

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

|                             |   |          |
|-----------------------------|---|----------|
| ROB TURNER, as Hillsborough | ) |          |
| County Property Appraiser   | ) |          |
|                             | ) |          |
|                             | ) |          |
| Petitioner,                 | ) |          |
| vs.                         | ) | Case No. |
|                             | ) |          |
| FLORIDA DEPARTMENT          | ) |          |
| OF REVENUE,                 | ) |          |
|                             | ) |          |
| Respondent.                 | ) |          |

**PETITION**

Rob Turner, as Hillsborough County Property Appraiser, brings this petition against the Florida Department of Revenue and alleges:

1. Petitioner Rob Turner (“Turner”) is the Hillsborough County Property Appraiser.
2. As the elected official, Turner’s statutory and constitutional duties are to value all property in Hillsborough County for the purposes of ad valorem taxation.
3. Turner’s duties also include the defense of those values at administrative hearings before the Hillsborough County Value Adjustment Board. (See Fla. Stat. 194.011, 194.034.)
4. VAB hearings take place in the fall of each calendar year.

5. The Florida Department of Revenue (“DOR”) has both implemented rules that contradict established law and developed agency statements of general applicability that constitute a rule without following proper procedure for establishing a rule.
6. The rules challenged herein directly impact Turner’s defense of property tax appraisals at the VAB level in that they contradict established law and create an unfair and improper burden at VAB hearings, resulting in a financial and administrative burden on Turner’s office.
7. The complained of rules in this challenge constitute an invalid exercise of delegated authority in that they directly conflict with existing law and are both arbitrary and capricious.
8. There are no material facts in dispute.

**COUNT I – RULE 12D-9.020/12D-9.025**

9. Florida Statute 194.011(4)(a) sets forth the procedures for the exchange of evidence between parties to a VAB petition. That statute states, “At least 15 days before the hearing the petitioner **shall provide** to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation

to be considered by the value adjustment board and a summary of evidence to be presented by witnesses.” (Emphasis added.)

10. In spite of the mandatory evidence exchange contemplated in Florida Statute 194.011(4)(a), the Florida Department of Revenue promulgated Rule 12D-9.020 which makes the evidence exchange **optional**. Subsection (1) of the rule begins, “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 special magistrate.” The language making an evidence exchange optional is repeated in Subsections (2)(a), (2)(b) and Rule 12D-9.025(2)(c) and 12D-9.025(4)(a).
11. Rule 12D-9.020 directly conflicts with Florida Statute 194.011(4)(a) and is arbitrary and capricious.
12. 12D-9.020 puts Turner in the unreasonable and burdensome position of having to appear at VAB hearings without knowing what evidence will be presented by the petitioner.
13. Although the rule states that a county property appraiser such as Turner may request in writing any evidence a petitioner is planning to submit [See 12D-9.020(8)], this provision then requires Turner

to expend monies and resources mailing each petitioner correspondence requesting such evidence. This requirement to make a written request is also not contemplated by Florida Statute 194.011(4)(a).

14. Finally, Rule 12D-9.020(8) allows a petitioner to present “rebuttal evidence” at a hearing without providing it in advance to the county property appraiser. This also contradicts Florida Statute 194.011(4)(a).

## **COUNT II - 2010 VALUE ADJUSTMENT BOARD**

### **TRAINING MANUAL**

15. Turner challenges the implementation of the Florida Department of Revenue’s 2010 Value Adjustment Board Training Manual (“Training Manual”) as an unpromulgated agency rule and therefore an invalid exercise of delegated legislative authority.
16. Certain specific policies within the Training Manual also contradict and violate established law.
17. Florida Statutes 194.011(5), 194.035(3) and Rule 12D-9.012 contemplate that the DOR will provide rules, procedures and training to VAB special magistrates. The Training Manual is the official training for the VAB and special magistrates. (Page 2,

Training Manual; F.A.C. 12D-9.015) All VAB special magistrates are required to take this training. (Page 4, Training Manual.)

18. In Department of Revenue v. Vanjaria Enterprises, Inc., 675 So. 2d 252 (Fla. 5<sup>th</sup> DCA 1996), the First District Court of Appeal held that a DOR training manual constituted an unpromulgated rule.
19. Page 65 of the Training Manual reiterates the same evidentiary procedures complained of in Count I of this petition: to wit, it attempts to create an optional evidentiary exchange when Florida Statute 194.011(4) requires a mandatory evidence exchange.
20. Pages 68-69 of the Training Manual attempt to void established Florida case law by claiming that the case of Higgs v. Good, 813 So. 2d 178 (Fla. 3d DCA 2002) is not applicable to VAB proceedings.
21. In Higgs v. Good, the court held that a taxpayer could not refuse to provide data requested by county property appraiser, then use that same data later in an attempt to achieve a reduction in his property tax assessment.
22. The DOR's statement that Higgs v. Good does not apply to administrative hearings directly conflicts with the holding of the

case, wherein the court states that Higgs v. Good applies in both circuit court and administrative hearings, as follows:

We conclude that it was error for the trial court to allow Good to defer the submission of the income data until it pleased him to submit it (tardily), then use the data to demand either administrative or judicial reduction of his property's tax assessment valuation.

Id at 179 (emphasis supplied.)

23. Pages 92 and 110 also adopts a position contrary to long-standing law in that it proclaims that “just value” (the value county property appraiser must arrive at for property tax purposes) is no longer equal to “fair market value”.
24. DOR’s position in the Training Manual on this matter is as follows: “Subsection 193.011(8) F.S., generally known as the ‘eight criterion’ was last amended in 1979... . Since its enactment and amendments, this eighth just valuation criterion has functioned to create, in effect, a net just value that is less than fair market value.” (Training Manual, page 92.)
25. On page 110, the Training Manual goes on to provide examples of how to adjust for the eighth criterion.

26. This DOR mandate directly conflicts with the law as set forth in Walter v. Schuler 176 So. 2d 181 (Fla. 1965) (“...just value is synonymous with fair market value....”); Turner v. Tokai Financial Services, Inc., 767 So. 2d 494 (Fla. 2d DCA 2000) (“Therefore the costs of sale have already been factored into the market value of the property when it is placed for sale. To allow a blanket deduction for costs of sale gives a windfall to the seller who has already accounted for them in his sales price.”); Valencia Center, Inc. v. Bystrom, 543 So. 2d 214 (Fla. 1989)(“This Court has found that the just valuation at which property must be assessed under the constitution and section 193.011 is synonymous with fair market value... .”) Bystrom v. Valencia Center, Inc., 432 So. 2d 108 (Fla. 3d DCA 1983)(“Valencia’s argument is that the language of Section 193.011(2), Florida Statute (1979), requires the Appraiser to apply criteria yielding a value less than fair market value. That desired result would interpret the statute as explicitly unconstitutional.”)
27. DOR’s Training Manual constitutes an unpromulgated rule, parts of which directly conflict with Florida law.

WHEREFORE, Rob Turner, as Hillsborough County Property Appraiser respectfully requests this body:

1. Find that the above rules set forth in Count I contradict established law and are invalid and of no effect;
2. Find that the 2010 Value Adjustment Board Training Manual is an unpromulgated rule and/or contradicts established law and the sections specified in Count II are invalid and of no effect;
3. Award Turner his attorney's fees and costs; and
4. Grant any other relief deemed appropriate.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via U.S. Mail to Steve Keller, Esquire, Florida Department of Revenue, Property Tax Administration, Legal Department, P.O. Box 6668 Tallahassee, FL 32314-6668 and by U. S. Mail to Joseph Mellichamp, Esquire, Office of the Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, FL 32399-1050 this 9<sup>th</sup> day of February, 2011.



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