

**Applecrest Farm Orchards, Inc.**

**v.**

**Town of Hampton Falls**

**Docket No.: 12772-92CU**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" 1992 land-use-change tax (LUCT) of \$8,000 on Lot 4-66-1 (Lot 1) and \$8,000 on Lot 4-66-2 (Lot 2). Each LUCT was based on an \$80,000 full-value assessment. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the LUCTs were excessive. See TAX 205.07. We find the Taxpayer failed to carry its burden.

The Taxpayer argued the LUCTs were excessive because:

- (1) they significantly exceeded the LUCT imposed on other lots (The Taxpayer submitted a list of these other lots.); and
- (2) they resulted in inequitable taxes--in essence, a penalty.

The Taxpayer submitted an exhibit with various documents supporting the Taxpayer's arguments.

The Town argued the LUCTs were proper because they were consistent with the sales prices on the lots--the lots sold for \$80,000 a piece. The Town also submitted a list of the other lots that were assessed a LUCT.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to show the LUCTs were excessive. We also find the Town supported the LUCT assessments.

The LUCTs were based on the sales prices for the lots. Under RSA 79-A:7 I, the LUCT must be at "10 percent of the full and true value \*\*\*" of the lots without regard to the current-use taxation. "A sales price is one of the 'best indicators of the property's value.'" Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). Therefore, the LUCTs were not shown to be excessive.

The Taxpayer's arguments about the LUCTs imposed on other lots were insufficient to show error with the LUCTs imposed on the Taxpayer's lots. First, the sales prices were the best market-value evidence. Second, the Taxpayer did not have any information about when the other LUCTs were imposed and what the other properties' values were. Third, if the Town had erred before in imposing the LUCTs on other properties, the Town and this board must correctly follow the law, and the Taxpayer cannot obtain a benefit from past errors. The bottom line is whether the Taxpayer was correctly taxed. We find it was correctly taxed.

Note: Based on the Town records, the change-of-use dates, i.e., the dates the lots no longer qualified for current use, was January 3, 1992, for Lot 1 and June 5, 1992, for Lot 2, which were the dates the lots were transferred. However, based on the closing dates, the dates of change were December 13, 1991, for Lot 1 and June 5, 1992, for Lot 2. Any variation from the Town's dates is without significance.

Page 3

Applecrest Farm Orchards, Inc. v. Town of Hampton Falls  
Docket No.: 12772-92CU

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ben Wagner, Vice President of Applecrest Farm Orchards, Inc., Taxpayer; and Chairman, Selectmen of Hampton Falls.

Dated: July 8, 1994

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Valerie B. Lanigan, Clerk

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