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TOWN ATTORNEY REPORT

DATE: August 9, 2001
FROM: Monroe D. Kiar
RE: Litigation Update



1. **Sunrise Water Acquisition Negotiations:** The Town Attorney's Office prepared a letter to the attorneys for the City of Sunrise regarding these negotiations and the limited amount of documentation provided by Sunrise to Mr. Cohen and requesting that the City of Sunrise provide all documentation listed therein. The Town Attorney's Office has been in contact with the attorney for Sunrise requesting the documentation needed by Mr. Cohen in order to enter into meaningful negotiations for the acquisition of the water and sewer system. Ms. Kornspan, the attorney for Sunrise, contacted the undersigned on one occasion. Since then, the Town Attorney's Office has made several phone calls to Ms. Kornspan's office, but on each occasion has been advised that she has been out of the office on vacation or otherwise unavailable. The Town Attorney's Office has sent another letter to Ms. Kornspan requesting that the City of Sunrise Finance Department and Utility Department provide to the Town of Davie the documentation needed by Mr. Cohen to analyze the cost of acquisition of the water and sewer system.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict. The Plaintiffs failed to file a timely Notice of Appeal and therefore, the jury verdict is now final. Mr. Burke has moved to tax court costs against the Plaintiffs. His Motion remains pending.
3. **Sessa v. Town of Davie (Forman):** The parties have executed a Stipulation Agreement agreeing to binding mediation. The Stipulation was approved by the Court and binding mediation has been tentatively scheduled for Fall, 2001 before retired judge, Gerald Mager.
4. **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 is to be dismissed as a defendant in this lawsuit pursuant to the Stipulated

Agreement, and discharged of any liability as to any and all claims or causes of action raised against the Town. In the meantime, another entity, Seacoast Sanitation Ltd., Inc. and Joint Enterprises, Inc. filed a Motion to Intervene in the Coastal Carting lawsuit. They have also filed a Motion to Vacate and Set Aside the Settlement Agreement in this lawsuit. Judge Gonzalez granted the Interveners' Motion to Intervene. Nevertheless, our outside counsel, Mr. Johnson, has filed a Memorandum of Law in Opposition to the Interveners' Motion to Vacate and he believes the Motion to Vacate and Set Aside the Settlement Agreement will not be successful. Nevertheless, the Motion to Vacate and Set Aside the Settlement Agreement continues pending.

5. **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 latter part of the Court's four week trial docket commenced July 30, 2001, and continues at this time. Oral argument on the Motions will take approximately ½ day.
6. **MVP Properties, Inc.:** The United States District Judge, Paul C. Huck, granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Motion for Reconsideration which Motion was denied. MVP Properties, Inc. has filed a timely Notice of Appeal seeking further review of the matter by the United States Court of Appeals for the 11th Circuit.
7. **Cummings v. Town of Davie:** The Town Attorney's Office prepared a draft of the Stipulation of Settlement in this case which was approved by the Town Council at its July 3, 2001 meeting. The Town Attorney and the attorney for the Plaintiffs filed a Joint Motion for Continuance and attended the hearing on said Motion on July 23, 2001 before the Court, and the Motion was granted, in order to allow the terms of the Stipulation for Settlement to be complied with. The original Stipulation for Settlement was filed with the Court at the July 23, 2001 hearing. The attorney for the Plaintiffs has advised the Town Attorney's Office that the Plaintiffs have begun the variance application procedure as per the terms of the Stipulation for Settlement.
8. **Town of Davie v. Malka:** The Town Attorney's Office has been in close contact with both the Code Enforcement Officer, Mr. Stallone, and with our Building Official, Mr. Sprovero. Mr. Sprovero sent a letter to both Mr. Malka and his contractor placing them on notice that due to their failure to complete the work in a timely manner, all work must cease and that the addition would be treated as an unsafe structure. Mr. Sprovero's letter also indicated that the Building Division would file complaints with the Department of Professional Regulations against the contractor for job abandonment on the roofing permit. Mr. Sprovero has indicated that his letter to the Malkas apparently met with positive response. There have been 6 inspections and the exterior of the home is nearly completed. Some minor tile work remains to be completed and the stucco needs to be painted. Upon completion of these tasks, the exterior will be complete, which has been the goal of both the Code Enforcement Division, the Town Attorney's Office, the Building Department and the Town of Davie, as well as the residents in the community.

9. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The 4th District Court of Appeals reversed Judge Fleet's ruling in which he enjoined the Department of Agriculture and Consumer Services from cutting down healthy, but exposed trees within a 1900 foot radius of an infected tree. The Florida Department of Agriculture thereafter, filed a Motion which was heard on Monday, July 30, 2001, requesting that Judge Fleet lift the Injunction in accordance with the ruling of the 4th DCA. Pursuant to the Mandate of the 4th DCA, Judge Fleet in fact did lift the Injunction. In the meantime, the coalition of cities, including Davie, filed a rule challenge in an Administrative proceeding before DOAH. In a 73 page ruling, the Administrative Law Judge found the rule promulgated by the Florida Department of Agriculture in July, 2000 relevant to the removal of healthy, but exposed trees within a 1900 foot radius to have been an invalid exercise of delegated Legislative authority by the Department of Agriculture and Consumer Services, and in violation of the Florida Statutes. In response, the Department of Agriculture and Consumer Services filed a Notice of Withdrawal of its prior Rule 5D-58.001, noticed by it in Volume 27, Number 29, July 20, 2001, Florida Administrative Weekly. In its place, the Department has filed a Notice of Emergency Rule and promulgated Rule Number 5BER01-1 entitled "Citrus Canker Eradication" in an attempt to promulgate a rule which would withstand a challenge by the coalition of cities before DOAH. The coalition of cities has met and is filing such a challenge to the new rule promulgated by the Department of Agriculture and Consumer Services. The new rule once again, contends that citrus trees located within 1900 feet of a citrus tree exhibiting visible signs of Citrus Canker must be removed to effectuate eradication of Citrus Canker. The Chief Assistant County Attorney will appear before the Administrative Law Judge on August 20, 2001 in Tallahassee to argue the invalidity of the new rule.
10. **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 go to trial.
11. **Reinfeld v. Town of Davie, et al:** The Florida League of Cities attorney assigned to represent the remaining individual defendant, Mr. Weiner, received a response from the Plaintiff to Defendant Weiner's Motion to Dismiss. In turn, Mr. Marrero has filed a reply in support of the Motion to Dismiss Mr. Weiner as a defendant. Mr. Marrero is confident that Mr. Weiner will be dismissed as a defendant in these proceeding. Mr. Burke, who was assigned by the League of Cities to represent the Town, has filed his Answer to the Amended Complaint. Mr. Burke has begun discovery procedures in this case.
12. **Department of Community Affairs v. Town of Davie:** The attorneys for the Department of Community Affairs and the Town Attorney's Office filed a Joint Motion to Dismiss the lawsuit before the Division of Administrative Hearings, as the parties conferred and

resolved the issues raised within the lawsuit. The parties also entered into a Stipulated Settlement Agreement effective February 13, 2001, which required the Town to adopt certain remedial plan amendments which in fact were adopted by the Town, and the Department thereafter published a Notice of August 1, 2001 that the amendments were "in compliance". The parties have asked the Court to dismiss the lawsuit as the action has been made moot. In the meantime however, the County Commission, after extensive debate and a presentation by the legal counsel for the property owner, refused to approve the County Land Use Amendment on the Flamingo Center Amendment and thus, the County land use designation remains R-5.