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TOWN ATTORNEY REPORT

DATE: July 2, 2002  
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 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. The Town Attorney's Office has spoken with Mr. Cohen, who indicated that negotiations with URS for such services have been ongoing. Mr. Cohen indicated that the Town recently met with representatives from URS and requested that URS provide to the Town a Memorandum of Services setting forth the anticipated costs for each service to be rendered. The Town has just received a response from URS and it will be reviewing same to determine the precise cost of this project and to further determine if there are funds presently available to allow for the retaining of URS to conduct such services this fiscal year. Mr. Cohen further advises that the Town has received considerable documentation from the City of Sunrise which his staff has been sorting through. There are ongoing discussions at this time with Sunrise regarding the documentation provided to the Town.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. A Judgment in favor of the Town granting its costs and attorney's fees was entered against the Plaintiffs in the amount of \$6,514.34. The League of Cities is attempting to collect the amount of this Judgment from the Plaintiffs directly and has indicated that it will not seek reimbursement from the Town for the \$6,514.34 in costs and attorney's fees expended by the League in defense of the Town in this matter. As this matter is now concluded, the Town Attorney's Office will be closing its file on this case.
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final

Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. Pursuant to the direction given to Mr. Burke by the Davie Town Council, an appeal of the Order entered by Judge Cocalis was filed with the 4<sup>th</sup> District Court of Appeal. On April 17, 2002, Mr. Burke filed a Petition for Writ of Certiorari on behalf of the Town of Davie with the 4<sup>th</sup> District Court of Appeal, but the 4<sup>th</sup> District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion and ordered that the matter be remanded back to the Town Council and requiring it to vote on the application based on the record as it existed prior to the filing of the Writ of Certiorari and in accordance with the Final Judgment entered by Judge Cocalis. As of this date, it is the understanding of the Town Attorney's Office that the Petitioner has not sought to have this matter placed again on the Town Council Agenda. Mr. Burke has been in contact with the attorney for the Petitioner. Mr. Burke has indicated that he will provide the Council with further direction in this regard shortly.

4. **MVP Properties, Inc.:** The Plaintiff previously filed a multi-count lawsuit in the United States District Court for the Southern District of Florida where a Final Summary Judgment in favor of the Town and against Plaintiff, MVP Properties, Inc. was granted by the Court. MVP Properties, Inc. appealed to the 11<sup>th</sup> Circuit Court of Appeals which later affirmed the decision of the lower court in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. The Town is currently pursuing collection of the Judgment for costs that has been obtained from MVP Properties, Inc. In the meantime, MVP Properties, Inc. has instituted a new lawsuit in which it has filed a Complaint for Inverse Condemnation against the Town of Davie. The Florida League of Cities declined to represent the Town in this latest lawsuit as actions for inverse condemnation are excluded from coverage by the League. Accordingly, the Town Attorney's Office has reviewed the Complaint for Inverse Condemnation filed by MVP Properties, Inc. against the Town of Davie and has timely filed a Motion to Dismiss the Plaintiff's Complaint. Said Motion to Dismiss has been scheduled for hearing for Tuesday, October 29, 2002, at 2:00 P.M. The Town Attorney's Office is confident in the outcome of this litigation.
5. **Town of Davie v. Malka:** Since the last Litigation Report, the Town Attorney's Office has again spoken with the Chief Building Official, Mr. Craig, who has again confirmed that the exterior of the home is complete and that Mr. Malka is continuing to complete the interior which will consist of a living room addition. The building official has indicated that his department will continue to keep close contact with this property owner to insure proper completion of all additions to the structure as promised.
6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** As indicated in prior Litigation Reports, on May 24, 2002, Judge Fleet issued a 19 page Order on the Motion for Temporary Injunction in which he

concluded that the Amendments regarding the Citrus Canker litigation enacted by the Florida Legislature as codified in Florida Statutes Section 581.184, was an invalid invasion of the constitutional safeguard contained in both the United States Constitution and the Constitution of the State of Florida, and the Judge entered an Order enjoining the Department of Agriculture from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. In response to numerous Motions to Intervene in these proceedings by various individuals and commercial and governmental entities, Judge Fleet entered an Order extending the Stay statewide. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal of Judge Fleet's Orders on June 21, 2002, seeking review by the 4<sup>th</sup> District Court of Appeal. The Florida Department of Agriculture would normally have 70 days in which to file its Appellate Brief and thereafter, once the Brief is received and reviewed, the County, on behalf of itself and the coalition of cities and citizens, would file its response. The Florida Department of Agriculture has now filed several motions with the 4<sup>th</sup> District Court of Appeal seeking that the appellate procedures be expedited. These motions have not yet been ruled upon by the 4<sup>th</sup> District Court of Appeal. The latest motion filed by the Florida Department of Agriculture and Consumer Services is a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture is contending that in light of the gravity and emergency nature of the issues, that this matter be certified by the 4<sup>th</sup> District Court of Appeal directly to the Supreme Court of Florida for its adjudication since it anticipates that regardless as to how the 4<sup>th</sup> District Court of Appeal rules, the matter will in fact be appealed by either the Department of Agriculture and Consumer Services or by the County and coalition of cities, to the Supreme Court of Florida for final adjudication.

7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie 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. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Florida League of Cities attorney assigned to this case has filed a Motion to Dismiss the Amended Complaint and has advised the Town Attorney's Office that if this is not granted, he will again, file a Motion for Summary Judgment. It is Mr. McDuff's belief that this case will ultimately be dismissed by the Court in its entirety.
8. **Reinfeld v. Town of Davie, et al:** Previously, both the Town Administrator and former Vice Mayor Weiner were dismissed as defendants in this lawsuit. This matter was previously scheduled to be tried sometime in May, 2002, but at the request of Ms. Reinfeld's legal counsel, the trial of the action was postponed and is now scheduled during the 2 week trial period commencing October 7, 2002. The Town has filed a Motion for Summary Judgment which remains pending, but it is

anticipated that the Court will render an opinion regarding our Motion for Summary Judgment shortly. In response to the Town's Motion for Summary Judgment, the Plaintiff dropped her claim alleging that she was wrongfully terminated in retaliation for engaging in protected speech or because of her gender. At this time, only 2 counts, both of which are against the Town of Davie, remain pending. A proposal submitted to Mr. Burke by Ms. Reinfeld's attorney to settle this case was rejected by the League of Cities.

9. **Spur Road Property:** Mr. Burke had previously given a presentation to the Town Council several weeks ago and at that time, advised the Council that the Division of Administrative Hearings had ruled against the Town of Davie's protest to the Department of Transportation's award of the property to the highest bidder, and that a Final Order had been entered by the Department of Transportation adopting the recommendations of the Judge for the Division of Administrative Hearings. Mr. Burke requested that the Council provide him with direction as to how to proceed in this matter and the Council authorized him to take an appeal of the Final Order that was entered against the Town. Mr. Burke timely filed a Notice of Appeal. The Clerk of the Department of Transportation is preparing the record for appeal, but has requested and received authorization from the Court for an extension of time in which to compile same. Accordingly, the Appellate Brief which was previously to be filed in June is now not due until July 10, 2002. Mr. Burke's office has begun preparation of their Appellate Brief and upon receipt of the full record from the Department of Transportation, will complete same and file it in a timely manner. In the meantime, the Department of Transportation continues to own the property and has not transferred title to the highest bidder.
10. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The parties have conducted considerable discovery, including taking the depositions of the treating physician as well as the doctor hired by the Plaintiff's PIP carrier and several independent witnesses. Most of the individuals deposed seemed to be consistent in their impression that Ms. Saldena sustained minimal, if any, injuries. Accordingly, the testimony of the witnesses for the most part, is favorable in the area of damages. One witness, however, has testified that her mother, the driver of the other vehicle, did not strike Ms. Saldena's vehicle which was immediately in front of her until pushed into it by the police officer's vehicle which struck her vehicle in the rear.
11. **Proposed Sidewalk in Front of Foster Home:** As indicated in earlier Litigation

Reports, after considerable negotiations, the parties were able to resolve their differences and the Fosters agreed to donate a permanent easement to the Town of Davie for the purposes of constructing the last segment of the sidewalk. The Town has agreed to pay all costs related to the conveyance of the permanent easement, including the preparation of the conveyance documents and the fees charged by the Fosters' engineering expert, Mr. Arnold Ramos, as well as the legal descriptions of the areas to be conveyed to the Town which were prepared by McLaughlin Engineering, and the attorney's fees incurred by the Fosters relevant to this matter. As indicated, this office was advised by the attorney for the Fosters that the total cost to the Town are within the direct authority of the Administrator. The Town Attorney has visited the subject site on several occasions at no cost to the Town, to view the sidewalk completion work as it has progressed. From a last view of the property, it appears the sidewalk is now complete. The legal descriptions prepared by McLaughlin Engineering were forwarded to the Town Attorney's Office and the Town Attorney's Office prepared a Sidewalk Easement which it transmitted to the attorneys for Mr. and Mrs. Foster for their execution. The Town Attorney has spoken to Ms. Camp, the attorney for the Fosters, and she is reviewing the Sidewalk Easement and will have it presented to the Fosters for their signature. The Town Attorney's Office has written to Ms. Camp as well as placed a phone call to her as of the date of this Report, requesting the status regarding the signing of the Sidewalk Easement by Mr. and Mrs. Foster, and is awaiting a reply.

12. **Peter Castagna v. Officers Brito and Williams:** Peter Castagna recently filed a lawsuit against Officers Daniel Brito and Paul Williams alleging an action for damages pursuant to Title 42 U.S.C. 1983, for alleged false imprisonment, battery and alleged intentional infliction of emotional distress. The outside legal counsel assigned by the Florida League of Cities to defend the police officers at the League's expense, filed a Motion to Dismiss the lawsuit instituted by Mr. Castagna. Prior to Mr. Alexander's Motion being heard, the attorneys for Mr. Castagna filed an Amended Complaint and Attorney Scott Alexander has since filed a Motion to Dismiss the Amended Complaint. The Town Attorney has again spoken with the Florida League of Cities Attorney, and it is his belief that the case is very defensible and he anticipates a successful verdict in favor of the two police officers.
  
13. **Covenant House of Florida, Inc. v. Town of Davie:** A Petition for Writ of Certiorari and Writ of Mandamus and Supplementary or Alternatively, a Petition for Relief Pursuant to Section 163.3215, Fla. Stat. (2002), was furnished to the Town Attorney's Office as well as Mayor Venis by mail on June 14, 2002, and received by the Town Attorney's Office on June 17, 2002. The pleading was immediately forwarded to the Town Administrator with the request that the Florida League of Cities be contacted to see if they would provide legal defense for the Town with regard to this lawsuit at its expense, under its policy of insurance with the Town. The Florida League of Cities has assigned outside legal counsel to represent the Town. The Petitioner originally sought an Order to Show Cause from Judge Estella Moriarty, but Judge

Moriarty recused herself as she had been previously affiliated with Covenant House of Florida. The Town Attorney's Office spoke with Mr. Lunny, the attorney for Covenant House of Florida, on June 26, 2002, and as of that date, an Order to Show Cause had not yet been entered requiring the Town to respond to the Petition for Writ of Certiorari and Writ of Mandamus. Mr. Burke is currently reviewing the Petition filed by Covenant House and upon receipt of the Order to Show Cause, as indicated, he will file an appropriate response. Covenant House is seeking monetary damages, including lost sale and profits, the time value of money, and other damages, as well as challenging the Council's denial of its application for an RM-10 Zoning Application.

14. **Pelican Coast Holdings, Inc. and William Cutherbertson v. Town of Davie:** A Petition for Certiorari was served upon the Town along with an Order to Show Cause signed by Judge Burnstein requiring the Town of Davie to show cause why the relief requested in the Petition for Certiorari should not be granted. Mr. Burke has been provided with a copy of the pleadings and met with and conferred with the Town Administrator as well as the Town Attorney regarding this case. Mr. Burke will be conducting the defense of this litigation and has advised Mr. Willi and the Town Attorney that he will be filing a timely response to the Petition and Order to Show Cause on behalf of the Town of Davie. The Court has granted the Town an extension until July 19, 2002, in which to file its response.
  
14. **Math Iglar Groves (Town of Davie v. Rober Corporation, Inc.):** On June 4, 2002, a full day trial of this matter was conducted by the Town Attorney's Office and Code Enforcement. At the conclusion of the trial, the Special Master requested that the Respondent, Rober Corporation, and the Town of Davie each submit a Memorandum of Law in support of their respective positions. The position of the Town of Davie was that Rober Corporation, Inc. was operating a convenience store and selling alcoholic beverages at the property contrary to the A-1 Zoning District without a Town of Davie occupational license, and in violation of Section 12-32, which does not permit these uses, and that it was guilty of violating other provisions of the Davie Town Code. On June 26, 2002, the Special Master entered a Final Order, a copy of which was previously forwarded to the Mayor and Councilmembers by the Town Attorney's Office on July 1, 2002. The Special Master concluded from the evidence presented at the hearing on June 4, 2002, and the supporting Memoranda of Law, that the Respondent, Rober Corporation, Inc. has been operating a convenience store and selling alcoholic beverages at the property contrary to the A-1 Zoning District without a Town of Davie occupational license and that as a result, the Respondent has violated Section 12-32, namely the operation of a convenience store and the sale of alcoholic beverages as non-permitted uses; Section 12-33(T), namely the consumption of alcoholic beverages and gathering of patrons on or about the interior and exterior of the premises constituting a neighborhood nuisance; Section 12-33(W), namely engaging in prohibited outdoor activities; and Section 13-17, namely engaging in a business without the required

occupational license. The Special Master has ordered the Respondent to comply with said provisions within 60 days. The Order further requires the Respondent to thereafter continuously comply with all of the aforesaid Davie Town Code Sanctions and failure to do so shall be considered a violation of the Order and the matter will then be set for hearing before the Special Master to consider the assessment of an administrative fine of up to \$250.00 per day per violation, and the imposition of a lien as provided by Section 162.09 of the Florida Statutes, for each day each such violation shall occur after the date set for compliance in the Special Master's Order. The Respondent has 30 days in which to appeal, if it so chooses, the ruling of the Special Master to the Circuit Court of Broward County.