

MONROE D. KIAR
INTERIM TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: June 1, 2000
FROM: Monroe D. Kiar 
RE: Litigation Update

1. **Sunrise Litigation** - An all day mediation was held on May 23, 2000, and participated in by Mr. Serota, the Interim Town Attorney, Monroe Kiar, Town Administrator, Robert Middaugh, Mayor Harry Venis, Finance Director, Chris Wallace, and Deputy Finance Director, Carol Menke. Sunrise was represented by their legal counsel and representatives of their Finance Department. An initial draft of a Mediated Settlement Agreement was formulated at the conclusion of the mediation session. The initial draft was later amended and signed by the Town Administrator on May 26, 2000. An executive session will be requested to permit the Town Council to meet and discuss the contents of the Mediated Settlement Agreement and to determine whether or not same shall be approved by the Council.

2. **Transamerican Land Corp.** - As stated in the previous Litigation Update, the plaintiff's attorney had indicated in April that she would be filing amended pleadings in this lawsuit. To date, the plaintiff's attorney has failed to do so and we continue to await receipt of those amended pleadings on the part of the plaintiff. From prior discussions with the plaintiff's attorney, it is hoped that Davie will be dropped as a party to this lawsuit. As stated in my prior report, it is the Town Attorney's opinion that the basis of this lawsuit is a dispute between the plaintiff, Transamerican Land Corporation and the defendant, FLR Company, LLC, and Madison Lakes, Inc. The defendants have filed a Counterclaim against the plaintiff and the plaintiff has filed its Answer and Affirmative Defenses to the Defendants' Counterclaim. No further action has been taken by either the plaintiff or the defendants.

3. **Chapters 175 and 185 Funds** - The Town Attorney had conversations recently with Attorney Robert D. Klausner. Although both of these cases are scheduled for hearing on June 16, 2000, Mr. Klausner indicates that the issues in the Police Officers Pension Plan have been virtually resolved and he anticipates a proposed Stipulation will be forthcoming and a copy of same transmitted to the Town Attorney shortly. With regard to the Firefighters Pension Plan,

Mr. Klausner also remains optimistic that this too, can be ultimately resolved before trial. However, there continues to be a dispute as to whether a resolution of this matter would involve a retroactive offset of actuarial gains and losses beginning with the October 1, 1995 plan year as suggested by Mr. Klausner, versus a retroactive offset beginning with an October 1, 1994 date.

4. **Coastal Carting, Ltd., Inc. v. City of Sunrise, et al** - As indicated previously, Bruce Johnson had requested of the plaintiff's attorney that it dismiss Municipal defendants, including Davie, from the lawsuit. As of this date however, Mr. Johnson has not yet received any word from the plaintiff's attorney. I have been assured by Mr. Johnson that as soon as something new transpires in this matter, I will be advised at once.

5. **MVP Properties, Inc.** - Mr. Burke has filed an Answer and Affirmative Defenses on behalf of the Town of Davie in accordance with the Court's ruling on the Town's Motion to Dismiss which was granted in part and denied in part. Mr. Burke has commenced discovery procedures and propounded a series of Interrogatories to better determine what loss, if any, has been sustained by the plaintiff. He continues to await the plaintiff's Answers to those Interrogatories. The Federal Judge assigned to this case has scheduled a Pretrial Conference for February 16, 2001, and Mr. Burke anticipates that if this matter goes to trial, it will be in March or April, 2001.

6. **LDG Corp.** - This matter continues to be litigated and the Department of Transportation is contending the Town does not have the right to require a variance in this case or to require the property owner to make the improvements which were conditioned by the Town for granting the variance to the property owner.

7. **Orandello** - The Temporary Injunction issued by the Court restraining Mr. Orandello from selling ice cream in Davie continues to be in full force and he has made no effort since the last report to lift the Temporary Injunction. Further, although Mr. Orandello has indicated in the past that he wishes to settle the Code Enforcement Lien, the sums mentioned by him to the previous attorney, Barry Webber, to date have been inadequate and unacceptable to the Town.

8. **142nd Avenue, Kuegler v. Town of Davie** - The plaintiff has moved for Summary Judgment and it is scheduled for July, 2000. I am in the process of preparing an Opposition to the Summary Judgment and further, I sent a Request to Produce to the plaintiff demanding that they produce certain documentary evidence which I believe may be helpful to our side of this case. The plaintiff has objected to producing the documents we requested. It is our position that these documents are extremely relevant and material and may reasonably lead to the discovery of admissible evidence in these proceedings. Accordingly, I have set down their Response to our Request to Produce in which they object to producing the documents requested before the Honorable W. Herbert Moriarty for the 8th day of June, 2000, so that Judge Moriarty can rule on our request for the documentation. A copy of the Notice of Hearing is attached.

9. **Cummings** - This is an action filed by the plaintiffs for inverse condemnation contending

the Town constructed a public sidewalk over a portion of the plaintiffs' property and thereby depriving the plaintiffs of the beneficial enjoyment of the property under the sidewalk. This matter has been pending since October, 1999. The Town has previously filed its Answer and Affirmative Defenses to plaintiffs' Complaint denying the plaintiff's allegations. The Town also commenced discovery by serving and receiving responses to a series of Request for Production and initial set of Interrogatories. The plaintiffs recently served upon the Town their first Request for Production of Documents, and these have been forwarded to the Administration for its review and enable us to respond in a timely manner.

10. **Federal National Mortgage Assoc. v. Mejias and Town of Davie** - This Mortgage Foreclosure Complaint where the Town was named as a defendant as it may claim an interest in the subject property by virtue of two recorded liens, has since been dismissed by the plaintiff.

11. **Association for Disabled Americans, Inc. v. Muvico Entertainment, LLC** - The Interim Town Attorney along with Mr. Thomas Willi and Mr. Leonard Castanza appeared at the Chambers of Judge Turnoff and attended the second Settlement Status Conference in this litigation. The parties reached agreement with the assistance of Mr. Willi, Mr. Castanza and myself as to the disputed issues concerning the Muvico Theater in the Town of Davie. It was agreed that the Defendant would modify to a slope no steeper than 1.50 portion of cross slope, at least 36 inches in width along the present path of access either from the accessible parking at the southeast corner or at the northeast corner of the property along the east side of the building. As an acceptable alternative to these requirements, the parties stipulated that the defendant, Muvico of Davie may put all of the accessible parking to the theater in the parking area directly east of the main building entrance. In the event this alternative is implemented, the accessible parking spaces in that parking area will be located as close as practicable to the front building entrance. Either of these alternatives were found to be acceptable by Mr. Willi as accessible path of access. With regard to the children's playroom, it was agreed that the entrance door would meet the accessible door perimeters. As an alternative to modifying the playroom entrance door to comply with the accessible door perimeters, it was agreed that the defendant would implement a policy and procedure which requires the door to be left open at all times that the playroom is open to the public. This was found to be agreeable and permissible by Mr. Castanza. Due to the assistance provided by Mr. Castanza and Mr. Willi to the litigating parties, all issues involving the Town of Davie were resolved, thus eliminating the necessity of another court appearance in Miami.

12. **Davie v. Discount Auto Parts, Inc.** - As indicated in my previous report, at the May 3, 2000 meeting, the Davie Town Council approved a resolution of the Town of Davie approving a request for mitigation of the Code Enforcement Lien in this case from \$21,750.00 to amount of \$5,225.44, and requiring that the mitigated amount be paid within 45 days of the enactment of the resolution. In accordance with the Town's direction, the undersigned and opposing counsel prepared a Stipulation of Settlement which was executed by the Town's attorney and by the attorney for Discount Auto Parts, Inc. and submitted to Judge Greene for his approval. We are now awaiting receipt of the funds.

13. **Davie v. Statewide Transportation & Recovery Services, Inc.** - A Judgment in the amount of \$41,175.25 was obtained against Statewide Transportation & Recovery Services, Inc. The undersigned has effectuated service individually on two of the principals of the business, requiring that they appear personally for the taking of their deposition. If they fail to appear, then the undersigned will move to have them held in contempt of court individually. As a result, I received a telephone call from an attorney purporting to represent the principals of Statewide Transportation & Recovery Services, Inc., and we forwarded to him a copy of the Final Judgment as he requested. The successful Return of Service Affidavits have been filed with the court.

MDK/grnv
enclosure

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO: CACE 98-18884 (18)

AGNES R. KUEGLER,

Plaintiff,

vs.

BROWARD COUNTY FLORIDA, and
TOWN OF DAVIE, FLORIDA,

Defendants.

NOTICE OF HEARING

TO: Joseph J. Huss, Esquire
Romanik Huss & Ivers
Co-Counsel for Plaintiff
20170 Pines Boulevard, Suite 302
Pembroke Pines, Florida 33029

James C. Brady, Esquire
Brady & Coker
Co-Counsel for Plaintiff
501 NE 8th Street
Fort Lauderdale, Florida 33304

Michael J. Kerr, Esquire
Attorney for Defendant/Broward County, Florida
County Attorney's Office
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

PLEASE TAKE NOTICE that on **Thursday, the 8th day of June, 2000, at 8:45 A.M.** or as soon thereafter as counsel can be heard, the undersigned will bring on to be heard the **Plaintiff's Response to Request to Produce**, before the Honorable **W. Herbert Moriarty**, one of the Judges of the above court, in his Chambers, in Room 801, in the Courthouse at 201 S.E. 6th Street, Fort Lauderdale, Broward County, Florida.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to the above-named addressee, this 31 day of May, 2000.

MONROE D. KIAR, ATTORNEY AT LAW
Attorney for Plaintiff, Town of Davie
6191 S.W. 45th Street
Suite 6151A
Davie, Florida 33314
Phone: (954) 584-9770

BY 
MONROE D. KIAR, ESQUIRE
Florida Bar #177320

Movant counsel certifies that a good faith effort to agree or to narrow the issues on the motion noticed has been made with opposing counsel prior to noticing the above hearing.

In accordance with the Americans with Disabilities Act of 1990 (ADA), disabled persons who, because of their disabilities, need special accommodation to participate in this proceeding could contact the ADA coordinator at 201 SE 6th Street, Room 136, Fort Lauderdale, Florida, 33301 or telephone Voice/TDD (954) 357-6364 no later than seven (7) business days prior to such proceeding.