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February 18, 2010

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

**Re: Superior Growers, L.P. v. Board of Supervisors,
London Grove Township, CCP ChesCo No. 2009-15011-LU
Our File No. 8097-1**

Dear Regina:

I am enclosing time-stamped copies of the Brief for Appellant and Answer to Petition for Leave to Intervene in Land Use Appeal I filed on behalf of Superior Growers, L.P. today.

By photocopies of this letter, I am sending copies to the other attorneys in the case.

Thank you.

Very truly yours,


DENIS M. DUNN

DMD/

Enclosure:

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

**PETRIKIN, WELLMAN, DAMICO,
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Attorney for Appellant

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

SUPERIOR GROWERS, LP

Appellant

vs.

BOARD OF SUPERVISORS
LONDON GROVE TOWNSHIP

Appellee

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

NO. 2009-15011-LU

**PRAECIPE FOR DETERMINATION
PURSUANT TO RULE 5002**

TO THE PROTHONOTARY:

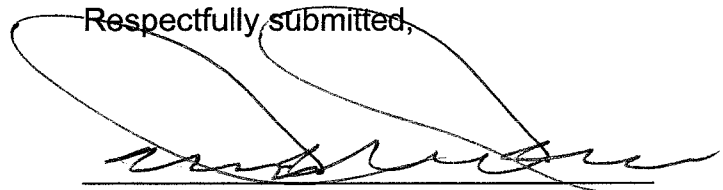
Kindly submit the following matter to the Honorable Ronald C. Nagle for determination:

Brief for Appellant.

ORAL ARGUMENT IS REQUESTED.

NOTE: This case is not yet ready for determination because there is a pending Petition to Intervene.

Respectfully submitted,



DENIS M. DUNN, ESQUIRE
ATTORNEY FOR APPELLANT

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

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Attorney for Appellant

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OFFICE OF THE
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SUPERIOR GROWERS, LP

Appellant

vs.

BOARD OF SUPERVISORS
LONDON GROVE TOWNSHIP

Appellee

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

NO. 2009-15011-LU

BRIEF FOR APPELLANT

INTRODUCTION:

Appellant in this Land Use Appeal, Superior Growers, L.P. has appealed the denial of the Conditional Use application it filed with London Grove Township (Township) on October 31, 2008. The application sought conditional use approval to develop 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 for the construction of a mushroom preparation substrate area and related experimental mulch processing. Appellant is the tenant under a lease with the owner of the Property.

This conditional use proposed is part of a by-right development including four mushroom growing buildings containing 98 growing rooms, employee housing, office building, truck repair and other related accessory uses.

Public hearings were held by the Appellee Board of Supervisors of the Township (Board) in connection with the Application between January 12, 2009 and October 15,

2009. By Decision dated November 25, 2009, the Board denied the application. See Exhibit "A" attached to the Appeal. Reversal is required because the Board imposed the wrong burdens on Appellant in reviewing the application.

QUESTIONS PRESENTED:

In this appeal from denial of a Conditional Use application, the central question is whether the zoning ordinance at issue places the burden on the applicant of proving compliance with any specific standards other than those set out in the ordinance provision authorizing the conditional use, i.e., §301.B.7. Under the case law applicable to conditional uses, and the wording of the Township's zoning ordinance, the only specific standards Appellant had to, and here did, prove were in §301.B.7.

DISCUSSION:

The law governing conditional uses in Pennsylvania is as follows:

An applicant is entitled to a conditional use as a matter of right, unless the governing body determines that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use. *Hoppe v. Zoning Hearing Board of the Borough of Portland*, 910 A.2d 756, 758 (Pa.Cmwlt.2006) (citing *East Manchester Zoning Hearing Board v. Dallmeyer*, 147 Pa.Cmwlt. 671, 609 A.2d 604, 610 (Pa.Cmwlt.1992)). The applicant bears the initial burden of showing that the proposed conditional use satisfies the objective standards set forth in the zoning ordinance, and a proposed use that does so is presumptively deemed to be consistent with the health, safety and welfare of the community.FN8 *Id.* Once the applicant satisfies these specific standards, the burden shifts to the objectors to prove that the impact of the proposed use is such that it would violate the other general requirements for land use that are set forth in the zoning ordinance, i.e., that the proposed use would be injurious to the public health, safety and welfare. *Id.*

In re Drumore Crossings, L.P., 984 A.2d 589, 595 (Pa. Commonwealth 2009).

In addition: “An applicant cannot be required to provide specific engineering design details of its proposed development at the conditional use stage. *In re: Appeal of Brickstone Realty Corp.*, 789 A.2d 333, 343 (Pa.Cmwth.2001).” *In re Drumore Crossings, L.P.*, 984 A.2d 589, 595-96 (Pa. Commonwealth 2009).

To establish that the proposed use would be injurious to the public health, safety and welfare, there must be evidence to establish a high degree of probability, not just a substantial question, that the proposed use will substantially affect the health, safety and welfare of the community and that there is a high probability **that the use at issue will generate adverse impacts not normally generated by that type of use** and that these impacts will pose a substantial threat to the health and safety of the community. *In re: Appeal of Brickstone Realty Corp.*, 789 A.2d 333, 343 (Pa.Cmwth.2001) (emphasis added).

Pennsylvania case law has long held that where municipalities place general, non-specific or non-objective requirements into an ordinance dealing with special exceptions or conditional uses, such general provisions are not usually seen as part of the threshold persuasion burden and presentation duty of the applicant. *Commonwealth, Bureau of Corr. v. City of Pittsburgh*, 91 Pa.Cmwth. 293, 496 A.2d 1361, 1363 (1985), *aff'd*, 516 Pa. 75, 532 A.2d 12 (1987) (citing *Bray v. Zoning Bd. of Adjustment*, 48 Pa.Cmwth. 523, 410 A.2d 909 (1980); *In re Appeal of Baker*, 19 Pa.Cmwth. 163, 339 A.2d 131 (1975)); *41 Valley Associates v. Board of Sup'rs of London Grove Tp.*, 882 A.2d 5, 14 -15 (Pa.Cmwth.,2005).

To summarize, a **conditional use is a matter of right** UNLESS the applicant fails to meet the specific objective criteria in the ordinance or UNLESS the evidence

establishes that there is a high probability **that the use at issue will generate adverse impacts not normally generated by that type of use** and that these impacts will pose a substantial threat to the health and safety of the community. The applicant is NOT required to provide specific engineering design details of its proposed development at the conditional use stage.

A. THE APPLICATION MEETS THE TWO SPECIFIC CRITERIA OF THE CONDITIONAL USE ORDINANCE.

In this AP zoning district, the applicable Ordinance presumes that the preparation of mushroom growing substrate and the storage of raw materials used in the preparation of said substrate [the balance of the project is permitted by right] is consistent with the health, safety and welfare of the community if only two elements are shown: (1) it utilizes advanced technology, and (2) the total surface area of the concrete wharf devoted to the preparation of mushroom growing substrate is greater than 1.25 acres. Specifically, §301.B.7 of the Township Zoning Ordinance provides that the following is permitted by conditional use:

Preparation of mushroom growing substrate which utilizes advanced technology and the storage of raw materials used in the preparation of said substrate; provided that the total surface area of the concrete wharf devoted to the preparation of mushroom growing substrate shall be greater than 1.25 acres and further subject to the provisions of Article XXIII of this Ordinance.

Appellant's application is to use advanced technology. In addition, Appellant submitted the Best Practices manual, A-16, and the Mushroom Substrate Preparation Odor Management Plan, A-17, and will be following those. N.T. 4/30/2009, p. 577-78; N.T. 5/21/2009, p. 658-59, 714. The sketch plan shows an area for experimental mulch.

These constitute the “advanced technology” referenced in the ordinance. The Board was not free to disregard the description of the use by the applicant. *Heck v. Zoning Hearing Board for Harvey’s Lake Borough*, 39 Pa. Commonwealth 570, 397 A.2d 15 (1979).

The Board specifically found that proposed use included the preparation of mushroom growing substrate, Findings 29, 31. The Board did not find that the proposed use would NOT utilize advanced technology. Rather, the Board stated in Finding 52: “The Applicant did not provide any documentation regarding the use of advanced technology as required by Section 301.B.7. (N.T. 4/30/09 at 583).” Nothing in Section 301.B.7 (quoted in full above) requires “documentation” of this or any other nature, and the Board committed an error of law and abused its discretion in finding that the ordinance imposed a requirement not contained in the ordinance. The case law states that the Board is not permitted to disregard the description of the use by the applicant. *Heck v. Zoning Hearing Board for Harvey’s Lake Borough*, 39 Pa. Commonwealth 570, 397 A.2d 15 (1979). The Board erred in so doing and imposing non-existent requirements.

The Board specifically found that proposed use had 549,000 square feet of substrate preparation area, Finding 32. The Board specifically found that proposed use had over twelve acres of outside concrete wharves, Finding 33.

Appellant submitted a sketch plan and provided uncontradicted evidence that the proposed use could meet all applicable regulations and would not be seeking any zoning relief when presented for land development approval.

In short, Appellant met its burden of proving compliance with the only two specific criteria set out in this ordinance as applicable in the conditional use application.

B. THE BOARD PLACED THE WRONG BURDEN OF PROOF ON THE APPLICATION HERE.

The bulk of the Board's Decision turns on the Board's application of many specific standards set out in Article 17 of the Zoning Ordinance. Appellant here did not attempt to meet those standards because, under the terms of the Ordinance itself, §2209 does not place the burden on the conditional use applicant to meet those standards at that stage.

To be sure, this development will have to comply with Article 17, as well as other applicable articles of the zoning ordinance, at the appropriate time, i.e. in the land development stage. At this point, under this ordinance, read in accordance with the case law governing conditional use applications, Appellant had no burden of proof on any specific standards other than the two set out §301.B.7 of the Township Zoning Ordinance

Section 2209 governs Conditional Uses in London Grove Township. The Board, in Finding 59, states that, under section 2209.C.2, a proposed Conditional Use must meet the standards set forth in Section 2107 for the review of Special Exceptions. This is the wording of the ordinance, but it does not change the burden of proof regarding general standards. As quoted and cited in the case law above, the conditional use applicant has NO burden regarding general standards.

Section 2107 is found in Exhibit T-6. The Board, in Findings 62 through 163, analyzes the evidence against the language of §2107 and finds that Appellant's

evidence was lacking. The error is that §2107 contains only general standards, i.e. Appellant had no burden of proof regarding those standards. In most instances, the subsections of §2107 state that the Board should “give consideration” to or “consider” certain factors or aspects of the development. These, plainly, are general standards.

Section 2107 A(3) is structured differently than the other subsections of §2107A and required the Board to:

Assure that the specific performance standards set forth in §1713 through §1724 shall be made applicable to regulate the nature, intensity, design, layout, and operation of the proposed land use as permitted as a Special Exception....

“The Board assuring something shall be made applicable,” to paraphrase the ordinance, isn’t even a standard; it’s a directive to the Board. An applicant can’t prove that the Board will assure anything. The concept simply makes no sense as a standard.

Rather than assure that those sections be made applicable as directed by the ordinance, i.e. impose a requirement for approval that the development would have to meet those standards in the land development process, the Board found that Appellant had the burden of proving those standards in this application. This is error under the case law cited above since that subsection does not impose any obligation on the applicant in the conditional use application phase. In addition, that subsection does not apply because this is a Conditional Use application, and the use proposed is not permitted as a Special Exception.

Findings 69 through 110 address §1713 through §1723. Appellant did not, by and large, produce specific evidence on these sections because they are not part of its burden of proof here. The fact that the Board found the evidence lacking on these

sections is irrelevant because Appellant did not have to prove compliance with them at this stage under this ordinance.

Findings 63 through 66 and 111 through 154 address the other subsections of §2107. There is no need to quote the language of those subsections. A simple review shows that they are the type of standards that the case law in this area deems to be “general.” Thus, the fact that the Board found the evidence lacking on these sections is irrelevant because Appellant did not have to prove compliance with them at all.

Findings 155 through 170 address §2209D of the zoning ordinance. The Board begins its analysis in Finding 155: “Under Section 2209.D, all applications for conditional uses must comply with and conform to several additional criteria specific to the grant of a conditional use. (N.T. 7/16/09 at 877).” This finding errs in at least two respects: (1) Section 2209D, as worded, only requires conformance with “general standards” and (2) The Board turned its duty to read the ordinance over to a witness.

The opening phrase of Section 2209D is: “All applications for Conditional Uses shall comply and conform to the following **general** standards:” (emphasis added).

Finding 155 attempts to re-write the ordinance to add the phrase “and specific” after the word “general.” It’s not there. The Board has no power in the conditional use hearing to re-write the ordinance. The Ordinance designates the standards that follow as “general,” meaning that the Appellant [under the ordinance] had no burden of proof regarding those standards and also meaning that [because of the effect of the case law cited above], to the extent the listed standards had any objective requirements, they were not part of Appellant’s burden of proof at this stage.

The Board correctly notes that Appellant did not prove compliance with numerous specific parking, fire lane design and other standards. This is because the ordinance, as written, does not impose upon the applicant for a conditional use the burden of proving compliance with the specific standards cited. It was error for the Board to require Appellant to produce evidence not called for in the ordinance and to deny the application based upon Applicant's alleged failure to produce evidence not required.

The Board continued its error in Findings 156 through 196 by requiring Appellant to meet the standards set out in Articles 17, 18, 19, 21 and 22 of the zoning ordinance when the Conditional Use ordinance itself, §2209, calls for compliance with "general standards" only of these Articles at the conditional use phase and, as set out above, the applicant in a conditional use case has no burden of proof regarding general standards.

In multiple findings, the Board turned its legal determination function over to witnesses. See Findings 41-51, 54-60, 62-63, 65, 67-71, 74, 81-82, 85, 86, 96, 98, 100, 101, 102, 104, 106, 108-109, 111, 113, 114, 119, 122, 135, 155-157, 159, 161, 164, 166, 168, 170, 171, 173-175, 179-180, 182, 185, 188, 192-195; Conclusions 15-75. This is error. Fortunately, since the Court here is charged with reviewing and applying the ordinance as it is written, the Court can readily correct the error.

One of the Board's more glaring errors in ordinance reading concerns the stormwater management facilities sketched on the plan. The Board found that the proposed stormwater management facilities were not permitted in the perimeter buffer width called for under §302D(4)(b). See Findings 54-57, 193. That section requires a Perimeter Buffer Width of 100 feet for Intensive Agricultural Uses. It apparently conflicts

with §2301A(4)(b), see T-4, which only requires 75 feet for advanced technology. The issue here, however, is not the discrepancy in the ordinance; the issue is whether land is a “structure.” Common sense, as well as the applicable statute, say it is not.

The sketch plan shows a Perimeter Buffer Width of 100 feet. Within that 100 feet at various points around the Property, the sketch plan shows portions of earthen basins that will be used for stormwater management. According to the Township Engineer, whose testimony is the sole source of the Board’s ruling on this issue, land graded to form an earthen basin is a “structure” and, pursuant to the ordinance definition of “buffer area” [there is no ordinance definition for Perimeter Buffer Width] grading of land in that area is not permitted. Again, the Board abdicated its duty to read the ordinance. Nothing in the ordinance says that the Perimeter Buffer Width incorporates the definition of “buffer area.” Nothing in the ordinance says that the Perimeter Buffer Width can’t have any structures of any sort in it. Plainly, driveways are permitted. Natural improvements such as landscaping and trees are permitted in buffer areas. See §1705, T-7. Fences and walls are also allowed. §1705 E (2). Grading of land is a permissible buffer tool as well. §1705 E (3).

More importantly, when did graded land become a “structure”? A “structure,” according to the Municipalities Planning Code (MPC) and this ordinance, is “Any man-made object or improvement having an ascertainable stationary location on land or in the water, whether or not affixed to the land.” The Township engineer, and the Board, in finding that graded land is a “structure,” effectively amended that definition by adding land itself, not just things on or in it. This is error. The Township doesn’t get to change the ordinance while considering an application it doesn’t like in order to deny the

application. In addition, §603.1 of the MPC, 53 P.S. §10603.1, requires that zoning ordinance provisions regarding the extent of a restriction upon the use of the property be interpreted in favor of the property owner and against any implied extension of the restriction. Plainly, the word “structure” cannot be extended to include land itself. If it did, how would you measure a front yard? It makes no sense.

C. THERE IS NO FINDING NOR EVIDENCE TO SUPPORT A FINDING THAT THIS USE WOULD HAVE ADVERSE EFFECTS NOT NORMALLY ASSOCIATED WITH THIS TYPE OF USE.

The Board made no finding that the proposed use would adversely impact public health, safety or welfare. Accordingly, since Appellant met its burden regarding the specific standards for the conditional use, the Board erred in fact and in law and abused its discretion in denying the application.

Had the Board made a finding that the proposed use would adversely impact public health, safety or welfare, it would not be sufficient to deny this application because no one attempted to show the adverse impacts normally generated by this type of use. Accordingly, no one could have shown that this particular use would generate adverse impacts that were not normal for this type of use, i.e. no one attempted to meet the correct “adverse impact” burden. This, perhaps, is exactly why the Board did not make an “adverse impact” finding. A brief discussion of this issue is warranted given the large portion of the record dedicated to the perceived adverse effects.

The use proposed, by virtue of the very existence the Township’s own ordinance, is consistent with the public interest in the AP zoning district. It is difficult to read the record in this case without asking the Board, the governing body of the Township, why it

designated this area (or any area, for that matter) to house this type of intensive agricultural use in 2001 [See T-11] and, when presented with a real application for it, decided it was not such a great idea after all.

The record here shows exactly the type of use contemplated by the ordinance. That type of use, to be sure, can have negative effects on residential areas. The Township and the objecting residents put on plenty of evidence on that issue. Aside from the fact that this area is not zoned residential, **the adverse effects are not the issue UNLESS they are of a type not normally generated by this type of use.**

There was no effort by any party, nor substantial evidence, to establish a high degree of probability that the proposed use will substantially affect the health, safety and welfare of the community and a high probability that the use will generate adverse impacts **not normally generated by this type of use** and that these impacts will pose a substantial threat to the health and safety of the community. In fact, no one attempted to show that there was any other use of this type [i.e. preparation of mushroom growing substrate which utilizes advanced technology and the storage of raw materials used in the preparation of said substrate]. Since no one attempted to show the adverse impacts normally generated by this type of use, no one could have shown that this particular use would generate adverse impacts that were not normal for this type of use. In short, there was a complete failure by the Township and objecting parties to recognize the burden they had to overcome the presumption created in a conditional use case.

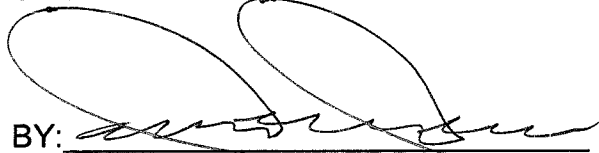
Since there is no substantial evidence of record to support a conclusion that the proposed use will adversely affect the safety of the surrounding area of the nature

necessary to justify a denial, and since there is no such conclusion, the Board erred in fact and in law and abused its discretion in denying the application.

CONCLUSION:

Appellant respectfully requests that this Honorable Court reverse the Decision of the Board of Supervisors of London Grove Township and enter an Order that Appellant be granted the conditional use for which it applied and grant such other relief as the Court deems appropriate.

PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA

A handwritten signature in black ink, appearing to read 'Dunn', is written over a horizontal line. The signature is stylized with large loops and a long tail.

BY: _____
DENIS M. DUNN, ESQUIRE
Attorney for Appellant

CERTIFICATE OF SERVICE

FILED

10 FEB 18 PM 2:46

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

This is to certify that in this case complete copies of the foregoing have been served upon the following persons on the date below, by mailing a copy of the same via first class mail:

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

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41 E. Orange St.
Lancaster, PA 17602
Attorney for Petitioners seeking Intervention

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

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BROWN & PETROSA

BY: 

DENIS M. DUNN, ESQUIRE
Attorney for Appellant

2-18-10

**PETRIKIN, WELLMAN, DAMICO,
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OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA

SUPERIOR GROWERS, LP
184 W. London Grove Road
West Grove, PA 19390
Appellant

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

vs.

NO. 09-15011-LU

BOARD OF SUPERVISORS
LONDON GROVE TOWNSHIP
372 Rosehill Road, Suite 100
West Grove, PA 19390
Appellee

**APPELLANT'S ANSWER TO PETITION FOR LEAVE TO INTERVENE IN LAND USE
APPEAL**

1. Denied. The identities of the Petitioners are admitted. The remaining allegations are denied as Appellant, after reasonable investigation, is unable to form a belief concerning the truth of these averments. Strict proof thereof, if relevant, is demanded at trial.

2. Admitted.

3. Admitted.

4. Denied as stated. The application, being a written document, speaks for itself. Any characterization is denied.

5. Admitted in part; denied in part. All of Petitioners except Jennifer Loustau sought and 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 and does not mandate permission to intervene. Except as admitted herein, this paragraph is specifically denied.

6. Denied. After reasonable investigation, Appellant is unable to form a belief concerning the truth of this averment. Strict proof thereof, if relevant, is demanded at trial.

7. Denied. After reasonable investigation, Appellant is unable to form a belief concerning the truth of this averment. Strict proof thereof, if relevant, is demanded at trial.

8. Denied. After reasonable investigation, Appellant is unable to form a belief concerning the truth of this averment. Strict proof thereof, if relevant, is demanded at trial.

9. Denied. After reasonable investigation, Appellant is unable to form a belief concerning the truth of this averment. Strict proof thereof, if relevant, is demanded at trial.

10. Denied. After reasonable investigation, Appellant is unable to form a belief concerning the truth of this averment. Strict proof thereof, if relevant, is demanded at trial.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

15. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

16. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

17. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

18. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

19. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

20. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

21. Denied as a conclusion of law to which no responsive pleading is required except to say the same is deemed denied.

WHEREFORE, Appellant respectfully requests that this Honorable Court deny the Petition for Leave to Intervene.

NEW MATTER

22. Appellant incorporates by reference herein its allegations set forth above as though fully set forth at length herein.

23. Some and/or all of Petitioners have no standing.

24. Some and/or all of Petitioners are not aggrieved.

25. Some and/or all of Petitioners have no direct interest in this matter.

26. Some and/or all of Petitioners have no legally enforceable interest that will be determined in this appeal.

27. Some and/or all of Petitioners here cannot meet the minimum requirements of PA. R.Civ. P. 2327 for intervention.

28. The Township of London Grove actively opposed Appellant's application before the Board of Supervisors.

29. Pursuant to Section 1004-A of the Municipalities' Planning Code, 53 P.S. §11004-A, the Township of London Grove intervened in this appeal as a matter of right within 30 days after the appeal was filed.

30. In the event this Court determines that any, some or all of Petitioners here have a sufficient interest to meet the requirements of PA. R.Civ. P. 2327, the Petition for Leave to Intervene should be denied under PA. R.Civ. P. 2329 as any interest any Petitioner may have (such interest being specifically denied) is already being adequately represented by the Township.

31. Two of the Petitioners herein, CFACE and Daniel Williams, have already filed their own appeal at No. 2009-15101-LU in this Court objecting to claimed deficiencies in the decision of the Board of Supervisors at issue herein. That appeal was filed by the same counsel who filed the subject Petition for Leave to Intervene.

32. In the event this Court determines that any, some or all of Petitioners here have a sufficient interest to meet the requirements of PA. R.Civ. P. 2327, the Petition for Leave to Intervene should be denied under PA. R.Civ. P. 2329 because Petitioners' claims are not in subordination to and in recognition of the propriety of this appeal.

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

FILED

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This is to certify that in this case 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:

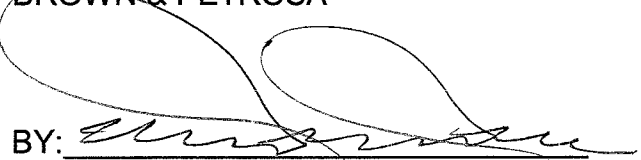
OFFICE OF THE
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Attorney for Petitioners

PETRIKIN, WELLMAN, DAMICO,
BROWN & PETROSA

BY: 

DENIS M. DUNN, ESQUIRE
Attorney for Appellant

2/18/10