

Title Opinion

Front Street from Dade Street to Date Street,
City of Fernandina Beach
Florida

April 14, 2009

March 25, 2009

Michael Czymbor
City Manager
204 Ash Street
Fernandina Beach, FL 32034

Dear Mr. Czymbor:

On Thursday, February 3, 2009, I was authorized by the city of Fernandina Beach to render a Title Opinion on the parcel of land underlying Front Street between Dade and Date Streets in the City of Fernandina Beach, Florida. The purpose of the opinion is to identify the city's interest and right's on the parcel of land described above. The opinion will assist the City in developing significant improvements to its infrastructure and property along the waterfront on the Amelia River, on and parallel to Front Street.

Fernandina's history, both before and after European contact, is long and rich. On May 3, 1562, Jean Ribault discovered Amelia Island and claimed her for France after various sovereign and not so sovereign governments claimed Amelia Island including the high-toned sovereigns of Spain and England. July 4, 1776 marked the beginning of the revolutionary war which was concluded on September 3, 1783 by the Treaty of Paris between Great Britain and the United States of America, and the Treaty of Versailles, between Great Britain and Spain.

Under Article V of the Treaty of Versaille, Great Britain ceded East Florida and West Florida to Spain and thus begins the Second Spanish period in Florida, (Whitfield's

Notes, Volume III Helpful and Useful Matter P.101 1943).

Land titles in Florida are generally predicated upon one of the following classes of land:

1. Spanish Land Grants from the second Spanish period prior to January 24, 1818 and recognized or confirmed by the United States pursuant to article VIII of the Treaty of Settlement and limits between Spain and the United States.
2. Grants or patents from the United States to the territory of Florida ceded by the United States to the State of Florida or to private owners of land in the State.
3. Grants or conveyances from the state, of lands, granted or patented and approved by the United States under various acts of congress.
4. Lands under bodies of navigable bodies of water known as Sovereignty lands. These lands were transferred by the United States to Florida when Florida was granted statehood and admitted into the Union on equal footing with the original thirteen Colonies in all respects whatsoever . (Whitfield ibid. page 230).

For the purposes of this title opinion, the only classes of land relevant to Front Street are :

- (1). Confirmed Spanish Land Grants
- (4). Sovereignty Lands

The Treaty of Cession of the two Florida's by Spain to the United States of America dated February 22, 1819 and ratified February 22, 1821 contains the following language. (Ex. 1)

ARTICLE II

“His catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of the

said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them.”(emphasis supplied)

ARTICLE VIII

This Article of the treaty states in part:

“All the grants of Land made before the 24th January, 1818 by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the grants would be valid if the territories had remained under the Dominion of his Catholic Majesty and its Treaty”

In summary the King of Spain divested himself of all his property including sovereign lands in the two Florida’s except private property and confirmed lands grants to individuals prior to January 24, 1818.

This Title Opinion, as it relates to the then upland portion of Front Street between Dade and Date Street, begins with two land grants on Amelia Island from the King of Spain to Domingo Fernandez. (Composit Exhibit 2) These Grants were for uplands, and did **not include** lands subject to the ebb and flow of the tides of the Amelia River. Those lands were sovereign lands reserved to the King.

These two grants were not ceded by Article II of the Treaty to the United States but remained in the private hands of Domingo Fernandez. They were:

- (1) Private claim of Domingo Fernandez for section 21 Township No.3 R. 28 E for 100 acres known as Yellow Bluff Plantation. Confirmed by East Florida Land Commission, on (Exhibit 2)
- (2) Private claim of Domingo Fernandez to section 22 township 3 R 28 E for 100 acres, known as Louisa or Eliza Plantation. Confirmed by East Florida Land Commission on (Exhibit 2)

The eastern boundary of each of the two grants for the uplands ran to the winding eastern edge of the marsh or zachatal on the Amelia River (see translation of survey of private claims for section 21, 22, Township 3 North – Range 28 East. Simply put, the Grant did not include the marsh on the river.

The titles to all the lands within the ceded domain, (excluding private property not owned by the King such as the above two grants) became either the property of the United States America or was held in Trust by the United States until Florida became a State. The property held in Trust included all sovereignty lands, that is the lands under navigable waters including the adjacent tide lands, foreshore and marsh. Thus during the Territorial period the policy of the federal government was to hold lands under navigable water and its adjacent tidal lands for the use of the public , which would inure to the state for the benefit of its inhabitants upon the formation of a state government. The other lands owned by the United States in the Territory were subject to acquisition and private ownership. Shively v Bowlby, 152 U.S. 1, 14 Sup. Ct. 548, 38 L. Ed. 331). Whitfield Notes.

On March 3, 1845 by an Act of Congress (5 stat. 742) Florida was given her Statehood. Under the “Equal Footing” doctrine by virtue of her sovereignty, the State became the owner, for the people of the State ,of all lands under navigable bodies of water as well as the lands adjacent to these navigable waters, including those lands between the ordinary high and low water marks. Pollard v. Hagan 44 u.s. 712,3 How 212,11 L Ed. 565; Ellis v Gerbing 56 Fla, 603, 47 So. 353.

In order to determine whether Front Street was located, on the sovereign lands of the state or on the private lands of Domingo Fernandez at the time Florida of Florida’s Statehood. I retained Dean Privett and Associates to trace overlays of early surveys of the two Fernandez Grants, onto the official 1857 Plat drawn for the Florida Rail Road Company and on the 1857 United States Government Chart

of the St Mary River and Fernandina Harbor.

A copy of Mr. Privett's resume, and the overlays are included in Exhibit (3).

By using the above described methodology described by Mr. Privett was able to determine at the time Florida became a state the only uplands underlying Front Street between Dade and Date, was from the platted intersection of Dade Street, south to a point on the western boundary line of Lot 7 Block 3 of the 1857 Plat. All of the other land underlying Front Street, South Front Street, West Front Street or New West Front Street were either in the marsh or in some cases the open water of the Amelia River and thus all being sovereignty lands.

Domingo Fernandez died on September 3 of 1833 and his wife Mary August 21, 1840 . They are buried in the Fernandez Reserve, the family burial ground, located in the Center of Lot 21 between Calhoun and Broom Street in Fernandina. Mary Fernandez unlike her husband Domingo Fernandez died testate. Her will is recorded at. OR Book. Page. Exhibit. 4.

By the late 1830's and early 1840 a serious political effort was under way in Florida to build a railroad from the Atlantic Ocean to the Gulf of Mexico. During this period a young lawyer by the name of David Levy Yulee and other supporters of a cross Florida railroad began to organize a group of investors to construct such a line. By 1849, the tempo of the railroad project intensified with the discovery of gold in California and the passage of the Swamp and Overflowed Lands Act in Congress. Now the idea of a railroad spanning the peninsula was quickly becoming a viable business project. Beginning in the early 1850's

agents and business partners of David Yulee quietly began buying large tracts of land on Amelia Island and lots fronting the Amelia River in Old Town.

These riverfront land purchases included Yellow Bluff Plantation and Eliza and Louisa Plantation from the heirs of Domingo and Mary Fernandez. (Dr Joe Knetsch, David Yulee and the Development of Antebellum, Florida 1998) .

Through a series of transactions they were sold to David Yulee who later transferred them to the Florida Rail Road Company see all relevant documents. Marked Exhibit (5).

By the time Yulee was finished acquiring land on Amelia Island he controlled the entire river front and its riparian rights from approximately Jackson Creek north to Egan's or Clark's Creek. The eastern Terminal of the Railroad on an outlet to the Atlantic Ocean was now established. (See Knetsch, *ibid.*)

In the last 8 days of January of 1853, the Florida Legislature passed and the Governor approved, Chapter 482 "An Act to Incorporate a Company to Construct a Rail Road across the Peninsula of Florida, under the style of the Florida Rail Road Company, Comp. Exhibit (6). The Charter of the Florida Railroad Company included in part the following:

SECTION 2. Be it further enacted, **That the said Rail Road shall commence in East Florida upon some tributary of the Atlantic Ocean within the limits of the State of Florida, having a sufficient outlet to the Ocean to admit of the passage of sea Steamers,** and shall run through the Eastern and Southern part of the State in the most eligible direction to some point, bay, arm or tributary of the Gulf of Mexico in South Florida, South of the Suwannee river, having a sufficient outlet for sea Steamers, to be determined by a competent Engineer, with the approval of a majority of the directors of said Company. (Emphasis Supplied)

Other provisions of the Charter pertinent to this title opinion are:

SECTION 7. Be it further enacted, That the (said) Company shall have the right and privilege to construct and complete a Railroad, with one or more tracks or sets of rails for cars, for the transportation of passengers, produce, goods, and other articles whatsoever, to commence in East Florida, upon some tributary of the Atlantic Ocean, within the limits of the State of Florida, having sufficient outlet to the Ocean to admit the passage of sea steamers, and thence to continue, in the most eligible direction, through the State, to some point, bay, arm or tributary of the Gulf of Mexico, South and East of the Suwannee River, having a similar outlet, to be determined as provided for in the second section of this act.

SECTION 9. In part states hereby authorized, at those points in the line of their Railroad where it may appear to them necessary for the accomplishment and business of the Road, to establish, depots and warehouses, or any other necessary and convenient houses and buildings, to be used by them for all purposes of said Road, or to be disposed of by them when it may be necessary, and to charge and receive, for the storage of produce, merchandize and other articles, at such warehouses and other buildings as they may find it necessary to construct, rates not exceeding the ordinary warehouse duties.

And most importantly :

SECTION 10. Be it further enacted, That in constructing the said Rail Road, it shall and may be lawful for the said Company, by its proper agents and servants, to enter upon **and take possession of any land whatsoever belonging to the State, which may be necessary for the completion of the work contemplated by this Act.** (Emphasis Supplied)

SECTION 12. Be it further enacted, That all property so assessed and paid for by the President and Directors of said Company or its agents, agreeably to the provisions of this Act, **and all donations made to and for the same, shall forever afterwards belong to and become the property of said Company, its successors and assigns, in fee simple,** in proportion to the number of share owned by the Stock-holders respectively. (Emphasis Supplied)

By 1854 the necessary waterfront land acquisition was completed on Amelia Island. During the 1854 – 1855 session of Florida Legislature two other crucial Acts for the railroad were passed and approved by the governor . The first, Chapter 610 “An Act to Provide for and Encourage a System of Internal Improvements in This State” was one of the most profound piece of Legislation

ever passed by the Legislature in the State of Florida. Its Primary purpose was to establish a financial mechanism for the financing of railroads and other development in the State. Not surprisingly it was written by David Yulee and four other railroad men. Comp . Exhibit (6)

Chapter 610 section 4 states:

SECTION 4 Be it further enacted, That a Line of Railroad from the St. Johns River, at Jacksonville, and the waters of Pensacola Bay, with and extension from suitable points on said line to St. Marks River, or Cooked River, at White Bluff on Apalachicola bay, in Middle Florida, and to the waters of St Andrews bay, in West Florida, **and a line from Amelia Island on the Atlantic, to the waters of Tampa bay, in South Florida, with an extension to Cedar Key, in West Florida;** also a Canal from the waters of St. Johns River on Lake Harney to the waters of Indian river, are proper improvements to be aided from the Internal Improvement Fund, in manner as hereinafter provided.

Later that same year the Legislator passed Chapter 720 “An Act to Amend the Act Incorporating the Florida Rail Road Company. Comp. Exhibit (6) For the purpose of this Title Opinion the pertinent sections of Chapter 720 are :

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the act incorporating the Florida Railroad Company, approved the 8th day of January, A. D., 1853, is hereby Amended so that the said company shall have power to construct the railroad from Amelia Island on the Atlantic, to the waters of Tampa Bay in South Florida, with an extension to Cedar Key in East Florida, under the provisions of an act to provide for and encourage a liberal system of Internal Improvements in this State, approved the 6th day of January, A.D. 1855.

SECTION 2. Be it further enacted , That in addition to the powers and privileges conferred upon said company, they shall be, and are hereby authorized and empowered to own and hold, or to hire and charter such and so many ships, vessels and boats propelled by sails or steam as they may deem necessary to connect with the said railroad, for the conveyance of mails, passengers or freight.

The Fourth Act and for the purpose of this Title Opinion and the most critical piece of

Legislation was Chapter 932 entitled AN ACT to Provide a Charter for the City of

Fernandina, passed by the Legislature in the last week of December 1858 and approved by the Governor on January 15, 1859.

SECTION 1. Be it enacted by the Senate and House of Representative of the State of Florida in General Assembly convened, That all the territory upon the Island of Amelia, bounded on the north by a line drawn from the most northwardly bend of Clark's Creek, due east to the Atlantic Beach at low water, and due west to low water on the west bank of Amelia river, east by the Atlantic Beach, south by the south line of the new town of Fernandina, as laid down on the map made for the Florida Railroad Company, after said line has been produced eastwardly to the Atlantic Beach and westwardly to low water on the west bank of Amelia river. Exhibit (6)

Thus Chapter 932 approved the 1857 Plat drawn by the Florida Rail Road Company showing Front Street running north from its intersection with Center Street to its merger with Marine Street south of Old Town. The Plat shows a large parcel of land south of the intersection of Center and Front Street as reserved for railroad lands. The 1857 Plat shows a single wharf and rail head at the foot of Center Street with a single rail line running south and west to Cedar Key.

(See copy of Plat marked Comp. (7) and Frank Leslie's Illustrated Newspaper sketch April 26, 1862. Exhibit (7).

Front Street was platted running north through marsh and open water until it crossed over the uplands at Lot of Block 3 which was formerly Yellow Bluff Plantation.

In summary, Section One, of this Act approves the official plat made by the Florida Railroad Company (1857), established the westerly boundary of the city at the low water mark on the west bank of the Amelia River and ceded the Sovereign Lands of the State running under Front Street to the Florida Rail

Road Company. The above mentioned Acts and the 1857 plat constitute a sovereign grant of the lands under Front Street to the Florida Rail Road Company which in turn dedicated them to the City of Fernandina under Section 14 of Chapter 932. Wherein it states:

“Be it further enacted, That the Council may open or extend, widen or narrow, lay out and graduate, pave and otherwise improve streets and public alleys in the city, and have them properly lighted and kept in order, and they shall have over any street or alley in the city, which has been or may be ceded to the city, authority as over other streets and alleys; but private property shall not be taken for public uses without compensation.

By this Act and by common law the platted streets were ceded to the City by the Florida Rail Road Company and the State of Florida.

Thus the origin of title on North Front between Dade and Dade are from two separate and distinct sovereigns. The land underlying Front Street between Dade Street and Lot 7 Block 3 is a Spanish Land Grant from the King of Spain to Domingo Fernandez. The remainder of Front Street between its intersections between Dade and Date was a Sovereign Grant from the Florida Legislature to the Florida Rail Road Company and in turn to the City of Fernandina . Both of these Grants are the highest quality and character of title that can be granted.

Construction of the railroad began in 1857 and was finished in the latter part of April 1861 . On March 1st the first train arrived in Cedar Key from Fernandina.

Six short weeks later General Beauagard fired on Fort Sumter and the Civil War began. By the time Lee surrendered at Appomattix Court House the Florida Railroad was in shambles. During the years following War the railroad struggled to rebuild.

By 1886 the railroad, then known as the Florida Railway and Navigation Company

and the City of Fernandina were prospering. What had began as a single rail head at Front Street among abandoned Plantations and empty lots was now a booming port with multiple tracks, spurs, wharfs and warehouses running north on Front Street

and the Amelia River, as shown by the 1887 plat of the City (Exhibit 8 & Comp Exhibit 9). North Front Street, although a platted Street was little more than a sand strip built out of ballast and fill with tracks and spurs running north through huge piles of timber projects, naval stores, warehouses and saw mills Comp. Exhibit 9. With the expansion of business the Florida Railway and Navigation Company was now in need of two or more tracks on Front Street in order to accommodate its customers.

H.R. Duval the Receiver for the railroad petitioned the City Council for right of way for two or more tracks for a standard gauge steam railroad on Front Street beginning from its intersection with Center Street and running north to its intersection with Escambia with one track located in the center of Front Street and the other to its west.

On March 3, 1886 the City Commission pasted an Ordinance granting the petition for the right of way for the two tracks for the railroad on Front Street but it also forced the railroad to agree to a number of concessions. Exhibit (10)

Specifically Section 3. of the ordinance provides that the railroad shall “construct and maintain suitable street crossings and drains where they may be deemed necessary by the City Council, the filling in or excavating, or the removal of obstructions, to be executed at the expense of party receiving right of way, excepting where the City Council may join said railway in improvement or opening of any of the streets through which right of way is granted”. Section 3 further states that “Said company to construct and maintain suitable street crossings and drains where they may be deemed necessary by the

City Council, the filling in or excavating, or the removal of obstructions, to be executed at the expense of party receiving right of way, excepting where the City Council may join said railway in improvement or opening of any of the streets through which right of way is granted.”

Section 4. of the Ordinance gave the City virtually unlimited regulatory power over the railroad. It reads as follows:

“ In granting this right of way it is hereby specifically stipulated”

(ineligible) H.R. Duval, Receiver, as trustee for himself and his successor and interests **shall submit** to such rules and regulations on the part of the City as from time to time may be essential and practical is for the maintenance of unobstructed traffic, for the protection of life, health, against fire, or for the maintenance of good order.”

The right of way mentioned in Section Five of the order granted previously to the Fernandina and Amelia Beach Railway Company has either reverted to the City or been incorporated into the right of way of the Florida Railroad and Navigation Company or its successors at the time the Fernandina Beach and Amelia Beach Railroad Company was abandoned. A Copy of that ordinance is marked Exhibit (10) The other sections of this Ordinance of 3 March 1886 are not relevant to this title opinion.

Neither the Florida Railroad and Navigation Company nor the Florida Town Improvement Company (the railroads development company) shared the City’s new enthusiasm for regulating the railroad. Six months later on November 9, 1886 the Florida Town Improvement Company deeded to Henry Reiman Duval as Trustee the

lands designated as "railroad grounds" on the 1857 Plat. Specifically it deeded the Florida Railroad and Navigation Company an 80 foot right of way from the intersection of Front and Center running south and west through the railroad grounds. Exhibit (12)

Thus the parcel of land designated as south Front Street was not dedicated for public use but remained in the hands of the railroad.

In 1887 The Florida Town and Improvement Company then revised, enlarged and reissued the original 1857 Plat of Fernandina now showing a platted South and West Front Street part of which was owned by the railroad and not the City. Exhibit (8)

Today the CSX owns South Front from its intersection with Center Street to the western boundary of Ash Street. The current agreement, dated December 16, 1986 between CSX and the City of Fernandina Beach, gave the City a right of way for a strip of land 23.5 feet in width for a road running south from Center to Ash Street. Exhibit (14).

In June 1901 the official Plat of the City of Fernandina was again revised, enlarged and reissued by the Town Improvement Company, again showing west Front with 80 feet right of way. Exhibit (13)

By 1953 there were two tracks running north from Center street on the westerly side of Front Street. At that time the Seaboard Airline Company, (a successor railroad of the Florida Railroad and Navigation Company) initiated an expansion and redesign of the Railroad yards south of Front Street. Exhibit (15) The design required that the tracks on Front Street to be realigned and shifted eastwards of their then present location of the eastern most track. CSX has provided me with a Valuation Committee Maps (VAL Maps) which shows a heavy dotted line marked "Old Main Line, (Exhibit 16) which I

believe is the center line of the referenced eastern most track of the Seaboard Airline on Front Street. In order to accomplish the foregoing, the City enacted Ordinance # 258 entitled: AN ORDINANCE VACATING AND DISCONTINUING CERTAIN STREETS AND PORTIONS OF STREETS IN THE CITY OF FERNANDINA BEACH. (Exhibit 17);

Section 1. of the ordinance references an attached drawing which in fact, was not attached to the original ordinance in the city's possession nor was a copy of the drawing attached to the copy of ordinance in CSX records. There are however Railroad VAL Maps which show the realignment of the tracks on Front Street which reflects the location of the tracks as they exist today.

Section 1(a) of the Ordinance "closes and vacates all of that portion of Front Street lying easterly of the present eastern most track of the Seaboard Air Line Railway lying between the following points: For a Northern Terminus of the portion of said Front Street to be closed, beginning at a point on a prolongation of the westerly line of Lot Numbered 16 of Block Numbered 4 of said City of Fernandina Beach, twenty (20) feet northerly from the Northwest corner of said Lot 16 of Block 4, thence run Southerly to the North boundary of the intersection of Center Street with Front Street approximately 25 feet wide and 1800 feet long beginning at a point on a prolongation of the westerly lot line of Lot 16 Block 4, 20 feet northerly of the northwest corner of Lot 16 Block 4 fence running south to the northerly boundary of the intersection of Center Street and Front Street." In other words the City vacated a portion of Front Street that was approximately 25 ft by 1800 ft on the east side of the street running north from the intersection of Front and Center Street to a point 20 ft north of Escambia Street. Excepted out of this vacation,

however, was a 10 foot wide driveway paralleling the western sidewalk line of Lots 1, 2, 3, 4, of Block 1 , was for not stated purpose. This 10 foot driveway was excepted from the Vacation. and was to provide vehicular access to lots 7 and 8 of Block 1. Exhibit (17) .

The Act of vacating this strip of land was improper as it served no public purpose, was not for the public benefit and was not a public necessity. The City, pursuant to the March 3, 1886 Ordinance could have allowed Seaboard Coast Line to shift the right of way to the east side of Front Street, without vacating this street.

Section 1(b) of the Ordinance specifically closes Beech Street South of the eastern most line of Lot 21, Block 271 which is today part of the CSX switching yard. Other than a portion of Front Street and Beech Street **No other street or portions of streets in the City of Fernandina Beach were closed or vacated by this Ordinance.**

Seaboard Coast Line, in consideration for closing and vacating portions of the streets mentioned above agreed to construct a driveway 22ft - 24ft wide on the westerly portion of Front Street. This is what we locally refer to as Front or North Front Street today. Furthermore the Railroad agreed to construct a 20 foot roadway beginning at the intersection of Ash and Front Street, and extending southerly along South Front Street on the west side of said Railway's tracks from Ash Street to the intersection of Beech Street. As Beech Street was specifically closed in Section (1.b.) of this ordinance and by the use of the present tense of the sentence I assume that it referred to the intersection of Beech and Front as of the date of Ordinance. The shifting of the rail road lines to the west and the closing of Beech Street was completed in accordance with Ordinance 258.

It should be noted that Ordinance 258 revoked the March 3, 1886 Ordinance only in so far as it is in conflict or inconsistency with the later Ordinance 258.

To further complicate matters on January 20, 1959, Wayne F. McJunkin as a direct result of the vacation, claimed ownership of the portion of Front Street east of its center line east to the westerly boundaries of Lots 9, 10, 11, 12, 13 in Block 1 of the City of Fernandina Beach and entered into a Perpetual Easement Deed and Release with the Seaboard Airline Railroad Company. As the Grantor Mr. McJunkin, conveyed to the Grantee (Seaboard) "it's successor and assigns forever, a perpetual right of way and easement, subject to termination as hereinafter provided, for the construction, operation and maintenance of railroad tracks and for any other proper and appropriate railroad purpose in connection therewith, in, over, upon and along the following described parcel of land in the City of Fernandina Beach, County of Nassau, State of Florida". This document also contained a reverter clause whereby if the Railroad abandoned the land for railroad purposes and removed the railroad tracks, the right of way and easement would cease and the land would revert to the McJunkin's heirs or successors, not the City of Fernandina. Thus the present owners of lots 9, 10, 11, 12 as Mr. McJunkin assigns and successors have an interest in that portion of Front Street east of the center line of Front Street and westerly of the boundary line of the above reference lots is a direct result of the City vacation the 25 x 1800 foot corridor Exhibit (17).

Shortly thereafter Mr. McJunkin's neighbors Frank G. Lambright and Etta Mae Lambright, his wife (Grantors) and Seaboard Airline Railroad Company Grantees, granted the railroad a perpetual easement to the railroad over portion east of the center line of Front Street abutting the westerly boundary of Lot 8 and Block 1. The

Lambright's, based their claim this portion of Front Street from the partial vacation on Front Street as well. As in the McJunkin easement deed and release there is a reverter clause in the easement whereby if the railroad ceases to function as a railroad and removes from the above described land in Front Street right of way the easement will cease and revert back to the McJunkin's their heirs and assigns. The Lambright easement deed and release also require Seaboard Airline Railroad Company to construct as follows a roadway and crossing.

"The Grantee hereby agrees to construct a roadway and crossing suitable for normal vehicular travel by the use of oolite or similar material, said roadway to be constructed over that portion of Front Street commencing at the northerly boundary of Center Street and extending to the northerly boundary of the hereinabove described Property Block 8, Lot 1 and extending from the easterly end of the cross ties in the westerly set of tracks to the easterly boundary of said Front Street and said crossing to be constructed at grade over the main track of Grantee westerly of the hereinabove described property, all as shown hatched in RED on Grantee's Division Engineer's Drawing No. F-78, dated 12/22/55, attached hereto and made a part here of. Grantee hereby further agrees that said roadway and crossing will be so constructed so that the drainage therefrom will not interfere with the normal use of said property known as Lot 8 in Block 1 in the City of Fernandina Beach, hereby further agrees to maintain said roadway and crossing in a manner satisfactory for normal vehicular use, and not to obstruct same by the parking of railroad cars and equipment thereon. (Comp. Exhibit 17).

West Front Street as originally platted on the 1887 and 1901 plats runs through the marsh south of Ash Street. although platted for over 100 years it has never

been opened. Over the years a path and later a dirt road came into existence east of platted west Front Street and running down to what is now known as David Cook's property. In order to rectify this situation the City of Fernandina passed Ordinance 478 on March 22, 1973. The purpose of the Ordinance was to adjust the platted right of way of west Front Street to conform with the existing roadway in order to accomplish this ITT Rayonier Inc. gave the City a parcel of land which was incorporated into the new right of way of west Front Street. Exhibit (18).

Exceptions

This opinion of title is for a portion of a public road officially known as Front Street and its extensions known as South Front Street and West Front Street lying between its intersections with Dade and Date Streets in the City of Fernandina Beach, Florida. This opinion was requested by the City of Fernandina Beach, Florida to assist then in making improvements to lands in the waterfront area adjacent to and lying within the Front Street corridor. I have examined the relevant documents of this public road more particularly described below as of March 31, 2009 and I find the above described property to be a public road or an easement for a public road in the possession of the City of Fernandina Beach, Florida subject to the following:

1. An ordinance passed by the City of Fernandina dated March 3, 1886 granting right of way for two or more tracks of standard gauge steam railroad on front Street to a point on its intersection with Nassau Street as shown and depicted on the official

plat of the City of Fernandina as lithographed and issued by the Florida Railroad Company in 1857. The easement was granted to H. R. Duval Receiver – the relevant portions of the Ordinance are:

It is HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FERNANDINA, that the right of way for two or more tracks of standard gauge steam railroad is hereby granted to H. R. Duval, Receiver, as trustee for himself and his successors for the benefit of the Florida Rail Road and Navigation Company and its components the F.C.W.R.R., the Transit & Peninsular Tropical, Fla, Leesburg and Indian River and Fernandina and Jacksonville R.R. and along Front Street to a point on Nassau Street and under conditions hereinafter named,

SEC. 1 Right of way is granted from the intersection of Center and First St. northward through Front Street to the intersection of First and Escambia Streets for a double track railway, one of which tracks shall be located in the center and the other on west side of the same.

SEC. 2. Right of way is granted from the intersection of Center and First Street, northward through Front Street to the intersection of First and Escambia Streets for a double track railway, one of which tracks shall be located on the center and the other on west side of same.

2. Ordinance No. 258, entitled an Ordinance Vacation and Discontinuing certain Streets and Portions of Streets in the City of Fernandina Beach dated May 26. 1953.

SECTION 1. That all of the following described streets and portions of streets In the City of Fernandina Beach, as shown on the attached drawing and which are herein described are hereby closed and vacated at the points where indicated:

- (a) All of that portion of Front Street lying easterly of the present easternmost track of the Seaboard Air Line Railway lying between the following points: for a Northern Terminus of the portion of said Front Street to be closed, begin at a point on a prolongation of the westerly line of Lot Numbered 16 of Block Numbered 4 of said City of Fernandina Beach, twenty (20) feet northerly from the Northwest corner of said Lot 16 of Block 4, thence run Southerly to the North boundary of the intersection of Center Street with Front Street. EXCEPTING therefrom a ten foot wide driveway paralleling the westerly sidewalk line of Lots 1,2,3, and 4 of Block 1 of said City. Said portion of Front Street hereby closed and vacated being approximately twenty-five (25) feet in width and approximately eighteen hundred (1800) feet in length.

(b) All of that portion of Beech Street lying West of a Southerly prolongation of the easterly line of Lot Numbered 21 of Block Numbered 271 of said City of Fernandina Beach, Florida.

3. An easement deed and release dated January 20, 1959 between Wayne F. McJunkin, Grantor, and Seaboard Airline Railroad Company: Grantee wherein the Grantor granted and conveyed to the Grantee, its successors and assigns forever, a perpetual right of way and easement, subject to termination as hereinafter provided, for the construction, operation and maintenance of railroad tracks and for any other proper and appropriate railroad purpose in connection therewith, in, over, upon and along the following described parcel of land in the City of Fernandina Beach, County of Nassau, State of Florida:

That portion of Front Street east of the center line thereof and abutting the westerly boundary of Lots 9,10,11,12,and 13, in Block 1 of said City, according to the official Plat there-of (as lithographed and issued by the Florida Railroad Company in 1857 and revised, enlarged and reissued by The Florida Town Improvement Company in 1887 and 1901).

To have and to hold the same unto the Grantee, its successors and assigns forever: Provided, however, that if the Grantee shall abandon the use of the land for the purposes hereinbefore set out and remove from said land the railroad tracks and other structures constructed thereupon, then and in that event the aforesaid right of way and easement shall cease and determine and the Grantor and his heirs and assigns shall hold the land hereinbefore described freed of such right of way of easement.

The Grantor hereby warrants the title to the said right of way and easement hereinabove described and will defend the same against the lawful claims of all persons whomsoever.

4. An easement deed and release dated July 17 , 1959 between Frank G Lambright and Etta Mae Lambright, his wife, Grantors and Seaboard Airline Railroad Company

Grantees were in the Grantors granted and conveyed to the Grantee, its successors and assigns forever, a perpetual right of way and easement, subject to termination as hereinafter provided, for the construction, operation and maintenance or railroad tracks and for any other proper and appropriate railroad purpose in connection therewith, in, over, upon and along the following described area or parcel of land in the City of Fernandina Beach, County of Nassau, State of Florida:

That portion of Front Street east of the center line thereof and abutting the westerly

Boundary of Lot 8 in Block 1 of said City, according to the official plat thereof (as lithographed and issued by the Florida Railroad Company in 1857 and revised, enlarged and reissued by the Florida Town Improvement Company in 1887 and 1901).

To have and to hold the same unto the Grantee, its successors and assigns forever; Provided, however, that if the Grantee shall abandon the use of land for the purposes hereinbefore set out and remove from said land the railroad tracks and other structures constructed thereupon, then and in the event the aforesaid right of way and easement shall cease and determine and the Grantors and their heirs and assigns shall hold the land hereinbefore described freed of such right of way and easement.

Furthermore the Grantee agrees to construct a roadway and crossing suitable for normal vehicular travel by the use of oolite or similar material, said roadway to be constructed over that portion of Front Street commencing at the northerly boundary of Center Street and extending to the northerly boundary of the hereinabove described property and extending from the easterly end of the cross ties in the westerly set of tracks to the easterly boundary of said Front Street and said crossing to be constructed at grade over the main track of Grantee westerly of the hereinabove described property, all as shown hatched in RED on Grantee's Division Engineer's Drawing No. F-78, dated 12/22/55, attached hereto and made a part hereof. Grantee hereby further agrees that said roadway and crossing will be so constructed so that the drainage therefrom will not interfere with the normal use of said property known as Lot 8 in Block 1 in the City of Fernandina Beach above mentioned. Grantee hereby further agrees to maintain said road way and crossing in a manner satisfactory for normal vehicular use, and not to obstruct same by the parking of railroad cars and equipment thereon.

5. Other potential claims of owners of lands abutting the 25ft by 1800ft lying east to the center of the center line of Front Street between the intersection of Center Street and Dade Street.

6. The City of Fernandina Beach and CSX Transportation Inc, entered into an agreement adopted by the City on December 16, 1986 wherein CSX granted the City a 23.5foot easement and right of user in and to certain land owned by CSX at

Fernandina Beach and more particularly described as That certain strip of land 23.5 feet in width on the extreme westerly portion of Grantor's right of way, said strip of land beginning at a point 360 feet northwardly measured along the center line of Grantor's main lead track from Milepost SMA-47, and extending northwardly 1,155feet, more or less, to the south line of Centre Street, the east line of said strip of land being at a minimum clearance of 10 feet west of the center line of said main lead track; said strip of land being shown outlined in red on print of Grantor's Drawing

No. F-205, dated September 10, 1986, attached hereto and made a part hereof.

Said strip of land to be utilized incident to the relocation and improvement of South Front Street.

There are numerous other covenants and restrictions in this agreement between the City and CSX to numerous to list, however they are incorporated by reference into this opinion. Exhibit (14)

7. The original right of way of west Front Street is platted on the official plat on the City of Fernandina revised, enlarged and reissued by the Florida Town Improvement Company in 1887 and 1901 was reestablished by Ordinance Number 478 entitled:

AN ORDINANCE FIXING AND RE-ESTABLISHING THE RIGHT-OF-WAY FOR WEST FRONT STREET; REPEALING ALL LAWS IN CONFLICT THERE-WITH AND PROVIDING WHEN SAID ORDINANCE SHALL TAKE EFFECT.

) and are incorporated by reference into this Opinion.

The agreement and legal description and survey of the reestablished right of way is included with this opinion marked Exhibit (18).

8. Ordinance Number 96-4 an Ordinance Granting a Franchise to the Florida Public Utilities Company, see paragraph 1(a) of Ordinance.

Based on title examination, I find no legal deficiencies in the title to said land except as noted herein.

If there are any questions concerning this title opinion, you may contact me at your convenience.


E. Clinch Kavanaugh, Esq