

BEFORE THE LONDON GROVE TOWNSHIP BOARD OF SUPERVISORS  
CHESTER COUNTY, PENNSYLVANIA

IN RE:           **CONDITIONAL USE APPLICATION OF  
SUPERIOR GROWERS, LP.**

**DECISION OF BOARD OF SUPERVISORS OF LONDON GROVE TOWNSHIP**

On October 31, 2008, Applicant, Superior Growers, LP filed an application seeking conditional use approval to develop two parcels of property located along the south side of West London Grove Road in the Township's Agricultural Preservation (AP) District for the construction of four mushroom growing buildings containing 98 growing rooms, a mushroom growing substrate area, employee housing, mulch processing, office building, truck repair and related accessory uses.

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

The London Grove Township Board of Supervisors hereby **DENIES** the Application and, in support of this Decision, sets forth the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

**BACKGROUND**

1. Applicant is Superior Growers, LP, a Pennsylvania limited partnership, ("Applicant"). (Exhibits A-2 (Lease) and A-6 (Conditional Use Application); N.T. 1/12/09 at 8-9).
2. On October 31, 2008, the Applicant filed with the Board of Supervisors an

Application for Conditional Use Hearing (the “Application”) relating to 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 at Tax Parcel Nos. 59-005-0035.01 and 59-004-0018.00 (the “Property”). (Exhibit A-6; N.T. 1/12/09 at 8-9).

3. The Property is located in the Township’s Agricultural Preservation (“AP”) Zoning District. (N.T. 1/12/09 at 9-10).
4. By letter dated December 3, 2008, Applicant’s attorney agreed to an extension of time under the Municipalities Planning Code for commencing the first hearing until January 12, 2009. (Exhibit A-3; N.T. 1/12/09 at 11).
5. On January 12, 2009, the Board commenced the Conditional Use Hearing. (N.T. 1/12/09).
6. Notice of the hearing of the subject application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code (“MPC”) and The Zoning Ordinance of London Grove Township of 1995, (the “Ordinance”) as amended. (Exhibit B-1).
7. Public hearings were held before the Board of Supervisors of London Grove Township (“Board”) on this application on January 12<sup>th</sup>, January 29<sup>th</sup>, February 10<sup>th</sup>, March 19<sup>th</sup>, April 16<sup>th</sup>, April 30<sup>th</sup>, May 21<sup>st</sup>, June 11<sup>th</sup>, July 16<sup>th</sup>, August 13<sup>th</sup>, September 17<sup>th</sup>, October 8<sup>th</sup>, and October 15<sup>th</sup> of 2009<sup>1</sup>.
8. Testimony at the public hearings was stenographically recorded. (N.T. 1/12/09, 1/29/09, 2/10/09, 3/19/09, 4/16/09, 4/30/09, 5/21/09, 6/11/09, 7/16/09, 8/13/09, 9/17/09, 10/8/09 and 10/15/09).

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<sup>1</sup> The hearings on 1/29/09 and 9/17/09 consisted of placing continuances into the record.

9. The Board of Supervisors of London Grove Township (“Board”) was represented at the hearings by Regina M. MacKenzie, Esquire and Bereth K. Graeff, Esquire of Beatty Lincke.
10. Applicant was represented at the hearings by its legal counsel, Mark Damico, Esquire of Petrikin, Wellman, Damico, Brown & Petrosa.
11. Steven C. Brown, the Township Manager of London Grove Township, and London Grove Township (collectively “Township”) were represented at the hearings by legal counsel Steven Hann, Esquire of Hamburg, Rubin, Mullin, Maxwell & Lupin.
12. A citizens group called Chester Countians for a Clean Environment, (“CFACE”) requested and was granted party status. (N.T. 1/12/09 at 4-5).
13. CFACE was represented at the hearings by legal counsel Dwight Yoder, Esquire of Gibbel, Kraybill & Hess.
14. Several individual residents of the Township requested and were granted party status and participated in the hearings pro se.<sup>2</sup>
15. Applicant presented its case during hearings held on January 12<sup>th</sup>, February 10<sup>th</sup>, March 19<sup>th</sup>, April 16<sup>th</sup>, April 30<sup>th</sup> and May 21st of 2009 and presented testimony from professional engineer Benton Graves Webber, traffic engineer John A. Seitz and property owner Wayne DiFrancesco. (N.T. 1/12/09, 2/10/09, 3/19/09, 4/16/09, 4/30/09 and 5/21/09).
16. Applicant submitted into the record seventeen (17) exhibits in support of its Application. (Exhibits A-1 through A-17).
17. CFACE presented its case in opposition to the Application on June 11, 2009 and

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<sup>2</sup> Pro se parties included Daniel Williams, Harold Woodward, Henry Shields, Dennis Newbold, Louis Kaplan, Peter Schlobach, Margaret Watkins, Donald Damico, Terrence Trevisan, Mark Bubel, Krista and Ray Schoen and Paul Stab. (N.T. 1/12/09 at 4-5; N.T. 4/16/09 at 394).

presented testimony from adjoining residential property owner Jennifer Loustau, substrate preparation and mushroom growing expert Phillip Coles and expert truck driver and neighboring residential property owner Terry Trevisan. (N.T. 6/11/09).

18. CFACE offered into evidence twenty-three (23) exhibits. (Exhibits CFACE 1 through 23).

19. The Township presented its case in opposition to the Application on July 16<sup>th</sup>, August 13<sup>th</sup> and October 8<sup>th</sup> 2009 and presented testimony from Township Engineer and engineering and plan reviews expert, Anthony J. Severino, P.E., hydrogeology expert Matthew Brill, traffic expert Gerald Baker, P.E. and stormwater management expert Edward Strauss, P.E. (N.T. 7/16/09, 8/13/09 and 10/8/09).

20. Pro se party Louis Kaplan, Ph.D. testified in opposition to the Application on October 15, 2009. (N.T. 10/15/2009).

21. On February 9, 2009, Applicant's legal counsel submitted a letter to the Board Solicitor alleging potential conflicts of interest by Board members William Welsh, Edward Bordas and Timothy Nelson. (Exhibit B-5; N.T. 2/10/09 at 150).

22. Applicant did not provide any testimony or other evidence to support the alleged conflicts of interest. (N.T. 2/10/09).

23. The Board Solicitor questioned each affected Board member regarding their review of the letter and whether they had considered if they could continue to participate in the hearing impartially and without prejudice. (N.T. 2/10/09 at 150-154).

24. Each Board member indicated on the record that they could listen to the evidence presented and decide the matter in an unbiased manner applying the law as instructed by the Board's Solicitor. (N.T. 2/10/09 at 150-154).

25. The Board's Solicitor then placed into the record recusal questionnaires executed by the three Board members. (N.T. 2/10/09 at 150-154; Exhibits B-6, B-7 and B-8).

26. Applicant did not object to the continued participation of the three Board members in the hearing. (N.T. 2/10/09).

#### PROPOSED PROJECT

27. The London Grove Township Zoning Ordinance ("Zoning Ordinance") governs Applicant's proposed use of the Property. (N.T. 7/17/09 at 857, 862-63).

28. Article III of the Zoning Ordinance addresses the Applicant's proposed conditional use in this matter. (N.T. 7/16/09 at 862).

29. Applicant seeks conditional use approval pursuant to § 301.B.8 of the Zoning Ordinance to develop a mushroom growing / substrate preparation facility (the "Project"). (N.T. 1/12/09 at 9 and 18; Exhibit A-6).

30. Section 301.B.8 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.

(N.T. 7/16/09 at 864; Exhibit T-3).

31. The Application proposes the development of the Property with the construction of four mushroom growing buildings containing 98 growing rooms, a mushroom growing substrate area, employee housing, mulch processing, office building, truck repair and related accessory uses. (N.T. 1/12/09 at 9 and 18; Exhibit A-6).

32. The site plan submitted with the Application depicted 549,000 square feet of substrate preparation area; 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. (Exhibit A-6).

33. The proposed facility would have over twelve acres of outside concrete wharves and would result in more than thirty-nine (39) acres of impervious coverage at the Property. (N.T. 6/11/09 at 786; Exhibit A-6).

34. The proposed facility would operate twenty-four hours a day, seven days a week and 365 days a year. (N.T. 4/16/09 at 472).

35. The proposed facility would manufacture spent mushroom substrate, some of which would be used at the Property, but a large portion of which would be removed from the Property. (N.T. 4/16/09 at 469; N.T. 4/30/09 at 540).

36. The proposed facility would produce phase-one compost using ricks on large open wharves, an outdated process that was in use for the last fifty to sixty years but is being phased out. (N.T. 6/11/09 at 769-772).

37. It is anticipated that the operation would utilize and generate truck and equipment traffic including tractor trailer sized trucks, flatbed trucks, dump trucks, front end loaders, skid loaders, tractors and specialized equipment used for preparing and manufacturing compost such as wetting machines, turners and conveyers. (N.T. of Coles; Exhibit CFACE-22).

38. Truck traffic and heavy equipment will operate throughout the day and night. (N.T. 4/30/09 at 546-547).

39. The proposed facility would include a truck repair and terminal facility, which would involve all types of garage service (including body work) on trucks as well as the storage of trucks on the site. (N.T. 4/30/09 at 541-542).

40. The proposed facility also includes an equipment repair shop and a fabrication repair garage, which would include specialized equipment for working on hydraulics and diesel engines, as well as welding, sheet metal work and other fabrication processes. (N.T. 4/30/09 at 545-546).

#### APPLICABLE STANDARDS AND CRITERIA

41. Section 2209.A addresses applications for a conditional use and the documentation that must be submitted with an application in order to permit the Township to determine whether the application meets the requirements for conditional use approval. (N.T. 7/16/09 at 855).

42. An application for conditional use is reviewed by the Township to determine whether it contains the information required by Section 2209. (N.T. 7/16/09 at 857).

43. The applicable standards referred to in Section 2209.A for the Project include: (1) certain standards in Article III, which Article authorizes the proposed conditional use (incorporated through Section 2209.C.1); (2) all of the standards in Section 2107, which are incorporated through Section 2209.C.2; (3) all of the standards in Section 2209.D; and (4) all of the applicable standards in Article XVII, which are incorporated through Section 2209.D.8 as well as all of the applicable standards contained in provisions referenced in those standards. (See Exhibit T-2).

44. Under Section 2209.A, an application for conditional use approval must be accompanied by a plan showing the size and location of the proposed use, all proposed buildings and all proposed accessory facilities, including roads, access drives and parking lots. (N.T. 7/16/09 at 858; Exhibit T-2).

45. In addition, under Section 2209.A, the application is required to contain such information in graphic and/or narrative form, to demonstrate compliance with all the applicable standards to be met. (N.T. 7/16/09 at 858; Exhibit T-2).

46. Section 2209.A also requires that the feasibility of water supply, sanitary sewage disposal, and storm drainage control be demonstrated, although they need not be fully engineered. (N.T. 7/16/09 at 859; Exhibit T-2).

48. The requirements listed in Section 2209.C.1 are applicable to the Application. (N.T. 7/16/09 at 862).

49. Under Section 2209.C.1, the proposed conditional use must meet all of the specific standards and regulations for eligibility which appear in the section of the Zoning Ordinance authorizing the proposed conditional use. (N.T. 7/16/09 at 862).

50. Article III of the Zoning Ordinance, specifically Sections 301.B.7 and 302.D.4.b, governs the Applicant's proposed conditional use (N.T. 7/16/09 at 862; N.T. 8/13/09 at 964-68).

51. Section 301.B.7 provides that a conditional use application proposing the preparation of mushroom growing substrate with a wharf area greater than 1.25 acres is subject to the conditional use requirements and must use advanced technology as required by Article XXIII of the Zoning Ordinance. (N.T. 7/16/09 at 864-65; N.T. 8/13/09 at 964-65).

#### COMPLIANCE WITH APPLICABLE STANDARDS AND CRITERIA

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).

53. In fact, the Applicant, admitted in its testimony that no documentation regarding the use of advanced technology was submitted as part of its Application. (N.T. 4/30/09 at 583).

54. Section 302.D.4.b of Article III addresses area and bulk standards for intensive agricultural uses and, specifically, requires a perimeter buffer width of one-hundred feet (N.T. 7/16/09 at 866).

55. The definition of the term “buffer area” in the Zoning Ordinance specifically excludes structures not otherwise permitted from being located within such area (N.T. 7/16/09 at 867-68).

56.. A stormwater management facility is considered a “structure” under Article II of the Zoning Ordinance (N.T. 7/16/09 at 867-68).

57. Applicant’s proposed stormwater management facilities are located within the one-hundred foot perimeter buffer width, contrary to the requirements of Section 302.D.4.b (N.T. 7/16/09 at 867).

58. Section 2209.C.2 contains standards for review of proposed conditional uses. (N.T. 7/16/09 at 866).

59. Under Section 2209.C.2., a proposed conditional use must meet the standards set forth in Section 2107 for review of Special Exception applications. (N.T. 7/16/09 at 868).

60. The standards set forth in Section 2107 through Section 2209.C.2, are applicable to the Application. (N.T. 7/16/09 at 868-69).

61. The Applicant’s expert witness, Benton Webber, admitted that the Applicant did not meet all 14 standards set forth in Section 2107. (N.T. 3/19/09 at 328).

62. Applicant did not provide any evidence related to or otherwise show compliance with Section 2209.C.2 relating to Special Exception Standards under Section 2107 of the Zoning Ordinance. (N.T. 3/19/09 at 327-331)
63. Section 2107.A.1 requires the Board to give consideration to the size, scope, extent, and character of the conditional use desired and assure itself that the request is consistent with the plan for future land use in the Township and with the spirit, purpose and intent of the Zoning Ordinance. (N.T. 7/16/09 at 869; Exhibit T-6).
64. Applicant did not demonstrate how its use will be consistent with the plan for future land use in the Township or with the spirit, purpose, and intent of the Zoning Ordinance (N.T. 7/16/09 at 870-71).
65. Section 2107.A.2 requires the Board to consider the suitability of the property for the use desired. (N.T. 7/16/09 at 871).
66. The desired use of the property includes mushroom growing and composting on 116 acres. (N.T. 7/16/09 at 871-73).
67. Section 2107.A.3 refers to specific performance standards set forth in Article XVII. (N.T. 7/16/09 at 873).
68. Under Section 2107.A.3, the specific performance standards in Sections 1713 through 1724 are applicable to the proposed Project. (N.T. 7/16/09 at 873).
69. Sections 1713 and 1714 set forth specific performance standards with regard to capacity of road network and impacts on the road network, respectively. (N.T. 8/13/09 at 1046).
70. Sections 1713 and 1714 require the applicant to prepare a traffic impact study in accordance with Section 1726. (N.T. 8/13/09 at 1042-46).

71. Section 1726.A. provides that the purpose of a traffic impact study is to enable the Board of Supervisors to assess the likely impact of a proposed development in the various components of the transportation system in the Township and to identify any traffic problems likely to emanate from egress, road capacities, and off-site traffic flow. (N.T. 8/13/09 at 1046-47).

72. Applicant did not conduct a traffic impact study. (N.T. 8/13/09 at 1047).

73. Applicant's traffic expert, Mr. Seitz, admitted that Applicant did not submit a traffic impact study according to Section 1714.B and 1726 of the Zoning Ordinance. (N.T. 2/10/09 at 230-31).

74. Section 1715, sets forth specific performance standards for water consumption. (N.T. 7/16/09 at 876; 8/13/09 at 991).

75. A water study submittal by Applicant contained no indication of the safe yield of the affected aquifer, no indication as to the effect on any of the existing wells in the area and there was no evidence as to the movement of known sources of contaminated groundwater (N.T. 7/16/09 at 876-77).

76. Applicant did not perform any site-specific testing of any wells at the site of the Project. (N.T. 8/13/09 at 994).

77. Applicant did not perform any evaluation of groundwater movement at the site of the Project. (N.T. 8/13/09 at 999-1000).

78. Groundwater contamination in the form of nitrates is flowing toward the site of the Project. (N.T. 8/13/09 at 1000).

79. Applicant did not determine the effects of the Project upon groundwater. (N.T. 8/13/09 at 1001).

80. Applicant did not examine the underground geology, adjacent wells or surface hydrological features. (N.T. 8/13/09 at 1005).

81. Section 1716 sets forth specific performance standards for fire protection. (N.T. 7/16/09 at 877).

82. Under Section 1716.B, among other requirements, the Applicant shall furnish a plan of fire protection approved by the Chief of the Fire Department having first call jurisdiction demonstrating that fire fighting facilities are available to fight fires or similar casualties any place within the subject premises to the extent that the peril may there be found. (N.T. 7/16/09 at 878).

83. Applicant submitted no plan and provided no testimony as to how the Specific Performance Standard for Fire Protection would be met. (N.T. 7/16/09 at 878).

84. Applicant's expert witness, Mr. Webber, admitted that Applicant did not submit a fire protection plan to demonstrate compliance with Section 1716 and noted that "we haven't determined the means by which we would provide the fire protection." (N.T. 3/19/09 at 346).

85. Section 1717 sets forth specific performance standards for noise. (N.T. 7/16/09 at 878).

86. Section 1717.B. sets forth specific decibel levels which may not be exceeded for the Project (N.T. 7/16/09 at 878).

87. Applicant's proposed Project will generate noise. (N.T. 7/16/09 at 878).

88. There will be extensive noise generated by the proposed use due to the continuous operation of heavy equipment and trucks, all of which typically use diesel engines, which are significantly louder than gasoline engines. (N.T. 6/11/09 at 830-833).

89. Due to the high level of noise generated by the equipment, all operators are required to wear hearing protection. (N.T. 6/11/09 at 781).
90. The pre-wet machines, which run outside, typically generate a level of noise that is around 100 decibels. (N.T. 6/11/09 at 781).
91. All of the machines operating on the site would be required to have a warning beep when equipment backs up, which also generates noise. (N.T. 6/11/09 at 831-832).
92. Applicant's proposal also will generate extensive noise and activity due to running a truck repair and terminal facility, an equipment repair shop with storage and a maintenance and fabrication repair garage, all of which would use heavy equipment, involving sheet metal work and other manufacturing processes. (N.T. 6/11/09 at 779).
93. There will be additional noise generated because the diesel trucks at the facility will need to be warmed up in colder temperatures by starting the trucks and allowing them to idle for approximately thirty minutes. (N.T. 6/11/09 at 830-831).
94. Diesel engines are louder than gasoline engines. (N.T. 6/11/09 at 831).
95. Larger trucks may also use jake brakes, which utilize the engine to help slow down a vehicle thereby creating a very loud engine noise. (N.T. 6/11/09 at 832).
96. Applicant offered no evidence to establish how the Project would comply with the standards set forth in Section 1717 relating to noise. (N.T. 7/16/09 at 878-79)
97. Applicant's expert witness, Mr. Webber, admitted that Applicant did not address the noise standards in Section 1717, stating that "we haven't evaluated that yet." (N.T. 3/19/09 at 306).
98. Section 1718 sets forth specific performance standards for dust. (N.T. 7/16/09 at 894).

99. Applicant provided no documentation or testimony regarding dust control. (N.T. 7/16/09 at 895).
100. Section 1719 sets forth specific performance standards for odor. (N.T. 7/16/09 at 879).
101. Section 1719.B specifically addresses certain agricultural uses. (N.T. 7/16/09 at 879-80).
102. Advanced technology is required to be utilized in connection with the Project under Article III of the Zoning Ordinance, which requires the reduction of odors from mushroom growing substrate operations. (N.T. 7/16/09 at 879).
103. Applicant did not offer any evidence related to or otherwise show compliance with Section 1719 relating to Specific Performance Standards for Odor. (N.T. 7/16/09 at 879).
104. Section 1721 sets forth specific performance standards for glare. (N.T. 7/16/09 at 880).
105. Applicant did not provide any documentation or testimony to establish how it would meet the specific performance standards for glare. (N.T. 7/16/09 at 881).
106. Section 1722 sets forth specific performance standards for vibrations. (N.T. 7/16/09 at 881).
107. Applicant did not provide any documentation or testimony with respect to vibrations. (N.T. 7/16/09 at 881).
108. Section 1723 sets forth specific performance standards for the storage and waste disposal. (N.T. 7/16/09 at 882).

109. Section 1723.D addresses storage and waste disposal requirements for mushroom composting and provides certain requirements for, among other things, piling combustible fiber materials and separation distance between piles of hay. (N.T. 7/16/09 at 882).
110. The Application does not contain any information regarding storage and waste disposal. (N.T. 7/16/09 at 882-83).
111. Section 2107.A.4 relates to Safe and Convenient Pedestrian Access. (N.T. 8/13/09 at 1030-1031).
112. Applicant did not provide any documentation or testimony related to pedestrian access or internal circulation. (N.T. 8/13/09 at 1030).
113. Section 2107.A.7 relates to Congestion on Roads and Highways. (N.T. 8/13/09 at 1032).
114. Section 2107.A.8 relates to Public Service and Facilities, specifically transportation and roads. (N.T. 8/13/09 at 1043).
115. Applicant did not provide any documentation or testimony to determine if there will be congestion on roads and highways. (N.T. 8/13/09 at 1032).
116. Applicant did not address adjacent or public roads or off-site intersections where traffic generation from the Project site will be traveling. (N.T. 8/13/09 at 1032).
117. Applicant did not conduct a traffic impact study. (N.T. 8/13/09 at 1034).
118. The Project will have an impact on West London Grove Road (N.T. 8/13/09 at 1033).

119. Section 2107.A.9 requires the Board to be assured that the natural features and processes characterizing the proposed site and its surroundings shall not suffer unmitigated degradation. (N.T. 7/16/09 at 885).

120. The Project will require a significant amount of regrading which will cause natural features to be altered on the site of the Project (N.T. 7/16/09 at 885).

121. Applicant's expert witness, Benton Webber, expressed doubts as to whether Applicant's Application met the requirements of the Township's Stormwater Management Ordinance. (N.T. 3/19/09 at 349).

122. Section 2107.A.10 requires the Board to take into consideration the character and type of development in the area surrounding the location of the Project. (N.T. 7/16/09 at 886).

123. The location of the proposed Project includes extensive agricultural use and residential use. (N.T. 7/16/09 at 886).

124. The Property is currently undeveloped and consists of rolling, open field which are used for growing crops. (N.T. 6/11/09 at 722).

125. The properties surrounding the Property consist of single family homes and family farms. (Exhibits CFACE-15 and CFACE-18).

126. There are approximately 50 residential homes in the vicinity of the Property. (N.T. 6/11/09 at 722).

127. Many families with young children and school-aged children live in houses surrounding the site, particularly along West London Grove Road. (N.T. 6/11/09 at 723).

128. It is common for individuals to walk or jog on the roads surrounding the Property and children ride bikes on the road and play in adjoining yards. (N.T. 6/11/09 at 724).

129. School bus stops are located along West London Grove Road and North Gurnsey Road. (N.T. 6/11/09 at 724).
130. The Township is in the process of developing a community park directly across from the Property. (N.T. 6/11/09 at 725).
131. The surrounding area is very quiet, particularly at night. (N.T. 6/11/09 at 728).
132. There are no existing odor problems in the vicinity of the Property. (N.T. 6/11/09 at 746-747).
133. It is generally dark in the vicinity of the Property at night with the exception of small house lights. (N.T. 6/11/09 at 728-729).
134. Applicant was unable to identify any other facilities within the Township which would be close in size and magnitude of the operation proposed by Applicant. (N.T. 4/30/09 at 558-565).
135. Section 2107.A.12 relates to Highway Congestion and Access. (N.T. 8/13/09 at 1037).
136. Applicant presented the testimony of Jon Seitz, a traffic engineer, who prepared a traffic impact assessment. (Exhibit A-8).
137. Mr. Seitz was not familiar with mushroom growing and substrate preparation operations and therefore could not respond to specific questions about the truck traffic, both as to traffic external and internal to the site. (N.T. 2/10/09 at 180, 182 and 207).
138. In response to certain questions regarding the surrounding roadways and the truck traffic generated by the proposed facility, Mr. Seitz either was unable to answer the questions or stated that such questions would need to be addressed later in the land development process. (N.T. 2/10/09 at 180, 182 and 198).

139. For example, Mr. Seitz stated in his report that West London Grove Road had lane widths of nine feet. (Exhibit A-8 at p.2).

140. However, photographs presented by residents who live along West London Grove Road established that the total width of West London Grove Road was fifteen feet, thereby resulting in lane widths of seven and one-half feet. (Exhibit CFACE 17(a)-(c)).

141. Mr. Seitz acknowledged the narrowness of the surrounding roadways and the fact that two dump trucks or tractor trailer trucks would not be able to pass each other on West London Grove Road unless one truck slowed down and pulled off of the road. (N.T. 2/10/09 at 204 and 206).

142. Mr. Seitz declined to state during his testimony that West London Grove Road had the necessary width and structure to adequately and safely support the types of trucks that would be arriving and departing from the proposed facility. (N.T. 2/10/09 at 206).

143. The roads surrounding the Property are narrow and without shoulders. (N.T. 6/11/09 at 730).

144. West London Grove Road is a tar and chip road, with widths as narrow as 14 to 15 feet wide in some locations. (Exhibit CFACE-17).

145. Because a typical dump truck is 9 feet wide from mirror to mirror, two dump trucks would not be able to pass on West London Grove Road unless one or both of them pulled onto the grass. (N.T. Trevisan 6/11/09; Exhibit CFACE-1).

146. North Guernsey Road is a rural, narrow road without shoulders; it also is used by local residents for walking and biking. (N.T. 6/11/09 at 733).

147. Because there are no shoulders, if two trucks are driving on North Guernsey Road and there is a resident or child walking or riding a bike on the road, the roadway is not

wide enough to allow the trucks to safely pass the resident or child. (N.T. 6/11/09 at 826).

148. North Guernsey Road intersects with Route 41 and Applicant has indicated that most trucks would come to the Property (and leave the Property) by using North Guernsey Road and Route 41. (N.T. 6/11/09 at 827).

149. Route 41 is a state road with a speed limit of 55 miles per hour. (N.T. 6/11/09 at 827).

150. There is no traffic light at the intersection of Route 41 and North Guernsey Road; there is no separate turning lane on Route 41; and the intersection is very difficult to see due to a steep embankment. (N.T. 6/11/09 at 829).

151. In order for a truck to turn onto North Guernsey Road from Route 41, the truck would need to swing into the opposite lane of traffic on North Guernsey Road because the roadway is narrow and the turning area at the intersection is very limited. (N.T. 6/11/09 at 828).

152. In order for a truck to make a right hand turn from North Guernsey Road onto Route 41 (going South), the truck would need to pull into the opposite lane of traffic on Route 41 because North Guernsey Road is so narrow and the turning area at the intersection is very limited. (N.T. 6/11/09 at 829-830).

153. It is not possible for a tractor trailer or large dump truck to make a turn at the intersection of Route 41 and North Guernsey Road without going into the other lane of traffic. (N.T. 6/11/09 at 828-830).

154. Without a traffic impact study, the impact of the proposed Project on area roads cannot be fully determined. (N.T. 8/13/09 at 1037).

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 887).
156. Section 2209.D.1 requires compliance with the off-street parking regulations and design standards in Article XIX. (N.T. 7/16/09 at 888).
157. Article XIX sets forth, among other things, parking requirements with regard to fire lane design standards (Section 1903), and the minimum number of spaces for employees (Section 1908). (N.T. 7/16/09 at 888-90).
158. Applicant did not provide documentation or testimony demonstrating compliance with Section 2209.D.1 regarding Article XIX (Off-street Parking Regulations and Design Standards). (N.T. 7/16/09 at 890).
159. Section 2209.D.2 requires compliance with and conformance to sign regulations in Article XVIII. (N.T. 7/16/09 at 890).
160. The plans submitted by the Applicant to the Township do not contain any information about signs. (N.T. 7/16/09 at 890).
161. Section 2209.D.3 requires the applicant to establish by a fair preponderance of credible evidence that the use intended at the location intended shall not be contrary to the public health, public safety, or public welfare. (N.T. 7/16/09 at 891; Exhibit T-2).
162. Applicant's expert witness, Benton Webber, admitted that Section 2209.D.3 was not satisfied, stating "I don't believe that the information supplied so far satisfies all those regulations." (N.T. 3/19/09 at 333).

163. Additionally, Applicant's expert witness, Mr. Seitz, admitted that the existing conditions on access roads are "not ideal" in that said roads are of insufficient width to maintain consistent truck traffic. (N.T. 2/10/09 at 206).

164. Section 2209.D.4 requires Applicant to establish by a fair preponderance of credible evidence that the interior traffic circulation for the proposed use shall be adequate to provide safe and convenient circulation for all users, visitors, employees, and emergency vehicles that may enter the facility. (N.T. 8/13/09 at 1038).

165. Applicant did not provide any documentation or testimony with regard to the requirements of Section 2209.D.4. (N.T. 8/13/09 at 1038).

166. Section 2209.D.5 requires the Applicant to establish by a fair preponderance of credible evidence that the facility provide safe and convenient pedestrian access and internal circulation within the grounds of the facility. (N.T. 8/13/09 at 1040).

167. Applicant did not provide evidence related to or show compliance with Section 2209.D.5. (N.T. 8/13/09 at 1040).

168. Section 2209.D.6 requires the applicant to establish by a fair preponderance of credible evidence that adequate screening is provided between the lands in question and surrounding residential uses and residentially zoned districts to screen the facility from view and to preclude any glare from lighting or noise from being ascertained beyond the boundaries of the property. (N.T. 7/16/09 at 893).

169. Applicant did not provide any documentation or testimony to demonstrate compliance with Section 2209.D.6. (N.T. 7/16/09 at 893-94).

170. Section 2209.D.8 requires that all applications for conditional use comply with and conform to all applicable standards of Article XVII. (N.T. 7/16/09 at 895).

171. Section 1704 sets forth standards for fencing. (N.T. 7/16/09 at 896).
172. Applicant did not provide any documentation or testimony relating to fencing. (N.T. 7/16/09 at 896).
173. Section 1705 sets forth buffering standards applicable to the Project. (N.T. 7/16/09 at 896-97).
174. The Application does not comply with the Buffering Standards in Section 1705. (N.T. 7/16/09 at 897).
175. Section 1706 contains general standards with respect to lighting. (N.T. 7/16/09 at 897).
176. There will be employees working at the facility at night and coming and going throughout the night. (N.T. 4/30/09 at 556).
177. There will be lights on the property that would stay on all night. (N.T. 4/30/09 at 546-547).
178. Applicant's expert witness, Benton Webber, admitted that the site plan does not indicate any information about lighting. (N.T. 3/19/09 at 305).
179. The Application does not conform to the lighting standards set forth in Section 1706. (N.T. 7/16/09 at 897-98).
180. Section 1707.B.1, all storage shall be buffered in accordance with Section 1705. (N.T. 7/16/09 at 898).
181. The Applicant did not provide documentation or testimony to demonstrate that all storage would be buffered in accordance with Section 1705. (N.T. 7/16/09 at 898).

182. Section 1708 provides that an applicant must demonstrate the ability to provide safe, efficient and permanent facilities for the collection and treatment of sewage generated within the subject tract of land. (N.T. 10/8/09 at 1126).

183. The narrative and report prepared by the Applicant indicates only that an on-lot sewage disposal system would be utilized; the narrative does not indicate the type of treatment or the method of disposal and the site plan does not show any sewage facilities at all, treatment or disposal. (N.T. 7/16/09 at 898-90; N.T. 10/8/09 at 1126).

184. There is no indication of the type of treatment proposed or method of disposal. (N.T. 10/8/09 at 1126-27).

185. Section 1708.A also provides that an applicant demonstrate that the proposed system is capable of so functioning without degradation of streams or pollution to or diversion of the underground water table. (N.T. 10/8/09 at 1127).

186. The narrative submitted by Applicant only indicates on-lot sewage disposal, does not indicate type of treatment or method of disposal and no sewage disposal facilities are shown on the site plan. (N.T. 10/8/09 at 1127).

187. Applicant failed to provide evidence related to or show compliance with Section 1708 relating to the standards for sewage disposal (N.T. 7/16/09 at 898-90).

188. Under Section 1709, Applicant must demonstrate a safe and efficient permanent supply capable of furnishing adequate safe and potable water for the purposes envisioned within the proposed Project. (N.T. 7/16/09 at 899).

189. Applicant did not provide evidence to demonstrate a safe and efficient and permanent water supply capable of furnishing adequate, safe and potable water for purposes envisioned within the proposed Project. (N.T. 8/13/09 at 1003).

190. Applicant did not sample water from the actual site of the Project to demonstrate compliance with Section 1709.A. (N.T. 8/13/09 at 1004).

191. Applicant has not shown the location of any wells, the yields of aquifers, the movement of contaminant or the effects of the Project on neighboring wells. (N.T. 7/16/09 at 899).

192. Applicant installed no wells at the site to demonstrate compliance with Section 1709.B. (N.T. 8/16/09 at 1005).

193. Stormwater facilities are not allowed within a buffer area under the Zoning Ordinance. (N.T. 7/16/09 at 900-01).

194. Section 1710 requires, among other things, that when a site is developed, an applicant cannot exceed the quantity of stormwater flows leaving the site in the pre-developed condition. (N.T. 7/16/09 at 901).

195. Section 1711 addresses stormwater quality, including the management of stormwater runoff from property, because downstream areas should not be polluted because of flows from developed sites. (N.T. 7/16/09 at 904).

196. Applicant did not provide evidence related to or show compliance with Section 1711 relating to Stormwater Quality Standards. (N.T. 7/16/09 at 904-05).

197. Applicant's engineer relied heavily upon plans his firm had prepared in connection with two other proposed projects in preparing the Application. (N.T. 1/12/09 at 27, 30 106-107; N.T. 3/19/09 at 292-293, 313-314, 324, 371-372, 374-376.).

198. Applicant's engineer repeatedly stated that Applicant would demonstrate compliance with unsatisfied ordinance requirements at a future time and/or at the time of

land development. (N.T. 1/12/09 at 43-46, 53-54, 56-57, 59; N.T. 3/19/09 at 307, 342-343, 347, 354).

199. During the hearing, Applicant's engineer repeatedly responded to questions regarding compliance with ordinance standards by requesting to meet with Township representatives to discuss applicable requirements. (N.T. 1/12/09 at 53-54, 58-59, 62; N.T. 3/19/09 at 328).

### CONCLUSIONS OF LAW

1. As a general rule, a municipal officer should disqualify herself from any proceeding in which she has an immediate or direct personal or pecuniary interest. Amerikohl Min. Inc. v. ZHB of Wharton Township, 597 A.2d 219 (Pa. Cmwlth. 1991).

2. Generally, recusal is warranted where a member of the tribunal participates as an advocate or witness, publicly expresses predisposition, or has a fiduciary relationship with a party in interest. See Prin v. Council of the Municipality of Monroeville, 645 A.2d 450 (Pa. Cmwlth. 1994) (counsel member who publicly expressed predisposition against project in letters on counsel letterhead); Thornbury Township v. W.D.D. Inc., 546 A.2d 744 (Pa. Cmwlth. 1988) (board member who took advocacy role before board as private citizen in opposition to subdivision plan); McVay v. ZHB of New Bethlehem Borough, 496 A.2d 1328 (Pa. Cmwlth. 1985) (board members signed and filed petitions in opposition to zoning ordinance at issue); and Borough of Youngsville, 450 A.2d 1086 (Pa. Cmwlth. 1982) (board member had been employed by applicant and testified on applicant's behalf).

3. However, a tangential relationship between a tribunal member and the litigation, without evidence of bias, prejudice, capricious disbelief or prejudgment, is insufficient to

warrant recusal. Christman v. ZHB of the Township of Windsor, 854 A.2d 629 (Pa. Cmwlth. 2004). See also Caln v. Nether Co., L.P., 840 A.2d at 496 (supervisor who owned property near proposed project not required to recuse himself despite membership in civic association granted party status opposing project).

4. A conditional use is nothing more than a special exception which falls within the jurisdiction of the governing body rather than the zoning hearing board. In re Cutler Group, Inc., 880 A.2d 39, 42 (Pa. Cmwlth. 2005); Collier Stone Company v. Township of Collier Board of Commissioners, 735 A.2d 768, 770 (Pa. Cmwlth. 1999) (n.1).

5. Special exceptions (and conditional uses) “are made available as a *privilege* not as a right. . . .” Omiridis v. Zoning Hearing Board of the City of Chester, 531 A.2d 1196, 1198 (Pa. Commw. 1987), quoting Blair v. Board of Adjustment, 169 A.2d 49, 50 (Pa. 1961) (emphasis in original).

6. An applicant for conditional use must demonstrate its entitlement to the conditional use by establishing compliance with the specific objective requirements detailed in the zoning ordinance. K. Hovanian Pennsylvania Acquisitions, LLC v. Newtown Township Board of Supervisors, 954 A.2d 718, 724 (Pa. Cmwlth. 2008); Sheetz v. Phoenixville Borough Council, 804 A.2d 113, 115 (Pa. Commw. 2002), appeal denied 820 A.2d 706, citing Bray v. Zoning Board of Adjustment, 410 A.2d 909 (Pa. Commw. 1980).

7. The applicant for a special exception or conditional use bears the burden of proving that he will comply with all requirements of the zoning ordinance related to the use intended. Ralph & Joanne’s, Inc. v. Nephanneck Township Zoning Hearing Board, 550 A.2d 586 (Pa. Commw. 1988).

8. “To be entitled to receive a special exception it [is] incumbent on the [applicant] to come forward with evidence detailing how it is going to be in compliance with the requirements necessary to obtain a special exception to operate” its facility in the applicable zoning district. Council Rock School District v. Wrightstown Township Zoning Hearing Board, 709 A.2d 453, 459 (Pa. Commw. 1998) quoting Edgmont Township v. Springton Lake Montessori School, Inc., 622 A.2d 418, 419 (Pa. Commw. 1993).
9. When evaluating whether a special exception or conditional use application complies with specific requirements in the zoning ordinance, the procedure to be followed is to determine whether the materials submitted by the applicant demonstrate compliance with the requirements of the zoning ordinance. Lafayette College v. Zoning Hearing Board of the City of Easton, 588 A.2 1323 (Pa. Commw. 1991); Appeal of Baird, 537 A.2d 976 (Pa. Commw. 1998); Appeal of Neill, 634 A.2 749 (Pa. Commw. 1993).
10. Specific requirements for a conditional use cannot be simply deleted and “[i]nconvenience to the applicant is not a valid reason to dispense with compliance with the ordinance as written.” In re Appeal from Decision of Board of Supervisors of Penn Township, 62 Pa. D. & C.4th 492, 506 (Pa.Com.Pl. 2002).
11. An applicant must submit definite plans or specifications to show compliance with the applicable zoning ordinance. Lafayette College v. Zoning Hearing Board of City of Easton, 58 A.2d 1323, 1326 (Pa.Cmwlth. 1991); Appeal of Baird, 537 A.2d 976, 977-78 (Pa.Cmwlth. 1988).
12. A governing body is entitled to withhold approval of a conditional use at any stage

if the application submitted is incomplete. See Municipality of Upper St. Clair v. Boyce Road Partnership, 531 A.2d 111 (Pa.Cmwlt. 1987) (holding developer was properly refused final approval of conditional use where developer failed to comply with one requirement of zoning ordinance; In re Appeal from Decision of Board of Supervisors of Penn Township, 62 Pa. D. & C. 4th 492 (Pa.Com.Pl. 2002) (concluding it was error for board of supervisors to grant conditional use where requirements of ordinance not met by applicant).

13. An applicant cannot rely on testimony provided by witnesses during the hearing to show that its proposed use falls within the requirements of the zoning ordinance. See Edgemont Township v. Springton Lake Montessori School, Inc., 622 A.2d 418 (Pa.Cmwlt. 1993) (reversing grant of special exception where grant was based on applicant's testimony that it planned to comply with zoning ordinance); see also Appeal of Baird, 537 A.2d 976 (Pa.Cmwlt. 1988) (finding board of supervisors properly denied special exception where no plans or specifications were submitted to demonstrate compliance with dimensional requirements of buildings within district).

14. Applicant provided insufficient application materials and insufficient evidence to demonstrate compliance with applicable London Grove Township Zoning Ordinance provisions for the conditional use approval sought.

15. Applicant failed to provide all of the information required by Section 2209.A relating to Applications for Conditional Use. (N.T. 7/16/09 at 858-862).

16. The Application did not meet the requirements of Section 2209.A because neither the Application nor the testimony provided by Applicant demonstrated compliance with

the applicable performance standards set forth in the Zoning Ordinance. (N.T. 7/16/09 at 859).

17. Applicant failed to demonstrate that water supply was feasible for the Project site because it did not identify the locations of proposed wells; it did not prove that the supply of water identified in the Application could be drawn from the aquifer; it did not establish that its Project would not have a negative or adverse effect on surrounding wells, or that it would not cause movement of any contaminated groundwater (N.T. 7/16/09 at 859-860).

18. Applicant failed to demonstrate feasibility of sanitary sewage disposal because Applicant failed to indicate the type of treatment or the method of disposal and the site plan does not show any sewage treatment or disposal facilities at all. (N.T. 7/16/09 at 898-90; N.T. 10/8/09 at 1126).

19. Applicant failed to demonstrate the feasibility of storm drainage control because most of Applicant's stormwater drainage facilities are located in a one-hundred foot perimeter buffer area, which is prohibited by the Zoning Ordinance. (N.T. 7/16/09 at 861).

20. Applicant failed to meet the requirements of Section 301.B.7 of Article III, because Applicant failed to demonstrate that advanced technology would be utilized in the preparation of mushroom growing substrate. (N.T. 7/16/09 at 863).

21. Applicant failed to meet the requirements of Section 302.D.4.b of Article III because Applicant's proposed stormwater management facilities are located within a buffer area (N.T. 7/16/09 at 866-67).

22. Applicant failed to provide evidence related to or otherwise show compliance with Section 2209.C.2 relating to Special Exception Standards under Section 2107 of the Zoning Ordinance.
23. Applicant's request for conditional use is not consistent with the plan for future land use in the Township or with the spirit, purpose, and intent of the Zoning Ordinance, because Applicant failed to demonstrate compliance with the performance standards under the Zoning Ordinance or the requirement for conditional use approval under Article III of the Zoning Ordinance (Article III). (N.T. 7/16/09 at 870-71).
24. Applicant failed to provide evidence related to or show compliance with Section 2107.A.1 relating to Size, Scope, Extent and Character of the Intended Use.
25. Applicant failed to provide evidence related to or show compliance with Section 2107.A.2 relating to Suitability of Property for Use Desired. (N.T. 7/16/09 at 871).
26. The Applicant has the burden of proof to demonstrate that the specific performance standards set forth in Sections 1713 through 1724 are met. (N.T. 7/16/09 at 874).
27. Applicant failed to submit a traffic impact study in accordance with Section 1714.B or Section 1714.B of the Zoning Ordinance. (N.T. 2/10/09 at 230-31)
28. Applicant failed to provide evidence related to or otherwise show compliance with Sections 1713 and 1714 relating to Specific Performance Standards for Capacity of Road Network and Impacts on the Road Network. (N.T. 2/10/09 at 230-231).
29. The water study submittal by Applicant was insufficient to demonstrate compliance with Section 1715 because there was no indication of the safe yield of the affected aquifer, which is a requirement of Section 1715, there was no indication as to the

effect on any of the existing wells in the area and there was no evidence as to the movement of known sources of contaminated groundwater (N.T. 7/16/09 at 876-77).

30. Applicant failed to determine the safe yield of the affected aquifer as required by Section 1715. (N.T. 8/13/09 at 993).

31. Applicant failed to provide evidence related to or show compliance with that portion of 1715 which requires that Applicant demonstrate that the proposed use of water at the premises shall not adversely affect existing wells or cause movement of known sources of contaminated groundwater. (N.T. 8/13/09 at 1002).

32. Applicant failed to determine the effects of the Project upon groundwater. (N.T. 8/13/09 at 1001).

33. Applicant failed to provide evidence related to or show compliance with the provision of 1715 requiring that the underground geology, adjacent wells, surface hydrological features be examined, because Applicant did not examine any of those features. (N.T. 8/13/09 at 1005).

34. Applicant failed to provide evidence related to or otherwise show compliance with Section 1715 relating to the Specific Performance Standards for Water Consumption. (N.T. 7/16/09 at 876-877; N.T. 8/13/09 at 994, 999-1001 and 1005).

35. Applicant failed to provide evidence related to or show compliance with Section 1716 relating to the Specific Performance Standard for Fire Protection. (N.T. 7/16/09 at 877).

36. Applicant failed to provide evidence related to or show compliance with Section 1717 relating to Specific Performance Standards for Noise. (N.T. 7/16/09 at 878-79).

37. Applicant failed to provide evidence related to or show compliance with Section 1718 relating to Specific Performance Standards for Dust. (N.T. 7/16/09 at 895).
38. Applicant failed to provide evidence related to or show compliance with Section 1719 relating to Specific Performance Standards for Odor. (N.T. 7/16/09 at 879).
39. Applicant failed to provide evidence related to or show compliance with Section 1721 relating to Specific Performance Standards for Glare. (N.T. 7/16/09 at 880-81).
40. Applicant failed to provide evidence related to or show compliance with Section 1722 relating to Specific Performance Standards for Vibration. (N.T. 7/16/09 at 881).
41. Applicant failed to provide evidence related to or show compliance with Section 1723, and specifically Section 1723.D, relating to Specific Performance Standards for Storage and Waste Disposal. (N.T. 7/15/09 at 882).
42. Applicant failed to provide evidence related to or show compliance with Section 2107.A.4 relating to Safe and Convenient Pedestrian Access. (N.T. 8/13/09 at 1030-31).
43. Applicant failed to provide any documentation or testimony to determine if there will be congestion on roads and highways. (N.T. 8/13/09 at 1032).
44. Applicant failed to address adjacent or public roads or off-site intersections where traffic generation from the Project site will be traveling. (N.T. 8/13/09 at 1032).
45. Applicant failed to provide evidence related to or show compliance with Section 2107.A.7 relating to Congestion on Roads or Highways. (N.T. 8/13/09 at 1032).
46. Applicant failed to provide evidence relating to or show compliance with Section 2107.A.8 relating to Public Service and Facilities, specifically transportation and roads. (N.T. 8/13/09 at 1034).

47. Applicant failed to demonstrate compliance with the Township's goals, practices and plans relating to the management of stormwater. (N.T. 7/16/09 at 885-86).
48. Applicant failed to demonstrate compliance with Section 2107.A.9 relating to Natural Features and Stormwater Management. (N.T. 7/16/09 at 885).
49. Applicant's proposed Project, which will encompass mushroom composting and mushroom growing on 116 acres of property, would not constitute an appropriate use in the area and severely detract from the character of the neighborhood under Section 2107.A.10. (N.T. 7/16/09 at 886).
50. Because Applicant failed to conduct a traffic impact study, the impact of the proposed Project on area roads cannot be fully determined. (N.T. 8/13/09 at 1037).
51. Applicant failed to provide credible evidence relating to or show compliance with Section 2107.A.12 relating to Highway Congestion and Access. (N.T. 8/13/09 at 1037).
52. Applicant failed to provide documentation or testimony demonstrating compliance with Section 2209.D.1 regarding Article XIX (Off-street Parking Regulations and Design Standards). (N.T. 7/16/09 at 890).
53. The Application does not comply with the requirements of Section 2209.D.2, as the plans submitted by Applicant to the Township do not contain any information about signs. (N.T. 7/16/09 at 890).
54. Applicant's proposed Project is contrary to Section 2209.D.3, because Applicant failed to demonstrate compliance with the Performance Standards under the Zoning Ordinance and, therefore, did not comply with the public health, public safety, and public welfare requirements of the Zoning Ordinance. (N.T. 7/16/09 at 891-92).

55. Applicant failed to comply with Section 2209.D.3 relating to Public Health, Public Safety and Public Welfare. (N.T. 7/16/09 at 892).
56. Applicant failed to provide evidence relating to or show compliance with Section 2209.D.4 relating to Interior Traffic Circulation. (N.T. 8/13/09 at 1038).
57. Applicant failed to show compliance with Section 2209.D.5 relating to Safe and Convenient Pedestrian Access and Internal Circulation. (N.T. 8/13/09 at 1090).
58. Applicant failed to demonstrate compliance with Section 2209.D.6 regarding adequate screening. (N.T. 7/16/09 at 893-94).
59. Applicant failed to provide any documentation or testimony relating to fencing. (N.T. 7/16/09 at 896).
60. Applicant failed to provide evidence related to or show compliance with Section 1704 regarding the standard for fencing. (N.T. 7/16/09 at 896).
61. Applicant failed to demonstrate compliance with Section 1705 relating to Buffering Standards. (N.T. 7/16/09 at 897).
62. The Application does not conform to the lighting standards set forth in Section 1706 and Applicant failed to provide evidence related to or show compliance with Section 1706 relating to Lighting Standards. (N.T. 7/16/09 at 897-98).
63. Applicant failed to provide documentation or testimony to demonstrate that all storage would be buffered in accordance with Section 1705. (N.T. 7/16/09 at 898).
64. Applicant failed to provide evidence related to or show compliance with the requirements of Section 1707 relating to General Storage Standards. (N.T. 7/16/09 at 898).

65. Applicant failed to provide evidence related to or show compliance with that portion of Section 1708 of the Township Zoning Ordinance which requires the applicant demonstrate the ability to provide safe, efficient and permanent facilities for collection, treatment and disposal of sanitary sewage generated within the tract. (N.T., 10/8/09 at 1127).

66. Section 1708 also provides that an applicant demonstrate that the proposed system is capable of so functioning without degradation of streams or pollution to or diversion of the underground water table. (N.T. 10/8/09 at 1127).

67. Applicant did not meet the criteria of Section 1708.A because the narrative only indicates on-lot sewage disposal, does not indicate type of treatment or method of disposal and no sewage disposal facilities are shown on the site plan. (N.T. 10/8/09 at 1127).

68. Applicant failed to provide evidence related to or show compliance with that portion of Section 1708.A of the Township Zoning Ordinance which requires that the applicant demonstrate that the proposed system is capable of so functioning without degradation of streams or by pollution to or diversion of the underground water table. (N.T. 10/8/09 at 1128).

69. Applicant failed to provide evidence related to or show compliance with Section 1708 relating to the standards for sewage disposal (N.T. 7/16/09 at 898-90).

70. Applicant failed to provide evidence or comply with the Section 1709 requirements that Applicant demonstrate safe and efficient and permanent water supply capable of furnishing adequate, safe and potable water for purposes envisioned within the proposed Project. (N.T. 8/13/09 at 1003).

71. Applicant failed to provide evidence related to or show compliance with the Section 1709.A provision dealing with residential uses and other uses where appropriate, because Applicant did not sample water from the actual site of the Project. (N.T. 7/16/09 at 899; N.T. 8/13/09 at 1004).

72. Applicant failed to provide evidence related to or show compliance with Section 1709.B. because no wells were installed at the site. (N.T. 8/16/09 at 1005).

73. Applicant failed to provide evidence related to or show compliance with Section 1710 relating to Stormwater Quantity Standards. (N.T. 7/16/09 at 901).

74. Applicant failed to provide evidence related to or show compliance with Section 1711 relating to Stormwater Quality Standards. (N.T. 7/16/09 at 904-05).

75. For the foregoing reasons, the Board determines that the Applicant failed to establish that it has complied with the objective applicable standards and criteria or the London Grove Township Zoning Ordinance so as to be entitled to approval of its Application.



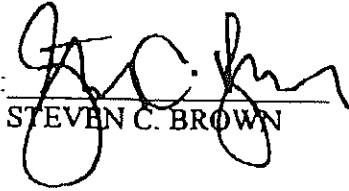
**DECISION**

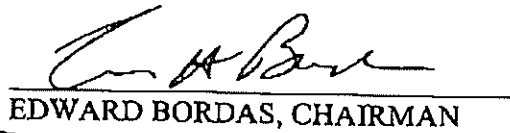
Based upon the foregoing Findings of Facts and Conclusions of Law, the Board of Supervisors of the Township of London Grove hereby DENIES the Application of Superior Growers for a conditional use.

Date: 11/25/09

LONDON GROVE TOWNSHIP  
BOARD OF SUPERISORS

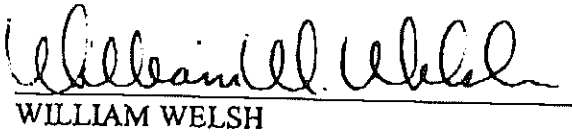
ATTEST:

  
STEVEN C. BROWN

  
EDWARD BORDAS, CHAIRMAN

  
TIMOTHY NELSON, VICE CHAIRMAN

  
DAVID ECKARD

  
WILLIAM WELSH

  
ROBERT VANELLA

**CERTIFICATE OF SERVICE**

I, REGINA M. MACKENZIE, ESQUIRE, Solicitor for London Grove Township Board of Supervisors, hereby certify that on this date, true and correct copies of the foregoing Decision have been served upon the parties listed below in the manner indicated below their names:

Superior Growers  
Attn: Wayne DeFrancesco  
155 Valley Road  
West Grove, PA 19390

*Via Regular Mail*

Mark A. Damico, Esquire  
Petrikin, Wellman Damico, Brown  
& Petrosa  
The William Penn Building  
109 Chesley Drive  
Media, PA 19063  
*Via Regular Mail and  
Electronic Mail*

J. Dwight Yoder, Esquire  
Gibbel, Kraybill & Hess  
41 East Orange Street  
Lancaster, PA 17602

*Via Regular Mail and  
Electronic Mail*

Steven A. Hann, Esquire  
Hamburg, Rubin, Mullin, Maxwell  
& Lupin  
375 Morris Road  
P.O. Box 1479  
Lansdale, PA 19446  
*Via Regular Mail and  
Electronic Mail*

Date: November 25, 2009

BEATTY LINCKE

BY:   
REGINA M. MACKENZIE, ESQUIRE