TRUE NORTH LAW
A National Authority in Complex, Constitutional and Appellate Litigation.

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Re: Legacy Trail and the recent letter from Sarasota County

I know that you and many of your neighbors have recently received letters from Sarasota County demanding you remove alleged "encroachments" (such as fences, swimming pools, sheds, patios and other improvements) from your property. I am aware of this situation and have been working with the Justice Department and Sarasota County to address this issue. I was in Sarasota for the meeting Sarasota County held on Monday at 3:00 at the Carlisle Inn at 3727 Bahia Vista. Sarasota County called the meeting.

Some Background.

Let me first provide some background. As you know from our previous correspondence and discussions, the federal Trails Act imposes a new easement for public recreation and a possible railroad across landowners' property in the future. The United States Supreme Court has ruled that when the federal government invokes the Trails Act, the Fifth Amendment to the Constitution requires to federal government to pay the owner "just compensation. "*Preseault v. Interstate Commerce Commission*, 494 U.S. 1 (1990). That is the reason the federal government must pay you for the value of your property taken for the Legacy Trail.

As we have discussed before, the railroad did not own the land but merely had a right-of-way easement to use a strip of the land for the operation of a railroad and when the railroad no longer operated, the easement terminated and landowners' property was not encumbered by any easement. Under Florida law the owner held exclusive title and could use and possess the land. (There a few segments where the railroad may have bought the land itself and not just an easement. But for most of

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the Legacy Trail there is no doubt the railroad had only an easement.).

The *Castillo* case I won yesterday in the Federal Circuit.

In a case called *Castillo et. al. v. United States* decided yesterday we won a landmark decision in the United States Court of Appeals for the Federal Circuit. In *Castillo* I represented Miami landowners in a similar situation. The Justice Department argued the owners of property adjoining the abandoned railroad did not own the land under the abandoned railway line. Many owner's deeds described their property as a lot by reference to a plat that showed the property boundary as the edge of the railroad right-of-way or by a deed that said "less" or "except" the right-of-way.

Because of these descriptions in the owner's land title, the Justice Department argued the owners were not entitled to compensation because (the government argued) these owners didn't really own the land. But it has long been understood that under an established doctrine of property law the owner acquires title to the land (what is called the fee estate) to the center of the adjoining road or railroad. This is called the "centerline presumption" and it goes back hundreds of years.

Nonetheless, Judge Horn of the Court of Federal Claims, accepted the government's argument and, on that basis, denied these owners compensation. I appealed on behalf of the landowners and prevailed. I have posted a copy of the Federal Circuit Court of Appeals decision on my firm's website.

The Federal Circuit's decision is of national importance and of particular importance to your claim for compensation. Like here, *Castillo* involved Florida law. But, as the Court noted, the centerline presumption holds that an owner of land adjoining a road or railroad easement actually owns title to the fee estate in the land under the easement. As the court noted, this principle of property law is recognized by the United States Supreme Court and by almost every state. And, as the Supreme

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Court has also held, when the railroad no longer operates across the right-of-way easement, the owner of the land holds unencumbered title and the exclusive right to use and occupy the land.

Sarasota County's demand that you remove improvements from your land.

Now to the demand Sarasota County is making in letters and doorhangers and that landowners along the northern extension of the Legacy Trail remove improvements from property Sarasota County claims they "acquired" from the railroad. This is wrong. As the United States Supreme Court explained in *Brandt Trust*, the railroad's right-of-way easement terminated, and you owned your land unencumbered by any easement. The Alabama Supreme Court recently explained in another Trails Act case that the railroad could sell the county nothing because the railroad had nothing to sell. Here is the link to the Monroe County Alabama case. http://bit.ly/38k42ubMonroeCountyAL This is an important case and I encourage you to read it if you are interested.

Back to Sarasota County. Any right Sarasota County has to use your land or to demand that you remove any improvements from your land does not come from the railroad but from the order the federal Surface Transportation Board issued last May creating the new rail-trail easement across your land. The nature and extent of Sarasota County's interest is defined by the federal Surface Transportation Board. Whatever Sarasota County can do with your property – and whether Sarasota County can demand that you remove existing improvements from your property – is determined by the Surface Transportation Board. If the Surface Transportation Board did, in fact, grant Sarasota County the authority to demand that you remove improvements from your land, than the federal government must pay you for how that affects the value of your property and must also pay any cost related to removing these improvements. This compensation will be paid by the federal government and will be determined as part of the

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case now pending in the Court of Federal Claims. You have already made a claim in this case.

But, and here is the rub, the Surface Transportation Board has not yet clarified what it took from you and gave to Sarasota County. In this and other Trails Act cases, the Justice Department tries to avoid paying the owners the full compensation by arguing the federal government did not take from the owner what the trail user (here Sarasota County) claims to have been taken. This leaves the owner with the prospect of getting "whipsawed" by having the trail user take (or claim to take) much more of the owner's property than the federal government will pay for.

I am in active discussions with the Justice Department attorney handling this matter for the federal government. The solution is for the federal government and Sarasota County to agree on what exactly the federal government took. Sarasota County has no right to your property greater than the federal government gave Sarasota County. Until this agreement is reached, Sarasota County cannot remove or force you to remove any improvement from your property. If this agreement cannot be reached, we will ask a federal judge to issue an order resolving the matter.

One of the options I have discussed with the Justice Department which he is discussing with Sarasota County is granting you a permanent license allowing you to continue using your land for the existing improvement. There are several conditions that have to be met by the federal government and Sarasota County. Those conditions are that the license will be recorded in the land records so you have a permanent enforceable right so that when you sell your property there is no doubt about your ability to maintain this improvement, that you pay nothing for this license (not even the recording fees) and, very importantly, that both Sarasota County *and* the federal Surface Transportation Board sign the license.

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After further discussions next week I will send you an update. Right now I am not optimistic that Sarasota County and the Surface Transportation Board will agree to execute such a license. Again, if the Surface Transportation Board and Sarasota County won't reach a voluntary agreement resolving this matter, I will ask a federal judge to resolve this issue.

Warmest regards,

Mark F. (Thor) Hearne, II

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