



TRUE NORTH LAW

A National Authority in Complex, Constitutional and Appellate Litigation.

Mark F. (Thor) Hearne, II

Founding Partner

Thor@TrueNorthLawGroup.com

Direct: 314.296.4002

Cell: 314.229.5512

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The Honorable Greg Steube
United States House of Representatives
521 Cannon House Office Building
Washington, DC 20515

Re: Northern Extension of Sarasota Legacy Rail-Trail Corridor

Dear Congressman Steube:

The federal Surface Transportation Board took private property from more than four hundred Sarasota County landowners in violation of the Fifth Amendment. The Fifth Amendment provides, “No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The Surface Transportation Board issued an order taking these owners’ land for the northern extension of the Legacy Trail. The Surface Transportation Board then authorized Sarasota County to build and operate a public recreational trail across these owners’ land and created an easement for a future railroad across these owner’s land. But no one – neither the federal government, nor Sarasota County – has paid these hundreds of owners for that property the government took from them. This is a violation of the Fifth Amendment. See *Preseault v. Interstate Commerce Commission*, 494 U.S. 1, 8 (1990), and *Knick v. Scott Township*, 139 S.Ct. 2162, 2170 (2019) (“because a taking without compensation violates the self-executing Fifth Amendment at the time of the taking, the property owner can bring a federal suit at that time”).

Because the federal government violated the Fifth Amendment, the owners filed a lawsuit in the Court of Federal Claims. In prior

litigation involving the southern segment of the Legacy Trail, the court awarded landowners compensation for the land, interest for the government's delay in paying the owners, and ordered the federal government to reimburse the owners' legal fees and litigation expenses.

But there is an issue. The Justice Department, the Surface Transportation Board, and Sarasota County have taken conflicting positions on what property the federal government took from these landowners. We can resolve this conflict through litigation, but that will be very costly and take years. Or the Surface Transportation Board, the Justice Department, Sarasota County, and the landowners can agree upon what property the federal government took and what property Sarasota County actually needs for the northern extension of the Legacy Trail.

In the past, the Surface Transportation Board has taken the position that when it invokes the Trails Act, the Board takes possession of the owners' rights to the land subject to the new federally-created right-of-way. In this case, Sarasota County is the trail-user, and acting under the authority the federal government granted it, Sarasota County claims it now "owns" these owners' land. Yet, when owners seek compensation for the property the federal government has taken from them, Justice Department lawyers argue the federal government didn't really take all of the owners' rights to their land. The government cannot both run with the fox and hunt with the hounds.

And now comes Sarasota County. By authority of the Surface Transportation Board's order invoking the Trails Act, Sarasota County has demanded the owners of more than two hundred properties remove "encroachments" from the Legacy Trail right-of-way before February 7.

These “encroachments” include in-ground swimming pools, sheds, fences, patios, and septic drainage fields. All of these improvements have been on the owners’ land for years and were lawfully permitted when they were constructed.

So, I return to the central issue. Is the federal government going to pay these owners for removing these improvements? Or, is Sarasota County demanding something that is beyond what it was granted when the Surface Transportation Board invoked the Trails Act? In which event, Sarasota County will have to independently exercise eminent domain under Florida law and pay the landowners.

Assistant Attorney General Jeffrey Bossert Clark, who oversees the career lawyers at the Justice Department, is a good man who respects the Constitution. I ask you to request that he personally review this matter. I enclose the letter I sent him.

I also ask that you request members of the Surface Transportation Board to grant these Sarasota County landowners the right to continue using land now subject to the easement the Surface Transportation Board established when it invoked the Trails Act. Doing so will save taxpayers millions of dollars and allow these landowners to resolve their claims in a fair and cost-efficient manner. Thank you very much.

Warmest regards,



Mark F. (Thor) Hearne, II