

12 **12D-9.02~~5~~6 Procedures for Conducting a Hearing; Presentation of Evidence;**

13 **Testimony of Witnesses.**

14 (1) As part of administrative reviews, the board or special magistrate must:

15 (a) review the evidence presented by the parties;

16 (b) determine whether the evidence presented is admissible;

17 (c) admit the evidence that is admissible, and identify ~~mark~~ the evidence presented to

18 indicate that it is admitted or not admitted; and

19 (d) consider the admitted evidence.

20 (2)(a) In these rules, the term “admitted evidence” means evidence that has been admitted

21 into the record for consideration by the board or special magistrate. Board and special magistrate

22 proceedings are not controlled by strict rules of evidence and procedure. Formal rules of

23 evidence shall not apply, but fundamental due process shall be observed and shall govern the

1 proceedings.

2 (b) For administrative reviews, “relevant evidence” is evidence that is reasonably related,
3 directly or indirectly, to the statutory criteria that apply to the issue under review. This
4 description means the evidence meets or exceeds a minimum level of relevance necessary to be
5 admitted for consideration, but does not necessarily mean that the evidence has sufficient
6 relevance to legally justify a particular conclusion.

7 (c) Rebuttal evidence is relevant evidence used solely to disprove or contradict the
8 original evidence presented by an opposing party.

9 ~~(e) The board or special magistrate may exclude from consideration evidence that is not~~
10 ~~reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under~~
11 ~~administrative review.~~

12 ~~(d) Hearsay evidence may be used for the purpose of supplementing or explaining~~
13 ~~admissible evidence. However, hearsay evidence shall not be sufficient by itself to support a~~
14 ~~finding of fact unless it would be admissible in civil actions.~~

15 ~~(d)(e)~~ If the board or special magistrate has a question relating to the admissibility or use
16 of evidence, the board or special magistrate shall consult with board legal counsel. The special
17 magistrate may ~~delay postpone~~ ruling on the question during the hearing and consult with board
18 legal counsel after the hearing.

19 (3)(a) In a board or special magistrate hearing, the petitioner is responsible for presenting
20 relevant and credible evidence in support of his or her belief that the property appraiser’s
21 determination is incorrect. The property appraiser is responsible for presenting relevant and
22 credible evidence in support of his or her determination.

23 (b) Under Section 194.301, Florida Statutes (2009), starting with 2009 assessments,

1 “preponderance of the evidence” is the standard of proof that applies in assessment challenges.
2 The “clear and convincing evidence” standard of proof no longer applies, starting with 2009
3 assessments. A taxpayer shall never have the burden of proving that the property appraiser’s
4 assessment is not supported by any reasonable hypothesis of a legal assessment.

5 (4)(a) No evidence shall be considered by the board or special magistrate except when
6 presented and admitted during the time scheduled for the petitioner’s hearing, or at a time when
7 the petitioner has been given reasonable notice. The petitioner may still present evidence if he or
8 she does not participate in the evidence exchange. However, if the property appraiser asks in
9 writing for evidence before the hearing in connection with a filed petition, and the petitioner has
10 this evidence and refuses to provide it to the property appraiser, the evidence cannot be presented
11 by the petitioner or accepted for consideration by the board or special magistrate.

12 (b) If a party submits evidence to the clerk prior to the hearing, the board or special
13 magistrate shall not review or consider such evidence prior to the hearing.

14 (c) In order to be reviewed by the board or special magistrate, any evidence filed with the
15 clerk shall be brought to the hearing by the party. These requirements shall not apply where:

16 1. a ~~petitioner~~ ~~petitioners~~ does not appear at a hearing ~~where the petitioner has indicated~~
17 ~~that he or she will not appear on the petition or on a~~ “portability” assessment difference ~~transfer~~
18 ~~petitions~~ in which the previous homestead is the subject of the petition and is located in a county
19 other than the county where the new homestead is located. Requirements specific to hearings on
20 such petitions are set forth in Section 12D-9.028(6) ~~29(9)~~, F.A.C.; or

21 2. a petitioner has indicated that he or she does not wish to appear at the hearing but
22 would like for the board or special magistrate to consider evidence submitted by the petitioner.

1 (d) A petitioner who has indicated that he or she does not wish to appear at the hearing,
2 but would like for the board or special magistrate to consider his or her evidence, shall submit his
3 or her evidence to the board clerk before the hearing. The board clerk shall:

- 4 1. keep the petitioner's evidence as part of the petition file;
- 5 2. notify the board or special magistrate before or at the hearing that the petitioner has
6 indicated he or she will not appear at the hearing, but would like for the board or special
7 magistrate to consider his or her evidence at the hearing; and
- 8 3. give the evidence to the board or special magistrate at the beginning of the hearing.

9 (e) The clerk may provide an electronic system for the filing and retrieval of evidence for
10 the convenience of the parties, but such evidence shall not be considered part of the record and
11 shall not be reviewed by the board or special magistrate until presented at a hearing. Any
12 exchange of evidence should occur between the parties and such evidence is not part of the
13 record until presented by the offering party and deemed admissible at the hearing.

14 ~~(f) Evidence is not made admissible only because it has been exchanged; evidence must~~
15 ~~be reviewed and determined to be admissible by the board or special magistrate.~~

16 ~~(f)(g)~~1. No petitioner shall present, nor shall the board or special magistrate accept for
17 consideration, testimony or other evidentiary materials that were requested of the petitioner in
18 writing by the property appraiser in connection with a filed petition, of which the petitioner had
19 knowledge and denied to the property appraiser. Such evidentiary materials shall be considered
20 timely if provided to the property appraiser no later than fifteen (15) days before the hearing in
21 accordance with the exchange of evidence rules in Section 12D-9.020 ~~24~~, F.A.C. and, if provided
22 to the property appraiser less than fifteen (15) days before the hearing, shall be considered timely
23 if the board or special magistrate determines they were provided a reasonable time before the

1 hearing. A petitioner's ability to introduce the evidence, requested of the petitioner in writing by
2 the property appraiser, is lost if not provided to the property appraiser as described in this
3 paragraph. This provision does not preclude rebuttal evidence that was not specifically requested
4 of the petitioner by the property appraiser.

5 2. A property appraiser shall not present undisclosed evidence that was not supplied to
6 the petitioner as required under the evidence exchange rule, Section 12D-9.020 ~~21~~, F.A.C. The
7 normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the
8 petitioner an opportunity to review the information of the property appraiser.

9 (5) When testimony is presented at a hearing, each party shall have the right to cross-
10 examine any witness.

11 (6)(a) By agreement of the parties entered in the record, the board or special magistrate
12 may leave the record open and postpone completion of the hearing to a date certain to allow a
13 party to collect and provide additional relevant and credible evidence. Such postponements shall
14 be limited to instances where, after completing original presentations of evidence, the parties
15 agree to the collection and submittal of additional, specific factual evidence for consideration by
16 the board or special magistrate.

17 (b) If additional hearing time is necessary, the hearing must be completed at the date,
18 place, and time agreed upon for presenting the additional evidence to the board or special
19 magistrate for consideration.

20 (c) The following limitations shall apply if the property appraiser seeks to present
21 additional evidence that was unexpectedly discovered and that would increase the assessment.

22 1. The board or special magistrate shall ensure that such additional evidence is limited to
23 a correction of a factual error discovered in the physical attributes of the petitioned property; a

1 change in the property appraiser's judgment is not such a correction and shall not justify an
2 increase in the assessment.

3 2. A notice of revised proposed assessment shall be made and provided to the petitioner
4 in accordance with the notice provisions set out in Florida Statutes for notices of proposed
5 property taxes.

6 3. A new hearing shall be scheduled and notice of the hearing shall be sent to the
7 petitioner along with a copy of the revised property record card, if requested.

8 4. The evidence exchange ~~procedures provisions~~ in Section 12D-9.020 ~~24~~, F.A.C., shall
9 be available apply where necessary.

10 5. The back assessment procedure in Section 193.092, Florida Statutes, shall be used for
11 any assessment already certified.

12 (7)(a) The board or special magistrate shall receive, identify for the record, and retain all
13 exhibits presented during the hearing and send them to the clerk along with the recommended
14 decision or final decision. Upon agreement of the parties, the clerk is authorized to make an
15 electronic representation of evidence that is difficult to store or maintain.

16 (b) The board or special magistrate shall have the authority, at a hearing, to ask questions
17 at any time of either party, the witnesses, or board staff. When asking questions, the board or
18 special magistrate shall not show bias for or against any party or witness. The board or special
19 magistrate shall limit the content of any question asked of a party or witness to matters
20 reasonably related, directly or indirectly, to matters already in the record.

21 (c) Representatives of interested municipalities may be heard as provided in Section
22 193.116, Florida Statutes.

1 (8) Unless a board or special magistrate determines that additional time is necessary, the
2 board or special magistrate shall conclude all hearings at the end of the time scheduled for the
3 hearing. If a hearing is not concluded by the end of the time scheduled, the board or special
4 magistrate shall determine the amount of additional time needed to conclude the hearing.

5 (a) If the board or special magistrate determines that the amount of additional time
6 needed to conclude the hearing would not unreasonably disrupt other hearings, the board or
7 special magistrate is authorized to proceed with conclusion of the hearing.

8 (b) If the board or special magistrate determines that the amount of additional time
9 needed to conclude the hearing would unreasonably disrupt other hearings, the board or special
10 magistrate shall so state on the record and shall notify the clerk to reschedule the conclusion of
11 the hearing to a time as scheduled and noticed by the clerk, mutually agreeable to the parties.

12 (9) The board or special magistrate shall not be not required to make, at any time during a
13 hearing, any oral or written finding, conclusion, decision, or reason for decision. The board or
14 special magistrate has the discretion to determine whether to make such determinations during a
15 hearing or to consider the petition and evidence further after the hearing and then make such
16 determinations.

17 Rulemaking Specific Authority ~~193.092~~, 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law
18 Implemented 193.092, 194.011, 194.032, 194.034, 195.022, 213.05 FS. History-New xx-xx-09.