

MEMORANDUM

To: The Miami-Dade County VAB Community
From: Miami-Dade County VAB Attorney Rafael E. Millares, Esq.
Date: October 21, 2020
Subject: **VAB Telephonic Hearing Procedures Due to the COVID 19 “Corona Virus” Global Pandemic-3rd Edition**

INTRODUCTION

The purpose of this memo is to provide the Miami-Dade County Value Adjustment Board (hereinafter “VAB”) community with guidance and procedures so that they may successfully navigate the upcoming telephonic VAB hearings. Telephonic VAB hearings are not ideal for a number of reasons, but they are now necessary due to the ongoing COVID 19 global pandemic. This memorandum replaces the previous COVID-19 procedures memorandum dated March 24, 2020.

Our hope is that these procedures will help protect the public’s health and will eliminate uncertainty during this challenging time. We thank you in advance for your cooperation and understanding.

PROCEDURES

- 1) The scheduling and noticing of VAB hearings will proceed as normal. Expect to conduct your VAB hearing telephonically, beginning in October of 2020. Since the legal landscape surrounding COVID-19 continues to be in flux¹, we reserve the right to amend these procedures at any time.
- 2) So as to not provide an unfair advantage to one side or the other, both parties must appear telephonically. The only people physically in the VAB hearing room during a telephonic hearing will be the Special Magistrate and a VAB clerk. The assigned VAB clerk will call and conference in both parties at the time of the hearing using the phone numbers that the parties have provided to the VAB.² If hearings are running late, a party may have to wait by the phone beyond their hearing time waiting for the VAB clerk to call them. Because of the newness of these telephonic hearings, we ask for your patience and understanding as we perfect the process and as we endeavor to implement our new computer system (AXIA).
- 3) If a party does not answer their phone at first, the VAB clerk shall make one additional attempt at calling them. If they do not pick up the phone during these two initial attempts, the case will be passed and a third attempt to call the party will be made shortly thereafter. If the party does not pick up during the third phone call attempt, they will be marked as a “no-show”.

¹ See relevant state & local emergency orders, federal/state/local health organizations, etc.

² If you need to update your phone number with the VAB, please do so as soon as possible.

- 4) Separate and apart from the evidence exchange process between the parties;³ whatever evidence the parties would like to present to the special magistrate at the hearing, in an attempt to have that evidence “admitted” and considered by the special magistrate, must be uploaded into our new VAB computer system (AXIA) by 9:00 am EST the day before the VAB hearing⁴ is scheduled to take place.⁵
- 5) A party’s evidence packet (that is uploaded/scanned into AXIA) must be in pdf. format and must have a cover page on it with the following information written legibly: petition number(s)⁶, folio number(s), the party’s name, which party it is/is submitting (PAO or Petitioner) and the phone number they wish to be called on. Additionally, if a party plans on having witnesses testify during the hearing, they must include the witness’ name and phone number on the cover page (if that witness will not be testifying from the party’s office/location).
- 6) NOTE: The words “agenda number” will no longer be used by the VAB. AXIA uses the words “petition number” instead of “agenda number” so we have changed our nomenclature accordingly. Please get into the practice of referencing “petition numbers” instead of “agenda numbers.”
- 7) Please see Exhibit A for more granular/technical procedures on how to upload documents into AXIA. The AXIA document upload process is fairly intuitive but if you require additional help or guidance please feel free to contact the VAB office at (305) 375-5641. It will no longer be necessary for you to number each page of the evidence that you upload into AXIA because it automatically numbers the pages for you when you upload the documents into AXIA.⁷ These page numbers may be helpful if you wish to highlight a particular page of evidence for the Special Magistrate during the VAB hearing. E.g. “Your honor, I would like to draw your attention to page 25 of my evidence packet because it contains a comparable sale that I feel is highly relevant and probative to the issues before you.”
- 8) Any evidentiary objections may be made at the time of the hearing to the Special Magistrate as per usual but we implore all of you to please operate at the highest levels of integrity regarding your evidence packets.⁸
- 9) The order of presentation memorandum issued on January 9, 2017⁹ will be strictly enforced during these telephonic hearings. Interrupting the other party or talking over the other party will not be tolerated. The Special Magistrate will let each party know when it is their turn to speak in order to maintain an orderly and efficient telephonic hearing.

³ The evidence exchange process happens outside of the purview of the VAB and shall continue to take place between the Miami-Dade County Property Appraiser’s Office and the Petitioner, in the same manner as it has for years.

⁴ This is unchanged from the previous telephonic hearing procedures memo dated March 24, 2020.

⁵ If your hearing is scheduled on a Monday or on a Tuesday after a Monday-holiday, then you must upload by 9am on the previous Friday.

⁶ The words “agenda number” will no longer be used by the VAB. AXIA uses the words “petition number” instead of “agenda number” so we have changed our nomenclature accordingly. Please get into the practice of referencing “petition numbers” instead of “agenda numbers.”

⁷ It bears repeating that the upload documents must be in pdf. format.

⁸ Although the vast majority of folks that appear before this VAB behave with integrity, some are prone to employ evidentiary “tactics” or shenanigans designed to gain an advantage at the hearing. Either side may report bad behavior to the VAB attorney. There will be zero tolerance for such behavior. If the VAB attorney becomes aware of such behavior, and if he feels that it is warranted, that party’s entire evidence package may be excluded.

⁹ See Exhibit B (without its original exhibits).

- 10) Even though the Special Magistrate will endeavor to allow the parties to cross examine each other and witnesses (if they wish to), this must be done within the confines of an orderly telephonic hearing process. We recognize that cross examination via phone will be limited/difficult in this regard and we thank everyone in advance for their patience and cooperation.
- 11) The Special Magistrates will make sure to read the approved VAB Opening Statement on the record for each hearing, unless its reading is waived by the parties.¹⁰
- 12) The Special Magistrate will swear in everyone on the call. This includes representatives and witnesses.¹¹

NOTES

Even though we are holding emergency VAB hearings telephonically, this in no way sets a precedent or obligation for the Miami-Dade County VAB to hold telephonic hearings in the future.


¹⁰ The phone inside of the VAB hearing room will be placed near the existing microphones. Each room's audio/visual recording systems will be on during the hearings and will pick up each party's telephonic voices.

¹¹ If you wish to have a witness testify during the hearing, that witness should be with you at your office or wherever you plan on receiving the VAB's call. If that proves to be impossible, please provide the VAB with the witness' phone number and information and we will conference that person into the call.

EXHIBIT "A"

FOR UNREPRESENTED PETITIONERS/TAXPAYERS: How to access the VAB's AXIA Website & to Upload Evidence For the Special Magistrates' Consideration (this is different than the evidence exchange process)

1. The petitioner/taxpayer must log onto the AXIA website (<https://vabprod.miamidade.gov>).
 - *Any browser besides Internet Explorer is recommended.
2. The AXIA website has a distinct login area for unrepresented petitioners/taxpayers.



CHECK PETITION STATUS

Transaction #: Password: **Log In**

[Forgot your password?](#)

3. Log-in information for each petitioner/taxpayer was provided during their petition filing process. The AXIA receipt will display their **Transaction# & Password**. (If lost or never received, VAB can reproduce it and resend it to the requesting petitioner/taxpayer)
4. Petitioners/taxpayers will see their filed petition listed and will click on the folder to enter their case.
5. Once inside the case, an **“Upload”** icon will be available to the petitioner/taxpayer to upload the evidence that they would like to submit to the Special Magistrate for the Special Magistrate's consideration into AXIA.
6. Please note that submitting evidence into AXIA is separate, apart and different from the evidence exchange process that takes place between a petitioner/taxpayer and the Property appraiser's office. Both are required, but they are separate processes.

EXHIBIT "B"

MEMORANDUM

To: Miami-Dade County VAB Community
From: Miami-Dade County VAB Attorney Rafael E. Millares, Esq.
Date: January 9, 2017
Subject: Which party goes first at VAB Hearings and what are the resulting impacts on due process, the presumption of correctness, the exchange of evidence, the presentation of evidence, rebuttal evidence and the petitioner's burden of proof?

INTRODUCTION

Since April of 2016 Miami-Dade County Property Appraiser's Office (hereinafter "PAO") Representatives have been (i) reading a short statement (See Exhibit "A") regarding their mass appraisal techniques and (ii) submitting a property card at the beginning of every Miami-Dade County Value Adjustment Board (hereinafter "VAB") hearing. The PAO believes that this is enough to establish a presumption of correctness. As such, they have not been presenting any additional evidence at VAB hearings unless and until they choose to do so as rebuttal evidence, after the petitioner presents their case.

BACKGROUND

This change in the order of evidence presentation was allegedly approved by my predecessor. It is a departure from the way VAB hearings have historically¹ been conducted in Miami-Dade County and the majority of (if not all) Florida counties.

Pre-April 2016 the presentation of evidence at Miami-Dade County VAB hearings went as follows:

- 1) The magistrate would read their opening statement.
- 2) The PAO would make an opening statement before each and every case or simply when a new petitioner or attorney/agent appeared to hear a group of cases.
- 3) The PAO would present all of their evidence.

¹ From 2009 - March of 2016.

- 4) The petitioner would present all of their evidence.
- 5) The PAO would have a chance to rebut the evidence presented by the petitioner in the spirit of and in the limited fashion allowed by Florida Law².
- 6) The petitioner would have a chance to rebut the evidence presented by the PAO in the spirit of and in the limited fashion allowed by Florida Law.
- 7) The magistrate would then proceed with the VAB hearing per Florida Law.

MY FINDINGS

After much research, I am of the opinion that Florida Law dictates that the Miami-Dade County VAB revert back to the pre-April 2016 hearing procedure, regarding the order in which evidence is presented at all VAB hearings.

Starting Wednesday January 11, 2017, evidence at all Miami-Dade VAB hearings will be presented in the following manner per Florida Law:

- 1) The VAB hearing magistrate will read their opening statement (it is their option whether to read the statement before each and every case or simply when a new petitioner or attorney/agent appears before them to hear a group of cases).
- 2) The PAO will then make their opening statement before each and every case or simply when a new petitioner or attorney/agent appears to hear a group of cases.³ (The magistrate will work with the PAO and vice-a-versa in order to run the most efficient hearing possible⁴).
- 3) The PAO shall then present all of their evidence, if they choose to present any evidence at all.⁵
- 4) The petitioner shall then present all of their evidence, if they choose to present any evidence at all.

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, Florida Attorney General Opinions, Florida House and Senate Bills (specifically HB 909 (2008) & HB 521 (2009)) with accompanying committee reports/legislative intent and case law.

³ It is completely up to the PAO whether they will make an opening statement at all. They may choose not to read or submit anything into the record during a hearing. That is their right. I cannot advise either side regarding hearing strategy or trial advocacy.

⁴ Please see this memo's "Additional Notes" section.

⁵ If the PAO chooses to present any evidence at a VAB hearing, it must all be presented at this time (save any rebuttal evidence) before the petitioner presents their evidence, per page 85 of the DOR VAB Training Manual citing to F.S. Section 194.301 and DOR Rules 12D-9.024(7) & 12D-9.025(3)(a). Furthermore, the Florida Legislature and DOR have made clear that VAB efficiency is a priority. I am thus obliged to use the authority afforded me by DOR Rule 12D-9.005(2) and PTO 09-29 to require the above-described procedure in the interest of enhancing VAB efficiency.

- 5) The PAO will have a chance to rebut the evidence presented by the petitioner in the spirit of and in the limited fashion allowed by Florida Law.
- 6) The petitioner will have a chance to rebut the evidence presented by the PAO in the spirit of and in the limited fashion allowed by Florida Law.
- 7) The magistrate will then proceed with the hearing per Florida Law.

ADDITIONAL NOTES

- Reading a prepared statement like Exhibit “A” and presenting a property card is not enough to establish a presumption of correctness.⁶ If the PAO chooses to (i) present only a prepared statement like Exhibit “A” and a property card as evidence or (ii) chooses not to present any evidence at all or (iii) chooses to waive its presumption of correctness, then their assessment on that particular property will not enjoy a presumption of correctness and the hearing will proceed as-is.
- As clarification on a related issue, once evidence is properly admitted into the record, that evidence may be used by both sides.⁷
- VAB uniformity is also a priority for the Florida Legislature. The above-described procedure brings us in line with what other Florida counties have done historically and what they are doing now.

⁶Pages 128 and 129 of the 2016 DOR VAB Training Manual citing F.S. Section 194.301(1) and PTO 09-29. Please also see the legislative intent behind HB 909 (2008) & HB 521 (2009) in light of Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452 (Fla., 1992).

⁷DOR Rule 12D-9.025.