

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: John C. Rayson

PREPARED BY: John C. Rayson

SUBJECT: Litigation Report

AFFECTED DISTRICT:

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM:

REPORT IN BRIEF:

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account Name:

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S):

Attachment(s): Litigation Report

OFFICE OF THE TOWN ATTORNEY
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TOWN ATTORNEY REPORT

DATE: June 18, 2008
FROM: John C. Rayson, Esq.
RE: Litigation Report Update

1. PARK CITY MANAGEMENT CORP. vs. TOWN OF DAVIE AND PARK CITY ESTATES

HOMEOWNERS ASSOCIATION: The Town was sued for Declaratory Relief regarding the issue of the maintenance of the 18th Street median strip within the Park City Mobile Home Park. The Judge then allowed the Plaintiff to file an Amended Complaint which names Park City Homeowners' Association as a defendant in the lawsuit. The Town filed an Answer in response to the Complaint and discovery ensued. The Co-Defendant, Park City Estates Homeowners Association, filed a Motion to Dismiss the Complaint, which was denied. The former Town Attorney has taken several depositions of potential witnesses for the Town and for all other parties in this lawsuit. Park City has been billed for services rendered by the Town of Davie. Park City has filed a Partial Motion for Summary Judgment and a hearing is scheduled on June 17, 2008.

2. FEINGOLD vs. TOWN OF DAVIE and FPL: Richard McDuff, Esq. represents the Town in this negligence action. The Complaint alleges that Plaintiff was thrown from a horse by electrical wiring and is claiming bodily injury. The Plaintiff eventually dropped FPL and two unknown Defendants in this litigation. Thereafter, Plaintiff filed an Amended Complaint, Count 2 of which was dismissed by the Court. The Town Attorney spoke with Mr. McDuff on October 2, 2007, who advised that Plaintiff's counsel recently noticed the case for trial and we are awaiting a trial date. On February 4, 2008, The Assistant Town Attorney spoke with attorney Jeff Hochman, who advised that some reports were not disclosed during depositions of Plaintiff's expert in electrical engineering. Therefore, attorney Hochman filed a motion for an order to force the Plaintiff to turnover the undisclosed reports. The deposition has been re-set.

3. TOWN OF DAVIE vs. OSVALDO CIEDI: The Town filed a six count Code Enforcement action against the property owner alleging that he and others had violated the Davie Town Code and Charter. The Special Magistrate found the property owner in violation of provisions of the Town Code and Charter. The property owner has been ordered to come into compliance with the Town Code and Charter by removing the solid waste in a safe manner. Mr. Ciedi has complied with the Order and the case is now in a *status quo* posture. In particular, the Town is close to reaching an agreement with Mr. Ciedi pursuant to which any development of the property would be contingent

upon the replacement of any remaining solid waste with approved fill. It should be noted that the dumping has ceased and that, over time, the solid waste at issue has essentially deteriorated into soil, so that the urgency of this matter has significantly lessened. There are several potential buyers of the property. Any buyer would be bound by the agreement to replace any remaining waste with approved fill.

4. MATTHEW MALIN and BRANDON RIVERA vs. TOWN OF DAVIE POLICE DEPARTMENT: The Town was sued by Plaintiff alleging religious discrimination. The case has been assigned to Mr. Harry Boreth to defend the Town and Mr. Boreth has indicated that the Town is actively defending the lawsuit. On October 3, 2007, the Town Attorney spoke with Mr. Boreth, who indicated that the case is in the discovery phase and that the litigation is active and ongoing. On February 4, 2008, attorney Boreth stated that he is in the process of filing a motion for summary judgment. On April 28, 2008, summary judgment was granted in favor of the Town of Davie.
5. MARINA SWEAT vs. TOWN OF DAVIE: The Plaintiff originally filed a Complaint alleging sexual harassment and retaliation. On October 3, 2006, our special legal counsel, Mr. Harry Boreth, advised the Town Attorney that the case has been dismissed. Accordingly, the Town has moved for recovery of its costs. However, the Plaintiff has filed what appears to be an untimely appeal. Negotiations are ongoing concerning an agreement for Plaintiff to pay the Town's costs and for Plaintiff to dismiss its untimely appeal. As of February 4, 2008, we are pursuing recovery of our attorneys' fees.
6. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: On January 28, 2008, the Town of Davie has filed its Response to Plaintiff's Objection to Report and Recommendation. The same date Plaintiff filed a Response to Town of Davie's Objection to the Magistrate's Report and Recommendation. In addition, the District Judge Alan Gold has scheduled a hearing on Wal-Mart's Motion to Enforce Settlement on February 15, 2008. In this hearing Judge Gold issued an order adopting report and recommendation in part; remanding to magistrate judge to schedule a status conference on April 11, 2008. In this status conference hearing, Judge Turnoff entered an order to establish a briefing schedule to address the parties' defenses. After the briefings, Magistrate Judge Turnoff issued an order for mediation to be held on June 26, 2008.
7. RESIDENTIAL FUNDING COR., vs. SANDRA RABENSBURG, TOWN OF DAVIE, et al.: A final summary judgment of foreclosure was issued on March 4, 2008, granting the Town a valid lien in principal amount of four thousand six hundred, which is superior to lien of Plaintiff's mortgage. A notice of sale dated June 5, 2008 was issued. The Town attorney is waiting for the certificate of sale in order to file a claim over this foreclosure.
8. ALSINA vs. GONZALEZ and the TOWN OF DAVIE: This is a code enforcement case that resulted in Alsina filing a lawsuit. The Alsina's rebuilt their screened patio after Hurricane Wilma. The patio now encroaches on the neighbor's (Gonzalez) property. The Town has imposed \$60,000 in fines due to the continuing violation and the Alsina's refusal to correct or remove the encroaching patio. The Alsina's filed a lawsuit for adverse possession against Gonzalez and seeking an emergency injunction to prevent the Town from assessing or collecting any fines until the adverse possession claim against Gonzalez is adjudicated. After a full hearing, the Honorable Barry Goldstein denied Alsina's motion for injunction, stating that the Special Magistrate had authority to impose the fines and the Court could not interfere with the Special Magistrates' findings and rulings. Thus, the Town can continue to assess fines as long as the violation continues.

The only action that the Town can not take without Court order is removing the patio. According to Robert Harris, Chief Code Compliance Officer, removal of the patio is not an action that the Town would undertake in any event. As of February 4, 2008, the parties are still in process of responding to each other's claims, and the Town is merely a by-stander to this action.

9. NOVASTAR vs. MELANIE RODRIGUEZ, TOWN OF DAVIE, et al: Mortgage foreclosure case. The Town has a recorded Order Imposing Administrative Fine. The Final Judgment has been entered which recognizes and preserves the Town's lien rights. We have not received notice of a sale date yet. Rodriguez has filed for bankruptcy as a result of this proceeding; the foreclosure sale has been rescheduled.

10. DEUTSCHE BANK vs. THEODORE COLLIER, TOWN OF DAVIE, et al: This is a new mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Enforcement Lien and Administrative Fine in the amount of \$22,400. We have responded to the foreclosure complaint by asserting our lien rights as an affirmative defense. There have been no hearings scheduled yet as this is a new case.
11. DEUTSCHE BANK vs. TOM HARVEY, TOWN OF DAVIE, et al.: New mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Compliance Lien in the amount of \$1,800. We will respond to lawsuit by asserting the Town's lien rights as an affirmative defense.
12. OAKES FIRE STATION (PINO KAOBA) : Settlement agreement pending. Final punch list agreed upon.
13. FIRST RESOLUTION INVESTMENT CORP. vs. GREG ATKINS AND TOWN OF DAVIE (GARNISHEE): This is a garnishment action in the State of Iowa. The former Town Attorney filed an Answer to the Garnishment on July 12, 2007. The Town Attorney is awaiting further action.
14. BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY vs. JOHNNY WILLIAMS, et al.: This is a Property Mortgage Foreclosure action. The Town of Davie's answer and affirmative defenses were filed on March 12, 2008. The Town Attorney is awaiting further action.
15. BP LOANS, LLC (50%) AND MEISTER FINANCIAL GROUP, INC. (50%) vs. TOP VIDEO & PRODUCTIONS, USA, INC., a Florida Corporation, et al.: This is a Property Mortgage Foreclosure action. The Town of Davie's answer and affirmative defenses were filed on March 10, 2008. On May 31, 2008, Plaintiffs' filed a motion for summary judgment of foreclosure and taxation of attorney's fees and costs and enforce loan documents. The Town Attorney is awaiting further action.
16. N & D HOLDING, INC., a Florida Corporation vs. Town of Davie: This is a Declaratory Judgment action. The Town of Davie's motion to dismiss was filed on March 12, 2008. At the hearing the Motion to Dismiss was granted to the Town allowing N & D to file an amended complaint. On June 6, 2008, the Town filed its motion to dismiss the amended complaint.
17. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Diamond III LLC and Broeren Russo Builders of Florida, LLC.): This is a pending appeal action (code violation). On February 29, 2008, Southern Waste Systems along with Diamond III filed a Notice of Appeal with the Court appealing the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. On March 14, 2008, Southern Waste Systems filed an unopposed motion to dismiss Diamond III, LLC and Broeren Russo Builders of Florida, LLC from the appeal. The Town attorney is awaiting further action.

18. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Flamingo Village Corp. and American Engineering & Construction, Inc.): This is a pending appeal action (code violation). On February 29, 2008, Southern Waste Systems along with Flamingo Village Corp., and American Engineering & Construction, Inc. filed a Notice of Appeal with the Court appealing the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. On March 14, 2008, Southern Waste Systems filed an unopposed motion to dismiss Flamingo Village Corp., and American Engineering & Construction, Inc., from the appeal. The Town attorney is awaiting further action.

19. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., PAUL BANGE ROOFING, INC.: This is a code violation case. The violators have filed a Motion to Dismiss Code Violation. The case is in continuance and the Town attorney is awaiting further action.

20. U.S. BANK NATIONAL ASSOCIATION vs. RONALD LANDAU, TOWN OF DAVIE, et al.: This is a property mortgage foreclosure action. The Town's answer and affirmative defenses were filed on May, 20, 2008. The Town attorney is awaiting further action.

21. REOWTIE ROY vs. 305 DEVELOPERS, LLC., TOWN OF DAVIE, et al.: This is a property mortgage foreclosure action. The Town's answer and affirmative defenses were filed on May, 20, 2008. The Town attorney is awaiting further action.

22. THE TOWN OF DAVIE vs. CHARLES SCOTT, et al.: This is a lien foreclosure action filed by the Town. The Town is in the process of serving the defendants.

23. THE TOWN OF DAVIE vs. MARK ROCCI, et al.: This is a lien foreclosure action filed by the Town. The Town is in the process of serving the defendants.