

JEFFREY K. BARTON

Clerk to the Board



March 10, 2011

MINUTES OF THE FINAL MEETING OF THE 2010 VALUE ADJUSTMENT BOARD

The Value Adjustment Board (VAB) of Indian River County, Florida, met on Thursday, March 10, 2011 at 2:00 p.m. in the County Administration Building, 1801 27th Street, Room A-102, Vero Beach, Florida. Present were Chairman Joseph E. Flescher, School Board Member Carol Johnson, and Citizen Members Rose Spytek and Duane Weise. Vice Chairman Wesley S. Davis was absent. Also present VAB Attorney David Hancock and VAB Board Clerk Maria Suesz.

1. CALL TO ORDER

Chairman Joseph E. Flescher called the meeting to order at 2:00 p.m.

Chairman Flescher reflected a brief moment on the creation and benefits of the Value Adjustment Board.

2. INVOCATION - DUANE WEISE

Citizen Member Duane Weise delivered the Invocation.

3. PLEDGE OF ALLEGIANCE – CAROL JOHNSON

School Board Member Carol Johnson led the Pledge of Allegiance to the Flag.

THE ROLL

The roll was conducted by Board Clerk Maria Suesz who confirmed a quorum of the Board.

Joseph E. Flescher	<u>Present</u>
Wesley S. Davis	<u>Absent</u>
Carol Johnson	<u>Present</u>
Rose Spytek	<u>Present</u>
Duane Weise	<u>Present</u>

Also present:

David Hancock	<u>Present</u>
Maria I. Suesz	<u>Present</u>

INTRODUCTIONS

Introductions were made individually by all present:

From the Property Appraiser's Office: Commercial Real Estate Appraiser Wayne Bibeau, Chief Deputy Mickey Umphrey, and Assessment Control Clerk Janine Hicks.

From the Public: Petitioner Stephen Boyle (Petition 2010-0208), Attorney Paul Berg and son Zane, Petitioner Federico Bucspun (Petition 2010-0094), and Petitioner Max Coombs (Petition 2010-0097).

Absent were Property Appraiser David Nolte and Property Appraiser's Attorney Eric Barkett.

4. APPROVAL OF MINUTES FOR VAB ORGANIZATIONAL MEETING OF WEDNESDAY, AUGUST 4, 2010

ON MOTION by Citizen Member Weise, SECONDED by
Citizen Member Spytek, by a 4-0 vote (Vice Chairman
Davis absent), the Board approved the Value Adjustment

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

5.A. PETITIONS RELATING TO PORTABILITY

**5.A.1. VAB ATTORNEY HANCOCK TO DISCUSS SPECIAL MAGISTRATE'S
WORKSHEET FOR PETITION 2010-0108**

VAB Attorney Hancock reviewed the new Department of Revenue rules and Procedures that the Petitioners and Board must operate under, and provided guidance to the Board on handling additional evidence, or the scheduling of a second hearing. He explained the need to have a majority vote for approval: a 3-1 vote, and in the situation of a 2-2 vote, a second motion would be required.

With respect to Petition 2010-0108, Attorney Hancock explained that he was notified by the Board Clerk to review the Special Magistrate's recommended decision to determine if the Special Magistrate's recommended decision was appropriately completed. After review, it was his opinion that the Special Magistrate did not correctly apply the Department of Revenue Rules, nor did the recommended decision comply with Florida Law.

He advised the Board that he received a letter (on record) from the Florida Department of Revenue that confirmed his opinion as to how the law on Portability is to be applied. He requested that the Special Magistrate revise her recommended decision to comply with Florida Law in accordance with the letter from the Department of Revenue, and his previous letter. The Special Magistrate submitted a second recommended decision, but did not revise her findings of fact and conclusions of law to comply with the rules and terms of Florida Law.

Therefore, Attorney Hancock requested the Board to adopt the Special Magistrate's second recommended decision with the correct mathematical calculation, denying relief, and to reject the Special Magistrate's findings of fact and conclusions of law, and instead, adopt the VAB Attorney's "rationale" of the findings of fact and conclusions of law that he

substituted based upon his review of applicable law, the rules of the Florida Department of Revenue, and the instruction letter received from the Florida Department of Revenue.

The Board sought further details regarding this matter posing questions to Attorney Hancock. During the discussion, Attorney Hancock pointed out that the purpose of the VAB is to apply current law, and not to make new law.

**5.A.2. STEPHEN BOYLE, PETITIONER, TO ADDRESS THE BOARD REGARDING PETITION
2010-0108**

Stephen Boyle provided a layman's standpoint of the steps taken in the VAB process regarding his 2009 and 2010 Petitions.

Attorney Paul Berg spoke on behalf of Mr. Boyle, stating that this issue is basically a difference of opinion between Attorney Hancock and the Special Magistrate. He questioned whether the VAB Attorney could draft a "rationale" of findings of fact and conclusions of law when someone else had been contracted to do that for the VAB, and he questioned whether the Attorney could present such evidence to the Board at this meeting. He told the Board if they follow the Attorney's recommended "rationale" they would be denying the Petitioner his constitutional right, and he questioned why he was being forced to take this matter to Circuit Court. He asked the Board to take the recommendation on behalf of the taxpayer and grant the taxpayer, Mr. Boyle, his constitutional right.

Attorney Hancock, in his defense, explained that his responsibility as Attorney to the VAB was to ensure the VAB acts in accordance with the law, stating that all the material provided to the Board was also provided to the Florida Department of Revenue Attorney. He added that if the recommended decision does not comply with Florida Statutes and the DOR Rules, the VAB has no authority to adopt the Special Magistrate's recommended decision in the form that it was submitted.

Petitioner Boyle continued to argue his opinion, asking the Board to consider the facts of the case, and to do the right thing.

Chairman Flescher supported the actions taken by the VAB Attorney in this matter.

Petitioner Boyle and Attorney Berg continued to argue that this issue was not a procedural matter. Attorney Berg stated that the real issue was on the substance.

Chief Deputy Mickey Umphrey advocated for Property Appraiser David Nolte in his absence, regarding the assessment placed on Mr. Boyle's previous homestead in 2009, explaining that one sale does not make the market.

Chairman Flescher opened the floor for Board discussion.

Citizen Member Spytek said she saw very valid reasons why the petitioner wanted to bring this forward, and she definitely thought there was some ambiguity in the Statutes; the law was not clear. Unfortunately she said, her role as a VAB member was not to interpret the law; it has to be done by the Courts, and she had to deny Mr. Boyle's request.

School Board Member Johnson was not going to state her vote, but she pointed out that the Board was not allowed to make law, and she felt that was an important issue.

Citizen Member Weise stated he would like to see this issue go back to another Special Magistrate for reconsideration.

Chairman Flescher reviewed some options available to the Board: to adopt the conclusions reached by the Special Magistrate to deny relief, and approve the "rationale" of the findings of fact and conclusions of law used by the VAB Attorney, or to table the matter until they have a full Board present.

MOTION WAS MADE by Citizen Member Weise to remand this Petition back to a Special Magistrate for reconsideration. Motion Died for lack of a Second.

MOTION WAS MADE by Citizen Member Spytek to adopt the Special Magistrate's recommendation to deny relief to the Petitioner. Motion Died for lack of a Second.

ON MOTION by School Board Member Johnson, SECONDED by Chairman Flescher, by a 3-1 vote (Citizen Member Weise opposed, and Vice Chairman Davis absent), the Board approved the revised first page of the Special Magistrate's recommendation to deny relief for Petition 2010-0108, and approved the proposed findings of fact and conclusions of law as presented and written in compliance with the Department of Revenue Rules and Florida Law.

Clerk's note: The approved documents are attached and filed with these minutes.

5.B. PETITIONS RELATING TO CLASSIFICATION

**5.B.1. PROPERTY APPRAISER DAVID NOLTE TO DISCUSS SPECIAL MAGISTRATE'S
RECOMMENDATION FOR PETITION 2010-0095 AND 2010-0097**

Chief Deputy Mickey Umphrey spoke on behalf of Property Appraiser David Nolte and Attorney Barkett in their absence regarding the subject Petitions. He stated that prior to the Value Adjustment Board hearing with the Special Magistrate, his staff did grant the Agriculture Classification on two acres, and they disagreed with the Special Magistrate's decision granting Agricultural Classification on 90 acres based on 40 beehives as being a qualified agricultural operation. He asked the Board to reject the Special Magistrate's decision for these two Petitions. He responded to questions from the Board.

**5.B.2. FEDERICO BUCSPUN, BIG SUR USA, LLC, TO ADDRESS THE BOARD
REGARDING PETITION 2010-0095**

Mr. Bucspun introduced Petitioner Max Coombs, who was present at the meeting, as his neighbor, and he spoke on his behalf. Mr. Bucspun corrected for the record that the total number of acres for both properties was only 80 acres, not 90 acres. He also pointed out that the Florida Statutes specifically mentions a bee apiary as an agricultural operation, and he highlighted some of the evidence that was presented during their hearing. He urged the Board to approve the Special Magistrate's recommended decision. Petitioner Bucspun responded to questions from the Board.

MOTION WAS MADE by School Board Member Johnson, SECONDED by Citizen Member Spytek, to uphold the Special Magistrate's recommended decision granting an Agriculture Classification to the total number of acres to Petitions 2010-0094 and 2010-0097.

Discussion ensued regarding the habits of bee colonies.

THE CHAIRMAN CALLED THE QUESTION and the Motion carried, by a 4-0 vote (Vice Chairman Davis absent).

6. APPROVE AND ADOPT THE SPECIAL MAGISTRATES' RECOMMENDATIONS AS THE VALUE ADJUSTMENT BOARD'S DECISION AND AUTHORIZE DISTRIBUTION OF FORM DR485V, PURSUANT TO SECTION 194.032, F.S.

6.A. SPECIAL MAGISTRATES' RECOMMENDATIONS REPORT

After reviewing the Special Magistrates' Recommendations Report for the Board, Board Clerk Suesz asked for a motion to adopt the Report and authorize distribution of the Final Decision Forms DR-485V to the Petitioners.

There was a brief discussion by VAB Attorney Hancock who clarified the Board needed to adopt just the remaining decisions excluding those previously voted upon.

ON MOTION by School Board Member Johnson, SECONDED by Citizen Member Spytek, by a 4-0 vote (Vice Chairman Davis absent), the Board adopted the Special Magistrates' Recommendations Report, approving the Special Magistrates' Recommended Decisions as the VAB's Decisions, excluding Petitions 2010-0108, 2010-0094, and 2010-0097 previously voted on separately, and authorized staff to distribute the Final Decision Forms DR-485V to the Petitioners.

6.B. PETITIONER GEORGE MCCLOSKEY'S LETTER REGARDING PETITION 2010-0019

Board Clerk Suesz advised the Board that Mr. McCloskey's letter was added to the agenda packet as information only and no Board action was necessary. She briefed the Board stating that Mr. McCloskey had a hearing with the Special Magistrate, who remanded the Petition back to the Property Appraiser for additional review. In the remand process, Mr. McCloskey was granted partial relief by the Property Appraiser. Mr. McCloskey pursued his argument further requesting a continuation of his hearing. No further relief was granted by the Special Magistrate at the second hearing.

7. AUTHORIZE AND APPROVE THE CHAIRMAN TO EXECUTE FORMS DR-529 (TAX IMPACT NOTICE) FOR PUBLICATION, AND FORM DR-488 (THE CERTIFICATION FOR REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY), PURSUANT TO F.S. 193.122

7.A. TAX IMPACT NOTICE DR-529 FOR TAX YEAR 2010, SUMMARY AND DETAIL

7.B. CERTIFICATION FORM DR-488 REAL PROPERTY

7.C. CERTIFICATION FORM DR-488 TANGIBLE PERSONAL PROPERTY

ON MOTION by Citizen Member Spytek, SECONDED by School Board Member Johnson, by a 4-0 vote (Vice Chairman Davis absent), the Board approved and authorized the Chairman to execute the Tax Impact Notice Form DR-529 for the Tax Year 2010, and the Certification of Real Property and Tangible Personal Property Forms DR-488.

8. AUTHORIZE THE VALUE ADJUSTMENT BOARD CLERK TO SOLICIT FOR ATTORNEY AND APPRAISER SPECIAL MAGISTRATES FOR THE 2011 VAB HEARINGS

MOTION WAS MADE by Citizen Member Weise, SECONDED by School Board Member Johnson, to approve and authorize the Board Clerk to solicit for Attorney and Appraiser Special Magistrates for the 2011 VAB Hearings.

Discussion ensued regarding the solicitation and selection process of Special Magistrates.

Chairman Flescher advised that the process was previously discussed and wanted to have that information forwarded to the full Board.

Board Clerk Suesz explained the hiring process currently being followed in accordance with the Department of Revenue Rules.

School Board Member Johnson told Chairman Flescher and the Board that she was very impressed with what staff has been able to do for this Board, and as the newbie on the Board, she said she was extremely impressed by what they have been able to bring forward.

The Chairman CALLED THE QUESTION and the Motion carried, by a 4-0 vote (Vice Chairman Davis absent). The VAB approved and authorized the Board Clerk to solicit for Attorney and Appraiser Special Magistrates for the 2011 VAB Hearings.

9. ADDITIONAL ITEMS FOR DISCUSSION AND INFORMATION

9.A. PETITION RECAP – COMPLETED PETITIONS

Board Clerk Suesz recapped the total Petitions filed stating that 245 Petitions were resolved or withdrawn without going to a hearing; 119 Petitions went to hearing, and of those 119 Petitions, 18 were granted, 5 granted in part, and 96 were denied relief. Included in those numbers were 27 good cause requests that were reviewed by the VAB Attorney, for a total of 394 Petitions filed for the 2010 Tax Year.

Citizen Member Weise was very appreciative of the work the Board Clerk put forth into gathering the above information so the Board could be more defensive in the future if challenged by the Press or the Public.

9.B. VAB ATTORNEY DAVID HANCOCK'S REQUEST TO DISCUSS LEWIS BARTON

LITIGATION AGAINST THE VAB IN CIRCUIT COURT

VAB Attorney Hancock briefed the Board regarding the Lewis Barton Litigation. He explained to Lewis Barton that the complaint he filed is not handled by the Value Adjustment Board. The VAB Attorney asked Mr. Barton to amend his complaint so the VAB would not be involved; or dismiss it and re-file correctly. Mr. Barton agreed and filed an amendment to the complaint, but the filing was defective. The VAB Attorney filed a motion to dismiss, and advised the Board there was very little prospect that this complaint would continue involving the VAB.

Discussion ensued regarding previous VAB Petitions filed by Lewis Barton over the years.

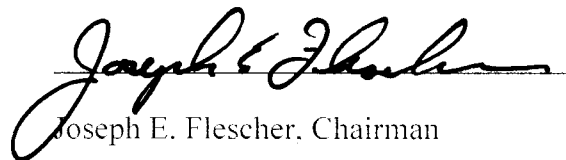
Chairman Flescher thanked the Board Clerk and the Property Appraiser staff for all that they do for the VAB.

10. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 4:30 p.m.



FOR: Jeffrey K. Barton, Clerk



Joseph E. Flescher, Chairman

Minutes Approved: 7-18-11

MIS/2010FinalMtg.Minutes

Attachments: Special Magistrate's Recommendation (2).

VAB Attorney's prepared rationale of findings of fact and conclusions of law regarding Petition 2010-0108.