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TOWN ATTORNEY REPORT

DATE: April 30, 2003

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 in the past, spoken with Mr. Cohen, who indicated that negotiations with URS have been ongoing. Mr. Cohen indicated that URS was requested to provide the Town with a Memorandum of Services setting forth their anticipated costs for each service to be rendered to enable the Town to determine the precise cost of the project and to determine if there are funds available to allow URS to conduct such services. A response has been received by the Town. The Town Attorney's Office this date, April 30, 2003, spoke with Heidi Cavicchia Town's Utilities Department. Ms. Cavicchia indicated that no agreement has been reached with URS as yet for conducting the engineering services for the western area utilities study, nor have they been given the go ahead for the project by the Administration.
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 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, 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.

A Petition for Supplemental Relief to Enforce Mandate or in the Alternative, Supplemental Complaint for Writ of Mandamus and for Writ of Certiorari was thereafter filed by the Plaintiff, Griffin-Orange North, Inc. and Seventy-Five East, Inc. with regard to the Quasi Judicial Hearing held before the Town of Davie on October 2, 2002. The Plaintiffs have filed these pleadings requesting that the Court order the Town of Davie to grant them the B3 Zoning and they are seeking a recovery of their attorney's fees and court costs for their preparation of the filing of this new Petition for Supplemental Relief to Enforce the Court's Mandate. Essentially, the pleadings request that the Circuit Court quash the Town Council's second denial of the Plaintiffs' Zoning Application and request that the Court compel approval of the B3 Zoning designation. The Plaintiffs filed their pleadings with the same Court (Judge Cocalis) which previously entered a Final Judgment in favor of Plaintiffs, and also filed an identical original action to cover all of their procedural basis. Subsequent thereto, the Plaintiff filed a Motion to Consolidate the Petition for Supplemental Relief to Enforce Mandate as well as the second lawsuit it initiated and requested that both lawsuits be heard before the original judge in this case, Judge Cocalis, who is no longer in the Civil Division, rather than Judge Robert Carney, who has taken over Judge Cocalis' prior case load. The hearing on the Petitioner's Motion to Consolidate a new Petition for Writ of Certiorari with its previously filed action was heard on December 17, 2002. Judge Carney the property owner's Motion to Consolidate, but denied the property owner's second Motion, which was to transfer both actions back to Circuit Court Judge Patricia Cocalis. On January 30, 2003, there was an initial hearing and oral argument was presented by both sides before Judge Robert Carney relevant to the property owner's Motion to prohibit the Town of Davie Administrator from proceeding with Administrative re-zoning of the property. At the January 30, 2003 hearing, Judge Carney stated he wanted to hear more argument on this matter and scheduled another hearing for February 14, 2003. On February 14, 2003, the Judge denied the Writ of Prohibition and Motion to Stay and as indicated, in his view, the Court did not have jurisdiction to prevent the Town of Davie from carrying out its municipal function of re-zoning property. Accordingly, as confirmed by Mr. Burke, there are no legal impediments

to the Town moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. The Town Attorney's Office has been advised by Staff that the Town Administrator's application to re-zone the two parcels shall be brought before the Town Council for its review and action at the May 7, 2003 Town Council Meeting. The property owner has filed an Appeal appealing Judge Carney's denial of their Writ of Prohibition and Motion to Stay. Further, as of this date, the Trial Court has not yet addressed the property owner's second Petition for Writ of Certiorari, Petition for Mandamus and Request for Supplemental Relief, all of which seek the entry of a Court Order compelling the Town to re-zone the subject property to B3. Mr. Burke's office has further advised the Town Attorney that the property owner has filed a Motion to Expedite Consideration of the Petition for Writ of Certiorari with the 4<sup>th</sup> District Court of Appeal and Mr. Burke has filed an appropriate response to said Motion.

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 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 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 oral argument on our Motion to Dismiss was heard on February 21, 2003 before Judge Robert A. Rosenberg. The Town Attorney has provided the Town Council with a copy of Judge Rosenberg's Order granting the Defendant, Town of Davie's Motion to Dismiss and allowing the Plaintiff to amend its Complaint. The Town Attorney's Office thereafter filed a Motion for the Entry of a Final Order of Dismissal based upon the fact that the Plaintiff had failed to file an Amended Complaint within the 21 days granted to it to do so. The hearing on the Town of Davie's Motion for Entry of a Final Order of Dismissal was heard on March 31, 2003, and after oral argument, the Court entered a Final Order of Dismissal in this matter. A copy of Judge Rosenberg's Order of March 31, 2003, was previously forwarded to

the Town Council for its information. The Plaintiff had 30 days from the entry of the Final Order of Dismissal on March 31, 2003, to file an Appeal to the 4<sup>th</sup> District Court of Appeal. As of this date, April 30, 2003, this Office has not received a notice of appeal. The Town Attorney will advise the Council at the next meeting as to whether an appeal was filed within the 30 days as permitted by law.

4. **Town of Davie v. Malka:** As the Town Council has been previously advised, the Town Attorney's Office has kept close contact with the Building Department relevant to the progress of this particular property. The Building Department is continuing to keep a close eye on this particular property owner to ensure that the property owner is moving ahead with final completion of all additions of the structure as promised. During the last telephone conversation with the Building Official, the Town Attorney was advised that this property owner is current with all of his inspections to date. Further, the property owner is moving ahead as promised and there have been no recent complaints from the community.
  
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 4<sup>th</sup> District Court of Appeal. The Department of Agriculture also filed a Motion with the 4<sup>th</sup> 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 4<sup>th</sup> District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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 filed a Reply Brief to the Brief filed by Broward County and the coalition of cities. The Town Attorney along with several other municipal attorneys, at the request of the Chief Appellate Attorney for Broward County, Andrew Meyers, attended the oral argument in these proceedings before a three judge panel at the 4<sup>th</sup> District Court of Appeal Courthouse in Palm Beach County, on December 4, 2002. On January 15, 2003, the 4<sup>th</sup> District Court of Appeal issued its opinion relevant to the appeal filed by the Florida Department of Agriculture and Consumer Services challenging the Order of Judge Fleet. The 4<sup>th</sup> District Court of Appeal found that Section 581.184 of the Florida Statutes (2002) requiring removal of Citrus trees within the 1900 feet of a tree infected with canker did not violate due process and therefore, was constitutional. The 4<sup>th</sup> District Court of Appeal also found Section 933.07(2) of the Florida Statutes allowing area wide search warrants unconstitutional and a violation of the 4<sup>th</sup> Amendment. The Court however, did rule that multiple properties to be searched may be included in a single search warrant and the issuance of such a warrant should be left to the discretion of the issuing magistrate. The 4<sup>th</sup> District Court of Appeal entered an Order quashing Judge Fleet's Order and in response, the County and coalition of cities, including the Town of Davie, filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court and to review the decision of the 4<sup>th</sup> District Court of Appeal dated January 15, 2003, and rendered February 17, 2003. The Notice to Invoke Discretionary Jurisdiction also requested a review by the Supreme Court of the 4<sup>th</sup> District Court of Appeal's December 10, 2002 Order Reimposing the Rule 9.212(b)(2), Automatic Stay of Temporary Injunction. Jurisdictional Briefs were filed by the parties in support of their respective positions. The Supreme Court entered an Order agreeing to review this matter, but also refusing to reimpose the Automatic Stay prohibiting the removal of healthy, but exposed Citrus trees during the pendency of this litigation. As indicated in earlier reports, the Florida Department of Agriculture has resumed cutting healthy, but exposed trees in Central and North Palm Beach as well as in the Cities of Cape Coral and Orlando. The Department also has pending 600 applications for the issuance of warrants to cut down infected trees in Broward County. To date, the County has been successful in opposing the issuance of warrant applications in Broward County regarding the cutting of healthy Citrus trees. The Chief Appellate Attorney for Broward County has indicated that his Supreme Court Brief is nearly finished and will be served next week.

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. The Town Attorney's Office conferred with Mr. McDuff regarding the status of this case. As of this date, the status remains the same and the Court has still not yet ruled upon the Town's Motion to Dismiss the Amended Complaint. In the meantime, the Plaintiffs continue to do little to move their case forward and Mr. McDuff's Office continues to remain confident that the case will be ultimately dismissed by the Court in its entirety, either on the merits or for lack of prosecution.
7. **Spur Road Property:** As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4<sup>th</sup> District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the last Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council.
8. **Peter Castagna v. Officers Brito and Williams:** Peter Castagna 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 thereafter, filed a Motion to Dismiss the Amended Complaint. Said Motion was denied and the Town has now filed its Answer and Affirmative Defenses to the First Amended Complaint. In the meantime, the case is still scheduled for trial in May, 2003. The Town Attorney has spoken with Mr. McDuff, our special outside legal counsel, regarding this case. Mr. McDuff indicates that the Town filed a Motion for Summary Judgment and incorporated Memorandum of Law. Mr. McDuff is waiting for the Court to rule on the Town's Motion for Summary Judgment. He advises that if the Court denies our

Motion for Summary Judgment, then his office will file an immediate appeal and seek a stay of the trial until the appeal is concluded.

9. **Pelican Coast Holdings, Inc. and William Cuthbertson 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. Oral argument in this matter was held on October 3, 2002 and thereafter, both side submitted Memorandum of Law in support of their respective positions. On October 28, 2002, Judge Burnstein issued her Order in this case. The Court granted the Petition for Writ of Certiorari and quashed the condition imposed by the Town Council at its May 15, 2002 Meeting that the owner of the property obtained a “special permit” from the Council, if the owner seeks to serve alcoholic beverages at the site. The Court does however, make clear that the owners and users of the property are bound by the separation requirements for alcoholic establishments, but the Court proposes that the Town would be able to monitor the owner’s compliance through its occupational licensing regulations. The Court has also ruled that the Petitioner is entitled to recover its attorney’s fees in prosecuting the appeal. A copy of Judge Burnstein’s Order of October 28, 2002 has been previously provided to the Mayor and Councilmembers. At the first meeting in November of the Davie Town Council, the Council authorized Mr. Burke’s firm to file the necessary paperwork to challenge Judge Burnstein’s Order of October 28, 2002. Pursuant to the Council’s instructions, a Petition for Writ of Certiorari was filed on behalf of the Town of Davie with the 4<sup>th</sup> District Court of Appeal. The Petition was reviewed by a 3 judge panel of the 4<sup>th</sup> District Court of Appeal and the Town Attorney has been advised by Mr. Burke that the Court has denied the Town’s Petition for Writ of Certiorari, but also denied the request of the property owner for an award of attorney’s fees on the appellate level. The Town Attorney’s Office received a copy of the property owner’s Motion to Fix the Amount of Attorney’s Fees and Costs to be paid by Respondent, Town of Davie, which was served on Mr. Burke, our special outside counsel, on April 16, 2003. The matter has not yet been set for hearing. Pelican Coast and William Cuthbertson are seeking to recover \$14,166.50 in attorney’s fees along with \$1,474.18 in costs, or a total award of \$15,640.68. It is Mr. Burke’s opinion that the Court’s award of attorney’s fees, pursuant to Florida Statute §57.105, was of questionable validity and the Florida Courts have not previously awarded attorney’s fees under F.S. §57.105 against a respondent or appellee who did not prevail on appeal. Further, since the Town of Davie did not initiate this appeal proceeding, the Court’s Order essentially provides

that the Town should be required to pay attorney's fees because it did not confess error. Mr. Burke is of the opinion that the Town has a reasonable chance of successfully appealing the Circuit Court's findings that attorney's fees should be awarded against the Town. He indicates however, that any such appeal cannot be brought until the Circuit Court enters a Final Judgment determining the amount of attorney's fees and costs awarded.

10. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4<sup>th</sup> District Court of Appeal where the matter is now pending.
  
11. **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. The Town Attorney's Office has again spoken with Mr. Burke's office regarding this matter, as well as with Mr. Laystrom in an effort to conclude this matter. As indicated in earlier Litigation Reports, a written proposal from Attorney Spencer had been received and the proposed stipulation was reviewed the Town Attorney's Office, Mr. Burke and the Town Administration, and Mr. Spencer was advised that it was not in proper form. As indicated in prior Litigation Reports, Mr. Burke has requested that Southern Homes comply with its prior oral agreement made before the Town Council by its attorneys and dismiss the lawsuit. The Town Council has also indicated its wish that the oral stipulation made by the property owner be enforced and vigorously pursued. This has been relayed to Mr. Burke by the Town Attorney, as well as to Mr. Laystrom, one of the property owner's attorneys. Mr. Burke has indicated that he expects to file a Motion to enforce the stipulation shortly if this matter is not concluded. However, he hopes this will not be necessary and will be again contacting Mr. Spencer in a last effort to bring about an amicable conclusion of these lawsuits.

12. **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 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 Plaintiff is 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. The Town of Davie's Motion to dismiss the lawsuit was heard on Friday, November 15, 2002, and after Judge Greene heard lengthy oral argument on both sides, the Court granted the Town of Davie's Motion to Dismiss Plaintiff's Complaint. The Judge granted our Motion to Dismiss with Prejudice as to Count II, which was a claim by the Plaintiff against the Town of Davie for unjust enrichment with regard to the Town of Davie's collection of the public service fee which was subsequently ruled unconstitutional. The Judge also granted the Town's Motion to Dismiss Counts I and III in which the Plaintiff sought a declaratory judgment and a refund of the public services fee that was collected relevant to the Plaintiffs. The Judge also struck with prejudice that portion of Count III which sought prejudgment interest against the Town if the Plaintiff is successful. The Judge did give the Plaintiff 20 days in which to amend Count I and the balance of Count III. A copy of the Court's Order of November 15, 2002, was

previously forwarded to the Town for distribution to the Mayor and Councilmembers. The Plaintiffs filed an Amended Complaint and Mr. Johnson's office filed an Answer to the remaining Count which seeks a refund of the public services fee that was collected from the Plaintiffs. The parties are continuing to conduct discovery in this case and Mr. Johnson anticipates filing a Motion for Summary Judgment in the near future. The Plaintiff, in the meantime, served upon the Town a set of Interrogatories to be answered by the Town, and a Request for Production of various documents. The Answers to the Interrogatories and the compiling of the necessary documents were accomplished by the Town Attorney with the able assistance of the Town Clerk, Deputy Town Clerk, Ms. Menke, Frank Apicella and other members of the Town Staff. The Answers to the Interrogatories and documents were thereafter, forwarded to Mr. Johnson so that he could in turn, file them with the Court in a timely manner.

13. **Michael Biglen v. Town of Davie:** The Plaintiff has sued Florida Power & Light Company, the Town of Davie and several other defendants. The Plaintiff alleges that he made contact with an overhead power line owned by Florida Power & Light Company while he was on the premises of a private land owner. Nevertheless, he asserts claims for negligence against the Town claiming a duty owed by the Town to enforce compliance with one of its ordinances. The Town has filed a Motion to Dismiss the Plaintiff's Second Amended Complaint for failure to state a cause of action for premises liability against the Town of Davie, that the Plaintiff's claims are barred by sovereign immunity, and seeking an award from the Plaintiff of attorney's fees and costs pursuant to Florida Statutes §57.105. It is the Town's position that the Plaintiff has asserted claims against the Town without a good faith basis in doing so and that no facts or legal theories support the Plaintiff's claims and therefore, based on the circumstances, the Town is entitled to an award of its attorney's fees and costs. On January 16, 2003, the Court heard a Motion to Dismiss filed on behalf of the Town of Davie to dismiss the Plaintiff's Second Amended Complaint. On February 21, 2003, Judge Andrews issued his Order granting the Town of Davie's Motion to Dismiss Count V of the Second Amended Complaint (the only Count naming the Town as a defendant). The Court found that the Plaintiff's claims against the Town of Davie were barred by sovereign immunity. A copy of Judge Andrews' Order has been previously provided to the Town Council. A Motion for Entry of Final Judgment in favor of the Town of Davie and requesting an award of the Town's taxable costs against the Plaintiff was heard on March 27, 2003, and on that date, Judge Andrews granted the Town's Motion. A copy of the Final Judgment entered in favor of the Town of Davie on March 27, 2003, was previously forwarded to the Town Council and Town Administrator on March 31, 2003. The Plaintiffs had 30 days from the entry of the Final Judgment in which to file an appeal

to the 4<sup>th</sup> District Court of Appeal. The Town's special legal counsel advised the Town Attorney's Office previously that the Plaintiff had agreed not to file an appeal in exchange for the Town not seeking to recover its taxable costs against the Plaintiff. The 30 days have expired and the Town Attorney's Office is awaiting confirmation that no Notice of Appeal has been filed.

14. **City of Cooper City v. Town of Davie:** The City of Cooper City has filed a lawsuit for Declaratory Judgment and Injunctive Relief and Alternative Petitions for Writ of Quo Warranto and Certiorari alleging that a recent ordinance and a recent resolution relevant to annexation are invalid. The Town Attorney's Office prepared an appropriate Motion to Dismiss and filed same as the Town's insurance carrier has refused to provide a legal defense to this action. As the Town Council has previously been advised, this office filed its Motion to Dismiss citing Cooper City's failure to comply with pertinent provisions of the Florida Statutes. Included within those enumerated provisions cited by the Town Attorney's Office, was Cooper City's failure to adhere to the "Intergovernmental Conflict Dispute Resolution" provisions of the Florida Statutes set forth in Chapter 164. Oral argument on the Town's Motion to Dismiss was heard on March 26, 2003 at which time the Judge indicated that this was the first time a matter such as this has come before him in 19 years on the bench and accordingly, he advised both sides that he would take this matter under advisement and get back to the attorneys shortly with his decision. The Judge thereafter, ordered that Cooper City's lawsuit is to be abated until Cooper City has initiated and exhausted the provisions set forth in Chapter 164. The Town and Cooper City will engage in the conflict resolution proceedings and attempt to resolve the matter without resorting to further legal remedies. As indicated in previous Litigation Reports, the Town Attorney's Office is confident in an ultimate successful outcome of this litigation and it is the Town Attorney's position that the Judge's abatement of Cooper City's lawsuit is further proof of the Town's contention that Cooper City has prematurely and inaccurately filed the present lawsuit. The initial meeting required under the "Intergovernmental Conflict Resolution" provisions of Florida Statutes Chapter 164 was held for April 17, 2003. The meeting was attended by the Town Administrator, Mr. Willi, the City Manager of Cooper City, Mr. Farrell, along with their attorneys. The meeting had been advertised and was open to the public. As a resolution to the conflict was not reached, accordingly, pursuant to Section 164.1055, a joint meeting of the municipalities will be held in order to resolve the conflict. If no ultimate resolution is achieved through the conflict resolution procedures set forth in Chapter 164, the Town Attorney's Office will renew its existing Motion to Dismiss this litigation.

15. **DMG Roadworks, LLC v. Town of Davie.** The property owner has filed a Petition for Writ of Certiorari regarding the Town of Davie's re-zoning of the parcel of land owned by DMG Roadworks from the Broward County M4 Zoning District to the Town of Davie M3 Zoning District. This matter has been referred to special outside legal counsel, Michael Burke, who has filed an Answer on behalf of the Town in response to the property owner's Petition.