

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** John C. Rayson, Esq.

**PREPARED BY:** John C. Rayson, Esq.

**SUBJECT:** Litigation Report

**AFFECTED DISTRICT:** Town-Wide

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** Litigation Report

**REPORT IN BRIEF:**

**PREVIOUS ACTIONS:**

**CONCURRENCES:**

**FISCAL IMPACT:** not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account Name:

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments:

**RECOMMENDATION(S):**

**Attachment(s):** Litigation Report



OFFICE OF THE TOWN ATTORNEY  
JOHN RAYSON

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**TOWN ATTORNEY REPORT**

DATE: January 4, 2008  
FROM: John C. Rayson, Esq.  
RE: Litigation Report Update

1. TOWN OF DAVIE vs. LAMAR ELECTRONICS, INC.: **Settled. The amount of \$500,000.00 (five hundred thousand dollars) paid to Town of Davie**

2. PARK CITY MANAGEMENT CORP. vs. TOWN OF DAVIE AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION: The Town was sued for Declaratory Relief regarding the issue of the maintenance of the 18th Street median strip within the Park City Mobile Home Park. The Judge then allowed the Plaintiff to file an Amended Complaint which names Park City Homeowners' Association as a defendant in the lawsuit. The Town filed an Answer in response to the Complaint and discovery ensued. The Co-Defendant, Park City Estates Homeowners Association, filed a Motion to Dismiss the Complaint, which was denied. The former Town Attorney has taken several depositions of potential witnesses for the Town and for all other parties in this lawsuit. Park City has been billed for services rendered by the Town of Davie.

3. FEINGOLD vs. TOWN OF DAVIE and FPL: Richard McDuff, Esq. represents the Town in this negligence action. The Complaint alleges that Plaintiff was thrown from a horse by electrical wiring and is claiming bodily injury. The Plaintiff eventually dropped FPL and two unknown Defendants in this litigation. Thereafter, Plaintiff filed an Amended Complaint, Count 2 of which was dismissed by the Court. The Town Attorney spoke with Mr. McDuff on October 2, 2007, who advised that Plaintiff's counsel recently noticed the case for trial and we are awaiting a trial date.

4. TOWN OF DAVIE vs. OSVALDO CIEDI: The Town filed a six count Code Enforcement action against the property owner alleging that he and others had violated the Davie Town Code and Charter. The Special Magistrate found the property owner in violation of provisions of the Town Code and Charter. The property owner has been ordered to come into compliance with the Town Code and Charter by removing the solid waste in a safe manner. Mr. Ciedi has complied with the Order and the case is now in a *status quo* posture. In particular, the Town is close to reaching an agreement with Mr. Ciedi pursuant to which any development of the property would be contingent upon the replacement of any remaining solid waste with approved fill. It should be noted that the dumping has ceased and that, over time, the solid waste at issue has essentially deteriorated into soil, so that the urgency of this matter has significantly lessened. There are several potential buyers of the property. Any buyer would be bound by the agreement to replace any remaining waste with approved fill.

5. MATTHEW MALIN and BRANDON RIVERA vs. TOWN OF DAVIE POLICE DEPARTMENT: The Town was sued by Plaintiff alleging religious discrimination. The case has been assigned to Mr. Harry Boreth to defend the Town and Mr. Boreth has indicated that the Town is actively defending the lawsuit. On October 3, 2007, the Town Attorney spoke with Mr. Boreth, who indicated that the case is in the discovery phase and that the litigation is active and ongoing.

6. MARINA SWEAT vs. TOWN OF DAVIE: The Plaintiff originally filed a Complaint alleging sexual harassment and retaliation. On October 3, 2006, our special legal counsel, Mr. Harry Boreth, advised the Town Attorney that the case has been dismissed. Accordingly, the Town has moved for recovery of its costs. However, the Plaintiff has filed what appears to be an untimely appeal. Negotiations are ongoing concerning an agreement for Plaintiff to pay the Town's costs and for Plaintiff to dismiss its untimely appeal.

7. TOWN OF DAVIE V. ONTANEDA: **Settled. The amount of \$ 250, 000.00 (two hundred and fifty thousand dollars) paid to Town of Davie**

8. NATALIA ECHAVARRIA V. TOWN OF DAVIE: On November 2, 2007, the Town Attorney spoke with Ken Carman, Esq., the attorney appointed by the insurance company. Mr. Carman advised that this case has been resolved and is now closed.

9. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: This case is now on appeal in the Fourth District Court of Appeal. The Petition for Writ of Certiorari filed by Wal-Mart (seeking judicial review of the Town Council's denial of Wal-Mart's application for site plan approval) in the State Court was denied on March 9, 2007. Wal-Mart's Motion for Rehearing was also denied in the State Court. Thereafter, Wal-Mart filed a Petition for Writ of Certiorari with the Appellate Court on May 10, 2007 seeking review of the State Court's denial of the first-tier Petition for Writ of Certiorari. This case remains stayed at the State Court level pending a ruling by the Appellate Court. The Town is represented by Andrew Maurois on appeal. The Town Attorney's office is awaiting the ruling of the Court. Upon the Town Attorney's recommendation, the Town Administrator authorized substitution of Michael T. Burke, Esq. as counsel for the Town of Davie. On October 5, 2007, Wal-Mart filed a Motion in the U.S. District Court for the Southern District of Florida seeking to enforce a 1987 settlement agreement which the Town of Davie entered into with Mr. Spielman. Mr. Burke is preparing the Town's motion in opposition to Wal-Mart's motion. On December 6, 2007 a hearing on Wal-Mart's Motion to Enforce Settlement Agreement was held. Magistrate Judge Turnoff entered an Order Denying without prejudice

Wal-Mart's motion. The Town is filing objections to Judge Turnoff's factual findings that the U. S. District Court retained jurisdiction to determine compliance with the development agreement portion of the old settlement.

10. LORRYCE BROWN vs. TOWN OF DAVIE: A second lawsuit against the Town alleging that Plaintiff was thrown from a horse due to electrical Special Counsel, Richard McDuff. Mr. McDuff has filed an Answer to Count 1 and a Motion to Dismiss regarding Count 2. His office

11. WASTE MANAGEMENT INC. and the TOWN OF DAVIE vs. UHEL POLLY HAULING, INC.: **Settled. The amount of \$48,905.03 (forty eight thousand nine hundred and five dollars and three cents) paid to Town of Davie.**

12. ALSINA vs. GONZALEZ and the TOWN OF DAVIE: This is a code enforcement case that resulted in Alsina filing a lawsuit. The Alsina's rebuilt their screened patio after Hurricane Wilma. The patio now encroaches on the neighbor's (Gonzalez) property. The Town has imposed \$60,000 in fines due to the continuing violation and the Alsina's refusal to correct or remove the encroaching patio. The Alsina's filed a lawsuit for adverse possession against Gonzalez and seeking an emergency injunction to prevent the Town from assessing or collecting any fines until the adverse possession claim against Gonzalez is adjudicated. After a full hearing, the Honorable Barry Goldstein denied Alsina's motion for injunction, stating that the Special Magistrate had authority to impose the fines and the Court could not interfere with the Special Magistrates' findings and rulings. Thus, the Town can continue to assess fines as long as the violation continues. The only action that the Town can not take without Court order is removing the patio. According to Robert Harris, Chief Code Compliance Officer, removal of the patio is not an action that the Town would undertake in any event.

13. NOVASTAR vs. MELANIE RODRIGUEZ, TOWN OF DAVIE, et al: Mortgage foreclosure case. The Town has a recorded Order Imposing Administrative Fine. The Final Judgment has been entered which recognizes and preserves the Town's lien rights. We have not received notice of a sale date yet.

14. DEUTSCHE BANK vs. THEODORE COLLIER, TOWN OF DAVIE, et al: This is a new mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Enforcement Lien and Administrative Fine in the amount of \$22,400. We have responded to the foreclosure complaint by asserting our lien rights as an affirmative defense. There have been no hearings scheduled yet as this is a new case.

15. DEUTSCHE BANK vs. TOM HARVEY, TOWN OF DAVIE, et al.: New mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Compliance Lien in the amount of \$1,800. We will respond to lawsuit by asserting the Town's lien rights as an affirmative defense.

16. ASSET ACCEPTANCE, LLC. vs. KOSSIBI KOKOU: Final Judgment in Garnishment and Order Directing Garnishee (Town of Davie) to Disburse Funds was entered on August 27, 2007. The Town Attorney's office forwarded a copy of the foregoing Judgment and Order to the Town Budget and Finance Director's office on September 4, 2007.

17. OAKES FIRE STATION (PINO KAOPA) : On October 4, 2007, the Davie Administration, Fire Chief, Assistant Fire Chief, Architect, and Manny Diez met with representatives of the bonding company for Pino Kaoba. A solution was proposed by the Town and is being evaluated by the bonding company and the contractor. Additional inspection has occurred.

18. FIRST RESOLUTION INVESTMENT CORP. vs. GREG ATKINS AND TOWN OF DAVIE (GARNISHEE): This is a garnishment action in the State of Iowa. The former Town Attorney filed an Answer to the Garnishment on July 12, 2007. The Town Attorney is awaiting further action.

19. TOWN OF DAVIE vs. JAMES ROCEK: Tenant Evicted from Old Davie School.

20. TOWN OF DAVIE vs. TOM LEE: Tenant Evicted from Old Davie School.