

Appeal No. VA95/1/012

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

**Heinz Surenmann t/a Tomgar Stud**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Racing Stables and Land at Map Ref: 1E, Townland: Tomgar, ED: Ballycanew, RD: Gorey, Co. Wexford

Agricultural exemption - Training of horses

**B E F O R E**

**Henry Abbott**

**S.C. Chairman**

**Mary Devins**

**Solicitor**

**Patrick Riney**

**FRICS.MIAVI**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF DECEMBER, 1995**

By Notice of Appeal dated the 10th day of April 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £225 on the above described hereditament.

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

- "(1) the rateable valuation of the property is excessive
- (2) the buildings contained in this particular property are all agricultural buildings and as such should be exempt from rates."

**The Property:**

The property comprises a large portal frame industrial/commercial building with concrete stanchions and concrete roof trusses. The roof is up to 30 feet high and there is unhindered circulation throughout the building. To the front is the reception area and a block of stables. To the side is a two storey lean-to comprising stables and tack rooms on the ground floor and the first floor living quarters for the manager and part viewing area. To the rear is a block of open stables with a large arena in the middle with access from all stables. The location is close to the village of Ballycanew on the main road from Gorey to Wexford.

**Valuation History:**

The complex was first valued in 1993/4 Revision.

**Written Submissions:**

A written submission was received from Mr. Frank O'Donnell, B.Agr.Sc., FIAVI, MIREF, Principal of Frank O'Donnell & Company, Valuation and Rating Consultants on behalf of the appellant.

In his written submission, Mr. O'Donnell described the premises as a stud farm on 62.5 acres outside the village of Ballycanew. He said that the issue in this appeal was both the quantum and rateability of the subject premises. In relation to the issue of quantum Mr. O'Donnell set out his calculation of the rateable valuation as follows:-

No	Description	Area (sq.ft)	Rate psf	NAV
1	Exercise Arena	11,617	£0.60	£6,970.20
2-4	Stables (18 No.)	4,885	£0.50	£ 2,442.50
3	Tack Room	920	£0.50	£ 460.00
5	Boiler Room	310	£0.50	£ 155.00
7	Open Lean-to (front)	1,917	£0.20	£ 383.40
6	Open Lean-to (rear)	4,949	£0.20	<u>£ 989.80</u>
				<u>£11,400.90</u>
			RV @ 0.5%	£57.00
	1st Floor Accommodation	2,464	£1.50	£3,696.00
			RV @ 0.5% =	£18.00

On the issue of quantum Mr. O'Donnell offered two comparisons:-

- (1) **VA94/1/013 - Rina Myers t/a Rockland Stables v. Commissioner of Valuation**  
 (2) **VA93/3/035 - Trustees of Punchestown Racecourse v. Commissioner of Valuation**

On the issue of rateability Mr. O'Donnell offered two comparisons:-

- (1) **VA88/0/340 - Cork County Council v. Commissioner of Valuation**  
 (2) **VA88/0/348 - Cork County Council v. Commissioner of Valuation**

He said that it was incorrect to describe the premises as either racing stables or riding school as it was in fact a stud farm. He submitted therefore that the buildings contained in the subject hereditament are all of an agricultural nature and as such should not be rated. In conclusion, Mr. O'Donnell said that a fair rateable valuation for the property would be of the order of £75 to be apportioned as follows:- Agricultural - £57.00 and Domestic - £18.00.

Together with his written submission Mr. O'Donnell also submitted a statement from Mr. Paddy Murphy, Stud Manager, Tomgar Stud, Ballycanew, Co. Wexford and a statement from Mr. Tommy Brennan concerning Tomgar Stud, Ballycanew, Co. Wexford.

A written submission was received on the 14th day of September 1995 from Mr. Philip Colgan, District Valuer with 27 years experience in the Valuation Office on behalf of the respondent.

In his written submission, Mr. Colgan described the premises and set out its valuation history. Mr. Colgan assessed rateable valuation on the subject premises as follows:-

First Floor Domestic	RV £15.00				
Office/Reception (b)	910 sq.ft.	@	£2	=	£1,820
Ground Floor Stables (a)	910 sq.ft.	@	£2	=	£1,920
Open Stables (e, f)	3,406 sq.ft.	@	£1.50	=	£5,109
Tack Rooms	920 sq.ft.	@	£2	=	£1,840
Equestrian/Training Arena (e)	11,707 sq.ft.	@	£2.60	=	<u>£30,438</u>
Breeding Stables	2,422 sq.ft.				
			<b>Total</b>		<b><u>£42,507</u></b>

NAV Say	42,000 x 0.5% =	£210.00
Add Domestic		= <u>£ 15.00</u>
RV		= <u>£225.00</u>

Mr. Colgan said that he would compare the subject premises to a large grain stores or nearby modern industrial building. It is built to this standard and the functions carried on are

commercial and in no way could be described as a farm yard enterprise. Mr. Colgan offered four comparisons as follows:-

- (1) **Orchards Homes Limited (Ann Myler) Ramstown Lower, Gorey**  
 1993/4 First Appeal  
 Old Factory Buildings 20,100 sq.ft. @ £1.00psf = £20,100  
 Offices 548 sq.ft. @ £2.00psf = £ 1,096  
 £21,196  
 NAV - £22,200 x 0.5% = RV £110  
 Domestic £ 30  
 RV = £140
- (2) **Custom Compost Limited, 8B Ballyminann Hill, RD: Gorey**  
 VA91/1/5  
 Mushroom compost factory in rural location  
 Offices @ £3.00 psf  
 Sheds, stores @ £1.50psf and £1.00psf  
 NAV - £42,000 @ 0.5%  
 RV £210.00
- (3) **3.3a to 37 Goreybridge, RD: Gorey**  
 Former old tanning factory in very poor repair subdivided into a number of workshop units.  
 NAV taken @ £1.12psf for various units
- (4) **Weather Glaze Limited, 7D1 Cloonatin Lower, RD: Gorey**  
 Factory @ £1.80psf and £1.50psf

**Oral Hearing:**

The oral hearing took place in Wexford on the 26th day of September 1995. David Hardiman B.L. instructed by O'Doherty, Warren & Associates, Solicitors, appeared for the appellant. Mr. Frank O'Donnell, B.Agr.Sc., FIAVI, MIREF, Principal of Frank O'Donnell & Company, gave evidence in addition to the manager of the stud, Mr. Patrick Murphy and Mr. Tommy Brennan. Margaret Nerney B.L. instructed by the Chief State Solicitor appeared for the respondent with Mr. Phil Colgan, Valuer from the Valuation Office.

From cross examination of the witnesses, it emerged that there were some jumps in the arena. It was indicated that while a considerable amount of purchased concentrates were fed to the horses especially indoors, an equally significant amount of hay required to feed them was saved on the farmland associated with the subject and this year 500 round bails were packed into storage. Mr. Thomas Brennan, a former distinguished international rider for Ireland

described the fact that Mr. Surenmann houses ten mares, two stallions together with a number of young stock which he believed could be in the region of 40-45. He said the intention was to breed foals and hopefully produce top quality show jumpers. He said that no outside horses were permitted on the premises and he said that the buildings provided at Tomgar were that of a standard furnished stud farm. The provision of an arena and detached stabling facilities was in his opinion an integral part of any stud farm.

He said that in this particular case the exercise arena fulfils the role of accommodating the young stock in bad weather as well as being used with more traditional roles i.e. covering the mares and exercising the young horses. Under cross examination he also conceded that the arena could be used for schooling and jumping young horses as well as affording them the more natural exercise on a loose housing basis during the winter.

He stated that the sport horses concerned were bred for show jumping and eventing and that ideally the young three year old horses would be sold out after the minimum of handling and before breaking on the basis of appearance and breeding only. However, he said that the market in Ireland for such animals had become sluggish and purchasers more discriminating. He said that sometimes if the animals are not sold by four years of age they would have to be broken and brought to a stage of indicating some promise - "they would have to go to battle". This meant that they would be taken out to a few local shows to prove their metal with an eye to sale. Mr. Brennan explained that this is a course which would be forced upon an owner who was left in a position where the animals could not be sold at the initial and optimal stage for horse producers. Mr. Brennan said that at present the management were trying to select stock so as to ensure higher prices and he said that the whole process of breeding was being tidied up. The general thrust of the evidence was that perhaps Mr. Surenmann had not aimed high enough in terms of breeding to beat the market and that he had now an embarrassment of young stock coming on which of necessity at the three or four year old stage would have to be kept saleable or face calamitous prices through "doing battle".

The evidence was that no member of the public was permitted to use the facilities and no application was made for government grants for the facility on the basis that commitment to the public by way of providing equestrian facilities would be required. While there was a viewing area, some of the cordoned off part of the premises had been changed to a domestic dwelling for management or staff. While the construction of the premises in structural terms resembled industrial premises, nevertheless in finish and in terms of ability to withstand the heavy duty pressures of industry, the building did not match up in terms of foundation,

flooring services or fire safety equipment. The building in any event did not have industrial planning permission. The evidence was however, that if it was an agricultural building it was an agricultural building built to a high standard mirroring the enthusiasm of its owner to include everything under the one roof.

There followed further debate on quantum along the lines of the précis which was helped by the intense argument on exemption.

### **The Law:**

The law relating to the issue in this case is summarised in the judgment of Keane J. in *International Mushrooms Limited v. Commissioner of Valuation [1994] 2ILRM* pg. 124 as follows:

*Section 12 of the Valuation (Ireland) Act 1852* provides that:

"For the purposes of this Act the following hereditaments shall be deemed to be rateable hereditaments; viz, all lands, buildings, and opened mines, all commons and rights of common, and all other profits to be had or received or taken out of any land; [and in the case of land or buildings used exclusively for public, scientific or charitable purposes, as hereinafter specified, half the annual rent derived by the owner or other person interested in the same, so far as the same can or may be ascertained by the said commissioner of valuation;] and all rights of fishery; all canals, navigations, and rights of navigation; all railways and tramroads; all rights of way and other rights of easements over land, and the tolls levied in respect of such rights and easements, and all other tolls."

The words in square brackets were repealed by s.3 and the schedule to the *Local Government (Rateability of Rents)(Abolition) Act 1971*. *S.14 of the Act of 1852* provides that:

"No hereditament or tenement shall be liable to be rated in respect of any increase in the value thereof arising from any drainage, reclamation, or embankment from the sea or any lake or river, or any erection of farm, outhouse, or office buildings, or any permanent agricultural improvement as specified under [10 & 11 Vict., c.32, s.4] made or executed thereon within seven years next before the making of such valuation or revision."

*S.2 of the Valuation Act 1986* provides that:

"For the purposes of the Act of 1852, property falling within any of the categories of fixed property specified in the schedule of the Act of 1852 (inserted by this Act) shall be deemed to be rateable hereditaments in addition to those specified in s.12 of that Act."

The schedule, as inserted by *s.3 of the Act of 1986*, is in the following terms:

"(1) (2)  
*Ref. No Categories of Fixed Property*

1. All constructions affixed to lands or tenements, other than buildings referred to in s.14 of this Act.
2. All lands developed for any purpose other than agriculture, horticulture, forestry or sport, irrespective of whether or not such land is surfaced, and including any constructions affixed thereto which pertain to the development.
3. All cables, pipelines and conduits (whether underground, on the surface or overhead), and including all pylons, supports and other constructions which pertain to them.
4. All fixed moorings, piers and docks.
5. Plant falling within any of the categories of plant specified in the schedule to the Annual Revision of Rateable Property (Ireland) Amendment Act 1860 (inserted by the Valuation Act 1986)."

**The Facts:**

- (1) The premises is a large integrated premises having built into it a large indoor arena suitable for keeping and exercising horses, stables and ancillary housing, a viewing area and staff quarters.
- (2) There is a reasonably extensive amount of land used in conjunction with this building both from the point of view of providing hay and grazing outside the winter months.
- (3) The indoor arena is used to allow free exercise of younger animals and foddering on a group basis.
- (4) The purpose of the enterprise is to produce sports horses saleable on the hoof at an optimum three year period with a minimum of handling or possibly recently broken.
- (5) Due to slowness of marketing either a greater or lesser proportion of the animals intended for sale may have to continue being kept on the lands and premises for further attempts at sale.
- (6) Such further attempts at sale require that the animals "go to battle" in competitive

shows on a local basis so as to keep the value by performance which it was hoped they would have by inspection at the optimum period.

- (7) In order to "go to battle" the young animals must have a minimum of training to ensure that they can be shown at the local shows or privately in the arena to the best effect.
- (8) The indoor arena certainly when not occupied by feeding animals is suitable, (and is probably used) for schooling and training of the animals which have to "go to battle".

This schooling and training of the animals intended to "go to battle" is different in quality and intensity to the normal exercising and handling of breeding and growing horses and in the context of the subject represents a task imposed by a sluggish market which is more akin to a salvage operation on the stock rejected by the market than any prime commercial purpose of the establishment.

### **The Submissions:**

Ms. Nerney for the respondent submitted that the fact that training occurred meant that the subject was a training establishment and as such rateable. It was conceded that thoroughbred training establishments were rateable. Ms. Nerney referred to the following passage of the judgment of Henchy J. in *Nixon v. Commission of Valuation [1980] IR* at pg. 346 here quoted:-

"I consider that the words 'farm.... buildings' in s.14 of the Act of 1852 should be given their ordinary meaning, namely, buildings on a farm which are used in connection with the farming operations of the farm. That is what these poultry houses are. They are used for intensive poultry farming as houses in which chickens are reared to be sold as broilers or in which laying hens are kept for egg production. They are not used as a separate or self-contained activity. They are situated on the farm and are a related part of its activities. It is impossible to treat them as other than an integral part of the farming operations. In each case the litter from the poultry house provides valuable fertilizer for the rest of the farm, thus a substantial saving in the expenditure on artificial fertilizer. They are thus an important adjunct to the purely agricultural use of these farms. In Mr. Nixon's case, water for the birds is supplied from a well on his farm. In Mr. Quinn's case, grain grown on his farm is scattered on the litter as scratch food for the young fowl. In those circumstances it cannot be held that the poultry houses are not a part of the farming operations on these farms. Intensified production of cattle, pigs and fowl in specialised houses of this kind has become a common feature of modern farming."



Ms. Nerney then referred to the interpretation of this passage by Keane J. in *International Mushrooms v. Commissioner of Valuation* at pg. 126 as follows:-

"The whole tenor of the passage is that buildings should be regarded as 'farm ... buildings' where they are buildings on a farm which are used in connection with farming operations on that farm and not otherwise. If they come within that description, it is immaterial that activity of a relatively intensive nature is carried on in them."

She submitted that the occurrence of training in the premises took them out of the farm exemption and the very intensity of the use meant that they were not used in connection with farm activities.

Mr. Hardiman for the appellant also referred to *Nixon v. Commissioner of Valuation* and to the judgment of Mr. Justice Barrington in *Knockhall Piggeries and Inspector of Taxes* delivered on the 2nd day of May 1985. He stated that the predominant business of the subject premises was the breeding, production and sale of young horses. He stated that to accept the respondent's submissions would be to use the undoubted occurrence of training in the process of production and sale as an "icon" the presence whereof had the effect of immediately removing the building from the exemption contained in *Section 14 of the 1852 Act* and that the training of the horses was an integral part of sale of such animals which was the concluding act of their production and conversion of the valued added of such production into commercial returns for the enterprise.

### **Conclusions:**

#### **(1) Quantum**

Bearing in mind the decision of the Tribunal in *VA94/1/013 - Rina Myers t/a Rockland Stables v. Commissioner of Valuation* and *VA93/3/035 - Trustees of Punchestown Racecourse v. Commissioner of Valuation* the Tribunal fixes a valuation of £115 on the building and £7 on the land. This determination must be viewed in the context of the later conclusions of the Tribunal.

#### **(2) Rateability**

The Tribunal holds that the only aspect of the operation (not withstanding the

imposing and high quality nature of the building) which threatens the farm exemption under *Section 14 of the Valuation (Ireland) Act 1852* is the undoubted occurrence of breaking and training animals for show in connection with their sale. The Tribunal is satisfied that this aspect of training is very much subsidiary and perhaps undesired in terms of the overall enterprise which is that of the production of sports horses which at the conclusion of the production process may be sold with a minimum of handling, never mind formal training. The Tribunal finds that there is a compulsory, non elective, aspect of the type of training done in the subject premises on the young horses not achieving a ready sale at the three to four year old stage which has an element of salvage and which (if things were going smoothly in the marketing end of the horse breeding enterprise) might not occur at all. This type of training has to be distinguished from training of horses arriving at the premises either through purchase or livery, or training of horses retained for serious competition over a significant time and constituting a different enterprise.

Having regard to the foregoing, and the fact that the land used in conjunction with the building is relatively extensive being more than 90 acres in all and the fact that the courts in the Nixon and Knockhall and other cases have indicated that recognition would have to be given to the fact that farm enterprises have in the modern world become more intensive, the subject is appropriate for exemption pursuant to *Section 14 of the Valuation (Ireland) Act 1852* with the exception of the domestic portion of the subject which remains as determined by the Commissioner of Valuation.