



TRUE NORTH LAW

A National Authority in Complex, Constitutional and Appellate Litigation.

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Sent via U.S. Certified Mail

December 19, 2019

Charles D. Hines, Chairman
Michael A. Moran, Vice Chair
Christian Ziegler
Nancy C. Detert
Alan Maio
Sarasota County Commission
1660 Ringling Blvd.
Sarasota, FL 34236

Re: Legacy Trail

Dear Members of the Sarasota County Commission:

I write for two reasons. First, I am requesting documents relating to the Northern extension of the Legacy Trail. Article I, §24, of the Florida Constitution and Chapters 119 and 286 of the Florida Statutes require the County to provide these documents. A specific list of the requested documents is provided below.

The second reason I write is to address the recent letter Hayley Baldinelli of the Sarasota County Property Management Division sent to almost 250 landowners demanding these owners remove “encroachments” from their private property. The improvements Sarasota County demanded owners remove from their land included fences, sheds, and even in-ground swimming pools. Sarasota County did not provide any legal authority for its demand. Many of these improvements have existed for decades, if not generations, and are located on private land. Sarasota County further failed to provide any support for the interest the County claims in these owners’ land.

Florida Sunshine Law request for official public records.

Please immediately provide copies of the following documents (“documents” includes emails):

1. All documents, surveys, or other records related to Sarasota County’s demand that almost 250 landowners remove long-established structures and improvements

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112 S. Hanley Road, Suite 200, St. Louis, MO 63105

from their land along the northern extension of the Legacy Trail.¹

2. Copies of the Legacy Trail Operation and Use Policy referenced in Sarasota County's correspondence with landowners and any supporting studies, legal opinions, or amendments to this policy.
3. Copies of any correspondence (including emails) between Sarasota County and any third party – including (but not limited to) the federal Surface Transportation Board, the United States Department of Justice, the Trust for Public Land, CSX Transportation, Inc., and Seminole Gulf Railway – and any other party involved in the extension of the Legacy Trail north of Sawyer Loop Road.
4. Copies of any land title records, chains of title, title policies, surveys, engineering drawings, or other documents related to the abandoned Seaboard Air Line railway line north of Sawyer Loop Road. This request includes any copies of any documents supporting the County's claim that it can demand these owners remove any "encroachment" from what the Sarasota County letter claimed was "county-owned property."
5. Copies of all records concerning any agreement between Sarasota County and any other party related to the development of that portion of the Legacy Trail north of Sawyer Loop Road.
6. Copies of all correspondence, emails, and other documents related to any communication between

¹ For your reference I have included a copy of the form letter Hayley A. Baldinelli, Manager, Property Management Division, sent to nearly 250 landowners on December 9 (from your website). Many of my clients have received a version of this letter specific to their property. Nicole Rissler and Jon Robinson, Director and Manager of Sarasota County's Parks, Recreation and Natural Resources Department, were also copied.

Sarasota County and the Seminole Gulf Railroad and
CSX Transportation, Inc., related to the Legacy Trail.

Because you have recently sent letters demanding these landowners remove what you claimed to be an “encroachment,” all of these records should be immediately available. Accordingly, there should be no fees relating to gathering these records. To reduce costs and speed the resolution of this request, you may send these documents electronically to me, my colleague, Steve Davis, and my senior paralegal, Megan Epperson, at my email address noted above.

Should you deny this request, or any part of this request, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial as required by Florida Statute §119.07(1)(d). If you have any questions about this request, I (or my colleague Steve Davis) am available to discuss this matter.

The basis for Sarasota County’s demand that these landowners remove existing improvements from their private property.

I turn now to my second point.

Sarasota County did not pay these owners for that land Sarasota County now wants to use for the northern extension of the Legacy Trail. Sarasota County has not explained under what authority it can demand these owners remove fences, pools, sheds, and other improvements from their private property. Again, Sarasota County has not paid these landowners anything for the right to use these owners’ private property for the Legacy Trail easement, and Sarasota County has not exercised any eminent domain authority it may claim under Florida law.

The federal government took private property from these landowners in May 2019 when the federal Surface Transportation Board invoked section 8(d) of the Trails Act. Whatever right Sarasota County has to use an easement across these owners’ land is derived from the order the federal Surface Transportation Board issued acting under section 8(d) of the Trails Act. The federal Surface Transportation Board retains control and jurisdiction of this corridor. The Surface Transportation Board may authorize a new railroad or other transportation corridor to be constructed across these owners’ land even if that means removing the Legacy Trail improvements constructed by Sarasota County.

Under Florida law and the terms of the original easement these present-day owners' predecessors-in-title granted the Seaboard Air Line Railway a right-of-way easement that was limited to using a strip of land for the operation of a railway line. See, for example, the easement Adrian Honore granted Seaboard Air Line Railway in 1910 (copy enclosed). The easement Adrian Honore granted the railroad provided that the conveyance to the railroad was "made on the express condition, however, that ... if at any time [following the construction of the railroad] the said [railroad] shall abandon said land for railroad purposes then the above described pieces and parcels of land shall *ipso facto* revert to and again become the property of the undersigned, his heirs, administrators and assigns."

When Seaboard and its successor railroads no longer operated, the easement terminated, and the owner of the fee estate regained unencumbered title to their land and the exclusive right to use and possess and to exclude others from their land. See *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 8 (1990) (*Preseault I*), *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed Cir. 1996) (*en banc*) (*Preseault II*), *Hash v. United States*, 403 F.3d 1308, 1318 (Fed. Cir. 2005), and *Brandt Trust v. United States*, 572 U.S. 93, 104-05 (2014). The railroad unequivocally abandoned this right-of-way easement.

In short, the railroad had *nothing* to convey Sarasota County. Because the railroad had only a limited right to use the land for the operation of a railway and that right had terminated, Sarasota County acquired no interest in these owners' land by reason of the conveyance from the railroad. See the Alabama Supreme Court's recent decision in a directly analogous case, *Monroe County Commission v. Nettles*, 2019 Ala. LEXIS 37 (April 26, 2019). This also means there was no reason for Sarasota County to pay the railroad anything.

So, in short, Sarasota County has absolutely no right to order or demand these owners remove their fences, sheds, pools, or any other improvements from their privately-owned land. The only reason Sarasota County has any claim to use these owners' land for a public recreational trail is because the federal Surface Transportation Board issued an order invoking section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d).

Furthermore, most (if not all) of these alleged "encroachments" Sarasota County is now demanding the owners remove were approved

by Sarasota County or the City of Sarasota through the county or city permitting and zoning process when they were constructed.

There is pending federal litigation in the United States Court of Federal Claims regarding the northern extension of the Legacy Trail. See *4023 Sawyer Road I, LLC, et al. v. United States*, No. 19-757, and *Cheshire Hunt, et al. v. United States*, No. 18-111. The owners of more than 180 properties along the northern Legacy Trail extension brought these lawsuits to enforce their constitutional right to be justly compensated for property the federal government took from them when the Surface Transportation Board invoked section 8(d) of the Trails Act.

In 2004, the Surface Transportation Board took land for the southern segment of the Legacy Trail between Sawyer Loop Road and Venice. The owners whose property was taken sued the federal government, and the Court of Federal Claims ordered the federal government to pay these landowners tens of millions of dollars. See *Rogers v. United States*, 90 Fed. Cl. 418 (2009); *Childers v. United States*, 116 Fed. Cl. 486, 497 (2014); *McCann Holdings v. United States*, 111 Fed. Cl. 608, 614 (2013).

The fundamental point is quite simple. Our Constitution prevents the federal government, the state of Florida, or Sarasota County from taking private property without justly compensating the owner.

The Constitution 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.” See *Knick v. Scott Township*, 139 S.Ct. 2162, 2172 (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”). See also *Horne v. Department of Agriculture*, 135 S.Ct. 2419, 2426 (2015) (“The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home.”); *Stop the Beach Renourishment, Inc. v. Florida Dept. of Env'tl. Prot.*, 130 S.Ct. 2592, 2601 (2010) (the government “effect[s] a taking if they recharacterize as public property what was previously private property”); *Preseault I*, 494 U.S. at 20 (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984), and *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980)); *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”). This absolute constitutional mandate applies even if the government only takes private property for a short time. See *Arkansas Game & Fish Comm’n*, 568 U.S. 23, 32 (2012) (“our decisions confirm that takings temporary in duration can be compensable”).

In light of these fundamental constitutional principles I return to our immediate issue. Sarasota County has issued a demand that these landowners remove existing improvements (such as fences, pools, and sheds) from the landowners’ private property. Sarasota County has demanded almost 250 owners remove existing improvements from their property before February 7. Many of these improvements have existed for decades. Sarasota County makes the implicit threat that, if these owners don’t remove these improvements, Sarasota will forcibly do so.

You should be cautioned that Sarasota County is headed into some dangerous waters that could prove very expensive to Sarasota County taxpayers.

When the Surface Transportation Board invoked section 8(d) of the national Trails Act, the federal government incurred the obligation to compensate these landowners. See *Preseault II*, 100 F.3d at 1531 (“[W]e conclude that the taking that resulted from the establishment of the recreational trail is properly laid at the doorstep of the Federal Government.”). But, if Sarasota County takes more private property than the Surface Transportation Board’s order invoking section 8(d) of the Trails Act authorized, Sarasota County then must pay the landowners.

As noted, these landowners have already sued the federal government seeking compensation for that property the Surface Transportation Board’s May 2019 order took from them. This litigation is currently pending in the United States Court of Federal Claims before Judge Williams. Should Judge Williams determine that the Surface Transportation Board’s invocation of section 8(d) of the Trails Act granted Sarasota County the right to force these owners to remove their existing in-ground pools, sheds, fences, and other improvements from land they own, the federal government must compensate these owners and United States’ taxpayers will bear the expense. This will be expensive. See *Childers*, 116 Fed. Cl. at 497, and *McCann Holdings*, 111 Fed. Cl. at 614.

Alternatively, should the Surface Transportation Board or the Court of Federal Claims take a more limited view of the scope of the

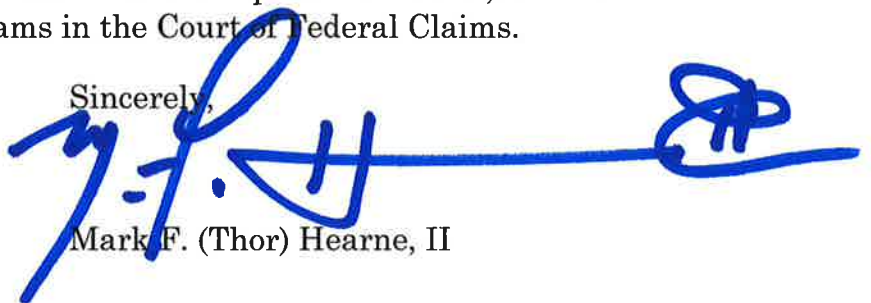
Surface Transportation Board's authority and the nature of the property interest the federal government took when it invoked section 8(d) of the federal Trails Act, then Sarasota County will bear the cost of compensating these owners for the loss of property value and removal of these existing improvements from their land. This will be costly and will be an expense paid by Sarasota County taxpayers.

But one thing is certain. One way or the other, Sarasota County or the federal government will compensate these landowners for that private property taken from them for the Legacy Trail. This compensation includes the value of the land taken, the cost of any improvements that are taken, the mitigation cost (including berms, buffers, and fences), the diminished value of each owner's remaining property, interest from May 2019 until each owner is paid, and reimbursement of every owners' legal fees and litigation expenses.

Hayley Baldinelli's letter of December 9 made a demand Sarasota County has no authority to make. I have advised the owners I represent to disregard this illegal demand. And, if Sarasota County takes any action to trespass upon these owners' private property or seek to remove any existing improvements from these owners' land, the County will be met with federal litigation requesting an injunction denying Sarasota County any use of these owners' land until the federal court has finally resolved this matter.

Finally, as noted below, I am sending this letter to the Department of Justice and the Surface Transportation Board, and I will file a copy with Judge Williams in the Court of Federal Claims.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. F. Hearne, II', with a long horizontal line extending to the right and a circular flourish at the end.

Mark F. (Thor) Hearne, II

Enclosures

cc: Sarasota County Planning and Development Services
Attn: Property Management
1660 Ringling Blvd., Suite 240
Sarasota, FL 34236

Surface Transportation Board
Ann D. Begeman, Chairman
Patrick J. Fuchs, Vice Chairman
Martin J. Oberman, Member
Craig Keats, Director, Office of the General Counsel

U.S. Department of Justice
Assistant Attorney General Jeffrey Bossert Clark
Deputy Assistant Attorney General Jean E. Williams
Trial Attorney Brent Allen

U.S. Congress
Senator Marco Rubio
Senator Rick Scott
Representative Greg Steube
Representative Vern Buchanan



December 9, 2019

John Doe
1234 Example St.
Sarasota, FL 34236

Certified Mail: 0000 0000 0000 0000 0000

Re: Action Needed to Address Private Encroachment on County-Owned Property

Dear Property Owner:

On June 30, 2019, Sarasota County acquired a former railroad corridor to become an extension of the Legacy Trail. On November 19, 2019, the Board of County Commissioners adopted the Legacy Trail Operation and Use Policy (the "Policy"), which prohibits encroachments onto the Legacy Trail by adjacent property owners.

As an adjacent property owner, your [insert type of encroachment] is extending beyond the legal boundaries onto the neighboring Sarasota County-owned Legacy Trail. This encroachment is a violation of the Policy and must be removed from the Legacy Trail by February 7, 2020 as construction on the Legacy Trail extension is expected to begin mid-2020. Please ensure compliance with this request by the aforementioned date to avoid any further actions.

Please contact encroachments@scgov.net or 941-861-5191 with questions.

Sincerely,

Hayley A. Baldinelli,
Manager, Property Management Division

cc/e-mail:

Nicole Rissler, Director, Parks, Recreation and Natural Resources
Jon Robinson, Manager, Parks, Recreation and Natural Resources

HONORE DEED

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, ADRIAN C. MONORE, a bachelor of Chicago, Illinois, for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations this day to him in hand paid, the receipt whereof is hereby acknowledged, does hereby remise, release and forever quit claim unto the SEABOARD AIR LINE RAILWAY, a corporation of the state of Virginia and other States, a right of way for railroad purposes over and across the following described parcels of land, lying and being in the County of Manatee, and State of Florida:

(1) A strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by the grantor herein in Sections three (3) and ten (10), Township thirty-seven (37) South, Range eighteen (18) East, Manatee County, Florida; said center line being described as follows:

Beginning at a point on the north line of the northwest quarter of the northeast quarter of Section three (3), Township thirty-seven (37) South, Range eighteen (18) East, seven hundred and twenty-four (724) feet west of the northeast corner thereof; running thence in a straight line south twelve (12) degrees, eleven (11) minutes east, nine thousand eight hundred and fourteen (9814) feet, more or less, across said Section three (3), and crossing the south line of said section at a point eight hundred and eighty-eight (888) feet west of the southeast corner thereof, and across the East one-half of the northeast quarter and the northeast quarter of the southeast quarter of Section ten (10), Township thirty-seven (37) South, Range eighteen (18) East, and crossing the south line of said northeast quarter of the southeast quarter of Section ten (10) at a point thirty-three (33) feet west of the southeast corner thereof, and across the S.E. 1/4 of the S.E. 1/4 of said Section ten (10) to a point on the east line thereof. The said strip of land contains twenty-two and five-tenths (22.5) acres, more or less.

(2) A strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by the grantor herein in Sections fourteen (14), twenty-three (23), twenty-six (26) and thirty-five (35) Township thirty-seven (37) South, Range eighteen (18) East, and Sections two (2), one (1) and twelve (12), Township thirty-eight (38) South, Range eighteen (18) East, Manatee County, Florida; said center line being described as follows:

Beginning at a point on the North line of the northwest quarter of the northwest quarter of Section fourteen (14), Township thirty-seven (37) South, Range eighteen (18) East, two hundred and fifty-two (252) feet east of the northwest corner thereof; running thence in a straight line South twelve (12) degrees, eleven (11) minutes East, thirty-five thousand

one hundred and eighty (36,180) feet, more or less, across Sections fourteen (14), twenty-three (23), twenty-six (26) and thirty-five (35), Township thirty-seven (37) South, Range eighteen (18) East, and Sections two (2), one (1) and twelve (12), Township thirty-eight (38) South, Range eighteen (18) East, crossing the south line of the southeast quarter of the southwest quarter of Section twelve (12) at a point six hundred eighty-eight (688) feet west of the southeast corner thereof. Said strip of land contains _____ acres, more or less.

(3) A strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across the lands owned by the grantor herein in the southeast quarter of Section thirteen (13), Section twenty-four (24) and the northeast quarter of the northeast quarter of Section twenty-five (25), Township thirty-eight (38) South, Range eighteen (18) East, Manatee County, Florida; said center line being described as follows:

Beginning at a point on the west line of the northwest quarter of the southeast quarter of Section thirteen (13), Township thirty-eight (38) South, Range eighteen (18) East, five hundred and sixty (560) feet, more or less, south of the northwest corner thereof; running thence in a straight line south twelve (12) degrees, eleven (11) minutes east, eight thousand nine hundred and twenty-five (8925) feet, more or less, across the southeast quarter of Section thirteen (13), Section twenty-four (24), and the northeast quarter of the northeast quarter of Section twenty-five (25), Township thirty-eight (38) South, Range eighteen (18) East, to a point on the south line of the said northeast quarter of the northeast quarter of Section twenty-five (25), distant five hundred sixty-five (565) feet, more or less, east of the southwest corner thereof. Said strip of land contains twenty and five tenths (20.5) acres, more or less.

(4) A strip of land one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway, as located across lands owned by the grantor herein in the northeast quarter of the southeast quarter and the northeast quarter of the southeast quarter of the southeast quarter of Section twenty-five (25), Township thirty-eight (38) South, Range eighteen (18) East, Manatee County, Florida; said center line being described as follows:

Beginning at a point on the north line of the northeast quarter of the southeast quarter of Section twenty-five (25), Township thirty-eight (38) South, Range eighteen (18) East, four hundred and sixty-seven (467) feet west of the northeast corner thereof; running thence in a straight line south twelve (12) degrees, eleven (11) minutes east, a distance of two thousand and fifteen (2015) feet, more or less, to a point on the south line of the northeast quarter of the southeast quarter of the southeast quarter of Section twenty-five (25), distant forty-five (45) feet, more or less, west of the southeast corner thereof. Said strip of land contains four and six-tenths (4.6) acres, more or less.

TO HAVE AND TO HOLD the said premises unto the said Seaboard Air Line Railway, its successors and assigns and to its or their own proper use, benefit and behoof forever for railroad purposes.

This conveyance is made upon the express condition, however that if the Seaboard Air Line Railway shall not construct upon said land and commence the operation thereon with one year of the date hereof of a line of railroad, or, if at any time thereafter the said Seaboard Air Line Railway shall abandon said land for railroad purposes then the above described pieces and parcels of land shall ipso facto revert to and again become the property of the undersigned, his heirs, administrators and assigns.

IN TESTIMONY WHEREOF the undersigned has hereunto set his hand and seal this 5th day of November, A.D. 1910.

Adrian C. Honore (SEAL)

WITNESSES:

Paul de Archer
Adrian C. Honore
State of Illinois, }
County of Cook. } ss.

I hereby certify that on this 5th day of November, A.D. 1910, before me, the undersigned authority, personally appeared in the State and County aforesaid, the said Adrian C. Honore, a bachelor, personally known to me to be the individual described in and who executed the above written deed of conveyance, and for himself, acknowledged that he signed, sealed and delivered the said deed freely and voluntarily and for the uses and purposes therein stated.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal the day and year above written.
My Notarial Commission expires on the 27th day of December, A.D. 1918. Paul de Archer
Notary Public in and for Cook of Illinois State of Illinois