

To: Value Adjustment Board Attorneys
From: Steve Keller, Office of General Counsel
Date: September 29, 2010
Bulletin: PTO 10-26

**FLORIDA DEPARTMENT OF REVENUE
PROPERTY TAX INFORMATIONAL BULLETIN**

Value Adjustment Board Petitions Involving Multiple Parcels

This advisement responds to questions regarding the procedure to follow when a petitioner files a petition that involves multiple parcels under Subsection 194.011(3)(e) or (f), F.S., and Rule 12D-9.015(8), F.A.C.

Summary of Advisement

When a petition that involves multiple parcels is filed, the law provides for the petition to include a determination from the property appraiser that the parcels are substantially similar. However, if a filed multi-parcel petition does not include this determination, the property appraiser can determine when he or she receives the filed petition that the parcels are substantially similar. If the property appraiser objects to the multi-parcel petition on the grounds that the parcels are not substantially similar, the issue should be presented to the Board or special magistrate for a determination of whether the parcels are substantially similar.

This bulletin describes the procedure for Boards and clerks to follow when:

- A filed multi-parcel petition does not include a determination from the property appraiser that the parcels are substantially similar; and
- A property appraiser objects to a filed multi-parcel petition on the grounds that the parcels are not substantially similar.

Analysis

Subsection 194.011(3)(e) and (f), F.S., and Rule 12D-9.015(8), F.A.C., provide for the property appraiser to determine whether the parcels are substantially similar. This statute states:

(e) A condominium association, cooperative association, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association as defined in s.723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

(f) An owner of contiguous, undeveloped parcels may file with the value adjustment board a single joint petition if the property appraiser determines such parcels are substantially similar in nature.

Neither this statute nor this rule provides any penalty in a Board proceeding when a filed multi-parcel petition does not include the property appraiser's determination that the parcels are substantially similar. Article I, Section 18, of the Florida Constitution prohibits administrative agencies from imposing or authorizing a penalty not provided by law. Therefore, the Department's rules for Board proceedings cannot create or authorize a penalty not specifically provided by statute such as dismissal of the petition for incompleteness. Although Rule 12D-9.015(8), F.A.C., provides for the petitioner to obtain the property appraiser's determination before filing the petition, the rule does not specify any consequences when a filed petition does not include such determination.

The determination of whether multiple parcels are substantially similar should be based on the statutory criteria that apply to the parcels. If the property appraiser objects to a filed multi-parcel petition, the issue should be presented to the Board or special magistrate for a determination of whether the parcels are substantially similar in accordance with Subsections 194.011(3)(e) or (f), F.S. There is no statute or rule authorizing a Board or special magistrate to dismiss a petition based on the petitioner's failure to secure the property appraiser's determination that the parcels are substantially similar.

When the Board clerk sends a copy of a filed multi-parcel petition to the property appraiser, the clerk should note if a determination by the property appraiser that the parcels are substantially similar was not included and should also ask the property appraiser to respond if he or she objects to the petition. If the property appraiser does not object, the petition should proceed on the basis that the parcels are substantially similar.

If the Board or special magistrate determines that the parcels are not substantially similar, the petitioner has a right to a separately scheduled hearing for each parcel unless the petitioner agrees to consolidate the hearings.

The Department's Form DR-486MU has a place for the property appraiser or deputy to sign indicating that the parcels are substantially similar. This form is a suggested form only. There is not a required form for the property appraiser's determination.

Please ensure that all Board members and special magistrates are aware of this bulletin.

You may send questions by e-mail to VAB@dor.state.fl.us.