



# TRUE NORTH LAW

A National Authority in Complex, Constitutional and Appellate Litigation.

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*Sent via email to:* nrodriquez@heraldtribune.com  
barbara.peters-smith@heraldtribune.com  
chris.wille@heraldtribune.com

Nicole Rodriquez  
Barbara Peters-Smith  
Chris Wille  
Sarasota Herald-Tribune  
777 Main Street  
Sarasota, FL 34236

**RE: Northern extension of the Legacy Trail**

Dear Nicole, Barbara, and Chris:

I understand you are covering the Legacy Trail and events related to the extension of the northern segment of the Legacy Trail. I represent the owners of almost 200 tracts of land whose property was taken to accommodate the northern extension of the Legacy Trail – that segment north of Sawyer Loop Road. I also represented all of the landowners whose property was taken in 2004 for the southern segments of the Legacy Trail between Venice and Sawyer Loop Road.

Earlier this month Sarasota County sent letters to the owners of almost 300 properties demanding the owners remove any “encroachment” from their land. Sarasota County now claims an interest in these owners’ land by reason of an order the federal Surface Transportation Board issued under the federal Trails Act.<sup>1</sup> Sarasota

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<sup>1</sup> 16 U.S.C. §1247(d), which provides that “interim use [of the otherwise-abandoned railroad corridor for a recreational trail] shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.”

County is now demanding these owners remove these “encroachments” before February 7.<sup>2</sup> The alleged “encroachments” include in-ground swimming pools, patios, fences, septic drainage fields, stormwater drainage fields, landscaping, sheds, and other buildings. Almost all of the structures Sarasota County is now demanding these owners remove were existing improvements for which Sarasota County would have granted the owner a permit to build. These improvements have been located on these owners’ land for years, if not decades.

The apparent basis for Sarasota County’s demand is the federal Surface Transportation Board’s orders of December 2017 and May 2019 invoking the federal Trails Act extending the Legacy Trail north of Sawyer Loop Road.

The Fifth Amendment to the United States Constitution prohibits the government (federal, state, or a local government like Sarasota County) from taking private property without justly compensating the property owner. 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.”

These Sarasota County property owners were not compensated when the federal Surface Transportation Board issued its orders taking their land in December 2017 and in May 2019. Because the federal government took these owners’ land in violation of the Takings Clause

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<sup>2</sup> An example of the letter Sarasota County sent these owners is attached and is also available at:

<https://www.scgov.net/Home/ShowDocument?id=43520>

of the Fifth Amendment, these owners sued the federal government in the United States Court of Federal Claims seeking compensation for that property the federal government took.<sup>3</sup>

The compensation the federal government owes these landowners will be paid by the United States Treasury, not Sarasota County. But the federal government will only pay for that property the federal Surface Transportation Board took.

Sarasota County's recent letter raises an issue of significant concern to Sarasota County taxpayers and to the federal government. Because Sarasota County is demanding almost 300 Sarasota County landowners remove improvements – such as swimming pools, drainage fields, buildings, patios, fences, sheds, and other improvements – from these owners' private property, Sarasota County's demand invites a significant risk.

Here is the dilemma. If the federal Surface Transportation Board agrees that the Board's invocation of the federal Trails Act granted Sarasota County the authority to demand these owners remove these existing improvements from their private property, the *federal* government is constitutionally obligated to pay these owners for the cost of doing so and must also compensate the owners for the owners' loss in property value.

But, if Sarasota County demands the owners remove these so-called "encroachments" without the federal government first agreeing

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<sup>3</sup> A copy of the lawsuit I filed on behalf of these owners is attached. I will soon be amending this lawsuit or filing an additional lawsuit to add additional landowners.

that the federal government will pay these owners, then *Sarasota County* will have to pay these landowners.

This is no small matter. The amount of compensation due these owners is tens of millions of dollars. Furthermore, resolving this matter will delay construction of the northern extension of the Legacy Trail by a decade or more due to litigation necessary to resolve exactly what property interest Sarasota County claims and the dimension of that property interest the federal government took when the Surface Transportation Board invoked the federal Trails Act.

I enclose a copy of the letter I sent the Sarasota County Commissioners explaining this situation. I have also enclosed a copy of the letter I sent Assistant Attorney General Jeffrey Bossert Clark and the members of the Surface Transportation Board.

The Legacy Trail is a very popular public amenity, and the northern extension can be a further enhancement to this public amenity. More than a quarter-million people a year use the southern segment of the Legacy Trail. But this is a *public* amenity. And this public amenity – a public recreational trail easement and an easement for “railbanking” allowing some future railroad or light rail to build a railway line across these owners’ land – takes *privately-owned* property. The United States Constitution and the Florida State Constitution require that the government compensate these owners for that private property taken from them. See *Preseault v. Interstate Commerce Commission*, 494 U.S. 1, 8 (1990); *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996) (*en banc*); *Toews v. United States*, 376 F.3d 1371, 1381 (Fed. Cir. 2004).

The southern segment of the Legacy Trail generated two federal lawsuits. I represented all the landowners in both lawsuits. In those cases, the United States Court of Federal Claims awarded the landowners more than \$15 million. Judge Williams found that the Legacy Trail diminished the value of a landowner's remaining property (that portion of their land not physically occupied by the rail-trail corridor easement) by at least twenty percent. And this compensation was in addition to the value of the land physically taken for the new rail-trail easement. See *McCann Holdings, Ltd. v. United States*, 111 Fed. Cl. 608 (2013), and *Childers v. United States*, 116 Fed. Cl. 486 (2014). Other judges in other federal Trails Act litigation have reached similar conclusions.

Settled law, including a series of decisions by the United States Supreme Court, requires the government (either the federal government or Sarasota County) to compensate the owner for the full value of the land actually taken for the easement and also for the loss in value to the owner's remaining property. See, e.g., *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893) ("no private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner"); *United States v. Miller*, 317 U.S. 369, 373 (1943) ("Such [just] compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken.").

I will keep you informed as this matter develops. I am available to discuss this litigation should you desire additional background. My personal cell phone is 314-229-5512.

Warmest regards,

A handwritten signature in blue ink, appearing to read "Thor", with a large, stylized initial "H" that loops back to underline the name.

Mark F. (Thor) Hearne, II

Enclosures