

Freeholders Told Court Ruling A ‘Big Setback’ For Penn East Pipeline

The attorney representing Hunterdon County in the PennEast Pipeline’s suit to condemn state-owned properties, told the Hunterdon County Freeholder Board Tuesday evening that a Federal Appeals Court ruling against the pipeline company earlier this month is ‘the first big setback they’ve had.’

Attorney Timothy Duggan of the Stark and Stark law firm in Lawrenceville said, “The third circuit court of appeals found that Penn East cannot sue the state of New Jersey in federal court, and the state is now dismissed from 43 cases and Hunterdon County is in about 20 of those cases. We believe this is a big victory.”

Freeholder Board Director Suzanne Lagay stated following the meeting, “The Freeholder Board has continued to have deep concerns about the abuse of eminent domain and its affect on preserved farmland and open space that the taxpayers have paid to preserve. This ruling is most welcome.”

Hunterdon County has partnered with the State Agriculture Development Committee in the funding for the preservation of numerous farms targeted by PennEast for an eminent domain taking. Those properties are among the cases dismissed.

On September 10, the Third Circuit held that while the National Gas Act (NGA) delegates the federal government’s power of eminent domain to private gas companies, it does not necessarily delegate the federal government’s exemption from state sovereign immunity. As a result, private entities such as PennEast, acting under the NGA, cannot condemn state-owned property.

Duggan, a Lambertville resident, told the Freeholders, “The ruling puts the project in jeopardy of getting approval from New Jersey Department of Environmental Protection, and it puts the pipeline in a bad situation, jeopardizing the entire pipeline project. It’s the first big setback that they’ve had, other than the delays.”

Duggan advised, “PennEast may try to reroute the pipeline and we don’t think that’s going to work. We also don’t think the case will go to Supreme Court, it might, but we don’t think it will. The Third Circuit ruling is a really solid decision.”

At issue in the case was PennEast Pipeline Company’s suit against the State of New Jersey to condemn state-owned properties to pave the way for construction of a pipeline through the state. The District Court of New Jersey issued a condemnation order and on appeal the State of New Jersey argued that the suit violated the state’s right to sovereign immunity under the Eleventh Amendment.

The Third Circuit found the issue of sovereign immunity particularly concerning in the eminent domain context, given the fact that private parties’ incentives for condemning land might overshadow what the court called “the duty to take care that the laws be faithfully executed.”

