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MONDAY, SEPTEMBER 20, 2021 | HERALDTRIBUNE.COM

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## Residents, county face off over Legacy Trail



Craig and Cyndie Dickie stand in what's left of their backyard, separated from the easement for the Legacy Trail by a makeshift chicken-wire fence. They once maintained and enjoyed the use of easement land. Sarasota County wants the Dickies and other residents to remove sheds and other encroaching structures or pay an annual fee to allow them to remain. EARLE KIMEL/SARASOTA HERALD-TRIBUNE

### Easement property dispute frustrates landowners

**Earle Kimel**  
Sarasota Herald-Tribune  
USA TODAY NETWORK

SARASOTA COUNTY – The Circus Train once traveled the railroad track in the backyard of Cyndie and Craig Dickie's Ingram Avenue house, carrying Ringling Bros. and Barnum & Baily Cir-

cus performers south to Venice. The Dickies used to make sure the children were up at 11 p.m. to watch and wave, as the engineer used to toss candy to the children. Their backyard had many trees so their children joined others from the

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**“It's a great little block house, (but) it's taken a beating off of this crap and we've taken a beating over it.”**

**Bill Grames** Legacy Trail homeowner



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# Legacy Trail

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neighborhood in the space between their lot and their neighbor's garden.

"That was a standard thing, which was really cool," Cyndie Dickie recalled.

When she and Craig bought their house in 1973, Tamaron – the 498-home deed-restricted community on the east side of the tracks – was still cow pasture, Bahia Visa Street and Bee Ridge Road were both still two-lane roads, and residents of nearby Pinecraft still used both horse and buggies and bicycles to get around.

Like their neighbors, the Dickies took care of the grass around the railroad easement because they believe half of the 100-foot-wide right of way is theirs.

But after Sarasota County paid CSX Railroad \$30.1 million for the right to the 6.3-mile-long railroad corridor from Ashton Road north to Payne Park, that long-held belief was challenged.

As contractors built the trail, signs warning that their belongings were encroaching on the linear park were followed by destruction of trees, fencing, sheds and – in some cases septic fields.

The Dickies are among some 200 property owners currently represented by a St. Louis-based attorney who claims Sarasota County is exceeding its rights by – among other things – directly contacting his clients in an attempt to secure outright ownership of the trail right of way. He has demanded the county stop doing so and to properly compensate the homeowners.

The dispute between the county and landowners has turned into a legal showdown that, barring a settlement, will be decided in court.

## A popular exercise trail

The original 12.5-mile-long stretch of the Legacy Trail connected the Venice Historic Train Depot to Culverhouse Park in Palmer Ranch and quickly grew in popularity with the public.

In 2013, The Friends of the Legacy Trail started a campaign to extend the heavily used hiking and biking trail north to Payne Park in Sarasota.

Sarasota County commissioners agreed. So did a majority of registered voters in Sarasota County, who approved a \$65 million bond referendum in 2018 to pay for the extension of the trail north, as well as south to North Port.

Developers carving subdivisions out of pasture land between Sarasota and Venice now use proximity to the Legacy Trail as a selling point akin to beachfront property.

Sarasota County opened the 2.75-mile section of Legacy Trail from Bahia Vista Street south to a point just beyond Proctor Road on July 6.

Residents along that northern stretch



Contractors tagged the fence behind Bill and Brooke Grames home as an encroachment of the Legacy Trail easement. PHOTO PROVIDED BY BILL GRAMES

appreciate the trail's aesthetics but said they were plagued by the noise and occasionally foundation-cracking vibration of construction and now face uncertainty about what they considered their historical property lines, as well as their home values.

"It's a great little block house, (but) it's taken a beating off of this crap and we've taken a beating over it," Bill Grames said of the modest home he shares with his wife Brooke on Harris Avenue, just south of Proctor Road. "They literally cut four feet off of my septic field, destroyed my fence, threw it in my back yard, took all of our privacy."

"They haven't told us what our property line is," added Grames, who put up a nine-foot-tall tarp to block his back yard from those who now travel the trail.

He noted that officials have told them the county may insist on another 10-foot setback from the currently cleared corridor. "Ten feet would leave me with a foot-long septic field, which would make my house unlivable because they're not going to spend millions of dollars to bring water and sewer here," he said.

## Bought and paid for?

Officials with the Trust for Public Land – the California-based organization that brokered the deal – say that Sarasota County legitimately bought the land from CSX Railroad prior to any opportunity those landowners had to lay claim to right-of-way that the last owner, the Seminole Gulf Railway petitioned the Surface Transportation Board to abandon it.

Meanwhile, Mark F. "Thor" Hearne II, the St. Louis attorney, contends that CSX had no ownership right to the land, which the railroad used after 1910 when Adrian Honore granted an easement across his land to the Seaboard Air Line Railway, so

it could build a rail line connecting Sarasota and Venice.

"The only interest Sarasota County could obtain is that interest which the Federal Surface Transportation Board allowed them to obtain, which was a limited right to use it for a hiking, biking trail and then for the Surface Transportation board to still retain jurisdiction for a future railroad," Hearne said.

"The railroad did not own the land; they just owned the railroad easement," he added during an interview. "So, they had nothing to sell Sarasota County, apart from the federal government issuing its order under the Trails Act."

"The big question to me is why did Sarasota County pay the railroad anything," Hearne said.

From his perspective, property owners on each side own the land up to the center line of the 100-foot-wide easement.

The disputed ownership of that land – as well as another 2.7 miles of right of way Sarasota County bought in 2017 to extend the Legacy Trail north from Culverhouse Nature Park to Ashton Road for \$7.9 million – is the subject of a series of federal lawsuits being argued by Hearne.

While one case, Grames vs. Sarasota County, is currently scheduled for mediation in the U.S. Middle District Court in Tampa, it is also awaiting on decisions out of the U.S. Federal Claims Court.

Hearne is arguing two Legacy Trail cases in U.S. Federal Claims Court – 4023 Sawyer Road I, LLC et. al. vs. USA and Cheshire Hunt Inc., et. al. vs. USA – that are key to the fortunes of the Dickies and the other property owners along the right of way.

Cheshire Hunt involves the right-of-way for 2.7-mile stretch of the Legacy Trail between Sawyer Loop and Ashton roads that Sarasota County bought in 2017.

Federal Claims Court Judge Edward H. Meyers is presiding over 4023 Sawyer Road I, LLC, which involves the northern stretch of right-of-way.

Cheshire Hunt is really the lynchpin

for all three cases.

In May 7 transcripts from the case, U.S. Department of Justice Attorney Zachary West stressed that the federal government is only responsible for compensating landowners for the same use previously enjoyed by railroads, as part of the rails-to-trails conversion. To the extent Sarasota County exceeded that authority, the county would have to reimburse property owners.

The federal government pays property owners for its use out of a Judgment Fund set up by the Treasury Department.

Hearne and his clients contend that Sarasota County's actions, which include burying fiber optic cable and other utility lines, altering drainage patterns and forcibly removing encroaching trees and structures from the right-of-way goes beyond those rights enjoyed by the railroad, which historically ignored encroachments that didn't interfere with the trains.

In those same transcripts, federal Claims Court Judge Meyers appeared to side with West's interpretation, when he cut Hearne off in mid-thought.

"I don't mean to interrupt, but it does seem like Sarasota County is acting on something more than just the Surface Transportation Board order," Meyers said. "I mean, they seem to think the honorary deed was a transfer in fee, not an easement, meaning that they own the property in fee, and they seem to acknowledge if they're wrong about that they they've got a heck of a bill to pay."

In Cheshire Hunt, Meyers will ultimately rule on the nature of the interest in the property that the federal government granted Sarasota County.

That ruling is key because under the federal Trails Act the U.S. government will reimburse the property owners for the federal right-of-way. But Sarasota County would have to cut a check for right-of-way acquisition in addition to that -- for example, Hearne noted, the ability to bury fiber optic cables and utility lines, change the storm water drainage flow and demolition of fences, sheds and other property that Sarasota County deemed as encroaching on the easement.

## A purchase for public use

Doug Hattaway, senior project manager with the Trust for Public Land, contends that Sarasota County bought full ownership of the right-of-way with its \$30.1 million check to the CSX Railroad, with the caveat that the corridor remains under federal jurisdiction.

That little wrinkle in the federal Rails-to-Trails Act means that if a railroad wanted to someday activate the corridor for its original use, it could.

"This is something we, eyes wide open, chose to do," Hattaway said. "The alternatives would be to abandon the corridor which then allows that if there were any reversionary interests affecting any portion of that corridor would take effect on abandonment of the corridor."

That means, if Seminole Gulf Railway had just abandoned the corridor outright,

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the adjacent property owners could have laid claim to the land. But because of the timing of the deal, public use of the land was never technically abandoned.

Hattaway noted that by acquiring the corridor through the federal railbanking program, they ensured the contiguity of the corridor.

Plus, he said, if a railroad did want to start up, it would have to buy back the land from Sarasota County at fair market value plus the depreciated value of any assets the county placed there.

Hattaway termed that price “a high bar,” especially given the popularity of the Legacy Trail.

Paperwork on file with the Sarasota County Property Appraiser’s Office supports the concept that Sarasota County owns the Legacy Trail land outright.

Brian Loughrey, chief deputy property appraiser for Sarasota County, said property owners adjacent to the Legacy Trail right of way have never been billed for the value of that land.

“Those legal descriptions did not overlap with the Legacy Trail’s legal descriptions,” Loughrey said.

Deputy Sarasota County Attorney Bora Kayan, who represents the county on the right-of-way issue, declined through a spokeswoman to comment on the ongoing legal matter.

In general, county officials and contractors have been quiet when dealing with Hearne’s clients but it was a July 9 letter from Donise E. Beehler, a senior right of way leasing agent for Sarasota County, to one of the residents demanding that shed and landscaping extended 9.9 feet onto the right-of-way be removed that got Hearne riled up enough to fire off a letter to Kayan – reminding the attorney that the county was not supposed to have contact with his clients.

Beehler’s letter references a county policy adopted by the County Commission on Nov. 19, 2019 that opened up the possibility of the homeowners to sign a licensing agreement with the county to allow the encroaching features to remain.

Hearne’s Aug. 5 response to Kayan – that he also supplied to local media – called that and similar letters a threat.

In a colorful mix of metaphors, Hearne told Kayan that Sarasota County was both “running with scissors” and “way ahead of its skis.”



**Brooke and Bill Grames stand at the edge of what’s left of their septic field in their backyard. Grames said they already lopped off four feet of the home’s septic field while building the Legacy Trail. They put up the green tarp for some privacy from travelers along the trail.** EARLE KIMEL/SARASOTA HERALD-TRIBUNE

Sarasota County sent another encroachment warning letter to property owners in September. Hearne, in his letter to Kayan, also referenced the transcript of the exchange between West and Meyers in the Cheshire Hunt case currently pending in federal claims court.

While that exchange may be indicative of the mindset of both the Justice Department attorney and the judge, it’s also not representative of case law – yet.

## A trail through working class neighborhoods

The northern extension of the Legacy Trail – the already open Segment 1, where the Dickies and the Grames live – Segment 2, which will connect that to the original trail, and Segment 3, which will connect north to Payne Park, cuts through mostly developed neighborhoods. Most of those neighborhoods are populated by working class residents or budget-conscious retirees.

Bill and Brooke Grames bought their two-bedroom, one-bath home out of foreclosure in 1999 as a starter home. While the neighbors to the south actually front Harris Avenue, their home sits behind that, at the end of a longer driveway.

The environmentally conscious couple both drive Prius hybrid vehicles.

Brooke works in a doctor’s office in Nokomis, while Grames, a former police communications officer, saw his anticipated career as cardiovascular technolo-

gist end, after an industrial accident left him with severe cranial nerve damage.

Their makeshift privacy tarp rests near the westernmost end of a shed they use as a pantry. Sarasota County contends that pantry encroaches on its land but Grames points out that it is permitted. The same property appraiser’s records that do not show any resident ownership of the right of way details the 2012 permit he received to build the shed.

## A taking of privacy

Grames apologizes for the tarp because “it looks very hillbilly” but he and Brooke both note that they fear anything more permanent would be seen as encroaching. They’re more concerned about the new, wide drainage swale they say contractors built behind their house that was filled to near capacity after Labor Day weekend rains.

“They made my entire area a drainage ditch,” Grames said, then added that the water appears to be draining south from Proctor Road.

Once things get resolved, Grames is figuring he may need to put the highest privacy fence he can atop a one-foot berm to get some privacy. “We want our privacy and they’ve literally reduced the value of our home,” Grames said.

Brooke Grames added, “If they’re going to put people on top of you, shouldn’t they have to put up a cement wall to give you back some privacy so people can’t

just come onto your property and block the noise?”

Neither of them look forward to the opening of the Ashton Road trailhead, which will include a spot for food trucks, and the extra traffic. “They’re going to be walking down here with food, they’re going to be throwing crap everywhere. It’s already happening,” Grames said.

In some ways, the Dickies are more fortunate. They still have enough room in their back yard for a swimming pool. Their septic system drain field is in the front yard. But some tables and a portion of their shed is on the right of way easement Sarasota County says it owns.

A couple of years back, they added solar panels on the portion of the roof facing the front yard. The back yard used to be too shaded by trees.

Now, some of their outdoor furniture is crammed between the pool cage and a chicken wire fence they have put up for some piece of mind.

Cyndie Dickie notes that the contractor never put up a silt fence to define the scope of construction as they should have, and the couple made a point of staying home as much as possible because it seemed like neighbors’ fences were demolished whenever they weren’t home to protest. “Every time they came to take the trees down, I said I want a boss here, I want somebody in charge here I want a silt fence up to show the scope of construction and they never did that,” she said.

When the Dickies did leave the property after a friend died, they received a call from a neighbor who said they had a video of contractors taking the last tree down.

Like Grames, they want to keep what they believe is their property, once again enjoy some privacy and be compensated for the stress of the construction process.

Hearne notes that the Legacy Trail is a well-built public amenity.

“No one disputes that it’s a nice thing to have,” Hearne said. “The question is, we’ve taken these people’s private property to create that and that’s the error of Sarasota County.”

“It’s not about trying to prevent the Legacy Trail, as much as to allow the Legacy Trail to be created in a manner that treats the owners whose property is taken for the legacy trail in a fair and constitutional manner.”

*Earle Kimel primarily covers south Sarasota County for the Herald-Tribune and can be reached at earle.kimel@heraldtribune.com.*