

ADMINISTRATIVE REVIEWS OF REAL PROPERTY JUST VALUES PART 1

NEW Statutory Law Beginning in 2009 (See HB 521)

An important change to Florida Statutes was passed in the 2009 legislative session and then approved by the Governor on June 4, 2009.

See section 194.301, Florida Statutes, as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

A complete copy of this new legislation is presented here:

Be It Enacted by the Legislature of the State of Florida:
Section 1. Section 194.301, Florida Statutes, is amended to read:

194.301 Challenge to ad valorem tax assessment.—

- (1) In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser's assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. However, a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment. The value of property must be determined by an appraisal methodology that complies with the criteria of s. 193.011 and professionally accepted appraisal practices. The provisions of this subsection preempt any prior case law that is inconsistent with this subsection.
- (2) In an administrative or judicial action in which an ad valorem tax assessment is challenged, the burden of proof is on the party initiating the challenge.
 - (a) If the challenge is to the assessed value of the property, the party initiating the challenge has the burden of proving by a preponderance of the evidence that the assessed value:
 1. Does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property;
 2. Does not represent the classified use value or fractional value of the property if the property is required to be assessed based on its character or use; or
 3. 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.
 - (b) If the party challenging the assessment satisfies the requirements of paragraph (a), the presumption provided in subsection (1) is overcome and the value adjustment board or the court shall establish the assessment if there is competent, substantial evidence of value in the record which cumulatively meets the criteria of s. 193.011 and professionally accepted appraisal practices. If the record lacks such evidence, the matter must be remanded to the property appraiser with appropriate

directions from the value adjustment board or the court, and the property appraiser must comply with those directions.

- (c) If the revised assessment following remand is challenged, the procedures described in this section apply.
- (d) If the challenge is to the classification or exemption status of the property, there is no presumption of correctness and the party initiating the challenge has the burden of proving by a preponderance of the evidence that the classification or exempt status assigned to the property is incorrect.

Section 2. (1) It is the express intent of the Legislature that 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. All cases establishing the every-reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretative of legislative intent.

- (2) This section is intended to clarify existing law and apply retroactively.

Section 3. This act shall take effect upon becoming a law and shall first apply to assessments in 2009.

Approved by the Governor June 4, 2009.

Filed in Office Secretary of State June 4, 2009.

Ch. 2009-121 LAWS OF FLORIDA Ch. 2009-121

Legal Provisions on the Real Property Appraisal Guidelines

Below are provisions from section 195.032, Florida Statutes, describing the Florida Real Property Appraisal Guidelines.

1. *“The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with section 193.011...”*
2. *“The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property.”*

See Rule 12D-51.003, Florida Administrative Code, for more information on the Florida Real Property Appraisal Guidelines.

- The Florida Real Property Appraisal Guidelines contain descriptions of appraisal methods that may be used by property appraisers to develop just valuations of real property consistent with Florida law. A copy of these guidelines is available at the following web address: <http://dor.myflorida.com/dor/property/RP/FLrpg.pdf>

Florida Information on Appraisal Development

- Section 4, Article VII of the Florida Constitution requires a just valuation of all property for ad valorem taxation, with certain conditions. The Florida Supreme Court has defined just value as: *“the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.”* See Walter v. Schuler, 176 So.2d 81 (Fla. 1965). Section 193.011, F.S. contains eight statutory criteria the legislature has provided for property appraisers to consider in making just valuations. The property appraiser must take these factors into proper consideration including
 - (1) *The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length; and*
 - (8) *The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or a typical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.”*

- The Florida Real Property Appraisal Guidelines contain descriptions of appraisal methods that may be used by property appraisers to develop just valuations of real property consistent with Florida law. Boards and special magistrates are expected to understand these guidelines for purposes of reviewing challenged assessments. A copy of these guidelines is available at the following web address:
<http://dor.myflorida.com/dor/property/RP/FLrpg.pdf>
- The property appraiser's discretion is limited by the constitutional requirement for a just valuation, the Florida Supreme Court's definition of just value, and by the criteria of section 193.011, F.S. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006). Also, see section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- The property appraiser is required to consider, but is not required to use, all three approaches to value. See Mastroianni v. Barnett Banks, Inc., 664 So.2d 284 (Fla. 1st DCA 1995) review denied 673 So.2d 29 (Fla. 1996). However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness.
- The property appraiser's appraisal methodology must comply with the criteria in section 193.011, F.S., and professionally accepted appraisal practices. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and section 193.011, F.S.
- The property appraiser has discretion to determine the valuation methodology as long as it complies with the criteria of section 193.011, F.S., and professionally accepted appraisal practices. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006), and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness.

Provisions for Administrative Reviews

- Boards and special magistrates must follow the provisions of law on the administrative review of assessments. See Chapter 194, Part 1, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Rule 12D-10, F.A.C.

- In establishing just value when required by law, Boards and special magistrates are bound by the same standards as property appraisers. See Rule 12D-10.003(1), Florida Administrative Code. However, when observing this requirement, Boards and special magistrates must act within their scope of authority described previously.
- The effective date of administrative review is January 1 each year, and the real property interest to be reviewed is the unencumbered fee simple estate. Section 193.011, F.S. contains eight statutory criteria the legislature has provided for property appraisers to consider in making just valuations. The property appraiser must take these factors into proper consideration.
Under Section 193.011(8), F.S., when the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property. Under Section 193.011(1), F.S., the property appraiser shall take into consideration the present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length. See generally the Florida Real Property Appraisal Guidelines. A copy of these guidelines is available at the following web address: <http://dor.myflorida.com/dor/property/RP/FLrpg.pdf>
- “For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods.” See subsection 194.034(5), F.S.

Florida law defines real property as land, buildings, fixtures, and all other improvements to land. See subsection 192.001(12), F.S.

- Florida law defines personal property as being divided into the following four categories: 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible personal property. See subsection 192.001(11), F.S.
- Section 193.011, F.S. contains eight statutory criteria the legislature has provided for property appraisers to consider in making just valuations. The property appraiser must take these factors into proper consideration.
Under Section 193.011(8), F.S., when the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

- Personal property just value should be excluded from just valuations of real property. See subsection 193.011(8), F.S.
- The petitioner is entitled to a determination by the Board of the appropriateness of the appraisal methodology used in making the assessment. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness.
- After lawfully considering the factors, the property appraiser may discard entirely any factor that is not probative (indicative) of just value under the circumstances, as long as the appraisal methodology complies with professionally accepted appraisal practices. See Mazourek v. Wal-Mart Stores, 831 So.2d 85 (Fla. 2002), and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). Also, see In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).
- However, the property appraiser cannot simply “out of hand” reject, without careful consideration, a just valuation factor as being inappropriate in a particular case. See Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985).
- The new law requires the property appraiser to show that he or she complied with Section 193.011, Florida Statutes, by considering each of the eight factors. If the property appraiser does not properly consider each of the eight factors, the property appraiser will not establish the presumption of correctness.

Petitioner’s Presentation of Evidence

If the property appraiser establishes the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the petitioner must prove by a preponderance of the evidence that the assessed value does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). “Preponderance of the evidence” is a standard (level) of proof that means “greater weight of the evidence” or “more likely than not.”

However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness. In this instance, the Board or special magistrate must establish the value if a party presents, or the record contains, competent substantial evidence of just value, or must remand the matter to the property appraiser with appropriate directions with which the property appraiser must comply. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Evaluation of Evidence

- In this training, the term “admitted evidence” means evidence that has been admitted into the record for consideration by the Board or special magistrate.
- As part of their administrative reviews, Boards or special magistrates must review the evidence presented, determine whether the evidence presented is admissible, and consider the admitted evidence.
- Under Florida law, as the trier of fact, the Board or special magistrate may independently rule on the admissibility and use of evidence. If the Board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the Board attorney.
- A property owner generally is qualified, on account of ownership, to testify regarding the just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

ADMINISTRATIVE REVIEWS OF REAL PROPERTY JUST VALUES PART 3

Determination of Whether the Assessment is Valid

- The Board or special magistrate must determine whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight to prove that the assessment is incorrect. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

The property appraiser must prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate; if this is not proven, the property appraiser will not establish the presumption of correctness. In this instance, the Board or special magistrate must establish the value if the record contains competent substantial evidence of just value, or must remand the matter to the property appraiser with appropriate directions with which the property appraiser must comply. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

The property appraiser's assessment will stand unless:

The property appraiser loses the presumption of correctness by failing to prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices. This includes mass appraisal standards, if applicable;

The admitted evidence proves that the property appraiser's assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; **or**

The preponderance of the evidence shows that the assessment 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.

See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

- If the admitted evidence proves that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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, then the Board or special magistrate must determine whether the record contains competent substantial evidence for establishing just value, as defined following. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Establishing Just Value or Remanding the Assessment

- If the property appraiser establishes the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and if the admitted evidence proves the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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, and the record contains competent substantial evidence for establishing just value, the Board shall establish the just value using the competent substantial evidence. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- If the property appraiser establishes the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and if the admitted evidence proves the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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, but the record does not contain competent substantial evidence for establishing just value, the Board or special magistrate must remand the assessment back to the property appraiser with appropriate directions. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- **NOTE:** More information on remanding an assessment is presented in the last training module titled, “Decisions of the Value Adjustment Board.”

Establishment of Just Value by the Board or Special Magistrate

In order for the Board or Special Magistrate to have legal authority to establish just value:

1. The admitted evidence must show:
 - a. That the property appraiser did not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and therefore the property appraiser did not establish the presumption of correctness. In this instance, the Board or special magistrate must establish the value if the record contains competent substantial evidence of just value, or must remand the matter to the property appraiser with specific instructions with which

the property appraiser must comply. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

or

b. That the property appraiser established the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and the admitted evidence proves by a preponderance of the evidence that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

2. The record must contain competent substantial evidence for establishing just value, as defined previously.

- If both requirements are met, the Board or special magistrate shall establish the just value based upon the requirements of law and using only the competent substantial evidence for establishing just value. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- It is important for Boards and special magistrates to understand the difference between two key decisions in the administrative review process under section 194.301 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- This statute provides a decision-making process for a Board or special magistrate to:
 - (1) decide whether the property appraiser has established the presumption of correctness. To make this conclusion, two questions must be answered:
 - (a) Did the property appraiser prove that the eight criteria in Section 193.011, F.S. were properly considered (complied with)?
 - (b) Were professionally accepted appraisal practices complied with in developing the proposed assessment?
- The answer to each question must be yes, or the property appraiser does not have a presumption of correctness.

A taxpayer who challenges an assessment is entitled to a determination by the Board or special magistrate of the appropriateness of the appraisal methodology used in making the assessment.

(2) decide whether the admitted evidence proves by a preponderance of the evidence that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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.

(3) If the property appraiser does not establish the presumption of correctness under (1), or if the petitioner proves the assessment is incorrect under (2), determine if the record contains “competent substantial evidence for establishing just value.”

(a) If yes, determine the value,

(b) If no, remand the case to the property appraiser with appropriate directions for how to determine a correct assessment and have the Clerk set a new hearing on the remand to ensure compliance with the instructions. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Legal Limitations on Administrative Reviews

- No evidence shall be considered by the Board or special magistrate except when presented during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice. See subsection 194.034(1)(c), F.S. Also, see Rule 12D-10.003(4)(b), F.A.C.
- Under Florida law, as the trier of fact, the Board or special magistrate may independently rule on the admissibility and use of evidence. If the Board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the Board attorney.
- The Board or special magistrate shall not consider the tax consequences of the valuation of a specific property in making its decision. See Rule 12D-10.003(1), Florida Administrative Code.

Sequence of Procedural Steps

- This section sets forth a sequence of eleven (11) procedural steps for administrative reviews of just valuations.

- 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 must follow this sequence in order to fulfill the procedural requirements of section 194.301, Florida Statutes (2009), starting with administrative reviews of 2009 assessments.
1. Consider the admitted evidence presented by the parties.
 2. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the factors in section 193.011, Florida Statutes as presented in the admitted evidence.
 3. Identify the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property, and consider this appraisal methodology in light of the essential characteristics of the petitioned property. Determine if that is the appropriate methodology.
 4. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology is appropriate and complies with section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If the property appraiser has not properly considered the eight criteria in section 193.011, F.S., or has not complied with professionally accepted appraisal practices, the presumption of correctness is not established. If the property appraiser has properly considered the eight criteria in section 193.011, F.S., and has complied with professionally accepted appraisal practices, the presumption of correctness is established.
 5. Determine whether the property appraiser's appraisal methodology is appropriate. The appraisal methodology is appropriate if it complies with section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If the appraisal methodology does not so comply, it is not appropriate, and the presumption of correctness of the assessment is not established.
 - a) If the board or special magistrate determines that the property appraiser's appraisal methodology is appropriate, the board or special magistrate must then proceed to step 6 below.
 - b) If the board or special magistrate determines that the property appraiser's appraisal methodology is not appropriate, the board or special magistrate must conclude that the assessment is invalid under the law and must then proceed to step 9 below.

6. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation does not represent just value.
7. Determine whether the admitted evidence proves by a preponderance of the evidence that 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.
 - a) In making this determination, the board or special magistrate must consider any admitted evidence regarding assessments among comparable properties within homogeneous areas or neighborhoods.
8. If the board or special magistrate determines that the assessment is correct under steps 5, 6, and 7, the board or special magistrate must not proceed further and must produce a written decision or written recommended decision.
9. If the board or special magistrate determines that the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation does not represent just value, or 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, or that the presumption of correctness is not established under either step 5, 6 or 7, the board or special magistrate must then determine whether the hearing record contains competent, substantial evidence of just value that cumulatively meets the criteria of section 193.011, Florida Statutes, and professionally accepted appraisal practices.
10. If the board or special magistrate determines that the hearing record contains competent, substantial evidence for establishing a revised just value, the board or an appraiser special magistrate must establish a revised just value based only upon such evidence.
 - a) When the prerequisite conditions exist, the board or an appraiser special magistrate is required to establish a revised just value for the petitioned property.
 - b) In establishing a revised just value when required by law, the board or special magistrate is not restricted to any specific values offered by the parties.
11. If the hearing record lacks competent, substantial evidence for establishing a revised just value, the board or special magistrate must remand the assessment to the property appraiser with appropriate directions that the property appraiser is required to follow under law. The Board or special magistrate shall instruct the Clerk to schedule a new hearing on the remand.

ADMINISTRATIVE REVIEWS OF TANGIBLE PERSONAL PROPERTY JUST VALUES PART 1

NEW Statutory Law Beginning in 2009 (See HB 521)

- An important change to Florida Statutes was passed in the 2009 legislative session and then approved by the Governor on June 4, 2009. See section 194.301, Florida Statutes, as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- A complete copy of this new legislation is presented here:

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 194.301, Florida Statutes, is amended to read:

194.301 Challenge to ad valorem tax assessment.—

- (1) In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser's assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. However, a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment. The value of property must be determined by an appraisal methodology that complies with the criteria of s. 193.011 and professionally accepted appraisal practices. The provisions of this subsection preempt any prior case law that is inconsistent with this subsection.
- (2) In an administrative or judicial action in which an ad valorem tax assessment is challenged, the burden of proof is on the party initiating the challenge.
 - (a) If the challenge is to the assessed value of the property, the party initiating the challenge has the burden of proving by a preponderance of the evidence that the assessed value:
 1. Does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property;
 2. Does not represent the classified use value or fractional value of the property if the property is required to be assessed based on its character or use; or
 3. 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.
 - (b) If the party challenging the assessment satisfies the requirements of paragraph (a), the presumption provided in subsection (1) is overcome and the value adjustment board or the court shall establish the assessment if there is competent, substantial evidence of value in the record which cumulatively meets the criteria of s. 193.011 and professionally accepted appraisal practices. If the record lacks such evidence, the matter must be remanded to the property appraiser with appropriate

directions from the value adjustment board or the court, and the property appraiser must comply with those directions.

- (c) If the revised assessment following remand is challenged, the procedures described in this section apply.
- (d) If the challenge is to the classification or exemption status of the property, there is no presumption of correctness and the party initiating the challenge has the burden of proving by a preponderance of the evidence that the classification or exempt status assigned to the property is incorrect.

Section 2. (1) It is the express intent of the Legislature that 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. All cases establishing the every-reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretative of legislative intent.

(2) This section is intended to clarify existing law and apply retroactively.

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Approved by the Governor June 4, 2009.

Filed in Office Secretary of State June 4, 2009.

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Florida Information on Appraisal Development

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 - (1) *The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length; and*
 - (8) *The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or a typical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall*

exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.”

- The Tangible Personal Property Appraisal Guidelines contain descriptions of appraisal methods that may be used by property appraisers to develop just valuations of tangible personal property consistent with Florida law.
- Boards and special magistrates are expected to understand these guidelines for purposes of reviewing challenged assessments. A copy of these guidelines is available at the following web address:
<http://dor.myflorida.com/dor/property/guidelines.html>
- Appraisal is an art, not a science. See Powell v. Kelly, 223 So.2d 305 (Fla. 1969).
- The property appraiser’s discretion is limited by the constitutional requirement for a just valuation, the Florida Supreme Court’s definition of just value, and by the criteria of section 193.011, F.S. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006). Also, see section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- The property appraiser is required to consider, but is not required to use, all three approaches to value. See Mastroianni v. Barnett Banks, Inc., 664 So.2d 284 (Fla. 1st DCA 1995) review denied 673 So.2d 29 (Fla. 1996). However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness.
- The property appraiser’s appraisal methodology must comply with the criteria in section 193.011, F.S., and professionally accepted appraisal practices. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and section 193.011, F.S.
- The property appraiser has discretion to determine the valuation methodology as long as it complies with the criteria of section 193.011, F.S., and professionally accepted appraisal practices. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006), and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness.

Provisions for Administrative Reviews

- Boards and special magistrates must follow the provisions of law on the administrative review of assessments. See Chapter 194, Part 1, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Rule 12D-10, F.A.C.
- In establishing just value when required by law, Boards and special magistrates are bound by the same standards as property appraisers. See Rule 12D-10.003(1), Florida Administrative Code. However, when observing this requirement, Boards and special magistrates must act within their scope of authority described previously.
- The effective date of administrative review is January 1 each year, and the property interest to be reviewed is the unencumbered fee simple estate. Section 193.011, F.S. contains eight statutory criteria the legislature has provided for property appraisers to consider in making just valuations. The property appraiser must take these factors into proper consideration.
Under Section 193.011(8), F.S., when the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property. Under Section 193.011(1), F.S., the property appraiser shall take into consideration the present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length. See generally the Tangible Personal Property Appraisal Guidelines. A copy of these guidelines is available at the following web address: <http://dor.myflorida.com/dor/property/guidelines.html>
- Florida law defines real property as land, buildings, fixtures, and all other improvements to land. See subsection 192.001(12), F.S.
- Florida law defines personal property as being divided into the following four categories: 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible personal property. See subsection 192.001(11), F.S.
- Section 193.011, F.S. contains eight statutory criteria the legislature has provided for property appraisers to consider in making just valuations. The property appraiser must take these factors into proper consideration.
Under Section 193.011(8), F.S., when the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any

portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

- Personal property just value should be excluded from just valuations of real property. See subsection 193.011(8), F.S.
- The petitioner is entitled to a determination by the Board of the appropriateness of the appraisal methodology used in making the assessment. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness..
- After lawfully considering the factors, the property appraiser may discard entirely any factor that is not probative (indicative) of just value under the circumstances, as long as the appraisal methodology complies with professionally accepted appraisal practices. See Mazourek v. Wal-Mart Stores, 831 So.2d 85 (Fla. 2002), and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). Also, see In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).
- However, the property appraiser cannot simply “out of hand” reject, without careful consideration, a just valuation factor as being inappropriate in a particular case. See Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985).
- The new law requires the property appraiser to show that he or she complied with Section 193.011, Florida Statutes, by considering each of the eight factors. If the property appraiser does not properly consider each of the eight factors, the property appraiser will not establish the presumption of correctness.

Petitioner’s Presentation of Evidence

- If the property appraiser establishes the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the petitioner must prove by a preponderance of the evidence that the assessed value does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

“Preponderance of the evidence” is a standard (level) of proof that means “greater weight of the evidence” or “more likely than not.”

However, if the property appraiser does not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the property appraiser will not establish the presumption of correctness. In this instance, the Board or special magistrate must establish the value if a party presents, or the record contains competent substantial evidence of just value, or must remand the matter to the property appraiser with appropriate directions with which the property appraiser must comply. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Evaluation of Evidence

- In this training, the term “admitted evidence” means evidence that has been admitted into the record for consideration by the Board or special magistrate.
- As part of their administrative reviews, Boards or special magistrates must review the evidence presented, determine whether the evidence presented is admissible, and consider the admitted evidence.
- Under Florida law, as the trier of fact, the Board or special magistrate may independently rule on the admissibility and use of evidence. If the Board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the Board attorney.
- A property owner generally is qualified, on account of ownership, to testify regarding the just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

ADMINISTRATIVE REVIEWS OF TANGIBLE PERSONAL PROPERTY JUST VALUES PART 3

Determination of Whether the Assessment is Valid

- The Board or special magistrate must determine whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight to prove that the assessment is incorrect. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
- The property appraiser must prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate; if this is not proven, the property appraiser will not establish the presumption of correctness. In this instance, the Board or special magistrate must establish the value if the record contains competent substantial evidence of just value, or must remand the matter to the property appraiser with appropriate directions with which the property appraiser must comply. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

The property appraiser's assessment will stand unless:

The property appraiser loses the presumption of correctness by failing to prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices. This includes mass appraisal standards, if applicable;

The admitted evidence proves that the property appraiser's assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; **or**

The preponderance of the evidence shows that the assessment 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.

See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

- If the admitted evidence proves that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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, then the Board or special magistrate must determine whether the record contains competent substantial evidence for establishing just value, as defined following. See section

194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

- If the property appraiser establishes the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and if the admitted evidence proves the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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, and the record contains competent substantial evidence for establishing just value, the Board shall establish the just value using the competent substantial evidence. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

- If the property appraiser establishes the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and if the admitted evidence proves the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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, but the record does not contain competent substantial evidence for establishing just value, the Board or special magistrate must remand the assessment back to the property appraiser with appropriate directions. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

- **NOTE:** More information on remanding an assessment is presented in the last training module titled, “Decisions of the Value Adjustment Board.”

Establishment of Just Value by the Board or Special Magistrate

- In order for the Board or Special Magistrate to have legal authority to establish just value:
 1. The admitted evidence must show:
 - a. That the property appraiser did not prove by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and therefore the property appraiser did not establish the presumption

of correctness. In this instance, the Board or special magistrate must establish the value if the record contains competent substantial evidence of just value, or must remand the matter to the property appraiser with specific instructions with which the property appraiser must comply. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

or

b. That the property appraiser established the presumption of correctness by proving by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, and the admitted evidence proves by a preponderance of the evidence that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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. See section 193.011, F.S., and section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

2. The record must contain competent substantial evidence for establishing just value, as defined previously.
 - If both requirements are met, the Board or special magistrate shall establish the just value based upon the requirements of law and using only the competent substantial evidence for establishing just value. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
 - It is important for Boards and special magistrates to understand the difference between two key decisions in the administrative review process under section 194.301 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).
 - This statute provides a decision-making process for a Board or special magistrate to:
 - (1) decide whether the property appraiser has established the presumption of correctness. To make this conclusion, two questions must be answered:
 - (a) did the property appraiser prove that the eight criteria in Section 193.011, F.S. were properly considered (complied with),,
 - (b) and were professionally accepted appraisal practices complied with in developing the proposed assessment,
 - The answer to each question must be yes, or the property appraiser does not have a presumption of correctness.

A taxpayer who challenges an assessment is entitled to a determination by the Board or special magistrate of the appropriateness of the appraisal methodology used in making the assessment.

(2) decide whether the admitted evidence proves by a preponderance of the evidence that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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.

(3) If the property appraiser does not establish the presumption of correctness under (1), or if the petitioner proves the assessment is incorrect under (2) determine if the record contains “competent substantial evidence for establishing just value.”

(a) If yes, determine the value,

(b) If no, remand the case to the property appraiser with appropriate directions for how to determine a correct assessment and have the Clerk set a new hearing on the remand to ensure compliance with the instructions. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Legal Limitations on Administrative Reviews

- No evidence shall be considered by the Board or special magistrate except when presented during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice. See subsection 194.034(1)(c), F.S. Also, see Rule 12D-10.003(4)(b), F.A.C.
- Under Florida law, as the trier of fact, the Board or special magistrate may independently rule on the admissibility and use of evidence. If the Board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the Board attorney.
- The Board or special magistrate shall not consider the tax consequences of the valuation of a specific property in making its decision. See Rule 12D-10.003(1), Florida Administrative Code.

Sequence of Procedural Steps

- This section sets forth a sequence of eleven (11) procedural steps for administrative reviews of just valuations.
 - 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 must follow this sequence in order to fulfill the procedural requirements of section 194.301, Florida Statutes (2009), starting with administrative reviews of 2009 assessments.
1. Consider the admitted evidence presented by the parties.
 2. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the factors in section 193.011, Florida Statutes as presented in the admitted evidence.
 3. Identify the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property, and consider this appraisal methodology in light of the essential characteristics of the petitioned property. Determine if that is the appropriate methodology.
 4. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology is appropriate and complies with section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If the property appraiser has not properly considered the eight criteria in section 193.011, F.S., or has not complied with professionally accepted appraisal practices, the presumption of correctness is not established. If the property appraiser has properly considered the eight criteria in section 193.011, F.S., and has complied with professionally accepted appraisal practices, the presumption of correctness is established.
 5. Determine whether the property appraiser's appraisal methodology is appropriate. The appraisal methodology is appropriate if it complies with section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If the appraisal methodology does not so comply, it is not appropriate, and the presumption of correctness of the assessment is not established.
 - a) If the board or special magistrate determines that the property appraiser's appraisal methodology is appropriate, the board or special magistrate must then proceed to step 6 below.
 - b) If the board or special magistrate determines that the property appraiser's appraisal methodology is not appropriate, the board or special magistrate must

conclude that the assessment is invalid under the law and must then proceed to step 9 below

6. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation does not represent just value.
7. Determine whether the admitted evidence proves by a preponderance of the evidence that 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.
 - a) In making this determination, the board or special magistrate must consider any admitted evidence regarding assessments among comparable properties within homogeneous areas or neighborhoods.
8. If the board or special magistrate determines that the assessment is correct under steps 5, 6, and 7, the board or special magistrate must not proceed further and must produce a written decision or written recommended decision.
9. If the board or special magistrate determines that the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation does not represent just value, or 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, or that the presumption of correctness is not established under either step 5, 6 or 7, the board or special magistrate must then 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.
10. If the board or special magistrate determines that the hearing record contains competent, substantial evidence for establishing a revised just value, the board or an appraiser special magistrate must establish a revised just value based only upon such evidence.
 - a) When the prerequisite conditions exist, the board or an appraiser special magistrate is required to establish a revised just value for the petitioned property.
 - b) In establishing a revised just value when required by law, the board or special magistrate is not restricted to any specific values offered by the parties.
11. If the hearing record lacks competent, substantial evidence for establishing a revised just value, the board or special magistrate must remand the assessment to the property appraiser with appropriate directions that the property appraiser is required to follow under law. The Board or special magistrate shall instruct the Clerk to schedule a new hearing on the remand.

DECISIONS OF THE VALUE ADJUSTMENT BOARD PART 2

Presentation of Evidence

The Board or Special Magistrate shall consider only evidence that is presented at the hearing or at another time when the petitioner has had reasonable notice. This requirement is specifically spelled out in Subsection 194.034(1)(c), F.S. which reads:

The rules shall provide that no evidence shall be considered by the board except when presented during the time scheduled for the petitioner's hearing or at a time when the petitioner has been given reasonable notice; that a verbatim record of the proceedings shall be made, and proof of any documentary evidence presented shall be preserved and made available to the Department of Revenue, if requested; and that further judicial proceedings shall be as provided in s. 194.036.

Presentation of Evidence

Boards or special magistrates must review the evidence, determine whether the evidence is admissible, and then consider the evidence.

The Board or special magistrate must consider the evidence and determine whether it is “sufficiently relevant and credible” to reach the “preponderance of the evidence” standard of proof explained in this training.

Admissibility of Evidence

The Board is a quasi-judicial body and special magistrates are quasi-judicial officers. See *Redford v. Department of Revenue*, 478 So.2d 808 (Fla. 1985) and subsection 195.027(3), Florida Statutes. Also, see *Rodriguez v. Tax Adjustment Experts of Florida, Inc.*, 551 So.2d 537 (Fla. 3d DCA 1989).

Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. See *Jennings v. Dade County*, 589 So.2d 1337 (Fla. 3d DCA 1991). Also, see *Ehrhardt's Florida Evidence*, 2008 Edition (Eagan, MN: Thomson West, 2008), page 5.

Boards and special magistrates must not apply strict standards of relevance or materiality in deciding whether to admit evidence into the record. Any decisions to exclude evidence must not be arbitrary or unreasonable.

Some evidence is specifically inadmissible during the hearing on the petition.

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, 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.

If the petitioner chooses to participate in an exchange of evidence with the property appraiser, at least 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.

Under Florida law, as the trier of fact, the Board or special magistrate may independently rule on the admissibility and use of evidence. If the Board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the Board attorney.

Definitions: Sufficient

“Sufficient” means the admitted evidence is “good enough” to legally justify a particular decision by the Board or special magistrate.

Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded. See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

To determine whether the evidence is sufficient, the Board or special magistrate must:

1. Evaluate the “relevance and credibility” of the evidence;
2. Determine the overall weight of the evidence;
3. Compare the overall weight of the evidence to the standard of proof;
and
4. Determine whether the weight of the evidence meets the standard of proof.

If the weight of the evidence meets the standard of proof (proves that the assessment does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property; or 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)(or for an exemption, classification, or portability assessment difference transfer, proves the necessary statutory criteria were met), or if the presumption of correctness of the assessment is not established under section 194.301(1), F.S., then the Board or special magistrate must overturn the assessment. If not, the assessment must be upheld.

DECISIONS OF THE VALUE ADJUSTMENT BOARD PART 4

Decisions to Remand the Assessment

If the special magistrate or the Board finds that there is sufficient evidence to overturn the assessment, but not enough evidence in the record to allow for a correct assessment to be made, the assessment may be remanded to the property appraiser who will make a new assessment based on the remand instructions.

A decision by the Board or special magistrate to remand an assessment to the property appraiser must be in writing.

The Board clerk must retain the verbatim record and documentary evidence presented at the hearing so they are available for review during the remand period.

A written remand decision should contain the following items:

All findings of fact and conclusions of law that are needed to justify the remand decision; [See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521)];

Appropriate remand directions to the property appraiser.

Under 2009 changes to Florida Statutes, the property appraiser must follow the remand directions of the Board or special magistrate. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

For procedures when a revised assessment following remand is challenged, see section 194.301, F.S., (as amended by Chapter 2009-121, Laws of Florida (House Bill 521)).

Complaints

If a Board, Board attorney, Clerk, or special magistrate receives written communication from a party expressing concerns about a hearing or a recommended decision, the following steps should be taken:

1. If the Board, Board attorney, or special magistrate receives the written communication, the communication should be immediately provided to the Clerk who should keep the communication as part of the petition record.
2. The Clerk should immediately send a copy of the communication to the other party and provide a copy to the Board attorney.

3. The Board attorney should review the matter to determine whether the requirements of law were met and whether corrective action is needed.
4. If the Clerk receives any response from the other party, the clerk should keep the response as part of the petition record and provide a copy of the response to the Board attorney.
5. The Board attorney may request a response from the other party.
6. The Board attorney should write a determination of whether the requirements of law were met and if any corrective action should be taken, and provide this to the Clerk.
7. The Clerk must provide a copy of the Board attorney's determination to both parties.
8. The Board attorney must provide a copy of the original complaint and the Board attorney's determination or response to the Department.