

OHIO BOARD OF TAX APPEALS

Geraldine Dennis,)	CASE NO. 2003-M-1741
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Knox County Board of Revision and the Knox County Auditor,)	(Denying Motions to Quash Subpoenas)
)	
Appellees.)	Dismissed on Appeal Sept. 9, 2005 Knox County Court of Appeals

APPEARANCES: 2005-Ohio-4712

For the Appellant -	McDevitt, Mayhew & Malek, L.P.A.. Fred E. Mayhew 1 Public Square Mount Vernon, Ohio 43050
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For the County - Appellees	- John W. Baker Knox County Prosecuting Attorney Mark Gillis Special Prosecuting Attorney Rich, Crites & Dittmer, LLC 300 East Broad Street, Suite 300 Columbus, Ohio 43215
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Entered October 1, 2004

This matter is now considered by the Board of Tax Appeals upon three¹ “Motion[s] to Quash Subpoena” filed on August 27, 2004. The three persons to whom the subpoenas were directed seek an order from this board excusing each from attendance at the hearing which was scheduled for September 2, 2004 but was continued so that the board could fully consider the motions. The subpoenas were also ducas tecum, requiring

¹ The board has actually docketed a motion to quash the subpoena directed to Margaret Ann Ruhl, the Knox County Auditor, and two motions to quash the subpoena directed to John G. Cleminshaw. As a subpoena issued at the same time as the subpoenas for which we have received motions to quash was directed to John David Cleminshaw, we shall consider the redundant motion to speak to the subpoena directed to John David Cleminshaw.

each person to supply “any and all documentation of how the appraised value was established for the above referenced² property including but not limited to any comparables, grade/design factors and exterior feature calculations.”

The movants argue that they are not in possession of any relevant documents that can be of assistance to appellant in satisfying her burden to prove the true value of the subject property. The movants further argue that the appellant’s request for production of documents is vague and overbroad, and all information relevant to the subject property appears on the property record card. Finally, the movants argue that the issuance of the subpoenas fails to allow those subpoenaed reasonable time to comply. As we have continued the hearing, the final issue is moot.

The appellant responds by claiming that the persons subpoenaed, the auditor and two deputy auditors³ who are charged with the duty of appraising property in the county, by the nature of their occupations, should have some information regarding the manner by which the appraised value of the subject property was reached. The appellant also argues that her requests were neither vague nor overbroad, as the requests were directed only to the subject property. Finally, in response to the movants’ statements that all information relevant to the subject property appears on the property record card, the appellant notes that the property record card is the result of some methodology which is subject to challenge. As the numbers are subject to challenge, the appellant seeks to

² The “above-referenced” property refers to certain property located in Knox County and is identified as parcel no. 66-09962-001.

³ The two deputy auditors are John G. Cleminshaw and John David Cleminshaw. John David Cleminshaw was identified as an appraiser at the BOR hearing and questioned Mr. Ken Dennis who appeared on behalf of the property owner.

obtain information from those persons who participated in the creation of the methodology by which information reported on property record cards was adduced.

In *Herdendorf v. Erie Cty. Bd. of Revision* (Interim Order, Apr. 9, 1998), BTA No. 1995-T-854, unreported, this board was drawn into essentially the same dispute. A property owner sought certain information from the county treasurer, the county auditor and the chief deputy auditor and issued subpoenas commanding their appearance as witnesses at the hearing scheduled before this board. The county moved to quash the subpoenas on the grounds that (1) there was nothing of relevance to the appeal that could be asked of the offices; (2) the request for documents was vague; and (3) there were no documents in existence of the kind the appellant sought.

The board denied the motion. Therein it held:

“We agree with the county that Mr. Herdendorf has the burden of coming forward with evidence which establishes his right to the decreases he seeks. However, the ability of Mr. Herdendorf to meet this burden is not determinative in questions involving the propriety of a subpoena. Rather, in reviewing a subpoena issued for purposes of providing testimony and/or documents for hearing, we must determine if the information sought is relevant to the issues pending in the underlying action. See, e.g., *Shopco Group v. City of Springdale* (1989), 64 Ohio App.3d 373 (testimony of private investigator hired to investigate a zoning matter and his records concerning telephone calls and credit card transactions were not relevant to a claim for money damages). Thus, the question before this Board is whether the subject subpoenas properly ask for information that is relevant to the issues in this appeal, namely the value of the subject property.” *Id.* at 3.

As the quote reflects, the board must consider whether the subject subpoenas properly ask for information that is relevant to the issues in this appeal. As the

issue in this appeal is the valuation of the subject property, the board must find that the information sought is relevant. See *Coates v. Ottawa Cty. Bd. of Revision* (Interim Order, Oct. 17 2001), BTA No. 2000-P-1458, unreported. We do not find that the form of the subpoenas is so overbroad that the persons receiving the subpoenas will be subjected to an undue burden when complying.

The board must make a final note. The movants suggest that the subpoenas should not be permitted because the appellant never issued requests for the production of documents during “the discovery phase” of the appeal. The appellant indicates that it did serve the auditor with a request for the production of documents on April 28, 2004, but the auditor chose not to respond, knowing that the request fell outside the 120-day discovery period provided for in Ohio Adm. Code 5717-1-11(A)(1). The board will take this opportunity to remind the parties that discovery is governed by the Ohio Rules of Civil Procedure. Our rules indicate that discovery “should be completed” within the 120-day period. However, in many cases discovery extends far beyond those time limitations. The board will not become involved in discovery disputes after the cut-off period. However, the board assumes that the parties remain diligent in fully disclosing information requested. Therefore, the fact that certain information was not requested “during the discovery phase” does not support a claim that an opposing party was not aware of the requests made and therefore could not timely provide such information when called before hearing.

The motions to quash are overruled. The matter will be scheduled in the ordinary course of the board’s business.

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