

2009

Highlands at Jordanelle v. BV Jordanelle : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

THE HIGHLANDS AT JORDANELLE,
LLC, a Utah limited liability company,

Appellant,

v.

BV JORDANELLE, LLC, an Idaho limited
liability company,

Appellee.

Appellate Case No.: 20090031

SUPPLEMENTAL BRIEF OF APPELLEE

Appeal from a Final Order of the Fourth Judicial District Court
for Wasatch County, Judge Derek P. Pullan Presiding
Civil No. 080500561

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This Supplemental Brief is being filed pursuant to the Court’s Order, dated June 28, 2010 (the “**June 28 Order**”). In the June 28 Order, the Court noted that, because it had recalled this appeal from the Court of Appeals, the parties would “be permitted to submit supplemental or replacement briefs if they choose.” The Court also directed that, if Appellee elected to file a supplemental or replacement brief, it needed to do so by no later than August 25, 2010.

RECENT LEGISLATIVE HISTORY DEMONSTRATES THAT PRIVATE LANDOWNERS ARE NOT AUTHORIZED TO EXERCISE EMINENT DOMAIN UNDER THE EMINENT DOMAIN ACT

This Supplemental Brief focuses on recent legislative amendments to one of the condemnation statutes at issue in this case. In particular, during the 2010 General Session, the Utah State Legislature passed Senate Bill 122 (the “**Bill**”), which made amendments to Utah Code Ann. § 78B-6-501 (the “**Statute**”). The Statute—which is the first section of the Eminent Domain Act, Utah Code Ann. §§ 78B-6-501 through 522—addresses the uses for which the right of eminent domain may be exercised under Utah law. One of the defined statutory uses is byroads leading from a highway to a residence, development or farm. Statute, § 78B-6-501(7).

During the committee meetings and floor debates addressing the Bill, the Bill’s sponsors and other legislators made various comments strongly supporting Appellee BV Jordanelle’s (“**BV**”) position that private landowners do not have the express or implied authority to exercise eminent domain for the use proposed by Appellant here; i.e., for a byroad leading from a highway to a private residential subdivision. Indeed, the legislators commenting on this issue were uniform in their understanding that only

governmental entities could exercise this tremendous power for such a use. The legislators' comments should come as no surprise.

As was explained in BV's initial brief to the Court, a private party must have direct authority from the legislature in order to exercise eminent domain. *See* 1A-3 Nichols on Eminent Domain § 3.03(1) ("The right to authorize the exercise of eminent domain is a legislative power. In the absence of direct authority from the legislature, there can be no taking of private property for a public use, except in cases where the owner consents to the taking."). And although the right to exercise eminent domain may be delegated to a private entity, such a delegation "must be affirmatively shown either by express words or by necessary implication." *Id.* at § 9(a). The necessity from which an implied grant of authority might arise must be compelling, *see id.* at § 3.03(3)(d), and a grant of eminent domain authority to a private party may only be implied where "any other construction of the statute or statutes involved would render worthless or seriously impair the grant of power to condemn for the given purposes," *Bertagnoli v. Baker*, 215 P.2d 626, 628 (Utah 1950).

The statutes at issue in this case fall far short of demonstrating any express or implied delegation to private parties for the purpose of condemning land for construction of a byroad to a residential development. Instead, the statutes comprising the Eminent Domain Act can be read in harmony only when interpreted as authorizing public entities to exercise eminent domain for such a use—not private entities. *See, e.g.*, Utah Code Ann. § 78B-6-505(1) ("[B]efore *taking a final vote* to approve the filing of an eminent domain action, [the party seeking to acquire property shall] make a reasonable effort to

negotiate with the property owner for the purchase of the property.”) (emphasis added). In any event, denying private parties the authority to exercise eminent domain to condemn property for a byroad will not render worthless or meaningless Section 501 of the Eminent Domain Act because, of course, the State or its political subdivisions can always exercise the power for that same purpose when they deem such an action to further the public good. *See Bertagnoli*, 215 P.2d at 628.

But even if the plain language of the statutes at issue here were somehow ambiguous regarding the lack of authority for a private party to exercise eminent domain and thereby condemn property for a byroad, the legislative history and other policy considerations erase any doubt. *See Summit Water Distrib. Co. v. Summit Cnty.*, 2005 UT 73, ¶ 17, 123 P.3d 437 (“[I]f we find ambiguity in the statute’s language, we look to legislative history and other policy considerations for guidance.”) (internal quotations omitted).

The stated purpose of the Bill was to codify what was already being done in practice: public entities were exercising eminent domain and condemning property for *proposed* residences and developments, and not just *completed* residences and developments, because byroads to the development needed to be built before the development itself was built. (*See* Bill, a copy of the enrolled version of which can be found at App. 1-4, attached hereto.) In other words, the Legislature wanted to clarify that a public entity (a city, for example) could exercise the power of eminent domain to condemn property for a public road or byway that would serve a residential development, even if the residential development had not yet been completed. In explaining and

debating these changes to the Statute, various legislators provided significant insights into their understanding of the Eminent Domain Act and who was authorized to exercise this power. For example:

- First, during the Utah House Transportation Standing Committee Meeting on February 17, 2010, Senator Adams, a co-sponsor of the Bill, engaged in the following exchange with Representative Mascaro:

Adams: You know, I'm not familiar enough with statute to quote, you know, the section, but I think if you've used eminent domain, you understand there has to be public hearings, uh, actual public purpose, need, those types of issues that are, that are taken care of in those public processes. And I'd have to find that supposed location statute, but I think if you, if you, if you experience that, and again, I-, *there are very few entities that can use eminent domain. I think the comment of Representative Wallis was, uh, was pretty accurate because the only people that can use this, again, are, are the federal government, the state government, and basically, cities and towns.* And this doesn't expand that power at all; it simply allows those entities to use it in a-, in that process, so, so I'm a little confused to how you could use it if you weren't using it through, uh, you know, *if it wasn't a city or town.*

Mascaro: Okay. And so the comment you just made that it's only really able to be used by cities or towns, there's not-, I'm not reading in here that it's proposing that anyone other than cities or town or any other government agency is able to do this. It, it doesn't allow someone other than a government agency to utilize eminent domain, does it? These changes-, I don't see that on here.

Adams: No, again, it just codifies what's existing in practice. If your-, cities and towns are doing this, but *it doesn't allow for anybody in the private sector to do that.* That would be [inaudible]-

Mascaro: Oh, I see. I understand.

Adams: *That would be something that would be inappropriate.*

Utah House Transportation Standing Committee Meeting, S.B. 122, 58th Leg., Gen. Sess. (Feb. 17, 2010) (Statements of Senator Adams and Representative Mascaro) (emphasis added).¹

- Second, when the Bill was debated on the floor of the House of Representatives, Representative Morley, the other co-sponsor of the Bill, engaged in the following exchange with Representative Powell:

Powell: Thank you. Just wondering on line 79. It looks like there was an amendment added in the bill referencing a settlement of not less than 10 families. Representative, I wonder if that um--is that implying that some group other than city or town would have eminent domain authority?

Morley: Uh, no. *It's my understanding that the, that eminent domain has to be for public good and can only be exercised by the federal government, state government or subdivision of the state.*

House Floor Debate, S.B. 122, 58th Leg., Gen. Sess. (Feb. 18, 2010) (Statements of Representatives Morley and Powell) (emphasis added) (App. 10-11).

- Finally, when the Bill was debated on the Senate floor, Senator Adams and Senator Buttars said the following:

Buttars: The word eminent domain sends a chill down my back.

Adams: I agree.

Buttars: I think it should be roped and lassoed and chained at all times.

¹ A transcript of this meeting, prepared by BV, is attached hereto as App. 5-9. The Appendix contains transcripts of the other legislators' comments cited herein. (See App. 10-14.) BV has also submitted a CD ("**SB122 Audio Files on CD**") which contains the audio files provided by the Utah Legislature on its webpage addressing the Bill. These audio files can also be accessed by the Court and its staff at: <http://le.utah.gov/~2010/htmdoc/sbillhtm/SB0122.htm>.

Uh, does this bill open up additional access to the use of eminent domain?

Adams: This bill clarifies what is currently being used and makes sure that uh, if there is a proposed project that eminent domain can be used for that if and when it meets that high standard, the standard, that bar that we've set as a legislature.

Buttars: Remind me what that standard is, would you?

Adams: I'm not aware of that exact standard but I do know that there is a process that each jurisdiction goes, that we go through as a state, that the federal government goes through and that local jurisdictions go through in order to determine the public need for that process.

Senate Floor Debate, S.B. 122, 58th Leg., Gen. Sess. (Feb. 19, 2010) (Statements of Senators Adams and Buttars) (emphasis added) (App. 12-14).

These statements provide persuasive evidence that the Utah State Legislature has authorized only public entities to exercise eminent domain under the Statute and Eminent Domain Act to condemn private property for a road, byroad, street or alley.

Significantly, there were no objections made to the comments cited above, nor any other comments suggesting that private parties could exercise this power. (*See* SB 122 Audio Files on CD, submitted herewith.) As explained above, this Court need not look to the legislative history to make its determination because of the lack of an express or implied delegation in the Eminent Domain Act. However, should the Court choose to look to legislative history, this history shows a uniform understanding that only public entities may exercise this awesome power when the use at issue is the use being proposed by Appellant. This legislative history, coupled with the policy considerations outlined in

BV's original brief,² erases all doubt as to the proper resolution of this matter. Judge Pullan's Order dismissing Appellant's Complaint should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm the rulings of the district court in this matter.

DATED this 25th day of August 2010.

RAY QUINNEY & NEBEKER P.C.

Michael R. Johnson
Matthew M. Cannon

Attorneys for BV Jordanelle

² As explained in BV's initial brief, the Utah Constitution lists one's right to possess and protect property rights as an inherent and inalienable right. Utah Const. Art. I, Sec. 1. However, under The Highlands' theory, *any* private party can exercise the power of eminent domain and take his or her neighbor's property, provided the land taken is going to be used for a public purpose. In other words, a non-resident could purchase landlocked property in Utah without any consideration regarding access to the property (and for a bargain basement price), and he could thereafter solve his access problem by using the power of eminent domain to acquire his neighbor's property to build a road or byway to a proposed residence. Such an extreme power would ignore the Utah Constitution, and might very well result in an unconstitutional statutory authorization by the legislature. The Legislature cannot confer a private benefit simply by proclaiming one private party's use of another party's property to be a public use, even if that use may be in the public interest, unless it does so consistent with the requirements of the Utah Constitution. Such a ruling also would undoubtedly flood the courts with a wave of eminent domain actions brought by private landowners against their neighbors.

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing
SUPPLEMENTAL BRIEF OF APPELLEE were mailed, postage prepaid, on this 25th
day of August 2010, to:

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APPENDIX

Download Zipped Enrolled WordPerfect [SB0122.ZIP](#)
[\[Introduced\]](#)[\[Amended\]](#)[\[Status\]](#)[\[Bill Documents\]](#)[\[Fiscal Note\]](#)[\[Bills Directory\]](#)

S.B. 122 Enrolled

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EMINENT DOMAIN REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill amends provisions relating to the right to exercise eminent domain.

Highlighted Provisions:

This bill:

- . authorizes an entity to exercise eminent domain for:
 - . a byroad leading from a highway to an existing or proposed residence, development, or farm; or
 - . sewage service for an existing or proposed development; and
 - . makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-501, as last amended by Laws of Utah 2008, Chapter 341 and renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-6-501** is amended to read:

78B-6-501. Eminent domain -- Uses for which right may be exercised.

Subject to the provisions of this part, the right of eminent domain may be exercised on

behalf of the following public uses:

- 31 (1) all public uses authorized by the [~~Government of the United States~~] *federal*
- 32 *government*;
- 33 (2) public buildings and grounds for the use of the state, and all other public uses
- 34 authorized by the Legislature;
- 35 (3) (a) public buildings and grounds for the use of any county, city, town, or board of
- 36 education;
- 37 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the
- 38 use of the inhabitants of any county, city, or town, or for the draining of any county, city,
- or 39 town;
- 40 (c) the raising of the banks of streams, removing obstructions from streams, and
- 41 widening, deepening, or straightening their channels;
- 42 (d) bicycle paths and sidewalks adjacent to paved roads;
- 43 (e) roads, streets, and alleys for public vehicular use, excluding trails, paths, or other
- 44 ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose
- 45 primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and
- 46 (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- 47 (4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
- 48 and turnpike roads, roads for transportation by traction engines or road locomotives, roads
- for 49 logging or lumbering purposes, and railroads and street railways for public transportation;
- 50 (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
- 51 for the supplying of persons, mines, mills, smelters or other works for the reduction of
- ores, 52 with water for domestic or other uses, or for irrigation purposes, or for the draining and
- 53 reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for
- solar 54 evaporation ponds and other facilities for the recovery of minerals in solution;
- 55 (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
- 56 to access or facilitate the milling, smelting, or other reduction of ores, or the working of
- mines, 57 quarries, coal mines, or mineral deposits including minerals in solution;

-
- 58
 - (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
 - 59 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
 - 60 mines or mineral deposits including minerals in solution;
 - 61 (c) mill dams;
 - 62 (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or
 - 63 formation in any land for the underground storage of natural gas, and in connection with
 - that, 64 any other interests in property which may be required to adequately examine, prepare,
 - 65 maintain, and operate underground natural gas storage facilities;
 - 66 (e) solar evaporation ponds and other facilities for the recovery of minerals in solution;
 - 67 and
 - 68 (f) any occupancy in common by the owners or possessors of different mines, quarries,
 - 69 coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or
 - any 70 place for the flow, deposit or conduct of tailings or refuse matter;

71 (7) byroads leading from [~~highways~~] a highway to [~~residences and farms;~~] an existing
 72 or proposed:
 73 (a) residence;
 74 (b) development; or
 75 (c) farm;
 76 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
 77 light and power plants;
 78 (9) [~~sewerage of any~~] sewage service for:
 79 (a) a city [~~or~~], town, or [~~of~~] any settlement of not less than 10 families[~~, or of any~~];
 80 (b) an existing or proposed development;
 81 (c) a public building belonging to the state[~~, or of any~~]; or
 82 (d) a college or university;
 83 (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
 84 storing water for the operation of machinery for the purpose of generating and
 transmitting
 85 electricity for power, light or heat;

86
 (11) cemeteries and public parks, except for a park whose primary use is:
 87 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
 88 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
 89 equestrian use;
 90 (12) pipe lines for the purpose of conducting any and all liquids connected with the
 91 manufacture of beet sugar; and
 92 (13) sites for mills, smelters or other works for the reduction of ores and necessary to
 93 their successful operation, including the right to take lands for the discharge and natural
 94 distribution of smoke, fumes, and dust, produced by the operation of works, provided that
 the
 95 powers granted by this subsection may not be exercised in any county where the
 population
 96 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor
 unless the
 97 proposed condemner has the right to operate by purchase, option to purchase or easement,
 at
 98 least 75% in value of land acreage owned by persons or corporations situated within a
 radius of
 99 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the
 limits
 100 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements
 existing
 101 between the condemner and the owner of land within the limit and providing for the
 operation
 102 of such mill, smelter, or other works for the reduction of ores; nor until an action shall
 have
 103 been commenced to restrain the operation of such mill, smelter, or other works for the
 104 reduction of ores.

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**Utah House Transportation Standing Committee Meeting, S.B. 122,
58th Leg., Gen. Sess. (Feb. 17, 2010)**

- Adams: ...good to be here.
- Fisher: Welcome, Senator. Good to have you in Transportation. This is where you've always felt at home.
- Adams: It's great to be back, so it looks like a good committee. A few changes, but, uh, really familiar. Uh, Senate Bill 122 has to do with eminent domain and it's basically a clean-up bill. It, it, uh, allows for eminent domain to happen not only-, currently in statute-
- Fisher: Could you pull the microphone down just a little bit and-, yeah, thank you.
- Adams: I will. This basically codifies what is normally done and there was-, basically clarifies where eminent domain can be used. And it indicates that eminent domain can be used not only when there are existing residences, but when there's proposed subdivisions. There's a very high standard for the use of eminent domain. It doesn't, it doesn't basically change what is currently done, but it clarifies the existing practices.
- Fisher: Does that conclude your presentation?
- Adams: Yes [inaudible].
- Fisher: Eminent domain in two seconds?
- Adams: Well, if you can read, it's only about 20 words, so pretty easy.
- Fisher: I think we have a question for you. We're gonna bring this back to the Committee for questions. Representative Wallis?
- Wallis: Senator, what-, who's the entity that's authorized?
- Adams: Who's the entity that's authorized? I think if you look at where eminent domain can be used, it starts at-, on line 31. Eminent domain can be used by federal governments, by state governments, and by local entities. This basically-, uh, allows those entities should be able to use those, especially, I think it's-, basically it's first, local entities to use those to for an existing proposed resident development or farm. And then-
- Wallis: I guess the question...
- Female: [Inaudible.]

Wallis: I guess the question in my mind is why would they want to do that for a farm or a-, I've seen a sewage service, but a development or a f-, I've seen-, a development or a farm, what-, why would they do that?

Adams: Well, if you look at what's, what's allowed, what could be used for eminent domain, there's a long list of uses. You can use it for reservoirs, canals, raising a bank, a stream, bicycle paths, roads, streets, other, other type of things that eminent domain can be used for. But this simply allows-, it clarifies that use, that it can be used for not only, uh, uh, if you have a proposed-, maybe the best example I can, I can use: Layton City had a water tank and, uh, the, the Forest Service moved that water tank from one location to the other. They needed to bring a water line down through that, that area. It was-, it didn't have an existing residence. It didn't have a, uh, an existing home in it. They bought it down through an area that, that was basically proposed. That's being done now, and basically this allows that eminent domain use to be brought through an area that's proposed. When you have help-, and there's a very high standard for using eminent domain, and you can't use it to allow a subdivision to proceed. If somebody had a subdivision application ahead of them and they wanted to use this to be able to, uh, to, to, to further that cause-, there has to be a, uh, uh, public use for that. Very high standard, uh, health safety, welfare, those type of uses for eminent domain. It doesn't change that at all; it just simply clarifies what's currently in statute-

Wallis: Okay.

Adams: Uh, currently in practice—not in statute.

Wallis: Thank you.

Fisher: Further questions? Representative Mascaro?

Mascaro: Thank you. Um, it appears with this committee, you have to come earlier or you don't get a seat. Nice to see you a show, show, a nice turnout to this Committee. Um, I wonder if Senator could tell-, I, uh, where that-, the standards that you're talking about. Are they in statutes, uh, that the reference you made to the high-, a very high standard for the use of eminent domain. And just for the record, I, uh, worked in the development industry for a lot of years, used eminent domain as part of my, uh, business practice, so I have that background and I support a lot of what you're saying, but I'm wondering where in statute the high standard that you just made reference to, to be able to implement and where it appears.

Adams: You know, I'm not familiar enough with statute to quote, you know, the section, but I think if you've used eminent domain, you understand there has to be public hearings, uh, actual public purpose, need, those types of issues that are, that are taken care of in those public processes. And I'd have to find that supposed location statute, but I think if you, if you, if you experience that,

and again, I-, there are very few entities that can use eminent domain. I think the comment of Representative Wallis was, uh, was pretty accurate because the only people that can use this, again, are, are the federal government, the state government, and basically, cities and towns. And this doesn't expand that power at all; it simply allows those entities to use it in a-, in that process, so, so I'm a little confused to how you could use it if you weren't using it through, uh, you know, if it wasn't a city or town.

Mascaro: Okay. And so the comment you just made that it's only really able to be used by cities or towns, there's not-, I'm not reading in here that it's proposing that anyone other than cities or town or any other government agency is able to do this. It, it doesn't allow someone other than a government agency to utilize eminent domain, does it? These changes-, I don't see that on here.

Adams: No, again, it just codifies what's existing in practice. If you're-, cities and towns are doing this, but it doesn't allow for anybody in the private sector to do that. That would be [inaudible]-

Mascaro: Oh, I see. I understand.

Adams: That would be something that would be inappropriate.

Mascaro: Okay. That's all the questions I have. Thank you.

Fisher: Do you we have any further questions from the Committee? Seeing none, um, do we have any comments from the public? Anybody? Chris Kyler, please come to the stand and sign in and state your name.

Kyler: Chris Kyler, attorney for the Utah Association of Realtors. Our committee's looked at this, and they like the bill and in specific reference to Representative Mascaro's questions, the standards are found in the Utah Constitution and other parts of the statute, and they would be any time property is going to be taken or condemned. The Constitution says you get fair market value, and that's always where the big debate is, is what's fair market value. What's good about this bill is it specifies that for these public purposes and for these developments, they still fall under all of the protections that you guys have put in place over the years, which include access to the private property rights ombudsman. Notice early on, uh, that the pamphlet that you guys have developed that explains the rights of the citizen and the homeowner indicates eminent domain, and then maybe one of the most important ones is the right to a second appraisal for free by the condemning authority if the homeowner or landowner feels they've been mistreated, so this is a great clarification of the law, um, in our estimation.

Fisher: Thank you. Um, could you clarify, who's requesting this? Is there anybody that has requested this or-

Kyler: Basically, I think it's a group of property rights people that have come and asked for them.

Fisher: Okay. Any further questions from the Committee? Seeing none, um, we're going bring-, well, we've had public comment. We're back to the Committee for a motion or discussion. Any discussion from the Committee?

[No audible response.]

Fisher: Representative Mascaro?

Mascaro: Um, I'd like, uh, to make a motion to speak to that.

Fisher: Please.

Mascara: I would move that we pass this bill out with a favorable recommendation, Senate Bill 122. Um, I think it's important to remember that bills like this, it is important to ask questions and scrutinize them. I had the privilege of carrying a bill dealing with eminent domain as it affected superfund sites in the State of Utah, and specifically, a superfund site that was in Midvale. And we had a super hazard in the middle of Midvale and my district for years and years and years, although as children, we thought it was a playground. It was actually a hazardous place as we come to find out later, but through its changes and eminent domain laws, we now have an incredible community of homes, of stores, of roads, and turned that property into something very useful for the community, Midvale, by the proper use of eminent domain. And, uh, I appreciate this bill being brought forward and I do understand the importance and relevance of the Constitutional requirements of eminent domain and would also agree that this is a bill that we should push forward that continues to serve the community.

Fisher: Thank you for your comments. We now have before us, uh, Senate Bill 122. A motion is to pass that out with a favorable recommendation. All in favor say aye.

All: Aye. [*Vote was unanimous except for Wayne A. Harper, who was absent for the vote.*]

Fisher: Any opposed?

Fisher: Seeing none, your bill passes out with a favorable recommendation

Adams: Thank you.

Fisher: Thank you. And we also have minutes from our Committee that, uh, were placed before you just this morning, so we have a motion to pass those minutes out. All those, uh, who would pass that out with a favorable recommendation, say, aye.

All: Aye. [*Vote was unanimous except for Wayne A. Harper, who was absent for the vote.*]

Fisher: Any opposed?

[No audible response.]

Fisher: That passes. One more motion.

Hemingway: Motion to adjourn.

Fisher: Motion to adjourn. Thank you.

Fisher: All those in favor say, aye.

All: Aye.

Fisher: Aye. That's not (inaudible).

House Floor Debate, S.B. 122, 58th Leg., Gen. Sess. (Feb. 18, 2010)

Speaker: Madam Reading Clerk.

Clerk: Senate Bill 122 Eminent Domain Revisions. Senator Adams, the house floor sponsor is Representative Morley. This was heard in House Transportation with a vote of 12-0 and 2.

Speaker: Representative Morley.

Thank you, Mr. Speaker. This particular bill is a clarification of current use of the eminent domain authority. It does not change any of, or expand any of the current practice, but clarifies that, and uh, clarifies that uh, if a road or sewer line or something of public use needs to be installed to a development that that authority uh, exists. The concern was that it needed to be clear that it was available through the proper channels and that all of the eminent domain requirements, such as appraisal and notification was in effect for these types of uses.

Speaker: Thank you. Further discussion. Representative Powell.

Powell: Will sponsor yield to question?

Speaker: Will the sponsor yield? (Laughs).

Morley: Yes.

Speaker: Proceed. (Laughs).

Powell: Thank you. Just wondering on line 79. It looks like there was an amendment added in the bill referencing a settlement of not less than 10 families. Representative, I wonder if that um--is that implying that some group other than city or town would have Eminent Domain authority?

Morley: Uh, no. It's my understanding that the, that Eminent Domain has to be for public good and can only be exercised by the federal government, state government or subdivision of the state.

Powell: Um, do you happen to know what that reference refers to there—for the--

Morley: That was eliminated. Uh, it looks to me that uh, that that language was taken out which indicates uh, or of any settlement of not less than 10 families and just leaves it with the town or incorporated towns or cities.

Powell: And um—I'm just making sure that I'm looking at the correct version. So it's your understanding that that language is not in the bill now?

Morley: Actually the uh, amendment, there was an amendment that uh, reinstated that. It looks to me like, uh.

Powell: Thank you, Mr. Speaker.

Speaker: Thank you. Further discussion? (Pause). See no further lights. Representative Morley?

Morley: I'll waive.

Speaker: Summation is waived. Voting will be opened on SB 122 Eminent Domain Revisions.

Sound of repeated chiming.

Speaker: Real quickly, representatives. Representative Julie Fisher?

Chimes.

Speaker: It appears that all members present having voted, voting will be closed. SB 122 passes this body with 64 yes, and 6 nos. Be signed by the Speaker and returned to the Senate for the signature of the President.

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Senate Floor Debate, S.B. 122, 58th Leg., Gen. Sess. (Feb. 19, 2010)

- Mr. President: Senate Bill 122.
- Female: Senate Bill 122 Eminent Domain Revisions, Senator Adams.
- President: Thank you. Senator Adams.
- Senator Adams: Mr. President, I'd move Amendment 1 in my name. Speak to that.
- President: Motion by Senator Adams is to adopt Amendment No. 1. It's coming around now.
- Adams: If I could, in committee we inadvertently in the drafting of the bill, it struck the words 'or any settlement of less than 10 families. Currently Eminent Domain can be used by the federal government, by the state, a city and a town and by settlement of not less than 10 families. That was taken out of the original bill. The committee had a consensus that that out to be put on the floor and this amendment does that.
- President: I see no motion to debate, so I'll place the motion to amend. All in favor say aye.
- People: Aye.
- President: All opposed? Motion carries. The bill is amended. You may proceed with Senate Bill 122.
- Adams: Uh, to Senate Bill 122 adds and allows Eminent Domain to be used for an existing and proposed, for a project--not only for existing projects but proposed projects in relationship to an existing or proposed road.
- President: Senator Jenkins.
- Jenkins: Uh, would the sponsor yield to the question?
- Adams: Absolutely.
- Jenkins: I was up in Weber County. They're trying to locate a new landfill. Uh, there's a guy that's got a piece of property next to that landfill that doesn't want it and he owns the road. So this would allow the county to go in and take his road for their purpose.
- Adams: Currently, with any Eminent Domain action, there's a very high standard and I think the legislature has set a very high standard of using Eminent Domain. This does not change that standard at all. And that, so if there, the current standard that exists within the current statute of using Eminent

Domain remains the same and so this simply clarifies what basically is being done today, is that, it's, it's, in the statute it indicates that uh, uh, you can use Eminent Domain for an existing resident or farm, however there are proposed residents and farms that, that are actually--if there's a public need and that standard is actually reached, Eminent Domain could be used for it.

Adams: Okay, thank you.

President: Senator Buttars.

Buttars: The word Eminent Domain sends a chill down my back.

Adams: I agree.

Buttars: I think it should be roped and lassoed and chained at all times. Uh, does this bill open up additional access to the use of Eminent Domain?

Adams: This bill clarifies what is currently being used and makes sure that uh, if there is a proposed project that Eminent Domain can be used for that if and when it meets that high standard, the standard, that bar that we've set as a legislature.

Buttars: Remind me what that standard is, would you?

Adams: I'm not aware of that exact standard but I do know that there is a process that each jurisdiction goes, that we go through as a state, that the federal government goes through and that local jurisdictions go through in order to determine the public need for that process.

Buttars: I was involved in the—I guess uh, five year fight, to get the land for 114th? And uh, we need to go through that and this, I don't think, addresses that. But just to be aware because there was some loopholes in that that left some families high and dry and uh, we need to--seems like that monster's grew a new head and we need to look at that hard one of these days. Thank you.

President: Senator Adams for summation.

Adams: (Inaudible word) waive summation and move Senate Bill 122 be passed.

President: Thank you. Roll call vote.

Female: Senator Adams, Bramble, Buttars, Christensen, Davis, Dayton, Goodfellow, Greiner, Hillyard, Hinkins, Jenkins, Jones, Knudson, Liljenquist, Madsen, Mayne, McAdams, Morgan, Niederhauser, Okerlund, Robles, Romero, H. Stephenson, J. Stevenson, Stowell, Urquhart, Valentine, Van Tassell, Stevenson, President Waddoups.

President:

Aye. Senate Bill 122 having received 29 yea votes, 0 nay votes, 0 being absent, passes. Will be forward to the House for their actions.

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