

OHIO BOARD OF TAX APPEALS

Board of Education of the Kettering)	
City Schools,)	
)	CASE NO. 2008-T-1745
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	ORDER
Montgomery County Board of Revision)	
Montgomery County Auditor, and MVHE,)	(Overruling Motion To Dismiss and
Inc.,)	According Appellee Additional Time
)	to Respond to Discovery)
Appellees.)	

APPEARANCES:

For the Appellant	- Rich & Gillis Law Group, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215-3704
For the County Appellees	- Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Nolan Thomas Assistant Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, Ohio 45422
For the Appellee MVHE, Inc.	- April Ann Jordan Attorney at Law 124 E. Third Street, Suite 300 Dayton, Ohio 45402

Entered March 10, 2009

On February 24, 2009, this board issued an order compelling appellee, MVHE, Inc., to provide responses to appellant’s discovery within fourteen days. Now, through counsel,¹ MVHE moves² this board to either dismiss this matter because the

¹ By the filing of the motion addressed herein, counsel shall be deemed to have entered an appearance with this board. See Ohio Adm. Code 5717-1-03(A).

Montgomery County Board of Revision (“BOR”) failed to notice it of the filing of the present appeal or, in the alternative, accord it additional time within which to respond to discovery. This board will consider each of these requests in turn.

With respect to MVHE’s suggestion that jurisdiction is somehow lacking, similar arguments have been previously considered and rejected by this board. Upon the filing of an appeal, it is the responsibility of a county board of revision whose decision is subject to appeal, not the appellant, to notice the other parties before that tribunal that further review has been sought. See R.C. 5717.01 (“Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals.”). See, also, *Bd. of Edn. of the Princeton City School Dist. v. Butler Cty. Bd. of Revision* (Jan. 29, 1993), BTA No. 1990-J-830, unreported, affirmed sub nom. *Equitable Life Assurance Soc. of the United States v. Bd. of Edn., Princeton City School Dist.* (Aug. 30, 1993), Butler App. No. CA93-03-035, unreported; *Zell v. Lucas Cty. Bd. of Revision* (Interim Order, Sept. 17, 1993), BTA No. 1992-K-1486, unreported; *Sylvania Monroe Plaza, LLC v. Lucas Cty. Bd. of Revision* (Interim Order, Mar. 7, 2008), BTA No. 2006-T-1751, unreported. Compare R.C. 5717.05 (in providing that an appeal may alternatively be taken to a county board of revision, this statute provides that “[t]he county auditor and all parties to the proceeding before the board, other than the appellant filing the appeal in the court, shall be made appellees, and notice of the appeal

Footnote contd. _____

² Although Ohio Adm. Code 5717-1-12(B) accords an opposing party fourteen days within which to respond to a motion, since neither appellant nor the county appellees will be materially prejudiced by this ruling, this board will proceed to address MVHE’s motion.

shall be served upon them by certified mail unless waived.”). See, e.g., *Huber Hts. Circuit Courts, Ltd. v. Carne* (1996), 74 Ohio St.3d 306; *McClintick v. Summit Cty. Bd. of Revision* (Sept. 28, 2007), Summit App. No. 23615, 2007-Ohio-5110. Accordingly, MVHE’s motion to dismiss is overruled.

In this instance, the record certified by the BOR to this board fails to include the requisite proof that notice was provided to MVHE of the filing of appellant’s appeal. However, MVHE was noticed by this board of this appeal through a September 29, 2008 docketing letter, as well as by appellant through its various discovery related documents. Nevertheless, MVHE’s request for additional time within which to respond to discovery is hereby granted and it will be accorded an additional thirty days from the date of this order to submit its responses to appellant.³

ohiosearchkeybta

³ Although counsel requested that appellant be directed to serve its discovery upon MVHE’s counsel, now that she has entered an appearance in this matter, and that the response period begin from that date, given MVHE’s actual notice of these proceedings this board finds such “re-service” of discovery unwarranted.