

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

JAMES E. WARD

CASE NO.
DIVISION:

Petitioner,

vs.

COUNTY OF VOLUSIA, a Political
Subdivision of the State of Florida

Respondent.

_____ /

DECLARATORY ACTION TO DETERMINE EASEMENT

COMES NOW Petitioner, JAMES E. WARD, by and through his undersigned attorneys
and brings this Declaratory Action to Determine Easement, stating as follows:

JURISDICTION AND VENUE

1. This is an action for Declaratory Judgment in connection to real property located in the County of Volusia, Florida, pursuant to Fla. Stat. §86.011.
2. Jurisdiction is appropriate pursuant to Fla. Stat. §§86.011 and 26.012(a).
3. Venue is appropriate in Volusia County, Florida pursuant to Fla. Stat. §47.011 and Chapter 605, Florida Statutes as the causes of action accrued and material facts related to said causes of action occurred in Volusia County, Florida, and the Respondent and Petitioner own real property located in Volusia County, Florida.

PARTIES

4. Petitioner, JAMES E. WARD is sui juris and a resident of Port Orange, County of Volusia, Florida, whose residential address is: 5910 Trailwood Drive, Port Orange, FL 32127. Title is vested in JAMES E WARD, as to an enhanced life estate interest and to James E. Ward as Trustee of the Ward Family Trust dated August 24, 2021 (and as amended from time to time) as to the remainder interest.

5. Respondent, COUNTY OF VOLUSIA is a political subdivision of the State of Florida.

GENERAL ALLEGATIONS

6. On or about January 28, 1982, Petitioner became owner of record (with his now deceased Wife) of real property with a physical address of 5910 Trailwood Drive, Port Orange, FL 32127 and with the following legal description:

LOT 32 CAMBRIDGE ACRES SUBDIVISION, AS RECORDED IN MAP
BOOK 34, PAGE 23, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA

7. Said property was acquired by Petitioner subject to that certain 40 foot drainage easement recorded in the Public Records of Volusia County at Official Book 990, Page 684. A copy of Easement Deed is attached hereto as Exhibit "A".

8. For years after Petitioner acquired an interest in the Subject Property, there existed a concrete bridge over the easement that permitted Petitioner to safely access his home (via vehicle or on foot) which bridge spans the drainage easement and is the only manner in which one can access the Petitioner's residence on the Subject Property.

9. Around or about 2007 or 2008, Respondent replaced the concrete bridge with a wooden bridge.

10. With the passage of time, the wooden structure has deteriorated, the boards are lifting, and the structure appears unsafe.

11. Petitioner has repeatedly reached out to Respondent regarding the safety issues presented by its failure to maintain the bridge structure, but Respondent has failed and refused to respond.

12. On or about May 20, 2025, Petitioner, JAMES E. WARD, furnished notice to the Respondent, COUNTY OF VOLUSIA, by U.S. Certified Mail, return receipt requested, pursuant

to Fla. Stat. §768.28 (6)(c). This notice, along with the corresponding proof of delivery, is attached hereto as Exhibit “B”.

13. Respondent has not taken any action to repair/replace the wood bridge structure and has not responded to Petitioner or Petitioner’s counsel in any manner that is designed to resolve the issue of the unsafe wood bridge structure.

COUNT I: REQUEST FOR DECLARATORY RELIEF

14. Petitioner reallege all of the allegations outlined in paragraphs 1 through 13 as if restated herein.

15. Pursuant to Fla.Stat. §86.011 et. seq., Petitioner requests this Court declare his rights and status regarding the demand that Respondent take responsibility for repairing and maintaining the wooden structure bridge described above.

16. There is an actual bona fide, present and practical need for the declaration being sought herein and such declaration is not being sought merely to assuage Petitioner’s curiosity in the matter.

17. All persons with an interest in the outcome of this matter are before the court.

WHEREFORE, Petitioner, JAMES E. WARD, respectfully requests this Court declare that the maintenance and repair of the wooden bridge structure that spans the 40 foot drainage easement located on the Subject Property is the responsibility of Respondent, COUNTY OF VOLUSIA, to be maintained and that an order be entered directing that any and all maintenance required to be undertaken to maintain the safety of the structure be undertaken with all expenses associated therewith remaining with the Respondent, COUNTY OF VOLUSA, and for such other and further relief as is just and proper.

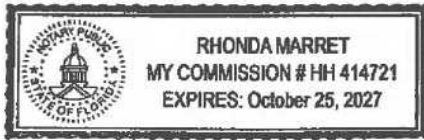
VERIFICATION

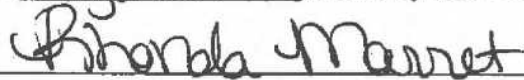
STATE OF FLORIDA
COUNTY OF VOLUSIA

I, JAMES E. WARD, having read the foregoing, and being sui juris, and of sound mind and competent to contract, and being first duly sworn on oath, do swear and affirm that I have read each of the foregoing allegations and that based on my own personal knowledge, each is true and correct. I understand that I am swearing or affirming under oath to the truthfulness of the foregoing document and that the punishment for knowingly making a false statement includes fines and/or imprisonment.


JAMES E. WARD

SWORN TO AND SUBSCRIBED before me by means of ☒ physical presence or ☐ online notarization this 27th day of August, 2025, by JAMES E. WARD.




(Notary Public- State of Florida)

Rhonda Marret
(Print, type or stamp commissioned name of Notary)

Personally Known ☒ OR Produced Identification _____
Type of Identification produced _____

Dated this _____ day of August, 2025.

/s/ Susanne D. McCabe
SUSANNE D. McCABE, ESQUIRE
Florida Bar No.: 0771511
ALLISON J. McCABE, ESQUIRE
Florida Bar No.: 0044595
McCABE LAW FIRM
900 North Swallowtail Drive, Suite 101
Port Orange, FL 32129
Phone No.: (386) 761-3008
Facsimile No.: (386) 761-8680
EMAIL FOR SERVICE OF PLEADINGS:
sdm@mccabelawyers.com,
ajm@mccabelawyers.com,
eservice@mccabelawyers.com
Attorneys for Petitioner, JAMES E. WARD.

EXHIBIT “A”

1 1000

20 090 0684

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS: That Mariel Hardisty Strachley, single, Erwin Hardisty Strachley and Patricia M. Strachley, his wife, and Diane Strachley Martin and John W. Martin, her husband, hereinafter referred to as Grantors, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations to them in hand paid, receipt whereof is hereby acknowledged, do hereby give, grant and convey unto the County of Volusia, a Political Subdivision of the State of Florida, as Grantee, and its successor and assigns, a perpetual and exclusive easement and right-of-way for the construction and maintenance of a public drainage ditch over and upon the following described lands, situated in Volusia County, Florida, to-wit:

That part of the S $\frac{1}{2}$ of NW $\frac{1}{4}$ and N $\frac{1}{2}$ of SW $\frac{1}{4}$, Section 22, Township 16 South, Range 33 East, Volusia County, Florida, lying Westerly of F.E.C. Railroad Right-of-Way, being a continuous strip of land lying within 40 feet, at right angles Northerly, of the following described line:

Beginning at the SW corner of said S $\frac{1}{2}$ of NW $\frac{1}{4}$; run thence N. [redacted] E., along the South line of said S $\frac{1}{2}$ of NW $\frac{1}{4}$, a distance of 272.7 feet; thence S. 64°46'10" E., a distance of 255.6 feet; thence S. 44°03'10" E., a distance of 537.8 feet; thence N. 88°54'20" E., a distance of 242.9 feet; thence N. [redacted] E., a distance of 256.3 feet; thence N. 65°47'50" E., a distance of 134.1 feet; thence N. 80°05'50" E., a distance of 193.7 feet; thence N. 20°13'20" E., a distance of 198.8 feet; thence N. 21°14'10" W., a distance of 191.2 feet; thence N. 39°31'50" E., a distance of 350 feet; thence N. 57°00'50" E., a distance of 150.2 feet; thence N. 47°24'50" E., to a point in the Westerly Right-of-Way line of the Florida East Coast Railroad and end of line description.

AND:-

That part of the E $\frac{1}{2}$ of NE $\frac{1}{4}$, Section 21, Township 16 South, Range 33 East, Volusia County, Florida, being a continuous strip of land lying within 40 feet, at right angles Easterly, of the following described line:



77 9911 645

Beginning at the SE corner of said E $\frac{1}{2}$ of NE $\frac{1}{4}$; run thence N. 27°22'10" W., a distance of 2814.2 feet, to a point in the West line of said E $\frac{1}{2}$ of NE $\frac{1}{4}$; thence N. 0 50" E., a distance of 50 feet, more or less, to the NW corner of said E $\frac{1}{2}$ of NE $\frac{1}{4}$ and end of line description.

TO HAVE AND TO HOLD the same unto said Grantee and its successors and assigns, together with the right to enter upon said lands for the purpose of constructing and maintaining a public drainage ditch thereon with all such fills, cuts, drains, ditches and other incidents located upon said land which the Grantee may deem necessary or convenient in connection therewith. Said grant is given upon the following understanding and agreements all of which are agreed to by the Grantee.

1. The drainage ditch heretofore constructed by the Grantee from the Clyde Williams property across other property of the Grantors in Section 15 of Township 16 South, Range 33 East, Volusia County, Florida, will, within ninety (90) days from the date of this grant, be filled in by the Grantee and the fill packed and leveled to present a right appearance.

2. The drainage ditch to be constructed over the above described property shall be constructed in a neat and workmanlike manner, in accordance with plans evidenced by the County Engineer's plat on file in the County Engineer's office, and not exceed twenty (20) feet in width. The other 20 feet of the easement shall be used solely for the construction and utilization of a maintenance road which is to be available only to the Grantee and its personnel and not to be used as a public road. The Grantors shall at their expense have a right to

" 9911 27 (186)

construct gates with locks at the open end of the maintenance road so long as keys to the locks are available to the personnel agents and officers of the Grantee.

3. In the construction of the drainage ditch, the Grantee will remove no soil or dirt from the property over which the easement is granted or the adjoining property of the Grantors, will level all dirt to grade and will dispose

of all roots, stump trees and other debris.

4. Care shall be taken to leave all surveyors monuments, to leave the sand trail crossing the ditch and shown on the Engineer's plat in a passable condition, and to replace the bridge for said sand trail (as located on plat of William E. Swooper, Jr., of May 31, 1967) with a double culvert. The Grantors shall at their expense have the right to construct and maintain additional culverts or bridges across the canal so long as they do not obstruct the drainage.

5. Within sixty (60) days after completion of the drainage ditch upon the above described property, the Grantee will narrow down and tidy the drainage ditch heretofore dug by the Grantee along Spruce Creek Road.

6. The drainage ditch for which this easement is granted shall be constructed and completed within six (6) months from the date hereof but with the understanding that an additional thirty (30) days will be granted in event of delays due to weather conditions. The drainage ditch shall never be used for sewage of any type.

990-657

IN WITNESS WHEREOF, said Grantors have set their
hands and seals this 27 day of October 1967.

Witnessed by:

Robert Abraham

John P. Strachley
As to Muriel Hardesty
Strachley

As to Erwin Hardesty
Strachley and Patricia
M. Strachley

Phyllis F. Weaver

As to Diane Strachley
Martin and John W. Martin

Muriel Hardesty Strachley, Single

Erwin Hardesty Strachley

Patricia M. Strachley

Diane Strachley Martin

John W. Martin

Accepted and approved this 27 day of October

BOARD OF COUNTY COMMISSIONERS OF
VOLUSIA COUNTY, FLORIDA

ATTEST:

By Chairman

JESS WATHAN

Clerk

BY

Deputy Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and in the County aforesaid to take acknowledgments, personally appeared MURIEL HARDESTY STRAHLLEY, single, to me known to be the person described in and who executed the foregoing instrument, and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd day of October, A.D. 1967.

J. L. [Signature]
Notary Public, State of Florida
at Large

My Commission Expires: 3-20-68

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and in the County aforesaid to take acknowledgments, personally appeared ERWIN HARDESTY STRAHLLEY joined by his wife, PATRICIA M. STRAHLLEY, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this day of A.D. 1967.

[Signature]
Notary Public, State of Pennsylvania

My Commission Expires:

STATE OF FLORIDA
COUNTY OF DADE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and in the County aforesaid to take acknowledgments, personally appeared DIANE STRAHLLEY MARTIN, joined by her husband, JOHN W. MARTIN, to me known to be the persons described in and who executed the foregoing instrument, and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this day of A.D. 1967.

[Signature]
Notary Public, State of Florida
at Large

My Commission Expires:

OFFICIAL
RECORD

1968 JUN 12 AM 8 58

[Signature]

EXHIBIT “B”

MCCABE LAW FIRM

SUSANNE D. McCABE

ALLISON J. McCABE

900 N. SWALLOWTAIL DRIVE, SUITE 101

PORT ORANGE, FLORIDA 32129

BUSINESS: 386-761-3008

FAX: 386-761-8680

SUSANNE D. McCABE
SDM@MCCABELAWYERS.COM

ALLISON J. McCABE
AJM@MCCABELAWYERS.COM

May 20, 2025

VIA REGULAR & CERTIFIED MAIL RRR #9589 0710 5270 0049 1250 68
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
Deland, FL 32720

VIA REGULAR & CERTIFIED MAIL RRR #9589 0710 5270 0049 1250 82
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32339-0322

Re: Our Client: James E. Ward
Subject Property: 5910 Trailwood Drive, Port Orange, Florida 32127
Demand for County Maintenance of Easement
STATUTORY NOTICE PURSUANT TO FLA. STAT. §768.28

Dear Sir or Madam:

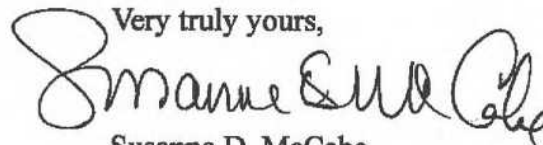
This firm is privileged to represent James E. Ward in the above referenced matter. The purpose of this correspondence is to provide statutory notice of my client's claim against the County of Volusia, pursuant to Fla. Stat. §768.28 (1989).

The County of Volusia has an easement that runs on my client's property located at 5910 Trailwood Drive, Port Orange, Florida. A true and correct copy of the easement is attached hereto as Exhibit A to this correspondence. The County has failed to maintain the easement which has led to the deterioration of the bridge the County erected over the easement which in turn has interfered with my client's ingress and egress on his homestead property.

Volusia County has an obligation to maintain the bridge it constructed over the easement in order to insure my client's continued and safe access to his property. The County has failed to maintain same which constitutes a breach of duty. My client intends to pursue all remedies available under the law including but not limited to injunctive relief to compel its maintenance obligations, specific performance, declaratory relief and any other relief available in law or equity.

- a. Claimant's full name: James E. Ward
- b. Claimant's place of birth: Adel, Georgia
- c. Claimant's social security number: [REDACTED]
- d. Claimant's date of birth: 2/3/1942
- e. Amount of any damages, expenses, etc.: Unknown at this time
- f. Specific government employee causing injury: n/a

Please contact the undersigned once you have had an opportunity to undertake a review of this matter with an eye towards resolution without the necessity of litigation.

Very truly yours,

Susanne D. McCabe

9589 0710 5270 0049 1250 68

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☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

5/20/25

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City

Thomas C. Kelly Administration Center
 123 W. Indiana Avenue
 Deland, FL 32720

PS Form 3800, January 2023 PSN 7530-02-000-9001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Thomas C. Kelly Administration Center
 123 W. Indiana Avenue
 Deland, FL 32720

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]*

B. Received by (Printed Name) *John*

C. Date of Delivery *5-27-25*

D. Is delivery address different from item 1? ☐ Yes
 YES, enter delivery address below: ☐ No

☐ Agent
☐ Addressee

Ret Receipt



9590 9402 9350 5002 2564 41

2. Article Number (Number from previous page)
 9589 0710 5270 0049 1250 68

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9002

(over \$500)

Restricted Delivery

Ward

Domestic Return Receipt

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CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

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☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage

Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32339-0322

PS Form 3800, January 2012 PSN 7530-02-000-9047 See Reverse for Instructions

570/15

Postmark
Here

SENDER: COMPLETE THIS SECTION

- Complete 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32339-0322



9590 9402 9350 5002 2564 34

2. Article Number (Transfer from service label)

9589 0710 5270 0049 1250 82

PS Form 3811, July 2020 PSN

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☐ Addressee

X

B. Received by (Printed Name)

C. Date of Delivery

Delivery address different from item 1? ☐ Yes
If yes, enter delivery address below: ☐ No

Ret Receipt

3. Service Type

☐ Adult Signature	☐ Priority Mail Express [®]
☐ Adult Signature Restricted Delivery	☐ Registered Mail [™]
☒ Certified Mail [®]	☐ Registered Mail Restr. Delivery
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation [™]
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery	

Domestic Return Receipt