

Appeal No. VA06/3/048

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Rathbeale Service Station Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Garage/Filling Station at Lot No.7b, Commons West, Swords Lissenhall, Swords,
County Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 7TH DAY OF FEBRUARY, 2007

By Notice of Appeal dated the 5th day of August, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €80.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"On the basis that the valuation as assessed is excessive, inequitable and bad in law. The property has not been fairly assessed when compared with other comparable properties already in the list."

The appeal proceeded by way of an oral hearing which took place in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 29th November, 2006 and on the 8th January, 2007. Mr. Proinsias O Maolchalain, BL, instructed by Mr. Eamonn Halpin, B.Sc. (Surveying), A.S.C.S., M.R.I.C.S., M.I.A.V.I., represented the appellant. Mr. Halpin and Mr. Eamonn Garrigan, owner of the subject property, gave evidence on behalf of the appellant. Mr. Colm MacEochaidh, BL, instructed by the Chief State Solicitor, represented the respondent. Mr. Damien Curran, B.Sc (Surveying), M.R.I.C.S., A.S.C.S., a Staff Valuer in the Valuation Office, gave evidence on behalf of the respondent. At the oral hearing both valuers, having taken the oath, adopted their respective précis, which had previously been received by the Tribunal, as being their evidence-in-chief.

PRELIMINARY LEGAL ISSUE

The hearing was first set down for the 29th November, 2006. Due to lack of clarity on the issue the matter was adjourned to the 8th January, 2007 with the appellant required to clarify for both the Tribunal and the respondent the precise issue he was raising with regard to valuation methodology and with the parties required to furnish written legal submissions by the 14th December, 2006. By letter of the 5th December, 2006 addressed to the Tribunal and copied to the respondent, Mr. Halpin, for the appellant, set out the detail of the issues of concern to the appellant as follows:

“The Appellants are unhappy with the quantum of the valuation as they believe it to be excessive inequitable

- (a) Firstly they believe that the amount attributed to the building element of the valuation is excessive inequitable and not in accordance with the established tone of the list.*
- (b) They also believe that the Commissioner’s use of the throughput formula is not equitable as it imposes a larger burden on recently revised petrol stations and fails to value these stations by reference to the value of comparable properties already in the list as set out in Section 49 of the 2001 Act.*

The Commissioner has varied his throughput formula approach in some other cases such as the Tesco filling stations and the appellants also seek to have the level applied varied in this case.”

Written legal submissions on behalf of the appellant were lodged with the Tribunal on the 14th December, 2006.

No written legal submissions were lodged by the respondent who, in a letter dated 20th December, 2006 from the Office of the Chief State Solicitor to the Tribunal and at the hearing on the 8th January, 2007, said that no legal issues were identified by the appellant in their letter of the 5th December, 2006 and that in any event the appellant was not entitled to expand its appeal beyond the statutory time limits. The respondent further added that the only matter before the Tribunal was quantum.

While it may be true that the applicants may be out of time with their written legal submissions, nevertheless we feel it is important to address the issue for the sake of transparency, clarity and fairness and to apply the principle *audi alteram partem* (hear the other side).

Appellant's submission

The appellant raised a legal issue with regard to the valuation methodology of the Commissioner. The throughput method was fundamentally flawed in that it imposed an ever increasing burden on newly revised filling stations and was contrary to section 49 of the Valuation Act, 2001. The concept of a throughput rate per gallon having a "tone" in a given rating authority area was fundamentally flawed as it was only values appearing on the valuation list that could be said to have a tone. A throughput rate per gallon was not a value within the meaning of section 49 and was *ultra vires* section 49 and contrary to natural justice. A reference to the price per gallon ratio on throughput was not a reference to the tone of values on the list. The applicant further pointed out that a similar methodology to that employed by the Commissioner in this case was considered by the Tribunal in **VA06/2/045 - Orange Tree Ltd.** with reference to the Jones Lang LaSalle retail index. Applying the reasoning in **Orange Tree** to this case the Commissioner would be found to be *ultra vires* section 49 and in breach of fairness and equality.

In response to the applicant's legal submissions to establish whether or not the Commissioner is in breach of the Valuation Act, 2001 and fair procedures, we first look to the method of valuation and then the standard of valuation.

Method of Valuation

The method of valuation generally as per section 48 of the Valuation Act, 2001 is by estimating the net annual value (NAV) of the property and the NAV is its value; the NAV being the rent which the hypothetical tenant would pay one year with another. A valuer may use many methods to estimate the NAV. The rate per square metre based on the comparison method is probably the most common method. However, there is one important proviso attached to section 48 and that is that any method of estimating the NAV cannot prejudice section 49 of the Valuation Act. In other words, to arrive at a NAV one must have regard to the values appearing on the valuation list in the same rating authority area of other properties comparable to the subject property. The only exception to this would appear to be the cost of construction method under section 50 of the Act. Further these values cannot date back further than 1st November, 1988.

With regard to the subject property the Commissioner used two methods to obtain his NAV: the price per square metre on the shop area and a rate per gallon on the throughput on the pumps. This is not uncommon with regard to petrol stations – see **VA04/3/013 - Ard Services Ltd.** decided under the 2001 Act. The methodologies used by the Commissioner are compatible with section 48. Subsection 2 of section 48 states that section 48 is “without prejudice to section 49”. What is important is that the valuer arrives at his NAV by reference to the values on the list for that rating authority area of other properties comparable to the subject property to satisfy the requirements of section 49. In the **Orange Tree** case the Tribunal found that the procedures used by the revision and appeal officers were flawed as rental values were deduced by reference to Jones Lang LaSalle retail rental index, and not by reference to values appearing on the list. This was a clear breach of section 49. In the present case the Commissioner did refer to “values” on the list. The Commissioner gave the RV assessed at 0.63% of the NAV in his comparisons. These are the values appearing on the list. The rate per square metre or the rate on throughput per gallon are methods or means to achieve the value and may not be values in themselves. Nevertheless, without them we could not arrive at a value. They are necessary for comparative evidence. The Commissioner has referred to RV values (NAV @ 0.63%) in each of his seven comparisons and these are the values appearing on the list. In doing so the Commissioner has fulfilled his obligations under section 49 of the Valuation Act.

Accordingly, the Tribunal finds that the Commissioner, as regards his methodology, has acted *intra vires* his powers under sections 48 and 49 of the Valuation Act, 2001.

Standard of Valuation

Fairness and equity is the hallmark of a good standard of valuation. The standard is set by the “tone of the list” as all subject properties should be valued in line with the tone. This is the ideal. The tone of the list should first be established before any comparisons can be made. Section 49 of the Valuation Act, 2001 does not expressly refer to the tone of the list. It lays the basis on which the tone of the list should be established by stating that a determination shall be made by reference to the values of other comparable properties on the list. The tone of the list is an integral part of valuation practice. The tone is not always easy to establish as there are many variables involved such as usage, size, the nature and time of construction, quality, location and other factors which affect the valuation. Accordingly a good valuer must bring to bear all his skills of analysis to establish a tone. Comparative analysis is a very subjective exercise. Allowances or adjustments may have to be made in order to bring the subject valuation in line with the tone.

Because of the subjective element involved valuers are often brought into conflict with each other on what is or is not a fair valuation. When this happens the issue is a matter of quantum, not law. Valuers may regard the valuation as excessive having regard to the tone of the list. If this is the case then it is a matter of quantum, not law.

The Commissioner establishes a tone of comparable properties from the list. Equally, the appellant is free to establish his tone which may correspond with that established by the Commissioner in some cases. It is the Tribunal’s job to decide if the valuation is fair with regard to the tone of the list. If we think the valuation is excessive and not in line with the tone we have jurisdiction to amend the valuation.

In the present case the Tribunal finds that the Commissioner has complied with the law and that leaves before us the issue of quantum only.

Moreover, it is beyond the remit of this Tribunal to deal with questions regarding the constitutionality of the Valuation Act, 2001 or its compatibility with the European Convention of Human Rights.

THE QUANTUM ISSUE

The Property - Description and Location

The subject property is a modern purpose built filling station with single storey shop and stores. It also has customer parking and car wash. It is located on the western outskirts of Swords approximately a half mile from the town centre.

Agreed Areas

The agreed floor areas of the property are:

Shop:	304.75 sq. metres
Offices:	33.30 sq. metres
Store:	82.60 sq. metres

Valuation History

The property was inspected for revision on 1st November, 2005 and the valuation certificate (proposed) issued on 2nd November, 2005 with an RV of €80. The appellant made representations to the Revision Officer on 28th November, 2005. The valuation certificate was issued unchanged on 5th December, 2005 fixing the RV at €80. On 12th January, 2006, the appellant appealed the valuation through Mr. Halpin and submissions were made to the Revision Officer. On 12th July, 2006 the Commissioner of Valuation issued the result of the first appeal with the RV unchanged at €80. On 5th August, 2006, the appellant appealed the Commissioner's decision to the Valuation Tribunal.

Appellant's case

Mr. Eamonn Halpin, having taken the oath, adopted his written précis and valuation which had been received by the Tribunal as his evidence-in-chief. He stated that the NAV adopted by the Commissioner of Valuation was too high in view of the following:

- The subject is not located on a primary route and does not have a high profile location.
- The NAV is excessive in view of the comparisons and established tone of the list.

- The subject is now suffering from severe competition from new fuel discount outlets in the area.
- The subject is not being fairly compared with the established tone of the list.
- The throughput at this outlet is strongly boosted by the occupier's personalised goodwill built up over many years. This goodwill should not be taxed because the hypothetical tenant could not enjoy this volume of business at this location.
- There is restricted planning permission attached to this property which limits opening hours to 10.30 pm.

Mr. Halpin contended for a rateable valuation as set out below:

Shop: 304.75 sq. metres @ €4.92 per sq. metre	= €19,784.00
Offices: 33.30 sq. metres @ €41.00 per sq. metre	= €1,365.00
Store: 90.00 sq. metres @ €34.17 per sq. metre	= €3,075.00
Car Wash:	= €6,000.00
Sustainable throughput for hypothetical tenant 800,000 gallons @ €0.04 per gallon	= €32,000.00
i.e. allowing an approximate 20% discount to the current sales to allow for the occupier personalised goodwill and exceptional ability	
Total NAV:	€6,224.00

RV @ 0.63% = €354.21

Say RV €355

Mr. Halpin stated that the property is located on the Brackenstown Road, Swords, Co. Dublin. It is owned by the Garrigan family and trades as Rathbeale Service Station Ltd. It is a modern, re-developed, neighbourhood petrol filling station and convenience shop with customer car parking and car wash. It is independently owned and run as a family business. When the re-development was proposed, Statoil, who were their suppliers at the time, refused to become involved so the Garrigan family carried out the development themselves and are now supplied by Esso. Because they are a family business they are not part of any group, so

they have to purchase their petrol at the standard rate which leaves them at a disadvantage, unlike their competitors, who are members of different groups.

The fact that the subject property has planning restrictions, (i.e. closing at 10.30 pm) is also a militating factor against their business. The property is located on a minor road and most of its business is local (from the Swords area) because they have lost substantial business due to the opening of the M1 motorway by-passing Swords. They have also lost business due to Statoil being developed locally and Tesco supermarket discount-fuel operation close by on the Malahide Road. Mr. Halpin also stated that even though car numbers have increased substantially over the years, the gross profit per gallon has declined since the late 1980s. The current gross margin runs from about 4.5 cent per litre to as low as 1 cent per litre for discount operators.

In referring to his comparison properties Mr. Halpin outlined details of the properties he put forward, namely (1) Esso, Dublin Airport, with 24 hour opening and recognised as one of the top 10 stations in the country, (2) Scanlan Texaco Oil Station, Dublin Street, Balbriggan, with a throughput in excess of 1,000,000 gallons per annum, in a good location, (3) Statoil, Main Street, Swords, no building restrictions, new development and more accessible to passing trade, (4) Statoil, Lanestown, Swords, substantial re-developed station, (5) Esso Station, occupied by Jim Beatty & Martin Rankin in a better location than the subject, located close to turn off for Skerries, Rush and Lusk at Blakes Cross, (6) Texaco, North Street, Swords is now a car sales outlet with no petrol filling station. He also referred to a number of retail comparisons in the Swords area in his précis as an indication of values applied to this type of property in the area.

Mr. Halpin also stated that, in valuing filling stations, throughput should always be considered as he felt that filling stations with similar throughput should have similar values.

Mr. Halpin's comparisons are at Appendix 1 hereto.

Cross-examination

Cross examined by Mr. MacEochaidh, Mr. Halpin stated that, in valuing filling stations, throughput and the retail elements must be taken into account. He agreed that the retail element of a filling station should only be compared with the retail element of other filling

stations if they are comparable. Mr. Halpin stated that, he had two problems in relation to the subject, one related to the retail element and the other related to throughput. He would not accept that 5 cents per gallon was a fair valuation for throughput because the levels varied from one filling station to another.

Evidence was then given by Mr. Eamonn Garrigan, one of the owners of Rathbeale Service Station Ltd. He stated that the business was family owned. They were unaware that Tesco were considering entering the petrol business when they carried out the development of the property. He also stated that since Tesco opened, their business was seriously adversely affected. The business was located beside a very large supermarket (J.C.'s Supermarket) and therefore their retail business was mainly confined to convenience foods. He stated that the throughput at the time of valuation was 18,000 to 19,000 gallons per week or approximately 990,000 gallons per annum. The old valuation was €14 and it was now proposed to increase this six times to €80, which he felt was a huge increase. He also told the Tribunal that the turnover from the petrol was about 50% higher than that of the shop in terms of income. The gross profit from the business was about 4% from petrol sales and 20% from sales from the shop.

Respondent's case

Mr. Damien Curran, having taken the oath, adopted his written précis and valuation which had been received by the Tribunal, as his evidence-in-chief.

He assessed the rateable valuation of the subject property as follows:

Shop:	304.75 sq. metres @ €23.00 per sq. metre	= €7,484.25
Offices:	33.30 sq. metres @ €2.00 per sq. metre	= €2,730.60
Store:	82.60 sq. metres @ €1.50 per sq. metre	= €5,079.90
Throughput:	1.14 ml gallons @ €0.05 per gallon	= €7,000.00
Car Wash:		= <u>€6,000.00</u>
Total NAV =		€108,294.75

RV @ 0.63% = €82.26

Say RV €80

He said his rateable valuation was assessed at 0.63% of net annual value, which was in line with the basis adopted for the determination of value for other revised properties in the locality. The valuation was made by reference to the values of comparable properties appearing in the valuation list for the Fingal County Council area.

The property comprised a modern purpose built filling station with a single storey shop and stores. It had an extensive site with a large area to the front and rear incorporating a car wash.

Mr. Curran told the Tribunal that the approach to valuing filling stations was to compare filling stations with other filling stations and therefore he would not consider retail properties as comparable properties. There were, he said, two elements to valuing filling stations, one was throughput and the other was to value any retail element attached. So you compare throughput with other filling stations' throughput and you compare the retail area with other filling stations' retail areas.

With regard to the significant difference in the valuation levels between himself and Mr. Halpin, he stated that his comparison number one, Statoil, Dublin Road, Swords (a common comparison) is located, together with the subject, on one of the two main roads into Swords. He would not accept that the traffic coming into Swords from the Dublin Road is greater than the traffic coming from the Ashbourne area. He felt that the only way to value those two properties was by the throughput method, and as both properties had almost identical throughput and are located in the same area, Statoil was an ideal comparison for the subject. Mr. Curran stated that Mr. Halpin and himself had, between them, produced ten comparisons in the Fingal rating area and seven of the ten were at 5 cents per gallon, one at 6.3 cents per gallon, one at 4.5 cents per gallon and one at 4 cents per gallon. He therefore felt that the tone was well established for valuing filling stations in the Fingal area at 5 cents per gallon with a few exceptions. He felt that four of his comparisons - Lusk, Lanestown, Blakes Cross and Carrolls, Dublin Road, Skerries - were all in inferior locations to the subject. In regard to the increase in valuation for the subject, Mr. Curran stated that the original valuation, carried out about 1988, referred to a property that no longer exists and the present valuation refers to a far superior new property, which now replaces the old building.

In response to the Chairperson, Mr. Curran said he was happy to accept Mr. Garrigan's figure of 990,000 gallons per annum.

Mr. Curran's comparisons are at Appendix 2 hereto.

Cross-examination

In reply to Mr. O'Maolchalain, Mr. Curran stated that if he valued two properties in close proximity to one another at the same time and they had the same development and sale potential, he would value them at the same commercial value. But if they were in a different location within the same county, the location would have to be looked at.

Findings and Determination

The Tribunal, having carefully considered all the evidence and arguments adduced by the parties, makes the following findings:

1. The throughput method is the method applied to petrol stations. We refer to **Ard Services Ltd.** cited above which was decided under the Valuation Act, 2001. Any method that is applied must be based on the tone of the list. While we appreciate that some competitors may buy in cheaper than others, nevertheless it is the rate on the volume of throughput which guides us.
2. The comparisons indicate that a throughput of around 500,000 gallons has an average rate of around 5 cents a gallon. Bearing this in mind the subject throughput of 990,000 gallons (agreed) a rate of 4.5 cents per gallon would not appear to be unreasonable or out of line with the tone.
3. We also take into account that the station is not on a national primary route and would miss out on passing trade.
4. We find the retail element should be valued in comparison with other retail shops in service stations, and not with retail shops per se.
5. We do not value the goodwill of a property but only the property itself.
6. We also take into account that the service station does not have permission for a 24 hour service and must, in fact, close at 10.30pm.
7. While we appreciate that there is a large increase in the rateable valuation from the old to the new property, it must be appreciated that we are talking about a totally different property. The old buildings were demolished. The subject is a new modern premises and the valuation of a new modern premises is what is at issue.

In view of the foregoing, the Tribunal determines the net annual value of the subject property to be as follows:

Shop: 304.75 sq. metres	@ €15.00 per sq. metre	= €5,046.25
Offices 33.30 sq. metres	@ €77.00 per sq. metre	= €2,564.10
Store: 82.60 sq. metres	@ €61.50 per sq. metre	= €5,079.90
Throughput: 990,000 gallons	@ €0.045 per gallon	= €44,550.00
Car wash:		= <u>€6,000.00</u>
NAV		€3,240.25
@ 0.63% = RV	€87.41	

Say RV €87

And the Tribunal so determines.