Amy Daskal and Yehuda Daskal
v.
Town of Lee

Docket No. 3750-87

DECISION

A hearing in this appeal was held, as scheduled, on April 5, 1989. The Taxpayers were represented by Chris W. Calivas, Esquire and were present at the hearing. The Town was represented by Lee Buchanan-Gregory, Town Administrator and Alice MacKinnon, Appraiser.

The Taxpayers appeal, pursuant to RSA 76:16-a and RSA 79-A:10, the assessment of a Land Use Change Tax of $3,600 placed on their real estate located on Route 155 on March of 1987. The subject property consists of an approximately 10.9 acre parcel of land with a residential building and green houses.

The Taxpayers argued change in use on the subject property occurred in June of 1987 when they started construction of two greenhouses, which were completed in October of 1987. The Taxpayers testified the greenhouses were constructed with no foundation on land that had been bulldozed level. The Taxpayers further testified the horticultural business conducted on the subject property had a gross income of $41,000 for 1987 of which $4,000 was from agricultural products grown outside the greenhouses.

The Taxpayers stated the greenhouses were essential to their horticultural use of their property due to the growing conditions in the area.

The Town argued the greenhouses were permanent structures and noted a building permit had been obtained by the Taxpayers. The Town's position was the subject property no longer met the minimum acreage due to the construction and subsequent change in use of the greenhouses. The Town's representatives

testified they had made no determination of the area of the structures and the lands necessary to support the structures.

The Board finds the Taxpayer's land is actively devoted to agricultural or horticultural use and has an annual growth value of products normally produced in excess of $2,500. The Board finds the Taxpayers did change the use of the land in current use when construction of the greenhouses commenced and further finds that change in use took place in June of 1987. The Board also finds only those lands necessary for support of the greenhouses shall be considered as having been changed in use. The Board finds the remaining land properly remains in current use as the Taxpayers agricultural activities gross in excess of the $2,500 annual minimum required. The Board finds .12 acres of land represent the footprint of the greenhouses and further finds the greenhouses are served only by electric utilities resulting in a small area of grounds necessary to support the buildings.

The Board therefore rules .12 acres of land shall be removed from current use and shall be subject to the Land Use Change Tax. The Board also rules the remaining land in current use shall remain in current use. The Board also rules the Land Use Change Tax is not a penalty, but is a tax levy on those properties which have relinquished their right to special taxation granted in return for meeting public goals for conservation and agricultural use of lands.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_ Anne S. Richmond, Esquire, Chairman

_ George Twigg, III, Member

_ Peter J. Donahue, Member

_ Paul B. Franklin, Member

Date:

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I certify that copies of the within Decision have this date been mailed, postage prepaid, to Chris W. Calivas, Esq., counsel for Amy & Yehuda Daskal, taxpayers; and the Chairman, Selectmen of Lee.

_ Michele E. LeBrun, Clerk

Date:

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