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BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSASIN THE MATTER OF THE EQUALIZATION
APPEAL OF MENARD, INC. FOR THE YEAR
2016 IN SHAWNEE COUNTY, KANSAS

Docket No. 2016-2946-EQ

**ORDER ON TAXPAYER'S OBJECTION AND
MOTION TO QUASH SHAWNEE COUNTY'S
REQUEST FOR ISSUANCE OF SUBPOENAS
TO VALBRIDGE PROPERTY ADVISORS
AND BBG, INC.**

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted oral arguments in this matter on June 15, 2017. The Taxpayer, Menard, Inc., appeared by Kevin J. Breer, Attorney. Shawnee County appeared by Ashley Biegert, Shawnee County Assistant County Counselor. The tax year in issue is 2016.

After considering all of the arguments presented, the Board finds and concludes as follows:

In the Taxpayer's Expert Witness Designations, submitted on March 30, 2017, the Taxpayer identified Michael Septer, MAI, of BBG, Inc. as its only expert witness. In a telephone conference held May 1, 2017, the Taxpayer indicated that Valbridge Property Advisors (hereinafter "Valbridge") had been used by the Taxpayer in prior years. On May 5, 2017, Shawnee County submitted a Notice of Intent to Issue Business Records Subpoena for Valbridge and BBG, Inc. The County is seeking appraisals, documents related to value, and invoices for the last five years from Valbridge.

The Taxpayer filed the instant motion, arguing the County's Request for Records Subpoenas should be quashed. The Board will consider the arguments in order.

Relevance

First, the Taxpayer argued that the discovery requested is irrelevant. The Taxpayer stated that five years is too far from the lien date for the documents to be relevant. According to the Taxpayer, if the appraisals would not be admissible at trial, they are not relevant and the County should not be able to request them in discovery. Second, the Taxpayer noted that it has not hired Valbridge as an expert witness in this matter.

The County responded that the documents requested are relevant, noting that relevance is interpreted broadly during discovery. The County stated it has reason to believe Valbridge has appraised the subject property in recent years, and a review of those appraisals as well as the other documents requested may lead to the discovery of admissible evidence.

The Board finds the five years of documents requested to be relevant. K.S.A. 60-226(b) states, "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." While acknowledging that the five years of documents requested ultimately may not be admissible, the Board finds they may lead to the discovery of admissible evidence. The Board finds the Taxpayer's motion to quash on the basis that the discovery is irrelevant should be denied.

K.S.A. 79-1412a(c)(2)

K.S.A. 79-1412a(c) states, in part:

Notwithstanding the provisions of this section, the county appraiser or the county appraiser's designee shall not, at any time, request the following from a taxpayer:

(2) any fee appraisal with an effective date more than 12 months prior to January 1 of the valuation year under appeal...

The Taxpayer's second argument is that the documents are protected by K.S.A. 79-1412a(c)(2). The Taxpayer argued that the county's attorney cannot do what the county appraiser is prohibited from doing. The Taxpayer asserted the county counselor is an agent of the appraiser for purposes of this appeal.

The County argued that the statute applies to county appraisers and county appraiser designees only, not to a county counselor who is a representative of the county commissioners. Further, the statute prohibits the request of information from a taxpayer and, in this case, the County is requesting information from a third party.

The Board finds the County's argument to be persuasive. The statute provides that the *county appraiser or county designee* may not request certain documents from a *taxpayer*. The Taxpayer's request fails in two ways. First, the county counselor is not the county appraiser or the county appraiser's designee. Second, the County is requesting documents from an appraisal firm, not from the taxpayer. "When determining whether a statute is open to construction, or in

construing statute, ordinary words are to be given their ordinary meaning, and courts are not justified in disregarding unambiguous meaning. In construing statute, it is presumed that the legislature understood the meaning of words it used and intended to use them." See *State ex rel. Stephan v. Board of County Com'rs of Seward County*, 254 Kan. 446, 866 P.2d 1024, Syl. ¶¶ 6 and 7 (1994). Here, the statute's language is unambiguous and, in giving ordinary meaning to the words, the Board finds the Taxpayer's motion to quash pursuant to K.S.A. 79-1412a(c)(2) should be denied.

K.S.A. 60-226

K.S.A. 60-226(b)(5) provides, in part, as follows:

- (B) *Trial-preparation protection for draft disclosures.* Subsections (b)(4)(A) and (b)(4)(B) protect drafts of any disclosure required under subsection (b)(6), and drafts of a disclosure by an expert witness provided in lieu of the disclosure required by subsection (b)(6), regardless of the form in which the draft is recorded.
- (C) *Trial-preparation protection for communications between a party's attorney and expert witnesses.* Subsections (b)(4)(A) and (b)(4)(B) protect communications between the party's attorney and any witness about whom disclosure is required under subsection (b)(6), regardless of the form of the communications...
- (D) *Expert employed only for trial preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial.

The Taxpayer's third assertion is that the documents may be protected by K.S.A. 60-226. The Taxpayer argued that the County cannot conduct discovery on experts who will not be testifying at the trial.

The County noted that subsections (B) and (C) applied to identified experts, and Valbridge is not an identified expert in this case. Subsection (D) applies to interrogatories and depositions whereas at issue in this case is a business records subpoena.

The Board notes that K.S.A. 60-226(b)(5)(B) and (C) apply, respectively, to disclosures and communications of expert witnesses. In this case, the documentation is sought from a third party who is not currently identified as an expert witness, and the Board finds K.S.A. 60-226(b)(5)(B) and (C) do not serve to limit the discovery sought in this case. The Board notes that K.S.A. 60-226(b)(5)(D)

identifies limits on interrogatories or depositions; neither of those are requested in this case. It further states that the limitation applies to facts known or opinions held by "an expert retained or specially employed by another party in anticipation of litigation or to prepare for trial and is not expected to be called as a witness for trial." In this case, the Taxpayer has not asserted that Valbridge was specially employed in anticipation of litigation or to prepare for trial. The Board finds the Taxpayer's motion to quash pursuant to K.S.A. 60-226 should be denied.

IT IS THEREFORE ORDERED that, for the reasons stated above,
Taxpayer's Motion is denied.

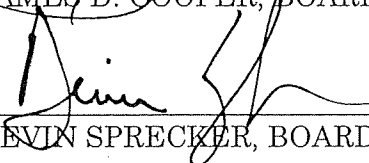
IT IS SO ORDERED



THE KANSAS BOARD OF TAX APPEALS


RONALD C. MASON, CHAIR


JAMES D. COOPER, BOARD MEMBER


DEVIN SPRECKER, BOARD MEMBER


JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joeline R. Allen, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket No. 2016-2946-EQ and any attachments thereto, was placed in the United States Mail, on this 28th day of June, 2017, addressed to:

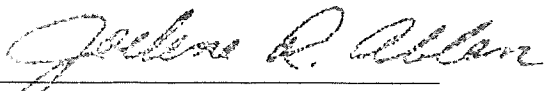
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Joeline R. Allen, Secretary