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MEMORANDUM

TO: Members of the 2020 Orange County Value Adjustment Board and VAB Clerk

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: Special Magistrate Dwayne Taylor – Pet. Nos. 2020-03511, 2020-03514, 2020-03520, 2020-03524, 2020-03525, 2020-03528, 2020-03530, 2020-03533, 2020-03544, 2020-03551, 2020-03554, 2020-03565, 2020-03569, 2020-03583, 2020-03610, 2020-03632, 2020-03640, 2020-03661, 2020-03663, 2020-03664, 2020-03666, 2020-03674, 2020-03683, 2020-03684, 2020-03692, 2020-03723, 2020-03727, 2020-03737, 2020-03741, 2020-03754, 2020-03770, 2020-03780, 2020-03782, 2020-03783

DATE: April 13, 2021

EXECUTIVE SUMMARY

Special Magistrate Dwayne Taylor (“SM Taylor”) has demonstrated a lack of competence at preparing recommendations which comply with applicable Department of Revenue regulations and Chapter 193, Florida Statutes. VAB counsel and the VAB clerk attempted to work with SM Taylor to correct the deficiencies, but do not have confidence that SM Taylor can efficiently and properly prepare compliant recommendations.

Therefore, it is my recommendation that the Board approve transferring the above petitions to a different special magistrate.

DISCUSSION

On February 23, 2021, SM Taylor heard the thirty-four petitions provided above.

On March 17, 2021, VAB counsel reviewed a number of the above recommendations, and found them to be non-compliant with the applicable rules in several ways, to the extent that it was only possible to identify the most fundamental issues, hope that SM Taylor could correct those issues, and then review again for more granular issues. VAB counsel emailed the following to the VAB clerk regarding one of SM Taylor’s recommendations; however, these issues were common to all of SM Taylor’s recommendations:¹

- Lacks findings reciting the parties’ evidence and regarding the evidence’s admissibility

¹ VAB counsel reported these issues to the VAB clerk on March 17, 2021. For context, it is typical for a recommendation to have anywhere from zero to one or two deficiencies. However, the extent to which SM Taylor’s recommendations were deficient is unprecedented in VAB counsel’s experience.

- Findings of fact lack sufficient context to stand on their own, without having reviewed the parties' evidence separately; the parties shouldn't have to look outside of the recommendation itself to understand the recommendation.
- The petition was denied, but it is difficult to understand what evidence and methodologies underlie the special magistrate's conclusions. Much more detail is needed.
- While VAB Counsel generally prefers not to criticize writing style, in this case there are simply too many typos, misspellings, and grammar errors to ignore because they make the recommendation difficult to understand. Though the same issues are present in this recommendation as SM Taylor's other recommendations, given how much work is needed, I have not attached a redline as I have with SM Taylor's other recommendations, but I will be happy to do so after receiving the revised recommendation, if needed.
- Please note that given how much work is needed here, there will likely be additional comments when the final draft is reviewed.

In addition to the above, VAB counsel emailed the VAB clerk a redlined MS Word .doc, onto which was copied SM Taylor's entire Findings of Fact Section, with additional questions and corrections:

The screenshot shows a redlined document with several comments from Aaron Thalwitzer (AT) on the right margin. The text in the document is as follows:

~~Finding of Fact, currently t~~The petitioner's evidence ~~present~~ indicates a similar quality of condition and quality of construction ~~and~~. ~~The petitioner evidence~~ brackets the subject property in all areas minus actual age and lot size. ~~h~~However, no adjustments were made in either ~~the~~ property appraiser's evidence (for superior and inferior actual and lot size), ~~and~~ nor the petitioner's evidence (which did not indicate a value adjustment). The evidence ~~concludes shows~~ that ~~in this case that~~ a 3-car garage ~~hold~~ has more value than 2-car garages in the subject market area. ~~Petitioner's data evidence appears to have to include~~ two comps ~~used that currently have with~~ 2-car garages ~~and~~. ~~Currently, the property appraiser's data evidence has includes~~ one comp ~~used with~~ a 2-car garage.

Comments from Aaron Thalwitzer (AT):

- AT: Aaron Thalwitzer
Similar to what?
- AT: Aaron Thalwitzer
I'm assuming you're referring to comparable sales, but it needs to be clearly stated, and cite to actual evidence.
- AT: Aaron Thalwitzer
Does it include two comps or not?
- AT: Aaron Thalwitzer
What conclusion do you draw from this? It is not clear why it is included.

In addition to providing the above to Ms. Mercado and Ms. Lofton of the VAB clerk's office, VAB counsel also took the additional step of notifying Ms. Smith and Ms. Vaupel of the unusual extent of the problems with SM Taylor's recommendations, and suggesting extra attention be given to his recommendations. They were receptive and received VAB counsel's comments with appropriate seriousness.

SM Taylor received VAB counsel's critiques, including the redlined documents, and eventually produced revised recommendations. However, the revised recommendations still failed to address the majority of the issues identified by VAB counsel, and it appeared the SM Taylor had ignored VAB counsel's redlined suggestions. The VAB clerk confirmed that SM Taylor did not view the redlined document before revising the recommendation. After receiving all of SM Taylor's revised recommendations, the Ms. Smith and Ms. Vaupel conferred with VAB counsel. All agreed that SM Taylor did not appear capable of rendering compliant recommendations.

There were two options available to the VAB clerk and VAB counsel, either: (1) assign VAB counsel to work closely with SM Taylor to produce compliant recommendations, or (2) assign a different special magistrate to review the records for SM Taylor's petitions and prepare new recommendations.

It would take an inordinate amount of time, and cost the VAB a significant amount of money for VAB counsel to walk SM Taylor through each recommendation. Additionally, special magistrates are legally and contractually required to have the competence to prepare compliant recommendations, and the VAB should not have to essentially pay VAB counsel to train a special magistrate in the midst of a VAB cycle. Finally, VAB counsel is not a special magistrate and is not experienced at writing recommendations, making this an imperfect solution. Therefore, while there would be an additional cost associated with assigning a different special magistrate to rewrite SM Taylor's recommendations, this option is preferred since it would essentially allow the VAB to proceed with the recommendations using the usual and customary procedures, without incurring the extra fees associated with VAB counsel's participation.

Accordingly, VAB counsel and the VAB clerk recommend that the Board approve transferring the above petitions to a different special magistrate to be selected in the VAB clerk's judgment based upon the special magistrate's availability and competence.

GORDON & THALWITZER

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

Aaron Thalwitzer, Esq.