Appeal No. VA11/5/297

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

The Leopardstown Club Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 498613, Race Track (Horses) at Leopardstown Racecourse, Foxrock, County Dublin.

B E F O R E

Fred Devlin - FSCSI, FRICS **Deputy Chairperson**

Brian Larkin - Barrister **Member**

Aidan McNulty - Solicitor **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF FEBRUARY, 2012

By Notice of Appeal received on the 1st day of September, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €2,237,000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"The Valuation is excessive, inequitable."

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal on the 9th day of January, 2012 and the 16th and 22nd day of February, 2012.

2. At the hearing the appellant was represented by Mr. Martin O'Donnell, BA, FSCSI, FRICS, ACI Arb, Principal of O'Donnell Property Consultants.

3. On the first day of the hearing the respondent, the Commissioner of Valuation was represented by Mr. Paul Ogbebor, B Eng (Hons) Civil Engineering, a Valuer in the Valuation Office. On the second and third day of the hearing the respondent was represented by Mr. Mark Adamson, Team Leader, Special Projects & CMAU, a Chartered Surveyor in the Valuation Office.

The Subject Property

4. The subject property consists of the grandstands, terracing and ancillary buildings at Leopardstown Racecourse. It is agreed that the buildings and structures which are relevant property under Schedule 3 of the Valuation Act, 2001 are:
   Grandstand Buildings – 17,331 sq. metres
   Terracing – 4,898 sq. metres
   Site area – 9.5575 acres (3.867 hectares)

   Other buildings

Ancillary buildings –	292 sq. metres
Saddling stalls –	378 sq. metres
Entrance building –	193 sq. metres
Vets room etc. –	467 sq. metres
Staff quarters –	493 sq. metres

Rating History

5. As part of the revaluation of relevant property in the Dun Laoghaire Rathdown rating authority area, carried out in accordance with Section 19 of the Valuation Act, 2001, the net annual value of the property concerned was initially determined at €3,324,000 under the provisions of Section 48 of the Act, at the specified valuation date of 30th September, 2005. Following representations by the appellant, the valuation of the property concerned was entered on the valuation list at a valuation of €2,237,000.

6. An appeal against this assessment was made under Section 30 of the Act and having considered the matter, the Commissioner of Valuation decided to disallow the appeal and affirmed the valuation of €2,237,000. The appellant being dissatisfied with the Commissioner's decision made an appeal to this Tribunal under Section 34 of the Act.

The Issue

7. The primary issue in dispute is the quantum of the net annual value of the property concerned to be determined in accordance with Section 48 of the Valuation Act, 2001 at the specified valuation date of the 30th September, 2005. During the course of the hearing a second issue arose as to which method of valuation was to be preferred.

Summary of Evidence

Mr. Martin O'Donnell

8. Mr. O'Donnell in evidence said that the property concerned was the first of its type to be valued under the revaluation programme as provided under the provisions of the Valuation Act, 2001. Since there were a total of 26 racecourses, all of which would be subject to a revaluation, it was important to all the stakeholders in the valuation process if the determination of the Tribunal in this appeal would serve as a precedent, by which all other racecourses would be valued under the revaluation programme.

9. Mr. O'Donnell said that before arriving at his opinion of net annual value, in the absence of any agreed method of valuation, he had looked at how racecourses in other jurisdictions which had a similar rating valuation code as ours were valued.

10. As a result of this research, Mr. O'Donnell said he came to the conclusion that the Receipts and Expenditure method of valuation was the method to be preferred. His decision in this regard, was in line with the Practice Note published by the Scottish Assessors Association in regard to the valuation of racecourses which recommended the use of "a quasi revenue" method. The Rating Manual practice note published by the Valuation Office Agency (England and Wales) recommended that the valuation of racecourses be determined by applying a progressive percentage to the adjusted gross receipts. Copies of these Practice Notes were made available to the Tribunal.

11. Having decided to prepare his valuation on the Receipts and Expenditure method, Mr. O'Donnell set out his valuation as set out below:

<u>Receipts and Expenditure Method</u>			
<u>Income</u>			
Turnover		€5,313,611	
Less Blarney/McGuirk income		(€134,872)	
Less Westwood income		<u>(€430,461)</u>	
			€4,748,278
<u>Expenditure</u>			
Operating costs		€2,868,148	
Less crèche (Westwood)	€14,908		
Tsunami Donation	<u>€14,402</u>		
		<u>€29,310</u>	
		€2,838,838	
Admin costs	€1,441,228		
Service recovery charges	€195,929		
Less project mgt. fees	<u>€297,819</u>		
		<u>€947,480</u>	
		€3,786,318	
Other expenses	€1,103,149		
Add race mgt. charge deductions	<u>€69,418</u>		
	€1,172,567		
<u>Less</u>			
Depreciation	€1,058,487		
Recruitment fees	€10,632		
Racecourse mgt. recharge	<u>€38,092</u>		
		<u>€65,356</u>	
		€3,851,674	
Less Rent & Rates		<u>€375,008</u>	
Allowable costs		€3,476,666	
<u>Asset costs</u>			
Renewal of landlords assets	-		
Property maintenance	€29,832		
		<u>€29,832</u>	

Total deductions	€3,506,498
Divisible balance	€1,241,780
Tenant's share @ 50%	€620,890
	€620,890
Multiplier 2011 @ 0.17	
Rates adjustment factor	1.17
Profit available for rent – NAV	€530,675
Say, NAV €530,600	

12. Mr. O'Donnell said that he was aware at every stage in his negotiations with the Valuation Office that their preferred method of valuation was the Contractor's Method. Accordingly, therefore, he submitted a valuation on this using the Contractor's Method on a strictly without prejudice basis to his firmly held view that the Receipts and Expenditure method was to be preferred.

<u>Valuation on Contractor's Basis</u>

Grandstand buildings:	17,331 sq. metres @ €2,300 per sq. metre	= €39,861,300
Terracing:	4,898 sq. metres @ €360 per sq. metre	= €1,763,280
Total estimated cost		€41,684,580
Allow for depreciation/obsolescence	@ 50%	€20,812.290
Add land value – 9.5575 acres @ €200,000 per acre		€1,911,500
Total estimated cost		€22,723,790
Decapitalise @ 5% (Section 50) =		€1,136,189
Add NAV of ancillary buildings as agreed		€124,400
Total		€1,260,589
Net annual value, Say €1,260,000		

13. Under examination Mr. O'Donnell agreed that Horse Racing Ireland (HRI) had a major say in the operation of all racecourses in the country, including Leopardstown in as much as it controlled the allocation of race fixtures and the setting of race programmes. He also agreed that HRI had an over arching role in developing and promoting Ireland as a world centre for horse racing and breeding.

14. When questioned about two items under the income section of the accounts, referred to as "Discount & FOC deduction" and "BBQ voucher deduction," Mr. O'Donnell said that these were in the nature of promotion/marketing costs and hence, in his opinion, an allowable expense. The first item referred to was in respect of free tickets given to horse owners and others engaged in horse racing and breeding activities. The BBQ voucher was of a similar promotional nature and were vouchers given for items of food and drink at specific meetings.

15. In regard to the tenant's share, Mr. O'Donnell said his 50% was in line with previous decisions of the Tribunal when valuing hotels and nursing homes. The only exceptions to this general rule was that used when valuing the West Link toll in **VA05/3/006 & 007 - West Link Toll Bridge Ltd.** where the Tribunal took the tenant's share as being *"10% of the net toll income of €33,810,236."* The decision to determine the tenant's share in this manner was because of *"the magnitude of the revenue stream and its security into the future."* The income stream in regard to Leopardstown, Mr. O'Donnell said, was not of any great magnitude nor was it secure. The fact of the matter was that attendance figures at Leopardstown had dropped over the past several years (2005 – 182,125, 2006 – 180,963, 2007 – 170,182, 2008 – 155,574, 2009 – 140,723, and 2010 – 121,373).

16. When questioned further about his tenant's share of 50%, Mr. O'Donnell said the figure arrived at was not excessive, having regard to the fact that it has to allow the tenant the opportunity to achieve a profit, an allowance for risk and a return on the tenant's capital, which Mr. O'Donnell estimated to be in the order of €2 million. Mr. O'Donnell agreed that the 50% share was not a constant and that in recent negotiations in relation to a semi-state enterprise, he and Mr. Adamson had agreed a figure of 42.5 %.

(Mr. Mark Adamson)

17. Mr. Adamson, in his evidence said that, the method of valuation preferred by the Commissioner of Valuation when valuing racecourses was the Contractor's Method. Having regard to this policy, he introduced the following estimate of net annual value:

Contractor's Method of Valuation

Grandstand – 15,050 sq. metres

Terracing – 4,898 sq. metres

19,948 sq. metres @ €920 per sq. metre =	€18,352,160
Pavilion blg: 2,280 sq. metres @ €2,100 per sq. metre =	€4,788,000
	€23,140,160
Less depreciation @ 30%	€7,037,550
	€16,198,112

Site value: 9.5575 acres @ €1,500,000 per acre =	€14,336,250	
Area under buildings	25%	
	€3,584,063	
Devalue by	20%	
	€2,867,250	
Balance free of buildings 75%	€10,752,188	€13,619,438
		€29,817,550
Decapitalise @ 5%		€1,490,877
Ancillary buildings: 292 sq. metres @ €75 per sq. metre = €21,900		
Saddling stalls: 378 sq. metres @ €75 per sq. metre = €28,350		
Entrance building: 193 sq. metres @ €75 per sq. metre = €14,475		
Vets room: 467 sq. metres @ €75 per sq. metre = €35,025		
Staff quarters: 493 sq. metres @ €50 per sq. metre = €24,650		€124,400
		€1,615,277

Net annual value, Say €1,615,000

The above valuation was arrived at having regard to the following:

Building Costs

Racecourse	Sq. metres	Cost	Year	Property No.	Cost 2005*	Cost per sq. metre
Limerick	9,332	€5,700,000	1999	2163915	€8,516,206	€913
Cork Greyhound Stadium	4,143	€6,050,000	1999	2150058	€8,556,013	€2,065
Kilkenny City FC	€565.88	€332,601	2001	2202377	€407,814	€721

Site Value Evidence

(i) Carrickmines Interchange: 21.25 acres sold by tender 2004 for €33,000,000 or €1.553m per acre. Zoned residential and immediately south east of the subject property. (Agent – Hamilton Osborne King)

(ii) Murphystown Road: 5.74 acres sold by tender 2004 for €25,000,000 or €4.355m per acre. Zoned residential and west of the subject property across M50. (Agent – Hamilton Osborne King/DTZ Sherry Fitzgerald)

(iii) Blackthorn Road, Sandyford Industrial Estate: 12.23 acres sold in 2004 for €39,000,000 or €3.189m per acre. Zone office use. (Source – Irish Independent 12th January 2005).

(iv) Ballintyre Hall, Ballinteer: 24.4 acres sold in 2003 for €50,000,000 or €2.049m per acre. Zoned residential with planning for 401 residential units. Located 4 kilometres west of the subject property along M50. (Agent – Hamilton Osborne King).

(v) Carrickmines Interchange: 50 acres sold in 1999 for €46,350,000 or €0.927m per acre. Zoned commercial and now site of The Park. Located immediately south east of the subject property across M50. (Source – Irish Times 2005).

18. Mr. Adamson also submitted a valuation using the Receipts and Expenditure method of valuation as set out below:

Receipts and Expenditure Valuation

Income

Turnover		€5,313,611
Add Add back Discount FOC deduction	€394,457	
Add back BBQ Voucher deduction	€6,714	
		€5,714,782
Less Westwood income (valued separately)	€430,461	
Blarney/McGuirk (valued separately)	€134,872	
		€5,149,449

Expenditure

Operating costs	€2,868,148	
Less: Creche (part of Westwood)	€14,908	
Tsunami donation	€14,402	
		€2,838,838

Administration costs	€1,441,228		
Less: Service recovery charges	€195,929		
Project management fees	€297,819	€947,480	
		€3,786,318	
Other expenses	€1,103,149		
Add: Add back Race Mgt. Charge	€69,418		
	€1,172,567		
Less: Depreciation	€1,058,487		
Recruitment fees	€10,632		
Racecourse Mgt. Recharge	€38,092	€65,356	
		€3,851,674	
Less: Rent & rates		€375,008	
Allowable costs		€3,476,666	
<u>Asset Costs</u>			
Renewal of landlord's assets	--		
Property maintenance	€29,832	€29,832	
Total deductions			€3,506,498
Divisible balance			€1,642,951
Tenant's share @ 10%			€514,945
Excess for rent & rates			€1,128,006
Multiplier (2011 multiplier)			0.17
Rates adjustment factor			1.17
Profits available for rent – NAV			€964,108
Net annual value, Say €964,000.			

19. Mr. Adamson said that his valuation using the Receipts and Expenditure method was the same as Mr. O'Donnell's, save in two important respects.

Firstly, the discount & FOC deduction and BBQ voucher deduction and
Secondly, the tenant's share should be 10% of turnover.

When asked by Mr. O'Donnell if there was an internal practice note prepared by the Valuation Office dealing with the valuation of racecourses, Mr. Adamson said there was not. Mr. Adamson also said that the Valuation Office, to an extent, was looking to the Valuation Tribunal for guidance in this regard.

20. Mr. O'Donnell asked Mr. Adamson if, as an expert valuation witness, he was of the view that the Contractor's Method was the method to be preferred, Mr. Adamson said that it was not. When asked if it were the method he would recommend to the Tribunal for valuing the property concerned, Mr. Adamson said it was not. In his professional opinion, the net annual value of the property concerned should be determined using the Receipts and Expenditure method as put forward by him.

Findings

1. The facts regarding the property concerned are agreed. So also are details of income and expenditure.

2. Relevant property as listed in Schedule 3 comes in several categories and indeed, sub-categories. The Valuation Office as a matter of policy prepare practice notes for the valuation of the various categories of property which are available to all stakeholders in the rating process. Such a policy is to be commended, in that it gives ratepayers, their advisers and others, including this Tribunal, an opportunity to understand how valuations are determined in a clear and transparent manner.

3. Those elements of racecourses which are relevant property under the Act, are a special category. All the more surprising therefore, that the Valuation Office has not deemed it appropriate to prepare a practice note for rating thereof, particularly in a revaluation programme that is going to be rolled out over a period of years. These practice notes could be prepared with the cooperation of interested parties, including HRI. Similar practice notes could be prepared for valuing those parts of sporting stadia and other such like property which are relevant property as per Schedule 3.

4. The function of this Tribunal in relation to appeals made under Section 34, are set down in Schedule 2 which may be summarised as follows. The Chairman of the Tribunal shall assign the appeal to a division of the Tribunal which shall hold an oral hearing in order to receive evidence and submissions from the parties concerned or in some instances notice parties. At the conclusion of the hearing, the Tribunal shall

5. The Tribunal attaches no weight to the guidance notes in regard to how racecourses in other jurisdictions are valued, as introduced by Mr. O'Donnell, who had no knowledge of the statutory provisions upon which such properties are valued.

6. In the context of this appeal, the Tribunal received opinions of net annual value arrived at by both valuers using the Receipts and Expenditure method and the Contractor's Method, which is often referred to as the valuation of last resort. Mr. O'Donnell, in his evidence, was very definite when saying that his preferred method of valuation was the Receipts and Expenditure method.

7. Mr. Adamson, in his evidence, initially put forward a valuation prepared on the Contractor's Method, which he said, was the respondent's preferred method of valuation. However, under cross-examination, Mr. Adamson indicated that it was his own personally held opinion that the Receipts and Expenditure method was to be preferred in this instance. Mr. Adamson told the Tribunal that he was conscious of the fact that he was an expert witness and in that role was there to assist the Tribunal in arriving at its determination. He said he was aware that any opinions he expressed must be honestly held and independent. In such circumstances, Mr. Adamson suggested that the Tribunal adopt the Receipts and Expenditure Method of valuation in this instance.

8. Having considered the matter at some length, the Tribunal has come to the conclusion that the Receipts and Expenditure method is the one to be preferred. To do otherwise, in the light of the expert evidence adduced by both valuers, would be perverse and possibly lead to a determination that would be unsafe.

9. Having come to the above decision, the Tribunal finds in favour of Mr. Adamson that the FOC and BBQ deductions should be added back. These are discretionary items of

costs – actual or notional – which a hypothetical tenant may not wish to perpetuate. The Tribunal also finds for Mr. Adamson that the 50% tenant's share is high in relation to an enterprise where the physical assets are not being used to optimum effect.

10. Finally, it must be said that, Mr. Adamson presented his evidence and expressed his opinions in a manner that is consistent with the precepts of highest professional integrity. Mr. Adamson is a highly experienced and competent valuation surveyor and his position as Team Leader, Special Projects & CMAU in the Valuation Office is testament of his ability and leadership qualities.

Determination

Having regard to the foregoing, the Tribunal determines the net annual value of the subject property, in accordance with Section 48 of the Valuation Act, 2001, at the specified valuation date of 30th September, 2005 as set out below:

Income			
Turnover			€5,313,611
Add Add back Discount FOC deduction		€394,457	
Add back BBQ Voucher deduction		€6,714	
			€5,714,782
Less Westwood income (valued separately)		€430,461	
Blarney/McGuirk (valued separately)		€134,872	
			€5,149,449
Expenditure			
Operating costs	€2,868,148		
Less: Creche (part of Westwood)	€14,908		
Tsunami donation	€14,402		
		€2,838,838	
Administration costs	€1,441,228		
Less: Service recovery charges	€195,929		
Project management fees	€297,819	€947,480	
		€3,786,318	
Other expenses	€1,103,149		

Add: Add back Race Mgt. Charge	€69,418		
	€1,172,567		
Less: Depreciation	€1,058,487		
Recruitment fees	€10,632		
Racecourse Mgt. Recharge	€38,092	€65,356	
		€3,851,674	
Less: Rent & rates		€375,008	
Allowable costs		€3,476,666	
Asset Costs			
Renewal of landlord's assets	--		
Property maintenance	€29,832	€29,832	
Total deductions			€3,506,498
Divisible balance			€1,642,951
Tenant's share @ 40%			€657,180
Excess for rent & rates			€985,771
Rates adjustment factor - 1.17			.8547
Profits available for rent – NAV			€842,538

Net annual value, Say €843,000.

And the Tribunal so determines.