

**OHIO BOARD OF TAX APPEALS**

Craig Allen MacFarlane, Trustee of the )  
Faye E. MacFarlane, Trust, )  
)  
Appellant, )  
)  
vs. )  
)  
) (Denying Motion to Extend Discovery  
Cuyahoga County Board of Revision, ) Period and Ordering Board of Revision  
Cuyahoga County Auditor, and Euclid ) to File Statutory Transcript  
City School District Board of Education, )  
)  
Appellees. )

CASE NO. 2008-Z-1295

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Property Owner - Karen H. Bauernschmidt Co., LPA  
Karen H. Bauernschmidt  
1370 West 6th Street, Suite 200  
Cleveland, Ohio 44113

For the County Appellees - William D. Mason  
Cuyahoga County Prosecuting Attorney  
Timothy J. Kollin  
Assistant Prosecuting Attorney  
1200 Ontario Street, 8th Floor  
Cleveland, Ohio 44113

For the Bd. of Edn. - Britton, Smith, Peters & Kalail Co., L.P.A.  
Karrie M. Kalail  
3 Summit Park Drive, Suite 400  
Cleveland, Ohio 44131

Entered January 6, 2009

This matter is before the Board of Tax Appeals pursuant to a motion to extend the discovery deadline filed by counsel for the Euclid City School District Board of Education (“BOE”). Neither the property owner nor the county appellees filed a response to the BOE’s motion with this board.

The notice of appeal was filed with this board on August 6, 2008. The original discovery period expired on December 4, 2008, the same date on which the BOE filed its motion to extend the discovery period. In its motion, the BOE moved this board for an order extending the discovery period to January 9, 2009.

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....’” The BOE represents that it served its discovery requests on the appellant property owner on November 18, 2008.

Responses would therefore have been due on December 16, 2008.<sup>1</sup> Ohio Adm. Code 5717-1-11(A)(3).

Upon review, the BTA finds that the BOE has 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 due to the BOE's delay in serving its discovery requests on the appellants, the appellant's responses to the BOE's discovery requests were due 12 days *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 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.

While the BOE may seek information important to its appeal, waiting to 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.<sup>2</sup>

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<sup>1</sup> On December 8, 2008, the appellant filed with this board a notice of service wherein it provided notice that the appellant's responses to the BOE's discovery requests were served on the BOE. This board, however, has not received from the BOE a withdrawal of its motion to extend the discovery deadline. Accordingly, this board will rule on the BOE's motion herein.

<sup>2</sup> Although the board declines to extend the discovery period, it notes that discovery was served just prior to the expiration of the 120-day period. This board reminds all that a party who receives

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.

It is further the order of this board that within fourteen (14) days of the issuance of this order the Cuyahoga County Board of Revision prepare and file with this board the statutory transcript as required by Ohio Adm. Code 5717-1-09(B).

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discovery should not rely upon the discovery deadlines as a means of escaping its duty to respond. See *Karrington*, supra, at 6.