

**Earl L. Kalil, Jr.**

**v.**

**Town of Raymond**

**Docket No. 3621-87**

**DECISION**

A hearing in this appeal was held, as scheduled, on January 26, 1989. The Taxpayer was represented by John Czeciuk, Esquire. The Town was represented by Andrew L. Blais, Appraiser.

The Taxpayer appeals, pursuant to RSA 79-A:10, the assessment of a land use change tax of \$4,000 placed on his real estate, located on the northerly side of Route 27. The subject parcel consisted of 2.2 acres of land and was further identified as Map 9, Lot 65-3.

The Taxpayer's position was he paid a land use change tax of \$4,000 on September 30, 1987. The Taxpayer further argued the subject parcel was one of five lots sold at auction on August 15, 1987. The Taxpayer testified there were seven lots offered for sale at that auction, and that the subject parcel sold for a price of \$33,000.

The Taxpayer argued the original conditions of the auction sale were that the new owners would be liable for the land use change tax. The Taxpayer further argued the buyer of the subject parcel never completed the purchase and therefore the Taxpayer was liable for the land use change tax. The Taxpayer submitted the subject parcel was subsequently sold in March, 1988 for a total sales price of \$35,000.

The Taxpayer held the \$40,000 value placed on the subject lot by the Town's appraiser was too high. The Taxpayer further maintained the auction was

not

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conducted as a distress sale but was a normal marketing and sales technique used by the Taxpayer. The Taxpayer argued the fair market value of the subject property on the date of the assessment of the land use change tax was \$36,300.

The Town argued the value of the subject property was determined by adding the 10 percent land use change tax value. The Town also argued two acre lots in the Town had market values ranging from \$45 - 51,000. The Town acknowledged the subject lot was inferior due to the removal of timber prior to the sale.

The Town argued it determined that the fair market value for all of the lots sold at auction was \$40,000 each and presented properties as comparables from other sections of the Town and with higher sales prices and superior amenities.

The Town also maintained the method of sale of the subject property was not traditional and that the brochure and other advertising efforts the auctioneer carried out were not as effective and as informative to the market place as those efforts that might have been made by a licensed "realtor".

The Board finds the subject property was in an inferior location from the comparables presented by the Town. The Board also finds the subject property had been clear cut and was covered with slash at the time of sale. The Board also finds the buyers at the auction were aware the land use change tax would be in addition to the auction sale price paid to the seller. The Board finds the auction method of sale is not evidence in itself of deficient market exposure and therefore does not cause sales prices at less than fair and full market value. The Board finds that the Taxpayer presented evidence of a sales price as of the date of assessment of the land use change tax, which approximates fair market value for the subject property. The Board finds the Town relied on sales of properties which were superior to the subject property both in location and standing trees. The Board finds the Town's reliance on the auction method of sale as an indicator of a less than full and fair market value sales price for the subject property is in error.

The Board therefore rules the full market value of the subject property

at the time of sale was \$37,000. If the tax has been paid the amount paid on

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the value in excess of \$3,700 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Anne S. Richmond, Esquire, Chairman

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George Twigg, III, Member

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Peter J. Donahue, Member

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(Mr. Franklin did not sit.)  
Paul B. Franklin, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to John Czeciuk, Esquire, counsel for Earl L. Kalil, Jr., taxpayer; and the Chairman, Selectmen of Raymond.

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Michele E. LeBrun, Clerk

Date:

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