

Heritage Hills, Ltd.,)	CASE NOS.	96-T-776
Phase II, and Heritage)		96-T-780
Hills, Inc.,)		
)		
Appellants,)		
)	(REAL PROPERTY TAX)	
vs.)		
)		
Ross County Board)		
of Revision and the Ross)	INTER IM ORDER	
County Auditor,)		
)		
Appellees.)	(Modifying Subpoena)	

APPEARANCES:

For the Appellants	-	Todd W. Sleggs Todd W. Sleggs & Associates 1015 Euclid Avenue Third Floor Cleveland, Ohio 44115
For the Appellees	-	Scott Nusbaum Ross County Prosecuting Attorney By: James R. Gorry Teaford, Rich & Wheeler 20 East Broad Street Columbus, Ohio 43215

ENTERED: July 3, 1997

This matter is before the Board of Tax Appeals pursuant to a "Motion to Quash Subpoena" filed under date of June 6, 1997, by counsel for Heritage Hills. The subject subpoena was issued under date of May 29, 1997. In the subpoena, the county appellees request Douglas Parobek, a tax consultant retained by Heritage Hills, to appear and testify at this Board's evidentiary hearing.

In addition, the subpoena requests Mr. Parobek to bring certain documents with him.

Heritage Hills moves to quash the subpoena on the grounds that it is (1) overly broad and (2) that the subpoena seeks information that is not relevant to the issues currently before this Board. No memorandum in opposition to the "Motion to Quash" was filed by the county within the time prescribed by Ohio Adm. Code 5717-1-12(B).

Initially, Heritage Hills objects to the subpoena on the grounds that this Board has previously ruled upon the discovery of identical information, denying the county's request therefor. See Heritage Hills, Ltd. v. Ross Cty. Bd. of Revision (Jan. 17, 1997), BTA Case Nos. 96-T-776 and 96-T-780, unreported. However, the Board's basis for denying discovery in that order was that the record referred 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." Id. at 3. In its motion to quash the subject subpoena, Heritage Hills admits that Mr. Parobek "is a tax consultant who was retained by the property owner in connection with the 1995 assessment of the real property that is the subject of this appeal." (Appellant's Motion to Quash Subpoena of Douglas Parobek.) Thus, Mr. Parobek's relationship has now been identified for purposes of this appeal. Moreover, the discovery order denied the county's original request for documents in Mr. Parobek's

possession because the county had failed to utilize the appropriate method for seeking documents from a person who is not a party to the action, as specified under Civ. R. 34(C). Id. at 7. Although it may have been the better practice for the county to depose Mr. Parobek under Civ. R. 34(C), the Board can find nothing which prevents the county from seeking the documents under the current subpoena.

In reviewing a subpoena issued for purposes of providing testimony and/or documents for hearing, the information sought must be 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 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 subpoena properly asks Mr. Parobek to provide information that is relevant to the issues in this appeal, namely the value of the subject real property. The Board shall review each request separately, below. If the request is found to be relevant, the motion to quash that particular request will be denied. If a request seeks information that is not relevant to this appeal, then the request will be either quashed or modified to properly restrict its scope. Civ. R. 45(C)(3).

Request Number One seeks "all contracts and agreements between Douglas Parobek and/or Ambassador Research, Inc., and the owner of the property involved in this appeal, or its agents,

officers, and employees, concerning the property involved in this appeal, and the filing of the board of revision complaint, and the appeal with the Ohio Board of Tax Appeals." Similarly, Request Number Two seeks all "letters, memorandum [sic], and other written communications of any kind" between the property owner and Douglass Parobek and/or Ambassador Research concerning the subject property.

In light of the Supreme Court's holding in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St. 3d 479, issues concerning a nonattorney's role in the filing of complaints before a board of revision are relevant in appeals before this Board. Nevertheless, while the request will be permitted to stand, it must be limited to only those documents which are property specific, i.e., documentation dealing with the subject property itself and any general documentation which Mr. Parobek reasonably believes led the property owner to retain his and/or Ambassador Research's services in this matter.

Request Number Three asks for "[a]ll contracts and agreements of any kind, whenever executed, between Douglas Parobek and/or Ambassador Research, Inc., and Ronald Davis, or any other company or entity of which Ronald Davis is or was a part, whenever executed, concerning the appraisal of real property located in the State of Ohio." This request is not limited to issues concerning the valuation of the subject property. Instead, it seeks all information without regard to a parcel of real property, the owner thereof, or the purpose of the contract or communication. The county has not responded to Heritage Hills' objections to the

request. Thus, the county has not come forward with any information which would allow this Board to find that Request Number Three seeks information relevant to the issue of the subject property's valuation for tax year 1995. Finally, the broad scope of the request appears to place an undue burden on Mr. Parobek to search for, and provide, a large amount of information. See Civ. R. 45(C)(3)(d). For all of the foregoing reasons, Mr. Parobek need not comply with Request Number Three.

Request Number Four asks Mr. Parobek to deliver all "letters, memorandum [sic], and other written communications of any kind between Douglas Parobek and/or Ambassador Research, Inc., and Ronald Davis concerning the property, or Mr. Davis' appraisal of the property, involved in the appeal[.]" The request seeks documents that have passed between Heritage Hills' appraiser and Ambassador Research concerning the subject property. The request evidently seeks information concerning the relationship between Mr. Davis and Mr. Parobek and/or Ambassador Research in the context of the appraisal of the subject property. Such information may be relevant to the weight which should be afforded to Mr. Davis' opinion of value or to the issue of whether Mr. Davis should be accepted before this Board as an expert witness. See 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); and Dan Marchetta and Co. v. Summit Cty. Bd. of Revision (Jul. 19, 1996), BTA Case No. 94-P-1268, unreported (appraisal testimony

excluded where such evidence fails to meet the test for admissibility under Evid. R. 702). Mr. Parobek must therefore bring to the evidentiary hearing any documents which he reasonably believes relate to Mr. Davis' appraisal of the subject property.

Request Number Five demands that Mr. Parobek bring all "checking account records, receipts, and all other documents showing the amount of any and all payments, whenever made, or the total amount of all such payments to May 1, 1997, made by Douglas Parobek and/or Ambassador Research, Inc. to Ronald Davis or any company or entity of which Mr. Davis was or is a part, in connection with payment for appraisals done by Mr. Davis for Douglas Parobek and/or Ambassador Research."

Again, the request seeks information that does not concern Mr. Davis' appraisal of the subject property. The county has not come forward with any information to demonstrate what relevancy, if any, the entire request may have in this matter. The Board notes that questions regarding the weight to be afforded an appraisal is to be determined on a case-by-case basis. LaSpina, supra. Thus, questions regarding payments received by Mr. Davis in circumstances not involving the subject property are, without evidence to the contrary, irrelevant to the issues pending in this matter. Request Number Five is therefore modified to require Mr. Parobek to bring with him only those checking account records, receipts, and other documents showing payments to Mr. Davis, or a company or entity to which Mr. Davis belongs, which relate to any services performed with regard to the real property at issue in this appeal.

Request Number Six asks for all contracts, agreements, letters, memoranda, and other written communications between Mr. Parobek and/or Ambassador Research, Inc., and Heritage Hills' attorney, Todd Sleggs. The Board does not find this information to be relevant to any issue before it, nor has the county presented any reasonable basis to establish the information as relevant to this appeal. Therefore, Mr. Parobek need not comply with the request.¹

Finally, Request Number Seven asks Mr. Parobek to provide all documents which demonstrate the number of individual appraisals the Mr. Davis has completed for Mr. Parobek and/or Ambassador Research, Inc. Again, this request is not limited to the subject property now before the Board, nor does it appear to seek information that is relevant to the valuation of the subject property. Mr. Parobek will therefore not be required to bring the documents sought by Request Number Seven. The Board does note, however, that this ruling does not necessarily preclude the county from asking Mr. Parobek about the number of appraisals completed by Mr. Davis, should the proper foundation for the inquiry be laid at hearing.

Therefore, IT IS ORDERED that the subject subpoena be, and the same hereby is, modified as detailed above.

¹ In addition, the request may seek some documents protected by the attorney/client privilege. Without more information, however, the Board declines to make a specific finding concerning this issue.

IT IS FURTHER ORDERED THAT the subject motion, as modified, shall be deemed continuing, as prescribed by Ohio Adm. Code 5717-1-13(F). ohiosearchkeybta