

**VALUE ADJUSTMENT BOARD ORANGE COUNTY FLORIDA  
PETITIONER: UNIVERSITY BOULEVARD DEVELOPMENT, INC.**

**PETITION NO. 2024 – 514**

**Parcel ID: 09-22-31-8948-05-000**

**Petitioner Name: University Boulevard Development, Inc.**

**Property Address: 11472 University Blvd., Orlando, FL 32817**

**PETITIONER'S REQUEST FOR RECONSIDERATION**

Dear Members of the Value Adjustment Board,

Pursuant to Chapter 194 of the Florida Statutes, Petitioner filed a request for review of the Assessed Value of its property with regard the improvements only, and specifically made no objection to the land valuation. I am writing to request reconsideration of the decision of the Special Magistrate rendered in my property tax appeal, referenced above.

I respectfully submit this request based on the following procedural and substantive issues that I believe warrant further review:

**Statement of the Case**

After conferring with Tax Assessor and unable to get relief, Petitioner challenged assessment based on value of improvements only and agreed with valuation on land. Petitioner timely filed his evidence with the VAB and Tax Assessor, and timely requested Tax Assessor's evidence in writing. VAB Clerk continued the first hearing to allow Tax Assessor time to submit evidence to Petitioner. Petitioner did not receive Tax Assessor's evidence prior to the hearing<sup>1</sup> and timely objected to Tax Assessor's submission of evidence.

Petitioner presented evidence in the form of testimony and sworn affidavits from qualified experts, which was not challenged by the Tax Assessor, as follows:

1. The subject property improvement is a 25-year-old single purpose frame & stucco, fast-food restaurant building without a drive-thru.
2. The subject building is currently leased to a fast-food operator, Panera Bread.
3. Panera Bread has recently built a new location a couple of blocks down the street on the University of Central Florida Campus.
4. The Lease to Panera Bread has only a couple of years left on the lease term.
5. The small size of the site, a 49' front driveway easement (set back) and the location of the building all make it impossible to install a drive-thru, making the property completely unmarketable for another fast-food user.
6. The single purpose use, the lack of drive-thru, the age of the building, the type of construction (frame & stucco) and the small size of the building, make it functionally and economically obsolete; and External Obsolescence due to Panera Bread building a new location just down the street.

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<sup>1</sup> As Petitioner will argue, he is new to this venue and neither VAB nor Tax Assessor, gave any notice or notification of any type to Petitioner that with this reciprocal evidence exchange, Petitioner had to go online to find Tax Assessor's evidence and that it would not be sent to Petitioner.

7. On expiration of the Panera Lease, the building will be demolished or need substantial renovation.
8. Because of the very short remainder of the Panera Bread lease term, accrued depreciation and the Functional, Economic and External obsolescence, the building has a nominal value of less than \$250,000.

Tax Assessor did not reply to the issue of Petitioner's evidence as to reduced value of the improvement based on the cost approach, but instead presented evidence using the income from other buildings.

#### Argument

1. Florida law clearly allows taxpayers to challenge specific components of an assessment, and this issue was appropriately addressed.
2. Although Tax Assessor has the right to use the income approach, it cannot ignore reasonable inferences that significantly affect value such as accrued depreciation, and External, Functional And Economic Obsolescence.
  - a. The comparative properties used by Tax Assessor to establish income, as clearly disclosed by the documents presented, were new leases which included significant buildout by landlord, not older buildings with a short remainder in the lease term.
  - b. The issue of valuation based on value of tenant or other intangible factors, and not based on fair market value of real estate is contrary to Florida Law and as mandated by *Singh v. Walt Disney Parks and Resorts US, Inc.* 325 So. 3d 124 (Fla. Dist. Ct. App 2020).
3. **Introduction of Undisclosed Evidence (Trial by Ambush).** The Florida Statutes and Florida Administrative rules require evidence to be exchanged.
  - a. Petitioner is new to the Orange County Venue and was unaware of the local requirement that reciprocal evidence exchange required Petitioner to go to a web site to obtain this material.
  - b. Petitioner has made a detailed review of all of the material received from both the VAB and the Tax Assessor and found no reference as to going online to retrieve reciprocal evidence from Tax Assessor.
  - c. Tax Assessor sent Petitioner a request for evidence but did not in any manner disclose that Petitioner would have to go to a particular website to retrieve the reciprocal evidence from Tax collector. Tax Assessor gave instructions to send material directly to Tax Assessor's office.
  - d. When Petitioner sent evidence to VAB Clerk, VAB Clerk sent Petitioner a notice confirming it was sending the evidence material to Tax Assessor.
  - e. When the original hearing date was continue by VAB Clerk, there was no mention or directions that Petitioner would have to go online to a particular web site to retrieve the evidence from Tax Assessor.
  - f. Comparative sales and materials used by the Tax Assessor were introduced during the hearing but were **not disclosed** to beforehand. This deprived me of the opportunity to review or rebut this evidence, violating principles of due process as outlined in Florida Statutes and the Florida Administrative Code (Rule 12D-9.020).
4. **Reliance on Non-Real Estate Valuations**
  - a. The decision relied on sales of single-tenant triple-net lease properties valued primarily on **lease terms and tenant creditworthiness**. As established in Florida



case law, such intangible factors are impermissible for ad valorem tax purposes and should not have been considered in the valuation of my property.

**5. Procedural Errors in Evidence Exchange**

- a. The VAB Clerk continued the hearing to allow the Tax Assessor to comply with evidence exchange requirements. However, the materials were not made accessible to me as required, and I was not informed that accessing AXIA was necessary to retrieve such evidence.

**Requested Remedy**

To address these procedural and substantive issues, I respectfully request:

- A **new hearing** before an independent and impartial Special Magistrate.
- Exclusion of improperly introduced evidence or an opportunity to respond to such evidence in accordance with due process.

**Conclusion**

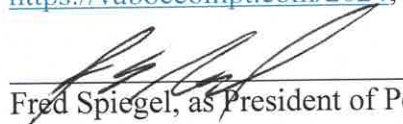
This request is made in good faith to ensure that the VAB's decision complies with Florida law and provides the petitioner with a fair and impartial review of the property assessment. I urge the Board to reconsider the decision and grant the relief requested.

Sincerely,

  
Fred Spiegel, as President of Petitioner  
fspiegel@bellsouth.net  
Phone (305) 794-4269

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing (with attachments) has been furnished by email to the Hon. Amy Mercado, Orange County Property Appraiser at [CommercialVAB@ocpafl.org](mailto:CommercialVAB@ocpafl.org) and to the Orange County Value Adjustment Board, at Web Site <https://vabocompt.com/2024>, this 6<sup>th</sup> day of January, 2025.

  
Fred Spiegel, as President of Petitioner

**AMY MERCADO**

ORANGE COUNTY PROPERTY APPRAISER



January 16, 2025

**VIA EMAIL**Value Adjustment Board ([VAB@occompt.com](mailto:VAB@occompt.com))Aaron Thalwitzer, Esq., VAB Attorney ([aaron@brevardlegal.com](mailto:aaron@brevardlegal.com))**RE: Response to Reconsideration Request - Petition #2024-514**

Dear Mr. Thalwitzer:

Our office respectfully requests that the petitioner's reconsideration request of the Special Magistrate's recommendation for petition #2024-514 be denied. This response is submitted in compliance with the time requirements set forth in the Value Adjustment Board's Procedures for Requests for Reconsideration (VAB local rules).

The subject property is a "retail/restaurant building" comprised of 4,797 square feet and currently occupied by Panera Bread. Special Magistrate's Rec. at p. 6. The 2024 market and assessed values of the subject property as determined by our office are \$1,761,428. Id. at p. 1.

Our office submitted evidence, which included an income approach to value, comparable rents, and other supporting market data. Id. at pp. 2-3. The petitioner submitted a letter regarding building value, a survey, historical values, and affidavits. Id. at p. 2. Importantly, the petitioner did not submit any approaches to value or market data. The Special Magistrate admitted the evidence submitted by both parties. Id. at p. 3.

In his recommendation, the Special Magistrate ultimately adopted our office's indicated value derived via the income approach of \$2,050,718. Id. at p. 7. The Special Magistrate reduced our office's indicated value by applying a 10% "adjustment for COS, per DOR requirements"<sup>1</sup> to arrive at a recommended value of \$1,850,000, which exceeds our assessment. Id. The Special Magistrate, therefore, denied the petition. Id. at p. 8.

The petitioner's reconsideration request seeks a new hearing based on several grounds. However, the petitioner does not "identify erroneous findings of fact or conclusions of law" or "identify the specific legal authority which such findings or conclusions violate" as required by VAB local rule 1.1.1. Rather, the petitioner reasserts the same arguments presented at the hearing and already considered by the Special Magistrate.

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<sup>1</sup> Our office disagrees with the "cost of sale" deduction made at your direction by this and other Special Magistrates and has previously filed two assertions. We do not waive any arguments regarding this issue but do not address them in this response given your prior directive and rulings.

**AMY MERCADO**

ORANGE COUNTY PROPERTY APPRAISER



First, the petitioner argues in his reconsideration request that he is only contesting the improvement value and not the land value of the subject property. While a petitioner may challenge only a portion of their assessment, our office is allowed to defend the total assessment as being correct despite a flawed internal allocation of value. Turner v. Bell Chevrolet, Inc., 819 So.2d 177 (Fla. 2d DCA 2002). Our office, therefore, submitted an income approach analysis for the entire property.

Regarding the improvement, the petitioner raises issues about depreciation and obsolescence, which the Special Magistrate has already considered and rejected in his recommendation. As the Special Magistrate found, “the Petitioner’s argument regarding the subject building improvement value, due to its age, functionality, and depreciation, is not a complete analysis/approach to value.” Id. at p. 8.

On the other hand, the Special Magistrate found that our office’s income analysis was “more compelling, and therefore, carries greater weight.” In reaching this conclusion, the Special Magistrate noted that our office’s income approach analysis was “supported by several surveys, as well as comparable data (rentals).” Id. at p. 6.

Moreover, the Special Magistrate indicated that our income approach “represents a complete income analysis, which is appropriate, and replicates what an investor, or lender would consider when estimating fee simple market value” for the subject property. Id. at p. 8. Thus, the Special Magistrate’s findings of fact and conclusions of law regarding our income approach analysis are well supported and comply with Section 194.034(2), Florida Statutes (2024), and Florida Administrative Code Rule 12D-10.003(3) (2024).

Second, the petitioner’s reliance on Singh v. Walt Disney Parks, 325 So.3d 124 (Fla. 5th DCA 2020) is misplaced. The petitioner believes that our office utilized comparables based on the identity of tenants as he argued at the hearing. The sales the petitioner referenced in the hearing were pulled from our website and not part of our evidence in this hearing. Hearing Audio at 38:30” to 39:10”.

The comparables used in our income approach are casual dining establishments without drive-thrus similar to the subject property. The selection of comparables is a matter of appraisal discretion and the Special Magistrate has already found that our comparables were appropriate.

Lastly, the petitioner raised evidentiary issues in his reconsideration request that have previously been addressed by both the Special Magistrate and the VAB. It is undisputed that our evidence for this hearing was timely uploaded into AXIA on December 3, 2024, which is seven days prior to the hearing held on December 10, 2024. Furthermore, evidentiary issues are up to the Special Magistrate, who has already ruled that our evidence was timely and admissible.

**AMY MERCADO**

ORANGE COUNTY PROPERTY APPRAISER



For the reasons set forth above, our office respectfully requests that the petitioner's reconsideration be denied.

Sincerely,

*/s/Ana C. Torres*

Ana C. Torres, Esq.  
General Counsel & Chief Deputy Property Appraiser

cc: fspiegel@bellsouth.net (Petitioner)



GORDON & THALWITZER  
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January 23, 2025

**VIA E-MAIL TO: [ANISSA.MERCADO@OCCOMPT.COM](mailto:ANISSA.MERCADO@OCCOMPT.COM)**

Orange County Value Adjustment Board  
c/o Ms. Anissa Mercado, VAB Supervisor

Re: VAB Counsel's Opinion on Request for Reconsideration  
Pet. No(s): 2024-00514  
Petitioner: University Boulevard Development Inc.

Ms. Mercado:

I have reviewed the request for reconsideration submitted by the petitioner, the Orange County Property Appraiser's ("PAO") response, the recommended decision, and the pertinent portions of the record. The subject property has a just value of \$1,761,428, and the special magistrate ("SM") denied the just value petition. The subject property is occupied by Panera Bread.

The petitioner requests a new hearing and exclusion of the PAO's evidence. The petitioner further asserts that it only seeks to appeal the improvement value and not the land value. The petitioner also lists various substantive issues which allegedly support a lower improvement value: the building is 25 years old and incompatible with a drive-thru, the subject property is leased by Panera Bread (which recently built a new location nearby), the lease expires in "a couple of years", and because the building is functionally and economically obsolete, it will be demolished when the Panera Bread lease expires. The petitioner asserts that the building has a "nominal value" under \$250,000.

The petitioner asserts that "Florida law clearly allows taxpayers to challenge specific components of an assessment", but does not cite this alleged Florida law. The petitioner also asserts that the PAO "cannot ignore reasonable inferences that significantly affect value such as accrued depreciation, and External, Functional And Economic Obsolescence", but this is a mere truism and ignores the fact that the PAO *did* consider such factors. The petitioner argues that the current lease distinguishes the subject property from the PAO's comparables, which have longer term leases, relying upon *Singh v. Walt Disney Parks and Resorts US, Inc.*, 325 So. 3d 124 (Fla. 5th DCA 2020) for the proposition that "[t]he issue of valuation based on value of tenant or other intangible factors, and not based on fair market value of real estate is contrary to Florida Law".

The petitioner asserts that the PAO's evidence was "improperly introduced" based on the petitioner not understanding where to access such evidence. The petitioner argues that the PAO introduced "undisclosed evidence", contrary to "Florida Statutes and Florida Administrative Code" but again does not cite the alleged authorities. Petitioner asserts that because he "is new to Orange County" and did not know that the PAO's evidence was available on a website, the PAO's evidence were not disclosed and should not have been admitted into evidence.

The petitioner also argues that the recommended decision relied on “non-real estate valuations”, specifically, properties with “single-tenant triple-net lease[s]” which the petitioner asserts should not be included for just value purposes. The petitioner asserts that the PAO used comparable sales based on the identity of tenants, however, per the PAO, the sales the petitioner referenced at the hearing were from the PAO’s website and were not part of the PAO’s evidence.

The PAO responds that the special magistrate adopted the PAO’s indicated value via the income approach after deducting 10% for cost of sale. The PAO asserts that the petitioner failed to “‘identify erroneous findings of fact or conclusions of law,’ as required by VAB Procedures 1.1.1.” and that the request for reconsideration merely restates arguments presented at the hearing. The PAO also asserts that the VAB cannot reduce just value based on properties receiving a lower assessed value, citing *Allegheny Pittsburgh Coal Co. v. Webster Co.*, 488 U.S. 336 (1989). As to the petitioner’s arguments regarding the improvements, the PAO responds that the depreciation and obsolescence issues have already been considered, as reflected by the special magistrate’s finding that, “the Petitioner’s argument regarding the subject building improvement value, due to its age, functionality, and depreciation, is not a complete analysis/approach to value.” The PAO observes that the special magistrate found the PAO’s income analysis to be “more compelling” and consequently “carries greater weight”, in part because it was “supported by several surveys, as well as comparable data (rentals).”

The PAO is correct that the request is procedurally defective. The request for reconsideration fails to identify “erroneous findings of fact or conclusions of law”. The request also fails to identify the specific rules, statutes, or other legal authorities supporting many of its positions. It would be improper for the VAB to vacate its neutral role by attempting to identify the legal authorities that the petitioner might be attempting to rely upon, which is the basis for the local procedure requiring parties to “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.” See VAB Reconsideration Procedure 1.1.1.

Even ignoring these procedural defects, the request also repeats the same arguments and raises the same issues which the special magistrate already considered. The purpose of reconsideration is to address legal errors and is not intended to be a proverbial “second bite at the apple”. Parties to VAB proceedings may appeal the VAB’s decisions *de novo* to the circuit court. See s. 194.036, F.S.; Rule 12D-9.032(3), F.A.C.

The PAO is also correct that the petitioner’s reliance on *Singh v. Walt Disney Parks and Resorts US, Inc.*, 325 So. 3d 124 (Fla. 5th DCA 2020) is misplaced. The petitioner argues that *Singh* precludes consideration of properties with dissimilar lease terms, but *Singh* actually held that the Rushmore method is unreliable because it did not account for the full value of intangible assets, which cannot be included in a real property’s just value.<sup>1</sup> The petitioner’s conclusion that the building is worth less than \$250,000 does not appear to be based on any recognized approach to value. The petitioner also states that the building will be demolished in a few years when the Panera lease expires, but this is speculation, not evidence.

The PAO’s evidence cannot be excluded due to the petitioner not knowing that the evidence was available on the VAB’s Axia website. In fact, the PAO’s evidence was available on Axia, the same site on which the petitioner filed its petition. The special magistrate rejected the petitioner’s request to exclude the PAO’s evidence (and to reschedule the hearing). Thus, the petitioner repeats the same rejected argument on reconsideration and, regardless, the evidence exchange rule does not authorize the VAB to exclude the PAO’s evidence. Rather, the sole remedy in such cases is to reschedule the hearing to give the petitioner time to review the PAO’s evidence. See Rule 12D-9.020(3)(b), F.A.C. (“If the property appraiser does not provide the information to the petitioner within the time required by paragraph (2)(b), the hearing shall be rescheduled to allow the petitioner additional time to review the property appraiser’s evidence.”). Accordingly, the petitioner’s request to exclude the PAO’s evidence cannot be granted.

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<sup>1</sup> The Rushmore method, often used to value hotels, is a way to calculate a property's value by subtracting the value of intangible assets from its income.



Based upon the foregoing, VAB counsel recommends that the petitioner's request for reconsideration be DENIED.

Sincerely,

**GORDON & THALWITZER**

A handwritten signature in blue ink, appearing to read "Aaron Thalwitzer", with a stylized flourish at the end.

Aaron Thalwitzer, Esq.