

PASSED AND ADOPTED this ____ day of _____, 2010, by the following vote:

AYES:

NOES:

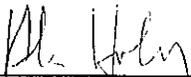
ABSENT:

Dr. Thomas E. Holden, Chairman

ATTEST:

Daniel Martinez, Secretary Designate

APPROVED AS TO FORM:



Alan Holmberg, General Counsel

PRICE, POSTEL & PARMA LLP

JAMES H. HURLEY, JR.
J. TERRY SCHWARTZ
DAVID W. VAN HORNE
PETER D. SLAUGHTER
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OF COUNSEL
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STEVEN K. MCGUIRE

RETIRED PARTNERS
GERALD S. THEDE
DAVID K. HUGHES

OUR FILE NUMBER

22126-1

June 28, 2010

VIA FACSIMILE & U.S. MAIL

Facsimile: (213) 627-7128

Charles D. Cummings
Sullivan, Workman & Dee, LLP
800 South Figueroa Street, 12th Floor
Los Angeles, CA 90017-2521

Re: Pacific Oaks Federal Credit Union
1950 North "C" Street; Oxnard, California
Oxnard Community Development Commission - Carriage Square Project

Dear Mr. Cummings:

This office represents the Oxnard Community Development Commission ("Commission") and this letter is being sent to you on the Commission's behalf. We are sending you this letter in your status as counsel for Pacific Oaks Federal Credit Union ("Pacific Oaks"), pursuant to your request.

You are hereby notified, pursuant to California Code of Civil Procedure Section 1245.235, that the Commission intends to consider adopting a Resolution of Necessity to acquire by eminent domain Pacific Oaks' leasehold interest in the property located 1950 North "C" Street in Oxnard, California.

The public project for which this leasehold interest may be acquired is for the purposes of the redevelopment of Carriage Square.

The Commission intends to consider adopting this Resolution of Necessity at its meeting to be held on July 13, 2010, at 7:00 p.m. in the Oxnard City Council Chambers located at 305 West 3rd Street, Oxnard, California.

Charles D. Cummings, Esq.
June 28, 2010
Page 2

As leaseholder of this property, Pacific Oaks has the right to appear at this meeting and be heard on the following matters:

1. Whether public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the property sought to be acquired is necessary for the project; and
4. Whether the offer required by Government Code section 7267.2 has been made to the owner of record.

If Pacific Oaks wishes to appear and be heard at this meeting, Pacific Oaks must file a written request with the City within fifteen (15) days after the date this notice was mailed. The request should be addressed to the Clerk of the City of Oxnard, 305 West 3rd Street, Oxnard, California 93030.

PLEASE BE ADVISED, FAILURE TO FILE A WRITTEN REQUEST TO APPEAR AND BE HEARD WITHIN FIFTEEN (15) DAYS OF THE DATE THIS NOTICE, WILL BE CONSTRUED AS A WAIVER OF PACIFIC OAKS' RIGHTS TO APPEAR AND BE HEARD ON THIS MATTER.

Very truly yours,



Todd A. Amspoker
Attorney for the Oxnard
Community Development Commission

TAA:kl

cc: Curtis Cannon
Alan Holmberg
Michael C. O'Brien
Thomas E. Neuhaus

PRICE, POSTEL & PARMA LLP

JAMES H. HURLEY, JR.
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DANIEL C. DAVID
SUSAN M. BASHAM
STEVEN K. MCGUIRE

RETIRED PARTNERS
GERALD S. THEDE
DAVID K. HUGHES

OUR FILE NUMBER
22126-1

June 28, 2010

VIA FACSIMILE & U.S. MAIL

Facsimile: (209) 473-6455

M. Max Steinheimer
Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219

Re: O'Reilley Auto Parts dba Kragen Auto Parts
151 West Gonzales; Oxnard, California
Oxnard Community Development Commission - Carriage Square Project

Dear Mr. Steinheimer:

This office represents the Oxnard Community Development Commission ("Commission") and this letter is being sent to you on the Commission's behalf. We are sending you this letter in your status as counsel for O'Reilley Auto Parts dba Kragen Auto Parts ("Kragen"), pursuant to your request.

You are hereby notified, pursuant to California Code of Civil Procedure Section 1245.235, that the Commission intends to consider adopting a Resolution of Necessity to acquire by eminent domain Kragen's leasehold interest in the property located at 151 West Gonzales in Oxnard, California.

The public project for which this leasehold interest may be acquired is for the purpose of the redevelopment of Carriage Square.

The Commission intends to consider adopting this Resolution of Necessity at its meeting to be held on July 13, 2010, at 7:00 p.m. in the Oxnard City Council Chambers located at 305 West 3rd Street, Oxnard, California.

M. Max Steinheimer
June 28, 2010
Page 2

As leaseholder of this property, Kragen has the right to appear at this meeting and be heard on the following matters:

1. Whether public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the property sought to be acquired is necessary for the project; and
4. Whether the offer required by Government Code section 7267.2 has been made to the owner of record.

If Kragen wishes to appear and be heard at this meeting, Kragen must file a written request with the City within fifteen (15) days after the date this notice was mailed. The request should be addressed to the Clerk of the City of Oxnard, 305 West 3rd Street, Oxnard, California 93030.

PLEASE BE ADVISED, FAILURE TO FILE A WRITTEN REQUEST TO APPEAR AND BE HEARD WITHIN FIFTEEN (15) DAYS OF THE DATE THIS NOTICE, WILL BE CONSTRUED AS A WAIVER OF KRAGEN'S RIGHTS TO APPEAR AND BE HEARD ON THIS MATTER.

Very truly yours,



Todd A. Amspoker
Attorney for the Oxnard
Community Development Commission

TAA:kl
cc: Curtis Cannon
Alan Holmberg
Robert L. Greene

PRICE, POSTEL & PARMA LLP

JAMES H. HURLEY, JR.
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22126-1

July 8, 2010

VIA FACSIMILE & U.S. MAIL

Facsimile: (213) 627-7128

Charles D. Cummings
Sullivan, Workman & Dee, LLP
800 South Figueroa Street, 12th Floor
Los Angeles, CA 90017-2521

Re: Pacific Oaks Federal Credit Union
1950 North "C" Street; Oxnard, California
Oxnard Community Development Commission - Carriage Square Project

Dear Mr. Cummings:

This office represents the Oxnard Community Development Commission ("Commission") and this letter is being sent to you on the Commission's behalf. We are sending you this letter in your status as counsel for Pacific Oaks Federal Credit Union ("Pacific Oaks"), pursuant to your request.

You were previously notified that the Commission intends to consider adopting a Resolution of Necessity to acquire by eminent domain Pacific Oaks' leasehold interest in the property located 1950 North "C" Street in Oxnard, California. This hearing was scheduled for July 13, 2010.

The Commission's meeting has been re-scheduled for July 27, 2010, at 7:00 p.m. in the Oxnard City Council Chambers located at 305 West 3rd Street, Oxnard, California. All information previously provided to you in my June 28, 2010 letter to you still pertains.

Charles D. Cummings, Esq.
July 8, 2010
Page 2

Please let me know if you have any questions about this matter.

Very truly yours,

A handwritten signature in black ink that reads "Todd A. Amspoker". The signature is written in a cursive, flowing style.

Todd A. Amspoker
Attorney for the Oxnard
Community Development Commission

TAA:kl
cc: Curtis Cannon
Alan Holmberg
Michael C. O'Brien
Thomas E. Neuhaus

PRICE, POSTEL & PARMA LLP

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M. Max Steinheimer
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3425 Brookside Road, Suite A
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You were previously notified that the Commission intends to consider adopting a Resolution of Necessity to acquire by eminent domain Kragen's leasehold interest in the property located 151 West Gonzales in Oxnard, California. This hearing was scheduled for July 13, 2010.

The Commission's meeting has been re-scheduled for July 27, 2010, at 7:00 p.m. in the Oxnard City Council Chambers located at 305 West 3rd Street, Oxnard, California. All information previously provided to you in my June 28, 2010 letter to you still pertains.

M. Max Steinheimer
July 8, 2010
Page 2

Please let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Todd A. Amspoker". The signature is written in a cursive style with a long horizontal flourish at the end.

Todd A. Amspoker
Attorney for the Oxnard
Community Development Commission

TAA:kl
cc: Curtis Cannon
Alan Holmberg
Robert L. Greene

