

City of Coral Gables City Commission Meeting
Agenda Item E-2
October 28, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

Interim City Manager, Carmen Olazabal

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Bruno Lopes, Vice President, Miami Realtor Association

E-2 [Start: 12:40:54 p.m.]

An Ordinance of the City Commission of Coral Gables, Florida amending the Code of the City of Coral Gables, Florida by creating Sections 34-175 through 34-186 of the City Code, “Forfeiture of Abandoned Real Property” of Chapter 34 “Nuisances”, to create a process by which the City can take and perfect right, title and interest in and to such properties which are or remain in violation of the City Code or Zoning Code; and providing for a repealer provision, severability clause, codification and providing for an effective date. (Continued from the October 14, 2014 City Commission Meeting).

Mayor Cason: Let’s move onto Agenda Item E-2, this is an item on First Reading. Item E-2 is an Ordinance on First Reading relating to amending the Code of the City of Coral Gables regarding Forfeiture of Abandoned Real Property.

Commissioner Quesada: I would ask if we can push this back after the next one because the individual from the Realtor Association, I know he stepped out for a second.

Mayor Cason: That's fine.

[Note for the Record: The Commission took up another item and then resumed with E-2 at 1:10:44 p.m.]

Mayor Cason: Let's go back to E-2. E-2 is an Ordinance on First Reading of the City Commission amending the Code of the City of Coral Gables by creating Sections 34-175 through 34-186 of the City Code, "Forfeiture of Abandoned Real Property" of Chapter 34 "Nuisances", to create a process by which the City can take and perfect right, title and interest in and to such properties which are or remain in violation of the City Code or Zoning Code; and providing for a repealer provision, severability clause, codification and providing for an effective date. And this was continued from the October 14, 2014 City Commission Meeting.

Commissioner Quesada: Now Mr. Mayor considering that this is Craig Leen's item. I hate to say it but maybe we should wait until he is back in the room.

[Note for the Record: The Commission resumed Agenda Item E-2]

City Attorney Leen: Read it on the Manager's behalf. E-2 An Ordinance of the City Commission of Coral Gables, Florida amending the Code of the City of Coral Gables, Florida by creating Sections 34-175 through 34-186 of the City Code, "Forfeiture of Abandoned Real Property" of Chapter 34 "Nuisances", to create a process by which the City can take and perfect right, title and interest in and to such properties which are or remain in violation of the City Code or Zoning Code; and providing for a repealer provision, severability clause, codification and providing for an effective date. This was continued from the October 14, 2014 City Commission Meeting. What this ordinance does it's a continuation of a number of ordinances that have been passed by this Commission related to abandoned properties, to squatters, and to improving neighborhoods where these abandoned properties are. This particular provision was placed on the agenda by Commissioner Keon and I'll turn it over to her if she wants to say a few words. What this provision attempts to do and seeks to do is, it's not a takings ordinance, it's not an eminent domain ordinance, it's not an abandoned property ordinance we already have that, it's not a squatters ordinance. What this does is it says, if a financial institution for a property that's been on the abandoned property registry, so remember it has to be on the abandoned property registry, which means there always has to be a mortgage holder involved who is foreclosing, so if there is a bank that is foreclosing as the mortgage holder and they either continue to be the mortgage holder or they become the owner through that foreclosure or something related to that

foreclosure and they do not fix a property up for more than six months, so they just allow it to linger there. That is a municipal ordinance violation, it's a continuing one, and following that time period the City has the authority under this ordinance to initiate forfeiture proceedings. Now what is a forfeiture?- it's a quasi-criminal type proceeding, so the way it would come up usually is if someone – an obvious forfeiture is some illegal things like contraband. If someone is using illegal drugs and the police capture them those drugs would be, they are basically confiscated, but it's a form of forfeiture. The type of forfeiture we are talking about though can involve legal things, but they are things that are used as an instrumentality of a crime or used as part of the crime or related to the crime and that's defined by statute; and so for example, if someone rides a bicycle to commit a burglary and they use the bicycle in the course of the burglary and then they are escaping and the police capture them, the police can initiate forfeiture proceedings related to the bicycle. They can seize it because it's been used as part of a crime they can forfeit it. Basically it's to prevent people, and of course you've probably heard much larger things that are forfeited, counter-fit money, actual money that's used as part of any sort of illegal enterprise, cars, vehicles, and we actually do forfeitures as well. Judges Reyes and Manny Guarch are the attorneys who do forfeitures for the City and they are very successful in doing them. I asked them to put together an ordinance that would apply those principles to situations where you have a residence where basically a bank has abandoned it even though they have an interest in it, either a legal or equitable one, but they are basically allowing it to linger there, they are not doing what they are required to do by the Code, which is illegal, which violates the Code, they do this for a six month period or more. At some point they become complicit on what's happening with that house and that house becomes part of their criminal activity because it's the house itself, its condition that is the illegal conduct. So it's not just the property owners, it's the bank, because our Code places a burden directly on the banks, so what this ordinance allows us to do is initiate forfeiture proceedings in those limited cases and we can proceed and there is due process, there is a process related to this, it goes to court, there is a right to a jury trial. A lot of these forfeiture proceedings get resolved prior to that either the other side doesn't show up and basically defaults or there is a settlement, a lot of times how these are resolved. It's very possible that's how these will resolve, these particular cases and hopefully the bank would agree to comply with the law and basically fix the property once that period of time has passed and they realize they are going to lose the property because of the illegal conduct.

Mayor Cason: Is this legislation unique in Florida?- are we one of the first to go this far?

City Attorney Leen: Forfeiture provisions are not, applying it in this context is. We are at the forefront. The reason why I feel comfortable being at the forefront here is, I did have two experts in this area look at this; two attorneys that do this area a lot, which is Izzy Reyes and Manny Guarch, I looked at it myself. The reason why I like it is because there is all this process; you have to go to Circuit Court. It's not like we are going to be forfeiting the property and then

someone can sue us. There is actually a process in place already under Florida Law that we will go through. So if someone raises a valid objection we can either start proceeding with that particular forfeiture or they will win in court and then we don't end up with the forfeited proceedings. That's like any other forfeiture, but if we do obtain the forfeited property and we do it through the valid process, I don't see a valid way to challenge that in that proceeding.

Mayor Cason: Now I think what's going to happen is that, I think we only have 13 bank-owned properties, something like that, is that correct?- that are in this?- there is a small number.

City Attorney Leen: In the chart that we gave you?

Mayor Cason: Yes.

City Attorney Leen: Yes. These are the ones that we are monitoring; I don't have the specific numbers.

Mayor Cason: I think this is good because most likely it's going to get the attention, it's like a cold bucket of water on a bank that may have lots of these and get around to it whenever they get around to them and nobody bothers them, but I think this will be a wakeup call and it might get, as you say, a lot of these things resolved before they ever get to a forfeiture, so it's an incentive for banks to pay attention. Do we have anybody that's going to speak?- people want to speak?

Commissioner Keon: I think we have somebody that wants to speak on it.

City Attorney Leen: And while he is coming up, I did want to say, I spoke with – and I don't want to take what you are going to say, I do want you to know that real estate agents their association called me, we need some amendments to the ordinance to address their concerns. I don't know if it addressed all their concerns, so I'll let him speak and then I can always respond and let you know.

Mayor Cason: Why don't address that – state your name.

Mr. Bruno Lopes: Thank you Commission, thank you Mayor, my name is Bruno Lopez, I'm with the Miami Association of Realtors, and I'm the Vice President of Government Affairs there.

Mayor Cason: Shouldn't he be sworn in Walter? Walter?

City Clerk Foeman: Yes. Do you solemnly swear or affirm that the statements that you are about to make will be the truth and nothing but the truth.

Mr. Lopes: I do.

Mayor Cason: Go ahead.

Mr. Lopes: I also have a property at 1465 Certosa Avenue, but today I'm here on behalf of the 34,000 realtors that we represent, including 1,300 in Coral Gables. First we appreciate the assertiveness the City has shown to get properties back to performing level, you've had several ordinances that have done that and we support the overall goal. Our concern with this ordinance, in particular is one, this Commission is not always going to be here and how it's used in the future is a concern once it's on the books, there are a lot of ways this can go wrong, including tying up the City in many lawsuits if it's not used appropriately. The final concern is that it's a private property issue, is it justified to forfeit a property because there are Code violations, is there another way to enforce those ordinances?- that's what we would like to explore with you guys. We have hired a consulting law firm, a national law firm to analyze this and if you guys would give us the time, if the Commission would be kind enough to give us the time we'd love to share those findings with you. We should have those returned within the next week or so, so maybe by Second Reading I'll be able to take those to each of you.

Commissioner Quesada: OK. Can you just make sure that whatever results they have they speak directly with our City Attorney?

Mr. Lopes: Sure – and like he stated, we've been in contact.

Commissioner Quesada: We would love to hear the feedback.

City Attorney Leen: We want to make this as good as possible. I can tell you on behalf of myself, as City Attorney, I know the Commission, so if you have any suggestions please, I'll work them in and we can present it for Second Reading.

Commissioner Quesada: Or if you want even before they are done, put Craig in touch with them so they can be speaking and maybe he can provide information so that they can perform their work a little bit quicker and more efficiently.

Mr. Lopes: Yes. I'd be happy to do so.

City Attorney Leen: And just for purposes of the record. One thing that – there was a concern from the Commissioners was how would this affect individual property owners who are in the house?- and so the focus of this and we try to emphasize that in the cover memo and the Whereas

clause in terms of the intent and how this was going to be used, and so it's in the ordinance, is that its focused on these bank-owned properties that are vacant basically where the bank either comes in as the property owner or has this equitable interest as a mortgage holder and they are not doing anything to fix up the property; and we can talk about, assuming this ordinance is passed and obviously that's up to the Commission, we can talk about how you want to enforce it at that time too and you can direct us.

Mr. Lopes: We are aware that it's only for bank-owned properties and we have spoken with the bankers, they are going to have a position on it as well, something I can put you in touch with them as well.

Mayor Cason: OK. Well, I think in order to – you can come back before you do the second hearing on this and with either of you we can modify this, but in order to move this forward otherwise we only have one meeting in November and December, I think we should vote on this now and we'll come back for second.

Commissioner Quesada: I'm going to make a motion, but I'm going to amend the motion to include that the City Attorney meet with your counsel prior to the next meeting, so we can be prepared for what the discussion is going to be with the specific portions of potentially being objected to and hopefully we'll get everything get worked out and everyone is on the same page.

Mayor Cason: OK.

Vice Mayor Kerdyk: I'll second that.

Mayor Cason: So Commissioner Quesada makes the motion and the Vice Mayor seconds it.

City Clerk

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes

Commissioner Quesada: Yes

Commissioner Keon: Yes

Mayor Cason: Before voting I want to make sure there was no other business of public hearing, any other speaker cards, so we'll close the public hearing and I will vote yes. Thank you very much.

[End: 1:48:08 p.m.]