

**PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA**

By: Denis M. Dunn, Esquire
Attorney I.D. #34583
The William Penn Building
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Media, PA 19063
(610) 565-2670

Attorney for Intervenor

OFFICE OF THE
PROTHONOTARY
CHESTER CO. PA.

2010 MAR 23 PM 3:17

FILED

CHESTER COUNTIANS for a
CLEAN ENVIRONMENT;
DANIEL WILLIAMS

Appellant

vs.

LONDON GROVE TOWNSHIP
BOARD OF SUPERVISORS

Appellee

IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PA
CIVIL ACTION

15611

NO. 2009-1510T-LU

ORDER

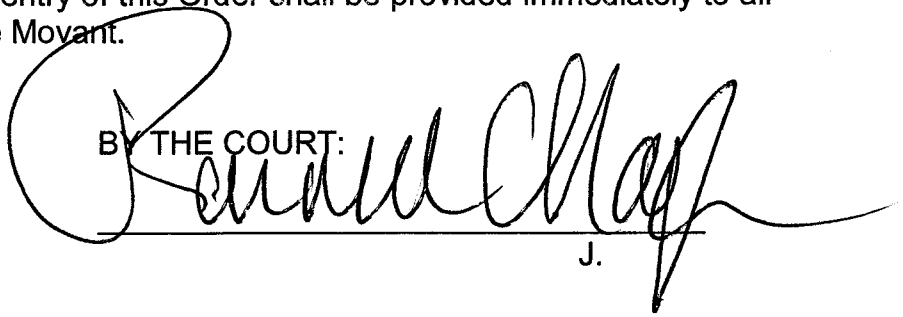
AND NOW, this 19 day of MARCH, 2010, upon

consideration of the within Motion to Quash, it is hereby ORDERED that:

- (1) A rule is issued against the Appellants-Respondents, to show cause why the Movant is not entitled to the relief requested;
- (2) The Appellants -Respondents shall file an Answer to the Motion within twenty (20) days of service upon the respondents;
- (3) The motion shall be decided under Pa. R.C.P. No. 206.7;
- (4) Depositions shall be completed within forty-five (45) days of the service upon movant of the answer to the motion;
- (5) A hearing on the within Motion is hereby scheduled to be held on the 24th day of May, 2010 at 10:00 AM in Courtroom No. 8 of the Courthouse of Chester County, West Chester, Pennsylvania.
- (6) Notice of the entry of this Order shall be provided immediately to all parties by the Movant.

RMC

BY THE COURT:


J.

PETRIKIN, WELLMAN, DAMICO, BROWN & PETROSA
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

THE WILLIAM PENN BUILDING
109 CHESLEY DRIVE
MEDIA, PA 19063

JOSEPH A. DAMICO, JR.
JOHN W. NILON, JR.^
DONALD T. PETROSA
STEVEN A. COHEN
DENIS M. DUNN*
MARK D. DAMICO
KENNETH D. KYNETT*
H. FINTAN McHUGH*
CHARLES G. MILLER*

MALCOLM B. PETRIKIN
(1934-1995)
JOHN W. WELLMAN
(1951-2002)
STEVEN G. BROWN
(1970-2010)

610-565-2670
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*ALSO MEMBER NEW JERSEY BAR
^ALSO MEMBER NY BAR and INTERNATIONAL TRADE COURT

March 12, 2010

e-mail: dmd@petrikin.com

Prothonotary
Court of Common Pleas Chester County
Chester County Justice Center
201 W. Market Street
P.O. Box 2746
West Chester, PA 19380-0989

**Re: *CFACE v. Board of Supervisors,
London Grove Township, CCP ChesCo No. 2009-15101-LU
Our File No. 8097-1***

Dear Prothonotary:

I represent Intervenor Superior Growers, L.P. in the above. I am enclosing an original and one copy of a Motion to Quash Land Use Appeal for filing. Also enclosed are two stamped, self-addressed envelopes.

Please file the original, time stamp the copy and return it to me in the larger of the enclosed envelopes. Please forward the Motion and the smaller envelope to the Court Administrator to have the rule filled in, signed and a copy sent to me.

Please call if you have any questions. Thank you for your anticipated cooperation.

Very truly yours,


DENIS M. DUNN

DMD/

Enclosure:

cc: Michael G. Crotty, Esquire
Eric M. Brown, Esquire
J. Dwight Yoder
Regina M. MacKenzie, Esquire
Wayne DiFrancesco

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CHESTER COUNTIANS for a
CLEAN ENVIRONMENT;
DANIEL WILLIAMS

Appellant

vs.

LONDON GROVE TOWNSHIP
BOARD OF SUPERVISORS

Appellee

**IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PA
CIVIL ACTION**

NO. 2009-15101-LU

PRAECIPE FOR DETERMINATION
PURSUANT TO RULE 5002

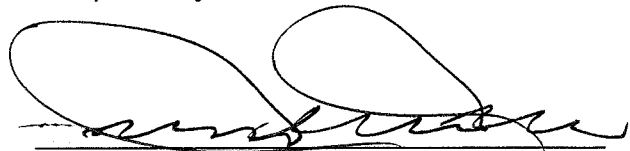
TO THE PROTHONOTARY:

Kindly submit the following matter to the Honorable David F. Bortner for
determination:

Motion of Intervenor Superior Growers, L.P. to Quash Land Use Appeal.

ORAL ARGUMENT IS REQUESTED.

Respectfully submitted,



DENIS M. DUNN, ESQUIRE
ATTORNEY FOR INTERVENOR

**PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA**

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CHESTER COUNTIANS for a	:	IN THE COURT OF COMMON PLEAS
CLEAN ENVIRONMENT;	:	OF CHESTER COUNTY, PA
DANIEL WILLIAMS	:	CIVIL ACTION
Appellant	:	
vs.	:	
LONDON GROVE TOWNSHIP	:	NO. 2009-15101-LU
BOARD OF SUPERVISORS	:	
Appellee	:	

ORDER

AND NOW, this _____ day of _____, 2010, upon

consideration of the within Motion to Quash, it is hereby ORDERED that:

- (1) A rule is issued against the Appellants-Respondents, to show cause why the Movant is not entitled to the relief requested;
- (2) The Appellants -Respondents shall file an Answer to the Motion within twenty (20) days of service upon the respondents;
- (3) The motion shall be decided under Pa. R.C.P. No. 206.7;
- (4) Depositions shall be completed within forty-five (45) days of the service upon movant of the answer to the motion;
- (5) A hearing on the within Motion is hereby scheduled to be held on the ____ day of _____, 20__ at _____. M. in Courtroom No. ____ of the Courthouse of Chester County, West Chester, Pennsylvania.
- (6) Notice of the entry of this Order shall be provided immediately to all parties by the Movant.

BY THE COURT:

J.

**PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA**

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CLEAN ENVIRONMENT;	:	OF CHESTER COUNTY, PA
DANIEL WILLIAMS	:	CIVIL ACTION
Appellant	:	
vs.	:	
LONDON GROVE TOWNSHIP	:	NO. 2009-15101-LU
BOARD OF SUPERVISORS	:	
Appellee	:	

ORDER

AND NOW, this _____ day of _____, upon consideration of the Motion of Superior Growers, L.P. to Quash this land use appeal, and upon consideration of the response, if any, filed by Appellants, the Court hereby GRANTS the Motion to Quash and dismisses this Land Use Appeal with prejudice.

BY THE COURT:

J.

**PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA**

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CHESTER COUNTIANS for a	:	IN THE COURT OF COMMON PLEAS
CLEAN ENVIRONMENT;	:	OF CHESTER COUNTY, PA
DANIEL WILLIAMS	:	CIVIL ACTION
Appellant	:	
vs.	:	
LONDON GROVE TOWNSHIP	:	NO. 2009-15101-LU
BOARD OF SUPERVISORS	:	
Appellee	:	

INTERVENOR SUPERIOR GROWER'S MOTION TO QUASH LAND USE APPEAL

1. This Land Use Appeal purports to be a protective appeal filed by a community organization and nearby resident who prevailed below. The land at issue involves two contiguous parcels of real property consisting of 115.94 acres located along the south side of West London Grove Road between North Guernsey Road and Chatham Road (the "Property") in the Township's Agricultural Preservation (AP) District.

2. Movant is Superior Growers, L.P. (Superior), the applicant who sought conditional use approval to develop the Property for the construction of a mushroom preparation substrate area and related experimental mulch processing. Superior is the tenant under a lease with the owner of the Property.

3. By Decision dated November 25, 2009, Appellee the Board of Supervisors denied Superior's application.

4. On December 23, 2009, Superior appealed that denial in a Land Use Appeal filed in this Court at No.2009-15011-LU.

5. On December 28, 2009, Appellants here filed this Land Use Appeal.

6. Appellant Chester Countians for a Clean Environment (CFACE) alleges it is “a citizens group committed to protecting the environment within London Grove Township and Chester County.”

7. CFACE owns no real estate in London Grove Township.

8. Appellant Daniel Williams (Williams) alleges that he lives at 142 West London Grove Road in London Grove Township.

9. Williams does not own the property where he lives; it is owned by Jennifer Loustau, his wife.

10. Williams transferred his interest in 142 West London Grove Road in London Grove Township to his wife by deed dated April, 5, 2000.

11. Appellants were granted party status for the conditional use hearing before the Board of Supervisors. Such status before the Board of Supervisors does not establish standing or party status in a land use appeal. *SCRUB v. Zoning Hearing Board of Adjustment*, Pa. Commonwealth, 951 A.2d 398 (2008).

12. Neither CFACE nor Williams have any standing to bring the Land Use Appeal because:

- A. They are not aggrieved.
- B. They have no direct interest in this matter.
- C. They have no legally enforceable interest that will be determined in this appeal.

13. Because the Board of Supervisors ruled in favor of the Appellants, they are not aggrieved and this appeal is a nullity. *Appeal of Foltz*, 22 Pa. Commonwealth 562, 349 A.2d 918 (1976). See also *ACS Enterprises, Inc. v. Norristown Borough Zoning Hearing Bd.*, 659 A.2d 651, 653 (Pa. Commonwealth 1995) (a party who has

prevailed in the proceeding below is not an aggrieved party and consequently has no standing to appeal; a prevailing party's disagreement with the legal reasoning or basis for a decision does not amount to a cognizable aggrievement necessary to establish standing).

WHEREFORE, Intervening Appellee respectfully requests that this Honorable Court quash this Land Use Appeal.

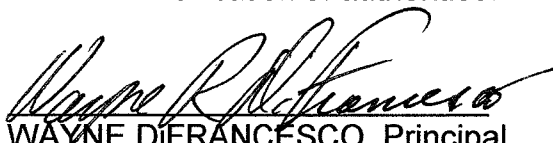
PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA

BY: 

DENIS M. DUNN, ESQUIRE
Attorney for Intervenor

VERIFICATION

The Undersigned having read the attached pleading verifies that the within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies that he/she has read the within pleading and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the pleadings are that of counsel, verifier has relied upon counsel in taking this Verification. This Verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification of authorities.


WAYNE DIFRANCESCO, Principal

DATED: 2-17-10

CERTIFICATE OF SERVICE


This is to certify that in this case assigned to Judge David F. Bortner complete copies of all papers contained in the foregoing have been served upon the following persons on the date below, by mailing a copy of the same via first class mail:

Regina M. MacKenzie, Esquire
200 Old Forge Road
Suite 202
Kennett Square, PA 19348
Solicitor for Appellee

Michael G. Crotty, Esquire
Eric M. Brown, Esquire
Siana, Bellwoar & McAndrew, LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
Solicitor for London Grove Township

J. Dwight Yoder
Gibbel Kraybill & Hess LLP
41 E. Orange St.
Lancaster, PA 17602
Attorney for Appellants

PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA

BY: 
DENIS M. DUNN, ESQUIRE
Attorney for Intervenor

3-12-2010