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TOWN ATTORNEY REPORT

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FROM: Monroe D. Kiar 

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. 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):** On September 6, 2001, the Town Attorney's Office forwarded to the binding mediator its Memorandum of Law concerning the Forman properties. The Formans also filed their Memorandum of Law in support of their position. This matter has been bifurcated pursuant to agreement of the parties and the initial issue for determination at the first mediation session was whether the Town was precluded from imposing a special road assessment upon the Forman properties as a result of a "Settlement Agreement" dated November 12, 1985, negotiated by the prior Town Attorney and former Administration. It is the contention of the Formans that by virtue of the language contained in the Settlement Agreement in 1985 regarding annexation, the Town does not have a right to impose a special assessment for the road improvement in question. The Town Attorney's Office of course, has taken a different position, and both sides presented oral argument in support of their respective positions on this issue at the mediation session held on Tuesday, September 11, 2001. Each side was thereafter requested to submit additional legal authority in support of their respective positions by the binding mediator. The Town Attorney's Office submitted such a supplement to its original Memorandum of

Law, as have the Formans. All further information requested by the binding mediator has been submitted in a timely fashion and both sides are awaiting a ruling by the binding mediator and anticipate such a ruling in the near future.

4. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** United States District Judge Jose A. Gonzalez, Jr. dismissed this action as to the Plaintiff, Coastal Carting Ltd. and as to the various municipal defendants, including Davie. Other garbage companies have since been allowed to intervene in this lawsuit and the case will proceed as to those new garbage companies. Despite repeated requests from the Town of Davie to the County, the County has refused to provide to the Town of Davie and the other municipalities a General Release of any further liability. Instead, the County has responded to Mr. Johnson's request by stating that the cities should be brought back into the lawsuit as defendants. The new garbage companies however, have indicated to Mr. Johnson that this is not their desire at this time. Nevertheless, it is Mr. Johnson's understanding that the municipalities may in fact be brought back into the case at a later date since the Resource Recovery Board of Broward County is still alleging that the municipalities are indispensable parties.
5. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing was held before Judge Cocalis regarding the Plaintiffs' Petition for Writ of Certiorari and both sides are awaiting the court's decision. In the meantime, the County is in negotiations with the property owner to purchase the 60 acres of commercial property in question for use as a regional park. The Town Council at its meeting of October 3, 2001, made a recommendation to the County by a 3-2 vote that the County proceed with its negotiations regarding the possible purchase of this land for use as a regional park and further, with its recommendation, requested that the property owner be required as part of any such purchase, to dismiss the instant lawsuits with prejudice, and release the Town of Davie of any and all further liability or cause of action relevant to the two lawsuits.
6. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11th Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. Oral argument in this matter has now been set for the week of January 28, 2002 at the Federal Courthouse in Miami, Florida.
7. **Cummings v. Town of Davie:** The Town and the Plaintiffs entered into a Stipulation for Settlement which was filed with the court at the July 23, 2001 hearing. Pursuant to the Stipulation for Settlement, the Plaintiffs initiated a variance application which was approved by the Town Council at its last meeting. The Town Attorney's Office and the attorney for the Plaintiffs are jointly preparing a Final Judgment to be submitted to the

Court pursuant to the terms of the Stipulation Settlement. Also, the Town Attorney's Office has prepared an appropriate Deed to be executed by the Cummings transferring title to the property in question to the Town of Davie.

8. **Town of Davie v. Malka:** The Town Attorney's Office has been in close contact with our Building Official, Mr. Sprovero, who has advised that the exterior of the home is nearly complete. The exterior has been painted and the construction debris removed and the roofing is nearly complete. The completion of the exterior has been the principal goal of the Code Enforcement Division, the Town Attorney's Office and the Building Department, as well as the residents in the community. The owner has applied for a permit to complete the interior of the structure when the exterior is completed.
9. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The Department of Agriculture has filed an Appeal of the DOAH Ruling in which the coalition of cities and Broward County successfully challenged the last rule promulgated by the Department of Agriculture. In the meantime, the Department of Agriculture has promulgated a new rule and a rule challenge has been filed by the coalition of cities, including Davie. The Town Attorney's Office has participated in strategy conferences with the County and several of the other cities by conference phone and the coalition has mapped out its future strategy relevant to the new challenge now pending before the DOAH. The coalition will be conducting discovery, including written discovery and depositions of the Department witnesses, and due to the forthcoming holiday season, anticipate that the hearing on the rule challenge will be heard in January, 2002. The coalition of cities is seeking to have venue transferred to Broward County from Tallahassee to enable more members of the coalition to attend.
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:** A Motion to Dismiss the remaining individual defendant, Mr. Weiner, was filed by the Florida League of Cities attorney, Mr. Marrero, but said Motion has been denied by the Court. Accordingly, Mr. Marrero has filed an Answer on behalf of Mr. Weiner in these proceedings. Judge Moore's Order, while denying Defendant Weiner's Motion to Dismiss, does state on page 2 of his Order however, that "While Defendant Weiner has claimed that he was acting within the scope of his duties, the issues of what the scope of his duties was, and whether he was acting within them, are better resolved in summary judgment or at a trial on the merits." The Town Attorney's Office has spoken directly with Attorney Marrero and he has authorized the Town Attorney's Office to advise the Council that it is his expectation that his office

will be moving for summary judgment on this matter on behalf of Mr. Weiner in the near future and his office remains confident that any such Motion for Summary Judgment will ultimately be granted by the Court.

12. **Spur Road Property:** The Department of Transportation awarded the property to the highest bidder and the Town filed a formal protest of the Department's actions with the Division of Administrative Hearings. At the time of the writing of this Litigation Update, Mr. Burke is appearing in Tallahassee before DOAH regarding the hearing on the Town's formal protest to the actions of the Department of Transportation.
13. **Victoria Saldena v. Town of Davie:** The Town Attorney's Office has spoken with the League of Cities attorney assigned to represent the Town in this case, Mr. Bruce Johnson. Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson has assured the Town Attorney's Office that there should be no exposure to the Town which exceeds its insurance coverage and that the maximum exposure to the Town is its deductible.