

**A.U. Family Company, LLC**

**v.**

**City of Lebanon**

**Docket No.: 25887-10PT**

**ORDER**

The board has reviewed the June 21, 2013 “Motion to Dismiss for Lack of Standing” (“Motion”) filed by the “City” and the July 1, 2013 “Objection” filed by the Taxpayer. The Motion is denied for the reasons stated in the Objection and the additional reasons noted below.

The Motion asserts the Taxpayer, the owner of the “Property,” lacks standing and has “no estate” sufficient to allow it to maintain a tax abatement appeal. The board does not agree. The City’s assertion rests on the apparent belief that only one party (either the “Landlord,” Taxpayer or the “Tenant,” “Mayako Inc.”), but not both, can be a person “aggrieved” within the meaning of the tax abatement and appeal statutes. See RSA 76:16 and RSA 76:16-a. The board further disagrees with the City’s reading of the case law it has cited in the Motion. See, e.g., Appeal of Thermo-Fisher Scientific, Inc., 160 N.H. 670 (2010); Appeal of City of Lebanon, 161 N.H. 463 (2011); and Appeal of Town of Sunapee, 126 N.H. 214 (1985).<sup>1</sup>

Moreover, upon the facts presented, it is the Landlord, not the Tenant, that has the direct responsibility to pay the taxes under the Lease. [See, e.g., Section 50 of the Lease (Exhibit B

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<sup>1</sup> Cf. Village of Northwood Ridge Water District v. Town of Northwood, BTLA Docket No. 18647-00PT, cited in the Motion (pp. 7-8).

attached to the Motion); and Objection, paragraphs 4 and 6.] While the Tenant agreed to reimburse the Landlord for taxes, the Landlord still has the underlying obligation to pay taxes or suffer the consequences. In addition to late payment charges, adverse consequences for delay or non-payment of taxes could include loss of the Property through the prescribed tax lien and sale procedures. [See, e.g., RSA ch. 80 (Collection of Taxes).] To the extent the assessment on the Property is disproportional, the Landlord is adversely affected (and therefore “aggrieved”) due to the likely diminution in the market value of the Property (because of excess tax liabilities).<sup>2</sup>

Consequently, the board finds the Taxpayer is a person aggrieved by the assessment on the Property even if, arguably, the Tenant is also a person aggrieved by the assessment. The Motion is therefore denied.<sup>3</sup>

Finally, the board reminds the parties that the hearing on the merits of this appeal has been scheduled and noticed for **Wednesday, July 24, 2013**. The parties should be prepared to present their respective evidence and arguments regarding the proportionality of the assessment on the Property at that time.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Member

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<sup>2</sup> All other things being equal, a property that has higher tax liabilities associated with it is likely to sell for less than other properties.

<sup>3</sup> The board notes the offer of the Taxpayer’s attorney to ‘substitute’ the Tenant as a party “should the [board] agree with the City.” (Objection, paragraphs 7 and 8.) The board will allow such substitution, if the Taxpayer elects to do so for reasons of its own, but substitution is not necessary in order to defeat the Motion.

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**Certification**

I hereby certify a copy of the foregoing Order has this date been faxed and mailed, postage prepaid, to: Joshua M. Pantesco, Esq., Gardner Fulton & Waugh PLLC, 78 Bank Street, Lebanon, NH 03766, (603) 448-5949, counsel for the City; George Spaneas, Esq., Spaneas Law Office, 79 Hanover Street, Lebanon, NH 03766, (603) 727-9252, counsel for the Taxpayer; and City of Lebanon, Chairman, Board of Assessors, 51 North Park Street, Lebanon, NH 03766, (603) 448-4891.

Date: 7/16/13

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Anne M. Stelmach, Clerk