

Thermo-Fisher Scientific, Inc.

v.

Town of Hampton

Docket Nos.: 22992-06PT and 23519-07PT

ORDER

Within three weeks of the scheduled hearing date for these appeals (March 26, 2009), the parties filed three motions:

- (1) a “Motion to Dismiss” on March 9, 2009 by the “Town”;
- (2) a “Motion for a View” on March 9, 2009 by the Town; and
- (3) a “Motion to Continue” on March 11, 2009 by the “Taxpayer.”

Upon consideration of all three motions and the pleadings filed in response to them, the board rules as set forth below.

The board will hold a limited hearing on the Town’s Motion to Dismiss because it raises a threshold jurisdictional issue pertaining to the Taxpayer’s standing. In light of the pendency and importance of this issue, the board grants the Taxpayer’s Motion to Continue the March 26, 2009 substantive hearing date and will hold the Town’s Motion for a View in abeyance.

The limited hearing on the Town's Motion to Dismiss will be held on **Monday, May 11, 2009 at 9:00 a.m. in the board's offices, Gov. Gallen State Office Park, 107 Pleasant Street, Johnson Hall, Concord, NH.** This limited hearing will focus on whether the Taxpayer has standing to maintain each appeal as a "person aggrieved" within the meaning of the tax abatement and appeal statutes. See RSA 76:16 and RSA 76:16-a. In support of this motion, the Town argues that Thermo-Fisher Scientific, Inc., the named Taxpayer in each appeal document, "was not, as of April 1, 2006 or at any time thereafter, the property owner." The Taxpayer's response includes information regarding a corporate merger "in the fourth quarter of 2006" between Fisher Scientific and Thermo Electron, Inc. that resulted in its creation as the surviving parent company and an explanation that the parties who owned the "Property" under appeal "during the relevant time periods" are wholly owned subsidiaries of the Taxpayer. The board directs each party to present at the limited hearing: 1) all relevant evidence pertaining to the jurisdictional question of whether each appeal should be dismissed because of the "person aggrieved" requirement in the statutes and case law; and 2) a copy of each abatement application filed with the Town.

If the board finds dismissal of each appeal is not warranted, the board will then proceed to schedule a substantive hearing in due course and rule on the Town's Motion for a View. Otherwise, those motions will be rendered moot.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the above Order has this date been mailed, postage prepaid, to: Andrew J. Piela, Esq., Hamblett & Kerrigan, P.A., 146 Main Street, Nashua, NH 03060, counsel for the Taxpayer; and Mark S. Gearreald, Esq., Hampton Town Office, 100 Winnacunnet Road, Hampton, NH 03842, counsel for the Town of Hampton.

Dated: April 2, 2009

Anne M. Stelmach, Clerk