

**OHIO BOARD OF TAX APPEALS**

Euclid Hills Apartments, Ltd.,	)	
	)	
Appellant,	)	CASE NO. 2008-A-1246
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
	)	ORDER
Cuyahoga County Board of Revision,	)	
Cuyahoga County Auditor, and Euclid	)	
City School District Board of Education,	)	(Construing Motion to Extend
	)	Discovery Deadline as a Motion
Appellees.	)	to Compel)
	)	

APPEARANCES:

For the Appellant	-	Timothy A. Pirtle Attorney at Law 2929 Kenny Road, Suite 160 Columbus, Ohio 43221
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Justice Center – 8 <sup>th</sup> Floor 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee Bd. of Edn.	-	Britton, Smith, Peters & Kalail Co., LPA Susan R. Hartung 3 Summit Park Drive, Suite 400 Cleveland, Ohio 44131-2582

Entered February 3, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a joint motion to extend the discovery deadline filed by the appellant property owner and appellee board of education. The matter was submitted to the Board of Tax Appeals upon the motion and brief in support of said motion.

Specifically, said motion provides, in pertinent part:

“Now comes Appellee Euclid City School District Board of Education \*\*\* and Appellant Euclid Hills Apartments, Ltd. \*\*\* to hereby move this Board pursuant to Section 5717-1-11(A)(1) of the Ohio Administrative Code to extend the deadline for the BOE to request this Board’s involvement in discovery until February 9, 2009.”

In its brief in support, the BOE indicated that the subject discovery deadline had previously been extended until January 9, 2009, pursuant to this board’s order. See *Euclid Hills Apartments v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 16, 2008), BTA No. 2008-A-1246, unreported. The BOE went on to state that:

“While Appellant partially responded to the BOE’s requests, on December 5, 2008, he has, recently expressed to counsel for the BOE that he needs more time to gather some of the requested information. Prior to requesting the Board’s future involvement, the BOE intends to continue to seek the cooperation of Appellant in completing discovery. Nonetheless, due to the above-referenced reason, the parties request this Board to extend the last date upon which the BOE may request the Board’s involvement in discovery until February 9, 2009.”

Based upon the extended discovery deadline, the last date for seeking assistance from this board on discovery matters in this instance was January 9, 2009, the date on which the instant motion was filed.

Ohio Adm. Code 5717-1-11 (A)(1) provides that “[U]pon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.” Herein, instead of requesting an order compelling discovery, the BOE seeks a second extension of the discovery period for an additional 30 days. In *Spalding Leasing Co. v. Cuyahoga Cty. Bd. of Revision* (Interim

Order, Jan. 14, 2000), BTA No. 1999-K- 1460, 1475, unreported, a case in which a similar motion to extend discovery was sought, the board concluded:

“Although Ohio Adm. Code 5717-1-11(A)(1) contemplates that there may exist *extraordinary* circumstances wherein the deadline for completing discovery and seeking this Board’s intervention in discovery matters may be extended, it requires the movant under such circumstances to demonstrate good cause. In this instance, good cause is found lacking. Merely because a party upon whom discovery has been served has not responded, does (sic) not justify an extension of discovery until some uncertain period in the future. \*\*\* If this Board were to routinely grant such motions, the exception to the general deadlines set forth in Ohio Adm. Code 5717-1-11 would consume the rule. Accordingly, the BOE’s motion to extend discovery is not well-taken and it is hereby denied.” Id. at 3. (Emphasis in original)

Therefore, because the instant discovery deadline has already been extended once and no extraordinary circumstances have been demonstrated to explain the need for additional time, and because this request is made at the end of the period during which intervention of the board may be sought, the board will construe the motion filed to be in the nature of a motion to compel discovery. The board hereby provides the property owner a period of 14 days in which to respond to the BOE’s requests.

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