

OHIO BOARD OF TAX APPEALS

Board of Education of the Cleveland Municipal School District,)	CASE NOS. 2008-V-1468 2008-V-1475
)	
Appellant/Appellee,)	(REAL PROPERTY TAX)
)	
and)	ORDER
)	
Erievew Tower & Parking LLC,)	(Denying Motion to Extend Discovery Period)
)	
Appellant/Appellee,)	
)	
vs.)	
)	
Cuyahoga County Board of Revision and the Cuyahoga County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant/Appellee BOE	-	Brindza, McIntyre & Seed LLP Jennifer A. Hoehnen 1111 Superior Avenue Suite 1025 Cleveland, OH 44114
For the Appellant/Appellee Property Owner	-	Sleggs, Danzinger & Gill Co., LPA Todd W. Sleggs 820 West Superior Avenue Suite 400 Cleveland, OH 44113
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Justice Center, 8th Floor 1200 Ontario Street Cleveland, OH 44113

Entered February 17, 2009

This matter is currently before the Board of Tax Appeals as a result of a motion by the Cleveland Municipal City School District Board of Education (“BOE”) to

extend the discovery period for sixty days beyond the one-hundred and twenty day time frame.

The BOE's motion provides:

“Now comes Appellant, Cleveland Municipal School District Board of Education (the ‘District’), 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). Cross-Appellant Erieview Tower & Parking LLC, has no objection to the request to extend the discovery deadline. 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 incorporation herein by reference.”

Ohio Adm. Code 5717-1-11, which sets forth the board's rule for allowing discovery, provides, in pertinent part:

“(A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The ‘Ohio Rules of Civil Procedure,’ effective July 1, 2006, shall be followed for discovery purposes to the extent they are not inconsistent with other board rules. *** Discovery shall be subject to the following limitations:

“(1) 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.” (Emphasis added.)

In the BOE's supporting memorandum, counsel fails to give any indication as to when discovery was served upon Erieview Tower & Parking, LLC. The memorandum also indicates that the BOE had not received a response to the initial discovery request. Further, the BOE plans to request a site inspection of the subject property.

The 120 day time frame in which to invoke this board's involvement expired on December 19, 2008.¹ Furthermore, this board did not receive the BOE's motion until December 22, 2008.

Although this board denies the BOE's motion, the parties should be mindful of the position taken by this board in other cases, where we stated:

“Although we will not compel discovery in this matter, we remind all that a party who received discovery should not rely upon the discovery deadlines as a means of escaping its duty to respond:

“*** We wish to take this opportunity to remind the parties that the purpose of this Board, as with any tribunal, is to determine the facts based upon a review of the record. The discovery rules are an essential tool in that fact-finding process. See *Goff v. The Kroger Co.* (S.D. Ohio 1988), 4121 F.R.D. 61. The discovery rules are not designed to place an onerous burden upon the parties. When followed, the rules provide a means by which the exchange of information can be carried out in a cooperative and professional manner. The rules also protect each party from abuses, which unfortunately do occur. Nevertheless, the discovery rules should never be used by a party to avoid the free exchange of information that may be beneficial to this Board's objective. While the time in which to seek this Board's intervention in discovery disputes is limited, neither the Civil Rules nor the Rules of this Board expressly restrict the duty of a party to

¹ The notice of appeal was filed with this board on August 21, 2008.

respond to discovery, whenever served. We hope the interests of cooperation and fair play would motive Karrington, even now, to voluntarily exchange the requested information.” *Karrington of Kenwood, Ltd. v. Hamilton Cty. Bd. of Revision* (Interim Order, Aug. 24, 2001), BTA No. 2000-T-1512, unreported, at 6.

“We further stated in *Karrington* that, even in instances where the discovery period may be closed, this board maintains the authority to curtail any abuse of the discovery process and to impose sanctions, sua sponte, for violations of the applicable discovery rules. See Ohio Adm. Code 5717-1-14. See, also, *Nakoff v. Fairview Gen. Hosp.* (1996), 75 Ohio St.3d 254; *Salem Med. Arts & Dev. v. Columbiana Cty. Bd. of Revision* (1998), 82 Ohio St.3d 193 (a party need not have filed a motion seeking to compel discovery before Civ.R. 37(D) sanctions can be issued.) Cf. *BRE/City Ctr. LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Aug. 10, 2001), BTA No. 2000-T-320, et al., unreported (imposing sanctions for failure to comply with discovery).” *Wal-Mart Real Estate Business Trust v. Darke Cty. Bd. of Revision* (Interim Order, Dec. 1, 2006), BTA No. 2006-R-773, unreported at 3-4.

Therefore, this request is made outside the period during which intervention of the board may be sought. Absent a showing of good cause, the motion is denied.