

**City of Coral Gables City Commission
Agenda Item F-3
September 23, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Jim Cason
Vice Mayor William H. Kerdyk, Jr.
Commissioner Patricia Keon
Commissioner Vince Lago
Commissioner Frank Quesada**

City Staff

**Acting Interim City Manager, Cynthia Birdsill
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia**

Public Speaker(s)

Alexander Palenzuela, Special Counsel

F-3 [Start: 01:17:15 PM]

Report from City Attorney and special counsel regarding status of legal actions
related to properties on the abandoned property ordinance.

Mr. Leen: We have an attorney here who has to leave.

Commissioner Keon: Oh, why don't we do F-3?

Mayor Cason: OK, let's do -- is that the F-2?

Mr. Leen: That's F-3, which I know you're all interested in because that's the Abandoned
Property Ordinance. He's here to talk about it.

Mayor Cason: Okay, let's do it, then we'll do F-3, and then we'll take break.

Commissioner Lago: So are we doing F-2?

Commissioner Keon: OK.

Mr. Leen: Just to give you a brief introduction on F-3. We have attorney, or Special Counsel Alex Palenzuela, Alexander Palenzuela. He has been assisting us with a lot of Code Enforcement actions whenever we bring actions against different properties to enforce our Abandoned Property Ordinance. What you will see, and we're very proud of this, I know the Manager's Office is, Code Enforcement, Alex, my office; I know the Commission has been very involved in this by giving us properties. Every time you bring a property up, which is a problem property, we go out and take a look at it and it goes onto this chart. And so, basically, what this is, is we're taking much more aggressive action related to banks. And in fact, we're working with the banks, but we have established a process basically to make sure that they fix up the properties that they have an interest in, and they can have two different types of interest: One, they can be in foreclosure and they're not the owner of the property. There's an actual property owner who usually has left or abandoned the property. The property is in foreclosure; the bank has an interest. We even put you, the Commission, has imposed on those banks a number of obligations. And what we have done now is we are bringing actions, or at least sending demand letters to banks on a lot of these properties. Alex is going to talk about them, and the banks have been working with us; some of them, where they're not, we're going to be bringing actions, and he's going to talk to you about that today. In addition, there are times when the bank actually takes over the property and they're the actual property owner, and so we are treating them like a property owner, but one thing that we're doing at the new Code Enforcement meetings, which I wanted to inform you all about, is when a bank, either as the property owner, where they've taken over the property; or as part of the abandoned property ordinance, whenever a bank commits a violation like this, we are now doing \$150 a day immediately. We're not giving 30 days. We are now imposing an immediate lien, and the idea behind this is we do not want our liens and fines to be basically foreclosed on or to be lost in some way because the bank sells the property or gives up the property before we can impose a lien. Because once a lien is in the chain of title, it takes precedence over any further liens, including mortgages that come later in

time. So we have become extremely aggressive on behalf of the Commission and the public to raising these issues immediately, reaching out to the banks and we're getting very good results. And so I'd like Alex to come up and be able talk to you, and then the idea is that if there's any additional properties you'd like to be added or any thoughts, please give them to Alex and we will follow your direction.

Mayor Cason: And we only have 11, from the looks of it, in the whole city out of 18,500 dwellings. Pretty good.

Alexander Palenzuela: And I've been told to put on the list of abandoned real properties, that's true. I'm sure there are others, but these are the ones that the City has identified as being particularly egregious because of neighbors' complaints usually, but also Code Enforcement, sometimes for years, has been maintaining the properties on behalf of the owner who disappeared and, more recently, on behalf of the banks ever since the Commission adopted the Abandoned Real Property Ordinance that holds them equally responsible for maintaining the property. So I mean, they've asked me to become involved when Code Enforcement -- traditional Code Enforcement, which is still ongoing now against the bank, as well as the owner, has failed and basically had been sending demand letters to not just the owners, they're still involved, the banks, the responsible parties that they have to list on the vacant property register to get their attention to usually work with them within their bureaucracy, because a lot of them it might be done in-house on a huge bank, and they have to hire vendors and, you know, vet them and get bids, and some of them have gone out for rebidding, depending on how serious the violations are. So really, you stayed on top of them and work with them and focused their attention on the properties that need it, and generally, eventually, it will get done. However, I've only not heard back from 3 of the 12; 1 is going to be referred to their Legal Department. Hopefully, they will work with us. But we've had a favorable response with three-quarters of the properties on the list. One's already complied, but it was when it came to...

Mayor Cason: Were they just not aware that among all the properties they had that these were there? I mean, were they lost or where they just...?

Mr. Palenzuela: I think, some of the foreclosures...I mean, it's a crisis. I mean, and you've read about it in the paper, how the banks started foreclosing. There was a Robo-Signing scandal. They had to let their attorneys go. Some attorneys were disbarred over this. So they picked up and started foreclosing again with new counsel. So, I mean, this has been going on for years. Some foreclosures I've seen on these particular properties were filed in 2006 or 7 or 8. They were dismissed either for want of prosecution or because, in one case, the defendant prevailed on a statute of limitations argument. I mean, they were refiled. Now, most recently, one was just refiled. So, the foreclosure process is not getting us where we want to be, which is to have a new responsible owner who's going to come in and take care of it, so we don't wait around for that. The demand letter was telling them what options the City has. We've identified injunction actions as the most efficient and rapid means of getting what the City needs, which is them to focus on compliance. So that's where I come in, and hopefully, we won't have to go that route, but we're prepared to do so, if there's not diligent progress on each and every one of the properties. And I have to say, in the past couple of months, we had been getting progress, where some things, we did remove a swatter a few months back on one of them, and then the bank secured the property, coordinating with the Police Department and Code Enforcement, and they started correcting some of the violations. So depending on what the condition of the property is, the expense, there is one that's on the list, 1044 Cotorro, which I think inspired the Abandoned Real Property Ordinance. That property was basically gutted and has no roof over the garage. It's a historic property, so they can't just buy windows at the Home Depot. They have to get special casement windows. We're trying to work with the bank and Dona Spain to go over the bids, make sure that they're reasonable also. I mean, we're only requiring that they come up to Code. And so that one the bank agree to our deadline.

Mr. Leen: Could you talk a little more on 1044 Cotorro, could you give them more specifics? Because, you know, ultimately, right now we're looking at maybe bringing a complaint because ...

Mr. Palenzuela: Right.

Mr. Leen: Could you explain that and get their direction?

Mr. Palenzuela: This is one that's drawn a lot of attention and complaints, and I'm in touch with all of the complainants, the neighbors, basically, keeping them apprised of what's going on. But the bank came in and agreed to a deadline in the Code Enforcement proceeding of July 22. Well, they missed the deadline, even though we were on top of them and reminding them. The reason that they gave, and it's not the bank directly; it's their servicer, saying that the amount that the bids came back at for the repairs was astronomical for them. It was \$400,000 just to bring the property up to Code. So what the City has offered is to work with them, and we've requested their bid to see if, indeed, everything that the contractor put down really has to get done, or if we can make that number more reasonable. We never got that list. What happened was, they put it out for bid again. So we are working with them, but to the point where as long as we feel that they are diligently working toward a resolution, we'll continue to work with them. But as I've said, I've already begun drafting the complaint for the injunction action in the event that this second round of bids doesn't lead to a contractor being hired to perform the work.

Commissioner Keon: The problem with that particular property, I mean the issue with that particular property is I think that there have been numerous people interested in purchasing that property, but the bank they won't proceed with the foreclosure on that property.

Mr. Palenzuela: I put one of the potential investors in touch with the attorney for the bank to make it go more quickly. However, that really is not, in my opinion, a viable solution in this. I mean, unless they move quickly on it. Because what they're buying is the note. They're buying the right to foreclosure. That's a property where the foreclosure was dismissed. All of our liens attached to that property we could foreclosure, but that's not a viable solution either, because it's going to take so long. What we need is either the bank, who's currently responsible, to move on it and start some of the repair work. At least the most egregious violation should be corrected. Or if they could show me that they've sold the note and the buyer's willing to do it, that's fine.

Commissioner Keon: Right.

Mr. Palenzuela: However, I haven't seen that either, which is why we're moving toward a

complaint in that particular case as the first one.

Commissioner Keon: Right. So I think that our goal is either to have the banks either repair the properties and bring them up to Code, or to sell the note and let us deal with an owner to restore these properties.

Mr. Palenzuela: Right. And you know, each case being different.

Commissioner Keon: Right.

Mr. Palenzuela: I actually had the owner of one of the properties contact me when he got my demand letter saying I went through bankruptcy; I'm not responsible. I said, well, okay, that's fine. But I put him in touch with the banks so that he could sign the permits to make this process go more quickly. And, you know, every case really is different.

Commissioner Keon: Right.

Mr. Palenzuela: But if you work with them and you stay on top of it and you come up with creative solutions, hopefully we will get the banks to take action promptly. There was one where the foreclosure sale happened September 12. We decided to hold off until after the foreclosure sale to see if the bank would be the ultimate owner or someone else; it turned out to be the bank. They had already received our demand letters and notices. So before I waited for the Certificate of Title to be recorded to know exactly if it was going to be the bank itself, or an REO company they set up to cite them and go after them. They called me, because they already had the demand letter and the attorneys saying we're going to do everything we need to do. As a matter of fact, while I was sitting here, I got an e-mail (electronic) from him saying that they need some information from us, and they're getting us what I asked them for so that we can start getting the work done.

Commissioner Lago: Craig, could I ask a quick question? In reference to the fees that we're obviously incurring by this great work that outside counsel is doing, are we putting a lien on the

property to see if we can recoup some of those fees? I mean, in regards in those issue, our number-one priority is, obviously, safety and, you know, the beautification of these homes and making sure that it's not an eyesore to the residents, but also I want to see if maybe we can get some of our money, because this work is not free.

Mr. Leen: I'll say two things: Alex gives us a remarkably good rate, and he also is very efficient. So the bills have not been that high related to Alex, but in addition, every one of these properties, we're still doing the Code Enforcement lien.

Commissioner Lago: Yeah.

Mr. Leen: And if we do file the lawsuit, at that point, we will seek our attorney's fees and costs. And so for example, on Cotorro, I think we're going to end up filing that lawsuit. They've already admitted to all the violations, so there's really not much we have to do. We have an order where they stipulated, the other side, in front of the Code Enforcement Board that they're responsible for the violations. So, you know, I wanted to bring that up today because my inclination is to go forward with the lawsuit.

Mr. Palenzuela: I would agree, because based on the bureaucracy, because again, this happened back in July, they sent it out for bids, and now we're doing it again. So unless something changes, they're not moving quickly enough. So most likely, what we will do is bring the injunction action and either get the injunction or get their agreement to an injunction, and a deadline which then the court could enforce, and hopefully, they would move more diligently, and the City wisely put in a provision in its ordinance, because that's not the general rule that the City can recover its attorney's fees and costs in the injunction action.

Mr. Leen: So the thought is in that one, we would bring the action. We'll probably give them some extension of time to respond to see if that works, but at that point, once we seek the injunction and have the hearing. I would think that we would proceed and get our lien. I mean, it is a bank; they are able to pay, and they have admitted here, they've stipulated to their responsibility, so I think it's just a question of the bureaucracy. These are huge institutions. And

sometimes it's hard to get someone who will work with us. The best thing about this ordinance, and I think you would agree, is that we are getting a lot more attention when we contact the bank than before. I think one of them even said that they're putting ours as a higher priority.

Mayor Cason: Money talks.

Commissioner Lago: Yeah, money talks.

Mayor Cason: Money talks.

Mr. Palenzuela: And just so you know, the City does record its liens, especially assessment liens where they're out of pocket for paying a vendor to mow the lawn. Obviously, the City's not going to undertake rehabbing a property or, you know, finishing a building that was never completed.

Mr. Leen: Oh, that's an option. I mean, at some point we may need to talk about that, too. Do we want to foreclosure on these properties? That's a bigger question. It's more of a policy question ultimately, but it is a legal remedy that we have which we haven't come to the point yet where we've recommended to the Manager's Office, or to the Commission.

Mayor Cason: Let us know if, in the future, we need to do anything else, but I think it sounds like it's more than well. We've got their attention. At least one was taken off the agenda.

Mr. Leen: Mr. Mayor, one other thing. I told the Code Enforcement Board I would bring up 1009 Columbus Avenue. It has a hole in the roof. The Code Enforcement Board issued an order basically, you know, finding it unlawful, but that is, a violation of minimum housing standards. They've ordered an immediate fine, an immediate lien, immediate action. In addition, they've asked staff to look at whether it's an unsafe structure. And they've asked us to look at putting up a fence around the property.

Vice Mayor Kerdyk: Right.

Mr. Leen: And we've told them that we're going to expedite that one and bring a suit as soon as -
- send a demand letter and bring a suit as soon as possible. I did tell them I would tell you about that property. And if you have any other properties, we can talk about those, if you want. But if you have any other properties which you learn about, please alert either Alex, myself, or Cindy, and we will get it on this chart.

Mayor Cason: OK.

Mr. Palenzuela: (UNINTELLIGIBLE) have years' worth of violations and liens originally against the owner, so I'm waiting to hear back from the officer that we caught everything and to put in the demand letter and that'll go out today, assuming that --

Vice Mayor Kerdyk: Yeah. The sad part, what is this, like three or four years I've heard about this house on Cotorro.

Mayor Cason: Cotorro, yeah.

Vice Mayor Kerdyk: Yeah. The one that he was talking about, yeah.

Commissioner Keon: But this gives us the ability to move much more quickly and -- you know, in actually doing something.

Vice Mayor Kerdyk: Yeah, I think it's very good.

Commissioner Keon: Thank you very much.

Mayor Cason: Thank you very much.

Vice Mayor Kerdyk: Very good.

