

City of Coral Gables City Commission Meeting
Agenda Item I-1
October 25, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

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)

Alex Palenzuela, Special Counsel

Agenda Item I-1 [12:36:38 a.m.]

Status Report regarding pending Nuisance Abatement/Abandoned Property Matters

Mayor Cason: Let's do I-1.

City Attorney Leen: Mr. Palenzuela could you come up. Item I-1, I'm just going to briefly introduce it. Item I-1 is the Commission's Abandoned Property List, there is a broader list, but then there is a Commission List where the Commission has identified specific properties that need significant rehabilitation that the Commission views essentially as public nuisances and that they have to be abated or fixed or addressed; and the City has been very aggressive in bringing Code Enforcement cases, lawsuits and any other matter it needs to, to get these cases, pardon me, to get these properties brought into compliance; and I'm proud to tell you, I'm proud to tell the Commission that if you look at our list of properties over half of them are in compliance, almost all of them are either in compliance, or in the process of compliance. The only two that are not,

one of them is the 1411 Mantua property where we recently got a forfeiture order finding probable cause and the City is moving forward on that one as well, and I'm hopeful soon we'll have an agreement with the bank, or a court order requiring demolition of that property; and then lastly, there is a property of Ford Avenue that's awaiting a grant award, which hopefully will bring that into compliance. So the goal is to bring every single one of those properties into compliance and I would just ask the Commission if you know of any additional properties, please any Commissioner...

Mayor Cason: Or any resident.

City Attorney Leen:...City Manager, or any resident through one of the elected or appointed officials by notifying us, we can place that property for review to place it on the list, and the City will be very aggressive in bringing that into compliance. So with that I'd like to turn it over to Mr. Palenzuela who can give you the update, also if you have any questions about specific properties this will be the best time to ask him and he'll either be able to inform you now or he'll get back to you with a report.

Mr. Palenzuela: Good afternoon Mr. Mayor, Vice Mayor and Commissioners. I'd just like to go down the list to give a quick update. Mr. Leen has already spoken about 1344 Florida Avenue; 505 Alcazar Avenue, that property is under renovation and they have until March 15th to pass the next required inspection, so far they've addressed all of the City's concerns during the construction; 707 Ponce de Leon Boulevard, that one the property manager has obtained permits to correct the violations. At this point they have two other permits they need and we are trying to verify if the vendor applied for the third, but they are working toward compliance and in the meantime the City has tried to help them move the foreclosure along because there was a pending order for an order to show cause why the foreclosure judgement shouldn't be entered, so I contacted the JA to see if there was a trial date. As far as 711 University Drive, the seller of the property is correcting all the violations and has until October 31st to do so, but it's my understanding and they've already requested a compliance inspection that they believed they corrected all the violations relating to the structure. There still are a couple of open permits that they need to address. As far as 803 Alhambra, the Fish and Wildlife Service hasn't given a date yet for the bat's assessment; this is a property that has endangered Florida Bonnets and Bats of which there are only 200 known to exist and so the City has been helping the owner move their plans along, and they are almost ready to obtain their permits, but the permits can't issue until the service has approved a plan to basically relocate the bats. So we are still working with them to get a date.

City Attorney Leen: We did notify them that there are serious inverse condemnation issues by just delaying that indefinitely, because a property owner has the right to develop property, so we are working with the government, I know the City Manager's office is, I know Alex is, we are going to move those bats, but we've let them know that we need to move forward.

Mayor Cason: We've gone to bat for them.

Mr. Palenzuela: I'm sorry?

Mayor Cason: I said we've gone to bat for them.

[Laughter]

Mr. Palenzuela: Yes – exactly.

City Manager Swanson-Rivenbark: You know Mr. Mayor, we appreciate the pun. We have been told we had to wait till after mating season, we have waited.

Mayor Cason: Ours or there's?

[Laughter]

City Manager Swanson-Rivenbark: I'm sorry, the bats. At some point they cannot hold the property owner or the neighborhood hostage because they have been waiting for something good to happen on that building.

Mr. Palenzuela: They were supposed to provide the date for the assessment about a month ago, but then they used the hurricane as a reason for not having done.

City Manager Swanson-Rivenbark: Which hurricane?

Mr. Palenzuela: Matthew – because their office is in Palm Beach and allegedly they were impacted, but that's not an excuse, and my position was that you can still do the assessment whether there is mating season or not and determine how you are going to finally remove the bats and prepare for that because it's a process, so they really should be providing that date. They've said they would have the date by Friday, I followed up, they still don't have a date. We will stay on top of them and Mr. Leen is going to talk to the director.

City Attorney Leen: We are having a conference call and Peter, I was going to ask you to be on the call with me, if it's OK Madam Manager, we really need to get that moving. In fact, if the Commission by unanimous consent could simply, so I could tell them the Commission has indicated they want to save the bats, but they want it done on an expedited basis.

Commissioner Lago: And I think you mentioned a good point. I've been working with the owner who came to see me and staff has been incredible about this, they have done everything in their power because that home went into foreclosure and there is a new owner that I guess bought the note, he has come to see me and he's met with staff. I actually introduced him to his backdoor neighbor who is a dentist who was living like this for the past four years. They had a great meeting together, he asked, please put up a silk fence put up a brand new fence so nobody can congregate on that property. They are at their last wits end in reference to the bats; they actually, I think, already submitted plans to the City for approval in reference to the renovation, they just can't do anything until those bats are either moved or something has got to happen, and we are trying to do everything in our power to save those bats, but as you mentioned, the federal government is kind of dragging their feet.

Mr. Palenzuela: Right – and I believe they only need to address comments from two of the remaining trades to get approval for what they want to do with the property, and I thought that that process would take longer than the bat assessment, but it's turning out to be the other way around, so we are really impressing upon the Fish and Wildlife Service that they have to complete their assessment.

Commissioner Lago: Yes, but they were waiting for mating season to come to an end and I had an ongoing bet with the Manager that....

City Manager Swanson-Rivenbark: I'm still going to win sir. This has been over seven months, so when we seem like we are losing our patients, seven months of mating season.

Mr. Palenzuela: But let me explain also, the Services said that you cannot relocate the bats until the mating season...they have determined that they are pups.

Commissioner Lago: These are endangered bats.

City Attorney Leen: The Service needs to pay them for the property while they are using it as a, what do you call it?- a bat..

Commissioner Keon: A bat house.

City Attorney Leen: A bat house. They need to pay them for that.

Commissioner Lago: But let me explain. Let me just make the Commission aware of just one last fact. Again, besides the fact that we are waiting for this federal entity to provide approval in regards to relocation of the bats, Peter has been involved in, I think, like two or three meetings in regards to this. The issue here is that you are going to have demolition by neglect on this property and the owner has stated, I don't want to demolish the house, but I can't touch the roof, the bats are living in the roof; and if you drive by there and I've gone there several times already, the roof is basically falling down, its caving in amongst itself, especially with the rain that we've had lately over the past few months, there is nothing they can do, because we can't touch, what does the statute say, or what does the federal government if you somehow somehow hurt one of those bats or...

Mr. Palenzuela: Well they are protected, they are an endangered species.

City Manager Swanson-Rivenbark: What would be helpful is if you could get a name from them of a consultant that they truly would respect that the City could retain under our authority, without having to involve the Commission, we would be happy to do that at the City's expense.

Commissioner Lago: This is what I was trying to get to the point and to end my point. I met their bat consultant, she has worked on previous bat issues of the same vain in reference to endangered species that's basically nested now and has taken nest in this home; and the gentleman told me look, there is nothing I can do until I get clearance from the federal government to relocate those bats to, I think, it would be either the golf course where they take refuge there, or another location. I think there are like 200 or 300 of these bats left in the wild, so they have to be incredibly careful.

Mr. Palenzuela: The City has been working closely with their current consultant, a Ms. Lopez, she explained to me that what the service proposes now is to capture and tag one of the bats so that when they are eventually relocated they can track them and find out where they go.

Commissioner Lago: Just to give you an idea so you know how serious...

Mr. Palenzuela: ...but they haven't provided a date for this.

Commissioner Lago: Just to give you an idea of how serious this is, to see the amount of money that this is costing this individual. He's had to hire a sound technician to go there in the middle of

the evening to record the bats so they know how many male and female and whether they are still mating or not. Its wild, its wild, its wild.

[Laughter]

Commissioner Lago: I mean I've seen people who – it's the wildest thing and the poor owner, the new owner is just like, I think I've bit off more than I can chew, we've heard some crazy stories, but this is an interesting one.

City Attorney Leen: Mr. Mayor, I think we should handle this in a similar way to how we handled the United States Postal Service matter. I think we should notify Representative Ros Lehtinen, let her know what we are doing, that we are willing to even hire a consultant to help, but the Service needs to respect the property rights of our citizens, they need to be respectful of that and so they should expedite this. We are willing to help, we made that very clear, we want to save the bats, but they can't just leave this for years, and that's my concern they are not taking action.

Commissioner Lago: The house is going to cave in.

Commissioner Slesnick: It's expensive for this homeowner to keep maintaining an empty property and not be able to get on with it. You budget for repairs and...

Mayor Cason: Let's ask the Congresswoman to intervene; if you need help I'll go see her.

Mr. Palenzuela: Thank you Mr. Mayor. OK. So the next one is 1200 Hardee and the development since the report was submitted is that the demolition has commenced, the house has been torn down, but the debris has not yet been removed. He has until under the compliance agreement until November 14th to clear the debris, remove the construction fence and lay down sod. It probably will be done soon. The next property is 1222 Tangier, they have an extension until October 31st to address the most recent Board of Architect's comments and obtain their permits for redevelopment of the property. 1411 Mantua, Mr. Leen already commented on it, there should be either an agreement or a court order soon to require them to bring the property into compliance with the Code, or allow the City to do it, or they'll be in forfeiture eventually.

Commissioner Keon: Where is that now though?- is it in court?

Mr. Palenzuela: The lawsuit has been filed and there is a process to the forfeiture ordinance, and they've gone through the probable cause order, then they serve a copy of the complaint, so it becomes like a regular lawsuit, but during that...

City Attorney Leen: So what we are asking is the court to allow demolition of the property. If we end up having to pay for it, i.e., the City, then we will proceed with the forfeiture end and ultimately my view is take ownership and control of the property. If on the other hand, the bank ends up paying for the forfeiture and reimburses us then they will bring the property into compliance and we will no longer be able to take ownership and control though the property will be in compliance. So they have a tremendous incentive to pay for the forfeiture because otherwise they are not in compliance and we would assert that we have a right to ownership and control of the property.

Commissioner Keon: Have they been cooperative with...

Mr. Palenzuela: They say they will cooperate, but then they come up with a way to delay the case, they file a motion to abate based on the uncertainty of the foreclosure that's up on appeal, but the City has filed a response attacking their arguments is invalid and is confident that the court will not further abate the forfeiture proceedings based on the outcome of the foreclosure appeal.

City Attorney Leen: And we've been in contact with the ACM Building Official, and we are going to be posting a notice on the house to make it clear that no one can go in there, that it's been seized essentially, and we are going to go forward and get that court order, and if necessary Peter and I will go to the hearing and we will testify and explain to the court why that would be necessary. I should note at this moment, I would like to thank Peter, I'd like to thank him through the City Manager, who has been very supportive of this, but Peter has been a great help in these matters. Every one of these matters now we are looking at do we bring a case?- do we bring an unsafe structures proceeding?- what can we do?- and he's been extremely helpful, he and Alex have worked very well together.

Commissioner Keon: Thank you.

Mr. Palenzuela: So the next one is 1433 Mandavia Avenue, that one the owner has until January 9, 2017 to pass the next required inspection rather in the rebuilding process; they've actually asked us to help explain to their contractors that they would like this done in advance of that deadline, so hopefully they will comply. 3500 LeJeune Road, after five attempts before the Board of Architects, the buyer of the property has decided to replace his architect, no longer

wants to redevelop the house by partially demolishing and building on the existing structure, so he determined that he's going to demolish the existing structure and come into compliance that way we receive the signed new compliance agreement from him on the 25th, I'm sorry, we are expecting it today, so he did e-mail it to me yesterday, but the original is going to Mr. Ortiz; and the next property, 3933...

Commissioner Keon: Can I ask a question about that, I'm sorry. On the one on LeJeune, if they demolish the property, they come into compliance if they demolish and then what do they have to do?

Mr. Palenzuela: Well they would have to demolish, right, remove the construction and lay down sod, and then they would have whatever time they need to submit the new plans for, I think he wants to build...I'm not sure, but he did tell me he's already hired the new architect and he plans to move on that quickly, but he will be in compliance under the agreement because the property would be fully co-compliant once the demolition is complete.

Commissioner Keon: Right – once the demolition is done and it's resodded.

Mr. Palenzuela: Once the fence comes down that's in the agreement, he understands that he's prepared to do it.

Commissioner Keon: You know what it is; I don't want him to put up a construction fence around there while they are waiting for plans to go through and approval and have it sit there for a long time with a construction fence around it.

Mr. Palenzuela: Right, that's not a condition of the agreement and he understands that.

Commissioner Keon: OK. Thank you.

Mr. Palenzuela: Sure. 3933 Riviera, the owner has permits; he has an extension until October 31st. Again this is his third attempt before the Board to get approvals to continue the renovation, so the City is giving, in these cases short extensions and monitoring the progress closely and only giving additional extensions if there is significant progress. The next property 4600 Booker Street, the City successfully filed a motion to intervene in the foreclosure and has been working with the servicer and the banks, one before that, but the pro-sale litigant has done everything possible to delay the case which had a foreclosure sale set and then it was cancelled by bankruptcy, he's since filed another bankruptcy. Most recently I attended a court hearing where I was able to prevent him from attempting to persuade the court contrary to an order that had been

entered in the second bankruptcy that the third bankruptcy would stay the issue until the rate of possession; the rate of possession has issued and the City is hoping that the bank will recover possession, at this point Fanny Mae is the purchaser of the original judgement, and so they own the property and they are working with a broker as soon as the property is vacated. That will correct some of the code violations relating to the occupant living in the carport and the dirty furniture in the carport, and so once the eviction takes place, for lack of a better word, execution on the rate of possession after a foreclosure, then they will send someone into assess the structure and decide whether it's worth fixing or demolishing the structure, because apparently it has leaks.

Commissioner Keon: How long will that take; I mean when do you see some resolution to this issue?

Mr. Palenzuela: Well as far as the execution on the rate of possession that could happen any day and then the process of, you know at that point Fanny Mae has to apply for permits, hire vendors, get bids, if they exceed the amount that the broker can approve it has to be picked up and then someone has to approve it, but we intend and have already started working with them on that process, sent them the permit applications and everything, so that they are ready to move as soon as they can.

Commissioner Keon: Thank you.

Mr. Palenzuela: 5626 Granada is the last case on the list. The property, the home has a certificate of completion already, but the pool hasn't past final inspection because it was built with the deep end on the other side to get it closer to the pump, so they have to either make a note on the plans or amend the plans for the property to pass final inspection, and so the code violations, technically they have been corrected, but until the permit issues the violations waived to the structure have not been corrected; and then the City will request that the Receiver retain control of the property until its sold to someone who's going to live in it so that violations don't recur.

City Attorney Leen: I informed Mr. Palenzuela that the City, typically the City doesn't have a preference toward rental or ownership, but in this particular case I thought that we did have, and obviously it's ultimately up to you, but in my view ownership is preferable here because we really want this property to go out of receivership, and we would like to be compensated, basically reimbursed for the receiver certificates, because the City has expended money related to this case and we have Receiver Certificates, please explain that to the Commission, but my understanding is that they take precedence over everything basically.

Mr. Palenzuela: Right. The Receiver's costs are in first position over everything and after that are the construction costs that were paid to the contractor to finish the home, and after that the City agreed to subordinate its special assessment liens on the money it spent maintaining the property until a Receiver was appointed, and after that the mortgage, and after that the code enforcement.

City Attorney Leen: The important thing is that all of the City's expenses would be paid out of the sale proceeds before the mortgage is paid, but it's not going to happen if it gets rented for years.

Mr. Palenzuela: Right. I mean the bank has now finally come forward now that the house is almost complete to find out how much of a reduction they can get to try to communicate and I put the owner in touch with them, because the owner now also is trying to sell the property, but anything that happens has to go through the Receiver, so they'll be a for sale sign up soon, but no contracts can be signed without the Receiver and court's approval eventually if the parties can't agree.

Mayor Cason: Thank you. I think it's really great that we have over 17,000 homes and we've got what?- just a couple left. I mean I don't know if there is any jurisdiction probably in Florida that has such a better housing stock because of these ordinances that we've all worked on over the last four, five years, so it's great.

City Attorney Leen: If I could say something. The Commission has made such, this started several years ago with the Cotorro case, what was the number again?-

Mr. Palenzuela: 1044.

City Attorney Leen: 1044 Cotorro house which for a couple of years was just there, it was in a very deteriorated state. The Commission adopted a slew of ordinances addressed to these matters and now the goal is to eliminate every one of these types of deteriorating residents from our City, and City Manager and really Special Counsel, everyone deserves a lot of credit for this. I feel like it's something that other cities look at. When I do speak a lot, they often ask me to speak on this subject and a lot of cities are very impressed with Coral Gables and how much the Commission has actively and dynamically addressed these types of houses.

Mayor Cason: Well the way things are going I hope we don't see you again. [Laughter]

Mr. Palenzuela: I'm hoping that a few more will be off the list by the next time.

Commissioner Lago: You've done a great job.

Mayor Cason: Great job.

Commissioner Keon: Thank you very much. And the Cotorro property and the one on Granada are probably kind of the most dramatic from a street view.

Commissioner Lago: Mantua.

Commissioner Keon: Well Mantua we need to do that, but that really deteriorating property in the French Village and the property that was right behind Temple Judea, I mean as an unfinished building for as long as I can remember.

Commissioner Slesnick: That's one of our major boulevards – the Granada property really looks great now.

Mayor Cason: Temple Judea thanked us for it...

Commissioner Lago:...it's interesting because Commissioner Slesnick mentioned the Temple before and at the ribbon-cutting, the Rabbi so graciously thanked the Commission and the City and staff for really going after that property because it was an eyesore in their backyard that they had to deal with every single day, so they are very grateful with that. I think that was very touching for the Commission and for everybody in the City to see that the progress that we've made and how we are increasing the quality of life.

Mr. Palenzuela: I assure you the City staff and I are doing everything that we can to keep the cases moving toward compliance as soon as possible.

Mayor Cason: Thank you very much, appreciate it.

City Attorney Leen: Mr. Mayor, I would be remiss if I didn't also thank the City Prosecutor over there.

Mayor Cason: Prosecute away.

[End: 12:59:24]

