

StarTribune.com

Bly and Maccabee: An eminent domain win for 'little guy'

New law sides with landowners over utilities in condemnation disputes.

By DAVID BLY and PAULA GOODMAN MACCABEE

Last update: May 30, 2010 - 5:19 PM

We've all read about the partisan stalemates at the Minnesota Legislature this year. But there was also a quiet yet significant victory that now protects ordinary landowners when large utilities condemn their property for power lines and pipelines.

The Legislature overwhelmingly (124-7 in the House and 59-5 in the Senate) sided with individuals rather than corporate interests and increased the fairness of the eminent domain process.

Perhaps more surprising, this was a bipartisan effort led by unlikely allies -- Rep. David Bly, DFL-Northfield, and Rep. Mark Buesgens, R-Jordan, along with Senate author, Sen. Kevin Dahle, DFL-Northfield.

Informal networks of citizens without offices, lobbyists or foundation grants -- the Citizens Energy Task Force and United

Citizens' Action Network -- initiated the change in law, testified at the Capitol and convinced legislators that utilities must provide farmers and homeowners with fundamental fairness.

One citizen's story highlights the importance of this legislative change. In the spring of 2006, Russell Martin got a letter stating that the MinnCan crude oil pipeline would cross his land. That same year the Minnesota Legislature passed laws to protect landowners from condemnation of their property. If land was needed for a new road or park, the new law ensured that the city or state would have to show the property owner an appraisal, negotiate in good faith, pay for relocation or loss of a business, and provide sufficient compensation so that a landowner could find another comparable property in the community.

If the government's last offer was a "low ball" offer, 40 percent below the value found in condemnation, the landowner could even get attorneys' fees reimbursed.

Like thousands of other citizens, Russell may have felt reassured that he would at least get fair value for any easement required by the pipeline. But when he looked more closely at the legislation he learned that there was one

StarTribune.com

catch. "Public service" corporations, including the utilities building power lines and pipelines, were exempted. These corporations did not have to share appraisals, negotiate in good faith, or pay for going concerns or relocation.

In nearly every case where a lawyer brought a MinnCan claim to an objective condemnation commission, the actual value of the property was more than 40 percent -- sometimes more than 500 percent -- above the pipeline company's "best" offer.

Landowners like Russell who were affected by the MinnCan pipeline joined thousands of citizens across the state likely to be impacted by the proposed CapX2020 high-voltage power lines to ask their representatives to remove the exemptions from pipeline and power line condemnation. Without the new law, costs of the CapX2020 power lines would unfairly burden landowners who have the bad luck to live or farm in their path and little leverage to negotiate with huge utilities.

This year, the Legislature listened.

The victory for the "little guy" in eminent domain is sound policy that spreads costs to utilities and to the many customers who use and benefit from energy. The Legislature's

willingness, on a broad bipartisan basis, to stand up to corporate interests in the name of fairness is good for all Minnesotans.

Rep. David Bly, a Democrat, was a lead author of the eminent domain legislation. Attorney Paula Goodman Maccabee represented the Citizens Energy Task Force in its work on the bill.