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TOWN ATTORNEY REPORT

DATE: March 29, 2001
FROM: Monroe D. Kiar 
RE: Litigation Update

1. **Kuegler v. Town of Davie:** On March 23, 2001, it came to the attention of the Town Attorney's Office that there was a question concerning the appropriateness of the Town paying the attorney's fees for the property owners of the property along 142nd Avenue who contributed toward the litigation in the case of Kuegler v. Broward County, Florida and Town of Davie, Florida. The Town Attorney's Office researched this issue and came to the opinion that the Town cannot properly pay the attorneys' fees to the property owners, but it can pay the taxable court costs incurred by the Plaintiff. In Florida, where there is not a contractual or statutory obligation, a municipality can only pay funds for a public purpose and not for a paramountly private benefit. The voluntary payment of attorneys' fees incurred by these property owners would legally be considered as conferring no public benefit to the municipality, and as such, not a proper expenditure of public funds. On the other hand, court costs are taxable in a litigation in favor of the prevailing party, and may properly be paid by the Town. Attached is another copy of the Town Attorney's Memorandum of March 26, 2001.
2. **Sunrise Water Acquisition Negotiation:** At a previous Town 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 legal counsel, Mr. Michael Burke continues to conduct further discovery in these proceedings. In the meantime, Mr. Burke has filed a Motion for Summary Judgment in this case and the Motion is now pending.
4. **Sessa v. Town of Davie (Forman):** The parties have executed a Stipulation agreeing to binding mediation. The Stipulation was submitted to the Court and approved by the Judge. Binding Mediation has been scheduled for June, 2001 before retired judge, Gerald Mager.

5. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** This matter has been settled by the Resource Recovery Board and the Plaintiffs, Waste Management and Coastal Carting Ltd. As far as the settlement, each of the cities, including the Town of Davie, is to be dismissed as a defendant in the lawsuit and is to receive a Special Limited Release discharging it of any liability as to any of the claims or causes of action raised against the Town in this litigation. In exchange, the Plaintiffs have requested that the Town of Davie also execute a similar Special Limited Release.
6. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Hearing on the Petition for Writ of Certiorari will be conducted sometime during the Court's 4 week trial docket commencing July 30, 2001. Oral argument on the Motions are anticipated to take approximately 1/2 day and as the July 30, 2001 docket approaches, Mr. Burke will advise the Town Attorney's Office exactly when the oral arguments will take place.
7. **MVP Properties, Inc.:** The Town of Davie's Motion for Summary Judgment continues pending. Both sides have filed Memorandum of Law in support of their respective positions in this case. Mr. Burke anticipates that this matter will go to trial around December, 2001.
8. **Cummings v. Town of Davie:** This trial in this matter has been rescheduled for the 4 week trial period commencing July, 2001. An Executive Session of the Town Council has been scheduled for April 4, 2001 at 6:00 P.M. so that the Town Attorney's Office may discuss in detail with the Town Council litigation strategy regarding this lawsuit.
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, submitted to the Court which approved same. This matter has been abated pursuant to the Court's Order of February 16, 2001, to allow the parties to comply with the provisions of the Stipulated Settlement Agreement.
10. **Town of Davie v. Malka:** The Town Attorney's office has been in contact with the Code Enforcement Officer, Mr. Daniel Stallone. Mr. Stallone, upon his last visit to the Malka property, observed that the Malkas are proceeding in an effort to complete the construction of the exterior of their residence. 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 months permit.
11. **City of Pompano Beach, Davie, et al v. Florida Department of Agriculture and Consumer Services:** The Florida Department of Agriculture has filed an appeal of Judge Fleet's Order in which he ruled in favor of Davie, the County and the other cities enjoining the Florida Department of Agriculture and Consumer Services from further

cutting of healthy citrus trees in Broward County. 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, Howard Forman, to the Clerk of the 4th District Court of Appeal. The 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 has also requested that oral argument be permitted in these proceedings.

12. **Christina Mackenzie Maranon v. Town of Davie:** The Town of Davie has 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. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed this case from the trial docket pending its ruling on our Motion for Summary Judgment.

13. **National City Mortgage Co. v. Dwayne E. Robinson and Town of Davie, et al:** The Plaintiff, National City Mortgage Co. 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 Defenses alleging that the Town of Davie's Order Imposing Municipal Enforcement Lien dated August 24, 1989 was in fact superior in time and dignity to that of the Plaintiff's mortgage. At the initial hearing on the Plaintiff's Motion for Summary Judgment, the Court agreed with the Town's position. The Plaintiff has requested a re-hearing on this issue and the Court has granted their Motion for Re-Hearing, which hearing will be scheduled to be heard sometime in the future.