

OHIO BOARD OF TAX APPEALS

Cincinnati Gas & Electric Co.,)	CASE NOS. 98-K-706, 98-K-707
)	98-K-708, 98-K-709
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	ORDER
Clermont County Board of Revision,)	
Clermont County Auditor, Board)	(Overruling Motion to Compel
of Trustees of Pierce Township, New)	Discovery, Designating Appeals
Richmond Exempted Village Board)	as "Complex Litigation," Scheduling
of Education, U.S. Grant Vocational)	Appeals and Confirming Parties'
School District Board of Education,)	Protective Agreement)
Washington Township Board of Trustees)	
And the City of Moscow,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Raymond D. Anderson Carol Mahaffey Vorys, Sater, Seymour and Pease LLP 52 East Gay Street P.O. Box 1008 Columbus, Ohio 43216-1008
		John J. Finnigan, Jr. Senior Counsel Cinergy Corp. Legal Dept. 2500 Atrium II P.O. Box 960 Cincinnati, Ohio 45201-0960
For the County Appellees	-	Donald A. White Clermont County Prosecuting Attorney By: Alan Lee Edwards Assistant Prosecuting Attorney Courthouse Batavia, Ohio 45103
For the Appellee Board of Trustees of Pierce Township	-	Paul D. Rice, Esq. 600 Shepherd Avenue Cincinnati, Ohio 45215

<p>For the Appellees New Richmond Exempted Village Board of Education and U.S. Grant Vocational School District Board of Education</p>	<p>- David C. DiMuzio Wood & Lamping LLP 2500 Cincinnati Commerce Center 600 Vine Street Cincinnati, Ohio 45202-2409</p>
<p>For the Appellee Washington Township Board of Trustees</p>	<p>- Alan C. Motta Township Solicitor 2783 Bert Reed Road Felicity, Ohio 45120</p>
<p>For the Appellee City of Moscow</p>	<p>- Franklin A. Klaine, Jr. Klaine, Wiley, Hoffman & Minutolo 105 East Fourth Street, Suite 1850 Cincinnati, Ohio 45202</p>

Entered March 1, 1999

This matter is now considered by the Board of Tax Appeals following the filing of several documents.¹ Among these documents are the following: (1) a motion seeking to compel discovery filed on behalf of appellee New Richmond Exempted Village Board of Education; (2) an agreed schedule of events leading up to, including and following evidentiary hearing; and (3) a document entitled “Stipulated Protective Order.” The latter two of these documents were filed following the conclusion of a prehearing conference at which time, among other issues, the designation of these appeals as “complex litigation” pursuant to Ohio Adm. Code 5717-1-07, was discussed. Given the agreed upon schedule which has been submitted, the issues raised through the aforementioned motion to compel discovery are considered moot and will not be further addressed by this Board.

In their proposed schedule, the parties have agreed to the following pertinent deadlines:²

¹ Although these appeals have not been consolidated, for purposes of this Order, they will be treated collectively with distinctions drawn where appropriate.

² This Board acknowledges that the parties have agreed to several other scheduling aspects not specifically delineated within the body of this Order. As with those set forth above, they are hereby approved.

Preliminary Matters

Date for filing jurisdictional motions – March 5, 1999

Date for responses – March 22, 1999

Date for replies – March 31, 1999

Date for filing joint motion to consolidate B.T.A. Nos. 98-K-706 and 98-K-709 – March 5, 1999

Date for filing joint motion to consolidate B.T.A. Nos. 98-K-707 and 98-K-708 – March 5, 1999

Date for filing viewing requests – March 5, 1999

Date for filing objections – March 22, 1999

Date for Replies – March 31, 1999

Date for appellant to voluntarily dismiss assignment of error related to classification of property (i.e., real or personal) – March 15, 1999

Discovery

Date of service of preliminary discovery – March 15, 1999

Date for service of responses – May 15, 1999

Date for supplemental discovery and initial disclosure of witnesses – July 1, 1999

Date for service of responses to supplemental discovery – August 15, 1999

Exchange of all expert appraisal reports – October 1, 1999

Date for completion of depositions – November 15, 1999

Date for filing motions to compel – as needed in accordance with the Board's Rules of Practice and Procedure

Date for filing motion for protective order – as needed, in accordance with the Board's Rules of Practice and Procedure, but not later than January 14, 2000

Hearing

Date for filing stipulations of fact – December 1, 1999
Filing of pre-hearing statements, limited to fifteen pages in length – January 14, 2000

Date for filing subpoenas – January 5, 2000
Date for filing motions to quash – January 12, 2000
Date for responses – January 19, 2000
Date for replies – January 21, 2000

Date for identification and final exchange of witness lists and trial exhibits – January 7, 2000, unless previously produced to all parties in which event exchange of trial exhibit lists shall suffice

Date for hearing in B.T.A. Nos. 98-K-706 and 98-K-709 – January 24, 2000
Date for hearing in B.T.A. Nos. 98-K-707 and 98-K-708 – January 31, 2000

Appellant's post-hearing brief for B.T.A. Nos. 98-K-706 and 98-K-709 – 30 days after receipt of hearing transcript
Appellee's post-hearing brief – 30 days after service of appellant's brief
Appellant's reply brief – 15 days after service of appellee's brief

Appellant's post-hearing brief for B.T.A. Nos. 98-K-707 and 98-K-708 – 45 days after receipt of hearing transcript
Appellee's post-hearing brief – 30 days after service of appellant's brief
Appellant's reply brief – 15 days after service of appellee's brief

The Board finds the schedule proposed by the parties for these appeals to be reasonable given their complexity. Accordingly, these appeals are hereby designated "complex litigation" pursuant to Ohio Adm. Code 5717-1-7 and the schedule as agreed upon by the parties upon shall apply.

As also initially referenced, the parties have jointly filed a document setting forth the manner by which they have agreed to exchange certain information during the course of discovery. The body of this document provides as follows:

"During the course of this action, the parties hereto may seek discovery of information which the other party considers to be confidential, and the parties having stipulated to the entry of this protective order pursuant to Civil Rule 26(c), and good cause appearing, it is hereby ordered as follows:

"1. For the purpose of this Order, 'Confidential Information' shall mean all material or information which a party considers to contain confidential information, and which has been so designated by a party in the manner set forth hereinafter. If a party desires to designate as 'Confidential Information' information contained in documentary form or in an object, such party shall stamp or affix thereto, or alternatively on the portion thereof containing the 'Confidential Information,' the legend: 'Confidential' or 'Confidential Information.' Any information contained in any document or object so designated shall be handled in accordance with this Order.

"2. All 'Confidential Information' not reduced to documentary, tangible, or physical form or which cannot be conveniently designated pursuant to Paragraph 1, shall be designated by the party by so informing the other party in writing, however, information testified to during a deposition may be brought within the protection of this Order by making a statement to that effect on the record during the deposition, or by thereafter informing the other party to that effect in writing within three days after the day that the deposition testimony is given.

"3. All 'Confidential Information' shall be retained by counsel receiving same and shall be used by them only for purposes of this litigation and shall be made available and disclosed only to counsel's office staff, to other attorneys assisting counsel, to counsel's client, to persons retained to assist in the preparation for trial of this lawsuit, to

witnesses and to potential witnesses, and only on condition that such office staff, attorney, client, retained person, witness or potential witness be shown a copy of this Protective Order and agrees to use the 'Confidential Information' only for purposes of this litigation and agrees not to disclose the 'Confidential Information' to any other person. To the extent that the 'Confidential Information' will be used in any proceeding before a court or administrative agency, then the parties will agree in advance of the proceeding to suitable measures to preserve the confidentiality of the information.

"4. Upon final disposition of this action or once participation in this action by a party or any other person representing or retained by the party has been concluded, all materials which have been designated or marked in accordance with this Protective Order shall be returned to the party which designated or marked same, and all notes, memoranda, and other papers containing 'Confidential Information,' except correspondence, memoranda of counsel, and such materials as have become part of the official record of this action shall be destroyed. All materials which are subject to this Protective Order and which are not returned or destroyed shall nonetheless remain subject to the provisions of this Protective Order.

"5. If counsel disagrees as to the confidentiality status of any discovery, the party who challenges the need for confidentiality will hold the documents confidential until an order by the court is obtained. The burden of proving any discovery 'confidential' is placed on the party who asserts the need for confidentiality. Upon written notification by the party who challenges the need for confidentiality of a determination that a specific document should not be granted a 'confidential' status, the party who asserts the need for confidentiality shall apply for a protective order within 21 days from receipt of said notification. Failure by the party who asserts the need for confidentiality to apply for a protective order within 21 days from receipt of said notification will render the document non-confidential.

“6 . If a party desires relief from this Order or desires a modification of this Order, they may file an appropriate motion, which will be given due consideration.”

Upon consideration of the foregoing, the Board hereby confirms the parties' agreement and orders that discovery as between the parties proceed as outlined above. Cf Gentile v. Hamilton Cty. Bd. of Revisio (Aug. 14, 1992),nB.T.A. Nos. 90-K-1569 et seq., unreported. The parties are specifically advised that, at the present time, the above-quoted agreement shall not serve as the basis to seal any documents filed with or maintained by this Board.