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

CHESTER COUNTIANS for a)	
CLEAN ENVIRONMENT; DANIEL)	
WILLIAMS)	Consolidated under
)	No. 2009-15011-LU
)	
v.)	(originally filed under
)	No. 2009-15101-LU)
LONDON GROVE TOWNSHIP BOARD)	
OF SUPERVISORS)	LAND USE APPEAL

ANSWER OF APPELLANTS TO MOTION TO QUASH

Your Honorable Court should dismiss Intervenor Superior Growers’ Motion to Quash Land Use Appeal for the following two reasons. First, Superior Growers (“Superior”) waived any objections it has to the standing of Chester Countians for a Clean Environment (“CFACE”) and Daniel Williams (“Williams”) by not objecting to their standing when they requested party status before the Board of Supervisors. Second, Appellants have standing to file a protective appeal because they have a direct, immediate and substantial interest in the subject matter of the appeal and, based on the rationale advanced in Superior’s own appeal, CFACE and Williams were aggrieved by the Board’s Decision. In support thereof, Appellants provide the following Answer to Superiors’ Motion to Quash:

1. Denied as stated. The pending appeal is a written document that speaks for itself and any characterization thereof is denied. Moreover, Daniel Williams is not a “nearby” resident; rather, his home directly abuts the proposed composting operation and the house where

he lives with his wife will be surrounded on three sides by the proposed composting operation. CFACE is an established citizens group that advocates for a clean environment and reasonable development within Chester County and, in particular, within London Grove Township.

2. Admitted and Denied. It is admitted that Superior Growers, L.P. was the Applicant who sought conditional use approval. Any characterization of the proposed use of the Property is denied because the Board of Supervisors of London Grove Township (“Board”) issued a written decision setting forth the proposed use of the Property, which speaks for itself. Superior’s relationship with the owner also is denied. By way of further response, Superior’s own conditional use application depicts a massive, industrial sized composting and mushroom facility that will include 549,000 square feet of composting wharves; 527,017 square feet of mushroom growing rooms; 12,000 square feet for a truck repair and terminal; 3,840 square feet for an office; and 5,040 square feet for employee housing. Superior has proposed developing this composting operation within a quiet, rural-residential area that is surrounded by many existing single family homes and traditional family farms.

3. Admitted with clarification. It is admitted that the Board denied Superior’s application but Superior has taken the position in its own appeal that the Board should have granted conditional use approval and that the Board’s decision “made no finding that the proposed use would adversely impact public health, safety or welfare.” Superior Notice of Appeal at ¶ 23. CFACE and Williams maintain that the testimony and evidence was overwhelming that the proposed composting facility would completely destroy the surrounding residential homes and rural community. However, if Superior is correct in its assertion (*i.e.*, because the Board did not render specific findings regarding whether the proposed use would be injurious to the surrounding homes and community, the Board concluded that the proposed use would not be injurious to the public health, safety and welfare), then Appellants clearly are

aggrieved by the Board's decision and, in such a case, the Commonwealth Court has held that the proper approach is for objectors to file a protective appeal. *In re: Appeal of Drumore Crossings, L.P.*, 984 A.2d 589, 598 (Pa. Cmwlth. 2009).

4. Admitted. By way of further response, Superior's appeal claims that the Board's decision made no finding that the proposed use would adversely impact public health, safety or welfare. *See Superior Appeal* at ¶ 23.

5. Admitted.

6. Admitted.

7. Admitted with clarification. It is admitted that CFACE as a separate entity does not own any property within London Grove Township, however, many CFACE members do own property and CFACE was acting in a representative capacity on behalf of those members. *See Pittsburgh Trust for Cultural Resources v. Zoning Bd. of Adj. of City of Pittsburgh*, 604 A.2d 298 (Pa. Cmwlth. 1992); *Society Hill Civic Assoc. v. Philadelphia Bd. of Lic. & Ins. Review*, 905 A.2d 579 (Pa. Cmwlth. 2006). Moreover, CFACE obtained party status before the Board without objection from Superior.

8. Admitted. By way of further response, Williams and his wife Jennifer Loustau have lived at this property for over thirty years, they designed and built their house, they maintain large vegetable gardens and fruit trees on the property, they raise small farm animals on the property and they have a substantial interest and attachment to this property.

9. Admitted and Denied. It is admitted that for estate planning purposes that the deed to the property is in the name of Jennifer Loustau, Williams' wife. It is denied that Williams is not a "landowner" as that term is defined under the Municipalities Planning Code because he clearly has a proprietary interest in the land. Williams also was granted party status before the Board without objection. Moreover, whether or not Williams is listed on the deed to

the property is of no moment when it is undisputed that he has lived at the property over thirty years with his wife and that the proposed composting facility will adversely affect the property where Williams lives and completely destroy the quality of life that Williams and Loustau currently enjoy at their property.

10. Admitted. By way of further clarification, Appellants refer to their response to paragraph 9.

11. Admitted and Denied. It is admitted that Appellants were granted party status by the Board without objection from Superior. The remainder of this allegation is denied as a conclusion of law to which no response is necessary. Appellants do note that numerous Commonwealth Court decisions specifically hold that an individual or entity that obtains party status before the municipal board without objection has automatic standing to appeal the board's decision. *See Grant v. Zoning Hrg. Bd. of the Township of Penn*, 776 A.2d 356 (Pa. Cmwlt. 2001); *Baker v. Zoning Hrg. Bd. of West Goshen Tp.*, 367 A.2d 819 (Pa. Cmwlt. 1976). Superior's citation to *Scrub v. Zoning Hearing Board of Adjustment*, 951 A.2d 398 (Pa. Cmwlt. 2008) is misplaced because in *Scrub* the applicant specifically objected to the standing of SCRUB to participate as a party before the zoning hearing board. Superior has waived any objection to the standing of CFACE and Williams to take an appeal because Superior did not object to their standing before the Board. *Thompson v. Zoning Hrg. Bd. of Horsham Tp.*, 963 A.2d 622 (Pa. Cmwlt. 2009).

12. Denied as a conclusion of law to which no response is necessary. To the extent a response is necessary, both CFACE and Williams are aggrieved, have a direct interest in this matter and have legally enforceable interests (or, in the case of CFACE, its members have legally enforceable interests) that will be determined in this appeal. Accordingly, they both have

standing to file the present protective appeal. Superior also has waived any objections to the standing of CFACE and Williams.

13. Denied. Superior clearly misunderstands that this is a protective appeal and was taken because Superior's own appeal maintains that the Board's decision actually should be interpreted in a way that would be adverse to CFACE and Williams (*i.e.* by not making any specific findings of fact that the proposed composting facility is not injurious to the public safety, health and welfare, the Board concluded there would be no adverse impact on the surrounding residents and community). Moreover, as set forth above, pursuant to a recent Commonwealth Court decision, when a municipal board denies a zoning application because the Applicant failed to meet the specific criteria of the ordinance and, therefore, does not render specific findings on whether the proposed use would harm the surrounding community, protestants should file a protective appeal to preserve their right to argue that the proposed use would be injurious to the safety, health and welfare of the community should that become necessary. The testimony and evidence in this case was overwhelming that the proposed use would be very detrimental to the surrounding community, would have serious health and safety issues, is contrary to the welfare of the surrounding residential neighborhood and would completely destroy those homes in the immediate vicinity, particularly the home where Williams and his wife live.

NEW MATTER

14. Superior has waived any objections to the standing of CFACE and Williams to take this appeal by not objecting to their standing before the Board.

WHEREFORE, Chester Countians for a Clean Environment and Daniel Williams respectfully request your Honorable Court to deny Superior Growers' Motion to Quash.

Respectfully submitted,
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