

NORTH CAROLINA
RANDOLPH COUNTY

RANDOLPH COUNTY VOLUNTARY
AGRICULTURAL DISTRICT ADVISORY BOARD

In the matter of:

Proposed Condemnation of Allen)
Property)

PRELIMINARY REPORT

THIS MATTER coming to be heard by public hearing on January 16, 2024 before the Randolph County Voluntary Agricultural District Advisory Board pursuant to N.C.G.S. §106-740 and Article IX of the Randolph County Voluntary Agricultural District Ordinance. Chairman Kemp Davis and the following Board members were present: Kemp Davis, David Allen, Bernard Beck, Ken Austin, Clifford Elliott, Bill Scotton, Lisa Holder, Steven King, Linda York, Thomas Lawrence, Joe Allen, Roger Pritchard, Hope Haywood, Chastity Elliott, Cooperative Extension Director Kenneth Sherin and Associate County Attorney Aimee Scotton were also present. Also present were: Dustin Johnson, representing Carolina Land Acquisitions and Vickie Miller HDR Engineering (Mr. Johnson and Ms. Miller were representing DOT); David Allen, owner of the subject property; and members of the public, many of them members of a Voluntary Agricultural District or an Enhanced Voluntary Agricultural District. The foregoing statute and ordinance provisions require that no State or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district or an enhanced voluntary agricultural district until such agency has requested the local agricultural advisory board to hold a public hearing on the proposed condemnation.

The North Carolina Department of Transportation (hereinafter "DOT") has proposed condemnation of portions of three tracts of property, owned by David Lee Allen. These properties are contained in an Enhanced Voluntary Agricultural District. The portions proposed to be condemned by DOT are:

- From an approximately 6.93 acre tract (Identified by PIN number 8717069331) owned by David Lee Allen, two separate areas of Fee Simple right-of-way (.058 and .044 acres respectively) totaling .102 acres.

- From an approximately 40.4 acre tract (Identified by PIN number 8717153169) owned by David Lee Allen, two separate areas of Fee Simple right-of-way (.050 and .539 acres respectively) totaling .589 acres; and a Temporary Construction Easement totaling .846 acres. The Temporary Construction Easement will expire upon completion and acceptance of the project by NCDOT.

- From an approximately 35.93 acre tract (Identified by PIN number 8717046253) owned by David Lee Allen, one area of Fee Simple right-of-way totaling .901 acres; and two separate areas of Temporary Construction Easements (.279 and .023 acres respectively) totaling .302

acres. The Temporary Construction Easements will expire upon completion and acceptance of the project by NCDOT.

On January 3, 2024, DOT requested a public hearing on this matter before the Randolph County Voluntary Agricultural District Advisory Board (hereinafter the “Board”) in accordance with the aforementioned statute and ordinance provisions. Notice of the public hearing was published in a newspaper of general circulation in Randolph County (hereinafter the “County”) and the public hearing was held at 6:00 p.m. in the Randolph County Cooperative Extension Office on January, 16, 2024. The purpose of this hearing was to consider the following questions with regards to the proposed condemnation:

1. Has the need for the Project been satisfactorily established by DOT? This inquiry includes a review of any fiscal impact analysis conducted by DOT.
2. Are there alternatives for completing the Project that have less impact and are less disruptive to the agricultural activities of the District?

At the public hearing, DOT was invited to present evidence in support of its Project and the proposed condemnation. Members of the public were also invited to present any evidence and/or concerns regarding the proposed condemnation. The DOT representatives, Mr. Allen, and two members of the public spoke. At the conclusion of the public hearing, the Board met to consider the above questions and now makes the following Preliminary Findings and Recommendations.

PRELIMINARY FINDINGS

1. Has the need for the project been satisfactorily established by DOT?

At the public hearing, the DOT stated that the purpose of the project was to control traffic coming in for the Toyota Site. No additional evidence was presented by DOT to establish the need for this project. Mr. Allen stated that the need for two interchanges had been established in 2018 when Toyota initially looked at the site for an automobile manufacturing facility. Toyota ultimately chose a different site for their automobile manufacturing facility. In 2021, Toyota chose this site for a battery manufacturing facility, a facility that is smaller in scope than an automobile manufacturing facility and that does not precipitate the same level of ancillary development. Never the less, two interchanges remained the plan, whether two are actually needed or not.

2. Are there alternatives for completing the Project that have less impact on the agricultural activities of the District?

The Board finds that there was no evidence submitted regarding the existence of alternatives with less impact on the agricultural activities of the District. At the hearing, DOT presented evidence documenting the steps that it took in planning this Project. In summary, DOT first determined the need for the project (see above). Once that need was established, environmental and other studies were conducted that documented the presence of VAD and Enhanced VAD properties. These studies were done in order to identify the least environmentally damaging practical alternative. The factors that were

considered in making this determination include, but are not limited to, environmental issues, human impact, fiscal matters, and wetlands.

The taking of VAD properties is supposed to be a last resort. However, there is no indication that the VAD status of any property played any role whatsoever in the design of these interchanges. Whether any other routes were considered that would have lesser impact on the District's agricultural activities is simply not known. The Board therefore finds it impossible to determine whether or not there are alternatives for completing the Project that have less impact on the agricultural activities of the District.

3. **Other concerns and considerations?**

The Randolph County Voluntary Agricultural District Ordinance was passed in 2002 to promote agricultural and environmental values and the general welfare of the County and, more specifically, to increase identity and pride in the agricultural community and its way of life, to encourage the economic health of agriculture, and **to increase protection from non-farm development and other negative impacts** on properly managed farms. This Ordinance was passed pursuant to authority granted by the North Carolina Agricultural Development and Farmland Preservation Enabling Act (N.C.G.S. §§ 106-735 through 106-744). State law provides further protection to qualifying farmland by putting in place the requirement that, prior to instituting a condemnation proceeding involving said farmland, a State or local public agency or governmental unit must request a public hearing on the matter before the local agricultural advisory board. This requirement carries with it the necessary implication that the legislature intended for public agencies and governmental units to consider the impact on agricultural activities **before** making decisions involving the condemnation of property. In fact, the existence of the requirement that, following the public hearing, this Board must issue a recommendation to DOT regarding the proposed condemnation indicates that the intention of the law was for this recommendation to be given serious consideration. However, the fact that this hearing occurs so late in DOT's planning process removes any chance that this hearing is taken seriously. By requiring the hearing to occur only before a condemnation proceeding is filed, the legislature has ensured that, by the time the hearing takes place, DOT has invested too much time and money in the chosen route to consider a change. All across America, farmland is being ravaged to make way for new development with little or no regard to its importance or necessity. When protections are put in place, they must be heeded if they are to be of any value whatsoever. However, it has become apparent that the protections that are in place are inadequate.

THEREFORE, based on the foregoing preliminary findings, DOT is hereby **RECOMMENDED** as follows:

Although the necessity of some access to the Toyota site has been established, there has been no evidence that the selected mode of accomplishment is the feasible alternative that has the least negative impact on the agricultural activities of the District. In fact, no evidence has been submitted to establish that the agricultural activities of the District were given any consideration whatsoever in choosing how this Project would be conducted. Given that, it is the recommendation of this Board that DOT refrain from the condemnation of the Subject Property,


conduct a study as to the agricultural impact of the other possible alternatives and reconsider the chosen route. Furthermore, this Board respectfully requests that, in the future, DOT notify the VAD Board early in its planning process when a selected route appears to impact VAD property.

The Board intends to explore a re-examination of the legislation requiring this hearing with our locally elected legislators. The Board would like to see a requirement that the VAD Board be included earlier in the process to ensure that VAD properties are afforded the protection that the statute envisions.

This Preliminary Report shall be available for public inspection and comment in the Randolph County Cooperative Extension Office, 1003 S. Fayetteville Street, Asheboro, NC for a period of not less than ten (10) days, said public comment period to end at 5:00 p.m. on Friday, January 26, 2024. Following the expiration of the public comment period, the Board shall meet to consider comments and to prepare its Final Report. A copy of the Final Report shall be submitted to DOT on or before January 31, 2024 in accordance with applicable state law. The Final Report shall be on file in the Randolph County Cooperative Extension Office and shall be available for public review.

Submitted this 16th day of January, 2024.

By:



J. Kemp Davis, Chairperson
Randolph County Voluntary Agricultural
District Advisory Board