

RESOLUTION NO. 784

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA DECLARING THE ACQUISITION OF PROPERTY IN FEE SIMPLE TO BE NECESSARY FOR THE RIGHT OF WAY FOR THE GREENWAY/PEDWAY PROJECT, INCLUDING DRAINAGE FUNCTIONS, ALONG SOUTH SEWALL'S POINT ROAD, AND AUTHORIZING THE EXERCISE OF THE POWER AND RIGHT OF EMINENT DOMAIN TO ACQUIRE THIS PROPERTY AND THE FILING OF AN EMINENT DOMAIN PROCEEDING AND OTHER NECESSARY ACTIONS TO ACQUIRE SUCH PROPERTY.

WHEREAS, the Town of Sewall's Point, Martin County, Florida (hereinafter, the "Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and,

WHEREAS, the Town Commission has held many meetings to consider a Greenway/Pedway Project (hereinafter, "Greenway/Pedway Project") to provide a safe means of access along one of this Town's main streets, South Sewall's Point Road, for pedestrians including holding "Visioning Meetings" with the public to review the cost and the benefits of various design options; and,

WHEREAS, the Town Commission has obtained the input of the Town Engineer regarding the need for, and the costs and benefits of, the Greenway/Pedway Project along South Sewall's Point Road as summarized in the Analysis Report attached hereto as Exhibit "A;" and,

WHEREAS, the Town Commission has considered the input of the public and the Town Engineer and has determined that this Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road is important to the public's health, safety, and welfare; and,

WHEREAS, as more fully described in the Analysis Report attached hereto as Exhibit "A," the Town Engineer has analyzed the following factors in recommending a route for the Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road: (i) availability of alternate routes; (ii) long-range planning; (iii) safety; (iv) cost; and (v) the environment and, after analyzing these factors, has recommended the route described in the Analysis Report as Alternative 3 as the best choice; and,

WHEREAS, after considering the above-referenced analysis of the Town Engineer of the various factors and his recommendation of a route, the Commission has determined that the Greenway/Pedway Project, including drainage functions, along South Sewall's Point Road should be constructed in accordance with the recommendations of the Town Engineer; and,

WHEREAS, in accordance with his recommended route, the Town Engineer has recommended the acquisition of certain real property (the "Property") in fee simple (and not an

easement) for right-of-way which is needed for the construction of the proposed Greenway/Pedway Project, including drainage functions, along South Sewall's Point Road; and,

WHEREAS, this Property is within the limits of the Town and is described in Exhibit "B" attached hereto; and,

WHEREAS, the funds are available for the acquisition of the needed Property; and,

WHEREAS, the owner of the Property has not accepted an offer to purchase the Property made by the Town which offer materially exceeded the amount of the appraisal of an independent state registered and MAI appraiser; and,

WHEREAS, the Town is authorized to exercise the right and power of eminent domain under Section 166.401 of the Florida Statutes for purposes and uses allowed under Section 166.411 of the Florida Statutes; and,

WHEREAS, the Town's exercise of the right and power of eminent domain to acquire the Property is for the following uses and purposes authorized by the following pertinent subsections of Section 166.411 of the Florida Statutes: (1), for the proper and efficient carrying into effect of any proposed scheme or plan of drainage, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof; (3), for lanes, alleys, and ways; (4), for public grounds; (5), for drainage in order to promote sanitation and healthfulness; (7), for the use of water pipes and for drainage purposes; and (9), for other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain; and,

WHEREAS, this Town Commission finds and agrees that the acquisition of the Property described in Exhibit "B" in fee simple is reasonably necessary for the right-of-way for the construction of the proposed Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road and that Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road constitutes a public use and purpose and, therefore, the Town may and does authorize the exercise of its power and right of eminent domain to acquire this Property; and,

WHEREAS, the limits of construction of the proposed Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road shall not extend beyond the limits outlined in Exhibit "B;" and,

WHEREAS, in order to accomplish the Property described in Exhibit "B" in fee simple for the right-of-way for the construction of the proposed Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road, it is necessary for the Town to file eminent domain proceedings; and,

WHEREAS, the Town desires to obtain the Property expeditiously and, therefore, authorizes the use of the "quick take" procedures found in Chapter 74 of the Florida Statutes; and

WHEREAS, the Town's exercise of the power and right of eminent domain by the Town will comply with Sections 166.401 and 166.411 and Chapters 73 and 74 of the Florida Statutes and the Florida Constitution and this exercise of the power and right of eminent domain is not for any purpose prohibited by Florida law; and,

WHEREAS, the Town has retained the law firm of Barry S. Balmuth, P.A. to provide consultation and to represent it in any eminent domain proceedings; and

WHEREAS, the Town Manager, Town Attorney, Town Engineer, and Barry S. Balmuth, P.A. are authorized to take all actions necessary for the acquisition of the Property in fee simple including filing and prosecuting an eminent domain proceeding, to the extent not already retained, retaining an appraiser and other experts, and making an offer of judgment/proposal for settlement to the owner of the Property in the amount of the offer previously made to the owner of the Property at an appropriate time; and,

WHEREAS, in any eminent domain proceeding, the Town Engineer is authorized to provide testimony on behalf of the Town committing it to the use of the Property acquired, to wit: the construction of the Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road and to the effect of the use of the Property acquired on the remaining property including access to and drainage of the remaining property.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, THAT:

1. This Commission adopts and ratifies those matters set forth in the foregoing recitals.
2. Town Manager, Town Attorney, Town Engineer, and Barry S. Balmuth, P.A. are hereby authorized and directed to proceed to take all necessary steps, including, to the extent not already retained, the retention of appraisers and expert witnesses, for the Town to acquire in its own name by eminent domain proceedings, the Property described in Exhibit "B" attached hereto in fee simple and to prepare in the name of the Town all papers, pleadings and other instruments required for that purpose, and to see that all eminent domain proceedings are prosecuted to judgment.
3. The Town Manager, Town Attorney, Town Engineer, and Barry S. Balmuth, P.A. are hereby authorized and directed to take such further actions as are reasonably required to fully accomplish the purposes hereinabove directed including making any minor modifications of the limitations of the Property to be acquired or the description of same as may be necessary to fully accomplish these purposes.
4. Town Engineer is authorized to provide testimony on behalf of the Town committing it to the use of the Property acquired, to wit: the construction of the Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road and to the effect of the use of the Property acquired on access to and drainage of the remaining property.

BE IT FURTHER RESOLVED that the property described on Exhibit "B" is to be used for the following public purposes; the Greenway/Pedway Project, including the accompanying drainage functions, along South Sewall's Point Road.

Commissioner Luger offered the Resolution and moved its adoption. The motion was seconded by Commissioner Thurlow-Lippisch, and upon being put to a vote, the vote was:

	AYE	NAY
THOMAS P. BAUSCH, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PAM BUSHA, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VINCENT BARILE, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PAUL LUGAR, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JACQUI THURLOW-LIPPISCH, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Town Manager thereupon declared this Resolution No. 754 approved and adopted by the Town Commission of the Town of Sewall's Point on this 23rd day of July, 2013.

TOWN OF SEWALL'S POINT, FLORIDA

Thomas P. Bausch

Thomas P. Bausch, Mayor

ATTEST:

Ann-Marie S. Basler
Ann-Marie S. Basler, Town Clerk

(TOWN SEAL)

Glen J. Torcivia

Glen J. Torcivia, Town Attorney

Florida Bar No. 343374

Approved as to form and legal sufficiency