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Mr. Shane Ewald, Esq.
Gahanna City Attorney
200 South Hamilton Road
Gahanna, Ohio 43230

Via Email to: shane.ewald@gahanna.gov

**Re: Appeal of City of Gahanna Planning Commission Case No. FDP-001-2017
(Hamilton Commerce Center)**

Dear Shane:

This letter is being provided on behalf of my client, Gallas Zadeh Development, LLC (GZD), the applicant in the above-referenced case which was approved by the City of Gahanna Planning Commission on May 10, 2017. Yesterday we were made aware of an administrative appeal that was filed by "THE ACADEMY RIDGE COMMUNITY ASSOCIATION, INC., TO INCLUDE CONTIGUOUS AND NON-CONTIGUOUS PROPERTY OWNERS." The appeal requests a hearing before the City's Board of Zoning Appeals (BZA) and names my client as the appellee. For the reasons provided below, please accept this letter as a formal request for the City to decline to present this matter to the BZA for appeal.

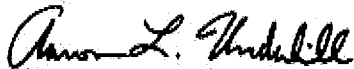
The primary reason that this matter cannot and should not be heard by the BZA is that a property owners' association does not have standing to file an administrative appeal under Chapter 2506 of the Ohio Revised Code. In fact, there is a case from Ohio's Tenth District Court of Appeals (the court with jurisdiction over Gahanna) that speaks directly to this point. In *Northern Woods Civic Association v. City of Columbus Graphics Commission* (1986), 31 Ohio App.3d 46, the court of appeals held that non-profit corporations, including homeowners' associations, do not have the right to file an administrative appeal. More specifically, the court held that "[t]he right of appeal is conferred only upon the person so affected" by the administrative action. *Id.* at Page 47. Moreover, "[t]here is no provision by statute, or otherwise, whereby another may file the appeal in a representative capacity on behalf of the person who is affected." *Id.* The court could not have been clearer in its conclusion that "a representative appeal is not available to an association on behalf of its members in the absence of specific statutory authority of which there is none." *Id.* at Page 48. Just as in the *Northern Woods* case, the appeal of GZD's final

on its merits (although this would be in the role of an interested party rather than an appellee). However, the appellants and the City should be advised that there is a loan closing for the purchase of the property which is scheduled for the end of this month. Therefore, the appeal must be heard by the BZA as soon as possible in order to ensure that the parties are not exposing themselves to the possibility of damages should GZD's position on the dismissal of this matter prove to be affirmed. Accordingly, should the City decide to proceed with a hearing on this appeal, we request that the hearing occur on Thursday, June 22, 2017 or such later date that is the earliest permitted by law for a hearing on this matter. A decision should be issued by the BZA on the same date as the hearing.

Lastly, please note that Mr. Tim Pack is listed on the City's website as a member of the BZA. Mr. Pack has appeared at many meetings on the case at hand to voice his concerns with the development that is the subject of the appeal. Therefore, if he remains a member of the BZA when a hearing is held, he must recuse himself from the proceedings due to a conflict of interest.

In closing, the City should act immediately to dismiss the appeal for the reasons stated above. The appeal is null and void as of its filing. Since the 30-day administrative appeal period has expired, no other parties may file a separate appeal and the decision to approve GZD's final development plan is now legally effective.

Sincerely,



Aaron L. Underhill

cc: Jason Zadeh
Gregg Gallas