

NORTH CAROLINA
RANDOLPH COUNTY

RANDOLPH COUNTY VOLUNTARY
AGRICULTURAL DISTRICT ADVISORY BOARD

In the matter of:
Proposed Condemnation of Staley)
Property (Parcel Identification)
No. 7669444820) by North Carolina)
Department of Transportation as)
Part of the Proposed US 64,)
Asheboro By-Pass Preferred)
Alternative 29 Project)

FINAL REPORT

THIS MATTER coming to be heard by public hearing on August 5, 2008 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: Joe Allen, Ken Austin, Bobby Allen, Arlie Culp, Randall Spencer, Wilbert Hancock, Bernard Beck, and Margie Beesom. Cooperative Extension Director Carolyn Langley and Associate County Attorney Aimee Scotton were also present. Also present were: Jamille Robbins, representing the North Carolina Department of Transportation; Roger Lewis of Earthtech, the project manager; Donna and Denette Staley, the owners of the subject property; and approximately twenty (20) 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 a tract of property, containing 22.850 acres more or less and owned by Donna L. and Denette R. Staley, Parcel Identification Number 7669444820 (hereinafter the "Subject Property") as part of the Proposed US 64, Asheboro By-Pass Preferred Alternative 29 Project (hereinafter the "Project"). The Subject Property is contained in an Enhanced Voluntary Agricultural District (hereinafter the "District"). On July 29, 2008, 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 Tuesday, August 05, 2008. 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. 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 presented evidence that supported the need for the improvements to Highway 64, namely the By-Pass project. Essentially, it was stated that the Project would serve several purposes, including the following: to improve access to the City of Asheboro; to improve access to the NC Zoo; to relieve the congestion along Highway 64 through the City of Asheboro; and to speed up the flow of traffic through the City of Asheboro. Because of the dense business development along Dixie Drive, widening Highway 64 was not a feasible alternative. In addition, a northern by-pass was not a good option because of the impact that such a project would have on water supply areas and the lack of available space for an interchange with future 73/74. Furthermore, a northern by-pass would do nothing to improve access to the NC Zoo. Given the evidence presented, the Board agreed that DOT had satisfactorily established the need for the project.

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, the study area was defined and nine preliminary corridors were identified for detailed study. Various 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 the number of relocations involved. Alternative 29 (the route at issue here) was chosen, and a design public hearing was held in March of this year. One result of this public hearing was that DOT was notified of the existence of the Randolph County Voluntary/Enhanced Voluntary Agricultural Districts. When asked, Mr. Robbins (the DOT official in charge of public outreach for this Project) admitted that prior to the public hearing in March, DOT was unaware of the District or that this public hearing process was in place. Once so informed, DOT did evaluate whether Alternative 29 could be adjusted to reduce its effect on agriculture and it was determined that such an

adjustment was not feasible (a northern shift would affect a retirement center; a southern shift would impact the national forest, the NC Zoo, and two residential subdivisions). However, DOT presented no evidence that it considered the impact on agriculture when evaluating the options available prior to narrowing down alternatives and identifying the nine initial corridors nor did it present evidence that agricultural impact was taken into account when selecting Alternative 29 as the preferred route. Whether any of the other routes considered would have lesser impact on the District's agricultural activities is simply not known. In fact, Mr. Robbins admitted at the hearing that the impact upon the District was not considered until March of this year, when the decision on the route had already been made and design work had begun. The only consideration given to the impact on agriculture was made after the route had been determined and then only to evaluate whether the already-chosen route could be shifted. 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. In the case at hand, DOT made no such considerations prior to making major decisions regarding this Project. Once informed of the need to consider agricultural impact, that consideration was only applied to the route that had already been chosen. At every step of this process, DOT appears, at worst, to have ignored these requirements or, at best, to have taken them very lightly. That the agency claims ignorance of the existence of these legal requirements and ignorance of the existence of Voluntary Agricultural Districts is irrelevant. As citizens, we are charged to uphold the law even when we are ignorant as to specific requirements; the State and its subdivisions should be held to that same standard. That being said, this cavalier attitude regarding the taking of farmland is upsetting to say the least. 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.

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

Although the necessity of the Project 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 corridors that were initially identified and reconsider its selection of Alternative 29 in light of the findings of that study.

In accordance with state law, the Preliminary Report was made available for public inspection and comment in the Randolph County Cooperative Extension Office, 112 West Walker Avenue, Asheboro, NC for a period of not less than ten (10) days, said public comment period ending at 5:00 p.m. on Monday, August 18, 2008. Two written comments from the public were received, both consistent with and in support of the conclusions reached in the preliminary report. On Monday, August 25, 2008, the Board met to consider these comments and to prepare its Final Report. At this meeting, the Board voted to adopt the foregoing as its Final Report on the matter. A copy of this Final Report shall be submitted to DOT on or before August 28, 2008 in accordance with applicable state law. This Final Report shall be placed on file in the Randolph County Cooperative Extension Office and shall be made available for public review.

Submitted this 25th day of August, 2008.

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