

MEMORANDUM

TO: Mayor David Coviello
Vice Mayor Barbara Watts
Commissioner Bob Anderson
Commissioner Fred Jonas
Commissioner Roxanne Ross

CC: Village Manager Heidi Seigel
Village Clerk Maria Camara

FROM: John J. Hearn, Village Attorney

RE: Special Magistrate vs. Code Compliance Boards

DATE: January 28, 2016

You have asked for an overview of the distinction between having a code compliance board or a special magistrate enforce municipal code violations.

Code compliance boards consist of volunteer members who are appointed by a commission. These members are property owners and residents of the city they serve. While Section 162.05 of the Florida Statutes provides for the appointment of individuals engaged in certain professions whenever possible, other than being a property owner and resident, there are no further requirements for education or experience. Members appointed to the code compliance board serve at the pleasure of the Village Commission. Board members do not receive any compensation for their service. The Village Attorney may only represent the board or Village staff in cases before the board. Due to the prohibition for the Village Attorney to serve in a dual capacity, it may be necessary from time to time to hire outside counsel to represent the board or Village staff.

A special magistrate system provides for an individual who is delegated the authority by a municipality to hold hearings and assess fines against violators of municipal code. Special magistrates are usually attorneys that practice local government law. Special magistrates are usually selected after a request for proposals search and are appointed by a local governing body. Special magistrates are typically compensated for their time.

Code compliance boards and special magistrates are granted the same powers. Pursuant to Section 162.03 of the Florida Statutes, those powers include: adopting rules of conduct for hearings, subpoenaing alleged violators, subpoenaing evidence at hearings, taking testimony under oath, and issuing orders that have the force of law.

The decision of whether to use a volunteer board, a special magistrate, or both, is left to the elected Commission. Over the years, there have been discussions among elected bodies over the advantages/disadvantages of both systems. Volunteer boards, especially in small communities,

often will have an intimate understanding of the community in which they live. Also, as they serve without compensation, it is almost always less expensive than hiring special magistrates. However, volunteer boards do not have the same training and experience as it relates to following due process and providing for orderly hearings as a trained special magistrate. Special magistrates also have the advantage of usually not living in the community in which they are magistrates, which helps them to remain objective. Of course, special magistrates are usually lawyers and typically charge on an hourly basis of at least \$125.00 per hour.

If a decision is made to add a special magistrate process, the Village Commission would need to adopt an ordinance delegating authority to the special magistrate. Nothing prohibits the Village from having both a special magistrate and a code compliance board.