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January 8, 2014

VALUE ADJUSTMENT BOARD
2013 FINAL MEETING MINUTES JANUARY 8, 2014

The Value Adjustment Board (VAB) of Indian River County, Florida, met on Wednesday, January 8, 2014, at 8:30 a.m., in the County Administration Building, 1801 27th Street, Building "A", Room A-102, Vero Beach, Florida. Present were Chairman, Commissioner Wesley S. Davis, Vice Chairman, Commissioner Peter O'Bryan, School Board Member Carol Johnson, and Citizen Member Duane Weise. Citizen Member Todd Heckman arrived later. Also present were VAB Attorney David Hancock, Clerk of Circuit Court and Comptroller Jeffrey R. Smith, and VAB Board Clerk Maria I. Suesz.

Present from the Property Appraiser's Office was Property Appraiser David Nolte, and Attorney Eric Barkett, Supervisor Janine Hicks, Office Manager Helen "Sissy" Long, and Appraiser Mark Goodwin.

1. CALL TO ORDER

Chairman Wesley S. Davis called the meeting to order at 8:30 a.m.

2. INVOCATION – ~~Todd Heckman~~ Chairman, Commissioner Wesley S. Davis

Chairman Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE – Vice Chairman, Commissioner Peter D. O’Bryan

Vice Chairman Peter D. O’Bryan led the Pledge of Allegiance to the Flag.

**4. APPROVAL OF MINUTES OF VAB ORGANIZATIONAL MEETING OF
MAY 29, 2013**

ON MOTION by School Board Member Johnson, SECONDED by Vice Chairman O’Bryan, by a 4-0 vote, Citizen Member Heckman was delayed; the Board approved the Value Adjustment Board Organizational Meeting Minutes of May 29, 2013, as written.

5. ADDITIONS AND DELETIONS

Addition: Item 7.C. – Petitions 2013-001 up to and including 2013-008 were pulled for discussion.

ON MOTION by School Board Member Johnson, SECONDED by Vice Chairman O’Bryan, by a 4-0 vote, Citizen Member Heckman was delayed; the Board approved the agenda, as amended.

**6. ACT UPON MATTERS PENDING BEFORE THE VALUE ADJUSTMENT
BOARD - NONE**

7. 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.

7.A. Petition recap by VAB Board Clerk

7.B. Special Magistrates' Recommendations

ADD: 7.C. Petitions 2013-001 up to and including 2013-008 were pulled for discussion

Vice Chairman O'Bryan commented that he did not receive an e-mail that was sent to the Board from the VAB Attorney. A copy of the e-mail was provided to him, and VAB Attorney Hancock explained it was primarily intended for Mr. Heckman since this was his first Final Meeting, to give him a perspective of what this meeting was about.

Vice Chairman O'Bryan stated that he had some concerns regarding the eight Petitions pulled for discussion. He disclosed that he had obtained legal advice from County Attorney Dylan Reingold as to whether it was appropriate to talk to any of the parties involved, such as the Property Owner, the Property Appraiser, or the Special Magistrate. He learned that discussions with those parties was inappropriate, but as there was no issue in talking to staff, he requested from staff the material used by the Special Magistrate in making the recommended decisions for the eight petitions.

(Clerk's note: Citizen Member Heckman entered the meeting at 8:34 a.m.)

Vice Chairman O'Bryan recognized a substantial decrease in the valuation of the eight properties involved, and noted that the owner was seeking an agricultural exemption (Ag). He voiced several concerns regarding the lease involved, and the two properties that were zoned commercial in the City of Vero Beach.

VAB Attorney Hancock cited the statutory requirements of the recommendations in accordance with the Florida Department of Revenue (DOR) Rule 12D-9.031(a), and the Florida

Statutes, Sections 194.301, 104.034(2) and 104.035(1), stating there is not a lot of structure in the rules, and in Chapter 194. The intent is to provide an expedited inexpensive process to get the petitions heard, and the goal is to have them heard, processed through the system, and if somebody is still unhappy with the decision, they then take their argument to Circuit Court.

Vice Chairman O'Bryan continued reading State Law regarding cultivating non-native plants, and a non-native species permit. He deemed that the real reason that the bees were on site was for the sole purpose of gathering nectar from Brazilian Pepper, which will propagate more Brazilian Pepper seeds, which are on the Florida noxious weed list, and he did not see that as a bona fide agricultural operation. He opined that the owner was generating income to satisfy a nexus of a bona fide Ag operation. He could not see how having two properties commercially zoned in the City of Vero Beach and being used for agricultural purposes could be allowed based on the City's code and permitted uses, and if the whole point is to get bees on the property to propagate and feed on Melealuca and Brazilian Pepper, he did not feel that they have met the nexus.

Chairman Davis believed for the sanctity of the Ag exemption, it was extremely important that they find this business to be there for a legitimate agricultural purpose. He commented on Vice Chairman O'Bryan's concerns, and whether the agricultural operation had to own the property to be a legitimate operation for use, and what would uphold in a court of law. He could not make the connection on leasing the property out. Secondly, he affirmed that honey can be produced from those plants mentioned. In regards to Petition 2013-005 and 2013-006, he assessed the situation to be no different than abiding by the County's Codes where it is a violation to have cattle on residentially zoned property. Based on that, he believed that the commercial zoned properties in the City of Vero Beach would be in violation of the City's code by pursuing an Ag exemption on those properties.

Discussion ensued by Vice Chairman O'Bryan, agreeing with Chairman Davis that you can lease out your land and still get Ag exemption, but he was concerned with the lease structure, and the income to the owner being negative. He believed the lease was set up to pay out a fee,

and he saw no possibility of the business showing an income. He did not see it as a bona fide Ag operation, and opined that the only viable reason for this setup was a tax dodge.

School Board Member Johnson understood Vice Chairman O'Bryan's concerns and recommended that the Special Magistrate take a second look at Petitions 2013-005 and 2013-006. She felt the Board was sending a message to the public and setting precedence that the Board may challenge recommendations based on different criteria.

Citizen Member Heckman inquired if the Petitioner had any other examples of leases showing a profit, and Vice Chairman O'Bryan read the petitioner's promotional pitch where it states several times in their documents that "The property owner can save thousands of dollars of their taxes, may be able to save hundreds of thousands of dollars on their real estate taxes," and it also stated that they are looking for test cases to establish nationally.

Discussion continued by Vice Chairman O'Bryan who felt certain on the issue of the commercial zoned property located in the City of Vero Beach for Petitions 2031-005 and Petitions 2013-006, but pondered whether the Special Magistrate would reverse their recommended decision recognizing that the issues are vague. He sought legal counsel as to what the next procedure would be, if the magistrate reverses their recommendation.

VAB Attorney Hancock responded to Chairman Davis's earlier question, referring to the Florida Statutes Chapter 193.46.1(3) (b) where it lists some factors, and mentioned the important things for the Board to remember in determining agricultural purpose, defining the term bona fide agriculture purposes, and other factors that may be taken into consideration by the Special Magistrate. Although the Special Magistrate is not required to look at those factors, he stated other factors such as commercial zoning literally could be a factor that is allowed to be considered to determine whether it is a bona fide agricultural use.

Chairman Davis commented that he could see how somebody with acreage could go into business and be profitable.

Property Appraiser David Nolte commented on bee operators in Indian River that have been here forever, stating that they get Ag exemption only on the land where the bee hives are, not on the whole property.

VAB Attorney Hancock interjected to remind the Board that the rules also provide that the Property Appraiser or the Property Owner is not permitted during the final meeting to re-argue a position that was before the Special Magistrate; plus, it is an ex parte communication. Mr. Nolte commented that he did not know that this was mentioned before at the hearing.

Citizen Member Heckman felt that the Internal Revenue Service would scrutinize this operation, and it seemed to him that someone else needs to investigate it further to determine whether or not this is for profit, or if it is really pushing the tax angle, as opposed to the Ag angle. He asked whether the Board has the right to try to stop that now, when it is only a few properties, before it becomes thirty or forty properties.

VAB Attorney Hancock reiterated the Board's position to determine whether the Petitioner is entitled to an exemption or not, based on review of the Special Magistrate's decision. If there are any policy or law changes, the Property Appraiser or the Property Owner is to go to the Florida Legislature or court, and have the court interpret the law.

Discussion continued between Property Appraiser Nolte and VAB Attorney Hancock regarding the Special Magistrate's conclusions of law and DOR rules.

Vice Chairman O'Bryan argued his point of the illegal use of the zoning requirements of the City of Vero Beach.

MOTION WAS MADE by Vice Chairman O'Bryan, SECONDED by Citizen Member Heckman, to not accept the Special Magistrate's recommended decision for Petitions 2013-005 and 2013-006, based on the conflict of the zoning allowances within the City of Vero Beach.

Chairman Davis sought legal advice regarding the specifics needed in the motion.

VAB Attorney Hancock said he would reference this discussion and instruct the Special Magistrate to look at the VAB's concern with the terms of the lease, and with respect to the two petitions that are Commercially Zoned properties, the VAB is concerned that it would be an illegal use; and request the Special Magistrate to adjust her recommended decision.

Chairman Davis questioned, and Vice Chairman O'Bryan responded that C-1, Commercial Zoning was not in the Comprehensive Plan.

The CHAIRMAN CALLED THE QUESTION and the Motion carried unanimously. The Board approved to reject the Special Magistrate's recommended decision, for Petitions 2013-005 and 2013-006, based on the conflict of the zoning allowances within the City of Vero Beach., and directed the VAB Attorney to instruct the Special Magistrate to review the concerns of the Board, and resubmit her recommended decisions for Board approval.

Vice Chairman O'Bryan asked VAB Attorney Hancock, and he was advised that legally the Board cannot reject the other six petitions, because the recommended decisions met the criteria of the three statutory sections of the Florida Statutes.

Vice Chairman O'Bryan felt that going back to the Special Magistrate was not going to resolve this, and felt the true resolution would be getting a legal opinion from a judge. He strongly expressed his objection to the recommended decisions to grant Ag exemption on these properties and told the Board that he was not going to make a motion to move them forward. He disclosed that he had no idea who the property owners were. He said he did his research, and after driving by the properties, he did not believe the owners have met statutory requirements.

Citizen Member Heckman inquired what legal ramifications would there be if they do decide to send the other six petitions back to the Special Magistrate, questioning whether or not they are a viable Ag exemption.

VAB Attorney Hancock reiterated that he did not know that the Board has the authority to send those six petitions back to the Special Magistrate, because there is no apparent error in the recommendation; the recommended decisions meet the requirements of the three Florida Statutes; he further explained that the Property Appraiser would be entitled to take the VAB to court by improperly sending the recommended decision back to the Special Magistrate.

Discussion ensued by the Property Appraiser and the Board recalling a time when the Property Appraiser sued the VAB.

Vice Chairman O'Bryan commented that the Special Magistrate agreed to hear all eight of the Petitions together, and he read from the recommended decision what was taken into consideration by the Special Magistrate in determining bona fide Ag exemption pertaining to accepted Ag practices. He pointed out that has not occurred on these properties. He had seen these properties, and found them to be purely overgrown with Brazilian Pepper. He stated if that is one of the criteria, then these properties do not meet those criteria, and therefore he believed the Special Magistrate was in error in granting these exemptions. He added that there is no bona fide care or use of the land in accordance with agricultural practices.

School Board Member Johnson recalled that in past years the VAB heard all appeals, and related what that was like, not having a professional opinion. She did not fault the Special Magistrate if the Special Magistrate followed the statutory criteria, she faulted the system and felt that is what needed to be addressed on how the statute reads, but she was not in favor of this Board doing that.

Chairman Davis questioned why the Board can reject some, but not all of the petitions when the Special Magistrate heard all of them as one argument. VAB Attorney Hancock, in answer to the Chairman's question, explained that all of the petitions involved were heard

together as one issue, but the Board can reject each petition individually because they each have a separate recommended decision.

MOTION WAS MADE by Vice Chairman O'Bryan, SECONDED by Citizen Member Heckman, to reject Petitions 2013-001 up to and including 2013-004; and Petitions 2013-007 and 2013-008.

VAB Attorney Hancock verified that the Motion meant sending the recommended decisions back to the Special Magistrate, to review the Board's concerns and resubmit their recommended decision for Board.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved to reject Petitions 2013-001 up to and including 2013-004; and Petitions

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Davis, the Board unanimously accepted the remainder of the Special Magistrates' recommended decisions.

8. 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

- A. Tax Impact Notice DR-529 for Tax year 2013
- B. Certification Form DR-488 Real Property
- C. Certification Form DR-488 Tangible Personal Property

ON MOTION by Citizen Member Johnson, Seconded by Vice Chairman O'Bryan, the Board unanimously approved and authorized the Chairman to execute, as amended: 1) Tax Impact Notice Form DR-529 for publication, and 2) the Certification Forms DR-488 for Real Property and Tangible Personal Property.

VAB Attorney reminded the Board that they will need to have an additional final meeting to reconsider the second recommended decision of the Special Magistrate.

9. AUTHORIZE THE VALUE ADJUSTMENT BOARD CLERK TO SOLICIT FOR ATTORNEY AND APPRAISER SPECIAL MAGISTRATES FOR THE 2014 TAX YEAR HEARINGS

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Davis, the Board unanimously authorized the Value Adjustment Board Clerk to solicit for Attorney and Appraiser Special Magistrates for the 2014 Tax Year Hearings.

10. PUBLIC INPUT - NONE

11. APPRECIATION FOR SCHOOL BOARD MEMBER CAROL JOHNSON

Chairman Davis thanked Ms. Johnson for her service to the Value Adjustment Board and Indian River County. Ms. Johnson stated that she will be on the Board through November 2014.

(Clerk's Note: Karen Disney-Brombach was appointed by the School Board to fill the position being vacated by Ms. Johnson.)

12. ADJOURNMENT- 9:15 a.m.

There was no further business, and Chairman Davis called for adjournment at 9:15 a.m.

ATTEST:

Jeffrey R. Smith
Clerk of Circuit Court and Comptroller

By: _____
Maria I. Suesz, Deputy Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

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