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**ATTACHMENT 1**  
**AGENDA #3a(2)**

**PETITION FOR ACTION BY THE TOWN COUNCIL OF CHAPEL HILL**

**SUBJECT:**

REVIEW OF THE INTERPRETATION OF THE SPECIAL USE PERMIT (SUP) FOR 1162 AIRPORT ROAD (The Property); formerly the site for GROWIN' GREEN NURSERY, a nursery and landscape business).

**SUBMITTED BY:**

Cordell Earthworks, Inc. (prospective tenant) and Kovens Construction Company (Owner)

**BACKGROUND:**

The property's use is governed by a SUP (Attachment 1). The section titled "Special Terms and Conditions", Item 2 dictates, "That the owner will use this property only for a residence and operation of a landscape nursery business, primarily wholesale."

While there are a number of other terms and conditions, the above item forms the basis for our Companies' request that Cordell Earthworks, Inc., a landscape and nursery company, be allowed to occupy the site under the existing SUP, without the requirement that we apply for a Modification of a Special Use Permit (MSUP).

In an email (Attachment 2) dated 11/10/03 to David Fernandez, CEO of Cordell Earthworks, Roger Waldon, Planning Director, indicated his interpretation of the SUP and a review of the minutes from the 2/22/88 Council Public Hearing (Attachment 3) that approved the SUP, required that we submit a request for a MSUP.

**MSUP COST:** In an email dated 01/06/04 to Mr. Fernandez (Attachment 4) Mr. Than Austin, Senior Planner, outlined the fees and documentation associated with an MSUP. The approximate cost according to the formulas was over \$8000. A subsequent email to Mr. Fernandez dated 01/30/04 (Attachment 5) indicated probable requirement for other reports, including a Traffic Impact Analysis, Stormwater Impact Statement, a Stormwater Management Plan, Tree Survey, Fire Flow Report, and General Building and Site Plans. These additional reports would increase the total cost of the MSUP. Estimates run as high as \$25,000.

We respectfully disagree with Mr. Waldon's interpretation of the Council's original intent. There is nothing in the record of the minutes provided by Messrs. Austin/Waldon that speaks to a requirement that The Property be used as an "...owner-occupied dwelling with a primarily wholesale landscape/nursery business run by that owner-resident..." (See Attachment 2 – Mr. Waldon's email paragraph 5).

There are comments made by then Council Member Nancy Preston in the minutes (Attachment 3 - Minutes Page 16 paragraph 1) that raise the issue of the Baucom's intent to reside on the site. However, there is no mention that residency should be a requirement. Please refer to Ms. Preston's letter to Mr. Waldon dated 12/03/03 (Attachment 6) where she attempts to clarify this matter. Furthermore, discussions by Mr. Kovens with Mr. Levine of the Potted Plant, former employer of the Baucoms, and Mr. Gray Moody, owner of the trailer park where the Baucoms lived prior to moving to The Property, indicated that the Baucoms wished to live on the business site primarily to accommodate the special needs of their child. Thus, it appears that the intent of the Council was to protect the Baucoms by specifically allowing them to reside on The Property. Kovens Construction, current owners of The Property, request that the SUP provision for use as a residence be interpreted not as a requirement but simply as a permitted use. Furthermore, the owner requests that the Council interpret the SUP to mean that a landscape nursery operation is the permitted use of the site without the assumption that the business owner must be the property owner.

From 2000 – 2003 another business, Carolina Waterscapes, leased The Property from the Owner. In conversation with Mr. Fernandez, Mr. Ed Fitts, President, indicated that their company occupied The Property for three years with approval from Inspections and with no other requirement from the Town of Chapel Hill. They sold and installed waterscapes and equipment related to that business. Mr. Fitts did not own The Property during the time he held a lease, yet was permitted to operate there without being the "owner-operator" or "owner-resident".

As described above, Cordell Earthworks, Inc. is a landscape nursery business. It intends to use the property as a landscape nursery business engaged in design work, selling nursery products and a referral point to its new 9-acre Orange County location at the intersection of I85 & US70. Based on this proposed use the company should be permitted to occupy The Property under the existing terms of the SUP.

Currently, The Property is empty and the owners cannot monitor it to prevent what appears to be evidence of drug use, sexual activity and open fires. Unoccupied, The Property is unsafe, an eyesore and unproductive. It is the owner's and the prospective tenant's desire to return this property, located on a main thoroughfare of Chapel Hill, to productive use, while providing a valuable service to the community.

End