Appeal No. VA96/4/035

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Ray Murray Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop and store at **Lot** No: 23.24, North Main Street, Ward: Centre West, Centre B, County Borough of Cork
Quantum - Method used to convert to 1988 values

B E F O R E

Liam McKechnie - S.C.	**Chairman**
Con Guiney - Barrister at Law	**Deputy Chairman**
Finian Brannigan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF JUNE, 1997

1. At all material times relevant to the facts, matters and circumstances of this appeal the company known as Ray Murray Limited was the Occupier of certain lands, premises and hereditaments known as No's. 23.24, North Main Street in the City of Cork. In 1995 these said hereditaments were listed by or on behalf of the Occupier on the grounds that the "valuation is excessive". Messrs. Lisney, Valuers and Surveyors, were, through their Cork office retained on behalf of the Occupier to deal with this revision. Their first involvement was in November, 1995.

Being dissatisfied with the results of such revision they appealed to the Commissioner of Valuation who issued the results of that "First Appeal" on the 2nd August, 1996. On the 28th of that month they caused a further appeal to be lodged to this Tribunal in respect of the RV then applied to the said hereditaments.

2. On the 22nd April, 1997 the Valuation Tribunal wrote to Messrs. Lisney indicating that the said Appeal so lodged would be heard by this Tribunal sitting in Cork on the 11th June, 1997. Also in that letter was a specific request that "a Summary of the Evidence, proposed to be adduced on behalf of the Appellant should be exchanged with the Commissioner of Valuation and be lodged with this Tribunal on or before but not later than the 28th May, 1997". This request was in reality an application of *Rule 7(1) of the Valuation Act 1988 (Appeals) Rules, 1988.* These said rules in general were made by the Valuation Tribunal under and pursuant to powers vested in it by virtue of the *Valuation Act, 1988*. Rule 7(1) reads: "*The Commissioner and any other party shall give a Summary of Evidence proposed to be adduced to the Tribunal and there shall be an exchange of summaries between the parties (including any comparisons to be relied upon) in advance of the hearing*". The purpose of this rule is several fold. Firstly, it ensures that both parties will have the opportunity of adequately preparing for the hearing well in advance of the date upon which the appeal is listed: secondly, it ensures that the opposite party, whether it be the Appellant or the Commissioner is aware in broad terms of the evidence which the presenting party intends to adduce at the hearing of the appeal: thirdly, at least in cases where comparative evidence is relied upon, this summary affords to the receiving party an opportunity of making further enquiries and/or carrying out further inspections - all to the effect of being able to adequately and fairly deal with the evidence at the appeal: fourthly, it permits the members of the Tribunal to appraise themselves of the broad and general nature of the evidence proposed to be adduced at the appeal: fifthly, it reduces costs, saves time and thus makes the best use of the overall resources available to this Tribunal: sixthly, it is within the public interest it serves that the administration of justice, being an essential element in ensuring that fair procedures and/or a fair hearing is permitted and allowed to each party to an appeal before us.

3. In this case Messrs. Lisney did not comply with the aforesaid rule as applied to the circumstances of this appeal by virtue of the Tribunal's letter dated the 22nd April,

1997. The specified date of the 28th May went by without the Summary of Evidence being either exchanged with the Commissioner or lodged with this Tribunal. On the 3rd June a member of the Tribunal staff phoned the office of the Appellant's Agent, pointed out the failure to comply with the aforesaid rule and requested as a matter of urgency the Written Submissions. There was no response to this telephone call. A further call was made on the 5th June. On that occasion Messrs. Lisney indicated that the required submission would be "faxed" to the Tribunal on Friday, 6th June. At approximately 4:55 PM on the said 6th June a "faxed" copy of the "Summary of Evidence" was received with the original being sent on Monday, 9th June and received on Tuesday, 10th June. On the 9th June, 1997 the Commissioner also received a copy of the Submission.

4. By reason of the aforesaid circumstances this Tribunal, at the commencement of this appeal, raised of its own initiative, this issue of non-compliance and decided to deal with the matter by way of a preliminary issue. It sought an explanation from Mr. Hanafin. The explanation so offered was to the effect that the Cork office of Messrs. Lisney was "overworked" and that this type of service, namely valuation appeals, did not constitute a major part of the overall work load at this branch. Such an explanation is unacceptable to this Tribunal. It is quite clear from the aforegoing that Messrs. Lisney were involved in this case since November, 1995, that they were instrumental in dealing with the revision and with the appeal to the Commissioner, that they had several discussions with the "Appeal Valuer" before August, 1996 and perhaps some with him thereafter. It is also clear that they lodged the Notice of Appeal to the Commissioner and a Notice of Appeal to this Tribunal. In such circumstances it is perfectly evident that they must have had for a considerable period of time all the necessary information and documentation which were required for compiling the submission sought. That being the case the explanation so tendered is wholly unacceptable and is in the circumstances quite untenable.

5. This Tribunal would like to make it clear that it will not under any circumstances accept or tolerate a non-compliance with the rule above mentioned. It is crucial to the fair and balanced administration of this Tribunal and to its obligations to the public, property owners and those involved in the rating/valuation business that the specified procedures are complied with. Failure to do so will have serious consequences for those in default. Depending on the particular circumstances of

each case and of course bearing in mind fair procedures and the need to do and be seen to do justice, it is our view that every procedural act and step taken after the service of the Notice of Appeal is nullified by the subsequent non-compliance with the aforesaid rule and that if such be the case this Tribunal will not, in future embark upon or hear any appeal so tainted even if otherwise it should be listed before us. In such circumstances the defaulting party will have to apply for a new listing. Any such relisting would be subject to specified conditions and would not be heard before all appeals then pending have been disposed of. Indeed, this Tribunal would be receptive to and would seriously consider any submission to the effect that in such circumstances the Notice of Appeal itself is null and void and has no effect.

6. These views, as expressed, do not have as their object an intention to penalise. They have the sole aim and intention of ensuring and if necessary of compelling compliance with the Tribunal's specified procedures.

7. In the instant case the Tribunal with great reluctance will embark upon the hearing of the appeal proper. It will do so because it might be thought that the views herein expressed have not, in the past, been made sufficiently clear or adequately circulated so as to leave no doubt as to what the consequences would be for any future non-compliance. Therefore, as we have said, in the circumstances prevailing the Tribunal will hear this appeal but such a leniency will not be accorded to any future departures from our said rules.

DECISION ON QUANTUM ISSUE:
DELIVERED ON THE 11TH DAY OF JUNE, 1997

1. The subject matter of this appeal are the hereditaments and premises known as No's. 23.24, North Main Street in the city of Cork. These said premises, at the instigation of the Occupier were listed for revision in 1995 on the grounds that "the valuation is excessive". Being dissatisfied both with the results of the revision and the First Appeal stage, the Ratepayer by Notice of Appeal dated the 28th day of August, 1996 appealed to this Tribunal again, on the grounds that "the valuation is excessive".

2. This appeal, by way of an oral hearing, took place in Cork on the 11th day of June, 1997. The Commissioner of Valuation was represented by Mr. Tom Costello, a District Valuer with over 34 years experience in the Valuation Office with the Ratepayer being represented by Mr. Edward Hanafin, ARICS, ASCS of Messrs. Lisney. Having taken the oath, both Valuers adopted as their evidence in chief, their respective "Written Submissions". From the evidence so tendered the following facts, which essentially were not in dispute have been found by us and are in our view the only relevant facts necessary for the purposes of determining this appeal.

3. Throughout the years these premises at No's. 23 and 24, had been the subject matter of various listings for revision and/or appeals. As a result of the 1971 revision/appeals process, the said premises had separate valuations placed on each lot number. After the 1995 revision the Lot No's. were amalgamated and the RV of £95 was placed on the amalgamated lots which now cover both No's. 23 and 24. As a result of First Appeal the RV of £95 was reduced to £85. It is against that figure that this appeal now comes before this Tribunal.

4. The property comprises a large shop and stores on the ground floor with a small office on the first floor. The rest of the first floor and the remainder of this three storey property, fronting onto Main Street, is disused. The building is constructed of masonry with brick walls, rendered externally with a pitched timber and slate roof, has a solid ground floor and timber upper floors. There is a timber shop front at street level. The usable part of the property is in reasonable repair and there is some evidence that the store at the rear of the ground floor may be of relatively recent origin. The design however is dated and the layout in both shape and use is somewhat awkward. The areas have been agreed between the parties and these are as follows:-

Ground Floor	Retail Shop	639 sq.ft.
	Shop (Rear)	252 sq.ft.
	Total Retail Space	891 sq.ft.
	Stockroom	693 sq.ft.
First Floor	Office	152 sq.ft.
Total		**1,736 sq.ft.**

5. The location of this property is on North Main Street and is on the eastern side of that street. This street is undoubtedly a secondary location within the City of Cork and even in the street itself there is a definite bias towards the southern part thereof. This is explained by the fact that the southern part leads directionally towards Patrick Street and is generally leading to an area where the prime retail activities take place within the City of Cork. The street is long and narrow; it has a mix of retails shops, restaurants and licensed premises on the ground floor with some accommodation overhead. There is a one way traffic system in being with very limited car parking on the street. There is an entrance from North Main Street onto the North Main Street Shopping Centre. This entrance is pedestrian only. There is a new car park attached to this shopping centre with the vehicular access not from North Main Street but from Kyle Street. In any event we are satisfied that this new shopping centre and in particular the new car park attached to it plays little part in the retail activities being conducted in North Main Street. Some of the units within that street are empty and difficulty has been experienced in letting there from time to time. There is no doubt but that over several years the activities within the street have been in decline and whilst that decline may have arrested itself, there has been no evidence before us to show any real growth within that area over a long period of time. This question of growth will be returned to later in this judgment.

6. In addition to these facts we have had evidence on behalf of the Ratepayer that the entity trading as "Just U" fashions vacated this property in 1996 and that whilst in occupation thereof they were Lessees under lease for an unidentified period but apparently at an annual rent of £12,000. This included an obligation to pay rates which have been estimated at £3,000 leaving in all a net rent of £9,000pa. There is some evidence that there was a "connection" between the Lessee trading as "Just U" and the Landlord and accordingly we are not satisfied that this lease and the rent so identified could form a basis for coming to a conclusion as to what the correct NAV should be and hence the correct RV.

7. In addition, however, there was evidence that the present occupiers who trade under 'Main Street Menswear' have a 5 year lease on the property from 1st January, 1997 at a rent of £12,000pa. There is no question or evidence of any connection between this Lessee and this Landlord and equally so we have had no evidence that the rent is in any way soft or is in any way undermined by collateral or third party considerations. In short, the evidence satisfies us that the rent of £12,000pa was negotiated at arms

length and represents for these premises the passing rent as of the date of the Lease i.e. 1st January, 1997.

8. On behalf of the Occupier Mr. Hanafin offered an opinion as to what the correct NAV should be. His approach was based on taking the passing rent of £12,000pa calculated as and from the 1st January, 1997 and relating that back to November, 1988 by deducting from it 12%. That gives a figure of £10,600 analysed as follows:-

Ground Floor	Retail	891 sq.ft. @ £10.00 psf = £8,910
	Stockroom	693 sq.ft. @ £ 2.00 psf = £1,386
First Floor	Office	152 sq.ft. @ £ 2.00 psf = £ 304
		£10,600

RV @ 0.63% = £66.

On a quick calculation it appears to us that if one was to apply these figures and adopt the zoning approach then the area of 433 sq.ft. would have a Zone A rate of £14 psf, the area of 290 sq.ft. would have a rate of £7 psf and the balance of the space of 168 sq.ft. would have a Zone C rating of £3.50 psf. Our calculations suggest that that would cumulatively result in a figure of £8,681 for the retail area.

9. In addition Mr. Hanafin offered a number of comparisons which he said supported his approach and supported what his view of the correct NAV should be.

10. On behalf of the Commissioner, Mr. Costello adopted a different approach. He suggested that in arriving at the correct NAV one should zone the retail space into Zones A, B and C. It is his view that the Zone A in the area already identified should have a figure of £20 psf, Zone B should have half that and Zone C should have £5 psf. Adding on £1 psf on 693 sq.ft. for storage space and £5 for the 152 sq.ft. of first floor office space, in all the NAV as suggested by the Commissioner is £13,853 which gives a resulting RV of £85. It should be noted that there is approximately a 15% increase over the passing rent of £12,000. Mr. Costello offered in evidence four comparisons which he believed are relevant.

11. The primary submission on behalf of the Commissioner was to the effect that these comparisons established a tone of the list and in accordance with that tone a rate of £20 psf on Zone A is both reasonable and just. When a tone of the list is established it is our view that such a tone is of considerable assistance and considerable help in adjudicating upon what the correct NAV should be and therefore the correct RV of any given property. In order to establish a tone however it is necessary to have a number of properties which are similarly circumstanced or which can, with adjustments reasonably based, be so similarly circumstanced. Having established a tone it is then necessary to consider what weight should be given to that tone. Amongst the matters which this Tribunal would take into account in considering this question of weight are: firstly, the number of properties involved: secondly, the location of such properties: thirdly, the quality and condition of such properties: fourthly, whether the RV attaching to such properties has resulted from a revision *per se* or has resulted from a decision on first appeal or from a decision of this Tribunal. Fifthly, we would consider whether or not the Ratepayers have appeared or have been professionally represented, either at revision, first appeal or at the hearing before us. Sixthly, we would consider whether the Ratepayers were professionally represented and indeed whether that professional representation was by the same firm of Agents or whether there were different firms of Agents involved.

As one would readily appreciate the greatest weight to be attached to the tone of the list would, of course, result from the different stages of the entire process having been gone through where different Occupiers were professionally represented by different Agents. It is evident in our view that a tone based exclusively or principally on for example different RV's established by the invocation of the entire process should carry far greater weight than a suggested tone based exclusively or principally on RV's established only through the revision process where there had been no input or no representation by the Ratepayer. It is of course true to say that the Commissioner is always a party to the establishment of an RV whether by way of revision only or otherwise and that the Commissioner cannot encourage, compel or force any Ratepayer to take any part in the process. Nevertheless from the point of view of weight and looking at the matter objectively and reasonably it is clear to us that a tone so established in the manner first indicated would of necessity have to have greater weight and would of necessity have to find greater favour with this Tribunal than one established by revision only with no input. In between both of these

extremes there are several variations which have to be individually assessed in the context of any given case.

12. In this case therefore it is necessary to look at the evidence presented on behalf of the Commissioner in order see whether or not firstly a tone of the list has been established and if so, secondly, to see what weight should give to that tone. In all there were four comparisons offered in evidence: No. 3 was 49/50, North Main Street with No. 4 being 48, North Main Street. No's. 49/50 were revised in 1989. This revision was made under and pursuant to both the statutory and practice regime which pre-dated the *Valuation Act, 1988*. Equally so with No. 48. Consequently, the method adopted in establishing the RV attaching to these properties did not take into account the provisions of the last mentioned Act and in particular the agreed practice of implementing the effect of *Section 5(2)* thereof. In these circumstances, whilst undoubtedly some measure of benefit might be obtained from the further consideration of these properties and the RV's attaching thereto, nevertheless in our opinion we could not with any degree of safety rely upon either or both of these as being important precedents in endeavoring to establish a tone of the list, let alone in considering and evaluating what weight should attach to that tone.

13. That leaves properties No's. 97 and 99, both again, located at North Main Street. Mr. Costello was himself involved in No. 97 but was not so in No. 99. No. 97 was revised in 1994 and has now attaching to it an RV of £52. In total the floor area is 520 sq.ft. with a retail shop on the ground floor thereof. On a devaluation basis it is suggested that £20 psf should attach to a Zone A area of 320 sq.ft. with £10 psf attaching to a Zone B area of 196 sq.ft.. We do not have any express evidence as to whether the valuation when so fixed derived from a calculation made on this basis. We are however prepared to imply that it did. This because it was Mr. Costello who was involved. However, it is of importance to point out that the then Ratepayer was not involved in this revision, that he did not make any representations so far as we know, and insofar as the evidence goes, there was no appeal to the Commissioner at 'First Appeal stage' and obviously because of that, there was no appeal to this Tribunal. In relation to No. 99, it is suggested that the £75 RV when devalued results in a Zone A rating of £20 psf for the area of 426 sq.ft. with half that figure for the Zone B area of 212 sq.ft.. Added to that must be other areas in the subject property, namely, stores, cold room, first floor rear (office & canteen) attaching to which a price psf has been given. In this case we do not know when this RV was fixed or

whether the zoning method was adopted in its calculation. Since Mr. Costello was not involved directly himself he cannot say with certainty what the correct position is. Even however if it was and even however if that RV of £75 was calculated in exactly the same manner as it was in No. 97, it is once more of importance to point out that there was no involvement of the Ratepayer, no appeal to the Commissioner and obviously no appeal to this Tribunal. Consequently, what we have before us is evidence of No's. 97 and 99, restricted in the manner indicated, as being the only properties/RV's, put forward as establishing a tone of the list and from that tone we are invited to conclude that the zoning method is correct and that within that method a rate of £20 psf on Zone A is justified.

14. We are not satisfied that the evidence so establishes either that there exists what is properly so called a tone of the list or that, such a tone could justify a rate of £20 psf on Zone A. We believe that substantially more evidence of other properties would have to be available before there would be before us, a safe evidential base from which we could conclude that there was in fact in existence a tone of the list. Even however if we are wrong in this regard and even if the evidence did establish a tone of the list we could not with safety give that tone in this case such predominance or such priority of purpose as would enable us to adopt the zoning method or to place upon the Zone A area a figure of £20 psf.

15. Accordingly, in relation to this case, the Tribunal prefers the approach adopted by Mr. Hanafin. *Prima facia* if there is a passing rent which has been determined by market forces and which is not otherwise invalidated by third party considerations, that rent should be taken as the basis for calculating the NAV. In this case as we have above indicated there is a passing rent as and from January, 1997 at £12,000. We are satisfied that this equates with the true market rent at the relevant date. Having so determined it is then necessary to apply the agreed fraction in converting the NAV to the RV so as to relate that rent back to November, 1988. On behalf of the Ratepayer it is suggested that a reduction of 12% would be appropriate thus giving an NAV as of November, 1988 of £10,600. Mr. Costello disputes this and his view is to the effect that there was in fact no growth of either 12% or indeed at all, in retail properties in North Main Street , between November, 1988 and January, 1997. He suggested therefore that no reduction should be made to the rent of £12,000.

16. We are of the view that as a matter of probability there has been, during this period, some growth. However, cases before this Tribunal can be determined only on evidence and cannot be determined by way of submissions only. The onus is on the Appellant to satisfy us as to what would be a reasonable relationship back from January, 1997 to November, 1988. As we have said 12% is suggested. However, we are not told as to how that figure is arrived at. We are not informed as to whether the CPI was used or as to whether some other property or construction or retail index was used. We are not told whether this comes from some private analysis carried out by either Messrs. Lisney or some other firms operating in this market. We are not therefore in a position on the evidence to be satisfied that there is a sustainable base for adopting the 12% relationship. We are equally satisfied that it would be quite inappropriate for us to substitute an estimated percentage reduction when such an estimate is based on no evidence. We therefore feel that we cannot apply that suggested 12% reduction. As the Appellant has not discharged the onus of proof and has not satisfied us by way of evidence and submission as to what would be a correct relationship we are not prepared to speculate or estimate. Accordingly, whilst we feel that probably there was some growth we believe that in the facts and circumstances of this case we cannot take that into account in estimating what the correct NAV is. Since the evidence therefore before us establishes a rent of £12,000 we are going to adopt that as being the correct NAV and we apply to that figure the agreed percentage of 0.63% which gives an RV of £75.60, say £75.

17. In conclusion therefore we determine that the correct RV of the subject property namely, Lot No's. 23.24 is the figure of £75.