



Eminent domain for trails

Mark Lambert to: City Council and Mayor, Steve Schainker,
Brian Phillips, Deb Schildroth

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Cc: Kelly Diekmann, John C Joiner, Keith A Abraham

Tim had asked me informally if I would take a very quick look at what the legal basis was for something he and I both had heard before: "You can't use eminent domain for recreational trails." But I thought I'd respond to all of you. I was as curious as Tim was, because I didn't know the specific legal basis for the statement we'd both heard. I did some superficial investigation into the question. I expected to find a simple answer, but like many areas of the law, it's not so simple.

I found this on the website of Des Moines law firm Sullivan and Ward:

No Eminent Domain for Bike Trails

Most people are generally familiar with the legal concept of eminent domain, whereby the government can take private property for public use, upon the payment of just compensation to the property owner. It is found in the Fifth Amendment to the U.S. Constitution, and similarly found in the Iowa Constitution at Article 1, Section 18. The Iowa Legislature has provided that the power of eminent domain to be enjoyed by state agencies and local governing bodies shall be as delegated by legislative act. In the Iowa Supreme Court case of *East Oaks Development, Inc. v. Iowa Department of Transportation* ("DOT"), 603 N.W.2d 566, (Iowa 1999), the Court determined that the Legislature has not extended this power of eminent domain for development of recreational trails, stating: "...the DOT has no general eminent domain authority for establishing recreational trails or bikeways." Ultimately, the Court determined that the DOT could exercise eminent domain to re-develop a road by placing a bike trail next to it, since such placement of the trail helped improve traffic on the road. The takeaway from the *East Oaks* case, however, is that the State does not have eminent domain power for the creation of recreational trails. [Underlining added]

However, I think the statement I underlined in the paragraph above, that "the State does not have eminent domain power for the creation of recreational trails" is perhaps an oversimplification, and possibly not correct.

I took a quick look at the *East Oaks Development* decision. The decision seems to apply only to the Iowa DOT, based upon very specific language in the Iowa Code re: IDOT's authority, and does not seem to address the issue generally of the State's or local governments' authority to use eminent domain for trails. (And in this case, the Iowa Supreme Court upheld IDOT's authority to use eminent domain for a trail in this specific instance since it was in conjunction with highway construction and the trail would improve flood control and keep bicyclists off the highway.)

I took a quick look at eminent domain chapter of the Iowa Code (Chapter 6A). Cities are empowered to use eminent domain for "public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities." (Iowa Code 6A.3(6)). However, recreational trails are defined as a "private development purpose" (not a public purpose) under the definition of 6A.21(1)(d). What's odd about this definition of "private development purposes" is it is located in a section *regarding eminent domain of agricultural lands*. At first

blush, it appears that definition only applies re: agricultural lands, but the way it's written, there could be an argument the definition applies to the entire chapter. (This definition was not mentioned in the *East Oaks* decision, but the statute has been amended three times since that decision, so without diving deeper, I don't know if that definition existed at the time of the decision.) The definition of "private development purposes" is: "the construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, aboveground merchant lines, housing and residential development, or commercial or industrial enterprise development."

So, I'm a bit skeptical that this one Iowa Supreme Court decision is relevant to the issue of whether the State of Iowa generally or local governments can use eminent domain for bike trails. [Note: I did not look for other case law]

My quick-analysis bottom line of this is: the Iowa Supreme Court decision seems pretty clearly specific to IDOT's authority to use eminent domain re: trails, not to the authority of the State of Iowa generally, or local governments. Although I have heard several times municipal attorneys say : "You can't use eminent domain for trails," I really don't think this decision says that. The Iowa Code language is not clear. (I would want to compare old versions of Iowa's eminent domain law to the current version and do some deeper research to have an opinion on what the eminent domain statute means).

If the Council would like me to explore this issue in a more in-depth fashion, if someone would please make a motion during Council comments for me to research the matter further and prepare a memo, and I'd be happy to do so.

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