

Appeal No. VA96/5/017

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Patrick Lambert

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Licensed house, shop (closed), petrol station & land at Lot No. 22B, Townland:
Camolin, ED: Kilcomb, RD: Gorey, Co. Wexford
Quantum - Net annual value agreed

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Michael Coghlan - Solicitor

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF FEBRUARY, 1999

By Notice of Appeal dated the 7th day of October 1996 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £215.00 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that "the revised valuation is still excessive."

The relevant valuation history is that in November 1995 the entire premises was valued at £320. In December 1995 an appeal was lodged by the rated occupier through his agent Anthony F. O’Gorman & Co., Solicitors. The premises were inspected in July 1996. In September 1996 the Commissioner issued his decision on the appeal and reduced the R.V. to £215. In October 1996 an appeal was lodged by the appellant to the Valuation Tribunal.

A written submission prepared by Mr. Edward Hickey, a Chartered Surveyor with 26 years experience in the Valuation Office, on behalf of the Respondent was received by the Tribunal on 2nd day of April 1997.

The written submission valued the premises under three headings;

1. Nite club/Bar
2. Shop
3. Filling Station

1. Bars/Nite Club

Bars	2,850 sq.ft.
Nite Club	5,165 sq.ft.
Kitchen	560 sq.ft.
Store	600 sq.ft.
Toilets	<u>845</u> sq.ft.
Total area	10,020 sq.ft.

Turnover for year ended 31/12/1995 £373,451 (excl. VAT)

Yield 10% £37,345

Adjust to 1988 (20%) Say £30,000

R.V. 0.5% £150

2. Shop

2,442 sq.ft. (assume 25% will be used for storage).

Shop 1,832 sq.ft. @ £4.00 p.s.f. = £7,328

Store 610 sq.ft. @ £2.00 p.s.f. = £1,220

£8,548

R.V. 0.5% = £42.74

Say £43

3. Filling Station

Throughput 2,000 per week = £104,000 per annum

104,000 x £0.04 per gal = £4,160

R.V. 0.5% = £20.80

Say £21.00

In summary therefore the total R.V. of the hereditament amounts to £215.

The written submission contained two comparisons for the bars/nite club, one comparison for the shop, and one comparison for the filling station.

A written submission on behalf of the respondent prepared by John W. Corish F.I.A.V.I. F.S.V.A., Estate Agent and Valuer was received by the Tribunal on 9th day of July 1998.

This written submission described the accommodation of the premises and stated the total usable floor area as being approximately 10,841 sq.ft.

Mr. Corish's written submission contended that on an FRI lease and excluding the circulation areas that the net annual value of the premises on a long lease, with five year rent reviews would amount to £34,000 in November of 1988.

Again Mr. Corish's written submission stated that the appropriate fraction for deriving an N.A.V. was 0.3%. On this basis therefore, the written submission concluded that a rateable valuation of £102 was appropriate for the hereditament.

Mr. Corish's written submission contained a schedule of nine comparisons.

Mr. Corish's written submission contained a copy letter dated 19th January 1998 from Anthony Ryan & Co., Chartered Accountants to Mr. Patrick Lambert. This copy letter showed the turnover figure for each of the calendar years of 1995, 1996 and 1997. The copy letter further stated that in that time period the percentage decrease in turnover amounted to 35.24%.

The written submission contained copies of accounts in respect of the business carried on at the subject hereditament for the years ending 31st December 1995, 31st December 1996 and 31st December 1997 respectively. These accounts had been prepared by Anthony Ryan & Co., Chartered Accountants. The auditors stated in a note attached to the accounts for each year that the accounts had been prepared without carrying out an audit.

This case was listed for hearing on 9th April 1997 in Wexford town. On the date of the hearing Mr. Lambert sought an adjournment to enable him to engage a valuer to submit a written submission to the Tribunal. The Tribunal granted Mr. Lambert this adjournment.

The case was subsequently listed for hearing on 21st January 1998 in Wexford town. Again at the opening of the hearing Mr. Lambert sought another adjournment for the purposes of the preparation by his valuer of a written submission and its transmission to the Tribunal. The Tribunal again granted the adjournment sought by Mr. Lambert.

This case was finally heard at the Tribunal Offices in Dublin on 22nd day of July 1998. The appellant, Mr. Lambert was represented by Mr. McCarten O'Gorman, Solicitor of Anthony F.O'Gorman & Co.

Mr. John Corish, Valuer, gave sworn testimony on behalf of the appellant. He stated that the floor areas and rent for the subject hereditament had been agreed between the appellant and the respondent.

In particular the agreement as to areas was:

Main licensed premises	5,703 sq.ft.
Nite Club area	5,138 sq.ft.
Front Store	2,435 sq.ft.

The agreement as to the 1988 N.A.V. was £35,000 for the premises and £4,000 for the petrol station. Therefore the total agreed N.A.V. for 1988 was £39,000 per annum.

In his evidence Mr. Corish described the buildings in the subject as not very well built and not in a good condition.

Mr. Corish described the bar and nightclub as up to a certain standard but not a very high standard. He said the portion of the premises described, as a shop had in fact never traded as such. It was now used as a store.

Mr. Corish then referred to the decrease in turnover at the subject premises as shown in the copy letter dated 19th day of January 1998 from Anthony Ryan & Co. to Mr. Lambert. Mr. Corish stated the accountant's figures show the property is trading in a negative way and cannot sustain the payment of the rates sought by the local authority.

Mr. Corish then dealt in his evidence with the issue of the appropriate percentage to be applied to the agreed N.A.V. Mr. Corish said the subject premises could not be compared to thriving businesses in Wexford, Gorey and Courtown. He said the subject was badly located. It was located on the main Dublin/Wexford Road and people were not stopping on this busy road.

Mr. Corish referred to the comparisons in his written submission. He said these were all substantial properties. It would be inequitable to compare the subject to them.

Mr. Corish stated that the correct percentage to apply to the agreed N.A.V. was 0.3%.

Under cross-examination by Mr. Hickey, Mr. Corish stated that none of his comparisons had the 0.3% percentage. Mr. Hickey put it to Mr. Corish that one of his comparisons, The Castle Nite Club, Enniscorthy, Co. Wexford had the 0.5% percentage applied to the N.A.V. This case had been decided by the Tribunal VA96/2/074.

On re-examination by Mr. O'Gorman, Mr. Corish stated that all his comparisons were located in large towns.

Mr. Lambert affirmed with respect to the evidence he was about to give.

In response to his solicitor Mr. Lambert stated that nobody could make £40,000 per annum at his premises. He said there was no business with the volume of the traffic going through Camolin. Mr. Lambert further stated there was no population in Camolin to sustain his business properly. He also referred to the boycott by the local community, which had adversely effected his business.

In the course of his evidence Mr. Lambert repudiated the agreement as to the 1988 N.A.V. of £39,000 on which his valuer Mr. Corish, had already given evidence to the Tribunal.

At this stage the Tribunal rose for a short interval to allow Mr. Lambert to consult with his solicitor and his valuer.

When the Tribunal resumed the hearing Mr. Lambert stated that he had not understood the details of the agreement about the 1988 N.A.V. already announced to the Tribunal on his behalf. He was now not accepting that agreement.

Mr. Lambert stated that it was not possible to get £39,000 in Camolin. He said that a person would make £250 per week at his premises and give it a “go” for six months.

In his sworn testimony Mr. Hickey adopted his written submission as his evidence to the Tribunal.

In a closing submission Mr. Hickey said that the agreed N.A.V. for 1988 of £39,000 was a fair basis for arriving at a rateable valuation in this case.

Findings

The Tribunal has considered the written submissions and the oral evidence and submissions of the appellant and the respondent.

The Tribunal finds that an N.A.V. of £39,000 per annum for 1988 is a just and equitable basis for arriving at an R.V. in this case. The Tribunal further finds that the 0.5% percentage is the appropriate one to be used in deriving an R.V. in this case.

These findings are based on the evidence given to the Tribunal that the expert valuers on behalf of the appellant and the respondent agreed that £39,000 per annum in 1988 was an appropriate N.A.V. In particular the Tribunal is constrained to conclude that Mr. Corish, as an expert valuer, had recommended this N.A.V. to his client on the basis of his expertise as an independent expert valuer.

The finding as to the appropriate percentage of 0.5% is based on the failure of Mr. Corish to discharge the evidential burden on him to show that a percentage of 0.3% should apply. Mr. Corish in fact admitted that in the comparisons submitted by him none had a 0.3% percentage applied.

In this respect the Tribunal notes that in the case of Wincroft Holdings Limited t/a Castle Night Club and the Commissioner of Valuation VA96/2/074, the agent for the appellant, Mr. Nerney, compared the subject premises as being appropriate as a comparison to the subject of that appeal. In that decision of the Tribunal a 0.5% percentage was employed to arrive at an R.V.

Finally the Tribunal finds that a hypothetical tenant would take into account the potential of the premises on the Main Wexford/Dublin road with access to bar, shop, and filling station. At the hearing no evidence was adduced by the appellant as to any physical problems of access to the premises.

Therefore taking into account an N.A.V. of £39,000 in 1988 and applying the 0.5% percentage the R.V. is £195.00.

Therefore the Tribunal determines the rateable valuation of the subject hereditament to be £195.00.