

**2023 HENDRY COUNTY VALUE ADJUSTMENT BOARD
FINAL MEETING AGENDA – January 19, 2024 - 10:00 a.m.**

A. CALL TO ORDER

1. Pledge of Allegiance
2. Introductions

B. REVIEW AFFIDAVIT OF PUBLICATION AND VERIFICATION OF QUORUM – VAB Counsel

C. APPROVAL OF AGENDA FOR THIS MEETING – Motion Needed

D. APPROVAL OF MINUTES – Motion Needed

VAB Organizational Meeting of August 24, 2023

E. LIST OF WITHDRAWN AND SETTLED PETITIONS - Informational

F. NOTIFICATION OF GOOD CAUSE PETITIONS DENIED - Informational

G. PUBLIC COMMENT

H. APPROVAL OF SPECIAL MAGISTRATE RECOMMENDED DECISIONS – Motion Needed

1. Letter from Property Appraiser's Office
2. Response Emails from Petitioners
3. Department of Revenue Email String Re: Petitions 23-01 and 23-02

I. RATIFICATION OF SPECIAL MAGISTRATE INVOICE PAYMENTS – Motion Needed

J. RATIFICATION OF VAB COUNSEL INVOICE PAYMENTS – Motion Needed

K. CERTIFICATIONS OF VALUE ADJUSTMENT BOARD / FORMS DR-488 – Motion Needed

L. APPROVAL OF NOTICE OF TAX IMPACT OF VAB FOR 2023 – Motion Needed

M. RATIFICATION OF ATTORNEY RENEWAL / RETURN FOR 2024 – Motion Needed

**N. ADDITIONAL DISCUSSION ITEMS FROM VAB, VAB LEGAL COUNSEL OR
VAB ADMINISTRATION AS NECESSARY**

1. **Legislative Updates - VAB Counsel**
2. **Additional Compliance Items – VAB Counsel**
VAB Counsel Organizational Meeting Checklist – Informational
3. **Board Comments and/or Concerns Regarding 2023 VAB Session**

O. ADJOURNMENT

VALUE ADJUSTMENT BOARD 2023

CONTACT LIST

VAB Member:

Commissioner Emory Howard

P. O. Box 2340

LaBelle, FL 33975

bocc2@hendryfla.net

863-517-8006 (cell)

VAB Member:

Commissioner Emma Byrd

PO Box 2340

LaBelle, FL 33975

bocc1@hendryfla.net

863-206-9651 (cell)

VAB Member, School Board:

Paul Samerdyke

653 Caloosa Estates Drive

LaBelle, FL 33935

District2@hendry-schools.net

863-517-0004 (cell)

Citizen Member appointed by the County

Commission:

James Vee Lofton, Jr.

468 Old County Rd. 78

LaBelle, FL 33935

veemoework@embarqmail.com

239-633-0419 (cell)

863-675-2288 (home)

Citizen Member appointed by the School Board:

Ayman Kaki

149 W. Hickpochee Ave.

LaBelle, FL 33935

aymankaki@gmail.com

561-301-6686 (cell)

863-675-0004

VAB Attorney:

Holly E. Cosby

Law Office of Holly E. Cosby, P.A.

602 Center Road

Fort Myers, FL 33907

holly@cosbylaw.com

239-931-0006

239-418-0006 (fax)

Clerk of Circuit Court:

Kimberley Barrineau

PO Box 1760

LaBelle, FL 33975

kbarrineau@hendryclerk.org

863-675-5217

863-675-5238 (fax)

VAB Clerk:

Sharon Congleton

PO Box 1760

LaBelle, FL 33975

scongleton@hendryclerk.org

863-675-5216

863-675-5238 (fax)

Alternate School Board Member:

Dwayne Brown

PO Box 684

Clewiston, FL 33440

District1@hendry-schools.net

863-228-4955 (cell)

INDEPENDENT NEWSMEDIA INC. USA

STATE OF FLORIDA
COUNTY OF HENDRY

Before the undersigned authority personally appeared **Katrina Elsen Muros**, who on oath says that she is **Editor in Chief** of the **Lake Okeechobee News**, a weekly newspaper published in **Hendry County, Florida**; that the attached copy of advertisement, being a **Public Notice** matter of

Public Notice

in the **20th Judicial District of the Circuit Court of Hendry County, Florida**, was published in said newspaper in the issues of

(Print Dates)

or by publication on the newspaper's website, if authorized, on

09/27/23, 09/28/23, 09/29/23, 09/30/23, 10/01/23, 10/02/23, 10/03/23,
10/04/23, 10/05/23, 10/06/23, 10/07/23, 10/08/23, 10/09/23, 10/10/23,
10/11/23, 10/12/23, 10/13/23, 10/14/23, 10/15/23, 10/16/23, 10/17/23,
10/18/23, 10/19/23, 10/20/23, 10/21/23, 10/22/23, 10/23/23, 10/24/23,
10/25/23, 10/26/23, 10/27/23, 10/28/23, 10/29/23, 10/30/23, 10/31/23

(Website Dates)

Affiant further says that the newspaper complies with all legal requirements for publication in Chapter 50, Florida Statutes.

Katrina Elsen Muros

Katrina Elsen Muros

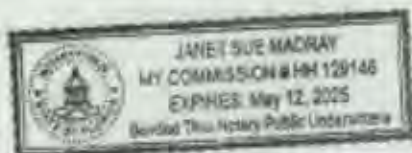
Sworn to and subscribed before me by means of

☐ Physical Presence ☒ Online Notarization

physical presence or online notarization, this

2nd day of October, 2023.

Janet Sue Madray



(Signature of Notary Public)
STAMP OF NOTARY PUBLIC

Lake Okeechobee News
313 NW 4th Avenue
Okeechobee, FL 34972
863-763-3134

PUBLIC NOTICE – 2023 HENDRY COUNTY VALUE ADJUSTMENT BOARD TO ALL PROPERTY OWNERS AND TAXPAYERS OF HENDRY COUNTY

Please be advised that hearings before special magistrates of the 2023 Hendry County Value Adjustment Board (VAB) will be held to consider petitions appealing the denial of exemptions/discounts, appealing the denial of applications for catastrophic event tax refund, appealing portability issues, appealing determinations regarding changes of ownership or control and qualifying improvements, appealing the denial of tax statements, appealing the assessment of real and tangible property values, and appealing ad valorem tax defenses in Hendry County as provided under Florida Statutes. Said hearings shall commence at 9:00 a.m. on October 31, 2023 and shall continue thereafter until all petitioners are heard, in the Hendry County Commissioner's Board Room on the first floor of the Hendry County Courthouse Administration Building, 25 East Hopewatch Avenue, LaBelle, Florida.

The Hendry County Property Appraiser maintains a list of all applicants for exemption who have had their applications for exemption wholly or partially approved or who have had their exemption denied. Said list(s) are available to the public, in Room A-229 of the Hendry County Courthouse Administration Building, 25 East Hopewatch Avenue, LaBelle, Florida, Monday through Friday, 8:00 a.m. to 5:00 p.m. The types of exemptions which are included in the aforementioned list(s) are: homestead-of categories; disability-of categories; widows and widowers exemptions; tangible personal property; institutional-charitable; religious, scientific, literary, educational; service members and veterans; government property; parcels granted economic development; historic property; and land dedicated in perpetuity for conservation purposes.

All hearings are recorded and open to the public. Interested citizens are invited to attend. If a person desires to appeal a decision made by the Hendry County VAB with respect to any matter considered at the aforementioned hearing(s), a record of any such proceeding will be needed for such purpose, and such person will need to ensure that a verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based. If you have a disability that will require assistance or accommodations for your attendance at the meeting, please contact the VAB Clerk at (863) 675-5230.

Kimberly Barnes, Clerk of Court
Hendry County Value Adjustment Board
Hendry County, Florida

6/27/11 ONLINE LCH-Hendry/27/2023

Agenda Item B



Lake Okeechobee News
313 NW 4th Avenue
Okeechobee, FL 34972
863-763-3134

STATE OF FLORIDA
COUNTY OF HENDRY

Before the undersigned authority personally appeared **Katrina Elsken Muros**, who on oath says that she is **Editor in Chief** of the **Lake Okeechobee News**, a weekly newspaper published in **Hendry County, Florida**; that the attached copy of advertisement, being a **Public Notice** matter of

Public Notice

in the **20th Judicial District of the Circuit Court of Hendry County, Florida**, was published in said newspaper in the issues of

12/27/23

(Print Dates)

or by publication on the newspaper's website, if authorized, on

(Website Dates)

Affiant further says that the newspaper complies with all legal requirements for publication in Chapter 50, Florida Statutes.

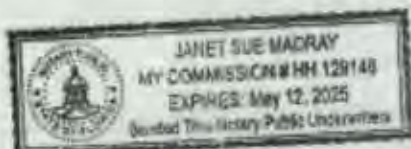
Katrina Elsken Muros

Sworn to and subscribed before me by means of

☐ Physical Presence ☒ Online Notarization

physical presence or online notarization, this

2nd day of January, 2024.



(Signature of Notary Public)
STAMP OF NOTARY PUBLIC

NOTICE**HENDRY COUNTY VALUE ADJUSTMENT BOARD FINAL MEETING**

PLEASE BE ADVISED that the 2023 HENDRY COUNTY VALUE ADJUSTMENT BOARD will convene its final public meeting on FRIDAY, JANUARY 19, 2024 at 10:00 am in the Commission Chambers at the Hendry County Courthouse, 25 East Hickpochee Avenue, LaBelle, Florida, to review the recommendations of the appointed Special Magistrates on petitions duly filed with the 2023 Value Adjustment Board, to render final decisions on said petitions, and to discuss other related issues at the suggestion or request of the Chairman, Staff, or Board members prior to or during the meeting.

If a person decides to appeal a decision made by the Hendry County Value Adjustment Board with respect to any matter considered at this meeting, a record of the proceeding will be needed for such purpose, and such person will need to ensure that a verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based.

If you have a disability that will require special assistance or accommodations for your attendance at this meeting, please call the Value Adjustment Board Clerk at (863) 675-5216.

This meeting will be open to the public, and interested citizens are invited to attend.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Kimberley Barrineau, Clerk of Circuit Court
Hendry County Value Adjustment Board

631535 LON/Hendry 12/27/2023

**HENDRY COUNTY VALUE ADJUSTMENT BOARD
ORGANIZATIONAL MEETING
THURSDAY, AUGUST 24, 2023, 10:00 a.m.
CD 2023-20**

The Organizational Meeting of the Hendry County Value Adjustment Board was held on Thursday, August 24, 2023, at 10:00 a.m. in the County Commission Chambers in LaBelle, Florida. In attendance:

Commissioner Emory Howard, Chairperson
Commissioner Emma Byrd
School Board Member Paul Samerdyke
Citizen Member James Vee Lofton, Jr.
Citizen Member Ayman Kaki
VAB Attorney Holly Cosby
VAB Clerk Sharon Congleton

1. Call to Order, verification of quorum – Florida Statute Section 194.015

VAB Attorney Holly Cosby called the meeting to order, verified a quorum was present according to Florida Statute 194.015, and proceeded with the meeting.

2. Review advertisement for Organizational Meeting/Affidavit of Publication

Ms. Cosby said she reviewed the advertisement/affidavit of publication and finds it sufficient to proceed.

3. Introduction of Value Adjustment Board Members and Clerk

The Board members introduced themselves and Ms. Cosby introduced herself and the Clerk for the record.

A. Elect Chairperson

Commissioner Byrd nominated Commissioner Howard as the new Chairperson of the VAB. The nomination was seconded by Mr. Samerdyke, called and unanimously carried to approve the nomination of Commissioner Howard as Chairperson.

Chairperson Howard appointed Commissioner Byrd as Vice-Chair.

B. Contact information for each member, Clerk, and VAB Attorney

Ms. Cosby asked the Board members to review and verify that their contact information is correct. All members present confirmed the accuracy of their contact information.

4. Ratify the private Board Legal Counsel

- A. VAB Counsel has completed the DOR VAB Training and passed the corresponding exam.

The 2023 DOR VAB Training is not available yet, but as soon as it is Ms. Cosby will provide her updated documentation.

- B. Contract for Legal Counsel – rate increase requested, no other changes to terms of contract.

Motion made by Chairperson Howard, seconded by Mr. Samerdyke, called and unanimously carried to approve the rate increase to \$250.00 per hour with IRS mileage, and the contract appointing Holly E. Cosby as Legal Counsel for the VAB.

5. Approval of the agenda for this Organizational Meeting

Motion made by Commissioner Byrd seconded by Mr. Kaki, called and unanimously carried to approve the agenda for this Organizational Meeting.

6. Clerk's report on filed petitions

- A. Ms. Congleton reported that two petitions have been filed at this time.
- B. Ms. Congleton reported that hearings are scheduled on October 31, November 1 and November 2, 2023. Potential rescheduled hearings will be held December 5 and 6, 2023. TRIM Notices were mailed August 21, 2023 and the deadline for petitions is September 15, 2023.

Mr. Samerdyke asked if the Board will be notified. Ms. Cosby explained that Board members are not required to attend, however they are welcome if they choose. Special Magistrates are appointed to run the hearings which are open to the public.

7. Approval of minutes from the August 23, 2022 Organizational Meeting

Motion made by Commissioner Byrd, seconded by Mr. Samerdyke, called and unanimously carried to approve the minutes from the August 23, 2022 Organizational meeting.

8. Establish a fee for filing petitions

Commissioner Byrd asked how long the fee has been \$15. Ms. Cosby said as long as she has been doing this and that by Statute the maximum amount of \$15 can be requested.

Motion made by Commissioner Byrd, seconded by Mr. Samerdyke, called and unanimously carried to approve the \$15 filing fee for petitions by adopting RESOLUTION 2023 No.1.

9. Special Magistrates

Ms. Cosby said each year we bring back the same three Special Magistrates who continue expressing interest in serving Hendry County. The Special Magistrates are:

Ellen Chadwell, Attorney, she can hear classifications and exemption matters or any other legal issues (portability, high water recharge, working waterfront or any other legal issues).

Steven Nystrom can hear anything value or property value wise residential, commercial, and tangible personal property.

Michael McGinley can hear residential and commercial property value matters.

Ms. Cosby advised the Board that we have compliance packets for each Magistrate. She has reviewed their information and they are all eligible and will serve. They have not taken the 2023 VAB Training from the Department of Revenue because it is not available yet. Once it is available we will ensure that they complete the training prior to hearing matters here in Hendry County.

Ms. Cosby said the contract is the same one that has been used for years; no changes have been made to it. She said the request is for the VAB to appoint the same three Special Magistrates that Hendry County has had for years.

Mr. Samerdyke asked how the Special Magistrates are compensated. Ms. Cosby said they are paid \$150 per hour for the hearings, plus mileage.

Motion made by Commissioner Byrd, seconded by Mr. Kaki, called and unanimously carried to appoint the Special Magistrates and to ratify the existing contract.

10. Discuss general information on Florida's property tax system, respective roles within this system, taxpayer opportunities to participate in the system, and property taxpayers' rights

Ms. Cosby said there is a four-page document that outlines the Florida Property Tax System, respective roles within the system, tax payer opportunity to participate in the system and property tax payer rights. This document is a good synopsis of the system and gives everybody the opportunity to review, in a nice concise manner, the entire property tax system and it's required to be included in the agenda for the Organizational Meeting.

Ms. Cosby invited anyone that had questions after the meeting to e-mail her with any questions they may have.

Also included is the Department of Revenue's form PT-101, it's a nice property tax overview of the VAB process.

11. Adopt all portions of the Florida Statutes and Florida Administrative Code which govern Value Adjustment Boards in Florida, and make available to the public and VAB.

Ms. Cosby explained that a motion is needed to adopt the following items which were read into the record:

- A. F.A.C. Chapters 12D-9, 12D-10, 12D-16
- B. F.A.C. Sections 12D51.001, 12D-51.002 and 12D-51.003
- C. Current Government in the Sunshine Manual
- D. Florida Statute Chapters 119, 192, 193, 194, 195, 196, 197, and 286
- E. DOR VAB forms – adoption of forms

Ms. Cosby said all of these items are present in the room today and are also on the Clerk's VAB website.

Motion made by Commissioner Byrd, seconded by Mr. Samerdyke, called and unanimously carried to approve to adopt all of the items listed.

12. Authorize the Chairman to sign Forms DR-488p; 2023 Preliminary Certifications of the Value Adjustment Board (Real Property and Tangible Personal Property)

Motion made by Mr. Samerdyke, seconded by Commissioner Byrd, called and unanimously carried to authorize the Chairperson to sign Forms DR-488p; 2023 Preliminary Certifications of the Value Adjustment Board (Real Property and Tangible Personal Property).

13. Designate VAB Counsel to review and grant or deny late filed petitions for good cause, reschedule hearing requests requiring good cause statements, and good cause statements for failure to appear at scheduled hearings pursuant to F.A.C. 12D-9.015,

F.A.C. 12D-9.019 and F.A.C. 12D-9.021; and authorize VAB Counsel to request more definite information from the petitioners during any good cause review.

Motion made by Commissioner Byrd, seconded by Mr. Kaki, called and unanimously carried to designate VAB Counsel to review and grant or deny late filed petitions for good cause, reschedule hearing requests requiring good cause statements, and good cause statements for failure to appear at scheduled hearings pursuant to F.A.C. 12D-9.015, F.A.C. 12D-9.019 and F.A.C. 12D-9.021; and authorize VAB Counsel to request more definite information from the petitioners during any good cause review.

14. Department of Revenue Uniform Value Adjustment Board Procedures

A. The website for DOR VAB can be reached through a link on the Clerk's website: www.hendryclerk.org

B. The Uniform Policies and Procedures Manual for the Value Adjustment Board is available on the following website: <https://floridarevenue.com/property/Documents/vabupppmanual.pdf>

Ms. Cosby said this is informational only. It is available in the room, on the Clerk's VAB website, and on the websites listed.

15. Discuss, take testimony on, and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the board

Ms. Cosby said there were none at this time.

16. Clerk's VAB website – Board approval is needed for VAB Counsel to update, if necessary.

Ms. Cosby advised for the record that she has checked the Clerk's website and all links work, everything that is required to be on the website is there.

Motion made by Commissioner Byrd, seconded by Mr. Samerdyke, called and unanimously carried to approve for VAB Counsel to update the Clerk's VAB website if necessary.

17. Legislative update

Ms. Cosby said there are two items that are being modified and worked on at this time or added to the VAB process. The Agricultural Appraisal Guidelines have been modified. This is something that the property appraiser utilizes in their assessment reviews. She has provided the Agricultural Guideline packet and it is included in

the agenda. Said guidelines are more for the magistrates and how that information is applied when the petitions are heard.

The other item is a new issue that now falls under VAB review. It is for any denials for tax refunds for catastrophic events. If there are any properties that sustained damage for 30 days or more, like with Hurricane Ian, that property owner can apply for a tax refund for the time the property was not inhabitable. They can submit the application with the Property Appraiser's office first. The Property Appraiser will either approve or deny that application. If approved, the application goes to the Tax Collector and the property owner will be issued a tax refund. If the application is denied, the denial can be appealed to the VAB. We do not have any of those petitions at this time, but it is a new issue that the VAB can review. Initially, it was an emergency rule for Hurricanes Ian and Nicole. It is now permanently on the VAB petition, if there are any catastrophic events that render the residential property uninhabitable for at least 30 days with damages, the property owner can apply for a tax refund.

18. VAB to permit Chair to sign DR-488 forms and not hold a final meeting if all petitions have been resolved and no recommendations will need VAB consideration or approval.

Motion made by Commissioner Byrd, seconded by Mr. Samerdyke, called and unanimously carried to approve for the Chair to sign DR-488 forms and not hold a final meeting if all petitions have been resolved and no recommendations will need VAB consideration or approval.

19. Additional items for discussion and Board Counsel review of Statutory and Rule Requirements for Organizational Meeting to ensure Board compliance.

Ms. Cosby reviewed and verified the following items on the Verification of VAB Compliance Prehearing Checklist:

- Ms. Cosby verified specific criteria of the citizen members and confirmed that Mr. Kaki and Mr. Lofton are still eligible to serve the Board.
- Ms. Cosby asked Mr. Kaki and Mr. Lofton if either of them represented any governmental entities or taxpayers in any VAB petition or Circuit Court matters with regard to value issues. Mr. Kaki and Mr. Lofton both replied "no".
- Ms. Cosby asked Mr. Kaki and Mr. Lofton if either of them is a member or employee of a taxing authority for the current VAB session. Mr. Kaki and Mr. Lofton both replied "no".
- The VAB has held an organizational meeting prior to holding any hearings.

- The VAB is willing to consider any written complaint filed with respect to a Special Magistrate by any party or citizen.
- All procedures and forms of the VAB or Special Magistrates are in compliance with Florida Statute 194 and F.A.C. 12D-9.
- The VAB is in compliance with Florida Statute Chapter 194 and F.A.C. 12D-9.
- The VAB local procedures are ministerial in nature and are not inconsistent with governing statutes, case law, attorney general opinions or rules of the department. Ms. Cosby said there are none but if there were any in Hendry County they would comply with this requirement.
- Ms. Cosby said there are three items that cannot be verified today:
 - Ms. Cosby has not completed the Department of Revenue training or taken the exam because it is not available at this time.
 - The Special Magistrates have not completed the Department of Revenue training because it is not available at this time. Ms. Cosby will ensure they take the training prior to hearing any petitions in Hendry County.
 - Notice will be given to the chief executive officer of each municipality. Ms. Cosby said if the property that the hearing will be addressing exists within a municipality then the property owner, the Property Appraiser, and the CEO of that municipality must be notified of the date and time of the hearing.

Ms. Cosby said once these items are complete she will complete the checklist and ensure Hendry County is in full compliance.

20. Public comment

Nick Tanner, Property Appraisal Director, asked about virtual hearings. Ms. Cosby requested that Mr. Tanner direct parties who are requesting virtual VAB hearings to Ms. Congleton. There is a rule that if the VAB has capacity to hold a virtual hearing, it can be done; in Hendry County those hearings would be telephonic, and if the VAB will be holding remote hearings, then at some point the VAB should have official telephonic hearing procedures.

ADJOURN

Motion made by Commissioner Byrd, seconded by Mr. Samerdyke, called and unanimously carried to adjourn the meeting at 10:30 a.m.

Emory "Rowdy" Howard, Chairperson

ATTEST:

, VAB Clerk

LIST OF WITHDRAWN AND SETTLED PETITIONS
2023 VAB CYCLE

<u>Petition #</u>	<u>Type</u>
23-03	Commercial
23-04	Vacant Lot/Acreage
23-05	Vacant Lot/Acreage
23-06	Vacant Lot/Acreage
23-07	Vacant Lot/Acreage
23-08	Agricultural
23-08B	Agricultural
23-09	Tangible Personal Property
23-10	Tangible Personal Property
23-11	Tangible Personal Property
23-12	Residential 1-4 Units
23-13	Vacant Lot/Acreage
23-14	Vacant Lot/Acreage
23-15	Residential 1-4 Units
23-16	Commercial
23-18	Tangible Personal Property
23-19	Residential 1-4 Units
23-20	Tangible Personal Property
23-21	Tangible Personal Property
23-22	Tangible Personal Property
23-23	Commercial
23-24	Commercial
23-25	Tangible Personal Property
23-26	Vacant Lot/Acreage

HENDRY COUNTY VALUE ADJUSTMENT BOARD GUIDELINES FOR PUBLIC COMMENT AT VAB MEETINGS

- a) Maximum time for any individual speaker from the public at any VAB meeting shall not exceed three (3) minutes,
- b) Only the individual submitting the card is allowed to address the Value Adjustment Board with respect to the maximum amount of time allotted; time may not be “yielded” to other speakers,
- c) Public comment must be limited to topics relevant to the VAB and only concerning the VAB operations and/or VAB procedures, and this time shall not be utilized to appeal specific recommendations, decisions or merits of any particular case,
- d) Any member of the public wishing to speak during the public comment segment of any VAB meeting must submit a “Request to Comment Card” prior to speaking during any VAB meeting, containing the speaker’s name and the subject the speaker wishes to address,
- e) Any member of the public wishing to speak during the public comment segment of any VAB meeting must approach the table in order for the recording equipment to properly record the entirety of all conversations, pursuant to the verbatim requirements of the VAB
- f) Speakers shall be called to address the Value Adjustment Board in the order in which each has submitted a Request to Comment Card,
- g) Inappropriate or irrelevant remarks, attacks on individuals and abusive comments shall not be allowed and shall be ruled “out of order” by the Board Chair. Any speaker continuing with such remarks or comments shall be required to relinquish any remaining floor time, and
- h) These guidelines and approved VAB form shall be placed on the VAB webpage.

The Hendry County Value Adjustment Board

Request to Comment

Please Print Information Clearly

Name _____

Address _____

City _____ State _____ Zip _____

Representing _____

Issue _____

Date _____ Registered Lobbyist ☐ yes ☐ no



For Additional Information Contact

VAB Clerk at (863) 675-5216

or visit our website at <http://www.hendryclerk.org/FAQ.htm>



DECISION OF THE VALUE ADJUSTMENT BOARD
EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE
TRANSFER, CHANGE OF OWNERSHIP OR CONTROL,
OR QUALIFYING IMPROVEMENT PETITION

DR-485XC
R. 11/23
Rule 12D-16.002
F.A.C.
Eff. 11/23

The actions below were taken on your petition in Hendry County.
☒ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.
If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(i), 194.036, 194.171(2), 194.181, 196.151, and 197.2425, Florida Statutes.)

Petition # 2023-001	Parcel ID 1 32 43 32 A00 00045.0A00
Petitioner name <u>Chosen Farms, LLC.</u>	Property 4120 Price Road
The petitioner is: <input checked="" type="checkbox"/> taxpayer of record <input type="checkbox"/> representative	address Labelle
<input type="checkbox"/> other, explain: _____	

Decision Summary ☐ Denied your petition ☒ **Granted your petition** ☐ **Granted your petition in part**

Lines 1 and 4 must be completed	Value from TRIM Notice	Value before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C.	Value after Board Action
1. Just value, required	\$320,782	\$320,782	\$320,782
2. Assessed or classified use value,* if applicable	\$320,782	\$320,782	\$237,631
3. Exempt value,* enter "0" if none			
4. Taxable value,* required	\$320,782	\$320,782	\$237,631

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition


<input type="checkbox"/> Homestead	<input type="checkbox"/> Widow/er	<input type="checkbox"/> Blind	<input type="checkbox"/> Totally and permanently disabled veteran
<input type="checkbox"/> Low-income senior	<input type="checkbox"/> Disabled	<input type="checkbox"/> Disabled veteran	<input checked="" type="checkbox"/> Use classification, specify <u>Ag</u>
<input type="checkbox"/> Parent/grandparent assessment reduction	<input type="checkbox"/> Deployed military	<input type="checkbox"/> Use exemption, specify _____	<input type="checkbox"/> Qualifying improvement
<input type="checkbox"/> Transfer of homestead assessment difference		<input type="checkbox"/> Other, specify _____	
<input type="checkbox"/> Change of ownership or control			

Reasons for Decision Fill-in fields will expand, or add pages as needed

Findings of Fact
See Attached.

Conclusions of Law
See Attached.

☒ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

	Ellen T. Chadwell	<u>12/12/23</u>
Signature, special magistrate	Print name	Date

Signature, VAB clerk or special representative	Print name	Date
If this is a recommended decision, the board will consider the recommended decision on _____ at _____ <input type="checkbox"/> AM <input type="checkbox"/> PM.		
Address _____		
If the line above is blank, please call _____ or visit our website at _____		

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board	Print name	Date of decision
Signature, VAB clerk or representative	Print name	Date mailed to parties

FINDINGS OF FACT.

Petition 2023-001 concerns a five-acre parcel of land located at 4120 Price Road in Hendry County, Florida. A mobile home is located on this parcel. This parcel is immediately adjacent to the five-acre parcel which is the subject of Petition 2023-002. Both parcels are enclosed by fencing that contains the entire ten acres and are being utilized together as one parcel for the raising and keeping of livestock. These petitions were consolidated for purposes of the hearing as all evidence related to both parcels and their use. Both parcels will be collectively referred to as "the Property" for purposes of this recommended decision.

Petitioner is a Florida limited liability company owned by Benjamin Becker. (Becker: PAO Ex. 1, p. 2) Ms. Tal Shemtov presented the case for Petitioner. She is Mr. Becker's wife and a practicing attorney. Mr. Becker appeared as a witness. The tenant and business owner, Virginia Williams, was also present at the hearing.

The Property Appraiser's Office (PAO) was represented by counsel, Loren Levy, the Property Appraiser, Dena Pittman, Nick Tanner, Appraiser Director and Karen Robinson, Agricultural Appraiser. All parties were sworn in, including Ms. Levy.

The PAO offered two packets as evidence. The first packet contained 39 pages and was admitted as Composite Ex. 1, without objection. The second packet contained 21 pages and was admitted as PAO Composite Ex. 2, without objection.

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The Property previously enjoyed an agricultural classification for citrus production and cattle grazing. (Becker) Petitioner intended to retain the citrus grove when he purchased the land, but discovered after purchase that the citrus grove was not viable. (Becker) Petitioner met Virginia Williams a few years ago on the east coast, where Mr. Becker and Ms. Shemtov reside. Ms. Williams owns Fancy's Magical Critters, LLC., also known as Magical Critters. (Shemtov; Williams; PAO Ex. 1) Magical Critters is for all intents and purposes a travelling petting zoo. (Tanner; P. Ex. 1 (#1)) Ms. Williams owns a number of farm animals, including goats, chickens, ducks, cows, sheep, llamas, rabbits and a horse and pony. (Williams) These animals are transported to schools, day care and religious facilities, private homes and other locations for exhibition and educational purposes, primarily for children. Children are permitted to pet, feed and interact with the animals, while learning about them. (Shemtov; Williams). This is a for profit business that was created in 2015. (Williams) The majority of the animals reside on the Property. Sometimes they are transported to the east coast for events, and in these circumstances, the animals will stay temporarily with a friend in Rolling Oaks, Florida. (Williams)

Mr. Becker was contacted by Ms. Williams sometime in the fall of 2022. She needed a place to house her animals as she had lost her previous residence in Broward County. Petitioner purchased the Property in September, 2022, for the purpose of giving Ms. Williams and her animals a place to live. (Becker) Mr. Becker and Ms. Williams signed a 10-year lease on September 30, 2022. The Lease calls for a monthly rent of \$2500. (P. Ex. 4) The rent was reduced to \$1600 a month because Williams is unable to afford the original lease amount. (Becker) Ms. Williams routinely makes partial payments when she does not have sufficient funds to pay the entire rent. (Becker; P. Ex. 1 (#13); PAO Ex. 2, Add. A.2) However, the evidence showed that Ms. Williams did not make regular payments of rent during 2023 irrespective of this reduction. There was also insufficient evidence to show that Williams earns enough money from her business to cover her rental obligations. The Lease grants Ms. Williams full use of the mobile home and the land and requires her to maintain the farm "for use for her petting zoo business." The Lease states in Section III that "the animals must be part of the business." (P. Ex. 4)

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The Property was field inspected on March 28, 2023, by Ms. Robinson. (Tanner; PAO Ex. 2, pp. 9-21) The applications were denied on grounds that the land was not being used primarily for a bona fide agricultural purpose in accordance with s. 193.461(3), Fla. Stat., which the denial explained further as "meaning not using the land for a good faith commercial agricultural use." (PAO Ex. 3)

The PAO received a number of invoices and checks provided by Petitioner which showed the purchase of services from Fancy's Magical Critters and payment to Magical Critters. The PAO deemed most of these

documents suspect for various reasons. (PAO Ex. 1, p. 28). In an attempt to determine the bona fides of Magical Critters, Mr. Tanner requested a Schedule F, income/expense statement, financial statement and the identification numbers for the cattle, goats and sheep. (PAO Ex. 1, p. 19). Petitioner objected to producing financial information for the LLC and did not produce these statements.

Goats are to be officially identified if transported anywhere within the state. (Tanner; PAO Ex. 1, 30-31) None of the cattle, goats or sheep are identified in accordance with USDA and state requirements. (Tanner)

Ms. Williams does not file an income tax return or pay taxes on her business. (Williams)

The Special Magistrate remanded this matter to the PAO for a reclassification and re-assessment of the Property. The PAO's written remand review was provided to Petitioner, who accepted the results and waived its right to a continuation hearing.

CONCLUSIONS OF LAW

Petitioner has the burden of proof to show by a preponderance of the evidence that a bona fide agricultural use exists on the property as of January 1, 2023. This is the operative date for purposes of a determination of agricultural classification. Section 193.461(3)(b), Fla. Stat., provides that only those lands used primarily for bona fide agricultural purposes may be classified agricultural. "Primarily" means that the agricultural use must be the most significant activity on the land. *Bystrom v. Union Land Investments, Inc.*, 477 So. 2d 585, 587 (Fla. 3d DCA 1985). Section 193.461(3)(b) then defines a bona fide use as a "good faith commercial agricultural use," and sets forth a number of factors to be considered when making this determination: (1) length of time the land has been used; (2) whether the use is continuous; (3) purchase price; (4) size of land as it relates to the use; (5) efforts to care sufficiently for the land in accordance with accepted commercial agricultural practices; (6) the existence of a lease and its terms; and (7) any other factors that may be relevant, such as profit motive. No one factor is determinative, and the actual physical use of the property as of January 1st remains the guidepost for the agricultural determination. See *Straughn v. Tuck*, 354 So. 2d 368 (Fla. 1977); *Fisher v. Schooley*, 371 So. 2d 496 (Fla. 2d DCA 1979); and *Bystrom* at p. 585.

The question in this appeal is whether the 10 acres were being used by Petitioner on January 1, 2023, for a good faith commercial agricultural purpose. Although the evidence was not credible to show that Ms. Williams routinely meets her rental obligations, the Lease Agreement is a legally binding document that is sufficient to establish her status as a lessee on the Property. Because the Property is being leased to Ms. Williams, her use of the Property must meet the statutory requirement for agricultural classification. Petitioner must show that Ms. Williams' traveling petting zoo is a bona fide for-profit venture and that the raising and maintaining of these animals on the Property qualifies as an agricultural use. Petitioner cites *McClendon v. Nikolits*, 211 So. 3d 92 (Fla. 4th DCA 2017) in support of its contention that this specific use qualifies as an agricultural one. *McClendon* concerns the raising of exotic birds for sale as pets, known as "aviculture." In this case, the court was required to consider the definitions of "agricultural purpose" under s. 193.461(5), and "farm product" under s. 823.14, Fla. Stat., also known as The Florida Right to Farm Act. In considering those definitions it determined that the examples given were not intended to be exhaustive. Section 823.14(3)(c) states: "Farm product means any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom." After hearing from experts who opined that aviculture is useful to humans for reasons such as companionship, concern for endangered species, entertainment, education and scientific purposes, the trial court found that aviculture provides birds for their entertainment use or novelty value. Based on this finding, which was undisputed by the Property Appraiser, the *McClendon* court found that pet birds were useful to humans and therefore the breeding and sale of such birds qualified as an agricultural purpose.

Because a farm product constitutes an "agricultural purpose" under s. 193.461(5), if exhibition animals qualify as a farm product, then the current use of the Property for the raising of such animals would constitute an agricultural use. Although we do not have expert testimony here to confirm that petting zoos provide educational and entertainment benefits to humans, it is a well-established fact that the interaction between humans and animals, as is the purpose of a petting zoo, is beneficial to humans. And, one can infer from the evidence that educating the public about farm animals is also beneficial to humans. It certainly furthers the policy behind the Right to Farm Act. In this case, the evidence was credible and sufficient to show that the animals are bred and maintained on the Property. Even

without finding that exhibition animals constitute a farm product, the credible and relevant evidence showed that livestock, which is included in the definition of agricultural purpose under s. 193.461(5), were being bred and maintained on the property. As Petitioner points out, "livestock" is defined by Rule 12D-1.002(6), Fla. Admin. Code, as animals kept or raised for use or pleasure. Clearly these animals were kept on the property for both purposes.

The evidence provided by the Petitioner was sufficient to show that all the land, excepting the mobile home and its curtilage, was used for the raising of livestock and exhibition animals. In fact, this was supported by the stocking requirements provided by the PAO. Ms. Williams' testimony about keeping some of the baby animals inside the home was credible. However, this fact does not transform the residence into a barn or a farm structure. It is used primarily as Ms. Williams' primary residence, not for production of a farm product, and this portion of the Property should keep its classified use as residential.

Finding that this use was an agricultural purpose as defined by statute, however, is not the end of the inquiry. Section 193.461(3)(b), clearly requires that the use be a "good faith commercial agricultural use." This requires that the raising and maintenance of these exhibition animals be something more than a hobby. In McClendon, there was no dispute about the good faith commercial aspect of the use, as the birds were clearly being sold. Here, the commercial aspect of Ms. Williams' activity is less than clear.

The PAO questioned the bona fides of the business, Fancy's Magical Critters, the size of land as it related to the use and whether the land was being cared for in accordance With acceptable agricultural practices. To that end, the PAO presented credible evidence that these animals were not being transported and maintained in accordance with acceptable agricultural practices, and that there was insufficient land for the grazing of goats. These facts, however, do not outweigh the physical use of the land. There was sufficient credible evidence that the animals reside on the Property when they are not travelling and that the actual, physical use of the Property was for the maintenance and breeding of these animals. (Williams)

Credible evidence was provided by the parties that Fancy's Magical Critter is a registered for-profit business entity and that Ms. Williams has been running her petting zoo for many years. (P. Ex 1, # 6-8; PAO Ex. 1, p. 3) As Petitioner points out, Florida case law does not require that the farmer or applicant make a profit as a result of their agricultural use in order to qualify as a good faith commercial agricultural use, only that the venture not be a sham and has a profit motive. *Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995); see also *Matheson v. Elcock*, 173 So. 2d 164, 166 (Fla. 3d DCA 1965) ("Nothing in the law requires that a person operate a business efficiently or at a profit."). Although much of Petitioner's evidence of commercial activity was incomplete or incompetent to prove what it purported to show, there was little cross-examination on these matters of proof. Consequently, the testimony of Ms. Williams, the affidavit of the rabbi, and the few credible invoices and checks were sufficient proof that Ms. Williams does operate a travelling petting zoo for monetary compensation. Based on the evidence presented, she clearly does not make a profit, but the evidence was sufficient to establish that the business is not a sham and is a for-profit enterprise. Although Ms. Williams testified that she doesn't file an income tax return for her business, this doesn't negate her business operation. Although not professional or profitable, the business is a not sham.

The credible and relevant evidence was sufficient to show that a commercial enterprise was operated on the Property, albeit a poorly run one, which enterprise keeps livestock and maintains and produces animals that provide a useful and beneficial service to humans. The land is utilized and necessary for the production of a farm product and is primarily being used for an agricultural purpose. As such, Petitioner met its burden of proof in this appeal, and this matter was remanded to the PAO for classification and re-assessment as agricultural land. Petitioner has accepted the PAO's written remand review and waived its right to a continuation hearing. This recommended decision is issued in order that any right the Petitioner has to bring an action in circuit court is not impaired.



DECISION OF THE VALUE ADJUSTMENT BOARD
EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE
TRANSFER, CHANGE OF OWNERSHIP OR CONTROL,
OR QUALIFYING IMPROVEMENT PETITION

DR-485XC
R. 11/23
Rule 12D-16.002
F.A.C.
Eff. 11/23

The actions below were taken on your petition in Hendry County.
☒ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.
If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(i), 194.036, 194.171(2), 194.181, 196.151, and 197.2425, Florida Statutes.)

Petition # 2023-002	Parcel ID 1 32 43 32 A00 0044.0000
Petitioner name <u>Chosen Farms, LLC.</u> The petitioner is: <input checked="" type="checkbox"/> taxpayer of record <input type="checkbox"/> representative <input type="checkbox"/> other, explain: _____	Property address <u>4155 Price Road Labelle</u>

Decision Summary ☐ Denied your petition ☒ **Granted your petition** ☐ Granted your petition in part

Lines 1 and 4 must be completed	Value from TRIM Notice	Value before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C.	Value after Board Action
1. Just value, required	\$93,600	\$93,600	\$93,600
2. Assessed or classified use value,* if applicable	\$93,600	\$93,600	\$1,210
3. Exempt value,* enter "0" if none			
4. Taxable value,* required	\$93,600	\$93,600	\$1,210

*All values entered should be county taxable values. School and other taxing authority values may differ, (Section 196.031(7), F.S.)

Reason for Petition

<input type="checkbox"/> Homestead	<input type="checkbox"/> Widow/er	<input type="checkbox"/> Blind	<input type="checkbox"/> Totally and permanently disabled veteran
<input type="checkbox"/> Low-income senior	<input type="checkbox"/> Disabled	<input type="checkbox"/> Disabled veteran	<input checked="" type="checkbox"/> Use classification, specify <u>Ag</u>
<input type="checkbox"/> Parent/grandparent assessment reduction	<input type="checkbox"/> Deployed military	<input type="checkbox"/> Use exemption, specify _____	<input type="checkbox"/> Qualifying improvement
<input type="checkbox"/> Transfer of homestead assessment difference		<input type="checkbox"/> Other, specify _____	
<input type="checkbox"/> Change of ownership or control			

Reasons for Decision Fill-in fields will expand, or add pages as needed.

Findings of Fact
See Attached.

Conclusions of Law
See Attached.

☒ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

	Ellen T. Chadwell	12/12/23
Signature, special magistrate	Print name	Date
Signature, VAB clerk or special representative _____ Print name _____ Date _____		
If this is a recommended decision, the board will consider the recommended decision on _____ at _____ <input type="checkbox"/> AM <input type="checkbox"/> PM.		
Address _____		
If the line above is blank, please call _____ or visit our website at _____		

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board _____	Print name _____	Date of decision _____
Signature, VAB clerk or representative _____	Print name _____	Date mailed to parties _____

FINDINGS OF FACT

Petition 2023-002 concerns a five-acre parcel of land located at 4155 Price Road in Hendry County, Florida. This parcel is immediately adjacent to a five-acre parcel which is the subject of Petition 2023-001. Both parcels are enclosed by fencing that contains the entire ten acres and are being utilized together as one parcel for the raising and keeping of livestock. A mobile home is located on the 4120 Price Road parcel. These petitions were consolidated for purposes of the hearing as all evidence related to both parcels and their use. Both parcels will be collectively referred to as "the Property" for purposes of this recommended decision.

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Finding that this use was an agricultural purpose as defined by statute, however, is not the end of the inquiry. Section 193.461(3)(b), clearly requires that the use be a "good faith commercial agricultural use." This requires that the raising and maintenance of these exhibition animals be something more than a hobby. In McClendon, there was no dispute about the good faith commercial aspect of the use, as the birds were clearly being sold. Here, the commercial aspect of Ms. Williams' activity is less than clear.

The PAO questioned the bona fides of the business, Fancy's Magical Critters, the size of land as it related to the use and whether the land was being cared for in accordance With acceptable agricultural practices. To that end, the PAO presented credible evidence that these animals were not being transported and maintained in accordance with acceptable agricultural practices, and that there was insufficient land for the grazing of goats. These facts, however, do not outweigh the physical use of the land. There was sufficient credible evidence that the animals reside on the Property when they are not travelling and that the actual, physical use of the Property was for the maintenance and breeding of these animals. (Williams)

Credible evidence was provided by the parties that Fancy's Magical Critter is a registered for-profit business entity and that Ms. Williams has been running her petting zoo for many years. (P. Ex 1, # 6-8; PAO Ex. 1, p. 3) As Petitioner points out, Florida case law does not require that the farmer or applicant make a profit as a result of their agricultural use in order to qualify as a good faith commercial agricultural use, only that the venture not be a sham and has a profit motive. *Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995); see also *Matheson v. Elcock*, 173 So. 2d 164, 166 (Fla. 3d DCA 1965) ("Nothing in the law requires that a person operate a business efficiently or at a profit."). Although much of Petitioner's evidence of commercial activity was incomplete or incompetent to prove what it purported to show, there was little cross-examination on these matters of proof. Consequently, the testimony of Ms. Williams, the affidavit of the rabbi, and the few credible invoices and checks were sufficient proof that Ms. Williams does operate a travelling petting zoo for monetary compensation. Based on the evidence presented, she clearly does not make a profit, but the evidence was sufficient to establish that the business is not a sham and is a for-profit enterprise. Although Ms. Williams testified that she doesn't file an income tax return for her business, this doesn't negate her business operation. Although not professional or profitable, the business is a not sham.

The credible and relevant evidence was sufficient to show that a commercial enterprise was operated on the Property, albeit a poorly run one, which enterprise keeps livestock and maintains and produces animals that provide a useful and beneficial service to humans. The land is utilized and necessary for the production of a farm product and is primarily being used for an agricultural purpose. As such, Petitioner met its burden of proof in this appeal, and this matter was remanded to the PAO for classification and re-assessment as agricultural land. Petitioner has accepted the PAO's written remand review and waived its right to a continuation hearing. This recommended decision is issued in order that any right the Petitioner has to bring an action in circuit court is not impaired.



DECISION OF THE VALUE ADJUSTMENT BOARD VALUE PETITION

Hendry _____ County

DR-485V
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

The actions below were taken on your petition.

☒ These actions are a recommendation only, not final ☐ These actions are a final decision of the VAB
If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, Florida Statutes.)

Petition # 2023-17 Parcel ID 1 34 43 07 020 0000-011.0 (27757)

Petitioner name Property Tax Consultants, LTD
The petitioner is: ☐ taxpayer of record ☒ taxpayer's representative
☐ other, explain: _____

Property 2772 W US Hwy 27
address Clewiston, FL 33440

Decision Summary ☒ Denied your petition ☐ Granted your petition ☐ Granted your petition in part

Value Lines 1 and 4 must be completed	Value from TRIM Notice	Before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C.	After Board Action
1. Just value, required	420,425.00	420,425.00	420,425.00
2. Assessed or classified use value,* if applicable			
3. Exempt value,* enter "0" if none	0.00	0.00	0.00
4. Taxable value,* required	420,425.00	420,425.00	420,425.00

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reasons for Decision

Fill-in fields will expand, or add pages as needed.

Findings of Fact

The subject identified as a convenience store/gas station with a gross building area of 2,578 square feet on 2.2297 acres of commercial zoned land, per Hendry County Property Appraiser's office.
Nicholas Tanner, CFE, with the Property Appraiser's office stated he considered the eight criteria as specified in Florida Statute 193.011 and applied the cost, sales, and income approaches to value.

Conclusions of Law

The Property Appraiser provided evidence and methodology considered to be sufficient, credible, and relevant in supporting the just value indicated. The Petitioner did not present relevant, credible evidence sufficient enough to change the Property Appraiser's value conclusion. The Property Appraiser retains the presumption of correctness.
The Property Appraiser did comply with the criteria of Section 193.011, F.S. and has met the presumption of correctness by a

☒ **Recommended Decision of Special Magistrate** Finding and conclusions above are recommendations.

Michael E McGinley <small>Digitally signed by Michael E McGinley DN: cn=Michael E McGinley, o=, email=mike@mcginleycompany.net, c=US Date: 2023.11.17 13:18:20 -0500</small>	Michael E. McGinley	11/17/2023
Signature, special magistrate	Print name	Date
Signature, VAB clerk or special representative	Print name	Date
If this is a recommended decision, the board will consider the recommended decision on _____ at _____ Address _____ If the line above is blank, the board does not yet know the date, time, and place when the recommended decision will be considered. To find the information, please call _____ or visit our website at _____.		
<input type="checkbox"/> Final Decision of the Value Adjustment Board		
Signature, chair, value adjustment board	Print name	Date of decision
Signature, VAB clerk or representative	Print name	Date mailed to parties

Finding of Facts

The subject identified as a convenience store/gas station with a gross building area of 2,578 square feet on 2.2297 acres of commercial zoned land, per Hendry County Property Appraiser's office.

Nicholas Tanner, CFE, with the Property Appraiser's office stated he considered the eight criteria as specified in Florida Statute 193.011 and applied the cost, sales, and income approaches to value.

A cost approach by the Property Appraiser was well developed and included land sales in the area. The approach was supportive, relevant, and credible.

The Sales Comparison Approach by the Property Appraiser included only two sales. The Property Appraiser's evidence stated, "Based on the limit amount of comparable sales, the Sales Comparison Approach was considered but not utilized." The approach was relevant but not credible.

The Income Approach by the Property Appraiser was developed using information provided by the state. This information is confidential, and the figures were not disclosed. CAP rates were extracted from the subject's marketing area. The approach was relevant and credible and supported the value conclusion.

The Petitioner's Agent did not attend the hearing but did ask for the evidence to be heard. The Petitioner's evidence included the prior sale of the subject property and one comparable sale. The prior sale of the subject property is not relevant. The one sale supplied is in a different marketing area than the subject property. No other information was supplied by the Petitioner's agent. The evidence was not relevant and not credible.

Conclusions of Law

The Property Appraiser provided evidence and methodology considered to be sufficient, credible, and relevant in supporting the just value indicated. The Petitioner did not present relevant, credible evidence sufficient enough to change the Property Appraiser's value conclusion. The Property Appraiser retains the presumption of correctness.

The Property Appraiser did comply with the criteria of Section 193.011, F.S. and has met the presumption of correctness by a preponderance of the evidence.



DECISION OF THE VALUE ADJUSTMENT BOARD
EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE
TRANSFER, CHANGE OF OWNERSHIP OR CONTROL,
OR QUALIFYING IMPROVEMENT PETITION

DR-485XC
R. 11/23
Rule 12D-16.002
F.A.C.
Eff. 11/23

The actions below were taken on your petition in Hendry County.

☒ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.
If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 194.181, 196.151, and 197.2425, Florida Statutes.)

Petition # 2023-27

Parcel ID 1 28 43 13 A00 0044.0400

Petitioner name Stephen Gudz

Property 2633 Fort Denaud Road
address Labelle

The petitioner is: ☒ taxpayer of record ☐ representative
☐ other, explain: _____

Decision Summary ☐ Denied your petition ☒ **Granted your petition** ☐ **Granted your petition in part**

Lines 1 and 4 must be completed	Value from TRIM Notice	Value before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C.	Value after Board Action
1. Just value, required	\$760,674	\$760,674	\$708,468
2. Assessed or classified use value,* if applicable	\$710,882	\$710,882	\$404,515
3. Exempt value,* enter "0" if none			
4. Taxable value,* required	\$710,882	\$710,882	\$404,515

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Homestead | <input type="checkbox"/> Widow/er | <input type="checkbox"/> Blind | <input type="checkbox"/> Totally and permanently disabled veteran |
| <input type="checkbox"/> Low-income senior | <input type="checkbox"/> Disabled | <input type="checkbox"/> Disabled veteran | <input checked="" type="checkbox"/> Use classification, specify <u>Aq</u> |
| <input type="checkbox"/> Parent/grandparent assessment reduction | <input type="checkbox"/> Deployed military | <input type="checkbox"/> Use exemption, specify _____ | <input type="checkbox"/> Qualifying improvement |
| <input type="checkbox"/> Transfer of homestead assessment difference | | <input type="checkbox"/> Other, specify _____ | |
| <input type="checkbox"/> Change of ownership or control | | | |

Reasons for Decision

Fill-in fields will expand, or add pages as needed.

Findings of Fact

See Attached.

Conclusions of Law

See Attached.

☒ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

	Ellen T. Chadwell	<u>12/08/23</u>
Signature, special magistrate	Print name	Date

Signature, VAB clerk or special representative	Print name	Date
If this is a recommended decision, the board will consider the recommended decision on _____ at _____ <input type="checkbox"/> AM <input type="checkbox"/> PM.		
Address _____		
If the line above is blank, please call _____ or visit our website at _____		

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board	Print name	Date of decision
Signature, VAB clerk or representative	Print name	Date mailed to parties

FINDINGS OF FACT

Petitioner is Stephen Gudz, who owns a 36-acre parcel of land located at 2352 W. State Road 80 in Hendry County, Florida. Approximately seventeen acres of the property have been used as citrus grove and were previously granted an agricultural classification for this use. Petitioner is appealing the removal of an agricultural classification on the property. Petitioner conducts business as Whispering Palms Farms.

Mr. Gudz was present and sworn in. The Property Appraiser's Office ("PAO") was represented by Nick Tanner, Appraisal Director, Karen Robinson, Agricultural Appraiser, Dena Pittman, Property Appraiser, and Loren Levy, Attorney for the Property Appraiser. Ms. Pittman, Ms. Robinson and Mr. Tanner were reminded that they remained under oath from a previous hearing.

The PAO offered its 13-page package as evidence, which was admitted, without objection, as PAO Composite Ex. 1. The Notice of Disapproval was admitted as PAO Ex. 2, without objection. Petitioner presented its 41-page package of documents, which were admitted without objection as P. Composite Ex. 1.

The property was purchased by Petitioner in October of 2020. At that time the property enjoyed an agricultural classification on 17 acres for citrus production, and citrus trees were present on the property. (Tanner; Gudz) The remaining portion of the land is heavily treed and improved with a home. Petitioner purchased the property with the intent to expand the citrus operation in conjunction with the adjacent property owned by Tropical Oaks Farms. Petitioner co-owns Tropical Oaks Farms with Martin Mason, as a minority shareholder (20%) in the corporation. (Gudz) Petitioner did harvest some citrus from the existing grove in 2021, but this "harvest" amounted to a few boxes of citrus due to the fact that the grove was diseased. In May of 2021, Petitioner had the grove assessed by the USDA Farm Service Agency under its Tree Assistance Program (TAP) who determined that the grove suffered from a condition called citrus greening. As a result of this assessment, Petitioner removed all existing trees. Although eligible for certification under CHRP, which would have entitled Petitioner to an assessment of nominal value of \$50 an acre for a period up to five years, Petitioner was unaware of the program and failed to apply for this relief. (Gudz; Robinson). Petitioner has applied for TAP assistance (P. Ex. 1, Att. G) and an extension on this 2021 application has been requested. (P. Ex. 1, Att. M)

Since determining that the existing citrus needed to be removed, Petitioner has undertaken efforts to restore the citrus production on the property. (Gudz; P. Ex. 1) On April, 2021, Petitioner entered into a contract with Dilley for the purchase of 2800 trees. The contract does not specify when these trees would be ready for planting. Petitioner made the first payment of \$5600 on June 16, 2021. (P. Ex.1, Att. H and I; Gudz) The tree stock was damaged as a result of Hurricane Ian, and Dilley ultimately refunded the downpayment on February 24, 2023. (P. Ex.1, Att. J; Gudz) Shortly thereafter, on April 30, 2023, Petitioner entered into a contract with Citrific for the purchase of 1800 Pummelo trees. (P. Ex.1, Att. K: Gudz) These trees were to be delivered in the spring of 2024. Petitioner paid Citrific the sum of \$1417.50 on that same date as a deposit on the contract. (P. Ex. 1., Att. L) At the same time, Tropical Oaks Farms also contracted with Citrific for the delivery of citrus trees. (Gudz) At least 100 of those trees were delivered to Tropical Oaks Farms in the summer of 2023. (Gudz) A second payment was made by Petitioner for the Citrific tree order on September 26, 2023, in the amount of \$8032.50, per the

contract. (P. Ex. 1, Att. N and O) Per a letter from Citrific (P. Ex. 1, Att. P) the 1800 Pummelo trees will be ready for delivery in December of this year.

While waiting for the trees, Petitioner has periodically applied herbicide to the beds between the tree rows, has repositioned the irrigation lines along the rows and has applied compost to the rows in preparation for the new seedlings. (P. Ex. 1, Att. R; Gudz) Petitioner has also applied for a Water Use permit modification based on a change of ownership and reduction in irrigated area, which permit modification was issued on March 15, 2022. (P. Ex.1, Att. Q.) Although Petitioner claims to have also marked holes, purchased cover bags to protect the young trees and installed a micro sprinkler system, no further evidence was provided of these activities and the Magistrate makes no finding of these activities. Petitioner admitted that the compost and labor were provided through Tropical Oaks Farms and therefore no invoices were being provided. No specific details were provided regarding the micro sprinkler system.

Ms. Robinson inspected the property on December 9, 2022, at which time she photographed the property. (Robinson; PAO Ex. 1, p. 6) The irrigation lines and mulch were not evident from these photographs. Ms. Robinson did not enter into the property but rather photographed it from the fenceline of the adjacent property to the south. (Robinson) Petitioner disputed the existence of the black irrigation lines as of the time of inspection. Ms. Robinson testified that if the irrigation lines existed she would have been able to see them from that position and did not see any in the rows at that location. (Robinson) As this evidence was in conflict, Petitioner's testimony in conjunction with the undated photographs he presented was insufficient to establish that the irrigation was in fact in place as of December 2022. What was clear from the two sets of photos was that distinct rows that could be seen on Petitioner's photos could not be seen during December 2022.

Petitioner claimed to have spent close to \$25,000 since the time of purchase to prepare the land for citrus production. Roughly \$9500 was allocated to the purchase of tree stock. \$5000 was spent on labor to remove the trees. Petitioner failed to account for the remaining \$10,000, except to say generally that this amount included irrigation replacement, compost and the remaining measures testified to. (Gudz) Although Petitioner paid for the tree stock, the remaining sums were paid for and/or the labor supplied by Tropical Oaks Farms, Inc., in which Petitioner owns a 20% interest. This is why no documentation substantiating these costs was provided (Gudz). Petitioner acknowledged that he needs to differentiate these expenses in the future in order to support his commercial agricultural efforts for Whispering Palms Farms. Although these labor costs will be reimbursed to Tropical Oaks Farms by Petitioner, this has not yet been done. (Gudz) Petitioner intends to manage both his farm and Tropical Oaks Farms together and has entered into a 20-year Lease with Tropical Oaks Farm as of August 29, 2023. (P. Ex. 1, pp. 1-3, 9-11; Gudz)

On June 27, 2023, PAO issued a Notice of Disapproval of Application for Property Tax Exemption or Classification on grounds that the land was no longer being used for agricultural purposes per s. 193.461(4)(b), Fla. Stat. (P. Ex. 1, p. 5; PAO Ex. 2) Because the citrus grove was removed in May of 2021 and had not been replanted as of January 1, 2023, the property was reclassified by the PAO as nonagricultural land.

The Special Magistrate remanded this matter to the PAO for a reclassification and re-assessment of the 17+ acres that previously enjoyed the agricultural classification. The PAO's written remand review was provided to Petitioner, who accepted the results and waived his right to a continuation hearing.

CONCLUSIONS OF LAW

Petitioner has the burden of proof to show by a preponderance of the evidence that a bona fide agricultural use exists on the property as of January 1, 2023. This is the operative date for purposes of a determination of agricultural classification. Section 193.461(3)(b), Fla. Stat., provides that only those lands used primarily for bona fide agricultural uses may be classified agricultural. “Primarily” means that the agricultural use must be the most significant activity on the land. *Bystrom v. Union Land Investments, Inc.*, 477 So. 2d 585, 587 (Fla. 3d DCA 1985). Section 193.461(3)(b) then defines a bona fide use as a “good faith commercial agricultural use,” and sets forth a number of factors to be considered when making this determination: (1) length of time the land has been used; (2) whether the use is continuous; (3) purchase price; (4) size of land as it relates to the use; (5) efforts to care sufficiently for the land in accordance with accepted commercial agricultural practices; (6) the existence of a lease and its terms; and (7) any other factors that may be relevant, such as profit motive. No one factor is determinative, but the actual physical use of the property as of January 1st still remains the guidepost for the agricultural determination. See *Straughn v. Tuck*, 354 So. 2d 368 (Fla. 1977); *Fisher v. Schooley*, 371 So. 2d 496 (Fla. 2d DCA 1979); and *Bystrom* at p. 585.

The question in this appeal is whether the 17 acres in question were being used by Petitioner on January 1, 2023, in a good faith commercial agricultural manner. While the land was being used for citrus production when Petitioner purchased the land in late 2020, the citrus grove has since been removed by Petitioner and more than two years have passed without the re-planting of this grove. Although Petitioner presented credible evidence that he had ordered trees, modified his Water Use Permit and maintained the land in preparation for the re-planting of the grove, the PAO argues that this activity is insufficient to constitute a bona fide commercial agricultural use.

The PAO provided *Bystrom v. Union Land Investments, Inc.*, 477 So. 2d 585 (Fla. 3d DCA 1985) in support of its argument. This decision provides analysis on whether preparatory measures only qualify as an “agricultural use.” Unlike the Gudz property, the land in Union Land contained a heavy overgrowth of trees and shrubs and was substantially covered with debris at the time of purchase. Although both the VAB and the trial court concluded that planting was underway as of January 1, the appellate court in Union Land found that planting did not occur until January 24, 1980, and only 10% of the 180 leased acres had been cleared, even though the lease required the lessee to complete clearing by February 1. Although the appellate court noted that the act of clearing could, “if combined with other actions evincing the owner’s bona fide intent to use the land for agricultural purposes” constitute an agricultural use, it found that there was no evidence that any specific amount of land was cleared as of January 1 and reversed the trial court’s decision that the land was being used for bona fide agricultural purposes. *Id.* at 587-588.

In the instant case, the subject 17 acres had previously been cleared, rowed and prepped for citrus production. As of January 1, this condition remained. The rows were in place and the irrigation remained. Although the PAO’s photos taken in December 9, 2022, did not evidence irrigation lines, they were not sufficiently detailed and clear to negate Petitioner’s testimony that such irrigation was in place at the end of 2022. Moreover, Petitioner presented credible and relevant evidence that sufficient trees had been ordered in the spring of 2022 to reestablish the citrus grove and that Petitioner had continuously sprayed the beds with herbicide and had composted the rows in preparation for planting.

In accordance with Union Land and other Florida opinions, such preparatory activity on the land may constitute an agricultural use when coupled with evidence of a bona fide intent.

The PAO cites *Mackle Co. v. Metropolitan Dade County*, 220 So. 2d 422 (Fla. 3d DCA 1969) for the proposition that preparing 160 acres of row crop land for planting was insufficient to establish an agricultural use. The *Mackle Co.* opinion, however, was founded on the fact that the owner had no intent to plant as of January 1, even if the clearing had been completed. The court stated that “the significance of the work was materially lessened if not eliminated by the owner’s testimony that he did not intend to farm that acreage even if the preparation of the land had been completed.” (emphasis added) This opinion shows that the owner/lessee’s intent to put the land to use is of equal, if not, paramount importance. While the efforts undertaken by Petitioner were significantly less than that undertaken by the owner in *Mackle Co.*, Petitioner has demonstrated his intent to reestablish a citrus grove on the property. While it is understandable that the Property Appraiser would question the land’s use after a period of two years in the complete absence of any trees, Petitioner did present credible and relevant evidence that his bona fide intent was to reestablish a citrus operation on the previously classified 17 acres and that planting would begin as soon as the trees were delivered. (The evidence from both the PAO and Petitioner showed that trees were ordered by and delivered to Tropical Oaks Farms from the same supplier Citrifac during the time that the subject property remained treeless. This fact furthered the PAO’s doubt as to the bona fide intentions of Petitioner. This fact alone, however, does not disprove Petitioner’s intent or his purchase of trees for the property, and Petitioner provided a reasonable explanation as to why Tropical Oaks had received some of their trees before the 1800 trees ordered by Petitioner.)

In consideration of the factors enumerated in 193.461(3)(b), Fla. Stat., the Special Magistrate finds that the land is currently rowed for citrus, was used for citrus production for several continuous years until the tree were removed due to disease, has been cared for sufficiently in accordance with acceptable agricultural practices and is an appropriate size for citrus production. While removal of the trees may signify an abandonment of this use, it is also an acceptable agricultural practice to remove trees diseased with citrus greening. The overall weight of the credible and relevant evidence proved Petitioner’s intention to replant the grove and his financial and physical efforts in preparing the land for future planting. Petitioner adequately explained the delay in getting trees delivered and planted due to Hurricane Ian. The land remains prepared for the planting of new trees. The irrigation remains in place and the water use permit has been updated. It is undisputed that there has been no excavation or change to the configuration or condition of the land to support a nonagricultural use. The land is being maintained in accordance with acceptable agricultural practice insofar as the diseased trees have been removed and composting and de-weeding has occurred on the property. In this case, the most significant use of the land is for maintenance of a citrus grove.

The overall weight of the credible and relevant evidence provided by both the PAO and the Petitioner was sufficient to show that the agricultural use of citrus production has not been abandoned and that Petitioner has a bona fide intent to continue this use on the 17 acres. Petitioner has met his burden to show that the PAO’s denial was wrong, and the Special Magistrate recommends that the petition be granted. This matter was remanded matter to the PAO for classification and re-assessment of the 17+ acres that previously enjoyed the agricultural classification. Petitioner has accepted the PAO’s written remand review and waived his right to a continuation hearing. This recommended decision is issued in order that any right the Petitioner has to bring an action in circuit court is not impaired.



LEVY LAW FIRM
— PROPERTY TAX —

Reply to:
LOREN E. LEVY
llevy@levylawtax.com

January 12, 2024

VIA E-MAIL

Emory Howard, Chair
Hendry County Value Adjustment Board
25 E. Hickpochee Avenue
LaBelle, Florida 33935
E-mail: bocc2@hendryfla.net

Re: Special Magistrate Recommendations on VAB Petitions 2023-1, 2023-2 and
2023-27

Dear Chair Howard:

The Hendry County Value Adjustment Board (VAB) currently is scheduled to review the Recommended Decisions of the Special Magistrate for the 2023 tax year at a meeting on January 19, 2023. At that time, the Board must decide to either adopt or reject each of those decisions in accordance with Florida Administrative Code Rule 12D-9.031 (2023). On behalf of my client, Dena Pittman in her official capacity as the Hendry County Property Appraiser (property appraiser), please accept this letter as a formal request that the VAB **reject** the Recommended Decision of the Special Magistrate for Petitions 2023-1, 2023-2, and 2023-27 as contrary to the rule, controlling Florida Statutes, and case law.

Background

Each of the petitions involved entitlement to agricultural classification. Petitions #1 and #2 related to a claim that the property involved was entitled to the classified use value (greenbelt exemption) because the lessee of the property was using it to house animals that were to be used in her traveling petting zoo operation. Petition #27 involved an abandoned citrus grove where the owner claimed the agricultural classification because he had attempted to obtain trees and planned on planting trees sometime in the future. The property appraiser respectfully asserts that the special magistrate applied an incorrect legal analysis in awarding these classifications and requests that the VAB reject the recommended decisions.

When the VAB engages the services of a special magistrate to conduct hearings, the VAB's review of the recommended decision is governed by Florida Administrative Code Rule 12D-9.031 (2023). Before a recommended decision may be accepted by the VAB, a determination must be made as to whether it complies with Florida law. The process of the VAB's review of the recommended decision is outlined in the rule as follows:

(1) All recommended decisions shall comply with Sections 194.301, 194.034(2) and 194.035(1), F.S. A special magistrate shall not submit to the board, and the board shall not adopt, any recommended decision that is not in compliance with Sections 194.301, 194.034(2) and 194.035(1), F.S.

(2) As provided in Sections 194.034(2) and 194.035(1), F.S., the board shall consider the recommended decisions of special magistrates and may act upon the recommended decisions without further hearing. If the board holds further hearing for such consideration, the board clerk shall send notice of the hearing to the parties. Any notice of hearing shall be in the same form as specified in subsection 12D-9.019(3), F.A.C., but need not include items specified in subparagraphs 6. through 9. of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination. Adoption of recommended decisions need not include a review of the underlying record.

(3) If the board determines that a recommended decision meets the requirements of subsection (1), the board shall adopt the recommended decision. When a recommended decision is adopted and rendered by the board, it becomes final.

(4) If the board determines that a recommended decision does not comply with the requirements of subsection (1), the board shall proceed as follows:

(a) The board shall request the advice of board legal counsel to evaluate further action and shall take the steps necessary for producing a final decision in compliance with subsection (1).

(b) The board may direct a special magistrate to produce a recommended decision that complies with subsection (1) based on, if necessary, a review of the entire record.

(c) The board shall retain any recommended decisions and all other records of actions under this rule section.

(Emphasis added.)

Petition #1 and #2

Factual Background

These petitions involved two, five-acre parcels including a mobile home. The special magistrate's recommended decisions included several observations as to the lack of credibility of the property owner or its lessee and their failure to provide the necessary information to the property appraiser to assist in her review of the applications. (Recommended Decisions attached as Exh. #1, 2) For example, the applications for agricultural classification for the two parcels state that there is one acre used for citrus and three acres used for grazing land on each of those parcels. The property owner did not check the box that the parcels were leased, and did not indicate on the applications that the use of the property was by a lessee. "When asked why, he had no credible explanation." (Recommended Decisions for Petitions #1 and #2 at p. 3)

The property owner objected to the property appraiser's request for financial information and identification numbers for the cattle, goats, and sheep. "No evidence was provided showing Ms. Williams' [lessee] costs for maintaining the animals or the land." (*Id.*) Likewise, "[n]or was there sufficient evidence that she earns enough money from her business to cover her rental obligations." (*Id.*) The lessee testified at the hearing that she does not file an income tax return or pay taxes on her

traveling petting zoo operation. The special magistrate also acknowledged the property appraiser's testimony that goats are to be officially identified if transported within the state and that "[n]one of the cattle, goats or sheep are identified in accordance with USDA and state requirements." (*Id.* at p. 4)

The special magistrate included factual findings as to the lessee's intent to conduct agricultural activities in the future. She noted that the lessee had recently purchased a black angus bull and "plans on selling the older goats and rams for meat at some indefinite time in the future." (*Id.* at p. 3)

The special magistrate correctly observed that the property owner was required to demonstrate that its lessee's traveling petting zoo was a bona fide for-profit venture and that raising and maintaining these animals on the property qualified as an agricultural use. In evaluating the evidence, however, the final recommendation that the parcels should be entitled to the agricultural classification was legally incorrect in the following respects.

Legal Analysis

1. The special magistrate failed to properly apply the statutory burden of proof. The property owner was required to prove, by a preponderance of the evidence, that the denial of the agricultural classification was incorrect. § 194.301(2)(d), Fla. Stat. (2023). Here, the property owner filed applications that were admittedly incorrect and failed to reflect that the property was leased. The owner later refused to provide the type of financial and factual information necessary for the property appraiser to adequately review the applications. The property appraiser is statutorily authorized to request "such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose." § 193.461(3)(a), Fla. Stat. (2023). The lessee did not provide information to adequately establish either the income derived from the traveling petting zoo services or the cost for maintaining the animals on the land. The rent paid for the property included the right to reside in the mobile home. It was the property owner's obligation to prove that the property appraiser's decision was incorrect and it cannot satisfy that obligation by filing an incorrect application and refusing to provide the information necessary to review it.

2. The special magistrate failed to adhere to the statutory command that the agricultural classification only may be granted when the taxpayer has established that the property is used for bona fide agricultural purposes, which means good faith commercial agricultural use of the land. It is important that use of the property merely to conduct agricultural-related operations does not qualify under the statute; rather, good faith commercial agricultural use is required. *Tilton v. Gardner*, 52 So.3d 771 (Fla. 5th DCA 2011). In that case, the court rejected an argument that "some agricultural activity" qualifies for the classification in the absence of proof that it constituted good faith commercial use of the property. *Id.* at 777. In this regard, the following comment from the special magistrate reveals the flaw in its basis:

Finding that this use was an agricultural purpose as defined by statute, however, is not the end of the inquiry. Section 193.461(3)(b), clearly requires that the use be a 'good faith commercial agricultural use.' This requires that the raising and maintenance of these exhibition animals be something more than a hobby. In McClendon, there was no dispute about the good faith commercial aspect of the use, as the birds were clearly being sold. Here, the commercial aspect of Ms. Williams'

activity is less than clear. The PAO questioned the bona fides of the business, Fancy's Magical Critters, the size of the land as it related to the use and whether the land was being cared for in accordance with acceptable agricultural practices. To that end, the PAO presented credible evidence that these animals were not being transported and maintained in accordance with acceptable agricultural practices, and that there was insufficient land for the grazing of goats. *These facts, however, do not outweigh the physical use of the land. There was sufficient credible evidence that the animals reside on the Property when they are not traveling and that the actual, physical use of the Property was for maintenance and breeding of these animals.* (Williams)

(*Id.* at p 4, emphasis added.)

In sum, the special magistrate reversed the property appraiser's denial of agricultural classification without any showing that the lessee was conducting a good faith commercial agricultural use of the property despite observing that such commercial use was required. Use of the property for maintenance and breeding of animals, without more, is insufficient. The conclusion was legally incorrect and failed to comply with sections 193.461(3)(b) or 194.301(2)(d), Florida Statutes (2023).

3. Lastly, the special magistrate relied on facts that were not admitted into evidence. All decisions must be based upon "admitted evidence." *See* Fla. Admin. Code R. 12D-9.027(4)(g) (2023). The special magistrate discussed *McClendon v. Nikolits*, 211 So.3d 92 (Fla. 4th DCA 2017), where the raising of exotic birds for sale as pets, which is known as aviculture, was determined to constitute a good faith commercial agricultural use. In that case, the court allowed the agricultural classification because the raising and sale of birds for pets fell within the definition of farm product.

The special magistrate commented that "if the raising and caring for exhibition animals constitutes a farm product, then the current use of the Property would constitute an agricultural purpose." (*Id.*) The magistrate, however, noted the lack of testimony as to this issue but nevertheless concluded that "it is a well-established fact that the interaction between humans and animals, as is the purpose of a petting zoo, is beneficial to humans." (*Id.*) Importantly, such a "fact" was not part of the record of evidence before the special magistrate. Rather, it was her personal belief that such a fact should exist.

In this discussion, the special magistrate also repeats her error of evaluating agricultural use without requiring that it be a good faith commercial agricultural use of the property by commenting that "[e]ven without finding that the use of the animals constituted a farm product, the credible and relevant evidence showed that livestock were being bred and maintained on the property." Absent from this comment is any requirement that the livestock be sold to generate the revenues, as was the factual context of the exotic bird case. (*Id.*)

The special magistrate's conclusion that the property appraiser "was wrong in this denial of these applications for agricultural classification" fails to comply with Florida law. (*Id.*) Accordingly, the property appraiser respectfully requests the VAB to reject the recommended decisions and uphold the denial of agricultural classification for these two parcels.

Petition #27**Factual Background**

Petition #27 involved 17 acres that had been used as a citrus grove in past years and previously granted the agricultural classification based upon such use. The property owner purchased the property in October 2020. Only a few boxes of citrus were harvested in 2021 because the grove was diseased. In May 2021, the grove was determined to be suffering from citrus greening. As a result, the property owner had all of the existing trees removed.

The special magistrate reversed the property appraiser's denial of the agricultural classification for the 2023 tax year because the property owner had undertaken efforts to restore the citrus production – even though no trees were planted as of January 1, 2023. In particular, the special magistrate relied upon the fact that the property owner had entered into a contract with Dilleys in April 2021 for delivery of trees. Because of damage the citrus grower (Dilleys) purportedly incurred as a result of Hurricane Ian, the contract was cancelled in February 2023. A new contract with a different grower (Citrific) was entered into in April 2023, with anticipated delivery in spring of 2024. The property owner was a minority owner of an adjacent parcel and also obtained trees from Citrific and planted them on that parcel in the summer of 2023. The property owner testified that he intended to manage both his farm and the adjacent property together and entered into a 20-year lease with the operator of that operation in August 2023.

The property owner testified that he had applied herbicide to the beds between the tree rows, repositioned irrigation lines and applied compost. No invoices of these expenses were provided. He also provided photographs of the property showing the irrigation lines and compost.

The property appraiser inspected the property on December 9, 2022, and introduced photographs of the property. The irrigation lines and mulch were not evident from those photographs. The special magistrate commented that [w]hat was clear from the two sets of photos was that distinct rows that could be seen on Petitioner's photos could not be seen during December 2022.” (Recommended Decision on Petition #27 at p. 3)

The special magistrate concluded that the property owner had presented “credible and relevant evidence that his bona fide intent was to reestablish a citrus operation on the previously classified 17 acres and that planting would begin as soon as the trees were delivered.” (*Id.* at p. 5) “The overall weight of the credible and relevant evidence proved Petitioner's intention to replant the grove and his financial and physical efforts in preparing the land for future planting. Petitioner adequately explained the delay in getting trees delivered and planted due to Hurricane Ian. The land remains prepared for the planting of new trees.” (*Id.*) Accordingly, the agricultural classification should have been granted for 2023. In this regard, the special magistrate plainly erred.

Legal Analysis

It is well established that the owner's future intended use of property is irrelevant and that the focus must be on the use of the property as of January 1. *RH Resorts, Ltd. v. Donegan*, 831 So.2d 1152 (Fla. 5th DCA 2004). The law in Florida is clear that in determining the agricultural classification of property the only relevant date is January 1 of the tax year in question. *Gianolio v. Markham*, 564 So.2d

1131, 1136 (Fla. 4th DCA 1990). It is . . . the actual use of [the] property as of the assessment date that controls in determining entitlement to agricultural classification. Under the taxing statutes the assessment date is January 1 of each year, and the character of a particular parcel of land, including whether or not it should be classified as agricultural, is determined by its use as of that date. *Bystrom v. Union Land Inv. Inc.*, 477 So.2d 585, 587 (Fla. 3d DCA 1985).

Simply stated, a property owner cannot obtain the agricultural classification because he or she intends to conduct good faith commercial agricultural operations in the future. The agricultural classification is determined on an annual basis. § 193.461(3)(a), Fla. Stat. (2023). The property owner is not entitled to the classification merely because agricultural operations were conducted in past years and the property owner intends to resume those operations as some point in the future. Ordering trees for future delivery is not an agricultural use as of January 1 of the tax year.

Consider the example of a property owner that intends to conduct a cow-calf operation. In the first year, he or she purchased the property and the prior owner removed the cattle that previously had been on the property. As of January 1 of the following year, the new owner has ordered cattle to be delivered in a future year. Perhaps the owner even repaired some fencing and gates in the interim to prepare the property for such future use. On January 1, there was no cattle on the property. Thus, no good faith commercial agricultural use is being made of the property and the agricultural classification is not authorized.

The same rule works in the opposite direction. Simply because the cow-calf operation may be discontinued in a future year and a new subdivision constructed – the plans and zoning changes already initiated as of January 1 – the agricultural classification may not be removed if the cattle operation is ongoing as of that date. The court in *Gianolio* addressed that situation, albeit in the context of a dairy operation. There the court rejected the property appraiser’s argument that development is a long process that typically begins with zoning, land use, and permitting changes that require the agricultural classification to be removed as violative of the future use doctrine. As long as the property was still being used as a dairy as of January 1, the classification would not be removed based upon future development plans.

The special magistrate’s reliance on two cases involving the clearing of land for row crops to support a conclusion that the property owner’s intent to conduct agricultural operations in the future supports the granting of agricultural operations is flatly incorrect. See *Bystrom v. Union Land Invest.*, 477 So.2d 585 (Fla. 3d DCA 1985); *Mackle Co. v. Metro. Dade Cnty.*, 220 So.2d 422 (Fla. 3d DCA 1969). Both of these cases held that the classification should not be granted despite some preparatory work on the property at issue. In fact, *Bystrom* reversed the trial court’s decision to grant agricultural classification when land-clearing for row crops had commenced in late October or early November and was to be completed by February of the tax year at issue. The district court held that “although there is no dispute that the property owner intended to use the property in question for agricultural purposes during 1980 and, thereafter, the property owner failed to prove, as was its burden, that it was being so used on January 1, 1980. *Bystrom*, 477 So.2d at 585.

Conclusion

It is respectfully requested that the VAB reject the special magistrate's recommendations that agricultural classification should have been granted. The recommended decisions for petitioner 2023-1, 2023-2, and 2023-27 are incorrect as a matter of law and should be rejected pursuant to rule 12D-9.031.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Loren E. Levy', with a stylized, cursive flourish.

Loren E. Levy

LEL/gls

cc: Hon. Dena Pittman, CFA, Hendry County Property Appraiser
Holly E. Cosby, VAB Attorney (via e-mail: holly@cosbylaw.com)
Sharon Congleton, VAB Clerk (via e-mail: scongleton@hendryclerk.com)

From: [Law Office of Holly E. Cosby, PA](#)
To: ["Sharon Congleton"](#)
Subject: RE: VAB-Hendry County Petition 2023-1 and 2023-2
Date: Tuesday, January 16, 2024 2:55:00 PM

Good afternoon.

Please provide the following to the petitioner:

Good afternoon.

The letter you received this morning was the attorney for the Property Appraiser's objection to the recommended decision. We, the Value Adjustment Board, are duty bound to ensure that any ex parte information received by one party is promptly provided to the other party, to resolve any ex parte issues. The recommended decisions you previously received with regards to your petitions will still be presented to the Board for approval this Friday, along with the letter from the Property Appraiser's attorney and your email below. The Board will have all the information on Friday, and the Board attorney is prepared to advise the Board appropriately.

Sincerely,
VAB Administration

Holly E. Cosby
Law Office of Holly E. Cosby, P.A.
602 Center Road
Fort Myers, Florida 33907
(239) 931-0006
(239) 599-9115 (fax)

This electronic message transmission and any associated files and/or attachments contains information from the Law Office of Holly E. Cosby, P.A. that is considered confidential or privileged. The information is intended solely for the recipient and use by any other party is not authorized. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please permanently delete this information and notify me immediately by telephone (239-931-0006), or by electronic mail (holly@cosbylaw.com). Additionally, however, Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure. Thank you.

From: Sharon Congleton <scongleton@hendryclerk.org>
Sent: Tuesday, January 16, 2024 11:55 AM
To: holly@cosbylaw.com
Subject: FW: VAB-Hendry County Petition 2023-1 and 2023-2

Received this from Petitioner 2023-1/2

From: Tal Shemtov <tal@shlawfl.com>
Sent: Tuesday, January 16, 2024 11:26 AM

To: Sharon Congleton <scongleton@hendryclerk.org>

Subject: Re: VAB-Hendry County Petition 2023-1 and 2023-2

Good morning,

I just received this. This is an improper appeal. I object to it being included. There is a system in place for an appeal and this is not a legal avenue. This is an attempt to taint the VAB and the process. I have just received this and have yet to give it a proper read, yet from a cursory glance it is wholly improper to send a letter in general with facts not in evidence and not include a transcript or record. The case law is clear: Per Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, a record must be attached with any appeal.

I OBJECT to this being included and if it is going to be included, I need to know so that I may file the proper appeal.

Thank you.

On Tue, Jan 16, 2024 at 10:38 AM Sharon Congleton <scongleton@hendryclerk.org> wrote:

Please see the attached correspondence from the Hendry County Property Appraisers Attorney.

Thank you,

Sharon Congleton, Chief Deputy Clerk
Hendry County Clerk of Court
25 E. Hickpochee Avenue
LaBelle, Florida 33935
(863)675-5216

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications, including your email address, may therefore be subject to public disclosure.

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From: [Law Office of Holly E. Cosby, PA](#)
To: ["Sharon Congleton"](#)
Subject: RE: VAB-Hendry County Petition 2023-27
Date: Tuesday, January 16, 2024 2:57:00 PM

Good afternoon.

Please provide the following to the petitioner:

Good afternoon.

The letter you received this morning was the attorney for the Property Appraiser's objection to the recommended decision. We, the Value Adjustment Board, are duty bound to ensure that any ex parte information received by one party is promptly provided to the other party, to resolve any ex parte issues. The recommended decision you previously received with regards to your petition was rendered by the Value Adjustment Board Special Magistrate. The recommended decision will still be presented to the Board for approval this Friday, along with the letter from the Property Appraiser's attorney and your email below. The Board will have all the information on Friday, and the Board attorney is prepared to advise the Board appropriately.

Sincerely,
VAB Administration

[Holly E. Cosby](#)
[Law Office of Holly E. Cosby, P.A.](#)
602 Center Road
Fort Myers, Florida 33907
(239) 931-0006
(239) 599-9115 (fax)

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From: Sharon Congleton <scongleton@hendryclerk.org>
Sent: Tuesday, January 16, 2024 1:06 PM
To: holly@cosbylaw.com
Subject: FW: VAB-Hendry County Petition 2023-27

How would you like me to respond to them?

From: stephen gudz <stephengudz@gmail.com>
Sent: Tuesday, January 16, 2024 12:35 PM

To: Sharon Congleton <scongleton@hendryclerk.org>
Cc: martin mason <Memhort@aol.com>
Subject: Re: VAB-Hendry County Petition 2023-27

Hello Sharon,

I am confused by this, I previously understood that the Property Appraiser had approved the agriculture classification, as demonstrated by her recalculation of the tax to be paid. Has the Property Appraiser changed their position?

If the Hendry Country Value Adjustment Board denies, can I then go to the state?

Thanks,
Stephen

On Tue, Jan 16, 2024 at 10:44 AM Sharon Congleton <scongleton@hendryclerk.org> wrote:

Please see the attached correspondence from the Hendry County Property Appraisers Attorney.

Sharon Congleton, Chief Deputy Clerk
Hendry County Clerk of Court
25 E. Hickpochee Avenue
LaBelle, Florida 33935
(863)675-5216

***Please Note:** Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications, including your email address, may therefore be subject to public disclosure.*

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From: [Law Office of Holly E. Cosby, PA](#)
To: "Steve Keller"; [Loren Levy](#)
Cc: "[tal@shlawfl.com](#)"; "[llevy@levylawtax.com](#)"
Subject: RE: VAB Hendry 2024 0118 / FW: New Property Tax Customer Form
Date: Thursday, January 18, 2024 12:41:00 PM
Attachments: [RE VAB-Hendry County Petition 2023-1 and 2023-2.msg](#)
[image001.png](#)
[image003.png](#)
Importance: High

Sending again, so that Attorney Levy receives the same.

Holly E. Cosby
 Law Office of Holly E. Cosby, P.A.
 602 Center Road
 Fort Myers, Florida 33907
 (239) 931-0006
 (239) 599-9115 (fax)

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From: Law Office of Holly E. Cosby, PA <holly@cosbylaw.com>
Sent: Thursday, January 18, 2024 12:36 PM
To: 'Steve Keller' <Steve.Keller@floridarevenue.com>
Cc: 'tal@shlawfl.com' <tal@shlawfl.com>; 'llevy@levylawrax.com' <llevy@levylawrax.com>
Subject: RE: VAB Hendry 2024 0118 / FW: New Property Tax Customer Form
Importance: High

Good afternoon, Mr. Keller.

Because the Value Adjustment Board (VAB) falls under the Sunshine Laws, we are duty bound to ensure that all correspondence received is provided to the Board and available to the public, with the exception of any confidential information. We are also duty bound to ensure that all parties receive any ex parte communication. The VAB received the letter from the Property Appraiser's Office and promptly provided the same to my office and all affected petitioners. The VAB received responses from each petitioner as well.

All correspondence received from the parties will be provided to the Board during the Final Meeting tomorrow, as is required by law. Additionally, I will be present at the Final Meeting and will be advising the Board of the laws and rules which apply to this matter. I assure you that the Board has not and will not be tainted, and that I will be advising the Board adequately with regards to this matter. I also have a memorandum

drafted with regards to this legal issue, which I can provide to your office after the Final Meeting.

Attorney Shemtov has been formally invited to attend the meeting, which is open to the public, and Attorney Shemtov has also been provided with the attached responses. This matter has been addressed to the best of my ability at this time. I believe that Attorney Shemtov has a misunderstanding of the process and the laws that govern Florida Value Adjustment Boards, and I believe that this will all be resolved at the Final Meeting tomorrow without issue.

I am trying to be efficient yet thorough. I am hopeful that you find this response adequate. I am currently preparing for the meeting tomorrow while also tending to two sick parents, one of which is in the hospital. I will be sure to include this inquiry and my response in the agenda for tomorrow's meeting.

Please let me know if you have any further questions or concerns.

Respectfully,
Holly Cosby

Holly E. Cosby
Law Office of Holly E. Cosby, P.A.
602 Center Road
Fort Myers, Florida 33907
(239) 931-0006
(239) 599-9115 (fax)

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From: Steve Keller <Steve.Keller@floridarevenue.com>

Sent: Thursday, January 18, 2024 12:06 PM

To: holly@cosbylaw.com

Cc: tal@shlawfl.com; llevy@levylawrax.com

Subject: VAB Hendry 2024 0118 / FW: New Property Tax Customer Form

To: Holly Cosby, VAB Attorney Hendry County holly@cosbylaw.com

cc: Tal Shemtov, Esq tal@shlawfl.com

Loren Levy, Esq llevy@levylawrax.com

Dear Ms. Cosby:

We are forwarding the attached correspondence to you as VAB attorney for Hendry

County, as it concerns VAB processes in Hendry County and indicates it is time sensitive.

Sincerely,

Stephen J. Keller
Chief Legal Counsel - Property
Tax
Litigation and Value Adjustment
Board Oversight
Office of the General Counsel
Department of Revenue
850 617 8347

email encryption status [unsecure]; signifies: not encrypted

From: Webmaster <Webmaster@floridarevenue.com>

Sent: Tuesday, January 16, 2024 5:53 PM

To: DORPTO <DORPTO@floridarevenue.com>

Subject: New Property Tax Customer Form

A customer has submitted a new contact form, [click here](#) to view this submission.

Customer Name: Tal Shemtov

County Where Property is Located: Hendry

Have you previously contacted the property appraiser or tax collector with your question? Yes

Contact Email: tal@shlawfl.com

Phone Number: 9544789527

Type of Question: Question

Subject: Value Adjustment Board

Description: I am an attorney. I went in front of the Magistrate to appeal the denial of an agricultural exemption. After a 3 hour hearing, we won against the property appraiser and the magistrate agreed that we should have been granted the AG exemption. Now, the attorney for the property appraiser is attempting to submit an objection disguised as an improper appeal. They wrote 7 pages of why they believe the magistrate erred and included lies in the appeal. They also did not provide any proof nor transcript. They are attempting to sway and taint the VAB. I believe this is inappropriate and would like your assistance in the matter. I have objected to the paperwork being shown to the VAB but the clerk claims that she will show it to them on Friday. This is a time sensitive issue.

NOTIFICATION TO RECIPIENTS: The subject line of this email may indicate that this email has been

sent unsecure. This is a default setting which in no way indicates that this communication is unsafe, but rather that the email has been sent unencrypted in clear text form. Revenue does provide secure email exchange. Please contact us if you need to exchange confidential information electronically.

If you have received this email in error, please notify us immediately by return email. If you receive a Florida Department of Revenue communication that contains personal or confidential information, and you are not the intended recipient, you are prohibited from using the information in any way. All record of any such communication (electronic or otherwise) should be destroyed in its entirety.

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Internet email is not secure and may be viewed by someone other than the person you send it to. Please do not include your social security number, federal employer identification number, or other sensitive information in an email to us.

From: [Law Office of Holly E. Cosby, PA](#)
To: ["Sharon Congleton"](#)
Cc: ["Kim Barrineau"](#)
Subject: RE: VAB-Hendry County Petition 2023-1 and 2023-2
Date: Wednesday, January 17, 2024 12:31:00 PM

You can copy and paste the following:

Good afternoon.

This matter is included in the Final Meeting agenda, which meeting is scheduled for this Friday, January 19th at 10:00 am. The meeting is open to the public. In the event you would like to express your concerns to the Value Adjustment Board (VAB), you are welcome to attend and speak during the public comment portion of the meeting. The VAB is represented by counsel, who is experienced and knowledgeable, and who will be addressing this matter during said meeting. VAB Counsel has received your comments and concerns, and has included the same in the agenda. This communication will be the final response you will receive from this office.

Please govern yourself accordingly.

Holly E. Cosby
Law Office of Holly E. Cosby, P.A.
602 Center Road
Fort Myers, Florida 33907
(239) 931-0006
(239) 599-9115 (fax)

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From: Sharon Congleton <scongleton@hendryclerk.org>
Sent: Wednesday, January 17, 2024 7:36 AM
To: holly@cosbylaw.com
Subject: FW: VAB-Hendry County Petition 2023-1 and 2023-2

From: Tal Shemtov <tal@shlawfl.com>
Sent: Tuesday, January 16, 2024 5:51 PM

To: Sharon Congleton <scongleton@hendryclerk.org>
Subject: Re: VAB-Hendry County Petition 2023-1 and 2023-2

Please show me in the rules where a an objection disguised as an improper appeal is permitted. They wrote 7 pages of why they believe the magistrate erred and included lies in the appeal. They also did not provide any proof nor transcript. They are attempting to sway and taint the VAB. I believe this is inappropriate and would like proof that a letter, not just a simple objection is permitted.

Thank you.

On Tue, Jan 16, 2024 at 3:11 PM Sharon Congleton <scongleton@hendryclerk.org> wrote:

Good afternoon.

The letter you received this morning was the attorney for the Property Appraiser's objection to the recommended decision. We, the Value Adjustment Board, are duty bound to ensure that any ex parte information received by one party is promptly provided to the other party, to resolve any ex parte issues. The recommended decisions you previously received with regards to your petitions will still be presented to the Board for approval this Friday, along with the letter from the Property Appraiser's attorney and your email below. The Board will have all the information on Friday, and the Board attorney is prepared to advise the Board appropriately.

Sincerely,
VAB Administration

From: Tal Shemtov <tal@shlawfl.com>
Sent: Tuesday, January 16, 2024 11:26 AM
To: Sharon Congleton <scongleton@hendryclerk.org>
Subject: Re: VAB-Hendry County Petition 2023-1 and 2023-2

Good morning,

I just received this. This is an improper appeal. I object to it being included. There is a system in place for an appeal and this is not a legal avenue. This is an attempt to taint the VAB and the process. I have just received this and have yet to give it a proper read, yet from a cursory glance it is wholly improper to send a letter in general with facts not in evidence and not include a transcript or record. The case law is clear: Per Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, a record must be attached with any appeal.

I OBJECT to this being included and if it is going to be included, I need to know so that I may file the proper appeal.

Thank you.

On Tue, Jan 16, 2024 at 10:38 AM Sharon Congleton <scongleton@hendryclerk.org> wrote:

Please see the attached correspondence from the Hendry County Property Appraisers Attorney.

Thank you,

Sharon Congleton, Chief Deputy Clerk
Hendry County Clerk of Court
25 E. Hickpochee Avenue
LaBelle, Florida 33935
(863)675-5216

***Please Note:** Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications, including your email address, may therefore be subject to public disclosure.*

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From: [Steve Keller](#)
To: holly@cosbylaw.com
Cc: tal@shlawfl.com; llevy@levylawrax.com
Subject: VAB Hendry 2024 0118 / FW: New Property Tax Customer Form
Date: Thursday, January 18, 2024 12:06:23 PM
Attachments: [image001.png](#)
[image003.png](#)
[Fwd Help with VAB issue \(4.27 MB\).msg](#)

To: Holly Cosby, VAB Attorney Hendry County holly@cosbylaw.com
cc: Tal Shemtov, Esq tal@shlawfl.com
Loren Levy, Esq llevy@levylawrax.com

Dear Ms. Cosby:

We are forwarding the attached correspondence to you as VAB attorney for Hendry County, as it concerns VAB processes in Hendry County and indicates it is time sensitive.

Sincerely,

Stephen J. Keller
Chief Legal Counsel - Property
Tax
Litigation and Value Adjustment
Board Oversight
Office of the General Counsel
Department of Revenue
850 617 8347

email encryption status [unsecure]; signifies: not encrypted

From: Webmaster <Webmaster@floridarevenue.com>
Sent: Tuesday, January 16, 2024 5:53 PM
To: DORPTO <DORPTO@floridarevenue.com>
Subject: New Property Tax Customer Form

A customer has submitted a new contact form, [click here](#) to view this submission.

Customer Name: Tal Shemtov

County Where Property is Located: Hendry

Have you previously contacted the property appraiser or tax collector with your question? Yes

Contact Email: tal@shlawfl.com

Phone Number: 9544789527

Type of Question: Question

Subject: Value Adjustment Board

Description: I am an attorney. I went in front of the Magistrate to appeal the denial of an agricultural exemption. After a 3 hour hearing, we won against the property appraiser and the magistrate agreed that we should have been granted the AG exemption. Now, the attorney for the property appraiser is attempting to submit an objection disguised as an improper appeal. They wrote 7 pages of why they believe the magistrate erred and included lies in the appeal. They also did not provide any proof nor transcript. They are attempting to sway and taint the VAB. I believe this is inappropriate and would like your assistance in the matter. I have objected to the paperwork being shown to the VAB but the clerk claims that she will show it to them on Friday. This is a time sensitive issue.

NOTIFICATION TO RECIPIENTS: The subject line of this email may indicate that this email has been sent unsecure. This is a default setting which in no way indicates that this communication is unsafe, but rather that the email has been sent unencrypted in clear text form. Revenue does provide secure email exchange. Please contact us if you need to exchange confidential information electronically.

If you have received this email in error, please notify us immediately by return email. If you receive a Florida Department of Revenue communication that contains personal or confidential information, and you are not the intended recipient, you are prohibited from using the information in any way. All record of any such communication (electronic or otherwise) should be destroyed in its entirety.

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Internet email is not secure and may be viewed by someone other than the person you send it to. Please do not include your social security number, federal employer identification number, or other sensitive information in an email to us.

From: [Tal Shemtov](#)
To: [DORPTO](#); [PTO Director](#); [PTOAAProcessOffice](#)
Subject: Fwd: Help with VAB issue
Date: Thursday, January 18, 2024 9:42:51 AM
Attachments: [Letter to DOR re VAB.pdf](#)
[2023-01 Chosen Farms.pdf](#)
[2023-02 Chosen Farms.pdf](#)
[Scan1 \(4\).pdf](#)

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

----- Forwarded message -----

From: **Tal Shemtov** <tal@shlawfl.com>
Date: Wed, Jan 17, 2024 at 2:02 PM
Subject: Help with VAB issue
To: <DORPTO@flrevenue.com>

Good afternoon,

I am an attorney. I believe that Hendry County Property Appraisers Office is acting corruptly in a matter that I am litigating against them.

I would like your guidance in the laws of the VAB to figure out if the property appraisers office is violating the rules/law of the VAB.

A little bit of background, we own a farm in Hendry County. This farm was denied agricultural exemption. We filed an appeal. We had a three-hour hearing in front of the magistrate. After hearing both sides, the magistrate ruled in our favor and granted the agricultural exemption. I have attached the ruling for your reference.

Yesterday on January 16, 2024, I received an email from the Henry County Clerk of Courts notifying me that they would be attaching a letter from counsel for the Property Appraiser to the magistrate's findings. I have attached a copy for your review.

The letter is 7 pages of why they believe the magistrate erred and included opinions and mischaracterizations of the evidence, frankly speaking lies. They also did not provide any proof nor transcript. They are attempting to sway and taint the VAB. I believe this is inappropriate and would like your assistance in the matter. I have objected to the paperwork being shown to the VAB but the clerk claims that she will show it to them on Friday. This is a time sensitive issue.

Frankly, this is an improper appeal. I object to it being included. There is a system in place for an appeal after the VAB accepts or rejects the findings of the Magistrate. This is not a legal avenue. This is an attempt to taint the VAB and the process. It is wholly improper to send a letter in general with facts not in evidence and not include a transcript or record. The case law is clear: per Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, a record must be attached with any appeal.

This is a time sensitive issue, as the VAB meets this Friday for review.

Please let me know your thoughts on this matter. I can be reached anytime on my cell at 954-478-9527.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Tal Shemtov

Florida Bar # 28456

Shemtov & Hillstrom, PLLC

612 SE 5th Ave., Suite 6

Fort Lauderdale, FL 33301

(954) 329-2222

(954) 462-7237 fax

Tal@shlawfl.com



January 17, 2024

Good afternoon,

I am an attorney. I believe that Hendry County Property Appraisers Office is acting corruptly in a matter that I am litigating against them.

I would like your guidance in the laws of the VAB to figure out if the property appraisers office is violating the rules/law of the VAB.

A little bit of background, we own a farm in Hendry County. This farm was denied agricultural exemption. We filed an appeal. We had a three-hour hearing in front of the magistrate. After hearing both sides, the magistrate ruled in our favor and granted the agricultural exemption. I have attached the ruling for your reference.

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This is a time sensitive issue, as the VAB meets this Friday for review. Please let me know your thoughts on this matter. I can be reached anytime on my cell at 954-478-9527.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Tal Shemtov
Florida Bar # 28456
Shemtov & Hillstrom, PLLC
612 SE 5th Ave., Suite 6

Fort Lauderdale, FL 33301
(954) 329-2222
(954) 462-7237 FAX
Tal@shlawfl.com



DECISION OF THE VALUE ADJUSTMENT BOARD
EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE
TRANSFER, CHANGE OF OWNERSHIP OR CONTROL,
OR QUALIFYING IMPROVEMENT PETITION

Agenda Item H3
R. 11/23
Rule 12D-16.002
F.A.C.
Eff. 11/23

The actions below were taken on your petition in Hendry County.

☒ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.
If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 194.181, 196.151, and 197.2425, Florida Statutes.)

Petition # 2023-001

Parcel ID 1 32 43 32 A00 00045.0A00

Petitioner name Chosen Farms, LLC.

Property address 4120 Price Road
Labelle

The petitioner is: ☒ taxpayer of record ☐ representative
☐ other, explain: _____

Decision Summary ☐ Denied your petition ☒ Granted your petition ☐ Granted your petition in part

Lines 1 and 4 must be completed	Value from TRIM Notice	Value before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C.	Value after Board Action
1. Just value, required	\$320,782	\$320,782	\$320,782
2. Assessed or classified use value,* if applicable	\$320,782	\$320,782	\$237,631
3. Exempt value,* enter "0" if none			
4. Taxable value,* required	\$320,782	\$320,782	\$237,631

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Homestead | <input type="checkbox"/> Widow/er | <input type="checkbox"/> Blind | <input type="checkbox"/> Totally and permanently disabled veteran |
| <input type="checkbox"/> Low-income senior | <input type="checkbox"/> Disabled | <input type="checkbox"/> Disabled veteran | <input checked="" type="checkbox"/> Use classification, specify <u>Ag</u> |
| <input type="checkbox"/> Parent/grandparent assessment reduction | <input type="checkbox"/> Deployed military | <input type="checkbox"/> Use exemption, specify _____ | <input type="checkbox"/> Qualifying improvement |
| <input type="checkbox"/> Transfer of homestead assessment difference | | <input type="checkbox"/> Other, specify _____ | |
| <input type="checkbox"/> Change of ownership or control | | | |

Reasons for Decision

Fill-in fields will expand, or add pages as needed.

Findings of Fact
See Attached.

Conclusions of Law
See Attached.

☒ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

Ellen T. Chadwell
Signature, special magistrate

Ellen T. Chadwell
Print name

12/12/23
Date

Sharon Congleton
Signature, VAB clerk or special representative

Sharon Congleton
Print name

12/14/2023
Date

If this is a recommended decision, the board will consider the recommended decision on _____ at _____ ☐ AM ☐ PM.
Address _____

If the line above is blank, please call 863-675-5216 or visit our website at SCongleton@hendryclerk.org

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board

Print name

Date of decision

Signature, VAB clerk or representative

Print name

Date mailed to parties

Petitions 2023-001 (CHOSEN FARMS, LLC.)

FINDINGS OF FACT.

Petition 2023-001 concerns a five-acre parcel of land located at 4120 Price Road in Hendry County, Florida. A mobile home is located on this parcel. This parcel is immediately adjacent to the five-acre parcel which is the subject of Petition 2023-002. Both parcels are enclosed by fencing that contains the entire ten acres and are being utilized together as one parcel for the raising and keeping of livestock. These petitions were consolidated for purposes of the hearing as all evidence related to both parcels and their use. Both parcels will be collectively referred to as "the Property" for purposes of this recommended decision.

Petitioner is a Florida limited liability company owned by Benjamin Becker. (Becker: PAO Ex. 1, p. 2) Ms. Tal Shemtov presented the case for Petitioner. She is Mr. Becker's wife and a practicing attorney. Mr. Becker appeared as a witness. The tenant and business owner, Virginia Williams, was also present at the hearing.

The Property Appraiser's Office (PAO) was represented by counsel, Loren Levy, the Property Appraiser, Dena Pittman, Nick Tanner, Appraiser Director and Karen Robinson, Agricultural Appraiser. All parties were sworn in, including Ms. Levy.

The PAO offered two packets as evidence. The first packet contained 39 pages and was admitted as Composite Ex. 1, without objection. The second packet contained 21 pages and was admitted as PAO Composite Ex. 2, without objection.

Petitioner offered two packets of evidence as well. One consisting of 51 pages was admitted, without objection, as P. Composite Exhibit 1. The 8-page packet contains a list of the exhibits included in Composite Ex. 1, and legal argument. This packet was admitted as P. Composite Exhibit 2, without objection. The Notice of Disapproval was admitted as P. Exhibit 3, without objection. The Lease Agreement was admitted as P. Exhibit 4, without objection. Reference in this Recommendation to Composite Ex. 1 will identify those specifically numbered exhibits included in the package.

In addition, counsel for both parties provided the Special Magistrate with case law.

The Property previously enjoyed an agricultural classification for citrus production and cattle grazing. (Becker) Petitioner intended to retain the citrus grove when he purchased the land, but discovered after purchase that the citrus grove was not viable. (Becker) Petitioner met Virginia Williams a few years ago on the east coast, where Mr. Becker and Ms. Shemtov reside. Ms. Williams owns Fancy's Magical Critters, LLC., also known as Magical Critters. (Shemtov; Williams; PAO Ex. 1) Magical Critters is for all intents and purposes a travelling petting zoo. (Tanner; P. Ex. 1 (#1)) Ms. Williams owns a number of farm animals, including goats, chickens, ducks, cows, sheep, llamas, rabbits and a horse and pony. (Williams) These animals are transported to schools, day care and religious facilities, private homes and other locations for exhibition and educational purposes, primarily for children. Children are permitted to pet, feed and interact with the animals, while learning about them. (Shemtov; Williams). This is a for profit business that was created in 2015. (Williams) The majority of the animals reside on the Property. Sometimes they are transported to the east coast for events, and in these circumstances, the animals will stay temporarily with a friend in Rolling Oaks, Florida. (Williams)

Mr. Becker was contacted by Ms. Williams sometime in the fall of 2022. She needed a place to house her animals as she had lost her previous residence in Broward County. Petitioner purchased the Property in September, 2022, for the purpose of giving Ms. Williams and her animals a place to live. (Becker) Mr. Becker and Ms. Williams signed a 10-year lease on September 30, 2022. The Lease calls for a monthly rent of \$2500. (P. Ex. 4) The rent was reduced to \$1600 a month because Williams is unable to afford the original lease amount. (Becker) Ms. Williams routinely makes partial payments when she does not have sufficient funds to pay the entire rent. (Becker; P. Ex. 1 (#13); PAO Ex. 2, Add. A.2) However, the evidence showed that Ms. Williams did not make regular payments of rent during 2023 irrespective of this reduction. There was also insufficient evidence to show that Williams earns enough money from her business to cover her rental obligations. The Lease grants Ms. Williams full use of the mobile home and the land and requires her to maintain the farm "for use for her petting zoo business." The Lease states in Section III that "the animals must be part of the business." (P. Ex. 4)

Ms. Williams breeds her goats, sheep and poultry, and uses the baby animals as part of her business. The baby animals are often exhibited at schools and day care facilities for the children. (Williams; Shemtov) Some of the baby animals are kept temporarily in the mobile home to protect them from predators. Ms. Williams makes the mobile home her permanent residence. (Williams) She recently purchased a Black Angus bull. She plans on selling the older goats and rams for meat at some indefinite time in the future. (Williams)

No evidence was provided showing Ms. Williams' costs for maintaining the animals or the land.

Petitioner presented numerous screen shots from Instagram and Facebook which contained photos of the animals and past events and public posts from their followers. (P. Ex. 1, (#6--#8) These various screen shots contained posts and events going back to 2017. Petitioner also provided an affidavit of Rabbi Waks of The Jewish Center in Broward County. (P. Ex. 1 (Ex. 2)). The Jewish Center has hired Fancy Magical Critters for many past events and intends to hire them for future events as well. (P. Ex. 1 (# 2)) I Love Indoors, Inc., which was owned by Mr. Becker, hired Magical Critters regularly in 2023 for children's birthday parties. (Becker; P. Ex.1 (#10)) When Becker hired Magical Critters on behalf of I Love Indoors, he always doubled the cost to his customer, so he made 50% profit on the transaction. A handful of invoices, receipts and checks were provided that showed payment to Magical Critters.

On May 11, 2023, Mr. Becker applied for an agricultural classification on each of the parcels for 2023. (PAO Ex. 1, pp. 4-5). The application states that one acre is used for citrus and three acres are used for grazing land on each of the 5-acre parcels. Mr. Becker was assisted by an agent at the PAO and he testified that he was advised that the previous agricultural classification was based on a tree farm and also told that he should use the same acreage amounts as the previous owner. Mr. Becker checked the "no" box on the application as to whether the property was leased to others. When asked why, he had no credible explanation.

The Property was field inspected on March 28, 2023, by Ms. Robinson. (Tanner; PAO Ex. 2, pp. 9-21) The applications were denied on grounds that the land was not being used primarily for a bona fide agricultural purpose in accordance with s. 193.461(3), Fla. Stat., which the denial explained further as "meaning not using the land for a good faith commercial agricultural use." (PAO Ex. 3)

The PAO received a number of invoices and checks provided by Petitioner which showed the purchase of services from Fancy's Magical Critters and payment to Magical Critters. The PAO deemed most of these

documents suspect for various reasons. (PAO Ex. 1, p. 28). In an attempt to determine the bona fides of Magical Critters, Mr. Tanner requested a Schedule F, income/expense statement, financial statement and the identification numbers for the cattle, goats and sheep. (PAO Ex. 1, p. 19). Petitioner objected to producing financial information for the LLC and did not produce these statements.

Goats are to be officially identified if transported anywhere within the state. (Tanner; PAO Ex. 1, 30-31)
None of the cattle, goats or sheep are identified in accordance with USDA and state requirements.
(Tanner)

Ms. Williams does not file an income tax return or pay taxes on her business. (Williams)

The Special Magistrate remanded this matter to the PAO for a reclassification and re-assessment of the Property. The PAO's written remand review was provided to Petitioner, who accepted the results and waived its right to a continuation hearing.

CONCLUSIONS OF LAW

Petitioner has the burden of proof to show by a preponderance of the evidence that a bona fide agricultural use exists on the property as of January 1, 2023. This is the operative date for purposes of a determination of agricultural classification. Section 193.461(3)(b), Fla. Stat., provides that only those lands used primarily for bona fide agricultural purposes may be classified agricultural. "Primarily" means that the agricultural use must be the most significant activity on the land. *Bystrom v. Union Land Investments, Inc.*, 477 So. 2d 585, 587 (Fla. 3d DCA 1985). Section 193.461(3)(b) then defines a bona fide use as a "good faith commercial agricultural use," and sets forth a number of factors to be considered when making this determination: (1) length of time the land has been used; (2) whether the use is continuous; (3) purchase price; (4) size of land as it relates to the use; (5) efforts to care sufficiently for the land in accordance with accepted commercial agricultural practices; (6) the existence of a lease and its terms; and (7) any other factors that may be relevant, such as profit motive. No one factor is determinative, and the actual physical use of the property as of January 1st remains the guidepost for the agricultural determination. See *Straughn v. Tuck*, 354 So. 2d 368 (Fla. 1977); *Fisher v. Schooley*, 371 So. 2d 496 (Fla. 2d DCA 1979); and *Bystrom* at p. 585.

The question in this appeal is whether the 10 acres were being used by Petitioner on January 1, 2023, for a good faith commercial agricultural purpose. Although the evidence was not credible to show that Ms. Williams routinely meets her rental obligations, the Lease Agreement is a legally binding document that is sufficient to establish her status as a lessee on the Property. Because the Property is being leased to Ms. Williams, her use of the Property must meet the statutory requirement for agricultural classification. Petitioner must show that Ms. Williams' traveling petting zoo is a bona fide for-profit venture and that the raising and maintaining of these animals on the Property qualifies as an agricultural use. Petitioner cites *McClendon v. Nikolits*, 211 So. 3d 92 (Fla. 4th DCA 2017) in support of its contention that this specific use qualifies as an agricultural one. *McClendon* concerns the raising of exotic birds for sale as pets, known as "aviculture." In this case, the court was required to consider the definitions of "agricultural purpose" under s. 193.461(5), and "farm product" under s. 823.14, Fla. Stat., also known as The Florida Right to Farm Act. In considering those definitions it determined that the examples given were not intended to be exhaustive. Section 823.14(3)(c) states: "Farm product means any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom." After hearing from experts who opined that aviculture is useful to humans for reasons such as companionship, concern for endangered species, entertainment, education and scientific purposes, the trial court found that aviculture provides birds for their entertainment use or novelty value. Based on this finding, which was undisputed by the Property Appraiser, the *McClendon* court found that pet birds were useful to humans and therefore the breeding and sale of such birds qualified as an agricultural purpose.

Because a farm product constitutes an "agricultural purpose" under s. 193.461(5), if exhibition animals qualify as a farm product, then the current use of the Property for the raising of such animals would constitute an agricultural use. Although we do not have expert testimony here to confirm that petting zoos provide educational and entertainment benefits to humans, it is a well-established fact that the interaction between humans and animals, as is the purpose of a petting zoo, is beneficial to humans. And, one can infer from the evidence that educating the public about farm animals is also beneficial to humans. It certainly furthers the policy behind the Right to Farm Act. In this case, the evidence was credible and sufficient to show that the animals are bred and maintained on the Property. Even

without finding that exhibition animals constitute a farm product, the credible and relevant evidence showed that livestock, which is included in the definition of agricultural purpose under s. 193.461(5), were being bred and maintained on the property. As Petitioner points out, "livestock" is defined by Rule 12D-1.002(6), Fla. Admin. Code, as animals kept or raised for use or pleasure. Clearly these animals were kept on the property for both purposes.

The evidence provided by the Petitioner was sufficient to show that all the land, excepting the mobile home and its curtilage, was used for the raising of livestock and exhibition animals. In fact, this was supported by the stocking requirements provided by the PAO. Ms. Williams' testimony about keeping some of the baby animals inside the home was credible. However, this fact does not transform the residence into a barn or a farm structure. It is used primarily as Ms. Williams' primary residence, not for production of a farm product, and this portion of the Property should keep its classified use as residential.

Finding that this use was an agricultural purpose as defined by statute, however, is not the end of the inquiry. Section 193.461(3)(b), clearly requires that the use be a "good faith commercial agricultural use." This requires that the raising and maintenance of these exhibition animals be something more than a hobby. In McClendon, there was no dispute about the good faith commercial aspect of the use, as the birds were clearly being sold. Here, the commercial aspect of Ms. Williams' activity is less than clear.

The PAO questioned the bona fides of the business, Fancy's Magical Critters, the size of land as it related to the use and whether the land was being cared for in accordance With acceptable agricultural practices. To that end, the PAO presented credible evidence that these animals were not being transported and maintained in accordance with acceptable agricultural practices, and that there was insufficient land for the grazing of goats. These facts, however, do not outweigh the physical use of the land. There was sufficient credible evidence that the animals reside on the Property when they are not travelling and that the actual, physical use of the Property was for the maintenance and breeding of these animals. (Williams)

Credible evidence was provided by the parties that Fancy's Magical Critter is a registered for-profit business entity and that Ms. Williams has been running her petting zoo for many years. (P. Ex 1, # 6-8; PAO Ex. 1, p. 3) As Petitioner points out, Florida case law does not require that the farmer or applicant make a profit as a result of their agricultural use in order to qualify as a good faith commercial agricultural use, only that the venture not be a sham and has a profit motive. *Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995); see also *Matheson v. Elcock*, 173 So. 2d 164, 166 (Fla. 3d DCA 1965) ("Nothing in the law requires that a person operate a business efficiently or at a profit."). Although much of Petitioner's evidence of commercial activity was incomplete or incompetent to prove what it purported to show, there was little cross-examination on these matters of proof. Consequently, the testimony of Ms. Williams, the affidavit of the rabbi, and the few credible invoices and checks were sufficient proof that Ms. Williams does operate a travelling petting zoo for monetary compensation. Based on the evidence presented, she clearly does not make a profit, but the evidence was sufficient to establish that the business is not a sham and is a for-profit enterprise. Although Ms. Williams testified that she doesn't file an income tax return for her business, this doesn't negate her business operation. Although not professional or profitable, the business is a not sham.

The credible and relevant evidence was sufficient to show that a commercial enterprise was operated on the Property, albeit a poorly run one, which enterprise keeps livestock and maintains and produces animals that provide a useful and beneficial service to humans. The land is utilized and necessary for the production of a farm product and is primarily being used for an agricultural purpose. As such, Petitioner met its burden of proof in this appeal, and this matter was remanded to the PAO for classification and re-assessment as agricultural land. Petitioner has accepted the PAO's written remand review and waived its right to a continuation hearing. This recommended decision is issued in order that any right the Petitioner has to bring an action in circuit court is not impaired.



DECISION OF THE VALUE ADJUSTMENT BOARD
EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE
TRANSFER, CHANGE OF OWNERSHIP OR CONTROL,
OR QUALIFYING IMPROVEMENT PETITION

Agenda Item H3
R. 11/23
Rule 12D-16.002
F.A.C.
Eff. 11/23

The actions below were taken on your petition in Hendry County.

☒ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.
If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 194.181, 196.151, and 197.2425, Florida Statutes.)

Petition # 2023-002

Parcel ID 1 32 43 32 A00 0044.0000

Petitioner name Chosen Farms, LLC.

Property 4155 Price Road
address Labelle

The petitioner is: ☒ taxpayer of record ☐ representative
☐ other, explain: _____

Decision Summary ☐ Denied your petition ☒ Granted your petition ☐ Granted your petition in part

Lines 1 and 4 must be completed	Value from TRIM Notice	Value before Board Action Value presented by property appraiser Rule 12D-9.025(10), F.A.C.	Value after Board Action
1. Just value, required	\$93,600	\$93,600	\$93,600
2. Assessed or classified use value,* if applicable	\$93,600	\$93,600	\$1,210
3. Exempt value,* enter "0" if none			
4. Taxable value,* required	\$93,600	\$93,600	\$1,210

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Homestead | <input type="checkbox"/> Widow/er | <input type="checkbox"/> Blind | <input type="checkbox"/> Totally and permanently disabled veteran |
| <input type="checkbox"/> Low-income senior | <input type="checkbox"/> Disabled | <input type="checkbox"/> Disabled veteran | <input checked="" type="checkbox"/> Use classification, specify <u>Ag</u> |
| <input type="checkbox"/> Parent/grandparent assessment reduction | <input type="checkbox"/> Deployed military | <input type="checkbox"/> Use exemption, specify _____ | <input type="checkbox"/> Qualifying improvement |
| <input type="checkbox"/> Transfer of homestead assessment difference | | <input type="checkbox"/> Other, specify _____ | |
| <input type="checkbox"/> Change of ownership or control | | | |

Reasons for Decision

Fill-in fields will expand, or add pages as needed.

Findings of Fact
See Attached.

Conclusions of Law
See Attached.

☒ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

	Ellen T. Chadwell	<u>12/12/23</u>
Signature, special magistrate	Print name	Date

	Sharon Congleton	<u>12/14/2023</u>
Signature, VAB clerk or special representative	Print name	Date

If this is a recommended decision, the board will consider the recommended decision on _____ at _____ ☐ AM ☐ PM.
Address _____

If the line above is blank, please call 863-676-5216 or visit our website at Scingleton@hendryclerk.org.

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board	Print name	Date of decision
Signature, VAB clerk or representative	Print name	Date mailed to parties

Petitions 2023-002 (CHOSEN FARMS, LLC.)

FINDINGS OF FACT

Petition 2023-002 concerns a five-acre parcel of land located at 4155 Price Road in Hendry County, Florida. This parcel is immediately adjacent to a five-acre parcel which is the subject of Petition 2023-001. Both parcels are enclosed by fencing that contains the entire ten acres and are being utilized together as one parcel for the raising and keeping of livestock. A mobile home is located on the 4120 Price Road parcel. These petitions were consolidated for purposes of the hearing as all evidence related to both parcels and their use. Both parcels will be collectively referred to as "the Property" for purposes of this recommended decision.

Petitioner is a Florida limited liability company owned by Benjamin Becker. (Becker: PAO Ex. 1, p. 2) Ms. Tal Shemtov presented the case for Petitioner. She is Mr. Becker's wife and a practicing attorney. Mr. Becker appeared as a witness. The tenant and business owner, Virginia Williams, was also present at the hearing.

The Property Appraiser's Office (PAO) was represented by counsel, Loren Levy, the Property Appraiser, Dena Pittman, Nick Tanner, Appraiser Director and Karen Robinson, Agricultural Appraiser. All parties were sworn in, including Ms. Levy.

The PAO offered two packets as evidence. The first packet contained 39 pages and was admitted as Composite Ex. 1, without objection. The second packet contained 21 pages and was admitted as PAO Composite Ex. 2, without objection.

Petitioner offered two packets of evidence as well. One consisting of 51 pages was admitted, without objection, as P. Composite Exhibit 1. The 8-page packet contains a list of the exhibits included in Composite Ex. 1, and legal argument. This packet was admitted as P. Composite Exhibit 2, without objection. The Notice of Disapproval was admitted as P. Exhibit 3, without objection. The Lease Agreement was admitted as P. Exhibit 4, without objection. Reference in this Recommendation to Composite Ex. 1 will identify those specifically numbered exhibits included in the package.

In addition, counsel for both parties provided the Special Magistrate with case law.

The Property previously enjoyed an agricultural classification for citrus production and cattle grazing. (Becker) Petitioner intended to retain the citrus grove when he purchased the land, but discovered after purchase that the citrus grove was not viable. (Becker) Petitioner met Virginia Williams a few years ago on the east coast, where Mr. Becker and Ms. Shemtov reside. Ms. Williams owns Fancy's Magical Critters, LLC., also known as Magical Critters. (Shemtov; Williams; PAO Ex. 1) Magical Critters is for all intents and purposes a travelling petting zoo. (Tanner; P. Ex. 1 (#1)) Ms. Williams owns a number of farm animals, including goats, chickens, ducks, cows, sheep, llamas, rabbits and a horse and pony. (Williams) These animals are transported to schools, day care and religious facilities, private homes and other locations for exhibition and educational purposes, primarily for children. Children are permitted to pet, feed and interact with the animals, while learning about them. (Shemtov; Williams). This is a for profit business that was created in 2015. (Williams) The majority of the animals reside on the Property. Sometimes they are transported to the east coast for events, and in these circumstances, the animals will stay temporarily with a friend in Rolling Oaks, Florida. (Williams)

Mr. Becker was contacted by Ms. Williams sometime in the fall of 2022. She needed a place to house her animals as she had lost her previous residence in Broward County. Petitioner purchased the Property in September, 2022, for the purpose of giving Ms. Williams and her animals a place to live. (Becker) Mr. Becker and Ms. Williams signed a 10-year lease on September 30, 2022. The Lease calls for a monthly rent of \$2500. (P. Ex. 4) The rent was reduced to \$1600 a month because Williams is unable to afford the original lease amount. (Becker) Ms. Williams routinely makes partial payments when she does not have sufficient funds to pay the entire rent. (Becker; P. Ex. 1 (#13); PAO Ex. 2, Add. A.2) However, the evidence showed that Ms. Williams did not make regular payments of rent during 2023 irrespective of this reduction. There was also insufficient evidence to show that Williams earns enough money from her business to cover her rental obligations. The Lease grants Ms. Williams full use of the mobile home and the land and requires her to maintain the farm "for use for her petting zoo business." The Lease states in Section III that "the animals must be part of the business." (P. Ex. 4)

Ms. Williams breeds her goats, sheep and poultry, and uses the baby animals as part of her business. The baby animals are often exhibited at schools and day care facilities for the children. (Williams; Shemtov) Some of the baby animals are kept temporarily in the mobile home to protect them from predators. Ms. Williams makes the mobile home her permanent residence. (Williams) She recently purchased a Black Angus bull. She plans on selling the older goats and rams for meat at some indefinite time in the future. (Williams)

No evidence was provided showing Ms. Williams' costs for maintaining the animals or the land.

Petitioner presented numerous screen shots from Instagram and Facebook which contained photos of the animals and past events and public posts from their followers. (P. Ex. 1, (#6--#8) These various screen shots contained posts and events going back to 2017. Petitioner also provided an affidavit of Rabbi Waks of The Jewish Center in Broward County. (P. Ex. 1 (Ex. 2)). The Jewish Center has hired Fancy Magical Critters for many past events and intends to hire them for future events as well. (P. Ex. 1 (# 2)) I Love Indoors, Inc., which was owned by Mr. Becker, hired Magical Critters regularly in 2023 for children's birthday parties. (Becker; P. Ex.1 (#10)) When Becker hired Magical Critters on behalf of I Love Indoors, he always doubled the cost to his customer, so he made 50% profit on the transaction. A handful of invoices, receipts and checks were provided that showed payment to Magical Critters.

On May 11, 2023, Mr. Becker applied for an agricultural classification on each of the parcels for 2023. (PAO Ex. 1, pp. 4-5). The application states that one acre is used for citrus and three acres are used for grazing land on each of the 5-acre parcels. Mr. Becker was assisted by an agent at the PAO and he testified that he was advised that the previous agricultural classification was based on a tree farm and also told that he should use the same acreage amounts as the previous owner. Mr. Becker checked the "no" box on the application as to whether the property was leased to others. When asked why, he had no credible explanation.

The Property was field inspected on March 28, 2023, by Ms. Robinson. (Tanner; PAO Ex. 2, pp. 9-21) The applications were denied on grounds that the land was not being used primarily for a bona fide agricultural purpose in accordance with s. 193.461(3), Fla. Stat., which the denial explained further as "meaning not using the land for a good faith commercial agricultural use." (PAO Ex. 3)

The PAO received a number of invoices and checks provided by Petitioner which showed the purchase of services from Fancy's Magical Critters and payment to Magical Critters. The PAO deemed most of these

documents suspect for various reasons. (PAO Ex. 1, p. 28). In an attempt to determine the bona fides of Magical Critters, Mr. Tanner requested a Schedule F, income/expense statement, financial statement and the identification numbers for the cattle, goats and sheep. (PAO Ex. 1, p. 19). Petitioner objected to producing financial information for the LLC and did not produce these statements.

Goats are to be officially identified if transported anywhere within the state. (Tanner; PAO Ex. 1, 30-31) None of the cattle, goats or sheep are identified in accordance with USDA and state requirements. (Tanner)

Ms. Williams does not file an income tax return or pay taxes on her business. (Williams)

The Special Magistrate remanded this matter to the PAO for a reclassification and re-assessment of the Property. The PAO's written remand review was provided to Petitioner, who accepted the results and waived its right to a continuation hearing.

CONCLUSIONS OF LAW

Petitioner has the burden of proof to show by a preponderance of the evidence that a bona fide agricultural use exists on the property as of January 1, 2023. This is the operative date for purposes of a determination of agricultural classification. Section 193.461(3)(b), Fla. Stat., provides that only those lands used primarily for bona fide agricultural purposes may be classified agricultural. "Primarily" means that the agricultural use must be the most significant activity on the land. *Bystrom v. Union Land Investments, Inc.*, 477 So. 2d 585, 587 (Fla. 3d DCA 1985). Section 193.461(3)(b) then defines a bona fide use as a "good faith commercial agricultural use," and sets forth a number of factors to be considered when making this determination: (1) length of time the land has been used; (2) whether the use is continuous; (3) purchase price; (4) size of land as it relates to the use; (5) efforts to care sufficiently for the land in accordance with accepted commercial agricultural practices; (6) the existence of a lease and its terms; and (7) any other factors that may be relevant, such as profit motive. No one factor is determinative, and the actual physical use of the property as of January 1st remains the guidepost for the agricultural determination. See *Straughn v. Tuck*, 354 So. 2d 368 (Fla. 1977); *Fisher v. Schooley*, 371 So. 2d 496 (Fla. 2d DCA 1979); and *Bystrom* at p. 585.

The question in this appeal is whether the 10 acres were being used by Petitioner on January 1, 2023, for a good faith commercial agricultural purpose. Although the evidence was not credible to show that Ms. Williams routinely meets her rental obligations, the Lease Agreement is a legally binding document that is sufficient to establish her status as a lessee on the Property. Because the Property is being leased to Ms. Williams, her use of the Property must meet the statutory requirement for agricultural classification. Petitioner must show that Ms. Williams' traveling petting zoo is a bona fide for-profit venture and that the raising and maintaining of these animals on the Property qualifies as an agricultural use. Petitioner cites *McClendon v. Nikolits*, 211 So. 3d 92 (Fla. 4th DCA 2017) in support of its contention that this specific use qualifies as an agricultural one. *McClendon* concerns the raising of exotic birds for sale as pets, known as "aviculture." In this case, the court was required to consider the definitions of "agricultural purpose" under s. 193.461(5), and "farm product" under s. 823.14, Fla. Stat., also known as The Florida Right to Farm Act. In considering those definitions it determined that the examples given were not intended to be exhaustive. Section 823.14(3)(c) states: "Farm product means any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom." After hearing from experts who opined that aviculture is useful to humans for reasons such as companionship, concern for endangered species, entertainment, education and scientific purposes, the trial court found that aviculture provides birds for their entertainment use or novelty value. Based on this finding, which was undisputed by the Property Appraiser, the *McClendon* court found that pet birds were useful to humans and therefore the breeding and sale of such birds qualified as an agricultural purpose.

Because a farm product constitutes an "agricultural purpose" under s. 193.461(5), if exhibition animals qualify as a farm product, then the current use of the Property for the raising of such animals would constitute an agricultural use. Although we do not have expert testimony here to confirm that petting zoos provide educational and entertainment benefits to humans, it is a well-established fact that the interaction between humans and animals, as is the purpose of a petting zoo, is beneficial to humans. And, one can infer from the evidence that educating the public about farm animals is also beneficial to humans. It certainly furthers the policy behind the Right to Farm Act. In this case, the evidence was credible and sufficient to show that the animals are bred and maintained on the Property. Even

without finding that exhibition animals constitute a farm product, the credible and relevant evidence showed that livestock, which is included in the definition of agricultural purpose under s. 193.461(5), were being bred and maintained on the property. As Petitioner points out, "livestock" is defined by Rule 12D-1.002(6), Fla. Admin. Code, as animals kept or raised for use or pleasure. Clearly these animals were kept on the property for both purposes.

The evidence provided by the Petitioner was sufficient to show that all the land, excepting the mobile home and its curtilage, was used for the raising of livestock and exhibition animals. In fact, this was supported by the stocking requirements provided by the PAO. Ms. Williams' testimony about keeping some of the baby animals inside the home was credible. However, this fact does not transform the residence into a barn or a farm structure. It is used primarily as Ms. Williams' primary residence, not for production of a farm product, and this portion of the Property should keep its classified use as residential.

Finding that this use was an agricultural purpose as defined by statute, however, is not the end of the inquiry. Section 193.461(3)(b), clearly requires that the use be a "good faith commercial agricultural use." This requires that the raising and maintenance of these exhibition animals be something more than a hobby. In McClendon, there was no dispute about the good faith commercial aspect of the use, as the birds were clearly being sold. Here, the commercial aspect of Ms. Williams' activity is less than clear.

The PAO questioned the bona fides of the business, Fancy's Magical Critters, the size of land as it related to the use and whether the land was being cared for in accordance With acceptable agricultural practices. To that end, the PAO presented credible evidence that these animals were not being transported and maintained in accordance with acceptable agricultural practices, and that there was insufficient land for the grazing of goats. These facts, however, do not outweigh the physical use of the land. There was sufficient credible evidence that the animals reside on the Property when they are not travelling and that the actual, physical use of the Property was for the maintenance and breeding of these animals. (Williams)

Credible evidence was provided by the parties that Fancy's Magical Critter is a registered for-profit business entity and that Ms. Williams has been running her petting zoo for many years. (P. Ex 1, # 6-8; PAO Ex. 1, p. 3) As Petitioner points out, Florida case law does not require that the farmer or applicant make a profit as a result of their agricultural use in order to qualify as a good faith commercial agricultural use, only that the venture not be a sham and has a profit motive. *Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995); see also *Matheson v. Elcock*, 173 So. 2d 164, 166 (Fla. 3d DCA 1965) ("Nothing in the law requires that a person operate a business efficiently or at a profit."). Although much of Petitioner's evidence of commercial activity was incomplete or incompetent to prove what it purported to show, there was little cross-examination on these matters of proof. Consequently, the testimony of Ms. Williams, the affidavit of the rabbi, and the few credible invoices and checks were sufficient proof that Ms. Williams does operate a travelling petting zoo for monetary compensation. Based on the evidence presented, she clearly does not make a profit, but the evidence was sufficient to establish that the business is not a sham and is a for-profit enterprise. Although Ms. Williams testified that she doesn't file an income tax return for her business, this doesn't negate her business operation. Although not professional or profitable, the business is a not sham.

The credible and relevant evidence was sufficient to show that a commercial enterprise was operated on the Property, albeit a poorly run one, which enterprise keeps livestock and maintains and produces animals that provide a useful and beneficial service to humans. The land is utilized and necessary for the production of a farm product and is primarily being used for an agricultural purpose. As such, Petitioner met its burden of proof in this appeal, and this matter was remanded to the PAO for classification and re-assessment as agricultural land. Petitioner has accepted the PAO's written remand review and waived its right to a continuation hearing. This recommended decision is issued in order that any right the Petitioner has to bring an action in circuit court is not impaired.



LEVY LAW FIRM
— PROPERTY TAX —

Reply to:
LOREN E. LEVY
llevy@levylawtax.com

January 12, 2024

VIA E-MAIL

Emory Howard, Chair
Hendry County Value Adjustment Board
25 E. Hickpochee Avenue
LaBelle, Florida 33935
E-mail: bocc2@hendryfla.net

Re: Special Magistrate Recommendations on VAB Petitions 2023-1, 2023-2 and 2023-27

Dear Chair Howard:

The Hendry County Value Adjustment Board (VAB) currently is scheduled to review the Recommended Decisions of the Special Magistrate for the 2023 tax year at a meeting on January 19, 2023. At that time, the Board must decide to either adopt or reject each of those decisions in accordance with Florida Administrative Code Rule 12D-9.031 (2023). On behalf of my client, Dena Pittman in her official capacity as the Hendry County Property Appraiser (property appraiser), please accept this letter as a formal request that the VAB **reject** the Recommended Decision of the Special Magistrate for Petitions 2023-1, 2023-2, and 2023-27 as contrary to the rule, controlling Florida Statutes, and case law.

Background

Each of the petitions involved entitlement to agricultural classification. Petitions #1 and #2 related to a claim that the property involved was entitled to the classified use value (greenbelt exemption) because the lessee of the property was using it to house animals that were to be used in her traveling petting zoo operation. Petition #27 involved an abandoned citrus grove where the owner claimed the agricultural classification because he had attempted to obtain trees and planned on planting trees sometime in the future. The property appraiser respectfully asserts that the special magistrate applied an incorrect legal analysis in awarding these classifications and requests that the VAB reject the recommended decisions.

When the VAB engages the services of a special magistrate to conduct hearings, the VAB's review of the recommended decision is governed by Florida Administrative Code Rule 12D-9.031 (2023). Before a recommended decision may be accepted by the VAB, a determination must be made as to whether it complies with Florida law. The process of the VAB's review of the recommended decision is outlined in the rule as follows:

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(1) All recommended decisions shall comply with Sections 194.301, 194.034(2) and 194.035(1), F.S. A special magistrate shall not submit to the board, and the board shall not adopt, any recommended decision that is not in compliance with Sections 194.301, 194.034(2) and 194.035(1), F.S.

(2) As provided in Sections 194.034(2) and 194.035(1), F.S., the board shall consider the recommended decisions of special magistrates and may act upon the recommended decisions without further hearing. If the board holds further hearing for such consideration, the board clerk shall send notice of the hearing to the parties. Any notice of hearing shall be in the same form as specified in subsection 12D-9.019(3), F.A.C., but need not include items specified in subparagraphs 6. through 9. of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination. Adoption of recommended decisions need not include a review of the underlying record.

(3) If the board determines that a recommended decision meets the requirements of subsection (1), the board shall adopt the recommended decision. When a recommended decision is adopted and rendered by the board, it becomes final.

(4) If the board determines that a recommended decision does not comply with the requirements of subsection (1), the board shall proceed as follows:

(a) The board shall request the advice of board legal counsel to evaluate further action and shall take the steps necessary for producing a final decision in compliance with subsection (1).

(b) The board may direct a special magistrate to produce a recommended decision that complies with subsection (1) based on, if necessary, a review of the entire record.

(c) The board shall retain any recommended decisions and all other records of actions under this rule section.

(Emphasis added.)

Petition #1 and #2

Factual Background

These petitions involved two, five-acre parcels including a mobile home. The special magistrate's recommended decisions included several observations as to the lack of credibility of the property owner or its lessee and their failure to provide the necessary information to the property appraiser to assist in her review of the applications. (Recommended Decisions attached as Exh. #1, 2) For example, the applications for agricultural classification for the two parcels state that there is one acre used for citrus and three acres used for grazing land on each of those parcels. The property owner did not check the box that the parcels were leased, and did not indicate on the applications that the use of the property was by a lessee. "When asked why, he had no credible explanation." (Recommended Decisions for Petitions #1 and #2 at p. 3)

The property owner objected to the property appraiser's request for financial information and identification numbers for the cattle, goats, and sheep. "No evidence was provided showing Ms. Williams' [lessee] costs for maintaining the animals or the land." (*Id.*) Likewise, "[n]or was there sufficient evidence that she earns enough money from her business to cover her rental obligations." (*Id.*) The lessee testified at the hearing that she does not file an income tax return or pay taxes on her

traveling petting zoo operation. The special magistrate also acknowledged the property appraiser's testimony that goats are to be officially identified if transported within the state and that "[n]one of the cattle, goats or sheep are identified in accordance with USDA and state requirements." (*Id.* at p. 4)

The special magistrate included factual findings as to the lessee's intent to conduct agricultural activities in the future. She noted that the lessee had recently purchased a black angus bull and "plans on selling the older goats and rams for meat at some indefinite time in the future." (*Id.* at p. 3)

The special magistrate correctly observed that the property owner was required to demonstrate that its lessee's traveling petting zoo was a bona fide for-profit venture and that raising and maintaining these animals on the property qualified as an agricultural use. In evaluating the evidence, however, the final recommendation that the parcels should be entitled to the agricultural classification was legally incorrect in the following respects.

Legal Analysis

1. The special magistrate failed to properly apply the statutory burden of proof. The property owner was required to prove, by a preponderance of the evidence, that the denial of the agricultural classification was incorrect. § 194.301(2)(d), Fla. Stat. (2023). Here, the property owner filed applications that were admittedly incorrect and failed to reflect that the property was leased. The owner later refused to provide the type of financial and factual information necessary for the property appraiser to adequately review the applications. The property appraiser is statutorily authorized to request "such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose." § 193.461(3)(a), Fla. Stat. (2023). The lessee did not provide information to adequately establish either the income derived from the traveling petting zoo services or the cost for maintaining the animals on the land. The rent paid for the property included the right to reside in the mobile home. It was the property owner's obligation to prove that the property appraiser's decision was incorrect and it cannot satisfy that obligation by filing an incorrect application and refusing to provide the information necessary to review it.

2. The special magistrate failed to adhere to the statutory command that the agricultural classification only may be granted when the taxpayer has established that the property is used for bona fide agricultural purposes, which means good faith commercial agricultural use of the land. It is important that use of the property merely to conduct agricultural-related operations does not qualify under the statute; rather, good faith commercial agricultural use is required. *Tilton v. Gardner*, 52 So.3d 771 (Fla. 5th DCA 2011). In that case, the court rejected an argument that "some agricultural activity" qualifies for the classification in the absence of proof that it constituted good faith commercial use of the property. *Id.* at 777. In this regard, the following comment from the special magistrate reveals the flaw in its basis:

Finding that this use was an agricultural purpose as defined by statute, however, is not the end of the inquiry. Section 193.461(3)(b), clearly requires that the use be a 'good faith commercial agricultural use.' This requires that the raising and maintenance of these exhibition animals be something more than a hobby. In McClendon, there was no dispute about the good faith commercial aspect of the use, as the birds were clearly being sold. Here, the commercial aspect of Ms. Williams'

activity is less than clear. The PAO questioned the bona fides of the business, Fancy's Magical Critters, the size of the land as it related to the use and whether the land was being cared for in accordance with acceptable agricultural practices. To that end, the PAO presented credible evidence that these animals were not being transported and maintained in accordance with acceptable agricultural practices, and that there was insufficient land for the grazing of goats. *These facts, however, do not outweigh the physical use of the land. There was sufficient credible evidence that the animals reside on the Property when they are not traveling and that the actual, physical use of the Property was for maintenance and breeding of these animals.* (Williams)

(*Id.* at p 4, emphasis added.)

In sum, the special magistrate reversed the property appraiser's denial of agricultural classification without any showing that the lessee was conducting a good faith commercial agricultural use of the property despite observing that such commercial use was required. Use of the property for maintenance and breeding of animals, without more, is insufficient. The conclusion was legally incorrect and failed to comply with sections 193.461(3)(b) or 194.301(2)(d), Florida Statutes (2023).

3. Lastly, the special magistrate relied on facts that were not admitted into evidence. All decisions must be based upon "admitted evidence." See Fla. Admin. Code R. 12D-9.027(4)(g) (2023). The special magistrate discussed *McClendon v. Nikolits*, 211 So.3d 92 (Fla. 4th DCA 2017), where the raising of exotic birds for sale as pets, which is known as aviculture, was determined to constitute a good faith commercial agricultural use. In that case, the court allowed the agricultural classification because the raising and sale of birds for pets fell within the definition of farm product.

The special magistrate commented that "if the raising and caring for exhibition animals constitutes a farm product, then the current use of the Property would constitute an agricultural purpose." (*Id.*) The magistrate, however, noted the lack of testimony as to this issue but nevertheless concluded that "it is a well-established fact that the interaction between humans and animals, as is the purpose of a petting zoo, is beneficial to humans." (*Id.*) Importantly, such a "fact" was not part of the record of evidence before the special magistrate. Rather, it was her personal belief that such a fact should exist.

In this discussion, the special magistrate also repeats her error of evaluating agricultural use without requiring that it be a good faith commercial agricultural use of the property by commenting that "[e]ven without finding that the use of the animals constituted a farm product, the credible and relevant evidence showed that livestock were being bred and maintained on the property." Absent from this comment is any requirement that the livestock be sold to generate the revenues, as was the factual context of the exotic bird case. (*Id.*)

The special magistrate's conclusion that the property appraiser "was wrong in this denial of these applications for agricultural classification" fails to comply with Florida law. (*Id.*) Accordingly, the property appraiser respectfully requests the VAB to reject the recommended decisions and uphold the denial of agricultural classification for these two parcels.

Petition #27Factual Background

Petition #27 involved 17 acres that had been used as a citrus grove in past years and previously granted the agricultural classification based upon such use. The property owner purchased the property in October 2020. Only a few boxes of citrus were harvested in 2021 because the grove was diseased. In May 2021, the grove was determined to be suffering from citrus greening. As a result, the property owner had all of the existing trees removed.

The special magistrate reversed the property appraiser's denial of the agricultural classification for the 2023 tax year because the property owner had undertaken efforts to restore the citrus production – even though no trees were planted as of January 1, 2023. In particular, the special magistrate relied upon the fact that the property owner had entered into a contract with Dilley's in April 2021 for delivery of trees. Because of damage the citrus grower (Dilley's) purportedly incurred as a result of Hurricane Ian, the contract was cancelled in February 2023. A new contract with a different grower (Citric) was entered into in April 2023, with anticipated delivery in spring of 2024. The property owner was a minority owner of an adjacent parcel and also obtained trees from Citric and planted them on that parcel in the summer of 2023. The property owner testified that he intended to manage both his farm and the adjacent property together and entered into a 20-year lease with the operator of that operation in August 2023.

The property owner testified that he had applied herbicide to the beds between the tree rows, repositioned irrigation lines and applied compost. No invoices of these expenses were provided. He also provided photographs of the property showing the irrigation lines and compost.

The property appraiser inspected the property on December 9, 2022, and introduced photographs of the property. The irrigation lines and mulch were not evident from those photographs. The special magistrate commented that [w]hat was clear from the two sets of photos was that distinct rows that could be seen on Petitioner's photos could not be seen during December 2022." (Recommended Decision on Petition #27 at p. 3)

The special magistrate concluded that the property owner had presented "credible and relevant evidence that his bona fide intent was to reestablish a citrus operation on the previously classified 17 acres and that planting would begin as soon as the trees were delivered." (*Id.* at p. 5) "The overall weight of the credible and relevant evidence proved Petitioner's intention to replant the grove and his financial and physical efforts in preparing the land for future planting. Petitioner adequately explained the delay in getting trees delivered and planted due to Hurricane Ian. The land remains prepared for the planting of new trees." (*Id.*) Accordingly, the agricultural classification should have been granted for 2023. In this regard, the special magistrate plainly erred.

Legal Analysis

It is well established that the owner's future intended use of property is irrelevant and that the focus must be on the use of the property as of January 1. *RH Resorts, Ltd. v. Donegan*, 831 So.2d 1152 (Fla. 5th DCA 2004). The law in Florida is clear that in determining the agricultural classification of property the only relevant date is January 1 of the tax year in question. *Gianolio v. Markham*, 564 So.2d

1131, 1136 (Fla. 4th DCA 1990). It is . . . the actual use of [the] property as of the assessment date that controls in determining entitlement to agricultural classification. Under the taxing statutes the assessment date is January 1 of each year, and the character of a particular parcel of land, including whether or not it should be classified as agricultural, is determined by its use as of that date. *Bystrom v. Union Land Inv. Inc.*, 477 So.2d 585, 587 (Fla. 3d DCA 1985).

Simply stated, a property owner cannot obtain the agricultural classification because he or she intends to conduct good faith commercial agricultural operations in the future. The agricultural classification is determined on an annual basis. § 193.461(3)(a), Fla. Stat. (2023). The property owner is not entitled to the classification merely because agricultural operations were conducted in past years and the property owner intends to resume those operations as some point in the future. Ordering trees for future delivery is not an agricultural use as of January 1 of the tax year.

Consider the example of a property owner that intends to conduct a cow-calf operation. In the first year, he or she purchased the property and the prior owner removed the cattle that previously had been on the property. As of January 1 of the following year, the new owner has ordered cattle to be delivered in a future year. Perhaps the owner even repaired some fencing and gates in the interim to prepare the property for such future use. On January 1, there was no cattle on the property. Thus, no good faith commercial agricultural use is being made of the property and the agricultural classification is not authorized.

The same rule works in the opposite direction. Simply because the cow-calf operation may be discontinued in a future year and a new subdivision constructed – the plans and zoning changes already initiated as of January 1 – the agricultural classification may not be removed if the cattle operation is ongoing as of that date. The court in *Gianolio* addressed that situation, albeit in the context of a dairy operation. There the court rejected the property appraiser's argument that development is a long process that typically begins with zoning, land use, and permitting changes that require the agricultural classification to be removed as violative of the future use doctrine. As long as the property was still being used as a dairy as of January 1, the classification would not be removed based upon future development plans.

The special magistrate's reliance on two cases involving the clearing of land for row crops to support a conclusion that the property owner's intent to conduct agricultural operations in the future supports the granting of agricultural operations is flatly incorrect. See *Bystrom v. Union Land Invest.*, 477 So.2d 585 (Fla. 3d DCA 1985); *Mackle Co. v. Metro. Dade Cnty.*, 220 So.2d 422 (Fla. 3d DCA 1969). Both of these cases held that the classification should not be granted despite some preparatory work on the property at issue. In fact, *Bystrom* reversed the trial court's decision to grant agricultural classification when land-clearing for row crops had commenced in late October or early November and was to be completed by February of the tax year at issue. The district court held that "although there is no dispute that the property owner intended to use the property in question for agricultural purposes during 1980 and, thereafter, the property owner failed to prove, as was its burden, that it was being so used on January 1, 1980. *Bystrom*, 477 So.2d at 585.

Conclusion

It is respectfully requested that the VAB reject the special magistrate's recommendations that agricultural classification should have been granted. The recommended decisions for petitioner 2023-1, 2023-2, and 2023-27 are incorrect as a matter of law and should be rejected pursuant to rule 12D-9.031.

Very truly yours,



Loren E. Levy

LEL/gls

cc: Hon. Dena Pittman, CFA, Hendry County Property Appraiser
Holly E. Cosby, VAB Attorney (via e-mail: holly@cosbylaw.com)
Sharon Congleton, VAB Clerk (via e-mail: scongleton@hendryclerk.com)

60% due from Hendry County BOCC \$180.00
 40% due from Hendry County School Board \$120.00

Agenda Item I

Agenda Item I

Michael E. McGinley & Company

FROM: Michael E. McGinley & Company 1446 Park Shore Cir Apt 1 Fort Myers, FL 33901 Telephone Number: (239) 278-0033 Fax Number:		<h2 style="margin: 0;">INVOICE</h2>																	
TO: Hendry County Value Adjustment Board PO Box 1760 LaBelle, FL 33975 Telephone Number: Fax Number: Alternate Number: E-Mail:		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="background-color: #f2f2f2;">REFERENCE</td> </tr> <tr> <td style="width: 50%;">Internal Order #:</td> <td>VAB Hendry County #17</td> </tr> <tr> <td>Lender Case #:</td> <td></td> </tr> <tr> <td>Client File #:</td> <td></td> </tr> <tr> <td>Main File # on form:</td> <td>VAB Hendry County #17</td> </tr> <tr> <td>Other File # on form:</td> <td></td> </tr> <tr> <td>Federal Tax ID:</td> <td>65-0026558</td> </tr> <tr> <td>Employer ID:</td> <td></td> </tr> </table>		REFERENCE		Internal Order #:	VAB Hendry County #17	Lender Case #:		Client File #:		Main File # on form:	VAB Hendry County #17	Other File # on form:		Federal Tax ID:	65-0026558	Employer ID:	
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<table style="width: 100%;"> <tr> <td style="width: 80%;">11/02/2023 Conduct VAB Hearing minimum of one (1) hour fee</td> <td style="width: 20%; text-align: right;">150.00</td> </tr> <tr> <td>11/17/2023 Prepare VAB Recommendation</td> <td style="text-align: right;">150.00</td> </tr> <tr> <td colspan="2" style="height: 40px;"></td> </tr> <tr> <td style="text-align: right;">SUBTOTAL</td> <td style="text-align: right;">300.00</td> </tr> </table>			11/02/2023 Conduct VAB Hearing minimum of one (1) hour fee	150.00	11/17/2023 Prepare VAB Recommendation	150.00			SUBTOTAL	300.00									
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Check #:	Date:	Description:																	
Check #:	Date:	Description:																	
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SUBTOTAL			0																
TOTAL DUE			\$ 300.00																



INVOICE

Invoice # 788
Date: 12/15/2023
Due On: 01/14/2024

The Law Office of Ellen T. Chadwell, PL

5675 Strand Court
Naples, FL 34110

\$660.00 DUE FROM HENDRY COUNTY SCHOOL BOARD
\$990.00 DUE FROM HENDRY COUNTY B.O.C.C.

Hendry VAB
25 E. Hickpochee Avenue
Labelle, FL 33935

00155-Hendry VAB

VAB Special Magistrate Services

Type	Date	Description	Quantity	Rate	Total
Service	11/01/2023	Attend hearings on Petition Nos. 1, 2 and 27.	4.25	\$150.00	\$637.50
Service	11/15/2023	Review evidence; prepare Findings of Fact, Conclusions of Law and Remand Decision for Petition 27; finalize Recommended Decision.	2.75	\$150.00	\$412.50
Service	11/18/2023	Review Memorandum of Law and case law presented by Petitioner and PAO; review all evidence; prepare Findings of Fact, Conclusions of Law and Remand Decision for Petitions 1 and 2; finalize Recommended Decisions.	4.00	\$150.00	\$600.00
Subtotal					\$1,650.00
Total					\$1,650.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
788	01/14/2024	\$1,650.00	\$0.00	\$1,650.00
Outstanding Balance				\$1,650.00
Total Amount Outstanding				\$1,650.00

Agenda Item I

Please make all amounts payable to: The Law Office of Ellen T. Chadwell, PL

Please pay within 30 days.

I hereby certify that the foregoing is an accurate
statement of my time.

Ellen T. Chadwell 12/15/23

Law Office of Holly E. Cosby, P.A.

602 Center Road
Fort Myers, Florida 33907
239-931-0006

Invoice

Date	Invoice #
7/31/2023	2516

Bill To
Hendry County Value Adjustment Board Hendry County Courthouse 25 East Hickpochee Administration Wing, Room 226 LaBelle, Florida 33935

Re: June/July, 2023 - VAB Legal

Service ...	Description	Hours	Rate	Amount
6/29/2023	Email to Admin re: dates of availability to coordinate/set 2023 Organizational Meeting	0.1	250.00	25.00
6/30/2023	Updated email to Admin re: dates of availability to coordinate/set 2023 Organizational Meeting	0.1	250.00	25.00
7/5/2023	Email from Sharon re: responses received to her inquiry on availability - set 8/24 at 10am on calendar and advise Sharon of quorum requirements	0.1	250.00	25.00
7/5/2023	Add'l email from Sharon - provide first steps to prep for O Mtg and offer to handle as much of the agenda as she would like to delegate	0.1	250.00	25.00
7/5/2023	Set calendar tasks for agenda work and notice for publication	0.1	250.00	25.00
7/11/2023	Create meeting notice for publication, provide to Sharon with directions on updating the notice and the deadline for publication - Hendry organizes 8/24 - ad no later than 8/7 - Then answer question from Sharon re: number of times notice needs to be published	0.15	250.00	37.50
7/11/2023	Create agenda index, cover pages, and compliance checklist, forward agenda index and cover pages to Admin for approval	0.6	250.00	150.00
7/19/2023	Update agenda index and create exhibits for O Mtg - 3-Contact Sheet (send to Sharon for commissioner update); 4-Update Attorney Contract and save Insurance Cert; 7-Minutes from 8/23/23 O Mtg; 8 - Update Resolution; 9 - create SM compliance packets for Chadwell, Nystrom, McGinley, update SM contract (already at \$150/hr); 10- update property tax system document; 12 - create forms DR-488P for RP and TPP; 17 - legislative update/provide DOR bulletins and revised rules; 19 - update compliance checklist and create Exhibits 1, 2, and 3 for checklist/ check Clerk's VAB website while creating Ex. 3 for checklist/all good	3.75	250.00	937.50
	Email 1 to Sharon - send contact sheet to Sharon for commissioner update			
	Email 2 to Sharon - provide prelim agenda/exhibits and provide checklist and exhibits to Admin for review and comment; advise that I need: Contact Sheet, Affidavit of Publication			
	Email 3 to Sharon - provide three exhibits with no headers or footers for Admin to print for Chair signature after O Mtg (2022 O Mtg Minutes, DR-488p forms (2), Resolution 2023-1);			
	Email 4 to Sharon - provided everything to print for the "Big Book" (updated all forms, all statutes, all manuals, all rules)			
7/24/2023	Rec'd updated contact list for 2023 VAB, save in system and set task to finalize agenda at later date; also email to Sharon about ad/Aff of Pub	0.1	250.00	25.00

Thank you for your continued business, it is truly a pleasure to provide you with excellent service.

Total \$1,275.00

Payments/Credits -\$108.00

Balance Due \$1,167.00

E-mail Address holly@cosbylaw.com

Law Office of Holly E. Cosby, P.A.

602 Center Road
Fort Myers, Florida 33907
239-931-0006

Invoice

Date	Invoice #
8/31/2023	2530

Bill To
Hendry County Value Adjustment Board Hendry County Courthouse 25 East Hickpochee Administration Wing, Room 226 LaBelle, Florida 33935

Re: August, 2023 - VAB Legal

Service ...	Description	Hours	Rate	Amount
8/1/2023	Do not have Aff of Pub - finalize agenda without Aff of Pub (sans DOR training info) and forward to Sharon for review Pending task: Once I have the Affidavit of Publication from Sharon, I will replace that exhibit in the agenda packet and forward to Sharon for her to forward to the Board and to publish on the Clerk's VAB webpage – ask Sharon if she would like me to send the email with the agenda to the Board and CC her	0.5	250.00	125.00
8/2/2023	Rec'd Affidavit of Publication from Sharon, replaced that exhibit in the agenda packet and ask Sharon if she would like me to email the agenda to the Board - She would/forwarded agenda to Board with reminder on date/time for meeting; cc: Sharon for her to publish on the Clerk's VAB webpage and forward to PAO, also provide Sharon with direction on what to print out for the meeting for Chair signature and for Big Book	0.4	250.00	100.00
8/14/2023	Email from Admin re: types of petitions and potential hearings for Ag denials and hearing dates - review and respond	0.1	250.00	25.00
8/17/2023	Forward email to Board w/CC to Clerk and Admin re: 8/24 O Mtg and request for response; then field responses (confirm from all except School Board member); update Admin on responses	0.15	250.00	37.50
8/21/2023	Email from Admin re: setting hearing dates - would like to set 12/5 and 12/6 for hearings, asked about 12/19 and 12/20 being too short for rescheduled dates - provided FAC 12D-9.019(5) as reference and provided legal response; then response from Admin with proposed dates in January and inquiry posed to Admin re: why they are starting so late with initial hearings – why not October/November for first hearing dates with the December dates being the reschedule dates; additional email re: PAO expressed concerns with dates/response with inquiry about TRiM mailing date and petition filing deadline before any further discussion about hearing dates	0.25	250.00	62.50
8/22/2023	Email from/to Admin re: scheduling hearing dates; rec'd TRiM mailing date and petition deadline date	0.1	250.00	25.00
8/22/2023	Phone call with Sharon re: scheduling SMs for which type of hearings	0.1	250.00	25.00
8/22/2023	Prep for meeting - print agenda, mark up agenda, print agenda exhibits, print checklist, print public comment speech; forward atty contract to Sharon to print for Chair signature	0.5	250.00	125.00
8/24/2023	Mileage Charged - from Office to Hendry County Courthouse for 2023 Organizational Meeting	34.2	0.655	22.40
8/24/2023	2023 Organizational Meeting - address any items of concern prior to meeting; remain after for Chair signatures and brief conversation with Mr. Tanner from PAO	0.65	250.00	162.50
8/24/2023	Mileage Charged - from Hendry County Courthouse to Office after 2023 Organizational Meeting	34.2	0.655	22.40

Thank you for your continued business, it is truly a pleasure to provide you with excellent service.

Total

Payments/Credits

Balance Due

E-mail Address holly@cosbylaw.com

Date	Invoice #
8/31/2023	2530

Re: August, 2023 - VAB Legal

Thank you for your continued business, it is truly a pleasure to provide you with excellent service.

E-mail Address holly@cosbylaw.com

Law Office of Holly E. Cosby, P.A.

602 Center Road
Fort Myers, Florida 33907
239-931-0006

Invoice

Date	Invoice #
9/29/2023	2538

Bill To
Hendry County Value Adjustment Board Hendry County Courthouse 25 East Hickpochee Administration Wing, Room 226 LaBelle, Florida 33935

Re: September, 2023 - VAB Legal

Service ...	Description	Hours	Rate	Amount
9/6/2023	Email from Sharon re: filing petition w/denial notice and TRIM notice mailing dates considered - provided guidance and rule reference	0.35	250.00	87.50
9/7/2023	Call from Sharon re: petition deadline vs. denial date vs. TRIM notice mailing and issues with PAO; advised Sharon to forward 9/6 email from LAW to PAO which references FAC 12D-9.015(13)(f)	0.1	250.00	25.00
9/7/2023	Further email from Admin re: FAC 12D-9.015 and question re: a petition with multiple boxes checked - provided guidance on petition issue, directed PAO to PAO attorney for legal advice and interpretation	0.35	250.00	87.50
9/13/2023	Provide notice for publication and remind Sharon to get it out to the paper for publication on 10/1	0.1	250.00	25.00
9/15/2023	Email from Admin w/email from PAO counsel attached, advising that PAO disagrees with acceptance of late filed petition when PAO provided denial notice via Certified Mail - requested Admin to request proof from PAO that denial notice was mailed Certified, complete with Certified registration number; the current petition was withdrawn so matter is moot; then question from Sharon about a similar situation where petitioner rec'd a denial notice and submitted petition letter to her, not petition form, provided guidance to Sharon on a completed petition and that the petitioner needed to submit a good cause explanation	0.15	250.00	37.50
9/15/2023	Check notes from O Mtg and email Sharon advising that deadline is today (9/15) and anything received after today is late filed and needs good cause explanation and needs review	0.1	250.00	25.00
9/19/2023	Review minutes from 2023 O Mtg - revise in a few places, provide Sharon with v2 redline and v2 clean versions of minutes	0.3	250.00	75.00
9/19/2023	Email from Admin re: petition rec'd on 9/15 - first letter, then petition thereafter - advised that petition would be timely and does not need a good cause review because filing deadline was 9/15	0.1	250.00	25.00
9/22/2023	Email from Sharon re: paper's error in not publishing hearing notice and proposed solution - reviewed and responded	0.1	250.00	25.00

Thank you for your continued business, it is truly a pleasure to provide you with excellent service.

Total \$412.50

Payments/Credits \$0.00

Balance Due \$412.50

E-mail Address holly@cosbylaw.com

Law Office of Holly E. Cosby, P.A.

602 Center Road
Fort Myers, Florida 33907
239-931-0006

Invoice

Date	Invoice #
11/30/2023	2548

Bill To
Hendry County Value Adjustment Board Hendry County Courthouse 25 East Hickpochee Administration Wing, Room 226 LaBelle, Florida 33935

Re: Oct-Nov, 2023 - VAB Legal

Service ...	Description	Hours	Rate	Amount
10/16/2023	Email from Admin re: petitioner (23-17) requesting telephonic hearing - provide Sharon with proposed language denying the request/Hendry VAB does not have ability to hold telephonic hearings	0.1	250.00	25.00
10/16/2023	Complete all SM compliance packets with DOR training certs and forward to Admin	0.25	250.00	62.50
10/31/2023	Emails from Sharon re: hearings and petitions status, then provide Sharon with overview of remainder of current session re: rec reviews and final meeting planning	0.1	250.00	25.00
11/14/2023	Update on status of VAB and provide decision form to Sharon to provide to SM McGinley for his recommended decision	0.1	250.00	25.00
11/16/2023	Review remand for 23-27 and provide Sharon with directions on how to proceed	0.5	250.00	125.00
11/17/2023	Rec'd rec for 23-17/reviewed briefly-called SM McGinley to advise he needs to separate findings and conclusions in a separate Word doc and then attach it to the decision form - the PDF does not capture all findings and conclusions language	0.1	250.00	25.00
11/17/2023	Rec review for 23-17; provide review notes to Sharon along with guidance on how to proceed	0.25	250.00	62.50
11/20/2023	Combine and review remands for 23-01 and 23-02 and provide Sharon with directions on how to proceed	0.5	250.00	125.00
11/28/2023	Forward DOR memo re: definition of "real property" to SMs and VAB Clerk	0.15	250.00	37.50

Thank you for your continued business, it is truly a pleasure to provide you with excellent service.

Total \$512.50

Payments/Credits \$0.00

Balance Due \$512.50

E-mail Address holly@cosbylaw.com

Law Office of Holly E. Cosby, P.A.

602 Center Road
Fort Myers, Florida 33907
239-931-0006

Invoice

Date	Invoice #
12/28/2023	2559

Bill To
Hendry County Value Adjustment Board Hendry County Courthouse 25 East Hickpochee Administration Wing, Room 226 LaBelle, Florida 33935

Re: December, 2023 - VAB Legal

Service ...	Description	Hours	Rate	Amount
12/8/2023	Rec'd recommended decision for 23-27, reviewed and provided review notes and directions on how to proceed to Admin; additional email to Admin requesting status of petitions 23-01 and 23-02 (both remands)	0.25	250.00	62.50
12/12/2023	Rec'd recommended decisions for 23-01 and 23-02, ensured that petitioner has accepted and not requested continued hearing; reviewed and requested revision on 23-02 - missing language required by FAC 12D-9.029(9)	0.35	250.00	87.50
12/13/2023	Review revised rec for 23-02/approved, forwarded review notes for 23-01 and 23-02 to VAB Admin and provide directions on how to proceed; separate email to VAB Admin re: coordinating for final meeting	0.2	250.00	50.00
12/20/2023	Draft/send ad for final meeting to Sharon for publication	0.4	250.00	100.00
12/22/2023	Work on agenda and exhibits for final meeting - create agenda index and agenda index with status notes, create exhibits for contact info, O mtg minutes, public comment, recs, counsel invoices, DR488s, DR529, legislative update, compliance update, Send in email along with itemized list of what has been completed and what needs to be completed by Admin	2	250.00	500.00

Thank you for your continued business, it is truly a pleasure to provide you with excellent service.

Total \$800.00

Payments/Credits \$0.00

Balance Due \$800.00

E-mail Address holly@cosbylaw.com



CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

Section 193.122, Florida Statutes

Agenda Item K

DR-488

R. 12/09

Page 1 of 2

Rule 12D-16.002

Florida Administrative Code

Tax Roll Year

2	0	2	3
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The Value Adjustment Board of Hendry County, after approval of the assessment roll below by the Department of Revenue, certifies that all hearings required by section 194.032, F.S., have been held and the Value Adjustment Board is satisfied that the

Check one.

☒

Real Property

☐

Tangible Personal Property

assessment for our county includes all property and information required by the statutes of the State of Florida and the requirements and regulations of the Department of Revenue.

On behalf of the entire board, I certify that we have ordered this certification to be attached as part of the assessment roll. The roll will be delivered to the property appraiser of this county on the date of this certification. The property appraiser will adjust the roll accordingly and make all extensions to show the tax attributable to all taxable property under the law.

The following figures* are correct to the best of our knowledge:

1. Taxable value of <input checked="" type="checkbox"/> real property <input type="checkbox"/> tangible personal property assessment roll as submitted by the property appraiser to the value adjustment board	\$ 2,590,209,755
2. Net change in taxable value due to actions of the Board	\$ 481,908
3. Taxable value of <input checked="" type="checkbox"/> real property <input type="checkbox"/> tangible personal property assessment roll incorporating all changes due to action of the value adjustment board	\$ 2,589,727,847

*All values entered should be county taxable values. School and other taxing authority values may differ.

Signature, Chair of the Value Adjustment Board

January 19, 2024

Date

Continued on page 2

Certification of the Value Adjustment Board

DR-488
R. 12/09
Page 2 of 2

PROCEDURES

Tax Roll Year

2	0	2	3
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The value adjustment board has met the requirements below. Check all that apply.

The board:

<input checked="" type="checkbox"/>	1. Followed the prehearing checklist in Chapter 12D-9, Florida Administrative Code. Took all actions reported by the VAB clerk or the legal counsel to comply with the checklist.
<input checked="" type="checkbox"/>	2. Verified the qualifications of special magistrates, including if special magistrates completed the Department's training.
<input checked="" type="checkbox"/>	3. Based the selection of special magistrates solely on proper qualifications and the property appraiser did not influence the selection of special magistrates.
<input checked="" type="checkbox"/>	4. Considered only petitions filed by the deadline or found to have good cause for filing late.
<input checked="" type="checkbox"/>	5. Noticed all meetings as required by section 286.011, F.S.
<input checked="" type="checkbox"/>	6. Did not consider ex parte communications unless all parties were notified and allowed to object to or address the communication.
<input checked="" type="checkbox"/>	7. Reviewed and considered all petitions as required, unless withdrawn or settled by the petitioner.
<input checked="" type="checkbox"/>	8. Ensured that all decisions contained the required findings of fact and conclusions of law.
<input checked="" type="checkbox"/>	9. Allowed the opportunity for public comment at the meetings where the recommended decisions of special magistrates were considered or board decisions were adopted.
<input checked="" type="checkbox"/>	10. Addressed all complaints of noncompliance with the provisions of Chapter 194, Part I, Florida Statutes, and rule Chapter 12D-9, F.A.C., that were called to the board's attention.

All board members and the board's legal counsel have read this certification.

The board must submit this certification to the Department of Revenue before it publishes the notice of the findings and results required by section 194.037, F.S.

On behalf of the entire value adjustment board, I certify that the above statements are true and that the board has met all the requirements in Chapter 194, F.S., and Department rules.

After all hearings have been held, the board shall certify an assessment roll or part of an assessment roll that has been finally approved according to section 193.011, F.S. A sufficient number of copies of this certification shall be delivered to the property appraiser to attach to each copy of the assessment roll prepared by the property appraiser.

Signature, chair of the value adjustment board

January 19, 2024

Date



CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

Section 193.122, Florida Statutes

Agenda Item K

DR-488

R. 12/09

Page 1 of 2

Rule 12D-16.002

Florida Administrative Code

Tax Roll Year

2	0	2	3
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The Value Adjustment Board of Hendry County, after approval of the assessment roll below by the Department of Revenue, certifies that all hearings required by section 194.032, F.S., have been held and the Value Adjustment Board is satisfied that the

Check one.

☐

Real Property

☒

Tangible Personal Property

assessment for our county includes all property and information required by the statutes of the State of Florida and the requirements and regulations of the Department of Revenue.

On behalf of the entire board, I certify that we have ordered this certification to be attached as part of the assessment roll. The roll will be delivered to the property appraiser of this county on the date of this certification. The property appraiser will adjust the roll accordingly and make all extensions to show the tax attributable to all taxable property under the law.

The following figures* are correct to the best of our knowledge:

1. Taxable value of <input type="checkbox"/> real property <input checked="" type="checkbox"/> tangible personal property assessment roll as submitted by the property appraiser to the value adjustment board	\$ 1,238,857,069
2. Net change in taxable value due to actions of the Board	\$ 0
3. Taxable value of <input type="checkbox"/> real property <input checked="" type="checkbox"/> tangible personal property assessment roll incorporating all changes due to action of the value adjustment board	\$ 1,238,857,069

*All values entered should be county taxable values. School and other taxing authority values may differ.

Signature, Chair of the Value Adjustment Board

January 19, 2024

Date

Continued on page 2

Certification of the Value Adjustment Board

DR-488
R. 12/09
Page 2 of 2

PROCEDURES

Tax Roll Year

2	0	2	3
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The value adjustment board has met the requirements below. Check all that apply.

The board:

<input checked="" type="checkbox"/>	1. Followed the prehearing checklist in Chapter 12D-9, Florida Administrative Code. Took all actions reported by the VAB clerk or the legal counsel to comply with the checklist.
<input checked="" type="checkbox"/>	2. Verified the qualifications of special magistrates, including if special magistrates completed the Department's training.
<input checked="" type="checkbox"/>	3. Based the selection of special magistrates solely on proper qualifications and the property appraiser did not influence the selection of special magistrates.
<input checked="" type="checkbox"/>	4. Considered only petitions filed by the deadline or found to have good cause for filing late.
<input checked="" type="checkbox"/>	5. Noticed all meetings as required by section 286.011, F.S.
<input checked="" type="checkbox"/>	6. Did not consider ex parte communications unless all parties were notified and allowed to object to or address the communication.
<input checked="" type="checkbox"/>	7. Reviewed and considered all petitions as required, unless withdrawn or settled by the petitioner.
<input checked="" type="checkbox"/>	8. Ensured that all decisions contained the required findings of fact and conclusions of law.
<input checked="" type="checkbox"/>	9. Allowed the opportunity for public comment at the meetings where the recommended decisions of special magistrates were considered or board decisions were adopted.
<input checked="" type="checkbox"/>	10. Addressed all complaints of noncompliance with the provisions of Chapter 194, Part I, Florida Statutes, and rule Chapter 12D-9, F.A.C., that were called to the board's attention.

All board members and the board's legal counsel have read this certification.

The board must submit this certification to the Department of Revenue before it publishes the notice of the findings and results required by section 194.037, F.S.

On behalf of the entire value adjustment board, I certify that the above statements are true and that the board has met all the requirements in Chapter 194, F.S., and Department rules.

After all hearings have been held, the board shall certify an assessment roll or part of an assessment roll that has been finally approved according to section 193.011, F.S. A sufficient number of copies of this certification shall be delivered to the property appraiser to attach to each copy of the assessment roll prepared by the property appraiser.

Signature, chair of the value adjustment board

January 19, 2024

Date

NOTICE**TAX IMPACT OF VALUE ADJUSTMENT BOARD**

Hendry County

Tax Year

2	0	2	3
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Members of the Board

Honorable	Emma Byrd	Board of County Commissioners, District No.	1
Honorable	Emory Howard	Board of County Commissioners, District No.	2
Honorable	Paul Samerdyke	School Board, District No.	2
Citizen Member	Ayman Kaki	Business owner within the school district	
Citizen Member	James Vee Lofton, Jr.	Homestead property owner	

The Value Adjustment Board (VAB) meets each year to hear petitions and make decisions relating to property tax assessments, exemptions, classifications, and tax deferrals.

Summary of Year's Actions

Type of Property	Number of Parcels					Reduction in	Shift in
	Exemptions		Assessments*		Both	County Taxable Value	Taxes
	Granted	Requested	Reduced	Requested	Withdrawn or settled	Due to Board Actions	Due to Board Actions
Residential				3	3	\$ 0	\$ 0.00
Commercial				5	4	\$ 0	\$ 0.00
Industrial and miscellaneous						\$ 0	\$ 0.00
Agricultural or classified use			3	5	2	\$ 481,908	\$ 3,421.55
High-water recharge						\$ 0	\$ 0.00
Historic commercial or nonprofit						\$ 0	\$ 0.00
Business machinery and equipment				8	8	\$ 0	\$ 0.00
Vacant lots and acreage				7	7	\$ 0	\$ 0.00
TOTALS			3	28	24	\$ 481,908	\$ 3,421.55

All values should be county taxable values. School and other taxing authority values may differ.

*Include transfer of assessment difference (portability) requests.

If you have a question about these actions, contact the Chair or the Clerk of the Value Adjustment Board.

Chair's name	Emory Howard	Phone	863-675-5220	ext.
Clerk's name	Kimberley Barrineau	Phone	863-675-5217	ext.



Property Tax Oversight Informational Bulletin

Offset of Reductions in Ad Valorem Tax Revenue from Refunds Due to Hurricane Ian or Hurricane Nicole

PTO 23-02
July 18, 2023

Effective upon becoming law, May 25, 2023, section 50 of Chapter 2023-157, Laws of Florida (L.O.F), appropriated \$35 million dollars for the fiscal year beginning October 1, 2023-September 30, 2024, from the General Revenue Fund to the Department of Revenue for distribution to affected taxing jurisdictions to offset reductions in ad valorem tax revenue due to taxpayer refunds made in accordance with s. 197.3181, F.S. for uninhabitable property caused by Hurricane Ian or Hurricane Nicole.

During the 2022 Special Legislative Session, s. 197.3181, F.S. was created to provide property tax relief for residential properties rendered uninhabitable for 30 days or more due to Hurricane Ian or Hurricane Nicole. Form DR-5001, *Application for Hurricane Ian or Hurricane Nicole Tax Refund*, was created for affected property owners to apply to their county property appraiser for a refund of a portion of their property taxes levied and paid in 2022, for the time the property was uninhabitable. County tax collectors are required to provide the Department and the governing board of each affected local government the total ad valorem tax reduction for all properties that qualified for a refund, by submitting Form DR-5003, *Report of Total Reductions in Taxes From Hurricane Ian or Hurricane Nicole*.

To participate in the distribution of the funds appropriation to offset the reductions in ad valorem tax revenue, as provided in section 50 of Chapter 2023-157, L.O.F., **taxing jurisdictions must apply to the Department by October 1, 2023**. The Department created and made available for application **Form DR-5004, *Application to Offset Total Reductions in Ad Valorem Tax Revenue from Refunds Due to Hurricane Ian or Hurricane Nicole***. The application should be submitted along with documentation supporting the taxing jurisdiction's reduction in ad valorem tax revenue. The requested documentation is a copy of the Form DR-5003, *Report of Total Reductions in Taxes from Hurricane Ian or Hurricane Nicole*, as reported by the county tax collector, required under s. 197.3181(5), F.S. The form will list the taxing jurisdiction's reductions in ad valorem tax revenues.

Affected Rule and Form:

Form DR-5004, *Application to Offset Total Reductions in Ad Valorem Tax Revenue from Refunds Due to Hurricane Ian or Hurricane Nicole*.

The emergency rule adopting Form DR-5004 is available **here**.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the implementing law (chapter 2023-157, section 50, Laws of Florida, HB 7063), is available at <http://laws.flrules.org/2023/157>.

Implementing Date:

The implementing law is effective upon becoming law, which was May 25, 2023.



Property Tax Oversight Informational Bulletin
**Restrictions on County Special Assessments on
Agricultural Lands**

PTO 23-03
August 25, 2023

Section 1 of Chapter 2023-157, Laws of Florida (L.O.F.), amends section 125.01(1)(r), Florida Statutes (F.S.). Effective July 1, 2023, a county may not levy special assessments on agricultural lands classified under section 193.461, F.S., unless the revenue from such assessments has been pledged for debt service and is necessary to meet obligations of bonds or certificates issued by the county which remain outstanding on July 1, 2023, including refunds for debt service savings where the debt's maturity is not extended. For bonds or certificates issued after July 1, 2023, special assessments securing the bonds may not be levied on lands classified as agricultural under s. 193.461, F.S.

This amendment to s. 125.01(1)(r), F.S., does not apply to residential structures and curtilage.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-157, section 1, L.O.F, HB 7063), which revises s. 125.01(1)(r), F.S., is available at **<http://laws.flrules.org/2023/157>**

Implementing Date:

The law is effective July 1, 2023.



Property Tax Oversight Informational Bulletin
**Judicial Review After Value Adjustment Board
 (VAB) Decisions**

PTO 23-04
August 25, 2023

Effective July 1, 2023, Section 5 of Chapter 2023-157, Laws of Florida (L.O.F.), amends section 194.036(1)(b), Florida Statutes (F.S.) to increase the percentage and dollar amount threshold a VAB's ruling must vary from the property appraiser's assessed value before the property appraiser is permitted to file suit in circuit court.

If the property appraiser disagrees with the decision of the board, the property appraiser may seek a de novo judicial review in circuit court if there is a variance from the property appraiser's assessed value in excess of the following:

- 20 percent variance from any assessment of \$250,000 or less;
- 15 percent variance from any assessment in excess of \$250,000 but not in excess of \$1 million;
- 10 percent variance from any assessment in excess of \$1 million but not in excess of \$2.5 million; or
- 5 percent variance from any assessment in excess of \$2.5 million.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-157, section 5, L.O.F., HB 7063), which amends s. 194.036(1)(b), F.S., is available at **<http://laws.flrules.org/2023/157>**.

Implementing Date:

The law is effective July 1, 2023.



Property Tax Oversight Informational Bulletin

**Changes to the Exemption for Certain Veterans,
First Responders, and Surviving Spouses**

PTO 23-05
August 25, 2023

Section 6 of Chapter 2023-157, Laws of Florida (L.O.F.):

- Amends subsection 196.081(1)(b), Florida Statutes (F.S.), to change language to reflect that certain veterans or their surviving spouses are “entitled to” a refund of property taxes for property transferred between January 1 and November 1 of any year.
- Amends sections 196.081(3) and (4)(b), F.S., which clarify that certain veterans’ surviving spouses may transfer an exemption after a sale of the homestead property to his or her new residence under certain conditions.
- Amends section 196.081(6)(b), F.S., and clarifies that a first responder’s surviving spouse may transfer an exemption after a sale of the homestead property to his or her new residence under certain conditions.

Section 7 of Chapter 2023-157, Laws of Florida, states that amendments made by Section 6 of Chapter 2023-157, L.O.F. to section 196.081, F.S., are remedial and clarifying in nature and do not provide a basis for an assessment of any tax or create a right to a refund of any tax paid before the date the act becomes a law.

Section 8 of Chapter 2023-157, Laws of Florida:

- Creates section 196.081(1)(b)2., F.S. to clarify that a veteran or his or her surviving spouse, who meet certain conditions, are not required to currently receive the exemption on another property in order to be entitled to a refund of property taxes paid for newly acquired property between January 1 and November 1 of any year.
- Amends section 196.081(4), F.S. to remove the requirement that a deceased veteran who died from service-connected causes while on active duty, be a permanent resident of Florida on January 1 in the year the veteran died in order for the veteran’s surviving spouse to qualify for a homestead exemption.
- Amends section 196.081(6), F.S. to add the United States Government to the list of qualified first responder employers and removes the requirement that a deceased first responder who died in the line of duty be a permanent resident of Florida on January 1 in the year the first responder died in order for the first responder’s surviving spouse to qualify for the homestead exemption.
- Amends section 196.081(6)(c)1., F.S. to add federal law enforcement officers, as defined in section 901.1505(1), F.S., to the definition of “first responders.”

Section 9 of Chapter 2023-157, Laws of Florida, states that amendments made by section 8 to section 196.081, F.S., first apply to the 2024 ad valorem tax roll.

Affected Rules and Forms:

Form DR-501, *Original Application for Homestead and Related Tax Exemptions*

Information about the status of the Department's rulemaking is available at
<https://floridarevenue.com/rules>

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-157, sections 6, 7, 8, and 9, Laws of Florida, HB 7063), is available at **<http://laws.flrules.org/2023/157>**.

Implementing Date:

The law is effective July 1, 2023, for amendments to Section 6 of Chapter 2023-17 (ss. 196.081(1)(b), 196.081(3), 196.081(4)(b), and 196.081(6)(b) F.S.).

The amendments made by Section 8 to ss. 196.081(1)(b)2., 196.081(4), 196.081(6), and 196.081(6)(c)1., F.S., first apply to the 2024 ad valorem tax roll.

***Property Tax Oversight Informational Bulletin*****Religious Exemption – Parsonages, Burial
Grounds, and Tombs****PTO 23-06**
August 25, 2023

Section 10 of Chapter 2023-157, Laws of Florida (L.O.F.), creates subsection 196.196(6), Florida Statutes (F.S.), providing that property used as a parsonage, burial grounds, or tomb and owned by a house of public worship is used for a religious purpose.

Section 11 of Chapter 2023-157, L.O.F., states that the amendments to section 196.196, F.S., are remedial and clarifying in nature and do not provide a basis for an assessment of any tax or create a right to refund any tax paid prior to July 1, 2023.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-157, sections 10 and 11, L.O.F., HB 7063), which amends s. 196.196, F.S., is available at **<http://laws.flrules.org/2023/157>**.

Implementing Date:

The law is effective July 1, 2023.



Property Tax Oversight Informational Bulletin
Educational Property Exemption

PTO 23-07
August 25, 2023

Effective July 1, 2023, Section 12 of Chapter 2023-157, Laws of Florida (L.O.F.), amends the educational property exemption, section 196.198, Florida Statutes, to add that property used exclusively for educational purposes is deemed owned by an educational institution if the educational institution is a lessee that owns the leasehold interest in a bona fide lease for a nominal amount per year having an original term of 98 years or more. Section 196.198, F.S., was also amended to add that land, buildings, and other improvements to real property used exclusively for educational purposes are deemed owned by an educational institution if the institution currently using the land, buildings, and other improvements for educational purposes received the educational property exemption on the same property in any 10 consecutive prior years.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-157, section 12, Laws of Florida, HB 7063), which amends s. 196.198, F.S., is available at **<http://laws.flrules.org/2023/157>**.

Implementing Date:

The law is effective July 1, 2023.



Property Tax Oversight Informational Bulletin

**Refund of Taxes for Residential Improvements
Rendered Uninhabitable by a Catastrophic Event**

PTO 23-08
August 25, 2023

Section 13 of Chapter 2023-157, Laws of Florida (L.O.F.), amends the following subsections of section 197.319, Florida Statutes (F.S.):

- Section 197.319(1)(e), F.S. Amended to define “postcatastrophic event just value” as the just value of the residential parcel on January 1 of the year in which a catastrophic event occurred, adjusted by subtracting the just value of the residential improvement on January 1 of the year in which the catastrophic event occurred.
- Section 197.319(1)(f), F.S. Amended to define “residential improvement” as a residential dwelling or house on real estate used and owned as a homestead as defined in s. 196.012(13), F.S., or as nonhomestead residential property as defined in s. 193.1554(1), F.S.
- Section 197.319(1)(g), F.S. Amended to define “uninhabitable” as the loss of use and occupancy of a residential improvement for the purpose for which it was constructed resulting from damage to or destruction of, or from a condition that compromises the structural integrity of, the residential improvement which was caused by a catastrophic event.
- Section 197.319(2)(a), F.S. Amended to state a property owner must file an application for refund of taxes paid for the year in which a catastrophic event occurs with the property appraiser on a form prescribed by the Department of Revenue and furnished by the property appraiser. The refund application is due by March 1 of the year following the catastrophic event. The property appraiser may allow applications to be filed electronically.
- Section 197.319(2)(b), F.S. Amended to add that the application for refund must describe the catastrophic event. To determine uninhabitability, the application must be accompanied by supporting documentation, including, but not limited to utility bills, insurance information, contractors’ statements, building permit applications, or building inspection certificates of occupancy.
- Section 197.319(2)(d), F.S. Amended to state the property appraiser shall review the refund application and determine if the applicant is entitled to a refund. No later than April 1 of the year following the date the event occurred, the property appraiser must:
 - notify the applicant if the property appraiser determines the applicant is not entitled to receive a refund. If the property appraiser determines the applicant is not entitled to a refund, the applicant may file a petition with the value adjustment board requesting the refund be granted. The petition must be filed with the value adjustment board on or before the 30th day following the issuance of the notice by the property appraiser.
 - issue an official written statement to the tax collector and applicant if the property appraiser determines the applicant is entitled to a refund within 30 days after the

determination but no later than by April 1 of the year following the date on which the catastrophic event occurred.

- Section 197.319(3)(a), F.S. Amended to state that upon receipt of the written statement from the property appraiser, the tax collector shall calculate the damage differential and process a refund for property taxes already paid.
- Section 197.319(3)(b), F.S. Amended to state that if the property taxes for the year in which the event occurred are not paid, the tax collector must process a refund in an amount equal to the catastrophic refund event refund only upon receipt of timely payment of property taxes for the year in which the event occurred.

Subsections 197.319(6) and 197.319(7), F.S., are created:

- Subsection 197.319(6), F.S., states that for purposes of section 197.319, F.S., a residential improvement that is uninhabitable has no value.
- Subsection 197.319(7), F.S., states the catastrophic event refund is determined only for purposes of calculating tax refunds for the year in which the residential improvement is uninhabitable because of a catastrophic event and does not determine a parcel's just value as of January 1 of any subsequent year.

Section 14 of Chapter 2023-157, Laws of Florida, states that amendments made by section 13 to section 197.319, F.S., first apply to the 2024 tax roll.

Affected Rules and Forms:

Form DR-465, *Application for Catastrophic Event Tax Refund*

Information about the status of the Department's rulemaking is available at <https://floridarevenue.com/rules>.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email DORPTO@floridarevenue.com.

Reference:

The full text of the law (chapter 2023-157, sections 13 and 14, Laws of Florida, HB 7063), is available at <http://laws.flrules.org/2023/157>.

Implementing Date:

The law is effective January 1, 2024.



Property Tax Oversight Informational Bulletin

Affordable Housing Property Exemption Nonprofit Land Lease

PTO 23-09
August 29, 2023

Effective January 1, 2024, Section 8 of Chapter 2023-17, Laws of Florida (L.O.F.), enacts subsection 196.1978(1)(b), Florida Statutes (F.S.), to create an ad valorem property tax exemption for land owned by a nonprofit and leased for predominant use as affordable housing. The new subsection provides that land is exempt from ad valorem taxation if it meets the following requirements:

- The land is owned entirely by a nonprofit entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717; and,
- The land is leased for a minimum of 99 years for the purpose and predominant use of providing housing to persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, F.S.

Land is predominantly used for qualifying purposes if the square footage of the improvements on the land used to provide qualifying housing exceeds 50% of the square footage of all improvements on the land.

Affected Rules and Forms:

The following forms will be affected by the law change:

- Form DR-504AFH, *Ad Valorem Tax Exemption Application and Return for Multifamily Project and Affordable Housing Property*
- Form DR-403EB, *The 20XX Ad Valorem Assessment Rolls Exemption Breakdown of ____ County, Florida*
- Form DR-403V, *The 20XX Revised Recapitulation of the Ad Valorem Assessment Roll Value Data*
- Form DR-489EB, *The 20XX Ad Valorem Assessment Rolls Exemption Breakdown of ____ County, Florida*
- Form DR-489V, *The 20XX Preliminary Recapitulation of the Ad Valorem Assessment Roll Value Data*

Information about the status of the Department's rulemaking is available at <https://floridarevenue.com/rules>.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email DORPTO@floridarevenue.com.

Reference:

The full text of the law (chapter 2023-17, section 8, L.O.F., SB 102), which amends s. 196.1978, F.S., is available at <http://laws.flrules.org/2023/17>.

Implementing Date:

The law is effective January 1, 2024. The exemption first applies to the 2024 tax roll and is repealed on December 31, 2059.



Property Tax Oversight Informational Bulletin

Affordable Housing Property Exemption Newly Constructed Multifamily Project

PTO 23-10
August 29, 2023

Overview

Effective January 1, 2024, Section 8 of Chapter 2023-17, Laws of Florida (L.O.F.), enacts subsection 196.1978(3), Florida Statutes (F.S.), to create an ad valorem tax exemption for portions of a property with rent-restricted units within newly constructed affordable housing multifamily projects.

Exemption Requirements

Portions of property in a multifamily project are considered to be used for a charitable purpose and are eligible to receive an ad valorem property tax exemption if they:

- Provide affordable housing to persons or families meeting specified income limitations.
- Are within a newly constructed multifamily project containing more than 70 units dedicated to housing persons or families meeting specified income limits. “Newly constructed” is defined as an improvement to real property substantially complete within five years before the date of an applicant’s first submission of a request for certification or an application for exemption pursuant to s. 196.1978(3), F.S., whichever is earlier.
- Are rented for an amount not exceeding the amount specified by the most recent multifamily rental programs income and rent limit chart posted by the Florida Housing Finance Corporation (FHFC), derived from the Multifamily Tax Subsidy Projects Income Limits published by the United States Department of Housing and Urban Development or 90% of the fair market value rent determined by a rental market study meeting the requirements of s. 196.1978(3)(m), F.S., whichever is less.
- Obtain a certification notice from FHFC certifying the property meets the eligibility requirements.

Exemption Amounts

Properties applying for this exemption can either be 75% exempt or 100% exempt depending on the annual household income of the person or family living in the unit.

75% Exempt

- Annual household income is greater than 80 percent but not more than 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides, must receive an ad valorem property tax exemption of 75 percent of the assessed value.

100% Exempt

- Annual household income does not exceed 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides, is exempt from ad valorem property taxes.

How to Apply

This exemption must be applied for on a form prescribed by the Department of Revenue by March 1 each year, beginning in 2024. The application must be accompanied by a certification notice from the FHFC to the property appraiser. The property appraiser shall review the exemption application and determine if the applicant is entitled to an exemption. A property appraiser may grant an exemption only for a property for which the FHFC has issued a certification notice.

Property receiving the county and municipal affordable housing exemption pursuant to s. 196.1979, F.S. is not eligible for this exemption.

Affected Rules and Forms:

The following forms will be affected based on the law change:

- Form DR-504AFH, *Ad Valorem Tax Exemption Application and Return for Multifamily Project and Affordable Housing Property*
- Form DR-403EB, *The 20XX Ad Valorem Assessment Rolls Exemption Breakdown of ____ County, Florida*
- Form DR-403V, *The 20XX Revised Recapitulation of the Ad Valorem Assessment Roll Value Data*
- Form DR-489EB, *The 20XX Ad Valorem Assessment Rolls Exemption Breakdown of ____ County, Florida*
- Form DR-489V, *The 20XX Preliminary Recapitulation of the Ad Valorem Assessment Roll Value Data*

Information about the status of the Department's rulemaking is available at <https://floridarevenue.com/rules>.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-17, section 8, L.O.F., SB 102), which amends s. 196.1978, F.S., is available at <http://laws.flrules.org/2023/17>.

Implementing Date:

The law is effective January 1, 2024. The exemption first applies to the 2024 tax roll and is repealed December 31, 2059.



Property Tax Oversight Informational Bulletin

Affordable Housing Property Exemption County and Municipal Ordinance

PTO 23-11
August 29, 2023

Overview

Effective July 1, 2023, Section 9 of Chapter 2023-17, Laws of Florida (L.O.F.), enacts section 196.1979, Florida Statutes (F.S), to create the county and municipal ordinance exemption for affordable housing property. The board of county commissioners or governing body of a municipality may adopt an ordinance to exempt portions of property used to provide affordable housing that meet the requirements of s. 196.1979, F.S.

Exemption Requirements and Amounts

Portions of property used to provide affordable housing must:

- Be used to house persons or families whose annual household income:
 - Is greater than 30 percent but not more than 60 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides. The exemption amount that the ordinance may grant is up to 75% of the assessed value of each residential unit used to provide affordable housing if less than 100% of the multifamily project's residential units are used to provide affordable housing meeting the requirements of s. 196.1979, F.S., **or**;
 - Does not exceed 30 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides. The exemption amount that the ordinance may grant is up to 100% of the assessed value if 100% of the multifamily project's residential units are used to provide affordable housing meeting the requirements of s. 196.1979, F.S.
- Be within a multifamily project containing 50 or more residential units and 20% of those units must be used to provide affordable housing meeting the requirements of s. 196.1979, F.S.
- Rent for no more than the amount specified by the most recent multifamily rental programs income and rent limit chart posted by the Florida Housing Finance Corporation and derived from the Multifamily Tax Subsidy Project Income Limits published by the United States Department of Housing and Urban Development, or rent for no more than 90 percent of the fair market value rent as determined by the rental market study meeting the requirements of s. 196.1979(4), F.S., whichever is less.
- Not have been cited for code violation on three or more occasions in the past 24 months before applying and must not have any cited code violations that haven't been properly remedied before submission and must not have any unpaid fines or charges related to the

code violations. However, payment of outstanding fines or charges before a final determination will not act to exclude the property from qualifying.

Ordinance Requirements

A county's board of county commissioners or governing body of a municipality may adopt an ordinance that exempts property used to provide affordable housing. The ordinance must expire before the fourth January 1 after its adoption unless the local entity adopts a new ordinance to renew the exemption. A copy of the ordinance must be delivered to the Department of Revenue and the property appraiser within 10 days after its adoption. If it expires or is repealed, the local entity must notify the Department and the property appraiser within 10 days.

The ordinance granting the exemption authorized by s. 196.1979, F.S., must:

- Be adopted under the procedures for adoption of a nonemergency ordinance in accordance with chapters 125 or 166, F.S., as applicable.
- Designate the local entity supervised by either the board of county commissioners or governing body of a municipality, to develop, receive, and review certification applications and determination of eligibility notices.
- Require the property owner to apply for certification with the local entity. The application must be on the local entity's form and includes the information described in s.196.1979(3)(c)1-3, F.S.
- Require the local entity to verify and certify the property meets the ordinance requirements and qualifies for the exemption, and to forward the certification to the property owner and property appraiser. If the local entity denies the exemption, it must notify the applicant and include reasons for the denial.
- Require the eligible unit to meet the eligibility criteria of s. 196.1979(1)(a), F.S.
- Require the property owner to submit an application for exemption, on a form prescribed by the Department of Revenue, accompanied by the certification of qualified property, to the property appraiser no later than March 1.
- Specify the exemption applies to taxes levied by the unit of government granting the exemption and may not receive an exemption after the ordinance expires.
- Identify the percentage limitations described in s.196.1979(1)(b), F.S., of the assessed value subject to the exemption.
- Identify whether the exemption applies to persons or families meeting the income limits of s. 196.1979(1)(a)1.a., F.S., persons or families meeting the income limits of s. 196.1979(1)(a)1.b., F.S., or both.
- Require the deadline to submit the application for certification be published on the local entity's website.
- Require the local entity to publish on its website a list of certified affordable housing properties for the purpose of facilitating access to affordable housing.

Affected Rules and Forms:

The following forms will be affected based on the law change:

- Form DR-504AFH, *Ad Valorem Tax Exemption Application and Return for Multifamily Project and Affordable Housing Property*
- Form DR-403EB, *The 20XX Ad Valorem Assessment Rolls Exemption Breakdown of ____ County, Florida*
- Form DR-403V, *The 20XX Revised Recapitulation of the Ad Valorem Assessment Roll Value Data*
- Form DR-489EB, *The 20XX Ad Valorem Assessment Rolls Exemption Breakdown of ____ County, Florida*
- Form DR-489V, *The 20XX Preliminary Recapitulation of the Ad Valorem Assessment Roll Value Data*

Information about the status of the Department's rulemaking is available at <https://floridarevenue.com/rules>.

Questions:

This bulletin is provided by the Department of Revenue for your general information. Any questions, please email **DORPTO@floridarevenue.com**.

Reference:

The full text of the law (chapter 2023-17, section 9, Laws of Florida, SB 102), which creates s. 196.1979, F.S., is available at <http://laws.flrules.org/2023/17>.

Implementing Date:

The law is effective July 1, 2023, and first applies to the 2024 tax roll.



Property Tax Oversight Informational Bulletin

**Assessment of Agricultural Equipment Rendered
Unable to be Used Due to Hurricane Idalia**

**December 27, 2023
PTO 23-12**

The 2023 Florida Legislative Special Session enacted [Chapter 2023-349](#), Laws of Florida, effective November 13, 2023. Section 1 of the law creates section 193.4518, Florida Statutes, to provide that for the 2024 tax roll only, tangible personal property (“TPP”) owned and operated by a farm, farm operation, or agriculture processing facility located in Charlotte, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jefferson, Lafayette, Levy, Madison, Manatee, Pasco, Pinellas, Sarasota, Suwannee, or Taylor County is deemed to have a market value no greater than its salvage value if the agricultural equipment TPP was unable to be used for at least 60 days due to the effects of Hurricane Idalia in 2023.

The Department has prepared a suggested form that taxpayers may use as the 2024 application for the salvage value assessment pursuant to s. 193.4518, F.S. The filing deadline with the property appraiser is **March 1, 2024**. The suggested form is available on the Department’s [forms page](#).

The Department has prepared a second suggested form that property appraisers may use as a notice of denial of the application to send to the applicant. The suggested form is available on the Department’s [forms page](#).

If the property appraiser denies the assessment pursuant to s. 193.4518, F.S., the taxpayer can petition the value adjustment board pursuant to s. 194.011(3), F.S., to request the agricultural equipment be assessed at salvage value according to the statute. Taxpayers must complete and file *Petition to The Value Adjustment Board - Request for Hearing* ([Form DR-486](#)) with the value adjustment board clerk. The statute provides that such petition must be filed on or before the 25th day after the mailing by the property appraiser during the 2024 calendar year of the notice required under s. 194.011(1), F.S.

Suggested Forms

- [Suggested Form] Application for Assessment of Agricultural Equipment Unable to be Used Due to Hurricane Idalia
- [Suggested Form] Notice of Disapproval of Application for Agricultural Equipment Assessment Due to Hurricane Idalia

Questions

This bulletin is provided by the Department of Revenue for your general information. For questions, please email DORPTO@floridarevenue.com.

Reference

The full text of the implementing law (chapter 2023-349, Laws of Florida), which creates section 193.4518, F.S., is available at <https://laws.flrules.org/2023/349>.

Implementing Date


The implementing law is effective November 13, 2023, and applies to the 2024 tax roll only.

**HENDRY COUNTY 2023 VALUE ADJUSTMENT BOARD
VERIFICATION OF VAB COMPLIANCE – PREHEARING CHECKLIST
(to supplement Forms DR-488p)**

Information to be verified prior to or during the Organizational Meeting, and pursuant to F.S. §194.011(5), F.A.C. §12D-9.013 and F.A.C. §12D-9.014 Verification:

Date	Criteria
HEC 7/19/23	VAB comprised of two (2) County Commissioners, one (1) School Board Member, one (1) Citizen Member appointed by the BOCC and one (1) Citizen Member appointed by the School Board - Organizational Meeting Agenda Items 1 and 3; Verbatim
HEC 7/19/23	VAB Attorney verified that Citizen Members met all criteria pursuant to F.S. §194.015 and F.A.C. §12D-9.004 - Organizational Meeting Agenda Item 19; Ex. 1; Ex. 2; Verbatim
HEC 7/11/23	VAB Attorney meeting the requirements of F.S. §194.015 has been appointed or ratified - Organizational Meeting Agenda Item 4; Verbatim
HEC 7/11/23	VAB Attorney verified that no VAB members represent other governmental entities or taxpayers in any administrative or judicial review of property taxes - Organizational Meeting Agenda Item 19; Verbatim
HEC 7/11/23	VAB Attorney verified that citizen members are not members or employees of a taxing authority for the current VAB session - Organizational Meeting Agenda Item 19; Verbatim
HEC 9/16/23	VAB Attorney has received DOR training and has passed the corresponding exam - Organizational Meeting Agenda Item 4; Verbatim
HEC 7/11/23	The organizational meeting, as well as any other board meetings, will be or were noticed in accordance with F.S. §286.011, and will be held in accordance with law - Organizational Meeting Agenda Item 2; Verbatim; VAB Attorney oversees throughout VAB session
HEC 7/11/23	The organizational meeting notice includes the date, time, location, purpose of the meeting, and information required by F.S. §286.0105 - Organizational Meeting Agenda Item 2; Verbatim
HEC 7/11/23	The DOR's uniform value adjustment board procedures, were made available at the organizational meeting and copies were provided to special magistrates and board members - Organizational Meeting Agenda Item 14; Verbatim
HEC 7/19/23	The DOR's uniform policies and procedures manual is available on the existing website of the board clerk - Organizational Meeting Agenda Items 14; Ex. 3; Verbatim
HEC 7/11/23	The qualifications of special magistrates were verified - Organizational Meeting Agenda Item 9; Verbatim
HEC 9/20/23 10/3/23 10/12/23	All appointed special magistrates have received the DOR training and have completed the same and passed any corresponding exam, and special magistrates with less than five years of required experience successfully completed the DOR's training including any updated modules and an examination, and were certified - Organizational Meeting Agenda Item 9; Verbatim
HEC 7/11/23	The selection of special magistrates was based solely on proper experience and qualifications and neither the property appraiser nor any petitioners influenced the selection of special magistrates - Organizational Meeting Agenda Item 9; Verbatim
HEC 7/11/23	The VAB is willing to consider any written complaint filed with respect to a special magistrate by any party or citizen - Organizational Meeting Agenda Item 19; Verbatim
HEC 7/11/23	All procedures and forms of the board or special magistrate are in compliance with F.S. §194 and F.A.C. §12D-9 - Organizational Meeting Agenda Item 19; Verbatim
HEC N/A	Notice has been given to the chief executive officer of each municipality as provided in F.S. §193.116
HEC 7/11/23	The VAB is in compliance with F.S. §194 and F.A.C. 12D-9 - Organizational Meeting Agenda Item 19, Verbatim; VAB Attorney oversees throughout VAB session

	Organizational Meeting: August 24, 2023
	The VAB held organizational meeting prior to the holding of value adjustment board hearings Organizational Meeting Agenda Items 2 and 6; Verbatim
	The VAB introduced the members of the board and provided contact information - Organizational Meeting Agenda Item 3; Verbatim
	The VAB introduced the board clerk and any designee of the board clerk and provided the board clerk's contact information - Organizational Meeting Agenda Items 3 and 13; Verbatim
	The VAB appointed and/or ratified special magistrates - Organizational Meeting Agenda Item 9; Verbatim
	The VAB made F.A.C. 12D-9 available to the public, special magistrates and board members, containing the uniform rules of procedure for hearings before value adjustment boards and special magistrates – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda Item 11(A); Ex. 3; Verbatim
	The VAB made F.A.C. 12D-10 available to the public, special magistrates and board members, containing the rules applicable to the requirements for hearings and decisions – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda Item 11(A); Ex. 3; Verbatim
	The VAB made the requirements of Florida's Government in the Sunshine / open government laws including information on where to obtain the current Government-In-The-Sunshine manual available to the public, special magistrates and board members – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda Item 11(C); Ex. 3; Verbatim
	The VAB made F.A.C. 12D-51.001, 12D-51.002 and 12D-51.003 available to the public, special magistrates and board members – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda Item 11(B); Ex. 3; Verbatim
	The VAB made the associated forms that have been adopted by the DOR available to the public, special magistrates and board members – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda Item 11(E); Ex. 3; Verbatim
	The VAB made all local administrative procedures and forms of the board or special magistrates available to the public, special magistrates and board members – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda 15; Ex. 3; Verbatim
	The VAB made F.S. Chapters 192-195 available to the public, special magistrates and board members as reference information containing the guidelines and statutes applicable to assessments and assessment administration – available at organizational meeting and on the website of the board clerk - Organizational Meeting Agenda Item 11(D); Ex. 3; Verbatim
	The VAB discussed, took testimony on and adopted or ratified with any required revision or amendment any local administrative procedures and forms of the board, as necessary - Organizational Meeting Agenda Item 15; Verbatim
	The VAB local procedures are ministerial in nature and are not inconsistent with governing statutes, case law, attorney general opinions or rules of the department - Organizational Meeting Agenda Item 19; Verbatim
	The VAB discussed general information on Florida's property tax system, respective roles within this system, taxpayer opportunities to participate in the system, and property taxpayer rights – this issue has a separate agenda item, supplemented with additional local informational handouts; this discussion will be reflected in the verbatim record and minutes - Organizational Meeting Agenda Item 10; Verbatim
	The VAB adopted/ratified, by resolution, any filing fee for petitions for the current VAB session, in an amount not to exceed \$15.00 - Organizational Meeting Agenda Item 8; Verbatim

	The VAB announced the tentative schedule for the value adjustment board, taking into consideration the number of petitions filed, the possibility of the need to reschedule and the requirement that the board stay in session until all petitions have been heard - Organizational Meeting Agenda Item 6; Verbatim
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I, Holly E. Cosby, Esq., Hendry County Value Adjustment Board Attorney, hereby verify the following on July 11, 2023, July 19, 2023, and August 24, 2023:


- 1) that the above information regarding pre-hearing and pre-organizational requirements were verified, reviewed, and considered on July 11, 2023, July 19, 2023, and August 24, 2023,
- 2) that the Organizational Meeting for the Hendry County 2023 VAB Session was held on August 24, 2023, and the above information regarding organizational meeting requirements was verified, reviewed, and considered at said meeting, and
- 3) that hearings for the Hendry County 2023 VAB Session will commence on or after October/November 31, 2023.



Holly E. Cosby, Esq.

I, Holly E. Cosby, Esq., Hendry County Value Adjustment Board Attorney, hereby verify the following on August 24, 2023:

- 1) There are three (3) items above, which could not be verified before or during the organizational meeting, which are:
 - a. VAB Attorney has received DOR training and has passed the corresponding exam,
 - b. All appointed special magistrates have received the DOR training and have completed the same, and special magistrates with less than five years of required experience successfully completed the DOR's training including any updated modules and an examination, and were certified, and
 - c. Notice has been given to the chief executive officer of each municipality as provided in F.S. §193.116.
- 2) Items 1(a) and 1(b) could not be verified because the current DOR training was released on _____, 2023, and VAB Attorney was not able to reasonably complete said training prior to the instant meeting; further, it is only reasonable to expect that all special magistrates complete the DOR training in a timely manner, which would be defined as completing the DOR training prior to holding VAB hearings in Hendry County,
- 3) Item 1(a) will be completed as soon as reasonably practicable, and VAB Attorney will provide proof of the same.
- 4) Item 1(b) will be verified prior to special magistrates holding VAB hearings in Hendry County,
- 5) Item 1(c) could not be verified because no VAB hearings had been scheduled prior to the organizational meeting, for such notices to be required.
- 6) Once the above referenced, unverified items are able to be verified, I will provide the VAB with documentation and verification for the same.



Holly E. Cosby, Esq.

**2023 HENDRY COUNTY VALUE ADJUSTMENT BOARD
VERIFICATION OF BOCC CITIZEN MEMBER QUALIFICATIONS**

Name of Applicant: James Vee Lofton, Jr.

Position of Interest: Citizen Board Member Appointed by Board of County Commissioners (BoCC)

New Applicant: N Information Reviewed: 7/19/2023

F.S. §194.015 and F.A.C. §12D-9.004 Verification (performed by HEC on 7/19/2023):

Y/N	Criteria
Y	Own homestead property in Hendry County?
Y	Verified Address of Homestead: (from HendryPA.com) 468 Old Country Road 78 LaBelle, Florida 33935
N	Member of a taxing authority in Florida?
N	Employee of a taxing authority in Florida?
N	Represents property owners, property appraisers, tax collectors, or taxing authorities in any administrative or judicial review of property taxes?

Prior Service Comments/Concerns: None.

Concerns/Potential Conflicts/Additional Comments: None.

Supplements Attached: HendryPA Proof of Homestead record.

Date Applicant appointed by BoCC: TBA

I, Holly E. Cosby, Esq., Hendry County Value Adjustment Board Attorney, hereby verify the following:

- 1) that the above information has been verified, reviewed, and considered on July 19, 2023,
- 2) that the Applicant qualifies to serve as Citizen Board Member Appointed by BoCC,
- 3) that this review has been based solely upon the experience and qualifications of the Applicant,
- 4) that the approval of the Applicant is not influenced by the property appraiser, and
- 5) that the approval of the Applicant is not influenced by any party or potential party to a VAB proceeding or by any such party with an interest in the outcome of any such proceeding.

**Holly E.
Cosby, Esq.**

Digitally signed by Holly E. Cosby, Esq.
DN: cn=Holly E. Cosby, Esq., o=Law
Office of Holly E. Cosby, PA,
email=holly@cosbylaw.com, c=US
Date: 2023.07.19 13:09:47 -04'00'

Holly E. Cosby, Esq. - VAB Counsel

Parcel Summary

Parcel ID1 29 42 32 A00 0077.0000

Prop ID14263

Location Address468 OLD CR 78
LABELLE, FL 33935

Neighborhood/AreaNLB-S OF COWBOY WAY (101800.00)

Subdivision

Brief Legal Description*W 159.72 FT OF E 638.9 FT OF W 1/2 OF W 1/2 OF GL 1 LYING N OF SR 78 EXC N 273 FT + EXC BEG CEN SEC 32-S 00DEG 21M 11S W 1600.59 FT-S 89DEG 41M 41S E 25.00 FT TOPOB-S 89DEG 41M 41S E 15.00 FT-S 00DEG 21M 11S W 20.10 FT-S 13DEG 28M 46S W 66.05 FT- N 00DEG
(Note: *The Description above is not to be used on legal documents.)

Property Use CodeSINGLE FAMILY (0100)

Sec/Twp/Rng32-42-29

Tax DistrictCounty (District 1)

Millage Rate16.4031

Acreage1.110

HomesteadY

[View Map](#)



Internal Info

Market Area 10

Owner Information

[LOFTON JAMES VEE JR & LAURA S](#)
468 OLD COUNTY ROAD 78
LABELLE, FL 33935

Valuation

	2023 Preliminary Values	2022 Certified Values	2021 Certified Values
Just Market Value	\$283,017	\$228,066	\$184,559
Land Value	\$42,784	\$34,903	\$15,763
Agricultural (Market) Value	\$0	\$0	\$0
Agricultural Classified Value	\$0	\$0	\$0
Improvement Value	\$240,233	\$193,163	\$168,796
Non School Assessed Value	\$93,154	\$97,641	\$94,797
School Assessed Value	\$93,154	\$97,641	\$94,797
Exempt Value	\$50,000	\$50,000	\$50,000
Non School Taxable Value	\$43,154	\$47,641	\$44,797
School Taxable Value	\$68,154	\$72,641	\$69,797
Save Our Homes Deferred	\$189,863	\$130,425	\$89,762
Non Save Our Homes Deferred	\$0	\$0	\$0

Current Exemptions on this parcel:
HEX-A - Additional 25,000 Homestead Exemption
HEX - Exemption of Homesteads Reporting requirement on tax roll according to s. 196.002(1)

"Just (Market) Value" description - This is the value established by the Property Appraiser for ad valorem purposes. This value does not represent anticipated selling price.

Trim Notices

[2022 TRIM Notice \(PDF\)](#)

2022 Property Record Cards

[2022 Property Record Card \(PDF\)](#)

Tax Collector

[Link to Tax Collector](#)

Land Information

Land Use	Land Use Desc	Acres	Square Feet	Eff. Frontage	Depth
0100	SFR	1.11	48351.6	159.72	302.73

Building Information

Type	Single Family Residential	Heat Index	Electric -- Forced Air Ducted
Heated Area	1,560	Air Conditioning	Central Air
Exterior Walls	Face Brick	Bathrooms	2.5
Roof Cover	Galvalume	Bedrooms	3
Interior Walls	Drywall	Stories	1.0
Floor Cover	Carpet; Sheet Vinyl	Effective Year Built	1996
Actual Year Built	1996		

Sub Area

Type	Description	Sq. Footage	Act Year	Eff Year	Quality	Imprv Use	Imprv Use Descr
BAS	BAS Segment	1,560	1996	1996	03	*	ALL
FGR	Garage, Finished	525	1996	1996	03	*	ALL
FOP	Open Porch, Finished	399	1996	1996	03	*	ALL
GAR F	Garage Frame	864	2007	2007		*	ALL
PAV ASP	Paving Asphalt	4,172	2007	2007		*	ALL
PAV CON	Paving Concrete	240	1996	1996		*	ALL
SLAB C	Slab Concrete	160	1996	1996		*	ALL

Sales

Sales Date	Sale Price	Instrument	Book/Page	Qualification	Vacant/Improved	Grantor	Grantee
9/14/2000	\$100	QC	0604/1334	Qualified (Q)	Improved	LOFTON JAMES VEE JR	**None**
1/11/1995	\$100	WD	0518/1342	Qualified (Q)	Vacant	LOFTON JAMES V MARTHA JO	**None**
10/1/1986	\$100	CR	0383/0527	Qualified (Q)	Improved	LOFTON IDA	**None**
6/1/1981	\$100	WD	0294/0792	Qualified (Q)	Improved	LOFTON IDA	**None**
2/1/1953	\$0		0375/0046	Qualified (Q)	Vacant	LOFTON JAMES VEE JR	LOFTON JAMES VEE JR & LAURA S

Official Public Records information is provided by the Hendry County Clerk's Office. Clicking on the Book/Page links above will direct you to their web site displaying the document details for this specific transaction.

Permits

Permit Number	Type	Primary	Active	Issue Date	Value
16-0077	ROOF	Yes	No	2/4/2016	\$8,500
	FIVE YEAR REVIEW	No	No	9/28/2010	\$0
06-1055	UTILITY BUILDING	Yes	No	5/12/2006	\$84,000
0300894	ROOF OVER STRUCTURE	Yes	No	10/2/2003	\$2,400
	PN	Yes	No	12/19/1996	\$0
9601629	FENCE	Yes	No	3/15/1996	\$3,214
9501830	SINGLE FAMILY DWELLING	Yes	No	8/27/1995	\$82,085

Our permitting information is pulled from the Hendry County Permitting Offices. Permitting information shown here is all the Property Appraiser has on file for this property. Any detailed questions about permits should be directed to the Permitting Offices. Their website is: <https://hndy-trk.aspgov.com/eTRAKIT/>

Photos



Sketches

2023 HENDRY COUNTY VALUE ADJUSTMENT BOARD VERIFICATION OF SCHOOL BOARD CITIZEN MEMBER QUALIFICATIONS

Name of Applicant: Ayman Kaki

Position of Interest: Citizen Board Member Appointed by School Board

New Applicant: N Information Compiled: 7/19/2023

F.S. §194.015 and F.A.C. §12D-9.004 Verification (performed by HEC on 7/19/2023):

Y/N	Criteria
Y	Own a business/commercial enterprise, occupation, profession, or trade occupying and conducted from commercial space located within the school district of Hendry County?
Y	Verified Name and Address of Business: (sunbiz.org) K&M Drugs 149 W. Hickpochee Avenue LaBelle, Florida 33935
Y	Verify ownership of business: (sunbiz.org)
N	Member of a taxing authority in Florida?
N	Employee of a taxing authority in Florida?
N	Represents property owners, property appraisers, tax collectors, or taxing authorities in any administrative or judicial review of property taxes?

Prior Service Comments/Concerns: Applicant has been a wonderful part of the Hendry VAB for several years and his service is greatly appreciated.

Concerns/Potential Conflicts/Additional Comments: None.

Supplements attached: Company Verification – Sunbiz.org, 2023 Company Annual Report – Sunbiz.org, Verification of Commercial Space – HendryPA.com

Date appointed/ratified by School Board: TBA

I, Holly E. Cosby, Esq., Hendry County Value Adjustment Board Attorney, hereby verify the following:

- 1) that the above information has been verified, reviewed, and considered on July 19, 2023,
- 2) that the Applicant is qualified to serve as Citizen Board Member Appointed by School Board,
- 3) that this review has been based solely upon the experience and qualifications of the Applicant,
- 4) that the approval of the Applicant is not influenced by the property appraiser, and
- 5) that the approval of the Applicant is not influenced by any party or potential party to a VAB proceeding or by any such party with an interest in the outcome of any such proceeding.

Holly E. Cosby,
Esq.

Digitally signed by Holly E. Cosby, Esq.
 DN: cn=Holly E. Cosby, Esq., o=Law
 Office of Holly E. Cosby, PA,
 email=holly@cosbylaw.com, c=US
 Date: 2023.07.19 13:37:40 -04'00'

Holly E. Cosby, Esq. - VAB Counsel



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No Events **No Name History**

Detail by Entity Name

Florida Limited Liability Company
K & M DRUGS FORT MYERS, LLC

Filing Information

Document Number	L15000112374
FEI/EIN Number	47-4445195
Date Filed	06/29/2015
Effective Date	06/29/2015
State	FL
Status	ACTIVE

Principal Address

14651 PALM BEACH BLVD
102
FT. MYERS, FL 33905

Mailing Address

149 W HICKPOCHEE AVENUE
LABELLE, FL 33935

Registered Agent Name & Address

KAKI, AYMAN
340 E SUGARLAND HWY
CLEWISTON, FL 33440

Authorized Person(s) Detail

Name & Address

Title MGR

KAKI, AYMAN
340 E SUGARLAND HWY
CLEWISTON, FL 33440

Title MGR

KAKI, HAITHAM
340 E SUGARLAND HWY
CLEWISTON, FL 33440

Annual Reports

Report Year	Filed Date
2021	01/06/2021
2022	01/25/2022
2023	01/13/2023

Document Images

01/13/2023 -- ANNUAL REPORT	View image in PDF format
01/25/2022 -- ANNUAL REPORT	View image in PDF format
01/06/2021 -- ANNUAL REPORT	View image in PDF format
01/08/2020 -- ANNUAL REPORT	View image in PDF format
01/04/2019 -- ANNUAL REPORT	View image in PDF format
01/08/2018 -- ANNUAL REPORT	View image in PDF format
01/18/2017 -- ANNUAL REPORT	View image in PDF format
02/05/2016 -- ANNUAL REPORT	View image in PDF format
06/29/2015 -- Florida Limited Liability	View image in PDF format

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K & M drugs

Search

No Events No Name History

2023 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L15000112374

Entity Name: K & M DRUGS FORT MYERS, LLC

Current Principal Place of Business:

14651 PALM BEACH BLVD
102
FT. MYERS, FL 33905

Current Mailing Address:

149 W HICKPOCHEE AVENUE
LABELLE, FL 33935 US

FEI Number: 47-4445195

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

KAKI, AYMAN
340 E SUGARLAND HWY
CLEWISTON, FL 33440 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

Title	MGR	Title	MGR
Name	KAKI, AYMAN	Name	KAKI, HAITHAM
Address	340 E SUGARLAND HWY	Address	340 E SUGARLAND HWY
City-State-Zip:	CLEWISTON FL 33440	City-State-Zip:	CLEWISTON FL 33440

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: AYMAN KAKI

MGR

01/13/2023

Electronic Signature of Signing Authorized Person(s) Detail

Date

Parcel Summary

Parcel ID 2 29 43 02 100 0000-011.0
Prop ID 31373
Location Address 149 W HICKPOCHEE AVE
 LABELLE, FL 33935
Neighborhood/Area COMMERCIAL LA BELLE (201000.00)
Subdivision IMPROVED: COMMERCIAL LABELLE
Brief Legal Description* LABELLE AVALON PLACE S/D LOTS 18 + 19 + 20 + VACATED PKWY
 (Note: *The Description above is not to be used on legal documents.)
Property Use Code STORES ONE STORY (1100)
Sec/Twp/Rng 02-43-29
Tax District City of LaBelle (District 2)
Millage Rate 20.6531
Acreage 0.319
Homestead N

[View Map](#)


Internal Info

Market Area 20

Owner Information

AK & SONS RE HOLDINGS LLC
 340 E SUGARLAND HWY
 CLEWISTON, FL 33440

Valuation

	2023 Preliminary Values	2022 Certified Values	2021 Certified Values
Just Market Value	\$336,257	\$238,125	\$248,769
Land Value	\$131,119	\$131,119	\$107,517
Agricultural (Market) Value	\$0	\$0	\$0
Agricultural Classified Value	\$0	\$0	\$0
Improvement Value	\$205,138	\$107,006	\$141,252
Non School Assessed Value	\$240,378	\$218,525	\$198,659
School Assessed Value	\$336,257	\$238,125	\$248,769
Exempt Value	\$0	\$0	\$0
Non School Taxable Value	\$240,378	\$218,525	\$198,659
School Taxable Value	\$336,257	\$238,125	\$248,769
Save Our Homes Deferred	\$0	\$0	\$0
Non Save Our Homes Deferred	\$95,879	\$19,600	\$50,110

"Just (Market) Value" description - This is the value established by the Property Appraiser for ad valorem purposes. This value does not represent anticipated selling price.

Trim Notices

[2022 TRIM Notice \(PDF\)](#)

2022 Property Record Cards

[2022 Property Record Card \(PDF\)](#)

Tax Collector

[Link to Tax Collector](#)

Land Information

Land Use	Land Use Desc	Acres	Square Feet	Eff. Frontage	Depth	Zoning
1300	STORE DEPARTMT	0.32	13875	75	185	

Building Information

Type	Store-Retail	Heat Index	None -- None
Heated Area	3,900	Air Conditioning	None
Exterior Walls	CBS,Slump/Fluted,IC Form; Wood Siding or Log	Bathrooms	
Roof Cover	Prefinished Metal	Bedrooms	
Interior Walls	Drywall	Stories	1.0
Floor Cover	Carpet; Wood Laminant	Effective Year Built	1985
Actual Year Built	1985		

Sub Area

Type	Description	Sq. Footage	Act Year	Eff Year	Quality	Imprv Use	Imprv Use Descr
BAS	BAS Segment	615	1985	1985	05	CS 1 STORY	COM STR 1 STORY
CARSTOP	Car Stops	18	1985	1990	05	*	ALL
CAT	Cathedral ceiling	2,160	1985	1985	05	*	ALL
FOP	Open Porch, Finished	256	1985	1985	05	*	ALL
LFT	Loft	615	1985	1985	05	*	ALL
PAV ASP	Paving Asphalt	8,890	1985	1990	05	*	ALL
POF	Poor Office in Comm Bldg	510	1985	1985	05	*	ALL
SHED TST	Shed Ted Shed Type	340	2001	2001	05	*	ALL
SLAB C	Slab Concrete	69	1985	1990	05	*	ALL
UOP	Open Porch, Unfinished	120	1985	1985	05	*	ALL
WDDK	Wood Deck	72	1985	1985	05	*	ALL

Sales

Sales Date	Sale Price	Instrument	Book/Page	Qualification	Vacant/Improved	Grantor	Grantee
3/27/2013	\$228,000	WD	0860/0859	Unqualified (U)	Improved	JUAN + JOHN DRUGS INC	**None**
11/30/1995	\$300,000	WD	0530/1009	Qualified (Q)	Improved	HOWARD W R JR DONNA M	**None**
6/11/1993	\$100	WD	0496/1844	Qualified (Q)	Improved	STOCKMAN DAVID W JUDY H	**None**
9/1/1989	\$350,000	WD	0438/0003	Qualified (Q)	Improved	KOON DAVID M CHARLES	**None**
10/15/1984	\$50,000	WD	0345/0549	Qualified (Q)	Vacant	SMITH DONALD J LOIS M	**None**
3/1/1984	\$40,000	WD	0335/0291	Qualified (Q)	Vacant	STANNARD HEMAN W +	**None**
3/1/1984	\$100	QC	0334/0143	Qualified (Q)	Vacant	STANNARD CHARLES E EST	**None**
9/30/1980	\$0	QC	0287/0705	Qualified (Q)	Vacant	STANNARD CHARLES E EST	**None**
1/1/1969	\$0		0103/0412	Qualified (Q)	Vacant	**None**	AK & SONS RE HOLDINGS LLC
12/1/1948	\$0	MS	0280/0567	Qualified (Q)	Vacant	STANNARD ALICE EST	**None**
1/1/1926	\$150	WD	0204/0024	Qualified (Q)	Vacant	**None**	**None**

Official Public Records information is provided by the Hendry County Clerk's Office. Clicking on the Book/Page links above will direct you to their web site displaying the document details for this specific transaction.

Permits

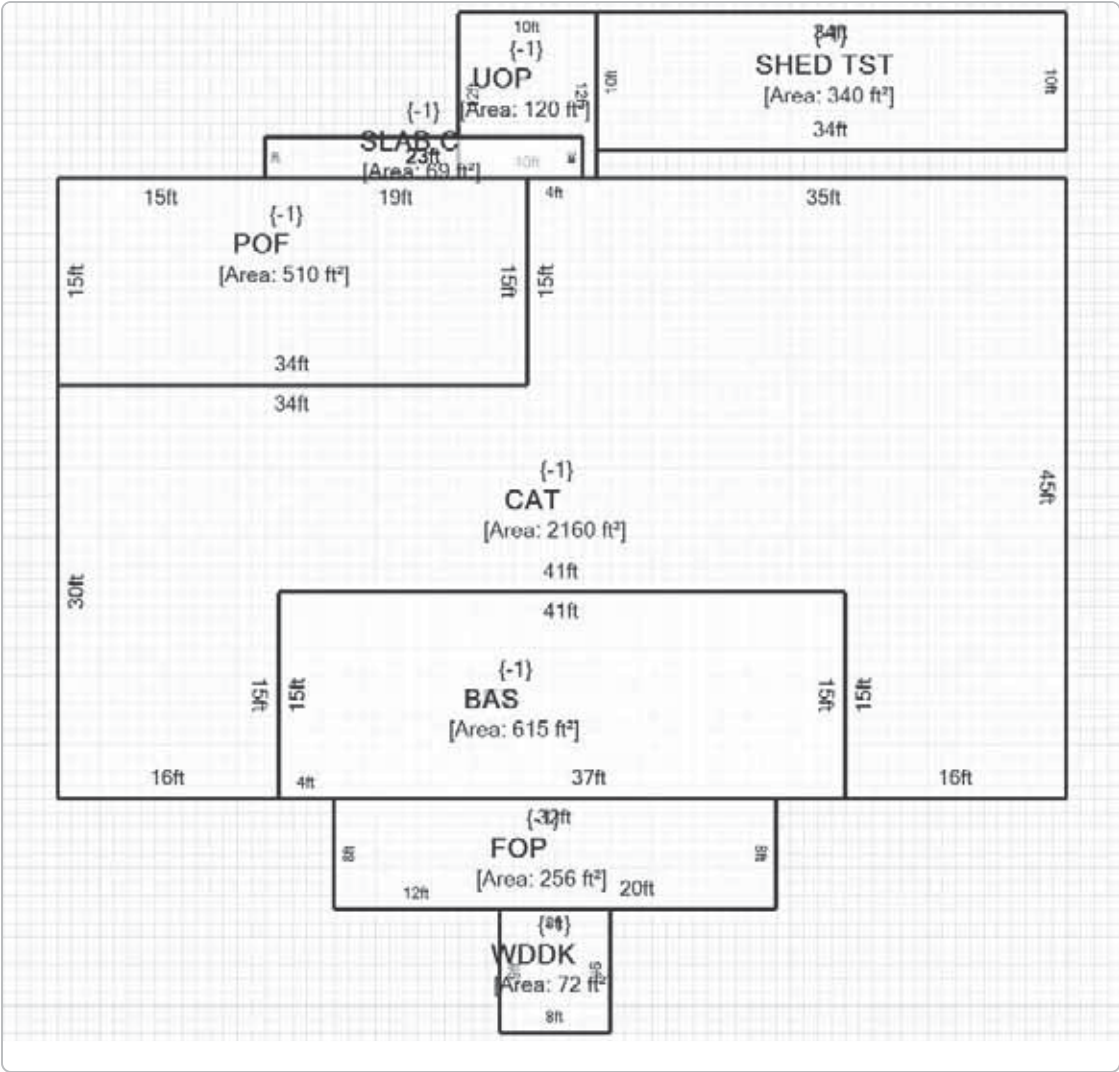
Permit Number	Type	Primary	Active	Issue Date	Value
18L0044	ROOF	Yes	No	3/21/2018	\$32,000
17L0017	COMMERICAL ADDITION	Yes	No	7/21/2017	\$8,000
010304	UTILITY BUILDING	Yes	No	2/23/2001	\$5,861
96LAB.	REVIEW	No	No	11/27/1995	\$0
940047	SIGN	Yes	No	10/18/1994	\$0
980037	SIGN	Yes	No		\$4,000

Our permitting information is pulled from the Hendry County Permitting Offices. Permitting information shown here is all the Property Appraiser has on file for this property. Any detailed questions about permits should be directed to the Permitting Offices. Their website is: <https://hndy-trk.aspgov.com/eTRAKIT/>

Photos



Sketches



No data available for the following modules: Extra Features.

This information was derived from data which was compiled by the Hendry County Property Appraiser Office solely for the governmental purpose of property assessment. This information should not be relied upon by anyone as a determination of the ownership of property or market value. No warranties, expressed or implied, are provided for the accuracy of the data herein, it's use, or it's interpretation.
| [User Privacy Policy](#) | [GDPR Privacy Notice](#)
Last Data Upload: 7/18/2023, 9:24:03 PM

Contact Us





IMPORTANT INFORMATION

IMPORTANT E-FILING PORTAL UPDATE



Value Adjustment Board

VAB 2022 Hearing Schedule: All petitions have been withdrawn. No hearings will be held.

Note: It is the property owner's responsibility to be fully informed of all the Florida laws and regulations of their local county's rules governing the Value Adjustment Board (VAB) process. As laws, rules and procedures may change from time to time, it is recommended that you thoroughly review all web sites, statutes and rules to verify their current status and for more complete information pertinent to this process.

The purpose of the value adjustment board (VAB) is to hear appeals regarding property value assessments, denied exemptions or classifications, ad valorem tax deferrals, portability decisions, and change of ownership or control. Taxpayers or their representatives file petitions with the VAB clerk in the county where the property is located. See the taxpayer guide on Petitions to the Value Adjustment Board for more information.

Florida Statutes

Chapter 119

Chapter 192

Chapter 193

Chapter 194

Chapter 195

Chapter 196

Chapter 286

Florida Department of Revenue – Value Adjustment Board Website –

Please [CLICK HERE] for Access to the Following:

FloridaAdministrative Code 12D-9

FloridaAdministrative Code 12D-10

FloridaAdministrative Code 12D-16

Value Adjustment Board Forms

Uniform Policies and Procedures Manual

Additional VAB Resources:

Florida Administrative Code 12D-51

Florida Government in the Sunshine Manual

The Clerk of the County and Circuit Courts is the Clerk to the VAB. The VAB as a panel considers and renders a decision on all appeal petitions relating to property assessments, classifications and exemptions. The VAB has no jurisdiction or control over taxes or tax rates.

established by taxing authorities. The VAB's one and only function is to hear evidence as to whether or not properties, petitioned for their consideration, are appraised at their fair market value and determine if an agricultural classification or exemption should be approved. The VAB cannot change an appraised value for any other reason, such as inability to pay.

The filing fee for petitions is \$15.00. Please make checks payable to: Hendry County Clerk of Court
Petitions may be mailed to either of the following addresses:

By U.S. Post Office:

By Fed-Ex or UPS:

Clerk of Circuit Court
Value Adjustment Board
PO Box 1760
LaBelle, FL 33975

Clerk of Circuit Court
Value Adjustment Board
25 E. Hickpochee Ave.
LaBelle, FL 33935

You may fax or email your petitions by sending to:

Fax: 863-612-4730

Email: scongleton@hendryclerk.org

You will need to call: 863-675-5216 to pay the filing fee by credit card.



QuickLinks

Accessibility
About the Clerk
County Civil
Circuit Civil
Clerk to Board
Court Services
Finance
Jury
Probate
Traffic

LaBelle Courthouse Complex

Kimberley Barrineau

Clerk of the Circuit Court & Comptroller

Hendry County, Florida

25 E. Hickpochee Ave.

SR 80 Corner SR 29

Phone (863)-675-5217

Office Hours 8:30 to 4:45

Clewiston Sub-Office

1100 S. Olympia Street, Suite 502

Phone (863)-983-1464

Office Hours: 8:30-1:00 & 2:00-4:45

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Website by MuniCreative

Certification of Training Completion

The Florida Department of Revenue provides this document for a person to certify that he or she, personally and without any assistance, has completed the Department's 2023 Value Adjustment Board Training, including the exam, for Board Members or Board Attorney.

I certify that I,

Holly E Cosby

Personally, and without any assistance, have carefully reviewed and studied the content of Modules 1 through 11 of the Department of Revenue's 2023 Value Adjustment Board Training, for learning such content, and further certify that I, personally and without any assistance, have completed and passed the Department of Revenue's corresponding examination.

This certification becomes valid only when signed and dated below by the person who completed the training including exam as described above. By my dated signature below, I further attest to my preceding statements.

Holly E. Cosby, Esq.

Digitally signed by Holly E. Cosby, Esq.
DN: cn=Holly E. Cosby, Esq., o=Law Office of Holly
E. Cosby, PA, email=holly@cosbylaw.com, c=US
Date: 2023.09.16 21:08:00 -04'00'

September 16, 2023

Signature and Certification of

DATE



FLORIDA

The screenshot shows a web browser window displaying the Florida Department of Revenue's online portal. The page header includes the state seal and the department's name. A user named Holly E. Cosby is logged in. The main content area displays a 'Completed - Exam - 2023 Value Adjustment Board Members and Board Attorneys VAB Exam' message. Below this, it states 'Completed - Exam - 2023 Value Adjustment Board Members and Board Attorneys VAB Exam' and 'You are finished taking the following exam:'. A table shows the exam name and a 'PASS' score of 100 points. A 'Certificate' section provides instructions on how to view and save the completion certificate.

Florida
DEPARTMENT OF REVENUE

Welcome, **Holly E. Cosby** [Sign Out](#)

[Content](#) [My Account](#)

Completed - Exam - 2023 Value Adjustment Board Members and Board Attorneys VAB Exam

[Completed - Exam - 2023 Value Adjustment Board Members and Board Attorneys VAB Exam](#)

You are finished taking the following exam:

Name	2023 Value Adjustment Board Members and Board Attorneys VAB Exam
Score	PASS 100 points scored (or 100.0%) out of 100 maximum points (a score of 80.0% or greater is needed to pass this test)

Certificate

A completion certificate is available for this exam. The certificate is in an Adobe PDF format. Click on the image below to open in a popup window. You may need to disable any popup blockers to view. Once opened, you can save the certificate on your computer or print.

For this exam, this application will allow you to retrieve this certificate at anytime under the My Account menu.

Certification of Training Completion

The Florida Department of Revenue provides this document for a person to certify that he or she, personally and without any assistance, has completed the Department's 2023 Value Adjustment Board Training, including the exam, for Attorney Special Magistrate.

I certify that I,

Ellen T. Chadwell

Personally, and without any assistance, have carefully reviewed and studied the content of Modules 1 through 5 and Modules 9 through 11 of the Department of Revenue's 2023 Value Adjustment Board Training, for learning such content, and further certify that I, personally and without any assistance, have completed and passed the Department of Revenue's corresponding examination.

This certification becomes valid only when signed and dated below by the person who completed the training including exam as described above. By my dated signature below, I further attest to my preceding statements.



Signature and Certification of

10/03/23

DATE



Certification of Training Completion

The Florida Department of Revenue provides this document for a person to certify that he or she, personally and without any assistance, has completed the Department's 2023 Value Adjustment Board Training, including the exam, for Real Property Appraiser Special Magistrate.

I certify that I,

Michael E Mcginley

Personally, and without any assistance, have carefully reviewed and studied the content of Modules 1 through 7 and Module 11 of the Department of Revenue's 2023 Value Adjustment Board Training, for learning such content, and further certify that I, personally and without any assistance, have completed and passed the Department of Revenue's corresponding examination.

This certification becomes valid only when signed and dated below by the person who completed the training including exam as described above. By my dated signature below, I further attest to my preceding statements.


Signature and Certification of

10-12-23
DATE



Certification of Training Completion

The Florida Department of Revenue provides this document for a person to certify that he or she, personally and without any assistance, has completed the Department's 2023 Value Adjustment Board Training, including the exam, for Real Property Appraiser Special Magistrate.

I certify that I,

Steven Lawrence Nystrom

Personally, and without any assistance, have carefully reviewed and studied the content of Modules 1 through 7 and Module 11 of the Department of Revenue's 2023 Value Adjustment Board Training, for learning such content, and further certify that I, personally and without any assistance, have completed and passed the Department of Revenue's corresponding examination.

This certification becomes valid only when signed and dated below by the person who completed the training including exam as described above. By my dated signature below, I further attest to my preceding statements.



Signature and Certification of

9/20/23

DATE



Certification of Training Completion

The Florida Department of Revenue provides this document for a person to certify that he or she, personally and without any assistance, has completed the Department's 2023 Value Adjustment Board Training, including the exam, for Tangible Personal Property Appraiser Special Magistrate.

I certify that I,

Steven Lawrence Nystrom

Personally, and without any assistance, have carefully reviewed and studied the content of Modules 1 through 5, Module 7 (part 1 only), 8, and 11 of the Department of Revenue's 2023 Value Adjustment Board Training, for learning such content, and further certify that I, personally and without any assistance, have completed and passed the Department of Revenue's corresponding examination.

This certification becomes valid only when signed and dated below by the person who completed the training including exam as described above. By my dated signature below, I further attest to my preceding statements.


Signature and Certification of

9/20/23
DATE

