

City of Coral Gables City Commission Meeting
Agenda Item I-1
April 12, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)

Manuel Guarch

Agenda Item I-1 [0:00:00 a.m.]

A Resolution authorizing the invocation of the Forfeiture Ordinance for 1411 Mantua Avenue, Coral Gables, Florida.

Mayor Cason: Alright, the next item we're going to pick up, I-1. This is forfeiture. City Manager -- City Attorney.

City Attorney Leen: Thank you, Mr. Mayor. I would ask that I-1 be put -- we have a PowerPoint. Let me just ask -- I'll start it, and let me ask outside counsel to come down who's doing work upstairs. So, as you know, the City Commission has adopted a number of ordinances

that are addressed toward quality of life, toward improving the City, toward addressing abandoned properties, toward addressing squatters, et cetera. It -- our City is touted statewide. I go to a number of conventions and seminars and people are very interested in what Coral Gables is doing regarding public safety and all these other issues I just mentioned. So, one of the ordinances that the Commission adopted was a forfeiture ordinance. And what it does is it says in situations where you -- you know, typically it's an abandoned property, but where you have a bank and that -- and it's a non-homestead property -- so we're not looking at people's homes here. We're looking at these abandoned properties that are deteriorating. So, when you have a bank that owns a prop -- that either is the mortgage holder or, in some circumstances, the owner, but often, the mortgage holder of the property and they're not doing anything to upkeep the property, there's systemic code enforcement violations, there's often special assessments as well on the property and it's deteriorating and it's basically a blight on the neighborhood and it's harming the neighborhood and it is a -- causes a public safety issue because some of these people will go into that house, you could have squatters, et cetera. So, in those circumstances, what the Commission has done is said, well, look, if these fines continue to grow -- code enforcement fines -- and if the bank is basically willful and fails to comply with the City's ordinance which requires them to maintain this property and they just willfully fail to do it and we give them notice and they're still not doing it, at some point the City is able to come and say, you know what, you've lost the right to have that property. That property -- because basically a crime is occurring with this property. It's in violation, and it's a municipal ordinance violation and it's systemic and willful. So, at that point -- and the City also has a resolution which focuses on -- raises a lot of different issues, which the Vice Mayor had sponsored and the Commission supported, which makes sure that the City is only using this power in really egregious cases. And then what would happen in the forfeiture ordinance, it goes through the full due process that's provided by law for any type of forfeiture. The City is able to basically indicate that it's going to be seizing the property. At that point, there's a probable cause hearing in front of a judge, circuit judge. It then goes through a full -- I believe there's discovery, if necessary. It then goes through a full jury trial, if necessary. And at the end, there would be an order of forfeiture, presumably. And the party who owns the property or has an interest in the property

has a right to raise any defenses available. And our ordinance goes out of the way to make it clear that as long as you comply and you fix the property, even during the forfeiture process, the whole forfeiture is dismissed. So, the goal of the City is not to take properties. The goal of the City is to prevent criminal conduct, which at some point when you have a property that is repeatedly violating the municipal ordinance and it's being done willfully, that's the way we view it. This has gone beyond just a code enforcement violation. The community is being severely harmed. So, with that, I would turn it over to special counsel who does the forfeitures for the City. He has done -- I want you to know that there -- it's not an entirely new precedent to forfeit a house. Houses have been forfeited before under the state Forfeiture Act. It's not a new precedent at all. It's just this type of municipal ordinance is a newer type of precedent, which is why we put in place all of these due process protections and why also we have this resolution that makes sure we're only doing it for the most egregious cases. So, with that, I would turn it over to Mr. Guarch. And Mr. Guarch, you know him. He's the special counsel for the City and he works with the Reyes law firm.

Manuel Guarch: That's right. And I'm here -- Mr. Reyes would love to be here, I'm sure. Unfortunately, he is presiding as a special magistrate in a somewhat contentious case. So, with that, Mr. Mayor, Commissioners, Madam City Manager, Mr. City Attorney, thank you for having me. To piggyback on what Craig said -- and I know there is a PowerPoint -- it's also not unprecedented for cities themselves to pass their own forfeiture ordinances. This ordinance itself is unique as far as we know. However, there have been other ordinances passed by other cities in the state of Florida, which have been upheld regarding the forfeiture of vehicles. Specifically, I believe there was one in reference to DUIs, vehicles that were used in the commission of a DUI offense and solicitation offenses. So, with that, here is the invocation of the forfeiture ordinance for 1411 Mantua. This is the front door and porch area. It's indicated that it's dirty and in disrepair. This doesn't give you really the best sense of what this house actually looks like.

City Attorney Leen: It will in a second. But the reason why we...

Mr. Guarch: This slide...

City Attorney Leen: Kept that -- I just want to be clear. The reason why we kept that it's dirty and disrepair is to show you -- you're going to see some -- well, you can see right now, a severe structural issue. But in addition to that, it shows it's not even trying. It's dirty. At the very least, they could go clean it. They're not even doing that.

Mr. Guarch: Right. And at this point, this is still the condition in which the house is in today. You'll see this condition has been present for years, not just months. The ordinance itself requires that the minimum housing code violations be present in excess of six months. And the theory behind that was that if something's been in violation for six months, it's accrued fees that have accrued for that entire period. So we're not trying to forfeit a house just because they've got a \$100 code enforcement violation or \$1000 special assessment. So, this is the rooftop area. It's clearly in disrepair. It's been collapsing and it's been in that actual condition since 2013. This is also the rooftop area; it requires maintenance. This is another portion of the roof which is damaged, and not only is it clearly damaged, there was a tarp in this area; it's been removed. There are no permits which have been pulled for doing any repairs. So, either the repairs were done without permits or they simply weren't done. This is the corner of the house. Now, here's what I was discussing earlier. Since 2009, there's seven special assessments which result in \$3,000 that have accrued to the City -- or that are owed to the City. There are three pending cases for code ordinance violations that have been pending since as early as October 27, 2010. It's \$596,000 in code enforcement violations. That's in excess of the assessed value of the house and this goes to a concern I know Commissioner Slesnick had last week when -- or I think it was at the last Commission meeting where there were assessed ordinance violations that we never collect on. This is a way to attempt to collect on that, and not only going through the forfeiture ordinance and obtaining the property. But, for example, if the bank were to bring the house into compliance, that doesn't wipe out these code ordinance violations. But once the forfeiture action's progressed -- we do this all the time in police cases regarding property that is being forfeited under the FCFA. You can settle the action for something less than what's going to be

seized. For example, the bank could say, okay, we recognize that we haven't met all those obligations. We'll pay \$100,000 or a fifth of the code enforcement violations and we'll bring it into repair. Obviously, that would be something for the Commission and the City Attorney to consider in deciding whether or not to settle so it doesn't become a situation where, oh, if we repair it, they'll just wipe it out and then we can sell the house. These are the code violations. The reason I bring these up and the reason those pictures are there is because the Commission has to make a particular finding that this forfeiture would promote the health, safety and welfare of the community. The -- two of the violations are for the porch being in disrepair and the structural violation. These are all minimum housing code violations. They present danger to the public, anybody who would approach the front door of that house. And they simply present a danger to children. There's a school that's less than one mile away from this residence. It might present an attractive nuisance to children who are walking by, might see it and wonder what's going on in that house. It's clearly abandoned. It also presents an opportunity for squatting, which I know the City has fought against very hard. So, you can see the dates the violations have been pending since, 2013, so three years now, well in excess of the six-month requirement. These are the additional violations that aren't visible in the photographs. The property is not well maintained. There's the discussion regarding the tarp. A formal demand for compliance was sent on March 23. The deadline for compliance or at least some substantive steps towards it was March 30. They have not complied. There's been no work done on the -- what are essentially the main minimum housing code violations.

Mayor Cason: Could you tell us who they are?

Mr. Guarch: Yes.

Commissioner Keon: JP Morgan Chase.

Mr. Guarch: They are...

Mayor Cason: And the bank.

Mr. Guarch: It's a bank.

Commissioner Keon: JP Morgan Chase.

Vice Mayor Quesada: Is it JP Morgan Chase or US...

Commissioner Keon: I think it's J -- it's National Home and then JP Morgan Chase.

Commissioner Lago: And what was...

Mr. Guarch: That sounds right.

City Attorney Leen: Well, wait. Let me just confirm.

Commissioner Keon: Yeah, US National...

City Attorney Leen: We sent out several...

Commissioner Keon: Association.

City Attorney Leen: Demand letters because we sent them out to every single party that could possibly have an interest. So, I think there were like six in this case -- don't hold me to that, but there was a number of them. The one that we've attached is to the -- yes, US Bank National Association as trustees for the holders of the JP Morgan Alternative Loan Trust.

Commissioner Lago: And when was the last time this property traded hands?

City Attorney Leen: I believe the -- let me just -- give me a second.

Mr. Guarch: It was foreclosed. I don't have the date of the foreclosure. It was JP Morgan Chase and US Bank that foreclosed on the note. So, we've also notified both the foreclosing lender as well as the prior property owner of the note, the mortgagee.

Mayor Cason: I would suspect if we pass this, we'll get their attention very quickly.

Commissioner Keon: Get their attention.

Mr. Guarch: I suspect we would.

City Attorney Leen: No, they -- I want to be clear. They have -- we have received some emails through Alex Palenzuela, who does our code enforcement...

Commissioner Lago: Okay.

City Attorney Leen: That from the property manager that they are -- you know, that they're doing landscaping. They have a landscaping bid that was approved. This is all in response to this demand letter and what we've been asking them to do. Further trimming the trees and shrubs. The property's going to be placed on a list to have its grass mowed every two weeks. The bid for trash and debris was canceled because the contractor did not find any. The roof and porch repair bids have not yet come in, but he expects they will have a response on each by the end of the week. So, what this shows is that they are taking action, but what hasn't happened -- and Manny's correct -- they haven't taken any action yet to fix it. And I want to be clear that the demand letter was sent very recently to let them know that forfeiture was an option and that we wanted immediate compliance. But this has been pending through code enforcement cases for years.

Mayor Cason: This could be the last little push to get them to really do something. So, as you say, if we pass this, it will stop if they actually...

City Attorney Leen: Yes.

Mayor Cason: If we reach an agreement so...

City Attorney Leen: Yes.

Mr. Guarch: And the ordinance the Commission has specifically indicates that the goal is to compel compliance, and that if compliance is obtained, the City has discretion to obviously, you know, settle the case or withdraw the...

Mayor Cason: Even apart from this particular case, it sends a good signal to others that just -- they can blow us off, that we're serious.

City Manager Swanson-Rivenbark: Commissioner Lago asked when did the property change hands. Purchased in 2002 for \$450,000; foreclosed in 2015 -- in 10/15/2015, and it's a non-homesteaded property. It was really important to you that we're not addressing homesteaded property where people are living there. This is a perfect example for a forfeiture.

Commissioner Lago: The reason why I asked that -- and it's a very simple question is due to the strength of the market and the location of this home, why hasn't this property traded hands even if it's in disrepair as it is? If that property would be placed on the market today, it would sell immediately.

Mayor Cason: It's \$600,000 in liens.

Commissioner Lago: Covering all that debt.

Mayor Cason: I mean, that's...

Commissioner Lago: That location, that's a stone's throw from my house.

Commissioner Keon: It's a nice -- yeah, it's a nice neighborhood.

Commissioner Lago: I would buy it if they would give me the option. I mean -- and I bet you a lot of people in this room would buy it.

Commissioner Slesnick: Has anybody been by to see the house?

Commissioner Lago: Yeah, I've driven by the house.

Commissioner Slesnick: Have you gotten out and looked at the front? I mean, the pictures do not do this house justice as far as the disrepairs. Because on the front porch, there is lumber all over the front porch with nails sticking up and so forth and you don't see that in the pictures.

Vice Mayor Quesada: The land value is worth more than the house.

Commissioner Lago: Don't forget -- and I've told you before, when I bought my home four and a half years ago when I moved from Edgewater, my home was a foreclosure. It was abandoned for four years so...

Commissioner Slesnick: But this house would need -- this house probably needs at least \$200,000 put into it with a new roof and those broken windows and a lot of repair of the wood and so forth.

Mayor Cason: Who knows what it's like inside so -- alright.

Commissioner Lago: But they're paying the taxes on it. The bank's been paying the taxes on it, so they're carrying this property. Even though they may not be providing maintenance on it, they're paying the taxes on it which has to be at least five or six thousand dollars a year on a property of that magnitude. There goes the City Manager. She's going to look it up for me.

Commissioner Keon: I don't think the house -- has the house been foreclosed on?

Vice Mayor Quesada: Yes.

Commissioner Lago: Yeah, 2/15.

Commissioner Keon: It was foreclosed on?

Mr. Guarch: It's been foreclosed. It's on appeal, but it...

Commissioner Keon: In 2/15?

Mr. Guarch: Definitely has been foreclosed. But we've...

Commissioner Keon: And it still remains on the bank's books as an asset?

Mr. Guarch: Yes.

Commissioner Keon: I mean, I think the biggest reason is for that reason is that it's an asset on the books of the banks. They don't want to write them off as a liability because if, you know, everybody keeps pushing, there's a lot of properties out there those banks are going to get.

Mayor Cason: The squeaky wheel gets the grease.

Commissioner Keon: So, you know, it's the louder we are, you know, and the more persistent we are, the more likely we are to, you know, get these things cleaned up. Last week I saw in the real estate section the house on Cortorro in the French village that we went after, that house is on the market now for \$2.4 million, so it's now on the market. And last week we -- the judge --

City Attorney Leen: Yes, on the Granada.

Commissioner Keon: Put the house -- the Granada house by Temple Judea...

City Attorney Leen: Yes.

Commissioner Keon: Into receivership and did the...

City Attorney Leen: Well, it was in receivership.

Commissioner Keon: Right.

City Attorney Leen: And he allowed the receiver to go forward with the contract, so we're going to be seeing construction very shortly on that project. I looked through the demand letters. We sent six demand letters it looks like. We did say in the demand letter that we might foreclose. That's where my confusion was. But what happened was the bank forecloses. And the reason why foreclosure is not a great option for us is because all of our code enforcement liens are junior to the bank. And what we really needed -- it's not really about our liens. It's about getting the bank to take action. And the problem is that when these liens are junior, there's no real reason for the bank to take action, so that's why we adopted these other ordinances to compel action.

Mayor Cason: Let's give them a reason to take action. So, do we have a motion?

Commissioner Keon: Okay, so I would move this item.

Mayor Cason: Commissioner Keon makes the motion.

Vice Mayor Quesada: Second.

Mayor Cason: Vice Mayor seconds. City Clerk.

Vice Mayor Quesada: Yes.

Commissioner Slesnick: Yes.

Commissioner Keon: Yes.

Commissioner Lago: Yes.

Mayor Cason: Yes.

(Vote: 5-0)

Mayor Cason: Thank you.

Vice Mayor Quesada: Thank you.

Commissioner Keon: Thank you.