

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

TOWN ATTORNEY REPORT

DATE: September 28, 2000

FROM: Monroe D. Kiar 

RE: Litigation Update

1. **142nd Avenue, Kuegler v. Town of Davie** - The parties will be conducting the depositions of the various witnesses shortly in preparation for trial. Attorney Brady has requested the taking of the depositions of the 7 individuals who filed Affidavits in support of the Town's position and in the successful opposition to Mrs. Kuegler's Motion for Summary Judgment. The Town Attorney has written to the 7 Affiants requesting that they contact him so that the scheduling of their depositions at a time convenient to the Affiants can be arranged. Christopher Wallace, the Budget and Finance Director, is compiling the data requested by Councilmember Clark at the September 20, 2000 Council Meeting. The Town Attorney has been in contact with Mr. Wallace and requested that he be provided with the information as well prior to the Council Meeting.
2. **Sunrise Litigation** - As indicated in the previous Town Attorney's Report, representatives of the Town of Davie and the City of Sunrise met for a second round of negotiations regarding the possible purchase and sale of the Sunrise utility lines and appurtenant facilities located within Davie on September 18, 2000. At the meeting on September 18, 2000, the City of Sunrise agreed to produce the preliminary documents requested by the Town representatives and their expert, Mr. Stanley Cohen. To date, a third meeting has not yet been scheduled, but is expected to be held in October.
3. **Ordonez, et al v. Town of Davie** - Mr. Burke advises that the depositions of Helen Ordonez, Durcy Ordonez and Dulce Flores were conducted on September 25, 2000 and September 27, 2000. Ricardo Flores' deposition was not taken and will be rescheduled. To date, the depositions of the Mayor and the former Chief of Police have not been canceled. Mr. Burke has been asked to see if he can get the depositions of the Mayor and the Chief of Police

postponed until after his Motion for Summary Judgment is prepared and heard.

4. **Department of Community Affairs v. Town of Davie** - The parties to this litigation are in the process of preparing a proposed Settlement Agreement between the DCA and the Town of Davie incorporating the provisions of the letter of understanding reached by the parties. Once the Settlement Agreement has been completed, it will be presented to the Town Council for its review.
5. **Sessa v. Town of Davie (Charles Powers)** - Binding mediation is scheduled to be tried before Judge Gerald Mager on October 25, 2000. In the meantime, Mr. Powers has made an offer to the Town to settle his claim for the sum of \$20,000.00. A copy of the settlement offer from Attorney James Brady was attached to my prior Town Attorney Report of September 14, 2000. The Town Attorney had asked for the input from the Finance Director and Town Staff with regard to the settlement proposal. Ms. Menke originally indicated in an e-mail of September 14, 2000 that the original assessment regarding these properties was \$53,179.61. After receipt of Ms. Menke's e-mail, the Town Attorney contacted Attorney James Brady again, who advised that the base assessed amount for Parcels 9 and 9A combined is \$28,040.87, and that the balance of the base assessment referenced by Ms. Menke in her e-mail pertained to Parcels 6, 7 and 8, which were previously paid by his client. Mr. Brady faxed to the Town Attorney a copy of a letter dated April 23, 1998 written by the prior Town Attorney, Suzanne McLean, confirming this fact. Finally, the Settlement Agreement dated May 26, 2000, also a form prepared by the prior Town Attorney and entered into by the parties, specifically provides in paragraph 4 that if any of the parcels of land mentioned have found to specially benefitted from the work which was the subject of the disputed special assessment, than all interest and penalties incurred through the date of the Hearing Officer's Order would be waived and the owner would be given the opportunity to choose within 20 days of the Order, to pay the amount of the special assessment in full or to pay the amount of the special assessment amortized in 60 consecutive monthly payments at a rate of 8% percent simple interest, with no prepayment penalty. The Budget and Finance Director, Mr. Chris Wallace, has been asked to confirm the information contained herein. If in fact everything is as indicated by Mr. Brady, then the offer of Charles Powers to settle this matter would not be unreasonable. Attached is a copy of the Memorandum of September 22, 2000 to Chris Wallace and Thomas Willi as well as a copy of Ms. McLean's letter of April 23, 1998, and another copy of the Settlement Agreement of May 26, 2000.
6. **Coastal Carting, Ltd., Inc. v. City of Sunrise, et al (includes Town of Davie as a Defendant)** - Previously, Mr. Johnson had been advised that the Resource Recovery Board had agreed to dismiss the various municipalities, including the Town of Davie, but as of this date, Mr. Johnson has still not yet received the signed Stipulation from Plaintiff's Attorney dismissing the municipalities. A Status Conference is set in this case for Friday, September 29, 2000 at 10:00 A.M., at which time Mr. Johnson will seek a dismissal of the municipalities by the United States District Court. Mr. Johnson's secretary confirmed at the time of the preparation of this Litigation Update, that the Status Conference is still scheduled for

September 29, 2000.

7. **ROHO Flamingo - Ice Plat (Control No. 000105)** - The current Town Attorney and the Attorney for ROHO Flamingo - Ice Plat have met and have made what appear to be the final revisions to the Complaint and the Stipulation previously prepared by Mr. Webber, incorporating changes negotiated and requested by the Town Attorney as well as those requested and negotiated by the attorney for ROHO Flamingo - Ice Plat.
8. **Seventy-Five East, Inc. v. Town of Davie** - The Plaintiff has filed its Reply Brief in this litigation. The Plaintiff is also seeking to consolidate this case with the Griffin-Orange North, Inc. v. Town of Davie litigation. Mr. Burke intends to oppose any such attempt to consolidate the two cases. No hearing has yet been scheduled on the Motion to attempt to consolidate the two cases.
9. **Griffin-Orange North, Inc. v. Town of Davie** - The Plaintiff has filed its Reply Brief and is seeking to consolidate to this case with the Seventy-Five East, Inc. case. Mr. Burke advises that he will oppose any consolidation of this case with the Seventy-Five East, Inc. case.
10. **MVP Properties, Inc.** - The Town Attorney has again spoken with the office of Michael Burke, our outside counsel, who indicated that he did not receive copies of the Appellate Briefs submitted by either the prior Town Attorney Webber, or the opposing counsel for MVP. Mr. Burke did provide copies of MVP Properties, Inc.'s Petition for Writ of Certiorari filed in the 17th Judicial Circuit In And For Broward County, Florida, the Order of the Honorable John A. Miller dated April 8, 1997, and the Opinion of the 4th District Court of Appeal entered on June 3, 1997. Copies of these have been previously provided to the Town Administrator, Mayor Venis and Councilmembers on September 25, 2000. The Town Attorney has again written to Mr. Webber requesting copies of any Briefs he has with regard to this lawsuit.
11. **LDG Corporation** - LDG and the DOT have gone to trial. The Town has previously been dismissed as a defendant. Mr. Burke's office has not yet received word as to the jury's decision regarding the trial between LDG Corporation and the DOT.
12. **Orandello** - The Code Enforcement Officer, Mr. Stallone, made a presentation to the Town Council at the September 20, 2000 Town Council Meeting and was directed by the Town Council to pursue this matter with Mr. Orandello directly, and then for presentation to the Special Master to determine a mitigation amount required to settle this matter. The Council directed the Town Attorney to take no further action until the Code Enforcement Officer had an opportunity to pursue remedies to address the situation with Mr. Orandello.
13. **Cummings v. Town of Davie** - The Plaintiffs' attorney served upon the Town Attorney the Plaintiffs' Notice of Service of Interrogatories and First Set of Interrogatories to Defendant,

Town of Davie. These were originally forwarded to Interim Town Engineer, John Doherty, for his review and assistance in completing the Interrogatories so that our response could be filed in a timely manner. It was later determined that the person most familiar with this case is Mr. Bruce Bernard and he is assisting the Town Attorney in responding to the Plaintiffs' Interrogatories.

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

MEMORANDUM

DATE: September 22, 2000
TO: Thomas Willi, Town Administrator
Chris Wallace, Director, Budget and Finance
FROM: Monroe Kiar *MK*
RE: Ralph Sessa, et al v. Town of Davie

This will acknowledge receipt of Carol Menke's e.mail of September 14, 2000 advising that Customer Service Department had looked up Charles Powers' assessment and determined that his original assessment was \$53,179.61 and therefore, it was the recommendation to reject Mr. Powers' settlement offer of \$20,000.00.

After receipt of Ms. Menke's e.mail, I contacted Attorney James Brady, who advised me that the base assessed amount for parcels and 9 and 9A combined is \$28,040.87, and that the balance of the base assessment pertain to parcels 6, 7 and 8, which were previously paid by his client. Mr. Brady faxed to me a letter dated April 23, 1998 written by my predecessor, Suzanne M. McLean, Esquire, confirming this fact. A copy of Ms. McLean's letter is attached.

Further, the Settlement Agreement dated May 26, 2000, also a form prepared by my predecessor and entered into by the parties, specifically provides in paragraph 4 that if any of the parcels of land mentioned are found to have specially benefited from the work which was the subject of the disputed special assessment, then all interest and penalties incurred through the date of the Hearing Officer's Order would be waived and the owner would be given the opportunity to choose within 20 day of the Order to pay the amount of the special assessment in full, or to pay the amount of the special assessment amortized in 60 consecutive monthly payments at a rate of 8% percent simple interest with no prepayment penalty. Attached please find another copy of the Settlement Agreement.

I have again spoken with Mr. Brady. In view of the aforementioned, the offer of his client to settle the assessments with regard to Parcels 9 and 9A (especially in light of the additional costs which the Town will incur in having both its attorney and its expert, Mr. John Calvin, appearing to testify at the hearing, appears to be a reasonable settlement proposal. Further, it is my belief that Mr. Powers may increase his proposal another \$2,000.00 or \$3,000.00 based upon my most recent conversation with Mr. Brady, if we so demand.

In light of the above, I believe the proposal and/or any additional amount is reasonable under the circumstances. This is especially true since there is nothing to guaranty that the Special Master will find that both parcels benefited from the special assessment work, as we will contend.

MDK/gmv
enclosures

GOODMAN, WEBBER AND HINDEN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

4430 SOUTHWEST 84TH AVENUE

DAVIE, FLORIDA 33314

MAILING ADDRESS

POST OFFICE BOX 8649

PC-PHONE PRICES, FLORIDA 33004-0549

April 23, 1998

BARRY S. WEBBER
JON A. HINDEN
SUZANNE M. McLEAN
DAVID C. GOODMAN
(1985-1992)TELEPHONE (954) 587-3956
TELECOPIER (954) 587-1776James C. Brady, Esq.
Brady & Coker
1318 S.W. 2nd Avenue
Ft. Lauderdale, FL 33316Re: Ralph Sessa et al v. Town of Davie
(Parcels 9 and 9A-Charles H. Powers)
Case No. 93-12985 (02)
Our File No. D-5474

Dear Mr. Brady:

I am writing in response to our telephone conversation of April 13, 1998. On that date, you informed the undersigned that your client owns 30.15 acres in the 47th Avenue Special Assessment District.

I have reviewed our file in this matter. Pursuant to our file, parcel 9, folio no. 0125-08-002 is comprised of 5.4704 acres and parcel 9A, folio no. 0125-08-003, is comprised of 1.6799 acres. As such, parcels 9 and 9A combine to total 7.15 acres. The base assessment amount for 7.15 acres is \$28,040.87.

With regard to parcels 6, 7 and 8, on November 6, 1995, the court appointed hearing officer, Michelle Kane, Esq., made a determination that the parcels specially benefitted from the special assessment work. According to our files, your client opted to pay the special assessment amount due on parcels 6, 7 and 8, in sixty (60) consecutive monthly payments at a rate of 8% simple interest with no prepayment penalty.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

GOODMAN, WEBBER and HINDEN

By: 

Suzanne M. McLean, Esq.

SMM:lc

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 26 day of May, 2000, by and between the TOWN OF DAVIE, a municipal corporation located in Broward County, Florida, and CHARLES H. POWERS, an individual, with all of the above parties to this agreement being referred to collectively as "the settling parties".

WHEREAS, the settling parties are parties in a certain action disputing a Special Assessment in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, entitled RALPH SESSA, et al. vs. TOWN OF DAVIE, etc., Case No. 93-12985 (02) (the "litigation"); and

WHEREAS, the settling parties have asserted various claims in the course of the litigation and desire now, by and through this agreement, to resolve the differences and disputes amicably in the litigation by settlement and compromise, all subject to the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the settling parties, intending to be legally bound, hereby agree as follows:

1. **IMPARTIAL HEARING:** CHARLES H. POWERS, or his designated agent, and the Town's attorney will appear at an impartial hearing to determine whether Parcels 9 and 9A as identified in Exhibit "A" to Town of Davie Resolution No. 91-65 have specially benefited from the work which is the subject of the disputed Special Assessment.
2. **RESULTS BINDING:** The results of this hearing will be final and binding upon the settling parties.
3. **HEARING OFFICER:** The mediator in this case, ret. Judge Gerald Mager, shall serve as the neutral hearing officer for the aforementioned hearing.
4. **RESULTS OF HEARINGS:** If any of the parcels of land mentioned in paragraph 1 are found not to have specially benefited from the work which is the subject of the disputed Special Assessment, then the Special Assessment will be void as to those specific parcels only. The amount of Special Assessment from these voided parcels may be redistributed for collection as the Town of Davie sees fit, but in no instance will these redistributed amounts be added or combined with amounts owing for the special assessment from any parcel which is owned by any other party to this litigation. This paragraph shall not

in the event a new special assessment is commenced by the Town.

If any of these parcels of land mentioned in paragraph 1 are found to have specially benefited from the work which is the subject of the disputed Special Assessment then all interest and penalties incurred through the date of the hearing officer's order shall be waived. The owner of the parcel found to have specially benefited shall choose within twenty (20) days of the order to pay the amount of the Special Assessment in full or to pay the amount of the Special Assessment in full or to pay the amount of the Special Assessment amortized in sixty (60) consecutive monthly payments at a rate of eight percent (8%) simple interest with no prepayment penalty.

5. **ATTORNEYS' FEES AND COSTS:** Notwithstanding the results of the hearing, each party agrees to bear their own attorney's fees and costs as previously agreed between that party and its respective counsel.

6. **DISMISSALS:** Within ten (10) business days of the executing of this Settlement Agreement, the settling parties will execute the attached Joint Stipulation and Order of Dismissal so that the litigation between the settling parties will be dismissed, with prejudice.

7. **REPRESENTATIONS AND WARRANTIES:** In connection with the executive and validity of this Agreement, and the confirmation of the transaction set forth herein, each of the settling parties represents and warrants to each other that it has not relied upon any statement, communication, representation, warranty, covenant or agreement made by, on behalf of, or about a settling party, except those specifically set forth herein.

8. **COVENANT OF NO FURTHER ACTION:** Each of the settling parties covenants and agrees that it shall not take any action before any governmental agency, regulatory or licensing body or commission, or otherwise assert or allege any complaint in any form against any of the settling parties arising, in whole or in part, as a result of or in connection with the Special Assessment, unless such action arises from and is related to a settling party's breach of this agreement.

This Agreement does not affect, settle, waive, or otherwise relate to any other claims, suits, actions or other matters in which the Settling Parties are involved, or may be involved in the future unrelated to the Special Assessment. This Agreement does not relate to any other persons or entities affected by the Special Assessment.

9. **NO ADMISSION OF LIABILITY:** This Agreement is made solely for the purpose of expeditiously and economically resolving the differences among the settling parties addressed herein, and nothing in this agreement shall be construed as or constitutes an admission of the validity or enforceability of any claims or demands of the litigation or described in this Agreement.

10. **COVENANT NOT TO SUE:** Each of the settling parties agrees and covenants that they will not commence, file, bring, cause to be brought or participate in, directly or indirectly, any lawsuit, action or proceeding against or adverse to the other settling party as to the Special Assessment or Settlement Agreement, except to enforce this Agreement.

11. **USE OF THIS AGREEMENT:** This Settlement and all negotiations, statements and proceedings in connection therewith shall not be offered as or in any way be construed as or deemed to be evidence of an admission or concession on the part of any settling party of any liability or wrongdoing on their part, which liability or wrongdoing are hereby expressly denied and disclaimed.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of, the settlement parties and their respective successors and assigns, and, in addition thereto, shall be binding upon any receiver, liquidator, rehabilitator, conservator, supervisor and any other person or entity (governmental or non-governmental) exercising or seeking to exercise the powers of the entities or persons named above.

13. **CAPTIONS AND SECTION HEADINGS:** Captions (other than case or civil action captions) used herein are for convenience only, and are not part of this Agreement.

14. **GOVERNING LAW:** This Agreement shall be governed by, construed in accordance with the law of the State of Florida.

15. **FINAL EXECUTION:** This Agreement shall be deemed to be finally executed when it has been signed by all the parties to this Agreement.

16. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement shall be effected and final executed when counterparts, which when taken together, bear the signature of all parties hereto, have been delivered to all settling parties.

17. EXECUTED: This day in the year first above written.

WITNESS MY HAND AND SEAL this May day of May 2000.

Glenn Bescher
Witness

Charles H. Powers
CHARLES H. POWERS

State of South Carolina
County of Florence :SS.

I HEREBY certify that on this day, before me, an officer duly authorized to administer oaths, and take acknowledgments, in the State and County aforesaid, Charles H. Powers who is personally known to me or who has produced as identification and who did take an oath, who executed the foregoing Settlement Agreement, and acknowledged before me and the witness whose signature appears hereinabove that he/she has read and fully understands its contents.

SWORN TO and SUBSCRIBED before me this 16 day of May 2000.

My Commission Expires:
4-1-2001

Betty L. Roush
Notary Public
BETTY L. ROUSH
(Print Name of Notary)

ATTEST:

Ginger
TOWN CLERK

TOWN OF DAVIE
By: Harry Venis
Harry Venis, Mayor

State of Florida :
County of Broward :SS.

I HEREBY certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, in the State and County aforesaid, Harry Venis, Mayor of the Town of Davie, who is personally known to me or who has produced his Florida driver license as identification and who did take an oath, who executed the foregoing Settlement Agreement on behalf of the Town of Davie, and acknowledged before me and the witness whose signature appears hereinabove that he has read and fully understands its contents.

SWORN TO and SUBSCRIBED before me this 17 day of July 2000.

My Commission Expires:

Maria Blackiston
Notary Public
MARIA Blackiston
(Print Name of Notary)

