

OHIO BOARD OF TAX APPEALS

Fargo Development Co.,)
)
 Appellant/Appellee,) CASE NOS. 2008-A-2250,
) 2008-A-2422, 2008-A-2484
 and)
)
 Orange City School District Board of)
 Education,)
) (REAL PROPERTY TAX)
 Appellee/Appellant,)
)
 vs.) ORDER
)
 Cuyahoga County Board of Revision and)
 Cuyahoga County Auditor,) (Granting Motion to
) Compel Discovery)
 Appellees.)

APPEARANCES:

For the Property Owner - Kenneth J. Fisher
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Cleveland, Ohio 44113

For the Bd. of Edn. - Kadish, Hinkel & Weibel
Janeane R. Cappara
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For the County Appellees - William D. Mason
Cuyahoga County Prosecuting Attorney
Timothy J. Kollin
Assistant Prosecuting Attorney
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Entered March 31, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion for extension of time to complete discovery or, in the alternative, motion to compel discovery filed by the 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.

Specifically, said motion provides, in pertinent part:

“Now comes Appellant Board of Education for the Orange City School District by and through undersigned counsel who herein requests an extension of time of thirty (30) days until April 11, 2009 for the parties to complete discovery in the above-captioned matter. The reason for this request is that the Board of Education has not received Appellee Fargo Industrial Properties['] *** answers to interrogatories or responses to requests for production of documents. In the alternative, the Board of Education for the Orange City School District *** pursuant to Section 5717-1-11(A) of the Ohio Administrative Code and Rule 37(A) of the Ohio Rules of Civil Procedure, hereby moves this Board to issue an order compelling Appellant/Appellee Fargo to respond to outstanding discovery requests that were served upon such party on or about January 19, 2009.”

In its memorandum in support of its motion, the BOE goes on to state that:

“At the time of the preparation of this motion, the property owner has not responded to the Board of Education’s discovery requests. Due to the press of business, the undersigned has not had an opportunity to personally speak to opposing counsel, but has left him a voicemail in an attempt to resolve this discovery dispute. Notwithstanding, additional time is necessary to complete discovery in this matter for the reason that even if the property owner were to serve the Board of Education with its discovery responses within the next few days, the Board of Education would not be afforded adequate time

to review the answers to interrogatories and responses to the request for production of documents, and conduct follow-up discovery if necessary.”

Ohio Adm. Code 5717-1-11 (A)(1) provides:

“Discovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed as expeditiously as possible. Discovery should be completed not more than one hundred twenty days after the filing of the notice of appeal, which shall also be the last day for a party to seek involvement of the board in discovery matters. Upon motion and for good cause, the board may establish other specific times for completion of discovery or consideration of discovery motions.”

The subject notices of appeal were filed on November 17, 2008 and December 4, 2008. The BOE seeks an extension of the discovery period for 30 days, or, in the alternative, an order compelling discovery. 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 filed, 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)

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. 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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