

Meijer Properties, Inc.,)	
)	CASE NO. 94-T-519
Appellant,)	
)	
vs.)	
)	(REAL PROPERTY TAX)
Greene County Board)	
of Revision and Greene)	
County Auditor,)	ORDER
)	
Appellees.)	(Denying Motion)

APPEARANCES:

For the Appellant	- Annrita S. Johnson
	Fred Siegel Co., L.P.A.
	42 East Gay Street
	Suite 1301
	Columbus, Ohio 43215
For the County	- William F. Schenck
Appellees	Greene County Prosecuting
	Attorney
	By: James R. Gorry
	Special Counsel
	20 East Broad Street
	Third Floor
	Columbus, Ohio 43215

ENTERED: February 7, 1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This matter is before the Board of Tax Appeals pursuant to a "Motion for Reconsideration" filed under date of June 14, 1996, by appellant, Meijer Properties, Inc. The motion asks us to reconsider a previous order of this Board, wherein we ordered Meijer to comply, in part, with certain discovery requests propounded by the County. Counsel for the County has responded to the motion with a "Memorandum" in opposition thereto.

Meijer's motion requests that we reconsider our May 24, 1996, order compelling Meijer to comply with the County's discovery requests. In order to properly review the concerns raised in the

motion, we find it pertinent to recite the procedural history of this matter. By letter dated September 15, 1994, notice was given to the parties that this matter was scheduled by the Board for an evidentiary hearing on November 3, 1994. On October 17, 1994, the County filed with this Board a request for the continuance of the November 3, 1994, hearing. The County's stated reason was that additional time was necessary for the County's appraiser to complete his appraisal. The motion was granted and the hearing rescheduled for December 12, 1994.

On December 6, 1994, the County filed with this Board a "Motion to Compel Discovery." Therein, the County sought an order compelling Meijer to produce certain documents and to answer certain interrogatories. The discovery requests were originally served upon Meijer on or about October 11, 1994. Also on December 6, 1994, the County filed a motion for continuance. This motion requested that the hearing be continued "until the Board has ruled upon Appellees' motion to compel." The County also asked the Board to continue the hearing until the Supreme Court had an opportunity to rule upon the validity of this Board's discovery orders in other cases because such rules might be dispositive of the County's motion to compel. On December 12, 1994, the Board granted the continuance for the sole purpose of considering the motion to compel discovery.

On March 3, 1995, this Board issued an order denying the County's motion. The reasons for the denial were that (1) the County failed to file the motion within thirty days of the scheduled hearing, as required by former Ohio Adm. Code 5717-1-

10(A)(3), and (2) the County failed to include with the motion a statement reciting efforts to resolve the discovery matter, as required by Civ. R. 37.

On March 10, 1995, this Board received an ex parte communication from the Greene County Auditor. The letter, dated March 8, 1995, expressed several concerns about the denial of the motion to compel. A letter from this Board, dated March 16, 1995, informed the Auditor that, if the county objected to the Board's decision, a motion for reconsideration, rather than an ex parte communication, should be filed.

Thereafter, on March 30, 1995, the County filed a notice of appeal with the Greene County Court of Appeals, challenging this Board's denial of the motion. On June 5, 1995, the court dismissed the County's appeal for lack of jurisdiction. In its dismissal, the court found the Board's order was not a final order from which an appeal could be made. Meijer Properties, Inc. v. Greene Cty. Bd. of Revision (Jun. 5, 1995), Greene Cty. App. No. 95-CA-24.

After this matter was returned to the Board's jurisdiction, the County filed a "Second Motion to Compel Discovery." This motion was granted, in part, by an order journalized on May 24, 1996. In granting the motion, we referred to an earlier order of this Board in Meijer Realty Co. v. Franklin Cty. Bd. of Revision (May 3, 1996), B.T.A. Case No. 93-K-1046, unreported, wherein we granted, in part, a motion to compel a response to discovery requests which were essentially identical to the ones at issue in the instant matter. Thus, we found that the County was entitled to discovery of all items but one. We excluded

from our order the provision of gross sales information on a departmental basis.

Meijer raises two basic objections to our May 24 order. First, Meijer contends that it has not been treated in a manner consistent with similarly situated parties. Specifically, Meijer refers to this Board's order denying the first motion to compel, as well as orders in other cases, which denied a motion to compel discovery for failure to timely file.

Initially, we observe that Meijer infers that there is a connection between the County's "Second Motion to Compel" and its first motion. Thus, Meijer would have us deny the second motion because we found the first to be untimely. We find, however, that the second motion was filed independently of the first motion, and at some time subsequent thereto. In determining the merits of the second motion, therefore, we looked only to the merits of that document. Moreover, we note that Ohio Adm. Code 5717-1-11 provides this Board with full authority to control discovery proceedings, including an extension or re-opening of the time in which discovery may be completed and discovery motions may be considered.

Next, we do not find Meijer's claim that it has not received equal treatment to be meritorious. During the proceedings before this Board, we have become increasingly aware that Meijer has failed to cooperate with the opposing parties. We note that the information at issue was originally requested by the Greene County Board of Revision. Meijer declined to comply with this request. Likewise, Meijer refused to comply with the County's discovery requests, claiming that the information was not

discoverable. There is no indication in the record that Meijer ever filed formal objections or other responses to discovery with the County within the 28 day time limitations set forth by Ohio Adm. Code 5717-1-11(3). No attempt appears to have been made by Meijer to come to a private agreement concerning the discovery of the claimed confidential information. Moreover, although Meijer has claimed that the information is not subject to discovery, no protective order was requested from this Board until June 14, 1996, the same date the subject "Motion for Reconsideration" was filed. Instead, after refusing to comply with the voluntary discovery procedures set forth in Ohio Adm. Code Chapter 5717 and Civ R. 26, Meijer continues to hold out a procedural barrier as a means of frustrating the County's attempts to compel discovery.

Meijer is correct in stating that we have refused to issue orders to compel discovery in some cases where a party has filed its motion beyond the time limits set forth in this Board's rules. However, we have, in cases similar to this one, also refused to allow parties to raise such procedural barriers as a means of impeding discovery. In Great Northern Shopping Center v. Cuyahoga Cty. Bd. of Revision (Mar. 3, 1995), B.T.A. Case Nos. 94-M-397, et seq., unreported, we considered a situation very similar to the one now before us. Therein, we held the following:

"As the Board has indicated in the past, we have no interest in refereeing any apparent gamesmanship of counsel. We will not allow rules intended to assure prompt and full discovery to be distorted into barriers to such full disclosure. From this record, we find the BOE's failure to file its discovery motions within 30 days of the initial hearing resulted from what are, at best, the equivocal responses received from the property owners. Therefore, the property owners'

objections to interrogatories and the request to deny the motion to compel based upon time limitations are not well taken." Id. at 11.

Meijer's second reason for reconsideration is that this matter is factually distinguishable from our order in Meijer Realty Co. v. Franklin Cty. Bd. of Revision (May 3, 1996), B.T.A. Case No. 93-K-17046, unreported, upon which we relied in granting partial discovery in this matter. We find this objection to be without merit. First, Meijer claims that the gross sales information requested constitutes current trade secrets, not stale commercial information as at issue in Meijer Realty. Again, we note that no attempt was made to file a protective order prior to the granting of the motion to compel. We therefore find that Meijer may not rely upon its unsupported characterizations as a means of denying discovery.

Second, Meijer's claim that gross sales for the first year of operation are not relevant is unsupported. Such information may yet provide an appraiser with information that is relevant to a determination of value. Moreover, the discovery requests now at issue are essentially identical to those considered in Meijer Realty.

Finally, we note that Meijer claims that it cannot produce certain requested income and expense statements and annual company reports because they do not exist. As they do not exist, such documents are necessarily excepted from our finding that Items 1 and 3 are discoverable.

Given all of the foregoing, we find that Meijer's motion to reconsider is not well taken. In closing, however, we note that

Meijer has filed a "Motion for Protective Order." Because this motion may require a hearing prior to our consideration, we find that Meijer's compliance with our May 26, 1996, order to compel should be, and the same hereby is, suspended until such time as the "Motion for Protective Order" is ruled upon. ohiosearchkeybta