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MEMORANDUM

TO: Members of the Orange County Value Adjustment Board

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: Summary of Requests for Reconsideration

DATE: March 19, 2025

I. Executive Summary

At the VAB's 2023 final meeting, the Board asked VAB counsel to provide the Board with summaries of the requests for reconsideration received by the VAB.

VAB counsel recommends denying Pet. Nos. 2024-00027, 00082, 00154, 00514, 00958, and 01607. VAB counsel recommends adopting the revised recommended decisions which were prepared in response to VAB counsel's granting of Pet. Nos. 2024-02375 and 03189.

II. Summaries of Requests for Reconsideration and VAB Counsel's Opinions

(1) Pet. No. 2024-00027 - Petitioner, Charles Carden. The petitioner ("PET") requests reconsideration of his agricultural classification ("AG") petition which the special magistrate ("SM") recommended denying. On reconsideration, the PET primarily cites materials and information not offered at the hearing and fails to specify which legal authorities the SM purportedly violated.[1] The PET includes dozens of pages of new materials which the PET did not submit pursuant to the evidence exchange rule.[2] Under these circumstances, the VAB cannot consider such evidence. In violation of the VAB's reconsideration procedures, the PET also failed to identify the specific legal authorities he alleges were violated. Additionally, before the hearing, the PET admits that he *deliberately* withheld a land lease from the PAO, again failing to disclose evidence as required. The PET asserts that the land lease depicted a farming operation running across a number of properties. The Property Appraiser's Office ("PAO") submitted evidence reflecting a history of code enforcement issues, including aerial photos from 2015 through 2023, evidence that part of the subject property was used as an automotive repair shop, and that the property was used for parking for trucking and Petitioner's transportation or Bobcat businesses – all non-agricultural uses. The SM found that the presence of PET's Bobcat and transportation business and the "junkyard" caliber auxiliary structures on the property contributed to the property being unsuitable for bona fide ranching or farming. Accordingly, the PET failed to meet his burden to prove bona fide

[1] The PET devotes significant space to matters questions posed to the VAB, VAB counsel, the PAO, and to hypothetical scenarios, digressions, speculation, conclusory statements, and irrelevant subject matter. The request criticizes the recommended decision because it does not recite certain specific claims and pieces of information. However, while recommended decisions must include findings of fact and cite admitted evidence, recommended decisions are not required to list each and every piece of information and argument offered by a party. Unfortunately, these defects clutter the request, which is nearly impossible to review for potentially bona fide issues.
[2] See Rule 12D-9.020, F.A.C. requires petitioners to disclose evidence at least 15 days before the hearing.

commercial agricultural use, including a profit motive and actual commercial AG use as of January 1, 2024. At the hearing, the PET's tax agent testified regarding six goats, auxiliary structures purportedly storing farming equipment, and use of the property as a quarantine zone, which is insufficient to prove bona fide commercial AG. The owner failed to appear at the hearing, and the PAO's evidence almost conclusively shows the property has, at best, incidental AG use by six goats. Overall, the PET's failure to comply with the evidence rules at and before the hearing, his attempt to introduce new evidence on reconsideration, and the strength of the PAO's evidence showing significant non-AG use of the property provide no support for the request, which VAB counsel recommends DENYING.

(2) Pet. No. 2024-00082 – Petitioner, Randie Surillo. The PET submitted a request for reconsideration on October 24, 2024. The recommended decision was issued on October 11, 2024. Requests for reconsideration must be submitted within 10 days of issuance of the recommended decision.[3] Accordingly, the request for reconsideration was untimely, requiring denial. Therefore, VAB counsel recommends DENYING the request.

(3) Pet. No. 2024-00154 - Petitioners, Matthew & Cheryl Bostrom. The PET requests reconsideration of the recommended decision which *granted* PET's just value petition, reducing just value from $1,828,480 to $1,653,000. PET asserts that just value should be further reduced to $1,181,386, based on the following: "Based on the average neighborhood Market Values, my Land has a value of $170,669. When added to the average neighborhood Market Value for my Buildings and Features of $1,010,717, it equals an overall Market Value of my property of $1,181,386." PET asserts that "[t]he gap between the sales price and actual market value (MV) assigned to my property is significant", listing three properties and their "OCPA Market Value for Tax Purposes", on which the PET bases his argument that that the property's just value is "inequitable". The PAO responds that the SM adopted the PAO's sales approach indicated value of $1,837,161 minus 10% for cost of sale. The PAO also asserts that the PET failed to "'identify erroneous findings of fact or conclusions of law,' as required by VAB Procedures 1.1.1." and the request for reconsideration merely restates arguments presented at the hearing, which is inappropriate on reconsideration, which is not intended as a "second bite at the apple". 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). The request is procedurally defective because it fails to identify "erroneous findings of fact or conclusions of law". Even ignoring this defect, the request merely restates arguments made at the hearing and seeks to reduce the subject's just value based on other properties receiving lower assessed values, which would violate binding legal precedent. VAB counsel recommends DENYING the request.

(4) Pet. No. 2024-00514 - Petitioner, University Boulevard Development, Inc. The PET's just value petition was denied. The property, leased by Panera Bread, has a just value of $1,761,428. On reconsideration, PET seeks a new hearing and exclusion of the PAO's evidence. PET asserts that just value should have been reduced due to the property's functional obsolescence (the building is 25 years old and lacks a drive-thru, Panera Bread recently built a new location nearby, the lease expires in "a couple of years", and the building will be demolished when the lease expires). PET asserts that "Florida law clearly allows taxpayers to challenge specific components of an assessment", but does not cite the alleged law. PET generally implies that the PAO ignored issues which support a reduced just value, but fails to address the PAO's evidence which shows that the PAO *did* consider such factors. PET requests exclusion of the PAO evidence because the PET did not understand how to access the PAO's evidence (in support of which, PET alleges that he is "new to Orange County"). However, the PAO submitted its evidence to the VAB as required, and that evidence was available on Axia, the same website on which the

[3] See Local Procedure 1.1.5 ("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.").

PET filed its petition. This is not a valid basis to exclude the PAO's evidence.[4] PET objects to the PAO's market approach, but this is irrelevant because the SM based the revised just value on the PAO's income approach, which the SM found "more compelling" and gave "greater weight", in part because it was "supported by several surveys, as well as comparable data (rentals)." The request also fails to identify the allegedly "erroneous findings of fact or conclusions of law" and fails to provide legal authorities supporting many of PET's positions. Procedural defects aside, the request largely repeats the same arguments and issues considered by the SM. The PET asserts that *Singh v. Walt Disney Parks and Resorts US, Inc.*, 325 So. 3d 124 (Fla. 5th DCA 2020) precludes consideration of properties with dissimilar lease terms, but *Singh* actually held that the "Rushmore method" is unreliable because it does not account for the full value of intangible assets, which cannot be included in a real property's just value.[5] The PET's assertion that the property's improvements have a value under $250,000 does not appear to be based upon any recognized approach to value. VAB counsel recommends DENYING the request.

(5) Pet. No. 2024-00958 - Petitioner, 2361 North Semoran Boulevard Owner, LLC. The PAO requests reconsideration of the recommended decision, which reduced PET's just value from $5,130,479 to $4,970,000. The PET also requests reconsideration, arguing for a further reduction in just value to $4,380,383, based upon the PAO's replacement cost after deducting depreciation, PET's land value, and cost of sale ("COS") would be $4,190,511. The PAO asserts that the SM's "weighted value indication" of $5,166,443 should control over the $5,500,000 sale of the subject property in September 2023 minus 10% for COS, resulting in a $4,950,000 just value. The PAO argues that merely deducting COS from the sale price is not a "professionally accepted appraisal practice" and inconsistent with the SM's analysis. The PET responds that the SM found that the sale of the subject property represents "further evidence supporting a reduced value". The PET argues that the SM should have applied 25% weight to the subject's sale instead of the PAO's comparable sales. The PET is correct that the subject's sale was not used in isolation, but rather tempered the conclusions derived from the parties' other evidence and approaches to value, as discusses in the recommended decision. The SM is not prohibited from using the subject's sale as evidence of value. The SM concluded a reduced just value of $5,165,000 "[b]ased on … the reconciled cost and sales comparison approaches, and consideration of the recent sale", finding that the revised just value aligns with the market evidence, addresses potential overstatements in the PAO's sales analysis and ensures appropriate weight was given to the cost approach. The SM is not restricted to using only one approach to value or only one party's evidence. Contrary to the parties' assertions, the recommended decision is not inconsistent and the revised just value is supported by evidence and applicable law. VAB counsel recommends DENYING the requests.

(6) Pet. No. 2024-01607 - Petitioner Matthew & Murray Morgan. PET requests reconsideration of the recommended decision which *granted* the PET's just value petition, reducing just value from $1,846,446 to $1,667,000. PET asserts that the subject property's just value should be further reduced to $1,200,000, based upon three comparable sales which allegedly conclude a market value of $1,263,607.52. PET also asserts that the PAO's comparable sales are inapplicable because there is a "massive gap between their sale prices and the actual market value". The PAO responds that the SM adopted the PAO's market approach indicated value of $1,852,507 and deducting 10% for COS. The PAO asserts that the PET failed to "'identify erroneous findings of fact or conclusions of law,' as required by VAB Procedures 1.1.1." and 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*, 488 U.S. 336. The request is procedurally defective because it fails to identify "erroneous findings of fact or conclusions of law", but even ignoring this defect, the request merely restates arguments made at the hearing and seeks to reduce the property's just value based on other properties' lower *assessed* values, which would violate *Allegheny*. VAB counsel recommends DENYING the request.

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[4] In fact, there can be *no* valid basis to exclude the PAO's evidence under Florida law. Rule 12D-9.020(3)(b), F.A.C. is clear that even if the PAO fails to timely provide its evidence to the petitioner, the only consequence is that the hearing must be rescheduled to allow the petitioner time to review the PAO evidence.

[5] 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.

(7) Pet. No. 2024-02735 - Petitioner, Naka Homes, LLC. The PAO requests reconsideration of the recommended decision which reduced PET's just value petition was granted, reducing just value from $1,108,986 to $940,000. The PAO asserts that the SM erroneously stated that the PAO's value estimate was $1,045,440 when in fact the PAO's market approach indicates values between $1,561,667 and $1,562,494, while no evidence shows that the PAO's evidence indicated a value of $1,045,440. PET responds that: (i) several of PET's comparable sales support the SM's revised value, and (ii) four of PET's comparable sales were from 2023, while PAO's comparable sales were all from 2022, and the market has changed since then. The PAO is correct. The recommended decision incorrectly found that the PAO's value estimate was $1,045,440, which appears to derive from a Comparable Land Sales Grid (see PAO's evidence, p. 14) which provides a price of $1,045,440/acre for the subject property, exclusive of improvements. Consequently, this figure does not represent the PAO's value indication. VAB counsel recommended GRANTING the request and Pursuant to VAB Local Procedure 2.5, Rule 1.3, directed the SM to revise the recommended decision's finding which erroneously indicates that the PAO offered a $1,045,440 indicated value, and to revise all other findings of fact and conclusions of law accordingly. The SM revised the recommended decision accordingly, which is before the Board for approval.

(8) Pet. No. 2024-03189 - Petitioner, Greeneway Park I, LLC. The PAO requests reconsideration of the recommended decision which reduced PET's just value petition was granted, reducing just value from $12,912,285 to $10,983,133. The PAO asserts that the Florida Department of Revenue's directive to apply the COS deductions identified in the PAO's DR-493 (10% for the Orange County PAO) are generally improper and that, in this case, the SM made two cost of sale deductions, first reducing the capitalization rate for COS and also deducting $1,220,348 for COS "below the line". DOR's 2024 VAB training materials provides that under professionally accepted appraisal practices and Florida law, it is improper to double-count cost of sale deductions.[6] Accordingly, the PAO is correct that the recommended decision improperly applied two cost of sale deductions. VAB counsel recommended GRANTING the PAO's request and the remanded the recommended decision to the SM to apply a single COS deduction. The revised recommended decision is before the Board for approval.

[6] "When the VAB makes findings of fact on the cost of sale deductions the property appraiser made and then reported on Form DR-493, and then uniformly applies the same percentage deductions where necessary for uniformity without double-counting, the VAB likewise complies with law including the standard of professionally accepted appraisal practices." 2024 VAB Training Materials, p. 156-57: