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HOUSE BILL NO. 2495

Offered January 20, 1997

A BILL to amend and reenact § 25-46.21 of the Code of Virginia, as is currently in effect and as shall become effective, relating to condemnation proceedings.

Patron—Robinson

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 25-46.21 of the Code of Virginia, as is currently in effect and as shall become effective, is amended and reenacted as follows:

§ 25-46.21. (Effective until July 1, 1997) View by commissioners; hearing of testimony; commissioners' report; exceptions to report and hearing thereon.

Upon the selection of the commissioners, the court shall direct them, in the custody of the sheriff or sergeant or one of his deputies, to view the property described in the petition with the owner and the petitioner, or any representative of either party, and none other, unless otherwise directed by the court. The judge shall accompany the commissioners upon such view. Such view shall not be considered by the commission or the court as the sole evidence in the case. Upon completion of the view, the court shall hear the testimony in open court on the issues joined. *Evidence of the existence of a mortgage on the property and of the timing and amount of the mortgage is relevant and admissible for the purpose of determining whether the property was mortgaged (i) at a time when the condemnation proceeding was not contemplated or (ii) for the purposes of leveraging out the property in anticipation of the taking.* When the commissioners shall have arrived at their conclusion they shall make their report in writing to the court, or to the judge thereof in vacation. The report may be confirmed or set aside forthwith by the court, or the judge, as the case may be, provided that when the report is so filed and before the court or judge passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than ten days after the rendering of the report by the commissioners. The court or the judge, as the case may be, shall have the same power over the commissioners' reports as it now has over verdicts of juries in civil actions.

Upon hearing of exceptions to the commissioners' report the court shall not recall and question the commissioners as to the manner in which their report was determined unless there be an allegation in such written exceptions that fraud, collusion, corruption or improper conduct entered into the report. If such allegation is made the judge shall summon the commissioners to appear and he alone shall question them concerning their actions. If the court be satisfied that fraud, collusion, corruption or improper conduct entered into the report of the commissioners, the report shall be set aside and new commissioners appointed or drawn to rehear the case.

If the court is satisfied that no such fraud, collusion, corruption or improper conduct entered into the report of the commissioners, or no other cause exists which would justify setting aside or modifying a jury verdict in civil actions, the report shall be confirmed.

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Upon the selection of the commissioners, the court shall direct them, in the custody of the sheriff or sergeant or one of his deputies, to view the property described in the petition with the owner and the petitioner, or any representative of either party, and none other, unless otherwise directed by the court; and, upon motion of either party, the judge shall accompany the commissioners upon such view. Such view shall not be considered by the commission or the court as the sole evidence in the case. Upon completion of the view, the court shall hear the testimony in open court on the issues joined. *Evidence of the existence of a mortgage on the property and of the timing and amount of the mortgage is relevant and admissible for the purpose of determining whether the property was mortgaged (i) at a time when the condemnation proceeding was not contemplated or (ii) for the purposes of leveraging out the property in anticipation of the taking.* When the commissioners shall have arrived at their conclusion they shall make their report in writing to the court, or to the judge thereof in vacation. The report may be confirmed or set aside forthwith by the court, or the judge, as the case may be, provided that when the report is so filed and before the court or judge passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than ten days after the rendering of the report by the commissioners. The court or the judge, as the case may be, shall have the same power over the commissioners' reports as it now has over verdicts of juries in civil actions.

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