

**RESOLUTION NO. 2025-02**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AUTHORIZING THE USE OF EMINENT DOMAIN FOR THE ACQUISITION OF AN EASEMENT TO FACILITATE THE CORKSCREW ROAD SIDEWALK, LANDSCAPE AND LIGHTING PROJECT; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, eminent domain is the right of a government or its agent to expropriate private property for public use, with payment of just compensation; and

**WHEREAS**, § 6 of Article X of the Florida Constitution provides, in relevant part, that “no private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner”; and

**WHEREAS**, eminent domain in Florida is governed by Florida Statutes Chapter 73 (Eminent Domain), and Chapter 74 (Proceedings Supplemental to Eminent Domain); and

**WHEREAS**, Chapter 73 governs the traditional method of eminent domain (where ownership in property is not acquired until the trial), while Chapter 73 (known commonly as “quick take”) permits acquisition of the land at the beginning of a case, leaving only compensation to be determined by the court at a later date; and

**WHEREAS**, Florida Statutes § 166.401(1) provides that eminent domain may be used either to acquire absolute fee simple title to property, or some lesser right or estate in property (such as an easement); and

**WHEREAS**, Florida Statutes § 166.401(3) provides that a local governing body of a municipality may not exercise its power of eminent domain unless the governing body adopts a resolution authorizing the acquisition of the property by eminent domain for the municipal use or purpose designated in such resolution; and

**WHEREAS**, the Village of Estero has designed and has the financial resources to construct a sidewalk, landscaping and streetlighting project along Corkscrew Road in the Village (the Project); and

**WHEREAS**, while the Village has been able to obtain necessary easements from the majority of property owners along the Project path, the owner of a parcel fronting the Dominos Pizza and dental office proximate to the intersection of Shoppes at Grande Oaks entrance (that portion of land depicted in **Exhibit “A”** attached to and incorporated into this Resolution) has declined to engage in voluntary discussions regarding the acquisition of a slope easement necessary for the construction of the Project along this parcel; and

**WHEREAS**, a slope easement is a legal right granted to a party to use a portion of another person's land specifically for the purpose of maintaining or creating and maintaining a slope, typically along a property line adjacent to a road or sidewalk, allowing for grading, excavation, and construction of any necessary retaining structures to support the slope and accommodate the adjacent public area; essentially, it gives the easement holder the ability to modify the natural contours of the land to ensure proper drainage and stability of the slope; and

**WHEREAS**, the portion of the parcel over which the slope easement is needed is currently an open grassy area, and under the Village's Land Development Code and applicable Development Orders it cannot be further developed; and

**WHEREAS**, once construction of the Project along this portion of Corkscrew Road is complete, the area will remain an open grassy area, with the only difference to the parcel being its slope; and

**WHEREAS**, the Village's professional engineering staff have considered the availability of an alternate route, costs, environmental factors, long-range area planning, and safety considerations related to the placement of the Project and resulting slope easement need; and

**WHEREAS**, while staff considered alternatives which would not create the need for a slope easement, since the Project has been designed to provide for adequate slopes all along the Project path to ensure proper water drainage and flow, as well as a uniform look, and since the inability to create the necessary slope on this parcel will force a break in the designed sidewalk path, alternatives are not realistic without compromising the integrity of the Project and decreasing stormwater flow consistency; and

**WHEREAS**, in addition, without the slope easement, the Project's path would need to be diverted to be dangerously close to Corkscrew Road, thus imperiling pedestrian users of the path; and

**WHEREAS**, in light of the foregoing facts, and pursuant to the foregoing authorities, the Village Council finds that adoption of this Resolution is in the Village's best interests.

**NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, THAT:**

1. The Village Attorney is authorized to institute eminent domain to acquire a slope easement from the owner of the parcel depicted in **Exhibit "A"**, in the area of that parcel depicted in **Exhibit "A"**, where the Village and parcel owner are unable to mutually agree on terms of a voluntary slope easement.
2. This authorization is for the acquisition of a slope easement. This Resolution does not authorize the taking of a fee interest in land.

3. The Village Manager is authorized to conduct the mandatory pre-suit negotiation required by Florida Statutes § 73.015 prior to the institution of an eminent domain proceeding pursuant to this Resolution.
4. The Village Attorney is authorized to use the statutory procedures available to the Village which the Village Manager determines are in the Village's best interests, taking into account logistical and financial considerations.
5. Prior to the filing of the eminent domain action, the Village Manager or his designee shall provide notice of the action to the Florida Department of Environmental Protection as required by Florida Statutes § 373.023(3).
6. The Village Clerk shall work with the Village Attorney to ensure the notice of the condemnation will be placed in a newspaper published in Lee County as required by Florida Statutes § 73.031(2) or § 74.041(2).

**BE IT FURTHER RESOLVED** that if any section, subsection, sentence, clause, provision or word of this Resolution is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Resolution shall not be affected by such invalidity, such that any remainder of the Resolution shall withstand any severed provision, as the Village Council would have adopted the Resolution even absent the invalid part.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon adoption.

**DULY ADOPTED** with a quorum present and voting this 19<sup>th</sup> day of February, 2025.

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Jon McLain, Mayor

**Attest:**

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Carol Sacco, Village Clerk