

Applecrest Farm Orchard, Inc.

v.

Town of Hampton Falls

Docket No.: 15852-94LC

DECISION

"Applecrest" appeals, pursuant to RSA 79-A:10, the "Town's" 1994 \$7,702 assessment of a land-use-change tax (LUCT) that was assessed against tax lot no. 73-8 (Lot 8). (All references to lot numbers will be to the subdivision lot number.) Lot 8 was a lot in a 12-lot subdivision (the Subdivision) that Applecrest developed on a 44-acre parcel that was in current use before being developed. In addition to appealing the LUCT on Lot 8, Applecrest purports to appeal the LUCT assessments on each lot in the Subdivision. This decision begins with the underlying facts followed by the parties' arguments and concludes with the board's analysis.

Based on the board's analysis, the board finds only Lot 8 was properly appealed, and Applecrest failed to carry its burden of showing that the Town erred in assessing the LUCT. See TAX 205.07 (burden of proof on taxpayer).

FACTS

In 1975, Applecrest owned this 44-acre parcel of land, and Applecrest placed that property in current use. In spring 1994, Applecrest obtained subdivision approval for 12 residential lots. A sketch of the Subdivision is attached to this decision.

The Subdivision had existing frontage on Route 88, known as "Exeter Road," and also had gravel-road frontage on Parsonage Road. To develop the property, Applecrest was required to upgrade (pave) Parsonage Road and was required to construct Coburn Woods Road. In spring 1994 when Applecrest received subdivision approval, Applecrest immediately began upgrading Parsonage Road and constructing Coburn Woods Road. Despite the requirement of RSA 79-A:7 (Supp. 1996), when Applecrest began the physical roadwork, the Town did not remove the land underlying Coburn Woods Road from current use and did not impose a LUCT on that land.

In July 1994, Applecrest began selling lots; Applecrest sold the last lot in August 1996. As lots were sold, the Town assessed the LUCT to the lot purchasers, sending the bills to the lot purchasers. The Town stated it did this because it considered the change in use to have occurred when lots less than 10 acres were conveyed from the larger parcel, and under RSA 79-A:7 II, the owner at the time the change occurs is liable for the LUCT. See also Current Use Criteria Book 1994 (administrative rules referred to as "CUB") CUB 307.01(a)(1) (provided no physical change on lot, only remove land that no longer meets the 10-acre requirement).

Table A lists the 12 lots, the sales information and the LUCT information. (The Subdivision plan attached to the decision also shows the sales and the LUCT information.)

TABLE A
Sales and LUCT Information

Lot #	Acres	Date of Sale	Sale Price	Date of Change	LUCT Bill Date	LUCT Tax	Date of Appeal (Local)	Parties Assessed	Assign. of Rights
1	4.61	1/20/95	\$ 81,000	1/20/95	3/1/95	\$ 8,100	None	Tatrinowicz	No
2	2.34	9/8/94	\$ 80,900	9/8/94	9/14/94	\$ 8,090	None	Applecrest	No
3	2.01	7/18/94	\$ 79,000	6/30/94	8/3/94	\$ 7,900	None	Applecrest	No
4	2	9/29/94	\$ 81,000	9/28/94	10/5/94	\$ 8,100	None	Smith	No
5	2.01	8/8/94	\$ 79,000	8/11/94	8/17/94	\$ 7,900	None	Applecrest	No
6&7	4.26	9/20/94	\$161,500	9/20/94	9/21/94	\$16,150	None	Coe	No
8	2.1	3/31/95	\$87,900	3/31/95	5/9/95	\$ 7,702	5/95	Whitney Bldrs.	Yes
9	5.63	1/12/96	\$ 97,900	1/12/96	2/20/96	\$ 9,790	None	Shek	No
10	12.65	10/3/96	\$120,000	7/25/96	8/21/96	\$ 8,180	None	Carmarda	No
11	2.68	1/12/96	\$ 89,000	1/12/96	2/20/96	\$ 8,900	None	DPW Bldrs.	No
12	2.01	1/12/96	\$ 79,000	1/12/96	2/20/96	\$ 7,900	None	DPW Bldrs.	No

Except for Lot 10, which after conveyance was still larger than 10 acres, the Town assessed the LUCT on the lots as they were conveyed. The LUCT was imposed on Lot 10 when actual construction began on the lot. The Town assessed the LUCT generally based on 10% of the sales price. On Lots 8 and 10, the Town assessed something less than the sales price because the Town concluded a deduction was appropriate given the incomplete status of Coburn Woods Road. (Although not necessary to decide this appeal, the board normally would not think that a developer's costs should be deducted from the price a person was willing to pay for a lot that lacked a completed road at the time

of sale. The price paid was for the lot given the road status. If the road is certain to go in, e.g., bonded with the town, buyers may pay full value for a lot that is not on a finished road.)

None of the lot owners that were assessed the LUCT filed appeals either with the Town or with the board. See RSA 79-A:10 (follow appeals procedures in RSA chapter 76); RSA 76:16-a (abatement application to municipality); RSA 76:16-a, 17 (file appeal document with either board or superior court). Applecrest, however, filed for abatement with the Town and with this board, appealing the LUCT assessed against the purchaser of Lot 8. After the appeal was pending with this board, the board required Applecrest to obtain an assignment of appeal rights from Lot 8's owner, and Applecrest obtained that assignment along with assignments of rights from the owners of Lots 9 through 12. Applecrest stated at the hearing that under the purchase and sales agreements for all of the lots, Applecrest was obligated to pay the LUCT assessments.

PARTIES' ARGUMENTS

The parties' arguments are summarized below to the extent necessary to decide this case; the board will reiterate and address arguments in our analysis below.

Applecrest argued the LUCT assessments were erroneous or excessive because:

- (1) pursuant to RSA 79-A:7 IV, the Town should have assessed one LUCT on the value of the entire Subdivision when construction on Coburn Woods Road began in the spring of 1994;
- (2) the Town never assessed a LUCT on the entire Subdivision; instead, the Town assessed a LUCT on each lot as it sold;
- (3) Applecrest was governed by RSA 79-A:7 IV, and therefore, the Town has

failed to issue a valid LUCT to Applecrest; and

(4) the Subdivision's value as of the date of change was \$366,000, and the LUCT should have been \$36,600.

The Town argued the LUCT assessments were proper because:

- (1) the LUCT bills were assessed based on the current-use rules and based on advice from the department of revenue administration;
- (2) the Town calculated the LUCT based on the individual sales of the lots without any deduction for betterment value;
- (3) the Town did not assess a LUCT on the entire Subdivision because the LUCT statute was amended in 1991; and
- (4) the Town has not assessed the LUCT on the road.

ISSUES

This appeal raises the following issues:

- (1) what LUCT assessments are under appeal?; and
- (2) did the Town correctly assess the LUCT against the appealed lot(s)?

The board concludes only Lot 8 was properly appealed, and the Town correctly assessed the LUCT against Lot 8.

SUBJECT OF APPEAL

Applecrest appealed pursuant to RSA 79-A:10, which required Applecrest to comply with RSA chapter 76. Specifically, Applecrest was required to file with the Town an abatement application within two months of the LUCT bill. RSA 76:16 (Supp. 1996). After applying to the municipality, Applecrest was required to file an appeal within eight months after the LUCT bill with either the board or the superior court. RSA 76:16-a (Supp. 1994), 17 (Supp. 1994). See also TAX 101.30 (notice of tax is the date the municipality sends the LUCT bill).

After receiving the LUCT bill for Lot 8, Applecrest filed with the Town

and with the board. Applecrest was not the party statutorily liable for the LUCT bill. Rather, Lot 8's purchaser was liable. See RSA 79-A:7 II (LUCT payable by owner when change occurs); RSA 79-A:7 IV (c) (lot that is less than minimum established acreage no longer qualifies); CUB 304.01 (b) (farmland has 10-acre minimum). Upon appeal to this board, Applecrest did obtain

assignments of rights from the purchasers of Lots 8 through 12. (There certainly is a question about whether Applecrest even had standing to file with the Town and with this board because Applecrest did not obtain assignments of rights until after the appeal was perfected. Therefore, when Applecrest actually did file with the Town and the board, Applecrest may not have had standing because Applecrest was not the party statutorily liable for the LUCT. Query whether Applecrest's liability under the sales contract grants standing. Query whether the subsequent assignments cured the standing defect. The Town, however, did not raise this issue and the board has not given the parties a chance to brief or argue this issue. Therefore, the board will assume for purposes of this decision that Applecrest is properly before the board.)

While Applecrest only filed an appeal for Lot 8, Applecrest asserted two separate grounds for expanding the LUCT assessments that are under review. First, Applecrest asserted that RSA 76:17-c (Supp. 1996) provides the board with automatic jurisdiction over LUCT bills issued after the Lot 8 appeal was filed. Second, the resolution of the appeal on Lot 8 necessarily requires determining whether the Town should have assessed the LUCT against the entire Subdivision, and therefore, if the board agrees the Town used the wrong methodology with Lot 8, all of the LUCT bills would have to be reviewed.

The Taxpayer is incorrect when it asserts that RSA 76:17-c grants this board jurisdiction over LUCT bills issued after the Lot 8 appeal. RSA 76:17-c does not apply to LUCT bills but rather applies only to ad valorem property-tax appeals. The plain reading of RSA 76:17-c confirms this conclusion. The

statute discusses granting an abatement "on the grounds of an incorrect property assessment value *** ," and discusses "assessing subsequent taxes upon that property, until such time as [the selectmen], in good faith, reappraise the property pursuant to RSA 75:8 due to changes in value, or until there is a general reassessment in the municipality." RSA 76:17-c. This

language demonstrates RSA 76:17-c applies only to ad valorem issues. A LUCT assessment is different than a property-tax assessment. The LUCT assessment is a one-time assessment whereas a property assessment is an ongoing yearly assessment. To read RSA 76:17-c to apply to LUCT assessments would require ignoring the plain meaning of the statute and the statute's intent.

Because RSA 76:17-c does not apply to Applecrest's LUCT appeal on Lot 8, the subsequent bills on Lots 9 through 12 are not under appeal.

Applecrest's second argument is that the Town should have assessed one LUCT against the entire Subdivision and not against individual lots as they were sold. Applecrest asserts that RSA 79-A:7 IV requires such a result. Applecrest further argued that RSA 79-A:7 V must be read consistent with IV, and the only way to do this would be to require the entire Subdivision be removed from current use at the time the construction began on Coburn Woods Road. Quite frankly, the board, despite several questions at the hearing and reading Applecrest's memorandum, has not been able to understand Applecrest's argument that IV controls V and that this requires the result sought by Applecrest. Nonetheless, here is the board's conclusion.

In reviewing RSA 79-A:7, the board applies the following rules of interpretation.

In construing statutes, the board should first examine the language and, where possible, ascribe plain and ordinary meaning to the words unless the statute itself suggests otherwise. Appeal of Astro Spectacular, 138 N.H. 298, 300 (1994); Appeal of Campton School District, 138 N.H. 267, 269 (1994).

If the language is clear and unambiguous, the board must apply such interpretation and not modify it by construction. State v. Dushame, 136 N.H. 309, 313 (1992); Penrich, Inc. v. Sullivan, 136 N.H. 621, 623 (1993).

The board must read the language at issue in the context of the entire statute and the statutory scheme. Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992); Great Lakes Aircraft Co., Inc. v. City of Claremont, 135 N.H. 270, 277 (1992).

RSA 79-A:7 IV (Supp. 1994) addresses the issue of when land no longer qualifies for current use, requiring the imposition of the LUCT. RSA 79-A:7 IV does not, however, describe how much land is removed from current use. That issue is addressed by RSA 79-A:7 V. (See discussion below concerning earlier interpretations of the "how-much issue.") A plain reading of RSA 79-A:7 IV and V demonstrates that the Town properly assessed the LUCT when the lots were sold that no longer met the 10-acre current-use minimum.

Concerning the amount of LUCT assessed against Lot 8, the board finds the LUCT was reasonable. Lot 8 sold in March 1995 for \$87,900. The Town issued an LUCT bill for \$7,702. The Town, based on advice from a current-use board member and an assessor, deducted from the purchase price 1/4 of the cost to complete Coburn Woods Road. While the board questions the necessity of the deduction, the board finds the LUCT was not excessive because it was consistent with the purchase price of Lot 8 and was consistent with the sales prices on other lots in the Subdivision. See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988) (the arm's-length sales price of a property is one of the best indicators of that property's value).

Finally, the board also notes that CUB 308.01 (do not include betterment value) did not apply to Lot 8 because there were no betterments on Lot 8.

REVIEW OF THE ENTIRE SUBDIVISION

As concluded above, Applecrest only perfected an appeal of the LUCT on Lot 8. Nonetheless, the taxpayer purported to argue that the board should review the entire Subdivision and the LUCT assessments on each lot. Applecrest asserted the board should find an LUCT of \$36,600, which

represented Applecrest's appraiser's estimate of the Subdivision's value on the date road construction began. While the board has not adopted Applecrest's position, the board makes the following observations.

For the board to review the entire Subdivision, the board would have to assert its RSA 79-A:12 II and/or RSA 71-B:16 II jurisdiction (collectively "Discretionary Jurisdiction"). The board, however, has decided not to assert this jurisdiction for the following reasons.

(1) Applecrest raised an interesting question about whether one LUCT should have been assessed against the entire Subdivision. However, Applecrest did not file appeals consistent with its position. To preserve its position, Applecrest should have filed an appeal when the first lot was sold and the LUCT assessed (assessed LUCT August 1994 on Lot 3). Applecrest did not do this but rather waited until it had paid the amount of LUCT that it thought was proper, and then it finally appealed Lot 8's LUCT bill. Generally, the board does not assert its Discretionary Jurisdiction where the statutes already provide a means to appeal. Assuming Applecrest obtained an assignment of rights from the purchaser of Lot 3, Applecrest could have raised the LUCT methodology at that time. Applecrest would have known then that the Town intended to assess the LUCT on a lot-by-lot basis. Applecrest was not diligent in pursuing its asserted rights, and the board will not exercise its Discretionary Jurisdiction in this case.

(2) As stated earlier, there is a question about Applecrest's standing to challenge the LUCTs that were assessed against the individual lot owners. Under the board's reading of the statutes, the LUCT for each lot was assessed against the individual lot owners and not against Applecrest. Therefore, to obtain any appeal rights, Applecrest should have obtained an assignment of rights at the time of sale, but Applecrest did not do this. Therefore, the

parties that had standing to appeal -- the lot owners -- did not exercise their rights, and Applecrest did not obtain those rights from all lots (no assignment Lots 1 through 7) and obtained some assignments (Lots 8 through 12) only after questioned by the board.

(3) Applecrest did not, on its own, raise any legal argument to persuade the board to assert its Discretionary Jurisdiction. Applecrest only presented the statutory interpretation argument discussed above. The board notes, however, that it has some concerns about the constitutionality of the Town's actions. There is, unfortunately, no clear answer to this issue. The remainder of this text is the board's attempt to articulate the issue.

Although not presented as an argument by Applecrest, the board has concerns about whether the Town's lot-by-lot assessment was constitutional. The board has researched the current-use statutes, regulations and cases on current use from 1974 forward. This research reveals that there has been a major shift in how much land is removed from current use when development begins. In the original current-use legislation, the statute did not specifically address how much land should be removed from current use when a subdivision development began. The law only addressed when the LUCT should be assessed. Before 1991 (when RSA 79-A:7 was amended), the assessment practice was, the statute could be interpreted as, and the supreme court cases supported the method whereby the entire land encompassing the subdivision would be removed from current use when physical changes occurred on the site, resulting in one LUCT on the entire subdivision and not on individual lot sales. Here is a review of the pre-1991 statutes, rules and cases.

The original legislation did not specify in RSA 79-A:7 how much land should be removed from current use when a change in use occurred. The original statute spoke of placing a "particular parcel of land" into current use, RSA 79-A:5 II (1974), and assessing that land in current use. The LUCT

statute, RSA 79-A:7 (1974), similarly spoke of "land."

In 1979, RSA 79-A:7 was amended in two ways: 1) paragraph IV was added, which defined the change-in-use date as when "actual construction begins on the site causing physical changes *** "; and 2) paragraph V was added, which

stated that the amount of land to be removed from current use would be based on the current-use board regulations. The current-use board did not immediately enact any rules concerning the amount of land to be removed from current use.

In 1988, the current-use board enacted Rev 1203.02 (b) (4) (c), which stated: "in the case of planned or existing building sites, the road, together with all building sites serviced by the road shall be considered changed in use." (Emphasis added.) This was the first statutory or regulatory change on this issue. Before this 1988 rule, the construction of the road anywhere on the site resulted in the entire parcel being removed from current use. Under the 1988 rule, only the road and the lots serviced by the road would be removed from current use. For explanation using this particular Subdivision, the lots along Coburn Woods Road would have come out of current use when road construction began because those lots were serviced by the road. But the lots along Exeter Road would not have come out upon road construction because Coburn Woods Road did not service the Exeter Road lots. Exeter Road would be assessed the LUCT upon conveyance because the lots were less than the 10-acre minimum.

RSA 79-A:7 was further amended in 1991. Under this amendment, with the exception of the road area, which would be removed from current use upon actual physical construction, the LUCT imposition would be delayed until the lots were sold, assuming the minimum acreage was still undeveloped. RSA 79-A:7 V (Supp. 1991) (requires the imposition of the LUCT on the road but requires that the lots that are being subdivided remain in current use if they

individually or collectively meet the 10-acre minimum.) RSA 79-A:7 V states that the lots should not be considered as changed in use if "any lot or site, or combination of adjacent lots or sites under the same ownership (are) large enough to remain qualified for current-use assessment under the completed development plan *** ."

The above statutory review shows there has been a radical change from the first LUCT assessment methodology -- assess the LUCT against the entire subdivided parcel when physical construction began anywhere on the parcel; to the interim methodology -- only assess the LUCT against the road and lots serviced by the road but not the entire subdivided parcel; to the current situation -- only assess the LUCT against the road provided the remaining lots individually or collectively meet the 10-acre minimum and then assess the LUCT on a lot-by-lot basis when lots are conveyed that are less than 10 acres.

If the taxpayer is correct that the entire Subdivision was worth \$366,000 when the road construction began (an issue not fully litigated, see paragraph 12 of the Town's response to Applecrest's requests), the LUCT bill on the entire Subdivision would have been \$36,600. The actual LUCT bills totaled approximately \$98,700. This certainly is a substantial increase based simply on a change in methodology.¹

In addition to reviewing the statutory and regulatory status on this issue, the board reviewed several supreme court cases, and these cases support the position that the earlier current-use statute was read as requiring the removal of the entire Subdivision. Frost v. Candia, 118 N.H. 923, 924 (1978) (change in use occurs when actual physical construction occurs); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980) (when roadwork and other

¹ Had the board asserted its Discretionary Jurisdiction and found that the LUCT bill should have been \$36,600, the board would have also ordered the Town to reassess the yearly property-tax bills on the individual lots, which presumably would have increased the taxpayer's property-tax burden for those lots that would have been removed from current use in 1994 and taxed at ad valorem assessments.

sitework begins assess LUCT against the subdivided parcel); Dana Patterson, Inc. v. Town of Merrimack, 130 N.H. 353, 355-57 (1988) (sitework on current-use parcel necessary for overall subdivision development requires imposition of the LUCT upon physical construction on the current-use parcel; case decided under the 1979 amendments).

Therefore, when Applecrest placed its property in current use in 1975, the assessment methodology was one way, which based on Applecrest's position would have resulted in a \$36,600 LUCT, but when the property was finally developed in 1994, the assessment methodology had changed, which has resulted in a LUCT of \$98,700. Under board questioning, Applecrest, however, admitted it did not consider the methodology when it placed the property in current use.

The board must admit that there is an honest question about whether this substantial increase in the LUCT is prohibited by part 1, art. 23 of the New Hampshire Constitution, which prohibits retrospective laws. The board notes that there are valid legal arguments on both sides of this issue. The board will not fully analyze this issue. However, on the side of finding that Applecrest should have been assessed on a subdivision basis, the board notes that in Appeal of Town of Peterborough, 120 N.H. at 329, the court explicitly stated "the purpose [of the LUCT assessment] was not to permit the town to wait a considerable time after the use was changed to tax the lots whenever they are sold at a greatly appreciated rate." Clearly, the change in methodology in Applecrest's situation has resulted in a delay of the assessment and a substantial increase in the LUCT. Additionally, in the Opinion of the Justices, 137 N.H. 270, 278 (1993), the court opined that changing the structure of the LUCT to include a graduated LUCT depending on how long a property had been in current use before the change occurred was a prohibited retrospective law. The majority in that opinion viewed the transaction as being when the land was placed in current use, entitling the

land owner to certain vested rights. The dissent asserted the transaction was not when the land was placed in current use but when the land was removed from current use.

There are, however, valid arguments supporting the lot-by-lot LUCT assessment. Here are two of them. First, the LUCT is a tax, and the legislature often changes how to calculate a tax. Here, Applecrest even admitted that when it placed the land in current use, it did not rely on any particular methodology for assessing the LUCT. Second, the purpose of current use is to preserve open space as long as possible. See RSA 79-A:1.

The board has presented the above analysis to preserve its thoughts should Applecrest decide to appeal the board's decision and should Applecrest be able to convince the court that the LUCT should have been assessed against the entire Subdivision. If Applecrest were to obtain a favorable ruling on this issue, the board would, on remand, assert its Discretionary Jurisdiction and then hear evidence on what the proper Subdivision value was on the date of change, an issue not fully explored in this proceeding. The board would also consider how the ad valorem assessments should be revised with appropriate amended tax bills.

ONE FINAL ISSUE

While not discussed by either party, the Town apparently never removed the land encompassing Coburn Woods Road from current use. For bookkeeping and registry purposes, the Town should record a current-use lien release, but the board does not see the need to issue a LUCT now.

FINDINGS OF FACT AND RULINGS OF LAW

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; or
- d. the request was irrelevant.

Applecrest's Findings of Fact

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Neither granted nor denied.
8. Neither granted nor denied.
9. Neither granted nor denied.
10. Granted.
11. Neither granted nor denied.
12. Denied. Earlier figure was \$450,000. Appeal document Section E, and
November 6, 1996 prehearing order at 2.
13. Neither granted nor denied. Note: CUB are the current use board's rules.
14. Denied. See TP Exhibit 3, p 5. Total \$394,802.

Applecrest's Rulings of Law

1. Denied.
2. Granted as to when; denied as to how much.
3. Denied.
4. Neither granted nor denied.
5. Neither granted nor denied.
6. Neither granted nor denied.
7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John D. Colliander, Esq., Counsel for Applecrest Farm Orchards, Inc., Taxpayer; Chairman, Selectmen of Hampton Falls; and Eric Small, Town Administrator.

Dated: April 2, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board concludes the original decision sufficiently addressed all of the issues raised in rehearing motion. The board, however, wishes to respond further to the argument that RSA 76:17-c applies to this appeal. In addition to the reasons stated in the decision, the board notes that RSA 76:17-c discusses the assessment "upon that property...." Under RSA 79-A:7, the land-use-change-tax was assessed against separate lots, and therefore, even if, RSA 76:17-c applied, each lot would constitute a separate property, requiring a separate appeal and demonstrating an additional reason that RSA 76:17-c does not apply here.

To appeal this matter, an appeal must be filed with the supreme court

within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John D. Colliander, Esq., counsel for Applecrest Farm Orchards, Inc., Taxpayer; Chairman, Selectmen of Hampton Falls; and Eric Small, Town Administrator.

Dated: May 9, 1997

Valerie B. Lanigan, Clerk