

OHIO BOARD OF TAX APPEALS

Regency Centers LP,)
)
 Appellant,)
)
 vs.)
)
 Fairfield County Board of Revision)
 and Fairfield County Auditor,)
)
 Appellees.)

CASE NO. 2008-Z-1521
(REAL PROPERTY TAX)

ORDER

(Denying Motion to Extend Discovery
Period and Ordering Board of Revision to
File Statutory Transcript)

APPEARANCES:

For Appellant - Karen H. Bauernschmidt Co., LPA
Sam Benson
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Cleveland, Ohio 44113

For the County Appellees - David L. Landefeld
Fairfield County Prosecuting Attorney
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Entered December 30, 2008

The appellant, Regency Centers LP, has moved this board for an order extending the discovery period to February 23, 2009. The original discovery period expired on December 24, 2008. Ohio Adm. Code 5717-1-11(A)(1).

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 appellant seeks an extension of the discovery period because “counsel for the County has not responded to Appellant’s discovery requests.” The appellant represents that it served its discovery requests on the county appellees on November 20, 2008. Responses would therefore have been due on December 18, 2008. Ohio Adm. Code 5717-1-11(A)(3).

Upon review, the BTA finds that the appellant 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 responses to the appellant’s discovery requests were due only six days before the expiration of the 120-day discovery period provided by this board’s rules. 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.”

While the appellant 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.¹ 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 appellant'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 Fairfield 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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¹ 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 discovery should not rely upon the discovery deadlines as a means of escaping its duty to respond. See *Karrington*, *supra*, at 6.