Appeal No: VA19/5/0185

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

Kanya Ltd T/A Centra **<u>APPELLANT</u>**

and

Commissioner of Valuation **<u>RESPONDENT</u>**

In relation to the valuation of
Property No. 2191776, Fuel/Depot at 30aa Unit 1 Mullagh, County Cavan.

B E F O R E

<u>Donal Madigan MRICS, MSCSI</u> **Deputy Chairperson**

<u>Barra McCabe BL, MRICS, MSCSI</u> **Member**

<u>Gerard O'Callaghan MRICS, MSCSI</u> **Member**

<u>JUDGMENT OF THE VALUATION TRIBUNAL</u>
<u>ISSUED ON THE 15TH DAY OF SEPTEMBER 2023</u>

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ('the NAV') of the above relevant Property was fixed in the sum of €151,700.

1.2 The grounds of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :

> *"As a fundamental, we believe that the filling station formula is unsuitable to value properties such as the subject property, which have more than 50% of their sales occurring in the shop. The definition of a filling station is a property that sells primarily*

motor fuel. If more than 50% of the sales in a 'filling station' occur in the shop, it is not in fact a filling station at all – it is a convenience store or indeed a supermarket with petrol pumps as an ancillary. The nature of this trade has already been explored by the Tribunal in VA15/5/069. Valuations of such properties need a complete rethink, as valuations multiples of superior supermarkets are placed on much smaller shop, solely due to the presence of pumps outside the door. The Commissioner does not investigate the turnover of a Tesco superstore adjoining a Tesco fuel outlet, nor should he. This approach should be widened to take in stations such as the subject property, which are nonstandard. Properties should be valued on a rate/m2 with an addition for pumps. A major filling station operator (Circle K, Applegreen etc.) would not be interested in the subject property as it is not capable of the fuel sales necessary to attract a bid.

1. *The native population of the town of Mullagh is just 1,348 persons. The subject property is on a regional road as is the town itself. This is not a highly trafficked route as reflected in the fuel sales.*
2. *The subject property is the only supermarket type property in the village. This has led to a complete overassessment of the subject property. The subject property has an NAV 1.5-2 x purpose-built Aldi, Lidl or Tesco stores, despite being vastly inferior.*
3. *Effectively, the subject property is being punished for its local convenience store trade, which is completely inequitable. Comparable convenience stores include PN 1989834 (Main Street Virginia – superior to the subject) and PN 1989279 (Main Street Kingscourt – superior to the subject).*
4. *The subject property's retail can be zoned or valued overall in line with comparable convenience stores.*
5. *The approach to the carwash is flawed.."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €39,800.

2. REVALUATION HISTORY

2.1 On the 29th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €151,700.

2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation manager did not consider it appropriate to provide for a lower valuation.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €151,700.

2.4 The date by reference to which the value of the property, the subject of this appeal, was determined as the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held remotely on the 16th day of February, 2022. At the hearing the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), BA. (Mod) of Eamonn Halpin & Co. Ltd and the Respondent was represented by Mr. John Doorly MSCSI, M.Sc., B.Sc. (Hons) of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

3.3 Mr. Halpin and Mr. Doorly had provided, in their respective Precis of Evidence, Declarations in the standard form and a Statement of Truth in accordance with Rule 41 of the Valuation Tribunal (Appeals) Rules 2019, which became operational from 16th September 2019.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The subject property is located on the Bailieborough Road (R191) on the northern part of the town of Mullagh, just to the North of the intersection of the Virginia Road (R194) in the South East of County Cavan. Mullagh has a population of 1,348 persons (2016 Census) and is approximately 10 kms from Virginia and 5 kms from Moynalty (in County Meath);

4.2 The property comprises of a convenience store and service station of 449.84m^2 with canopy to the front, having two petrol islands underneath, car wash and parking facilities.

4.3 The agreed floor areas, which were confirmed and agreed by the parties since the hearing are as follows:

Ground Floor	Shop	278.64m^2
	Store	140.00m^2
First Floor	Office	31.20m^2
		449.84m^2

4.4 The convenience store has a deli counter, off-licence, lotto agency, ATM, Payzone, post office and coffee service. It does not have fuel card sales, truck service, or drive through facilities;

4.5 The property is freehold.

5. ISSUE

The sole issue in dispute is the quantum of the valuation, based primarily, on how the property is best classified for valuation purposes, namely, either as a convenience store with petrol pumps, as contended for by the Appellant, or as a service station with a retail and storage area plus office, as contended for by the Respondent.

6. RELEVANT STATUTORY PROVISIONS:

6.1 All references in this Determination to the Act are to the Valuation Act 2001 as amended unless otherwise stated.

6.2 As this is a Revaluation type appeal, regard must be had, firstly, to sec. 19(5) of the Valuation Act 2001, as amended, which provides that the valuation entered on the Valuation List *shall achieve both (insofar as is reasonably practicable) –*

(a) correctness of value; and

(b) equity and uniformity of value between properties on that valuation list, and so that (as regards the matters referred to in paragraph (b)) the value of each property on that valuation list is relative to the value of other properties comparable to that property on that valuation list in the rating authority area concerned or, if no such comparable properties exist, is relative to the value of other properties on that valuation list in that rating authority area.

6.3 The net annual value of the Property must be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

> "*The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value*."

6.4 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the basis in calculating the net annual value:

> "*Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant*."

7. APPELLANT'S CASE

7.1 Mr. David Halpin, for the Appellant, contends for a valuation of € 39,500 (amended from his original Precis figure of € 39,400) as at the valuation date of 15th September, 2017 which he calculates (rearranged here for ease of comparison with the Respondent Surveyor's valuation) as follows:

			€
(1) Fuel	1,625,000 litres	@ € 0.006 per litre	9,750
(2) Car Wash			0
(3) Ground Floor Shop	Retail Zone A	118.04m^2 @ € 120.00 per m^2	14,165

		Retail Zone B	118.04m² @ €	60.00 per m²	7,082
		Retail Zone C	42.56m² @ €	30.00 per m²	1,277
	Store		140.00m² @ €	20.00 per m²	2,800
					25,324
First Floor	Office		31.20m² @ €	20.00 per m²	624
					25,948
ADD 15%	for Off-Licence				3,892
		Total (1), (2) & (3)			39,590
				say, NAV	€ 39,500.

7.2 Mr. Halpin offers an alternative valuation on an "adjusted formula basis" which yields a figure of NAV € 41,000, but this is, he submits, only for reasons of context, and ultimately his reliance is placed on the lower figure of € 39,500 set out in 7.1 above.
This alternative figure he calculates as follows:

			€
(1) Fuel	1,625,000 litres	@ € 0.006 per litre	9,750
(2) Car Wash			0 (no value ascribed)
(3) Shop sales	€ 1,250,000	@ 2.5%	31,250
			41,000
			say, NAV € 41,000.

7.3 In support of his valuation he provides details of turnover for the component parts of the property and 10 comparables, two "context" comparables, (from County Meath and County Louth) and three Tribunal decisions (from Counties Carlow and Limerick) as set out in Section A of the Appendix to this Determination (N/A to public).

The comparables are divided into two main categories, namely, **retail** and **filling station** (service station). A brief summary of these is set out hereunder:

RETAIL comparables.
(1) PN 221119. Adjacent small unit on the forecourt of 106.34m² which is assessed at an NAV of € 7,570 based on a unit value rate Zone A of € 120.00 per m²;
(2) PN 1989279. Convenience Shop in Kingscourt of 259.50m² that is assessed at an NAV of € 19,740 that is based on a unit value Zone A of € 180.00 per m² ;

(3) PN 1989666. Convenience Shop of 362.70m^2 in Ballyjamesduff that is assessed at an NAV of € 29,800 based on a unit value Zone A of € 180.00 per m^2 ;
(4) PN 1989834. Convenience Shop of 577.81m^2 in Virginia that is assessed at the NAV of € 41,700 based on a unit value Zone A of € 180.00 per m^2 ;
(5) PN 2188083. Convenience Shop of 1,043.00m^2 in Ballinagh (Co. Cavan) that is assessed at an NAV of € 61,500 based on a unit value overall rate of € 50.00 per m^2 ;
(6) PN 5009208. Supermarket of 1,351.35m^2 in Kingscourt that is assessed at an NAV of € 96,700 based on a unit value rate overall of € 60.00 per m^2 ;

FILLING STATION Comparables
(7) PN 2167148. Service station and shop of 238.78m^2 in Kingscourt that is assessed at the NAV of € 36,800 based on unit values derived from on the valuation scheme. Further important detail set out in the Appendix (N/A to public). This is a common comparable to both Appellant and Respondent.
(8) (a) PN 2211122. Service station with just pay booth/small shop of 44.44m^2 that is assessed at the NAV of € 28,400 based on unit values derived from the valuation scheme;
(b) PN 2204275. This is included for context being a major supermarket of 4,537.29m^2 located adjacent to the above in 8(a) that is assessed at an NAV of € 277,000 based on unit value rates of mainly €60.00 per m^2 overall, with corresponding lower unit value levels applied to ancillary areas of stores and loading bay;
(9) PN 1989417. Service station in Shercock, Co. Cavan, assessed at an NAV of € 13,980 based primarily on unit values derived from the valuation scheme plus a workshop of 64.51m^2 valued at € 22.00 per m^2;
(10) PN 2117890. Service station, also in Shercock, assessed at an NAV of € 31,500 based on unit values derived from the valuation scheme;
He further provides Context comparables and Valuation Tribunal decisions.
CONTEXT Comparables.
(11) PN 1553123. Service station in County Meath assessed at an NAV of € 6,250 based on unit values derived from the scheme;
(12) PN 1281447, 1281448 & 1281449 Convenience Shop of 184.02m^2 in Dundalk, Co. Louth, individually assessed at NAVs totalling € 17,010 based on unit value Zone A rates of € 120.00 per m^2 ;

VALUATION TRIBUNAL Decisions.

(13) PN 1139189 VA. 17/5/151. Munnelly Brothers. (Judgment 4th October, 2021)
Service station in Co. Carlow of 154.19m^2 which was determined by the Tribunal at an NAV of € 38,000 down from an NAV previously of €65,000. It was noted at the hearing that a letter of dissatisfaction was lodged against this Determination.

(14) PN 2148429. VA. 17/5/085. Rayro Service Station(Judgment 4th October, 2021.).
Service station in Co. Carlow of 266.79m^2 ,which was determined by the Tribunal at an NAV of € 98,500 down from the previous NAV of € 177,000. It was noted at the hearing that a letter of dissatisfaction was lodged against this Determination.

(15) PN 1277226. VA. 15/5/055. Michael Leonard. (Judgment 30th January, 2017)
Supermarket and filling station of 742.51m^2 in Cappamore, Co. Limerick that was determined by the Tribunal at an NAV of € 44,250 down from a Valuation List amended figure of € 71,200. 95% of turnover was generated from the retail element with throughput of only 120,000 litres per annum. Tribunal valued retail on a unit value per m^2 with fuel following the valuation scheme. It is understood that the appeal file is closed in this case.

7.4 In addition to the comparable evidence, Mr. Halpin, in summary, made the following points:
(a) As a fundamental, he believes that the filling station formula is unsuitable to value properties such as the subject property, because it has more than 50% of the sales occurring in the shop. The definition of a filling station is a property that sells primarily motor fuel. If more than 50% of the sales in a 'filling station' occur in the shop, then he contends that it is not in fact a filling station at all – it is a convenience store or indeed a supermarket with petrol pumps as ancillary.

(b) The nature of this trade has already been explored by the Tribunal in VA15/5/069. Valuations of such properties need a complete rethink, as valuation multiples of superior supermarkets are placed on much smaller shops, solely due to the presence of pumps outside the door. The Commissioner does not investigate the turnover of a Tesco superstore adjoining a Tesco fuel outlet, nor should he. This approach, he asserts, should be widened to take in service stations such as the subject property, which are nonstandard.

(c) Properties should be valued on a rate/m2 with an addition for pumps. A major filling station operator (Circle K, Applegreen etc.) would not be interested in the subject property as it is not capable of the fuel sales necessary to attract a bid. The native population of the town of Mullagh is just 1,348 persons. The subject property is on a regional road as is the town itself. This is not a highly trafficked route as reflected in the fuel sales. The subject property is the only supermarket type property in the village. This has led to a complete overassessment of the subject property. The subject property has an NAV 1.5-2 x purpose-built Aldi, Lidl or Tesco stores, despite being vastly inferior. Effectively, the subject property is being punished for its local convenience store trade, which is completely inequitable. Comparable convenience stores include PN 1989834 (Main Street Virginia – superior to the subject) and PN 1989279 (Main Street Kingscourt – superior to the subject). The subject property's retail can be zoned or valued overall in line with comparable convenience stores. The approach to the carwash is flawed.

(d) For the avoidance of doubt, the Appellants accept the schematic in regard to Fuel Throughput, Car Wash Sales and Shop turnover (where shop turnover is less than 50% of the entire turnover). It is therefore the 'shop sales' part of the schematic above 50% of the entire turnover which is under challenge. It is the Appellants contention that where shop sales exceed 50% of total turnover, the property transitions to a convenience store/supermarket far more readily comparable with other such properties. Indeed, the definition of a filling station is "a property which sells primarily motor fuel". Therefore, any property engaged primarily in the sale of grocery or other shop product – i.e. where shop sales exceed fuel sales – is not a filling station in the same sense. Mr. Halpin makes the further point that he considers that the Commissioner of Valuation recognises the difficulty of applying the scheme to certain properties and that a number of properties which have low throughput volumes and high shop sales have now been reflected in the scheme and where throughput has been provided and it is less than 1,000,000 litres, the percentage applied to shop sales has been reduced. A number of these types of properties may merit special attention, he contends.

8. RESPONDENT'S CASE

8.1 Mr. John Doorly, for the Respondent, contends for a valuation of € 142,200 as at the valuation date of 15th September, 2017, which is revised from the valuation figure in the Valuation List (€ 151,700) to account for a change in the value of the car wash, which was previously valued incorrectly on the basis of the Commissioner of Valuation's valuation scheme. He calculates this valuation (rearranged here for ease of comparison with the Appellant Surveyor's valuation) as follows:

	€
(1) Fuel 1,625,000 litres @ € 0.006 per litre	9,750
(2) Car Wash FMT € 10,000 @ € 0.075	750
(3) Shop FMT € 3,300,000 @ € 0.04	132,000
	142,200
	NAV € 142,200

The value of the shop, store and first floor office are included in 8.1(3).

8.2 In support of his valuation he relies on 16 comparables, including three Key Rental Transactions, three agreed prior to Tribunal in Co. Cavan and three outside the rating area, as set out in Section B of the Appendix to this Determination (N/A to public). A brief summary of these is outlined below with suitable redaction of parts:

(1) PN 2206237. Service station and shop of 187.97m^2 in Belturbet that is assessed at the NAV of € 45,000 based on unit values derived from the valuation scheme. Further important detail set out in the Appendix (N/A to public);

(2) PN 5018111. Service station with primarily fuel based business assessed at the NAV of € 10,800 based on unit values derived from the valuation scheme. Further important detail set out in the Appendix (N/A to public);

(3) PN 2167148. Service station and shop of 238.78m^2 in Kingscourt assessed at the NAV of € 36,800 based on unit values derived from the valuation scheme. Further important detail set out in the Appendix (N/A to public);

(4) PN 2198421. Service station and shop of 518.18m^2 in Ballyjamesduff assessed at the NAV of € 137,000 based on unit values derived from the valuation scheme;

(5) PN 1990451. Service station and shop of 354.10m^2 in Cootehill, Co. Cavan, assessed at the NAV of € 50,400 based on unit values derived from the valuation scheme

(6) PN 1990387. Service station and shop of 287.29m^2 in Stradone, Co. Cavan, assessed at the NAV of € 59,000 based on unit values derived from the valuation scheme;

(7) PN 5019377. Service station and shop of 192.51m^2 in Killygarry, Co. Cavan, assessed at the NAV of € 123,300 based on unit values derived from the valuation scheme;

(8) PN 1989793. Service station and shop of 442.60m^2 in Virginia, Co. Cavan, assessed at the NAV of € 32,200 based on unit values derived from the valuation scheme;

(9) PN 2211122. Service station and small shop of 44.44m^2 in Bailieborough assessed at the NAV of € 28,400 based on unit values derived from the valuation scheme;
(10) PN 2206239. Service station and shop of 211.67m^2 in Drumacon, Kilconny, Co. Cavan, assessed at the NAV of € 26,300 based on unit values derived from the valuation scheme;
Comparables agreed prior to Tribunal.
(11) PN 1990333. Service station of 428.87m^2 in Moneyhall, Co. Cavan agreed at the NAV of € 95,600 based on unit values derived from the valuation scheme;
(12) PN 2120439. Service station with shop of 387.40m^2 agreed at the NAV of € 66,700 based on unit values derived from the valuation scheme;
(13) PN 2191783. Service station with shop of 283.78m^2 agreed at the NAV of € 13,900 based on unit values derived from the valuation scheme;
Other comparables outside the rating authority area.
(14) PN 2008671 (Adamstown, New Ross, Co. Wexford.)
This is a filling station and shop of 676.91m^2 that is assessed at the NAV of € 43,600.
Shop FMT € 1,550,000 Fuel t/p 975,000 litres
(15) PN 1556510 (Portlaoise Road, Mountrath, Co. Laois.)
This is a filling station and shop of 778.96m^2 that is assessed at the NAV of € 75,600.
Shop FMT € 1,650,000 Fuel t/p 1,790,000 litres
(16) PN 1218911 (Sparr Street, Ballingarry, Co. Limerick.)
This is a filling station and shop of 971.90m^2 which is asseseed at the NAV of € 69,300.
Shop FMT € 1,750,000 Fuel t/p 750,000 litres

8.3 In addition to the comparable evidence, Mr. Doorly, in summary, made the following points:

(a) The valuations of service stations are made on a direct rental basis; suitably adjusted rents being devalued for analysis purposes to a price per thousand litres of maintainable throughput. Analysis is also carried out on turnovers achieved from shop and car wash elements of trade with regard being had to the Fair Maintainable Trade. An established method of valuation for service stations exists where rental values are linked to the trading potential and profitability of a service station. In the market the assessment of future (genuine) sustainable trading potential, and the profit that will be generated, is one of the fundamental principles - if not the fundamental principle - when valuing a service station. This method of valuation is applied to the varying types of service stations ranging from low volume sites with a basic forecourt shop offering, to larger volume sites with substantial convenience stores attached.

(b) The application of this valuation scheme has been achieved from market data and financial information analysed by the Valuation Office since the first revaluation was conducted in 2005 and suggests that the valuation approach adopted in relation to service stations is reflective of the open market and compatible with the statutory requirements of Part 5 of the Valuation Acts. Over the years the scheme has been modified to take account of low margin items. The scheme and valuation methodology has been applied in the rating authority areas revalued to date.

(c) The scheme has also been confirmed as the appropriate approach in several cases agreed prior to hearing :
VA 19/5/0110. Sharpmount Limited, Moynehall, Co. Cavan. PN 1990333
VA 19/5/1413. Cassidys Service Station Limited, Ballyconnell Co. Cavan. PN2120439
VA 19/5/0262. Finian O'Reilly, Loch Gowna, Co. Cavan. PN 2191783

(d) He refers to the Appellant's agent stating that the subject should be valued as a retail property due to 50 % of the service station turnover being in the shop and that the NAV applied to the subject is not in line with the retail values of other properties within the Mullagh area. Therefore, he submits that the agent attempts to use retail properties to undermine the valuation.

(e) The subject property is a service station and should be valued accordingly and with reference to similarly circumstanced properties. The fuel element is an integral part of the business model. The use of a sales ratio analysis to categorise a property is not recommended as it does not take account of petrol price fluctuations. It should be noted that the use of ratio analysis for service stations is not adopted by the Valuation Office. The ratio used by the Appellant's agent, he submits, is not a direct sales ratio, as this is due to the throughput value being measured at a rate per litre, not at a euro value per litre while the shop figure is at a euro value. This leads to the shop:fuel ratio to be understated.

(f) A dictionary definition of a filling station is not advocated. Dictionary definitions do not apply for rating purposes. He submits that the Appellant's agent has selected one of many, as his preferred definition. In his view, professional judgement and a property's characteristics, having regard to its most likely use by the hypothetical tenant, are relied upon when categorising a property.

9. SUBMISSIONS

There were no legal submissions in this case.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal must determine the value of the subject property so as to achieve, insofar as is reasonably practical, a valuation that is both correct, uniform and equitable, so that the valuation of the property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Cavan County Council.

10.2 Both Surveyors set out extensive submissions in their respective Precis of Evidence and followed up with further clarification of items, both at the hearing, and subsequently, for which the Tribunal is grateful.

10.3 The key contentious issue here is the classification of the property for valuation purposes and flowing from that, the suitability of the valuation scheme as it is applied to this property, given the contentions by the Appellant and the counter responses of the Respondent. For properties that are classified by the Commissioner of Valuation as service stations/filling stations, the Commissioner employs the use of a tabulated scheme of valuation, in essence a shortened form of the Receipts and Expenditure Method by reference to the trading/earning capacity of the property, where estimates are made for each component of trade (or streams of income) by applying a rate (%) to the estimated Fair Maintainable Trade (i.e. the FMT) that a hypothetical Tenant would expect to achieve at the valuation date from which to derive the Net Annual Value (NAV). This scheme assigns varying unit values, dependent on volume/turnover level to each component income generating element of a service station, be that fuel throughput, car wash FMT, retail FMT etc from which to derive an NAV. The difference here between the two Surveyors is significant, with the Appellant proposing a valuation of € 39,500, (as revised) in contrast to the Respondent at a valuation of € 142,200 (also revised). Both Surveyors agree the value attributable to the fuel throughput at € 9,750 and so the remaining differences that arise in their respective valuations are **only** in regard to the treatment of the **retail** element and the **car wash**.

10.4 In cases of rating valuation where the Commissioner of Valuation has developed a scheme of valuation, the Tribunal respects the legitimacy of that, because, on examination, it is usually accepted by Rating Surveyors and Rating Consultants for general application in the valuation of certain classes of property. Strong contrary evidence would ordinarily be required to direct the Tribunal to depart from adherence to that scheme.

10.5 Notwithstanding the comments in 10.4 above, the Tribunal considers, however, that the valuation scheme must ultimately produce the correct result in each case, to be applicable, as the fundamental test is laid down by the statutory framework of sec. 19 (5) and section 48. of the Valuation Act 2001. After the scheme is applied, the Valuer/Surveyor must take a "stand back and look" approach to the result to ensure that the value arrived at by the valuation scheme accords with reality and is properly within the context of what the law is seeking to achieve by those provisions. The valuation exercise is not completed without doing so. The necessity for employing a valuation scheme enables similar types of property to be valued in line with an agreed framework that saves time in endless negotiations for individual cases for both Respondent and Appellant. Ultimately, it is a tool of convenience for the Surveyors and Valuers acting for both parties.

10.6 Whilst it is acknowledged that the onus of proof rests with the Appellant, as with all rating appeals, to demonstrate that the valuation made by the Respondent is incorrect, the Tribunal directs caution in applying, as in this appeal, in a narrow formulaic manner, the scheme as devised without having due regard to the goals of the statutory quest posed by sections 19. and 48. of the Valuation Act 2001 which are, ultimately, the estimate of net annual value being, a **rent** payable by a **hypothetical tenant** for the subject property. It is not a case of whether a property fits the framework of the valuation scheme but whether the resultant calculations, from using that scheme, produce a rent that accords with both reality and the statutory basis.

10.7 Accordingly, care must be exercised, especially in the case of categories of property valued, primarily, by reference to their earning capacity, not to value beyond the scope of the statutory direction to encompass what might be construed as valuing the business, as opposed to the property. Details of this valuation scheme were set out by the Appellant and not, unusually, by the Respondent which gives rise to the question of whether sufficient information was placed before the Appellant to examine the scheme and for the Tribunal to investigate its application, having regard to rental evidence upon which to correctly ascertain the basis? The

Tribunal considers that the information provided by the Respondent for the scheme to be accepted as being wholly appropriate in this case is deficient.

10.8 An examination of the comparable evidence in this case leads the Tribunal to the conclusion that the valuation in the Valuation List, and further, even that figure as revised by the Respondent, is out of proportion to the other evidence and it partly accepts the contention of the Appellant, highlighting the incongruity in the figures. Both parties are agreed on the treatment of the fuel throughput for which a value of € 9,750 is attributed. Having regard to the general acceptance of rates adopted for fuel throughput in this type of property and in the absence of any contrary information, given that this component is agreed, the Tribunal follows that agreement of the parties.

10.9 There is another area of difference between the Surveyors on the treatment of the car wash, with the Appellant placing this at nil (which accords with the scheme) or € 750 as now contended for by the Respondent. For the car wash component, the Tribunal considers that it is reasonable for the scheme to apply because of the figures provided by the Appellant's agent, and that this should therefore follow the scheme, which directs, on the basis of the established FMT, being below € 5,000, that it should be valued at nil.

10.10 The variance in the rest of the valuations submitted by the Surveyors arises because once this is classified as a service station, then the element of turnover for the shop is fully taken into account (following the formula of the Commissioner of Valuation's valuation scheme for this category of property). Consequently, the Tribunal believes that the application of the valuation scheme in this case, for the retail FMT, acts to prejudice the retailer for having petrol pumps to the front of a convenience store by increasing the value of that retail component, the shop, **disproportionally**, relative to other retail properties valued on a unit value per m^2 basis overall or on a zoned per m^2 basis.

10.11 Strict application of the valuation scheme for the retail element of this property produces a higher valuation than is believed to be either correct **and** both equitable and uniform (as required by the Valuation Act) and, accordingly, must be adjusted or abandoned. Whilst difficulties can arise in trying to combine different methods of valuation for a single property, in this case the magnitude of the adjustment required to the retail FMT (to follow the valuation scheme formula) is so great that it persuades the Tribunal that a revised approach is warranted to properly satisfy the twin requirements of s.19(5) as regards (a) correctness of value and (b) equity & uniformity. The legislation envisaged such a situation arising by the provision in s. 37. (4) of the Valuation Act, 2001, as amended, which provides:

> *"37. (4) For the avoidance of doubt, neither subsection (1) (a) or (2) (b) (ii) (so far as it relates to section 19(5)) nor section 19(5) shall require the Tribunal to achieve the determination of the value of a property concerned by reference to any particular method of valuation and the Tribunal may arrive at its determination by reference to whatever method of valuation or combination of methods of valuation as the Tribunal, in its discretion, may deem appropriate"*

10.12 A review of the evidence submitted suggests that on a comparative unit value rate per m^2 the applicable figure for the retail area is € 120.00 per m^2 on a zoned basis (if we adopt the unit value Zone A rate applicable generally in the town or even on the adjacent retail unit) or € 50.00 per m^2 on an overall basis, going further afield. Ancillary areas such as stores can be taken at rates bearing a logical lower unit value rate, relative to the retail rate. An addition could be made for the benefit of the off licence. As this is the only supermarket in the village it suggests this property possibly enjoys a monopoly of trade but, could also, by contrast, indicate, by the lack of competitors, that there is an insufficient volume of trade with which to attract other operators to the location. In the absence of any more pertinent information, the Tribunal considers it to be more likely a case of trade being adequate but not extraordinary. However, the next question that arises is if the value as retail alone captures the disparity between a supermarket as a standalone and a supermarket with the benefit of fuel customers?. Mr. Halpin's comparable number 7. of his filling station type portrays an example where the scheme can be tested against rental evidence, albeit, somewhat before the valuation date. His analysis of that property is that the retail element was valued at what effectively amounted to a premium of 18.1% to the overall retail unit value rates of neighbouring units. There is a certain synergy between the retail component of the property and the fuel as the latter acts to attract additional custom to the retail over and above the typical retail only (or, non-fuel) customer.

10.13 Notwithstanding the evidence advanced by Mr. Doorly for the Respondent, the Tribunal is persuaded by the contrast in the net annual value of the comparable properties displayed in the evidence put forward by Mr. Halpin for the Appellant where he demonstrated that the current valuation of the retail element devalues to an equivalent zoning unit value rate of € 580 per m^2 Zone A which places it significantly ahead of the Zone A rate in the rest of the town as well as to the adjacent retail (smaller) unit, all being valued at the same Zone A rate of € 120.00 per m^2. The Tribunal considers that it does not believe the hypothetical Tenant envisaged by sec. 48 would be willing to pay so much more for the subject property given the pattern of net annual values of other retail properties because the property must be viewed "vacant and to let" at the valuation date. Undue reliance on accounts and consequent FMT estimates runs the risk of straying into the territory of valuing the business rather than the property.

10.14 Mr. Halpin had offered an alternative valuation (but secondary to his primary valuation) for the retail element for which he took an estimated FMT of € 1,250,000 and applied a rate of 2.5% to that to yield € 31,250 in contrast to Mr. Doorly for the Respondent who adopted an FMT for the shop of € 3,300,000 and applying the scheme valued this at 4% to yield an NAV for this component of € 132,000. The KRTs advanced by the Respondent to confirm the application of the scheme give the following pattern:

	Location	Size	Rent	NAV	NAV/Rent
KRT 1	Belturbet	187.97m^2	€ 59,000 p.a.	€ 45,000	0.7627
[Reduced since the appeal hearing to NAV € 39,900					0.6763]
KRT 2	Cavan town	16.00m^2	€ 12,000 p.a.	€ 10,800	0.900
KRT 3	Kingscourt	238.78m^2	€ 31,200 p.a.	€ 36,800	1.1795

This range indicates, that for these three valuations overall, to include fuel, shop FMT and car wash is (revising KRT No. 1 to reflect revised NAV) 0.6763 to 1.1795 in the inter relationship between rent and NAV. In simple percentage terms that is a spectrum or range of 50.32%. This corresponds to 25.16% either side of the mean (par). It is the view of the Tribunal that to state that these three pieces of evidence support the valuation scheme is adopting a very flexible approach and these can only really be said to be loosely in accord with the scheme. However, in the absence of further rental evidence it is all that we have to work from in this appeal. Aside from rental evidence, we also have the three cases agreed prior to hearing being the Respondent's three comparables in Co. Cavan, being his number 11, 12 & 13-Moynehall, Ballyconnell and Loch Gowna. An examination of these indicates that, in respect of the shop

FMT, that allowances were granted from the FMT to reduce the effective rate adopted to value the shop FMT to a net effective rate of 2.877%, 2.99% and 1.9% respectively.

10.15 An analysis of all the comparables, including the common comparable (No. 7 for the Appellant and Respondent No. 3) indicates to the Tribunal that the shop FMT has been over valued having regard to all the relevant factors but chiefly, location, size, expected earning capacity, and relative value in regard to other NAVs in the list as documented by the Appellant. Some radical adjustment must be undertaken to bring the assessment into line with the range of values in the Valuation List, because the mathematical relationship between rents cited in evidence and their NAVs does not follow a firm or easily discernible pattern. This is to reflect the value that most likely corresponds with what a hypothetical Landlord and Tenant would agree for the property without undue reliance being paid to actual trade and an overly optimistic view of that earning capacity.

10.16 The key issue arising here is the application of the valuation scheme in order to derive a net annual value that complies with the requirements of sec. 19 (5) and sec. 48(3) of the Valuation Act 2001. As the component relating to fuel throughput is agreed, and the issue of the car wash is dealt with above, the remaining item in dispute is the retail element of the valuation. As the Appellant accepts the application of the scheme save for this element the Tribunal considers that it must therefore endeavour to compute a result that produces an accurate net annual value within the parameters of the scheme, but adjusted, as required, to produce the correct result within the statutory framework. Accordingly, the Tribunal considers that a significant adjustment must be made to the retail FMT to align it best with the comparables and to bring it more into line with the corresponding net annual values for retail properties, as advocated by the Appellant. The Tribunal considers that an adjustment downwards of the shop FMT is necessary to provide a more **equitable** Net Annual Value, reflecting a value for the property as opposed to the business, and considers that this adjustment should be of the order 60% which brings the estimated shop FMT down to € 1,320,000 that, according to the scheme, is then valued at a rate of 3.5%. It is understood no allowances apply to discount this amount any further.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to **€ 55,950.**

This is calculated as follows:

(1) Fuel	1,625,000 litres	@ € 0.006 per litre	9,750.00
(2) Car Wash			0.00
(3) Shop FMT	1,320,000	@ € 0.35	46,200.00
		NAV	**€ 55,950.**

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.