From:	VAB
To:	"nparadela@rvmrlaw.com"; "propertytax"
Cc:	Smith, Katie; VAB; Durham, Keondra; Ana C. Torres; "Cristina Saya"
Subject:	RE: Petitions 2020-00622, 2020-00624, 2020-00628 and 2020-00629
Date:	Wednesday, February 10, 2021 1:34:22 PM
Attachments:	image001.png image002.png image003.png image004.png

Good Afternoon.

Please see the below response from VAB Counsel Thalwitzer regarding the petitioner's request for reconsideration for petitions 2020-00622, 00624, 00628 and 00629.

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From: Aaron Thalwitzer <aaron@brevardlegal.com>
Sent: Tuesday, February 9, 2021 5:18 PM
To: Durham, Keondra <Keondra.Durham@occompt.com>
Cc: VAB <VAB@occompt.com>
Subject: RE: Petitions 2020-00622, 2020-00624, 2020-00628 and 2020-00629

Hi Keondra,

I have reviewed the request for reconsideration of the above recommendations, in which the petitioner argues that the special magistrate ("SM") incorrectly shifted the burden to the petitioner to prove that the property appraiser ("PAO") considered the so-called "eighth criterion" of section 194.301, Florida Statutes, also known as the "cost of sale" ("COS"). In the recommendation, the SM found that the PAO considered COS in determining just value, and that there was no "relevant and credible" evidence indicating that the PAO did not consider COS. The petitioner argues that this finding shifts the burden to the petitioner.

The petitioner further argues that F.S. 194.301 requires the PAO to prove by a preponderance of the evidence that the PAO arrived at an assessment by comply with F.S. 193.011 and professionally accepted appraisal practices. The Petitioner argues that F.S. 194.301 disallows the PAO from according the PAO with a presumption of correctness by conclusorily stating the COS was properly considered). However, the sole case cited by the Petitioner in support of this contention, *Scripps Howard Cable Co. v. Havill* at 655 So. 2d 1071 (Fla. 5th DCA 1995), appears to be both miscited and taken out of context. In *Scripps*, the court held that the property appraiser office's conclusory statements that the eight (not *eighth*) criteria are "considered automatically" were "not credible" because, in *Scripps*, the property appraiser's representative admitted that "he had no idea of the condition, size, location, or income produced by the tangible personal property." *Scripps Howard Cable Co. v. Havill*, 665 So. 2d 1071, 1077 (Fla. 5th DCA 1995). The court held that the representative did not possess the information needed to properly use the three approaches. *Id.* The court then restated that the requirement that the property appraiser "*consider*, but not necessarily use, each of the statutory factors." *Id., citing* § 193.011, Fla. Stat. (1993). In *Scripps*, the court held that the property appraiser's represented admitted that he did not do so, and as a result, the court found that the property appraiser was not entitled to a presumption of correctness. Thus, *Scripps* does not appear to stand for the proposition argued by the Petitioner, and, to some extent, the Petitioner's argument unravels from there.

Petitioner further argues that it "read into the record the assessments of the properties which the Property Appraiser relied upon in its sales approach to show that it applied a cost of sale of at least 15% when assessing the comparable sales, but did not do so in its sales approach for the subject property." However, it is improper to use or compare assessed values of other properties when contesting a property's assessed value. Nonetheless, apparently on this basis, the Petitioner concludes that the PAO "is in clear violation of Fla. Stat. 194.301." VAB counsel cannot agree.

Nowhere in the request for reconsideration does the Petitioner suggest that no record evidence supports the PAO's statement that it considered the COS. On a practical level, it is not clear precisely what it is that the Petitioner believes the PAO could or should have stated or offered to further show that it considered the eighth criterion. To be clear, it is not the Petitioner's burden to show that the did not consider the eighth criterion, but where, as here, the PAO testifies that it did consider the COS, but decided not to apply an adjustment, the PAO's presumption of correctness is properly accorded.

Finally, the Petitioner concludes that, because the PAO did not consider and apply a COS adjustment in the individual appraisals of the subject properties, the PAO should be required to apply a 15% COS adjustment, as it does in mass appraisals. Without devolving into an extended discussion on the 15%

adjustment reflected in the DR-493 (which reflects adjustments to recorded selling *prices*, not the *fair market value* of any parcel(s) in arriving at assessed value), it suffices to say that the adjustments indicated by the PAO on the DR-493 have no relevance to individual appraisals. Rather, the PAO adjusts recorded selling prices at the rate set forth in the DR-493 to arrive at assessed values in conjunction with its CAMA system. Accordingly, I do not agree that it is proper or required for the VAB to apply a COS adjustment equal to the percentage found in the DR-493, as doing so would be arbitrary and unsupported by any evidence.

Based upon the foregoing, I recommend denying the Petitioner's request for reconsideration.

Thank you,

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From: Nina Paradela Roppo <nparadela@rvmrlaw.com>
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Subject: Petitions 2020-00622, 2020-00624, 2020-00628 and 2020-00629

Good afternoon. Please see attached correspondence from Jeffrey Mandler, Esq. regarding the above-referenced petitions. Thank you.

Nina Paradela Roppo
Paralegal

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