

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ALEX B. ALTMAN, ROBERTA M. ALTMAN,
THAD ALTMAN, DANIEL HASRATIAN, KARINE
MELKOUMIAN, JOHN M. PINTER AND
JANE E. PINTER AS TRUSTEES OF THE
JOHN M. PINTER AND JANE E. PINTER
TRUST U/A/D 05/12/08, ET AL.,

Appellants,

v.

Case No. 5D19-1839, 5D19-1842
and 5D19-1888

BREVARD COUNTY, FLORIDA, ESTATE
OF THIRREL A. ALTMAN, SR.,
LISA CULLEN, AS BREVARD COUNTY
TAX COLLECTOR, MERS, AS NOMINEE FOR
HSBC BANK USA, N.A., AND MERS AS
NOMINEE FOR TD BANK, N.A.,

Appellees.

_____ /

Opinion filed July 10, 2020

Nonfinal Appeal from the Circuit
Court for Brevard County,
W. David Dugan, Judge.

Edgar Lopez and Gordon H. Harris, of
Harris Harris Bauerle Ziegler Lopez,
Orlando, for Appellants Alex B. Altman,
Roberta M. Altman, Thad Altman, Daniel
Hasratian, and Karine Melkougian.

Sheena A. Thakrar, Howard S. Marks and
Lisa J. Geiger of Burr & Forman LLP,
Orlando, for Appellants John M. Pinter and
Jane E. Pinter, as Trustees of The John M.

Pinter and Jane E. Pinter Trust U/A/D
5/12/08.

S. Cary Gaylord and Blake H. Gaylord, of
Gaylord Merlin Ludovici & Diaz, Tampa,
for Appellant, Hubbard Investments, Inc.

Christine Valliere and Jad Brewer,
Assistant County Attorneys, of Office of
Brevard County Attorney, Viera, for
Appellee, Brevard County.

PER CURIAM.

In these three consolidated appeals, Appellants appeal the trial court's order of taking granting Brevard County ("the County") easements over their five beachfront properties, to be used in conducting the Brevard County Shore Protection Project ("Project"). Appellants contend that the trial court erred in granting the order of taking because: (1) the County was required to obtain separate resolutions for each taking; (2) the County's petition in eminent domain did not strictly comply with the Florida Statutes; (3) the resolution on which the County based its petition was nullified by an amended resolution; (4) the trial court crafted takings outside of the pleadings; (5) the County failed to establish a reasonable necessity for the takings; and (6) the County failed to present a good faith estimate of value for each easement. We find that the County's petition failed because it did not provide clear legal descriptions of the properties to be acquired and that the County failed to establish a reasonable necessity for the public use aspect of the takings. Additionally, the trial court crafted takings outside of the pleadings. Accordingly, we reverse.¹

¹ In all likelihood, this will not be the end of the Project. Therefore, we will address issues that will potentially reoccur when the County reattempts to take easements over Appellants' properties but not address issues unique to this set of facts.

In October 2018, the Board of County Commissioners of Brevard County (“Board”) passed resolution number 2018-175 (“Resolution”), declaring the necessity to acquire certain easements in Brevard County for the placement of sand for the Mid Reach portion of the Project. The Resolution provided that it was necessary to elevate and widen certain areas of the shoreline in order to maintain safe and sufficient hurricane evacuation routes, protect upland structures and infrastructures, preserve nesting habitats for sea turtles, and to preserve areas for public recreation. The Board defined the scope of the Project to include an initial restoration of a 7.8 mile stretch of shore, with periodic renourishment of the same areas every three years, as needed, for at least fifty years. The Board found that the Project was necessary and in the best interest of the public’s health and that the easements were necessary to ensure the success of the Project. It authorized the acquisition of easements over Appellants’ five properties in the Mid Reach area.

The Board described the interest to be acquired by the County:

A perpetual and assignable easement and right-of-way in, on, over and across the land [at issue] for use by the [Board], its representatives, agents, contractors and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the [Project] or beach renourishment project sponsored by the Board, together with the right of public use only on the portion of Defendant’s property described [in attachments]; to plant vegetation on said dunes and berms; to facilitate preservation of dunes and vegetation; to remove from said land debris and obstructions within the limits of the easement; reserving, however, to the Defendant(s), (his) (her) (its) (their) (heirs),

successors and assigns, the right to construct elevated decks, dune overwalk structures and similar improvements in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the Board and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the Defendant(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

The Board attached five exhibits to the Resolution (“Resolution Attachments”), each of which contained the same easement legal description:

All of that land which lies east of the seaward-most occurrence of the plus 14 foot elevation contour, as measured vertically from the National Geodetic Vertical Datum, or the seaward edge of the eroded dune bluff, defined by the seaward limit of continuous vegetation, or seawall, whichever is further seaward, of the lands lying within the following parcel of real property[.]

Each easement legal description was followed by a metes and bounds description of the property; the metes and bounds descriptions provided that the western boundary of each easement was the 14-foot elevation contour line.

In December 2018, the County filed a petition in eminent domain (“Petition”) to condemn easements over the five properties. In its Petition, the County alleged that it was bringing its action in eminent domain pursuant to Chapters 73, 74, and 127 of the Florida Statutes, as well as the Resolution. It stated that the properties to be acquired were described in an attached exhibit (“Exhibit A”). The County stated that there was a public purpose for the Project and that the acquisition of the easements was necessary to

effectuate that purpose. Additionally, the County alleged that it surveyed and located the line or area of construction or use of the properties and intended, in good faith, to construct the Project as described in the easement legal descriptions and Resolution. Finally, the County noted that it offered to purchase the properties and negotiated with Appellants in good faith, to no avail, and that it complied with all the conditions precedent to condemnation.

Exhibit A described the easements sought, using nearly identical language to the Resolution. It included the names of the property owners and provided the same easement legal descriptions as the Resolution Attachments:

All of that land which lies east of the seaward-most occurrence of the plus 14 foot elevation contour, as measured vertically from the National Geodetic Vertical Datum, or the seaward edge of the eroded dune bluff, defined by the seaward limit of continuous vegetation, or seawall, whichever is further seaward, of the lands lying within the following parcel of real property[.]

Those legal descriptions were followed by the same metes and bounds descriptions as the Resolution Attachments, which, like the Resolution Attachments, provided that the western boundary of each easement was the 14-foot elevation contour line.

In February 2019, the trial court held a hearing on the County's Petition ("First Hearing"). The County presented David Kugelmann, the registered surveyor who surveyed the easements. Kugelmann testified that he surveyed the properties according to their easement legal descriptions in the Resolution. The surveys were entered into evidence. Kugelmann explained that the "bold line" on the surveys was the proposed western boundary of the easement, which was also the 14-foot elevation contour line. Kugelmann did not conduct surveys of the easements using the line of vegetation as the

western boundary; he only conducted surveys between the 14-foot contour line and the mean high-water line. Kugelmann was not aware that the easement legal descriptions provided that the western boundary of each easement was *either* the 14-foot elevation contour line *or* the line of vegetation, whichever was further seaward. Kugelmann also explained that he did not “put the public use requirement” into the easements because his only instruction was to survey easements in between the 14-foot elevation contour line and the mean high-water line. Kugelmann explained that when he conducted his surveys, there were no existing easements on the properties and there was nothing in the records of public use in the area.

Next, the County called Kevin Bodge, the engineer of record for the Project. Bodge testified that the Mid Reach area was designated by the Florida Department of Environmental Protection as a critically eroded shoreline. He explained that the County had a partnership with the Army Corps of Engineers (“Corps”) for the Project and that the partnership agreement (“Agreement”), which provided the County with federal funding for the Project, required that County ensured the “continued public use of such shores compatible with the authorized purposes of the project”

Bodge stated that the Corps considered long-range planning for 50 years. In Bodge's opinion, the Project would maintain a healthy beach and dune system, which would protect against erosion and flooding of the upland properties. Additionally, he opined that the easements were necessary for the Project and that having gaps in the Project would allow “uprushes” through the gaps, which would blow the dune out from the landward side.

Bodge stated that the 14-foot elevation contour line was chosen as the western boundary of each easement because it represented the land relimit of erosion observed after severe storms in the past 30 to 40 years. Bodge explained that as of December 2017, there was a significant amount of dune vegetation existing east of at least one easement boundary. He stated that the 14-foot elevation contour line was the farthest western limit of sand placement but that it was truncated by the presence of vegetation because sand would be not placed on the dune vegetation. Finally, Bodge testified that the Project predicted a sand renourishment once every three years, which was consistent with the current post-storm dune restorations occurring in the County.

On cross-examination, Bodge testified that sand would not be placed on the dune vegetation but nevertheless opined that the portions of the easements that included the dune vegetation were necessary because in the past, the parcels have eroded back to the 14-foot elevation contour line. He explained that Kugelmann surveyed each property only from the 14-foot elevation contour line, not the line of vegetation, but that the County needed a consistent line to use as the boundary, and given that storm erosion varies, the 14-foot elevation contour line was a “good engineering approximation.”

Bodge stated that the public is not allowed to access the dune vegetation. He admitted that from a “pure physical engineering and construction standpoint,” the public use aspects of the easements were not necessary to complete the Project. He also noted that while the County’s Agreement with the Corps required the County to ensure the “continued public use” of the shore, the proposed easements did not limit the public use to “continued” or “existing” use; instead, they stated, “[t]ogether with the right of public use only on the property.”

The time allotted for the hearing elapsed, and the trial court directed the parties to schedule more time to allow for completion. In the interim, the County moved for leave to amend its Petition for “purposes of clarifying the western boundary of the easements.” Specifically, it sought to amend the exhibits to the Petition to clarify that the western boundary of each easement was the 14-foot elevation contour line. It noted that all the testimony and evidence presented at the First Hearing was based on easements with boundaries at the 14-foot elevation contour lines. The County attached its proposed amended petition (“Amended Petition”), which was the same as the original Petition. However, it attached a different Board resolution, number 2019-046, which the Board passed on March 26, 2019 (“Amended Resolution”). The Amended Resolution provided, in relevant part, “Whereas, Resolution 2018-175 was previously adopted by the Board to declare necessity for the specified easements and the purpose of this amended resolution is to clarify the easement boundaries.”

The attachments to the Amended Resolution contained different easement legal descriptions than the Resolution Attachments:

All of that land which lies east of the seaward-most occurrence of the plus 14 foot elevation contour, as measured vertically from the National Geodetic Vertical Datum, of the lands lying within the following parcel of real property[.]

Those legal descriptions were followed by the same metes and bounds descriptions from the Resolution Attachments, which provided that each easement had a western boundary at the 14-foot elevation contour line.

At the beginning of the second half of the hearing (“Second Hearing”), the County argued its motion to amend. It asserted that the amendment merely removed reference to the line of vegetation and that there was no practical effect of the amendment because

the western boundary of the easement remained at the 14-foot elevation contour line, as the witnesses testified at the First Hearing. Appellants disagreed that the amendment merely clarified the easement legal description; they contended that the original Resolution was clear that the boundary of the taking was *either* the 14-foot elevation contour line *or* the line of vegetation, whichever was further seaward. Appellants argued that the original Petition failed due to the conflict between the easement legal descriptions, which contained the “either” “or” boundaries, and the attached surveys, which provided only boundaries at the 14-foot elevation contour lines. They also asserted that the County was required to proceed under the original Resolution because the resolution authorizing condemnation must exist at the time the petition is filed, but the Amended Resolution was passed after the County filed its Petition.

The trial court denied the County’s motion to amend, ruling that it would proceed under the original Petition and original Resolution because the original Resolution was the resolution that gave the County the authority to proceed, and it had to be adopted prior to the initiation of the proceedings. The trial court told the County, “With that, you’ve got some tough choices. You can proceed. You can take a voluntary dismissal. You’ve got to figure out strategically what you want to do.” Following a ten-minute recess, the County elected to go forward on its original Petition.

The County called Michael McGarry, a coastal zone management expert who was also an employee of the Board and the program manager for the beaches. Appellants asked McGarry whether he was authorized to decide which resolution the County would proceed under, noting that despite that the trial court’s denial of County’s Amended Petition, the Amended Resolution nevertheless existed. McGarry acknowledged the

obvious—that the Board did not meet during the recess to determine under which resolution it would proceed.

McGarry testified that in order to receive funding from the Corps for the Project, only the “open sandy beach” portion of each parcel was required to be publicly accessible. He explained that in the original Resolution, the 14-foot elevation contour line was the alternate boundary line for each easement because the line of vegetation moved; however, the easements’ limits were whichever was farther seaward. McGarry stated that erosion had occurred as far landward as the 14-foot elevation contour line, so in order to maintain the Project in the future, it was necessary to have the easement boundaries at the 14-foot elevation contour line, even if during any one sand renourishment, sand placement that far landward was not necessary.

Finally, the County presented Paul Roper, a professional real estate appraiser. Roper visited the properties and appraised the easements described in the Resolution in accordance with the Uniform Standards of Professional Appraisal Practice. Roper also acknowledged the obvious—that he had not performed a new appraisal that morning. Roper explained that the surveys identified the 14-foot elevation contour line as the western boundary of each easement area, so that was what he based his appraisals on. To Roper’s knowledge, there was no public use aspect of the proposed easement; however, he believed that there was a preexisting public use on the beach area, such that his appraisals would have been the same even if he considered the public use aspect.

After the presentation of evidence, Appellants argued that pursuant to the easement legal descriptions, the County sought easements with boundaries *either* at the 14-foot elevation contour line *or* the line of vegetation, such that the easements would

need new legal descriptions in order to know the boundaries. The trial court asked the County, “How do you fix that?” and “How do you craft a legal description that would be in the public records understandable by [sic] and enforceable?” The County responded, “I think the Court would give the County a certain number of days to provide a legal description consistent with its ruling.”

The trial court stated that the necessity of the easements was “obvious.” It ruled that it would grant the easements, finding that the County “in its presentations has clarified the intent of the [R]esolution,” as it related to public use. Accordingly, the trial court ruled that “the order of taking will be limited to merely reference such public use as is currently in existence,” and that it was not going to create an additional public use or public access.

The trial court entered an order of taking (“Order of Taking”) in favor of the County. It provided the easement interest description and easement legal descriptions exactly as provided in the original Resolution. However, it added clarifications and limitations to those descriptions:

3. That the dune vegetation line is anticipated to change over time in response to natural causes of erosion.
4. That Petitioner is only permitted to place sand seaward of the then existing dune vegetation line during initial construction or periodic renourishment of the Mid Reach Segment of the Brevard County Shore Protection Project.
5. That the easements described in [the easement legal descriptions] include the maximum westerly boundary for placement of sand and restoration of dune vegetation.
6. That pursuant to Section 161.141, Fla. Stat., the right of public use contained in the easement description is limited to the sandy beach area, for traditional uses of the sandy beach consistent with uses that would have been allowed prior to the need for the restoration project. The limited right of public use does not include access to the vegetated dune.

This appeal followed.

Initially, we reject the argument that the County violated section 127.02, Florida Statutes (2018), by combining five properties within one resolution.² That statute provides that a “board of county commissioners may not exercise its power of eminent domain unless the board adopts a resolution authorizing the acquisition of a property, . . .” § 127.02, Fla. Stat. We do not find that section 127.02 requires a board of county commissioners to pass a separate resolution authorizing the acquisition of each individual parcel in a project.

Every petition in eminent domain must set forth “the authority under which” the property is to be acquired—i.e., the authorizing resolution. § 73.021(1), Fla. Stat. (2018). Section 73.021(2) provides that a petitioner may join all properties in a planned project in a single petition. § 73.021(2), Fla. Stat. (2018). If section 127.02 required a board of county commissioners to pass a separate resolution for each parcel of land, then section 73.021(2) would be meaningless; a condemning authority would then be required to file a separate petition for each individual property in a large-scale project. We do not believe that was the Legislature’s intent.³

The Altman Appellants argue that the trial court erred in finding that the County’s Petition strictly complied with section 73.021(2), which provides that a petition in eminent domain set forth, “[a] description identifying the property sought to be acquired.”

² In order to exercise the power of eminent domain, the condemning party must comply with section 127.02. Tosohatchee Game Preserve, Inc. v. Cent. & S. Fla. Flood Control Dist., 265 So. 2d 681, 683 (Fla. 1972).

³ Nor do we believe that a resolution fails if it does not set forth the necessity of a taking as to each individual parcel rather than the necessity of a project as a whole.

§ 73.021(2), Fla. Stat. Section 73.021 is strictly construed in favor of the landowner, and a petitioner must substantially comply with the statutory provision in order to sustain a petition for condemnation. Viverette v. State, Dep't of Transp., 227 So. 3d 1274, 1276 (Fla. 1st DCA 2017).

The Altman Appellants contend that the County's easement legal descriptions were inconsistent with the metes and bounds descriptions and surveys, such that the trial court should have dismissed the County's original Petition. They argue that the easement legal descriptions in the original Resolution provided that the western boundaries were *either* the 14-foot elevation contour line *or* the line of vegetation, but the surveys provided that each boundary was the 14-foot elevation contour line. They rely on Viverette, 227 So. 3d at 1276, in which the condemnor filed two resolutions with its petition: a project resolution reflecting a road-widening project and a parcel resolution reflecting the specific parcels deemed necessary for the project. The First District strictly construed section 73.021 against the condemnor, finding that the trial court erred in granting an order of taking because the project resolution adopted outdated maps, which reflected different parcels than the maps attached to the condemnor's petition. Id. at 1277–78.

We find Viverette inapposite. In Viverette, the fatal inconsistency was between the maps adopted in the project resolution and the maps incorporated into the petition. Here, there is no inconsistency between the easement areas adopted by the Board in its original Resolution and the easement areas incorporated into the County's original Petition. The easement legal descriptions in the original Resolution are identical to the easement legal descriptions in the original Petition. Additionally, the metes and bounds descriptions in

the original Petition are the exact metes and bounds descriptions that the Board adopted in the original Resolution.

However, we find that although the County technically included legal descriptions of the easements, the County's Petition was defective because the legal descriptions provided two potential easement boundaries, rendering them unclear. The original Resolution authorized an easement on each property, with a western boundary at either the 14-foot elevation contour line or the seaward edge of the eroded dune bluff, *depending on which was further seaward*. Thus, for each property, the County should have determined which potential boundary line was further seaward and petitioned for an easement with that boundary line.⁴

The County's argument that the "whichever is further seaward" language related only to the placement of sand is unconvincing. The plain language of the easement legal descriptions described the land sought for the easements, not the location on which the County intended to place sand. Additionally, the County acknowledged that to have easement legal descriptions that were enforceable and understandable, it would have had to craft new descriptions that were consistent with the trial court's ruling. Accordingly, although the County's original Petition technically included easement legal descriptions, as required by section 73.021(2), the Petition was nevertheless defective because the

⁴ Likewise, each survey should have been for an easement with a western boundary either at the 14-foot elevation contour line or the seaward edge of the eroded dune bluff, depending on which boundary line was determined to be further seaward.

easement legal descriptions were not clear as to which line was the western boundary of the easement.⁵

The Altman Appellants also argue that the County failed to comply with section 73.021(6). The only requirement of section 73.021(6) is that a petition in an eminent domain proceeding contain “[a] statement that the petitioner has surveyed and located its line or area of construction, and intends in good faith to construct the project on or over the described property.” Here, the County included just that; its Petition included allegations that it surveyed and located the line or area of construction or use for the properties and that it intended, in good faith, to construct the Project, as described in the easement descriptions and resolution. Two cases have explained the requirements of section 73.021(6), which coincides with its plain meaning. In Dade County v. General Waterworks Corp., 267 So. 2d 633, 636 (Fla. 1972), the Florida Supreme Court described the statute as a requirement “that there be a good faith intent on the part of the condemning authority to use the property, once acquired, for such purpose.” In City of Miami Beach v. Manilow, 232 So. 2d 759, 760 (Fla. 3d DCA 1970), the Third District Court of Appeal described the statute as a requirement that the petitioner allege that it performed the conditions precedent to condemnation. Here, the County conducted surveys prior, alleged so in its Petition, and included a statement that it intended, in good

⁵ Furthermore, even if the rules on deed interpretation were applicable and permitted a trial court to consider extrinsic evidence in determining the meaning of an easement legal description in a condemnation proceeding, the County was nevertheless unable to use extrinsic evidence to clarify the easement legal description in this instance. See Rice v. Rice, 499 F. Supp. 2d 1245, 1248–49 (M.D. Fla. 2007) (“[P]arol evidence is not admissible to determine the description when the parties deed an unspecified parcel of property, or the deed contains an *alternative description describing two distinct parcels . . .*” (emphasis added) (citations omitted)).

faith, to construct the Project according to its surveys. Accordingly, the County complied with section 73.021(6).

The Pinter Appellants argue that the trial court erred in entering the Order of Taking because the County failed to establish a reasonable necessity for the taking. “The condemning authority initially must come forward with proof that there is a public purpose for the taking and a reasonable necessity that the land in question is being taken for the contemplated public use.” City of Lakeland v. Bunch, 293 So. 2d 66, 69 (Fla. 1974).

In Cordones v. Brevard County, 781 So. 2d 519, 521 (Fla. 5th DCA 2001), the appeal from the trial court’s order of taking in the North Reach segment of the Project, this Court summarized the test to determine whether the condemnor established a reasonable necessity:

No bright line test is available to determine what constitutes “reasonable necessity” for a taking by a condemning authority. To establish necessity, the condemnor need not have the funds on hand, need not have plans and specifications completely prepared for the project, and need not have completed all preparations for immediate construction. Planning for the future is one of the elements that a county must consider in determining which property is to be acquired. A condemnor must consider several factors in establishing necessity, to wit: (1) the availability of an alternate route; (2) cost; (3) environmental factors; (4) long range planning; and (5) safety considerations. A governmental entity has wide discretion to select the amount, location and interest of the property to be condemned.

A trial court’s order approving condemnation of private property for public use should not be disturbed on appeal when the taking is supported by good faith considerations of cost, safety, environmental protection and long-term planning. The governmental entity need show only reasonable evidence of necessity. . . . [A] two-tier model is to be observed when determining whether a condemning authority has met its burden of proving reasonable necessity. The model suggests that: (1) the authority must show reasonable necessity for the

condemnation, and (2) after that is shown, such exercise should not be disturbed in the absence of illegality, bad faith or abuse of discretion.

Id. at 522 (citations omitted).

We find that there is competent substantial evidence in support of the trial court's finding that there was a reasonable necessity to take easements with western boundaries at the 14-foot elevation contour line. Bodge explained that the 14-foot elevation contour line was chosen as the boundary because it represented the land relimit of erosion observed after severe storms over the past 30 to 40 years. He also stated that although no sand would be placed on the dune vegetation, an easement extending to the 14-foot elevation contour line was necessary because in the past, the parcels have eroded back that far. Likewise, McGarry testified that erosion has occurred as far landward as the 14-foot elevation contour line and opined that in order to maintain the project in the future, the County needed to have authority to place sand as far landward as the 14-foot elevation contour line, even if it did not have to place sand that far landward during some sand renourishments. Further, he stated that the line of vegetation changes over time and that he has seen it retreat to the approximate area of the 14-foot elevation contour line. Accordingly, the County clearly established that there was a necessity for easements with boundaries at the 14-foot elevation contour line.

The Pinter Appellants also argue that the County did not establish a reasonable necessity for the public use aspect of the easements because the County sought the public use aspect only to obtain federal funding, which is insufficient to establish necessity. This Court has previously addressed this argument. See Cordones, 781 So. 2d at 522. In Cordones, like this case, the County sought easements for the Project, and

the easements included a public use component in order to obtain federal funding from the Corps. Id. The landowners argued that the County failed to prove a reasonable necessity. Id. at 521. They relied on Knappen v. Division of Administration, State Department of Transportation, 352 So. 2d 885 (Fla. 2d DCA 1977), arguing that “taking property by eminent domain for the purpose of attracting federal funds is insufficient to establish that the property interest sought is necessary for the project.” Cordones, 781 So. 2d at 521. In Knappen, the condemning authority sought to take more of the appellants’ land than necessary for a project in hopes that the wider road would attract federal funding for the project; the Second District Court of Appeal held that the condemning authority “overstepped the bounds of necessity for no good reason,” noting that its fear of a shortage of state funding for the project led it to increase the size of the taking to assist in attracting federal funds. Knappen, 352 So. 2d at 888, 890–91.

This Court distinguished Knappen, reasoning:

[T]he County sought to condemn only sufficient property as was necessary for the project, pursuant to the directions of the [Corps], that would assure federal funding. The amount and nature of the property interest sought to be taken in this case did not exceed what was required to accomplish the job.

Cordones, 781 So. 2d at 521–22. Here, the County sought to condemn easements that included a public use element in order to comply with the Agreement so that it would receive federal funding. Thus, pursuant to Cordones, so long as the County sought only the public use that its Agreement with the Corps required, there was a reasonable necessity for the public use aspect of the easements.

Here, the County’s Agreement with the Corps provided that the County “shall ensure the continued public use of such shores compatible with the authorized purposes

of the project.” The County sought easements that included “the right of public use only on the portion of Defendant’s property described [in the exhibits].” Based on the surveys of the properties, it is apparent that the easement areas include the sandy beach, the vegetated dune, and on some properties, a boardwalk or steps. Accordingly, while the Corps required only the continued public use on shores, the County sought an unrestricted public use element on the entire easement area.

Even the witnesses for the County recognized that the County sought a greater public use than was required by the Corps. Bodge recognized that while the Agreement required the County to ensure “continued public use” of the shore, the proposed easements did not limit the use to “continued” or “existing” use because they stated, “[t]ogether with the right of public use only on the property.” Likewise, McGarry testified that in order to receive federal grant money for the Project, only the “open sandy beach” portion of each condemned parcel had to be publicly accessible. Accordingly, pursuant to Cordones, the County failed to establish a reasonable necessity for the public use aspect of the easements.

Although not stated in its order, it is apparent that the trial court also found that there was not a reasonable necessity to grant the right of public use that the County sought in its Petition because, in its Order of Taking, the trial court limited the right of public use. The County sought the easement authorized by the Board in the Resolution, which included “the right of public use only on the portion of Defendant’s property described [in the Resolution Attachments].” In contrast, the trial court ruled:

[T]he right of public use contained in the easement description is limited to the sandy beach area, for traditional uses of the sandy beach consistent with uses that would have been allowed prior to the need for the restoration project. The

limited right of public use does not include access to the vegetated dune.

Thus, the trial court limited the Board's decision to condemn a public use component in the easements to only those public uses which previously existed, and it limited the area of public use to only the sandy beach area. Although we agree with the trial court that the County established a necessity to condemn the public use aspect of the easement on the sandy beach area, "[a] court is not authorized to substitute its judgment for that of the governmental body acting within the scope of its lawful authority." Canal Auth. v. Miller, 243 So. 2d 131, 133 (Fla. 1970). The County's argument that a trial court's authority includes discretion to enter an order of taking granting less than what the Board authorized the County to take is unconvincing. Because the trial court implicitly determined that there was no reasonable necessity for the public use aspect of the easements, the trial court should have denied the County's Petition rather than grant an order of taking with a limited public use.

In summary, we find the County's Petition was fatally defective and thus, the trial court should have dismissed it. The trial court was without authority to enter an order of taking which attempted to cure the defects in the original Resolution and original Petition.⁶

REVERSED.

COHEN, WALLIS and EDWARDS, JJ., concur.

⁶ We find no merit to Appellants' arguments as to the validity of the County's appraisal figure. Because the appraisal amount needed to only be an amount necessary to fully compensate Appellants, see Florida Water Services Corp. v. Utilities Commission, 790 So. 2d 501, 504 (Fla. 5th DCA 2001), the trial court did not err in determining that the appraisal of the greater area was sufficient; had the trial court granted an easement with a boundary at the line of vegetation, the smaller area, the amount that the County deposited in the registry would have nevertheless been sufficient to fully compensate Appellants.