

Landowner Guide To SADC Procedures for the Condemnation of Preserved Farmland

July, 2015

Background

When a farm is preserved, the landowner (known as the “grantor” in the transaction) sells the nonagricultural development rights on the preserved property to a county, the State Agriculture Development Committee (SADC), or a nonprofit organization through the conveyance of a Farmland Preservation Program (FPP) **deed of easement** (“*easement*”). The agency that purchases the easement is known as the “grantee,” and that entity becomes the owner of the nonagricultural development rights and easement. Regardless of which agency is the grantee, easements often are purchased with financial participation of several program partners including the SADC, county, municipality, and where applicable, a non-profit.

The law governing New Jersey’s Farmland Preservation Program is known as the Agriculture Retention and Development Act (the “ARDA”, N.J.S.A. 4:1C-11, et seq.). Once an FPP easement is acquired, the Act explicitly prohibits the sale, transfer or conveyance of that easement in any manner. However, the ARDA does recognize the potential use of condemnation by a public entity for public purposes, and in such instances, the Act defines the procedures that must be followed when public bodies (such as counties, municipalities, or as in a recent case, the NJ Turnpike Authority) seek to condemn preserved farmland for public projects (such as county road intersection improvements or replacement of a publicly owned bridge).

Recently, there has been significant interest among certain private utility companies, predominantly those related to developing natural gas pipelines and electrical transmission systems, to cross over preserved farmland for the purposes of upgrading or expanding utility system capacity. Sometimes these companies already own utility easements that predated the preservation of the farm, and other times, they do not and then seek to acquire new utility easements. When a utility project requires the use of lands outside of any existing utility easements owned by the utility company, they must acquire new or additional easement area to support utility expansion.

Because development/expansion of utility facilities constitutes use and development of the farm for nonagricultural purposes, neither the landowner nor the grantee of the easement can simply “allow” utility companies to cross preserved farmland for purposes of developing utility infrastructure. The only way that such utility companies get the ability to acquire new/expanded utility easement rights to cross preserved farmland is through a court-approved

condemnation, or “taking,” action. It is important to note that not all utility projects are capable of obtaining the court’s approval for a taking. For those that are not – such as electric utility and intrastate natural gas pipeline projects – the utility company cannot cross a preserved farm.

Preserved farms have two distinct components of value: One is the value associated with the Farmland Preservation Program easement previously bought by the county/SADC/nonprofit, and the second is the remaining value of the preserved farmland retained by the property owner. Accordingly, when preserved farms are subject to condemnation proceedings, compensation is paid in two parts: The first part is payment that goes to the grantee identified in the FPP easement (the county/SADC/nonprofit). Because the nonagricultural rights they own are being taken, the extent to which the condemnation project damages the value of the development rights previously purchased must be reimbursed to the grantee by the utility company.

The second part of the payment goes to the landowner, who is reimbursed because the underlying preserved farmland they own is also being taken by the project and the landowner must be reimbursed the value of those impacts. Also, there may be impacts to the landowner such as crop losses, interference with the planting season, or damages to improvements such as fences or buildings that also must be compensated to the landowner.

Appraisal Process

With regard to compensation paid for utility condemnation projects, utility companies that have obtained, or eventually will obtain, court approval to condemn preserved farmland must pay for the impacts of their project. That process begins with the appraisal of the area to be condemned.

The utility company will determine exactly what areas of a farm will be affected by the condemnation, and the company will seek to acquire new utility easements for those areas. These utility easements may take the form of either a permanent easement or a temporary easement, the latter typically being associated with things such as temporary work space utilized during construction that the utility company will not need after the project is complete. Once these areas are defined, the utility company will conduct appraisals to determine the value of the impacts to each farm associated with 1) the impact to the value of the development potential and 2) the impacts to the underlying farmland and farm operation, as explained further below.

It is important to note that when the appraisers value the impacts of the project, they must evaluate the property as if ***it were NOT yet preserved*** – so that the impact to the value of development potential can be assessed. As a result, preserved farms are not “cheaper” alternatives for utility project takings compared to unpreserved farmland. Preserved farms are appraised just as unpreserved farms would be, with the exception that the total compensation associated with the project is broken down into two components of value: the impact to the

value of the development rights (payable to the grantee) and the impact to the underlying farmland and farming operation (payable to the landowner).

In cases where the SADC previously provided a cost share grant toward the preservation of a farm, the SADC will review the appraisals conducted by the utility company to ensure that they adequately reflect the current fair market value of the development potential. If the SADC objects to the appraisals as deficient or inaccurate, it will lay out its objections in the form of a letter to the utility company, copied to the landowner, which will relay that information to its appraiser(s). Typically, any objections of the SADC are resolved and the appraisals are amended accordingly. If amicable resolution of the appraisals is not possible, the fair market value of the easement can be fixed by the court during the condemnation proceedings.

Negotiations

In the case of utility projects, frequently the compensation finally negotiated between the parties in a condemnation action is in **excess** of the appraised, “minimum” value as reflected in the appraisal report(s). The SADC recognizes that public bodies or utility companies may negotiate directly with the owners of preserved farms to determine a value for the condemnation actions associated with such projects ***subject to the important caveats that: 1) the SADC and the other agencies that contributed to the purchase of development rights to the farm have the right to approve such settlements, and 2) that the proceeds of the condemnation will be split between the landowner and the grantee of the Farmland Preservation Program easement.***

Once the SADC has reviewed and approved the appraisals, it can agree to a negotiated value, so long as that value is not less than the fair market value reflected in the appraisal(s). Further, because ARDA prohibits the SADC from voluntarily re-conveying its interest in farmland preserved properties, the condemning party (the utility company or public body) must first obtain the right to construct their projects through a court order to condemn farmland preserved property before the SADC can consent to the negotiated value.

Compensation

The potential for the condemnation of preserved farmland was contemplated during the establishment of the Farmland Preservation Program and the content of the FPP easement. The amount of the compensation owed to the landowner, versus the grantee, is calculated using the fraction contained in the deed of easement (usually located in paragraph #23). The fraction is a numerical reflection of the relationship between the value of the development easement compared to the value of the farm unpreserved, at the time of farmland preservation. The fraction’s numerator is the per-acre value of the development easement paid to the landowner when the farm was preserved; the denominator is the per-acre value of the property without the development easement on it (or the property’s “fee simple” value) at the time of preservation.

The final negotiated dollar value of compensation resulting from the utility condemnation is multiplied by the fraction, and the resultant figure (in dollars) is paid to the grantee (the owner of the development easement), with the remaining dollars paid to the landowner. For example, if the paragraph 23 fraction is \$10,000/\$15,000 (or 67%) and the appraised total value of a utility taking is \$14,000, then the grantee receives \$9,380 ($\$14,000 \times 0.67$) of the \$14,000 and the landowner receives the remainder, \$4,620 ($\$14,000 \times 0.33$) – see chart below.

Further, if the grantee is a county or nonprofit organization that received a grant from the SADC to help purchase the development easement, then the county/nonprofit must split the amount it received, as a result of the paragraph 23 multiplication, with the SADC based on the percentage of the SADC’s grant to the local government entity or nonprofit. Usually, the SADC provides a cost share grant equal to 60% of the easement value. In the case of a 60% SADC cost share, and using the example above, the grantee would split the \$9,380 so that the SADC would receive \$5,628 and the grantee would keep the remaining \$3,752. To summarize:

Original FP easement value:	\$10,000 per acre
Original fee simple value:	\$15,000 per acre
Paragraph 23 value:	67% ($\$10,000 / \$15,000$)
SADC Grant to County:	60% of easement value
Negotiated value of utility condemnation:	\$14,000
Portion paid to Grantee (Co/SADC/NP):	\$9,380 ($\$14,000 \times 67\%$)
Portion paid to the landowner:	<u>\$4,620</u> ($\$14,000 - \$9,380$)
	\$14,000
SADC’s portion of Grantee payment:	\$5,628 (60% of \$9,380)
County’s portion of Grantee payment:	<u>\$3,752</u> ($\$9,380 - \$5,628$)
	\$9,380

There are rare instances where the deed of easement on a given farm does not contain paragraph 23 due to unique circumstances surrounding the original purchase of the FPP easement, such as the easement having been donated to the SADC, or where the farm property was purchased in fee simple by the SADC and then resold as a preserved farm. In such instances, the SADC will work with the landowner and the condemning party to obtain sufficient information in order to be able to impute a paragraph 23 percentage to the transaction.

It is important to keep in mind that the above explanation and examples do NOT apply to farmland that was not preserved, including road rights-of-way and exception areas existing at the time of preservation, where the landowner continues to own the land free of the farmland preservation deed of easement. In cases in which the condemned land is not subject to the

deed of easement, the proceeds payable for the taking of those lands belong solely to the landowner. As noted earlier, it is important to remember that preserved farm landowners may also be entitled to compensation for such items as crop losses, interference with the planting season, damages to improvements, and such other damages caused by utility project construction, with no obligation to share those payments with the grantee(s).

SADC Administrative Procedure

A little more than two years ago, the SADC recognized the growing number of utility-type condemnation proceedings occurring in the state and sought to streamline its role in processing and completing such transactions. The SADC passed a resolution delegating joint authority to the SADC Executive Director and the Secretary of Agriculture, in his capacity as Chairman of the SADC, to approve appraised and final values and conveyances of development easements of farm properties acquired through eminent domain actions by public bodies, public utilities and interstate natural gas transmission companies. These administrative approvals require no further approval of the SADC unless deemed necessary or appropriate by the Executive Director and the Secretary of Agriculture. As a result of this delegation, SADC staff can perform timely reviews of appraisals, issue approval to settlement amounts agreed to by all parties and prepare all legal paperwork necessary to effectuate the condemnation without the need to wait for monthly SADC meetings to take action.

The SADC understands that going through the condemnation process can be stressful and confusing for many landowners. SADC staff stands ready and willing to assist landowners in reaching a timely and efficient conclusion to the process to minimize disruption to the farming operation. It is important to note, however, that the SADC cannot provide legal advice to landowners nor represent them through the condemnation process.

Questions or concerns regarding the process of condemning preserved farmland should be directed to SADC staff at 609-984-2504, or by email to Steven Bruder at steven.bruder@ag.state.nj.us.