

**OHIO BOARD OF TAX APPEALS**

Westfield Franklin Park Mall LLC, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Lucas County Board of Revision, )  
 Lucas County Auditor, and the )  
 Board of Education for Washington )  
 Local School District, )  
 )  
 Appellees. )

CASE NOS. 2008-V-1660  
through  
2008-V-1668

(REAL PROPERTY TAX)

ORDER

(Denying Motion to Extend Discovery  
Period)

APPEARANCES:

For the Property Owner - Karen H. Bauernschmidt Co., LPA  
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For the County Appellees - Julia R. Bates  
Lucas County Prosecuting Attorney  
Carol Bruggeman  
Assistant Prosecuting Attorney  
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For the Bd. of Edn. - Spengler Nathanson PLL  
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Entered February 17, 2009

This matter is before the Board of Tax Appeals pursuant to a motions to extend the discovery deadline filed by counsel for the Washington Local School District Board of Education (“BOE”) on January 26, 2009 and by the Lucas County Board of Revision (“BOR”) on February 5, 2009. Additionally, on January 13, 2009 the BOR requested that it be granted an extension of time days to respond to

appellant's discovery requests. The appellant has objected to the requested extensions of time.

The notices of appeal were filed with this board on September 11, 2008. The original discovery period expired on January 9, 2009. All three motions seeking extensions of time were filed beyond the 120 day time-frame imposed by this board's rules. In all three instances, counsel cites to the BOR's failure to promptly issue a statutory transcript in the instant appeals and asks that discovery be extended beyond the BOR's issuance of its statutory transcript, presumably to be completed at some future date. Counsel for the appellant argues that neither the county appellees nor the BOE has responded to its discovery requests. On February 12, 2009, this board received the statutory transcript from the Lucas County Board of Revision.

Ohio Adm. Code 5717-1-11(A)(1) provides that "[d]iscovery 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." Failure to seek this board's participation in a discovery dispute within the 120-day period may properly lead to this board's denial of any subsequent request for intervention. See, e.g., *Bedford Retirement Village LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Feb. 29, 2000), BTA Nos. 1999-D-369, 370, unreported, and *Karrington of Kenwood, Ltd. v. Hamilton Cty. Bd. of Revision* (Interim Order, Aug. 24, 2001), BTA No. 2000-T-1512, unreported.

Ohio Adm. Code 5717-1-11(A)(1), however, also provides that the board may set other specific times for the completion of discovery or for the consideration of

discovery motions “*upon motion and for good cause.*” (Emphasis added.) Here, the BOE seeks an extension of the discovery period because “Appellant has not responded to the discovery requests. Section 5717-1-11(A)(3) of the Ohio Administrative Code sets forth that ‘[a]nswers, objections, or other responses to discovery requests shall be served within twenty-eight days after service \*\*\*’”

Upon review, the BTA finds that the BOE and the county appellees have failed to show good cause for an extension of the discovery period as required by Ohio Adm. Code 5717-1-11(A)(1). The record before this board establishes that all three motions were filed *after* the expiration of the 120-day discovery period provided by this board’s rules. (Emphasis added.) In this regard, the board notes that Ohio Adm. Code 5717-1-11(A)(1) specifies that “[d]iscovery should be commenced by all parties promptly after the filing of a notice of appeal and should be completed as expeditiously as possible.” Clearly, the BOE and the county appellees did not commence discovery promptly after the filing of the notice of appeal in this matter and failed to provide good cause in its motion for not doing so.

This board declines to embrace the argument that the BOR’s delay in preparing a statutory transcript constitutes good cause to extend the discovery period. Albeit not promptly certified, the BOR’s records are available for public inspection.

While the BOE and the county appellees may seek information important to these appeals, this board has held on numerous occasions that waiting until the end (much less after the end) of the established period to begin discovery, without showing good cause for the delay, does not constitute good cause for purposes

of Ohio Adm. Code 5717-1-11(A)(1). *Mad River Local School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Interim Order, Mar. 23, 2007), BTA No. 2006-T-1840, unreported. Moreover, the failure of a party to respond to discovery does not, in and of itself, establish good cause for the extension of the discovery period.

The Board of Tax Appeals therefore denies the BOE's motion to extend the discovery period, the BOR's motion to extend the discovery period and the BOR's request for an extension of time to respond to appellant's discovery requests.

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