COURT OF APPEALS OF VIRGINIA

Record No. 1145-25-4

OMAR MOHAMMAD EL-RASHED, ET AL.
v.
COMMISSIONER OF HIGHWAYS FOR THE COMMONWEALTH OF VIRGINIA

Present: Chief Judge Decker, Judges AtLee and Callins
Argued at Fredericksburg, Virginia

Opinion Issued November 10, 2026

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Stephen C. Shannon, Judge[1]

Brian G. Kunze (Blake A. Willis; Waldo & Lyle, P.C., on briefs), for appellants.

Nancy C. Auth, Senior Assistant Attorney General (Jason S. Miyares,[2] Attorney General; Leslie A. T. Haley, Deputy Attorney General; Christian A. Parrish, Senior Assistant Attorney General; Scott W. Carpenter, Assistant Attorney General; George R. A. Doumar; Daniel R. Hernandez; Doumar Martin PLCC, on brief), for appellee.

PUBLISHED OPINION BY
CHIEF JUDGE MARLA GRAFF DECKER

Omar Mohammad El-Rashed and Eliana Eyad Albelbaisi appeal the decision of the circuit court in favor of the Commissioner of Highways in this eminent-domain case. They challenge the court's ruling excluding evidence pertaining to their claim for additional compensation related to a temporary construction easement taken by the Commissioner over a small portion of their residential property. Their assignments of error suggest the belief that they were entitled to compensation not only for the rental value of that temporary easement but also for the amount by

[1] Judge Patrick M. Blanch ruled on the pre-trial motion *in limine*. Judge Shannon entered the final order based on the parties' negotiated settlement.

[2] Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

which they claim the highway expansion project as a whole permanently reduced the value of their entire parcel. El-Rashed and Albelbaisi also seek attorney fees and costs "incurred in advocating for . . . just compensation." We hold that the circuit court did not err and also conclude that the appellants have not established an entitlement to financial reimbursement. We therefore affirm the circuit court's ruling and deny the request for attorney fees and costs.

BACKGROUND

El-Rashed and Albelbaisi (the landowners) owned a home and the parcel of land on which it was located in McLean, Virginia (the property). Before March 2023, the portion of Interstate 495 (I-495) in that area was an eight-lane highway, which was separated from the landowners' property by a sound wall and a wooded area. The Virginia Department of Transportation (VDOT) owned a right-of-way adjacent to the landowners' property, located between their property and the sound wall. Trees were located on both the right-of-way and the landowners' property.

In March 2023, VDOT initiated legal proceedings under Virginia's eminent-domain law to establish a temporary construction easement (TCE) over a small portion of the landowners' property. It did so by filing a "certificate of take" as defined in Code § 33.2-1000. *See, e.g.*, Code §§ 33.2-1016 (outlining the general procedure for condemnation by the Commissioner of Highways), -1022 (addressing the required contents of a certificate of take). The easement that VDOT sought covered a strip of land less than ten feet wide at the rear of the property totaling 1,458 square feet.[3] VDOT calculated the rental value of the TCE, which was for an unknown duration, as $29,700. The breakdown of that sum was $1,500 for "[n]atural trees/vines" and $28,200 for "Temporary Construction Easement (Slopes)." The certificate stated that the

[3] The property as a whole was approximately 20,198 square feet, meaning that the TCE property was slightly more than seven percent of the landowners' parcel.

Commissioner estimated the amount "to be the fair market value of the . . . interest" in the land and "damages to the remainder, if any." The related petition in condemnation provided that the Commissioner attempted to buy the temporary easement, "including any and all damages, from the owner[s] thereof" but "ha[d] been unable . . . to agree upon the purchase price."

The landowners filed an answer to the petition. They alleged that they rejected the Commissioner's offer to purchase the TCE because "it did not represent the constitutionally-required just compensation to which the[y we]re entitled." They also sought attorney fees and costs. The landowners received a check for $29,700 while they continued to pursue their claim that they were entitled to a greater sum.

During the pre-trial discovery process, the landowners identified appraiser Dennis Gruelle as an expert witness and provided a summary of his expected testimony. According to the landowners, Gruelle placed the rental value of the small parcel for an estimated period of five years at $50,495 and valued "landscaping being acquired by VDOT [at] $3,000," for a total of $53,495 related directly to the TCE. He also opined that the TCE and the highway construction project itself would reduce the value of the entire property by just under $500,000. Gruelle claimed that factors contributing to that reduction included the "elimination . . . of trees," "reconstruction of the sound wall closer to the subject property," and the "close proximity of the newly constructed I-495 travel lanes."

The Commissioner filed a motion *in limine* to exclude that portion of Gruelle's testimony claiming the almost $500,000 in damages. The Commissioner contended these damages were "unrelated to the acquisition" of the TCE and therefore were "not compensable." Put another way, he argued that because the only "public use" in question was the TCE—not the entire I-495 project—the landowners' damages were limited to those caused by the TCE. He explained that the acquisition itself was merely "the temporary rental of a sliver of land," which would "mak[e]

no permanent changes to the [acquisition] property and caus[e] no damages." The Commissioner added that the damages claimed would occur due to lawful activity on property that VDOT already owned,[4] therefore not resulting in a compensable taking.[5] The landowners replied that 2019 amendments to Code § 25.1-230 required considering damages to the remainder property. Additionally, they argued that the public use was the entire I-495 project, not simply the TCE.

At oral argument on the motion, the parties and the court addressed VDOT's constitutional and statutory duties. Following argument, the court granted the motion *in limine*, holding that Gruelle could not testify about damages "flowing from the overall roadway project" because only damages flowing from the TCE were recoverable. It also ruled that Gruelle could "not testify as to non-compensable factors . . . shared by the entire public," including the "loss of buffer . . . trees . . . from VDOT's [p]roperty, roadway or construction noise, vibration, or dust." Tracking the language of Virginia's Takings Clause, the court explained that the law permitted recovery for "damages to the residue that flow[ed] from the take." *See* Va. Const. art. I, § 11, cl. 3 (addressing "damages to the residue caused by the taking").

After the circuit court granted the motion, the landowners obtained a revised valuation from Gruelle. They represented that Gruelle opined that factors flowing solely from the TCE during the construction project—including noise, dust, vibration, and informal use of the rest of the landowners' property as a means of ingress to and egress from the TCE—reduced the value of the residue by five percent or $124,850.

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[4] The record reflects that some "[n]atural trees[and]vines" were on the landowners' property. The TCE price, though, included $1,500 for the removal of those trees.

[5] The Commissioner also suggested that the damages claimed to the "neighboring property," the residue, were speculative. The landowners disagreed. The circuit court declined to rule on this argument.

The Commissioner filed a second motion *in limine* seeking to exclude the new dollar figure. The landowners again opposed the motion. Prior to obtaining a ruling on the second motion, however, the parties entered into a settlement. They stipulated that "the value of just compensation" for the TCE itself was $29,700, but the settlement preserved the landowners' right to appeal the court's ruling on the first motion *in limine*, which had denied their additional claim for damages to the residue property. The court entered a final order based on the settlement.[6] The order specifically stated that the "judgment for $29,700 [wa]s binding on the parties, except for any claim for damage to the residue if appellate review result[ed] in a reversal of th[e trial court's evidentiary ruling] and a remand for further proceedings on that issue."[7]

ANALYSIS

The landowners' assignments of error challenge the circuit court's ruling excluding evidence of the reduction in value of their property that they claim was taken or damaged through eminent domain. They suggest that they were entitled to compensation for the amount by which the entire I-495 expansion project permanently reduced the value of their parcel as a whole.[8] The Commissioner, by contrast, contends that they were entitled only to the amount by which the TCE reduced that value. The landowners also seek attorney fees and costs.

[6] Two days after entry of the final order, counsel for the landowners filed a 524-page proffer, composed of a six-page summary and four exhibits. The Commissioner objected to the proffer. Neither party requested a hearing on the issue, and the circuit court did not rule on it.

[7] The order also required the Commissioner to pay $5,441 "for the cost of discovery for [the landowners'] appraiser" and $2,000 to them for the cost of deposition transcripts.

[8] The appellate record provides no indication that the landowners sold or wished to sell their home. It also does not reflect the ultimate duration of the TCE or the I-495 expansion project. The landowners alleged in the circuit court that, according to their expert, the duration of the TCE was coextensive with the I-495 expansion project and the estimated duration was five years from the commencement of the TCE in March 2023. Due to the parties' stipulation below to the amount of compensation due for the TCE itself, however, as well as this Court's decision affirming the ruling of the circuit court, that duration is not relevant in this appeal.

I. Standard of Review

"'[A] trial court's decision to admit or exclude evidence,' including in eminent domain proceedings, is reviewed for 'abuse of discretion.'" *Palmyra Assocs., LLC v. Comm'r of Highways*, 299 Va. 377, 384 (2020) (alteration in original) (quoting *Dean v. Bd. of Cnty. Supervisors*, 281 Va. 536, 540 (2011)). "Discretion means a 'range of choice' . . . ." *Id.* (quoting *Reyes v. Commonwealth*, 297 Va. 133, 140 (2019)). "This bell-shaped curve of reasonability governing our appellate review rests on the venerable belief that the judge closest to the contest is the judge best able to discern where the equities lie." *Palmer v. R.A. Yancey Lumber Corp.*, 294 Va. 140, 164 (2017) (quoting *Minh Duy Du v. Commonwealth*, 292 Va. 555, 564 (2016)). Consequently, when applying this standard, an appellate court "will not reverse a trial court's . . . discretionary decision [unless it] exceeded the 'outermost limits of the range of choice available.'" *Palmyra Assocs.*, 299 Va at 384 (quoting *Reyes*, 297 Va. at 140). Additionally, if a "trial court's decision is 'influenced by [a] mistake of law,'" that court necessarily has "abuse[d its] discretion." *Comm'r of Highways v. Karverly, Inc.*, 295 Va. 380, 388 n.7 (2018) (first alteration in original) (quoting *Martin v. Lahti*, 295 Va. 77, 88 (2018)). But to the extent that the assignments of error here present questions of constitutional or statutory construction, the appellate court reviews these issues de novo. *Palmer v. Atl. Coast Pipeline, LLC*, 293 Va. 573, 577 (2017).

II. Constitutional and Statutory Framework

This appeal involves the meaning of the "just compensation" to which landowners are entitled under the Virginia Constitution and Code §§ 1-219.1 and 25.1-230 when their property is condemned pursuant to the eminent-domain power for the purpose of a temporary easement. Virginia's Constitution provides that "no person shall be deprived of his . . . property without due process of law" and "[n]o private property shall be damaged or taken for public use without

just compensation." Va. Const. art. I, § 11, cls. 1, 3; *see McKeithen v. City of Richmond*, 302 Va. 422, 435-36 (2023); *see also Tidewater Ry. Co. v. Shartzer*, 107 Va. 562, 564-65 (1907) (recognizing that since 1902, the Takings Clause has mandated just compensation not just for takings of private property but also for damage to such property).

In 2005, the United States Supreme Court issued the landmark decision of *Kelo v. City of New London*, 545 U.S. 469, 483-84 (2005), upholding the taking of non-blighted private property for economic development as a valid "public use" under the Fifth Amendment to the United States Constitution. In 2012, at least partially in response to *Kelo*'s potential effect on the definition of "public use," Virginia significantly expanded its own constitutional takings provision. *See* 2012 Va. Acts chs. 564, 684; Stephen R. McCullough, *Virginia Constitutional Law* § 3.07[16][a], at 146 (2026). The amendments, among other things, added a definition of "just compensation" clarifying the common-law definition. *See* 2012 Va. Acts chs. 564, 684; *see* McCullough, *supra*, § 3.07[16][b], at 146-47 (quoting Va. Att'y Gen. Op. No. 11-135, at 6, 2012 Va. AG LEXIS 3, at *18 (Jan. 26, 2012)). The Virginia Takings Clause now defines "just compensation" as "no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking," with the "terms 'lost profits' and 'lost access' . . . to be defined by the General Assembly." Va. Const. art. I, § 11, cl. 3; *see* 2012 Va. Acts ch. 564; *see also* McCullough, *supra*, § 3.07[16][b], at 146 (recognizing that the definition added "lost access" and "lost profits" (citing Va. Att'y Gen. Op. No. 11-135, at 6, 2012 Va. AG LEXIS 3, at *18)).

Various Virginia statutes create a framework for implementing these rights. As relevant here, Code § 1-219.1 defines "public use[]" as including "the acquisition of property . . . for construction, maintenance, or operation of public facilities by public corporations." Code § 1-219.1(A)(ii); *see* 2007 Va. Acts chs. 882, 901, 926 (first codifying a definition of the term

"public uses" contained in Virginia's Takings Clause). The statute expressly lists the Commonwealth as a "[p]ublic corporation" and defines "[p]ublic facilities" to include "transportation facilities [such as] highways . . . [and] related easements." Code § 1-219.1(B) (emphasis omitted). The TCE here, therefore, qualified as a public use.

Code § 25.1-230 provides both a summary of the procedure for determining "just compensation" and a more detailed description of its application. In summary form, it states that "just compensation" requires "ascertain[ing] (i) the value of the property to be taken and (ii) the damages, if any, that may accrue to the residue."[9] Code § 25.1-230(A). The statute also sets out a more specific method for "determining the market value of *the property* before the taking" and "the market value of *the residue* after the taking." *Id.* (emphases added). Both the "before" and "after" definitions ostensibly permit "consider[ing] everything a buyer and seller in the marketplace would reasonably consider." *Id.* But only the "after" definition allows considering any impact of "the public use for which the property is being acquired" on the property's fair market value. *Id.*

It is in light of this constitutional and statutory framework that the Court considers the landowners' assignments of error. And we take additional guidance from settled principles of constitutional and statutory construction. Those principles include the fact that "[e]minent domain statutes . . . must be 'strictly construed.'" *See Norfolk S. Ry. v. State Corp. Comm'n*, 304 Va. 284, 292 (2025) (quoting *PKO Ventures, LLC v. Norfolk Redev. & Hous. Auth.*, 286 Va. 174, 182 (2013)). Even so, though, this requirement does not contravene the principle that a reviewing appellate court is "bound by the plain meaning of the [constitutional and] statutory

[9] The statute also addresses any "specific enhancement in value" to the residue "caused by the taking and public use . . . for which [the property] is condemned." Code § 25.1-230(A). A related statute defines lost profits and lost access, for which the Takings Clause permits recovery. Va. Const. art I, § 11, cl. 3; Code § 25.1-230.1; *see infra* footnote 12. None of these considerations are at issue in this appeal.

language." *Ramsey v. Comm'r of Highways*, 289 Va. 490, 495 (2015) (quoting *Hale v. Bd. of Zoning Appeals*, 277 Va. 250, 269 (2009)) (statutes); *see Scott v. Commonwealth*, 247 Va. 379, 384 (1994) (constitution); *see also Smith v. Larrowe*, 86 Va. App. 276, 288 (2025) (explaining that "where there is nothing to construe, the strict-construction rule does not apply"). If the language of a statute can be read in more than one way, the appellate court must "place . . . terms in context" and treat "the several parts . . . harmonious[ly]" to "carry out the legislative intent." *Town of Iron Gate v. Simpson*, 82 Va. App. 38, 57 (2024) (quoting *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 14 (2019)).

Two additional principles are particularly important here. First, courts presume that statutes do not "change the common law unless the legislative intent to do so is plainly manifested." *Isbell v. Com. Inv. Assocs.*, 273 Va. 605, 613 (2007) (quoting *Herndon v. St. Mary's Hosp.*, 266 Va. 472, 476 (2003)); *see Mertz v. Sullivan*, 82 Va. App. 762, 789 (2024). Second, a reviewing court must "'construe a statute to avoid any conflict with the Constitution' of Virginia . . . even when the statute's plain language is unambiguous and not absurd." *Va. Marine Res. Comm'n v. Chincoteague Inn*, 287 Va. 371, 380 (2014) (first alteration in original) (quoting *Commonwealth v. Doe*, 278 Va. 223, 229 (2009)).

III. Public Use and the Code § 25.1-230 Factors

The parties do not dispute that the use to which the Commissioner put the property was a public use, providing the landowners with a constitutional entitlement to just compensation. But the landowners challenge, for purposes of calculating any damages to their residue property, what that public use was. The Commissioner calculated damages based on the public use of the TCE, meaning the damages-to-the-residue portion of just compensation could be only those damages flowing from the TCE. The landowners argue that the public use was VDOT's I-495 project in its entirety, meaning recoverable damages to the residue would be those flowing from

the highway project as a whole, resulting in much higher compensation. They rely in part on the amendment to Code § 25.1-230 that allows consideration of "everything a buyer and seller in the marketplace would reasonably consider." They also contend that the circuit court erred by finding that some of the damages they claimed to the residue property were "shared by the entire public," thereby compelling the legal conclusion that they were not entitled to collect for those damages. The landowners' arguments are both factual (relating to the language used in the governing documents) and legal (based on applicable constitutional, statutory, and common law). We consider these arguments in turn.

A. Impact of Language in the Governing Legal Documents

We first examine the landowners' fact-based argument that the certificate of take, petition in condemnation, and Commissioner's answers to their requests for admission all define the particular public use as the entire I-495 project. We disagree. Neither the certificate of take nor the petition employs the words "public use" or even "use." The certificate provides that the take is "*in conjunction with* the construction, reconstruction, alteration, maintenance and repair of [the I-495 s]ystem, and for all other purposes incidental thereto." (Emphasis added). The certificate also refers to the take as "required for" the much more limited purpose of "the proper construction of cut and/or fill slopes." Finally, the petition refers to the TCE that is described in the certificate of take. The petition, similar to the certificate, uses the language "in conjunction with" and "incidental thereto"—not directly "for," "for the purpose of," or the like. As counsel for the Commissioner argued at the motion hearing, the public use was "the moving [of] equipment in and out[,] . . . not the construction of the overall highway." Further, the Commissioner's written admissions conceded nothing more with regard to "public use" than described in the certificate of take and petition.

In sum, none of these documents provide factual support for the result the landowners suggest. So we turn to the claimed legal bases for their assignments of error.

B. Impact of Constitutional and Statutory Language and the Common Law

The 2012 amendments to Virginia's Takings Clause define "just compensation" as "no less than the value of *the property taken*, lost profits and lost access, and *damages to the residue caused by the taking*," with the "terms 'lost profits' and 'lost access' . . . to be defined by the General Assembly." Va. Const. art. I, § 11, cl. 3 (emphases added); *see* 2012 Va. Acts ch. 564. By stating that the "terms 'lost profits' and 'lost access'" were "to be defined by the General Assembly"—but *not* mentioning other phrases in the amended language, including "the value of the property taken" and "the damages to the residue caused by the taking"—the new constitutional language expressed an intent to follow the existing statutes and common law relating to valuation and damages in all other ways. *See* Va. Const. art. I, § 11, cl. 3; *cf. Miller & Rhoads Bldg. v. City of Richmond*, 292 Va. 537, 544 (2016) ("[T]he mention of specific items in a statute implies that all items omitted were not intended to be included." (quoting *Va. Dep't of Health v. NRV Real Est.*, 278 Va. 181, 188 (2009))). Additionally, we must "'construe[the] statute to avoid any conflict with the Constitution' of Virginia . . . even when the statute's plain language is unambiguous and not absurd." *Chincoteague Inn*, 287 Va. at 380 (quoting *Doe*, 278 Va. at 229).

As a result, we hold that the General Assembly's 2019 amendments to Code § 25.1-230—the first amendments to that code section since both the 2005 decision in *Kelo* and the 2012 amendment of Virginia's Takings Clause—reflect no intention to change the law as to property valuation and damages not involving lost profits or lost access. Similarly, Virginia's Attorney General opined that the 2012 constitutional amendment would not change the law to allow "owners of property [merely] located in the vicinity of, or affected by, an unpopular public

facility to recover damages when none of their land has been taken." Va. Att'y Gen. Op. 11-135, at 2, 2012 Va. AG LEXIS 3, at *3.[10] The Attorney General provided examples of "official actions that would remain unaffected by the [constitutional] amendment." McCullough, *supra*, § 3.07[16][c], at 147. Included among those examples was that "[t]he design and construction of highways and roads . . . generally is not compensable . . . provided that a reasonable means of [access, i.e.,] ingress and egress[,] for an abutting property remains." *Id.* (third alteration in original) (quoting Va. Att'y Gen. Op. No. 11-135, at 2, 2012 Va. AG LEXIS 3, at *3-4).[11] And the General Assembly's subsequent definitions of "lost profits" and "lost access," which appear in a different code section, are not relevant to this appeal. *See* Code § 25.1-230.1.[12]

The landowners focus on the language of Code § 25.1-230(A), emphasizing its requirement to consider "everything a buyer and seller in the marketplace would reasonably consider, including the public use for which the property [wa]s . . . acquired." Under the plain meaning of this language, however, the easement property was "acquired" on only a temporary basis. *See Morgan v. City of Norfolk*, 86 Va. App. 535, 549 ("Just compensation for a temporary taking is the fair rental value of the property taken for the duration of the take."), *petition for*

[10] Opinions of the Attorney General of Virginia are "not binding" on the courts of the Commonwealth but may be considered "persuasive" authority. *See Nejati v. Stageberg*, 286 Va. 197, 203 (2013); *Jennings v. Commonwealth*, 82 Va. App. 692, 703-04 (2024).

[11] The Attorney General noted the "threshold requirement [of] damages in the constitutional sense," and he explained that proving such damages requires evidence of "a legal invasion . . . amount[ing] to a loss of property rights." Va. Att'y Gen. Op. 11-135, at 7-8, 2012 Va. AG LEXIS 3, at *22-23. *See infra* text accompanying footnotes 16-18.

[12] The statutory definition of "lost profits" applies only to "the owner of a business or farm operation." Code § 25.1-230.1(C); *see* Code § 25.1-100 (defining lost profits). "[L]ost access" covers only a "loss in market value of the remaining property from lost access." Code § 25.1-230.1(B); *see* Code § 25.1-100 (defining lost access). The instant case does not involve a business or farm. It also does not implicate a loss of access to the landowners' property due to the taking, which affected only a small strip at the back of their property that abutted the I-495 highway system and preexisting sound barrier. The landowners do not argue otherwise.

appeal refused, No. 260298 (Va. Sept. 29, 2026). So definitionally, the "public use" was limited to that occurring during the temporary acquisition. *See* 9 Julius L. Sackman, *Nichols on Eminent Domain* § G32.08[1][b], [1][e], [6] (rev. 3d ed. 2026) (explaining that the value of most *temporary* easements under a pure version of the before-and-after rule, a common method for valuing permanent easements, is zero); *see also Norfolk S. Ry.*, 304 Va. at 296 (observing that one definition of "'public use' connotes a possession, occupation, and enjoyment of the land . . . by [a] public agenc[y]" (quoting *Hoffman Fam., LLC v. City of Alexandria*, 272 Va. 274, 289 (2006))). Under Virginia's common law, too, damages to the residue from the overarching public use have been awarded only when a portion of the landowner's property is taken *permanently* rather than temporarily. *See City of Staunton v. Aldhizer*, 211 Va. 658, 660-62 (1971) (addressing damages available for harm to the residue for a permanent taking for a new road); *Colonial Pipeline Co. v. Lohman*, 207 Va. 775, 780-82 (1967) (reviewing the value awarded for damages to the residue after the taking of a permanent easement); *Appalachian Elec. Power Co. v. Gorman*, 191 Va. 344, 346, 349 (1950) (considering the admissibility of evidence and the amount of compensation awarded following the taking of a permanent easement).

Most importantly, Virginia's Takings Clause specifically provides that "just compensation" includes two components: "no less than the value of the property taken" and "damages to the residue *caused by the taking*."[13] Va. Const. art. I, § 11, cl. 3 (emphasis added);

[13] The landowners did not contend below and do not argue on appeal that the "no less than" language permitted the legislature to authorize greater damages for a taking through eminent domain than those specifically enumerated in the amended Takings Clause. *See* Rules 5A:18, 5A:20(c), (e). *See generally State Highway & Transp. Comm'r v. Dennison*, 231 Va. 239, 242 (1986) (holding that the Takings Clause requires compensation that is "just to the condemnor and condemnee alike," "fairly compensat[ing]" the condemnee "for what is taken" but "never . . . penaliz[ing]" the condemnor simply "because it has a 'deep pocket'"); *see State Highway & Transp. Comm'r v. Parr*, 217 Va. 522, 524-25 (1976) (explaining under Virginia's Takings Clause that "a landowner is entitled to 'just compensation'[] but not to bonus compensation").

see also Chincoteague Inn, 287 Va. at 380 (holding that statutes must be interpreted in light of the Virginia Constitution). Here, the only property *taken* was the TCE. Under the plain language of the Takings Clause, therefore, the damages to the residue that are recoverable are expressly those "*caused by the taking*"—the *temporary* construction easement. Due to the temporary nature of the taking, the damages to the residue itself that are recoverable through eminent domain are necessarily also measured in temporary terms.[14] As the circuit court in the instant case expressly concluded, the landowners are not entitled to damages that flow only indirectly from the larger project of which the specific temporary taking was a significantly smaller part.[15] Under the language of Virginia's Takings Clause, damages incurred due to a temporary taking are recoverable only if a sufficient causal connection exists between the *temporary* taking and the claimed harm of *permanent* diminution in value.

Longstanding principles of real property law in Virginia cases support this approach. In *Byler v. Virginia Electric & Power Co.*, 284 Va. 501, 509 (2012), the Supreme Court of Virginia emphasized that a reduction in a property's value is compensable only if it is caused by damage to a property right. The bundle of rights accompanying the rental or ownership of real property includes the right to possession and enjoyment, as well as the right to exclude others. *See Livingston v. VDOT*, 284 Va. 140, 154-55 (2012); *Pui Ho v. Rahman*, 79 Va. App. 677, 690 (2024).[16] Virginia's Takings Clause does not "authorize a remedy for every diminution in the

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[14] This does not mean that only damages for temporary harms are recoverable. Instead, any compensable harm must be caused by the temporary taking. *See infra* footnote 15.

[15] The landowners would still be entitled to direct damages to the residue resulting from VDOT's use of the acquisition property, such as physical damage to the residue's landscaping or residence.

[16] Both *Livingston*, 284 Va. at 145, and *Byler*, 284 Va. at 503, involved inverse-condemnation suits. Inverse condemnation is a cause of action for a "de facto violation[]" of Virginia's Takings Clause—by allegedly depriving a landowner of property rights without a prior eminent-domain taking. *AGCS Marine Ins. v. Arlington County*, 293 Va. 469, 477 (2017).

value of property that is caused by a public improvement." *Byler*, 284 Va. at 509 (quoting *Shartzer*, 107 Va. at 571). The fact that a property becomes "'less valuable, marketable[,] and desirable' because [it is] no longer suitable for [its] 'highest and best use' as [a] residential propert[y]" is simply not enough. *Id.* And the Supreme Court of Virginia has made clear that the 2012 amendment to Virginia's Constitution "did not add any [new] sticks to [the] bundle of property rights." *Palmer*, 293 Va. at 584; *see also United States v. Craft*, 535 U.S. 274, 278 (2002) ("State law determines . . . which sticks are in a person's bundle.").

Under settled Virginia law, two requirements must be satisfied to recover for damages to any of the rights in the bundle, including possession, enjoyment, and exclusion. *See Livingston*, 284 Va. at 155-56.[17] First, the damages must flow "directly" from the public use, meaning "physical[ly] . . . to the *corpus* or to some right of property appurtenant []to [it]." *Id.* (first quoting *City of Lynchburg v. Peters*, 156 Va. 40, 49 (1931); and then quoting *Lambert v. City of Norfolk*, 108 Va. 259, 265 (1908)). Second, the damages must flow "specially," meaning "in a manner not common to [both] the property owner and to the public at large." *Id.* at 156 (quoting *Peters*, 156 Va. at 49).

The permanent damages for the alleged decrease in the value of the residue property sought by the landowners here do not satisfy these requirements. First, the claimed damages are not "direct[]" because they do not flow from the temporary easement, as required by the Takings

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Inverse-condemnation holdings can apply in eminent-domain proceedings. *See id.* at 475-77, 479 (noting that both types of proceedings "arise[] out of . . . Article I, Section 11" of the Constitution of Virginia).

[17] The landowners, on brief, mentioned only the right to exclude others and did not discuss bundle-of-rights concepts or related case law in any depth. At oral argument, their counsel responded to questions about quiet use and enjoyment but focused on what counsel termed the damage to their property in the form of noise, vibration, and the like. Even so, the Commissioner analyzed the claim under bundle-of-rights concepts, and a discussion that includes Virginia's common-law treatment of such rights provides a useful lens through which to evaluate the landowners' claims.

Clause. *See id.* at 155-56 (quoting *Peters*, 156 Va. at 49). Instead, they flow from the I-495 expansion project as a whole. Second, the record does not establish that the limited rights at issue in this appeal are "special[]." *Id.* at 156 (quoting *Peters*, 156 Va. at 49). It is true that the landowners have likely suffered damages that flow "specially" to them *from the TCE*, such as construction noise, dust, and the like. Those damages, however, last only for the duration of the TCE, and the sum to which the landowners stipulated as payment for the TCE definitionally included compensation for that category of damages.[18] The landowners also challenge ongoing interference with the use and enjoyment of their entire parcel, as well as the residue's corresponding reduction in market value, because of the overarching I-495 construction project. But those harms do not flow "specially" to them. Instead, those harms flow to all nearby landowners from the entire I-495 project.

Relatedly, the landowners suggest that the circuit court erred by finding that some of the damages they claimed to the residue property were "shared by the entire public," compelling the conclusion that they were not entitled to collect for those damages. They contend that their claimed "damages [including] the loss of buffer . . . trees, roadway or construction noise, vibration, or dust, [are] specific to [their] property and [are] not and c[an]not be shared by the entire public."

This argument also fails. The landowners have no legal basis for compensation for any buffer trees the Commonwealth removed from its own land, so evidence about the impact of any such removal and any monetary value placed on it is irrelevant. With regard to buffer trees on the acquisition property that were damaged or removed during the period of the temporary

[18] The landowners initially challenged VDOT's valuation of $29,700 for the TCE, contending that it was worth $53,495. Nevertheless, they later entered into the partial settlement agreement. In doing so, they preserved their right to challenge the exclusion of their evidence of a permanent reduction in value *to the residue* from the entire I-495 project but simultaneously stipulated to the lower value for the TCE itself.

easement, the language in the certificate of take expressly provides that the sum paid by the Commissioner included compensation for those damages. Further, to the extent that VDOT's work on the acquisition property caused roadway or construction noise, vibration, or dust inhibiting enjoyment of the acquisition property or residue, the landowners were likewise compensated for that loss by the sum paid for the TCE. In fact, the landowners stipulated that sum was appropriate for the property acquired and damages caused to the residue based on that acquisition. *See supra* footnote 18. The only challenge they preserved for appeal was to the ruling that they were not entitled to damages from the I-495 project as a whole. So to the extent that the claimed damages were not unique or "special[]" to the landowners because they flowed from the overarching I-495 project, those damages simply were not compensable. *See Livingston*, 284 Va. at 156 (quoting *Peters*, 156 Va. at 49).

The circuit court did not err by excluding the landowners' evidence of the alleged diminution in value of their residue property from the I-495 project as a whole.[19]

IV. Attorney Fees and Costs

The landowners "request reimbursement for their fees and costs incurred in advocating for . . . the appropriate measure for . . . just compensation." Under the Rules of Court, a party "may request an award of attorney fees incurred in the appeal" of "any case in which [the] party has a statutory, contractual[,] or other basis to request attorney fees." Rule 5A:30(b)(2)(A). The

[19] We do not consider the landowners' proffer of their excluded expert evidence made two days after the trial court entered the final order dismissing the case. The "only purpose" of a proffer "made '. . . after the verdict' . . . is 'to provide a complete record for appeal[] and not to assist the trial judge in ruling on the admissibility of evidence.'" *Creamer v. Commonwealth*, 64 Va. App. 185, 203 (2015) (final alteration in original) (quoting *Lowery v. Commonwealth*, 9 Va. App. 304, 308 (1990)). Where, as here, the appellate court holds, "based on the [contemporaneous] proffer . . . , that the [circuit] court did not err, we need not review the post-trial proffer." *Id.* at 204. In light of our holding that the circuit court's ruling excluding the challenged evidence was not error, we do not consider the landowners' post-trial proffer for any purpose.

landowners do not allege a contractual or statutory basis for an award of attorney fees. *See id.*; Rule 5A:20(e); *see also Church Mut. Ins. v. Ephesus Richmond Seventh-Day Adventist Church*, 84 Va. App. 371, 390 (2025) (noting "that '[s]tatements unsupported by . . . authority[] . . . do not merit appellate consideration" (first three alterations in original) (quoting *Barnes v. Barnes*, 64 Va. App. 22, 32 (2014))). Absent any controlling authority, we deny the landowners' request for attorney fees and costs. *See generally* Rule 5A:30(a) ("Except as otherwise provided by law, . . . if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered . . . .").

CONCLUSION

The facts of this case, viewed in light of the applicable constitutional, statutory, and common law, support the circuit court's conclusion that the damages to the residue property that were compensable as a component of just compensation were the damages caused by the taking of the TCE itself, not by the larger project of which the temporary taking was merely a part. The language in Code § 25.1-230 counseling consideration of "everything a buyer and seller in the marketplace would reasonably consider" is circumscribed here by the temporary nature of the taking. For similar reasons, the circuit court did not err by denying the claim for compensation as to damages shared by the entire public because those damages did not flow from the temporary taking. Accordingly, we affirm the circuit court's ruling. We also deny the landowners' request for attorney fees and costs.

Affirmed.