



## Virginia Local Government Law

# Latest on Condemnation of Fixtures in Virginia: Taco Bell v Commonwealth Transportation Commissioner

By: Andrew McRoberts. *Wednesday, June 29th, 2011*

On June 9, 2011, the Virginia Supreme Court held that whether equipment within a condemned business is personal property (therefore not valued as part of the take) or a fixture (therefore valued as part of the take) is a question for the condemnation jury, not the trial court. The holding was the crux of its opinion in a Virginia Department of Transportation condemnation case, [Taco Bell of America, Inc. v. Commonwealth Transportation Commissioner of Virginia](#).

The import of the opinion is being [hotly debated in the press](#) and elsewhere. However, the Supreme Court's opinion was quite limited.

Supreme Court opinion did not alter the test in Virginia for determining whether equipment is fixtures in Virginia. Rather, the opinion quoted and applied the long-standing test in Virginia for determining whether equipment is considered fixtures from [Danville Holding Corp. v. Clement](#), 178 Va. 223, 16 S.E.2d 345 (1941).

The Court also did not suggest that it will be difficult for condemnors to assert that restaurant equipment are not fixtures. The Court certainly did not express an opinion as to whether the equipment in this case were fixtures. The Court only held that that the trial court erred in making the decision itself.

The Court remanded the case to the circuit court for a new trial, saying that a condemnation award is a "unitary award" of all of the take, and that it is not severable into its various parts. See opinion's footnote 2. Thus, the Court reasoned, a new trial is required. The Commissioner had argued that remand was only required on the question of whether the equipment at issue were fixtures or not.

Like a [proposed amendment to the Virginia Constitution](#) making compensable new items with values difficult to calculate such as "lost access" and "lost profits" due to the taking, this decision may drive appraisers' opinions of value up and even farther apart, making needed public infrastructure more expensive for the taxpayers, and settlements and condemnation trials more difficult to resolve.

<http://valocalitylaw.com/>

[Richmond](#) • [Christiansburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [McLean](#)

Copyright Sands Anderson PC

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.