

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

RAYMOND D. CARTWRIGHT,

petitioner,

v.

COMMONWEALTH TRANSPORTATION COMMISSIONER OF VIRGINIA,

Respondent.

AT LAW NO.: CL04-187

ORDER

THIS CAUSE came to be heard on March 3, 2004, and March 17, 2004. The petitioner and Respondent were both represented by counsel. Evidence was taken on March 3, and the case was argued by counsel.

IT APPEARS to the Court that the Petitioner, Raymond D. Cartwright, seeks a writ of Mandamus under the Virginia Freedom of Information Act (VA. Code §2.2-3700 et seq.) ordering the Commonwealth Transportation Commissioner to produce the "sales brochure. prepared by the Commissioner's appraisers in connection with right of way acquisition for the Route 17 construction project. It further appears that the petitioner is the respondent in Commonwealth Transportation Commissioner v. Raymond Cartwright, Law No. 03-538, a condemnation proceeding initiated by the Commissioner to acquire right of way for the Route 17, construction project now pending in the Circuit court for the City of Chesapeake. It further appears that the Petitioner in this case has filed a request for production of documents in the condemnation proceeding seeking the same "sales brochure" as he seeks in this case, that the Commissioner has objected to the request, but that the petitioner has not yet moved this Court to compel production of the sales brochure.

IN CONSIDERATION WHEREOF, the Court FINDS that the Petitioner may seek access to this document through the discovery process in the pending condemnation case, and, therefore, the petitioner has an adequate remedy at law. Consequently, mandamus does not lie, under the Virginia Freedom of Information Act, and the petition for a Writ of Mandamus should be, and hereby is, DENIED. The Court withholds ruling on whether the sales brochure qualifies as work product excluded from mandatory disclosure by §2.2-3705(8) Code of Virginia 1950, as amended.

IT IS FURTHER ORDERED that this case be removed from the docket of this Court.

ENTERED THIS 9th day of July, 2004

s/Judge

See and objected to:

s/Counsel for Raymond Cartwright

Seen:

s/Counsel for the Commonwealth Transportation Commissioner of Virginia