Appeal No: VA14/2/001

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Fabian Doyle **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2212551, Office(s) at Lot No. 80/2, Main Street Lower, Arklow, Arklow Urban, Arklow UD, County Wicklow.

B E F O R E

Stephen J. Byrne - BL **Deputy Chairperson**

Pat Riney- FSCSI, FRICS, ACI, Arb **Member**

Michael Connellan Jr – Solicitor **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21st DAY OF NOVEMBER, 2014

By Notice of Appeal received on the 30th day of May, 2014, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €18 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are that *"The property is incapable of beneficial occupation"* and as set out in the attached document at Appendix 1.

Description of property

The subject property comprises the first and second floors, 80 Lower Main Street, Arklow in the County of Wicklow. The subject property is situate at Main Street Lower, close to the junction of Main Street Upper and Bridge Street which leads to the Arklow Bridge providing access to the Ferrybank area of the town. The property comprises the first and second floors of a 3-storey property. The offices are finished to a good standard with painted and plastered walls, carpet flooring and boxed fluorescent lighting. The ground floor retail element is valued separately, Property number 2212550.

Valuation history

On the 11th January 2013 the proposed Valuation Certificate issued with a rateable valuation (RV) of €24. On the 8th February 2013 representations were made to the revision officer. The RV was amended. On the 17th July 2013 a final Certificate was issued for the subject property with a valuation of €18. On the 16th August 2013 there was an appeal to the Commissioner of Valuation. The appeal was made based on lack of retention planning permission and quantum. On the 16th May 2014 a Valuation Certificate issued unchanged at RV €18. This decision has been appealed to the Valuation Tribunal, ref. VA14/2/001.

The appeal was listed for oral hearing before the Tribunal at Holles House, Holles Street, Dublin 2.

Issue to be determined

The Appellant raised two inter-related arguments:

(i) The Appellant claims that the property is not rateable because as of the date of valuation the property is an unauthorised structure; it has been constructed otherwise than in accordance with the Grant of Planning Permission; the Appellant's case is that the property cannot as a consequence be let, as a hypothetical tenant, when informed of the planning "irregularity", will not take a tenancy of the property.

(ii) Even if the property is rateable, the rate as struck by the Respondent is in the circumstances grossly excessive. In this regard, the Appellant agitates for a nil rate on the grounds hereinbefore set out: the property cannot be let because, as constructed, it is unauthorised, that is to say, it is in breach of planning.

The evidence

Mr Eamonn Halpin of Eamonn Halpin & Company Limited represented the Appellant. He gave evidence on behalf of the Appellant. He had adopted his précis of evidence as his evidence in chief. He was sworn. He was cross-examined.

Mr David O'Brien gave evidence on behalf of the Respondent. He adopted his précis of evidence as his evidence in chief. He took the oath. He was cross-examined by Mr Halpin.

Mr David Dodd, instructed by Mr Michael Collins of the Chief State Solicitor's Office, represented the Respondent.

The Tribunal has had the benefit of oral and written submissions as made by Mr Halpin and Mr Dodd.

Planning

It is clear to the Tribunal that the position in relation to the Planning Permission in respect of the property is central to a consideration of the issues as raised in this appeal. Moreover the position in relation to the Planning Permission of the property is not in issue in the proceedings. The position in relation to Planning has been documented and recorded by the relevant authorities, that is to say and in turn, Arklow Town Council, Wicklow County Council and an Bord Pleanála.

It is useful therefore and at the outset to set out and in summary form, insofar as it is material, the position in relation to Planning.

The Appellant herein applied to the relevant local authority for Planning Permission to demolish the existing dwelling house and in its place to construct a three-storey building with retail unit on the ground floor and office space over.

The local authority granted Planning Permission for this development. There was a third party appeal to an Bord Pleanála. The Bord affirmed the Grant of Planning Permission but subjected same to conditions (nine in total).

Of particular interest are conditions nos. 2 and 9.

Condition No. 2 provides as follows:

> "*The boundary wall between Condren's Lane Lower and the proposed flat roof single structure as indicated on drawing No. 08/06/03 FI received by the planning authority on the 2nd day of October 2006 shall be removed. There shall be no site boundary wall between this part of the proposed development and Condren's Lane Lower (the proposed boundary wall incorporating a door access to the rear yard should be permitted). Prior to the commencement of the development the applicant shall submit to and agree in writing with the planning authority an amended ground floor plan indicating this change.*"

Condition No. 9 provides as follows:

> "*The front elevation of the proposed development shall be amended as follows. The proposed dormer window shall be omitted along with the other windows on the street elevation and shall be replaced with windows having a vertical emphasis. In addition a roof light shall be permitted to serve the top storey rooms. A revised drawing showing compliance with this condition shall be submitted to and agreed in writing with the planning authority prior to the commencement of the development.*"

As a universal requirement it is stipulated that the construction must be in accordance with plans and drawings as submitted.

Construction commenced and was completed. On completion of the construction it becomes apparent that all is not right in the sense that there are "departures" in construction from the Grant as confirmed by an Bord Pleanála.

The Appellant, in order to regularise the position, made an application to retain the structure as constructed. Application was made in the first instance to the local authority. The local authority made a decision refusing retention permission. This decision was made on the 4th February 2014.

The refusal to grant retention was appealed to an Bord Pleanála. The Bord refused the appeal by decision dated 7th July 2014.

The Bord, in coming to its decision, had the benefit of a detailed inspector's report. On foot of that inspection, the inspector noted "many" "changes" to the building involving a "major departure" from the original permission. There was an increase in the floor size of the ground floor with a consequent reduction of the open yard area. The walling was "slightly" higher than the original boundary. These two changes in and of themselves classified as material.

On the front elevation there were two velux roof lights instead of one. The windows on the front elevation were square. The Permission stipulated vertical. There were considerable changes to the rear elevation to include a row of four square windows at second floor level. There were two velux roof lights. The developer had created a doorway onto the roof. There was a revised window design at the first floor level. The ground floor entrance and windows on to the rear yard have been revised. On the ground floor there is a doorway providing access on to the small side yard window on the opposite side. There is no elevational drawing of the four strip windows on the northern side of the yard. The original drawings indicated a front balcony at second floor level. The balcony was omitted from subsequent revisions. There is, as a consequence, additional floor area. The access stairway to the offices had been moved from the rear to the front section of the building.

It is clear from the inspector's report that the building of the rear elevation comprised a number of significant "revisions" from the plans and drawings as submitted which, in the inspector's opinion "*are significant and indicate a blatant disregard for the permission given including the need to seek agreement with the planning authority*."

Mr Halpin, in his précis of evidence, makes reference to the property being the subject of an Enforcement Notice by the local authority. At the commencement of the proceedings before the Tribunal Mr Halpin made it clear that an Enforcement Notice had not in fact been served by the local authority on the Appellant.

It is clear from the inspector's report and findings that the planning deficiencies pertain exclusively to the building and/or structure. In other words, the use of the property is not directly in issue insofar as the planning authority is concerned. The Permission as granted permits use of the part of the property with which the Tribunal is concerned as offices.

At paragraph 7 of the inspector's report it is stated as follows:

> "*As stated above, the Board granted permission for the demolition of a house and the erection of a 3-storey building comprising of shop/offices at this location in 2007. The building has been erected, it is within the Town Centre. The premises are a shop with overhead offices so in terms of location and previous permission, the use is acceptable in principle.*"

Appellant's evidence

As has been stated, Mr Halpin adopted his précis as his evidence-in-chief. In his evidence he stated that the building cannot, in his opinion, be occupied because of the decision to refuse retention permission. The property cannot be let, in Mr Halpin's opinion. It is incapable of beneficial occupation. A hypothetical tenant would not occupy the property due to "*ongoing planning proceedings*".

Mr Halpin made detailed reference to the planning position. This has been set out in some detail already. The Tribunal does not propose to repeat same.

Mr Halpin emphasised what is referred to in his précis of evidence as "*ongoing proceedings, the threat of enforcement by the local authority to demolish or greatly modify the extant structure, a situation which is now faced by the Appellant*."

Mr Halpin makes the point forcefully that this renders the property unlettable. The hypothetical tenant could not or would not rent the property. He states that the property as a consequence has a nil value.

The comparators entered into evidence by the Respondent are not true comparisons on the grounds that such comparators are not, in Mr Halpin's opinion, "*illegal structures as determined by an Bord Pleanála*". As a consequence the subject property is not, in Mr Halpin's opinion, comparable to any other value.

In Mr Halpin's opinion, the overall effect of the departure in construction from what is permitted under the Grant of Planning Permission is to change the building completely.

In cross-examination Mr Halpin accepted that he did not have any evidence of any attempt on the part of the Appellant to let the property. Mr Halpin accepted that it is open to the owner to remedy the breaches as identified by the planning authority. Mr Halpin explained that the cost of remedying the defects would, in his opinion, be significant. It was put to Mr Halpin and he accepted that the ground floor, which is not the subject of this appeal but is part of the building and covered by the decision of an Bord Pleanála to refuse retention, is occupied and is achieving a rent.

Respondent's evidence

As has been stated, Mr David O'Brien adopted his précis as his evidence-in-chief.

He gave evidence of the fact that the ground floor was occupied achieving a rent and subject to the same planning issues. The planning concerns and in particular the

boundary wall and the shape of the windows are, in Mr O'Brien's opinion, landlord issues. Under a lease or tenancy, those are issues which would fall to a landlord to fix.

The boundary is in any event of concern to the ground floor and not, in Mr O'Brien's opinion, relevant to the consideration of the rateability of the property at issue.

On his inspection of the property Mr O'Brien found a number of items (safety storage boxes). He was asked not to photograph those items.

Insofar as Mr O'Brien is concerned, there is no legal impediment to the letting of the property. There is no binding prohibition. He had no evidence of any attempt by the Appellant to let the property. In addition to this he had no evidence that the property had been advertised for letting.

Mr O'Brien is satisfied with the comparators as set out in his précis of evidence. He is happy to stand over the level of rate as applied. He is satisfied that the level is fair and equitable and in line with comparable properties.

It is noted that Mr O'Brien evidences six comparable properties. He had photographs of all six together with particulars pertaining to the area and rateable valuation. In respect of each of the six comparators, Mr O'Brien has set out in bullet points why he maintains that they are comparable. His evidence on this was not directly challenged or put in issue. Mr Halpin put it to the witness that none of the comparators advanced are struck with the planning frailties of the property under consideration. Mr O'Brien stated that he was not aware of any planning issues affecting any of the comparators. He is nevertheless satisfied that the comparators as advanced are suitable.

The issues as raised

As has been stated, the Appellant has raised the following arguments by way of appeal:

(i) The property is not rateable; it is incapable of beneficial occupation; it is not capable of beneficial occupation because, in its current state, it is unauthorised; at the time at which valuation was set the property had not been constructed in accordance with the Grant of Planning Permission.

(ii) If the property is rateable, the rate set is excessive. In making this particular argument the Appellant relies heavily on the fact that the property in its current state is unauthorised. This is raised as a discrete ground of appeal and will be dealt with as such.

(i) **Is the property rateable?**

Under s.15 of the Valuation Act, 2001, subject to provisions which are not directly relevant, (ss. 16 and 59) "*relevant property shall be rateable*". The Tribunal is required under s.15 to construe "relevant property" in accordance with Schedule 3 to the Valuation Act, 2001.

Schedule 3 to the Act insofar as it is relevant requires the Tribunal when considering whether the property is "relevant property" and "rateable" to be satisfied that:

> (a) What is involved is in fact 'property'. There does not appear to be any issue on this in the instant case. Even if there were an issue, there is sufficient persuasive evidence to allow the Tribunal to conclude that what is involved is in fact property.
> (b) The property concerned can be of 'whatever estate or tenure'. The uncontested evidence establishes that the subject property is freehold."

A property of whatever estate or tenure must come within any one of a prescribed list or categories. Of the prescribed list or categories there are two which are of particular note:

(a) "buildings,
(b) lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development."

Again, there does not appear to be any great issue on this. For the avoidance of doubt, the evidence as adduced and unchallenged is that the subject property comprises "buildings". The Appellant's précis of evidence as adopted makes extended use of and reference to "the building".

The Tribunal is required to satisfy itself that the property comes within any one of the prescribed categories as provided for under Paragraph 1 of Schedule 3 to the Valuation Act, 2001.

As in this case where the Tribunal is satisfied on the evidence as adduced that the property comes within one of the prescribed categories, the Tribunal is not required to go further and to embark on "unnecessary" consideration of whether the property in addition comes within one or other or more of the remaining prescribed categories.

Once satisfied that the property comes within one of the prescribed list or categories, the Tribunal is required to go on and consider whether the "property" complies with the condition expressly provided for in paragraph 2 of Schedule 3.

The condition as expressly provided for in paragraph 2 of Schedule 3 offers alternatives. In essence, the Tribunal must satisfy itself as to occupancy of the property. The Tribunal must, in other words, be satisfied on the evidence as adduced that the property is either occupied or alternatively unoccupied.

There is evidence of "occupation". Mr O'Brien, on inspection, observed a number of what he took to be safety deposit boxes stored on the property. This evidence is imbued with a "whiff" of mystery. In his précis of evidence the Appellant asserts that the subject property, having been completed in or around 2010, "*has never been occupied.*" Notwithstanding the unchallenged evidence of Mr O'Brien suggestive of a measure of occupation, the Tribunal is prepared to accept and so finds as fact that the subject property is unoccupied.

This being so, the Tribunal is required to consider whether and having regard to the evidence, "*the property is capable of being the subject of rateable occupation by the owner of the property*".

In *Iarnród Éireann v. The Commissioner of Valuation* (judgment of Mr Justice Barron delivered on the 27th November 1992) the Court accepted the Tribunal's determination that there were three ingredients for rateable occupation, notably (i) it must be exclusive; (ii) it must be of value or benefit to the occupier; (iii) it must not be for too transient a period.

Taking these ingredients slightly out of turn:

(i) The Tribunal finds that the Appellant's occupation of the property is exclusive. The Appellant's précis of evidence states that he is the owner of the freehold interest in the property. The Appellant's exclusive occupation of the property as owner of the freehold interest is not materially affected by the decision of an Bord Pleanála to refuse retention permission. This decision in and of itself does not dilute in any material way the Appellant's legal entitlement to exclusive occupation of the property.

(iii) There is evidence to support a finding that the Appellant's occupation of the property is not transient. The Appellant is, as stated, the owner of the freehold interest. The development was completed in or around 2010. The Appellant has been in occupation since that time. Exclusive occupation of in the order of three years, together with the fact that the Appellant holds the freehold interest, is sufficient and in the circumstances to warrant a finding by the Tribunal that the Appellant's occupation is not for "too transient a period".

(ii) Is the occupation of benefit to the Appellant?

The Appellant argues that his occupation of the subject property is of no benefit to him. The Appellant, in putting forward this argument, reasons as follows:

(a) The decision of an Bord Pleanála that the property as constructed is unauthorised within the meaning of the Planning & Development Acts.

(b) As a consequence the property is incapable of being let; a hypothetical tenant when told about the planning, will not or is unlikely to take a letting.

(c) As an adjunct to (b), the prospect of enforcement proceedings is, in effect, a bar to letting.

As stated, the Appellant argues forcibly that the decision of an Bord Pleanála to refuse retention permission together with the "threat" of enforcement by the planning authority is evidence of the complete absence of benefit to this Appellant; the Grant of Planning Permission permits use of the property as offices; the Appellant cannot, it is claimed, use or rent the property as offices by reason of the decision of an Bord

Pleanála to refuse retention permission; a hypothetical tenant when appraised of the decision of an Bord Pleanála, will refuse to take a lease.

The Respondent, on the other hand, argues that the decision of an Bord Pleanála and all or any legal consequences that flow from this decision, do not evidence the absence of benefit to the occupier; the structural changes which have given rise to an adverse finding of an Bord Pleanála are capable of being remedied; the ground floor, which is subject to the same planning decision, is currently occupied by a tenant in use as permitted by the Grant of Planning Permission and is yielding rent; the decision to refuse retention permission does not in law amount to a prohibition of use and it follows does not legally inhibit a prospective tenant from taking a letting of the property.

The Respondent and by way of assistance has drawn the Tribunal's attention to the decision in VA11/2/029 – Mary McGrath v Commissioner of Valuation, issued on the 7th December 2011.

The appellant in the McGrath case relied on grounds of appeal which are strikingly similar to the grounds as raised herein. The Appellant, Mary McGrath, argued that her property was not rateable because she was the owner of a shopping unit which was not accessible. A stud wall had been erected. The door from the subject property to the service corridor was blocked up. Even if the blocks were removed, "*the doorway would still be too narrow to allow the property to be successfully used as a storage facility*". The subject property had been described in evidence as having a shell finish with no electrical, water or sewerage connections.

The factual position as outlined might be viewed as compelling evidence of the absence of any value in any real sense to that appellant.

The Tribunal was not, however, satisfied on the evidence as adduced that the property was incapable of beneficial occupation. The measure of the absence of "benefit" to an owner appears to have been whether on the evidence as adduced the property "*could be said to be struck with sterility in any and everybody's hands*".

In rejecting the appeal the Tribunal had regard in particular to evidence that the Appellant had been engaged in discussions with other tenants concerning the possibility of letting the subject property.

The material circumstances as relied upon in this appeal are almost indistinguishable from those circumstances as relied upon by the Appellant in Mary McGrath v Commissioner of Valuation. Having said that, refusal of an Bord Pleanála to grant retention permission as relied upon by this Appellant is, it has to be said, more intangible than the impairment relied upon in the McGrath decision. The argument being put forward is nevertheless strikingly similar. The argument being that the impairment, (i.e. the refusal to grant retention) is such as to deprive the owner of any meaningful opportunity to let the subject property.

The only real point of distinction between this appeal and that of McGrath is the fact that there was evidence in McGrath that the Appellant had engaged in discussion with tenants with a view to a possible letting of the property.

In this particular appeal there is no evidence of any discussion between the Appellant and a prospective tenant. Instead this Appellant seeks to rely solely on expert opinion to the effect that the property is not lettable in its current state by reason of the decision to refuse retention permission and by reason of the related threat of enforcement action.

The Tribunal is in the circumstances constrained to consider, to weigh up and to evaluate the expert evidence as adduced.

As has been stated, it is expert opinion to the effect that the subject property is incapable of being let because of the decision of an Bord Pleanála to refuse retention permission.

This opinion is grounded on the following:

(a) The fact that an Bord Pleanála has refused retention permission. This is a matter of record. It is uncontested.

(b) As a decision of an Bord Pleanála on appeal from the local authority it is, in the circumstances, final and unappealable.

(c) The threat of enforcement proceedings.

As to (c), the evidence establishes that to date the relevant authority, which appears to be Wicklow County Council, has not taken any formal steps to compel the Appellant to comply with the Grant of Planning Permission. There is no evidence that enforcement proceedings have been taken against the Appellant. There is no evidence that enforcement proceedings are pending as against the Appellant.

It is Mr Halpin's expert opinion that the fact of refusal of a Grant of retention permission will preclude the "hypothetical tenant" from taking a lease of the subject property. This opinion is, however, materially undermined by the fact that the ground floor, which is subject to the same planning frailties, has been let and is yielding a rent. The Tribunal accepts that the Appellant as lessor or landlord has had to make concessions in order to keep this tenant in place. This does not take from the fact that there is evidence that the same property with the same planning frailties is occupied and yielding rent and, it follows, is of benefit to the owner, that is to say this Appellant.

In circumstances where the Appellant offers no evidence of the steps taken to test the market and in the normal way by offering a lease of the property, "warts and all", the Tribunal is constrained in the circumstances to conclude that the planning deficiencies, whilst undoubtedly troublesome, do not and of themselves rob this property of all or any prospect of being let for its permitted and intended use, that is to say as offices.

As to (b), the Tribunal accepts that the decision of an Bord Pleanála is, in the circumstances, a final decision. The Appellant cannot retain the structure as is. It is nevertheless open to the Appellant to regularise planning by taking the appropriate and necessary steps to ensure that the structure conforms to the Grant of Planning

Permission. The Tribunal is prepared to accept that there is likely to be significant costs involved. This does not however take from the fact that the planning irregularities are capable of being remedied.

Accordingly and with no disrespect intended to Mr Halpin, the Tribunal finds that the expert evidence as adduced does not, on this particular issue, stand up to scrutiny.

The Tribunal finds therefore that the property is capable of beneficial occupation. Further, the Tribunal finds that the property is rateable.

(ii) **Is the rate which has been set excessive?**

The Tribunal is satisfied that the valuation of the property falls to be determined under the provisions of Section 49 of the Valuation Act 2001.

Under Section 49, value must in the first instance be determined by reference to the values as appearing on the valuation list relating to the same rating authority as the property is situate in. The Tribunal must, having considered the evidence as adduced, be satisfied that the properties by reference to which value is determined are comparable to the subject property. In the event that the Tribunal is satisfied and having regard to the evidence that there are no comparable properties the Tribunal is required to determine value by reference to section 48(1).

On this issue there is, perhaps understandably, conflicting evidence.

On the one hand, there is Mr O'Brien's evidence grounded on consideration of a number of what he suggests are comparators. On the other hand, there is the evidence of Mr Halpin.

Mr Halpin's evidence before the Tribunal, that is to say, his précis of evidence as adopted and his evidence *viva voce* directly and under cross-examination his expert opinion and at the risk of being laborious, is expert opinion to the effect and in summary that the property is unlettable because of the planning irregularities and ought consequently to have a nil valuation. This, as stated, is his expert opinion forcefully and at times passionately expressed.

The Tribunal is required to consider whether this expert opinion stands up to scrutiny and insofar as it has been adduced for the purpose of (a) challenging Mr O'Brien's findings, (b) persuading the Tribunal to substitute a nil valuation for the valuation as set by Mr O'Brien and as canvassed by the Respondent.

The Tribunal is of the view that this expert opinion does not stand up to scrutiny. In so determining, the Tribunal has had regard to:

(a) The opinion is grounded on the erroneous premise that a tenant (the hypothetical tenant) is constrained to bear the cost of remedying the planning irregularities.

(b) The opinion is grounded on the equally erroneous premise that the mere prospect without more of a threat of enforcement by the planning authority, constitutes "a charge payable under an enactment" or alternatively a rate or tax on the property.

(c) The Appellant's failure to adduce factual evidence in support of the expert opinion as proffered.

(d) It is noted that in a first appeal lodged with the Commissioner of Valuation dated 14th August 2013 as submitted by Eamonn Halpin & Company Limited:

(i) The said Eamonn Halpin & Company Limited posit a rateable valuation of €7 with calculation intended, it is assumed, to support same.

(ii) Put forward a comparator, notably the first floor, 28/29 Main Street which has a rateable valuation of €7.62 setting out what appears to be the relevant square footage.

The Appellant, in fairness, did not seek to rely on this application. That said, it is before the Tribunal, having been included (and properly included) as part of the documentation emanating from the Appellant.

As such, the Tribunal is entitled to have regard to it when considering the weight to be attached to Mr Halpin's expert opinion which, as stated, is an opinion to the effect that this property should have a nil valuation for reasons which he has advanced.

It is difficult, if not impossible, to reconcile the position as expressly set out in this appeal application advocating, as it does, a rateable valuation of €7 with the position maintained by Mr Halpin in his evidence advocating a nil valuation.

In the absence of a cogent explanation, the manifest conflict as between two positions on such a fundamental issue materially undermines the opinion put forward by Mr Halpin in evidence and to the effect that the property should have a nil valuation.

Accordingly, whilst there is a challenge to Mr O'Brien's valuation and the methodology employed by Mr O'Brien in arriving at same, the said challenge does not and for the reasons as set out herein, stand up to scrutiny.

Lest there be any doubt on the issue, the Tribunal is entirely satisfied with Mr O'Brien's evidence. Mr O'Brien, in arriving at the rateable valuation, has carefully and properly identified comparable properties. He has set out in detail why he maintains those properties are comparable. He has set out in detail the rateable valuation which applies to each of the comparable properties. He has drawn a conclusion from a careful consideration of the comparable properties, the square footage of each comparator and the rate as set for each individual comparator property.

The core and/or substance of his evidence and the material which he has employed in coming to his conclusion have not and in any way been materially challenged.

Accordingly, the Tribunal is, in the circumstances, satisfied to uphold the findings concerning the rateable valuation of this property.

And the Tribunal so determines.