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TOWN ATTORNEY REPORT

DATE: August 30, 2001  
FROM: Monroe D. Kiar  
RE: Litigation Update

1. Sunrise Water Acquisition Negotiations: The Town Attorney's Office prepared an initial letter to the attorneys for the City of Sunrise regarding these negotiations and setting forth the documentation which Mr. Cohen indicated he needed in order to enter into meaningful negotiations for the acquisition of the water and sewer system. Although the Town Attorney discussed this matter with Attorney Kornspan, the attorney for the City of Sunrise, and reviewed with her the contents of the Town Attorney's letter, none of the documentation requested has been received. As a consequence, another letter has been sent to Ms. Kornspan requesting that the City of Sunrise Finance Department and Utility Department provide to the Town of Davie the documentation needed by Mr. Cohen to analyze the cost of acquisition of the water and sewer system. It is suggested that it might be advantageous to schedule another meeting with the Sunrise officials in an effort to obtain for Mr. Cohen or any other expert retained by the Town, such information and documentation needed to analyze the cost of acquisition of the system.
2. Ordonez, et al v. Town of Davie: As previously indicated, this matter went to trial and the jury returned a zero verdict. The plaintiffs did not file a Notice of Appeal and the jury verdict is now final. Mr. Burke is waiting for ruling from the court with regard to his Motion to Tax Court Costs.
3. Sessa v. Town of Davie (Forman): The parties have executed a Stipulation Agreement agreeing to binding mediation. The Stipulation was approved by the court and binding mediation has been scheduled for Fall, 2001 before retired Judge, Gerald Mager. An issue has been raised as to the meaning of the Annexation Agreement prepared by the former Town Attorney. The former Town Attorney has been subpoenaed to testify as to the meaning and intent of the parties as to the language contained in the Agreement. The property owner contends that the language contained in the Annexation Agreement

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prepared by the former Town Attorney relieves them of any responsibility for payment of any portion of the special road assessment regarding 47<sup>th</sup> Avenue.

4. **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. The Town is to be dismissed as a defendant in this lawsuit pursuant to the Stipulated Agreement, and discharged of any liability as to any and all claims or causes of action raised against the Town. In the meantime, another entity filed a Motion to Intervene in the Coastal Carting lawsuit. Judge Gonzalez granted the Interveners' Motion to Intervene. Nevertheless, our outside counsel, Mr. Johnson, has filed a Memorandum of Law in Opposition to the Interveners' Motion to Vacate and he believes the Motion to Vacate and Set Aside the Settlement Agreement will not be successful and the municipalities will accordingly be dismissed. Nevertheless, the Motion to Vacate and Set Aside the Settlement Agreement continues pending.
5. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing was held before Judge Cocalis regarding the Plaintiffs' Petition for Writ of Certiorari and both sides are now awaiting the court's decision.
6. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties timely filed a Notice of Appeal seeking further review of the matter by the United States Court of Appeals for the 11<sup>th</sup> Circuit. The Appellate Brief of MVP Properties, Inc. is due shortly, but has not yet been filed.
7. **Cummings v. Town of Davie:** The Town and the Plaintiffs entered into a Stipulation for Settlement which was filed with the court at the July 23, 2001 hearing. The attorney for the Plaintiffs has advised the Town Attorney's Office that the Plaintiffs have begun the variance application procedure required under the terms of the Stipulation for Settlement.
8. **Town of Davie v. Malka:** The Town Attorney's Office has been in close contact with both the Code Enforcement Officer, Mr. Stallone, and with our Building Official, Mr. Sprovero. Mr. Sprovero sent a letter to both Mr. Malka and his contractor placing them on notice that due to their failure to complete the work in a timely manner, all work must cease and that the addition would be treated as an unsafe structure. Mr. Sprovero's letter also indicated that the Building Division would file complaints with the Department of Professional Regulations against the contractor for job abandonment on the roofing permit. Mr. Sprovero has indicated that his letter to the Malkas apparently met with positive response. There have been 6 inspections and the exterior of the home is nearly completed. Stucco is complete, the windows are in, the house is being painted, and the roof tile will be coming next week. Upon completion of these tasks, the exterior will be complete, which has been the goal of both the Code Enforcement Division, the Town Attorney's Office, the Building Department and the Town of Davie, as well as the residents in the community.

9. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The 4<sup>th</sup> District Court of Appeals reversed Judge Fleet's ruling in which he enjoined the Department of Agriculture and Consumer Services from cutting down healthy, but exposed trees within a 1900 foot radius of an infected tree and the Florida Department of Agriculture thereafter, was successful in having the Injunction lifted. In the meantime, the coalition of cities, including Davie, filed a rule challenge in an Administrative proceeding before DOAH. In a 73 page ruling, the Administrative Law Judge found the rule promulgated by the Florida Department of Agriculture in July, 2000 relevant to the removal of healthy, but exposed trees within a 1900 foot radius to have been an invalid exercise of delegated legislative authority by the Department of Agriculture and Consumer Services, and in violation of the Florida Statutes. In response, the Department of Agriculture and Consumer Services filed a Notice of Withdrawal of its prior Rule 5D-58.001, and in its place, filed a Notice of Emergency Rule and promulgated Rule Number 5BER01-1 entitled "Citrus Canker Eradication" in an attempt to promulgate a rule which would withstand a challenge by the coalition of cities before DOAH. The coalition of cities met and filed such a challenge to the new rule contending that the new rule was, like its predecessor, invalid. Before a hearing on this matter could be heard, the Department of Agriculture and Consumer Services withdrew its new Emergency Rule to cut down uninfected, but exposed trees. As there is no rule in place, the Department can only cut down infected trees, and cannot cut down uninfected trees within a 1900 foot radius of a citrus tree exhibiting visible signs of Citrus Canker. It is the belief of the coalition of cities that the Department of Agriculture is once again attempting to promulgate a new rule and intends to file same in the future. Once the Department has filed such a rule, it is anticipated that the coalition will again challenge its validity.
10. **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 the case from the trial docket pending its ruling on our Motion for Summary Judgment. There is a good likelihood therefore, that even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard before the end of the year, should it go to trial.
11. **Reinfeld v. Town of Davie, et al:** The Florida League of Cities attorney assigned to represent the remaining individual defendant, Mr. Weiner, received a response from the Plaintiff to Defendant Weiner's Motion to Dismiss. In turn, Mr. Marrero has filed a reply in support of the Motion to Dismiss Mr. Weiner as a defendant. Mr. Marrero is confident that Mr. Weiner will be dismissed as a defendant in these proceedings, but is awaiting the court's ruling on his motion. Mr. Burke, who was assigned by the League of Cities to represent the Town, has advised the Town Attorney's Office that he has propounded written Interrogatories and other discovery upon the plaintiff and is awaiting her response.