

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Special Meeting

June 24, 2024

Secretary Wengryn called the meeting to order at 9:00 a.m.

Mr. Roohr read the notice stating that the meeting was being held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

Roll call indicated the following:

Members Present

Secretary Wengryn Chairman
Martin Bullock
Scott Ellis
Pete Johnson
Rich Norz
Tiffany Bohlin
Charles Rosen
Julie Krause
Lauren Procida
Brian Schilling

Members Absent

Gina Fischetti

Charles Roohr, SADC Deputy Executive Director
Alexandra Horn, Esq.,

Mr. Roohr advised the committee that the purpose of today's meeting is in relation to the matter of the Riewerts/Tribble driveway relocation being litigated in the OAL and the petitioners' request for interlocutory review of the administrative law judge's decision denying their request for dismissal of the case.

Public Comment

Noah Botwinick, Esq., counsel for the petitioners, stated that there were several issues that were not addressed in the denial and that he believes those issues warrant consideration before the matter can proceed to a hearing.

Mr. Botwinick stated the denial does not address whether the Deed of Easement (DOE) constituted a change to the petitioners' easement, which is critical to the matter of jurisdiction because the prior owner did not have the authority to unilaterally modify the easement. Mr. Botwinick also stated the denial does not address that the SADC is asserting jurisdiction over the petitioners' ability to move the easement to a place where they could have previously moved it. The denial does not address the lack of notice to petitioners when the farm was preserved, at which point their ability to modify the easement was removed, constituted a denial of their procedural due process rights.

CLOSED SESSION

At 9:07 a.m. Mr. Roohr read the following resolution to go into Closed Session:

In accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-13, it is hereby resolved that the SADC shall now go into executive session to review with counsel Petitioners' request for interlocutory review of the order denying their motion to dismiss the OAL case entitled "In the Matter of SADC Resolution FY2015R12(2)"; and to discuss any other matters under N.J.S.A. 10:4-12(b) that arose during the public portion of the meeting. The minutes of such meeting shall remain confidential until the Committee determines that the need for confidentiality no longer exists.

It was moved by Mr. Schilling and seconded by Mr. Norz to go into closed session. The motion was unanimously approved.

Action as a Result of Closed Session

Review of Request for Interlocutory Review of Motion to Dismiss in OAL Docket No. ADC 01388-18 Regarding New Village Farms

It was moved by Mr. Norz and seconded by Ms. Bohlin to approve Resolution FY2024R6(1), as discussed in closed session, declining the petitioners request for interlocutory review. The motion was unanimously approved.

Public Comment

None

ADJOURNMENT

The meeting was adjourned at 9:45 a.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Charles Roohr". The signature is written in a cursive style with a large initial "C".

Charles Roohr, Deputy Executive Director
State Agriculture Development Committee

**STATE AGRICULTURE DEVELOPMENT COMMITTEE
RESOLUTION #FY2024RS6(1)**

**Review of Request for Interlocutory Review of Motion to Dismiss in OAL Docket
No. ADC 01388-18 Regarding New Village Farms**

June 24, 2024

**Subject Property:
Block 44, Lot 5
Greenwich Township, Warren County
54.88 Easement Acres**

WHEREAS, the underlying matter concerns a challenge by Henry Riewerts and Diane Tribble ("Petitioners") to the State Agriculture Development Committee's ("SADC") December 11, 2014 denial of Petitioners' request to reconfigure a right-of-way ("ROW") to which they are successors-in-interest pursuant to a deed of easement recorded since 1951; and

WHEREAS, the ROW provides Petitioners' property, Greenwich Township Block 44, Lot 24, acquired by Petitioners in March 2009, with access to the nearest public road and extends over the adjacent lot, Block 44, Lot 5; and

WHEREAS, on July 23, 2010, Block 44, Lot 5 was permanently preserved as farmland pursuant to the Agriculture Retention and Development Act ("ARDA"), N.J.S.A. 4:1C-11 to -48, by deed of easement ("DOE") from Robert Schuster and Geraldine Schuster, with cost share grants from the SADC and United States Department of Agriculture, Natural Resources Conservation Service ("NRCS"); and

WHEREAS, preserved Block 44, Lot 5 is now owned by New Village Farms; and

WHEREAS, in 2012, Petitioners submitted a proposal to the SADC to relocate the ROW to another preserved part of New Village Farms; and

WHEREAS, the SADC rejected Petitioners' proposed ROW reconfiguration on December 11, 2014 based on the resulting loss of farmland but proposed an alternative reconfiguration plan to Petitioners, which was rejected; and

WHEREAS, Petitioners appealed the SADC's denial in January 2016, after their request for reconsideration was denied on February 26, 2015; and

WHEREAS, on May 16, 2017, the Appellate Division vacated the SADC's denial, and remanded Petitioners' request for reconfiguration, based on the lack of a formal hearing; and

WHEREAS, in January 2018, the SADC transmitted the matter to the Office of Administrative Law ("OAL") pursuant to the Administrative Procedure Act ("APA"); and

WHEREAS, on February 1, 2024, Petitioners filed a motion in aid of litigants' rights in the Appellate Division requesting that the SADC hold the hearing, not the OAL; and

WHEREAS, on February 24, 2024, the Appellate Division ordered that "[t]he OAL is directed to have an ALJ [administrative law judge] schedule a hearing as ordered in our May 17, 2016 per curiam opinion, and issue an initial decision to the [SADC] on or before August 26, 2024"; and

WHEREAS, the August 26, 2024 deadline was later extended to December 31, 2024 upon Petitioners' request; and

WHEREAS, on April 1, 2024, Petitioners filed a motion to dismiss the case at OAL alleging the SADC lacks subject matter jurisdiction and requested that this matter be "transferred back to the municipality for Petitioners to seek local approval" to reconfigure the ROW; and

WHEREAS, Petitioners argued that the SADC does not have subject matter jurisdiction over this matter because:

- (1) The previous owners of the farm needed Petitioners' consent before executing the DOE; and
- (2) Petitioners' were not given notice of the DOE before its execution; and
- (3) Petitioners are not bound by the DOE because they were not parties to the DOE and did not consent to a subordination agreement; and
- (4) The DOE constitutes a government taking; and

WHEREAS, the SADC argued in opposition to Petitioners' motion that SADC does have jurisdiction because:

- (1) Petitioners had requested relocation of their ROW onto a preserved farm; and
- (2) Notice to Petitioners was not required at the time of preservation nor would notice bear on dismissal; and
- (3) SADC was not required to obtain a subordination agreement from Petitioners nor does such claim support dismissal; and
- (4) The DOE did not modify the ROW to support a takings claim but such claim could be brought in the future before the appropriate venue; and

WHEREAS, on June 4, 2024, the ALJ agreed with the SADC, finding that “the Legislature[] intend[ed] that the SADC has broad authority to protect the agricultural industry and farmland in New Jersey through administrative action such that the SADC has jurisdiction to consider a private landowner’s application to modify a right-of-way easement that may adversely impact and affect farmland that has been preserved under the ARDA through the SADC’s purchase of a development easement”; and

WHEREAS, the ALJ further found that Petitioners’ remaining arguments regarding failure to get Petitioners’ approval or obtain a subordination agreement, and whether the DOE modified Petitioners’ ROW or constituted a government taking, were not grounds for dismissal but could be addressed at a hearing; and

WHEREAS, Petitioners seek interlocutory review of this determination; and

WHEREAS, interlocutory review may be granted only in the interest of justice or for good cause shown; and

WHEREAS, In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 100 (N.J. 1982) holds that “[i]n the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case”; and

WHEREAS, such leave is granted only in exceptional cases where justice suggests the need for review in advance of final judgment;

NOW THEREFORE BE IT RESOLVED:

1. The WHEREAS paragraphs above are incorporated herein by reference.
2. The SADC finds Petitioners fail to demonstrate why, in light of the applicable standard, interlocutory review is warranted.
3. Petitioners argue that the ALJ did not address all of the issues raised in their motion to dismiss and reassert their position that the SADC lacks subject matter jurisdiction to rule on Petitioners’ application; however, as summarized above, the ALJ acknowledged each of Petitioners’ arguments but found that they did not constitute grounds for dismissal and are substantive issues that should be addressed in the course of the proceeding.
4. Regarding interlocutory review, Petitioners fail to indicate how ALJ Scarola improperly found that the SADC has subject matter jurisdiction over Petitioner’s application, merely averring that they disagree with the ALJ’s determination.

5. Petitioners further fail to assert that ALJ Scarola's determination was such that interlocutory review is required before the matter can proceed.
6. As such, Petitioners have not demonstrated a likelihood that an order on interlocutory review would have an impact on the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case, and thus fail to demonstrate why good cause exists or the interests of justice warrant interlocutory review.
7. Accordingly, pursuant to N.J.A.C. 1:1-14.10(c), the SADC declines to review, on an interlocutory basis, ALJ Scarola's June 4, 2024 order.

DATE 06/24/2024



Charles Roohr, Deputy Executive Director
State Agriculture Development Committee

VOTE WAS RECORDED AS FOLLOWS:

Martin Bullock	YES
Scott Ellis	YES
Pete Johnson	YES
Rich Norz	YES
Charles Rosen	YES
Tiffany Bohlin	YES
Lauren Procida (rep. DEP Commissioner LaTourette)	YES
Julie Krause (rep. State Treasurer Muoio)	YES
Brian Schilling (rep. Executive Dean Lawson)	YES
Edward D. Wengryn, Chairperson	YES