

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

TOWN ATTORNEY REPORT

DATE: April 12, 2001
FROM: Monroe D. Kiar 
RE: Litigation Update

1. **Kuegler v. Town of Davie:** At the last Town Council Meeting, the Town Council authorized payment of the Plaintiff's court costs as these are properly taxable in a litigation matter in favor of the prevailing party. These court costs expended by the Plaintiff's attorneys, David Mankuta and James Brady, were set forth in an Affidavit submitted by Mr. Mankuta with his Motion to Tax Court Costs. Mr. Mankuta has been advised that the Town will be paying the court costs set forth in his Affidavit attached to his Motion.
2. **Sunrise Water Acquisition Negotiation:** At a previous Town Council Meeting, Mr. Willi brought the Town Council up to date on this matter and indicated that the Town is moving forward in its preparation for further negotiations with the City of Sunrise for the possible acquisition of the water system. One of our experts, Mr. Stanley Cohen anticipates being in the South Florida area later in the month at which time he will meet with Mr. Willi and the Town Attorney, as well as special outside legal counsel, to discuss further the progress being made regarding further negotiations with the City of Sunrise.
3. **Ordonez, et al v. Town of Davie:** Mr. Michael Burke, our outside legal, has filed a Motion for Summary Judgment in this case and the Motion is now pending. Mr. Burke is quite confident that the various defendants named in this action will be dismissed as Defendants.
4. **Sessa v. Town of Davie (Forman):** The parties have executed a Stipulation agreeing to binding mediation. The Stipulation was submitted to the Court and approved by the Judge. Binding Mediation has been tentatively scheduled for summer, 2001, before retired judge, Gerald Mager.

5. Coastal Carting Ltd., Inc. v. City of Sunrise, et al: This matter has been settled by the Resource Recovery Board and the Plaintiffs, Waste Management and Coastal Carting Ltd. The Town of Davie is to be dismissed as a defendant in this lawsuit and is to receive a Special Limited Release discharging it of any liability as to any of the claims or causes of action raised against the Town in this litigation. The plaintiffs have requested that the Town of Davie also execute a similar Special Limited Release which in fact, has been signed by the Town and which will be forwarded to Mr. Johnson, our outside legal counsel, shortly.
6. Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie: A Final Hearing on the Petition for Writ of Certiorari will be conducted sometime during the Court's 4 week trial docket commencing July 30, 2001. Mr. Burke anticipates that oral argument on the Motions will take approximately 1/2 day and as the 4 week trial docket commencing July 30, 2001 approaches, he will advise the Town Attorney's Office exactly when the oral argument will take place.
7. **MVP Properties, Inc.:** The Town of Davie's Motion for Summary Judgment continues pending. Both sides have filed a Memorandum of Law in support of their respective positions in this case. Mr. Burke anticipates that this matter will go to trial around December, 2001.
8. **Cummings v. Town of Davie:** On Wednesday, April 4, 2001, the Davie Town Council had a closed session to discuss settlement and resolution of the above referenced matter. Then, after the closed session, the Town Council voted to approve one of the two settlement proposals offered by the Plaintiffs. The full terms of the settlement agreement are set forth in a letter from the Town Attorney's Office to Laura N. Camp, Esquire of Brigham Moore law firm. A copy of said letter from the Town Attorney's Office to Ms. Camp is attached hereto.
9. **Department of Community Affairs v. Town of Davie:** The Stipulated Settlement Agreement presented to the Town Council was signed by the Mayor and approved as to form by the Town Attorney. It was thereafter submitted to the Department of Community Affairs for its execution and thereafter, submitted to the Court which approved same. This matter has been abated pursuant to the Court's Order of February 16, 2001, to allow the parties to comply with the provisions of the Stipulated Settlement Agreement.
10. **Town of Davie v. Malka:** The Town Attorney's office has been in contact with the Code Enforcement Officer, Mr. Daniel Stallone. Mr. Stallone, upon his latest visit to the Malka property, observed that the Malkas are proceeding in an effort to complete the construction of the exterior of their residence. This, they were to have completed by March 31, 2001. Although they have not so completed the outside of the residence, it appears that they will complete the outside of the residence shortly. Nevertheless, Mr. Stallone has initiated proceedings to bring this matter before the Unsafe Structures Board. It is anticipated however, that the Malkas will complete the exterior project prior to the next meeting of the Unsafe Structures Board. If this is not the case however, then Mr. Stallone will have

set in motion the procedures for bringing this matter before the Unsafe Structure Board. It should be noted that there is still time remaining on the 6 month building permit currently issued to the Malkas. Mr. Stallone indicates that the Malkas will not however, be granted any additional extensions beyond the current 6 month permit.

11. **City of Pompano Beach, Davie, et al v. Florida Department of Agriculture and Consumer Services:** The Florida Department of Agriculture has filed an appeal of Judge Fleet's Order in which the Judge ruled in favor of Davie, the County and the other cities enjoining the Florida Department of Agriculture and Consumer Services from further cutting of healthy citrus trees in Broward County. The original Record on Appeal consisting of 10 volumes and 1 envelope of exhibits was transmitted on February 23, 2001 by the Clerk of the 4th District Court of Appeals. The Department of Agriculture has filed its Initial Brief and in response thereto, the coalition of cities have submitted their Answer Brief. The Florida Department of Agriculture has also requested that oral argument be permitted in these proceedings.
12. **Christina Mackenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed this case from the trial docket pending its ruling on our Motion for Summary Judgment. There is good likelihood therefore, that even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard before the end of the year, should it in fact go to trial.
13. **National City Mortgage Co. v. Dwayne E. Robinson and Town of Davie, et al:** The Plaintiff, National City Mortgage Company filed a Motion for Summary Judgment alleging that its Note and Mortgage were paramount in right and dignity to the liens of all defendants, including the Town of Davie. The Town Attorney's Office filed an Answer and Affirmative Defenses alleging that the Town of Davie's Order Imposing a Municipal Enforcement Lien dated August 24, 1989 was in fact superior in time and dignity to that of the Plaintiff's Mortgage. At the initial hearing on the Plaintiff's Motion for Summary Judgment, the Court agreed with the Town's position. The Plaintiff requested a re-hearing on this issue and the Court granted their Motion for Re-Hearing which will be scheduled to be heard sometime in the future. The Plaintiff is contending that it has documentation to prove that its lien is that of a purchase money mortgage and agreed to provide such documentation to the Town Attorney's Office for review. This documentation was neither presented to the Court or to the Town Attorney's Office at the previous hearing. The Town Attorney's Office has just received the documentation and will be reviewing same to make a determination as to whether or not the new contentions of the Plaintiff are valid.

**TOWN ATTORNEY'S OFFICE
TOWN OF DAVIE FLORIDA
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Monroe D. Kiar
Town Attorney

April 6, 2001

Sent by Fax

Laura N. Camp, Esquire
Brigham Moore
203 S.W. 13th Street
Miami, FL 33130

Re: Robert L. Cummings, et al vs. Town of Davie

Dear Laura:

On Wednesday, April 4, 2001, the Davie Town Council had a closed session to discuss settlement and resolution of the above referenced matter. Then, after the closed session, the Town Council voted to the following settlement:

1. Full compensation for the Cummings giving a Quit Claim Deed to the Town for the property in Lot 1 which is encompassed by the Misc. Map Book 3, Page 14, B.C.R., within which the sidewalk is located (subject to their being no mortgages or liens on said property), for the amount of \$32,000.00, exclusive of attorneys fees and costs.
2. Town of Davie will pay Plaintiffs' attorneys fees and costs in the amount of \$15,000.00.
3. This resolution is contingent on Plaintiffs obtaining all minimal variances reasonably necessary for residential development of Lot 1 from Defendant at no administrative cost or filing fees for the variance process to Plaintiff (there shall not be any expense or costs or fees charged by Town of Davie to Plaintiff for the variance process). Plaintiffs will within 2 months of the date of this Agreement make application for the variances,

Page 1 of 2

including but not limited to variances for lot size, lot width and setbacks. The Plaintiffs variance request shall be acted upon expeditiously by the Town of Davie, and the variance requests determined within 3 months of the Plaintiffs filing for the variances. If the variances are granted, then in that event, the variances shall be incorporated into a Final Judgment which shall fix the Plaintiff property owners rights to the variances being permanent to that property known as Lot 1. If Plaintiffs are not granted all necessary variances within the three month period in order to be able to develop Lot 1 for development of a single family residence, then the settlement is voidable by Plaintiffs (but not Defendant) provided Plaintiffs give written notice of such voiding within 30 days of Plaintiffs not getting the variances which would enable Plaintiffs to develop Lot 1 for development of a single family residence under this Agreement.

- 4. Town of Davie shall reimburse Plaintiffs for any expert fees incurred by Plaintiffs relating to Plaintiffs' application for said variances. Said costs shall not exceed \$5,000.00.
- 5. This settlement is subject to Plaintiffs' approval of the language of the final judgment, and the required period for funding.

This settlement is substantially the offer that was contained in the second page of your letter of March 16, 2001. The one area that especially needed clarity was the variance situation. The present Town Council is familiar with this matter. The land planner for Mr. Cummings is familiar with this matter. Now is the time to get the variance issue disposed of permanently. The parameters for the variances can be set at this time and the variance request can be made at this time, so that this matter can now go through the Planning and Zoning, and then to the Town Council. The matter will be handled expeditiously by the Town. Assuming the variances are granted, those variances can become part of a Final Judgment, and the rights concerning Lot 1 can be forever fixed. The matter can therefore be finally resolved as concerns this matter.

Please get back to me so that we can prepare the finalized paperwork. You may either contact me directly at: telephone (954) 428-0300, or fax (954) 428-6506; or contact Monroe at (954) 584-9770.

I thank you for your continued professionalism in this matter.

With best regards,

Sincerely,



A. THOMAS CONNICK

cc: Monroe D. Kiar, Esquire