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August 20, 2004

Honorable Bruce A. Clark  
Ventura County Superior Court  
Hall of Justice  
800 S. Victoria Ave.  
Ventura, CA 93009

RECEIVED  
SEP 03 2004  
VENTURA COUNTY GRAND JURY

RECEIVED  
VENTURA COUNTY SUPERIOR COURT

AUG 23 2004

OFFICE OF THE  
PRESIDING JUDGE

Re: Ventura County 2003-2004 Grand Jury report, "Oxnard Community Redevelopment"

Dear Judge Clark:

This letter contains the response of the Oxnard City Council, Mayor of the City of Oxnard, and Oxnard Planning Commission to the Ventura County 2003-2004 Grand Jury report dated May 21, 2004 entitled "Oxnard Community Redevelopment" ("the Report").

The letter consists primarily of responses to specific findings, conclusions and recommendations set forth in the Report. The introductory paragraphs of the Report, however, contain several errors which, to avoid confusion, should be noted.

The first paragraph of the Report entitled "Summary" states with respect to what is referred to as the "Brown Building": "This building is only one of several parcels owned by the City. They are considered either surplus property or property available for resale." In fact, the City does not own the Brown Building (348-350 S. Oxnard Boulevard). The Community Development Commission ("CDC") owns the Brown Building. "Surplus property" is a term usually associated with property held by a public agency which has been, but is no longer used in that agency's governmental or proprietary activities. The CDC does not use the term to describe properties which it owns and plans to devote to redevelopment purposes.

The second paragraph of the "Summary" contains a sentence which reads in part: "This act is being used by the city council, acting as the Community Development Commission (CDC) also referred to as the Community Development Department (CDD) and attached to the Oxnard Community Planning Department..." This statement is inaccurate in several respects. The City Council is the legislative body which governs the City. The Community Development Commission is a separate entity, the Commissioners of which are the Councilmembers. The

Community Development Department is a City department. There is no Community Planning Department. The Planning and Environmental Services Division is a division of the Development Services Department. The City departments and divisions are not legally attached or related to the CDC.

In the first paragraph of the portion of the Report entitled "Background," the Report states that the Brown Building is in the Historic Enhancement and Revitalization of Oxnard Redevelopment Project ("HERO") area. In fact, the Brown Building is in the Merged Downtown R-108 and Central City Revitalization Project area ("CCRP").

The remainder of this letter responds to the specific findings, conclusions and recommendations set forth in the Report.

### **Findings**

F-01. More than 40 years ago the California State Legislature delegated to cities and counties powers to be used by local redevelopment agencies to eliminate blight from designated urban areas in their communities.

Response: Concur.

F-02. RDAs have broad property management powers, including the authority to acquire property, sometimes by eminent domain, and to sell, lease, clear or develop real property in the project area(s).

Response: Concur.

F-03. The Brown Building is either within, or adjacent to, the CCRP project and the HERO project areas of development and revitalization. The building is located in what is referred to as the Central District Business Zone, which is now undergoing extensive expansion and development causing property values in the area to rise rapidly.

Response: Concur in part.

The Brown Building is located within the CCRP. The Brown Building is not in the HERO project area. The Brown Building is in the Central Business District ("CBD") of the City. The area is undergoing redevelopment, which is intended to cause property values to rise and property values have risen.

F-04. According to plans reviewed by the Grand Jury and statements made by the Community Development Director before city council meetings and to the press, some of the allowable uses for the building include restaurants, financial institutions, galleries, bookstores and a funeral home.

Response: Concur.

F-05. The means by which the CDC is considering offers from interested investors who will purchase and develop the property is through the use of Exclusive Negotiation Agreements (ENAs). These ENA responses from prospective investors must include specific development plans that include blueprints, drawings, specifications and the exact ultimate usage for the Brown Building. All materials produced to be presented to the commission for consideration must be prepared by the investor(s) at their own expense.

Response: Concur in part.

The CDC often uses exclusive negotiation agreements to define the parameters of agreements for the disposition and development of property owned by the CDC. The agreements contain specific guidelines for negotiation and contain development goals. The agreements usually contain specific guidelines for permissible uses of the property involved. The exclusive negotiation agreements do not typically include blueprints or detailed specifications. Detailed site plans and elevations may be included in a disposition and development agreement. As a general rule, materials produced by the developer in connection with the negotiation of a disposition and development agreement pursuant to an exclusive negotiation agreement would be prepared by a developer at its own expense, however, there could be occasions when materials to be prepared by developer could be of independent use or value to the CDC. An exclusive negotiation agreement could contain provisions for reimbursement if the CDC could appropriate the materials to its own use.

In the case of the Brown Building, the CDC entered into two exclusive negotiation agreements with Guadalupe Martinez, and negotiated with Guadalupe Martinez pursuant to those agreements. The agreements are dated November 18, 2003 and March 23, 2004 and are on file in the office of the Oxnard City Clerk. The agreements contain guidelines for negotiation and for use of the property. The agreements do not contain blueprints, drawings, or detailed specifications.

F-06. On November 20, 2002, the CDC received an offer from Al Barkley of Barkley Insurance Agents & Brokers. On July 14, 2003, Mr. Barkley withdrew his offer.

Response: Concur.

F-07. On July 8, 2003, Strand Cinemas, developer of the 14-screen Plaza cinema and Shopping Complex currently being built approximately four blocks from the Brown Building, was given an ENA for the building that was scheduled to last for 90 days, and possibly extended to 270 days. On August 22, 2003, Strand Cinemas withdrew its offer for the purchase and development of the Brown Building.

Response: Concur in part.

Strand Cinemas was a party to an exclusive negotiation agreement which included the Brown Building. Strand Cinemas did not make an offer to purchase the Brown Building. On or about

August 22, 2003, Strand Cinemas indicated to the CDC in writing that it was not interested in negotiating for the purchase of the Brown Building.

F-08. In July of 2003, the owners of Ruby's Café in Santa Barbara, California, were denied a special use permit by the City's planning commission to open a restaurant at 9<sup>th</sup> and A Streets near downtown Oxnard that would serve alcoholic beverages. Reasons for the denial were the lack of parking and the Oxnard Police Department's opposition to the permit due to the existence of several establishments in the area that have liquor licenses. The commission's view was that another business with a liquor license in the area might increase crime.

Response: Concur in part.

On June 5, 2003, the Planning Commission denied a special use permit for the proposed Ruby's Café location at 852 S. "A" Street. On July 22, 2003, after granting an appeal of the Planning Commission's decision, the City Council granted a special use permit for on site consumption, for a night club and for use of 33 on-street public parking spaces in conjunction with a restaurant to be located at 852 S. "A" Street.

F-09. On August 23, 2003, the CDC instructed its director to enter into an ENA with the owners of Ruby's Café for the Brown Building. On March 23, 2004, the vice chairman of the CDC executed the ENA with the owners at Ruby's Café for the purchase and development of the Brown Building.

Response: Concur in Part.

In a meeting held on August 26, 2003, CDC staff requested direction from the CDC Commissioners as to disposition of the Brown Building. The CDC Commissioners instructed the director to continue discussions with the owners of Ruby's Café. Exclusive negotiation agreements dated November 18, 2003 and March 23, 2004, were executed as a result of those discussions.

F-10. As of the end of April 2004, no sale of the Brown Building has been finalized, and no remodeling or renovation work on the structure has begun.

Response: Concur.

As of the date of this response, negotiations have been finalized. On August 3, 2004, the CDC approved an agreement for disposition, development and operation of the Brown Building by Guadalupe Martinez.

## **Conclusions**

C-01 Community Development Commission and Community Development Department staff control agency agendas and recommend actions. Commission members, who are also elected city council members, tend to rely on staff decisions more than on their own judgment. Though

simple in principle, redevelopment is sometimes presented as too complex for some ordinary officials and citizens to understand. (F-01, F-02).

Response: Concur in part, disagree in part.

CDC and Community Development Department staff seek through the Executive Director and City Manager to place items on the CDC and City Council agendas. The Executive Director and City Manager have the authority to place items on agendas. CDC Commissioners and Councilmembers also may request that items be placed on agendas. The CDC and City Council have developed procedures to consider such requests.

Councilmembers and CDC Commissioners consider agenda reports prepared by staff. CDC Commissioners and Councilmembers rely upon the information in the staff reports, as well as information which may be provided by the public, and other information which comes to their attention in making decisions on matters brought before the CDC and City Council. Staff's responsibility is to present information in staff reports and make recommendations. The legislative bodies' role is to make decisions based upon available information.

Staff does not control agendas. Councilmembers and CDC Commissioners may consider staff recommendations, but ultimately exercise their own discretion and judgment.

Some portions and parts of redevelopment law and policy are complex, however, CDC staff seeks in its agenda reports pertaining to redevelopment issues to present information in a manner which the public will understand.

C-02. Because of the proximity of the Brown Building to already developed projects like the Transportation Center and future projects such as the Plaza Cinema (Strand), the value of the building will most probably go up. However, the lack of sale of the building and its long-term vacancy has resulted in the loss of revenue to the City. (F-03, F-04, F-10).

Response: Concur in part.

The CDC has suffered a loss of revenue due to the fact that the Brown Building has not been on the real property tax rolls. Since the property is in a redevelopment area, the revenue would have been received by the CDC not the City.

C-03. The use of ENAs to come to terms with potential investors interested in surplus property and property available for resale is well within the laws and rules governing the Community Redevelopment Act that is being utilized by the city under the CDC. The ENA provides the necessary controls on who the owner or tenant will be and the ultimate use of the property, assuring that the property's usage will conform with the rest of the development in the area. (F-05, F-07, F-09).

Response: Concur.

C-04. Even though the owners of Ruby's Café were denied a use permit for a restaurant that would serve alcoholic beverages in one area of the City, and now are being considered as potential owners and operators of a restaurant in the Brown Building in another part of the City, there appears to be no conflict or special interest in the decision. What becomes of the Brown Building is the sole, exclusive choice of the CDC and the Oxnard City Council, which have common members. (F-08, F-09).

Response: Concur.

As noted above, the City Council on July 22, 2003 approved the special use permit in question.

### **Recommendations**

R-01 The CDC and the Oxnard City Council should provide more information on the general workings of its commission and RDAs through the continued use of televised commission/council meetings and the circulation of articles and publications on the subject to better educate the public on how redevelopment works.

Response: Implementation is ongoing.

The CDC and City have provided and will continue to provide information to the public on redevelopment issues. The CDC and City intend to continue televising Commission and City Council meetings as requested in the recommendation. The Community Development Director on December 9, 2003 provided a report to the City Council during a public meeting entitled "Fundamentals of Redevelopment: Why it Exists and What it Does," which report educated members of the public concerning the functions of the CDC. CDC staff will continue to provide articles and publications to educate the public on redevelopment issues, and staff will be mindful of additional educational opportunities. The CDC maintains a website which members of the public can access. The CDC will continue to maintain this website.

R-02. In the event the owners of Ruby's Café do not have their ENA approved or extended, or withdraw their offer, a more effective means should be used to solicit buyers and developers from a wider range of potential candidates interested in entering into an ENA for the purchase and development of the building. To avoid confusion for potential interested parties and the public, when the CDC enters into ENAs with investors, it should remove the "For Sale" sign from the building.

Response: Will implement in part.

The CDC Commissioners approved a disposition and development agreement ("DDA") with Guadalupe Martinez for the development of the Brown Building on August 3, 2004.

If the agreement with Guadalupe Martinez does not result in disposition of the Brown Building to Mr. Martinez, the CDC will analyze the opportunity and develop effective means to achieve

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redevelopment of the Brown Building. The CDC will consider the above recommendation in so doing.

The CDC presently does not intend to remove "for sale" signs when it enters into an exclusive negotiation agreement with a potential purchaser of property. Until there is a DDA or agreement to sell, the CDC staff welcomes all offers and expressions of interest. The CDC does and will inform potential offerors that an exclusive negotiation agreement is presently in place and that the CDC will not negotiate with any person in violation of an exclusive negotiation agreement. The CDC could, however, provide information as to the dates of exclusive negotiation period and indicate that an offer could be considered in the event no transaction is consummated under the exclusive negotiation agreement. The CDC believes that this approach is common and maximizes the number of persons who might be able to take advantage of an opportunity.

Respectfully submitted,



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City Manager