Appeal No. VA04/3/013

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Ard Services Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop and Garage/Filling Station at Lot No. 1F.3B, Brideswell Commons, Fonthill Road, Clondalkin Village, Clondalkin, County Dublin

B E F O R E

Frank Malone	**Deputy Chairperson**
Michael McWey - Valuer	**Member**
Joseph Murray - B.L.	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF MARCH, 2005

By Notice of Appeal dated the 14th day of July, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €900.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:
"That it is bad in law and contrary to Natural Justice that the Commissioner has relied on out of date comparisons, under an old Act which was found to be unfair."

The appeal proceeded by way of an oral hearing, which took place at the Valuation Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin 7 on 2nd November, 2004. Mr. John C. Elliott, FSCS, FRICS, FIAVI, MCI.Arb of Elliott & Fitzgerald appeared on behalf of the appellant. Mr Frank Shine, Accountant and Business Controller, Ard Services Ltd, gave evidence on behalf of the appellant. Mr Kevin Heery, B.Comm., ASCS, MRICS, MIAVI, a Staff Valuer with the Valuation Office appeared on behalf of the respondent. In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their précis of evidence and submitted them to the Tribunal.

Précis of Evidence

Both parties adopted their précis of evidence, with amendments, as their evidence-in-chief. The amendments in question are noted in manuscript in the relevant extracts from the respective précis contained in the Appendices to this judgment.

Matters Agreed

At hearing the parties agreed the area of the subject property as set out in their respective valuations as amended and copied in Appendices 1 and 2 to this judgment. They also agreed that the average annual throughput figure was 10,175,857 litres and that the equivalent of €0.0507 cent per gallon is €0.01115 per litre.

The Property

The subject property is situated on the Fonthill Road beside its junction with the Naas Road and Belgard Road in South County Dublin. The property, on a site of about one acre, consists of:

- Convenience shop and amenities
- Office
- Stores/canteen
- Passageway
- Covered car wash
- Jet wash
- Basic store/mineral store
- 4 forecourt pumps where fuel output is recorded.

Ard Services Ltd is 100% owned by Statoil Ireland Limited.

Valuation History

The station is 7 years old and was first valued in 1997 with an RV of €444.41. The property was revised at €900 in 2003 following alterations constituting a material change of circumstances. Two approaches were used for valuation in both 1997 and 2003: a price per litre/ gallon on throughput at the pumps and a rate per square metre on the remainder of the property.

Tenure

The property is understood to be freehold.

Services

All mains services are connected to the property.

Material change of circumstances

It was agreed between the parties that a material change of circumstances took place within the meaning of Section 3(1) of the Valuation Act, 2001. A new ATM facility (now separately valued) and two pumps with associated underground fuel storage tanks were added between 1997 and 2003.

At Issue:

- Quantum
- Methodology: Profit margin versus volume of throughput at so many cent per litre /gallon.

Submissions: Appellant

Submissions were made in both law and fact. The appellant claims that the revision is bad in law as the Valuation Office relied on comparisons determined under the previous Valuation Act, 1988 which, he claims, lacked fairness and equity and accordingly the revision should be struck out. These revisions were determined before the new Valuation Act, 2001 came into force on 2nd of May 2002. The new Act is based on fairness, equity and uniformity.

The methodology used by the Valuation Office is flawed. It uses an arbitrary figure of 5.07 cent per gallon on throughput. It lacks any method or science. The applicant proposed a fairer method based on profit margin at the pumps. Because of the state of the industry, with oil prices rising, the volume output at the forecourt should be adjusted downwards by 20% to reflect the nature of the business: 24-hour opening giving rise to extra costs; the construction of the ATM with right-of-way which reduced the trading area; the age and condition of the property; competition from Tesco at Finglas and Malahide. He arrived at the NAV by taking 15% of the adjusted throughput at 3 cent a litre - the gross profit margin at the valuation date. A copy of the appellant's valuation, so calculated, is contained in Appendix 1 to this judgment.

The tone of the list cannot be relied upon as it was arrived at by unfair means, by compromise and not by agreement.

The hypothetical tenant

The method used by the Valuation Office takes no account of the hypothetical tenant's position. He would not be able to pay the rent at the current profit margins as the margins are just not there. Market prices in the oil industry are going up. He cannot be expected to pay 100% of his gross margin on rent.

The proper method that should be used is that which is accepted by the oil industry, namely 15% of the gross retail profit at the pumps on the adjusted average throughput which would give a fairer result and would be in line with what the hypothetical tenant would be prepared to pay from one year to another. This price is based on a book entitled **"The Valuation and Development of Petrol Filling Stations"** by **JRE Sedgwick (Estate Gazette Ltd., London 1960).**

The appellant stated that 3 cent per litre was the profit margin at the date of valuation in December 2003. The current profit margin is 1.2 cent per litre. This was confirmed at the hearing by Mr Frank Shine, Accountant and Business Controller, Ard Services Ltd. It must be further borne in mind that out of this gross margin staff, insurance, light and heating costs have to be met. The petrol industry is going through a very difficult period at the moment. The forecourt margins are just not there and this has not been taken into account by the Valuation Office.

The Valuation Office did not value the property in its 'actual state' as required by section 48(3). The property is 7 years old and has undergone depreciation and an allowance should be made for this. At the date of inspection the jet wash was not working. The premises are no longer pristine. The hypothetical tenant would have to spend much on repairs. It is not the same as it was in 1997.

Comparisons

(see Appendices 3 and 4 to this judgment)

The appellant stated that there were a number of inconsistencies in the comparisons put forward by the Commissioner. In the case of Comparison no. 2 (Comparison no. 3 of the appellant) - Texaco, Ballydowd, a new petrol filling station regarded by both parties as the best comparison in South County Dublin the rate in the shop is €136.67 per square metre, while the shop in the subject premises is valued at €164 per square metre. There were other inconsistencies with regard to Ballydowd. The carwash, passageways and toilets were valued in the subject premises, while the same were not valued at Ballydowd. Moreover, the car wash in Comparison no. 1 - the Texas Cranly centre (Comparison no. 2 of the appellant) was valued at €6.83 per square metre while the equivalent in the subject is valued at a much higher rate. This inconsistency forms the basis of the tone of the list.

The appellant also stated that the Valuation Office was 'cherry picking' in looking for properties with the highest values rather than drawing on a mixed basket. The respondent had been selective in his comparisons.

Submissions: Respondent

The respondent described the property as a modern filling station in a good location in close proximity to Bewleys Hotel on the Fonthill Road close to its junction with the Naas Road. The site was purchased for one million euros and another million was invested to develop the station. It was first valued in 1997. At the time the throughput at the pumps was 750,000 gallons valued at a rate of 5.07 cent per gallon. At the date of valuation in 2003 the throughput was 2,265, 747 gallons and was again valued at 5.07 cent per gallon.

Once it was established that a material change of circumstances had taken place within the meaning of section 3(1) of the Valuation Act, 2001 the Valuation Office had a duty to revise the valuation by the method referred to in section 49 (1) namely by reference to the values appearing on the valuation list, the tone of the list for filling stations in the South County Dublin area.

The methodology he used is that set down in section 49(1). However, he pointed out that the appellant did not give any comparison where the 15% of gross profit method was used to determine the NAV although that was the method he was contending for in the subject. He referred to **VA01/2/002 – Texaco Ireland Ltd** (the **Texaco** case) where Mr. Freeman also used arguments for the 15% of gross profit approach which were not accepted by the Tribunal in reaching its decision. The respondent referred to page 13 of the Tribunal determination in the **Texaco** case which states that the volume of throughput in pence per gallon method is the "*general practice*" for filling stations.

The RV of €900 is reasonable having regard to the values of filling stations in the South County Dublin area.

5.07 cent per gallon for throughput supports the tone of the list for the South County Dublin area. In the **Texaco** case there is a lower rate in line with the tone of that area where the retail volume is lower.

The respondent stressed that he acted under section 49 of the Act. If he set a lower value than €900, it would be unfair to other filling stations in the same rating authority area.

Actual state

The respondent said that he valued the property one year with another in accordance with section 49.

The method put forward by the appellant to obtain rental evidence was not used in South County Dublin. The method used by the Valuation Office is the same as that used in South County Dublin. In fact the method used by the appellant is similar to that put forward in the **Texaco** case, which was not accepted by the Tribunal.

Findings in law and fact

The Tribunal is bound by section 49 of the Valuation Act 2001. Any method of estimating the NAV cannot *prejudice* section 49. The section also implies the "tone of the list". Section 49 states that the determination of the NAV *"shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property."* 'That' property in this case refers to the subject property.

Mr Elliott's method of valuation, *gross profit margin on the forecourt pumps,* does not comply with section 49 (1) because he did not use any comparisons from the valuation list based on his own method of valuation.

By contrast, the Tribunal has found that the respondent by his *throughput method on the forecourt pumps* has complied with section 49 by giving comparisons based on this method appearing on the valuation list and also comparisons within the same rating authority area.

The Tribunal also found the respondent's comparisons to be fair and reasonable.

Both methods of calculating NAV on the forecourt pumps were submitted in the Texaco case and the Tribunal found in favour of the *throughput* method. Moreover, the appellant did not cite one case where his method was used successfully.

It was confirmed at the hearing by the appellant's witness, Mr Shine, that the subject property is wholly owned by Statoil Ireland Limited and that a price support mechanism is in operation. The Tribunal notes this fact and agrees with the finding in the **Texaco** case that *"In relation to filling stations whilst gross retail margin may be under the control of the occupier there is no doubt that the petrol companies also have a major influence on the level of margin attained by the control they exercise in relation to the pump prices …"* . This fact also influenced the Tribunal to favour the *throughput* method.

It was submitted by the appellant that the construction of the ATM facility in 1999 reduced the amount of usable space at the subject property site. The amount of space reduced is minimal and it could well be argued that an ATM machine could well enhance the business of the service station. In the Tribunal’s view this has very little effect on the overall valuation.

The subject property is 7 years old. While it may be in need of refurbishment it could not be classified as an old building. It is a relatively modern building in line with comparisons in the rating authority area. These matters the Tribunal has taken into account.

Determination

The Tribunal determines the rate on throughput put forward by the Valuation Office to be correct at 5.07 cent per gallon (€0.01115 per litre) as it is in line with the tone of the list in South County Dublin.

As regards the rate per square metre in the shop, carwash, passageway and toilets the Tribunal acknowledges that there are inconsistencies with some of the comparisons given by the respondent and accordingly makes allowances taking into consideration the age of the service station and determines the NAV and RV of the subject property as follows:

Shop - 105.50 m^2 @ €150.34 per m^2	=	€15,860.87
Store - 11.44 m^2 @ €68.32 per m^2	=	€781.58
Lobby/Toilet - WHB & WC/Tea Station 9.68 m^2 @ €68.32 per m^2	=	€661.34
Alcove Store - 4.00 m^2 @ €68.32 per m^2	=	€273.28
Sluice Room - 2.67 m^2 @ €68.32 per m^2	=	€182.41
Cigarette Store - 2.73 m^2 @ €17.08 per m^2	=	€46.63
Office - 7.88 m^2 @ €82.00 per m^2	=	€646.16
Outside		
Mineral Store - 11.45 m^2 @ €41.00 per m^2	=	€469.45
Conveyor Wash - 134.63 m^2 @ €41.00 per m^2	=	€5,519.83
Jet Wash - 63.00 m^2 @ €20.50 per m^2	=	€1,291.50
Store - 16.07 m^2 @ €17.08 per m^2	=	€274.48

(Additional) Store - 48.30 m^2 @ €27.33 per m^2 =

€1,320.04

Annual throughput of fuel 10,175,857 litres @ €0.01115 per litre = €113,460.81

Total NAV **= €140,788.38**

RV @ 0.63% **RV = €886.97**

SAY RV €887

and the Tribunal so determines.