Village of Barrington Hills

Memo

To: Trustee Messer

From: Robert Kosin

CC: Village President

Date: September 23, 2011

Re: Administrative Adjudication

Lake County has adopted an ordinance for administrative adjudication of civil violations. This process was previously recommended by the Legal Committee for the Village of Barrington Hills to address nuisances or building code violations.

Whether locally adopted, the eventual adjudicating body is the county and for purpose of administrative effencies, there is an organizational sense to include such in an Intergovernmental Agreement.

With the pending BACOG and Legal Committee meetings, if the Board of Trustees are desirous of pursuing the subject further, an inquiry could begin of the interest by Lake County for an IGA for administrative adjudication.

Lake County
Administrative Adjudication Project

To: **Lake County Board Members**

From: **Amy McEwan, County Administrator's Office – Project Sponsor**
Matthew Meyers, Planning, Building & Development – Project Manager

Date: **September 6, 2011**

Re: **Administrative Adjudication Research Project in Lake County**

Changes in state legislation in 2010 gave permissive authority to counties to begin using administrative adjudication as an enforcement tool for minor code violations and nuisance offenses (examples: junk & debris, animal control). In early 2011, Lake County formed a team of employees to research the possible use of administrative adjudication for minor ordinance violations.

Project Goal: The goal of this research was to determine whether utilizing an administrative adjudication process as an additional compliance tool would be a more efficient and effective way to gain compliance for minor ordinance violations. Following is a summary of project scope and status.

Current Compliance Process:

How does Lake County enforce ordinances now? The Planning, Building and Development and Population Health Services departments first seek voluntary compliance. An analysis of the last 10 years worth of code violations demonstrates that on average staff invest 95 days and 3 inspections per case to gain voluntary compliance.

Current Process - Voluntary Compliance (Planning, Building & Development)			
Average number of cases per year	Average time per case for compliance	Average number of inspections	Fees collected per case
97	95 days	3	$0

For those cases that do not voluntarily comply, staff works with the State's Attorney Office and enters a case with the 19th Judicial Circuit Court. Due to the more routine nature of most nuisance type violations; these departments have traditionally considered the Circuit Court process for only the most egregious cases where voluntary compliance cannot be obtained. In the last ten years, gaining compliance for nuisance violations through the Circuit Court process averages 333 days.

Current Process – Compliance With Circuit Court (Planning, Building & Development)			
Average number of cases per year	Average time per case for compliance	Average number of inspections	Fees collected per case
61	333 days	6	$124

Administrative Adjudication Compliance Process:

What is administrative adjudication? It is a process where violators are issued a ticket/violation notice and then are given 15 days to comply or prepare for an administrative hearing. Absent voluntary compliance, an administrative hearing is scheduled and violators must appear and enter a plea to an administrative hearing officer. An administrative hearing officer reviews the facts of the case, takes testimony, and issues a judgment at the hearing. This process has been used by villages for years to resolve minor ordinance violations in a more expeditious manner. As has been demonstrated by a number of Lake County municipalities and metro county jurisdictions, the proposed system is designed to incentivize faster voluntary compliance, expedite judgment when voluntary compliance is not obtained, and recover more of the enforcement costs. Compliance time for ordinance violations using the administrative adjudication process, based on benchmarked communities, average 30-45 days and in other cases are resolved prior to the hearings.

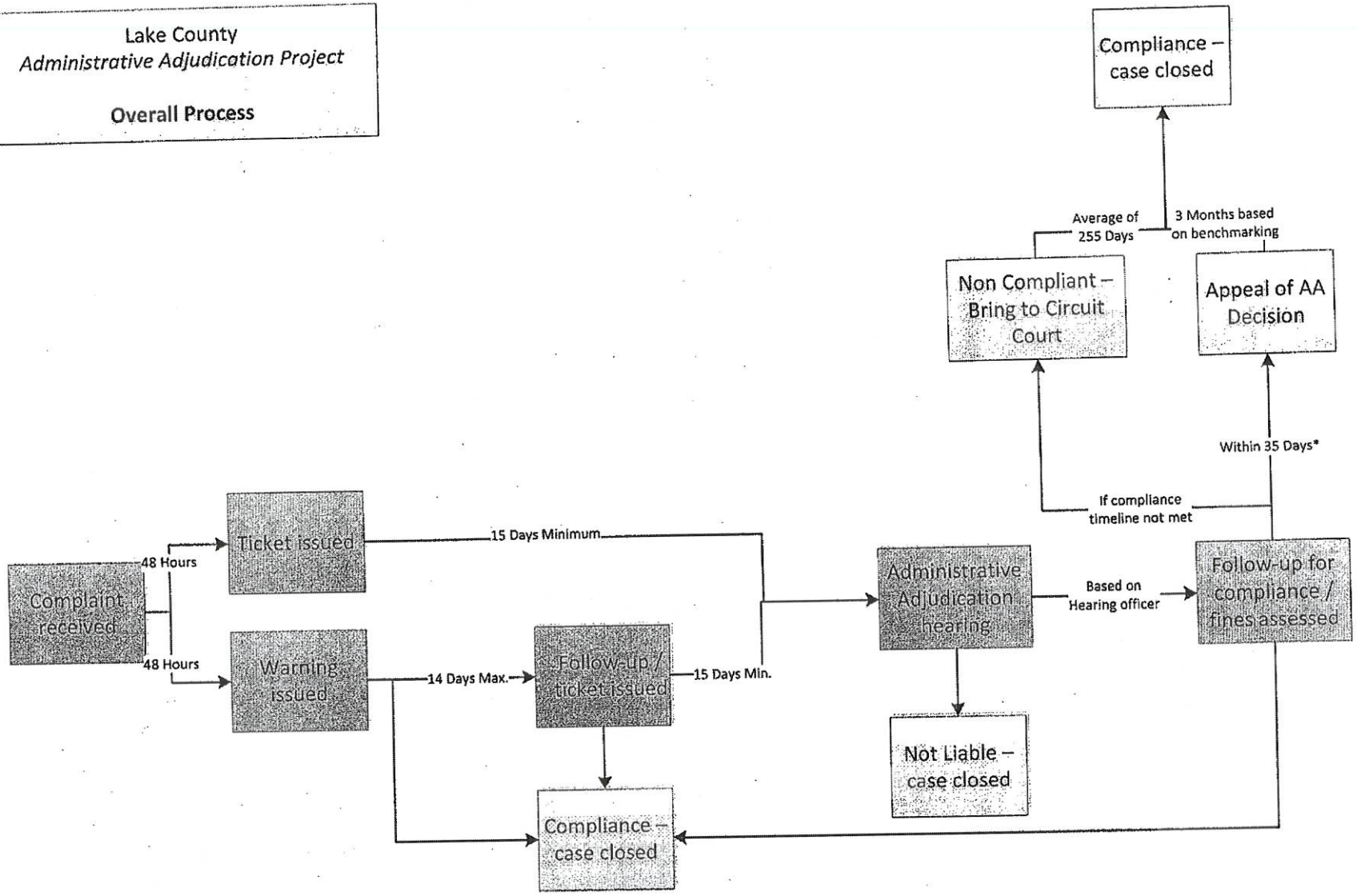
Administrative Adjudication Process (PB&D + Population Health Services)			
Assumed cases per year	Average time per case for compliance*	Average number of inspections*	Proposed fees collected per case
170	30 – 45 days	3	$100 - $200

*- based on communities currently utilizing administrative adjudication

A typical process has been added to the next page. It should be noted that a violator always retains their right to appeal the decision to the Circuit Court.

Lake County
Administrative Adjudication Project

Overall Process



*Pursuant to Administrative Review Law

Conclusions

A study team comprised of staff from the Sheriff's Office, Planning, Building & Development Department, the State's Attorney's Office, Population Health Services, Finance and Administrative Services, and the County Administrator's Office conducted a benchmarking study of 10 surrounding communities to identify process trends and best practices in adapting such best practices to our organization. The study team recommends the adoption of the Lake County Administrative Adjudication Ordinance for the following reasons:

Shortened time for compliance

On average, we anticipate a time savings of 255 days per case to obtain compliance for nuisance violations. Based on community surveys, we anticipate a significant increase in voluntary compliance rates.

Estimated Value of Time Saved

Department	*Current Cost per Case*	*Administrative Adjudication Cost per Case*	*Estimated Value of Time Saved by Lake County Per Year By Area*	*Total Value of Time Saved for Lake County Per Year*
Planning, Building & Development	$632.00	$309.00	$25,103.00	$38,008.00
Population Health Services	$517.00	$304.00	$12,905.00	

On the basis of shortened time for compliance and the reduction in the cost of enforcement, the Project Team recommends program adoption. We continue to work with our judicial partners on modifications to our internal process and training program.

Next Steps

1. Program Adoption
2. Training of staff and hiring of a hearing officer
3. Targeted "Go Live" date of January 2, 2012

LAKE COUNTY ADMINISTRATIVE ADJUDICATION ORDINANCE

WHEREAS, Illinois law was amended in July 2010 to authorize specified counties, including the County of Lake, to implement administrative adjudication as an additional alternative enforcement tool to the circuit court process pursuant to 55 ILCS 5/5-43005; and

WHEREAS, Lake County organized an inter-agency administrative adjudication project study team in March 2011 comprised of the Planning, Building & Development and Population Health Services Departments, the Sheriff's Office, Finance & Administrative Services, the State's Attorney's Office, and the County Administrator's Office ("the team") to research the technique of administrative adjudication and determine the feasibility of implementing such a process in Lake County as a means of expediting the enforcement of minor ordinance violations, and inducing more voluntary compliance with such regulations as an alternative to the circuit court process; and

WHEREAS, the team performed a benchmarking study of multiple surrounding municipalities and counties to determine the best practices utilized by such communities; and

WHEREAS, following a thorough review, the team developed a detailed administrative adjudication process to be utilized in Lake County; and

WHEREAS, the team further completed a detailed analysis of anticipated time savings to Lake County agencies associated with the proposed administrative adjudication process; and

WHEREAS, on the basis of these analyses, the Lake County Board finds that the implementation of administrative adjudication in Lake County provides for expedited resolution of minor public nuisance and animal care and control violations, and increased voluntary compliance with such regulations as compared to the circuit court process; and

WHEREAS, the Lake County Board has the authority to implement the process of Administrative Adjudication within Lake County, Illinois pursuant to Chapter 55, Section 5/5-43005 of the Illinois Compiled Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF THE COUNTY OF LAKE, ILLINOIS, as follows:

Section 1: Creation

Pursuant to the authority in 55 ILCS Statutes 5/5-43005 *et seq.*, in its current form and as it may be amended from time to time, the County hereby creates a code hearing unit which is hereby authorized to conduct administrative adjudication of violations of the Lake County Public Nuisance Ordinance and the Lake County Board of Health Ordinances Articles X and XVII, as they may be amended.

Section 2: Purpose

The purpose of the system of administrative adjudication of charges of ordinance violations is to provide a procedure by which charges of ordinance violations can be administratively adjudicated equitably and efficiently by Administrative Hearing Officers.

Section 3: Procedures Not Exclusive

The adoption by the County of a system of administrative adjudication does not preclude the County from using other methods to enforce the Lake County Public Nuisance Ordinance and the Lake County Board of Health Ordinances Articles X and XVII, as they may be amended, including, but not limited to, relief in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois.

Section 4: Definitions

Enforcement Officer: A County employee authorized to issue violations for County ordinance violations and to conduct inspections of public or private real property to determine whether ordinance violations exist. Per the provisions of Lake County Board of Health Ordinance Article X, Section ACC- 201.1, for the enforcement of violations of Lake County Board of Health Ordinance Article X, Sections ACC-601.2, ACC-601.5, ACC-601.1, ACC-601.2, ACC-1401.1, ACC-1101.1, ACC-501.1 and ACC-1301.1, an employee of the Lake County Sherriff's Department who is authorized to issue violations shall be deemed an appropriate designated agent of the Executive Director of the Lake County Health Department. However, nothing shall be construed to allow for administrative adjudication of an ordinance violation in the case where a state statute or administrative rule provides for a specific method or procedure to be followed, other than administrative adjudication, in enforcing a County ordinance.

Hearing Officer: A person other than an Enforcement Officer or law enforcement officer, who is appointed by the chairman of the County Board, with the consent of the Board, to preside over administrative hearings. Every Hearing Officer must be an attorney licensed to practice law in the State of Illinois for at least three (3) years. Prior to conducting administrative adjudication proceedings, a Hearing Officer shall have successfully completed a formal training program which includes the following:

(1) Instruction on rules of procedure of the administrative hearings which he will conduct;
(2) Orientation to each subject area of the ordinance violations he will adjudicate;
(3) Observation of administrative hearings; and
(4) Participation in hypothetical cases, including ruling on evidence and issuing final orders.

Property Owner: Any person, agent, firm or corporation having any legal or equitable interest in the property. Property owner includes, but is not limited to:

(1) A mortgagee in possession in who is vested:
    1. All or part of the legal title to the property.
    2. All or part of the beneficial ownership and the rights to the present use and enjoyment of the premises.
(2) An occupant who can control what occurs on the property.

Respondent: A property owner, or other individual, charged with liability for an alleged ordinance violation and the individual to whom the notice of violation is directed.

Section 5: Code Hearing Unit

(1) The code hearing unit shall consist of a Hearing Officer, administrative assistant, and recording secretary. The function of the code hearing unit shall be to expedite the prosecution and correction of violations of the Lake County Public Nuisance Ordinance and the Lake County Board of Health Ordinances Articles X and XVII, as they may be amended. Charges of ordinance violations are to be heard and adjudicated by a Hearing Officer.

(2) Hearing Officer has the following powers and duties:

1. Hearing testimony and accepting evidence that is relevant to the existence of the ordinance violation;
2. Issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing or for the production of relevant documents, upon the request of the parties or their representatives;
3. Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing;
4. Issuing a determination, based on the evidence presented at the hearing, of whether an ordinance violation existed at the time of citation, which shall be in writing and shall include written findings of fact, a decision, and order including the fine, penalty, or action with which the Respondent must comply; and
5. Imposing penalties as specified in the Lake County Public Nuisance Ordinance and the Lake County Board of Health Ordinances Articles X and XVII, as they may be amended, and assessing costs upon finding a party liable for the charged violation.

Section 6: Procedure For Instituting Proceedings

(1) A Notice of Ordinance Violation may be issued in accordance with the Lake County Public Nuisance Ordinance or the Lake County Board of Health Ordinances Articles X and XVII, as they may be amended.

(2) The Notice of Ordinance Violation shall identify the violation for which it is being issued, shall provide notice of the adjudicatory hearing specifying the next scheduled hearing date and location and the authority and jurisdiction for the hearing, the notice shall also specify the penalties for failure to appear and the fine amount established in the Lake County Administrative Adjudication Fee Schedule.

(3) The Enforcement Officer shall certify the correctness of the Notice of Ordinance Violation information required by subsection (2) of this section by signing his name to the Notice of Ordinance Violation, and indicate the date on which this was done. Failure to certify does not invalidate the Notice of Ordinance Violation, but will not establish a prima facie case at the administrative hearing.

(4) Prior to the hearing date documented on the Notice of Ordinance Violation, the Respondent may elect to abate or cease the violation for which the Notice of Ordinance Violation was issued, pay the fine listed on the Notice of Ordinance Violation, and not participate in the hearing.

(5) The option of a pre-hearing meeting shall be communicated to the Respondent on the Notice of Ordinance Violation. The pre-hearing meeting shall occur prior to the administrative hearing and shall consist of a meeting between the Respondent and County staff. A compliance time-line shall be established and documented with an agreement and filed with the code hearing unit prior to the administrative hearing.

(6) A copy of the Notice of Ordinance Violation shall be filed with the code hearing unit and served on the Respondent, not less than fifteen (15) days before the hearing is scheduled, either personally or by regular U.S. mail, postage prepaid, sent to the address of the Respondent. If the name of the Respondent cannot be ascertained or if the service on the Respondent cannot be made by regular U.S. mail, service may be made on the Respondent property owner or manager by posting a copy of the Notice of Ordinance Violation in a prominent place on the property where the violation was found.

Section 7: Notice of Hearings; Subpoenas; Default

(1) All administrative hearings shall be conducted on the date set for hearing. For good cause shown, a continuance may be granted at the discretion of the Hearing Officer. Lack of preparation shall not be grounds for a continuance. Continuances shall not go beyond the next scheduled hearing date, or thirty-five (35) days, whichever is earlier.

(2) At any time prior to the hearing date, at the request of the Enforcement Officer, the attorney for the County, the Respondent, or the attorney for the Respondent, the Hearing Officer assigned to hear the case may issue subpoenas directing witnesses to appear and give testimony at the hearing or for the production of relevant documents. Service of the subpoena shall be the responsibility of the requesting party.

(3) If, at the time set for hearing, the Respondent or his attorney fails to appear, the Hearing Officer shall proceed with the hearing and accept evidence relating to the existence of an ordinance violation. At the close of the hearing, upon sufficient evidence of a violation, the Hearing Officer may enter a default judgment of liability against the Respondent and impose fines and assess costs. A copy of the order of default shall be served promptly in any manner for service of a notice of violation permitted by section 6 and applicable to the violation. A copy of the default judgment, which is a final determination, shall apprise the Respondent of the procedure for setting aside the default judgment and also shall apprise the Respondent of the availability of an appeal of the default judgment to the Circuit Court for the Nineteenth Judicial Circuit, Lake County, IL.

(4) A Respondent against whom a default judgment has been entered may file a motion with the code enforcement unit to set aside the default judgment and for a new hearing. A motion to set aside a default judgment shall be filed within twenty-one (21)

days of entry of the default judgment. A motion to set aside a default judgment shall set forth the reason(s) the Respondent failed to appear on the original hearing date. The motion will be heard and ruled upon by the Hearing Officer at the next scheduled hearing date. If the judgment is set aside, a new hearing date will be set.

Section 8: Representation at Hearings

(1) The case for the County may be presented by an Enforcement Officer or by the State's Attorney. In no event, however, may the case for the County be presented by an employee of the code hearing unit.

(2) The case for the Respondent may be presented by the Respondent or the Respondent's attorney. If the Respondent is a corporation, it may appear through any officer, director, manager, or supervisor of the corporation.

Section 9: Conduct of Hearings

The Hearing Officer shall preside at the hearing, shall hear testimony, and shall accept any evidence relevant to the existence or nonexistence of an ordinance violation on the property indicated. All parties may present evidence, witnesses and cross-examine opposing witnesses. The Enforcement Officer's signed violation notice and report form shall be prima facie evidence of the existence of the ordinance violation described in the form. The strict rules of evidence applicable to judicial proceedings do not apply to hearings authorized under this Ordinance. The burden of proof is a preponderance of the evidence. Once a prima facie case is established by the County, the burden of proof then shifts to the Respondent.

Section 10: Findings, Determinations, and Order

At the conclusion of the hearing, the Hearing Officer shall make a determination on the basis of the evidence presented at the hearing as to whether an ordinance violation existed at the time of the Notice of Ordinance Violation. The determination shall be in writing and shall be designated as the Hearing Officer's findings, decision, and order. The findings, decision, and order shall include the hearings officer's findings of fact, a determination of whether an ordinance violation existed at the time of the Notice of Ordinance Violation based on the findings of fact, and an order imposing a fine or other penalty and directing the Respondent to correct the violation, or dismissing the case if the violation is not proved. If the Hearing Officer determines that the Respondent is liable for the cited violation, the Hearing Officer shall enter an order imposing fines that are provided in the Lake County Administrative Adjudication Fee Schedule for the violations proved. The Hearing Officer shall have the authority to reduce fines set forth in the Lake County Administrative Adjudication Fee Schedule by up to 25%. The Hearing Officer may also impose fines not specified in the Lake County Administrative Adjudication Fee Schedule, but any imposition of fines or fees shall be in accordance with applicable State of Illinois statutes and/or other Lake County ordinances. Costs may be recovered in the same manner as fines and penalties. In such cases that the Respondent does not appear at the hearing, a copy of the findings, decision, and order shall be served by personal service or by any method provided for service of the Notice of Ordinance Violation under section 6 of this Ordinance.

Section 11: Administrative Review

The findings, decision, and order of the Hearing Officer shall be subject to review in the Circuit Court for the Nineteenth Judicial Circuit, Lake County. The Administrative Review Law and the rules adopted pursuant thereto shall apply to and govern every action for the judicial review of the final findings, decision, and order of a Hearing Officer under section 10 of this Ordinance.

Section 12: Transfer or Conveyance of Property

The order to correct an ordinance violation and the sanctions imposed by the Hearing Officer against a Respondent property owner as the result of a finding of an ordinance violation under this section shall attach to the property, subject to the interests of all lien holders of record, as well as to the owner of the property, so that the owner cannot avoid the finding of an ordinance violation against the owner by conveying or transferring the property to another. Any subsequent transferee or owner of property takes the property subject to the findings, decision, and order of a Hearing Officer under this section if a notice consisting of a copy of the order to correct a ordinance violation and imposing any sanctions and costs, if applicable, and a description of the real estate affected that is sufficient to identify the real estate has been filed in the office of the Lake County Recorder by the County prior to the transfer or conveyance to the subsequent transferee or owner.

Section 13: Collections of Unpaid Fines and Other Sanctions

Any fine or other sanction or costs imposed, or any part of any fine or other sanction or costs imposed, remaining unpaid after the exhaustion of or failure to exhaust procedures for judicial review under the Administrative Review Law is a debt due and owed to Lake County and, as such, may be collected in accordance with applicable law.

Section 14: Hearing Costs

If an administrative hearing is held, and the Hearing Officer determines that the Respondent is liable for the cited violation, the Respondent shall be required to pay the hearing costs in the amount of not more than is specified in the Lake County Administrative Adjudication Fee Schedule, as it may be amended. The Hearing Officer, may, in an appropriate case, and for good cause shown, waive or reduce the hearing costs. The County, by separate ordinance or resolution may provide for additional or increased costs to be recovered.

Section 15: Separability, Partial Invalidity

The provisions of this Ordinance shall be separable. In the event any section, clause or provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance not specifically included in said decision which shall remain effective, it being the intent of this County Board that this Ordinance would have been approved without such invalid provisions, clauses or sections.

Section 16: Effective Date

This Ordinance shall be in full force and effect immediately upon its passage.

Adopted: September 13, 2011