

MEMORANDUM

To: Miami-Dade County VAB Community
From: Miami-Dade County VAB Attorney Rafael E. Millares, Esq.
Date: October 23, 2019
Subject: **Requests for Reconsideration**

INTRODUCTION

The Miami-Dade County Value Adjustment Board (hereinafter “VAB”) has entertained (post-VAB-hearing/pre-VAB final certification) reconsideration requests for at least 18 years. The Miami-Dade County VAB reconsideration procedure was originally memorialized in 2003 by then VAB Attorney Mr. Steven A. Schultz and more recently on October 25, 2017 by current VAB Attorney Mr. Rafael E. Millares. The purpose of this memorandum is to update Miami-Dade County VAB internal procedures regarding reconsiderations. This memorandum replaces and supersedes all previous memoranda on this topic.

BACKGROUND

Although Florida VABs are not statutorily obligated to entertain requests for reconsideration, reconsiderations are permitted¹ under Florida Law.² Since reconsiderations provide an extra layer of due process and accuracy for all parties involved, it stands to reason that many Florida VABs employ some type of reconsideration process.³

MY FINDINGS

I set forth the following internal operating procedures in order to ensure that all reconsideration requests are processed in a lawful and efficient way.⁴

1. Either party to a VAB hearing may file a reconsideration request... or not file one. There is no obligation to file a reconsideration request on any VAB case.

¹ DOR Rules 12D-9.032(6)(c) & (6)(a), 12D-9.031(4), 12D-9.030(2) and F.S. 194.035(1)

² For purposes of this memo “Florida Law” includes the United States Constitution, Florida Constitution, Florida Statutes, Florida Administrative Code/Department of Revenue (hereinafter “DOR”) Rules, DOR Bulletins/PTO’s, DOR VAB Training Manual, DOR Materials and Florida Attorney General Opinions.

³ Based on anecdotal evidence.

⁴ I am obliged to use the discretion afforded me by DOR Rule 12D-9.005(2) to update the Miami-Dade County VAB internal operating procedure regarding reconsiderations in the interest of maintaining VAB efficiency, uniformity and integrity. I find that this update is indispensable for the efficient operation of the Miami-Dade VAB process, especially in light of the unprecedented spike in reconsideration requests filed at the end of the 2016 VAB season (For some historical perspective: we typically receive around five reconsideration requests per month... in April of 2016 we received 90 and in May 2016 we received 369). This sudden increase in reconsideration requests nearly overwhelmed us and it highlighted vulnerabilities in our old reconsideration procedure(s).

2. Requesting a reconsideration is not a condition precedent to filing an appeal in Circuit Court.
3. The party requesting reconsideration must do so no later than 11:59pm EST on the 21st day after the VAB sends a notice E-mail⁵ to both parties or when the relevant fact finding sheet is posted online, whichever date is later.⁶ To calculate the twenty one (21) days, the filing party shall use calendar days and shall start counting the day after the fact finding sheet is posted online. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.⁷
4. The other/non-requesting party shall then have ten (10) days, from the date that the corresponding request for reconsideration is filed, to file a response if they wish to. They are not required to file a response. To calculate the ten (10) days, the filing party shall use calendar days and shall start counting the day after the request for reconsideration is E-mailed to them. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.⁸
5. Unless otherwise stated, time periods will end at 11:59pm EST of the relevant deadline/due date.
6. Late-filed requests for reconsideration and/or responses will not be accepted by the VAB.
7. All requests for reconsideration and responses are required to be in writing and must be E-mailed to the designated VAB staff member.⁹ The VAB Attorney, the VAB Manager and the opposing party must be carbon copied. The VAB staff member shall then process the request and reply with a confirmation E-mail. If you do not receive a confirmation E-mail back from the staff member, you shall follow up.
8. Failure to carbon copy the opposing party may result in the wholesale exclusion of the violating party's reconsideration request or response. Anyone (an opposing party, special magistrate or VAB staff etc.) can report a violation of this rule to the VAB attorney. The VAB attorney is authorized to take the above-described action if he confirms that there was a violation and that exclusion is an appropriate remedy.¹⁰
9. Only one request for reconsideration and one response will be allowed per case. No additional back-and-forth (e.g. a response to a response) will be entertained.

⁵ Notice E-mails will be sent via an automated system and their intent is to alert the taxpayer and/or their representative that the relevant fact finding sheet is ready for viewing.

⁶ Every effort will be made to post fact sheets online within 1-2 weeks post-hearing (assuming the case was not deferred, remanded or the SM is holding off on issuing their findings for some other lawful reason).

⁷ Quoted loosely from DOR Rule 12D-9.020 (d). As a comparison, Broward County gives 20 days to file a request for reconsideration.

⁸ Quoted loosely from DOR Rule 12D-9.020 (d). As a comparison, Broward County gives the other party 10 days to file a response.

⁹ Currently, the designated VAB staff member is Diana Burton at dianeb@miamidade.gov but please note that staff changes can happen unexpectedly.

¹⁰ To be evaluated on a case-by-case basis.

10. To avoid ex-parte communication, all reconsideration-related communications will be in writing and the entire reconsideration request process will be transparent.¹¹ No phone calls to the VAB regarding the merits (or lack thereof) of an active reconsideration request, please.
11. No new evidence (either in form or substance) may be submitted by either party upon reconsideration. Doing so may result in the wholesale exclusion of the violating party's reconsideration request or response. Anyone (an opposing party, SM or VAB staff etc.) can report a violation of this rule to the VAB attorney. The VAB attorney is authorized to take the above-described action if he confirms that there was a violation and that exclusion is an appropriate remedy.¹²
12. The special magistrate (hereinafter "SM") must be careful not to consider additional or supplemental documentary evidence or testimony submitted to them for the first time as part of, or along with, the request for reconsideration. However, additional or supplemental argument based on the same documentary evidence or testimony submitted at the hearing is appropriate to consider, if it is intended to point out specific mistakes of fact or law that the SM may have made in applying or interpreting any such evidence or testimony.¹³
13. Once the designated VAB staff member has received both a reconsideration request and the other party's response (or if the responding party files no response and the 10 days are up) the VAB staff member shall forward both documents, along with the entire case file, to the SM that issued the original fact finding sheet.
14. The SM shall review the reconsideration request, the other party's response and the entire case file (a video of the hearing will be provided to the SM, if he/she requests it) as part of the reconsideration review. Generally the SM will be looking to see if they made mistakes of fact or law in applying or interpreting the evidence or testimony that was admitted at the hearing.
15. The SM may inquire with the VAB attorney regarding any legal or procedural questions that arise during the reconsideration.
16. Once the SM has finished their reconsideration review they will write¹⁴ detailed findings per DOR Rules 12D-9.030 and 12D-9.032. The SM will then submit their detailed findings and/or amended fact finding sheet¹⁵ to the designated VAB staff member and will enter their findings into the VAB computer system.
17. The designated VAB staff member will then send the detailed findings and/or amended fact finding sheet to both parties.
18. As we reach the end of a future property tax year, the deadlines mentioned in this memo may be modified in order to ensure a timely and efficient close to that particular tax year.

¹¹ DOR Rule 12D-9.032(a)

¹² To be evaluated on a case-by-case basis.

¹³ One of the principle reasons we have a reconsideration process is to identify and fix errors. Parties should not request reconsideration simply because they did not like the initial outcome. Our reconsideration process is not intended to be a "second bite at the apple."

¹⁴ Typed is preferred but handwritten is acceptable as long as it is legible.

¹⁵ An amended fact finding sheet will only be issued if the SM is making a change to their original findings. If they are not making a change then detailed findings explaining their "no-change" will suffice and no amended fact finding sheet will be issued.

19. All parties are expected to operate in good faith. Abuse of the reconsideration process will not be tolerated.
20. Filing frivolous or vexatious reconsiderations is strictly prohibited. Doing so may result in the wholesale exclusion of the violating party's reconsideration request or response. Anyone (an opposing party, SM or VAB staff etc.) can report a violation of this rule to the VAB attorney. The VAB attorney is authorized to take the above-described action or any other appropriate action if he confirms that there was a violation.¹⁶

¹⁶ To be evaluated on a case-by-case basis.