

Resport LLC

v.

City of Portsmouth

Docket No.: 17952-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1998 assessment of \$4,068,100 (land \$1,827,000; buildings \$2,241,100) on a 90-room, limited-service, extended-stay hotel (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the land value (\$2,100,000) attributed by the City, based upon \$10,000 per developed hotel unit and \$8,000 per potential hotel unit, is excessive;
- (2) the building cost information indicates the Taxpayer's cost was \$2,575,734 as of April 1,

1998, when the construction was 55% complete;

(3) the ground lease (designated a “Sublease”) contains restrictions which preclude the Taxpayer from using the excess land for purposes other than an attached addition to the hotel and an attached restaurant, making the City’s assumptions about potential development of a 150 unit hotel questionable;

(4) there is no indication of a market need for such a substantial increase in hotel units; and

(5) the City’s methodology results in spot and disproportionate assessment.

The City argued the assessment was proper because:

(1) the land value (\$2,100,000) can be calculated based on \$10,000 times 90 developed units and \$8,000 times 150 potential additional units, based on present hotel unit densities per acre, and the value is reasonable when compared with other recent hotel sales; and

(2) the assessment added the land value to a building cost, as partially completed, of \$2,575,734.

In its original assessment, the City applied a 0.87 equalization ratio.

At the hearing, the parties agreed that the building was approximately 55% complete and to the amount of construction costs to date to determine building value. They also agreed the City’s 1998 equalization ratio of 0.82 should be applied. The assessment, using the 0.82 ratio, the City’s land value and the agreed building value, would be approximately \$3,834,100.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$3,112,250 (land \$1,000,150; building \$2,112,100).

Three issues are central to this appeal: 1) the legal basis for assessing the Property;

- 2) allegations by the Taxpayer of inter and intra strata disproportionality and spot assessing; and
- 3) the highest and best use and market value of the Property.

Legal Basis for Assessment

The Property is located on a 10-acre parcel leased from the Pease Development Authority (“PDA”), and, as of April 1, 1998, consisted of a partially-constructed, 90-room, limited-service, extended-stay hotel. The parcel is located at One International Drive and is essentially the second developed tract on the main entrance to Pease from the Spaulding Turnpike.

The PDA was established by the New Hampshire Legislature in 1990 to facilitate the redevelopment of the Pease Air Force Base after its closure by the United States government. See, generally, RSA Chapter 12-G. This legislation authorized the PDA to lease and otherwise transfer interests in land at Pease Air Force Base for the general benefit of the State of New Hampshire and the seacoast area. In December 1997, the Taxpayer entered into a 30-year “Sublease” with options to extend the term for up to a total term of 70 years. The Sublease prescribed an annual lease rate of \$12,197 per acre, which amounts to \$121,970 per year for the entire 10-acre parcel.

RSA Chapter 12-G and the PDA’s land use regulations provide for designation within Pease of an Airport District and areas for industrial and commercial zones outside the Airport

District. RSA 12-G:11 contains specific taxation provisions depending upon whether property is located within or outside the Airport District. This statute provides:

RSA-G:11 Limitations on State and Local Taxation; Provision of Services.

II. All property within the boundaries of Pease Air Force Base but outside of the airport district located thereon that is owned or occupied by a person, other than the authority or any other entity exempted from taxation under RSA 72:23, shall be taxable by the municipality in which the property is located as though such property were not owned by the exempt entity and were held in fee simple. Upon leasing or renting by the authority of any of its property outside the airport district to a non-exempt entity for any use, the municipality in which such property is located shall subject such property to any and all applicable property taxes of the municipality as though such property were not owned by the state or authority and were held in fee simple. (Emphasis added). ...

II-a. For all property within the boundaries of Pease Air Force Base and within the airport district that is owned, leased, or occupied by a person, other than the authority, who is subject to the payment of a municipal services fee in lieu of real estate taxes for the provision of services by or on behalf of the authority which are traditionally provided by the town of Newington and/or the city of Portsmouth, and to the extent such municipal services fee is based in whole or in part on the valuation of the property by the respective municipality for such purpose, subject to any equalization or proportionality factor to be applied within such municipality, if the lessee or authority determines that any valuation made by a municipality is excessive, it may seek a reduction of the valuation by the following the procedures prescribed in RSA 76 for the abatement of taxes.

The Taxpayer argued at the hearing, and offered to submit a legal brief, which it subsequently failed to do, for the proposition that the City was somehow limited to taxing the

building at no more than \$1 per square foot of building area. The Taxpayer apparently based this argument on RSA 12-G:11, II-a and Section 4.7 of the Lease, set forth below.¹ The board has

¹ 4.7 In addition to the Ground Rent required to be paid under this Article 4, Sublessee shall also pay to Sublessor as additional rent an annual municipal services fee of \$1.00 per square foot of building area per year (i.e. square feet of floor space within buildings measured from the outside edge of outside walls). within any building(s) on the Subleased Premises, as the same may be adjusted through additions from time to time. This fee is for fire, police and roadway services provided by Sublessor at the Airport and will be subject to increase each year only to the extent the cost to Sublessor of providing services increases. The municipal services fee shall be paid quarterly in advance commencing on the Term Commencement Date at the times and in the fashion provided in Section 4.2 for the payment of Ground Rent. To the extent the Subleased Premises are subject to municipal taxation, and provided such municipal taxes include the costs of the provision of fire, police and roadway services, Sublessee may offset against any fee paid to Sublessor the portion of such municipal taxes as are attributable to fire, police and roadway services, and Sublessor shall have no further obligation to provide such services. For so long as municipal taxes are imposed against the Subleased Premises, or on Sublessee as Sublessee, for all three of fire, police and roadway services and Sublessor either has no obligation to provide such services (or ceases to provide such services), the municipal services fee required to be paid by Sublessee to Sublessor.

In the event the Subleased Premises, or any portion thereof, are removed from the Airport District, Sublessee shall make payments in lieu of taxes to the appropriate municipality in accordance with the provision of RSA 12-G:11,

examined the statute and the Lease and finds this argument to be without merit.

At the time the Lease was drafted (and later signed on December 9, 1997), the parcel was apparently “located within the Airport District,” see Lease, Recital B, but was not in the Airport District as of the assessment date (April 1, 1998), according to undisputed evidence at the hearing. While not a model of clarity and less than complete in its verbiage, Section 4.7 of the Lease anticipates each eventuality in separate paragraphs.

Paragraph 1 speaks to payment by the Sublessee (the Taxpayer) to the PDA as “additional rent an annual municipal services fee of \$1 per square foot of building area per year . . . for fire, police and roadway services provided by [the PDA],” and allows the Sublessee to offset against this fee payable to the PDA “municipal taxes . . . attributable to fire, police and roadway services.” By its terms, these provisions applied only while the Property was still within the Airport District and, in any event, they do not restrict the amount of “municipal taxes” the Taxpayer may be obligated to pay.

Paragraph 2 of Section 4.7, for its part, anticipates the Property could be “removed from the Airport District,” in which event the Taxpayer would be responsible for taxes “in accordance with the provisions of RSA 12-G:11, II (or any successor statute) regarding taxation by a municipality of property within the boundaries of Pease, but outside the Airport District.” The

II (or any successor statute) regarding taxation by a municipality of property that is within the boundaries of Pease, but outside the Airport District.

municipality, in this case, is the City and paragraph II of the statute (quoted above) makes the Property “subject . . . to any and all applicable property taxes of the municipality.”

In summary, the Taxpayer is responsible for taxes imposed on the Property by the City in this case. See also Section 5 of the Sublease (obligating the Taxpayer to pay “all taxes” imposed on the leased premises). The City, of course, was not a party to the Sublease between the PDA and the Taxpayer and is not bound by its provisions. At best, therefore, the offset provision mentioned in the first paragraph of Section 7 was an arrangement entirely between the Taxpayer and the PDA which applied only while the Property was still within the Airport District. For all of these reasons the board rules RSA 12-G:11, II applies and the Property should be assessed as if the Property “were held in fee simple” by the Taxpayer.

Allegations of Spot and Disproportionate Assessing

The Taxpayer raised two related arguments. First, the Taxpayer argued the City improperly singled out three types of properties (hotels, multi-families greater than eight units and auto dealerships) to review and update their assessments in 1998. Second, the Taxpayer argued the Property’s assessment was disproportionate to both other hotel assessments and to commercial property values in general.

The board finds both arguments are without basis in this case.

Under the New Hampshire Constitution, citizens are required to contribute their share of governmental costs. N.H. Const., pt. 1, art. 12. Such contributions (i.e., taxes) must be "proportional and reasonable [in] assessments, rates, and taxes ***." N.H. Const., pt. 2, art. 5. In Appeal of Andrews, 136 N.H. 61, 64 (1992), the court held that the above-cited constitutional provisions require that all taxpayers in a municipality must be

assessed at the same proportion of market value. Moreover, the court stated that to establish disproportionality, a taxpayer must show that its assessment was higher than the general level of assessment in the municipality. The court made it clear that proportionality was to be judged across the entire town rather than only by property type. The Andrews decision is in accord with an early proportionality case -- Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 204-05 (1899). This same principle was enunciated in Opinion of the Justices, 123 N.H. 296, 301 (1983), where the court stated that the New Hampshire Constitution requires that all property within a particular 'class' be proportionately assessed. It is clear from reading New Hampshire case law that for purposes of real estate taxes, the 'class' is all real estate and not different types of real estate within that 'class.' See also RSA 72:6 and 7 and RSA 21:21. Therefore, to comply with the constitutional obligation of proportional assessment, municipalities are obligated to ensure that all property within the 'class' of real estate is assessed at the same general level of assessment prevailing throughout the municipality.

In this case, the City testified it reviewed general market data for all properties in the City and determined based on various market value indicators to focus their attention in 1998 on updating the three types of property earlier mentioned. It was the assessor's opinion, based on his knowledge of the market, that those properties were generally disproportionately underassessed, and thus, needed to be reviewed and revised for 1998. The board finds this type of update of a limited number of properties done within the context of a city-wide review is not spot assessing and is indeed what municipalities are required to do by law. RSA 75:1 requires that property be assessed at market value and the cases cited above indicate that assessments may be a proportion of market value as long as all assessments are at the same level of market value. E.g. Appeal of Andrews, supra, 136 N.H. at 64-5. Additionally, RSA 75:8 requires

municipalities to annually review assessments and to make adjustments that are necessary to correctly assess property. Furthermore, municipal officials also execute the RSA 75:7 oath, which requires them to state that all taxable properties were assessed at their full value.

Therefore, the board finds the City acted according to its statutory obligations in reviewing and revising the Taxpayer's assessment for 1998.

Further, as the cases above also assert, disproportionality is not measured by interassessment comparison but rather is the product of the determination of market value and the general level of assessment. "Our constitution mandates that all taxpayers in a town be assessed at the same proportion of ['fair market value'].²" Public Service Co. of N.H. v. Town of Seabrook, 133 N.H. 365, 377 (1990). Consequently, the Taxpayer's evidence relative to differing assessments of other hotels or commercial properties does not establish that the Taxpayer's assessment was disproportionate to market value.

1998 was the first year of assessment for the Property and the City used the Taxpayer's undisputed construction costs to date to establish a building value. The Taxpayer does not argue that the building value is incorrect, but only disputes the land value assigned by the City.

For reasons explained more fully in the next section, the board agrees with the Taxpayer that, to some extent, the market value of the land estimated by the City is too high. The board also finds the City's use of an 0.87 equalization ratio rather than the admittedly correct 0.82 ratio for 1998 was inappropriate. While the City stipulated to use of the correct ratio at the hearing, the board is concerned by the City's conscious failure to do so previously, apparently because it wished to retain some leverage in negotiating a compromise with the Taxpayer. To say the least,

such tactics are questionable and cannot be condoned.

Highest and Best Use and Market Value of the Property

Since the parties appear to agree on how to value the partially completed building (based upon construction costs to date), the one remaining issue appears to be a reasonable estimate of the market value of the land. The board finds the highest and best use of the site as developed is for continued use as one hotel complex with some ability for expansion on the excess land (approximately 5 acres of the 10 acre parcel).

The City's interrogatory responses and testimony indicate it determined the land value by applying a per unit value of \$10,000 for each of the 90 developed units on the "existing five acre site on which the hotel is now located," and, on the remaining "adjacent five acre undeveloped tract" assumed an expansion or new hotel of "150 regular hotel rooms . . . at \$8,000 per room." The City added each value component (\$900,000 and \$1,200,000) to conclude the total market value of the 10 acres is \$2.1 million.

The board finds this approach to be less than satisfactory, because of a lack of evidence that a 150 room hotel development is feasible either from a marketing² or a physical standpoint

²While there is some evidence of a demand for additional hotel rooms in the City (several new hotels (Hampton Inn and Motel 6) have opened in the last two years and other hotels have either undergone or plan to expand the number of rooms (including the Courtyard by Marriott hotel owned by an affiliate of

and because the indicated value is far in excess of the market value reflected by the Sublease presumably entered into at arms-length between the PDA and the Taxpayer. The City's Assessor testified that recent PDA leases, including the Taxpayer and Franklin Pierce properties, reflected market rates.

Applying a 10% capitalization rate to the Taxpayer's annual rental payments indicates a market value of \$1,219,700 (\$121,970 annual lease payment divided by 0.10) for the 10-acre parcel. A nearby 5-acre parcel at 73 Corporate Drive occupied by Franklin Pierce College is being subleased from the PDA for \$100,000 per year, indicating a (capitalized) value of \$1 million for five acres. From this paired-sales analysis, a (capitalized) value of approximately \$220,000 for the presently unused 5-acres on the Property can be derived, and the board finds this result to be reasonable.

Also relevant to this issue are certain use restrictions which appear to encumber the Taxpayer's future development of the Property, including the 5 excess acres of land. Section 9 of the Sublease ("Use of Subleased Premises") establishes the Property is to be used "for hotel purposes and any customary accessory use." While such accessory use can include "a full

the Taxpayer)), the board could not conclude from the evidence presented that a market demand existed for another 150 unit hotel on the Property in the foreseeable future. The Sublease also does not give the Taxpayer any 'exclusive' rights for hotel development within the PDA area even if sufficient demand exists.

service, table menu restaurant and lounge facility,” such a facility can only be operated for so long as “Sublessee is operating a hotel” and must be “fully integrated with the hotel” (“at a minimum an attached building sharing at least one common wall with the hotel”). Use for any other purpose is prohibited “without the prior written consent of Sublessor.” In sum, the board finds the use of the excess land is somewhat limited by the terms of the Sublease.

The board did review the various sales submitted by the parties of other hotel sites, both in Portsmouth and other areas of New Hampshire and New England. However, the board finds the best evidence is the analysis of the two ground leases within the PDA. These two ground leases indicate what different yet competing compatible users of the PDA sites are willing to pay for those locations, and thus, few adjustments are necessary. To make sites in Maine comparable to those of the PDA would require additional market research to be able to identify and make appropriate adjustments. Thus, the board places little weight on the sales data submitted by the parties and finds use of the above lease income capitalization approach to be more appropriate.

Summary

Applying the 1998 equalization factor to both the land and building values arrives at a proper assessed value for 1998 as follows:

Land

Market Value	\$1,219,700
1998 Equalization Factor	x <u>.82</u>
Assessed Value	\$1,000,150

Building

Market Value	\$2,575,734
1998 Equalization Factor	<u>x .82</u>
Assessed Value	\$2,112,100
 Total Assessed Value	 \$3,112,250

If the taxes have been paid, the amount paid on the value in excess of \$3,112,250 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Taxpayer apparently did not file a timely appeal of its 1999 assessment. The City, however, consistent with this decision, is bound by several relevant statutes and regulations in deciding, for 1999 and future years, how to proceed “in good faith . . . due to changes in value, or until there is a general reassessment in the municipality.” See RSA 76:17-c; RSA 75:8; and TAX 203.05; cf. Hanover Investment Corporation v. Town of Hanover, No. 98-129, ___ N.H. ___, 16 S.Ct.Rptr. 164-65 (November 15, 2000) <<http://www.state.nh.us/courts/supreme/opinions/0011/hanover.htm>>.

Findings of Fact and Rulings of Law

The Taxpayer submitted “Requests for Findings of Facts and Rulings of Law,” exceeding the maximum number of 25 specified in TAX 201.36 without leave of the board. In these responses, “neither granted nor denied” generally means one of the following:

- a. The request contained multiple requests for which a consistent response could not be given;
- b. The request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

- c. The request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. The request was irrelevant; or
- e. The request is specifically addressed in the decision.

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Neither granted nor denied.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Neither granted nor denied.
14. Granted.
15. Neither granted nor denied.
16. Neither granted nor denied.
17. Neither granted nor denied.
18. Neither granted nor denied.

19. Neither granted nor denied.
20. Neither granted nor denied.
21. Granted.
22. Denied.
23. Denied.
24. Granted.
25. Neither granted nor denied.
26. Neither granted nor denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Neither granted nor denied.
32. Denied.
33. Denied.
34. Granted, to the extent reflected in this Decision.

Rehearing Motion

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is

granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Page 17

Resport LLC v. City of Portsmouth

Docket No.: 17952-98PT

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas M. Keane, Esq., Counsel for Resport LLC, Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Date: December 28, 2000

Lynn M. Wheeler, Clerk

0006

Resport LLC

v.

City of Portsmouth

Docket No.: 17952-98PT

ORDER

The board is in receipt of the “Taxpayer’s” January 27, 2001 Motion for Clarification (“Motion”) and the “City’s” February 1, 2001 Response to the Motion (“Response”). Before the board can rule on the Motion, it needs clarification of assertions made by the City in its Response. The City in its Response stated:

“As per RSA 76:17-c we believe that the Portsmouth Assessor’s office is acting in good faith to reduce the excess land of 5 acres to the amount determined by the court’s decision of \$220,000. Following the recent decision of this Board we will use this value for the excess land for Tax Years 1998, 1999 and 2000.”

The City shall: 1) clarify if it has or intends to within two months of the board’s December 28, 2000 decision (See TAX 203.05(h)) revise and abate the Taxpayer’s 1999 and 2000 assessed value based on the excess land value found by the board; and 2) submit the calculations for such abated assessments for 1999 and 2000.

The City shall respond within 10 days of the clerk's date on this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Lynn M. Wheeler, Clerk

0006

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas M. Keane, Esq., Counsel for Resport LLC, Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Date: February 2, 2001

Lynn M. Wheeler, Clerk

0006
S:\DECISION\17000---98\17952-98.WPD

Resport LLC

v.

City of Portsmouth

Docket No.: 17952-98PT

ORDER

This order relates to the “Taxpayer’s” January 27, 2001 Motion for Clarification (“Motion”), the “City’s” February 1, 2001 Response to the Motion (“Response”), and the City’s February 6, 2001 Supplement to the Response (“Supplement”).

The board denies the Motion because: 1) RSA 76:17-c and Tax 203.05 are clear as to any effect the board’s ruling for tax year 1998 may have for tax year 1999; and 2) the Motion is premature as a motion for enforcement under Tax 203.05(j) for the reasons that follow.

If the Taxpayer disagrees with the City’s conclusion as to the effect of the board’s 1998 decision on tax year 1999, in the absence of a timely 1999 appeal, the Taxpayer’s remedy is limited to Tax 203.05(h) through (n). In short, the City has two months from the initial decision or decision on any rehearing motion to grant the abatement ordered by the board. The Taxpayer, if it believes the City has failed to either properly issue an abatement, or apply it properly

for subsequent years, may file a motion for enforcement no earlier than two months and a day after the clerk's date of the decision and no later than three months after such date. The City has apparently not yet issued the abatement but may be in the process of doing so. (See Supplement.) Since the time period for the City to issue the abatement has not yet elapsed, any motion from the Taxpayer for enforcement (under TAX 203.05 (j)) is premature.

The board also notes the Taxpayer has an alternate remedy for tax year 2000 as the abatement request and appeal time lines for 2000 have not passed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas M. Keane, Esq., Counsel for Resport LLC, Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Date: February 23, 2001

Lynn M. Wheeler, Clerk

Resport LLC

v.

City of Portsmouth

Docket No.: 17952-98PT

ORDER

The board has reviewed the “Motion to Enforce Compliance” (the “Enforcement Motion”) filed by the “Taxpayer” in light of the board’s Decision dated December 28, 2000 and its prior Orders dated February 2 and February 23, 2001. The Decision abated taxes assessed against the “Property” for the tax year 1998, the year under appeal. For the tax year 1999, the Taxpayer did not file an abatement application with the “City” nor an appeal with the board.

In the Enforcement Motion, the Taxpayer challenges the City’s calculation of the amount of reimbursement of property taxes it is entitled to receive for the 1999 tax year because the City allegedly used improper land and building assessed values in its calculations (in the “Resport Settlement Table” prepared by the City and attached to the Enforcement Motion) rather than applying the 1998 assessed values ordered in the Decision. According to the Taxpayer, it is

entitled to a reimbursement of “\$96,910 plus interest” for the 1999 tax year rather than the “\$18,350.67 plus interest” computed by the City.³

Before ruling on this claim, the board directs each party to submit within 10 days, with copies to the other party, all evidence of the actual assessments of the Property for the 1999 and 2000 tax years, including, without limitation, the assessment record cards and tax bills issued and received for those years, and any adjustments made by the City after issuance of the Decision. This evidence may allow the board to determine if the City complied with its obligations under RSA 76:17-c and TAX 203.05 with respect to the abatement of subsequent taxes or whether a hearing is necessary.

With regard to the request for attorney’s fees, the Enforcement Motion is denied. The board “is not authorized to award attorney’s fees in property tax abatement appeals.” Appeal of Land Acquisition, No. 98-672 (N.H. December 8, 2000)

<<http://www.state.nh.us/courts/supreme/opinions/0012/landacq.htm>> [reversal of award in motion for enforcement proceedings].

³With its letter dated February 6, 2001, the City submitted a table using the same methodology to extend its calculations to the 2000 tax year. The Enforcement Motion filed on March 23, 2001 does not address this computation, but the Taxpayer, in its letter to the City dated January 11, 2001 attached to the Enforcement Motion, proposed “carrying forward the 1999 assessment” for the year 2000.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas M. Keane, Esq., Counsel for Resport LLC, Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Date: May 24, 2001

Lisa M. Moquin, Temporary Clerk