

Appeal No. VA07/4/003

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

**Dr. Patrick McDermott**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Surgery at Lot No. 18Bb, Ballickmoyler, Ballickmoyler, Slievemargy, County Laois

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Michael F. Lyng - Valuer**

**Member**

**Mairéad Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 28TH DAY OF FEBRUARY, 2008**

By Notice of Appeal dated the 14th day of November, 2007, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €16.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of appeal and letters attached thereto, copies of which are contained in the Appendix to this judgment.

1. This appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 22<sup>nd</sup> day of January, 2008. At the hearing, the appellant, Dr. Patrick McDermott, appeared on his own behalf and the respondent, the Commissioner of Valuation, was represented by Mr. Don Donovan, B.Sc. (Property Management & Valuation Surveying), Dip FM, MIAVA, MACCA, a Valuer in the Valuation Office.

### **The Property Concerned**

2. The property concerned is a single storey detached building used as a doctor's surgery located on a minor country road just outside the village of Ballickmoyler.

### **Material Facts**

3. The property concerned was listed for Revision in November, 2004 and in due course a Valuation Certificate was issued by the Revision Officer on 27<sup>th</sup> May, 2005 to the effect that the rateable valuation of the property concerned had been assessed at €16.00.
4. No appeal was lodged by the appellant within the 40 day statutory appeal period which ended on the 5<sup>th</sup> July, 2005. However on the 4<sup>th</sup> May, 2006 Dr. McDermott wrote to the Commission of Valuation disputing the valuation as determined.
5. On the 30<sup>th</sup> May, 2006 the Revision Officer replied to Dr. McDermott's letter setting out in some detail the revision procedure under the Valuation Act, 2001 and including a copy of his valuation report.
6. Dr. McDermott once again wrote to the Revision Officer on 20<sup>th</sup> June, 2006 acknowledging receipt of his letter dated 30<sup>th</sup> May, 2006. In this letter Dr. McDermott said "*I either don't remember receiving (or possibly overlooked) the form allowing for representations to be made about my dissatisfaction with the original valuation*".
7. The Revision Officer again wrote to Dr. McDermott on 28<sup>th</sup> July, 2006 and in the second last paragraph of that letter stated as follows:  
*"As I previously stated (I attached the relevant documents in the previous letter), you will have to get your property re-listed for valuation. I would like to remind you that a Material Change of circumstance (since the last time the property was valued which in this case is the present valuation being discussed) has to occur for the unit to be re-valued."*
8. On 17<sup>th</sup> November, 2006 Dr. McDermott made an application to the Commission of Valuation for a revision to valuation accompanied by the requisite fee of €20.00.

9. Mr. Don Donovan, the Revision Officer appointed by the Commissioner of Valuation, inspected the property in March, 2007 and met with Dr. McDermott and advised him that since there was no material change of circumstances in respect of the property since the 2005 revision he was unable to make any alteration to the valuation of the said property. Accordingly therefore on 2<sup>nd</sup> May, 2007 he issued a document headed “Notice of Decision” to Dr. McDermott stating at paragraph 1 thereof: *“I wish to notify you that I have decided that no material change of circumstances has occurred in relation to this property and that I will therefore not exercise my powers in relation to this revision application”*. In other words, there would be no change in the rateable valuation of the property concerned.
10. Dr. McDermott lodged an appeal against this decision and when the Commissioner of Valuation disallowed the appeal Dr. McDermott lodged an appeal to this Tribunal.

### **The Law**

11. Material change of circumstances is defined in Section 3 of the Valuation Act and in the context of this appeal, paragraph (b) of the definition set out below is particularly relevant *“material change of circumstances” means a change of circumstances which consists of -*  
*(b) a change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause,”*
12. Section 28 (4) states, *“A revision officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate or, as the case may be, since the last previous exercise (if any) of the powers under this subsection in relation to the property warrants the doing of such, may, in respect of that property—*  
*(a) if that property appears on the valuation list relating to that area, do whichever of the following is or are appropriate—*  
*(i) amend the valuation of that property as it appears on the list,*  
*(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,*  
*(iii) amend any other material particular in relation to that property as it appears on the list,*

*(b) if that property does not appear on the said valuation list and it is relevant property (other than relevant property falling within Schedule 4 or to which an order under section 53 relates), do both of the following—*

*(i) carry out a valuation of that property, and*

*(ii) include that property on the list together with its value as determined on foot of that valuation.”*

13. Section 28(5) states, “A revision officer shall, if the property concerned is property that has been the subject of an application under section 27, within 6 months from the date of his or her appointment under subsection (3) in respect of that application—

*(a) make a decision as to whether the circumstances referred to in subsection (4) exist for the exercise by him or her of the powers under that subsection in relation to that property,*

*(b) if he or she decides that those circumstances do exist, exercise those powers in relation to that property accordingly.”*

14. Section 28(9) states, “If a revision officer decides that the circumstances referred to in subsection (4) do not exist for the exercise of the powers under that subsection in relation to a property referred to in subsection (5) he or she shall, forthwith after the making of that decision, issue to the person or as the case may be, each person who applied for his or her appointment under subsection (3) in respect of the property a notice of the decision.”

15. Accordingly therefore where the Revision Officer appointed pursuant to Section 28(2) finds that no material change of circumstances has taken place in relation to a property which has been listed for Revision since the property was last valued, he or she shall issue a notice to that effect and make no change to the rateable valuation of the property as it currently appears in the valuation list

### **The Oral Hearing**

16. Prior to the oral hearing and by letter dated 4<sup>th</sup> January, 2008 Dr. McDermott wrote to the Registrar of the Tribunal as follows:

*“I wish to make it clear from the outset I am not appealing on the grounds of any material change of circumstances and I will not have legal or expert witnesses with me.*

*Although the matter is small in monetary terms I believe the original valuation (20/3/05) was incorrect ( see your report of 26/05/06)*

*The reasons are as follows;*

- A. Report states that the property is just off Ballickmoyler Village – this is incorrect it is 1 km away on a small road joining the Carlow/Portlaoise to the Carlow/Castlecomer roads. There is not, as you say, in your observation very busy passing traffic on this road, this statement applies only to the main Carlow/Portlaoise road.*
- B. The surgery is small in size less than 600 square feet, is used only around 8 hours a week and does not even have a surgery sign outside. The village is in a very remote area and has only ten houses.*
- C. Comparing it to surgeries in Durrow, Castletown and Mountrath is grossly unfair.*

*I believe that based on the above explanation, a valuation of 25% of the original would be more appropriate. Thank you for your help.”*

17. At the hearing Dr. McDermott re-iterated the points contained in his letter and it was explained to him in some detail that the Tribunal could only deal with matters arising out of the revision process initiated by him in November, 2006. In response to a question from the Tribunal Dr. McDermott agreed that no alteration to the property concerned had taken place since the property was valued at the 2005 revision.

## **Findings**

The material change of circumstances provision as contained in the Valuation Act, 2001 is quite specific and unambiguous and the appellant seeking revision must clearly demonstrate a material change of circumstances has taken place. If no material change of circumstances has occurred then the Revision Officer has no alternative but to issue a “Notice of Decision” to that effect and to make no change to the rateable valuation of the property concerned as it appears on the valuation list. On appeal the Commission has no alternative but to uphold the Revision Officer’s decision.

**Determination**

Having regard to the foregoing the Tribunal finds that the Revision Officer and the Commissioner of Valuation were correct in arriving at their decision that no material change of circumstances had occurred to the property concerned. Accordingly therefore the appeal is dismissed and the valuation as currently appearing in the valuation list is affirmed.

And the Tribunal so determines.