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MEMORANDUM

TO: Members of the 2020 Orange County Value Adjustment Board

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: Special Magistrate Robert Sutte

DATE: October 13, 2020

I. Introduction

At the June 12, 2020 Organizational Meeting of the VAB, and after receiving VAB Counsel's opinion that Robert Sutte was qualified to serve as a special magistrate for the 2020 tax cycle, the Board selected Mr. Sutte to serve as value special magistrate.¹

On or about September 21, 2020, the VAB Clerk learned that Mr. Sutte had filed a petition with the VAB challenging the just value of real property he owned individually.²

The VAB Clerk asked VAB counsel whether this filing had any effect on the VAB or Mr. Sutte's service as a special magistrate. After researching the issue, VAB counsel concluded that the filing of a petition by a special magistrate disqualified that special magistrate from serving for that VAB for that tax cycle. In other words, by filing a VAB petition, even one in which he represents himself, Mr. Sutte disqualified himself from serving the VAB during the 2020 tax cycle.

II. The Rule

Rule 12D-9.010(4), F.A.C. prohibits special magistrates from representing "any party" before the VAB:

(c) During a tax year in which a special magistrate serves, he or she must not represent any party before the board in any administrative review of property taxes.

This language is found within the rule defining the required qualifications for special magistrates. Thus, if a special magistrate does not comply with the above rule, he or she cannot be considered qualified to serve as a special magistrate during the applicable tax cycle.

¹ In a written memorandum, VAB counsel wrote as follows: "Robert Sutte has been a Certified General Appraiser since 1987 and has held MAI designation since 1970, SRA designation since 1968, and CRE designation since 1975. Therefore, Mr. Sutte is qualified to serve as a Value Special Magistrate."

² To be clear, VAB counsel believes that Mr. Sutte filed the petition without understanding that doing so would cause his disqualification. Mr. Sutte is an experienced and capable special magistrate and it is unfortunate, for himself and the VAB, that he has become disqualified.

III. Mr. Sutte's position.

After VAB counsel researched the issue, the VAB Clerk notified Mr. Sutte of VAB counsel's opinion, prompting Mr. Sutte to withdraw his petition (neither the VAB Clerk nor VAB counsel requested nor recommended this action). This information was conveyed to VAB counsel, who opined that withdrawing the petition did not cure the disqualification caused by the filing of the petition.

The VAB Clerk communicated VAB counsel's opinion to Mr. Sutte, leading to Mr. Sutte engaging attorney Jay Small, Esq. to represent him. At Mr. Small's request, a conference call was held with VAB counsel, Katie Smith, Deputy Clerk, Manager, Clerk of the Board Department, Mr. Sutte, and Mr. Small at which Mr. Small advocated for Mr. Sutte.

Mr. Small argued that Mr. Sutte could not be disqualified for filing a petition for himself, because properly interpreting the rule requires an analysis under the agent-principal law, under which Mr. Small concluded that Mr. Sutte was not, in fact, his own "agent".³ This is a creative argument. However, there is no reason to resort to outside legal concepts to define the term "agent". After all, Rule 12D-9.003(8) itself expressly provides that "the term 'representative' means the same as the term 'agent.'" See Rule 12D-9.010(8).

Following the call, Mr. Sutte contacted the VAB Clerk directly. He submitted a packet of documents and summarized the events leading up to his potential disqualification, further advising that, going forward, he would represent himself. Mr. Sutte reiterated Mr. Small's argument that Rule 12D-9.010(4) was ambiguous. He also stated that the Department of Revenue's VAB trainings never included any material regarding Rule 12D-9.010(4), that he had never previously reviewed the rule, and that he did not understand the rule to prohibit special magistrates from representing themselves. Mr. Sutte also argued that he only filed the petition to give himself more time to negotiate with the Property Appraiser's Office, and that he never intended to go forward to a hearing.

IV. Mr. Sutte disqualified himself by filing a VAB petition for himself, a taxpayer, in a year in which he served as special magistrate.

After reviewing all the materials and argument submitted by Mr. Sutte, conferring with the VAB Clerk, and thoroughly researching the relevant legal authorities, VAB counsel concluded that Mr. Sutte disqualified himself from serving as a special magistrate the instant he filed his petition.

Mr. Sutte's arguments ultimately raise points which are irrelevant. Under Rule 12D-9.010(4), it makes no difference whether Mr. Sutte represented himself versus a third party, whether he prosecuted the petition beyond merely filing it, or whether he had been trained on, or, for that matter, was aware of the rule. The rule must be applied uniformly, as written. The VAB expects all participants to know and understand the rules, and cannot expect less of a special magistrate. Most importantly, the rule itself includes no exceptions and makes no distinctions based upon the scope of the agent's representation.

The rule also does not say whether a special magistrate may eliminate their disqualification by withdrawing the petition after filing it, but before a hearing. However, the undersigned does not find that distinction to make a difference. Though admittedly harsh as applied, the rule is not ambiguous.

Mr. Sutte's alternative interpretation, whereby filing a petition does not disqualify a special magistrate, requires an interpretation of the rule which permits special magistrates to act as agents/representatives up to a certain point in the VAB process, perhaps *only* precluding special magistrates from appearing at hearings. In other words, under this interpretation, a special magistrate could file an unlimited number of petitions, and could also create, gather, and file supporting evidence, argue in favor of those petitions, engage in prehearing negotiations with the PAO, and undertake everything else that goes into representing a taxpayer before the actual VAB hearing. In the undersigned's opinion, interpreting the rule in this way cuts against the rule's clear purpose, which is to maintain the integrity of the VAB process.

³ Mr. Small was apparently terminated before he was able to complete or transmit a written statement of his argument. Thus, this summary of Mr. Small's argument is from the undersigned's notes from the conference call.

Furthermore, if Mr. Sutte were to hear petitions during this tax cycle, he would be subject to potential disqualification in every petition in which he served as special magistrate (the Property Appraiser's Office has already stated as much). Putting aside the extra time and money this would cost the VAB in terms of VAB counsel and Mr. Sutte's own time spent addressing such requests, based strictly upon the facts presently known, it is likely that the undersigned would recommend granting disqualification. But, even if a request for disqualification were denied, that denial would have consequences in that it provides strong grounds for an appeal to the circuit court. It could also lead to a potential inquiry, or more, by the Florida Department of Revenue, which has oversight responsibilities over the VAB.

V. Conclusion

There should not be different standards for special magistrates who represent themselves versus special magistrates who represent other taxpayers. Even though I believe it was an innocent mistake and that disqualifying Mr. Sutte yields a loss of an experienced and capable special magistrate, the rule is clear.

Unfortunately, I am forced to recommend that the Board find that, by representing a party before the VAB in the same tax cycle in which he is serving as a special magistrate, Mr. Sutte is no longer qualified to serve as a special magistrate for this tax cycle.

As a result, the Board should ratify the VAB Clerk's actions removing Mr. Sutte from the VAB hearing schedule and also ratify the VAB Clerk's termination of Mr. Sutte's Orange County Special Magistrate Agreement dated September 19, 2020, by which Mr. Sutte was to serve as a special magistrate for the VAB for the 2020 tax cycle.

Should he apply, this would not disqualify Mr. Sutte from serving as a special magistrate for the 2021 tax cycle.

Sincerely,

GORDON & THALWITZER



Aaron Thalwitzer, Esq.

cc: Katie Smith, Deputy Clerk, Manager, Clerk of the Board Dept.: Katie.Smith@occompt.com
Jessica Vaupel, Assistant Manager, Clerk of the Board Dept.: Jessica.Vaupel@occompt.com