

OFFICIAL MINUTES OF THE  
VALUE ADJUSTMENT BOARD (VAB)  
PALM BEACH COUNTY, FLORIDA

COST OF SALE  
WORKSHOP  
JUNE 28, 2022

TUESDAY  
9:00 A.M.

COMMISSION CHAMBERS  
WEISMAN GOVERNMENTAL CENTER

MEMBERS:

Commissioner David Kerner, Chair  
School Board Member Frank Barbieri, Vice Chair  
Mayor Robert S. Weinroth  
Citizen Member Stormet Norem  
Citizen Member Joshua Smith

STAFF PRESENT:

Ann Clark, Board Meetings & Hearing Coordinator, Clerk of the Circuit Court & Comptroller  
Liana Figueroa, Manager of Finance Services, Board Services, Clerk of the Circuit Court & Comptroller  
Lisa Supan, Assistant Manager of Finance Services, Board Services, Clerk of the Circuit Court & Comptroller  
Aaron Thalwitzer, Esq., VAB Legal Counsel  
Maria Ticeran, Senior Board Meetings & Hearing Specialist, Clerk of the Circuit Court & Comptroller  
Jillian Zalewska, Deputy Clerk, Clerk of the Circuit Court & Comptroller

**1. CALL TO ORDER**

The chair called the meeting to order at 9:10 a.m.

**A. Roll Call**

Mr. Smith and Mayor Weinroth were absent.

**B. Pledge of Allegiance**

Mr. Barbieri led the Pledge of Allegiance.

**2. RECEIVE & FILE Proof of Publication Order No. 7404982 for Notice of VAB Meeting in the *Palm Beach Post*.**

**MOTION to receive and file the proof of publication. Motion by Stormet Norem, seconded by Frank Barbieri, and carried 3-0.**

3. **APPROVE** minutes of the VAB meeting of September 14, 2021.

**MOTION to approve the September 14, 2021, meeting minutes. Motion by Stormet Norem, seconded by Frank Barbieri, and carried 3-0.**

4. Discussion: Cost of Sale Adjustments

4.A. General background provided by VAB Legal Counsel

At the end of the last tax cycle, the Property Appraiser's office submitted several reconsideration requests due to the magistrate's application of the 15 percent cost of sale reduction. Mr. Thalwitzer explained that the Board had denied the requests and upheld the magistrates' recommendations. Mr. Thalwitzer opined that the cost of sale reduction was inappropriate in those cases, although the Department of Revenue (DOR) and the petitioners supported its application by the magistrates.

At Commissioner Kerner's request, Mr. Thalwitzer summarized the cost of sale issue as follows:

- The 15 percent cost of sale reduction was appropriate in the context of a mass appraisal to prevent overvaluation.
- The rationale of mass appraisal did not apply to VAB petitions, which involved specific appraisals.
- The purpose of the reduction in mass appraisals was to prevent the overvaluing of properties.
- No specific percentage adjustment was applied in determining fair market values.

Mr. Thalwitzer responded to questions from Commissioner Kerner regarding the cost of sale reduction and its application.

Mr. Barbieri raised concerns about the equitable application of the reduction.

Commissioner Kerner suggested that elimination of the adjustment might reduce the number of petitions filed, and Mr. Thalwitzer agreed.

In response to a question posed by Commissioner Kerner, Mr. Thalwitzer stated that the Fourth District Court of Appeal did not provide direct guidance regarding the cost of sale issue.

4.B. Property Appraiser's Office and Taxpayer Positions

Property Appraiser Dorothy Jacks presented her office's position to the Board. She discussed the following points:

- Petitions were filed for less than 1 percent of the properties valued by the Property Appraiser's office.
- Most petitions were filed by tax agents representing larger interests in the county.
- The majority of property valuations already contemplated a statistical 15 percent reduction.
- The office planned to reflect the 15 percent reduction in the grids presented at VAB hearings to illustrate why an additional reduction was not needed.
- Implementation of a standardized process would ensure consistency.

Ms. Jacks also stated that if the cost of sale adjustment were to be used, it should also be applied in cases where petitioners sought to increase valuations for portability purposes.

(CLERK'S NOTE: Item 5 was taken up at this time.)

## 5. PUBLIC COMMENTS

**PUBLIC COMMENT:** David Chapin

In response to Mr. Chapin's comments and a question posed by Commissioner Kerner, Ms. Jacks clarified that the portability benefit applied only to homesteaded properties.

**PUBLIC COMMENT:** Robb Udell and Tim Hart

In response to Mr. Hart's comments, Commissioner Kerner indicated that the Board could take notice that other counties applied the cost of sale adjustment in the context of petitions.

Mr. Hart stated the cost of sale reduction should also be applied in cases where an upward valuation adjustment was sought by petitioners seeking a portability benefit.

**PUBLIC COMMENT:** John McDonald, Michael Corbiciero, Nicholas Mau, and Rick Danes

Commissioner Kerner invited Ms. Jacks and Mr. Thalwitzer to respond to the speakers' comments.

Mr. Thalwitzer stated the following:

- Although the DOR did not have the authority to set VAB policy, the Board could

consider adopting their position for purposes of consistency.

- Case law considered fair market value to be the same as just value.
- The state legislature's intention that the Property Appraiser determine just value was clearly stated in the statute before the listing of the eight criteria.
- A consistent practice should be established, and special magistrates needed to follow the Board's guidance.

Ms. Jacks commented as follows:

- The current 15 percent adjustment value derived from Form DR-493 and was subject to change on an annual basis.
- "Double-dipping" would occur if magistrates applied a 15 percent reduction that had already been contemplated in the initial valuation.
- Uniform application of the adjustment would deny magistrates the discretion to apply smaller reductions in cases where petitioners presented evidence that the cost of sale was less than 15 percent.
- Application of the reduction in portability cases was appropriate because the adjustment was considered in the determination of fair market value.

Discussion ensued regarding portability cases and the potential for inequitable treatment of taxpayers.

(CLERK'S NOTE: The numerical order of the agenda was restored at this time.)

#### **4.C. VAB's Guidance to Special Magistrates**

Commissioner Kerner stated his intention to vote for a consistent application of the 15 percent cost of sale adjustment in all circumstances, while also preserving the petitioner's right to submit evidence.

Mr. Barbieri expressed concern about possible due process issues arising if a taxpayer produced evidence demonstrating a cost of sale lower than 15 percent.

Commissioner Kerner suggested the guidance include a rebuttable presumption that a magistrate should apply the 15 percent cost of sale reduction unless substantial competent evidence was introduced and weighed by the fact-finder.

In response to questions posed by Mr. Barbieri, Ms. Jacks provided clarification about portability calculations and explained that most portability cases involved petitioners who intended to sell a property and did not possess a closing statement that could be used as evidence.

Commissioner Kerner said the language should indicate that nothing in the guidance was to be construed as prohibiting the taxpayer from submitting evidence to the fact-finder.

After discussion of possible procedural issues, Commissioner Kerner said the guidance should not prohibit any party, including the Property Appraiser, from submitting evidence.

The members agreed that Mr. Thalwitzer would craft guidance incorporating the Board's recommendation that magistrates consistently apply the cost of sale adjustment, as determined by DR-493, with no element of the guidance to be construed as prohibiting any party from submitting evidence.

Mr. Thalwitzer stated he would present the language to the Board at the organizational meeting on August 10, 2022.

**MOTION to direct VAB counsel to bring back to the Board language incorporating the recommended guidance regarding application of the cost of sale adjustment. Motion by Frank Barbieri, seconded by Stormet Norem, and carried 3-0.**

**6. STAFF COMMENTS**

No comments were made.

**7. BOARD COMMENTS**

No comments were made.

**8. ADJOURNMENT**

**At 10:43 a.m., the chair declared the meeting adjourned.**

ATTESTED:



Clerk

APPROVED:



Chair