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TOWN ATTORNEY REPORT

DATE: February 28, 2001

FROM: Monroe D. Kiar

RE: Litigation Update



1. **Kuegler v. Town of Davie:** This matter was tried before Judge Herbert Moriarty on February 5 and 6, 2001. Judge Moriarty ruled in favor of the Plaintiff primarily based upon his belief that the Town, through its inaction, had abandoned its right to construct a trail along 142<sup>nd</sup> Avenue. He indicated that in 1990, at the direction of the Town Administrator, the Town elected to take no further action for several years with regard to the construction of a trail along 142<sup>nd</sup> Avenue. Although he took into consideration the fact that a number of the residents rode along the canal bank for many years, they nevertheless, did so as private citizens and not as representatives of the Town of Davie.
2. **Sunrise Litigation:** At the last Council Meeting, Mr. Willi brought the Town Council up to date on this matter and indicated that the Town is moving forward in its preparation for further negotiations with the City of Sunrise for the possible acquisition of the water system.
3. **Ordonez, et al v. Town of Davie:** Our outside counsel, Mr. Michael Burke, continues to conduct further discovery in these proceedings. Mr. Burke has requested copies of all discovery obtained by the Plaintiffs from the various physicians who have treated and/or examined the Plaintiffs. Mr. Burke advises that he will be filing a Motion for Summary Judgment in the very near future.
4. **Sessa v. Town of Davie (Forman):** The parties have executed a Stipulation agreeing to binding mediation. After the Stipulation is approved by Order of the Court, binding mediation shall be scheduled before Judge Gerald Mager.

5. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** The Town Attorney has spoken with E. Bruce Johnson, our outside legal counsel, who has indicated that the attorney for the County has still not yet filed a motion dismissing the City Defendants, including the Town of Davie, despite his previous indication that he would do so. As indicated in prior litigation updates, Mr. Johnson is confident that the Town of Davie will ultimately be dismissed as a defendant in this lawsuit. Mr. Burke has expressed his displeasure to the attorney for the County and has advised the Town Attorney that Mr. Burke intends to bring this matter to the attention of the Court at the next Status Conference and at that time, request that the Court enter an Order dismissing the City Defendants.
6. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** The Plaintiff has filed an "Amendment and Supplement" to its initial Brief and Mr. Burke, our outside legal counsel, has filed his response on behalf of the Town of Davie in opposition to the Plaintiff's Amended and Supplemental Petition for Writ of Certiorari. Copies of Mr. Burke's written response were recently provided to the Mayor and Town Councilmembers.
7. **MVP Properties, Inc.:** On February 20, 2001, Mr. Burke received the Plaintiff's Response and Memorandum of Law in Opposition to the Town of Davie's Motion for Summary Judgment. Mr. Burke advises that he has prepared a Reply Memorandum in Support of the Motion for Summary Judgment to be filed with the Court. Mr. Burke indicates that the primary arguments advanced by the Plaintiff, MVP, are that the Town of Davie wrongfully delayed processing its request for a gated entrance and that the ordinance ultimately adopted to deny the request does not further a legitimate municipal purpose and has not been applied to other similar developments.
8. **Cummings v. Town of Davie:** This matter has been set tentatively to go to trial during the 4 week trial period commencing April 26, 2001. Pursuant to the concurrence of the Town Council, the Town Attorney's office has retained several expert witnesses to testify on behalf of the Town in this inverse condemnation proceeding. The Town Attorney's office will be deposing Mr. and Mrs. Cummings and one of their expert witnesses on March 1, 2001 in preparation for trial.
9. **Department of Community Affairs v. Town of Davie:** The Stipulated Settlement Agreement presented to the Town Council was signed by the Mayor and approved as to form by the Town Attorney. It was thereafter submitted to the Department of Community Affairs for its execution and thereafter, was submitted to the Court for its approval. This matter has been abated pursuant to the Court's Order of February 16, 2001, pending the Court's review of the Stipulated Settlement Agreement.
10. **Town of Davie v. Malka:** The Code Enforcement Officer, Daniel Stallone has spoken with the Malkas and viewed the Malka property. The Code Enforcement Officer indicates that the Malkas are proceeding in an effort to complete the construction of the exterior of their residence no later than March 31, 2001. As indicated in the prior Litigation Update, after the Malkas have completed the exterior project, they will be permitted to continue

to proceed with the interior work as to the remaining interval of the 6 month building permit, to its completion. Mr. Stallone indicates that the Malkas however, will not be granted any additional extensions beyond the current 6 month permit.

11. **City of Pompano Beach, Davie, et al v. Florida Department of Agriculture and Consumer Services:** The Florida Department of Agriculture has filed its Initial Brief and in response thereto, the coalition of cities have submitted their Answer Brief. The Florida Department of Agriculture recently filed an Amended Initial Brief pursuant to the Court Order requiring it to do so, substituting references to the record in place of references to the appendices. The Florida Department of Agriculture has also requested that oral argument be permitted in these proceedings. The original Record on Appeal consisting of 10 volumes and 1 envelope of exhibits, was transmitted on February 23, 2001 by the Clerk of the Circuit Court, Howard C. Forman, to the Clerk of the 4<sup>th</sup> District Court of Appeal.
12. **Christina Mackenzie Maranon v. Town of Davie:** Our outside legal counsel, Richard H. McDuff has filed a Motion for Final Summary Judgment on behalf of the Defendants, Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Plaintiff has filed a Memorandum in Opposition to our Motion for Summary Judgment and the Motion continues to remain pending.
13. **National City Mortgage Co. v. Dwayne Robinson and Town of Davie, et al:** The Plaintiff, National City Mortgage Co. recently filed a Motion for Summary Judgment alleging that its Note and Mortgage were paramount in right and dignity to the liens of all defendants, including the Town of Davie. The Town Attorney's Office filed an Answer and Affirmative Defense alleging its original Order Imposing Municipal Code Enforcement Lien dated August 24, 1989 and recorded in the Public Records of Broward County prior to the recording of the Plaintiff's Mortgage was in fact superior in time and dignity to that of the Plaintiff's Mortgage and therefore, should not be foreclosed in these proceedings. The Town Attorney's Office attended the hearing on the Plaintiff's Motion for Summary Judgment and successfully argued its position. The Court entered an Order in which it decreed that the liens of all other defendants in this proceeding were junior and inferior to that of the Plaintiff, but held that the Order of the Town of Davie Imposing Municipal Code Enforcement Lien was superior to that of the Mortgage of the Plaintiff and that before any other disbursements were to be made, the Order of the Town of Davie was to be paid. The original Order Imposing Municipal Code Enforcement Lien is in the amount of \$2,050.00, with the possible addition of interest from the date of the Order, the payoff amount should be considerably greater.