

**City of Coral Gables City Commission Meeting  
Agenda Item I-1  
December 16, 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, Cathy Swanson-Rivenbark**

**City Attorney, Craig E. Leen**

**City Clerk, Walter J. Foeman**

**Deputy City Clerk, Billy Urquia**

**Code Enforcement Director, William Ortiz**

**Public Speaker(s)**

**Alex Palenzuela, Special Counsel**

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Agenda Item I-1 [Start: 4:42:45 p.m.]

Report regarding properties on the abandoned property registry that have been referred to City Attorney for further action, and on recently filed lawsuit seeking Court enforcement of Code requirements as to the property at 1044 Cotorro Avenue.

Mayor Cason: I-1.

City Attorney Leen: Mr. Mayor, this Commission, the City Commission for Coral Gables, has been more proactive on going after abandoned properties to try to make sure that they are brought back up to Code, that they don't have squatters, all sorts of issues to make sure that there are not unfit dwellings than probably any Commission I know of in the state of Florida. I've spoken on this topic at a number of different meetings of different City Attorneys and we always

seem to have the ordinances that are the most proactive. So what I've done today and we will be brief. Today we put together a report, following a request from several Commissioners, individually on what we're doing with these abandoned properties. We have a PowerPoint, so you can look at them. And I've asked both Alex Palenzuela, who is our outside special counsel, an excellent special counsel on matters of Code Enforcement and on enforcing the abandoned property ordinance, and we appreciate everything he's been doing because he's been extremely effective and you'll see that today. And then we've also asked our Code Enforcement Director, Will Ortiz, who has been extremely helpful in doing this. Not only is he a very effective Code Enforcement Director, but he's worked with us to be effective in the legal arena as well. And they're going to both go through a presentation with you at this time.

Vice Mayor Kerdyk: OK.

Alex Palenzuela: Good afternoon, Mayor and Commissioners. Thank you for this opportunity to address you to discuss what we've been doing to deal with the abandoned real properties. Just going to go through each one. I've distributed a list that includes all the violations on the different properties. The ones that are struck through had been corrected. And if you have any questions, feel free to stop me. But starting with the first one, 109 Frow Avenue, this is an historic property in the McFarlane subdivision. It's bank-owned and the bank, through its real estate agent, has been cooperating trying to get the violations corrected. You'll see this as a theme throughout this presentation, that a lot of times they'll correct the inexpensive and quick violations, like updating the registry, mowing the lawn, but when it gets to the more expensive, involved violations, then we stop seeing cooperation, but in this case, we have not yet gotten to that point. The next property is 134 Florida Avenue, also in the McFarlane district, also a historic property. This one the City has not issued new notices of violation because it's hoping, through Dona Spain's office, to use County funds, rather, that are for affordable and historic properties to correct the violations in cooperation with the owner.

Mayor Cason: There's a lot of McFarlane homes that you're working on?

Mr. Palenzuela: I'm sorry?

Mayor Cason: This is one of the McFarlane homes?

Mr. Palenzuela: Yes, sir.

Mayor Cason: OK, got it.

Commissioner Keon: Also 134 Florida?

Mr. Palenzuela: Right. The first two 109 and 134 came off that list. And because at the time 109 was in foreclosure, it was decided that since it qualified as an abandoned real property, it would be added to this list as well.

Commissioner Keon: OK.

City Attorney Leen: As part of that project, the City will be waiving its liens, as to those two properties, because that was one of the requirements the County had in order to be able to proceed.

Mr. Palenzuela: Which is why there was no point in citing, and once we pulled Florida Avenue, because creating more liens would only slow down the County process.

Commissioner Keon: OK.

Mr. Palenzuela: So the next property is 624 Zamora Avenue. This one when I last reported to the Commission a couple of months ago, Wells Fargo had agreed to work with the City, but they haven't done much, except replace the rooftop, mow the lawn, and I think they haven't even updated the registry, so the City has asked me to begin preparing a lawsuit to file in this case.

City Attorney Leen: So, Mr. Mayor, and for the Commission, this is one of the properties we would like to file a complaint on, so if there's any objection, let me know. But we would like to

file a complaint under the Code. We have to get either the Board of the Commission or the City Manager. I think you've all approved going forward on all of these already, but I just wanted to give you notice.

Commissioner Keon: All right.

Mr. Palenzuela: Right. And if it happens that we do get a response and they start complying, then we can always decide not to file right away.

Mayor Cason: And the defendant here is Wells Fargo?

Mr. Palenzuela: In this case, it's the property owner as well as any responsible parties, like the mortgagee.

Commissioner Quesada: This specific 624 Zamora.

Commissioner Keon: Is Wells Fargo.

Mr. Palenzuela: Well, Wells Fargo is the mortgagee, but this one, the property owner is an Adam, I'm sorry. A gentleman who the state, I believe, and he went through bankruptcy, so he has totally abandoned the property, so we would be going through the mortgage company.

Mayor Cason: And the mortgagee, has he moved forward?

Mr. Palenzuela: I'm sorry?

Commissioner Quesada: And the lender has not moved forward?

Mr. Palenzuela: No, sir.

Commissioner Quesada: They haven't foreclosed and is he still paying or we don't...?

Mr. Palenzuela: The foreclosure was dismissed for want of prosecution on January 18, 2012 and they haven't refiled as far as my last update on the title work.

Commissioner Keon: You know, the problem is with the banks.

Commissioner Quesada: They dropped the ball?

Mr. Palenzuela: It's not unusual with these abandoned properties. The banks do not take the properties to sale.

Commissioner Keon: The banks don't want to write them off, because it means they take him off their books as an asset and they have to put him on as a liability.

Mr. Palenzuela: Right.

Commissioner Quesada: No. But what's happening in this case because I do some of this kind of work representing banks, doing foreclosure work. Wells Fargo they're enormous, obviously if they start a foreclosure action, that means that the borrower wasn't paying, the homeowner wasn't paying. He's disappeared. He's in another state. He's declared bankruptcy. He's not making payments anymore. Wells Fargo probably is the law firm that has 10,000 cases. The attorney there probably dropped the ball. I mean, I'm assuming, I am guessing here and then they just haven't, they have so many properties, they haven't noticed they dropped the ball, so our neighborhood is suffering. So as soon as we start this lawsuit, I guarantee you, they're going to pay attention and they'll come into compliance.

Mr. Palenzuela: Hopefully.

Commissioner Quesada: Yeah, hopefully.

Mr. Palenzuela: Because I've seen cases you'll see them on this list, a couple of them were taken

to judgment, sales were set, the sales were cancelled, and they were never reset. So we'll get to one of those. I'll point it out to you. OK, so 624 Zamora.

City Attorney Leen: So this is one that we will take action on. We will certainly file a suit, and the forfeiture ordinance, this might be a good example approximately of one where we might want to invoke that, if it's passed. In the course at that point, we would work it out with the bank. That's normally what would happen. And we'd come to a settlement, which you're going to see you're going to talk about later with some other properties.

Mr. Palenzuela: Exactly. OK, the next one is 815 Catalonia Avenue. There's no bank involvement in this case. The owner has been cooperating, and as soon as she get to the permits, they will come into compliance. So, there's no need to take any further enforcement action there. The next one is 1009 Columbus Avenue, and this is one that was going through the foreclosure process. It has a new owner. They were in dispute with the mortgage company over whether the mortgage lien survived or not. There's a file title action filed that was then removed to federal court by the big banks. But in the meantime, the City wasn't getting compliance from the owner; although he was willing, didn't want to lose his investment. So we took it to the County's Unsafe Structures Board, because as you can see from the photograph, the roof is caving in.

Commissioner Keon: Yes.

Mr. Palenzuela: So we obtained an agreed order. The owner and mortgagees will work out their differences in the meantime. They have agreed to fix the violations by pulling permits within 60 days or rather, applying for them in 60 days, pulling them within 30 days or after, and passing final inspection on all the required permits 90 days or after. So within six months of the Board's hearing last week, they will be fully compliant.

City Attorney Leen: And one other caveat, if they don't comply, this will be subject to demolition, this building. And what will happen is it would be demolished. Of course, we could do that in conjunction; talking to the City Manager's staff. But the idea would be, it could be demolished at that point, and then there would be a lien placed on the property for the cost of the

demolition. And we probably could even use our Special Assessment Ordinance we'll talk about that to maybe put it on the tax rolls.

Mr. Palenzuela: Right. The County has its own procedure where you record an affidavit. Clearly, if there's another way to collect that money, it would be good to pursue it. 1021 Wallace Street is the next one. And this one, the owner is cooperating, but again, we're getting to that point where the roof repairs are more expensive than they're willing to pay upfront. So I spoke to them recently about coming into compliance. They suggested a time frame of the first trimester of next year. The City will tell me if that's sufficient, or if we should proceed.

City Attorney Leen: And I would ask the Commission ultimately, what do you think? We could wait and give that time, or we could proceed with the complaint.

Mayor Cason: Do you think they have the money and the will to do it? Or is it a question, they don't have the money and they...?

Commissioner Keon: Or just a delay.

City Attorney Leen: What is your recommendation?

Mr. Palenzuela: I tried to get specifics and the answer they gave me I did not find gave me enough information. I can go back and try to find out more specifics and present that to the City Attorney for me to make a recommendation.

Mayor Cason: It just sounds like that's a street that we've totally repaved and did all the sidewalks and it's a pristine street.

Commissioner Keon: It's a nice little street and it's a really...

Mayor Cason: And this house that can really ruin the property values.

City Attorney Leen: I mean, my recommendation would be to proceed. We can always settle with them and we can always agree to stay the case.

Commissioner Quesada: Let's move forward.

Mr. Palenzuela: I'll prioritize the other cases that are more glaring.

Commissioner Keon: OK.

Mr. Palenzuela: Ahead of this one, so that in the event they do start to come into compliance...

Commissioner Keon: I would go ahead and file. Go ahead.

Mr. Palenzuela:...then we can always give them more time.

City Attorney Leen: OK. So what the Commissioner said that go ahead and proceed --

Vice Mayor Kerdyk: Yeah.

Commissioner Keon: Go ahead.

Mr. Palenzuela: OK. The next one is 1044 Cotorro Avenue. Very important. I think this was the reason why the Commission amended its ordinance to strengthen the remedies available to the City.

Mayor Cason: Started that four years ago, if I'm not mistaken.

Commissioner Keon: Yes.

Mr. Palenzuela: And actually, back in July, there was a Code Enforcement hearing, at which the servicer at the time came in and agreed to correct the violation. It was in May. By July 22nd,

they did not. So, of course, we proceeded to the next step. We filed a lawsuit. After the lawsuit was filed, they notified me that, without notice to the City, they sold the mortgage, the first mortgage, to an investor. So we're now working with them hoping to resolve it with them, but in the meantime, there is a court date set for December 22 on an emergency motion for injunction.

Commissioner Keon: Thank you.

City Attorney Leen: And what we are proposing is an agreed order whereby the court would retain jurisdiction to enforce the compliance. If there was no compliance, then we would seek contempt. So we're hoping they will agree to this order as opposed to having an injunction placed upon them.

Commissioner Keon: And what does that eventually allow for? What happens?

Mr. Palenzuela: Well, it's a court order. So now it's enforceable by contempt. We've also asked in the complaint for the potential remedy. If the parties don't come to the table voluntarily, that a receiver will be appointed. I mean, the court proceeding should... I think it's going to resolve the matter, honestly, by agreement. I think that the first mortgagee is the (UNINTELLIGIBLE). The first mortgage has indicated that they would like to resolve it, but should they not, either way, we still have the owners who are responsible, and we have the servicer for the first mortgage (UNINTELLIGIBLE) that I haven't spoken to yet, so I think that will be the solution. Whether it happens on the 22nd or a different date, we're asking for the same remedy as in the Unsafe Structures proceeding where they're given a deadline to apply for the permits and take it forward that way. OK, and the next one is 1248 Sorolla Avenue. This is one where there was a recent foreclosure sale and the new owner is cooperating, as I recall. I'm sorry, the foreclosure sale is set for January 7, my mistake. So at this point, we would deal with the new owner rather than proceed to file a lawsuit at this point, because there's going to be a change of ownership. It'll either be by the bank, or a willing buyer. So hopefully, they'll buy with the intent to fix it up, knowing what they're buying. The next one is 1433 Mendavia. Again, this is another one that there is no bank involvement and...

City Attorney Leen: Before you continue, for 1248 Sorolla, what you'll see is that there has been compliance on a number of points, everything that's been crossed out. Alex has been very effective with this one.

Mr. Palenzuela: That's true.

City Attorney Leen: Everyone that's involved and has Will. Everything that's been crossed out is compliant.

Mr. Palenzuela: The owner recently started correcting the batting cage violations that was newly discovered in some of the existing violations, but again, the roof, he didn't want to invest in the roof unless he was sure he was going to be able to sell it in the short sale. Personally, I've never seen a short sale resolve a Code Enforcement problem of this magnitude. So most likely, the bank is not responding to their request for approval of the short sale. So most likely, it will go to foreclosure sale on January 7. OK. And so again, 1433 Mendavia, the owner is cooperating there. It's a historic property, and they're applying for all the necessary permits, so there's no reason to take further enforcement action on that case. The next one is 1549 San Rafael Avenue. And in this case, this is the one that the bank recently acquired, Deutsche Bank that filed a foreclosure became the owner. I've already spoken to Deutsche Bank because they were the first mortgagee in 1044 Cotorro, and we had to eventually file a lawsuit. The gentleman I spoke to said that he would escalate it, as they say, but ultimately, the servicer is responsible with their agreements. The bank itself in this secured (UNINTELLIGIBLE) agreements doesn't maintain the property. They have a servicer that's responsible by contract to do it, so he's going to ask that responsible party to take action on it.

Commissioner Keon: This has been for five or six years this house has been a mess.

Mr. Palenzuela: Well, hopefully, we'll take care of it soon. And if they don't voluntarily, then of course, we have the remedies. I should say for all of these properties on the list, we recently asked the Building Department to go over the list and assess them all as potential unsafe structures, because that remedy is quicker and also the banks, they will want to protect their

collateral because the land is worth more with a structure on it, even if the structure is not being properly maintained.

Commissioner Keon: OK.

Mr. Palenzuela: So hopefully this might qualify. That's up to the Building Department, the building official.

Commissioner Keon: On all of these, are there people that have been identified as owners on these? Or they've been abandoned and there's no ownership interest by anybody?

Mr. Palenzuela: In 1549 the owner is the bank, Deutsche Bank.

Commissioner Keon: The owner is Deutsche Bank, OK.

Mr. Palenzuela: Right. Yes, it says it on the PowerPoint presentation as well. They acquired it at auction in September.

Commissioner Keon: Oh, I'm sorry. OK. So the bank.

Mr. Palenzuela: And moving on the 3500 LeJeune Road. This is property that had the squatter that the City cooperated with the mortgagee and we're moving them after the sale of the property, and it's now bank-owned. The bank is selling. Apparently, they found a buyer. But again, if they don't close soon and sell it we have no confirmation of this. It's only upon information and belief then this would be one where we would want to go ahead and file the lawsuit because, again, they corrected some of the minor violations, but the major ones are still ongoing relating to the roof again in this case.

City Attorney Leen: This is one where we have asked for preparation of a complaint, I believe.

Mr. Palenzuela: Yes, this is one of them.

City Attorney Leen: Yes. So we will proceed with a complaint. We're doing several complaints. And part of this is going to determine... a lot of this depends on how the one on Cotorro goes. So far it's been very effective. And we're hoping that this agreed order will be adopted. But based on that, we plan to file several more, and this is one of them.

Mr. Palenzuela: Right, an agreed order or an injunction; at least, initially, a temporary injunction. OK, so the next one would be 5626 Granada Boulevard...I'm sorry

Mayor Cason: 3933 Riviera.

Mr. Palenzuela: -- 3933 Riviera, my fault. This one the only corrective action that they've taken is to update the registry, so this is probably the next one unless there is direction to do otherwise. Because Wells Fargo again, they had told me they were going to obtain permits and correct the violations that didn't require them, but they haven't taken any action, other than update the registry as I said.

Commissioner Keon: So we would file.

City Attorney Leen: So this is one where we would proceed with a complaint.

Mr. Palenzuela: Right.

Commissioner Keon: Good.

Mr. Palenzuela: And the last one, 5626 Granada Boulevard, this property, I hadn't heard from the owner until this Saturday.

Vice Mayor Kerdyk: Oh, that thing's been there for years.

Mr. Palenzuela: Right. I spoke to the realtor initially and I asked her to speak to the actual

owner. It's a corporation in California. And unlike Sunbiz here, you can only get the registered agent, so I had no idea who their actual identity was until I spoke to them. They again are seeking approval for a short sale of the property, and I've even spoken now to the title agent and the attorney for the bank so that the attorney for the bank can verify that they're even considering approving the short sale and see if they can make it happen, so that we can deal with a willing buyer to come bring the property into compliance, but you know, I'm not hopeful that a short sale would be approved, so we may have to prepare to file the lawsuit.

Vice Mayor Kerdyk: When you say "bank," does that mean possible credit union too or are they all actually FDIC banks or are some of them credit unions or...?

Mr. Palenzuela: Well, we had one that had a Space Union...

Vice Mayor Kerdyk: Space Coast Credit Union, yeah.

Mr. Palenzuela: Coast Credit Union lien in third position --

Vice Mayor Kerdyk: OK.

Mr. Palenzuela: The foreclosure went through. They've all been FDIC, as you say

Vice Mayor Kerdyk: FDIC, yeah.

Mr. Palenzuela: In this case, it's JP Morgan Chase.

Vice Mayor Kerdyk: OK.

Mr. Palenzuela: But, you know, it still hasn't gone through the foreclosure. This one, the foreclosure was dismissed June 8, 2011. And I didn't update the title work to see if one has been refiled since I prepared this report two months ago for this property. But as far as I'm aware, there's no foreclosure. It's just in default of the mortgage, and I think that's everything I have,

unless you have any questions.

Commissioner Keon: Nope.

Mayor Cason: No. I think it's great that we've got a relatively small number that we're working on. It looks like they're all moving forward one way or another, and if we have to, go to court.

Commissioner Keon: Yes and move on.

Mayor Cason: Thank you.

Mr. Palenzuela: Thank you.

Vice Mayor Kerdyk: Thank you.

Commissioner Keon: Thank you very much.

[End: 5:03:15 p.m.]