

# **Bond Case Briefs**

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## **EMINENT DOMAIN - VIRGINIA**

### **Palmyra Associates, LLC v. Commissioner of Highways**

**Supreme Court of Virginia - December 17, 2020 - S.E.2d - 2020 WL 7393500**

Department of Transportation (DOT) filed petition in condemnation after recording certificate of take.

The Circuit Court entered order confirming commissioners' award of \$107,131 for the take and setting aside the award for damages to the residue. Landowner appealed.

The Supreme Court held that:

- Landowner's ten-year-old site plans were not admissible to establish damages to the residue;
- Landowner's testimony concerning lost "development potential" was speculative and inadmissible to establish damages to the residue; and
- Invited error doctrine precluded consideration of claim that the trial court erred in putting the parties on terms of either the court confirming the value of the taken property or ordering a new trial.

Landowner's ten-year-old site plans were not admissible in eminent domain action to establish damages to the residue of the property not taken, where site plans had not been approved, landowner had not met conditions which county had imposed on approval, it was unclear whether site plans would require retaining wall, widened road, or bridge, and plans required entrance to proposed development for which landowner would have to gain approval.

Landowner's testimony concerning lost "development potential," which was necessarily rooted in a lost "pad site," was speculative and inadmissible in eminent domain action to show damages to the residue; pad site depended on contingent and speculative site plans, property's development potential was uncertain because the county had imposed certain conditions, which had not been satisfied, the property was situated in a flood plain, which would necessitate adjustments, and the property would need additional infrastructure changes to be developed as a commercial site.

Invited error doctrine precluded consideration of landowner's claim on appeal in eminent domain action that the trial court erred in putting the parties on terms of either the court confirming the value of the taken property or ordering a new trial, where landowner did not object at that time that the trial court was "putting it on terms," but instead agreed that the circuit court should confirm the award rather than grant a new trial.