

Regular Workshop – May 16, 2016
Agenda Item 14

Agenda Item: Discussion Regarding the Code Enforcement Board

Presenter: Town Manager and Staff

Summary: At the March 23, 2016, Regular Workshop Meeting, the Town Commission expressed interest in further discussing the role and alternative options to the Town's Code Enforcement Board (CEB). The Town Commission requested Staff provide additional information based on surrounding jurisdictions to consider alternative options.

Attachments: 4-20-16 Memo, CEO Elbon through Chief Cumming to Manager.
5-16-16 Discussion Regarding the Code Enforcement Board Presentation.
11-15 Florida Bar Journal Article.

Recommended

Action: Pending discussion, provide direction to Manager.

M E M O R A N D U M

Date: April 20, 2016

TO: Dave Bullock, Town Manager

FROM: Chris Elbon, Code Enforcement Officer

THROUGH: Pete Cumming, Police Chief

SUBJECT: Discussion Regarding the Code Enforcement Board

At the March 23, 2016, Regular Workshop Meeting, the Town Commission expressed interest in further discussing the role and alternative options to the Town's Code Enforcement Board. The Town Commission requested Staff provide additional information based on surrounding jurisdictions to consider alternative options to the Code Enforcement Board.

Based on the direction provided, Staff has prepared a presentation illustrating the advantages and the disadvantages of utilizing a Code Enforcement Board; a brief overview of Florida Statute 162; and comparisons of surrounding jurisdictions that utilize Code Enforcement Boards, Special Magistrates, and citations as supplemental means for enforcement.

An article published in the Florida Bar Journal discussing the advantages and disadvantages of a code enforcement board and special magistrate has been attached for additional information.

The point of contact for this report is Christopher Elbon at (941) 361-6411, Ext. 1917, or celbon@longboatkey.org.



Discussion Regarding the Code Enforcement Board

May 16, 2016

Prepared by: Chris Elbon, Code Enforcement Officer



Discussion Outline

- § Background & History
- § CEB Advantages & Disadvantages
- § Florida Statute 162
- § Ordinance Comparisons
- § Conclusion



Background & History

§ At the March 23, 2016, Regular Workshop Meeting, the Town Commission expressed interest in further discussing the role and alternative options to the Town's Code Enforcement Board (CEB). The Town Commission requested Staff provide additional information based on surrounding jurisdictions to consider alternative options.



CEB Advantages & Disadvantages

§ Advantages:

- § Typically have intimate understanding of community.
- § Peers of local land owners.
- § Serve without compensation.

§ Disadvantages:

- § Difficulties filling vacant positions.
- § Poor attendance rates by volunteer members.
- § If a quorum is not met, violations can remain unaddressed for months at a time.
- § Volunteer members may carry predetermined loyalties or biases.
- § Volunteer members rarely require legal training or special knowledge of local codes.
- § Failure to follow procedural due process can lead to indefensible orders that are overturned by courts.



CEB Advantages & Disadvantages

§ Disadvantages (continued):

- § Perception of cost-savings from a volunteer board:
 - F.S. 162 requires local governments to retain separate legal advisor for Code Enforcement Boards.
 - Statutory mandate to employ legal counsel as advisor may negate cost savings of using a volunteer board.



Florida Statute 162

- § Provides processes to enforce local ordinances.
- § Authorizes cities and counties to enforce their local laws and describes the official actions they may use.
- § Code Enforcement Boards have the authority to hold hearings and assess fines.
- § Special Magistrates have the same status as an enforcement board.
- § Local governments can utilize citations as a supplemental means of enforcement.



Ordinance Comparisons

	Code Enforcement Board	Special Magistrate	Citations
- Longboat Key	ü		
- Anna Maria		ü	ü
- Holmes Beach		ü	ü
- Bradenton Beach		ü	ü
- Sarasota		ü	ü
- Bradenton	ü		ü
- Sebring	ü	ü	ü
- St. Petersburg	ü	ü	ü
- Fort Lauderdale	ü	ü	ü
- Fernandina Beach	ü	ü	ü
- Seminole County	ü	ü	ü
- Sarasota County		ü	ü
- Manatee County		ü	ü



Ordinance Comparisons

- § Half of all compared jurisdictions do not utilize a CEB, whereas half do in some capacity.
- § All compared jurisdictions have some process for citations.
- § Majority of all compared jurisdictions utilize a Special Magistrate.
- § Special Magistrates are typically attorneys licensed to practice law in Florida, but are not required to be under Florida Statue 162.



Ordinance Comparisons

- § Some jurisdictions utilize Code Enforcement Board members as a Special Magistrate.

- § The hourly rate for a Special Magistrate may range from \$100 – 200 per hour.
 - The hourly rate depends on attorney fees.
 - The local government body is responsible for covering the fees associated with a Special Magistrate.
 - Fees are typically recouped through fines on contested citations that are heard before a Special Magistrate.



Ordinance Comparisons

§ Longboat Key:

- § Utilizes Code Enforcement Board.
- § Has language for issuing citations in the Town code, but requires revisions on the administrative procedures of the Town's code to process citations through the Town.
- § Would require revisions of the Town code to include a Special Magistrate option.

§ Anna Maria:

- § Sunsetting Code Enforcement Board.
- § Utilizes a Special Magistrate.
- § Citations are processed through the city and appeals are heard at the city by the Special Magistrate.



Ordinance Comparisons

§ Holmes Beach:

- § Utilizes Special Magistrate.
- § Citations are processed through the county and appeals are heard in county court.

§ Bradenton Beach:

- § Sunsetting Code Enforcement Board.
- § Utilizes a Special Magistrate.
- § Citations are processed through the city and appeals are heard at the city by the Special Magistrate.



Ordinance Comparisons

§ Sarasota:

- § Utilizes Special Magistrate.
- § Citations are processed through the city and appeals are heard at the city by the Special Magistrate.

§ Bradenton:

- § Utilizes Code Enforcement Board.
- § Citations are processed through the county and appeals are heard in county court.



Ordinance Comparisons

§ Sebring:

- § Utilizes Code Enforcement Board & Special Magistrate.
- § Considers all CEB members as Special Magistrates.
- § Utilizes Special Magistrates when no quorum is reached, in emergency cases, or in between CEB meetings.
- § Citations are processed through the county and appeals are heard in county court.

§ St. Petersburg:

- § Utilizes Code Enforcement Board & Special Magistrate.
- § Citations are processed through the city and appeals are heard at the city by the Special Magistrate.



Ordinance Comparisons

§ Fort Lauderdale:

- § Utilizes Code Enforcement Board & Special Magistrate.
- § Citations are processed through the city and appeals are heard at the city by the Special Magistrate.
- § Code Enforcement Board hears cases involving the building code and the Special Magistrate hears all other cases.

§ Fernandina Beach:

- § Utilizes CEB & Special Magistrate. Special Magistrate is utilized primarily for appeals on citations.
- § Citations are processed through the city and appeals are heard at the city by the Special Magistrate.



Ordinance Comparisons

§ Seminole County:

§ Utilizes Code Enforcement Board & Special Magistrate.

§ Citations are processed through the county and appeals are heard in county court.

§ Sarasota County:

§ Utilizes Special Magistrate.

§ Citations are processed through the county and appeals are heard in county court.

§ Manatee County:

§ Utilizes Code Enforcement Board.

§ Citations are processed through the county and appeals are heard in county court.



Citation Revenue

§ Bradenton:

§ FY 2012 - \$19,425

§ FY 2013 - \$20,530

§ FY 2014 - \$31,150

§ FY 2015 - \$1,464

- Decline due to no longer issuing citations for working without permits and unlicensed contractors.

§ Sarasota:

§ FY 2015 - \$0

§ YTD - \$24,000

- Increase due to issuing citations for working without permits and unlicensed contractors.



Conclusion

- § Several models are utilized by surrounding jurisdictions.
- § All surrounding jurisdictions have specific procedures for issuing citations and an appeals process.
- § Staff requests direction on whether to pursue a Special Magistrate option and revise Town ordinance to issue citations consistent with a Special Magistrate process.



Questions?

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Decision by Judge or Jury? Alternatives to Traditional Code Enforcement Boards

by Karen Zagrodny Consalo

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Through F.S. Ch. 162, the Local Government Code Enforcement Boards Act, the legislature expressly granted Florida cities and counties the power to enforce their codes through a variety of tools, including fines, abatement, and foreclosure. These tools established by Ch. 162 enable local governments to ensure compliance with any local code or ordinance.¹ Local codes subject to enforcement action can include matters ranging from zoning violations, tree cutting, creation of nuisances, excessive noise, unsafe buildings, and nearly any other matter properly regulated in the local government code.

Traditional Use of Code Enforcement Boards to Effectuate Code Enforcement

Enforcement of local government ordinances has traditionally been effectuated by volunteers from the community, appointed by local government elected officials and empaneled as the local code enforcement board. The Local Government Code Enforcement Boards Act requires that, when possible, such boards be composed of "an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor."² Unlike other appointed city or county boards, the code enforcement board has a significant amount of autonomy and authority in that its decisions are final. Neither the board's finding of a violation nor its establishment of a fine for the violation require further approval by the city council or county commission. Rather, the only avenue by which the decision of a code enforcement board may be challenged is through appeal to the local circuit court.³

Pros and Cons to the Use of Code Enforcement Boards

There are many apparent benefits to the use of volunteer boards to adjudicate code enforcement violations. As community volunteers, members of code enforcement boards typically have an intimate understanding of their community, including its historic and current development patterns, areas of local blight, the reputation of local landlords and land-holding trusts, pending redevelopment efforts, and other civic matters that may enable the board to review pending cases in the context of a larger understanding of community well-being. Further, like the composition of a jury, these community members are the peers of local land owners that may have alleged code enforcement violations.

Further, as civic-minded volunteers, the board members serve without compensation, allowing local governments to expend little in direct costs or staff time to ensure this vital aspect of local government is accomplished responsibly.

However, there are several drawbacks to the use of community volunteer boards to effectuate code enforcement. Some local governments, particularly smaller cities, run into difficulty in consistently filling these volunteer positions. Per F.S. §162.05, the board must be composed of either five or seven members depending on the size of the local government.⁴ While finding sufficient volunteers is not a difficulty for larger cities, it can be extremely challenging for smaller cities with a smaller pool of community members to fill the board vacancies. In a similar vein, some cities and counties experience poor attendance rates by the volunteer members. When sufficient volunteers cannot be located to fill vacancies, or a quorum cannot be met, the volunteer boards cannot conduct business, and code enforcement violations remain unaddressed for months at a time.⁵

Some local governments have also found that board members drawn from the local community may also come to the board with predetermined loyalties, vendettas, or biases that prohibit those members from affording the due process necessary to this quasi-judicial process. If such predispositions for or against a landowner can be demonstrated in a judicial challenge, it may result in a reversal of the code enforcement action. Even when not challenged in court, a perception of such personal predisposition of board members erodes local confidence in the fairness of these enforcement actions.

Although as noted above, there is a perception of cost-savings by use of a volunteer board, one must keep in mind that F.S. §162.05 requires local governments to retain a separate legal advisor for their code enforcement boards from the government's general legal counsel.⁶ This statutory mandate to employ an additional attorney as advisor to the volunteer board may negate the cost savings of using a volunteer board.

Members of a code enforcement board rarely are required to have any legal training or special knowledge of the local zoning codes. Rather, the statutory criteria to serve on a code enforcement board is simply a desire to serve on the board and appointment by the appropriate government officials. In this regard, the composition of a code enforcement board is much like an empaneled jury, if a jury governed all conduct in the courtroom. However, without legal training, such volunteers may lack the legal skills necessary to conduct the code enforcement hearings, particularly during board discussion and imposition of penalty phases, which meet legal requirements. The failure of a board to follow the detailed processes set forth in Ch. 162, as well as

ensuring the substantive and procedural due process required in these types of hearings, can lead to indefensible orders that are overturned by the courts. While a local government must appoint independent legal counsel to advise its code enforcement board, such legal counsel is merely advisory and cannot compel the board members to heed their advice.

A well-functioning code enforcement board, one with a regular membership that fairly and unbiasedly apply local laws, is a boon to any local government. However, there are alternatives for code enforcement when the local government finds that its volunteer board is not meeting the needs of the community.

Alternative Strategies for Code Enforcement and Use of Special Magistrates

While much of the Local Government Code Enforcement Boards Act indicates a legislative assumption that local governments will utilize volunteer code enforcement boards to render determinations as to the existence of code violations and applicable fines, also hidden within the law is an option for cities and counties to forego use of such boards entirely. While many local governments have a high rate of success with traditional code enforcement boards, some cities and counties have adopted alternative methods of code enforcement to replace or to supplement reliance on Ch. 162 and the volunteer board. The most common of these is a special magistrate.

If a code enforcement board is comparable to a jury, then the special magistrate is the “judge” of code enforcement procedures. In the special magistrate process, one individual, usually with legal training, conducts a public hearing regarding the alleged violation, renders a ruling, establishes fines, and conducts all other necessary processes for code enforcement. Rarely is the special magistrate a volunteer from the community, but rather is typically retained on a contractual basis by the local government to serve in this particular capacity.

There are multiple provisions in Ch. 162 that authorize a local government to utilize a special magistrate in lieu of a volunteer board. Section 162.03 directly contemplates enforcement by a special magistrate by first allowing a local government to abolish a local government board and then allowing such government to “adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances.” This section further specifies that any special magistrate “shall have the same status as an enforcement board under this chapter” and notes that most references within the act to an enforcement board shall be considered to apply to a special magistrate, context permitting.⁷

Reinforcing this legislative intent to grant local governments authority to replace or supplement a local volunteer board with a special magistrate is found in F.S. §162.13, which states that nothing within the act prohibits “a local government body from enforcing its codes by any other means.”

The statutory scheme clearly contemplates that a special magistrate may step into the shoes of a code enforcement board to engage in the practices and utilize the tools available to effectuate local government code enforcement. As such, in codes in which the special magistrate is authorized, such magistrates should retain the same powers as a traditional code enforcement board, including the ability to call meetings, to determine if code violations exist, to establish penalties for violations, and to reduce fines.

Best Practices for Use of Alternative Code Enforcement Procedures

While the legislative alternative to engage a special magistrate is a highly useful option for local governments, such option will only be as functional as the local government code that establishes the process. F.S. §162.03 places no limitations upon the creativity of a city or county in establishing a process that works best for that jurisdiction’s individual needs, such as population, budget, and extent of code enforcement needs. In exercising such creativity, however, it is important to keep in mind that while the legislature has granted broad discretion to local governments in this arena, the legislature does not and cannot exempt local governments from compliance with common law and due process requirements. Therefore, while a city or county may be quite creative in developing code enforcement procedures best suited to its jurisdictional needs, an awareness and recognition of these legal constraints must be reflected in the adopted procedures. Further, since there are a multitude of systems that might be adopted, it is important that elected officials indicate their preferences, at least in establishing the broad parameters of an alternative process, at the start of the drafting process.

The first decision is whether such alternative process will use a special magistrate in lieu of a code enforcement board or serve as a supplement to the board. While the former process is likely the simpler, there may be local reasons that keeping a code enforcement board is preferred, such as a legislative or political reluctance to suddenly dismantle an operational board. If a jurisdiction chooses to maintain both a special magistrate and a code enforcement board, it is important to clearly assign duties and powers to these respective entities to avoid confusion and power struggles.

There are several ways to differentiate the role of the board versus the role of the magistrate. One option would be to assign cases between the two entities based upon severity of the alleged violation(s). For example, a code may establish a process whereby simple violations, such as overgrowth of weeds or inappropriate vehicle parking, is directed to a code enforcement board. More complex matters, such as inappropriate use of land or allegations of slum or blight, would be designated to the special magistrate. If assignment of cases is conducted in this manner, best drafting practices would be to list each type of code violation and assign it to either the board or magistrate.⁸ Further, such ordinances should include a “catch-all” default for any unlisted violations to be directed to one or the other of the entities.

Alternatively, when both a special magistrate and a code enforcement board will be maintained, the ordinance may allow the alleged violator to decide whether the hearing will be conducted by the magistrate or the board. Such a process would be much like the ability of a plaintiff to demand a bench or jury trial. In drafting this type of ordinance, it is imperative to set a timeframe within which the alleged violator must make its selection of a board or magistrate hearing. The ordinance should also include a “default” assignment of the case in the event the alleged violator fails to timely make the selection. Otherwise, the code enforcement process could be stalled indefinitely simply by the violator failing to make a selection between board or magistrate.

Another method for assignment of cases may be to allow the code enforcement board, by appropriate vote, to refer certain cases to the special magistrate. This process would be compatible to the manner in which an agency may opt to refer an administrative hearing to an administrative law judge. However, should this method be utilized, the process should require such vote be taken at a separate, prior meeting to the hearing at which the substantive merits of the alleged violation should be heard. This will avoid the waste of public and private resources that would result if all parties had to fully prepare their case and witnesses for the board hearing, only to have the board vote to refer the case to the magistrate.

In addition to the decision as to whether to keep by the code enforcement board and the special magistrate, and how to assign cases between them, another important decision will be to establish the qualifications and terms of employment of a special magistrate.⁹ To ensure the special magistrate has a

firm understanding of Florida law, best practices would require any applicant to be an attorney of good standing in Florida. Additionally, the author recommends a minimum practice period of five years, preferably in fields related to government or real estate law.¹⁰

In regard to terms of employment of a special magistrate, it is important to designate who within the local government has authority to hire or dismiss the magistrate. The authority could rest with the mayor or chair, the chief administrative officer or manager, the city or county attorney, or it could require a majority vote of the legislative body. To ensure an unbiased hearing and, thus, due process, the terms of a magistrate's employment should expressly bar termination based upon the outcome of a case or cases. Similarly, if the government wishes to have a minimum or maximum term in office for the magistrate it may be indicated in the ordinance.

The role of a special magistrate as an "office" for purposes of the constitutional prohibition on dual-office holding had not been judicially resolved in Florida.¹¹ However, the Florida attorney general has issued several opinions on this issue that conclude, in general, a special magistrate would be an "office" subject to dual-office holding prohibitions. As such, it is recommended that the local ordinance prohibit employment as a special magistrate any person who already holds an "office" per Fla. Const. art. II, §5(a).

Another significant decision in establishing an alternative code enforcement process is the extent of authority to be delegated to a special magistrate. Itemizing the powers of a special magistrate is particularly important if code enforcement authority will be shared with a code enforcement board. If such authority will be shared, it is important to clearly delegate the powers between the two entities. In addition to division of authority, the legislation should include the powers of the special magistrate in regard to the conduct of hearings, the imposition of fines, reduction of fines or liens, etc. Another technical, but important, concern is whether ex parte communications will be permitted, and if so, under what framework. The drafter should bear in mind that the special magistrate is likely to be in regular communication with code enforcement staff regarding new cases and setting agendas. It is important to establish parameters around such communications to protect the integrity of the process.

As with many elements of the drafting process, the simplest method for assignment of powers to the special magistrate will be to simply reiterate the powers set forth in Ch. 162 for code enforcement boards, with appropriate references to the magistrate instead. F.S. §§162.06 and 162.07 establish much of the protocols for notice and conduct of a hearing to ensure that due process is provided to the alleged violator. Using these provisions as a model, the drafter may then amend to reflect the preferences of the local government.

While seemingly of less importance than the broad legislative decisions discussed above, the details for provision of notifications must be set forth in the ordinance. Due process in local government hearings requires notice and an opportunity to be heard.¹² Much of this article has been dedicated to the hearing portion of due process requirements. However, notice is a significant part of any code enforcement proceedings, including notice of the alleged violations, notice of hearing dates and times, notices of failure to comply, final orders, etc. Failure to ensure that notices are provided, or at least attempted in a constitutionally sufficient manner, can invalidate the hearing and any orders resulting from the hearing.

Therefore, any code enforcement process must have clearly articulated reasonable methods by which notice of these proceedings will be provided to the alleged violator.¹³ F.S. §162.12 establishes an extensive list of various types of notice that should be attempted, including mailing, posting, and publication. These notice provisions could be adopted, verbatim into a local government alternative process. However, if the local government opts for less extensive notice provisions, it should still, at a minimum, including mailing via U.S. certified mail, return receipt requested, within a certain number of days prior to the hearing. If such certified mail is not claimed, the ordinance should have an alternative delivery method through personal service of process, posting of the property, and/or publication in the local newspaper, also within a certain number of days prior to the hearing.

Similarly, procedural due process standards should be maintained at the hearing. The alleged violator must be afforded a meaningful opportunity to be heard in regard to the alleged violation. As a local government proceeding, any such hearing must also be public in nature and recorded.¹⁴ While a special magistrate need not strictly follow the rules of civil procedure or evidence, these rules should still guide the hearing process to ensure that a full and fair airing of the evidence is provided. In that regard, an alternative code enforcement ordinance may simply make reference to the rules of civil procedure and rules of evidence as guiding but not mandatory documents. Alternatively, the code enforcement ordinance may establish certain rules relating to civil procedure and evidence, such as whether testimony will be taken under oath, whether cross-examination will be allowed, whether evidence may be submitted at the hearing or is required to be submitted in advance, whether hearsay will be permitted, etc.

Conclusion

It is a fortunate local government that maintains an operational, effective, and well-perceived code enforcement board. Such a board creates a public perception of fairness and competence for the local government and may save taxpayer funds. Too often, however, these volunteer boards become plagued by problems with attendance, bias, or inefficiency. For local governments concerned by a flawed code enforcement board system, the Florida Legislature has permitted alternative processes to be adopted. Most commonly, this alternative process involves the appointment of a special magistrate to either supplement or replace the traditional code enforcement board.

In establishing such an alternative system of code enforcement, it is vitally important that the local government ensure a process to maintain procedural and substantive due process protections. In doing so, the government will protect its citizens from unfair enforcement while also ensuring the defensibility of code enforcement orders in court. Further, the local government should clearly articulate the framework for an alternative system, including whether the process will make use of both a code enforcement board and a special magistrate, the processes and powers of the special magistrate, and the level of local government supervision of the special magistrate's employment. Once up and running, the well-drafted alternative code enforcement process can quickly reverse perception of an unfair or ineffective code enforcement program and result in more enforceable code enforcement orders.

¹ Fla. Stat. §162.103 (2014).

² Fla. Stat. §162.05(2) (2014).

³ Fla. Stat. §162.11 (2014).

⁴ The composition of a code enforcement board is established by Fla. Stat. §162.05(1) (2014) ("The local governing body of a county or a municipality that has a population of less than 5,000 persons may appoint five-member or seven-member code enforcement boards. The local governing body of a county

or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards.”).

⁵ The membership and voting requirements of a code enforcement board is established in Fla. Stat. §162.05(4) (2014) (“The members of an enforcement board shall elect a chair, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, and the presence of three or more members shall constitute a quorum of any five-member enforcement board.”). As such, lack of attendance can prohibit a board from achieving quorum numbers and lead to cancellation of the scheduled meeting. Such occurrences tend to waste the time of the board members who did attend, as well as local government staff, citizens with alleged violations, and community members in attendance. Further, §162.05(e) includes mandatory disqualification of code board members who miss two of three meetings without statutory justification, which may lead to the board itself having insufficient membership to even call a meeting.

⁶ Fla. Stat. §163.105(5) (2014) requires a local government to maintain separate legal counsel for its code enforcement board (“The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.”).

⁷ Fla. Stat. §162.03 (2014) (“Applicability. — (1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein. (2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.”).

⁸ To maintain the government’s flexibility to adjust assignments between the magistrate and the board, this list might be adopted by resolution rather than in the codified ordinance since a resolution may be more easily and quickly amended.

⁹ A good reference point for qualifications can be found in Fla. Stat. §163.3215(f) (2014), which sets forth minimum qualifications for special masters used in certain quasi-judicial land development decisions. Per §163.3215(f), the magistrate must be an “impartial special master who is an attorney who has at least five years’ experience and who shall, at the conclusion of the hearing, recommend written findings of fact and conclusions of law. The special master shall have the power to swear witnesses and take their testimony under oath, to issue subpoenas and other orders regarding the conduct of the proceedings....”

¹⁰ Florida Bar certification in city, county, and local government law might also be made a requirement, or a hiring preference, as it would ensure that the magistrate has a firm understanding of city and county code enforcement.

¹¹ Fla. Const. art. II, §5(a) establishes the dual-office holding prohibition. See AGO 2002-78, AGO 2010-19, and AGO 2013-18 for analysis of dual-office holding prohibition in regard to code enforcement magistrates (also known as hearing officers.)

¹² See *Kupke v. Orange Co.*, 838 So. 2d 598, 599-600 (Fla. 5th DCA 2003); *Massey v. Charlotte Co.*, 842 So. 2d 142, 147 (Fla. 2d DCA 2003); *Michael D. Jones, PA v. Seminole Co.*, 670 So. 2d 95, 96 (Fla. 5th DCA 1996); *Rutledge v. Co. of Hillsborough*, 2005 WL 2416976 at *6 (13th Cir. Sept. 2, 2005) (finding due process was violated because there was no opportunity for the property owners to protest factual findings, the penalties were retroactive, and proper procedure was not followed).

¹³ For general discussion of extent of notice requirements, see *City of Tampa v. Brown*, 711 So. 2d 1188, 1189 (Fla. 2d DCA 1998), *reh’g granted*, 728 So. 2d 200 (Fla. 1988), *reh’g dismissed as improvidently granted*, 748 So. 2d 1002 (Fla. 1999).

¹⁴ Florida’s requirements for public meetings, known as the Sunshine Act, is set forth in Fla. Stat. §286.011 (2014).

Karen Zagrodny Consalo is a partner with the Consalo Law Firm, P.A., and serves as the code enforcement special magistrate for the Town of Oakland. She is a former assistant county attorney and former assistant city attorney, and currently represents private clients in local government proceedings, including code enforcement hearings. She received her J.D. and certificate of environmental and land use law from the University of Florida. She is certified by The Florida Bar in city, county and local government law.

This column is submitted on behalf of the City, County and Local Government Section, Mark CS Moriarty, chair, and David Miller, editor.

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End of Agenda Item