

SARASOTA

Sarasota Co. property owners settle 3 Legacy Trail takings claims; more cases to come

All payments to property owners come from a federal judgment fund; no Sarasota County funding is involved



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Three property owners along the Legacy Trail corridor received almost \$460,000 from the federal government in July as compensation for their property being taken for expansion of the popular Legacy Trail.

Final judgment in another key case U.S. Federal Claims Court could come as soon as this fall, noted Mark F. “Thor” Hearne II, an attorney with St. Louis-based True North Law. Hearne has been litigating a case in which Wynnstay Hunt, the corporation named plaintiff in the federal suit Cheshire Hunt Inc., et. al. vs. USA – which includes Palmer Ranch developer Hugh Culverhouse Jr. as chairman of its board of directors – could receive anywhere from about \$550,000 to \$2.3 million depending on how a judge resolves a key issue.

Why is the federal government paying landowners along the Legacy Trail?

The bulk of the 19.6-mile long Legacy Trail is built in abandoned railroad right of way. Sarasota County worked with the Trust for Public Land to purchase the land in three phases, from the Historic Venice Train Depot to what is now Culverhouse Nature Park, from that park to Ashton Road and from Ashton Road north to Payne Park in Sarasota.

After the right of way has been purchased for trail conversion there is a six-year window in which owners of the land underlying an easement – granted in 1910 by Adrian Honore to the Seaboard Air Line Railway – can file claims for the government taking of land that theoretically should have reverted to their ownership once the railroad right-of-way was abandoned.

Those claims are paid from a judgment fund established by the U.S. Treasury Department.

Tens of millions of dollars have been sought and paid from that fund, with the majority of those cases litigated either by Hearne at True North or the St. Louis offices of Lewis Rice, which includes a former Hearne colleague, attorney Lindsay Brinton of St. Louis-based Lewis Rice LLC.

Nearly \$460,000 paid to three landowners

The largest of the recent claims properties, Mullet's Aluminum Design Center on McIntosh Road, which is bordered by the Legacy Trail to the east, likely received the lion's share of that settlement, though Brinton declined to divulge the split. The other two parcels were residential properties farther north on the Legacy Trail in the city of Sarasota.

The settlement for the Mullet Aluminum property came from a December 2017 land takings case. The two residential properties are part of a May 2019 takings case.

“It's most important that there's still about 20 landowners out there who have not filed a claim for compensation and their situations will run out next May, so they have now less than a year to file their claim for compensation,” said Brinton, who added that Lewis Rice has currently settled all of Legacy Trail claims in Sarasota County. “It's always our goal to spread the word so people know they have the ability to file the claim and that the government is continuing to resolve and to pay these landowners.”

Many claims still in litigation

About 250 homeowners along the third and northernmost segment of the Legacy Trail and represented by Hearne are part of one case, 4023 Sawyer Road I, LLC et. al. vs. USA, that involves the northern stretch of right-of-way Sarasota purchased for \$30.1 million, which was financed from a \$65 million bond issue approved by Sarasota County voters in 2018.

The bond was to pay for extending the trail north to Payne Park in Sarasota and east through public land to connect to North Port.

Hearne noted that a key issue that should be determined in the U.S. Court of Federal Claims by Judge Edward H. Meyers is whether the railroad, when it obtained the corridor through condemnation in 1920, had only an easement over the property or ownership of the strip of land itself.

“The railroad never intended, wanted or understood that they had acquired any interest in this greater than an interest to operate a railroad across it,” Hearne said. “No one can seriously argue that they thought they were buying the mineral rights to the land under a 100-foot wide strip of property or all the other incidents of absolute fee ownership.”

That impacts Sarasota County’s claim for additional use of the trail that has – in some cases – forced landowners to destroy encroaching properties, including septic system drainage fields and whether those landowners must be compensated out of the judgment fund for their losses.

The cases involving assignment of those rights, *Deborah E. Barron and John Buenaventura Baez et. al, vs. USA*, was filed in 2021.

The key decision in *Cheshire Hunt Inc., et. al. vs. USA* involves the value of the 64.4-acre parcel – now developed as Promenade and Promenade East off of Sawyer Loop Road.

D.R. Horton developed the 141-unit Promenade On Palmer Ranch and 149-unit Promenade East on the parcel that was bisected by the Legacy Trail.

“They could have built it as a unified whole,” said Hearne, who noted that the presence of the trail meant the developer built three amenity centers for the projects instead of two, and lost the ability to develop at least 12 and as many as 20 new units on the 100-foot wide strip of land.

Currently the federal government wants to compensate Culverhouse as if the parcel was two separate pieces, instead of a unified larger tract.

Twelve other property owners in the Cheshire Hunt case have been paid, Hearne noted with only this property remaining.

If valued in its entirety, Hearne said that would be a \$2.3 million payment out of the federal judgment fund, while the government views the value of the taking based on it being two separate parcels is \$550,000.

Hearne filed his latest brief with Judge Meyers on Aug. 16, with any arguments scheduled for September or early October.

He is hopes for a final judgment – which would provide precedent for his other cases – to be rendered by Meyers in October.