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TOWN ATTORNEY REPORT

DATE: July 2, 2003

FROM: Monroe D. Kiar

RE: Litigation Update

- Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Town Attorney's Office has in the past, spoken with Mr. Cohen, who indicated that negotiations with URS have been ongoing. Mr. Cohen indicated that URS was requested to provide the Town with a Memorandum of Services setting forth their anticipated costs for each service to be rendered to enable the Town to determine the precise cost of the project and to determine if there are funds available to allow URS to conduct such services. A response has been received by the Town. As indicated in the last Town Attorney's Report on June 25, 2003, the Town Attorney's Office spoke with Mr. Ken Cohen and the Director of the Town's Utilities Department, Daniel Colabella. Both advised the Town Attorney that no agreement been reached with URS as yet for conducting the engineering services for the western area utilities studies, nor have they been given the go ahead for the project by the Administration. Mr. Colabella did indicate at that time that Mr. Stanley Cohen will be scheduling appointments to meet with the individual Councilmembers with regard to both the Sunrise Water Acquisition issue and also, relevant to the Ferncrest Utilities facility. It appears that these meetings, along with meetings with the Staff and Town Attorney's Office will be scheduled by Mr. Cohen sometime in August, 2003.
- Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. Pursuant to the direction given to Mr. Burke by the Davie Town Council, an appeal of the Order entered by Judge Cocalis was filed with the 4<sup>th</sup> District Court of Appeal, but the 4<sup>th</sup> District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion, ordered that the matter

be remanded back to the Town Council and required it to vote on the application based on the record as it existed prior to the filing of the Writ of Certiorari and in accordance with the Final Judgment entered by Judge Cocalis. The Petitioner requested the matter again be placed on the Town Council Agenda and the matter was again heard on October 2, 2002, by the Town Council. After a presentation by Mr. Burke, the applicant and Staff evidence was presented by those in attendance who spoke in favor and in opposition to the two Petitions, the Town Council voted 4 to 1 to deny each petition. A Petition for Supplemental Relief to Enforce Mandate or in the Alternative, Supplemental Complaint for Writ of Mandamus and for Writ of Certiorari was thereafter filed by the Plaintiff, Griffin-Orange North, Inc. and Seventy-Five East, Inc. with regard to the Quasi Judicial Hearing held before the Town of Davie on October 2, 2002. The Plaintiffs have filed these pleadings requesting that the Court order the Town of Davie to grant them the B3 Zoning and they are seeking a recovery of their attorney's fees and court costs for their preparation of the filing of this new Petition for Supplemental Relief to Enforce the Court's Mandate. Essentially, the pleadings request that the Circuit Court quash the Town Council's second denial of the Plaintiffs' Zoning Application and request that the Court compel approval of the B3 Zoning designation. The Plaintiffs filed their pleadings with the same Court (Judge Cocalis) which previously entered a Final Judgment in favor of Plaintiffs, and also filed an identical original action to cover all of their procedural basis. Subsequent thereto, the Plaintiff filed a Motion to Consolidate the Petition for Supplemental Relief to Enforce Mandate as well as the second lawsuit it initiated and requested that both lawsuits be heard before the original judge in this case, Judge Cocalis, who is no longer in the Civil Division, rather than Judge Robert Carney, who has taken over Judge Cocalis' prior case load. The hearing on the Petitioner's Motion to Consolidate a new Petition for Writ of Certiorari with its previously filed action was heard on December 17, 2002. Judge Carney the property owner's Motion to Consolidate, but denied the property owner's second Motion, which was to transfer both actions back to Circuit Court Judge Patricia Cocalis. On January 30, 2003, there was an initial hearing and oral argument was presented by both sides before Judge Robert Carney relevant to the property owner's Motion to prohibit the Town of Davie Administrator from proceeding with Administrative re-zoning of the property. At the January 30, 2003 hearing, Judge Carney stated he wanted to hear more argument on this matter and scheduled another hearing for February 14, 2003. On February 14, 2003, the Judge denied the Writ of Prohibition and Motion to Stay and as indicated, in his view, the Court did not have jurisdiction to prevent the Town of Davie from carrying out its municipal function of re-zoning property. Accordingly, as confirmed by Mr. Burke, there are no legal impediments to the Town moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. However, at the Town Council Meeting of May 7, 2003, the Town of Davie and the property owner entered into an agreement which was filed with the Court and approved by the Town Council which would temporarily abate all litigation activities in the pending lawsuit, as well as abate the moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. This agreement was entered into to enable the County to obtain an appraisal and to continue its negotiations in an effort to possibly purchase the subject properties as a public park. As indicated in the last Litigation Report of June 25, 2003, the Town Attorney recently spoke with Attorney William Spencer, the attorney for the property owner. He indicated that at that time, it was his understanding that the County had completed its

appraisal regarding the two properties in question, but as of that date, had not tendered an offer to the property owner. On July 1, 2003, Mr. Burke's legal assistant indicated that she had not heard anything further with regard to the negotiations between the County and the property owner relevant to the possible purchase of the property as a park.

3. **Town of Davie v. Malka:** As the Town Council has been previously advised, the Town Attorney's Office has kept close contact with the Building Department relevant to the progress of this particular property. The Building Department is continuing to keep a close eye on this particular property owner to ensure that the property owner is moving ahead with final completion of all additions of the structure as promised. Recently, the Town Attorney spoke with the Town's Building Official and was advised that this property owner is current with all of his inspections to date. Our Building Official has further advised that the property owner is moving ahead as promised and that there have been no recent complaints from the community.
  
4. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** As indicated in prior Litigation Reports, on May 24, 2002, Judge Fleet issued a 19 page Order on the Motion for Temporary Injunction in which he concluded that the Amendments regarding the Citrus Canker litigation enacted by the Florida Legislature as codified in Florida Statutes Section 581.184, was an invalid invasion of the constitutional safeguard contained in both the United States Constitution and the Constitution of the State of Florida. The Judge ultimately entered a statewide Stay Order enjoining the Department of Agriculture from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal seeking review by the 4<sup>th</sup> District Court of Appeal. The Department of Agriculture also filed a Motion with the 4<sup>th</sup> District Court of Appeal seeking that the appellate procedures be expedited, and a motion in which there was a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture contended that in light of the gravity and emergency nature of the issues, the matter should be certified by the 4<sup>th</sup> District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4<sup>th</sup> District Court of Appeal rules on the matter, it would in fact be appealed by either the Department of Agriculture or by the County and coalition of cities to the Supreme Court of Florida for final adjudication. The 4<sup>th</sup> District Court of Appeal in fact for only the fourth time in its history, did certify this matter directly to the Florida Supreme Court for adjudication. The Florida Supreme Court however, refused to hear this matter at this stage and remanded it back to the 4<sup>th</sup> District Court of Appeal for further proceeding. Both the Florida Department of Agriculture and Consumer Services and the County and coalition of cities have filed their respective Appellate Briefs. The Florida Department of Agriculture filed a Reply Brief to the Brief filed by Broward County and the coalition of cities. The Town Attorney along with several other municipal attorneys, at the request of the Chief Appellate Attorney for Broward County, Andrew Meyers, attended the oral argument in these proceedings before a three judge panel at the 4<sup>th</sup> District Court of Appeal Courthouse in Palm Beach County, on December 4, 2002. On January 15, 2003, the 4<sup>th</sup> District Court of Appeal issued its opinion relevant to the appeal filed by the Florida Department of

Agriculture and Consumer Services challenging the Order of Judge Fleet. The 4<sup>th</sup> District Court of Appeal found that Section 581.184 of the Florida Statutes (2002) requiring removal of Citrus trees within the 1900 feet of a tree infected with canker did not violate due process and therefore, was constitutional. The 4<sup>th</sup> District Court of Appeal also found Section 933.07(2) of the Florida Statutes allowing area wide search warrants unconstitutional and a violation of the 4<sup>th</sup> Amendment. The Court however, did rule that multiple properties to be searched may be included in a single search warrant and the issuance of such a warrant should be left to the discretion of the issuing magistrate. The 4<sup>th</sup> District Court of Appeal entered an Order quashing Judge Fleet's Order and in response, the County and coalition of cities, including the Town of Davie, filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court and to review the decision of the 4<sup>th</sup> District Court of Appeal. The Notice to Invoke Discretionary Jurisdiction also requested the re-imposition of a temporary stay. The Supreme Court entered an Order agreeing to review this matter, but refused to re-impose the automatic stay prohibiting the removal of healthy, but exposed Citrus trees during the pendency of this litigation. The Florida Department of Agriculture has resumed cutting healthy, but exposed trees in Central and North Palm Beach as well as in the cities of Cape Coral and Orlando. As indicated in the last Town Attorney's Report on June 25, 2003, the Town Attorney spoke with the office of the Chief Appellate Attorney for Broward County. As previously indicated, the County continues to aggressively oppose the issuance of warrant applications in Broward County regarding the cutting of healthy, but exposed Citrus trees. At this time, both the County and coalition of cities and the Florida Department of Agriculture have filed their Briefs with the Florida Supreme Court. Oral argument in the "Fleet Case" is scheduled for October 7, 2003 before the Supreme Court in Tallahassee. In the meantime, the County has filed another Motion for the re-issuance of a new Stay with the Trial Court and that Motion is to be heard on July 7, 2003 at 7:00 A.M.

5. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie 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. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Town thereafter, filed a Motion to Dismiss the Amended Complaint, but after hearing the Motion to Dismiss, it was denied and the Plaintiff was given leave to file a new Amended Complaint in these proceedings. On July 1, 2003, Mr. McDuff advised the Town Attorney that to date, his office had not received the Amended Complaint. Mr. McDuff remains confident that ultimately, this matter will be dismissed on the merits.
6. **Spur Road Property:** As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4<sup>th</sup> District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council.

7. **Peter Castagna v. Officers Brito and Williams:** Peter Castagna filed a lawsuit against Officers Daniel Brito and Paul Williams alleging an action for damages pursuant to Title 42 U.S.C. 1983, for alleged false imprisonment, battery and alleged intentional infliction of emotional distress. The outside legal counsel assigned by the Florida League of Cities to defend the police officers at the League's expense, filed a Motion to Dismiss the lawsuit instituted by Mr. Castagna. Prior to the Motion being heard, the attorneys for Mr. Castagna filed an Amended Complaint and our special outside legal counsel thereafter, filed a Motion to Dismiss the Amended Complaint. Said Motion was denied and the Town thereafter, filed its Answer and Affirmative Defenses to the First Amended Complaint. The Town also filed a Motion for Summary Judgment and incorporated Memorandum of Law which is pending. The case had originally been scheduled for trial in May, 2003, but the Judge's Judicial Assistant contacted Mr. McDuff's firm to advise him that the Calendar Call had been canceled and the trial put on hold as the Judge intended to rule on the Motion for Summary Judgment. As previously indicated, the Court entered an Order granting the Town of Davie's Motion for Summary Judgment as well as the Final Summary Judgment in favor of the Town and against the Plaintiff, Peter Castagna. On July 1, 2003, the Town Attorney spoke with Mr. McDuff, who indicated that his office has filed a Motion to Tax Costs against the Plaintiff and this Motion is pending. Additionally, he anticipates that the Plaintiff will file a Notice of Appeal of the Order of the Court granting the Town's Motion for Summary Judgment.
  
8. **Pelican Coast Holdings, Inc. and William Cuthbertson v. Town of Davie:** A Petition for Certiorari was served upon the Town along with an Order to Show Cause signed by Judge Burnstein requiring the Town of Davie to show cause why the relief requested in the Petition for Certiorari should not be granted. On July 22, 2002, Appellee, Town of Davie, filed its response to the Petition for Writ of Certiorari and Pelican Coast Holdings, Inc. and William Cuthbertson have since filed their Reply Brief. Oral argument in this matter was held on October 3, 2002 and thereafter, both side submitted Memorandum of Law in support of their respective positions. On October 28, 2002, Judge Burnstein issued her Order in this case. The Court granted the Petition for Writ of Certiorari and quashed the condition imposed by the Town Council at its May 15, 2002 Meeting that the owner of the property obtained a "special permit" from the Council, if the owner seeks to serve alcoholic beverages at the site. The Court does however, make clear that the owners and users of the property are bound by the separation requirements for alcoholic establishments, but the Court proposes that the Town would be able to monitor the owner's compliance through its occupational licensing regulations. The Court has also ruled that the Petitioner is entitled to recover its attorney's fees in prosecuting the appeal. A copy of Judge Burnstein's Order of October 28, 2002 has been previously provided to the Mayor and Councilmembers. At the first meeting in November of the Davie Town Council, the Council authorized Mr. Burke's firm to file the necessary paperwork to challenge Judge Burnstein's Order of October 28, 2002. Pursuant to the Council's instructions, a Petition for Writ of Certiorari was filed on behalf of the Town of Davie with the 4<sup>th</sup> District Court of Appeal. The Petition was reviewed by a 3 judge panel of the 4<sup>th</sup> District Court of Appeal and the Town Attorney has been advised by Mr. Burke that the Court has denied the Town's Petition for Writ of Certiorari, but also denied the request of the property owner for an award of attorney's fees on the appellate level. The Town Attorney's Office received a

copy of the property owner's Motion to Fix the Amount of Attorney's Fees and Costs to be paid by Respondent, Town of Davie, which was served upon Mr. Burke, our special outside counsel, on April 16, 2003. The matter has not yet been set for hearing. Pelican Coast and William Cuthbertson are seeking to recover \$14,166.50 in attorney's fees, along with \$1,474.18 in costs, or a total of \$15, 640.68. It is Mr. Burke's opinion that the Court's award of attorney's fees pursuant to Florida Statute §57.105 was of questionable validity and the Florida courts have not previously awarded attorney's fees under Florida Statute §57.105 against a respondent or appellee who did not prevail on appeal. Further, since the Town of Davie did not initiate this appeal proceeding, the Court's Order essentially provides that the Town should be required to pay attorney's fees because it did not confess error. As indicated at the Town Council Meeting of May 7, 2003, Mr. Burke is of the opinion that the Town has a reasonable chance of successfully appealing the Circuit Court's findings that attorney's fees should be awarded against the Town. He nevertheless, also has advised the Town that to appeal the Judge's Order would undoubtedly cause the Town to incur considerable additional costs and legal fees. Accordingly, he requested and the Town Council authorized Mr. Burke to offer the sum of \$6,500.00 to the property owner in settlement of his claim for attorney's fees and costs. As indicated in the previous Town Attorney's Report, pursuant to the Town Council's authorization, Mr. Burke submitted the offer of settlement of \$6,500.00 to the property owner's attorney. On July 1, 2003, the Town Attorney spoke with Mr. Burke's legal assistant, and she indicated that to her knowledge, her office had not yet received from the property owner a response to the Town's offer of settlement.

9. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4<sup>th</sup> District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. The Town Attorney spoke with Mr. Burke's legal assistant on July 1, 2003. As previously indicated, the Town's Motion to Dismiss filed with the 4<sup>th</sup> District Court of Appeal due to the Plaintiff's failure to file in a timely manner its Appellate Brief was denied, and the 4<sup>th</sup> District Court of Appeal extended the time in which the Plaintiff may file its Brief. Mr. Burke's legal assistant indicated that at this time, their office continues to await receipt of the Plaintiff's Appellate Brief.
10. **Southern Homes of Davie, LLC v. Davie (Charleston Oaks Plat) Case No. 02-015674 (11):**

The Town was served with a Summons and Complaint for Declaratory Judgment and Injunction and Petition for Writ of Mandamus with regard to Case Number 02-015674 (11) instituted by Southern Homes of Davie, LLC against the Town of Davie relevant to the "Charleston Oaks Plat". The Florida League of Cities has accepted responsibility for providing a defense to the Town of Davie relevant to this lawsuit and has assigned the case to Attorney Michael Burke. The Plaintiff is seeking both equitable relief and monetary damages against the Town. The Plaintiff is alleging that they have suffered injury as a result of the Town's refusal to process, review and/or approve its Site Plan Application while the Zoning in Progress has been in effect. They are seeking an Order declaring that the Plaintiff is entitled to approval of its Site Plan Application and that the Town be estopped to apply the "Zoning in Progress"; declaring that the Zoning in Progress does not exist and/or does not apply to Plaintiff's Site Plan Application and/or Plaintiff's property, and other relief. Since then, the Plaintiff has filed a second companion case also seeking a Declaratory Judgment and Injunction and Petition for Mandamus against the Town of Davie with regard to the "Flamingo Plat". This too, has been accepted for defense by the Florida League of Cities. Both cases have been since consolidated for discovery purposes and Mr. Burke's firm has filed its response to each Complaint filed in the two lawsuits. On July 1, 2003, the Town Attorney spoke with Mr. Burke's legal assistant. Settlement of these consolidated cases is still pending. Recently, Mr. Burke advised the Town Attorney that his office had received a settlement proposal through Mr. Laystrom's office and this was confirmed to the Town Attorney by Mr. Spencer, the attorney for the property owner. According to Mr. Burke's legal assistant, the settlement proposal is currently being reviewed by Mr. Burke's office and it is anticipated that a redraft to the agreement will be forwarded to Mr. Spencer shortly after Mr. Burke's return from vacation. As indicated in the prior Town Attorney's Report, in the meantime, Southern Homes has taken the position that they were not required to dismiss the lawsuits until their Site Plans to these projects were approved by the Town. As the Site Plan applications appear to be moving forward, Mr. Spencer, in a recent telephone conversation with the Town Attorney on June 25, 2003, indicated that he anticipated a settlement agreement dismissing the lawsuits would be reached shortly.

11. **Asset Management Consultants of Virginia, Inc. v. Town of Davie:** The Town of Davie has been sued by Asset Management Consultants of Virginia, Inc., who are seeking a refund of a public service fee imposed on certain property owners by the Town pursuant to Ordinance No. 99-35 of the Town Code. The Town filed a Motion to Dismiss the Complaint along with a Memorandum of Law in support of the Town's position. The Town's position is that at the time of the passage of Ordinance No. 99-35 of the Davie Town Code, it was properly initiated and therefore, the Plaintiff is not entitled to a refund of the public services fees which were subsequently declared unconstitutional and contrary to Section 192.042 of the Florida Statutes by the Florida Supreme Court in 1999. The Town of Davie's Motion to dismiss the lawsuit was heard on Friday, November 15, 2002, and after Judge Greene heard lengthy oral argument on both sides, the Court granted the Town of Davie's Motion to Dismiss Plaintiff's Complaint. The Judge granted our Motion to Dismiss with Prejudice as to Count II, which was a claim by the Plaintiff against the Town of Davie for unjust enrichment with regard to the Town of Davie's collection of the public service fee which was subsequently ruled unconstitutional. The Judge also granted the Town's

Motion to Dismiss Counts I and III in which the Plaintiff sought a declaratory judgment and a refund of the public services fee that was collected relevant to the Plaintiffs. The Judge also struck with prejudice that portion of Count III which sought prejudgment interest against the Town if the Plaintiff is successful. The Judge did give the Plaintiff 20 days in which to amend Count I and the balance of Count III. A copy of the Court's Order of November 15, 2002, was previously forwarded to the Town for distribution to the Mayor and Councilmembers. The Plaintiffs filed an Amended Complaint and Mr. Johnson's office filed an Answer to the remaining Count which seeks a refund of the public services fee that was collected from the Plaintiffs. On July 1, 2003, the Town Attorney spoke with Mr. Johnson relevant to this case. The parties are continuing to conduct legal discovery in this case. Further, Mr. Johnson's office is in the process of preparing a Motion for Summary Judgment and a Memorandum in support of the Motion which he anticipates his office will be filing in the near future.

12. **City of Cooper City v. Town of Davie:** The City of Cooper City has filed a lawsuit for Declaratory Judgment and Injunctive Relief and Alternative Petitions for Writ of Quo Warranto and Certiorari alleging that a recent ordinance and a recent resolution relevant to annexation are invalid. The Town Attorney's Office prepared an appropriate Motion to Dismiss and filed same as the Town's insurance carrier has refused to provide a legal defense to this action. As the Town Council has previously been advised, this office filed its Motion to Dismiss citing Cooper City's failure to comply with pertinent provisions of the Florida Statutes. Included within those enumerated provisions cited by the Town Attorney's Office, was Cooper City's failure to adhere to the "Intergovernmental Conflict Dispute Resolution" provisions of the Florida Statutes set forth in Chapter 164. Oral argument on the Town's Motion to Dismiss was heard on March 26, 2003 at which time the Judge indicated that this was the first time a matter such as this has come before him in 19 years on the bench and accordingly, he advised both sides that he would take this matter under advisement and get back to the attorneys shortly with his decision. The Judge thereafter, ordered that Cooper City's lawsuit is to be abated until Cooper City has initiated and exhausted the provisions set forth in Chapter 164. The Town and Cooper City will engage in the conflict resolution proceedings and attempt to resolve the matter without resorting to further legal remedies. As indicated in previous Litigation Reports, the Town Attorney's Office is confident in an ultimate successful outcome of this litigation and it is the Town Attorney's position that the Judge's abatement of Cooper City's lawsuit is further proof of the Town's contention that Cooper City has prematurely and inaccurately filed the present lawsuit. The initial meeting required under the "Intergovernmental Conflict Resolution" provisions of Florida Statutes Chapter 164 was held for April 17, 2003. The meeting was attended by the Town Administrator, Mr. Willi, the City Manager of Cooper City, Mr. Farrell, along with their attorneys. The meeting had been advertised and was open to the public. As a resolution to the conflict was not reached, accordingly, pursuant to Section 164.1055, a joint meeting of the municipalities will be held in order to resolve the conflict. If no ultimate resolution is achieved through the conflict resolution procedures set forth in Chapter 164, the Town Attorney's Office will renew its existing Motion to Dismiss this litigation. An Executive Session was held on June 4, 2003, during which the Council discussed litigation strategy and the issues to be considered at the joint meeting between the Davie Town Council and the City of Cooper City. The Town Council also gave direction to Mr. Willi to retain in his discretion, a surveyor and also, for the Administration and Town Attorney's Office to schedule a mutually convenient time for the joint meeting of the Davie Town Council and the Cooper City Commission. The Town Attorney's Office has been in contact with the attorneys for Cooper City and the Town Administration in an effort to schedule a mutually convenient time for the joint meeting of the two governing bodies. On June 25, 2003, the Town Attorney's Office received a call from the attorney for Cooper City. She inquired whether the Town had decided to contract with an individual surveyor or whether the Town would accept Cooper City's offer to jointly coordinate the hiring of a surveyor. The Town Attorney's Office advised the Town Administrator's Office of the contents of the conversation with Ms. Alderman, and received direction from the Town Administrator that his office wished to retain its own independent surveyor. Ms. Alderman, the attorney for Cooper City, has been so advised in writing of the Administrator's decision.

13. **DMG Roadworks, LLC v. Town of Davie.** The property owner has filed a Petition for Writ of Certiorari regarding the Town of Davie's re-zoning of the parcel of land owned by DMG Roadworks from the Broward County M4 Zoning District to the Town of Davie M3 Zoning District. This matter has been referred to special outside legal counsel, Michael Burke, who has filed an Answer on behalf of the Town in response to the property owner's Petition. On July 1, 2003, the Town Attorney's Office spoke with Mr. Burke's legal assistant. This case is now fully briefed by both sides and the Town is now awaiting a decision from the Court as to whether it will rule on this matter based upon the contents of the Appellate Briefs, or whether it will set this matter for oral argument. To date, this case has not yet been set for oral argument.
14. **MIGUEL LEAL V. OFFICER WILLIAM BAMFORD, ET AL:** The Plaintiff is suing 14 named police officers from various municipalities, including Lt. William H. Bamford, and K-9 Officer Banjire. It is his contention that in the course of his arrest, the officers used unnecessary force and therefore, violated his rights under 42 U.S.C. Section 1983. He is seeking compensatory damages of \$20,000,000.00 and punitive damages of \$20,000,000.00. On July 1, 2003, the Town Attorney spoke with Mr. McDuff regarding this matter. The Town has filed an appropriate response to the Plaintiff's Complaint. The Federal Judge has placed this matter on a fast track for discovery purposes and has ordered that all discovery be completed by July 31, 2003. This matter had previously been scheduled for trial in the Fall, but because of objections filed by the attorneys for the Metro Dade Defendants, the Trial Order has been vacated by the Federal Judge. Mr. McDuff has sought to take the deposition of the Plaintiff, but the Plaintiff has objected. Accordingly, Mr. McDuff's Office will be filing a Motion with the Federal Court to require the Plaintiff to submit to a deposition.
15. **TOWN OF DAVIE V. UHEL POLLY HAULING, INC.:** The Town recently initiated a lawsuit against this Defendant seeking injunctive relief and contending that it was tortiously interfering with the Town's exclusive franchise with Waste Management with regard to the disposal of solid waste. The Defendant has filed a Motion to Dismiss and oral argument is scheduled by the Court for early September, 2003. Recently, the Town Attorney's Office received word from the attorney for the Defendant that his client is willing to enter into a settlement agreement with regard to this litigation instituted by the Town Attorney's Office in Broward Circuit Court, as well as several accompanying Code Enforcement actions initiated by the Code Enforcement Division.
16. **SESSA, ET AL V. TOWN OF DAVIE:** The Town Attorney's Office recently received a Default Judgment against Jack M. Johnson. The Town Attorney's Office has also received an offer of settlement from Mr. Johnson's attorney which has been forwarded to the Town Staff for its consideration before presentment to the Town Council. A letter of settlement has also been received from Lawrence Danielle regarding his property, and this too, has been provided to the Staff for its consideration. Recently, the Town Attorney's Office conferred with the Town Administrator and received authorization from the Town Administrator to proceed with further settlement negotiations in both cases in an effort to reach a more mutually agreeable settlement proposal for submission to the Town Council.

