

**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):**



OFFICE OF THE TOWN ATTORNEY  
JOHN RAYSON

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**TOWN ATTORNEY REPORT**

DATE: May 7, 2008  
FROM: John C. Rayson, Esq.  
RE: Litigation Report Update

1. 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.

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. A calendar call is scheduled for June 26, 2008.

3. 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. A summary judgment hearing has been scheduled for Monday, April 28, 2008.

4. 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. A judgment for fees in favor of the Town of Davie in the amount of \$ 5, 100 has been recorded.

5. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: On January 28, 2008, the Town of Davie has filed its Response to Plaintiff's Objection to Report and Recommendation. The same date Plaintiff filed a Response to Town of Davie's Objection to the Magistrate's Report and Recommendation. In addition, the District Judge Alan Gold has scheduled a hearing on Wal-Mart's Motion to Enforce Settlement on February 15, 2008. In this hearing, District Judge Gold believed that the Federal Court has jurisdiction to address the merits of Wal-mart's Motion to Enforce Settlement. However, Judge Marcus has remanded the matter back to the Magistrate Judge and has ordered the Magistrate to schedule a status conference. The Statutes Conference was held on April 11, 2008 before Magistrate Judge William Turnoff. In the Statutes Conference Hearing, Judge Turnoff scheduled a briefing on both parties to address the threshold defenses which the Town of Davie has asserted on opposition to Plaintiff's Motion to Enforce Settlement. The brief will be held on May 22, 2008. Also, in March 6, 2008, Wal-Mart's motion for Re-Hearing, Re-Hearing En Banc or for Certification to the Supreme Court of Florida in the related State Court litigation was denied.

6. 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 bystander to this action.

7. 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.

8. 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

9. 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.

10. OAKES FIRE STATION (PINO KAOBA): The roof has been warranted. Issues remain as to punch list items and payment. On April 22, 2008, we sent a demand letter to the Surety Company.

11. BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY vs. JOHNNY WILLIAMS; et.al.: This is a Property Mortgage Foreclosure action. The Town of Davie's answer and affirmative defenses were filed on March 12, 2008. The Town Attorney is awaiting further action.

12. BP LOANS, LLC (50%) AND MEISTER FINANCIAL GROUP, INC. (50%) vs. TOP VIDEO & PRODUCTIONS, USA, INC., a Florida Corporation, et al.: This is a Property Mortgage Foreclosure action. The Town of Davie's answer and affirmative defenses were filed on March 10, 2008. The Town Attorney is awaiting further action.

13. N & D HOLDING, INC., a Florida Corporation vs. THE TOWN OF DAVIE: This is a Declaratory Judgment action. The Town of Davie's motion to dismiss was filed on March 12, 2008. Plaintiff's N&D filed a memorandum in opposition to the Town's motion to dismiss on March 18, 2008. Nonetheless, a meeting with attorneys Rayson and Brady is set for Thursday April 24 to discuss settlement of this lawsuit.

14. SOUTHERN WASTE SYSTEMS, LLC., (Diamond III LLC and Broeren Russo Builders of Florida, LLC.) vs. THE TOWN OF DAVIE: This is a

pending appeal action (code violation). On February 29, 2008, Southern Waste Systems along with Diamond III filed a Notice of Appeal with the Court appealing the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. On March 14, 2008, Southern Waste Systems filed an unopposed motion to dismiss Diamond III, LLC and Broeren Russo Builders of Florida, LLC from the appeal. The Town attorney is awaiting further action.

15. SOUTHERN WAST SYSTEMS, LLC., ( Flamingo Village Corp. and American Engineering & Construction, Inc.) vs. THE TOWN OF DAVIE: This is a pending appeal action (code violation). On February 29, 2008, Southern Waste Systems along with Flamingo Village Corp., and American Engineering & Construction, Inc. filed a Notice of Appeal with the Court appealing the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. On March 14, 2008, Southern Waste Systems filed an unopposed motion to dismiss Flamingo Village Corp., and American Engineering & Construction, Inc., from the appeal. The Town attorney is awaiting further action.