

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 26, 2001
FROM: Monroe D. Kiar 
RE: Litigation Update

1. **Kuegler v. Town of Davie:** The Town Council authorized payment of the Plaintiff's cost in the amount of \$1,790.10, as these are properly taxable in a litigation matter in favor of the prevailing party. These court costs by the Plaintiff's attorneys, David Mankuta and James Brady, were set forth in Mr. Mankuta's Affidavit submitted to the Court with his Motion to Tax Court Costs. The Town's check in this amount was forwarded to Mr. Mankuta in payment of these taxable costs as authorized by the Town Council. The case is now closed.
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 had anticipated being in the South Florida area around April 19, 2001 at which time he was to meet with Mr. Willi and the Town Attorney as well as the special outside legal counsel to discuss further the progress being made regarding further negotiations with the City of Sunrise. Unfortunately, Mr. Cohen fell sick and was unable to make the trip. It is anticipated that his trip will be rescheduled in the near future.
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 Agreement agreeing to binding mediation. The Stipulation has been approved by a Court Order issued by the Judge. Binding mediation has been tentatively scheduled for September, 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 Town of Davie executed a similar Special Limited Release which has been forwarded to Mr. Johnson, our outside legal counsel.
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. It is anticipated that it should be the early part of August, 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 us as to the exact date 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. The attorney for the Plaintiff, Laura N. Camp will be preparing an initial draft of the Stipulation of Settlement and will be sending it to us shortly.
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 very shortly. Nevertheless, Mr. Stallone has initiated proceedings to bring this matter before the Unsafe Structures Board in case the Malkas fail to complete the outside structure as they promised. It is anticipated however, that the Malkas will complete the exterior project prior to the next meeting of the Unsafe Structures Board. It should be noted that there is still time remaining on the 6 month

building permit currently issued to the Malkas. Mr. Stallone has confirmed however, that the Malkas will not 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 Record on Appeal consisting of 10 volumes was transmitted on February 23, 2001. Both sides have filed their Briefs in this case. The Florida Department of Agriculture has also requested that oral argument be permitted in these proceedings, but to date, oral argument has not been scheduled. The Department of Agriculture had been actively cutting down both ill and healthy Citrus Trees prior to Judge Fleet's Order. For the last 3 months they have ceased all cutting. This week they have once again aggressively resumed the cutting down of infected Citrus Trees in Broward County. They have begun in the northern part of the County and have anticipated that they will be working south over the next number of weeks.
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 the case from the trial docket pending its ruling on our Motion for Summary Judgment. There is a 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 its 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 the Court granted the Plaintiff's Motion, but denied it as to Davie and ruled that Davie's Order was paramount to that of the Plaintiff's Mortgage. The Plaintiff then filed a Motion for Re-Hearing contending that it had documentation to prove that its lien was in fact a purchase money mortgage and agreed to provide such documentation to the Town Attorney's Office. This documentation had neither been presented to the Court or to the Town Attorney's Office prior to or at the previous hearing. Upon review of the documentation, it appears that the Plaintiff's Mortgage is in fact a purchase money mortgage and that the proceeds were used to purchase the subject property. Under the law, this would in fact make the Plaintiff's contentions valid and their purchase money mortgage is superior to that of the Town's Order Imposing Municipal Enforcement Lien.