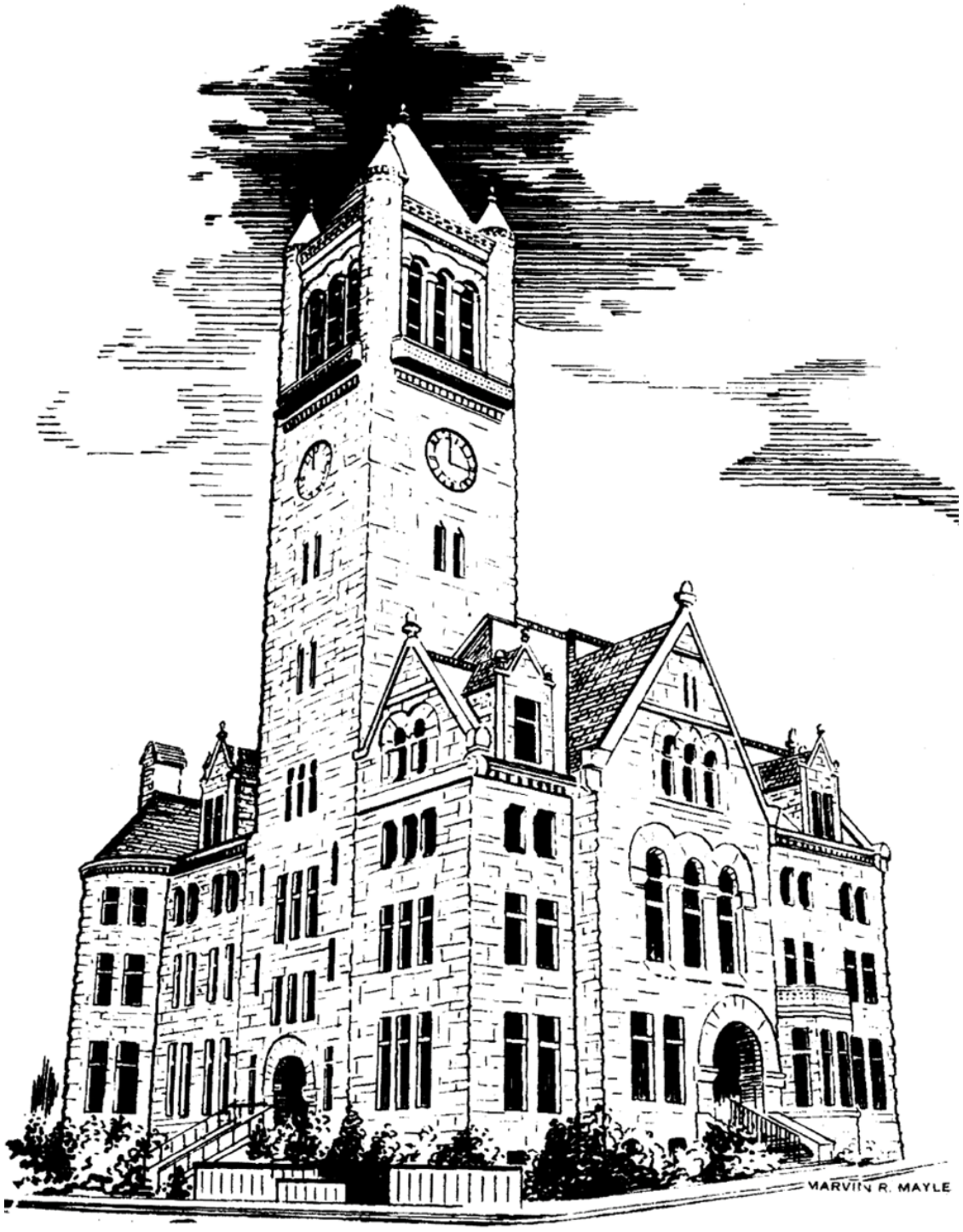
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FAYETTE LEGAL JOURNAL

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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

CLARA BERARDI a/k/A CLARA E. BARARDI, late of Uniontown, Fayette County, PA
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Second Publication

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LEGAL NOTICES

NOTICE

Pursuant to the Public School Code of 1949, as amended, notice is hereby given by Intermediate Unit 1, having an address of One Intermediate Unit Drive, Coal Center, Washington County, Pennsylvania 15423, of an online public auction of real property it owns, having a physical address of 6353 National Pike, Grindstone, Fayette County, Pennsylvania 15442 (Tax Parcel No. 30-19-000801). Said real property is comprised of 8.88 acres and a former public school building. The property is served by public water and has an on-lot sewage system. The public auction shall be hosted by Joe R. Pyle Complete Auction & Realty Service. Potential bidders for the public auction shall visit https://www.joerpyleauctions.com in order to place any bids. Bidding will be open on October 30, 2026, at 5:00 p.m. EST and end on December 8, 2026, at 6:00 p.m. EST, subject to the terms of Joe R. Pyle Complete Auction & Realty Service. AND FURTHER, conveyance of the property to the winning bidder shall be by Special Warranty Deed, under and subject to any existing exceptions, reservations, restrictions, easements, rights, limitations, and conditions in the chain of title, and also subject to a restrictive covenant running with the land prohibiting the future construction or operation of any charter or cyber charter school. In addition, the winning bid shall be subject to approval by the Intermediate Unit 1 Board of Directors at its next regular meeting, which is scheduled for December 10, 2026, at 6:00 p.m.

Questions regarding this public auction may be addressed to Intermediate Unit 1 at 724-938-3241.

Michele McVicker
Board Secretary

(1 of 3)

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COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE E&O INSURED WILL TRAVEL ACCEPTING NEW CLIENTS

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: CONDEMNATION BY THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION OF RIGHT-OF-WAY FOR STATE ROUTE 0021, SECTION J10, IN THE TOWNSHIP OF SOUTH UNION	:
PROPERTY OF: YOUGHIOGHENY WESTERN BAPTIST ASSOCIATION AND AUXILIARIES, INC.	: No. 190 of 2014, G.D. : Honorable Joseph M. George, Jr.

OPINION AND DECREE

GEORGE, J. September 22, 2026

Before the Court are the Appeal of Viewers' Report filed by the Condemnor, Commonwealth of Pennsylvania Department of Transportation ("PennDOT"), and the Cross-Appeal filed by the Condemnee, Youghiogheny Western Baptist Association and Auxiliaries, Inc. ("YWBA"). Upon consideration of the Appeal and Cross-Appeal and the briefs and oral arguments offered by the parties, the Court enters the following Opinion and Decree.

Factual and Procedural History

The subject property ("Property") in the above-captioned condemnation action consists of 26.990 acres (before the taking), including Tax Parcel Nos. 34-04-008 IT0O, 34-04-0081 X00, and 22-23-0024, owned in fee simple by the YWBA. The property is located on the northern side of State Route 21, also known as McClellandtown Road, at the intersection with Duck Hollow Road. The improvements on the property include a 1.5 story, 11,078 sq. ft. church building, a brick sign, an asphalt parking lot and driveway, concrete block retaining wall, a 30 x 31 ft. shed, and a 51 x 24 ft. pavilion. At the time of the taking, the YWBA leased an area consisting of 11.42 acres of the subject property to Franko's Golf Center and this area was improved by a 1,638 sq. ft., two-story building, a 16 x 9 ft. shed, concrete sidewalk, asphalt paving, and a miniature golf course and driving range. {1} The taking consisted of 2.039 acres for a right-of-way along SR 21, another 0.063 acres for a right-of-way along the township road, a Slope Easement of 0.480 acres, and a Temporary Construction Easement of 0.109 acres. No buildings were taken, but access was re-graded, portions of the paved driveway were removed, along with portions of the miniature golf course.

{1} PennDOT reached a separate settlement with Franko's Golf Center, and the Center has not, at any time, been a party to this action.

The Declaration of Taking was filed on September 23rd, 2013. On February 3rd, 2014, YWBA filed a Petition for the Appointment of Viewers. After period of inactivity and several procedural delays, including an attempt at mediation and the retirement of one of the initially appointed Board of Viewers, the Board of Viewers conducted a site visit and hearing in November of 2025, and filed a Report and Award of Board of Viewers on January 2nd, 2026. PennDOT filed a timely appeal from the Report on January 29th, 2026, and YWBA timely filed a Response and Cross-Appeal on February 13th, 2026. The parties submitted briefs and the Court heard oral argument on July 14th, 2026.

Scope of Appeal

A party aggrieved by the decision of the Board of Viewers may appeal to the trial court pursuant to 26 Pa. C.S.A. §517. {2} The appeal shall include any objections to the viewers' report other than to the amount of the award. Objections which raise questions as to legal issues shall be determined as a preliminary matter by the court, which may confirm, modify or change the report, or refer it back to the same or other viewers. §518(1) and (2). As reflected in this Court's Order dated April 16th 2026, the parties agreed that this matter would be decided on the existing record, including the transcript of the testimony presented before the Board, briefs, and oral argument, without a de novo trial. PennDOT raised four legal issues in its Appeal and YWBA raised three additional issues in its cross-appeal. {3}

Legal Issues

1. Did the Board's award of just compensation damages, in addition to the stated fair market value ("FMV") of the property before and after the taking violate §702(a)?

The main church building at issue on the Property is unique in that the first floor is served by a lower parking lot, and the upper floor is served by a separate, smaller parking lot. There is no elevator or ramp system providing wheelchair access between the two levels, A person with accessibility needs would park in the lower lot to access the lower level and in the upper lot to access the upper level. Prior to the taking, the upper lot had six parking spaces, and the parties disputed whether the upper lot could accommodate any parking spaces after the taking, rendering the upper floor effectively inaccessible for wheelchairs.

The standard for ascertaining damages in a condemnation is clearly established in §702(a) as the difference between the FMV of the condemnee's entire property interest immediately before the condemnation and that immediately after the condemnation. "Estimates as to the cost of rebuilding specific items of property or injury to particular uses affected by the taking are not recoverable or admissible as distinct items of damage, but such losses may become useful as elements bearing on the market value before and after the appropriation," Westinghouse Air Brake Co. v, City of Pittsburgh, 316 Pa. 372, 375 (1934).

_____

{2} All section references are to the Eminent Domain Code of 2006, 26 Pa. C.S.A. §101 et seq.

{3} The parties provided extensive briefing and oral arguments on each of the seven issues. The Court carefully considered all legal issues raised but limits the discussion in this Opinion to those it found dispositive. To the extent that the parties' respective issues overlap, they are combined for discussion here.

The Commonwealth's appraiser testified that he considered the reduced utility of the church building and parking lot due to the loss of parking spaces and set the value for that reduced utility at $141,789.00 (10% of the depreciated value of the building). The appraiser acknowledged in his testimony that he considered the loss of parking but did not factor in the loss of handicap parking specifically, and there was no discussion of the ramp or elevator proposals during his testimony. It is not clear from his testimony whether he was even aware of the issue. Because of this ambiguity, there is no way for the Court to determine whether the appraiser, if he had been aware of the specifics of the handicap access issue and the engineering reports and estimates offered by the YWBA, would have used the estimates for the cost of those proposed accessibility solutions in addition to the value he had already assessed for the reduced utility, instead of that value, or some combination thereof.

The condemnee bears the burden of proof that the value of their property has been impaired. Morrisey v. Com. Dept. of Highways, 424 Pa. 87, 92 (1967). Here, the Y\VBA established that the taking of a portion of the upper lot created an accessibility issue and offered credible estimates as to the cost of two different solutions; an exterior ramp for approximately $100,000.00 and an elevator in the interior of the building at approximately $180,000.00. However, YWBA failed to establish that the $141,789.00 the appraiser assessed as indirect costs for the reduction in the use of utility of the building did not adequately address the diminution in value caused by the alterations to the upper parking lot. With this ambiguity unresolved, the Board erred by awarding the $100,000.00 cost of a ramp in addition to the difference in fair market value, which is not permitted under §702(a), rather than factoring it into the calculation of the difference in FMV, where the reduction in utility was already included (at least to some extent) in determining the difference in FMV.

2. Did the Board err in apportioning the damage award between the YWBA and its tenant?

At the time of the taking, the YWBA had leased an area consisting of 11.42 acres of the Property to Franko 's Golf Center, which included a miniature golf course and a driving range. Six of the miniature golf course holes were directly impacted by the taking, rendering the remaining twelve holes of the course useless. The Commonwealth's appraiser assessed three values associated with the golf course: S28,752.00 in direct damages for the six holes taken, $46,405.00 in indirect damages for the remaining holes rendered useless, and $53,355.00 for the "cost to cure" to rebuild the miniature golf course in a new location on the same property. The total for these three costs was S128,507.00, which the appraiser apportioned to the tenant, who was not a party to this action. {4} The Board of Viewers awarded the direct and indirect costs to YWBA but decided the S53,355.00 "cost to cure" was payable to the tenant. PennDOT appeals the award of any damages attributed to the tenant by the appraiser to YWBA, while the YWBA claims the Board erred in awarding the cost to cure damages to the tenant.

The Lease had a ten-year term, running from June 7, 2007, through June 6, 2017. The parties stipulated that the Declaration of Taking was filed on September 23, 2013, and Penn DOT took physical possession on March 31st, 2014. The undisputed testimony at the Board of Viewers' Hearing was that the lease was in effect at the time of the taking, expired after the taking, and that the appraiser prepared his report based on the presumption that the lease would continue after the taking. (Tr. pp. 62, 85-86.)

{4} The appraiser testified that he understood at the time of his appraisal that the church area consisted of owner improvements and the leased area consisted of tenant improvements. (Tr. p. 49.) Whether the improvements belonged to the YWBA or to Franko's is a conclusion of law, and the Court is not obligated to accept the appraiser's conclusions on this issue.

YWBA's lease with Franko's Golf Center, which was admitted into evidence, includes the following two relevant provisions:

> VI. REPAIRS AND ALTERATIONS
>
> LESSEE shall make all repairs, except structural repairs, and LESSOR will make structural repairs. Blacktop paving is not to be considered structural.
>
> LESSEE may, during the continuance of this lease, make such alterations or improvements as may be proper or necessary for the conduct to he [sic] LESSEE business or for the full beneficial use of the premises. LESSEE shall pay all costs and expenses thereof and shall make such alterations and improvements in accordance with applicable laws and building codes in a good and workmanlike manner. All alterations and additions to the leased premises shall remain for the benefit of the LESSOR, but LESSEE may remove LESSEE's trade fixtures and equipment provided that all rental is paid to date and provided further that no damage is done by said removal and if damage is done it will be repaired to the satisfaction of the LESSOR, by the LESSEE.
>
> XXIII. CONDEMNATION
>
> In the event that the premises demised of any part thereof is taken or condemned for a public or quasi-public use, this lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, but all rental shall remain the same. The LESSEE waive all claims [sic] against the LESSOR by reason of the complete or partial taking of the demised premises, and it is agreed that the LESSEE shall not be entitled to any notice whatsoever of the partial or complete termination of this lease by reason of the aforesaid.

The Court finds as a matter of law that, pursuant to the lease, any improvements made to the premises belong to the YWBA, except for trade fixtures and equipment that can be removed without damage to the property. The partial condemnation of the leased property results in the termination of the lease as of the date title vests in PennDOT as to the condemned portion of the property only, but the rent due remains the same.

The Eminent Domain Code provides a means for compensation to a lessee in Franko's situation who finds that the value of their leased property is reduced by a partial taking but their obligation to pay the full rent due remains the same. A leasehold interest is considered a property interest for the purposes of eminent domain. Graham Realty Company Appeal, 447 A.2d, 342, 344 (Pa. Cmwlth. 1982). When the entire leasehold is not destroyed, as is the case here, {5} the lessee is entitled to recover the difference between the FMV of the leasehold interest immediately before the partial taking and the FMV of the leasehold interest remaining immediately after taking, projected over the remaining leasehold interest and discounted to its present worth. Id., at 345. The award of these damages for the leasehold interest is not before the Court and Franko's is not a party to this action.

{5} Though the miniature golf course was significantly impacted, with the taking including six of the eighteen holes, and some of the taking impacted the gravel parking area, the driving range and the building serving the business were not directly impacted.

The question before the Court is whether the direct and indirect damages and cost to cure as set forth by the appraiser should be apportioned to the YWBA or to Franko's. By the express terms of the lease, "all alterations and additions"' to the premises remain for the benefit of the YWBA upon the termination of the lease, except for "trade fixtures and equipment" provided that "no damage is done by said removal and if damage is done it will be repaired to the satisfaction of the LESSOR, by the LESSEE." In its briefs, the PennDOT characterizes the miniature golf holes as trade fixtures (and therefore, belonging to Franko's, the Lessee) and the "cost to cure" damages as '"the cost to build eighteen new miniature golf holes at a new location." (Emphasis added. PennDOT Brief filed June 18th, 2026, pp. 14-15.) The Court disagrees as to both characterizations.

The rule on "trade fixtures" is well-settled in Pennsylvania that where a tenant attaches fixtures and equipment necessary for the operation of its business, such items become "trade fixtures" and a presumption arises that the tenant is entitled to remove them during or at the termination of its lease. Lelunann v. Kelle,; 684 A.2d 618, 621 (Pa. Super. 1996). An exception to this general rule, which is also expressly stated in the Lease, is where removal of the fixtures would cause damage to the property. A golf course, including a miniature golf course, is inherently customized to the property on which it is built, and the walkways and landscaping are as integral to the course as the artificial greens and surface obstacles typical of a miniature golf course. Though it is conceivable that a particular outdoor light fixture or an obstacle sitting entirely on the surface of a green could be removed without damage, the Court cannot find that a miniature golf course, as a whole, is a trade fixture which a tenant would have a right to remove and could be removed without damage to the underlying property. Nor would items such as asphalt paving, concrete sidewalks, and gravel parking areas (which were included in the direct and indirect damages) be reasonably considered trade fixtures, as a tenant would not reasonably expect to take those improvements with them upon vacating a property, nor could one do so without damage to the underlying property. {6}

In fact, a miniature golf course would be a circumstance where the Assembled Economic Unit Doctrine would apply. See: Singer v. Redevelopment Authority of City of Oil City, 437 Pa. 55, 65-67 (1970). This Doctrine addresses a situation where only some of the machinery, equipment, and fixtures of an economic unit can be removed without damage to the property and removing these scattered pieces would not be sufficient to assemble an equivalent unit in another location. Under these scenarios, all the machinery, equipment, and fixtures, removable or not, are considered pan of the real estate and the condemned property. Id, at 67.

Furthermore, §707(b) allows a condemnee to elect to remove machinery, equipment, or fixtures that would otherwise form part of the real estate. If they elect to do so, the condemnee's damages are reduced by the fair market value of the items removed, but additional damages may be awarded for the cost of removal and re-installation. There is no evidence in the record that any fixtures were removed from the leased property pursuant to this option. PennDOT's appraiser did not treat the golf course holes as trade fixtures in calculating the difference in FMV before and after the taking. As PennDOT notes in its Brief at p.15, the items included in the direct damages, indirect damages, and cost to cure were not awarded as separate elements but were factored into the appraiser's overall

{6} The record does not reflect who built the miniature golf course and whether it was built during the lease at issue. This distinction is significant, as the trade fixtures analysis is only applicable when the improvements at issue were constructed by the lessee. See: Lehmann, at 621. Otherwise, the general principles applying to fixtures, rather than trade fixtures, would apply, and under the general rules of fixtures, a miniature golf course is clearly annexed to the realty.

calculation of the FMV before and after the taking. If any items were trade fixtures to be removed, they should have been valued separately (with possible damages awarded for removal and relocation), as per §703, FMV includes "the machinery, equipment, and fixtures forming part of the real estate taken." (Emphasis added.) Therefore, Court finds that the improvements on the leased property, including the miniature golf course, belonged to the YWBA, who is further entitled to the direct and indirect damages associated with the leased property.

The Court further finds that the Board of Viewers erred in deducting the cost to cure from the award of damages to the YWBA. PennDOT characterizes the cost to cure as compensation for reconstructing eighteen holes at a new location. However, the appraiser's report is very clear that the cost to cure is the cost to rebuild eighteen holes elsewhere on the existing property. Not only does the report specifically refer to the miniature golf course being "relocated and reconstructed on the current leased land," (Report, p. 48.) part of the costs included are for poles and netting "along the north and western sides of the miniature golf course due to the proximity of the relocated course to the area of the driving range tee boxes." Id. Thus, these damages would accrue to the owner of the improvements to compensate for the cost of moving the course elsewhere on the property (which would be the YWBA), not to the tenant to relocate the course to an entirely different property.

3. Did the Board err in declining to award damages for the increased "wet area"?

The YWBA contends that as a result of the taking, a larger pipe than previously existed was installed to drain water from the south side of Route 21 under the road and onto the YWBA property, which substantially increased the flow of water onto the property, increasing the area referred to as the "wet area," consisting approximately 1.5 acres. PennDOT contends that the YWBA waived any claim on this issue since no preliminary objections were filed relative to the Declaration of Taking. The Commonwealth Court addressed a similar situation and argument in City of Pittsburgh v. Gold, 390 A.2d 1373 (Pa. Cmwlth. 1978). In Gold, non-tortious damage from a sewer line installation did not become apparent until approximately two years after the filing of an Amended Declaration of Taking. The Court held that an exception based on the failure to file preliminary objections was unwarranted. Id. At 1376.

The Eminent Domain Code at §714 permits the award of consequential damages for damage to property abutting the area of an improvement resulting from the change of grade of a road whether or not any property is taken. A claim for consequential damages is separate and distinct from a claim for a de facto taking. Colombari v. Port Authority of Allegheny County, 951 A.2d 409, 413 (Pa. Cmwlth. 2008). The record does not establish that the YWBA has met the heavy burden of establishing a de facto taking, as, inter alia, the record does not establish whether the issue can be prevented or mitigated and whether the water damage is permanent, and therefore that they were substantially deprived of the use and enjoyment of their property (See: Colombari, at 414). The evidence presented was sufficient to establish that the YWBA suffered some consequential damage from the change in the volume of runoff as a result of the change in grade to the road surface. However, of the 1.5 acres at issue, the YWBA did not definitively establish the size of the wet area prior to the construction, nor did they establish that the area was entirely unusable, as the size and amount of water in the area appears to change based on season and weather. The Court finds that the records supports an award for consequential damages of one-half of the $24,000.00/acre value established by the appraiser for the 1.5 acre parcel at issue, for a total of $18,000.00, pursuant to §714.

4. Did the Board err in requiring the payment of delay compensation calculated from the date of taking rather than the date of possession?

The parties admitted a joint stipulation at the beginning of the hearing before the Board of Viewers. Under paragraph 4 of the Stipulation, PennDOT is responsible for delay compensation on the net damages (after credit for the prior Estimated Just Compensation payment) from March 31st, 2014, until the final date of payment. The Court finds that these stipulated terms dictate the date from which delay compensation is due and therefore the delay damages shall be calculated from March 31st, 2014, until the final date of payment.

5. Did the Board err in imposing costs of litigation on Penn DOT?

The Board of Viewers taxed the cost of the view to PennDOT, including S4,000.00 in attorney fees, engineering fees, and appraisal fees in accordance with §512. Whereas the YWBA is eligible for limited reimbursement of up to $4,000.00 for reasonable expenses for appraisal, attorney, and engineering fees pursuant to §710, PennDOT correctly cites to Spigelmyer v. Com., Dept. of Transportation, 41 A.3d 941,943 (Pa. Cmwlth. 2012), in that Fayette County is responsible for the salaries, fees, and expenses of the Board of Viewers.

Therefore, the Court enters the following Decree:

DECREE

AND NOW, this 22nd day of September, 2026, upon consideration of the Appeal of Viewers' Report filed by the Commonwealth of Pennsylvania Department of Transportation and the Cross-Appeal filed by the Condemnee, Youghiogheny Western Baptist Association and Auxiliaries, Inc., the Court DECREES that the Report and Award of Board of Viewers filed of record on January 2nd, 2026, is MODIFIED, pursuant to 26 Pa. C.S.A. §518(2) as follows:

1. The just compensation due, defined pursuant to 26 Pa. C.S.A. §702(a) as the difference between the fair market value of the Condemnee's entire property interest immediately before the condemnation and as unaffected by the condemnation and the fair market value of the property interest remaining immediately after the condemnation and as affected by the condemnation, is $345,665.00, all of which is apportioned to the Condemnee, Youghiogheny Western Baptist Association and Auxiliaries, Inc., with no additional award for the cost to cure any accessibility issues created by the partial condemnation of Condemnee's property.

2. In addition to the Just Compensation set forth above, Condemnee, Youghiogheny Western Baptist Association and Auxiliaries, Inc., is entitled to S18,000.00 in consequential damages pursuant to 26 Pa. C.S.A. §714, for damage to Condemnee's property resulting from the change in grade to the road.

3. The Condemnor, Commonwealth of Pennsylvania Department of Transportation, is responsible for delay compensation on the net damages, after credit for the prior Estimated Just Compensation payment, from March 31st, 2014, until the final date of payment.

4. Condemnee, Youghiogheny Western Baptist Association and Auxiliaries, Inc., is eligible for limited reimbursement of up to $4,000.00 for reasonable expenses for appraisal, attorney, and engineering fees pursuant to 26 Pa. C.S.A. §710.

5. Fayette County is responsible for the salaries, fees, and expenses of the

Board of Viewers.

This Decree, modifying the Report of the Board of Viewers, constitutes a final order pursuant to 26 Pa. C.S.A. §518(2).

BY THE COURT:
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:
PROTHONOTARY