

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

PROPERTY TAX OVERSIGHT PROGRAM

RULE NO:	RULE TITLE:
12D-9.001	Taxpayer Rights in Value Adjustment Board Proceedings
12D-9.002	Informal Conference Procedures
12D-9.003	Definitions
12D-9.004	Composition of the Value Adjustment Board
12D-9.005	Duties of the Board
12D-9.006	Clerk of the Value Adjustment Board
12D-9.007	Role of the Clerk of the Value Adjustment Board
12D-9.008	Appointment of Legal Counsel to the Value Adjustment Board
12D-9.009	Role of Legal Counsel to the Board
12D-9.010	Appointment of Special Magistrates to the Value Adjustment Board
12D-9.011	Role of Special Magistrates to the Value Adjustment Board
12D-9.012	Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel
12D-9.013	Organizational Meeting of the Value Adjustment Board
12D-9.014	Prehearing Checklist
12D-9.015	Petition; Form and Filing Fee
12D-9.016	Filing and Service
12D-9.017	Ex Parte Communication Prohibition

12D-9.018	Representation of the Taxpayer
12D-9.019	Scheduling and Notice of a Hearing
12D-9.020	Exchange of Evidence
12D-9.021	Withdrawn or Settled Petitions; Petitions Acknowledged as Correct
12D-9.022	Disqualification or Recusal of Special Magistrates or Board Members
12D-9.023	Hearings Before Board or Special Magistrates
12D-9.024	Procedures for Commencement of a Hearing
12D-9.025	Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses
12D-9.026	Procedures for Conducting a Hearing by Electronic Media
12D-9.027	Process of Administrative Review
12D-9.028	Petitions on Transfer of “Portability” Assessment Difference
12D-9.029	Procedures for Remanding Just Value or Classified Use Value Assessments
12D-9.030	Recommended Decisions
12D-9.031	Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews
12D-9.032	Final Decisions
12D-9.033	Further Judicial Proceedings
12D-9.034	Record of the Proceeding

- 12D-9.035 Duty of Clerk to Prepare and Transmit Record
- 12D-9.036 Procedures for Petitions on Denials for Tax Deferrals
- 12D-9.037 Certification of Assessment Rolls
- 12D-9.038 Public Notice of Findings and Results of Value Adjustment Board

PURPOSE AND EFFECT: The purpose of these proposed rules is to establish uniform procedures for hearings before value adjustment boards and their special magistrates, and to consider uniform forms related to these procedures. The effect of these proposed rules is that taxpayers who petition property tax matters to Value Adjustment Boards have access to comprehensive information about the procedures that govern the hearing of their petitions.

SUMMARY: a) Proposed Rule 12D-9.001, Florida Administrative Code (F.A.C.), enumerates the specific rights regarding value adjustment board (the board) procedures that are granted by law to taxpayers; b) Proposed Rule 12D-9.002, F.A.C., discusses how a taxpayer can request to meet with the property appraiser about an assessment; c) Proposed Rule 12D-9.003, F.A.C., defines words and terms used through the rules; d) Proposed Rule 12D-9.004, F.A.C., establishes criteria and procedures for membership on the board; e) Proposed Rule 12D-9.005, F.A.C., discusses duties of the board regarding holding meetings, sessions of the board, proper noticing of meetings, and maintaining administrative and staff independence from property appraiser and tax collector offices; f) Proposed Rule 12D-9.006, F.A.C., identifies who must serve as clerk of the Value Adjustment Board; g) Proposed Rule 12D-9.007, F.A.C., explains the duties that are performed by the clerk of the board; h) Proposed Rule 12D-9.008, F.A.C., discusses procedures regarding the appointment of legal counsel to help the board; i) Proposed Rule 12D-9.009, F.A.C., explains the role that legal counsel has regarding advising the board; j) Proposed Rule 12D-9.010, F.A.C., specifies the appointment, qualifications, and training of special magistrates;

k) Proposed Rule 12D-9.011, F.A.C., includes procedures regarding the role of special magistrates to act on behalf of the board for the taking of testimony and conducting orderly and fair proceedings, and issue recommended decisions on petitions; l) Proposed Rule 12D-9.012, F.A.C., discusses how the Department of Revenue provides training for special magistrates, board members, and legal counsel to the board; m) Proposed Rule 12D-9.013, F.A.C., details when and how the organizational meeting is to be held and what matters to discuss; n) Proposed Rule 12D-9.014, F.A.C., provides that requirements in Chapter 194, F.S., must be met before the clerk can schedule hearings; o) Proposed Rule 12D-9.015, F.A.C., adopts a petition form to be used by petitioners for requesting a hearing before a value adjustment board, specifies procedures for timely or untimely submission of such petition, filing fees, and explains how to establish good cause for considering a late-filed petition; p) Proposed Rule 12D-9.016, F.A.C., defines what constitutes the “filing” of documents, explains how documents other than the petition are filed, and how copies are provided to all parties; q) Proposed Rule 12D-9.017, F.A.C., specifies procedures regarding ex parte communications; r) Proposed Rule 12D-9.018, F.A.C., discusses the right of a taxpayer to be represented by an agent or attorney; s) Proposed Rule 12D-9.019, F.A.C., establishes procedures regarding the scheduling of hearings and rescheduled hearings, and notification to all parties regarding such scheduling; t) Proposed Rule 12D-9.020, F.A.C., contains procedures for the exchange of evidence between the petitioner and the property appraiser; u) Proposed Rule 12D-9.021, F.A.C., specifies procedures for handling withdrawn or settled petitions; v) Proposed Rule 12D-9.022 F.A.C., provides procedures for the disqualification or recusal of special magistrates; w) Proposed Rule 12D-9.023, F.A.C., establishes how a hearing is controlled and provides for ensuring that parties are given adequate time for their petition; x) Proposed Rule 12D-9.024, F.A.C., explains procedures for determining

at a hearing if a petition is contested or uncontested, how to handle the failure of a petitioner or the property appraiser to appear at a scheduled hearing, and the content of a required opening statement that must be made by the board or the board's special magistrate; y) Proposed Rule 12D-9.025, F.A.C., discusses procedures for handling evidence during the hearing, the testimony of witnesses, and how, with the agreement of all parties, a party can be given additional time to collect and provide additional information; z) Proposed Rule 12D-9.026, F.A.C., contains procedures for holding a hearing using electronic media, if agreed to by all parties; aa) Proposed Rule 12D-9.027, F.A.C., outlines steps for considering evidence, developing conclusions and producing written decisions for valuations; bb) Proposed Rule 12D-9.028, F.A.C., explains procedures for a taxpayer to file a petition asking the board to review a denial of assessment limitation difference transfers or the amount of such transfer; cc) Proposed Rule 12D-9.029, F.A.C., establishes procedures for a board or special magistrate to send the property appraiser a request to review a just value assessment or a classified use valuation that is the subject of a petition based on specific conditions, including the procedures used by the property appraiser to review the request, time frames for the review, duties of the board clerk, and the scheduling of a continuation hearing if requested by a petitioner; dd) Proposed Rule 12D-9.030, F.A.C., discusses requirements concerning the recommended decisions of special magistrates; ee) Proposed Rule 12D-9.031, F.A.C., specifies the procedures that boards must follow when considering the recommended decisions of their special magistrates; ff) Proposed Rule 12D-9.032, F.A.C., contains procedures regarding the issuance of final decisions by boards on petitions, including procedures about documenting the basis for the final decision; gg) Proposed Rule 12D-9.033, F.A.C., provides that further proceedings after a board issues a final decision, and the timing of such further proceedings, are governed by specific statutes; hh) Proposed Rule

12D-9.034, F.A.C., discusses requirements about establishing records of hearings; ii) Proposed Rule 12D-9.035, F.A.C., specifies the responsibilities of board clerks regarding the preparation and transmission of board records in instances where there is circuit court review under Section 194.036, Florida Statutes; jj) Proposed Rule 12D-9.036, F.A.C., states that the procedures for handling petitions about denials of requests to participate in the tax deferral program are the same procedures contained in this rule chapter for the handling of denials of exemptions; kk) Proposed Rule 12D-9.037, F.A.C., establishes procedures for value adjustment boards to certify that the board met all requirements of applicable statutes and the Department's rules, including the form and timing of such certification and what entities receive a copy; and, ll) Proposed Rule 12D-9.038, F.A.C., directs the clerk of the board to publish an advertisement in a newspaper of general circulation informing the public of the findings and results of the board after it has heard all petitions, complaints, appeals, and disputes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. A SERC has not been prepared by the agency. Any person who wishes to provide information regarding the statement of regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 193.092, 194.011(5) and (6), 194.034, 195.027(1), 213.06(1) FS.

LAW IMPLEMENTED: ss. 28.12, 50, 192.001, 192.0105, 193.074, 193.092, 193.122, 193.155, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.037, 194.171, 194.301, 195.002, 195.022, 195.027, 195.096, 196.011, 196.151, 196.193, 196.194, 197.122, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 200.069, 213.05, 286.0105, 286.011,

475.611, Ch. 475, Part I and II FS, AGO 2002-058, AGO 2008-055, AGO 2008-056.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: October 9, 2009 from 9:00 a.m. to 5:00 p.m. or upon adjournment; if necessary, a second hearing will be held on October 19, 2009 from 9:00 a.m. to 5:00 p.m. or upon adjournment. If the October 19, 2009 hearing is not necessary, notification of cancellation will be sent to interested parties and posted to the PTO Internet site at

<http://dor.myflorida.com/dor/property/vabwb/vabws.html>.

PLACE: Training Room D, Building C-1, Taxworld, 5050 W. Tennessee Street, Tallahassee Florida. The public can also participate in the hearing through a simultaneous electronic broadcast of this event by the Department of Revenue using WebEx, digital video production, and conference calling technology. The requirements to participate are access to the Internet and a phone. The public can participate in this electronic hearing by accessing the broadcast from their home or office.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding is asked to advise the Department at least 48 hours before such proceeding by contacting Janice Forrester at (850)922-7945. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janice Forrester, Tax Law Specialist, Property Tax Oversight Program, Department of Revenue, P.O. Box 3000, Tallahassee, Florida 32315-3000, telephone 850-922-7945, ForrestJ@dor.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA

DEPARTMENT OF REVENUE

PROPERTY TAX OVERSIGHT PROGRAM

CREATING RULE CHAPTER 12D-9, FLORIDA ADMINISTRATIVE CODE

REQUIREMENTS FOR VALUE ADJUSTMENT BOARDS IN ADMINISTRATIVE

REVIEWS; UNIFORM RULES OF PROCEDURE FOR HEARINGS BEFORE

VALUE ADJUSTMENT BOARDS

Part I

Taxpayer Rights; Informal Conference Procedures; Definitions; Composition of the Value Adjustment Board; Appointment of the Clerk; Appointment of Legal Counsel to the Board;

Appointment of Special Magistrates

12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings.

12D-9.002 Informal Conference Procedures.

12D-9.003 Definitions.

12D-9.004 Composition of the Value Adjustment Board.

12D-9.005 Duties of the Board.

12D-9.006 Clerk of the Value Adjustment Board.

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

12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board.

12D-9.009 Role of Legal Counsel to the Board.

12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board.

12D-9.011 Role of Special Magistrates to the Value Adjustment Board.

12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and Legal

Counsel.

12D-9.013 Organizational Meeting of the Value Adjustment Board.

12D-9.014 Prehearing Checklist.

Part II

Petitions; Representation of the Taxpayer; Scheduling and Notice of a Hearing; Exchange of Evidence; Withdrawn or Settled Petitions; Hearing Procedures; Disqualification or Recusal; Ex Parte Communication Prohibition; Record of the Proceeding; Petitions on Transfer of “Portability” Assessment Difference; Remanding Assessments; Recommended Decisions; Consideration and Adoption of Recommended Decisions; Final Decisions; Further Judicial Proceedings.

12D-9.015 Petition; Form and Filing Fee.

12D-9.016 Filing and Service.

12D-9.017 Ex Parte Communication Prohibition.

12D-9.018 Representation of the Taxpayer.

12D-9.019 Scheduling and Notice of a Hearing.

12D-9.020 Exchange of Evidence.

12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct.

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

12D-9.023 Hearings Before Board or Special Magistrates.

12D-9.024 Procedures for Commencement of a Hearing.

12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses.

12D-9.026 Procedures for Conducting a Hearing by Electronic Media.

- 12D-9.027 Process of Administrative Review.
- 12D-9.028 Petitions on Transfer of “Portability” Assessment Difference.
- 12D-9.029 Procedures for Remanding Just Value or Classified Use Value Assessments.
- 12D-9.030 Recommended Decisions.
- 12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates
by Value Adjustment Boards in Administrative Reviews.
- 12D-9.032 Final Decisions.
- 12D-9.033 Further Judicial Proceedings.
- 12D-9.034 Record of the Proceeding.
- 12D-9.035 Duty of Clerk to Prepare and Transmit Record.
- 12D-9.036 Procedures for Petitions on Denials of Tax Deferrals.

Part III

Uniform Certification of Assessment Rolls

- 12D-9.037 Certification of Assessment Rolls.
- 12D-9.038 Public Notice of Findings and Results of Value Adjustment Board.

Part I

Taxpayer Rights; Informal Conference Procedures; Composition of the Value Adjustment Board; Appointment of the Clerk; Appointment of Legal Counsel to the Board; Appointment of

Special Magistrates

12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings.

(1) Taxpayers are granted specific rights by Florida law concerning value adjustment board procedures.

(2) These rights include:

(a) the right to be notified of the assessment of each taxable item of property in accordance with the notice provisions set out in Florida Statutes for notices of proposed property taxes;

(b) the right to request an informal conference with the property appraiser regarding the correctness of the assessment or to petition for administrative or judicial review of property assessments. An informal conference with the property appraiser is not a prerequisite to filing a petition for administrative review or an action for judicial review;

(c) the right to file a petition on a form provided by the county that is substantially the same as the form prescribed by the department or to file a petition on the form provided by the department for this purpose;

(d) the right to state on the petition the approximate time anticipated by the taxpayer to present and argue his or her petition before the board;

(e) the right to be sent prior notice of the date for the hearing of the taxpayer's petition by the value adjustment board and the right to the hearing within a reasonable time of the scheduled hearing;

(f) the right to request and be granted a change in the hearing date as described in this chapter;

(g) the right to be notified of the date of certification of the county's tax rolls and to be sent a property record card if requested;

(h) the right to represent himself or herself or to be represented by an attorney or an agent;

(i) the right to have evidence presented and considered at a public hearing;

(j) the right to have witnesses sworn and cross-examined and to examine individuals employed by the board who present testimony;

(k) the right to be sent a timely written decision by the value adjustment board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser or tax collector;

(l) the right to advertised notice of all board actions, including appropriate narrative and column descriptions, in brief and nontechnical language;

(m) the right to bring an action in circuit court to appeal a value adjustment board valuation decision or decision to disapprove a classification, exemption, portability assessment difference transfer, or to deny a tax deferral or to impose a tax penalty;

(n) the right to have federal tax information, ad valorem tax returns, social security numbers, all financial records produced by the taxpayer and other confidential taxpayer information, kept confidential;

(o) the right to limiting the property appraiser's access to a taxpayer's records to only those instances in which it is determined that such records are necessary to determine either the classification or the value of taxable nonhomestead property;

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 193.074, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.301, 195.002, 195.027, 195.096, 196.011, 196.151, 196.193, 196.194, 197.122, 213.05 FS. History—
New xx-xx-09.

12D-9.002 Informal Conference Procedures.

(1) Any taxpayer who objects to the assessment placed on his or her property, including the assessment of homestead property at less than just value, shall have the right to request an informal conference with the property appraiser.

(2) The property appraiser or a member of his or her staff shall confer with the taxpayer

regarding the correctness of the assessment.

(3) At the conference the taxpayer shall present facts that he or she considers supportive of changing the assessment and the property appraiser or his or her representative shall present facts that the property appraiser considers to be supportive of the assessment.

(4) The request for an informal conference is not a prerequisite to administrative or judicial review of property assessments. The petitioner should file a petition, while requesting an informal conference, to preserve his or her right to an administrative hearing. Requesting or participating in an informal conference does not extend the petition filing deadline.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 213.05 FS. History—New xx-xx-09.

12D-9.003 Definitions.

(1) “Agent” means any person, including a family member of the taxpayer, who is authorized to represent the taxpayer before the board.

(2) “Board” means the local value adjustment board.

(3) “Clerk” means the clerk of the local value adjustment board.

(4) “Department,” unless otherwise designated, means the Department of Revenue.

(5) “Hearing” means any hearing relating to a petition before a value adjustment board or special magistrate, regardless of whether the parties are physically present or telephonic or other electronic media is used to conduct the hearing, but shall not include a proceeding to act upon, consider or adopt special magistrates’ recommended decisions at which no testimony or comment is taken or heard from a party.

(6) “Petitioner” means the taxpayer or the taxpayer as represented by an agent or attorney.

(7) “Taxpayer” means the person or other legal entity in whose name property is assessed,

including an agent of a timeshare period titleholder, and includes exempt owners of property, for purposes of this chapter.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.001, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.171, 195.022, AGO 2002-058 FS. History-New xx-xx-09.

12D-9.004 Composition of the Value Adjustment Board.

(1) Every county shall have a value adjustment board which consists of:

(a) Two members of the governing body of the county, elected by the governing body from among its members, one of whom shall be designated as the chairperson of the value adjustment board;

(b) One member of the school board of the county, elected by the school board from among its members;

(c) Two citizen members;

1. One who owns homestead property in the county appointed by the county's governing body;

2. One who owns a business that occupies commercial space located within the school district appointed by the school board of the county. This person must, during the entire course of service, own a commercial enterprise, occupation, profession, or trade conducted from a commercial space located within the school district and need not be the sole owner.

3. Citizen members must not be:

a. A member or employee of any taxing authority in this state; or,

b. A person who represents property owners, property appraisers, tax collectors, or taxing authorities in any administrative or judicial review of property taxes imposed on real or tangible

personal property in this state.

4. Citizen members shall be appointed in a manner to avoid conflicts of interest or the appearance of conflicts of interest.

(2)(a) Each elected member of the value adjustment board shall serve on the board until he or she is replaced by a successor elected by his or her respective governing body or school board or is no longer a member of the governing body or school board of the county.

(b) When an elected member of the value adjustment board ceases being a member of the governing body or school board whom he or she represents, that governing body or school board must elect a replacement.

(c) When the citizen member of the value adjustment board appointed by the governing body of the county is no longer an owner of homestead property within the county, the governing body must appoint a replacement.

(d) When the citizen member appointed by the school board is no longer an owner of a business occupying commercial space located within the school district, the school board must appoint a replacement.

(3)(a) At the same time that it selects a primary member of the value adjustment board, the governing body or school board may select an alternate to serve in place of the primary member as needed. The method for selecting alternates is the same as that for selecting the primary members.

(b) At any time during the value adjustment board process the chair of the county governing body or the chair of the school board may appoint a temporary replacement for its elected member of the value adjustment board or for a citizen member it has appointed to serve on the value adjustment board.

(4)(a) To have a quorum of the value adjustment board, the members of the board who are present must include at least:

1. One member of the governing body of the county; and,
2. One member of the school board; and,
3. One of the two citizen members.

(b) The quorum requirements of Section 194.015, Florida Statutes, may not be waived by anyone, including the petitioner.

(5) The value adjustment board cannot hold its organizational meeting until all members of the board are appointed even if the number and type of members appointed are sufficient to constitute a quorum.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS. AGO 2008-056 History--New xx-xx-09.

12D-9.005 Duties of the Board.

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

1. Hearing petitions relating to assessments filed pursuant to Section 194.011(3), Florida Statutes.
2. Hearing complaints relating to homestead exemptions as provided for under Section 196.151, Florida Statutes.
3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under Section 196.011, Florida Statutes.

4. Hearing appeals concerning ad valorem tax deferrals and classifications.

(b) The board may not meet earlier than July 1 to hear appeals pertaining to the denial of exemptions, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, and deferrals.

(c) The board shall remain in session until its duties are completed concerning all assessment rolls or parts of assessment rolls. The board may temporarily recess from time to time but shall reconvene when necessary in the normal course of business or to hear petitions, complaints, or appeals and disputes filed upon that roll or portion of the roll finally approved which had been disapproved pursuant to Section 193.1142(2), Florida Statutes.

(2)(a) Value adjustment boards may have additional internal operating procedures, not rules, that do not conflict with, change, expand, suspend, or negate the rules adopted in this rule chapter or other provisions of law, and only to the extent indispensable for the efficient operation of the value adjustment board process. The board may publish fee schedules adopted by the board.

(b) These internal operating procedures may include methods for creating the verbatim record, provisions for parking by participants, assignment of hearing rooms, compliance with the Americans with Disabilities Act, and other ministerial type procedures.

(c) The board shall not provide notices or establish a local procedure instructing petitioners to contact the property appraiser's or tax collector's office or any other agency with questions about board hearings or procedures. The board, legal counsel to the board, board clerk, special magistrate or other board representative shall not otherwise enlist the property appraiser's or tax collector's office to perform administrative functions for the board. Personnel performing any of the board's functions shall be independent of the property appraiser's and tax collector's office.

This section shall not prevent the property appraiser from providing data to assist the clerk with the notice of tax impact.

(3) The board must ensure that all board meetings are duly noticed under Section 286.011, Florida Statutes, and are held in accordance with the law.

(4) Other duties of value adjustment boards are set forth in other areas of Florida law. Value adjustment boards shall perform all duties required by law and shall abide by all limitations on their authority as provided by law.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 194.011, 194.015, 194.032, 194.034, 194.035, 194.037 FS. History-New xx-xx-09. 12D-9.006 Clerk of the Value Adjustment Board.

(1) The clerk of the governing body of the county shall be the clerk of the value adjustment board.

(2) The clerk may delegate the day to day responsibilities for the board to a member of his or her staff but is ultimately responsible for the operation of the board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 28.12, 192.001, 194.011, 194.015, 194.032, 213.05 FS. History--New xx-xx-09.

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

(1) It is the clerk's responsibility to verify through board legal counsel that the value adjustment board meets all of the requirements for the organizational meeting before the board or special magistrates hold hearings. If the clerk determines that any of the requirements were not met he or she shall contact the legal counsel to the board or the chair of the board regarding such deficiencies and cancel any scheduled hearings until such time as the requirements are met.

(2) The clerk shall make petition forms available to the public upon request.

(3) The clerk shall receive and acknowledge completed petitions and promptly furnish a copy of all completed and timely filed petitions to the property appraiser or tax collector.

(4) The clerk shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. If the petitioner has indicated on the petition an estimate of the amount of time he or she will need to present and argue the petition, the clerk must take this estimate into consideration when scheduling the hearing.

(5) No less than 25 calendar days prior to the day of the petitioner's scheduled appearance before the board, the clerk must notify the petitioner of the date and time scheduled for the appearance. The clerk shall simultaneously notify the property appraiser or tax collector. If, on the taxpayer's petition, he or she requests a copy of the property record card, the clerk shall obtain a copy of the property record card from the property appraiser and provide it to the petitioner no later than with the notice of the scheduled time of his or her appearance.

(6) If an incomplete petition, which includes a petition not accompanied by the required filing fee, is received within the time required, the clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days. Such petition shall be timely if completed and filed including payment of the fee if previously unpaid within the time frame provided in the clerk's notice of incomplete petition.

(7) In counties with a population of more than 75,000, the clerk shall provide notification annually to qualified individuals or their professional associations of opportunities to serve as special magistrates.

(8) The clerk shall ensure public notice of and access to all hearings. Hearings must be conducted in facilities that are clearly identified for such purpose and are freely accessible to the public while hearings are being conducted.

(9) The clerk shall schedule hearings to allow sufficient time for evidence to be presented and considered and to allow for hearings to begin at their scheduled time. The clerk shall advise the chair of the board if the board's tentative schedule for holding hearings is insufficient to allow for proper scheduling.

(10) The clerk shall timely notify the petitioner by first class mail of the decisions of the board and shall otherwise notify the property appraiser or tax collector of such mailing. In counties using special magistrates the clerk shall also make available to both parties as soon as practicable a copy of the recommended decision of the special magistrate by mail or electronic means. No party shall have access to decisions prior to any other party.

(11) After the value adjustment board has decided all petitions, complaints, appeals and disputes, the clerk shall make public notice of the findings and results of the board in the manner prescribed in Section 194.037, Florida Statutes and by the department.

(12) The clerk is the official record keeper for the board and shall maintain a record of the proceedings which shall consist of:

(a) all filed documents;

(b) a verbatim record of any hearing;

(c) all tangible exhibits and documentary evidence presented;

(d) any meeting minutes; and,

(e) any other documents or materials presented on the record by the parties or by the board or special magistrate.

The record shall be maintained for four years after the final decision has been rendered by the board if no appeal is filed in circuit court or for five years if an appeal is filed or if requested by one of the parties, until the final disposition of any subsequent judicial proceeding relating to the

property.

(13) The clerk shall make available to the public copies of all additional internal operating procedures and forms of the board or special magistrates described in Section 12D-9.005, F.A.C. and shall post any such procedures and forms on the clerk's website, if any.

(14) The clerk shall provide notification of appeals taken with respect to property located within a municipality to the chief executive officer of each municipality as provided in Section 193.116, Florida Statutes.

(15) The clerk shall have such other duties as set forth elsewhere in these rules and Rule Chapter 12D-10, F.A.C., and in the Florida Statutes and as assigned by the board not inconsistent with law.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022, 213.05 FS. History- New xx-xx-09.

12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board.

(1) Each value adjustment board must appoint private legal counsel to assist the board.

(2) This legal counsel must be an attorney in private practice. The use of an attorney employed by government is prohibited. Counsel must have practiced law for over five years and meet the requirements of Section 194.015, Florida Statutes.

(3) An attorney may represent more than one value adjustment board.

(4) An attorney may represent a value adjustment board even if another member of the attorney's law firm represents one of the enumerated parties so long as the representation is not before the value adjustment board.

(5) Legal counsel should avoid conflicts of interest or the appearance of a conflict of interest

in their representation.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented

194.011, 194.015, 213.05 FS. AGO 2008-055, History--New xx-xx-09.

12D-9.009 Role of Legal Counsel to the Board.

(1) The legal counsel to the board shall have the responsibilities listed below consistent with the provisions of law.

(a) The primary role of the legal counsel to the board shall be to advise the board on all aspects of the value adjustment board review process to ensure that all actions taken by the board and its appointees meet the requirements of law.

(b) Legal counsel to the board shall advise the board in a manner that will promote and maintain a high level of public trust and confidence in the administrative review process.

(c) The legal counsel to the board is not an advocate for either party in a value adjustment board proceeding but instead ensures that the proceedings are fair and consistent with the law.

(d) Legal counsel to the board shall advise the board of the actions necessary for compliance with the law.

(e) Legal counsel to the board shall advise the board regarding:

1. composition and quorum requirements;

2. statutory training and qualification requirements for special magistrates and members of the board;

3. legal requirements for recommended decisions and final decisions;

4. public meeting and open government laws; and

5. any other duties, responsibilities, actions or requirements of the board consistent with the laws of this state.

(f) Legal counsel to the board shall review and respond to written complaints alleging noncompliance with the law by the board, special magistrates, clerk, and the parties. The legal counsel shall send a copy of the complaint along with the response to the department.

(2) The legal counsel to the board shall, upon appointment, send his or her contact information, which shall include his or her name, mailing address, telephone number, fax number, and e-mail address, to the department by mail, fax, or e-mail to:

Department of Revenue

Property Tax Oversight Program

Attn: Director

P O Box 3000

Tallahassee, FL 32315-3000.

Fax Number: 850-922-7957

Email Address: VAB@dor.state.fl.us

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS. History--New xx-xx-09.

12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board.

(1) In counties with populations of more than 75,000, the value adjustment board shall appoint special magistrates to take testimony and make recommendations on petitions filed with the value adjustment board. Special magistrates shall be selected from a list maintained by the clerk of qualified individuals who are willing to serve.

(2) In counties with populations of 75,000 or less, the value adjustment board shall have the option of using special magistrates. The department shall make available to such counties a list of qualified special magistrates.

(3) A person does not have to be a resident of the county in which he or she serves as a special magistrate.

(4) The special magistrate must meet the following qualifications:

(a) A special magistrate must not be an elected or appointed official or employee of the county.

(b) A special magistrate must not be an elected or appointed official or employee of a taxing jurisdiction or of the State.

(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.

(d) All special magistrates must meet the qualifications specified in Section 194.035, Florida Statutes.

1. A special magistrate appointed to hear issues of exemptions, classifications, and portability assessment difference transfers shall be a member of The Florida Bar with no less than five years experience in the area of ad valorem taxation and having received training provided by the department, or with no less than three years of such experience and having completed training provided by the department.

2. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than five years experience in real property valuation and having received training provided by the department, or with no less than three years of such experience and having completed training provided by the department. A real property valuation special magistrate must be certified under Chapter 475, Part II, Florida Statutes.

a. A Florida certified residential appraiser appointed by the value adjustment board shall only

hear petitions on the just valuation of residential real property of one to four residential units and shall not hear petitions on other types of real property.

b. A Florida certified general appraiser appointed by the value adjustment board may hear petitions on the just valuation of any type of real property.

3. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than five years experience in tangible personal property valuation and having received training provided by the department, or with no less than three years of such experience and having completed training provided by the department.

4. All special magistrates shall attend or receive an annual training program provided by the department. Special magistrates substituting two years of experience must show that they have completed the training by taking a written examination provided by the department. A special magistrate must receive or complete any required training prior to holding hearings.

(5)(a) The value adjustment board or board legal counsel must verify a special magistrate's qualifications before appointing the special magistrate.

(b) The selection of a special magistrate must be based solely on the experience and qualification of such magistrate, and must not be influenced by any party, or prospective party, to a board proceeding or by any such party with an interest in the outcome of such proceeding.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05 Chapter 475, Part II FS. History-New xx-xx-09.

12D-9.011 Role of Special Magistrates to the Value Adjustment Board.

(1) The purpose of the special magistrate is to conduct hearings, take testimony and make

recommendations to the board regarding petitions filed before the board. In carrying out these duties the special magistrate shall:

(a) accurately and completely preserve all testimony, documents received, and evidence admitted for consideration;

(b) at the request of either party, administer the oath upon the property appraiser or tax collector, each petitioner and all witnesses testifying at a hearing;

(c) conduct all hearings in accordance with the rules prescribed by the department and the laws of the state; and

(d) make recommendations to the board which shall include proposed findings of fact, proposed conclusions of law, and the reasons for upholding or overturning the determination of the property appraiser or tax collector;

(2) The special magistrate shall perform other duties as set out in the rules of the department or Florida law.

(3) When an assessment is determined to be incorrect and the record contains competent substantial evidence for establishing value, an appraiser special magistrate is required to establish a revised value for the petitioned property. In establishing the revised value when authorized by law, the board or special magistrate is not restricted to any specific value offered by the parties.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, Chapter 475, Part II FS. History-New xx-xx-09.

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

(1) The department shall provide and conduct training for special magistrates at least once each state fiscal year available in at least five locations throughout the state. Such training shall emphasize:

(a) the law that applies to the administrative review of assessments;

(b) taxpayer rights in the administrative review process;

(c) the composition and operation of the value adjustment board;

(d) the roles of the board clerk, the board attorney, and special magistrates

(e) procedures for conducting hearings;

(f) administrative reviews of just valuations, classified use valuations, property classifications, exemptions, and portability assessment differences;

(g) the review, admissibility, and consideration of evidence;

(h) requirements for written decisions; and

(i) the department's standard measures of value, including the guidelines for real and tangible personal property.

(2) The training shall be open to the public.

(3) Before any hearings are conducted, in those counties that do not use special magistrates, all members of the board or the board's legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the clerk.

(4)(a) Each special magistrate that has five years of experience and each board member or the legal counsel to the board must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the clerk.

(b) Each special magistrate that has three years of experience must complete the training including any updated modules and examinations, and receive from the department a certificate of completion, before conducting hearings and shall provide a copy of the certificate of completion of the training and examinations, including any updated modules, to the clerk.

(5) The department's training is the official training for special magistrates regarding administrative reviews. Clerks and legal counsel to the boards may provide orientation to the special magistrates relating to local operating or ministerial procedures only. Such orientation shall be open to the public for observation.

(6) Meetings or orientations for special magistrates, for any instructional purposes relating to procedures for hearings, handling or consideration of petitions, evidence, worksheets, forms, decisions or related computer files, must be open to the public for observation. Such meetings or orientations must be reasonably noticed to the public in the same manner as an organizational meeting of the board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, Chapter 475, Part II FS. History-New xx-xx-09.

12D-9.013 Organizational Meeting of the Value Adjustment Board.

(1) The board shall annually hold one or more organizational meetings, at least one of which shall meet the requirements of this section. The board shall hold this organizational meeting prior to the holding of value adjustment board hearings. The board shall provide reasonable notice of each organizational meeting and such notice shall include the date, time, location, purpose of the meeting, and information required by Section 286.0105, Florida Statutes. At one organizational meeting the board shall:

(a) introduce the members of the board and provide contact information;

(b) introduce the clerk of the board, approve or ratify any designee of the clerk and provide the clerks contact information;

(c) appoint or ratify the private legal counsel to the board and provide the legal counsel's contact information;

(d) appoint or ratify special magistrates, if the board will be using them for that year;

(e) make available to the public, special magistrates and board members, Rule Chapter 12D-9, F.A.C., containing the uniform rules of procedure for hearings before value adjustment boards and special magistrates (if applicable), and the associated forms that have been adopted by the department;

(f) make available to the public, special magistrates and board members, Rule Chapter 12D-10, F.A.C., containing the rules applicable to the requirements for hearings and decisions;

(g) make available to the public, special magistrates and board members the requirements of Florida's Government in the Sunshine / open government laws including information on where to obtain the current Government-In-The-Sunshine manual; and

(h) discuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the board. Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions or rules of the department. All local administrative procedures and forms of the board or special magistrates shall be made available to the public and shall be accessible on the clerk's website, if any.

(i) discuss general information on Florida's property tax system, respective roles within this system, taxpayer opportunities to participate in the system, and property taxpayer rights.

(j) adopt or ratify by resolution any filing fee for petitions for that year, in an amount not to exceed \$15.

(2) The board shall announce the tentative schedule for the value adjustment board taking into consideration the number of petitions filed, the possibility of the need to reschedule and the requirement that the board stay in session until all petitions have been heard. The board is not authorized to set and publish a deadline for late filed petitions.

(3) The board may hold additional meetings for the purpose of addressing administrative matters.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 213.05, 286.011, 286.0105 FS. History-New xx-xx-09.

12D-9.014 Prehearing Checklist.

(1) The clerk shall not allow the holding of scheduled hearings until the board legal counsel has verified that all requirements in Chapter 194, Florida Statutes, and department rules, were met as follows:

(a) The composition of the board is as provided by law;

(b) Legal counsel to the board has been appointed as provided by law;

(c) Legal counsel to the board meets the requirements of Section 194.015, Florida Statutes;

(d) No board members represent other government entities or taxpayers in any administrative or judicial review of property taxes, and citizen members are not members or employees of a taxing authority;

(e) In a county that does not use special magistrates, either all board members have received the department's training or legal counsel to the board has received the department's training;

(f) The organizational meeting, as well as any other board meetings, will be or were noticed in accordance with Section 286.011, Florida Statutes, and will be or were held in accordance with law;

(g) The department's uniform value adjustment board procedures, consisting of this rule chapter, were made available at the organizational meeting and copies were provided to special magistrates and board members;

(h) The department's uniform policies and procedures manual is available on the existing website of the clerk, if the clerk has a website;

(i) The qualifications of special magistrates were verified, including that special magistrates received the department's training, and that special magistrates with less than five years of required experience successfully completed the department's training including any updated modules and an examination, and were certified;

(j) The selection of special magistrates was based solely on proper experience and qualifications and neither the property appraiser nor any petitioners influenced the selection of special magistrates. This provision does not prohibit the board from considering any written complaint filed with respect to a special magistrate by any party or citizen;

(k) All procedures and forms of the board or special magistrate are in compliance with Chapter 194, Florida Statutes, and this rule chapter;

(l) The board is otherwise in compliance with Chapter 194, Florida Statutes and this rule chapter; and

(m) Notice has been given to the chief executive officer of each municipality as provided in Section 193.116, Florida Statutes.

(2) The clerk shall notify the counsel to the board and the board chair of any action needed to

comply with subsection (1).

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 213.05 FS. History-New xx-xx-09.

Part II

Petitions; Representation of the Taxpayer; Scheduling and Notice of a Hearing; Exchange of Evidence; Withdrawn or Settled Petitions; Hearing Procedures; Disqualification or Recusal; Ex Parte Communication Prohibition; Record of the Proceeding; Petitions on Transfer of “Portability” Assessment Difference; Remanding Assessments; Recommended Decisions; Consideration and Adoption of Recommended Decisions; Final Decisions; Further Judicial Proceedings.

12D-9.015 Petition; Form and Filing Fee.

(1)(a) For the purpose of requesting a hearing before the value adjustment board, the department prescribes Form DR-486, hereby incorporated by reference.

(b) In accordance with Section 194.011(3), Florida Statutes, the department is required to prescribe petition forms. The department will not approve any local version of this form that contains substantive content that varies from the department’s prescribed form. Any requests under Section 195.022, Florida Statutes, for approval from the department to use forms for petitions that are not identical to the department’s form shall be by written board action or by written and signed request from the board chair or legal counsel to the board.

(2) Content of Petition. Petition forms as adopted or approved by the department shall contain the following elements so that when filed with the clerk they shall:

(a) describe the property by parcel number;

(b) be sworn by the petitioner;

(c) state the approximate time anticipated by the petitioner for presenting and arguing his or her petition before the board or special magistrate and may provide dates of nonavailability for scheduling purposes if applicable;

(d) contain a space for the petitioner to indicate on the petition form that he or she does not wish to be present and argue the petition before the board or special magistrate but would like to have their evidence considered without an appearance;

(e) provide a check box for the petitioner to request a copy of the property record card;

(f)1. contain a signature field to be signed by the taxpayer, or if the taxpayer is a legal entity, the employee of the legal entity with authority to file such petitions;

2. contain a signature field to be signed by an authorized agent. If the authorized agent is subject to licensure, a space to provide identification of the licensing body and license number. If the authorized agent is not subject to licensure, for example a family member, a space to indicate the petition is accompanied by a written authorization of the taxpayer if not otherwise signed by the taxpayer;

(g) a space for the petitioner to indicate if the property is four or less residential units; or other property type; provided the clerk shall accept the petition even if this space is not filled in; and

(h) a statement that a tangible personal property assessment may not be contested until a return required by Section 193.052, Florida Statutes, is filed.

(3) The petition form shall provide notice to the petitioner that the person signing the petition becomes the agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceeding, including any appeals of a board decision by the property appraiser or tax collector.

(4) The petition form shall provide notice to the petitioner of his or her right to an informal conference with the property appraiser and that such conference is not a prerequisite to filing a petition nor does it alter the time frame for filing a timely petition.

(5) The department, the clerk, and the property appraiser or tax collector shall make available to petitioners the blank petition form adopted or approved by the department. The department prescribes the Form DR-486 series, for this purpose, incorporated in Section 12D-16.002, F.A.C. by reference.

(6) If the taxpayer or agent's name, address, telephone, or similar contact information on the petition changes after filing the petition and before the hearing, the taxpayer or agent shall notify the clerk in writing.

(7) Filing Fees. By resolution of the value adjustment board, a petition shall be accompanied by a filing fee to be paid to the clerk of the value adjustment board in an amount determined by the board not to exceed \$15 for each separate parcel of property, real or personal covered by the petition and subject to appeal.

(a) Only a single filing fee shall be charged to any particular parcel of property despite the existence of multiple issues or hearings pertaining to such parcels.

(b) No filing fee shall be required with respect to an appeal from the disapproval of a timely filed application for homestead exemption or from the denial of a homestead tax deferral.

(c) For joint petitions filed pursuant to s. 194.011(3)(e) or (f), a single filing fee shall be charged. Such fee shall be calculated as the cost of the time required for the special magistrate in hearing the joint petition and shall not exceed \$5 per parcel. Said fee is to be proportionately paid by affected parcel owners.

(d) The value adjustment board or its designee shall waive the filing fee with respect to a

petition filed by a taxpayer who demonstrates at the time of the filing by submitting with the petition documentation issued by the Department of Children and Family Services that the petitioner is currently an eligible recipient of temporary assistance under Chapter 414, Florida Statutes.

(e) All filing fees shall be paid to the clerk at the time of filing. Any petition not accompanied by the required filing fee will be deemed incomplete.

(8) An owner of contiguous, undeveloped parcels may file a single joint petition if the property appraiser determines such parcels are substantially similar in nature. A condominium association, cooperative association, or any homeowners' association as defined in Section 723.075, Florida Statutes with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The property appraiser shall provide the petitioner with such determination upon request by the petitioner. The petitioner must obtain the determination from the property appraiser prior to filing the petition and must file the determination provided and completed by the property appraiser with the petition.

(9)(a) The clerk shall accept for filing any completed petition that is timely submitted on a form approved by the department, with payment if required. If an incomplete petition is received, the clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days. Such completed petition shall be timely if completed and filed within the time frame provided in the clerk's notice.

(b) A "completed" petition is one that provides information for all the required elements that

are displayed on the department's form, and is accompanied by the appropriate filing fee if required.

(c) The clerk may rely on the licensure information provided by a licensed agent, or written authorization provided by an unlicensed agent, in accepting the petition.

(10) Timely Filing of Petitions. Petitions related to valuation issues may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes. Other petitions may be filed as follows:

(a) with respect to issues involving the denial of an exemption on or before the 30th day following the mailing of the written notification of the denial of the exemption on or before July 1 of the year for which the application was filed;

(b) with respect to issues involving the denial of an agricultural classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the agricultural classification on or before July 1 of the year for which the application was filed;

(c) with respect to issues involving the denial of a high-water recharge classification application on or before the 30th day following the mailing of the notification in writing of the denial of the high-water recharge classification on or before July 1 of the year for which the application was filed;

(d) with respect to issues involving the denial of a historic property used for commercial or certain nonprofit purposes classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the classification on or before July 1 of the year for which the application was filed;

(e) with respect to issues involving the denial of a homestead tax deferral, on or before the 30th day following the mailing of the notification in writing of the denial of the deferral

application or on or before the 20th day following receipt of the notification, whichever date is later.

(f) with respect to exemption claims relating to an exemption that is not reflected on the notice of property taxes, including late filed exemption claims, on or before the 25th day following the mailing of the notice of proposed property taxes, or on or before the 30th day following the mailing of the written notification of the denial of the exemption, whichever date is later.

(g) with respect to penalties imposed for filing incorrect information relating to tax deferrals for homestead, for recreational and commercial working waterfronts or for affordable rental housing properties, within 30 days after the penalties are imposed.

(11)(a) Late Filed Petitions. The board may not extend the time for filing a petition.

(b) The clerk shall accept but not schedule for hearing a petition submitted to the board after the statutory deadline has expired, and shall submit the petition to the board for good cause consideration if the petition is accompanied by a written explanation for the delay in filing. Unless scheduled together or by the same notice, the decision regarding good cause for late filing of the petition must be made before a hearing is scheduled, and the parties shall be notified of such decision. The board is authorized to require good cause hearings before good cause determinations are made.

(c) The clerk shall forward a copy of completed but untimely filed petitions to the property appraiser or tax collector at the time they are received or upon the determination of good cause.

(d) The board or a board designee, which includes the board legal counsel or a special magistrate, shall determine whether the petitioner has demonstrated, in writing, good cause justifying consideration of the petition. If the board or a board designee determines that the

petitioner has demonstrated good cause, the clerk shall accept the petition for filing and so notify the petitioner and the property appraiser or the tax collector.

(e) If the board or a board designee determines that the petitioner has not demonstrated good cause, the clerk shall notify the petitioner and the property appraiser or tax collector.

(12) Acknowledgement of Timely Filed Petitions. The clerk shall accept all completed petitions, as defined by statute and subsection (2) of this rule. Upon receipt of a completed and filed petition, the board clerk shall provide to the petitioner an acknowledgment of receipt of such petition and shall provide to the property appraiser or tax collector a copy of the petition. If, in the petition, the petitioner requested a copy of the property record card, the property appraiser shall forward a copy of the property record card to the clerk. The clerk shall then provide to the petitioner a copy of the property record card, along with the notice of hearing.

(13) The clerk shall send the notice of hearing such that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The clerk will have prima facie complied with the requirements of this section if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such scheduled appearance.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.032, 194.034, 195.022, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 200.069, 213.05 FS. History-New xx-xx-09.

12D-9.016 Filing and Service.

(1) In construing these rules or any order of the board, special magistrate, or a board designee, filing shall mean received by the clerk during open hours or by the board, special magistrate, or a board designee during a meeting or hearing.

(2)(a) Any hand-delivered or mailed document received by the office of the clerk after close

of business as determined by the clerk shall be filed the next regular business day.

(b) If the clerk accepts documents filed by FAX or other electronic transmission, documents received on or after 11:59:59 P.M. of the day they are due shall be filed the next regular business day.

(c) Any document that is required to be filed, served, provided or made available may be filed, served, provided or made available electronically, if the board and the board clerk make such resources available, the parties agree and no party is prejudiced. Local procedure may dispense with, or use less than 3 copies if technology is available.

(3) When a party files a document with the board, other than the petition, that party shall serve copies of the document to all parties in the proceeding. When a document is filed that does not clearly indicate it has been provided to the other party, the clerk, board legal counsel, board members and special magistrates shall exercise care to ensure that a copy is provided to every party, and that no ex parte communication occurs.

(4) Any party who elects to file any document by FAX or other electronic transmission shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 195.022 FS. History-New xx-xx-09.

12D-9.017 Ex Parte Communication Prohibition.

(1)(a) No participant, including the petitioner, the property appraiser, the clerk, the special magistrate, a member of a value adjustment board, or other person directly or indirectly interested in the proceeding, nor anyone authorized to act on behalf of any party shall communicate with a member of the board or the special magistrate regarding the issues in the

case without the other party being present or without providing a copy of any written communication to the other party.

(b) This rule shall not prohibit internal communications among the clerk, board, special magistrates, and legal counsel to the board, regarding internal operations of the board and other administrative matters. The special magistrate is specifically authorized to communicate with the board's legal counsel or clerk on legal matters or other issues regarding a petition.

(2) Any attempt by the property appraiser, tax collector, taxpayer or taxpayer's agent to provide information or discuss issues regarding a petition without the presence of the opposing party before or after the hearing, with a member of the board or the special magistrate shall be immediately placed on the record by the board member or special magistrate.

(3) The ex parte communication shall not be considered by the board or the special magistrate unless all parties have been notified about the ex parte communication, and no party objects, and all parties have an opportunity during the hearing to cross-examine, object, or otherwise address the communication.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035 FS. History-New xx-xx-09.

12D-9.018 Representation of the Taxpayer.

(1) A taxpayer has the right, at the taxpayer's own expense, to be represented by an attorney or by an agent.

(2) The individual, agent, or legal entity that signs the petition becomes the agent of the taxpayer for the purpose of serving process to obtain jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser or tax collector.

(3) The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent them before the value adjustment board.

(4) A petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer.

(5) As used in this rule chapter, the term “licensed” refers to holding a license or certification under chapter 475, Part I or Part II, Florida Statutes, or membership in the Florida Bar.

(6) When duplicate petitions are filed on the same property, the clerk shall contact all petitioners to resolve the issue.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.032, 194.034, 195.022, 213.05, Chapter 475, Part I and II FS. History-New xx-xx-09.

12D-9.019 Scheduling and Notice of a Hearing.

(1)(a) The clerk shall prepare a schedule of appearances before the board or special magistrates based on timely filed petitions, and shall notify each petitioner of the scheduled time of appearance. The clerk shall simultaneously notify the property appraiser or tax collector. The clerk may electronically send this notification to the petitioner, if the petitioner indicates on his or her petition this means of communication for receiving notices, materials, and communications.

(b) When scheduling hearings, the clerk shall consider:

1. the anticipated amount of time if indicated on the petition;
2. the experience of the petitioner;
3. the complexity of the issues or the evidence to be presented;

4. the number of petitions/parcels to be heard at a single hearing;

5. the efficiency or difficulty for the petitioner of grouping multiple hearings for a single petitioner on the same day; and

6. the likelihood of withdrawals, cancellations of hearings or failure to appear.

(c) Upon request, the clerk shall consult with the petitioner and the property appraiser or tax collector to ensure that an adequate amount of time is provided for presenting and considering evidence.

(2) No hearing shall be scheduled related to valuation issues prior to completion by the governing body of each taxing authority of the public hearing on the tentative budget and proposed millage rate.

(3)(a) The notice of hearing before the value adjustment board shall be in writing, and shall be delivered by regular or certified U.S. mail or personal delivery, or in the manner requested by the petitioner on Form DR-486, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The notice of hearing form shall meet the requirements of this section and shall be subject to approval by the department. The department provides Form DR-481 as a format for the form of such notice. The notice shall include these elements:

1. the parcel number, account number or legal address of all properties being heard at the scheduled hearing;

2. the type of hearing scheduled;

3. the date and time of the scheduled hearing;

4. the time reserved, or instructions on how to obtain this information;

5. the location of the hearing, including the hearing room number if known, together with

clerk contact information including office address and telephone number, for petitioners to request assistance in finding hearing rooms;

6. instructions on how to obtain a list of the potential special magistrates for the type of petition in question;

7. a statement of the petitioner's right to participate in the exchange of evidence with the property appraiser;

8. a statement that the petitioner has the right to reschedule the hearing one time by making a written request to the clerk at least five calendar days before the hearing;

9. instructions on bringing copies of evidence;

10. any information necessary to comply with federal or state disability or accessibility acts;

and

11. information regarding where the petitioner may obtain a copy of the uniform rules of procedure.

(b) If the petitioner has requested a copy of the property record card, it shall be sent no later than the time at which the notice of hearing is sent. The clerk shall also publish any notice required by Section 196.194, Florida Statutes.

(4)(a) The petitioner may reschedule the hearing without good cause one time by submitting a written request to the clerk of the board no fewer than five (5) calendar days before the scheduled appearance. To calculate the five (5) days, the petitioner shall use calendar days and shall not include the day of the hearing in the calculation, and shall count backwards from the day of the hearing. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next previous day which is neither a Saturday, Sunday, or legal holiday.

(b) A petitioner may request a rescheduling of a hearing for good cause by submitting a written request to the clerk of the board before the scheduled appearance or as soon as practicable. A rescheduling for good cause shall not be treated as the one time rescheduling to which a petitioner has a right upon timely request under Section 194.032(2), Florida Statutes. Reasons for “good cause” that a clerk or board designee may consider in providing for a rescheduling are:

1. petitioner is scheduled for a value adjustment board hearing for the same time in another jurisdiction;
2. illness of the petitioner or a family member;
3. death of a family member;
4. the taxpayer’s hearing does not begin within a reasonable time of their scheduled hearing time; or
5. other reasons beyond the control of the petitioner.

(c) The property appraiser or tax collector may submit a written request to the clerk to reschedule the hearing, and must provide a copy of the request to the petitioner. If there is a conflict, such as the attorney or staff needs to attend two different hearings which are scheduled at the same time, the property appraiser or tax collector may request a reschedule.

(5) A request to reschedule the hearing made by the petitioner fewer than five calendar days before the scheduled hearing may be made only for an emergency when good cause is shown. Such a request shall be made to the clerk who shall forward the request to the board or a board designee, which includes the clerk, board legal counsel or a special magistrate.

(a) If the board or a board designee determines that the request does not show good cause, the request will be denied and the board may proceed with the hearing as scheduled.

(b) If the board or a board designee determines that the request demonstrates good cause, the request will be granted. In that event, the clerk will issue a notice of hearing with the new hearing date, which shall be the earliest date that is convenient for all parties.

(c) The clerk shall give appropriate notice to the petitioner of the determination as to good cause. Form DR-485WCN is designated and may be used for this purpose. The clerk shall also appropriately notify the property appraiser or tax collector.

(d) When rescheduling hearings under this rule subsection or subsection (4) above, if the parties are unable to agree on an earlier date, the clerk is authorized to schedule the hearing and send a notice of such hearing by regular or certified U.S. mail or personal delivery, or in the manner requested by the petitioner on the petition Form DR-486, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance.

(6) If a hearing is rescheduled, the deadlines for the exchange of evidence shall be computed from the new hearing date, if time permits.

(7)(a) If a petitioner's hearing does not commence as scheduled, the clerk is authorized to determine good cause exists to reschedule a petition.

(b) In no event shall a petitioner be required to wait more than a reasonable time from the scheduled time to be heard. The clerk is authorized to find that a reasonable time has elapsed based on other commitments, appointments or hearings of the petitioner, lateness in the day, and other hearings waiting to be heard earlier than the petitioner's hearing with the board or special magistrate. If his or her petition has not been heard within a reasonable time, the petitioner may request to be heard immediately. If the clerk finds a reasonable time has elapsed and petitioner is not heard, the clerk shall find good cause is present and shall reschedule the petitioner's hearing.

(c) A petitioner is not required to wait any length of time as a prerequisite to filing an action in circuit court.

(8) Failure on three occasions with respect to any single tax year for the board to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 195.022, 213.05 FS. History-New xx-xx-09.

12D-9.020 Exchange of Evidence.

(1) The petitioner has the option of participating in an exchange of evidence with the property appraiser. If the petitioner chooses not to participate in the evidence exchange, the petitioner may still present evidence for consideration by the board or the special magistrate. However, as described in this section, if the property appraiser asks in writing for evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and knowingly refuses to provide it to the property appraiser a reasonable time before the hearing, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate.

(2)(a) If the petitioner chooses to participate in an exchange of evidence with the property appraiser, at least fifteen (15) days before the hearing the petitioner shall provide the property appraiser with a list and summary of evidence to be presented at the hearing accompanied by copies of documentation to be presented at the hearing. To calculate the fifteen (15) days, the petitioner shall use calendar days and shall not include the day of the hearing in the calculation, and shall count backwards from the day of the hearing.

(b) If the petitioner chooses to participate in an exchange of evidence with the property appraiser and he or she shows good cause to the clerk for not being able to meet the fifteen (15) day requirement and the property appraiser is unwilling to agree to a different timing of the exchange, the clerk is authorized to reschedule the hearing to allow for the exchange of evidence to occur.

(c) No later than seven (7) days before the hearing, if the property appraiser receives the petitioner's documentation and if requested in writing by the petitioner, the property appraiser shall provide the petitioner with a list and summary of evidence to be presented at the hearing accompanied by copies of documentation to be presented by the property appraiser at the hearing. The evidence list must contain the property record card if provided by the clerk. To calculate the seven (7) days, the property appraiser shall use calendar days and shall not include the day of the hearing in the calculation, and shall count backwards from the day of the hearing.

(d) The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next previous day which is neither a Saturday, Sunday, or legal holiday.

(3)(a) If the petitioner does not provide the information to the property appraiser at least fifteen (15) days prior to the hearing pursuant to subsection (2)(a), the property appraiser need not provide the information to the petitioner pursuant to subsection (2)(c).

(b) If the property appraiser does not provide the information within the time required by subsection (2)(c), the hearing shall be rescheduled to allow the petitioner additional time to review the property appraiser's evidence.

(4) By agreement of the parties the evidence exchanged in subsection (2) shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. The petitioner

and property appraiser may agree to a different timing and method of exchange. "Provided" means received by the party not later than the time frame provided in this rule section. If either party does not designate a desired manner for receiving information in the evidence exchange, the information shall be provided by U.S. mail. The property appraiser shall provide the information at the address listed on the petition form for the petitioner.

(5) Level of detail on evidence summary: The summary pursuant to subsection (2) shall be sufficiently detailed as to reasonably inform a party of the general subject matter of the witness' testimony, and the name and address of the witness.

(6) Hearing procedures: Neither the board nor the special magistrate shall take any general action regarding compliance with this section, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with this section, and shall be taken at a scheduled hearing and based on evidence presented at such hearing. "General action" means a prearranged course of conduct not based on evidence received in a specific case at a scheduled hearing on a petition.

(7) A property appraiser shall not use at a hearing evidence that was not supplied to the petitioner as required. The normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(8) No petitioner may present for consideration, nor may a board or special magistrate accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in connection with a filed petition in writing by the property appraiser, of which the petitioner had knowledge and denied to the property appraiser. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.074, 194.011, 194.015, 194.032, 194.034, 194.035, 195.022, 200.069, 213.05 FS. History—New 4-4-04, Amended 12-30-04, Formerly 12D-10.0044.

12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct.

(1) A petitioner may withdraw a petition prior to the scheduled hearing. Form DR-485WI is prescribed by the department for such purpose; however, other written or electronic means may be used. Form DR-485WI shall indicate the reason for the withdrawal as one of the following:

(a) petitioner agrees with the determination of the property appraiser or tax collector;

(b) petitioner and property appraiser or tax collector have reached a settlement of the issues;

(c) petitioner does not agree with the decision or assessment of the property appraiser or tax collector but no longer wishes to pursue a remedy through the value adjustment board process;

or

(d) other specified reason.

(2) The clerk shall cancel the hearing upon receiving a notice of withdrawal from the petitioner and there shall be no further proceeding on the matter.

(3) If a property appraiser or tax collector agrees with a petition challenging a decision to deny an exemption, classification, portability assessment difference transfer, or deferral, the property appraiser or tax collector shall issue the petitioner a notice granting said exemption, classification, portability assessment difference transfer, or deferral and shall file with the clerk a notice that the petition was acknowledged as correct.

(4) The clerk shall cancel the hearing upon receiving the notice of acknowledgement and there shall be no further proceeding on the matter.

(5) If parties do not file a notice of withdrawal or notice of acknowledgement but indicate the

same at the hearing, the board or special magistrate shall so state on the hearing record and shall not proceed with the hearing and shall not issue a decision. The clerk shall list and report all withdrawals, settlements, acknowledgements of correctness as withdrawn or settled petitions. Settled petitions shall include those acknowledged as correct by the property appraiser or tax collector.

(6) For all withdrawn or settled petitions, a special magistrate shall not produce a recommended decision and the board shall not produce a final decision.

(7) When a petitioner does not appear by the commencement of a scheduled hearing and the petitioner has not indicated a desire to have their petition heard without their attendance and a good cause request is not pending, the board or the special magistrate shall allow at least three business days for the petitioner to provide good cause before issuing a decision or recommended decision. If the petitioner makes a good cause request within this time period, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

(8) When a petitioner does not appear by the commencement of a scheduled hearing and a good cause request is pending, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

(a) If the board or board designee finds good cause for the petitioner's failure to appear, the clerk shall reschedule the hearing.

(b) If the board or board's designee does not find good cause for the petitioner's failure to appear, the board or special magistrate shall issue a decision or recommended decision.

(9) Decisions issued under subsection (7) or subsection (8) shall contain:

(a) a finding of fact that the petitioner did not appear at the hearing and did not state good cause; and

(b) a conclusion of law that the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

Rulemaking Authority 194.011(5), 194.034(1), 194.034, 195.027(1) FS. Law Implemented 193.155, 194.011, 194.032, 194.037, 213.05 FS. History--New xx-xx-09.

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

(1) If either the petitioner or the property appraiser communicates a reasonable belief that a special magistrate does not possess the statutory qualifications in accordance with Sections 194.035 and 475.611(1)(h) and (i), Florida Statutes, to conduct a particular proceeding, the basis for that belief shall be included in the record of the proceeding.

(2)(a) Upon review, if the board or its legal counsel determines that the original special magistrate does not meet the statutory requirements and qualifications, the board or legal counsel shall enter into the record an instruction to the clerk to reschedule the petition before a different special magistrate to hear or rehear the petition without considering actions that may have occurred during any previous hearing.

(b) Upon review, if the board or its legal counsel determines that the special magistrate does meet the statutory requirements and qualifications, such determination shall be issued in writing and placed in the record, and the special magistrate will conduct the hearing, or, if a hearing was already held, the recommended decision will be forwarded to the board in accordance with these rules.

(3) Board members and special magistrates shall recuse themselves from hearing a petition

when they have a conflict of interest or an appearance of a conflict of interest.

(4)(a) If either the petitioner or the property appraiser communicates a reasonable belief that a board member or special magistrate has a conflict of interest, the basis for that belief shall be stated in the record of the proceeding.

(b) If the board member or special magistrate agrees with the basis stated in the record, the board member or special magistrate shall recuse himself or herself on the record. A special magistrate who recuses himself or herself shall close the hearing on the record and notify the clerk of the recusal. Upon a board member's recusal, the hearing shall go forward if there is a quorum. Upon a special magistrate's recusal, or a board member's recusal that results in a quorum not being present, the clerk shall reschedule the hearing.

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

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

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

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

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

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

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

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 475.611, FS. History-New xx-xx-09.

12D-9.023 Hearings Before Board or Special Magistrates.

(1) Hearing rooms, office space, computer systems, personnel, and other resources used for any of the board's functions shall be controlled by the board through the clerk of the value adjustment board. The clerk shall perform his or her duties in a manner to avoid the appearance of a conflict of interest. The clerk shall not use the resources of the property appraiser's or tax collector's office and shall not allow the property appraiser or tax collector to control or influence any part of the value adjustment board process.

(2) Boards and special magistrates shall adhere as closely as possible to the schedule of hearings established by the clerk but must ensure that adequate time is allowed for parties to present evidence and for the board or special magistrate to consider the admitted evidence. If the board or special magistrate determines from the petition form that the hearing has been scheduled for less time than the petitioner requested on the petition, the board or special magistrate must consider whether the hearing should be extended or continued to provide additional time.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 213.05 FS. History-New xx-xx-09.

12D-9.024 Procedures for Commencement of a Hearing.

(1) If all parties are present and the petition is not withdrawn or settled, a hearing on the petition shall commence.

(2) The hearing shall be open to the public.

(3) Upon the request of either party, a special magistrate shall swear in all witnesses in that proceeding on the record. Upon such request and if the witness has been sworn in during an earlier hearing, it shall be sufficient for the special magistrate to remind the witness that he or she is still under oath.

(4) Before or at the start of the hearing, the board, the board's designee or the special magistrate shall give a short overview verbally or in writing of the rules of procedure and any administrative issues necessary to conduct the hearing.

(5) Before or at the start of the hearing, unless waived by the parties, the board or special magistrate shall make an opening statement or provide a brochure or taxpayer information sheet that:

(a) states the board or special magistrate is an independent, impartial, and unbiased hearing body or officer, as applicable;

(b) states the board or special magistrate does not work for the property appraiser or tax collector, is independent of the property appraiser or tax collector, and is not influenced by the property appraiser or tax collector;

(c) states the hearing will be conducted in an orderly, fair, and unbiased manner;

(d) states that the law does not allow the board or special magistrate to review any evidence unless it is presented on the record at the hearing or presented upon agreement of the parties while the record is open; and

(e) states that the law requires the board or special magistrate to evaluate the relevance and credibility of the evidence in deciding the results of the petition.

(6) The board or special magistrate shall ask the parties if they have any questions regarding

the verbal or written overview of the procedures for the hearing.

(7) After the opening statement, and clarification of any questions with the parties, the board or special magistrate shall proceed with the hearing.

(8) If at any point in a hearing or proceeding the petitioner withdraws the petition or the parties agree to settlement, the petition becomes a withdrawn or settled petition and the hearing or proceeding shall end. The board or special magistrate shall state or note for the record that the petition is withdrawn or settled, shall not proceed with the hearing, shall not consider the petition, and shall not produce a decision or recommended decision.

(9)(a) If the petitioner does not appear by the commencement of a scheduled hearing, the board or special magistrate shall not commence the hearing and shall proceed under the requirements set forth in Section 12D-9.021(7), F.A.C., unless:

1. the petition is on a “portability” assessment difference transfer in which the previous homestead is the subject of the petition and is located in a county other than the county where the new homestead is located. Requirements specific to hearings on such petitions are set forth in Section 12D-9.028(6), F.A.C.; or

2. the petitioner has indicated that he or she does not wish to appear at the hearing but would like for the board or special magistrate to consider evidence submitted by the petitioner.

(b) A petitioner who has indicated that he or she does not wish to appear at the hearing, but would like for the board or special magistrate to consider his or her evidence, shall submit his or her evidence to the board clerk and property appraiser before the hearing. The board clerk shall:

1. keep the petitioner’s evidence as part of the petition file;

2. notify the board or special magistrate before or at the hearing that the petitioner has indicated he or she will not appear at the hearing, but would like for the board or special

magistrate to consider his or her evidence at the hearing; and

3. give the evidence to the board or special magistrate at the beginning of the hearing.

(10) If the property appraiser or tax collector does not appear by the commencement of a scheduled hearing, the board or special magistrate shall state on the record that the property appraiser or tax collector did not appear at the hearing. Then, the board or special magistrate shall request the petitioner to state for the record whether he or she wants to have the hearing rescheduled or wants to proceed with the hearing without the property appraiser or tax collector. If the petitioner elects to have the hearing rescheduled, the clerk shall reschedule the hearing. If the petitioner elects to proceed with the hearing without the property appraiser or tax collector, the board or special magistrate shall proceed with the hearing and shall produce a decision or recommended decision.

(11) In any hearing conducted without one of the parties present, the board or special magistrate must take into consideration the inability of the opposing party to cross-examine the non-appearing party in determining the sufficiency of the evidence of the non-appearing party.
Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 213.05 FS. History-New xx-xx-09.

12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses.

(1) As part of administrative reviews, the board or special magistrate must:

(a) review the evidence presented by the parties;

(b) determine whether the evidence presented is admissible;

(c) admit the evidence that is admissible, and identify the evidence presented to indicate that it is admitted or not admitted; and

(d) consider the admitted evidence.

(2)(a) In these rules, the term “admitted evidence” means evidence that has been admitted into the record for consideration by the board or special magistrate. Board and special magistrate proceedings are not controlled by strict rules of evidence and procedure. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(b) For administrative reviews, “relevant evidence” is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under review. This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, but does not necessarily mean that the evidence has sufficient relevance to legally justify a particular conclusion.

(c) Rebuttal evidence is relevant evidence used solely to disprove or contradict the original evidence presented by an opposing party.

(d) If the board or special magistrate has a question relating to the admissibility or use of evidence, the board or special magistrate shall consult with board legal counsel. The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.

(3)(a) In a board or special magistrate hearing, the petitioner is responsible for presenting relevant and credible evidence in support of his or her belief that the property appraiser’s determination is incorrect. The property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination.

(b) Under Section 194.301, Florida Statutes (2009), starting with 2009 assessments, “preponderance of the evidence” is the standard of proof that applies in assessment challenges.

The “clear and convincing evidence” standard of proof no longer applies, starting with 2009 assessments. A taxpayer shall never have the burden of proving that the property appraiser’s assessment is not supported by any reasonable hypothesis of a legal assessment.

(4)(a) No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice. The petitioner may still present evidence if he or she does not participate in the evidence exchange. However, if the property appraiser asks in writing for evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and refuses to provide it to the property appraiser, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate.

(b) If a party submits evidence to the clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing.

(c) In order to be reviewed by the board or special magistrate, any evidence filed with the clerk shall be brought to the hearing by the party. These requirements shall not apply where:

1. a petitioner does not appear at a hearing on a “portability” assessment difference transfer petition in which the previous homestead is the subject of the petition and is located in a county other than the county where the new homestead is located. Requirements specific to hearings on such petitions are set forth in Section 12D-9.028(6), F.A.C.; or

2. a petitioner has indicated that he or she does not wish to appear at the hearing but would like for the board or special magistrate to consider evidence submitted by the petitioner.

(d) A petitioner who has indicated that he or she does not wish to appear at the hearing, but would like for the board or special magistrate to consider his or her evidence, shall submit his or her evidence to the board clerk before the hearing. The board clerk shall:

1. keep the petitioner's evidence as part of the petition file;

2. notify the board or special magistrate before or at the hearing that the petitioner has indicated he or she will not appear at the hearing, but would like for the board or special magistrate to consider his or her evidence at the hearing; and

3. give the evidence to the board or special magistrate at the beginning of the hearing.

(e) The clerk may provide an electronic system for the filing and retrieval of evidence for the convenience of the parties, but such evidence shall not be considered part of the record and shall not be reviewed by the board or special magistrate until presented at a hearing. Any exchange of evidence should occur between the parties and such evidence is not part of the record until presented by the offering party and deemed admissible at the hearing.

(f)1. No petitioner shall present, nor shall the board or special magistrate accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser in connection with a filed petition, of which the petitioner had knowledge and denied to the property appraiser. Such evidentiary materials shall be considered timely if provided to the property appraiser no later than fifteen (15) days before the hearing in accordance with the exchange of evidence rules in Section 12D-9.020, F.A.C. and, if provided to the property appraiser less than fifteen (15) days before the hearing, shall be considered timely if the board or special magistrate determines they were provided a reasonable time before the hearing. A petitioner's ability to introduce the evidence, requested of the petitioner in writing by the property appraiser, is lost if not provided to the property appraiser as described in this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

2. A property appraiser shall not present undisclosed evidence that was not supplied to the

petitioner as required under the evidence exchange rule, Section 12D-9.020, F.A.C. The normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(5) When testimony is presented at a hearing, each party shall have the right to cross-examine any witness.

(6)(a) By agreement of the parties entered in the record, the board or special magistrate may leave the record open and postpone completion of the hearing to a date certain to allow a party to collect and provide additional relevant and credible evidence. Such postponements shall be limited to instances where, after completing original presentations of evidence, the parties agree to the collection and submittal of additional, specific factual evidence for consideration by the board or special magistrate.

(b) If additional hearing time is necessary, the hearing must be completed at the date, place, and time agreed upon for presenting the additional evidence to the board or special magistrate for consideration.

(c) The following limitations shall apply if the property appraiser seeks to present additional evidence that was unexpectedly discovered and that would increase the assessment.

1. The board or special magistrate shall ensure that such additional evidence is limited to a correction of a factual error discovered in the physical attributes of the petitioned property; a change in the property appraiser's judgment is not such a correction and shall not justify an increase in the assessment.

2. A notice of revised proposed assessment shall be made and provided to the petitioner in accordance with the notice provisions set out in Florida Statutes for notices of proposed property taxes.

3. A new hearing shall be scheduled and notice of the hearing shall be sent to the petitioner along with a copy of the revised property record card if requested.

4. The evidence exchange procedures in Section 12D-9.020, F.A.C., shall be available.

5. The back assessment procedure in Section 193.092, Florida Statutes, shall be used for any assessment already certified.

(7)(a) The board or special magistrate shall receive, identify for the record, and retain all exhibits presented during the hearing and send them to the clerk along with the recommended decision or final decision. Upon agreement of the parties, the clerk is authorized to make an electronic representation of evidence that is difficult to store or maintain.

(b) The board or special magistrate shall have the authority, at a hearing, to ask questions at any time of either party, the witnesses, or board staff. When asking questions, the board or special magistrate shall not show bias for or against any party or witness. The board or special magistrate shall limit the content of any question asked of a party or witness to matters reasonably related, directly or indirectly, to matters already in the record.

(c) Representatives of interested municipalities may be heard as provided in Section 193.116, Florida Statutes.

(8) Unless a board or special magistrate determines that additional time is necessary, the board or special magistrate shall conclude all hearings at the end of the time scheduled for the hearing. If a hearing is not concluded by the end of the time scheduled, the board or special magistrate shall determine the amount of additional time needed to conclude the hearing.

(a) If the board or special magistrate determines that the amount of additional time needed to conclude the hearing would not unreasonably disrupt other hearings, the board or special magistrate is authorized to proceed with conclusion of the hearing.

(b) If the board or special magistrate determines that the amount of additional time needed to conclude the hearing would unreasonably disrupt other hearings, the board or special magistrate shall so state on the record and shall notify the clerk to reschedule the conclusion of the hearing to a time as scheduled and noticed by the clerk.

(9) The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision. The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.092, 194.011, 194.032, 194.034, 195.022, 213.05 FS. History-New xx-xx-09.

12D-9.026 Procedures for Conducting a Hearing by Electronic Media.

(1) Hearings conducted by electronic media shall occur only under the conditions set forth in this rule section.

(a) The board must approve and have available the necessary equipment and procedures.

(b) The special magistrate, if one is used, must agree in each case to the electronic hearing.

(c) The board must accommodate parties that have hardship or lack necessary equipment or ability to access equipment.

(2) For any hearing conducted by electronic media, the board shall ensure that all equipment is adequate and functional for allowing clear communication among the participants and for creating the hearing records required by law. The board procedures shall specify the time period within which a party must request to appear at a hearing by electronic media.

(3) Consistent with board equipment and procedures:

(a) Any party may request to appear at a hearing before a board or special magistrate, using telephonic or other electronic media. If the board or special magistrate allows a party to appear by telephone, all members of the board in the hearing or the special magistrate must be physically present in the hearing room. Unless required by other provisions of state or federal law, the clerk need not comply with such a request if such telephonic or electronic media are not reasonably available.

(b) The parties must also all agree on the methods for swearing witnesses, presenting evidence, and placing testimony on the record. Such methods must comply with the provisions of this rule chapter. The agreement of the parties must include which parties must appear by telephonic or other electronic media, and which parties will be present in the hearing room.

(4) Such hearings must be open to the public either by providing the ability for interested members of the public to join the hearing electronically or to monitor the hearing at the location of the board or special magistrate.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.035, 195.022 FS. History-New xx-xx-09.

12D-9.027 Process of Administrative Review.

(1) This section sets forth the sequence of general procedural steps for administrative reviews. This order of steps applies to: the consideration of evidence during or after a hearing, the development of conclusions during or after a hearing, and the production of written decisions. The board or special magistrate shall follow this general sequence in order to fulfill the procedural requirements of section 194.301, Florida Statutes (2009), starting with 2009 assessments. The following subsections set forth the steps for administrative reviews of:

(a) just valuations in subsection (2);

(b) classified use valuations in subsection (3);

(c) assessed valuations of limited increase property in subsection (4); and

(d) exemptions, classifications, and portability assessment transfers in subsection (5).

(2) In administrative reviews of the just valuation of property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Consider the admitted evidence presented by the parties.

(b) Identify and consider the essential characteristics of the petitioned property based on the factors in section 193.011, Florida Statutes.

(c) Identify and consider the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property.

(d) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

(e) Determine whether the property appraiser's appraisal methodology is appropriate.

(f) Determine whether the admitted evidence proves by a preponderance of the evidence that:

1. The property appraiser's just valuation does not represent just value; or

2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.

(g) If one or both of the preceding conditions are determined to exist, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of just value which cumulatively meets the criteria of section 193.011, Florida Statutes, and professionally accepted appraisal practices.

1. If the hearing record contains competent, substantial evidence for establishing just value, the board or an appraiser special magistrate shall establish the just value based only upon such evidence. When the prerequisite conditions exist, the board or an appraiser special magistrate is required to establish a revised just value for the petitioned property. In establishing a revised just value when required by law, the board or special magistrate is not restricted to any specific value offered by the parties.

2. If the hearing record lacks competent, substantial evidence for establishing just value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions.

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

(a) Consider the admitted evidence presented by the parties.

(b) Identify the property classification applied to the petitioned property and identify the statutory criteria that apply to the classified use valuation of the property.

(c) Identify the essential characteristics of the petitioned property based on the statutory criteria that apply to the classified use valuation of the property.

(d) Identify the appraisal methodology used by the property appraiser in developing his or her classified use valuation of the petitioned property.

(e) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with the statutory criteria that apply to the classified use valuation of the petitioned property.

(f) Determine whether the property appraiser's appraisal methodology is appropriate.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence

that:

1. The property appraiser's classified use valuation does not represent classified use value; or
2. The property appraiser's classified use valuation is arbitrarily based on classified use appraisal practices that are different from the classified use appraisal practices generally applied by the property appraiser to comparable property of the same property classification within the same county.

(h) If one or both of the preceding conditions are determined to exist, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of classified use value which cumulatively meets the statutory criteria that apply to the classified use valuation of the petitioned property.

1. If the hearing record contains competent, substantial evidence for establishing classified use value, the board or an appraiser special magistrate shall establish the classified use value based only upon such evidence. When the prerequisite conditions exist, the board or an appraiser special magistrate is required to establish a revised classified use value for the petitioned property. In establishing a revised classified use value when required by law, the board or special magistrate is not restricted to any specific value offered by the parties.

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

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

(a) Consider the admitted evidence presented by the parties.

(b) Identify and consider the essential characteristics of the petitioned property based on the

statutory criteria that apply to the assessed valuation of the petitioned property.

(c) Identify and consider the methodology used by the property appraiser in developing his or her assessed valuation of the petitioned property.

(d) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with the applicable statutory criteria.

(e) Determine whether the property appraiser's methodology is appropriate.

(f) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's assessed value is incorrect.

(g) If the property appraiser's assessed value is determined to be incorrect, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of assessed value which cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned property.

1. If the hearing record contains competent, substantial evidence for establishing assessed value, the board or an appraiser special magistrate shall establish the assessed value based only upon such evidence.

2. If the hearing record lacks competent, substantial evidence for establishing assessed value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions.

(5) In administrative reviews of exemptions, classifications, and portability assessment transfers, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Consider the admitted evidence presented by the parties.

(b) Identify the particular exemption, property classification, or portability assessment transfer issue that is the subject of the petition.

(c) Identify the statutory criteria that apply to the particular exemption, property classification, or portability assessment difference transfer that was identified as the issue under administrative review.

(d) Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review.

(e) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property. Additionally, in the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid in determining whether to uphold or overturn the property appraiser's determination and shall:

1. review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), Florida Statutes;

2. determine whether the denial was valid under Section 196.193, Florida Statutes; and

3. not give weight to any exemption denial found to be invalid but shall instead proceed as provided in Section 194.301, Florida Statutes (2009).

(f) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption, classification, or portability assessment transfer should be granted because all of the applicable statutory criteria are satisfied.

(6) "Standard of proof" means the level of proof needed by the board or special magistrate to reach a particular conclusion. The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence."

(7) When applied to evidence, the term "sufficient" is a test of adequacy. Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to

legally justify a particular conclusion. A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. The board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the standard of proof that applies to the issue under consideration. In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:

(a) consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;

(b) determine the relevance and credibility, or overall weight, of the evidence;

(c) compare the overall weight of the evidence to the standard of proof;

(d) determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and

(e) produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History--New, xx-xx-09.

12D-9.028 Petitions on Transfer of “Portability” Assessment Difference.

(1) This rule section applies to the review of denials of assessment limitation difference transfers or of the amount of an assessment limitation difference transfer. No adjustment to the just, assessed or taxable value of the previous homestead parcel may be made pursuant to a petition under this rule.

(2) A petitioner may file a petition with the value adjustment board, in the county where the

new homestead is located, to petition either a denial of a transfer or the amount of the transfer, on Form DR-486PORT (Petition to Value Adjustment Board, Transfer of Homestead Assessment Difference – Request for Hearing; N. 07/08), which the Department of Revenue hereby adopts and incorporates in this rule by reference. Such petition must be filed within 25 days following the mailing of the notice of proposed property taxes as provided in Section 194.011, Florida Statutes. If only a part of a transfer of assessment increase differential is granted, the notice of proposed property taxes shall function as notice of the taxpayer’s right to appeal to the board.

(3) The petitioner may petition to the board the decision of the property appraiser refusing to allow the transfer of an assessment difference, and the board shall review the application and evidence presented to the property appraiser upon which the petitioner based the claim and shall hear the petitioner on behalf of his or her right to such assessment. Such petition shall be heard by an attorney special magistrate if the board uses special magistrates.

(4) This subsection will apply to value adjustment board proceedings in a county in which the previous homestead is located. Any petitioner desiring to appeal the action of a property appraiser in a county in which the previous homestead is located must so designate on Form DR-486PORT.

(5) If the petitioner does not agree with the amount of the assessment limitation difference for which the petitioner qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the petitioner qualifies to transfer any assessment limitation difference, upon the petitioner filing a petition to the value adjustment board in the county where the new homestead property is located, the board clerk in that county shall, upon receiving the petition, send a notice

using Form DR-486XCO, (Cross-County Notice of Appeal and Petition, Transfer of Homestead Assessment Difference; N. 07/08) which the Department of Revenue hereby adopts and incorporates in this rule by reference, to the board clerk in the county where the previous homestead was located, which shall reconvene if it has already adjourned.

(6)(a) If a cross county petition is filed as described in subsection (5), such notice operates as a timely petition and creates an appeal to the value adjustment board in the county where the previous homestead was located on all issues surrounding the previous assessment differential for the taxpayer involved. However, the petitioner may not petition to have the just, assessed, or taxable value of the previous homestead changed.

(b) The board clerk in the county where the previous homestead was located shall set the petition for hearing and notify the petitioner, the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located, and the value adjustment board in that county, and shall hear the petition.

(c) The board clerk in the county in which the previous homestead was located must note and file the petition from the county in which the new homestead is located. No filing fee is required. The board clerk shall notify each petitioner of the scheduled time of appearance. The notice shall be in writing and delivered by regular or certified U.S. mail or personal delivery or delivered in the manner requested by the petitioner on Form DR-486PORT, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The board clerk will have prima facie complied with the requirements of this section if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such scheduled appearance.

(d) Such petition shall be heard by an attorney special magistrate if the value adjustment

board in the county where the previous homestead was located uses special magistrates. The petitioner may attend such hearing and present evidence, but need not do so. If the petitioner does not appear at the hearing, the hearing shall go forward. The board or special magistrate shall obtain the petition file from the board clerk. The board or special magistrate shall consider deeds, property appraiser records that do not violate confidentiality requirements, and other documents that are admissible evidence. The petitioner may submit a written statement for review and consideration by the board or special magistrate explaining why the “portability” assessment difference should be granted based on applications and other documents and records submitted by the petitioner.

(e) The value adjustment board in the county where the previous homestead was located shall issue a decision and the board clerk shall send a copy of the decision to the board clerk in the county where the new homestead is located.

(f) In hearing the petition in the county where the new homestead is located, that value adjustment board shall consider the decision of the value adjustment board in the county where the previous homestead was located on the issues pertaining to the previous homestead and on the amount of any assessment reduction for which the petitioner qualifies. The value adjustment board in the county where the new homestead is located may not hold its hearing until it has received the decision from the value adjustment board in the county where the previous homestead was located.

(7) This rule does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, FS. History--New xx-xx-09.

12D-9.029 Procedures for Remanding Just Value or Classified Use Value Assessments.

(1) The board or appraiser special magistrate shall remand an assessment to the property appraiser when the board or special magistrate:

(a) has concluded that the property appraiser's assessment does not represent just value or classified use value, as applicable; and

(b) has concluded that the record does not contain the competent substantial evidence necessary for the board or special magistrate to establish just value or classified use value, as applicable.

(2) An attorney special magistrate shall remand an assessment to the property appraiser for a classified use valuation when the special magistrate has concluded that a property classification will be granted.

(3) The board shall remand an assessment to the property appraiser for a classified use valuation when the board:

(a) has concluded that a property classification will be granted; and

(b) has concluded that the record does not contain the competent substantial evidence necessary for the board to establish classified use value.

(4) The board or special magistrate shall, on the appropriate decision form from the Form DR-485 series, produce written findings of fact and conclusions of law necessary to determine that a remand is required, but shall not render a recommended or final decision unless a continuation hearing is held as provided in subsection (9).

(5) When an attorney special magistrate remands an assessment to the property appraiser for classified use valuation, an appraiser special magistrate retains authority to produce a recommended decision in accordance with law. When an appraiser special magistrate remands

an assessment to the property appraiser, the special magistrate retains authority to produce a recommended decision in accordance with law. When the value adjustment board remands an assessment to the property appraiser, the board retains authority to make a final decision on the petition in accordance with law.

(6) For remanding an assessment to the property appraiser, the board or special magistrate shall produce a written remand decision which shall include appropriate directions to the property appraiser.

(7) The board clerk shall concurrently provide, to the petitioner and the property appraiser, a copy of the written remand decision from the board or special magistrate. The petitioner's copy of the written remand decision shall be sent by regular or certified U.S. mail or by personal delivery, or in the manner requested by the taxpayer on Form DR-486.

(8)(a) After receiving a board or special magistrate's remand decision from the board clerk, the property appraiser shall follow the appropriate directions from the board or special magistrate and shall produce a written remand review.

(b) The property appraiser or his or her staff shall not have, directly or indirectly, any ex parte communication with the board or special magistrate regarding the remanded assessment.

(9)(a) Immediately after receipt of the written remand review from the property appraiser, the board clerk shall send a copy of the written remand review to the petitioner by regular or certified U.S. mail or by personal delivery, or in the manner requested by the taxpayer on Form DR-486, and shall send a copy to the board or special magistrate. The board clerk shall retain, as part of the petition file, the property appraiser's written remand review. Together with the petitioner's copy of the written remand review, the clerk shall send to the petitioner a copy of this rule subsection.

(b) The clerk shall schedule a continuation hearing unless the petitioner notifies the clerk that the results of the property appraiser's written remand review are acceptable to the petitioner and that the petitioner waives the right to a further hearing on the petition. The clerk shall send the notice of hearing so that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance, as described in Section 12D-9.019(3), F.A.C. If the petitioner agrees with the remand value, the board or special magistrate shall not produce a written decision; however, the petition shall be treated and listed as board action for purposes of the notice required by Section 12D-9.038, F.A.C.

(c) At a continuation hearing, the board or special magistrate shall receive and consider the property appraiser's written remand review and additional relevant and credible evidence, if any, from the parties. Also, the board or special magistrate may consider evidence admitted at the original hearing.

(10) In those counties that use special magistrates, if an attorney special magistrate has granted a property classification before the remand decision and the property appraiser has produced a remand classified use value, a real property valuation special magistrate shall conduct the continuation hearing.

(11) In no case shall a board or special magistrate remand to the property appraiser an exemption, "portability" assessment difference transfer, or property classification determination.

(12) Copies of all evidence shall remain with the clerk and be available during the remand process.

(13) In lieu of remand, the board or special magistrate may postpone conclusion of the hearing upon agreement of the parties if the requirements of Section 12D-9.025(6), F.A.C. are met.

(14) To the extent possible where the context will permit, remands of assessed valuations shall be handled procedurally under this rule chapter in the same manner as remands of just valuations.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 194.301, 213.05 FS. History-New xx-xx-09.

12D-9.030 Recommended Decisions.

(1) For each petition not withdrawn or settled, special magistrates shall produce a written recommended decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. Each recommended decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law. The special magistrate and clerk shall observe the petitioner's right to be sent a timely written recommended decision containing proposed findings of fact and proposed conclusions of law and reasons for upholding or overturning the determination of the property appraiser. After producing a recommended decision, the special magistrate shall provide it to the clerk.

(2) The clerk shall provide copies of the special magistrate's recommended decision to the petitioner and the property appraiser as soon as practicable after receiving the recommended decision, and if the clerk:

(a) knows the date, time, and place at which the recommended decision will be considered by the board, the clerk shall include such information when he or she sends the recommended decision to the petitioner and the property appraiser; or

(b) does not yet know the date, time, and place at which the recommended decision will be considered by the board, the clerk shall include information on how to find the date, time, and

place of the meeting at which the recommended decision will be considered by the board.

(3) Any board or special magistrate workpapers, worksheets, notes, or other materials that are made available to a party shall immediately be sent to the other party. Any workpapers, worksheets, notes, or other materials created by the board or special magistrates during the course of hearings or during consideration of petitions and evidence, that contain any material prepared in connection with official business, shall be transferred to the clerk and retained as public records. Value adjustment boards or special magistrates using standardized workpapers, worksheets, or notes, whether in electronic format or otherwise, must receive prior department approval to ensure that such standardized documents comply with the law.

(4) For the purpose of producing the recommended decisions of special magistrates, the department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the department under Section 195.022, Florida Statutes. The Form DR-485 series is adopted and incorporated by reference in Rule 12D-16.002, Florida Administrative Code. All recommended decisions of special magistrates, and all forms used for the recommended decisions, must contain the following required elements:

(a) findings of fact;

(b) conclusions of law; and

(c) reasons for upholding or overturning the determination of the property appraiser.

(5) As used in this section, the terms “findings of fact” and “conclusions of law” include proposed findings of fact and proposed conclusions of law produced by special magistrates in their recommended decisions.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 195.022, 213.05 FS. History--New xx-xx-09.

12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews.

(1) All recommended decisions shall comply with Sections 194.301, 194.034(2) and 194.035(1), Florida Statutes. A special magistrate shall not submit to the board, and the board shall not adopt, any recommended decision that is not in compliance with Sections 194.301, 194.034(2) and 194.035(1), Florida Statutes.

(2) As provided in Sections 194.034(2) and 194.035(1), Florida Statutes, the board shall consider the recommended decisions of special magistrates and may act upon the recommended decisions without further hearing. If the board holds further hearing for such consideration, the clerk shall send notice of the hearing to petitioners. The notice of hearing shall be in the same form as specified in Section 12D-9.019(3)(a), F.A.C., but need not include items specified in subparagraphs 6. through 10. of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination.

(3) If the board determines that a recommended decision meets the requirements of subsection (1), the board shall adopt the recommended decision. When a recommended decision is adopted and rendered by the board, it becomes final.

(4) If the board determines that a recommended decision does not comply with the requirements of subsection (1), the board shall proceed as follows:

(a) The board shall request the advice of board legal counsel to evaluate further action and shall take the steps necessary for producing a final decision in compliance with subsection (1).

(b) The board may direct a special magistrate to produce a recommended decision that complies with subsection (1) based on, if necessary, a review of the entire record.

(c) The board shall retain any recommended decisions and all other records of actions under this rule section.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History--New 10-12-76, Formerly 12D-10.03, Amended 11-10-77, 9-30-82, 12-31-98, xx-xx-09.

12D-9.032 Final Decisions.

(1) For each petition not withdrawn or settled, the board shall produce a written final decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. Each final decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law.

(2) A final decision of the board shall state the just, assessed, taxable, and exempt value, both before and after board action. Board action shall not include changes made as a result of action by the property appraiser. If the property appraiser has reduced his or her value or granted an exemption, property classification, or "portability" assessment difference transfer, whether before or during the hearing but before board action, the values in the "before" column shall reflect the adjusted figure before board action.

(3) The board's final decision shall advise the taxpayer and property appraiser that further proceedings in circuit court shall be as provided in Section 194.036, Florida Statutes.

(4) Upon issuance of a final decision by the board, the board shall provide it to the clerk and the clerk shall promptly provide notice of the final decision to the parties. Notice of the final decision may be made by providing a copy of the decision.

(5) For the purpose of producing the final decisions of the board, the department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the department under Section 195.022, Florida Statutes. The Form DR-485 series is adopted and incorporated by reference in Rule 12D-16.002, Florida Administrative Code. The Form DR-485 series, or approved electronic equivalent forms, are the only forms that shall be used for producing a final decision of the board. Before using any form to notify petitioners of the final decision, the board shall submit the proposed form to the department for approval. The board shall not use a form to notify the petitioner unless the department has approved the form.

(6)(a) If, prior to a final decision, any communication is received from a party concerning a board process on a petition or concerning a recommended decision, a copy of the communication shall promptly be furnished to all parties, the clerk, and the board legal counsel. No such communication shall be furnished to the board or a special magistrate unless a copy is immediately furnished to all parties.

(b) The board legal counsel shall respond to such communication and may advise the board concerning any action the board should take concerning the communication.

(c) No reconsideration of a recommended decision shall take place until all parties have been furnished all communications, and have been afforded adequate opportunity to respond.

(d) The clerk shall provide to the parties:

1. notification before the presentation of the matter to the board; and
2. notification of any action taken by the board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-New xx-xx-09.

12D-9.033 Further Judicial Proceedings. After the board issues its final decision, further

proceedings and the timing thereof are as provided in Sections 194.036 and 194.171, Florida Statutes.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-New xx-xx-09.

12D-9.034 Record of the Proceeding.

(1) The clerk shall maintain a record of the proceeding. The record shall consist of:

(a) the petition;

(b) all filed documents, including all tangible exhibits and documentary evidence presented, whether or not admitted into evidence; and

(c) meeting minutes and a verbatim record of the hearing.

(2) The verbatim record of the hearing may be kept by any electronic means which is easily retrieved and copied. In counties that use special magistrates, the special magistrate shall accurately and completely preserve the verbatim record during the hearing, and may be assisted by the clerk. In counties that do not use special magistrates, the clerk shall accurately and completely preserve the verbatim record during the hearing. At the conclusion of each hearing, the clerk shall retain the verbatim record as part of the petition file.

(3) The record shall be maintained for four years after the final decision has been rendered by the board if no appeal is filed in circuit court, or for five years if an appeal is filed.

(4) If requested by the taxpayer, the taxpayer's agent, or the property appraiser, the clerk shall retain these records until the final disposition of any subsequent judicial proceeding related to the same property.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented

194.011, 194.032, 194.034, 194.035, 213.05 FS. History-New xx-xx-09.

12D-9.035 Duty of Clerk to Prepare and Transmit Record.

(1) To the extent not inconsistent with the Florida Rules of Appellate Procedure, when applicable, when a change in the tax roll made by the board becomes subject to review by the Circuit Court pursuant to Section 194.036(1)(c), Florida Statutes, it shall be the duty of the clerk, when requested, to prepare the record for review. The record shall consist of a copy of each paper, including the petition and each exhibit in the proceeding together with a copy of the board's decision and written findings of fact and conclusions of law. The clerk shall transmit to the Court this record, and the clerk's certification of the record which shall be in the following form:

_____ Certification of Record

I hereby certify that the attached record, consisting of sequentially numbered pages one through _____, consists of true copies of all papers, exhibits, and the Board's findings of fact and conclusions of law, in the proceeding before the _____ County Value Adjustment Board upon petition numbered _____ filed by _____.

_____ Clerk of Value Adjustment Board

By: _____

Deputy Clerk

Should the verbatim transcript be prepared other than by a court reporter, the clerk shall also make the following certification:

CERTIFICATION OF VERBATIM TRANSCRIPT

I hereby certify that the attached verbatim transcript consisting of sequentially numbered

pages _____ through _____ is an accurate and true transcript of the hearing held on _____ in
the proceeding before the County Value Adjustment Board petition numbered _____ filed
by:

Clerk of Value Adjustment Board

By: _____

Deputy Clerk

(2) The clerk shall provide the petitioner and property appraiser, upon their request, a copy of
the record at no more than actual cost.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented
194.032, 194.036, 213.05 FS. History--New xx-xx-09.

12D-9.036 Procedures for Petitions on Denials of Tax Deferrals.

(1) The references in these rules to the tax collector are for the handling of petitions of
denials of tax deferrals under Sections 197.253, 197.3041 and 197.3073, Florida Statutes, and
petitions of penalties imposed under Sections 197.301, 197.3047, and 197.3079, Florida Statutes.

(2) To the extent possible where the context will permit, such petitions shall be handled
procedurally under this rule chapter in the same manner as denials of exemptions.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented
194.032, 194.036, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 213.05 FS.
History--New xx-xx-09.

Part III

Uniform Certification of Assessment Rolls

12D-9.037 Certification of Assessment Rolls.

(1) After all hearings have been held, the board shall certify an assessment roll or part of an assessment roll that has been finally approved pursuant to Section 193.1142, Florida Statutes. The certification shall be on the form prescribed by the department in this rule. A sufficient number of copies of the board's certification shall be delivered to the property appraiser who shall attach the same to each copy of each assessment roll prepared by the property appraiser.

(2) The form shall include a certification signed by the board chair, on behalf of the entire board, on Form DR-488, designated for this purpose, that all requirements in Chapter 194, Florida Statutes, and department rules, were met as follows:

(a) the prehearing checklist pursuant to Section 12D-9.014, F.A.C. was followed and all necessary actions reported by the clerk were taken to comply with Section 12D-9.014, F.A.C.;

(b) the qualifications of special magistrates were verified, including whether special magistrates completed the department's training;

(c) the selection of special magistrates was based solely on proper qualifications and the property appraiser and parties did not influence the selection of special magistrates;

(d) all petitions considered were either timely filed, or good cause was found for late filing after proper review by the board or its designee;

(e) all board meetings were duly noticed pursuant to Section 286.011, Florida Statutes, and were held in accordance with law;

(f) no ex parte communications were considered unless all parties were notified and allowed to rebut;

(g) all petitions were reviewed and considered as required by law unless withdrawn or settled as defined in this rule chapter;

(h) all decisions contain required findings of fact and conclusions of law in compliance with Chapter 194, Florida Statutes, and this rule chapter;

(i) the board allowed opportunity for public comment at the meeting at which special magistrate recommended decisions were considered and adopted;

(j) all board members and the board's legal counsel have read this certification and a copy of the statement in subsection (1) is attached; and

(k) all complaints of noncompliance with Part I, Chapter 194, Florida Statutes, or this rule chapter called to the board's attention have been appropriately addressed to conform with the provisions of Part I, Chapter 194, Florida Statutes, and this rule chapter.

(3) The board shall provide a signed original of the certification required under this rule section to the department before publication of the notice of the findings and results of the board required by Section 194.037, Florida Statutes. See Form DR-529, Notice Tax Impact of Value Adjustment Board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 195.022, 213.05 FS. History--New xx-xx-09.

12D-9.038 Public Notice of Findings and Results of Value Adjustment Board.

(1) After all hearings have been completed, the clerk of the value adjustment board shall publish a public notice advising all taxpayers of the findings and results of the board decisions, which shall include changes made by the board to the property appraiser's initial roll. For petitioned parcels, the property appraiser's initial roll shall be the property appraiser's determinations as presented at the commencement of the hearing or as settled by the property appraiser during the hearing but before a decision by the board or a recommended decision by a special magistrate. The public notice shall be in the form of a newspaper advertisement and shall

be referred to as the "tax impact notice". The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board, incorporated by reference in rule 12D-16.002.

(2) The size of the notice shall be at least a quarter page size advertisement of a standard or tabloid size newspaper. The newspaper notice shall include all of the above information and no change shall be made in the format or content without department approval. The notice shall be published in a part of the paper where legal notices and classified ads are not published.

(3) The notice of the findings and results of the value adjustment board shall be published in a newspaper of paid general circulation within the county. It shall be the specific intent of the publication of notice to reach the largest segment of the total county population. Any newspaper of less than general circulation in the county shall not be considered for publication except to supplement notices published in a paper of general circulation.

(4) The headline of the notice shall be set in a type no smaller than 18 point and shall read "TAX IMPACT OF VALUE ADJUSTMENT BOARD."

(5) It shall be the duty of the board clerk to insure publication of the notice after the board has heard all petitions, complaints, appeals, and disputes.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 50, 194.032, 194.034, 194.037, 213.05 FS. History--New xx-xx-09.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

NAME OF PERSON ORIGINATING PROPOSED RULES: Howard Moyes, Deputy Director, Property Tax Oversight Program, Department of Revenue, Bloxham Building, 725 S. Calhoun Street, Room G-12, Tallahassee, Florida, 32399-0100, telephone 850-922-7991.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: The Governor and Cabinet of the State of Florida.

DATE PROPOSED RULES APPROVED BY AGENCY HEAD: August 25, 2009.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: These proposed rules in new Rule Chapter 12D-9, F.A.C., were developed using a multi-step process designed to maximize public participation: A) first, topics based on value adjustment board hearing procedure issues were discussed with interested parties in a round-table forum at three day-long public meetings—March 13, 2009 (notice of which was published in the Florida Administrative Weekly (FAW) in Vol. 35, No. 8, p. 1000); May 12, 13, and 14, 2009 (notice was published in the FAW in Vol. 35, No. 16, p. 1990); and July 2, 2009 (notice was published in the FAW in Vol. 35, No. 25, p. 3113); B) then, proposed rules were written based on these discussions; C) a subsequent rule development workshop was held to receive public comments on the proposed rules—August 4, 2009 (notice was published in the FAW in Vol. 35, No. 28, pp, 3350-3352); and, D) a revised draft was developed based on the workshop. Members of the public attended each of these meetings and the workshop and made comments.

In 2008, the Department held seven workshops to develop an earlier rule draft. Members of the public attended each of these workshops and made comments. Notices for the workshops held on the earlier draft in 2008 were published on: July 11, 2008, for a workshop in Ft. Lauderdale, FL.(see Vol. 34, No. 28, pp. 3613-3614 of the Florida Administrative Weekly/F.A.W.); July 18, 2008, for a workshop in Live Oak, FL. (see Vol. 34, No. 29, p. 3668 of the F.A.W.); July 18, 2008, for a workshop in Tallahassee, FL. (see Vol. 34, No. 29, p. 3668 of the F.A.W.); September 19, 2008, for a workshop in Tampa, FL. (see Vol. 34, No. 38, p. 4803, of the F.A.W.); September 19, 2008, for a workshop in Panama City, FL. (see Vol. 34, No. 38, p. 4803,

of the F.A.W.); October 31, 2008, for a workshop in Orlando, FL. (see Vol. 34. No.44, pp. 5709-5711 of the F.A.W.); and, October 31, 2008, for a workshop in Miami, FL. (see Vol. 34, No. 44, pp, 5709-5711 if the F.A.W.). Members of the public attended each of this workshops and made comments on the forms.

In addition to these workshops, the Department published a notice of rule development on December 5, 2008, and posted a new draft of these proposed rules on the Internet site listed below on December 22, 2008, with a request that all public comments be submitted no later than January 16, 2009. The notice of rule development for these rules stated that a workshop would not be held unless one was requested in writing. The Department did not receive a written request to hold a workshop.

Throughout this rulemaking process written comments have been emailed to the Department and to an Internet site at <http://dor.myflorida.com/dor/property/vabwb/vabws.html>, which was created specifically to give the public access to all comments submitted on these proposed rules. In addition, written comments have been submitted to the Department be email, and to an Internet site at <http://dor.myflorida.com/dor/property/vabwb/vabws.html>, which was created specifically to give the public a location to post comments, to access all revised versions of the proposed rules and forms, and view comments submitted on these proposed new and amended rules and forms.