

# **Bond Case Briefs**

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## **EMINENT DOMAIN - VIRGINIA**

### **Board of Supervisors of County of Albemarle v. Route 29, LLC**

**Supreme Court of Virginia - June 2, 2022 - S.E.2d - 2022 WL 1787517**

Shopping center owner filed complaint and petition for review of alleged zoning violation in which county sought to enforce transit payments which were condition of rezoning approval.

The Circuit Court overruled county's demurrer and denied plea in bar, denied county's motion to strike the evidence, and, following trial, denied county's renewed motion to strike and entered judgment for owner. County appealed.

The Supreme Court held that:

- Unconstitutional conditions doctrine applied, and
- Commuter bus route did not bear a nexus to, nor was proportional to, the impact of shopping center on traffic, and thus conditional proffer to contribute to a public transportation service was an unconstitutional taking.

Unconstitutional conditions doctrine applied to shopping center developer's voluntary conditional proffer to contribute cash to a public transportation service provided to the shopping center project; proffer was a conditional proffer which was agreed to for the purpose of receiving a land-use permit, which required the amendment of a zoning ordinance, and shopping center owner claimed that proffer could not be enforced if the payments demanded did not have a nexus to the projected impacts resulting from the rezoned development.

Commuter bus route did not bear a nexus to, nor was proportional to, the impact of shopping center on traffic, and thus shopping center developer's voluntary conditional proffer to contribute cash to a public transportation service, as condition for zoning change, was an unconstitutional taking, where bus commuter route at the center actually brought additional vehicular traffic to the center, route did not run during the times at which traffic to the center was greatest, there was little-to-no discussion at county meeting concerning the identification or mitigation of traffic impacts resulting from the transportation project, and board members openly stated that ridership on the route would increase as the population grew in commuter communities.