

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: John C. Rayson

PREPARED BY: John C. Rayson

SUBJECT: Litigation Report

AFFECTED DISTRICT:

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
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TOWN ATTORNEY REPORT

DATE: March 19, 2008

FROM: John C. Rayson, Esq.

RE: Litigation Report Update

1. PARKCITY 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.
2. 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. On February 4, 2008, The Assistant Town Attorney spoke with attorney Jeff Hochman, who advised that some reports were not disclosed during depositions of Plaintiff's expert in electrical engineering. Therefore, attorney Hochman filed a motion for an order to force the Plaintiff to turnover the undisclosed reports. The deposition has been re-set.
3. 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.

4. 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. On February 4, 2008, attorney Boreth stated that he is in the process of filing a motion for summary judgment.

5. 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. As of February 4, 2008, we are pursuing recovery of our attorneys' fees.

6. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: The Florida 4th DCA issued a percuriam decision in favor of the Town of Davie on February 13, 2008. In the Federal Court case Judge Gold has ruled that the Federal Court does have jurisdiction to enforce the 1987 settlement agreement and has remanded the case to Magistrate Judge Turnoff for further hearing. A Status Conference has been scheduled on April 11, 2008.

7. 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 is currently conducting discovery. On November 2, 2006, the Town Attorney spoke with Mr. McDuff who advised that the status of this litigation remains the same. On November 16, 2006, the Attorney had filed a Motion to Extend the Time in which to Respond to the Town's Discovery Request. On December 19, 2006, the Town Attorney spoke with Mr. McDuff's legal assistant who indicated that as of this date the Court had not yet ruled on the Plaintiff's Motion to Extend the Time to Respond. On February 4, 2008, the Assistant Town Attorney spoke to attorney Jeff Hochman who stated that the attorney for Plaintiff has withdrawn. As of this date, Plaintiff is not pursuing this case any longer.

8. 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. As of February 4, 2008, the parties are still in process of responding to each other's claims, and the Town is merely a by-stander to this action.

9. 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. Rodriguez had filed for bankruptcy and as a result of this proceeding; the foreclosure sale has been rescheduled.

10. OAKES FIRE STATION (PINO KAOBA) : A punch list submitted by Pino Kaoba has been submitted as is being reviewed by Manny Diez and Emilio DeSimone of the Town of Davie. A notice of default has been sent to the contractors bonding company. The case is moving toward resolution