

City of Coral Gables City Commission Meeting
Agenda Item E-1
January 13, 2015
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, Cathy Swanson-Rivenbark

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Manuel Guarch, Attorney

Bruno Lopes, Miami Association of Realtors

Agenda Item E-1 [Start: 10:43:20 a.m.]

An Ordinance of the City Commission of Coral Gables, Florida amending 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. (Passed on First Reading October 28, 2014).

Mayor Cason: Alright. We are going to move onto Agenda E-1. This is an Ordinance on Second Reading related to Forfeiture of Abandoned Real Property of Chapter 34, "Nuisances". Madam City Manager.

City Attorney Leen: Mr. Mayor the Attorney reads the Second Reading one.

Mayor Cason: OK.

City Attorney Leen: Sorry about that. This is an Ordinance on Second Reading, its An Ordinance of the City Commission of Coral Gables, Florida amending 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 passed on First Reading October 28, 2014. This item was originally sponsored by Commissioner Keon. I will be speaking on the item today and then also in the audience is Bruno Lopes from the Miami Association of Realtors, who I’ve met with regarding this item. I also met with Anthony De Marco from the Florida Bankers Association, as instructed by the Commission, he is not here today; and then we also have Manny Guarch here, who is a former prosecutor who is here to answer questions about how this ordinance would be implemented and really executed if we do proceed with the forfeiture in this specific case, and he has a lot of experience with forfeitures. He and Judge Reyes do a lot of the forfeitures for the City, so they are here today as well. So to begin – Coral Gables has been at the forefront of the State in address abandoned and deteriorating properties. I’ve had the good fortune of being able to speak at a number of conventions regarding these types of items and what I’ve noticed both by email and people coming up to me, is that a lot of the state’s interested in what we are doing and they are impressed with what we are doing and that we put such significant effort and attention to making sure that every property in the Gables meets our Code, and something that adds to the property values and the welfare and just the beautiful community that exist in our City, and it really is because of this Commission and a number of items that you have passed over the last several years, and before I begin I just want to go through them briefly. As you may recall, this Commission passed an abandoned property ordinance several years ago where we established a registry for abandoned properties to be added and where there was a duty to maintain that was placed on the mortgage holder, not just the property owner, but the mortgage holder for the first time, under the theory that when a mortgage holder places a property into foreclosure, it freezes the property in a sense and the mortgage holder is getting the benefit of the foreclosure proceeding, but is not required to bear any of the detriments. Before this ordinance, it was the community that bore the detriments by having a property that was not maintained for a number of years. Second, this Commission passed a squatters ordinance, it made squatting illegal in the City of Coral Gables, and it provided for a process for the removal of squatters; and I can tell you that ever since this ordinance has been in place, anytime we hear of a squatter, we invoke this ordinance immediately and our experience is, that the squatter leaves. So we’ve never actually had to go and remove a squatter or go through the process of having a Special Magistrate make a determination, but it’s there for us if we need to, but from what I’m hearing is...and I heard this actually from someone who represented banks, is that this

is a great ordinance for the City, they wished more cities had this type of ordinance, because what used to happen was, the bank would actually have to go and ask the squatter to leave and negotiate with the squatter, and basically give them a settlement payment, and then the person would leave and they'd lock it again. But in Coral Gables we don't really have squatters anymore and when they do come up occasionally we invoke the ordinance. Third, this Commission passed a vacant property ordinance and it's sort of an enhanced abandoned property ordinance where you established a higher fee for vacant properties, because it took more time from the City to monitor those properties. You also established a trespass warning, basically allowing the City to give a trespass warning per vacant properties on the abandoned property registry unless the property owner, or the bank, opted out of that when they registered the property. You also established that a bank has to identify a general counsel so that I can contact the bank if I need to when the Commission says, what's going on with this property?- and I have someone that I can contact there other than just the property manager...someone higher level in the bank. You also established a very strict law saying that if a property has two or more violations in the Minimum Housing Code, or the abandoned property ordinance for more than six months and they don't do anything about it, that's actually a violation that's punishable by going to jail for up to 60 days and a fine. You also established a cause of action allowing the City Attorney, with the approval of the City Manager, to bring lawsuits seeking injunctions, forfeitures, and receivers, and directing that the court expedite those proceedings, and that attorney fees be provided to the City. And we used this ordinance recently with the Cotorro property and we were able to get an agreed injunction, so it was very useful ordinance and we are anticipating bringing several more of these actions. So this brings me to the forfeiture ordinance. The forfeiture ordinance is really the cap stone of what we are doing, and it basically completes the vacant property ordinance, which provided for forfeiture but did not provide the process by which we would do it. The forfeiture ordinance allows the City to seize property when there has been an ongoing violation of the law for over six months, and multiple violations of our minimum house code or the maintenance requirements of the abandoned property ordinance. This is not and I want to emphasize this for purposes of the record, for the Commission, for the people in the audience, anyone watching, this is not an eminent domain or takings ordinance, it has nothing to do with that. This ordinance relates to a very specific and extraordinary cases where a mortgage holder refuses to abide by our ordinances, and basically violates the law for a long period of time in a way that harms the City, and in those limited circumstances we can invoke this forfeiture ordinance, we can then seize the property and we can fix it up or we can auction it off to someone who will fix it up and put those conditions that it be fixed up on the property. It's basically an ordinance of last resort, but it's an important one, it's an important one because it gives us the ability to go to the bank and say, look, you cannot just disregard our law for months at a time. So let me briefly go through the changes to the ordinance. There is a red line that's attached, I also want to mention the City Manager and I discussed this, and we are going to start attaching red lines to any changes between First Reading and Second

Reading of all ordinances, because we want to be very clear what we are doing when we make a change, and that it's within the Commission's will and what you want us to do. When you look at the Whereas clauses what you'll see is, that I have focused this ordinance more, based on the Commission's instructions on the violation of the law, that this has to be a violation of the law for a long period of time in order to invoke this ordinance; and I'll just read one part – "the failure by banks as mortgage holder or as the eventual owner to maintain these properties is cause for serious concern creating hazardous and unsafe conditions and constituting unlawful conduct, which makes the properties subject to forfeiture", it's the unlawful conduct that makes the property subject to forfeiture.

Mayor Cason: Is it just banks or is it credit unions and other...?

City Attorney Leen: It's any mortgage holder.

Mayor Cason: Any mortgage holder.

City Attorney Leen: The concern was that we had large banks though, these were large banks, I'm not going to name them, but they were major banks and they were not complying with our ordinance, and they could, they had the means to, but they were not. The other changes that we made and this was done in conjunction with talking to the Florida...pardon me, with Bruno, from the Realtor's Association, and also from Mr. de Marco from the Bankers. We always made clear that we needed an ordinance that was workable and that would achieve our purpose, but we would otherwise work with them and try to make it limited so it didn't affect their ability to loan to people in Coral Gables, it didn't affect realtors to do their business. That was our goal and I think that we accomplished it. Forfeitable property has been limited now to only apply to non-homestead properties, one; two, the property, in order to be subject to forfeiture, it has to not only be on the abandoned real property ordinance, it also has to have two or more violations of the abandoned real property maintenance requirements, or the Minimum Housing Code for a period in excess of six months. In addition, the City will not initiate, and I'm reading from the provision itself, the City will not initiate the seizure or forfeiture until the City Commission, or the City Manager, in consultation with the City Attorney, makes a finding that such seizure or forfeiture substantially promotes or protects the health, safety, and welfare of the community. There was actually a suggestion by the Miami Realtor's Association, and we believe that it was a good addition, because it ensures that there will always have to be that finding. This is being done under the police power for the health, safety, and welfare of the community for nothing else, and that finding has to be made or this cannot be invoked. The other change that was made was at the end, there is a transition of ownership provision if the forfeiture ordinance is invoked and if it's successful, and if the City comes into the property or auctions it off to someone, there is a time period then that's provided to ensure that there is time for the new property owner to bring the property into compliance so they won't be immediately subject to this ordinance as

well after the six month period, etc. So we are again trying to show that we are going to give time to people when they come into the property and that this is really just focused on wrongdoers, people that are just ignoring our ordinances. So those are the proposed changes to the ordinance. At this point I would like, and I would say that I'm not sure if the realtors and the bankers support this. I know the bankers don't, I'm not sure if the realtors do, but I do think that they would say, and Bruno is here, that they appreciate that we put these changes in, and a number of them were suggested, and they are more...I'm not sure if happy is the right word, but they are more accepting of the ordinance.

Vice Mayor Kerdyk: Craig could you, I know you want to introduce counsel, but could you just...for the people listening and also for us, just go through the whole process. I know you went through and what happens when we see a house, a derelict house, go through the whole process, where do we take it, how do you notify, just so that people can understand that there is a huge process here that we put into place.

City Attorney Leen: I will.

Commissioner Keon: Maybe you can use an example. What about if you use Cotorro; Cotorro is well known and it's in the French Village, people can go by and look at it, and they can understand exactly what happens.

City Attorney Leen: I will use that house as an example. What I'm going to do is -- I'll take you through what we've done, and then I'll ask Manny to go through what we would do if these things don't work, to go through the actual forfeiture process. Manny if you could come up. So with Cotorro...

Commissioner Keon: How about the timeline?- how long ago?

City Attorney Leen: We learned about this property, Mr. Mayor, I remember you had raised it a couple of times.

Mayor Cason: Since 2011, I think.

City Attorney Leen: 2011 – and at that point we did cite the property, we reached out to the bank, but nothing was done, they would just get citations that would – basically it's a daily fine, but the problem is, the problem under Florida law is that when the bank forecloses on the property, it forecloses on the lien, so there is no real incentive for the bank to comply with the lien. The whole idea of these ordinances is let's cite the bank directly for their wrongful conduct under the ordinance, and then they may not be able to foreclose on that, or it may attach to other properties they have, that were the initial thought behind this. So with Cotorro we were very active, Code Enforcement cited it, they went out there, they monitored it, but there was no action taken. Eventually we brought it to the Code Enforcement Board, and we actually entered into a

stipulation with the mortgage holder at the time that they agreed to bring the property into compliance. Then they met with Dona Spain, our Historic Preservation Officer and....

Commissioner Keon: And who you are talking about is a major bank.

City Attorney Leen: Is a major bank.

Commissioner Keon: Is a major international well known bank.

City Attorney Leen: They at that point found out that it will cost something like \$600,000 to bring that property into compliance and they balked. They basically violated the stipulation; they were not going to comply with it. So at that point we – and all these different ordinances were being passed during this time, and this was after a couple of years. We invoked that vacant property ordinance, I mentioned to you, and we filed a lawsuit, and this happened relatively recently, against the property, against all of the parties that had interest, the property owners, the banks. The property owners had basically left, so it was really against the bank; and the first mortgagee who is the primary mortgage holder, they ended up agreeing – we filed a lawsuit, the judge agreed to expedite it, put the hearing right away, we were seeking our fees, we were seeking an order, and basically the bank realized that they were almost certainly going to lose, so in exchange for simply agreeing that we wouldn't require them to pay our fees for bringing this action, they agreed to all of our relief in an injunction order, and the injunction order allows the judge to retain jurisdiction and if they don't comply you can order contempt, you can order receiver, you can order all these things; and also of course, if they don't comply then we can go and seek our attorney's fees for anything further in the future. So it's a great order. But let's say, for example, they don't comply with it, and let's say the bank instead of ordering someone to go to jail, the judge orders a daily fine, and they don't comply with it, this ordinance would then come in, and what we would do is then we would seize the property and we would invoke the forfeiture ordinance. And I'll turn it over to Manny. Talk about what is the process for actually doing the seizure?

Mr. Manny Guarch: Good morning, Manuel Guarch from the Reyes Law Firm and I work for Israel Reyes, He is unfortunately tied up in court, I've not had the pleasure of appearing before all of you Mr. Mayor, Vice Mayor, Commissioners, Madam Manager, so thank you for hearing us out. Before I get to the actual process, I think it's important to note that forfeiture as a legal concept is old as ancient Rome, the underpinnings date back to ancient Rome. One of the first acts of the United States Congress was a forfeiture act, so this is not a novel concept. The FCFA is Florida's, Florida Contraband Forfeiture Act in which contraband, illicit drugs, anything that's used to move illicit drugs can be forfeited under that statute. The ordinance that you have before you today is lengthy, because it is modeled after Florida's...Florida Contraband Forfeiture Act, and the reason we did that was because – and the case of the Florida Department of Law

Enforcement vs. Real Property, the Florida Supreme Court interpreting U.S. Constitution and Florida Constitutional requirements for substantive and procedural due process requirements determine that certain steps, certain requirements needed to be met before forfeiture could occur. Those requirements were then codified into Florida Statutes 932.701 through 706, which are the FCFA that is the model that was used for this ordinance, and essentially requires notice and opportunity to be heard, either prior to a seizure or immediately following a seizure. So, if we are using, and...

Commissioner Keon: Cotorro.

Mr. Guarch: Cotorro.

Commissioner Keon: Cotorro.

Mr. Guarch: We'll use this property as the example. If a determination is made that the property is in violation is a forfeitable property, and so if you look at the definitions of forfeiture property under 34.176, that it's been in violation for six months of at least either two of the Minimum Housing Code standards or the abandoned property list, the City Manager, I'm sorry, the City Attorney and the City Manager in conjunction will make the required finding, they would get an affidavit from the code, the City Code Enforcement indicating that they've received notice or that they've given notice to the property owner, that the house has been in violation for more than six months and detailing the sum that is currently owed on that property. They would then direct our office will do the forfeitures for the City of Coral Gables Police Department to provide notice to the property owner that a Lis Pendens, a seizure, because the only way real property can be seized under Florida Law and under this ordinance is through a Lis Pendens for the purposes of forfeiture.

City Attorney Leen: We would give it to the property owner and all interested parties we would provide notice to, including the bank.

Mr. Guarch: Anyone entitled to notice, anybody with an interest in the property.

Mayor Cason: The six month period begins at the date of the second violation?

Mr. Guarch: It begins with the first violation and ends six months later, so it would be six months and one day.

City Attorney Leen: They need to have both violations for six months, so both would...

Commissioner Keon: But it also is a property that is already on the abandoned property list, it is already been registered on the abandoned property list, it is already known, it is already confirmed that it is abandoned, its uninhabited, it's not Homesteaded property, so there is a long

period of time that leads up to the actual – when you can actually begin to impose the fines or begin this procedure. It's not that somebody calls and says, I think it's abandoned and in six months we take. It is a very lengthy – this house has been going – this has been going on with this home since 2011, and most of the properties that this could be applied to have been doing on for three to four years, five years some of them, and they are deteriorating homes in neighborhoods with high value properties that are affecting and reducing the values of those neighboring properties, and are a threat to the safety and wellbeing of the people in the neighborhood.

Mayor Cason: How many of those do we have?- about 10, something like that?

City Attorney Leen: We are focusing – it's changed a little bit because a couple of the them we've got a compliance on, it's around 10 to 12 properties that we've been focusing on and we all add properties to that list if we see one, either the Manager or any Commissioner can always let us know and we'll take a look at it. But just to be perfectly clear, you need to be on the abandoned property registry, you need to have two or more violations for over six months, and then there needs to be a finding by the Commission or the Manager that this purports substantial health, safety, and welfare. Then the action needs to be brought by either the City Manager or the City Attorney, or by coming to the City Commission. Once all that's done then it comes to Manny. Manny, go through what a forfeiture proceeding would entail though.

Mr. Guarch: So the first step in the forfeiture proceeding is an adversarial....preliminary hearing, which a Circuit Court Judge makes a determination whether or not there is probably cause to proceed with the forfeiture action, not that the house is forfeited right then and there, but merely whether probably cause is met to believe that this house was. So a judge makes that determination initially whether the house was in violation of the provision of this Code for more than six months and that all the requirements are met to make it forfeitable property. It's called adversarial because the parties in interest have an opportunity to appear before the judge and be heard as to why a) the property doesn't qualify as forfeitable property or b) why....infringement with the ordinance or with the actual property or circumstances that would preclude a forfeiture. Following the adversarial preliminary hearing orders entered by the judge finding probably cause. You'll notice that we then have 45 days from the date of the implementation of the Lis Pendens, the date of the seizure to promptly proceed with this action that means we have to file a complaint for forfeiture alleging exactly the basis for forfeiture within 45 days of that seizure. Then after the 45 days the action really proceeds just like a regular civil action. There is discovery, there are interrogatories, so forth, you understand how a general civil action proceeds, and this is no different. The real difference is right there at the beginning with that adversarial preliminary hearing.

City Attorney Leen: So I can add in there. What's likely to happen is if we have a good case and we meet these elements they are likely to settle at that point. Usually the bank will come to us and they'll either agree to the forfeiture, they may ask for some type of consideration, they may not, they may agree not to forfeit it, but agree to a stipulation whereby they'd have to do certain things within a certain time and if they don't, then the judge could order the immediate transfer of property. All these things they could do by agreement, that's almost certainly the way it would occur. If they actually contest it, then it ends up going to a jury trial at the end and we would seek to win the case.

Commissioner Quesada: I've got questions. I've been back and forth on this one a million different times. You talked about the forfeiture statute and this happens all the time. Now I know for personal property, yes, I've seen it. Is this the first time it's being applied in a real property situation as far as you are aware?

Mr. Guarch: No, that's absolutely not.

Commissioner Quesada: No. Where else?

Mr. Guarch: Throughout the state. I'm currently representing – we also represent Seminole County Sheriff's office.

Commissioner Quesada: And they do the same thing there? What's their experience been?

Mr. Guarch: With real property?

Commissioner Quesada: Yes.

Mr. Guarch: Real property is actually a part of the FCFA, and so the same procedures are used regarding Lis Pendens and a pre-seizure adversarial preliminary hearing, that's been written into the statute regarding...

Commissioner Quesada: It has, OK. I wasn't aware of that. And then another thing, if you look at Section 34.178(b) and 34.182(a), so 178(b) and if the notice – 178(b) is the adversarial preliminary hearing, you were talking about, certified mail return receipt requested is what is required.

Mr. Guarch: Correct.

Commissioner Quesada: My fear in this process, obviously I like it much better the fact that its bank-owned property, it's not Homestead property, obviously that was a concern that I had early on, and I have had a number of bankers reach out to me and basically lobby me against it. So, I've been looking at this with a critical eye and I've spoken to Craig and some days I say I'm for it, some days I say I'm against it, so I've been going back and forth on it, but the biggest concern

that I would have here is no notice or not knowing. I know you guys have a procedure in place, I've seen it. I would feel more comfortable if there was a personal service requirement rather than just certified mail. Now you are dealing with banks, you are dealing with different...it could be in different locations, they could be local, they could be – who knows where they could be. Would a private lender also fall into the definition of a bank?

Mr. Guarch: The definition of a financial institution is fairly broad.

Commissioner Quesada: So, I guess our legislative intent would be to determine whether a private lender falls into that as well, because I know...I mean Bill you are in real estate, there is quite a bit of private lending that happens in Coral Gables.

Mr. Guarch: I don't believe this was intended or at least as its written now, it does not only cover banks. It covers any property owner or mortgage owner, holder, I'm sorry, that the property is in violation. So it's not just aimed at banks.

City Attorney Leen: But the reason why it really just applies to banks is because to be forfeitable the property has to be on the abandoned property registry, which means that there is an abandoned property owner, which means that the bank is the one that has the maintenance requirement at the time.

Mayor Cason: But to Frank's question. Who would be the person that would be served, the big bank with 100,000 employees? Do we identify the person?

Mr. Guarch: There is a registered agent.

Mayor Cason: So it's to the registered agent.

Commissioner Quesada: And Jim that's standard practice in any lawsuit. If you open up a corporation, if you open up a bank, you are required to list a registered agent and then the banks have their internal procedures of making sure that...

Mayor Cason: So your question is whether the mailing is good enough because it could get lost.

Commissioner Quesada: My concern is that they have certified mail, which OK, it got there, but if you certified mail to a Chase branch at a certain location, it doesn't mean it's going to get to the right place, doesn't mean it's going to get to...

Commissioner Keon: To the registered agent, why wouldn't it?

Mayor Cason: Is that a problem with you?

Commissioner Quesada: All the banks, the vast majority use CT Corporation Systems, which I don't know how they work with certified mail.

City Attorney Leen: Here's my concern – we still have to notice the property owners, who sometimes are very hard to find, which has been our experience; and then also there is multiple financial institutions and this is just for the adversarial preliminary hearing, which has to be done within 10 days of the Lis Pendens, according to this ordinance, and also I believe the Forfeiture Act, so we may not be able to do that. Whereas when you file the complaint do you serve process? Explain.

Mr. Guarch: As far as notice, what we do under that CFA, that CFA doesn't require personal notice, it requires either certified mail, hand delivery at the time of the seizure, of course that generally deals with personal property if you are taking a car or...

Commissioner Quesada: But that's hand delivery to, in this case it would be – of course, it would be the person on the site, the bank representative is not going to be there.

Mr. Guarch: Right – the third option is also notice via publication. For the Police Department, we've taken the stance that we do all three. The officers will hand deliver at the time of an arrest, we serve notice by publication within five days of the seizure, and we also send via certified mail to any addresses we are able to obtain. For this purpose, that wasn't necessary because you know who the registered agent and parties of interest, so you are going to be either a lien holder on the mortgage, you are the note holder, you are the person at the actual physical address, because its real property it's a little easier to deal with as opposed to...

Commissioner Quesada: But if we are dealing with an abandoned piece of property, Cotorro, I don't know – were there squatters in there at one point?- it's empty....

Commissioner Keon: It's falling down.

Commissioner Quesada: So under the scenario we'd be sending a certified mail to the home itself?

Mr. Guarch: Well we could also check if there is a mortgage on it, who the lien holder is, so if there's a bank...

Commissioner Quesada: That's not required under this proposal – it is?

Mr. Guarch: It is. People Entitled to Notice.

Commissioner Quesada: Where is that?- can you point it out?

Mr. Guarch: Person Entitled to Notice is (f), sorry, Section 34.176(f), Persons Entitled to Notice means any owner, entity, bonafide lienholder, or person in possession of the property, subject to forfeiture one seize, who is known to the City after a diligent search and inquiry.

Commissioner Quesada: But a bonafide lienholder...

Commissioner Keon: The bank.

Commissioner Quesada:...goes back to Subsection (C) is that interpreted to mean the lender?

Mr. Guarch: It would be any lienholder.

Commissioner Quesada: But under the way that this would be interpreted there'd be a lender?

Mr. Guarch: Yes. Oh, yes. But that's just one of...

Commissioner Quesada: I understand. I'm trying to get – my focus is making sure that if this is really going to be going against the banks that they have the right person is getting noticed. The last thing we want is this to be perceived as a taking. The reason the bankers and the reason the Realtors Association has been all over us on this, and rightfully so, they don't want any improper taking or the perception or the procedural effects of a taking. So the notice to me is the most important aspect of this. So I just want to clarify that the banks are going to know what's happening within a reasonable amount of time so that they can react.

Vice Mayor Kerdyk: Do they post too on the property?- they post on the property that this is subject to action?

Mr. Guarch: It's not required under the ordinance, it could be added, notice by publication could be also added.

Mayor Cason: If nobody is there....

Vice Mayor Kerdyk:...certified mail is....

Commissioner Quesada:...is what's standard. OK. Obviously, I'm thinking of something, we don't want to be standard; we want to make sure that – if we are going to be the most aggressive with these types of ordinances...

Commissioner Keon: But Commissioner...

Commissioner Quesada: Yes.

Commissioner Keon:...I think that – my interest in this particular piece of legislation and my support for it is really because we are fiduciary responsible to and our end-user is the residents of

this City, and it's to ensure that our neighborhoods – that we can enforce our Code, and that we maintain our properties within this City to the best, our very, very best ability. You know what, the decision by a bank or a private lender to enter into an agreement with somebody is a business venture that they agree, and you know what?- sometimes it works and apparently sometimes it doesn't. That is not our responsibility. It is our responsibility maybe to work with them, to ensure that how we deal with it is fair, is equitable, complies with all of the laws and everything else, and I think by what is in here and from what we are being told, it does comply, but eventually, you know what?- if some banks, they have wrapped mortgages, and wrapped them, and wrapped them, and wrapped them, so by the time that – you are lucky you can figure out who actually is the mortgage holder on a lot of these properties. Those are decisions, business decisions and the policies that banks have made. You know what?- we are saying to them, that certainly is your business, that's your practice, if that's how you practice, that's fine, but when it happens to be in our City and you are not responsive to us, this is the action that we as a City on behalf of our residents can take, and whether, even if it's a private lender. Anyone of these people at any moment in time can put this, can write this off, put it back on the market, and recover some of their investment, even a private lender. If you give somebody money, you take the property back, you realize the person has walked away, you go, you get certification, you foreclose on whatever this deal is. Give it to an agent and you stick a "For Sale" sign up and somebody is going to buy it. People have inquired about all of these properties, and nothing is happening with them, nothing – and they are eye sores in our neighborhood and they are dangerous. They are not being maintained, people can walk through them, kids can walk through them, and animals crawl in them. People can stage activity in a neighborhood that you don't want there in a neighborhood, because no one is assuming responsibility for the business decision that they make and it is over a long period of time, it's not like it happened yesterday. These things have been going on for three, four, five years.

Mayor Cason: Craig, do you have any doubts the way it's written now, the proper person, the registered agent is going to get to the right person, the person who is going to make that decision?

City Attorney Leen: Well here's the issue. I do believe it will get to them. Take a look at 34-183(e), I had asked our outside counsel to make sure this had all the process that would be required by law, and to be clear, not try to close – 34-183(e) does provide a service requirement for the complaint. It's more of a logistical issue. For the adversarial hearing, we only have ten days, and it's nice to be able to show that we complied, and we gave the certified mailing to different properties, you can show that very easily. Honestly, if we don't give them notice they are going to have an argument against us, so it's in our interest to make sure they have notice because that's part of the forfeiture ordinance is, in order to forfeit their interest they are going to need notice and opportunity to be heard. So what 9(e) does though, is it ensures that the owner

and even with the perfected security interest, like a mortgage, all of them will receive service a process or at least we are going to do our best to – well we have to comply with the Florida Rules of Civil Procedure, and if for some reason we can't, there are substitute service provisions in those rules that we can follow, but for a bank we would give it to the – there is a registered agent. So there is someone for us to serve, so I don't think in the end that will be an issue and I just wanted the Commission to know that we have put that in there; there is a service requirement, it's just logistically difficult to do at the beginning of the case without losing the case, because then if we don't comply within the ten days, they have an absolute defense that we have not complied with our ordinance, and it may be through no fault of our own.

Commissioner Quesada: Commissioner Keon.

Commissioner Keon: Yes sir.

Commissioner Quesada: I absolutely want to protect our neighborhoods, the aesthetics, the livability; I don't want them to deteriorate in any kind of way. I want to make sure we get rid of abandoned properties, but as our City Attorney told us at the beginning of this item, we are at the forefront of this.

Commissioner Keon: Right.

Commissioner Quesada: Nationwide we are at the forefront of everything that we are doing here. It's our job as elected officials to balance the interest of what we want with the right of property owners. Again, the last thing I want out there is a perception that we are instituting an ordinance that's in effect going to be a taking. Now our City Attorney said that at the beginning, and I know why he said that, because that is what we have been hearing from the professionals in the real estate industry. You know it, as well as I know it, sometimes it's not whether it is or it isn't but it's the perception of it. So no one – if your business is lending money, whether you are a bank, whether you are a regional bank, whether you are a national bank, whether you are a community bank, whether you are a private lender, whether you are retired and you are helping someone out, and you don't live in Coral Gables, my biggest fear is being blindsided, because it's an investment of \$100-\$200-\$300,000, and if we are doing something that no one has done before, the notice aspect, to me, is incredibly important. Now I hadn't seen the Section 183(e), I had missed that provision, that makes me feel better that there is a requirement there and I understand the adversarial proceeding aspect of it, is to get the ball rolling to establish the probable cause and after that then they'll have a chance to come in and defend themselves. I feel like you want to jump in. What is it?

Mr. Guarch: I might have glossed over earlier, and I think it's important to note that the Code Enforcement is providing notice to lienholder, to the home during that six month period, that they are in violation of the Code. So the lienholder, the banks are also finding out, look we've

got a piece of property that is in disrepair, that's abandoned, that the City of Coral Gables is frankly upset about, we should look into that, we should do something about that. Additionally, when we serve the complaint, this requirement, it's also an additional requirement of (e), of Notice by Publication for a period of two consecutive weeks.

Commissioner Quesada: Which is consistent with the statute in other notice of publication instances. But I'll tell you, I have a hearing this afternoon in West Palm Beach to set aside a default because of notice of publication, not everyone gets it, not everyone sees it. That's a last resort where people are trying to evade service. We are dealing with banks here that have personal representatives. If we are doing it in conjunction, I mean -- I would much rather prefer a personal service in that subsection (e) that our City Attorney appointed out.

Mr. Guarch: It requires both.

Commissioner Quesada: Yes. Another question for you guys. In the fourth whereas clause, the first line, "City intends to invoke this ordinance to address extraordinary situations." We don't really discuss in the ordinance and if I missed it, please point it out to me. What is extraordinary? I mean obviously, Cotorro, we have determined is an extraordinary situation, but the ambiguity is concerning, and I understand and I believe its Section 34-177(a), discusses that it's a determination of the City Manager, the City Commission, with consultation with the City Attorney, so ultimately it's going to be up to us up here to make that determination. So whoever the elected officials are at the time that this is applied is going to make that determination. Do we have any kind of analysis or any kind of benchmarks that need to be hit, for example, when we talk about the Mediterranean bonus? You know there are certain factors that have to be met, when we talk about lot splits, there are certain elements that we need to balance. Is there any kind of balancing test or elements that we need to be looking at as elected officials, because we are here now? We may have one opinion of what -- maybe the grass is too high and that's determined to be extraordinary. What I would like to see is something clearer -- again, if there is a hole in the roof, it's clear.

Commissioner Keon: What is minimum housing -- what is the...?

City Attorney Leen: It could be all sorts of things, the Minimum Housing Code. It can include holes in the roof; it can include not maintaining the property.

Commissioner Quesada: Do we refer anywhere into...

City Attorney Leen: We put it in the provisions.

Mr. Guarch: Section 34-176, subsection (b), defines forfeitable property.

City Attorney Leen: The reason I use the term extraordinary...

Commissioner Quesada: But under the Code, I mean that's...

City Attorney Leen: The reason I use the term extraordinary, it partially reflects a comment that was made by Bruno. He wanted us to indicate that forfeitures are disfavored. I didn't want to put that in the ordinance. I do think where it's appropriate; we should be able to do it and not have to say it's disfavored. However, extraordinary is a term that's used in the law when you are talking about extraordinary remedies, which tend to be – they are called rifts of – they are these things that existed at common law that you use only in very limited circumstances when there is a major harm that's occurring – an injunction is an extraordinary remedy. So the reason I used it here was because to me, I don't think it's going to be typical for a bank to have a property like this and refuse or fail to maintain it when we give them repeated notices and six months, and maybe even file a lawsuit against them. Our experience, we only have, we have a couple hundred properties on the abandoned property ordinance, the last time I looked, and don't hold me to that exactly, because it's been a little while since I looked, but we had a couple hundred, and we only have like eight to ten that we are really focused on here or are having this sort of significant problem, and that's what I meant by extraordinary.

Mayor Cason: It won't be like they refuse to cut the grass or fix a hole in the roof.

Commissioner Quesada: Hold on a second, hold on a second. If you look at the ordinance, the provision you just pointed out, 176(b), it refers to two or more violations of Section 34-166, which is the abandoned real property maintenance requirements. If you look at 166, and I just pulled it up, because it's not in our packet, I pulled it up online, it says, property subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, accumulation of newspapers, circular, flyers, notices, except as required by law, discarded personal items, furniture, clothing, large and small appliances, I mean, I would hate to invoke this because of someone's overgrown yard.

Commissioner Keon: But you are invoking it against a property that has been abandoned and no one is taking care of it, and if you live next door to that house after you have invested your dollar in redoing and redoing your house, and if you were living next door to a home that nobody cut the grass, and the circulars were all over the yard, and the paint is peeling off the house, and whatever else, would you want – and the City has attempted to remedy this, and we have the ability to go in and charge for those types of things, we can go in and maintain.

Commissioner Quesada: I agree with you. I'm not disagreeing with anything you've said.

Commissioner Keon: If those things happen do we have the right on behalf of our residents to go in and ensure that the business transaction that took place that failed, the responsibility for that is placed on the people or the group who actually engaged in that transaction.

Commissioner Quesada: I agree with you a thousand percent, but we shouldn't be able to do that because of weeds.

Mayor Cason: Craig, what are the ten homes that are on there now?- are there just weeds?- what are we talking about?

City Attorney Leen: Those ones are significant – hole in the roof, significant deterioration to the structure, a lot of structure problems. What I would say is, there are two things to think about Commissioner. First, I do think – they have to have two or more and there has to be this finding, substantially within the health, safety, and welfare of the community. In addition, there is a requirement of forfeiture law, which I would have to sign off on to bring this action, that what we are doing is proportional to what we are seeking, so if it was just weeds, I would not sign off on that, we couldn't because that would not be lawful. It would have to be something substantial enough to justify taking the entire property, and I think that requirement alone and the fact that I do not want to bring a cause of action and ask you and you to support a cause of action where we will lose, particularly, since this is a newer ordinance that we are doing that, that is a limitation, you should view that as a limitation. We are only going to come to you with one of these extraordinary cases on this list where they have a hole in the roof, its causing a lot of problems, maybe there are people using the property in an improper way. It would have to be very significant for us to invoke this ordinance, and I can say this on behalf of the City Attorney's office, we would not invoke the ordinance where it's not proportional, that's a legal requirement.

Commissioner Quesada. Mr. City Attorney I want to support this ordinance. I just want to make sure that when we are not sitting here 25 years down the line, you might still be sitting here; I won't be sitting here (laughter).

Mayor Cason: The transcript of this discussion will be there.

Commissioner Quesada: No, but the point is I don't want it to be applied inequitably. Now I'm not saying it's going to be frivolously, but we...if you read 166 – 34-166, that is referred to in the subsection that you pointed out, which I agree is a subsection that I guess would define extraordinary define these situations. It talks about maintaining the yard, the front, the side yard, I would hate for – I don't know, I would hate for something to happen for such a trivial issue.

Commissioner Keon: But those are things that the City has the ability to go in to mow the lawn and charge it, lien the house. Those things we have the ability to do. It is the major issues that we don't have the ability or why would we spend, why would the City put for \$800,000 to fix up Cotorro for the benefit of the bank?- it's inappropriate.

Commissioner Quesada: I agree with what you are saying, but what you said is not reflected in my reading of the ordinance. When you read in conjunction with 166, someone could really apply it in a manner, in a scary manner, that's the way I look at it.

Commissioner Keon: You know that, as an attorney, you know that with every single piece of legislation that comes down to us. You know that it can be twisted and turned and talked about and misappropriated.

Commissioner Quesada: And if we can prevent.

Mayor Cason: Is there a way to define extraordinary to get to his question?

Commissioner Keon: But you know what, until we try it, until we go forward and we go through this process, we aren't going to know, and you know we have to have the political courage to move forward. If we make a mistake, these are living, breathing documents we can change.

Vice Mayor Kerdyk: First of all, I'd like to say what the realtors say about this before I make any final comments on it. But do you feel anywhere comforted the fact that before this goes to the forfeiture that it has to come to the City Manager who has to sign off on the City Commission that has to sign off. There is some final latitude at this dais here, are you comforted...

Commissioner Quesada: Yes, I do. However, as an attorney when I'm reviewing statutes, I'd like there to be predictability. A few months ago there was a presentation to us, I think....when looking at our Building Code compared to...and it talked about, and I'm not saying I'm for or against anything, but it talked about predictability, and you want to know what's possible. When you are looking at a piece of legislation in any business that you are in, you'd like to understand what to be able to predict, whether its vague or ambiguous, or it can be interpreted very easily in a manner that can be prejudicial to a property owner, in this case which I think can be. Now I understand, we are the last line of defense, and we are the ones that are going to make that determination in conjunction with the other statutes that we have. I always like to look at any piece of legislation that we pass as if we are not sitting here. If unreasonable people are sitting here, and maybe I shouldn't think that way.

Commissioner Keon: You have a judicial system. You have an independent judiciary that makes the final...

Commissioner Quesada: And they make their determination on what this says.

Commissioner Keon: But they ask.

Vice Mayor Kerdyk: Do you see anything in here that you can suggest that...

Commissioner Quesada: If I could change it in any way, and Craig, I hate to be bringing it up now, because I've been back and forth on this is, I would like it to be a little bit more clear on what the reasons why the property could serve this process -- so just being kept free of weeds. If I'm a judge and I presented everything, and the City comes to me and says, that they have overgrown weeds, and the defendant says, the property owners says, you know something, I wasn't around, the house is in perfect condition, everything is perfect, but overgrown weeds. You're right; you can have that, OK...

Commissioner Keon: Is that the meaning of extraordinary?

Commissioner Quesada: I'm sorry.

Commissioner Keon: Does that fit the definition of the law of extraordinary.

Commissioner Quesada: Am I being unreasonable?

City Attorney Leen: We can address this. One way we could address it... As you counsel as Commission-as-a-whole, I always worry about limiting your discretion too much though, because I can't foresee all the different types of -- Commissioner Quesada, I can't foresee all the different types of situations that will arise.

Commissioner Quesada: Of course we can't, we never will.

City Attorney Leen: So that's why I didn't want to eliminate...One thing I could do in conjunction with the Manager, is I could -- I don't know if you should put that in the ordinance itself, but what we could do is put it -- we could do an implementing like resolution, or an administrative order, an implementing resolution, a legal opinion that discusses what would be the type of violations in there that would guide the Manager if she makes the decision, or the Commission in determining whether this is within the substantial health, safety, and welfare of the community and to initiate the forfeiture, and we can put that into a resolution. I can bring it next time, based on this ordinance and to implement, to give guidance, based on your instructions. I'd be happy to do that. I think it's a good point.

Commissioner Keon: And if you are on the prevailing side of this, you always have the right to bring it back.

Commissioner Quesada: I understand.

City Attorney Leen: And you could instruct as part of the motion, you could -- if you decide to pass this, you could also instruct us to bring back a resolution next time going over what sort of things should we focus on in implementing this. I'd be happy to do that.

Mayor Cason: Since this is a public hearing, before we go any farther, does anybody want to – you want to speak?

Commissioner Lago: I don't know Mayor, obviously you have the final word, but maybe we'd like to hear like the Vice Mayor was stating in regards to what the realtors have to say.

Mayor Cason: To answer my question. Does anybody want to...?

Commissioner Keon: Anybody want to speak?

Mayor Cason:...public hearing – yes please. State your name for the record please.

Mr. Bruno Lopes: Sure, Bruno Lopes, Miami Association of Realtors. Thank you Commission, Mayor, Vice Mayor, for letting me speak today on this ordinance. I've spoken with many of you on it already, and as the City Attorney mentioned, we've worked with him closely massaging this to see if we could reach a common goal of maintaining properties and maintaining property values throughout the City, which is obviously something that realtors will support. In the end, I think we came close; it is hard for us to accept what our opinion is, a bit of a draconian ordinance and excessive much like Commissioner Quesada pointed out. I do think there are some possibilities where this ordinance could be abused and, not only in perception, but in actuality overstep its intentions, whether by this Commission or future Commission. So I think in the end we did come close and the City was very accommodating, we do appreciate that. It's not something that we think – we'd like to see on the books in any municipality. I know that you guys take a lot of pride of being in the forefront of a lot of these issues, but we do think this has gone a step too far, and again we find it draconian.

Mayor Cason: What would you have us do in the case of Cotorro? If the bank says we are just not going to fix it up, we are going to stiff you.

Commissioner Keon: When we get around to it we'll deal with it.

Mr. Lopes: I think the conjunctive relief that you already have in place; I'd be surprised that that didn't alleviate almost all situations.

Commissioner Keon: It hasn't.

Commissioner Lago: It hasn't. That's the main problem.

Commissioner Keon: It hasn't. It hasn't.

Commissioner Lago: It hasn't given us any recourse in reference to the current issue. The biggest problem is what Commissioner Keon stated before and it's very clear. I don't want to have to put something in the books again that 25 years we look back and say, maybe it was a mistake, but

I'm willing to put something in the books right now which is going to assist the residents, and I received multiple phone calls from residents who are at their last wit in regards to, just for example, as Cotorro being a problem where the property is falling in on itself. The neighbor has an interest in potentially selling a property, and their home values are being impacted due to this issue, not only home values, because home values is always the main focal point, but what's overlooked in a lot of times is safety. You have rats, you have children, you have vagrants that live, that sometimes squat in the property and it's just a nuisance and a hazard for the community as a whole. So I'm trying to see how we can – I'm looking at it in a different way. I'm looking at it in a way that Commissioner Quesada said, how can I not impose this law, but for me it's getting to the point where we have no other choice. We are being left with no other choice. I want to be strict without putting ourselves in a situation where we are not giving the indication that we are taking people's property away, and my intention is not – you know if your yard is six inches overgrown to take your property based on your grass clippings, I think that's a little bit far-fetched and I think that's why the ultimate safety valve here is it comes before the Commission, it comes before the City Manager who are rational individuals.

Mayor Cason: And maybe the resolution can further define extraordinary.

Vice Mayor Kerdyk: Can I say something? Bruno, did you want to add anything else?

Mr. Lopes: If you don't mind. I know the Commission intentions are to only implement this in extreme measures, but already on this Commission we have the conversation of what if a bank doesn't want to mow the lawn for a property, do we owe it to the residents in the neighborhood to go in there, so just now we haven't implemented the ordinance, we've already brought up that issue. So what's to say that in the books, where it does allow you to implement this ordinance for something as simple and mundane not keeping the weeds out or mowing the lawn, that future Commissions won't try to implement that. I think we can all agree that something like that, the punishment doesn't quite fit the bill there, and as the Attorney mentioned, that there is a proportional issue in common law, and I think you are going to have a hard time proving that in court. I think it would arise a lot of legal issues.

Commissioner Quesada: You know for that situation that was brought up here, there are things that we can do. I spoke to our City Manager and just mentioned to me, clean and lien it, so basically we can go in there, we can clean it up in that kind of situation, and we can lien the property and put it on their tax bill. So that's what I think we need to do and I apologize if I haven't seen this, but I don't think we have a comprehensive summary of everything that the City can do. I think that's the most important aspect. As far as the different – I would like to see a document maybe five or six or seven different examples of situations of what the City would do. Maybe we put some administrative procedures in place, coupled with a resolution that we can further clarify this. Moving forward I don't want anybody blind-sided. I want to make sure

that it's clear, it's concise, and I just don't want that inequitable application of this moving forward.

Vice Mayor Kerdyk: So what you are saying is, let's defer it again?

Commissioner Quesada: No. No. No. What I'm saying is – I'm going to make a motion to approve it, OK, but with – I want additional feedback from staff. I want a resolution coming back to us with different examples, different situations of what can and cannot be done.

Vice Mayor Kerdyk: Can I say a few words before you make that motion?

Commissioner Quesada: Yes, of course.

Vice Mayor Kerdyk: I think extraordinary, we can define extraordinary. I know that we put a tremendous amount of time and effort in this. I sit up here uniquely because I'm a realtor, I understand property rights. I started Community Bank and I sit on a regional bank board, so I understand that, and I understand somewhat the responsibility of the bank to understand that they own property, and that they need to take care of their property. And they understand their properties are having problems, and somebody is not paying that needs to be on their radar screen, and I also understand the fact that I'm entrusted to protect the quality of life for the residents of the City of Coral Gables; and when I look at it all it makes me think that we need to have some ordinance here with some cleaning up, but I've got to tell you, I want to move forward and I can't really say that I would have said that at the last meeting, because I knew there were some things here that we need to take care of like non-homestead and defining that and making sure it's not homestead, but I do think we made some valiant efforts to move this process along and if we can define it a little bit better, I think it can become an ordinance that would be beneficial to the community and to the residents of the City of Coral Gables, which is ultimately what we serve.

Commissioner Keon: I think it's a good ordinance. I think that if you at the next meeting if we pass this, if you'd like them to come back with the administrative order or the implementing policy or the implementing order that would be perfectly appropriate. I also think that Code Enforcement can give us a presentation. We have 200 homes on – or over 200 homes on the abandoned property list, and you know most of them have been responsive. I mean that blue tarp was on that house along LeJeune Road for I don't know how long.

Mayor Cason: Five years.

Commissioner Keon: You know what?- we contacted them, they fixed the roof.

Mayor Cason: These are only 10 out of 200.

Commissioner Keon: Yes – this is 10 out of 200, I mean and I think – that’s why I would ask Craig too is extraordinary a legal term?

City Attorney Leen: Yes – extraordinary is a legal term. I would rather instead of – I would recommend that you go forward and approve the ordinance with instructions that I come back to you with a resolution that will, for example, give examples of what extraordinary is, and what is within the substantial health, safety, and welfare of the community.

Commissioner Quesada: Commissioner Keon so you understand what is extraordinary is as a legal term, to look at other court cases in similar circumstances where they discuss extraordinary. I don’t know if there is any case law that discusses it, there could be, I don’t know, in this kind of situation. So the thing is we have the power as a legislative body to define what extraordinary is.

Commissioner Keon: Right.

Commissioner Quesada: I want to see that. I want to make sure that for overgrown brush as mentioned 34-166, isn’t a reason why someone loses a property.

Commissioner Keon: But we will have that discussion with Code Enforcement and they can show us what types of things can we remedy, and do we go in and take care of. I mean we are not going in and paint homes, we are not in and pickup yards, and things like that. We can come back at the next meeting with the implementing....

Commissioner Quesada: And that’s why we need a summary document discussing all these types of situations, so that no one is caught off guard.

Mayor Cason: Anybody disagree with that? Let’s do this...

Commissioner Keon: You make the motion then...

Mayor Cason: We’ve got too close – is there anything else you want to say.

Commissioner Keon: I would think that the Realtor Association actually would be very supportive of any efforts that municipalities go to, to preserve the property values and the livability and the safety with their communities. I mean I really think rather than imposing this, I would really think that you would applaud it, because I think what you are doing is when you look at the extreme efforts that we would have to go to in order to do this as being extraordinary. What we are doing is, if you have a home for sale next door to an abandoned property, how difficult is it for you to sell that that reaches the point in which we would have to go through this. It makes it very difficult, you know. We are ensuring that we have quality neighborhoods so that people who are in real estate market business who are selling properties have the ability to cut so many deals that work. I mean if the banks chose to enter into those agreements then whatever,

that's not our issue, that's a banking issue, that's a business decision. But I would think that, particularly with the realtors we are really assisting them in ensuring that we have high quality neighborhoods that they have business in.

Mr. Lopes: And you're right that we do support ordinances that help maintain property values or in many cases increase property values, but there is also a balance between private property rights, we are just trying to ensure...

Commissioner Keon: And I think we've addressed them, and I mean I would hope you would be our advocate in going back to the Realtor Association and explain to them the extreme and the extraordinary events that would have to occur before anything would happen, and you know...

Mr. Lopes: And if I could make a suggestion on that. And Craig, if you could help provide me a little bit?- There was a piece of language that I was hoping to introduce to it that I think would further strengthen the extraordinary measure in the ordinance. It was something along the lines of – it was part common law, right?

City Attorney Leen: Bruno wanted to add that forfeitures are disfavored at law, so that they were not – I don't like the use of the term disfavored because that's a legal term too, and that means that the court will not apply it if there is any other remedy that's available.

Commissioner Keon: I think we have to trust – we have one of the best City Attorney's in the State of Florida. How many times have you been applauded for your work?- how many boards do you sit on?- you know is a Columbia Law, summa cum laude graduate who has practiced with the County Attorney's Office, you know this is a man who we really should rely on. Do I know that there is a legal, what the legal framework of extraordinary is?- no, but I don't write contracts, he does, and so I'm going to take his word for it and we have also hired counsel that also does; and so we can't ever be afraid to be first when we have relied on the best that is available to us, to provide us with the information we need in order for us to make decisions. Sometimes we will take that step, it's just like our IT people, giving them the opportunity to be creative, be first.

Mayor Cason: Does this ordinance say before we close the public hearing?

Mr. Lopes: If I may one more comment – and I believe the intent of the Commission was to use this as a last resort, so then to me it makes sense to add that the law disfavors...

Commissioner Keon: But our attorney has told you why we wouldn't do that, and he has good legal reason for that. So in turn it is incumbent upon us to follow, I would think for me, I would follow the legal counsel of my City Attorney knowing, knowing this man's background.

Mayor Cason: Thank you Bruno.

Vice Mayor Kerdyk: Let's clean it up a little bit, Craig like we were talking about – and by the way, Commissioner Keon, the City of Coral Gables has never had a problem taking the lead in issues and really been a leader, not the follower, actually this is what we've always done in the City of Coral Gables, been the leader, not the follower.

Mayor Cason: So we close the public hearing portion. Anymore discussion?- do we have a motion Frank?

Commissioner Quesada: Yes. I want to make a motion to approve the ordinance with an amendment requiring that we come back with a resolution giving examples of what extraordinary are, as well as what failure to maintain means, that's also in subsection 34-177(a), just so that its clarity for everyone involved so that we are not creating a forfeiture on a trivial matter.

Commissioner Keon: Would you like Code Enforcement to provide us with the abandoned property list and the active list that they have?- any of that...

Commissioner Quesada: I think its part of the presentation, but it doesn't need to be in the resolution.

Commissioner Keon: OK. No, but I didn't know if you wanted it as backup.

Commissioner Quesada: Yes. I think what I would like to see in the presentation when they are ready for it, with Code Enforcement and with Craig Leen and our outside counsel as well, really coming back and using different examples and maybe what other cities have done. I didn't realize that other cities; I think you said Seminole County...

Mr. Guarch: You asked whether or not other cities have....

Commissioner Quesada: Applied it to real property.

Mr. Guarch:...Implemented this actual ordinance or forfeitures of real property?

Commissioner Quesada: Forfeitures of real property.

Mr. Guarch: Forfeitures of real property are authorized if there use of let say house contraband, a home...

Commissioner Quesada: In a criminal setting.

Mr. Guarch: In a quasi-criminal setting -- in civil litigation under FCFA, yes, forfeiture of real property. I'm not aware of any ordinance that a city has done under these circumstances, but it's not prohibited or preempted in any way.

Commissioner Quesada: Got it. So I misunderstood what you said, so we are the first ones applying it the way we are.

Mr. Guarch: That I'm aware of – yes.

Commissioner Quesada: OK.

Mayor Cason: So we have a motion from Commissioner Quesada, do we have a second?

Commissioner Lago: I'll second the motion.

City Attorney Leen: Mr. Mayor may I ask Commissioner Quesada just for clarification. So by amendment though, you are proposing to approve the ordinance as written. We come back next time with an implementing resolution regarding those two terms how it will be applied.

Commissioner Quesada: Maybe we want to add it to the definitions after we've gone through that resolution.

City Attorney Leen: If you wanted to do that then you wouldn't pass it, because this will pass the ordinance, it will become part of the Code. At that point we are talking more about how you interpret.

Commissioner Quesada: Can we orally now make an amendment to the ordinance requiring reference to examples or for further clarification pursuant to our resolution?- can't do that?- because the resolution has been created yet?

Commissioner Keon: I'm sorry; I'm asking what the Minimal Housing Code is?

City Attorney Leen: It's a provision in – it's a section of our City Code that goes through all the different things you have to do to maintain your house – talks about roofs, ceilings, structures. It's what's usually cited by Code Enforcement – occupancy requirements.

Commissioner Keon: What if we limit it – I mean what I'm more concerned about is the structure itself, you know it isn't grass, but it is the structure itself.

Commissioner Quesada: If you did that he would have to rewrite the ordinance because the provision that refers to it refers back to 34-166.

Commissioner Keon: I guess I'm comfortable because it says extraordinary.

City Attorney Leen: I could put a sentence that says that the City may provide...

Commissioner Quesada: Craig, why can't we pass it and then amend it after either referring to the resolution or changing or adding the definitions to it?

City Attorney Leen: You could – you could pass it, I could come back with a resolution next time if you prefer to be put into the ordinance then we'll have to go through two readings again, but we could amend it at that point, or you could keep it as part of a resolution. You know the resolution it's still enforceable, the resolution, it just gives the Commission a little more flexibility, still giving notice though. We have to follow the resolution.

Commissioner Quesada: But you've got to dig for it.

City Attorney Leen: Say again.

Commissioner Quesada: You have to dig for it, when rather this would be up on Municode, it would be discovered anywhere on the Internet very easily. I guess it could be part of our Code Enforcement package. I know we have a book that we pass out. My motion is to apply as is and to come back with a resolution, and then we can decide on that, but we have the resolution whether we want to amend it or whether we want to reference the resolution or whether we just want to have it out there.

Mr. Guarch: Thank you Commissioners.

Mayor Cason: Alright. So we have Commissioner Quesada made the motion, Commissioner Lago seconded. City Clerk.

City Attorney Leen: Oh Mr. Mayor, one other thing, just a quick scrivener issue, its Section 134-185, its missing a one (1), and Section 134-186, if that's OK Mr. Commissioners, to include that.

Commissioner Quesada: That will be part of the amendment. I see that.

City Attorney Leen: Sorry about that.

Mayor Cason: City Clerk

Commissioner Keon: Yes

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:52:34 a.m.]