

The Valley Bank n/k/a CFX Bank
R. Cummings-Owner c/o S. Metiviev

v.

Town of Loudon

Docket No.: 13982-93PT

DECISION

The "Bank" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$593,150 on Map 21, Lot 16 (the Property). The Property is owned by the Bank's landlord (Cummings). The Bank leases one building on the Property (the Bank Building) and pays taxes on a valuation of \$200,000. For the reasons stated below, the appeal for abatement is denied.

The Bank argued the assessment was excessive because:

- (1) the Bank Building was built in 1989 and has 1924 square feet of rentable space;
- (2) a review of comparable leases supported a net rent of \$9.00/square foot;
- (3) the income approach supported a \$130,300 market value; and
- (4) the proper assessment for the Bank Building should be \$120,900.

The Town argued the assessment was proper because:

- (1) Cummings purchased the Property in January 1993 from the FDIC, which was not an arm's-length transaction;

- (2) the assessment has held since it was determined by the department of revenue administration (DRA); and
- (3) rental rates are negotiable and do not indicate market value.

Page 2

The Valley Bank et al. v. Town of Loudon
Docket No.: 13982-93PT

Board's Rulings

The board denies the Bank's appeal because the Bank did not show the owner's (Cummings) entire estate was overassessed.

The Bank Building is a free-standing bank building located on Map 21, Lot 16. Lot 16 is not owned by the Bank but is owned by Cummings. Cummings appealed Lot 16 and a property described as Map 21, Lot 17. Cummings was granted an abatement. Cummings v. Town of Loudon, Docket No.: 13754-94PT. There are three commercial buildings on Lot 16, and the Bank leases one of them. The Bank only presented evidence concerning the Bank Building's value.

The Bank did not present any evidence concerning the total value of Lot 16, and the Bank did not present any evidence on Map 21, Lot 17, which is also owned by Cummings.

The Bank's appeal raises two issues:

- (1) does a lessee of only a portion of a property have standing to appeal when the lessee does not have authorization from the lessor to appeal?; and

- (2) to be granted an abatement, must a fractional lessee (such as the Bank) prove the owner's (here Cummings) entire estate was overassessed or is

it sufficient to just show the lessee's unit was overassessed?

The first issue raises interesting issues, but because the answer to the second issue is clear, we need not answer issue one.

A tenant of part of a property cannot show overassessment simply by showing the tenant's unit was overassessed. Rather, the tenant must show: 1) the entire property was overassessed; and 2) the owner's entire estate (if the owner owns multiple properties) was overassessed. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board also notes that the tenant's portion of the total assessment (\$200,000) was determined by Cummings and billed to the tenant. The Town did not separately assess or bill the tenant for the bank.

Page 3
The Valley Bank et al. v. Town of Loudon
Docket No.: 13982-93PT

Lot 16 includes three buildings on 13 acres. The Bank's value opinion valued the Bank Building and appurtenant land separately from the remainder of Lot 16's buildings and land. Thus, the Bank did not show Lot 16 was overassessed, and the appeal must be denied.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Page 4
The Valley Bank et al. v. Town of Loudon
Docket No.: 13982-93PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, representing The Valley Bank; Raymond Cummings, Owner; and Chairman, Board of Selectmen.

Date: January 27, 1997

Valerie B. Lanigan, Clerk

0006