



GORDON & THALWITZER
ATTORNEYS AT LAW

299 North Orlando Avenue • Cocoa Beach, Florida 32931
Phone 321.799.4777 • Fax 321.735.0711

JASON M GORDON
Admitted in FL, NY & CT
jgordon@brevardlegal.com

AARON THALWITZER
Admitted in FL, D.C.
aaron@brevardlegal.com

MEMORANDUM

TO: Orange County Value Adjustment Board

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: Local Procedures for Requests for Reconsideration

DATE: April 30, 2025

Background

Since 2021, the VAB has adopted local procedures for disposition of requests for reconsideration of special magistrates' recommended decisions (the "procedures").¹ The procedures were modestly amended in subsequent years to make the reconsideration process more consistent, fair, and efficient, and VAB Counsel recommends adopting them again for the upcoming tax cycle.

The procedures provide a framework for the VAB to provide the required due process, and, due to the enhanced consistency and due process, the final decisions are stronger and less susceptible to reversal on appeal. With the procedures in place, parties know precisely what is required of their requests and responses as well as the timeframes governing the reconsideration process, conserving valuable staff resources and reduced legal fees paid to VAB counsel. Without the procedures, reconsideration procedures were formulated and applied on a somewhat *ad hoc* basis.

Reconsiderations have always been a part of the VAB process, thus, the cost of the local procedures to the VAB is likely negligible, and the savings realized by the efficiencies discussed above more than make up for any nominal cost.

The organizational meeting is the ideal forum at which to discuss and, if the Board wishes, adopt the local procedures.² VAB counsel recommends that the Board adopt the local procedures without amendment for the upcoming tax cycle, which are attached as **Exhibit "A"**.

¹ See generally Rules 12D-9.030, F.A.C., 12D-9.031, F.A.C., and 12D-9.032(6)-(7), F.A.C.; see also Rules 12D-9.009(1)(f), F.A.C. ("This section does not refer to routine requests for reconsideration"); 12D-9.032(6)(c) ("No reconsideration of a recommended decision shall take place until all parties have been furnished all communications, and have been afforded adequate opportunity to respond.") and (6)(a), 12D-9.031(4), F.A.C., 12D-9.030(2), F.A.C., F.A.C. and F.S. 194.035(1), F.A.C.

² Rule 12D-9.013(1)(h) provides that, at an "organizational meeting, the Board shall ... [d]iscuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the board. Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions or rules of the department. All local administrative procedures and forms of the board or special magistrates shall be made available to the public and shall be accessible on the board clerk's website, if any[.]"

EXHIBIT “A”



Requests for Reconsideration

Purpose: The VAB provides uniform procedures to ensure the fair and efficient resolution of requests for reconsideration. The Department of Revenue rules do not explicitly authorize or provide a procedure for requests for reconsideration. However, the rules make clear that the VAB is empowered to consider requests for reconsideration. Rather than a specific statute or rule, the source of such power is the VAB’s inherent authority to prepare, render, and, ultimately, reconsider its own recommendations.

1. Procedure for Requests for Reconsideration, Responses, and Opinions.

1.1. Requests for Reconsideration. In each VAB proceeding, the Property Appraiser and petitioner (collectively, “parties”) may each file one request for reconsideration per recommendation and one response to each request for reconsideration filed by the opposing party. A response is not required, however, the lack of a substantive response shall give rise to an inference that the request for reconsideration, to the extent legally sufficient on its face, is meritorious. Submissions following a request for reconsideration and a response shall not be accepted unless requested in writing by the VAB Clerk or VAB Counsel.

1.1.1. Substance. Requests for reconsideration and responses to same shall not include or reference evidence not offered at the hearing before the special magistrate. Requests for reconsideration and responses to same shall specifically identify erroneous findings of fact or conclusions of law, identify the specific legal authority which such findings or conclusions violate, and discuss why such findings or conclusions violate or fail to comply with such legal authority. Requests for reconsideration shall specifically identify the relief requested by the requesting party. Responses shall address each issue raised in the corresponding request for reconsideration, and the VAB may find that the responding party concedes any issue which the responding party fails to address. Failure to comply with this section may result in the excluding part or all of a party’s brief.

1.1.2. Notice. All requests for reconsideration and responses to same shall be emailed to the VAB clerk and to all designated email addresses of the other party. Requests for reconsideration and responses to same shall not be considered received unless the filing party complies with this section. It is the sole responsibility of the filer to comply with this requirement, not the VAB clerk, VAB counsel, or the other party. Petitioners shall serve all requests for reconsideration, and responses to same on the Property Appraiser’s point of contact, msaya@ocpafi.org, and service upon the foregoing email address shall be considered presumptively proper.

1.1.3. Form. Requests for reconsideration and responses to the same shall be submitted via email or, for petitioners who have designated U.S. Mail as their preferred contact method, by U.S. Mail. Parties may, but are not required to, include PDF copies of legal authorities cited in briefs, but shall not include evidence not submitted to the VAB before the hearing(s) before the VAB special magistrate(s).

1.1.4. No Oral Requests. The VAB shall only accept written requests for reconsideration and responses. Oral communications regarding such requests and responses shall not be accepted or considered.

1.1.5. Timing of Requests. Requests for reconsideration must be received by the VAB clerk not later than 10 calendar days after each party receives notice that a recommendation has been filed. Petitioners who have designated U.S. Mail as their preferred contact method must provide their request for reconsideration not later than 10 calendar days after the time stamp on the special magistrate's recommended decision.

1.1.6. Timing of Responses. Responses to requests for reconsideration must be received by the VAB clerk not later than 10 calendar days after a request for reconsideration is received. Petitioners who have designated U.S. Mail as their preferred contact method must ensure that their response is received by the VAB not later than 10 calendar days after the VAB receives a request for reconsideration from the Property Appraiser.

1.1.7. End of Tax Cycle Deadline. All requests for reconsideration, regardless of when a recommendation is received by the parties, must be received by the VAB clerk at least 10 days before the first final meeting (the "Final Meeting Date"). The VAB clerk shall have discretion to accept requests for reconsideration from parties who did not receive a recommendation until less than 10 days from Final Meeting Date. In considering whether to accept such requests for reconsideration, the VAB clerk shall consider all relevant factors, including the request's effect on the functioning of the VAB in the taxation process, the ability of the VAB clerk and VAB counsel to process such requests and responses, and the complexity of the request for reconsideration.

1.1.8. Untimely Requests and Responses. Untimely requests for reconsideration and responses shall not be accepted by the VAB.

1.1.9. Record. All requests for reconsideration and responses, VAB counsel's opinions, emails, and other documents, if any, related to the foregoing shall be included in the record of each petition.

1.1.10. Requests for Reconsideration Not Mandatory. Requests for reconsideration are not required before a party may appeal a final decision to the Circuit Court.

1.2. VAB Counsel's Opinion. After the VAB receives a response to a request for reconsideration, or the responding party indicates that it will not file a response, or the time for a response expires, VAB counsel shall have 10 calendar days to issue an opinion on the request for reconsideration. VAB counsel shall determine each party's compliance with these procedures and the consequences for failure to comply with same. VAB counsel may confer with the special magistrate who prepared the underlying

recommended decision in connection with preparing such opinion. The VAB may rely upon and adopt VAB counsel's determinations without reviewing the underlying record.

1.2.1. No Reconsideration of Opinions or Revised Recommendations. Requests for reconsideration of VAB counsel's opinion or of revised recommendations following issuance of such opinion shall not be accepted by the VAB.

1.3. Revised Recommendation. Within 3 calendar days of the filing of VAB counsel's opinion, the special magistrate shall revise the recommendation, if at all, as provided in VAB counsel's opinion. Special magistrates may consult with VAB counsel regarding the opinion and their preparation of revised recommendations.

1.4. Due Process. At all stages of the reconsideration process, fundamental due process shall be observed and shall govern the proceedings. As such, these procedures shall be implemented and interpreted to effectuate this requirement.

2. Calculation of Time for Requests for Reconsideration.

2.1. Computing Time. When calculating time for all time periods specified in this rule, (a) begin counting from the next day that is not a Saturday, Sunday, or legal holiday; (b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

2.2. Definitions.

2.2.1. "Last Day" Defined. Unless a different time is set by a statute, rule, or for good cause by VAB counsel, the last day ends at midnight.

2.2.2. "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

2.2.3. "Legal Holiday" Defined. "Legal holiday" means (a) the day set aside by section 110.117, Florida Statutes, for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day, or Christmas Day, and (b) any day designated as a holiday by the Value Adjustment Board.