

JEFFREY K. BARTON

Clerk to the Board



April 22, 2010

VALUE ADJUSTMENT BOARD (VAB)

FINAL MEETING

The Value Adjustment Board of Indian River County, Florida, held its Final Meeting for the 2009 Tax Cycle Year in the County Administration Building, 1801 27th Street, Room A-102, Vero Beach, Florida, on Monday, March 22, 2010. Present were Commissioner Wesley S. Davis, Vice Chairman Joseph E. Flescher, School Board Member Debbie MacKay, and Citizen Members Rose Spytek. Also present were Value Adjustment Board Attorney David Hancock, Value Adjustment Board Clerk Maria I. Suesz.

1. CALL TO ORDER

Vice Chairman Flescher called the meeting to order at 8:10 a.m.

2. INVOCATION

Vice Chairman Flescher delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Citizen Member Rose Spytek led the Pledge of Allegiance to the Flag.

4. ELECTIONS

A. CHAIRMAN – REPLACING PETER O'BRYAN, AND

Vice Chairman Flescher announced that Commissioner Wesley S. Davis was appointed to the Value Adjustment Board replacing Chairman O'Bryan who was now Chairman of the Board of County Commissioners. He advised the VAB that their nominations for Chairman and Vice Chairman should be a Commissioner.

Board Member Rose Spytek moved to nominate Commissioner Flescher. Commissioner Flescher accepted the nomination, and the nomination was put to vote.

ON MOTION by Citizen Member Spytek, SECONDED by Commissioner Wesley Davis, the VAB unanimously approved the election of Commissioner Joseph E. Flescher, as Chairman.

B. VICE CHAIRMAN – POSITION MUST BE FILLED BY A BOARD OF COUNTY COMMISSIONER

ON MOTION by Board Member Spytek, SECONDED by Chairman Flescher, the VAB unanimously approved the election of Commissioner Wesley S. Davis, as Vice Chairman.

**5. APPROVAL OF MINUTES OF VAB ORGANIZATIONAL MEETING DATED
JULY 31, 2009**

ON MOTION by Vice Chairman Davis, SECONDED by
Citizen Member Spytek, the Board unanimously approved
the minutes of the VAB Organizational Meeting of July
31, 2009, as written.

**6. APPROVAL OF BOARD'S DESIGNEE, ATTORNEY DAVID L. HANCOCK'S
DETERMINATION OF GOOD CAUSE FOR PETITIONS FILED BEYOND THE
STATUTORY DEADLINE**

ON MOTION by Vice Chairman Davis, SECONDED by
Citizen Member Spytek, the Board unanimously approved
Attorney Hancock's determinations of Good Cause for
Petitions filed beyond the statutory deadline.

**7. ACT UPON MATTERS PENDING BEFORE THE VALUE ADJUSTMENT
BOARD**

PETITIONS RELATING TO ASSESSMENTS

**A. ATTORNEY MICHAEL O'HAIRE TO DISCUSS PETITIONS 2009-0442 AND 2009-
0443**

Attorney Hancock reviewed for the Board the Petitioner's right to appeal the Special
Magistrate's decision to the VAB, and to make public comment.

Attorney O'Haire handed out photocopies of the Special Magistrate's recommendation to
the Board, addressing the Special Magistrate's comments which indicated that the "Petitioner
was entitled to relief, but not through an artificial reduction in property assessment", under

additional comments. He felt the Special Magistrate failed to translate the impact to the property in 2008 and 2009 tax years caused by a zoning change on the property, leaving the property owner the inability to build on his land. Attorney O'Haire asked the Board to send this Petition back to the Special Magistrate for a recommendation based on what he heard at the hearing and to further translate the damage into the impact on the property. He responded to questions from the Board.

Discussion ensued regarding this request and the Board expressed their opinion and concerns.

B. DISCUSSION BY PROPERTY APPRAISER DAVID NOLTE, OR HIS DESIGNEE

David Nolte, Property Appraiser commented that all the factors that Attorney O'Haire mentioned had already been taken into consideration, be believed fairly, in the assessment, and that was the reason that the Special Magistrate did not make any further reduction.

Chairman Flescher did not see a blatant error, and did not feel that the appeal should fall back on the Value Adjustment Board. The Board agreed.

ON MOTION by Commissioner Davis, SECONDED by Citizen Member Spytek, the Board unanimously denied the Petitioner's request for a second hearing with the Special Magistrate.

C. STEPHEN BOYLE AND ATTORNEY PAUL BERG TO DISCUSS PETITION 2009-0456

Petitioner Stephen Boyle brought documents to handout, and the Chairman refused submission of any additional evidence at this meeting. Mr. Boyle proceeded to explain his argument pertaining to his assessment being too low and portability. Mr. Boyle related that he appealed to the VAB for his home which he sold in June 2009, for substantially more than the Fair Market Value determined by the Property Appraiser on January 1, 2009. During the VAB hearing in December 2009, it was made clear that Mr. Boyle was not the current legal owner of

the property that he was arguing, and since the current legal owner did not file the petition, the hearing was stopped and remanded to the VAB Attorney for further action.

It appeared to Commissioner Davis that Mr. Boyle needed to go back to the Legislature, and Mr. Boyle confirmed that he was already looking into it. He added that the Legislature recognized a loop hole in the Law. He continued by reading Florida Statute 193.155(9)(a) that authorizes the Property Appraiser to correct an error once it is found. Mr. Boyle was not aware of that part of the Statute at the hearing, and he did not know that he was going to be denied a hearing, and he was appealing to the Board to grant him a hearing with the Special Magistrate.

Attorney Berg clarified that the evidence clearly shows there was an error, and secondly the intent of the Constitutional amendment under "Save Our Homes" is really to give the taxpayer regress so that they get a fair, just, evaluation of their property, and he asked that the Petition be remanded back to the Special Magistrate under the provision that the Special Magistrate can correct these errors and let Mr. Boyle put on his evidence.

Board Member MacKay thought Mr. Boyle filed the wrong petition form to argue Portability with the VAB. The VAB Attorney Hancock agreed.

D. DISCUSSION BY PROPERTY APPRAISER DAVID NOLTE, OR HIS DESIGNEE

Attorney Eric Barkett, representing the Property Appraiser David Nolte, stated, in general, everything that Mr. Boyle said he agreed with. He stated that this situation was unique because Mr. Boyle was arguing that the property value should be increased because the assessment was too low. With the current interpretation of the law, Attorney Barkett said Mr. Boyle does not have the standing to go forward with this.

Attorney Berg continued to argue this appeal stating that the CAMA value was wrong, and that his client was attempting to raise the CAMA value only for 2009.

Discussion ensued whereby the Board sought advice from the VAB Attorney Hancock. Attorney Hancock pointed out that the petition form used was the incorrect form, that he should have used the Portability form DR-501T.

He defined the Portability Law, and clarified that the VAB operates under the Department of Revenue Rules, and under those rules there is no appellate right or modification right as suggested by Mr. Berg through the Florida Administrative Code. Secondly, he read the statutory section quoted by the petitioner regarding correcting errors, submitting that a procedural error, filing the wrong petition, suggesting that he was the current owner of the property when he was not; all those things are not a characteristic of the property that a mistake has been made by the VAB. He felt the proper statutory remedy for the Board was to affirm, or agree with the recommendation of the Special Magistrate and let the Petitioner file an action with the Circuit Court if he so desires.

School Board Member MacKay pointed out that the VAB's job was to follow the law in regards to being tax fair, for everyone.

MOTION WAS MADE by School Board Member Debbie Mackay, SECONDED by Citizen Member Weise, to deny the Petitioner's request for a hearing and accept the recommendation of the Special Magistrate.

Discussion ensued.

The Chairman CALLED THE QUESTION and the Motion CARRIED, by a 4-1 vote, Vice Chairman Davis opposed.

**9.8. ACT UPON THE RECOMMENDED DECISIONS OF THE SPECIAL
MAGISTRATES RELATING TO THE VAB PETITIONS FOR THE 2009 TAX
YEAR, AUTHORIZE THE CHAIRMAN TO EXECUTE THE TAX IMPACT
NOTICE DR-529 FOR PUBLICATION, AND APPROVE THE CHAIRMAN TO
EXECUTE THE CERTIFICATION FORM DR-488 FOR REAL PROPERTY
AND TANGIBLE PERSONAL PROPERTY FOR FILING AS REQUIRED BY
THE FLORIDA STATUTES AND THE REQUIREMENTS AND REGULATIONS
OF THE DEPARTMENT OF REVENUE.**

A. TABLE OF DECISION CODES

B. EXEMPTION/CLASSIFICATION HEARING SUMMARY SHEETS

C. ASSESSMENT VALUATION HEARING SUMMARY SHEETS

D. TAX IMPACT NOTICE DR-529 FOR TAX YEAR 2009

E. CERTIFICATION FORM DR-488 REAL PROPERTY

F. CERTIFICATION FORM DR-488 TANGIBLE PERSONAL PROPERTY

ON MOTION by Vice Chairman Davis, SECONDED by School Board Member MacKay, the Board unanimously 1) approved the recommended decisions of the Special Magistrates relating to the VAB Petitions for the 2009 Tax Year, 2) authorized the Chairman to Execute the Tax Impact Notice DR-529 for publication, and 3) approved the Chairman to execute the Certification Form DR-488 for Real Property and Tangible Personal Property for Filing as required by the Florida Statutes and the requirements and regulations of the Department of Revenue.

40.9. AUTHORIZE THE VALUE ADJUSTMENT BOARD CLERK TO NOTIFY EACH PETITIONER, THE PROPERTY APPRAISER, AND THE FLORIDA DEPARTMENT OF REVENUE OF THE FINAL DECISIONS OF THE VALUE ADJUSTMENT BOARD

ON MOTION by Vice Chairman Davis, SECONDED by Board Member Spytek, the Board unanimously approved to authorize the VAB Clerk to notify each Petitioner, the Property Appraiser, and the Florida Department of Revenue of the Final Decisions of the Value Adjustment Board.

41.10. AUTHORIZE VAB CLERK TO SOLICIT FOR ATTORNEY AND APPRAISER SPECIAL MAGISTRATES FOR VAB HEARING PURPOSES FOR THE 2010 TAX YEAR

ON MOTION by Board Member Spytek, SECONDED by Vice Chairman Davis, the Board unanimously approved to authorize the VAB Clerk to solicit for Attorney and Appraiser Special Magistrates for VAB Hearing purposes for the 2010 Tax Year.

42.11. ADDITIONAL ITEMS FOR DISCUSSION AND INFORMATION

**A. REAL ESTATE ARTICLE PUBLISHED OCTOBER 29, 2009 IN 32963 –
DISCUSSION BY CITIZEN MEMBER WEISE**

Citizen Member Weise recognized that this article had some criticism about the way the Board was operating, and he investigated further to see if it was a justified interpretation of the Board itself. He wanted to improve on the figure as stated in the article that 98% of the petitions are denied relief by the Value Adjustment Board. He asked what the possibility was to develop a reason for the denial along with the decision code.

Property Appraiser Nolte spoke with the journalist that wrote the article, and he provided additional information. He related the process that his staff goes through before the Petition goes to a hearing. He related that the only cases that go to the Board are when two educated people disagree.

Discussion continued by Attorney Eric Barkett regarding information getting out to the public.

Chairman Flescher appreciated the recommendation.

Property Appraiser Nolte said he would put together some information, as requested.

B. RECAP OF EXPENSES (HANDOUT)

The VAB Clerk reviewed the expense sheet for the Board and responded to questions from the Board.

NO ACTION WAS TAKEN OR NEEDED.

14.12. ADJOURNMENT

The Chairman called the meeting adjourned at 9:40 a.m.

ATTEST:

By Maria Luszcz, Deputy Clerk Joseph E. Flescher
for: Jeffrey K. Barton, Clerk Joseph E. Flescher, Chairman 

Minutes Approved: 8-4-10

VABFinal/3/22/2010Minutes