

Procedures “Script” for Special Magistrate Hearing

(NOTE: Please refer to DOR’s VAB 2011 Training Module 4 as your “Primary Source” of information on this subject.)

Special Magistrate turns on recorder, by pressing the “Record” button, before making *any* statement. (Recorder should remain on throughout the hearing. Avoid going “off the record.” If you *must* suspend the recording during a hearing, press the “Pause” button. To continue the hearing, press “Record” again.)

Special Magistrate to state the following:

This is a hearing on VAB petition # _____.
The parcel number is: _____. The subject
property address is: _____.
Today is: _____ and the time is: _____.

Will each person here provide his or her name and address, and the reason you are here? (Go around room for this information.)

Are all parties to the petition present? And the petition is neither withdrawn nor settled?

Then the hearing on the petition shall commence. This hearing is open to the public.

According to the petition, _____ minutes are needed by the petitioner to present the case. The VAB Clerk has reserved _____ minutes total for this hearing. That time will be divided equally between the Petitioner and the Property Appraiser. The VAB has a responsibility to other petitioners who are waiting to try to stay on schedule.

Does either party wish to have the witnesses sworn?

(If so, the special magistrate shall swear in all witnesses in that proceeding on the record.)

Sample Oath:

“Raise your right hand, please, and answer audibly. Do you swear or affirm that the testimony you present in this hearing will be the truth, the whole truth, and nothing but the truth?”

(Note: If the witness has been sworn in during an earlier hearing, it is sufficient for the special magistrate to remind the witness that he or she is still under oath.)

Unless waived by the parties, the Special Magistrate shall make an opening statement as follows:

1. I am a special magistrate. A special magistrate is an independent, impartial, and unbiased hearing officer;
2. I do not work for the property appraiser or tax collector. I am independent of the property appraiser or tax collector, and I am not influenced by the property appraiser or tax collector;
3. The hearing will be conducted in an orderly, fair, and unbiased manner;
4. The law does not allow the Board or special magistrate to review any evidence unless it is presented on the record at this hearing or presented upon agreement of the parties while the record is open; and
5. The law requires me, as special magistrate, to evaluate the relevance and credibility of the evidence in deciding the results of the petition.
6. Does anyone have any questions, so far, regarding the procedures for the hearing? (The special magistrate then addresses any questions from the parties.)

The Property Appraiser will now indicate for the record his or her determination of:

- A.) just value
- B.) assessed value
- C.) classified use value
- D.) tax exemption
- E.) property classification or "portability" assessment difference

(Note to Special Magistrate: The foregoing information will later be inserted by the Special Magistrate in the "Before Board Action" column of the DR-485 cover sheet.)

In a hearing on just, classified use, or assessed value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness for the assessment. The property appraiser will present evidence on this issue first.

The property appraiser or tax collector is responsible for presenting relevant and credible evidence in support of his or her determination; and

The petitioner is responsible for presenting relevant and credible evidence in support of his or her belief that the property appraiser's or tax collector's determination is incorrect.

When all evidence and summations (argument) have been presented, the Special Magistrate shall then state:

"The hearing on VAB petition # _____ is now adjourned."

Note: Do not allow further discussion after adjournment is announced. Turn off recorder by hitting the "STOP" button at this time.

Notes:

**(Always refer to DOR's 2011 VAB Training
for your primary source of information)**

- 1.) The Petitioner is not required to estimate a specific value for the subject property.
- 2.) Each party is entitled to cross examine the other's witnesses.
- 3.) If neither party objects to the other's evidence, the Special Magistrate need not initiate an inquiry into whether evidence was properly exchanged or produced.
- 4.) Special Magistrate hearings are not controlled by strict rules of evidence and procedure. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- 5.) The parties are required to provide evidence to one another within certain time limits preceding the hearing (the "evidence exchange"). There are exceptions to the time limit requirements. (See Rule 12D-9.020 and consult with VAB legal counsel in event of an evidentiary dispute.)
- 6.) No petitioner shall present for consideration, nor shall the Board or Special Magistrate accept for consideration, testimony or other evidentiary materials that were specifically requested of the petitioner in writing by the property appraiser in connection with a filed petition, of which the petitioner had knowledge and denied to the property appraiser. See F.S. s.194.034(1)(d) and Rule 12D-9.025(4)(f)1., F.A.C.

- 7.) If a petitioner has acted in good faith and not denied evidence to the property appraiser prior to the hearing, as provided by Section 194.034(1)(d), F.S., but wishes to submit evidence at the hearing which is of a nature that would require investigation or verification by the property appraiser, then the special magistrate may allow the hearing to be recessed and, if necessary, rescheduled so that the property appraiser may review such evidence. See Rule 12D-9.025(4)(f)1., F.A.C.
- 8.) In the event of evidentiary or other disputes, call on VAB legal counsel for assistance.
- 9.) As each piece of evidence is presented, state for the record what is being received, audibly assign an exhibit number to the evidence, and then mark the evidence as either "Petitioner's Exhibit ___" or Property Appraiser's Exhibit ___", as appropriate. (The Special Magistrate must deliver all evidence to the VAB Clerk along with the recommended decision.)
- 10.) **During the hearing, the Special Magistrate is authorized to question either party, the witnesses or VAB Staff.** The Special magistrate shall not show bias for or against either party or a witness. The Special Magistrate shall limit the content of any question asked of a party or witness to matters reasonably related, directly or indirectly, to matters already in the record.
- 11.) **Ending the Hearing on Time:** Unless the Special Magistrate determines that additional time is necessary, the Special Magistrate shall conclude all hearings at the end of the time scheduled for the hearing. If the Special Magistrate determines that the amount of additional time needed to conclude the hearing would not unreasonably disrupt other hearings, the Special Magistrate is authorized to proceed with conclusion of the hearing. If the Special Magistrate determines that the amount of additional time needed to conclude the hearing *would* unreasonably disrupt other hearings, shall so state on the record and shall notify the VAB Staff to continue the conclusion of the hearing to a time as scheduled and noticed by the VAB Staff.