

MONROE D. KIAR
INTERIM TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: July 13, 2000

FROM: Monroe D. Kiar 

RE: Litigation Update

1. **Sunrise Litigation** - The Mediated Settlement Agreement was again considered by the Davie Town Council at an Executive Session and afterwards, approved by the Council. Attorney Serota continues to negotiate with the attorney for the City of Sunrise regarding the exact wording of the proposed Final Judgment, and he has conferred with the undersigned as well as Mr. Chris Wallace. Mr. Wallace will advise Mr. Serota with regard to a means of verifying the financial aspects of this settlement. As the City of Sunrise is obligated to pay 6.1 million dollars worth of monetary credits to its Davie customers, Mr. Serota will attempt to include within any final draft of the settlement and Final Judgment incorporating the Settlement Agreement, a provision for the award of attorney's fees, should either party fail to comply with the provisions of the Settlement Agreement. It was felt that this would further insure full compliance by the City of Sunrise with the terms of the agreement.
2. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al** - Attorney Bruce Johnson has requested that the Plaintiff's attorney dismiss the municipal defendants, including the Town of Davie, from this lawsuit, but as of this date, Mr. Johnson has not received confirmation from plaintiff's attorney that the plaintiff will in fact dismiss the Town of Davie as a defendant.
3. **MVP Properties, Inc.** - A Pretrial Conference has been scheduled by the Federal Judge assigned to this case for February 16, 2001. Mr. Burke anticipates that if this matter should go to trial, that it will be tried sometime in March or April, 2001. In the meantime, discovery procedures instituted by Mr. Burke continues.
4. **Street Vendors Ordinance** - As previously indicated, after extensive review of the applicable case law, a Memorandum was issued by the Interim Town Attorney suggesting that

a street ordinance, if properly drawn, can be successfully upheld if constitutionally challenged in court. I have spoken with Mr. Michael Burke whose firm has in the past, successfully litigated similar constitutional issues, and his firm has offered to represent the Town in drawing the ordinance and defending same, should it be challenged in Court, at the rate of \$150.00 per hour.

5. **LDG Corporation** - Judge Thomas M. Lynch IV, Judge of the Circuit Court of Broward County, issued an Order determining that the Town of Davie properly required LDG to obtain a variance as a result of the DOT's taking. The Court also has left undisturbed, the conditions imposed by the Town of Davie for the granting of the variance. Therefore, the Town of Davie can require LDG to construct the improvements as set forth in the variance and LDG can seek recovery of these costs from the DOT. A copy of Attorney Michael Burke's letter of July 6, 2000 to Gail Reinfeld, Administrative Services Director, along with a copy of the Court's Order on Legal Status of Property is annexed hereto. As indicated by Mr. Burke, "In short, the Town of Davie has prevailed and the DOT will have to pay for the improvements required by the variance."

6. **Orandello** - As previously indicated, Mr. Orandello has sent this Town Attorney a letter wishing to settle the Code Enforcement Lien and has made a proposal to do so for the sum of \$20,000.00. A copy of Mr. Orandello's offer was forwarded to the Town Administrator and to the Code Enforcement Department for its review and consideration, as well as attached to my prior Town Attorney Report. Although the Temporary Injunction issued by the Court restraining Mr. Orandello from selling ice cream in Davie continues to be in full force, the undersigned has recently received word from residents that they believe Mr. Orandello or someone in his employ is in fact selling ice cream in Davie, despite the Temporary Injunction. The undersigned is looking into these allegations.

7. **142nd Avenue, Kuegler v. Town of Davie** - The undersigned prepared an extensive pleading in opposition to the plaintiff's Motion for Summary Judgment. Several Affidavits and other documentary evidence was obtained and attached to the pleading which I prepared. The plaintiff's Motion for Summary Judgment will be heard on Monday, July 17, 2000, and a report as to the outcome will be given to the Council at its meeting on July 19, 2000.

8. **Cummings** - This is an action filed by the Plaintiffs for inverse condemnation contending the Town constructed a public sidewalk over a portion of the Plaintiffs' property and thereby, deprived the Plaintiffs of the beneficial enjoyment of the property under the sidewalk. Both parties are in the process of conducting discovery. This attorney, with the assistance of Mr. Robert Rawls, timely filed an appropriate response to the plaintiffs' First Request for Production of Documents.

9. **Davie v. Statewide Transportation & Recovery Services, Inc.** - A Judgment in the amount of \$41,175.25 was obtained against the Defendant. The deposition of one of the principals of the business was recently conducted and others will be scheduled in an effort to locate additional assets of the corporation.

10. **ROHO Flamingo - ICE Plat, (Control #000104)** - Some revisions have been made by me to an initial draft of a Complaint prepared previously by Mr. Webber. There are some issues that remain to be discussed with the staff before the Complaint can be filed.

11. **Seventy-Five East, Inc. v. Town of Davie** - A lawsuit has been filed against the Town of Davie by Seventy-Five East, Inc. under Broward County Circuit Court Case Number 00-11230 (25), in which the plaintiff challenges a determination rendered by the Davie Town Council regarding a re-zoning application. I have prepared a Resolution to be presented to the Town Council suggesting that the Town retain the legal services of Johnson, Anselmo, Murdoch, Burke & George, P.A. to defend the Town in this action. I have spoken with Mr. Michael Burke, who has represented us in several other litigation cases in the past, and he has agreed to defend the Town in this action for \$150.00 per hour.

12. **Griffin-Orange North, Inc. v. Town of Davie** - This is a companion case with the lawsuit instituted by Seven-Five East, Inc. v. Davie. The Griffin-Orange North, Inc. litigation also concerns a challenge to a determination rendered by the Davie Town Council regarding a re-zoning application. As with the companion case, a Resolution has been prepared for the Town Council's consideration in which it is recommended that the Town retain the outside legal services of the law firm of Johnson, Anselmo, Murdoch, Burke & George, P.A. to defend the Town in this action. It is anticipated that this lawsuit which was filed as Broward County Circuit Court Case Number 00-11228 (04), will be consolidated with the lawsuit filed on behalf of Seventy-Five East, Inc. against the Town of Davie.

MDK/gmv

LAW OFFICES

JOHNSON, ANSELMO, MURDOCH, BURKE & GEORGE, P.A.

A PROFESSIONAL ASSOCIATION

SCOTT D. ALEXANDER
 RONALD P. ANSELMO
 SCOTT R. ANSELMO
 MICHAEL T. BURKE *
 KIMMY K. COOGLER
 CHRISTINE M. QUIGMAN, P.A.
 BURL F. GEORGE
 ERN E. GILL
 JEFFREY L. HOCHMAN, P.A.
 E. BRUCE JOHNSON *
 MICHAEL W. JONES
 RICHARD H. McDUFF, P.A. *
 ROBERT E. MURDOCH
 MICHAEL R. PIPER, P.A. *
 WILLIAM E. PLATOW
 DAVID M. SCHWEIGER
 CHRISTOPHER L. SMITH
 HELENE K. YORK

*BOARD CERTIFIED
 CIVIL TRIAL LAWYERS

FT. LAUDERDALE OFFICE:
 790 E. BROWARD BLVD., SUITE 400
 FORT LAUDERDALE, FL 33301

MAILING ADDRESS:
 POST OFFICE BOX 030220
 FORT LAUDERDALE, FL 33303-0220

TELECOPIER (954) 463-2444
 TELEPHONE: (954) 463-0100
 (305) 945-2000 - Ocala
 (951) 940-7448 - WPB

July 6, 2000

VIA FACSIMILE & U.S. MAIL

Ms. Gail Reinfeld
 Town of Davie
 Administrative Services Director
 6591 S.W. 45th Street
 Davie, FL 33314-4399

Re: LDG Corp. vs. Town of Davie
 Our File No. 99-398 MTB

Dear Ms. Reinfeld:

Enclosed please find a copy of the Court's Order on Legal Status of Property in the above-referenced matter. As you can see, the Court has determined that Town of Davie properly required LDG to obtain a variance as a result of the DOT's taking. The Court also has left undisturbed the conditions imposed by the Town of Davie for the granting of the variance. Therefore, the Town of Davie can require LDG to construct the improvements set forth in the variance and LDG can seek recovery of these costs from the DOT.

In short, the Town of Davie has prevailed and the DOT will have to pay for the improvements required by the variance. Please don't hesitate to let me know if you have any questions or comments concerning the above or the status of the case in general. I will continue to keep you advised of any further developments.

Very truly yours,



Michael T. Burke
 For the Firm

MTB/lab
 Enclosure

cc Monroe Kiar, Esquire (w/encl.)

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Plaintiff,

CASE NO. 97- 13832 (11)

vs.

JUDGE THOMAS M. LYNCH IV

LDG CORP., a Florida
Corporation, et al.,

Defendants.

ORDER ON LEGAL STATUS OF PROPERTY

THIS CAUSE having come before the Court upon the Defendant, LDG CORP.'s Motion for Determination of Legal Status of Property, and the Court having considered said motion, heard arguments of counsel, and being otherwise fully advised in the premises, hereby finds and decides as follows:

The Town of Davie is not restricted in enforcing its zoning ordinances. The diminution of the size of Defendant LDG CORP.'s nonconforming property will cause the property to lose its nonconforming status. Davie Land Development Code Z. As such, the Town may require the issuance of a variance. See Broward County v. Patel, 641 So.2d 40 (Fla. 1994) and Morr v. State Department of Transportation, 667 So.2d 888 (Fla. 2nd DCA 1996).

Although the Court recognizes the existence of State Department of Transportation v. Bennett, 592 So.2d 1150 (Fla. 4th DCA 1992) and State Department of Transportation v. Michelin, 702 So.2d 1326 (Fla. 4th DCA 1997), which state the

general rule that expenses incurred by condemnees to comply with regulations enacted after the business commenced are not compensable, those cases are inapplicable. Neither of those cases concerned the situation before the Court, where the DOT's liability for severance damages will be mitigated by the issuance of a variance, like Patel. Since the variance, which will mitigate the damages that DOT is required to pay, is conditioned upon certain changes to the property, the cost of complying with those conditions is part of the full compensation that DOT is required to pay.

Accordingly, it is

ORDERED AND ADJUDGED that:

- (1) The taking deprived Defendant LDG CORP.'s property of its nonconforming status.
- (2) The Town of Davie may require a variance to allow the continued use of the property after the taking.
- (3) The severance damages payable by DOT may be mitigated by the probability that a variance will be issued for the property.
- (4) That variance may be issued with certain conditions.
- (5) The cost of complying with the conditions for the variance is part of the full compensation to which the condemnee is entitled.
- (6) No evidence challenging:
 - (a) the loss of the nonconforming status of the property;
 - (b) the necessity of obtaining a variance;
 - (c) the reasonableness or necessity of complying with the conditions of the variance; or

(d) the requirement that DOT pay for the changes required to comply with the variance;
 will be admissible.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida,
 this ____ day of _____, 2000.

THOMAS M. LYNCH, IV
 A TRUE COPY JUL 04 2000
 JUDGE THOMAS M. LYNCH IV
 CIRCUIT JUDGE

Copies furnished to:

Jasmine Calder
 Broward County Governmental Center
 115 So. Andrews Ave., Room 423
 Fort Lauderdale, FL 33301

Laura N. Camp, Esq.
 for LDG CORP and
 Safe Alarm Systems, Inc.
 203 S.W. 13 th Street
 Miami, FL 33130-4219

Michael T. Burke, Esq.
 790 E. Broward Blvd., Suite 400
 Fort Lauderdale, FL 33303-0220