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**HIGGINS, FRANKSTONE, GRAVES & MORRIS, P.A.** AGENDA # 3a(1)  
**ATTACHMENT 1**  
*Attorneys and Counsellors at Law*

Thomas D. Higgins, III  
David R. Frankstone  
Wm. Griffin Graves, III  
David S. Morris  
Kenneth L. Eagle

David J. Hart  
Jay Gallinger

870 AIRPORT RD.  
CHAPEL HILL, NC 27514

(919) 968-4717  
Fax: (919) 929-1415  
[thiggins@hfgmlaw.com](mailto:thiggins@hfgmlaw.com)

October 15, 2002

P.O. Drawer 2869  
Chapel Hill, NC 27515-2869

CARY OFFICE:  
14600 Weston Pkwy  
Cary, NC 27513  
(919) 678-8880  
CaryFax: (919) 678-8885

**HAND DELIVERY**

Ms. Joyce Smith  
Town Clerk  
Town of Chapel Hill  
306 North Columbia Street  
Chapel Hill, North Carolina

*RE: Sellers Properties Petition*

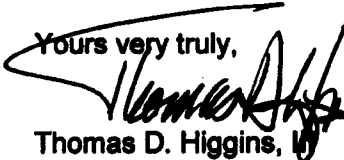
Dear Ms. Smith:

I have enclosed a Petition from Sellers Properties to be included with the work packet for the mayor and members of the Town Council for their meeting on Monday, October 21, 2002.

Would you please see that a copy of the petition is included within each work packet. Many thanks for your help and cooperation.

With best regards, I am

Yours very truly,

  
Thomas D. Higgins, III

TDH/tt

Enclosures - as above noted

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***HAND DELIVERED***

The Honorable Kevin Foy  
Chapel Hill Town Council  
Town of Chapel Hill  
306 North Columbia Street  
Chapel Hill, North carolina 27514

*RE: Sellers Properties Application*

Dear Honorable Kevin Foy and Council Members:

Sellers Properties has filed an application for site plan approval for a tire store to be run by Chapel Hill Tire Company on a commercial lot that it owns in Timberlyne Shopping Center. This letter is to be taken as a petition to permit the site plan application of the Sellers Properties to be considered under the present development ordinance. I feel that this is fair and equitable due to the following reasons:

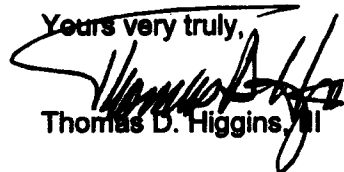
- 1 Sellers Properties filed their application for site plan approval on June 18, 2002 and on June 19, 2002, Sellers Properties attended a CDC meeting and addressed the concerns of the Town. This meeting was entirely voluntary on the part of Sellers Properties, because it did not need a special use permit only site plan approval. This was done to address any concerns the Town and/or residents might have and these concerns were addressed.
- 2 Sellers Properties' engineering firm, Ballentine Associates, attended the Public Information meeting on July 23, 2002, and on August 8, 2002, Sellers Properties and Ballentine Associates attended the Department Head Review meeting. The Town seemed well pleased by their efforts to meet all conditions set forth in the current development ordinance. At that meeting it became apparant that Sellers Properties had a choice to make in view of the possible adoption of the new development ordinance. The choice was whether they should rely on their previous filing of their application approval, or whether they should try to address the few concerns brought up at the DHR meeting. Trying to address all concerns raised at the DHR meeting delayed the submission of their application because it had to be changed. Unfortunately after they addressed the issues, but before they could submit amend their application, the application slots filled and eliminated them from the October planning meeting pushing their application to the December planning meeting.

- 4 All indications are that the new development ordinance will be adopted in some form or fashion at the November meeting with no grand-fathering of projects currently awaiting site plan approval.
- 5 The adoption of the new development ordinance with reference to the impervious surface restrictions would doom the project, because it would only allow development on 9,140 square feet of a 1.05 acre site thus rendering the lot useless. Sellers Properties has delayed development of this site until they found a local tenant with extremely strong business prospects. It is their hope that the Town will not penalize them for attempting to do what is best for the Town and the needs of the surrounding neighborhoods.
- 6 Presently this lot is zoned Community Commercial, and it is an out parcel in an established shopping center. This is not a newly developed lot, but is an established commercial lot surrounded by previously established commercial development thus it should be considered under the ordinance that existed when it was established. To judge it under the new proposed ordinance with the proposed impervious surface restrictions would eliminate its viability as a commercial lot within the confines of a commercial shopping center. I don't believe that this is what the new ordinance was intended to accomplish.
- 7 Sellers Properties has spent a significant sum in terms of money and time with local firms (Ballentine Associates, GGA Architects, and Swanson and Associates, Landscape Architects) to put forth an attractive viable project within Timberlyne Shopping Center. Sellers Properties has owned this lot for years and they have paid significant ad valorem taxes on it over the years, thus they should have the benefit of having their application considered under the ordinance in effect when they purchased the lot.

For all of the above reasons I ask that you consider this application for site plan approval under the development ordinance that presently exists.

With best regards, I am

Yours very truly,



Thomas D. Higgins, III

TDH/tt