WHITEWATER TOWNSHIP: AN OVERVIEW OF ORDINANCE ENFORCEMENT & CIVIL INFRACTIONS

Peter R. Wendling

Bauckham, Thall, Seeber, Kaufman & Koches, P.C.

DISCLAIMER

The information contained in this presentation is intended for general informational purposes only, does not constitute legal advice, and should not be relied upon without consulting with a qualified attorney regarding a specific situation.

AGENDA

- Part I – The Framework of Michigan Law in Enforcing Township Ordinances
- Part II – Civil Infraction Enforcement or Misdemeanor?
- Part III – Putting it All Together: Effectively Enforcing Ordinances in Whitewater Township
- Part IV – Recap
- Questions and Comments

Part I -The Framework of Michigan Law in Enforcing Local Ordinances

TYPES OF ORDINANCES

Police Power Ordinance	Zoning Ordinance
• Regulate public health, safety, and general welfare of persons and property (activity-based regulations)	• Regulate land development, use, and structures (use-based regulations)
• Includes blight, fire protection, bicycle regulations, traffic regulations, parking regulations, sidewalk maintenance and repair regulations, etc.	• Includes setbacks, parcel size, maximum structure height, building form and principal and accessory use of the land or use within buildings allowed within particular locations, etc.

THE GENERAL FRAMEWORK UNDER MICHIGAN LAW: CRIMINAL AND CIVIL ORDINANCE ENFORCEMENT

- Michigan law provides for criminal or civil prosecution of ordinance violations:
  - *Criminal*: the default penalty for ordinance violations is a misdemeanor which is a criminal offense that is punishable by up to 93 days' imprisonment. MCL 600.8313
  - *Civil*: Townships are to authorized to enforce their ordinances through civil infractions in the District Court. MCL 600.8701 *et seq.* The Michigan Zoning Enabling Act additionally confirms that zoning ordinances may be prosecuted through the municipal civil infraction process. MCL 125.3407(b)
- The criminal process of ordinance enforcement is costly, time consuming, and not as effective at obtaining compliance with ordinances

ORDINANCE ENFORCEMENT THROUGH THE CIVIL PROCESS UNDER MICHIGAN LAW

A BIFURCATED PROCESS EXISTS TO ENFORCE ORDINANCES:

Municipal Civil Infraction Notices

- A municipality may create a "municipal ordinance violations bureau" that is able to process ordinances violations by assessing fines and costs directly payable to the municipality upon an admission of responsibility after the issue of a "municipal civil infraction notice"
- The process is intended to allow a municipality to issue a citation without having to go through the cost and expense of the process with the District Court

NOT APPLICABLE

Municipal Civil Infraction Citations

- A municipality may also issue "municipal civil infraction citations" which are filed with the District Court and then resolved through the informal or formal hearing process
- The process is intended to facilitate resolution with direct involvement of the District Court

CIVIL INFRACTION HEARINGS

- There are two types of hearings:
  - Informal
  - Formal
- Both hearings follow approximately the same process, but Michigan Court Rules and the Michigan Rules of Evidence are not strictly followed in the informal hearing process
- No attorneys are permitted for either side in an informal hearing
- A formal hearing may be requested by either party:
  - Helpful for more complex violations
  - Township Attorney prosecutes the violation
  - Often necessary to obtain court (cleanup) order

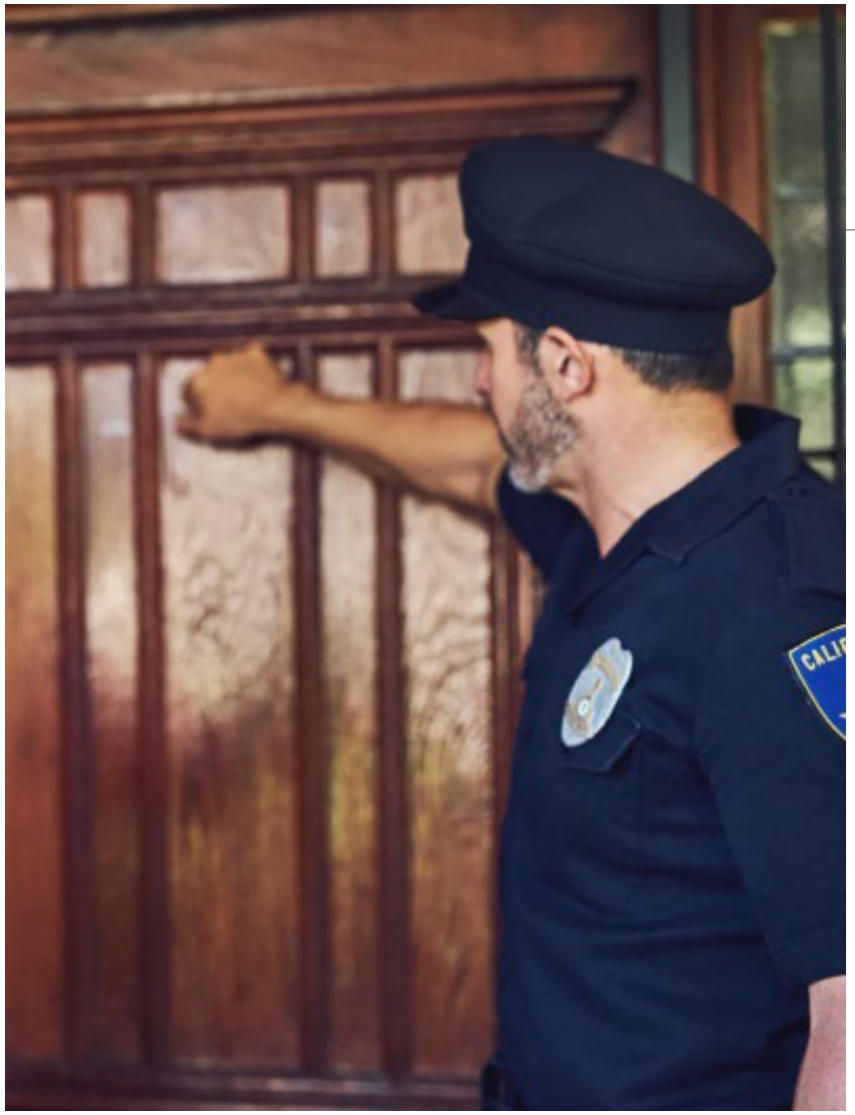
FORMAL HEARING VS. INFORMAL HEARING

THE INFORMAL HEARING

- The district court will schedule the informal hearing
- Zoning Administrator will prosecute the violation at the informal hearing in front of a Magistrate. Injunctive relief is possible but not guaranteed. MCL 600.8302
- The Zoning Administrator is likely to discuss and present the following before the district court:
  - The civil infraction citation
  - The warning letters
  - The Township's ordinances that have been violated and the provisions allowing enforcement via civil infraction.
  - Any photographs that are planned to be used to demonstrate a violation
  - Witness testimony (if applicable)
  - The proposed order approved by your Township attorney
  - Township representatives should be well trained for the hearing

THE FORMAL HEARING

- Attorneys are required to represent the Township
- Injunctive relief is more common
- The Michigan Court Rules apply along with the Michigan Rules of Evidence
- Used when the Township needs cleanup orders, significant remedies, or is requested by the parties



WHAT IF A VIOLATOR DOES NOT APPEAR?

- MCR 4.101(B)(4) provides “if a defendant fails to appear or otherwise respond to any matter pending relative to a civil infraction action” then the District Court “must enter a default against the defendant” and “must impose a sanction by entering a default judgment.”
- District Courts are also able to issue bench warrants to compel the appearance of individuals.

THE REQUIREMENTS FOR CIVIL ENFORCEMENT OF ORDINANCES UNDER MICHIGAN LAW

- Designate that civil infractions are penalties under ordinances - MCL 600.8701(c)
- Designate authorized officials to issue citations – MCL 600.8701(a)
- Utilize citations that fit statutory requirements – MCL 600.8705(1); MCL 600.8709
- Properly serve citations on violators – MCL 600.8707(3)-(4) (see next slide)
- Optional: Establish Municipal Ordinance Violations Bureau – MCL 600.8707(6)
- Establish Fine Schedule – MCL 600.8727(7)

CIVIL INFRACTION CITATION – SERVICE

- Citations must be served on a violator personally or by posting the citation on the property and mailing a copy to the violator.
- Generally, we recommend mailing the citation and posting a copy on the property.
  - Sometimes, police officers are utilized to post the citation
  - Posting the citation on a stake by the mailbox is sufficient and alleviates the need to enter the property.
- Improper service can be a basis to dismiss a citation, so always ensure that citations are properly served on the Defendant.

REMEDIES AVAILABLE

- Imposition of fine
- Attorney fees and costs
- Liens
- Orders of compliance and abatement
- Injunction for future activity in violation of the order

The most important grant of authority under Michigan law is that of equitable authority for District Court's in ordinance cases.

Part II – Civil Infraction Enforcement or Misdemeanor?

A Township's Options on Municipal Prosecutions

- Specific enforcement authority must be set forth in the Township's ordinances
- **Generally, violations of ordinances are prosecuted as criminal misdemeanors unless the municipality has adopted a municipal civil infraction ordinance** or has adopted a blight ordinance which provides for civil fines and sanctions.
- A violation of an ordinance may be prosecuted as a municipal civil infraction if it is specifically indicated that a violation of the ordinance is a municipal civil infraction
- In order to prosecute a violation of an ordinance as a municipal civil infraction, the municipality should 1) adopt a municipal civil infraction ordinance and 2) specify that the violation of an ordinance is a municipal civil infraction.

Differences Between a Misdemeanor and a Civil Infraction

MISDEMEANOR

Crime

Guilty/not guilty

Penalty includes jail

Must prove guilty beyond a reasonable doubt

Must be prosecuted in district court by attorney

Defendant entitled to attorney appointed at public expense if indigent and jail is a possibility

Defendant has right to jury trial at public expense

CIVIL INFRACTION

Civil action

Responsible/not responsible

No jail penalty

Must prove responsible by a preponderance of the evidence

Attorney only allowed in formal hearing

Defendant not entitled to attorney appointed at public expense if indigent

No jury trial

Why Adopt a Civil Infraction Process?

- Using civil infraction citations to effectively achieve ordinance compliance applies to both zoning and non-zoning ordinances.
- This allows the enforcement process to be the same regardless of whether it is a zoning violation or a non-zoning violation (such as a blight violation). If the township does not currently enforce its ordinances with civil infraction citations, the township can change easily to civil infraction enforcement.

- The fine for a civil infraction notice can best be used to offset enforcement costs.
- They can be issued and paid without the involvement of the township attorney or the district court, which cuts down on costs and complexity.
- They can be a valuable step in the code enforcement escalation continuum, falling between a warning letter and a formal civil infraction citation. While some defendants will always fight enforcement, a simple civil infraction notice can often be sufficient to convince well-intentioned residents to correct minor violations.
- Finally, civil infraction notices can be used in later proceedings in district court after a citation is issued to demonstrate both the reasonableness of the enforcing agency.

NOT APPLICABLE

Part III - Putting it All Together: Effectively Enforcing Ordinances in Whitewater Township

OVERVIEW OF ENFORCEMENT PROCESS

- Investigate the alleged violation
  - Photographs
  - Witnesses (i.e., neighbors)
- Warning Letters
- Issue a civil infraction notice
- Issue a civil infraction citation
- Prosecute at the hearing (formal/informal)
- Obtain court ordered relief
- Enforce court ordered relief

THE GOAL: VOLUNTARY COMPLIANCE

- Remember the ultimate goal is to obtain compliance with ordinances – it is not punishment or revenue generation: this key feature is what makes civil infraction enforcement preferred over criminal prosecution
- Voluntary compliance will always be less costly than court ordered compliance
- The Township can obtain voluntary compliance at any of these points:
  - Initial contact/verbal warning
  - Formal written warning
  - Municipal civil infraction notice
  - Pre-issuance of a citation
  - Post-issuance of a citation
  - Pre-hearing settlement
  - Day of hearing settlement
- Practical considerations with timeframes are always important to make when seeking voluntary compliance

WARNING LETTERS (AFTER OPTIONAL VERBAL WARNINGS)

- Warning letters are important because they often are the last step in achieving voluntary compliance. In the event warning letters go ignored, subsequent warning letters may be sent or you can move on to the next steps in the process
- Remember, warning letters demonstrate to the District Court what the Township has tried to do. Warnings should generally include:
  - Date, time, and person contacted
  - Identification of the responsible parties and activities
  - Specific ordinance(s) being violated
  - Required corrective action within specific deadline
  - Consequences of non-compliance
  - Township contact information

ISSUING CIVIL INFRACTION CITATION

- Citations should only be issued after warning letter and/or notice has failed unless it is a serious violation requiring immediate action
- Citation preparation checklist:
  - Verify property ownership
  - Document/prove violation through photos and other documents
  - Confirm authorized official's authority to issue
  - Complete all required fields
  - Request injunctive relief on citation if desired
- Ensure proper service of the citation (personal service OR posting on property and by mailing to owner's address) and document the same
- File with the District Court (our office can help coordinate)

PROSECUTE THE CASE: INFORMAL HEARING

- Township official will prosecute the case
- Burden of proof = Preponderance of evidence
- The District Court should be provided with all relevant ordinances
- Evidence that should be presented:
  - Testimony of individuals with personal knowledge of the situation or the harm that has resulted
  - Photographs of the subject property
  - All relevant documentation concerning the violation
- Attorneys can be used to prepare witness outlines, the compilation of documents, proposed orders, etc.
- Whatever relief is necessary to enforce the ordinance should be requested

PROSECUTE THE CASE: FORMAL HEARING

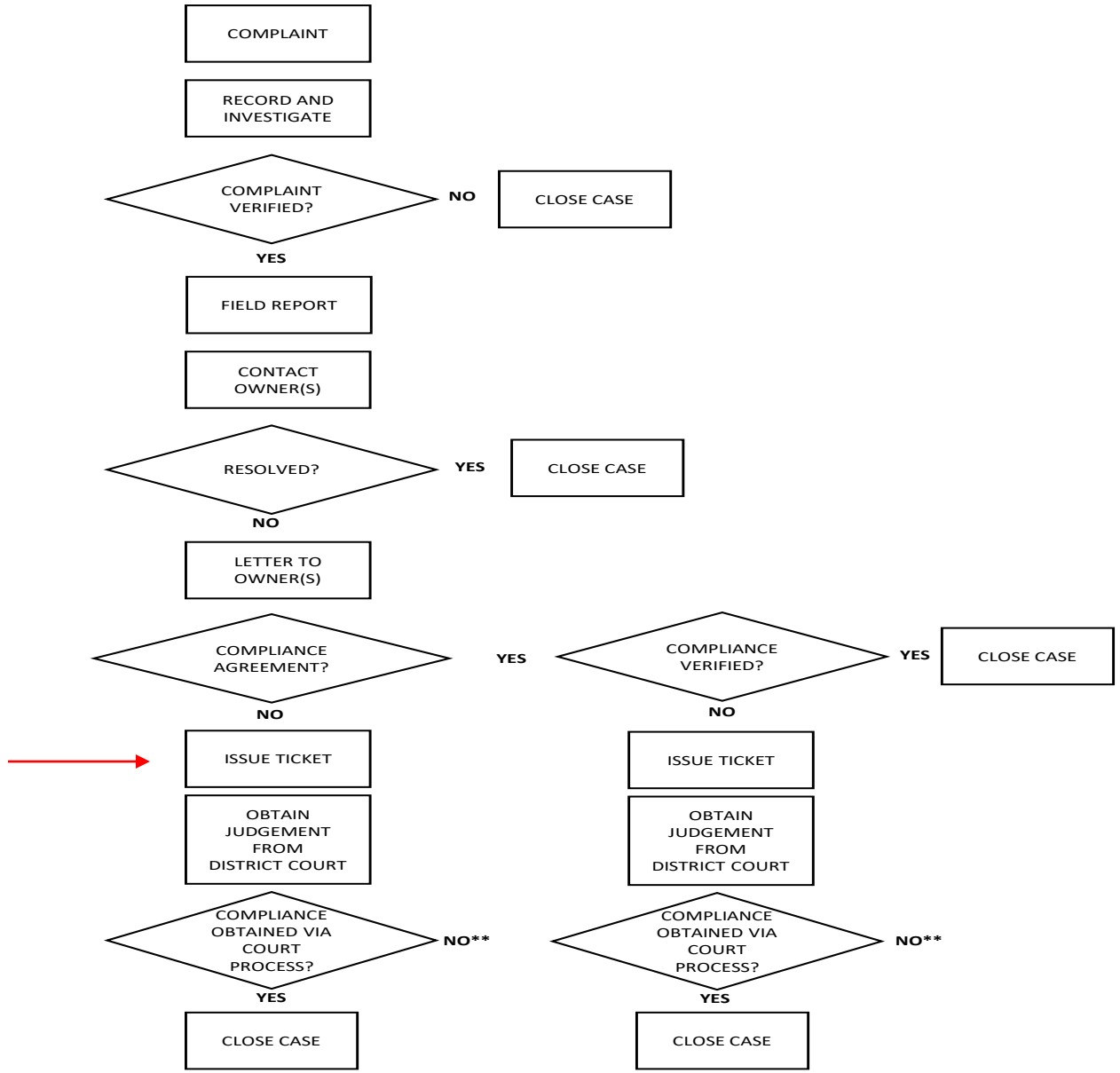
- Attorney will prosecute the case
- Burden of proof = Preponderance of evidence
- The District Court should be provided with all relevant ordinances
- Evidence that should be presented:
  - Testimony of individuals with personal knowledge of the situation or the harm that has resulted
  - Photographs of the subject property
  - All relevant documentation concerning the violation
- Whatever relief is necessary to enforce the ordinance should be requested

OBTAIN COMPLETE RELIEF

- Imposition of fine
- Attorney fees and costs
- The right to place liens for unpaid fines and costs
- Orders of compliance and abatement
  - Generally, 30 days to comply with the Township having the right to enter the property itself at the owner's risk and expense if continued non-compliance
- Injunction for future activity in violation of the order
- Township right to inspect the property

Part IV – Recap

Ordinance Enforcement Process



** If the violation continues to persist, alternative methods of enforcement may be pursued

Framework & Process

- Police power vs. zoning authority
- Criminal vs. civil enforcement
- Progressive enforcement approach:
  - Investigation and documentation
  - Warning letters
  - Civil infraction notice (optional)
  - Civil infraction citation
  - Informal or formal hearing
  - Court order and enforcement
- The goal is always to achieve voluntary compliance

QUESTIONS

Attorney Peter R. Wendling

Bauckham, Thall, Seeber, Kaufman & Koches, PC

470 W. Centre Ave. Ste A

Portage, MI 49024

wendling@michigantownshiplaw.com

www.michigantownshiplaw.com