

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOEL W. ROBBINS, THE PROPERTY)
APPRAISER OF MIAMI-DADE COUNTY,)
AND THE MIAMI-DADE COUNTY VALUE)
ADJUSTMENT BOARD,)
)
Petitioners,)
)
vs.) Case No. 03-3164RP
)
DEPARTMENT OF REVENUE,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a final hearing was conducted on
December 16, 2003, at Tallahassee, Florida, before
Administrative Law Judge Claude B. Arrington of the Division of
Administrative Hearings.

APPEARANCES

For Petitioner	Thomas W. Logue, Esquire
Joel W. Robbins:	Assistant County Attorney
	Miami-Dade County Attorney
	111 N. W. 1st Street
	Miami, Florida 33128-1993
For Petitioner	Steven A. Schultz, Esquire
Value Adjustment	Brooks, Hermelee, Geffin
Board:	25 Southeast Second Street, Suite 1135
	Miami, Florida 33131

For Respondent: Martha A. Berrera, Esquire
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STATEMENT OF THE ISSUES

Whether the underlined portions of Respondent's proposed Rule 12D-10.0044(4)(b) are invalid exercises of delegated legislative authority:

(b) If the property appraiser does not provide the information within the time required by subsection (3) and at least five calendar days before the hearing, the taxpayer shall be entitled to reschedule the hearing. If the property appraiser provides the information within the time set forth in subsection (5) but less than five calendar days before the hearing, the petitioner's submission of the information shall qualify as a written request for rescheduling as provided in subsection (9). In such circumstances, the clerk shall reschedule the hearing upon being so advised by the petitioner.

Whether the underlined portion of Respondent's proposed Rule 12D-10.0044(5) is an invalid exercise of delegated legislative authority:

(5)(a) The exchange in subsection (2) and (3) shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. It shall be

sufficient if at least three FAX or email attempts are made to such address (sic). If more than one FAX number is provided, three (3) attempts must be made for each number to satisfy this requirement. The taxpayer and property appraiser may agree to a different timing and method of exchange. "Provided" means made available in the manner designated by the property appraiser or by the petitioner in his/her submission of information, as via email, facsimile, U.S. mail, or at the property appraiser's office for pick up. If the petitioner does not designate his/her desired manner for receiving the property appraiser's information, the information shall be provided by the property appraiser by depositing it in the U.S. mail.

Whether Respondent's proposed Rule 12D-10.0044(8) is an invalid exercise of delegated legislative authority:

(8) The information shall be in writing and may be delivered by regular or certified U.S. mail or personal delivery so that the information shall be received timely.

PRELIMINARY STATEMENT

Succinctly stated, Mr. Robbins¹ asserts that the portions of the proposed rule at issue in this proceeding will make it difficult if not impossible for a property appraiser to comply with the rule and will result in the rescheduling of an inordinate number of hearings. The VAB agrees that the property appraiser will have difficulty in complying with the rule and asserts that rescheduling a large number of hearings will disrupt its proceedings.

Petitioners focus their challenge on two aspects of the proposed rule. First, they assert that the underlined portions of Section 4(b) of the proposed rule provides a property appraiser less time to deliver certain required information to a taxpayer than does the applicable statute and that the time provided by the proposed rule is insufficient.

Second, Petitioners challenge the underlined portions of Section (5)(a) and Section (8) of the proposed rule, which pertain to the property appraiser's delivering the required information by U.S. mail. Petitioners assert that requiring delivery by mail as a default method of delivery is beyond the requirements of the applicable statute and unrealistic in light of the short time frames involved.

Petitioners allege that the challenged portions of the proposed rule are invalid exercises of delegated legislative authority pursuant to Sections 120.58(8)(c) and (e), Florida Statutes.² All other issues arguably raised by their initial pleading have been abandoned by Petitioners either at the final hearing or in their Proposed Final Order.

Petitioners do not challenge DOR's authority to adopt rules implementing the statutes at issue in this proceeding.

Petitioners agree that DOR has the authority to adopt rules to implement the subject statutes and challenge only the content of the proposed rule. Petitioners also do not challenge the

procedures or the process DOR followed in adopting the proposed rule.

At the final hearing, Petitioners presented the testimony of Eddie Stephens and Frank Jacobs. Mr. Stephens is an attorney whose law firm represents the property appraiser of Palm Beach County, Florida. Mr. Jacobs is the Assistant Property Appraiser for Miami-Dade County. Petitioners presented 22 sequentially numbered exhibits, each of which was admitted into evidence. Among those exhibits was a composite exhibit consisting of the deposition taken of Roberto Alfaro on December 5, 2003, together with exhibits to that deposition. Mr. Alfaro is employed by Miami-Dade County as the manager of the VAB.

Respondent presented the testimony of Steve Keller, who is DOR's Chief Assistant General Counsel for Property Tax Administration. Respondent offered ten sequentially numbered exhibits, each of which was admitted into evidence. Among those exhibits were the depositions of Frank Gonzalez, Ann Richards, Manuel Pernas, Frank Jacobs, and Roberto Alfaro (taken October 7, 2003), together with the exhibits to each deposition. Mr. Gonzalez is employed by Miami-Dade County as the hearing scheduler for the VAB. Ms. Richards is employed by Broward County, Florida, and has direct oversight of the activities of Broward County's value adjustment board. Mr. Pernas is employed

by Mr. Robbins to appraise commercial property and to schedule the VAB hearings involving commercial property.

At the request of DOR, the undersigned took official recognition of Fla. R. Civ. P. 1.080(b), Fla. R. Juv. P. 8.225(5), Fla. Sm. Cl. R. 7.080(b), and Fla. Admin. Code R. 28-106.217.

A Transcript of the proceedings was filed on January 7, 2004. Petitioners filed a joint Proposed Final Order and DOR filed a Proposed Final Order. The Proposed Final Orders have been duly-considered by the undersigned in the preparation of this Final Order.

FINDINGS OF FACT

1. Mr. Robbins is the property appraiser for Miami-Dade County. The VAB is the duly-constituted value adjustment board for Miami-Dade County. Both Petitioners will be substantially affected if Respondent adopts the challenged portions of the proposed rule at issue in this proceeding. Both Petitioners have standing in this case.

2. DOR has the responsibility to aid and assist property appraisers, tax collectors and value adjustment boards with respect to the assessment and collection of property taxes pursuant to Chapters 192-197, Florida Statutes. In that capacity, DOR promulgates rules implementing relevant legislation ever year. DOR promulgates rules in many areas,

generally issues advisement letters, and interacts with local officials involved in the assessment and value adjustment board process.

3. Every year, each county property appraiser is required to determine the value of all property in the county that is subject to ad valorem taxation. The valuation is as of January 1 of each year. See §§ 192.011 and 192.042, Fla. Stat. Each property appraiser is required to provide each taxpayer a notice containing the information required by Section 200.069, Florida Statutes.³ This notice is referred to as the TRIM notice, which is an acronym for Truth in Millage. The TRIM notice is typically mailed to the taxpayer before the end of August of each year. The TRIM notice includes the property appraiser's valuation of the property.

4. For years Florida taxpayers have had the right to challenge a property appraiser's valuation and other issues pertaining to ad valorem taxation. Value adjustment boards, created by Section 194.015, Florida Statutes, serve as a forum to resolve disputes between taxpayers and county property appraisers regarding the appropriate value of real property or tangible personal property for ad valorem taxation purposes.⁴

5. Section 194.011(3)(d), Florida Statutes, sets a deadline for a taxpayer to file a petition for a hearing before a value adjustment board. A petition challenging the valuation

of property must be filed before the 25th day following the mailing of the TRIM notice. Petitions involving other issues must be filed on or before the 30th day following the mailing of the TRIM notice. Because of these deadlines, a value adjustment board typically knows by the end of September the maximum number of petitions that will have to be resolved for that annual cycle.

6. Pursuant to Section 194.015, Florida Statutes, a value adjustment board consists of three members of the governing body of the county and two members of the school board.

7. Section 194.011, Florida Statutes, provides certain procedures to be followed in the event a taxpayer challenges an assessment. Section 194.011(2), Florida Statutes, provides as follows:

(2) Any taxpayer who objects to the assessment placed on any property taxable to him or her may request the property appraiser to informally confer with the taxpayer. Upon receiving the request, the property appraiser, or a member of his or her staff, shall confer with the taxpayer regarding the correctness of the assessment. At this informal conference, the taxpayer shall present those facts considered by the taxpayer to be supportive of the taxpayer's claim for a change in the assessment of the property appraiser. The property appraiser or his or her representative at this conference shall present those facts considered by the property appraiser to be supportive of the correctness of the assessment. However, nothing herein shall be construed to be a prerequisite to

administrative or judicial review of property assessments.

8. If the dispute is not resolved, the taxpayer may file a petition with and have a hearing before the county's value adjustment board. The full value adjustment board can hear and decide a petition, or it can appoint a special master to hear the petition.

9. Typically in large counties, including Miami-Dade County, a group of special masters are appointed to hear cases for the county's value adjustment board. In Miami-Dade County, the clerk of the VAB schedules the hearings before each special master. A special master typically hears between 50 and 60 petitions in a day. The series of hearings before a special master for a particular day is referred to as a board. A board is similar to a court docket, where one case is heard after the other. As is apparent from the number of petitions heard in a day by a special master, a hearing before the VAB typically lasts less than 15 minutes. Even with typically brief hearings, the value adjustment board process in Miami-Dade County has in recent years required four to six boards each business day over a period of nine to ten months to hear all petitions filed with the VAB.

10. Mr. Robbins usually has an employee (referred to as an official) to represent his office at a board before a special

master. In all, Mr. Robbins has approximately 20 employees who serve as officials plus support staff dedicated to VAB proceedings. It usually takes an official five to six working days to prepare his or her presentations for one board. Typically, an official is assigned a new board every six to seven business days.

11. The value adjustment board process has a large impact on taxpayers and local governments in Miami-Dade County. In 2001, the VAB removed from the certified tax roll of Miami-Dade County over \$1,600,000,000 in assessment dollars, which translated to approximately \$39,500,000 fewer tax dollars. In 2002, the VAB removed from the certified tax roll of Miami-Dade County over \$1,900,000,000 in assessment dollars, which translated to approximately \$44,600,000 fewer tax dollars.

12. The VAB heard approximately 24,500 petitions for tax year 2002 and it is estimated that 28,500 petitions will be heard for tax year 2003.

13. Prior to 2002, the taxpayer had to disclose his or her evidence to the property appraiser prior to the hearing, but there was no requirement that the property appraiser had to provide his or her evidence to the taxpayer prior to the hearing. Frequently, the taxpayer would see the property appraiser's evidence for the first time at the hearing itself.

14. In 2002, the Florida Legislature enacted Chapter 2002-18, Laws of Florida, which amends portions of the law referred to as the "Taxpayers Bill of Rights," including portions of Chapter 194, Florida Statutes.

15. Referring to hearings before a value adjustment board, Section 2 of Chapter 2002-18 created subsection (4) and (5) of Section 194.011, Florida Statutes, to read as follows:

(4)(a) At least 10 days before the hearing, the petitioner [the taxpayer] shall provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses.^[5]

(b) No later than 5 days after the petitioner provides the information required under paragraph (a), the property appraiser shall provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. The evidence list must contain the property record card if provided by the clerk.

(5) The department shall by rule prescribe uniform procedures for hearings before the values adjustment board which include requiring:

(a) Procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032^[6]; and

(b) That the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

16. In response to the mandate found in Section 194.011(5), Florida Statutes, Respondent proposes, pertinent to this proceeding, to adopt Rule 12D-10.0044, which provides, in pertinent part, as follows.

(2) Subsequent to the mailing or sending of the hearing notice, and at least 10 days before the scheduled hearing, the petitioner shall provide the property appraiser with a list and summary of evidence to be presented at the hearing. The list and summary must be accompanied by copies of documentation to be presented at the hearing.

(3) No later than 5 days after the property appraiser receives the petitioner's documentation, the property appraiser shall provide the petitioner with a list and summary of evidence to be presented at the hearing. The list and summary must be accompanied by copies of documentation to be presented at the hearing. The evidence list must contain the property record card if provided by the clerk. In computing the 5 day period prescribed in this subsection, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. See Rule 1090(a), Florida Rules of Civil Procedure, entitled Time.^[7]

(4)(a) If the taxpayer does not provide the information to the property appraiser at least ten days prior to the hearing pursuant to subsection (2), the property appraiser need not provide the information to the taxpayer pursuant to subsection (3).

(b) If the property appraiser does not provide the information within the time required by subsection (3) and at least five calendar days before the hearing, the taxpayer shall be entitled to reschedule the hearing. If the property appraiser provides the information within the time set forth in subsection (5) but less than five calendar days before the hearing, the petitioner's submission of the information shall qualify

as a written request for rescheduling as provided in subsection (9). In such circumstances, the clerk shall reschedule the hearing upon being so advised by the petitioner.

(5)(a) The exchange in subsection (2) and (3) shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. It shall be sufficient if at least three FAX or email attempts are made to such address (sic). If more than one FAX number is provided, three (3) attempts must be made for each number to satisfy this requirement. The taxpayer and property appraiser may agree to a different timing and method of exchange. "Provided" means made available in the manner designated by the property appraiser or by the petitioner in his/her submission of information, as via email, facsimile, U.S. mail, or at the property appraiser's office for pick up. If the petitioner does not designate his/her desired manner for receiving the property appraiser's information, the information shall be provided by the property appraiser by depositing it in the U.S. mail.

(b) The information shall be sent to the address listed on the petition form; however, it may be submitted to an email or FAX address if given.

(c) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. 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 day which is neither a Saturday, Sunday, or legal holiday. If the tenth day before a hearing is a Saturday, Sunday, or legal holiday, the information under subsection (2) shall be provided no later than the previous business day.

* * *

(7) Hearing procedure: . . . A property appraiser shall not appear at the hearing and use undisclosed 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) The information shall be in writing and may be delivered by regular or certified U.S. mail or personal delivery so that the information shall be received timely.

(9) The petitioner may reschedule the hearing one time by submitting a written request to the clerk of the board no less than 5 calendar days before the scheduled appearance.

(10) This rule provides procedures for information and evidence exchange between the petitioner and property appraiser, consistent with s. 194.032 F.S., subject to the provisions of 194.034(1)(d), F.S., and subsection 12D-10.003(4), F.A.C., relating to a request by a property appraiser for information from the petitioner in connection with a filed petition, which information need not be provided earlier than ten days prior to a scheduled hearing pursuant to subsections (2) and (5).

(11) The value adjustment board shall hold an organizational meeting and must make the uniform procedures available to petitioners. Such procedures shall be available a reasonable time following the organizational meeting and shall be available a reasonable time before the commencement of hearings in conformance with this rule. The Board [sic] shall be deemed to have complied if it causes petitioners to be notified in writing, along with or as part of the notice of hearing, of the evidence and availability of its procedures and include notice as to the exchange of information contained in this rule. The Board [sic] is authorized to use other additional or alternative means of

notification directed to the general public or specific taxpayers, as it may determine.

17. The taxpayer is entitled to notice of the hearing of his or her hearing by a value adjustment board (or a special master on behalf of the value adjustment board) of no less than 20 calendar days. See § 194.032 (2), Fla. Stat.⁸

18. The taxpayer must provide the property appraiser with the taxpayer's evidence no less than ten calendar days before the scheduled hearing to trigger the requirement that the property appraiser provide his evidence to the taxpayer prior to the hearing. If the taxpayer does not provide its evidence to the property appraiser at least ten days prior to the hearing, the exchange of evidence requirement is not triggered and the taxpayer is not entitled to the property appraiser's evidence prior to the hearing.

19. If the exchange of evidence requirement is timely triggered by the taxpayer, Section 194.011(4)(b), Florida Statutes, requires the property appraiser to provide his or her evidence to the taxpayer within five days after receiving the taxpayer's information. Pursuant to Section 3 of the proposed rule (which is not being challenged in this proceeding) this five-day period consists of business days.

20. Pursuant to Section 194.032(2), Florida Statutes, the taxpayer has the right to one continuance of the hearing if the request for the continuance is made at least five calendar days before the scheduled hearing (the so-called "freebie"). In addition to the freebie, the VAB typically grants a taxpayer's motion for continuance based on one or more of the following grounds:

A. A recent death within the immediate family of the taxpayer or his representative;

B. A medical emergency;

C. Proper notification was not afforded the taxpayer pursuant to the provisions of Rule 12D-10.0004(2).

D. A clerical error was made by the county's staff that precluded the appearance of the taxpayer before the board as scheduled.

E. The taxpayer or the taxpayer's agent is scheduled to appear before another governmental entity on the same date and within the same time frame as the scheduled appearance before the board.

F. The taxpayer's scheduled appearance falls on a religious holiday.

G. The taxpayer has not been afforded reasonable notice of the requirement to have the professional appraiser who prepared the taxpayer's appraisal report physically present at the hearing to testify.

H. The taxpayer is unable to submit an appraisal report or other documentary evidence to the property appraiser prior to the scheduled hearing if reasonable cause exists for failure to do so.

I. The property appraiser failed to comply with the evidence exchange requirements of Section 194.011(4), and the taxpayer requests a consequence of that failure.

21. The proposed rule creates an additional ground for the taxpayer to request that a hearing be rescheduled. Pursuant to the portion of Section (4)(b), Florida Statutes, of the proposed rule being challenged in this proceeding, the taxpayer has a right to a continuance of the scheduled hearing (a) if the taxpayer has triggered the requirement for the exchange of evidence set forth in both Section 194.011 and the proposed rule and (b) the taxpayer does not receive the property appraiser's evidence at least five calendar days before the hearing.

22. It is realistic to anticipate that many taxpayers will trigger the exchange of evidence provision on the tenth day before the scheduled hearing. In most of those cases, the taxpayer will not receive the property appraiser's evidence five calendar days before the scheduled hearing even if the property appraiser provides his or her evidence to the taxpayer on the fifth business day following receipt of the taxpayer's evidence. In virtually all of those cases, the taxpayer will not receive the property appraiser's evidence five calendar days before the hearing if the property appraiser mails that evidence to the taxpayer or if the property appraiser needs time to gather rebuttal evidence.⁹

23. The number of hearings that will have to be rescheduled before the VAB has not been quantified, but the

number is substantial and additional costs will be incurred. While it is clear that the rescheduling of a substantial number of hearings before the VAB will increase the workload for Mr. Robbins's office and for the VAB staff, the evidence did not establish that the proposed rule places an impossible burden on either Mr. Robbins or the VAB. With appropriate planning both Petitioners should be able to manage the rescheduling of a large number of value adjustment board hearings.

24. DOR drafted the proposed rule with the intent that the interests of the taxpayer and the property appraisers be balanced to the fullest extent possible within the authority granted by Section 194.011(4) and (5), Florida Statutes.

25. The addition of the non-statutory ground for a continuance is intended to provide the taxpayer a reasonable period of time to review the property appraiser's evidence prior to a hearing.

26. In determining what would constitute a reasonable period of time for a taxpayer to have to review the property appraiser's evidence, DOR considered several factors. DOR considered the statutes and the legislative intent. DOR considered the type of evidence the property appraiser would typically have to provide the taxpayer and the availability of such evidence. DOR considered that Section 194.034(1)(d), Florida Statutes,¹⁰ has been historically interpreted as

requiring the taxpayer to provide his evidence to the property appraiser "a reasonable time" before the value adjustment board hearing, and that "a reasonable time" has been historically interpreted to be five business days before the hearing. DOR considered that the taxpayer must exercise the freebie continuance no less than five calendar days before the hearing. DOR considered input from representatives of taxpayers and property appraisers during the rulemaking process.

27. In drafting the provision that delivery by mail would be the default method of delivery, DOR considered that the rule will be of statewide applicability, that delivery by mail is the most common default method of delivery, and that not all taxpayers or property appraisers have the capabilities to receive or send information by facsimile, e-mail, or hand delivery.

28. DOR entered into a long rule-promulgation process, which gave all interested parties, including Mr. Robbins and the VAB, an opportunity to provide input into the rules that would govern the process of exchange of information prior to VAB hearings. Mr. Robbins and the VAB actively participated in the rule-making process and made their views known throughout the process. The promulgation of the proposed rule was delayed to give interested parties an opportunity to seek to have the

legislation amended, but no amendments were passed during the 2003 Legislative Session.

29. The Notices of Proposed Rulemaking for the proposed rule contained the summary of statement of estimated regulatory costs, which requested that any person who wishes to provide information regarding the regulatory costs or who wished to provide a proposal for a lower cost regulatory alternative must do so within 21 days of the notice. No comments or proposals were received on the regulatory cost statement at any point during the rule promulgation process. Neither Mr. Robbins nor the VAB submitted a statement of alternative regulatory costs during the rule promulgation process or at the final hearing. Neither Petitioner established at the final hearing that a less costly alternative to the proposed rule would substantially accomplish the statutory objectives.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. § 120.56, Fla. Stat.

31. Section 120.56(2)(a), Florida Statutes, establishes the burden of proof pertinent to this proceeding as follows:

. . . The petitioner has the burden of going forward. The agency has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid

exercise of delegated legislative authority as to the objections raised.

32. Pursuant to Section 120.56(2)(c), Florida Statutes, a proposed rule is not presumed to be valid or invalid.

33. The standard of proof is a preponderance of the evidence. See §§ 120.56(2)(a) and 120.57(1)(j), Fla. Stat.

34. Section 120.52(8), Florida Statutes, defines "invalid exercise of delegated legislative authority" to mean:

. . . action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

* * *

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

* * *

(e) The rule is arbitrary or capricious.
. . .

35. A property appraiser is in compliance with both the statute and the rule if the property appraiser provides his evidence to the taxpayer by depositing the evidence in the U.S. mail or by electing one of the other authorized delivery means within five business days of receiving the taxpayer's evidence. When the taxpayer receives the property appraiser's evidence is often out of the control of the property appraiser. The

proposed rule providing the non-statutory ground for the continuance of a value adjustment board hearing if the taxpayer does not receive the property appraiser's evidence five or more calendar days before the scheduled hearing does not enlarge, modify, alter or contravene the statutes being implemented by the proposed rule.

36. The proposed rule requiring that the property appraiser mail his evidence to the taxpayer unless otherwise agreed does not enlarge, modify, or contravene the statute being implemented.

37. Petitioners' challenges to the proposed rule based on Section 120.52(8)(c), Florida Statutes, are rejected.

38. This is a difficult statute to implement because of the short time frame involved, but it is clear from the statute that the legislature intended to provide the taxpayer with adequate time to analyze the property appraiser's evidence in an effort to level the playing field in hearings before value adjustment boards. DOR has appropriately considered input from all interested parties, determined the competing interests of those parties, and balanced those competing interests in a fair manner that is consistent with the statutes and legislative intent. "A capricious action is one which is taken without thought or reason or rationality. An arbitrary decision is one not supported by facts or logic, or despotic." Board of

Trustees of the Internal Improvement Trust Fund v. Levy, 656 So. 2d 1359 (Fla. 1st DCA 1995). The proposed rule is not capricious or arbitrary.

39. Petitioners' challenges to the proposed rule based on Section 120.52(8)(e), Florida Statutes, is rejected.

FINAL ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is ORDERED that the subject challenges to proposed Rule 12D-10.0044 are DENIED.

DONE AND ORDERED this 1st day of March, 2004, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of March, 2004.

ENDNOTES

1/ Throughout this Final Order, Petitioner Robbins will be referred to as Mr. Robbins; Petitioner Value Adjustment Board will be referred to as the VAB; and Respondent Department of Revenue will be referred to as DOR. Mr. Robbins and the VAB

will be referred to as Petitioners when the reference is to both of them.

2/ As used in this Final Order, all citations to statutes are to Florida Statutes (2003).

3/ Section 194.011(1), Florida Statutes, provides as follows:

(1) Each taxpayer whose property is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069.

4/ In addition to valuation disputes, value adjustment boards hear other cases. Section 194.032(1)(a), Florida Statutes, provides that a value adjustment board shall meet for the following purposes:

1. Hearing petitions relating to assessments filed pursuant to s. 194.011(3).
2. Hearing complaints relating to homestead exemptions as provided for under s. 196.151.
3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under s. 196.011.
4. Hearing appeals concerning ad valorem tax deferrals and classifications.

5/ For ease of reference, the information a taxpayer is required to provide to a property appraiser will be referred to as the taxpayer's evidence, and the information the property appraiser is required to deliver to a taxpayer will be referred to as the property appraiser's evidence.

6/ Section 194.032(2), Florida Statutes, provides, in pertinent part, as follows:

(2) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance no less than 20 calendar days prior to the day

of such scheduled appearance. Upon receipt of this notification, the petitioner shall have the right to reschedule the hearing a single time by submitting to the clerk of the governing body of the county a written request to reschedule, no less than 5 calendar days before the day of the originally scheduled hearing. A copy of the property record card containing relevant information used in computing the taxpayer's current assessment shall be included with such notice, if said card was requested by the taxpayer. Such request shall be made by checking an appropriate box on the petition form. No petitioner shall be required to wait for more than 4 hours from the scheduled time; and, if his or her petition is not heard in that time, the petitioner may, at his or her option, report to the chairperson of the meeting that he or she intends to leave; and, if he or she is not heard immediately, the petitioner's administrative remedies will be deemed to be exhausted, and he or she may seek further relief as he or she deems appropriate. ...

7/ As used in this Final Order, reference to a certain number of "business days" will exclude a Saturday, Sunday, or legal holiday. Reference to "calendar days" will include a Saturday, Sunday, or legal holiday.

8/ Florida Administrative Code Rule 12D-10.004(2) provides as follows:

(2) The clerk of the board shall prepare a schedule of appearances before the board based on timely filed petitions. The 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 so that the notice shall be received by the taxpayer no less than twenty (20) calendar days prior to the day of such scheduled appearance. The clerk will have prima facie [sic] complied with the requirements of this section if the notice

was deposited in the U.S. mail twenty-five (25) days prior to the day of such scheduled appearance.

9/ DOR interprets the evidence exchange provision in the statute to require a property appraiser to provide to the taxpayer all evidence, including any rebuttal evidence, the property appraiser intends to use at the hearing. Mr. Keller, on behalf of DOR, opined that the hearing should be rescheduled in a case where such an exchange cannot be timely made.

10/ Section 194.034(1)(d), Florida Statutes, provides as follows:

(d) Notwithstanding the provisions of this subsection, no petitioner may present for consideration, nor may a board or special master accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser of which the petitioner had knowledge and denied to the property appraiser.

COPIES FURNISHED:

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Scott Boyd
Executive Director and General Counsel
Joint Administrative Procedures Committee
Holland Building, Room 120
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.