

MEMORANDUM

To: Miami-Dade County VAB Community
From: Miami-Dade County VAB Attorney Rafael E. Millares, Esq.
Date: October 25, 2017
Subject: **Requests for Reconsideration**

INTRODUCTION

The Miami-Dade County Value Adjustment Board (hereinafter “VAB”) has entertained (post-VAB-hearing/pre-VAB final certification) reconsideration requests for at least 17 years. Miami-Dade County VAB reconsideration procedure was last memorialized in 2003 by then VAB attorney Mr. Steven A. Schultz (Exhibit “A”). The purpose of this memorandum is to update Miami-Dade County VAB internal procedures regarding reconsiderations.

BACKGROUND

Although Florida VABs are not statutorily obligated to entertain requests for reconsideration, reconsiderations are permitted¹ under Florida Law.² Since reconsiderations provide an extra layer of due process and accuracy for all parties involved, it stands to reason that many Florida VABs employ some type of reconsideration process.³

MY FINDINGS

I set forth the following internal operating procedures in order to ensure that all reconsideration requests are processed in a lawful and efficient way.⁴

1. Either party to a VAB hearing may file a reconsideration request... or not file one. There is no obligation to file a reconsideration request on any VAB case.

¹ DOR Rules 12D-9.032(6)(c) & (6)(a), 12D-9.031(4), 12D-9.030(2) and F.S. 194.035(1)

² For purposes of this memo “Florida Law” includes the United States Constitution, Florida Constitution, Florida Statutes, Florida Administrative Code/Department of Revenue (hereinafter “DOR”) Rules, DOR Bulletins/PTO’s, DOR VAB Training Manual, DOR Materials and Florida Attorney General Opinions.

³ Based on anecdotal evidence.

⁴ I am obliged to use the discretion afforded me by DOR Rule 12D-9.005(2) to update the Miami-Dade County VAB internal operating procedure regarding reconsiderations in the interest of maintaining VAB efficiency, uniformity and integrity. I find that this update is indispensable for the efficient operation of the Miami-Dade VAB process, especially in light of the unprecedented spike in reconsideration requests filed at the end of this 2016 VAB season (For some historical perspective: we typically receive around five reconsideration requests per month... in April we received 90 and in May we received 369). This sudden increase in reconsideration requests nearly overwhelmed us and it highlighted vulnerabilities with our existing reconsideration procedure. It is imperative that we update our procedure in order to avoid similar issues in the future.

2. Requesting a reconsideration is not a condition precedent to filing an appeal in Circuit Court.
3. The party requesting reconsideration must do so no later than 5pm EST on the 21st day after the relevant fact finding sheet is posted online.⁵ To calculate the twenty one (21) days, the filing party shall use calendar days and shall start counting the day after the fact finding sheet is posted online. 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.⁶
4. The other/non-requesting party shall then have ten (10) days, from the date that the corresponding request for reconsideration is filed, to file a response if they wish to. They are not required to file a response. To calculate the ten (10) days, the filing party shall use calendar days and shall start counting the day after the request for reconsideration is E-mailed to them. 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.⁷
5. Unless otherwise stated, time periods will end on 5pm EST of the relevant deadline/due date.
6. Late-filed requests for reconsideration and/or responses will not be accepted by the VAB.
7. All requests for reconsideration and responses are required to be in writing and must be E-mailed to a soon-to-be designated VAB staff member. The VAB Attorney, the VAB Manager and the opposing party must be carbon copied. The VAB staff member shall then process the request and reply with a confirmation E-mail. If you do not receive a confirmation E-mail back from the staff member, you shall follow up.
8. Failure to carbon copy the opposing party may result in the wholesale exclusion of the violating party's reconsideration request or response. Anyone (an opposing party, special magistrate or VAB staff etc.) can report a violation of this rule to the VAB attorney. The VAB attorney is authorized to take the above-described action if he confirms that there was a violation and that exclusion is an appropriate remedy.⁸
9. Only one request for reconsideration and one response will be allowed per case. No additional back-and-forth (e.g. a response to a response) will be entertained.
10. To avoid ex-parte communication, all reconsideration-related communications will be in writing and the entire reconsideration request process will be transparent.⁹ No phone calls to the VAB regarding the merits (or lack thereof) of an active reconsideration request, please.
11. No new evidence (either in form or substance) may be submitted by either party upon reconsideration. Doing so may result in the wholesale exclusion of the violating party's

⁵ Every effort will be made to post fact sheets online within 1-2 weeks post-hearing (assuming the case was not deferred, remanded or the SM is holding off on issuing their findings for some other lawful reason).

⁶ Quoted loosely from DOR Rule 12D-9.020 (d). As a comparison, Broward County gives 20 days to file a request for reconsideration.

⁷ Quoted loosely from DOR Rule 12D-9.020 (d). As a comparison, Broward County gives the other party 10 days to file a response.

⁸ To be evaluated on a case-by-case basis.

⁹ DOR Rule 12D-9.032(a)

reconsideration request or response. Anyone (an opposing party, SM or VAB staff etc.) can report a violation of this rule to the VAB attorney. The VAB attorney is authorized to take the above-described action if he confirms that there was a violation and that exclusion is an appropriate remedy.¹⁰

12. The special magistrate (hereinafter “SM”) must be careful not to consider additional or supplemental documentary evidence or testimony submitted to them for the first time as part of, or along with, the request for reconsideration. However, additional or supplemental argument based on the same documentary evidence or testimony submitted at the hearing is appropriate to consider, especially if it is intended to point out specific mistakes of fact or law that the SM may have made in applying or interpreting any such evidence or testimony.¹¹
13. Once the designated VAB staff member has received both a reconsideration request and the other party’s response (or if the responding party files no response and the 10 days are up) the VAB staff member shall forward both documents, along with the entire case file, to the SM that issued the original fact finding sheet.
14. The SM shall review the reconsideration request, the other party’s response and the entire case file (a video of the hearing will be provided to the SM, if he/she requests it) as part of the reconsideration review. Generally the SM will be looking to see if they made mistakes of fact or law in applying or interpreting the evidence or testimony that was admitted at the hearing.
15. The SM may inquire with the VAB attorney regarding any legal or procedural questions that arise during the reconsideration.
16. Once the SM has finished their reconsideration review they will write¹² detailed findings per DOR Rules 12D-9.030 and 12D-9.032. The SM will then submit their detailed findings and/or amended fact finding sheet¹³ to the designated VAB staff member and will enter their findings into the VAB computer system.
17. The designated VAB staff member will then send the detailed findings and/or amended fact finding sheet to both parties.
18. As we reach the end of a future property tax year, the deadlines mentioned in this memo may be modified in order to ensure a timely and efficient close to that particular tax year.

¹⁰ To be evaluated on a case-by-case basis.

¹¹ This section and certain others quote loosely from Exhibit A.


¹² Typed is preferred but handwritten is acceptable as long as it is legible.

¹³ An amended fact finding sheet will only be issued if the SM is making a change to their original findings. If they are not making a change then detailed findings explaining their “no-change” will suffice and no amended fact finding sheet will be issued.

EXHIBIT "A"

194.

MEMORANDUM

To: All Special Masters
From: Steven A. Schultz, Esq. 
Date: May 30, 2003
Subject: Procedure for Processing Reconsideration Requests

I believe that it may be appropriate to formally document the VAB procedures for processing requests for reconsideration of cases submitted by taxpayers and the Property Appraiser. As you are probably aware, most requests for reconsideration are submitted by taxpayers, but on occasion the Property Appraiser also submits such requests.

Although we may have generally discussed the procedures for reconsidering cases at your respective orientations, I believe that it is now appropriate to memorialize these procedures in writing so that, in the future, all cases will be processed in a uniform manner, designed to assure that all parties are afforded due process.

Requests for reconsideration are required to be in writing and may be addressed to me, the Clerk or to you. In any event, upon receipt, the written request will be initially inventoried and processed by the VAB staff. The request will then be forwarded to you for review. If, after such review, you believe that no change from your original findings should be made, please make explanatory notations on the same paper containing the request, or prepare a separate writing if a more detailed explanation is required. Thereafter, return the original request, along with your notations, to Elsie Buch or some other designated staff person, for further processing. In these cases, since no change is to be effected (i.e. from the original Fact Finding Sheet), copies of your notations indicating "no change" will be furnished to the person requesting reconsideration, along with a form VAB letter advising such person that the special master decided to maintain his or her original recommendations intact. If, on the other hand, you review the case and decide that you are inclined to make a change based on the contents of the written request, you should contact Elsie Buch and advise her in writing of your intentions. At that time, Elsie will forward a copy of the original written request to the other non-requesting party (i.e.

either the taxpayer or the Property Appraiser), along with any written comments indicating your preliminary intentions to change the original findings and recommendations. Thereafter, the other party will be given an opportunity to respond in writing to the issues raised in the initial request for reconsideration. Presumably, any such response will urge that the contemplated change should not be made and will set forth the specific reason(s) for not doing so. After you review this response, along with the original request for reconsideration, you should make a final determination as to whether or not the contemplated change is still appropriate. If so, you should advise the VAB staff accordingly, and create an "Amended Fact Finding Sheet" reflecting the changed recommendations. The VAB staff will then send the Amended Fact Finding Sheet to the effected parties. If, on the other hand, you decide that your original findings and recommendations should not be changed, then you should record your intentions to make "no change" in writing, along with explanatory notations, and submit the same to the VAB staff for further processing. Thereafter, the requesting party will be furnished a copy of your notations and will be notified by a VAB form letter of your decision not to disturb the original findings and recommendations.

In connection with the foregoing, you are further advised that the VAB reconsideration process should not be permitted to be used in a manner that will deprive either party of the right to cross-examination or the right to object to the admissibility of evidence which was not previously introduced at the hearing. When implementing this reconsideration process, you should be careful not to consider additional or supplemental documentary evidence or testimony submitted to you for the first time as part of or along with the request for reconsideration. However, additional or supplemental argument based on the same documentary evidence or testimony submitted at the hearing would be appropriate to consider, especially if it is intended to point out specific mistakes of fact or law the special master may have made in applying or interpreting any such evidence or testimony.

If you have any questions regarding this matter, please feel free to contact me.

cc: Mr. Frank Jacobs
Mr. Herbert Parlato
James Kracht, esq.
Mr. Frank Fernandez
Mr. Robert Alfaro