

City of Coral Gables City Commission Meeting
Agenda Item E-5
February 25, 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

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

George Volsky, Coral Gables Resident

E-5 [Start: 9:56:13 a.m.]

An Ordinance of the City Commission amending the Code of the City of Coral Gables, Florida by amending Article VI “Abandoned Real Property” of Chapter 34 “Nuisances”, to charge an additional fee for vacant properties; to all City Police Department to issue trespass warnings for vacant properties; to grant the City Attorney the authority with the approval with the approval of the City Manager or designee, to initiate court action to abate the public nuisance; declaring unlawful the failure to register or maintain a vacant property by the mortgagee or property owner; and providing for severability, repealer, codification and an effective date.

Mayor Cason: The final Agenda Item E-5 is also an Ordinance on First Reading in connection with Article VI “Abandoned Real Property” of Chapter 34 “Nuisances”. Mr. Manager you are going to read the....

City Manager Salerno: Thank you Mayor. Item E-5 is An Ordinance of the City Commission amending the Code of the City of Coral Gables, Florida by amending Article VI “Abandoned Real Property” of Chapter 34 “Nuisances”, to charge an additional fee for vacant properties; to all City Police Department to issue trespass warnings for vacant properties; to grant the City Attorney the authority with the approval with the approval of the City Manager or designee, to initiate court action to abate the public nuisance; declaring unlawful the failure to register or maintain a vacant property by the mortgagee or property owner; and providing for severability, repealer, codification and an effective date. Mayor and Commissioners this item has been in discussions between myself, City Attorney and staff, and I assume the City Attorney would like to address the item.

City Attorney Leen: Thank you Mr. Manager, thank you Mr. Mayor. This proposal was raised at the last Commission meeting and I was directed to prepare an ordinance that addresses a number of issues related to the abandoned property ordinance. What came up at the meeting and the focus of this proposal is vacant properties. The concern was that unlike abandoned properties that are occupied, vacant properties have a unique set of concerns because there is no one in the property to maintain it, and there is no one in the property to make sure that someone doesn't come in and occupy it, someone like a squatter, for example, and there is no one present to provide trespass warnings or to ensure that the property isn't used for negative purposes. So, I was asked to take a look at the matter and I spoke with outside counsel and then I put together this proposed ordinance. It meets a lot of the goals I believe of the Commission. Basically, I'll take you through it very quickly. The Commission is making a number findings that this is a concern that needs remedial action; the first thing that we are doing is on the registration requirement, we are requiring the mortgagee, which is generally the bank to list the name of their general counsel or legal department when they register the property. The purpose behind that is to make sure that there is someone that I can contact as City Attorney directly and raise this to a fairly high level in the bank or in the company that's the mortgagee. Right now we usually get a service provider, sometimes the service provider responds, sometimes they don't. If we are taking an adversarial position with them, I feel uncomfortable as the City Attorney directly contacting them, so usually then I'll go through staff, but ultimately I want the ability to, under this ordinance. I with that approval of the City Manager am given a fair amount of authority to take action against these properties and I need someone that I can contact at the bank, so that's the purpose of that provision. It was worded in this way, it doesn't require a bank to obtain counsel, if the bank does have counsel they are required to list the person. Secondly, the registration fee is presently \$200, it's an annual fee. For a vacant property the proposal is that it be raised by \$600 to a total of \$800 per year. The theory behind that is that these vacant properties take a lot more time, both from Code Enforcement and from the Police, and we want to know where these vacant properties are, we want to be able to monitor them, if squatters go

into the property, we want to be able to enforce the squatter ordinance against them. This cost additional money and additional time.

Mayor Cason: Can you define vacant – we were just talking about a building on a vacant piece of property, not a piece of vacant property with grass and weeds.

City Attorney Leen: Vacant is defined in the ordinance and it is defined as a property that can be lived in, basically a residence where no one is living in there. I could be more specific, but that's basically what the definition is.

Mayor Cason: It has to be a dwelling on it that's vacant.

City Attorney Leen: It has to be vacant. The next change is that and this is based on the remedial power of the City to take action against the public nuisance. This basically allows – in filling out the registration form and submitting the registration form to the City, the mortgagee and/or the property owner are granting the City authority to issue trespass warnings for the property, which basically means that people are hanging out in the property or around the property. This would allow the police to order them to leave, if they don't leave the Police could arrest them. So the theory is to allow the trespass after warning provision of the Florida Statutes to apply to these properties when there is generally no one available to give a trespass warning.

Mayor Cason: The list of registration that we had passed a couple of years ago, are people actually, banks and other actually filling that out?- are we finding that it's being ignored or they don't know about it?

City Attorney Leen: Yes, we have several hundred properties that are listed, that are being filled out by banks and/or property owners. Generally the bank or the mortgagee, they generally list a service provider. A portion of those are vacant, but yes, banks are participating. What happens is, if we find a property, we get a complaint about a property, and we see it's not on the ____ of property registry, Development Services and Code Enforcement sends that to the contractor who's this program, they'll look into it and if they are not registered we then site the bank.

Mayor Cason: Are we finding any of these where nobody knows who owns them, or it's very confused because it's been bounced around from 2008, nobody knew who owned half of these properties.

City Attorney Leen: The way that that's come up is that sometimes these properties are in foreclosure and the property owner has absconded, has left, and there is a question, and occasionally we had one several months ago where a company had put a fraudulent, basically a

fraudulent deed in the public records, which was the subject of a criminal investigation, but it messed up the chain of title because now it was unclear who was the owner?- who was not the owner?- was it legal?- was it illegal?- and that's one of the reasons why we passed a squatters ordinance, which we have not actually had to use. Every time we've raised the squatter ordinance, at least in my experience, the individuals have left, so it's been a very good tool, because they see that we mean business and I actually recently went out to a property with the Police and Code Enforcement where there was a squatter and we were going to do the squatter ordinance and they just left. The next provision under 34-168, "Public Nuisance", this is really the heart of the proposal. It gives the City Attorney with the approval of the City Manager or designee the ability to initiate court action and to seek an injunction requiring that the public nuisance be abated, basically requiring that the Code violations be fixed. In addition, it allows us to initiate foreclosure or forfeiture proceedings when that's appropriate. In addition, it basically establishes a cause of action for us that we can cite to this and be entitled to our attorney's fees and cost in seeking a court order under this article. This would not be that effective against property owners, because already they've abandoned the property. This would be extremely effective, I believe, against banks, but I think what would happen is we'll file the action and then the bank would probably work with us and then we'll dismiss the case, that's likely what's going to happen. So really we are just paying a filing fee and maybe a few hours' time for an attorney. If we have to actually litigate this and get the injunction it's going to be more expensive, but it gives us the ability to seek fees and cost.

Mayor Cason: Any other city has done this is Florida?

City Attorney Leen: Not that I know of. We've looked – a lot of cities have done an abandoned property ordinance – already our abandoned property ordinance and squatter ordinance are two of the strictest ordinances in the state, and I spoke at a state convention on this issue, and a lot of people are interested in it, but these are really, I don't want to say aggressive because I think they are perfectly appropriate, but these are very strong ordinances. They are addressing property values, they are addressing property and making sure that they are not causing a nuisance for the people around them.

Commissioner Lago: I think what we were talking about in reference to the main issue here is remediating. We need to fix the issue, and if a property owner is not going to deal with the problem at hand then we need to take it a step further and move toward the bank. The banks number one priority is to obviously protect their asset and as their asset is being devalued we also need to make sure because like I spoke to earlier today, I've spoken to several residents along with everyone on the Commission and the Mayor, this is a prevalent problem which is affecting, we talk about safety, but it's also affecting property values. Imagine if you are the home owner for example, at 1032 Cotorro, which I spoke to the property owner this weekend, I

happen to run into her on the Mile, excuse me on Giralda, and she made it very clear, I have to get up every day and I have to deal with this issue. Someone needs to be held accountable for this matter and I think that I don't view it as too harsh I think it's right in line with what our residents deserve, because of also being a safety issue, it's also a property value issue.

City Attorney Leen: In addition, I just want to tell you that the ordinance makes it clear that this is not imposing affirmative duty on the City to take action. Sometimes the City may want to use Code Enforcement, sometimes the City may want to wait a little while and work with the resident, so this is not imposing a duty on the City to file suit in every case. It's in appropriate cases, but it gives us discretion. In addition, the immunity for enforcement officers is extended to all individuals involved in enforcement of this ordinance, so that they will not be held individually accountable; and then finally, the failure to register or maintain a vacant property it's not called a misdemeanor it's basically a municipal violation, but it is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. Now, I will say that this sounds very strict, but our Municipal Code already makes it basically a criminal violation or a violation of an ordinance to violate any provision in the Code. In fact, a violation of the Code is treated like a misdemeanor, any violation of the Code, generally the City obviously does not enforce against its residents provisions of the Code as misdemeanors. We always use Code Enforcement. What this provision is doing is its making clear to the mortgagee that in situations where the mortgagee waits for basically 60 days, has multiple minimum housing code standard violations on that residence and just lets it sit there and does nothing for the City, and basically ignores what their legal duty is – it does provide another avenue to raise with the bank to make sure that either they act or that they are punished for not acting. We are hopeful that this will never have to be used, that generally it will be a civil response.

Mayor Cason: Sounds to me like another quiver, we certainly want to maintain the property values, we don't want nuisances. I know that was our big problem on Cotorro there was a bank that just didn't care, year after year, nothing we did seemed to – we even wanted to go talk to the Vice President, nothing made a difference. You think this will cover 99 percent of our cases?- still out there any gaps that we haven't found a way to address?- or does this cover most?

City Attorney Leen: I don't think this is going to fix every vacant property in the City. There are going to be vacant properties where either it's just a property owner and we are having trouble identifying the mortgagee or property owner, although usually we should be able to or where they simply will not act, notwithstanding our request to do so. We can try to seek the court order, hopefully we'll get a court order, but sometimes that can take time, a lot of problem is these foreclosure proceedings last a couple years. There may be individual cases where the City, I know that this has been raised by individual Commissioners, but I know that there may be circumstances where the City may want to look at foreclosing on a property, which this allows,

or may want to look at using forfeiture proceedings against a property, or taking stronger action against a property, but that's not what this is focused on. This allows for those, but basically the primary focus of this is allowing legal action against these properties to see what we can do and what will happen is, we'll take the legal action, we'll see what happens. If the property still is vacant and still basically has many Code violations, that's the type of property we can raise with the Commission to see if more, even more strenuous measures could be taken regarding those specific properties.

Mayor Cason: I think it would be important to make sure this gets out to the realtor community. I know there is going to be a session where we are going to talk about Coral Gables to the realtor. I won't be here for that one, but it would be good to let them know, realtors know that we have this array of laws and ordinances to protect them.

Commissioner Quesada: Yes, I'm speaking at that event on Thursday or Friday of this week. I'll be happy to bring it up.

City Attorney Leen: That would be great. You raised the issue of Cotorro and that's one of the properties we are focused on. I received a lot of complaints. I know that City staff has received a lot of complaints regarding Cotorro. That may be the first test case that we use with this. I'm not saying that we will do that, we obviously have to look at it, but that is one of the reasons why we are adopting, we are proposing this ordinance, and then I know Commissioner Keon wanted to speak about this, you had raised a lot of these issues.

Commissioner Keon: Yes, I'm very glad that we have the ability and the focus would be to turn to the banks and the mortgage holders in the event that these properties have been abandoned and now sit, because it seems that the backlog for the banks in preparing these properties to be placed on the market were sold in some way, it just languishes and they don't do anything about it, and the aesthetics of our neighborhoods declines because of it, so I'm very happy to see this and I hope that we will use it. I have a question on this item though, in Section 1(e), it says "all registration fees must be paid directly from the mortgage services or trustee or owner". It seems a little redundant and it doesn't, I don't think it is clear as to its like which one?- in what order?- how does it do?- I would either like to strike it because its dealt with in the other parts of the ordinance or make it very clear that it's just whoever is in control of the property.

City Attorney Leen: The reason why this was put into the ordinance to begin with was we – the real estate agents through, I think their industry representative came and spoke with us and they were concerned that basically this would be passed through to real estate agents or buyers to put the – to pay the fee and they wanted to make it clear that it wasn't them. Now that I look at it, this certainly could be either removed or worded in another way, but that was the concern. You

could for example say, all registration fees must be paid directly from the mortgagee or property owner. You could make it more limited or you could remove it, but I just wanted – that was the reason why it was originally put in.

Commissioner Keon: Do you have a feeling about this?- I think it's unclear.

Mayor Cason: Why not go with your first – specify the two people who had to pay it.

City Attorney Leen: Yes, I could do that.

Mayor Cason: That makes it clear; it's not the realtor's fault.

Commissioner Keon: I would like to maybe discuss having it say that whoever is in control of the property, because it may not be the owner, because if it's the owner they abandoned them they are no longer in control. Maybe the bank, so it's the mortgagee. So I'd like to know is whoever is in control of that property.

Mayor Cason: Is that a legal concept, control of?

City Attorney Leen: Yes. The way that we could say it though...

Commissioner Quesada: Who is in control – you purchased the home, let's do easy math. You purchased the home for \$100,000, your house is now worth \$50,000. You owe your bank an additional \$50,000, you stop making payments. If you wanted to do a short sale technically it's your home, but they have to approve that short sale, so who is in control of that acceptance? When you say control it's not a bright line, it's not that simple.

Commissioner Keon: That's what I'm asking you.

Commissioner Quesada: Its vague, it's difficult.

Commissioner Keon: Tell me what's the bright line.

City Attorney Leen: I have a suggestion. What you could do is just make the mortgagee principally responsible, because that's the purpose, and then you could make and if it's not done – I could write this so that the property owner is also responsible in the event it's not paid and the way that's normally enforced is that we would give the warning notice to the bank, find them principally responsible and then we would cite them, then we would give a warning notice to the property owner as well saying it hasn't been paid, you have a duty to pay, we would cite them.

Commissioner Keon: But then they just point fingers at one another.

Mayor Cason: Could you work on this between now and we have a Second Reading, fix it. I suppose we could approve it now subject to your...

Commissioner Keon: That revision of that...

Mayor Cason:....revision of that.

Commissioner Keon: I would like that to be very clear.

City Attorney Leen: I can give you some options.

Commissioner Lago: I think the issue too is that you may have like what Commissioner Keon was saying, you may have multiple notes on the property, first position, second position, so who is – obviously we all know that first is above second, but....

Commissioner Keon: I just don't want people pointing at each other saying, oh no...

Mayor Cason: Fix that for us then alright.

City Attorney Leen: The other thing you could do is you could remove it and then it just has to be paid, and normally the duty under here is the mortgagee or the property owner has the duty to do this. It's principally the mortgagee the way it's worded and then there is some language that says the property owner does as well.

Mayor Cason: So you'll come back next reading and clear it.

Commissioner Quesada: That's a very good point though.

City Attorney Leen: I'll give you several options.

Mayor Cason: Do we have any public – have you filled out a card?

Mr. Volsky: No, because I didn't know.

Mayor Cason: OK. Go ahead.

Mr. Volsky: My name is George Volsky, 1008 Alhambra Circle. First, I want to congratulate the City Manager and City Attorney for putting together this Bill. I just want for the record also to congratulate a number of residents because the whole thing started, I believe, when flooded by the residents of the Historic District. I wrote a couple of stories concerning one, abandoned vacant property on 901 Alhambra, which had been for a number of months with all the windows open with the rain entering the interior which had been gut, and the residents told me that this Historic District bank had called several times the Historic Preservation office and there was no action, so I wrote a story and I spoke to aides of the City Manager, Mr. Salerno and that's how the process started, because that's a vacant property and then of course Code Enforcement started action and action has been taken. I think now it's....but one aspect of this historic aspect because vacant properties can be abandoned, but you can fix up possibly a room....but abandoned properties in the Historic District lose the historic aspect because they deteriorate and this is something that I don't know whether this ordinance should consider, but this is a very important fact, because I imagine we live in, the Mayor and I live in a historic district, which there is an abandoned property and nobody lives there and it deteriorates by simply forces of nature. What happens? We lose the historic property or we have to force the owner to maintain the historic aspect of it. I don't know if this is far....

Mayor Cason: That was the question of Cotorro, no?- that was a historic property, right?

City Attorney Leen: This ordinance would give the City the authority to bring action when it's a historic property, normally because the action would be for them to restore the property, so it would be consistent with obligation of maintaining a historic property. There is a chance in very limited circumstances where the City may want the property needs to be demolished or something like that, like an unsafe structure. This doesn't address that, normally in those circumstances we do speak with Historic Preservation Department about that.

Mr. Volsky: According to a lot of people, who spoke to me on a number of occasions, they had called Historic Preservation Department and they did absolutely nothing, and so they say, well it's a matter of law enforcement, sure, but the historic aspect of that property and there was another one also on Alhambra further up, I think I forget, which again Code Enforcement entered the fray and they painted it and improved it, but historic aspect is something – a lot of historic properties which are, you said there are how many housed vacant...?

City Attorney Leen: I recall it being 400, not vacant, abandoned – abandoned.

Mr. Volsky: I'd like to know how many of these are historic and whether they deteriorate?- because if the notion or the concept of historical properties is by inaction, simply by weather

being eroded, so this is something which I think maybe second...in the next weeks to look at it, but certainly it's a very important aspect.

Commissioner Keon: I think that our ability or the authority given now under this ordinance will allow them to move much more quickly on dealing with these properties, so hopefully they will not sit abandoned for such a long period of time where they will erode and they will deteriorate, a lot of it is getting the bank now to move much more quickly on dealing with these properties and clearing them so that they can be sold and back on the market, so hopefully they won't sit.

Mr. Volsky: I understand what Mr. Leen is saying that there are banks they own 50,000 properties, if it's a big bank and they don't give a damn about...

Mayor Cason: This gives the bank some incentive to put us at the top to fix overall the other ones where there is no such ordinance, so it will be helpful.

Mr. Volsky: Could be some trust company name owns the property.

Mayor Cason: That's what happens, yes.

Mr. Volsky: But the historic aspect, Mr. Leen, is I believe is important, I don't know if the Historic Resources Department ought to be involved in this and also your attention to that fact.

Mayor Cason: Thank you very much.

Mr. Volsky: But anyhow neighbors, I believe, by their vigilance have been instrumental in this whole process. So thank you very much.

Mayor Cason: Thank you George.

Commissioner Lago: Thank you George.

Commissioner Keon: Thank you.

Mayor Cason: OK. So this will close the public hearing, anymore discussion?

Commissioner Quesada: I'll make a motion.

Mayor Cason: Commissioner Quesada makes a motion.

Commissioner Lago: I will second it.

Mayor Cason: Commissioner Lago seconds it.

Commissioner Quesada: I guess my motion is also based on the fact that there will be some revisions to our initial discussion related to what...

Mayor Cason: Yes, this is First Reading, right. With the proviso that next time you'll clarify options for us in terms of who has to pay.

City Attorney Leen: Yes, I will address issue and propose some amendments.

Commissioner Quesada: OK.

Commissioner Lago: As per Section 1, Item E.

City Attorney Leen: Yes.

Commissioner Lago: Thank you.

Mayor Cason: OK.

City Clerk

Commissioner Lago: Yes

Commissioner Quesada: Yes

Commissioner Keon: Yes

Mayor Cason: Yes

(Vote: 4-0)

Vice Mayor Kerdyk: (Absent)

[End: 10:21:08 a.m.]