City of Coral Gables City Commission Meeting
Agenda Item I-1
February 5, 2013
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission
Mayor Jim Cason
Vice Mayor William H. Kerdyk, Jr.
Commissioner Maria Anderson
Commissioner Rafael "Ralph" Cabrera, Jr.
Commissioner Frank Quesada

City Staff
City Manager, Patrick Salerno
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia

Public Speaker(s)
Alexander L. Palenzuela, Outside Counsel for the City

I-1 [Start: 11:30:30 a.m.]

Discussion regarding remedies related to squatters

City Attorney Leen: Thank you Mr. Mayor. At the last Commission meeting I was asked to come back with background materials related to remedies either currently available in or City Code and Zoning Code related to squatters, or possible changes to these Codes that could occur in order to remedy the issue of squatters. The way this has come up is over the last six months, I'd say, we've had several instances where City staff has been informed that residents are concerned that squatters are in a vacant or abandoned property.

Mayor Cason: Excuse me, we've had several, do you have a precise number?

City Attorney Leen: I recall three.

Mayor Cason: Three – OK.

City Attorney Leen: And one of them I believe resolved itself, but one of them came up several months ago on El Rado Street, and the City looked into the issue and outside counsel who will speak shortly, assisted us with that, but we looked into the issue of whether that house met the minimum standard in our Code, the one that had squatters in it on El Rado Street, and found that there was no running water to the house and that constituted not only a violation of our Code, but also an emergency of sorts because it was an unfit dwelling under our Code and we were able to use certain provisions of our Code to placard the building to make sure people couldn't live there and to order the inhabitants to leave and that worked out fine and they did indeed leave. That was the first squatter issue where we were able to address and we were able to do it under our existing Code. Well another issue has come up on Sunset where we've been informed for some time that there were squatters living in that residence. They had been violating certain provisions of the Code related to, I think putting their garbage out not on time and that's been addressed, but the issue of having squatters there has not been addressed. I was asked at the last Commission meeting to look into where there were any possible remedies related to that and could we look at other cities throughout the state and country to see if there were ways that we can strengthen our Code, so that in the future if there is a complaint of a squatter we can take immediate action; and I will have outside counsel present now on that issue and then I will have a few additional comments, but what I think you will find is that we do have a number of mechanisms in our Code that can be used to immediately go after squatters and there are some changes that we can make that are relatively minimal that can make that even stronger.

Mr. Palenzuela: Good morning Mayor and Commissioners, Alexander Palenzuela, the Law Offices of Alexander L. Palenzuela, and I put together some materials for your review. The first thing I included was a definition, a dictionary definition of the terms squatters because it's not defined either in the City Code or state law, and basically it is anyone who is in possession or present on the property without authorization. So the legal term that's closest would be trespass. Now the City Code already includes provisions that allow you to deal with squatters basically by trying to prevent them from coming to the property by requiring in Chapter 34, the Abandoned Real Property, chapter of the Code, requiring of the owner to secure the property so they never come on. The Code also allows the Code Enforcement Board to order the owner to take additional measures to prevent the property from further deteriorating. The problem with that is it means you first have to get before the Board or the Special Magistrate, so they can make that order. Now, I'll get into details with the other ordinances, but there are things the City can do if it chooses to, to strengthen its ability to deal with squatters. Another provision though under the existing Code is that the City Code has a general provision adopting all state misdemeanors as provisions of its Code, so you can actually rely on the existing laws, the criminal laws in Chapter 800, in the Florida Statutes that prohibit trespassing to address the issue of squatters, but again there are things that can be done to improve…

City Attorney Leen: I did want to clarify one thing there. Yes, it's a criminal misdemeanor, but we would be citing it as a violation of the Code.

Mr. Palenzuela: Correct.

City Attorney Leen: So it would be civil, you don't have to cite that as a criminal violation, you can cite it as a violation of the Code.

Mr. Palenzuela: Right – so rather than the police arresting them for trespassing the Code Compliance Officer issues a citation.

Commissioner Cabrera: Are there any enforcement provisions for the mortgage company?- is there anything – the banks?

City Attorney Leen: Well the bank could eject the squatters, or if they are there under some sort of claim of right, they could evict them.

Commissioner Cabrera: I guess what my question is, if the bank owns the property couldn't we in fact then apply the Code to the bank and expedite the process whatever that process is?

Mr. Palenzuela: Well, two things; number one, the banks generally take the position that until they actually acquire title in the foreclosure there is nothing they can do about squatters; and the second issue though is that there is nothing in the Code and that's one of the changes the Commission could make if they wanted to, that actually requires the property owners to remove the squatters once they are present. In other words....

Commissioner Cabrera: The chances of that happening, the chances of the property owner removing – take me through this and I don't mean to keep interrupting you, but take me through a practical approach as to how a property owner would then remove a squatter?

Mr. Palenzuela: If it's a bank, they can authorize the police to warn people that they are trespassing and then remove them that way. They could also go to court and file an action either for eviction or for ejectment. There are things they could do; they could post the property, so that once the trespassers are on there, they are presumed to be there without the authorization of the owner...

City Attorney Leen: For example, one thing we might think about doing is in our abandoned property ordinance put on the form that they fill out maybe they could check off that they would

allow police to eject any squatters, you could get some sort of notarized statement giving you the permission of the land owner to do that, that would be one example.

Mayor Cason: I guess a lot of the problems are the banks may not even know, they have so many of these that somebody is in there.

Mr. Palenzuela: Right – and generally once the City finds out they get in touch with the person who is responsible for maintaining the property on the vacant property registry, which most of the properties are registered, if they are not that's a separate issue.

Mayor Cason: We did that with Cotorro problem, didn't we?- with Bank of America.

City Attorney Leen: Yes that was one of the other issues that came up.

Mr. Palenzuela: Right – and you'll see from the sample ordinances I gave you, not only from Florida, but across the country the things that the City can specifically do to increase the tools that it can use to combat the problem is to specifically prohibit squatters so that, that in itself is a Code violation for which you could cite the squatter and the property owner, and you could also impose a duty on the owner to take action to remove the squatters by the various methods to be discussed. There is an ordinance out of Modesto, California that actually allows the government, in that case they call them the health officer, to take action to remove the squatters if the property owner doesn't and that's the boldest of all the ordinances I saw.

Mayor Cason: Excuse me, if the bank says it's not their problem until they finish the foreclosure, who would be – if it's a bank owned property how would that fit?

Mr. Palenzuela: Technically it's the responsibility of the titleholder at that point still. There might be a way to remand Chapter 34 to increase the mortgage company's duties to post the property to increase security measures to prevent people from coming on to the property. They'll take the position that until they own it they really can't authorize if they be removed because they are not the owner or other authorized person. The only way really to counter that, I've had to do it for municipalities in the past, is to remind the mortgage company that they do technically have the right to prohibit waste on the property based on the mortgage document, so at that point you send them to court in the foreclosure action ask them to file a motion getting permission from a judge to then go on the property and do what's necessary to remove the squatters. That's an extraordinary remedy though, and I think there are things that can be done under the Code to strength the City's ability to deal with. I won't get into too much detail about what other legal provisions can be put in, there are presumptions of whether they have authority or not, but there are other things that can be done.

City Attorney Leen: I might suggest to the Commission that if you are interested in an ordinance change to look at the abandoned property ordinance, we could probably put additional provisions in there related to squatters and that's something that would just be a text amendment, but the other thing we did want to say was that, and I believe it was just said very well, is that we do have provisions in the Code and if the Commission whether you want to do an ordinance change or not, if you direct us to use all available means we will.

Mayor Cason: Question about the people that are snuckered that think somebody gives them a lease and says they own a home, they sign a lease, they have a document, they pay, they move into the home, is there a way to – how do you handle people like that?

Mr. Palenzuela: Well, I put a case in the supporting materials where the landlord was claiming someone was a squatter because they said they hadn't authorized it, that ended up in landlord-tenant court because the person was claiming they did have authority to be on the property from the actual landlord. So the court had to distinguish there between tenant and a squatter. Those situations it will be fact based and to see whether or not the person had actual authority. I'm afraid that if the person believes they are a tenant they may avoid let's say criminal responsibility if the police tries to arrest them for trespassing, but I don't think that it would help them in avoiding being removed as trespassers in the sense that they really had no authority from the actual owner. Somebody who is not representing the owner as the authorized agent can't authorize someone else to go on the property as a tenant or otherwise.

Commissioner Anderson: Thank you very much. I appreciate the work that you've done and also the presentation. My initial thoughts and also in speaking with our City Attorney is I think, I speak for myself, but I'd like for us to definitely have our Code Enforcement Department enforce as much as they can within the existing framework that we have already. I don't know what the will of this Commission as far as text amendments or changes to the ordinance, I'm certainly willing, but I'd love to hear what my colleagues have to say, but definitely I would like for us to use our existing ordinance to do what we can at this point.

Commissioner Cabrera: But I get the sense that you would even feel comfortable in enhancing the ordinance.

Commissioner Anderson: Absolutely.

Commissioner Cabrera: Yes, I so would I.

Mayor Cason: So would I. I think that if you all could come up with something that would make it – we don't have a lot of cases, but we certainly don't want to have a lot of cases and if we could come up with an ordinance or a change whatever vehicle is there already, whether it's the abandoned property that would make it easier for us to enforce and get rid of the squatters, I think it would be great.

Commissioner Anderson: Yes.

Mayor Cason: Bill?

Vice Mayor Kerdyk: Yes, I'm totally supportive.

Mayor Cason: So do you want to have a resolution Maria that....

Commissioner Anderson: Yes, I'd like the resolution to encompass that we look at enhancing our ordinance, anything else that anybody wants to add, I'll make that motion.

City Attorney Leen: So the way I would draft it, if it's OK to do that, we would use all these available mechanisms and that we would come back to you with a proposed ordinance probably focused on abandoned property.

Commissioner Cabrera: Would you be agreeable to meeting with us individually on it?

City Attorney Leen: Yes.

Commissioner Cabrera: So we can each express our thoughts as to some ideas, because you and I worked on and the Mayor and the three of us worked on that El Rado squatters issue and I think you did some really great stuff using the existing ordinance, but I think there are some enhancements that could be added to it from the Code. So, I'd like to talk to you about that more in depth privately.

City Attorney Leen: Yes.

Mayor Cason: Do we have a second.

Mr. Palenzuela: As Mr. Leen had already pointed out that, that was a different remedy in that it was an unsafe structure because....

Commissioner Cabrera: Minimum housing standards was the issue, that's how we were able to get them.

Mayor Cason: That was a way to "skin the cat". Alright, we have a motion by Commissioner Anderson, seconded by the Vice Mayor on the resolution. Oh, I'm sorry and Marlin Ebbert you want to speak?

Commissioner Anderson: Sure come on up.

Ms. Ebbert: Good morning, my name is Marlin Ebbert and I live at 6935 Almansa Street; and this property is directly across the street from me. This is a property on Sunset that's an entire block, it runs from Tordera to Almansa and if you walk out my front door and I run right into their wall. I've lived there for 12 years and I would say that this property has been empty for the last five, and I first reported this to the City when I was walking by one day and I was aware that the air conditioner was on, it was a new sound, and so I knew somebody was living in there; and there is a wonderful Code Enforcement officer by the name of Michael Ka…

Commissioner Anderson: Kattou.

Ms. Ebbert:…Yes, he has been great, he is all over this, and you know I must say that these people decorated for Christmas, its surrounded by a wall that has been filthy for years, they cleaned the wall, they pressure cleaned the wall. I was having book club one night, they cut the grass, so people could park there. I don't know what the answer is, it's almost better to have somebody in there that's taking care of it than having it empty. Empty, I think the fear is that people come for a couple of nights and they rip out all the fixtures; and I think it's a family in there, Michael said that they don't answer the door because then I guess he could evict them and they are paying the bills, and Michael said that FPL really doesn't care who pays as long as someone is paying. So you know, I think the whole issue across the country is they've got to get these houses moving, its years that some of these houses are in foreclosure.

Mayor Cason: Yes, it's part of the problem.

Commissioner Anderson: Thank you so much.

Mayor Cason: Alright. We have a motion to approve the resolution to draft an ordinance.

City Clerk

Vice Mayor Kerdyk: Yes

Commissioner Quesada: Yes
Commissioner Anderson: Yes
Commissioner Cabrera: Yes
Mayor Cason: Yes
(Vote: 5-0)

Mayor Cason: Thank you very much.

Commissioner Cabrera: Thank you sir.

[End: 11:46:00 a.m.]