

HIGHWAYS, BRIDGES AND FERRIES: COMMONWEALTH TRANSPORTATION BOARD, ETC.

**Commonwealth Transportation Commissioner must value outdoor advertising signs in eminent domain cases using fair market valuation.**

The Honorable H. Morgan Griffith  
Member, House of Delegates  
December 20, 2001

You inquire regarding the valuation of outdoor advertising signs in eminent domain proceedings.

You advise that § 33.1-95.1(2) of the *Code of Virginia* permits the owner of any building, structure, or improvement subject to a taking under the power of eminent domain to present evidence of the "fair market value" of such building, structure, or improvement. You relate that a right-of-way operations manual published by the Department of Transportation recognizes that outdoor advertising signs are to be treated as tenant-owned improvements and considered as part of the real estate. The manual sets forth criteria for appraisers to consider in determining the value of signs. You have been informed that the Department of Transportation uses only the "cost approach" for valuation of outdoor advertising signs.

In the case of *Lamar Corporation v. City of Richmond*, the Supreme Court of Virginia considers the question "whether a lessee, who erects a billboard on the property he leases, has an interest in either the billboard or the underlying property which entitles him to a separate condemnation proceeding to ascertain just compensation when the underlying leasehold property is condemned."<sup>1</sup> The Court concludes:

[W]e have adopted the general rule that, as between the condemnor and lessee, structures attached to the condemned real estate but owned by the lessee are realty.

....

The value of the structures is included in the total award made for the freehold, even though the lessee has, by the terms of his lease, expressly reserved the right to remove them during or at the end of his term. Title to the structures passes to the condemnor as an incident of the entire taking.<sup>[2]</sup>

Section 33.1-95.1 begins with the phrase "[n]otwithstanding anything to the contrary contained in [Chapter 1 of Title 33.1]<sup>[3]</sup> or in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25." This phrase indicates a legislative intent to override any potential conflicts with earlier legislation.<sup>4</sup> Furthermore, § 33.1-95.1 sets forth certain requirements to be followed in the exercise of the power of eminent domain. The Commonwealth Transportation Commissioner is required to notify the owner of any "building, structure, or other improvement" of his intent to exercise the power resulting in the taking of such property.<sup>5</sup> The owner, then,

"may present evidence of the fair market value" of such property.<sup>6</sup> Section 33.1-95.1(4) defines the term "fair market value" as used in the statute to mean

the price that the real property would bring if it were offered for sale by one who wanted to sell, but was under no necessity, and was bought by one who wanted to buy, but was under no necessity.

There are several rules of statutory construction that I must apply to this matter. Obviously, the primary goal of statutory construction "is to ascertain and give effect to legislative intent."<sup>7</sup> "The manifest intention of the legislature, clearly disclosed by its language, must be applied."<sup>8</sup> The use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.<sup>9</sup> Statutes are to be read as a whole rather than in isolated parts.<sup>10</sup> The reading of a statute as a whole influences the proper construction of ambiguous individual provisions.<sup>11</sup> Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>12</sup>

The language of these statutory provisions pertaining to the Commissioner's exercise of the power of eminent domain resulting in the taking of a structure or other improvement is plain and obvious. The Commissioner must notify the owner of his intent to take such property. The owner of such property may present evidence of the fair market value of such property. Fair market value is basically that which a ready and willing seller is prepared to accept from a ready and willing buyer. In the case where the owner of such property "is different from the owner of the underlying land," he "shall not be allowed to proffer any evidence of value which the owner of the underlying land would not be permitted to proffer" if such property belonged to the land owner.<sup>13</sup>

Accordingly, I must conclude that § 33.1-95.1 requires the Commonwealth Transportation Commissioner to value outdoor advertising signs in eminent domain cases using the fair market valuation set forth in the statute.

<sup>1</sup>241 Va. 346, 348, 402 S.E.2d 31, 32 (1991).

<sup>2</sup>*Id.* at 351-52, 402 S.E.2d at 34.

<sup>3</sup>Va. Code Ann. §§ 33.1-1 to 33.1-223.9 (Michie Repl. Vol. 1996 & Supp. 2001).

<sup>4</sup>See Op. Va. Att'y Gen.: 1998 at 19, 21; 1996 at 197, 198; 1987-1988 at 1, 2.

<sup>5</sup>Section 33.1-95.1(1) (Michie Supp. 2001).

<sup>6</sup>Section 33.1-95.1(2).

<sup>7</sup>Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983) ("plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction"); see also Vollen v. Arlington Co. Electoral Bd., 216 Va. 674, 679, 222 S.E.2d 793, 797 (1976); 1993 Op. Va. Att'y Gen. 237, 239.

<sup>8</sup>Barr v. Town & Country Properties, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

<sup>9</sup>See Andrews v. Shepherd, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1999 at 44, 45; 1991 at 238, 240.

<sup>10</sup>See Gallagher v. Commonwealth, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964) ("every provision in or part of a statute shall be given effect if possible" (quoting Tilton v. Commonwealth, 196 Va. 774, 784, 85 S.E.2d 368, 374 (1955))); Op. Va. Att'y Gen.: 1996 at 26, 27; 1994 at 93, 95; 1985-1986 at 177, 178.

<sup>11</sup>See Rountree Corp. v. City of Richmond, 188 Va. 701, 711-12, 51 S.E.2d 260-61 (1949).

<sup>12</sup>See 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1999); Op. Va. Att'y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

<sup>13</sup>Section 33.1-95.1(5).

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