

JANUARY 12, 2011

The [Value Adjustment Board \(VAB\) Meeting](#) was held on this date with the following members present:

BOARD OF COUNTY COMMISSIONERS

A. Brian Bigelow, Chairman
Ray Judah

LEE COUNTY SCHOOL BOARD

Mary Fischer, [Alternate for Dr. Jane Kuckel](#)

CITIZEN MEMBERS

Fred Kobie, School Board Appointee
Alan Garges, Board of County Commissioners Appointee

CALL TO ORDER

The Chairman called the meeting to order at 10:00 a.m.

FILING OF THE AFFIDAVIT OF PUBLICATION

Attorney Holly Cosby, VAB Counsel, approved as to legal form and sufficiency, the [Affidavit of Publication](#); and entered it into the record. She noted that placement of the City of Fort Myers logo instead of the Lee County logo in the published advertisement did not invalidate the notice.

ANNOUNCEMENTS

Attorney Cosby read into the record an [announcement](#) concerning the procedures for public comment.

PUBLIC COMMENT

The Chairman called for public comment, and the following individuals came forward:

Cape Coral resident [Harry Mandell](#) expressed concern that the presiding magistrate at his hearing (Petition 2010-00477) would not allow him to separate assessed value of the land from assessed value of the building.
LATER IN THE MEETING:

Following further discussion, it was agreed that Mr. Mandell would be personally notified when the next VAB meeting date was determined. Attorney Cosby requested the name of the special magistrate who presided at Mr. Mandell's hearing, so that additional information could be acquired from the hearing record; and advised him to consult with an attorney if he wished to appeal through the Circuit Court.

Attorney [K'Shana Haynie](#), of the law firm of Roetzel and Andress, representing Steeve Squared LLC (Petitions 2010-00821 thru 2010-00877) requested that action be deferred on the Working Waterfront Classification petitions so the Final Decision mailing date would be the same as for another group of Valuation petitions for the same parcels that would be heard on January 20, 2011. She also mentioned that the Property Appraiser representative at the Classification hearings was not familiar with the properties in question.
LATER IN THE MEETING:

Attorney Cosby pointed out that the VAB was an independent body with no control over Property Appraiser personnel. She also noted that the two groups of petitions dealt with two different issues, which could require separate Circuit Court actions; and that the petitioner was not precluded from filing immediately in Circuit Court. She cautioned that removal of the petitions from the list of recommendations to be considered could be construed as preferential to one of the parties. Assistant County Attorney Dawn Lehnert, counsel to the Property Appraiser, opined that it would make sense to have both sets of petitions "travel together", since this appeared to be an unusual occurrence that would not set a precedent.

Fort Myers resident [April Miller](#), representing Steeve Squared LLC, pointed out that the Property Appraiser's evidence included pictures of signs that were not owned or placed by the petitioning property owner; and that she had pointed this out at the hearing.

Cape Coral resident [Pasquale Guarino](#) noted that the Property Appraiser did not consider the condition of the water or water depth when appraising his canal front property (Petition 2010-00496); and that individual assessors are not familiar with debris and drainage issues on individual canals.
LATER IN THE MEETING:

Attorney Cosby stated that Mr. Guarino's complaint regarding assessments on canal front properties should be addressed to the Property Appraiser.

Boca Grande resident [Tom Midyett](#) submitted a speaker card, but stated that he had no comments at this time.

Mr. Rex Harrell inquired about the disposition of his petition (2010-00515) and was informed that it had been granted.

FOLLOWING THE PETITIONERS' AND ATTORNEY COSBY'S COMMENTS:

Chairman Bigelow suggested that, for the March meeting, the public comment time limit should be expanded to five (5) minutes; that the speakers should be allowed to speak about any subject during that time; and that VAB Counsel would advise the Board as to which matters could or could not be considered by the Board. Following discussion about the ramifications of allowing speakers to address the particulars of their petitions, Attorney Cosby indicated that the public comment policy would be changed to a maximum of five minutes per speaker; and would include a statement that the Board would not consider subject matter issues, but would consider any and all procedural issues. There was consensus that the policy should be written in language simple enough for the petitioners to know what types of information would or would not be considered by the Board.

CONSENT AGENDA ITEMS TO BE PULLED:

Mr. Kobie - Item C-2

CONSENT AGENDA:

VAB Administration

C-1 ACTION REQUESTED/PURPOSE

Approve the Minutes of November 10, 2010 - [Exhibit C-1](#)

Commissioner Judah moved approval, seconded by Mr. Garges, called and carried.

C-2 ACTION REQUESTED/PURPOSE

- a. Approve recommendations as provided by VAB Special Magistrates except for Petition 2010-00075 - [Exhibit C-2](#)
- b. Approve recommendations as provided by VAB Special Magistrate for Petition 2010-00075 - [Exhibit C-2](#)

PULLED FOR DISCUSSION:

Referring to Mr. Mandell's comments, Commissioner Bigelow remarked that appraisals generally show land and building values independently. During the general Board discussion that ensued, Property Appraiser Assessment Administrator Julie Dalton briefly described the grids prepared and presented by the Property Appraiser analysts at hearings. Attorney Cosby indicated that she would contact the Property Appraiser's Office, review the audio hearing record, and speak to the special magistrate to determine whether there was any procedural error during the hearing for Mr. Mandell's petition. At the Chairman's request, Commissioner Judah moved to defer consideration of Petition 2010-00477 for procedural reasons to the March VAB meeting, seconded by Mr. Kobie, called and carried.

Mr. Kobie opined that, although the concern expressed by Mr. Guarino did not appear to be a procedural issue, it would not hurt anything to pull the petition pending research for additional information. Following brief Board discussion, Mr. Kobie moved to postpone consideration of Petition 2010-00496 to the March VAB meeting, seconded by Ms. Fischer, called and carried. Chairman Bigelow indicated that an investigation should be made into any possible procedural issues and a report provided to the Board at the next meeting.

Mr. Kobie moved to postpone a decision on Petitions 2010-00821 through 2010-00877, to allow VAB consideration of both sets of petitions for Steeve Squared at the next VAB meeting, seconded by Mr. Garges. Attorney Cosby clarified that the VAB was taking this action because the process had been bifurcated, and that the Property Appraiser had agreed to the postponement. Mr. Kobie amended the motion to state that all parties had agreed to move this item to the next meeting, and the seconder agreed. The amended motion was called and carried.

Mr. Kobie moved approval of the balance of Item C-2a, seconded by Ms. Fischer, called and carried.

Commissioner Judah moved approval of the recommendation as listed for Item C-2b, seconded by Mr. Garges, called and carried with Mr. Kobie abstaining.

C-3 ACTION REQUESTED/PURPOSE

Accept preliminary revenue/expense report - [Exhibit C-3](#)

Commissioner Judah moved approval, seconded by Mr. Garges, called and carried.

5. ADMINISTRATIVE AGENDA

VAB Counsel

A-1 ACTION REQUESTED/PURPOSE

Review and approve changes to VAB Local Administrative Procedures - [Exhibit A-1](#)

VAB Attorney Holly Cosby commented that, because this particular issue was not addressed in the recent changes to the Florida Administrative Code (F.A.C.), she had suggested adding application of the "mailbox rule" to notices mailed or emailed to petitioners. She explained that the "rule" was basically that an item would be deemed received if it was mailed and not returned, and read the proposed text from Page 5 of the Exhibit. Commissioner Judah moved approval, seconded by Mr. Kobie. In response to Commissioner Bigelow's questions, Attorney Cosby explained that notices were sent via US Mail unless the petitioner had requested email; that requesting a return receipt would add \$5.00 to each piece of mail; and that allowances were made for emergency situations. After Minutes Lead VAB Clerk Michele Cooper noted that there were proofs of mailing for emailed notices, the motion was called and carried.

VAB Administration

A-2 ACTION REQUESTED/PURPOSE

Discuss potential dates for 2010 VAB meeting in March 2011 to review recommendations as received from Special Magistrates and to conduct other business as needed.

Lead VAB Clerk Michele Cooper asked whether there was a day/time that would work just as well or better than Wednesday at 10:00 am for the Board members and VAB Counsel. Following discussion, there was consensus that the next meeting would be scheduled for 10:00 am on Wednesday, March 16, or Wednesday, March 23, with alternate dates of Thursday afternoon, March 17 or March 24. Ms. Fischer so moved, seconded by Mr. Kobie, called and carried.

AT THIS TIME, COMMISSIONER JUDAH LEFT THE MEETING AND DID NOT RETURN.

6. VAB MEMBERS' ITEMS

No items were presented for consideration by the individual Board members.

7. VAB ADMINISTRATION ITEMS

I-1 VAB Clerk Report on 2010 VAB Petitions Received to date (Graph) - [Exhibit I-1](#)

Ms. Cooper explained that the graph, which was omitted from the backup material for the previous meeting, showed a comparison of petitions received for the last three years. She noted that considerably fewer petitions were received for 2010, and explained the changes in the Department of Revenue (DOR) rules that resulted in the processing of more late-filed petitions. Ms. Cooper distributed a [chart](#) showing that over 2,800 petitioner notices had been sent via email, resulting in over \$1,000 savings on postage costs. She also presented a sample of the DOR-approved postcard Final Decision form ([DR-485M](#)), the use of which would result in additional savings.

8. VAB COUNSEL ITEMS

I-2 Report on Right of Board to Accept Special Magistrate recommendations without Further Review - [Exhibit I-2](#)

Attorney Cosby noted that, at the Board's request, she had prepared a five-page memo with references to all rules and laws regarding the Board's rights and responsibilities pertaining to Board acceptance of Special Magistrate recommendations without further consideration.

I-3 Update on Bevan lawsuit

Attorney Cosby reported that the case had been taken to the District Court of Appeals, and provided [copies of documents](#) relevant to the case. She added that as of January 5, 2011, the Bevans had fifteen (15) days to show cause why the appeal should not be dismissed; and that she would be filing a notice that there were no other cases related to this proceeding.

Extra Item: Complaint Alleging Special Magistrate Rule Violations

Attorney Cosby stated that a complaint alleging rule violations by the special magistrate at a hearing on December 22, 2010 had been received via email on January 10, 2011; and that the Minutes Office had reviewed the audio hearing file and provided a synopsis which was used to produce a response to the petitioner. [Copies of the complaint and response](#) were given to the Board members. Attorney Cosby explained that this communication did not constitute ex parte communication because it concerned a procedural issue; and provided a copy to the Property Appraiser's Attorney. Following lengthy discussion between the Board and Attorney Cosby, Mr. Kobie suggested that a complaint regarding a special magistrate should be discussed by the Board prior to any response. Commissioner Bigelow suggested that this item be tabled to allow VAB Counsel to prepare a policy amendment to address the complaint review process. Attorney Cosby suggested that, when a personal complaint is received, she could acknowledge receipt of the complaint, inform the complainant that their issue would be presented at the next Board meeting, and encourage the complainant to attend the meeting. At the same time, she would review, research, and provide the Board with her proposed response, which would be considered and revised as necessary at the Board meeting before being sent to the petitioner. Chairman Bigelow pointed out that Board members could call Attorney Cosby for explanations of meeting agenda items.

7. Adjourn

Mr. Kobie moved to adjourn, seconded by Mr. Garges, called and carried.

The Chairman adjourned the meeting at 11:30 a.m.

ATTEST:
CHARLIE GREEN, CLERK

Deputy Clerk

[Chairman, Lee County Value Adjustment Board](#)