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TOWN ATTORNEY REPORT

DATE: October 9, 2003
FROM: Monroe D. Kiar
RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** On August 27, 2003 and August 28, 2003, Mr. Stanley Cohen met individually with each Councilmember as well as Town Staff and the Town Attorney relevant to exploring the feasibility of the Town acquiring the Sunrise Water System and the Ferncrest Facility. On this date, October 9, 2003, the Town Attorney spoke with Mr. Ken Cohen who reconfirmed to the Town Attorney that Mr. Stanley Cohen and the Town Staff are continuing to conduct further studies regarding the acquisition of the Western Area Utilities as well as the Ferncrest Utilities Facility in the East and that they are continuing dialogue with the City of Sunrise.
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. 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. However, at the Town Council Meeting of May 7, 2003, the Town of Davie and the property owner entered into an agreement which was filed with the Court and approved by the Town Council which would temporarily abate all litigation activities in the pending lawsuit as well as abate the moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. This agreement was entered into to enable the County to obtain an appraisal and to continue its negotiations in an effort to possibly purchase the subject properties as a public park. At the July 2, 2003 Town Council Meeting, Councilmember Paul advised the Town Council that the County had completed its appraisal and the County and property owner had reached agreement as to the purchase price. The Council had previously been advised that this matter was to be heard and considered by the County Commission at its meeting in August, 2003 and accordingly, an Agreed Motion to Extend the Abatement of this litigation was prepared by Mr. Spencer, the attorney for the property owner, and reviewed by the Town Attorney's Office and subsequently approved by the Town Council at its July 8, 2003 Meeting. The Agreed Motion has been filed with the Court and the litigation continues to be abated pending final disposition by the County. At the Town Council Meeting of September 17, 2003, Mrs. Paul advised the Council that she and the Town Administrator had attended the meeting before the County Commission and it had voted by a margin of 7-2 to approve the purchase of the 2 parcels which are the subject matter of this litigation. Mr. Burke who was present at the Council Meeting, indicated that he would contact Mr. Spencer, the attorney for the property owner, and request that the abatement continue until such time as the

closing and the purchase of the property has been consummated at which time, he will have the lawsuit dismissed as the issues surrounding the litigation, namely whether or not the property owner had the right to re-zone the 2 parcels to B3 zoning would be a moot issue. On this date, October 9, 2003, Mr. Burke reiterated the fact that nothing new has occurred in this litigation.

3. **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. In the last Litigation Report, the Code Enforcement Official had advised the Town Attorney's Office that he had received a complaint from a citizen relevant to the project. The Town Attorney's Office spoke on this date, October 9, 2003, with both the Town's Building Official and with Mr. Stallone and Mr. Stallone indicated that the complaint has been closed and that the Malkas are continuing with the work as promised.

4. **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 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 4th District Court of Appeal Courthouse in Palm Beach County, on December 4, 2002. On January 15, 2003, the 4th 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 4th 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 4th 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 4th 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 4th 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 4th District Court of Appeal. The Notice to Invoke Discretionary Jurisdiction also requested the re-imposition of a temporary stay. The Supreme Court entered an Order agreeing to review this matter, but refused to re-impose the automatic stay prohibiting the removal of healthy, but exposed Citrus trees during the pendency of this litigation. 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. As indicated in the last several Town Attorney's Reports, the County continues to aggressively oppose the issuance of warrant applications in Broward County regarding the cutting of healthy, but exposed Citrus trees. On July 7, 2003, a hearing was held before Judge Fleet on the coalition of cities and County's Motion for Reinstatement of a Temporary Injunction with regard to the eradication of healthy, but exposed trees within 1900 feet of an infected tree. The Judge heard extensive oral argument on both sides and afterwards, ordered the Department of Agriculture and Consumer Services to comply with a prior Order concerning the method in which the Department is to measure the 1900 foot zone surrounding a Citrus tree within which exposed Citrus trees must be destroyed. The Court issued a written Order granting a Temporary Injunction (the "Temporary Injunction Order"). The Temporary Injunction Order prohibits the Department from using a method of measurement that substantially departs from the 1900 foot tree to tree measurement expressly required by Section 581.184(4)(c), Fla. Stat. (2002). The Temporary Injunction Order also prohibits a material violation of the 1900 foot destruction radius mandated by Section 581.184(1)(b) and Section 581.184(2)(a). The Temporary Injunction prohibits the Department from cutting down trees on the basis of past samples that were the product of flawed chain of custody and diagnosis procedures which procedures the Department itself has since abandoned. Under the Court's ruling now in effect, the Department of Agriculture must measure precisely from the infected tree to the drip line of any uninfected, but exposed tree within the 1900 foot zone rather than using satellite technology to set the 1900 foot radius. The Order granting the Temporary Injunction has been appealed by the Florida Department of Agriculture to the 4th District Court of Appeal and that Appeal is pending. The Florida Department of Agriculture has filed a Motion that all procedures on the 4th District Court of Appeal's level be expedited and their Motion for Expedited Consideration was granted. The Court indicated that no extensions of time regarding any matters shall be granted. On September 23, 2003, the Town Attorney's Office received the Florida Department of Agriculture and Consumer Services'

Expedited Request for Oral Argument pursuant to the 4th District Court of Appeal's August 29, 2003 Order granting expedited consideration. The Department is seeking a review of the Trial Court's Order of July 18, 2003 which directs the Department to utilize specific management and diagnostic methodologies in proceeding with the Citrus Canker program. The latest appeal pertains to the most recent Injunction Order entered by Judge Fleet in the Citrus Canker litigation which has now been ongoing for 3 years. On October 7, 2003, oral argument before the Supreme Court in the original "Fleet" case was heard. The Supreme Court granted both sides a total of 45 minutes to argue this case. The Town Attorney has discussed this matter on this date, October 9, 2003 with Chief Appellate Attorney for Broward County who felt very comfortable with his oral presentation before the Supreme Court. The Chief Appellate Attorney believes that the Supreme Court will rule on this matter somewhere between 30 and 60 days from now.

5. **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 Town thereafter, filed a Motion to Dismiss the Amended Complaint, but after hearing the Motion to Dismiss, it was denied and the Plaintiff was given leave to file a new Amended Complaint in these proceedings. As reported in the last Litigation Update, the Plaintiff filed an Amended Complaint and our special legal counsel, Mr. McDuff, prepared and filed an appropriate Answer with the Court. Mr. McDuff has indicated that his office is continuing to conduct discovery in this matter and is preparing for trial. He remains confident that ultimately, the matter will be dismissed on the merits.
6. **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 4th District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carnichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the 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.
7. **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 4th District Court of Appeal. The Petition was reviewed by a 3 judge panel of the 4th 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 upon 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 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 Florida Statute §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. As indicated at the Town Council Meeting of May 7, 2003, 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 nevertheless, also has advised the Town that to appeal the Judge’s Order would undoubtedly cause the Town to incur considerable additional costs and legal fees. Accordingly, he requested and the Town Council authorized Mr. Burke to offer the sum of \$6,500.00 to the property owner in settlement of his claim for attorney’s fees and costs. Pursuant to the Town Councils’ authorization, Mr. Burke submitted the offer of \$6,500.00 to the property owner, who in turn, submitted a counter-proposal in the amount of \$9,336.68. At the Town Council Meeting of August 20, 2003, the Town Council gave direction to advise the property owner that their latest settlement proposal was accepted. Mr. Burke did so and recently, a check issued by the Finance Department in the amount of \$9,336.68 payable to the order of the property owner and its attorneys was transmitted to Mr. Burke, who in turn, forwarded it on to the attorneys for the property owner. Mr. Burke has indicated that next week, an Order of Dismissal will be entered by the Court in this matter. He has indicated that once he receives a copy of the Order of Dismissal, he will send a copy to the Town Attorney’s Office.

8. **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 4th District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. As previously indicated, the Town Attorney has been in close contact with Mr. Burke relevant to this matter. The Town's Motion to Dismiss filed with the 4th District Court of Appeal due to the Plaintiff's failure to file in a timely manner, its Appellate Brief, was denied and the 4th District Court of Appeal extended the time in which the Plaintiff could file its Brief. The Plaintiff thereafter, did file his Brief and Mr. Burke's office in turn, prepared its Reply Brief which it filed on September 9, 2003.

After the time has elapsed for the Plaintiff to file a Reply Brief, if any, then the Court will determine whether to rule on the pleadings or to allow oral argument. According to Mr. Burke, to date, the Court has not yet so ruled.

9. **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. As indicated in prior Town Attorney's Reports, Southern Homes has taken the position that they were not required to dismiss the lawsuit until site plans for the projects are approved by the Town. At its meeting of September 17, 2003, the Town Council approved the Site Plan for the Charleston Oaks Plat. It had previously approved the Site Plan for the Flamingo Plat. At the Town Council Meeting of September 17, 2003, the property owner with his legal counsel present, Mr. William Laystrom, stipulated to the dismissal of the two lawsuits. Mr. Burke has presented Mr. Laystrom with a proposed Stipulation Agreement dismissing these lawsuits in accordance with

the property owner's agreement as presented to the Town Council on September 17, 2003. Mr. Burke indicated that as of this date, October 9, 2003, he is still awaiting a response from Mr. Laystrom.

10. **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. As previously indicated, oral argument on the Town's Motion for Summary Judgment in this case was previously scheduled for this date, October 9, 2003. However, in the interim, the attorneys for the Plaintiff, the law firm of Atkinson, Diner, Stone, Mankuta and Ploucha, P.A. moved to withdraw as counsel for the Plaintiff, Asset Management Consultants of Virginia, Inc. The Court granted their Motion to Withdraw and stayed the case for 45 days in order to allow the Plaintiff to obtain new legal counsel. At the expiration of 45 days, or until 10 days after new counsel appears, the Plaintiff must respond to the Town's outstanding discovery requests. The Judge further added to the Order that failure of Plaintiff to obtain new legal counsel may result in the striking of the Plaintiff's pleadings.
11. **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. An Executive Session was held on June 4, 2003, during which the Council discussed litigation strategy and the issues to be considered at the joint meeting between the Davie Town Council and the City of Cooper City. The Town Council also gave direction to Mr. Willi to retain in his discretion, a surveyor and also, for the Administration and Town Attorney's Office to schedule a mutually convenient time for the joint meeting of the Davie Town Council and the Cooper City Commission. The Town Attorney's Office has been in constant contact with the attorneys for Cooper City and the Town Administrator in an effort to schedule a mutually convenient time for the joint meeting of the two governing bodies. Since the last Litigation Update, the Town Council met in good faith with the Cooper City Commission on September 30, 2003. The Town Council and the City Commission of Cooper City are now required, pursuant to the Intergovernmental Conflict Resolution provisions, to attend mediation. The attorneys for both cities have reached a consensus on the person to mediate this matter. The Town Attorney will obtain several dates during which the mediator is available and will provide those dates to both the attorney for Cooper City and to the Town Clerk in order to schedule a date and time that is acceptable and convenient to all parties.

12. **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. As previously indicated, oral argument was held in this matter on August 12, 2003. Judge Carney entered an Order granting DMG's Petition for Writ of Certiorari and quashing the Town Council's re-zoning of the Spur Road property to Davie M3. The Court's Order was

previously forwarded to the Town Council and at its meeting of September 3, 2003, the Council gave Mr. Burke authority to seek further judicial review of the Trial Court's Order. This authority has been transmitted to Mr. Burke and his office is proceeding accordingly and taking the appropriate legal action. On this date, October 9, 2003, the Town Attorney spoke with Mr. Burke, who advised the Town Attorney that his office has filed a Petition for Writ of Certiorari with the 4th District Court of Appeal in an effort to quash the Trial Court's decision. His office is awaiting a determination from the 4th DCA as to whether it will issue an Order to Show Cause requiring a response from the property owner.

13. **MIGUEL LEAL V. OFFICER WILLIAM BAMFORD, ET AL:** The Plaintiff is suing 14 named police officers from various municipalities, including Lt. William H. Bamford, and K-9 Officer Banjire. It is his contention that in the course of his arrest, the officers used unnecessary force and therefore, violated his rights under 42 U.S.C. Section 1983. He is seeking compensatory damages of \$20,000,000.00 and punitive damages of \$20,000,000.00. As recently indicated to the Town Council, the Town has filed an appropriate response to Plaintiff's Complaint and Mr. McDuff's firm has deposed the Plaintiff and is moving forward with discovery. Mr. McDuff recently advised the Town Attorney that his office is in the process of preparing a Motion for Summary Judgment in this matter which he believes will be filed by October 20, 2003. Mr. Mc Duff continues to express his confidence that there is a good possibility that the Court may grant the Town's Motion for Summary Judgment in this case, either in whole or in part.
14. **TOWN OF DAVIE V. UHEL POLLY HAULING, INC.:** The Town Attorney's Office initiated a lawsuit against this Defendant seeking injunctive relief and contending that the Defendant was tortiously interfering with the Town's exclusive franchise with Waste Management with regard to the disposal of solid waste. The Defendant filed a Motion to Dismiss and Oral Argument was originally scheduled for September 10, 2003. As indicated in the last Litigation Update, the Defendant had filed a Motion to Dismiss and oral argument was originally scheduled for September 10, 2003. Before that date however, the Town Attorney's Office received word from the attorney for the Defendant that his client was willing to enter into a Settlement Agreement with regard to this litigation instituted by the Town Attorney's Office, as well as settle several accompanying Code Enforcement actions. The Town Attorney accordingly, prepared a proposed Stipulated Agreement between the Town of Davie and Uhel Polly Hauling, Inc. which it forwarded to the Code Enforcement Officer for his review. After the Code Enforcement Officer reviewed the document and found it to be satisfactory, the Stipulation was transmitted to the Defendant's attorney for review. In light of this fact, the hearing on the Defendant's Motion to Dismiss was canceled by the Defendant. The Town Attorneys' Office has been in close contact with the attorney for the Defendant and anticipates receiving from him, his comments shortly with regard to the contents of the proposed Stipulation. It is anticipated that this matter will be resolved shortly.
15. **SESSA, ET AL V. TOWN OF DAVIE:** As indicated previously, recently, the Town Attorney's Office successfully recovered the sum of \$20,000.00 from one property owner on his road assessments pertaining to 4 parcels owned by him. The Town Attorneys' Office is continuing to pursue enforcement of the road assessments with regard to other effected parcels

which continue to remain unpaid. Recently, a settlement proposal from another property owner, Sam Jack, Inc., was received with regard to the road assessments, and this proposal has been transmitted to the Administration and the Town Council for its consideration.