

**OHIO BOARD OF TAX APPEALS**

Berea City School District Board	)	CASE NOS. 2008-B-2498
of Education,	)	2008-B-2499
	)	
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	
Cuyahoga County Board of Revision,	)	ORDER
Cuyahoga County Auditor, and	)	
CP Snow Properties, LLC,	)	
	)	(Compelling Discovery and Denying
Appellees.	)	Motion to Extend Discovery Period)
	)	

APPEARANCES:

For the Appellant	- Kadish, Hinkel & Weibel Kevin M. Hinkel, Esq. Rita M. Jarrett 1717 East Ninth Street, Suite 2112 Cleveland, Ohio 44114
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney Timothy Kollin, Esq. Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
For the Property Owner	- Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt, Esq. 1370 West 6 <sup>th</sup> Street, Suite 200 Cleveland, Ohio 44113

Entered May 5, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to extend the discovery deadline and motion to compel discovery filed by the Berea City School District Board of Education (“BOE”). The

matter was submitted to the Board of Tax Appeals upon the motions and brief in support of said motions. No response from the property owner was filed herein.

Specifically, said motions request that this board compel discovery and extend the discovery deadline due to non-response of the appellant to the BOE's February 2, 2009 discovery requests.

The notice of appeal was filed on December 17, 2008. The instant motion was filed on April 6, 2009.

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, 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 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 such a manner or sought additional time. Therefore, the extension request is denied.

However, we find the BOE's motion to compel to be with merit. Therefore, this board orders the property owner to respond to the BOE's discovery requests within 21 days from the date of this order.

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