

OHIO BOARD OF TAX APPEALS

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| Euclid City School District Board of Education, |) | |
| |) | CASE NO. 2008-Z-2357 |
| Appellant, |) | (REAL PROPERTY TAX) |
| |) | |
| vs. |) | ORDER |
| |) | |
| Cuyahoga County Board of Revision, Cuyahoga County Auditor, and University Hospitals Health System, Inc., |) | (Construing Motion to Extend Discovery Period as a Motion to Compel Discovery and Ordering Board of Revision to File Statutory Transcript) |
| Appellees. |) | |

APPEARANCES:

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| For the Bd. of Edn. | | - Britton, Smith, Peters & Kalail Co., L.P.A. Michael E. Stinn 3 Summit Park Drive, Suite 400 Cleveland, Ohio 44131 |
| 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 Property Owner | | - University Hospitals Health System, Inc. 10524 Euclid Avenue, Suite 1170 Cleveland, Ohio 44106 |
| Copy to | | - Cleveland Clinic Foundation Robert Secrist, Esq. 9500 Euclid Avenue Cleveland, Ohio 44195 |

Entered April 7, 2009

On March 26, 2009, counsel for appellant Euclid City School District Board of Education (“BOE”) submitted a motion to extend the discovery period in this

matter. Neither the appellee property owner nor the county appellees filed a response with this board to the BOE's motion. The notice of appeal in this matter was filed with this board on November 26, 2008. The original discovery period expired on March 26, 2009, the same date on which the BOE filed its motion to extend the discovery period.

The BOE's motion provides, in part, as follows:

“On November 26, 2008, Appellant, Euclid City School District Board of Education (“Appellant”) filed a Notice of Appeal with this Board. On February 6, 2009, Appellant, Euclid City School District Board of Education served its First Set of Interrogatories and Request for Production of Documents upon Appellee pursuant to Rules 33 and 34 of the Ohio Rules of Civil Procedure and Section 5717-1-11 of the Ohio Administrative Code. *** To date, Appellee has not responded to the discovery requests. *** Appellant respectfully requests this Board to extend the discovery deadline to April 27, 2009.”

Ohio Adm. Code 5717-1-11, which sets forth the board's discovery rules, 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.)

The BOE’s motion reveals that discovery was served upon the appellee property owner, University Hospitals Health System, Inc., on February 6, 2009. As of the date of filing of the BOE’s motion, no response has been received.

Here, the BOE has requested an extension of the discovery period by approximately thirty days, instead of seeking an order compelling discovery. In *Spalding Leasing Co. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Jan. 14, 2000), BTA No. 1999-K-1460, 1475, unreported, a case in which a similar motion to extend discovery was sought, the board concluded:

“Although Ohio Adm. Code 5717-1-11(A)(1) contemplates that there may exist *extraordinary* circumstances wherein the deadline for completing discovery and seeking this Board’s intervention in discovery matters may be extended, it requires the movant under such circumstances to demonstrate good cause. In this instance, good cause is found lacking. Merely because a party upon whom discovery has been served has not responded, does not justify an extension of discovery until some uncertain period in the future. *** If this Board were to routinely grant such motions, the exception to the general deadlines set forth in Ohio Adm. Code 5717-1-11 would consume the rule. Accordingly, the BOE’s motion to extend discovery is not well-taken and it is hereby denied.” *Id.* at 3. (Emphasis in original).

See, also, *Bd. of Edn. of the Rocky River School Dist. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 9, 2008), BTA Nos. 2008-N-1485, 1620, unreported.

Where the parties have demonstrated a willingness to comply with discovery requests, this board has ordered that discovery periods be extended.

However, in the instant matter, there is no indication that the appellee property owner has responded or requested additional time within which to respond. We therefore construe the BOE's motion to extend the discovery period as a motion to compel discovery, and order the appellee property owner to respond to the BOE's discovery requests *within twenty-one (21) days of the issuance of this order*.

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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