

**OHIO BOARD OF TAX APPEALS**

Board of Education of the Cleveland )  
Municipal School District, )  
)  
Appellant/Appellee, )  
)  
and )  
)  
)  
Erievew Land Company LLC, )  
)  
Appellee/Appellant, )  
)  
vs. )  
)  
Cuyahoga County Board of Revision and )  
Cuyahoga County Auditor, )  
)  
Appellees. )

CASE NOS. 2008-A-1460,  
2008-A-1476

(REAL PROPERTY TAX)

ORDER

(Construing Motion to Extend  
Discovery Deadline as a  
Motion to Compel)

APPEARANCES:

For the Bd. of Edn. - Brindza McIntyre & Seed LLP  
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For the Property Owner - Sleggs, Danzinger & Gill Co., LPA  
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For the County Appellees - William D. Mason  
Cuyahoga County Prosecuting Attorney  
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Entered January 6, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to extend the discovery deadline filed by the appellant/appellee board of education (hereinafter “BOE”). The matter was submitted to the Board of Tax Appeals upon the motion and brief in support of said motion. No response from the property owner was received, although counsel to the BOE represented in the motion that the property owner “has no objection to the request to extend the discovery deadline.” Motion at 1.

Specifically, said motion provides, in pertinent part:

“Now comes Appellant, Cleveland Municipal School District Board of Education \*\*\*, by and through undersigned counsel, to request, for good cause shown, an Order from the Board extending the discovery period for 60 days pursuant to BTA Rule of Practice and Procedure 5717-1-11(A)(1). \*\*\* The District makes this request not for purposes of delay but to allow adequate time for the completion of discovery, a site inspection, an appraisal and for other good cause identified in the Brief in Support which is attached hereto and incorporated herein by reference.”

The BOE further indicated in its brief in support that the subject notices of appeal were filed on August 21, 2008 and August 22, 2008. There is no indication in the motion when the BOE filed its request for discovery upon the property owner. The BOE goes on to state that:

“At this time, the District has not yet received a response to its discovery requests. \*\*\*

“The District requests this Board to extend the discovery deadline not for purposes of unnecessary delay but rather to provide the District with sufficient time to obtain and review documents relating to the site inspection, appraisal

and responses to discovery in regards [sic] to the subject property. \*\*\*

“In order to properly prosecute its case on appeal, the District requests that the discovery deadline in this appeal be extended 60 days, or until February 17, 2009, so as to permit the District sufficient time to obtain and review the discovery responses and documents requested from Erieview Land in its discovery. \*\*\*” [Footnote omitted]

Based upon the date on which the latest of the subject appeals was filed, the deadline for seeking assistance from this board on discovery matters in this instance was December 20,<sup>1</sup> 2008. The instant motion was filed on December 22, 2008.

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 an extension of the discovery period for 60 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

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<sup>1</sup> Since December 20, 2008 fell on a Saturday, the deadline was extended to December 22, 2008.

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)

This board has ordered extensions of discovery periods when the parties to the appeal communicate a willingness to comply with discovery requests; in the present appeal there has been no suggestion that opposing counsel has responded in any manner or sought additional time, other than to indicate he does not oppose the instant motion. Therefore, 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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