

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

TOWN ATTORNEY REPORT

DATE: October 9, 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. **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 4th District Court of Appeal, but the 4th District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion, ordered that the matter be remanded back to the Town Council and required 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. The Petitioner requested the matter again be placed on the Town Council Agenda and the matter was again heard on October 2, 2002, by the Town Council. After a presentation by Mr. Burke, the applicant and Staff evidence was presented by those in attendance who spoke in favor and in opposition to the two Petitions, the Town Council voted 4 to 1 to deny each petition.

3. **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 11th 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 had been scheduled for hearing for Tuesday, October 29, 2002, at 2:00 P.M. The Plaintiff however, requested that the hearing be continued to a later date and the hearing is now scheduled to be heard in February, 2003. The Town Attorney's Office is confident in the outcome of this litigation.
4. **Town of Davie v. Malka:** Since the last Town Attorney's Report on September 25, 2002, the Town Attorney has again spoken with the Chief Building Official, Mr. Craig, who has again confirmed that his department is keeping a close contact with the property owner and the property owner is moving ahead with the completion of all additions to the structure as promised.
5. **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. The Judge ultimately entered a statewide Stay 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. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal seeking review by the 4th District Court of Appeal. The Department of Agriculture also filed a Motion with the 4th District Court of Appeal seeking that the appellate procedures be expedited, and a motion in which there was a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture contended that in light of the gravity and emergency nature of the issues, the matter should be certified by the 4th District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4th District Court of Appeal rules on the matter, it would in fact be appealed by either the Department of Agriculture or by the County and coalition of cities to the Supreme Court of Florida for final adjudication. The 4th District Court of Appeal in fact for only the fourth time in its history, did certify this matter directly to the Florida Supreme Court for adjudication. The Florida Supreme Court however, refused to hear this matter at this stage and remanded it back to the 4th District Court of Appeal for further proceeding. Both the Florida Department of Agriculture and Consumer Services and the County and coalition of cities have filed their respective Appellate Briefs. The Florida Department of Agriculture recently filed a Reply Brief to the Brief filed by Broward County and the coalition

of cities. The Town Attorney has once again spoken with the Chief Appellate Attorney for Broward County, Andrew Meyers, and he has again confirmed at this point, that oral argument has not yet been set by the 4th District Court of Appeal. In the meantime, the Florida Department of Agriculture has served a series of Interrogatories upon the Town of Davie and each of the other defendants. The Town Attorney's Office has been in contact with Mr. Bernard and confirmed with him that the Town has no knowledge of any employee, contractor or representative of the State having entered upon the Town's property to inspect any of its trees for canker. An appropriate response to the Interrogatories is being prepared and will be filed within the time permitted by the Rules of Civil Procedure.

6. **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 it is not granted, he will again file a Motion for Summary Judgment. I spoke with Mr. McDuff's office this date and was advised that the Judge has still not ruled upon the Town's Motion to Dismiss the Amended Complaint. It is Mr. McDuff's belief that this case will ultimately be dismissed by the Court in its entirety.

7. **Reinfeld v. Town of Davie, et al:** Previously, both the Town Administrator and former Vice Mayor Weiner were dismissed as defendants in this lawsuit. The matter was previously scheduled to be tried in May, 2002, but at the request of Ms. Reinfeld's legal counsel, it was postponed to be tried during the two week trial period commencing October 7, 2002. The Town filed a Motion for Summary Judgment and the Court rendered an opinion granting in part, the Town's Motion for Summary Judgment. The Plaintiff, Gail Reinfeld, was given the opportunity to file another Amended Complaint and she did so. Thereafter, the Town filed an Answer and Defenses to the Second Amended Complaint and another Motion for Partial Summary Judgment. In the meantime, Ms. Reinfeld's attorneys made an offer to settle the case for \$60,000.00 which the Florida League of Cities rejected. The Court thereafter, granted the Town's request for a Summary Judgment in its favor with respect to the Equal Protection Gender Discrimination claim asserted by the Plaintiff in her Second Amended Complaint. In her original Complaint, the Plaintiff filed a lawsuit consisting of 5 counts, but only 1 count survived the Motion for Summary Judgment. Prior to the matter being tried, the Town Attorney and the Town Administrator received a call from Mr. Burke indicating that the Plaintiff Reinfeld had offered a lesser settlement amount and the Florida Municipal Invested Trust has accepted the offer and settled the case to avoid the cost of trial. Mr. Burke indicates he anticipates a Stipulation dismissing this case will be filed shortly.

8. **Spur Road Property:** Mr. Burke had previously given a presentation to the Town Council 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. The Council then authorized Mr. Burke to take an appeal of the Final Order that was entered against the Town and Mr. Burke timely filed a Notice of Appeal. The Clerk of the Department of Transportation thereafter, prepared the Record for Appeal and the

Appellate Brief was prepared and timely filed by Mr. Burke's office. In the meantime, the Department of Transportation continues to own the property and has not transferred title to the highest bidder. The Florida Department of Transportation filed its Brief and the Town filed its Reply Brief. Oral argument in this case is now set for December 17, 2002.

9. **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 the Motion being heard, the attorneys for Mr. Castagna filed an Amended Complaint and our special outside legal counsel has filed a Motion to Dismiss the Amended Complaint. The Town Attorney's Office spoke with Mr. McDuff's Office this date and was advised that the Motion to Dismiss is still pending. In the meantime, the case has been scheduled for trial for May, 2003. As indicated in prior reports, it is the belief of the Florida League of Cities attorney that the evidence will show that there was no improper conduct by the police officers in this matter.
10. **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 accepted the case and 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. Since then, the case has been reassigned to Judge Carney and an Order to Show Cause has been entered by Judge Carney requiring that the Town respond to the Petition for Writ of Certiorari and Writ of Mandamus. The special legal counsel assigned by the Florida League of Cities filed his response to the Petition for Writ of Certiorari and Writ of Mandamus. The Town received a settlement proposal from the Plaintiff Covenant House Florida, Inc. and an executive session was held on September 12, 2002, allowing the Council to consider same. The Town Council has entered into a Contract for the purchase of the real property which is the subject of the lawsuit. The Town has been given 51 days in which to conduct its due diligence to confirm whether it wishes to purchase this property and consummate the Contract for purchase. The Town has received to date the survey for the property as well as one appraisal. The Town Attorney's Office has been assured that the second appraisal and the title work will be received within the due diligence period. The Town Attorney's Office has also requested of Staff that the Town place this item on a future Town Council Agenda after proper notice to the public as required by law.
11. **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. On July 22, 2002, Appellee, Town of Davie, filed its response to the Petition for Writ of Certiorari and Pelican Coast Holdings, Inc. and William

Cuthbertson have since filed their Reply Brief. Mr. Burke advised the Town Attorney that oral argument in this matter was scheduled for October 3, 2002, and oral argument was in fact attended by Mr. Burke and the Town Attorney, both of whom participated in the oral argument of this matter. The Court has requested that a Memorandum of Law be submitted by each side in support of its respective positions. It is the position of the Town that the Petition for Writ of Certiorari should be denied because the Town Council lawfully imposed the condition on the Site Plan Approval necessary to implement the alcoholic beverage establishment separation requirement set forth in Section 12-34(c) of the Town's Land Development Code. While the B-2 District permits a variety of uses which involve the sale of alcoholic beverages, the uses are permitted subject to compliance with objective separation requirements set forth in the Town Code.

12. **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 ordered the Respondent to comply with said provisions within sixty (60) days. The Order further required the Respondent to thereafter continuously comply with all of the aforesaid Davie Town Code Sanctions and failure to do would be considered a violation of the Order and the matter would 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 §162.09 of the Florida Statutes. The Town Attorney's Office has spoken with Mr. Stallone who has confirmed that the Respondent has in fact complied with the Special Master's Order and he has removed all alcoholic beverages from the site and discontinued the sale of convenience store items.

13. **DePaola v. Town of Davie:** Plaintiff DePaola has filed a lawsuit against the Town of Davie and the Florida League of Cities attorney assigned to the case has filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein, who requested that both sides file Memoranda of Law and she has taken the case under advisement. Both sides have timely filed their Memoranda of Law in support of their positions on the Town's Motion to Dismiss. Mr. Burke advised this date that he is still awaiting a decision from the Court.

14. **Southern Homes of Davie, LLC v. Davie (Charleston Oaks Plat) Case No. 02-015674 (11):** The Town was served with a Summons and Complaint for Declaratory Judgment and Injunction and Petition for Writ of Mandamus with regard to Case Number 02-015674 (11) instituted by Southern Homes of Davie, LLC against the Town of Davie relevant to the “Charleston Oaks Plat”. The Florida League of Cities has accepted responsibility for providing a defense to the Town of Davie relevant to this lawsuit and has assigned the case to Attorney Michael Burke. The Plaintiff is seeking both equitable relief and monetary damages against the Town. The Plaintiff is alleging that they have suffered injury as a result of the Town’s refusal to process, review and/or approve its Site Plan Application while the Zoning in Progress has been in effect. They are seeking an Order declaring that the Plaintiff is entitled to approval of its Site Plan Application and that the Town be estopped to apply the “Zoning in Progress”; declaring that the Zoning in Progress does not exist and/or does not apply to Plaintiff’s Site Plan Application and/or Plaintiff’s property, and other relief. Since then, the Plaintiff has filed a second companion case also seeking a Declaratory Judgment and Injunction and Petition for Mandamus against the Town of Davie with regard to the “Flamingo Plat”. This too, has been accepted for defense by the Florida League of Cities. Both cases have been since consolidated for discovery purposes and Mr. Burke’s firm has filed its response to each Complaint filed in the two lawsuits.

15. **Moises Narvaez v. Town of Davie:** Mr. McDuff, the League of Cities attorney assigned to this case, advises that Mr. Narvaez claims that while at the Players Pub bar, he was punched by another patron. According to the Davie Police that when they were summoned to the bar, they asked the Plaintiff, who had been hit in the face, whether he wanted medical attention and he indicated that he did not want medical attention. According to the Plaintiff, the next day when he awoke at home, he was unable to walk. Mr. McDuff indicates that while at Memorial Hospital in Hollywood, the Plaintiff indicated that he was beaten by several individuals while walking home from the bar. Mr. McDuff indicates that at his deposition, Plaintiff later changed his account of what happened and is now contending that the Town was negligent in not providing him with medical attention at the time of the incident at the Players Pub bar. This matter is set for trial period commencing November 4, 2002. The Plaintiff offered to settle this case for the sum of \$250,000.00 which offer has been rejected by the Florida League of Cities.

16. **Asset Management Consultants of Virginia, Inc. v. Town of Davie:** The Town of Davie has been sued by Asset Management Consultants of Virginia, Inc., who are seeking a refund of a public service fee imposed on certain property owners by the Town pursuant to Ordinance No. 99-35 of the Town Code. The Town of Davie through its special counsel, has filed a Motion to Dismiss the Complaint along with a Memorandum of Law in support of the Town’s position. The Town’s position is that at the time of the passage of Ordinance No. 99-35 of the Davie Town Code, it was properly initiated and therefore, the Plaintiffs are not entitled to a refund of the public services fees which were subsequently declared unconstitutional and contrary to Section 192.042 of the Florida Statutes by the Florida Supreme Court in 1999.