

Heritage Hills, Ltd.,)	CASE NOS. 96-T-776
)	96-T-780
Appellant,)	
)	
vs.)	
)	(REAL PROPERTY TAX)
Ross County Board)	
of Revision and the)	
Ross County Auditor,)	(Compelling Discovery)
)	(& Denying Motion for)
Appellees.)	(Protective Order)

APPEARANCES:

For the Appellant -	Todd W. Sleggs
	Attorney at Law
	1015 Euclid Avenue
	Third Floor
	Cleveland, Ohio 44115

For the County -	Scott Nusbaum
Appellees	Ross County Prosecuting
	Attorney
	By: James R. Gorry
	Teaford, Rich & Wheeler
	20 East Broad Street
	Columbus, Ohio 43215

ENTERED January 17, 1997

This matter is before the Board of Tax Appeals pursuant to a "Motion to Compel Discovery" filed under date of December 19, 1996, by counsel for the county appellees. The county asks this Board to compel Heritage Hills to provide responses to the county's discovery requests. Under date of January 8, 1997, Heritage Hills filed a memorandum in response to the motion and a "Motion for Protective Order." Thereafter, under date of January 15, 1997, the county filed its reply memorandum. Both motions, as well as the memoranda filed by the parties, will be considered herein.

Ohio Adm. Code 5717-1-11 governs discovery before the Board of Tax Appeals and reads, in pertinent part:

"(A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories, production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The 'Ohio Rules of Civil Procedure' shall be followed for discovery purposes to the extent they are not inconsistent with other board rules[.]"

In reviewing the discovery requests at issue, this Board will be guided by the general rule that material sought through the discovery process must reasonably appear to be "relevant to the subject matter involved in the pending action." Civ. R. 26(B)(1).

The county's first three interrogatories read as follows:

"(1) State the name and address of the individual connected with Appellant who first discussed the matter of filing the complaint in this case with Douglas Parobek and/or Ambassador Research:"

"(2) State how the individual referred to in Interrogatory No. 1 first learned of Douglas Parobek and/or Ambassador Research:"

"(3) State the name and address of the individual with Appellant who authorized Douglas Parobek and/or Ambassador Research to file the complaint with the Board of Revision:"

Heritage Hills objects to these interrogatories, contending that the information sought is "not reasonably calculated to lead to the discovery of admissible evidence." Upon review, this Board must uphold the objection. The complaint filed with the Board of Revision is signed by Heritage Hill's counsel,

Todd W. Sleggs. The record in this matter refers to neither an individual named "Douglas Parobek" nor an entity named "Ambassador Research." The county has provided this Board with nothing that either identifies them or indicates what relationship, if any, they may have to the filing of the complaint.

Although discovery under the Civil Rules is governed by a liberal philosophy, its scope is not all-encompassing. Discovery is subject to certain limitations concerning the relevancy of the information to the subject matter of the pending action. The county has failed to demonstrate that the above requests are reasonably likely to lead to information that is relevant to the value of subject property. Consequently, the requests are beyond the scope of permissible discovery.

Interrogatory number 5 seeks the name of "the specific individual who determined the values that are set forth on the complaint that was filed with the Board of Revision." Heritage Hills objects to this request on the basis that the information sought is not reasonably calculated to lead to the discovery of admissible evidence. This Board disagrees and finds that the information sought reasonably relates to the subject matter before it. The identity of those offering an opinion of the subject property's value as of tax lien date may provide information relevant to the determination of value. Moreover, Heritage Hills, as the owner of the subject property, expressed an opinion of value on the complaint. As such opinions are relevant to the proceedings before this Board, the identity of the person making the opinion

could provide beneficial information. See, generally, Smith v. Padgett (1987), 32 Ohio St. 3d 344; Amsdell v. Cuyahoga Cty. Bd. of Revision (1994), 69 Ohio St. 3d 572. An answer to Interrogatory 5 is thus compelled.

The next two interrogatories read as follows:

"(6) state the exact number of appraisals that Ronald Davis, Brent Davis, and Davis and Davis have done for, or done at the request of, or done for clients of, Douglas Parobek and/or Ambassador Research for a county board of revision in Ohio or for the Ohio Board of Tax Appeals, as of October 15, 1996:"

"(7) State the exact sum of money that Douglas Parobek and/or Ambassador Research has paid to Ronald Davis, Brent Davis, and Davis and Davis, or any of their employers, for appraisals done by them at the request of, or done for clients of, Douglas Parobek and/or Ambassador Research, as of October 15, 1996:"

Heritage Hills objects to the foregoing because (1) the requests are not reasonably calculated to lead to the discovery of admissible evidence in this appeal and (2) the information requested is not in Heritage Hill's possession. Both objections are sustained.

Again, the requests refer to people and entities that are not parties before this Board, and they do not seek information concerning the matters before the Board, i.e., the real property valuation in issue. The county has failed to establish that the information it desires is connected to the instant appeals or is reasonably calculated to reveal any relevant material. While Mr. Davis may have appeared at the Board of Revision to give an opinion

of the subject's value, the interrogatory does not limit itself to that issue. This Board finds the requests to be overly broad, as the information sought has not been sufficiently identified as being related to the subject matter of the pending appeals. The Board also notes that Heritage Hills has indicated that the information sought by the interrogatories is not in its possession. The county has failed to demonstrate that Heritage Hills has possession of, or has access to, the information. Therefore, this Board must find that Heritage Hills has complied fully with the requests.

Interrogatory number 8 requests the name of the individual or entity that "is paying, has paid, or will be paying" Ron Davis for his appraisal and for his testimony both before the Board of Revision and this Board. Heritage Hills objects to the request, stating that it goes beyond the scope of Civ. R. 26(B)(4). With respect to payments made to Mr. Davis before the Board of Revision, the Board finds the objection to be without merit. Mr. Davis has already rendered an opinion of value for the subject property before the Board of Revision. The identity of the person or entity that paid for his services is discoverable because it may provide information relevant to the weight which should be afforded to the opinion. See, e.g., LaSpina v. Summit Cty. Bd. of Revision (Jan. 12, 1996), BTA Case No. 94-T-1149, unreported (minimal weight given to appraiser's opinion of value where the appraiser had a contingent fee arrangement).

Under Civ. R. 26(B)(4), a party is permitted to ask another party to identify "each person whom the other party expects to call as an expert witness" and to "state the subject matter on which the expert is expected to testify." Heritage Hills argues that since an expert has not yet been identified, the county may not inquire about who will pay the expert's fee. However, the memoranda from both parties indicate that Mr. Davis will indeed be the appraiser before this Board. If this is true, the expert has been identified, and Heritage Hills must respond. If Mr. Davis is not testifying before this Board, then the request is premature, and Heritage Hills need not respond.

Finally, interrogatory number 9 asks Heritage Hills to identify how the fee for the appraisal was determined and how much that fee was. The Board finds that Heritage Hills must answer as to the question of the amount it has paid in appraisal fees. However, information appertaining to how that fee was determined is most likely not within the property owner's knowledge. If Heritage Hills has such information in its possession, it must provide it. If it does not, then Heritage Hills must inform the county that it does not have the requested information.

This matter now turns to several requests for the production of documents propounded by the county. Request numbers 1, 3, 4, 5, and 6 all concern entities and individuals that are not parties to the instant action and ask for documents that are not in the possession of Heritage Hills. Civ. R. 34(A) limits the serving of requests for the production of documents to a party who has

possession, custody, or control of the documents. In the instant matter, the documents sought are in the possession of persons who are not parties to the appeals. The requests therefore go beyond the scope of the rule and need not be complied with.

Document request number 2 asks for all "letters, memorandum, and other written communications of any kind, made at any time, between Appellant, and/or its agents, officer, and employees, and Douglas Parobek and/or Ambassador Research." As previously stated, the county has not sufficiently identified Douglas Parobek and Ambassador Research, nor has it demonstrated that this information is reasonably likely to lead to admissible evidence. Moreover, the request is overly broad, as it may lead to information that is not at issue in the subject appeal. Therefore, Heritage Hills need not supply the documents requested.

Finally, request number 7 asks for all contracts, agreements, letters, memoranda, or other written communications between Heritage Hills counsel and Douglas Parobek and/or Ambassador Research. Heritage Hills objects to the request on the grounds that the information sought includes items that are beyond the scope of the value of the subject property. The issue before this Board is the value of the subject property. The county has failed to demonstrate that communications between Ambassador

¹ Civ. R. 34(C) provides the appropriate method of seeking documents from a person who is not a party to the action. The county, however, did not utilize this section of the rules.

Research or Douglas Parobek are relevant to the value of the subject property. In addition, Heritage Hills argues that some of the communications fall within the attorney-client privilege. Absent evidence to the contrary, this Board agrees and will not order Heritage Hills to supply the documents.

The final issue before this Board concerns Heritage Hill's request for a protective order. Although Ohio Adm. Code 5717-1-11(D) authorizes this Board to issue protective orders, the Board finds that such an order is unnecessary in the instant situation. The ruling announced herein amply protects Heritage Hills from the disclosure of any undiscoverable information.

Based upon the foregoing, IT IS THEREFORE ORDERED that appellant, Heritage Hills, shall, within FOURTEEN (14) days of the issuance of this order, answer the interrogatories as detailed above.

IT IS FURTHER ORDERED that appellant, Heritage Hills, shall, within TWENTY-ONE (21) days of the issuance of this order, supply the county appellees with copies of the documents.

IT IS FURTHER ORDERED that a copy of this order be sent to each of the parties by and through their respective representatives. ohiosearchkeybta

On Behalf of the Board of Tax
Appeals, Pursuant to Ohio Adm.
Code 5717-1-10,

Steven L. Smiseck
Attorney Examiner

SLS/tah