

1 *NOTE: This redline version shows each addition and deletion to the proposed rules that were originally*
 2 *published in the Notice of Proposed Rule on September 4, 2009, as revised by the Notice of Change*
 3 *published on January 22, 2010. This redline document is to display the changes made to the text of the*
 4 *draft rules as such text existed after the published notice of change published on January 22, 2010. These*
 5 *changes are being made through the Notice of Change that will be published on February 5, 2010, which*
 6 *will show how the text will read when adopted.*

7
 8 **12D-9.005 Duties of the Board.**

9 (1)(a) The value adjustment board shall begin hearings on petitions meet not earlier than 30
 10 days and not later than 60 days after the mailing of the notice provided in Section 194.011(1),
 11 Florida Statutes; however, no board hearing shall be held before approval of all or any part of the
 12 county's assessment rolls by the Department of Revenue. The board shall meet for the following
 13 purposes:
 14

15 **12D-9.007 Role of the Clerk of the Value Adjustment Board.**

16 (8) The board clerk shall ensure public notice of and access to all hearings. Such notice shall
 17 contain a general description of the locations, dates, and times hearings are being scheduled. This
 18 notice requirement may be satisfied by making such notice available on the board clerk's
 19 website. Hearings must be conducted in facilities that are clearly identified for such purpose
 20 and are freely accessible to the public while hearings are being conducted. The board clerk shall
 21 assure proper signage to identify such facilities.
 22

23 **12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and**
 24 **Legal Counsel.**

25 (6) Meetings or orientations for special magistrates, for any instructional purposes relating to
 26 procedures for hearings, handling or consideration of petitions, evidence, worksheets, forms,
 27 decisions or related computer files, must be open to the public for observation. Such meetings or

1 orientations must be reasonably noticed to the public in the same manner as an organizational
2 meeting of the board or posted as reasonable notice on the board clerk's website.

3 Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented
4 194.011, 194.013, 194.032, 194.034, 194.035, 195.022, 195.084, 213.05, Chapter 475, Part II
5 FS. History-New xx-xx-10.

6

7 **12D-9.018 Representation of the Taxpayer.**

8 (5) As used in this rule chapter, the term “licensed” refers to holding a license or certification
9 under Chapter 475, Part I or Part II, Florida Statutes, being a Florida certified public accountant
10 under Chapter 473, Florida Statutes, or membership in the Florida Bar.

11 Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented
12 194.011, 194.013, 194.032, 194.034, 195.022, 195.084, 213.05, Chapter 473, Chapter 475, Part I
13 and II FS. History-New xx-xx-10.

14

15 **12D-9.022 Disqualification or Recusal of Special Magistrates or Board Members.**

16 (4)(a) If either the petitioner or the property appraiser communicates a reasonable belief that
17 a board member or special magistrate has a bias, prejudice or conflict of interest, the basis for
18 that belief shall be stated in the record of the proceeding or submitted prior to the hearing in
19 writing to the board legal counsel.

20 (b) If the board member or special magistrate agrees with the basis stated in the record, the
21 board member or special magistrate shall recuse himself or herself on the record. A special
22 magistrate who recuses himself or herself shall close the hearing on the record and notify the
23 board clerk of the recusal. Upon a board member's recusal, the hearing shall go forward if there

1 is a quorum. Upon a special magistrate's recusal, or a board member's recusal that results in a
2 quorum not being present, the board clerk shall reschedule the hearing.

3 (c) If the board member or special magistrate questions the need for recusal, the board
4 member or special magistrate shall ~~do one of the following:~~

5 ~~1. if time permits, request an immediate determination on the matter from the board's legal~~
6 ~~counsel; or~~

7 ~~2. state for the record that he or she questions the need for recusal and state the basis for the~~
8 ~~question, proceed with the hearing, and promptly present the matter to the board's legal counsel~~
9 ~~for review.~~

10 (d) Upon review, if the board legal counsel:

11 1. determines that a recusal is necessary, the board member or special magistrate shall recuse
12 himself or herself and the board clerk shall reschedule the hearing; or

13 2. is uncertain whether recusal is necessary ~~the board member or special magistrate has a~~
14 ~~conflict of interest~~, the board member or special magistrate shall recuse himself or herself and
15 the board clerk shall reschedule the hearing.

16 ~~3. determines the recusal is unnecessary, the board legal counsel shall set forth the basis upon~~
17 ~~which the request was not based on sufficient facts or reasons.~~

18 (e) In a rescheduled hearing, the board or special magistrate shall not consider any actions
19 that may have occurred during any previous hearing on the same petition.

20 ~~(5) A rescheduling for disqualification or recusal shall not be treated as the one time~~
21 ~~rescheduling to which a petitioner has a right upon timely request under Section 194.032(2),~~
22 ~~Florida Statutes.~~

23

1 **12D-9.027 Process of Administrative Review.**

2 (3) In administrative reviews of the classified use valuation of property or administrative
3 reviews of the assessed valuation of limited increase property, the board or special magistrate
4 shall follow this sequence of general procedural steps:

5 ...

6 (c) 1. In administrative reviews of classified use valuations, if the property appraiser
7 establishes a presumption of correctness, determine whether the admitted evidence proves by a
8 preponderance of the evidence that:

9 a. The property appraiser's classified use valuation does not represent classified use value; or

10 b. The property appraiser's classified use valuation is arbitrarily based on classified use
11 valuation practices that are different from the classified use valuation practices generally applied
12 by the property appraiser to comparable property of the same property classification within the
13 same county.

14 2. If one or both of the conditions in subparagraph (c)1. above are determined to exist, the
15 property appraiser's presumption of correctness is overcome.

16 3. If the property appraiser does not establish a presumption of correctness, or if the
17 presumption of correctness is overcome, the board or special magistrate shall determine whether
18 the hearing record contains competent, substantial evidence of classified use value which
19 cumulatively meets the statutory criteria that apply to the classified use valuation of the
20 petitioned property.

21 a. If the hearing record contains competent, substantial evidence for establishing a revised
22 classified use value, the board or an appraiser special magistrate shall establish a revised

1 classified use value based only upon such evidence. In establishing a revised classified use value,
 2 the board or special magistrate is not restricted to any specific value offered by one of the parties.

3 b. If the hearing record lacks competent, substantial evidence for establishing a revised
 4 classified use value, the board or special magistrate shall remand the assessment to the property
 5 appraiser with appropriate directions for establishing classified use value.

6 4. If the property appraiser establishes a presumption of correctness and that presumption of
 7 correctness is not overcome as described in subparagraph (c)1. above, the assessment stands. ~~b.~~
 8 ~~If the hearing record lacks competent, substantial evidence for establishing a revised classified~~
 9 ~~use value, the board or special magistrate shall remand the assessment to the property appraiser~~
 10 ~~with appropriate directions for establishing classified use value.~~ [NOTE: This text of “b.” was
 11 erroneously printed under “4.” in the Notice of Change published on January 22, 2010. The
 12 correction to this rule is being made only to correct that misprint by moving “b.” up into
 13 subparagraph “3.” from “4.”.]

14

15 **12D-9.032 Final Decisions.**

16 (1)(a) For each petition not withdrawn or settled, the board shall produce a written final
 17 decision that contains findings of fact, conclusions of law, and reasons for upholding or
 18 overturning the property appraiser’s determination. Each final decision shall contain sufficient
 19 factual and legal information and reasoning to enable the parties to understand the basis for the
 20 decision, and shall otherwise meet the requirements of law. The board may fulfill the
 21 requirement to produce a written final decision by adopting by reference a recommended
 22 decision of the special magistrate containing the required elements and providing notice that it
 23 has done so. The board may adopt the special magistrate’s recommended decision as the decision

1 of the board incorporating the recommended decision by reference, using a postcard or similar
2 notice. The board shall ensure regular and timely approval of recommended decisions.

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