

City of Coral Gables City Commission Meeting
Agenda Item E-1
March 11, 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)

Enrique Chor, Coral Gables Resident

E-1 [Start: 9:43:22 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 allow City police department to issue trespass warnings for vacant properties; to grant the City Attorney the authority 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. (Passed on First Reading February 25, 2014).

Mayor Cason: Agenda Item E-1 is an Ordinance on Second Reading, which is amending the Code of the City of Coral Gables, Florida, Article VI “Abandoned Real Property”, Mr. City Attorney would you please read this into the record.

City Attorney Leen: Thank you Mr. Mayor. This 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 allow City police department to issue trespass warnings for vacant properties; to grant the City Attorney the authority 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. This was passed on First Reading February 25, 2014. There had been a couple of changes to the ordinance which are stated in the cover memo. The main one though was raised at the last meeting, which was to remove the prohibition on certain – there was a clause that talked about who could pay the fee and it was a limiting clause, only a few entities could pay the fee, that’s been removed so anyone can pay the fee now.

Mayor Cason: OK. This is a public hearing, we have one speaker card, if anybody else wants to speak please fill out a card. I would ask Enrique Chor to come up and speak for no more than three minutes please.

Mr. Chor: Mr. Mayor, Commissioners, I own the property in Coral Gables at 1042 Cotorro Avenue, and this issue affects us directly. I don’t know you are probably familiar with the issue of the abandoned house at 1044, and I don’t see on this resolution a solution for that specific problem and I don’t know if there are probably other issues similar to ours in the community. The City keeps imposing fines on the property owner, the City is going after the bank that supposedly owns the note, we don’t even know who owns the note, and the fact is that this property has been abandoned for 7 years now, and we don’t see this as a solution for that specific problem and the house is abandoned. No maintenance has been done to the house, it’s an eye sore to the community, it’s a problem for the neighbors living there, we don’t know what’s inside the house because nobody can go into the house, so we are looking for something a little more specific, more teeth to go after the bank or the owner.

Mayor Cason: OK. Thank you. Craig, would you like to comment on that?

City Attorney Leen: Certainly Mr. Mayor. I believe you are talking about the house on Cottoro?

Mr. Chor: Yes, the corner house.

City Attorney Leen: That was one of the impetuses for this ordinance and what I was planning to do after this is passed, I was going to send a demand letter to the bank under this ordinance, at that point I will discuss what our remedies are with the City Manager. One of the goals, one of the things that we could do, which I’m looking to do is to file a lawsuit then against the bank

asking them to fix up the property. By lawsuit I don't mean a Code Enforcement proceeding, we already have Code Enforcement proceedings, but what we'd like to do is get a judge to either appoint a receiver for that house, and a receiver is someone appointed by the court who is responsible for basically maintaining the house and making sure it doesn't lose its value; and then at that point a receiver or have the bank do it itself, under the ordinance we would be entitled to our attorney's fees and cost, assuming we are able to get that court order. The other thing I was planning to do was also notify the bank that they have to comply with the higher registry fee. At that point they have to give us the name of someone from their general counsel's office who will be a contact for me who I also will contact and ask them to take action on the house; and then finally, we do have a provision, it's a municipal ordinance provision, but it acts like a criminal prohibition, which basically says that once this is passed and we give them notice and they don't do anything for 60 days, then it's a criminal violation or it has to be effect of a criminal violation. It's punishable by up to 60 days in jail.

Mr. Chor: If we can find who the owner of the note is.

City Attorney Leen: Well it would be the bank; the bank is the one that we are going to contact. We have been in contact with the bank in the past and they did take certain action to secure the property is my understanding, but now we are asking the bank to do more. The other thing that this ordinance does is it does allow us to initiate foreclosure actions, if we decided to do so. That's a major decision though, something we'd have to talk about, but this does permit it; and another thing that's coming up soon, we are looking at preparing a forfeiture ordinance, which we already have a draft of and I'm working on, but the other thing would be perhaps we could bring a forfeiture proceeding related to the house, but again that's a major decision because the City would be taking over the house and normally cities don't do that. So that would be – I think the primary goal of this ordinance, is for us to try to get the court to require the property owner or the bank in this case to take these actions. These other remedies we have, which are very severe, but they could be helpful, the goal of them I think ultimately is to hope that the bank will realize, look they could completely lose this property or they could commit a criminal act. Hopefully they will take the appropriate action, the action that's required by law and fix the property up. So, I'd like an opportunity to do this though, I heard what you said, but the goal was that this will help us deal with that particular property and then if it doesn't we'll have to look at other potential remedies and come back to the Commission.

Mayor Cason: Thank you for your input. OK. Then we'll close the public hearing, any discussion?

Commissioner Keon: Yes. I don't want a discussion on this item. I'd like to thank Craig particularly for working with us, with me on this for quite a while, and it is particularly the house

on Cotorro and some of the others in our community that have really risen to the occasion that require our attention to some legislative actions here. I have – one of the questions I keep asking Craig is, when does the – house is titled to a particular individual, when does that home no longer belong to that individual?- which is still a problem that I have because there is a statement in this piece of legislation that says, “in addition to the mortgagee, the owner also has a duty to ensure compliance with the provisions of this article”. But we know that possibly, if it’s in foreclosure but occupied the individual may have, maybe trying to work out a deal with the bank, maybe trying to sell the house, so maybe willing to comply and to maintain the home, but if this home is abandoned like the property on Cortorro and the property on San Rafael and so many of the others. How many do we have that are abandoned?

City Attorney Leen: There were 67, I think it was 67.

Commissioner Keon: 67 homes in our City are abandoned. If they have abandoned those homes the likelihood of our ever getting them to do anything with this is remote, it’s not – they are not going to do it; and I know this imposes a problem for banks who are hesitant to write these assets off their books and take them as liabilities, but we have an obligation within the law to do whatever we can to maintain our neighborhoods and our property values and the benefit of all that we put into the City to the people that are homeowners in the City. So, I would like to know how do we move directly once a home is abandoned?- do we have the ability to go directly to the bank?- or do we still have to deal with the property owner or the person that holds title?- or is it the person who has the vested interest in the property?

City Attorney Leen: That’s what this ordinance is intended to address. The general rule of law is that the property owner is responsible for the property until either the title shifts to the, basically they sell the property, or the bank completes a foreclosure and perhaps purchases the property or takes over the property at an auction or there is a forfeiture proceeding and it comes to the state, but generally it’s when the property owner loses their title, their legal right to the property; and there are a lot of these abandoned property ordinances throughout the state, but the purpose of these abandoned property ordinances is to place a duty on the bank as well or the mortgage holder to also take action related to the property. The legal theory behind it is that under the common law, in the restatement of property it indicates that a mortgage holder where you have a vacant or abandoned property, a mortgage holder is allowed, has the right to take action to prevent waste to the property to preserve their investment. Normally, they have a contractual right as well in their mortgage, but there is also a common law right. The idea behind these types of ordinances is that the City or the government is imposing a duty on the bank to do the same thing, because we have the authority to enter the property and take this action the idea is that the City can require them to do it as well. The rational basis behind that is that once the bank initiates foreclosure proceedings, it really causes the property to become stagnant; there is

nothing that can be done at that point. A lot of times property owners may leave, may abandon the property and you won't even be able to find them, so it leaves the property in a sort of limbo. Really the only one that has the beneficial interest of the property at that point is the bank, so the idea is that the bank has an interest in seeing that the property be maintained and this imposes upon them a duty. So the reason why that clause is in the ordinance, it does not shift the focus from the mortgagee, the bank, that's the focus of this ordinance. Property owner already has a duty to maintain their property under the Code. However, there are some duties in here that are placed on the bank where its useful to have the property owner also have the duty, or also be responsible. One of them for example, is we are saying that the police can issue a trespass warning because in submitting the property to registration the bank and the property owner are agreeing that the City has the right to issue a trespass warning. It's better to have the property owner have a duty to do that as well otherwise someone might argue, well the bank alone really didn't have that authority. It really had to be the bank and the property owner, so that's one of the theories behind it. Another one and this was recommended by our outside Code Enforcement counsel was that the ordinance already imposes this duty on property owners, but it did it in a way that wasn't very clear. One of the clauses simply said, the mortgagee and/or property owner has a duty and then it gave a duty to do something. The goal here was to make it clear that the property owner also has that duty, but in my opinion it doesn't remove the duty at all from the bank. It's just recognizing the reality of the situation, which is that the property owner has a duty, the property owners always had a duty. We could cite the property owner under this ordinance, but now what we are doing is we are imposing a concurrent duty on the mortgage holder to also take these actions. They are not doing it independently of the property owner, they are doing it instead of the property owner in many instances. The property owner still has that duty, but the whole problem is that they've left and they are not doing the duty, so the bank has the duty and this imposes on both of them and I believe it's equally enforceable against both of them.

Mayor Cason: Craig what happens if there is no mortgage holder?- the owner just abandoned the property, disappeared, died, nobody knows what happens.

City Attorney Leen: Well that's a different situation because these ordinances require there basically to be a mortgage holder. In fact, once the foreclosure is finished or the bank takes over the property they no longer have to be registered under this ordinance. This ordinance requires there to be a default on a mortgage or a foreclosure proceeding initiated. The situation you are discussing would probably be in probate, if the person passed away. If they didn't and they just abandoned the property at some point that would go to the state after a number of years, but there would probably be litigation related to that property, because normally if someone just abandons the property there are a lot of liens associated with that property and its very rare to have someone have a valuable asset like a house without a mortgage and leave and just leave the house there, but at some point that would either go to the state or it would just sit there.

Mayor Cason: So the 67 abandoned homes all have mortgages to our knowledge?

City Attorney Leen: The 67 abandoned homes all have mortgages; they are all registered as vacant on our registry, so these are the 67 properties that are really the focus of this ordinance.

Vice Mayor Kerdyk: I assume when you notify the bank you are telling them there is a lien and the fines are running?

City Attorney Leen: What happens right now is whenever there is an abandoned property we do notify the bank. We cannot have a fine running against the bank unless they've been given notice and an opportunity to appear; and my understanding from Code Enforcement is that usually once we notify the bank and is able to talk to the person supervising the property for the bank. We can often get some action taken, but there are instances where we have not been able to, and the purpose of this ordinance is to allow us to take additional action in those instances. I'm hoping that once the bank identifies someone from their general counsel's office when they register that all I'll do is just contact them and say, look you are letting this property slip through the cracks, can you take some action? Always my first approach to the bank I assure you will be trying to get them to take appropriate action, these other remedies are later, if we have to cite them because they are not doing anything or they are refusing to register the property. They haven't registered the property, and a lot of time has passed that's when we can do these other things, but normally we do try to reach out to the bank.

Commissioner Keon: In the event of this house on Cotorro, where are we with that house?

City Attorney Leen: That house – my recollection is that I drove by the house a couple of weeks ago to take a look at it and there are a number of pieces of paper attached to the house, posted on the house related to Code Enforcement fines and Code Enforcement proceedings and we have, as the gentleman said, we have I believe we have running fines. I certainly know that we've opened a number of Code Enforcement cases related to it. We have gotten some reaction from the bank, about a year or two ago when it wasn't secure and not it's secure, so the house is boarded up, but it's ugly.

Commissioner Keon: It's an eyesore.

City Attorney Leen: It's an eyesore that was part of the reason we did this for additional action.

Commissioner Keon: If we pass this ordinance, we can then take action to move for foreclosure on that property?

City Attorney Leen: I think the purpose would be initially to file a lawsuit to seek they require the bank to fix up the property.

Commissioner Keon: OK.

City Attorney Leen: At that point if that doesn't work, then I would have to meet, under this ordinance, I would meet with the Manager and we would discuss other options and determine what to do. Obviously the Commission can direct us as well.

Commissioner Keon: And the options would be?

City Attorney Leen: Well foreclosure would be one of them, foreclosure of a Code Enforcement lien. It's not a homestead property, so you could foreclose. Generally though the foreclosure, it's called a junior lien to the mortgage, and there is a recent case that came out from the Florida Supreme Court which said that the Code Enforcement liens do not take priority over the mortgage unless they are senior to the mortgage like they existed before the mortgage and were recorded before the mortgage, that's very rare. The bank won't usually give a mortgage with a Code Enforcement lien.

Commissioner Keon: No. In reality our liening and our fining these properties...

City Attorney Leen: Is not effective.

Commissioner Keon: It's not effective. It's not effective.

City Attorney Leen: It's not effective. One mechanism we've been using, which I think is effective is and that's another thing we are looking is, we've been giving notice to the banks and we've been fining the banks. Those fines once we record, and we've only been doing this over the last basically, my recollection is a year or so, but when those are recorded those liens, those liens will attached to all of the banks property. The bank is not the owner of this property, but it will attach to the banks other properties, so that is giving us some leverage to get action taken. Like I said, we have gotten some reaction from the banks, but this will give us a lot more, I'd say more than doubles our ability to get action from the bank.

Mayor Cason: OK. Any more discussion? We have a motion?

Vice Mayor Kerdyk: So moved.

Mayor Cason: Vice Mayor makes the motion. Second?

Commissioner Lago: Second.

Mayor Cason: Mr. Lago seconds.

City Clerk

Commissioner Lago: Yes

Commissioner Quesada: Yes

Commissioner Keon: Yes

Vice Mayor Kerdyk: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 10:01:16 a.m.]