

CONVENIENCE STORES

A DIVISION OF WIND RIVER PETROLEUM

RECEIVED

September 21, 2009

SEP 24 2009

By Email and U.S. Mail

Morgan Atkinson
Utah DERR
168 North 1950 West
P.O. Box 144840
SLC, UT 84114-4840
mpatkinson@utah.gov

DEQ
Environmental Response & Remediation



Re: *Gunnison Top Stop / Gunnison Property Values*

Dear Morgan:

I understand that during a recent public meeting in Gunnison, property owners requested that you, your department, or the Utah Attorney General assist them in seeking a reduction in the "market values" assessed to their Gunnison area properties by the Sanpete County Assessor (the "Property Owners' Request"). If I understand correctly, the property owners are unhappy because Sanpete County has refused to reduce (or maintain reductions in) their property values despite pressure applied by their attorneys, who also represent them in the lawsuits they have filed against Wind River related to the Gunnison Top Stop underground storage tank leak. I am writing to respond to the Property Owners' Request, and explain why such a reduction in market values would be inappropriate and directly contrary to the facts.

As you know, Wind River representatives (including myself) have attended a number of meetings with various environmental consultants and DEQ officials (including you) where everyone has agreed that the Gunnison Top Stop remediation has been extremely successful. While I understand why the property owners believe that their lawsuit against Wind River will be harmed by Sanpete County's refusal to meet the property owners' attorneys' demands, this is no reason to ignore the great successes achieved in connection with the remediation, or to succumb to the plaintiffs' continuing attempts to use political pressure to create unfounded evidence for use in the lawsuit.

I enclose herewith a copy of a letter I recently sent to Sanpete County officials related to this same subject. I will not repeat its contents here, other than to say that it describes in more detail why Wind River disagrees with the tactics employed by the property owners' attorneys. To the extent that you pass the Property Owners' Request along to anyone, I request that you also forward this letter and the accompanying materials to the same person.

As you know, Wind River takes very seriously its obligation to complete the remediation. Towards that end, Wind River already has spent more than \$1 million of its own money on remediation efforts. I look forward to continuing to work with you to complete that process, and (as always) invite you to contact me with any questions or concerns.

Sincerely,

J. Craig Larson

President

Christensen and Larson Investment Co.
2046 East Murray-Holladay Road #200
Salt Lake City, Utah 84117
801-272-9229

September 15, 2009

Ilene B. Roth
Sanpete County Auditor
PO Box 128
160 North Main
Manti, UT 84642
Facsimile: 435-835-2144

Kenneth Bench
Sanpete County Assessor
160 North Main
P.O. Box 158
Manti, UT 84642
Facsimile: 435-835-2110

Re: *2009 Notice of Property Valuation*
0000002371 Taxing District 004

Dear Ms. Roth & Mr. Bench:

I am writing in response to the enclosed *Sanpete County 2009 Notice of Property Valuation & Tax Change* (the "Notice") which Christensen & Larson Investment Company ("C&L") recently received regarding real property owned by C&L at 15 South Main Street in Gunnison, Utah (the "Property").

In 2008, Sanpete County concluded that the market value of the Property was \$112,756, and assessed related property taxes in an amount of \$1,555.58. In 2009, according to the Notice, Sanpete County concluded that the same Property has a market value of less than 1% of last year's value (now purportedly only \$1,000), and advises that the County intends to reduce related property taxes by approximately 99%, to approximately fourteen dollars. I am writing to advise you that C&L disagrees that the Property is worth only \$1,000, is ready, willing and able to pay taxes based upon the actual value of the Property, and to express grave concerns about the facts and circumstances that led to this and other drastic reductions in Sanpete County's assessed "market values" for certain properties in the Gunnison area.

As you may be aware, a C&L tenant used to operate a Top Stop gasoline and convenience station on the Property. In the summer of 2007, an underground storage tank owned by the tenant experienced a leak, allowing approximately 20,000 gallons of gasoline escape. Since that time, approximately \$2 million has been spent cleaning up the Property and surrounding properties, with great success.

While the leak was an extremely unfortunate occurrence, the notion that it completely devalued the Property or any other property in Gunnison is unfounded. Sanpete County's apparent decision to effectively eliminate this source of tax revenue is not fair to those who would benefit from the collection of such tax revenues, or to those who must pay additional taxes to replace these lost revenues. Moreover, the apparent basis for this decision is deeply troubling.

I have enclosed two letters previously sent to you by attorneys who represent various landowners who have filed suit against C&L, its tenant, and others on behalf of property owners who claim to have been damaged by the leak (the "Top Stop Lawsuit"). The first letter is from the Stirba Law Firm (the "Stirba Letter"). It relates to various properties owned by plaintiffs in the Top Stop Lawsuit who are clients of the Stirba Law Firm, and asserts that "the property values in the gasoline plume are diminished beyond the value of the land." Remarkably, the Stirba Law Firm makes this assertion despite acknowledging that it has no appraisals to document such a fact, nor any "documentation to support a further reduction in the tax." In short, the Stirba Letter simply claims (without any support) that the cost of cleaning up the Stirba clients' properties exceeds the properties' values, and they therefore should be deemed valueless for tax purposes.

The second letter (the "BTJD Letter") is from the law firm of Bennett Tueller Johnson & Deere ("BTJD"). It relates to various properties owned by plaintiffs in the Top Stop Lawsuit who are clients of the BTJD firm, and requests reductions in the assessed market values of their clients' properties, including that the "assessed raw property be zero." Like the Stirba Letter, the BTJD Letter does not include any appraisals or other evidence establishing that the properties actually have been devalued.

C&L understands that Sanpete County drastically reduced the assessed market value of the plaintiffs' properties after you received the Stirba Letter and the BTJD Letter.

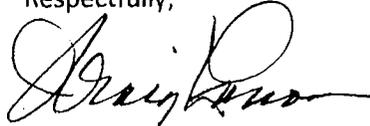
We are deeply troubled by the foregoing facts, and the apparent motivation for the Stirba Letter and the BTJD Letter. The law firms who sent you those letters represent a number of landowners in the Top Stop Lawsuit, presumably on a contingency fee basis (e.g., the amount of money (if any) an attorney will receive for working on the lawsuit depends upon the amount of money (if any) the plaintiffs recover in the lawsuit). As a result, the plaintiffs' attorneys have an incentive to assert that the properties are valueless for tax purposes, hoping that you will accept that assertion, which they then plan to use as evidence at the trial of the Top Stop Lawsuit, even if there is no basis for such an allegation. Equally troubling is the stigma created by such public assertions, even though they are baseless. The very fact that the plaintiffs and their attorneys publicly assert that the properties have no value undoubtedly will stigmatize and decrease the value of even perfectly clean properties.

The legitimacy of these concerns is confirmed by the court cases included with the Stirba Letter, relied upon as the primary basis for alleging that the properties should be valued at zero. In both of those cases, the courts concluded that such a devaluation was appropriate because the likely costs of cleaning up the properties at issue exceeded the value of those properties. What the Stirba Letter did not explain, however, is that in both of those cases, no one had undertaken any clean-up efforts, and it was certain (or at least likely) that the properties would not be cleaned up, or the landowners themselves would have to pay the clean-up costs. See *Schmidt* (pollution occurred in 19th century, and "No agency had required any clean-up or had even done an evaluation of the property"); *Baggett* ("the remediation had not even commenced and there is no certainty about when it will be done."). In contrast, a full and complete remediation commenced almost immediately in Gunnison, and over \$2 million has been spent to date with great success, with no portion of those funds coming from the

plaintiffs. In short, clean-up costs are irrelevant here, since they are not the responsibility of the plaintiff landowners, and the clean-up process is in its latter stages. Hence, it is extremely misleading to suggest that the court cases have any application to the situation in Gunnison, or provide any basis for devaluing the properties, where a State mandated (and very successful) clean-up is close to being complete at no expense to the plaintiffs.

For the foregoing reasons, C&L disagrees with the Property values assessed in the Notice, and stands ready, willing, and able to pay taxes in accordance with the actual market value of the Property, without regard to the self-serving assertions made by the plaintiffs' attorneys in their letters.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Craig Larson". The signature is fluid and cursive, with a large initial "J" and "L".

J. Craig Larson
CEO

Attorneys

- Steven W. Bennett
- Alden B. Tueller
- Barry N. Johnson
- Monte M. Daere Jr. **
- Clay W. Stucki ***
- Daniel L. Steele
- Kenneth C. Margetts
- Paul M. Johnson
- Brent J. Hawkins ****
- David M. Kono *
- Ryan B. Braithwaite
- Sean A. Manson
- J. Ryan Mitchell****
- Mark H. Richards
- Marc L. Turman **
- Nothan S. Dorius
- Shane L. Keppner
- Benjamin D. Johnson****
- Robert K. Reynard **
- Taylor L. Anderson
- Derek E. Anderson *
- Jared L. Inouye ***
- J. Reed Rawson **
- Daniel K. Brough
- Jerry A. Fors **
- Jeremy C. Reutzel
- Eric G. Goodrich
- Andrew V. Collins
- Thomas G. Bagley Jr.
- Josh I. Lee

September 3, 2008

Via Facsimile and U.S. Mail

Sanpete County Tax Assessor
 Attn: Kenneth Bench
 160 North Main
 P.O. Box 158
 Manti, UT 84642
 435-835-2110 (facsimile)

re: Assessed Values on Gunnison Properties Affected by Top Stop Gasoline Spill

Dear Ken:

This law firm represents certain individuals, entities, and business affected by the Gunnison Top Stop Gasoline Spill (the "Spill"). These individuals, entities, and business along with property information, including the property parcel number and block on which the property is located, include the following:

Of Counsel

- Philip D. Barker
- Joseph G. Piu

Owner Parcel No.

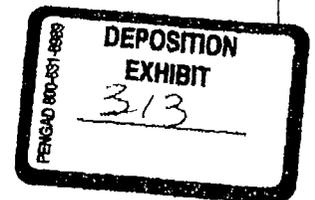
- * Also Admitted in California, New York, Connecticut and Washington State
- ** Also Admitted in Texas
- *** Also Admitted in Colorado and Nevada
- **** Also Admitted in Illinois
- † Also Admitted in Oregon
- .. Also Admitted in California
- ... Also Admitted in Nevada
- Also Admitted in Washington D.C.
- .. Also Admitted in Idaho

DIRECTLY IMPACTED BY GASOLINE PLUME

Lila Lee Christensen	2340x
Gunnison Valley Realty	2341
Gunnison Valley Realty	2339
Kim Reid Pickett	2336
Hal Pickett Radene Pickett	2342
John Randal Larson, Lana Lee Larson	2343
Gunnison Valley Real Estate, Gunnison Implement Co.	2287
Frank B. Pike	2293

3165 East Millrock Drive
 Suite 500
 Salt Lake City, Utah
 84121-4704

t (801) 438-2000
 f (801) 438-2050
 www.btjd.com



GVR 00010

Tami Hansen	2293x
Tyler Ashton, Adrie Ashton	2289x1
	2291

DIRECTLY ADJACENT TO THE
GASOLINE PLUME¹

J. Randal Larson, Lana L. Larson	2348
Frank R. Johanson, Stacey L. Johanson	2347x
Steven D. Willden Cindy M. Willden	2344
Kelly Patrick Fewkes, Erin Elizabeth Fewkes	2344x

Attached hereto is a map of the Gunnison Spill gasoline plume, which was generated by Wind River Petroleum's environmental consultant. The blue dotted line maps the area affected by the Gunnison Spill. While we are undertaking an investigation of our own as to the nature and extent of the contamination, we believe that, at a minimum, the attached map reflects the affected area. On behalf of those individuals, entities, and businesses who own property directly impacted by the Gunnison Spill, we request that the assessed value of the raw property be zero and, subject to the paragraphs below, the assessed value of any structures on the property be lower or equal to the 2007 assessed value. On behalf of those individuals, entities, and businesses who own property that is directly adjacent to the gasoline plume, we request that the assessed value of the raw property and the structure be lower or equal to the 2007 assessed value. The close proximity to the gasoline plume has reduced the value of their property; the value of the property most certainly has not increased.

On behalf of Lila Lee Christensen ("Lila Lee"), parcel 2340x, and Tyler and Adrie Ashton (the "Ashtons"), parcel 2291, we request that the assessed value on structures be zero. Due to gasoline fumes in her building, Lila Lee Christensen has been unable to conduct business and has closed her store. On September 7, 2007, shortly before she was forced to close, benzene vapor levels of 27 micrograms per cubic meter were recorded; the acceptable level is around 2 micrograms per cubic meter. Due to gasoline fumes in their home, the Ashtons were likewise forced to leave their home. The Ashtons left their home in November 2007 and have not inhabited their home since then. In December 2007, benzene vapor levels of 8.1 micrograms per cubic meter were recorded; the acceptable level is around 2 micrograms per cubic meter.

On behalf of Kim Pickett, parcel 2336, Hal Pickett, parcel 2342, and Tami Hansen, parcel 2289x1, we request that the assessed value on the structures be significantly reduced given the level of benzene vapors recorded in these structures. Because the vapor levels in each of the structures on parcels 2336, 2342, and 2289x1 were so high, a vapor mitigation system was installed in each of these structures.

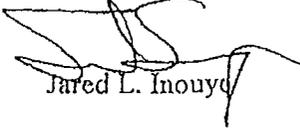
¹ Future investigation may reveal that each of these properties is also directly impacted by the Gunnison Spill gasoline plume.

Presently, each of these structures has a "positive pressure air system" installed, which theoretically prevents harmful petroleum vapors from entering the structure. The presence of the vapor mitigation systems along with the potential for pollution in each of these structures significantly reduces the value of these structures.

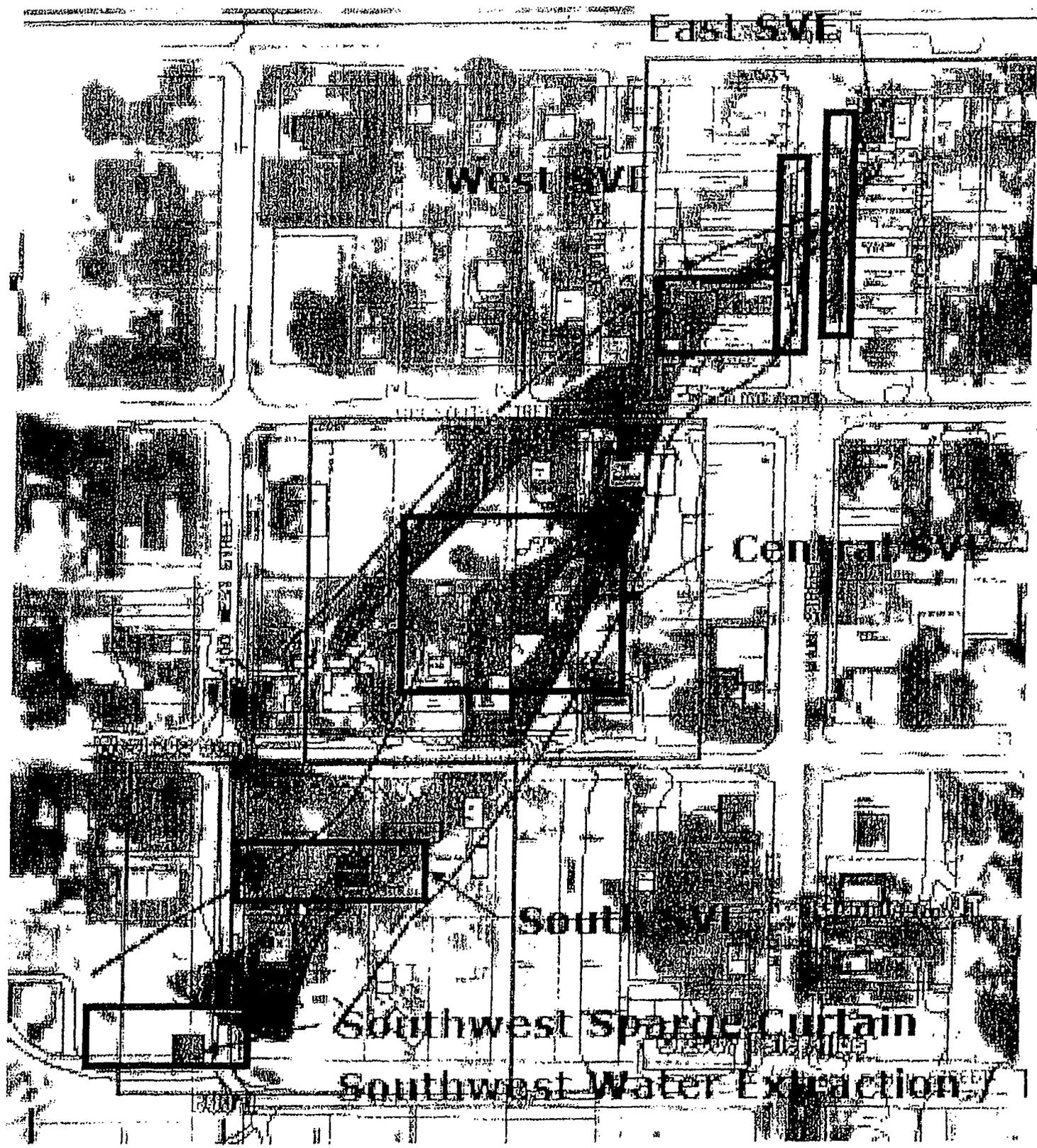
Regarding the Ashtons, parcel 2291, Frank Pike, parcels 2293 and 2293x, Tami Hansen, parcel 2289x1, Gunnison Valley Real Estate Company, parcel 2281, Hal Pickett, parcel 2342, Kim Pickett, parcel 2336, Gunnison Valley Realty, parcels 2341 and 2339, and Lila Lee, parcel 2340x, on each of these parcels, Wind River Petroleum has installed a network of trenches, pipes, and machines to extract gasoline vapors from the ground. Because of the network of trenches, pipes, and machines, the use of each parcel is significantly compromised and as a result the value of each parcel is dramatically reduced.

Please contact me if you have questions or would like to discuss.

Sincerely,



Jared L. Inouye



East SW

West SW

Central SW

South SW

Southwest Spange Curtain

Southwest Water Extraction



STIRBA
AND ASSOCIATES

A PROFESSIONAL LAW CORPORATION

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POST OFFICE BOX 810
SALT LAKE CITY • UTAH 84110-0810
TELEPHONE 801 364-8300
FACSIMILE: 801 364-8355

www.stirbalaw.com

August 18, 2008

Kenneth Bench
Sanpete County Assessor
160 North Main
P.O. Box 158
Manti, UT 84642

Dear Mr. Bench:

I am writing this letter to file a protest on some of the properties in Gunnison, Utah that have lost value due to the Top Stop gasoline spill. These properties are each listed separately in Exhibit A enclosed with this letter. We are not appealing the actual assessment value of Sanpete County, and thus, no appraisals are included with this letter.

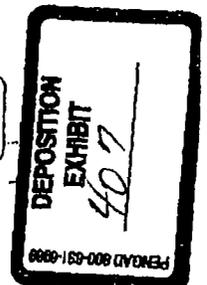
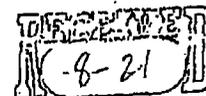
Our appeal is based on two cases, *Schmidt v. Utah State Tax Commission*, 980 P.2d 690 (Utah 1999) and *Salt Lake County Board of Equalization v. Utah State Tax Commission* (Utah Ct. App. 2005). These cases are attached for your review. In both cases, the value of the land was determined to have zero value because the cost of cleaning up the land was more than the value of the land; however, the improvements were valued at their actual tax rate because families were still living in, and using, their homes. Ultimately, we believe the property values in the gasoline plume are diminished beyond the value of the land; however, at this time we do not have the necessary documentation to support a further reduction in the tax. In addition to appealing the land values, as you will see in Exhibit A, one home is not inhabitable and we are appealing both the land and the improvement value.

Our appeal does not include other Gunnison properties that are adjacent to the plume. We believe that properties adjacent to the plume have also suffered a diminution in value; however, at this time, we do not have the necessary documentation to support a tax appeal.

Sincerely,

STIRBA & ASSOCIATES,

CARRIE L. TOWNER





STIRBA
AND ASSOCIATES

Exhibit A

The Top Stop gasoline plume has indisputably impacted the following properties:

1.	The Casino Star Theatre Foundation	2337
2.	Steve L. Anderson	2290
3.	Real Protection Trusts	2289x
4.	Claire Neilson Trustee	2289x2
5.	Eugene R. Lund, Trustee	2289x3
6.	Carissa M. Kuhni	2289
7.	Jeremy R. Taylor, et al.	2216
8.	Rodney R. Taylor	2217
9.	Rodney R. Taylor	2567
10.	Rodney R. Taylor	2634x1
11.	Sally N. Neal	2366x
12.	T. Mark Hopkins	2363
14.	Dale Dorius	2368
15.	Andover, LLC (Gunnison Valley Bank)	2354
16.	David M. Lambertsen	2352
17.	Gunnison Plumbing and Heating (Dale Peterson)	2352
18.	Jon Fred Spencer, et al.	2367x

The following property is uninhabitable:

1.	Jeremy R. Taylor, et al.	2216
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Westlaw.

Page 1

980 P.2d 690

980 P.2d 690, 369 Utah Adv. Rep. 34, 1999 UT 48

980 P.2d 690

C

Schmidt v. Utah State Tax Com'n
Utah, 1999.

Supreme Court of Utah.
Jeff and Victoria SCHMIDT, Petitioners,

v.

UTAH STATE TAX COMMISSION, County Board of Equalization of Salt Lake County, State of Utah, Respondents.
No. 970588.

May 14, 1999.

Taxpayers sought judicial review of State Tax Commission's determination of assessed value for their home, which was situated on contaminated land. The Supreme Court, Zimmerman, J., held that substantial evidence supported Commission's determination of assessed value by valuing contaminated land at zero and valuing the home at its value-in-use.

Affirmed.

Stewart, J., concurred in the result.

West Headnotes

[1] Taxation 371 ↪ 2723

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)1 Evidence in General

371k2723 k. Burden of Proof. Most Cited Cases

(Formerly 371k493.7(4))

A party challenging the State Tax Commission's factual findings bears the burden of marshaling all evidence supporting the findings and showing that this evidence is insufficient.

[2] Taxation 371 ↪ 2728

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)1 Evidence in General

371k2724 Weight and Sufficiency of Evidence

371k2728 k. Valuation. Most Cited Cases

(Formerly 371k485(3))

Substantial evidence supported State Tax Commission's determination of assessed value of contaminated residential property by valuing land at zero and valuing the home at its value-in-use; taxpayers lived in the house and consumed vegetables from garden, simple mathematical deduction of purported clean-up costs from initial appraisal would lead to a negative value that would not reflect usable value, and no agency had required clean-up. U.C.A. 1953, 59-2-103(1) .

*690 Brian J. Romriell, Steven E. Hugie , Salt Lake City, for petitioners.

Jan Graham , Atty Gen., John C. McCarrey , Asst. Atty Gen., Mary Ellen Sloan, Salt Lake City, for respondents.

ZIMMERMAN , Justice:

¶ 1 This matter is before us to review an order of the Utah State Tax Commission ("the Commission") fixing the assessed value on residential property owned by Jeff and Victoria Schmidt and to review the Commission's denial of a request from the Salt Lake County Board of Equalization ("the Board") for reconsideration. Both the Schmidts and the Board challenge the Commission's valuation. The Schmidts argue that their property should be valued at zero due to contamination. The Board argues that the property's value should be higher than that fixed by the Commission. We conclude that neither the Schmidts nor the Board met their burden of showing that the Commission's valuation was not based on substantial evidence, and therefore, we affirm.

¶ 2 The property at issue is residential property located on East Little Cottonwood Road in Sandy, Utah ("the property"). The property consists of a home of approximately 7000 square feet located on 2.7 acres. The property is located at the mouth of Little Cottonwood Canyon near the site where a smelter operated briefly in the early 1870's, refining ore from the mines in the canyon. Tailings from the mill are present on at least some of the land in varying quantities. The Board valued the property at \$789,370 for the 1995 tax year. The Schmidts then appealed to the Board to adjust its original valuation and notified the Board of the contamination on the property. An independent *691 hearing officer for the Board reduced the value of the property to \$706,000. The Schmidts then appealed to the Commission.

¶ 3 The Commission held a formal hearing. The Schmidts argued that because the property was contaminated with high levels of lead and arsenic, the market value should be reduced to zero. In support of their motion, the Schmidts offered letters from the Utah Department of Environmental Quality ("UDEQ") and the United States Environmental Protection Agency ("EPA"). The UDEQ letter states that the three trial holes on the 2.7 acres show that the land contains lead and arsenic at levels well above those UDEQ deems warrant clean-ups or the putting in place of environmental controls. The Schmidts also offered as evidence a letter containing a bid from Sitex Environmental, Inc. ("Sitex"), indicating that the removal of eighteen inches of topsoil from the entire 2.7 acres, disposal of the contaminated soil, and replacement with clean soil would cost \$1,042,252.05. The Schmidts submitted an appraisal that valued the property at negative \$334,000, a figure reached by deducting the amount of the Sitex bid from the value that the Board had fixed for the property. Finally, the Schmidts relied on letters from several banks that had denied permanent financing for the property after the contamination was discovered.

¶ 4 In opposition to the evidence proffered by the Schmidts, the Board submitted several pieces of evidence including an appraisal from Lisa Martin, an appraiser for the Salt Lake County Assessor's office. Martin determined that the value of the land should be calculated by using the \$706,000 figure and reducing it by 20 percent due to stigma from the contamination. A 20 percent reduction for stigma is a standard appraisal technique. She valued the property at \$563,900. The Board also disputed that it was necessary to remove as much soil as the Sitex bid suggested. It argued that because only three soil samples had been taken on the entire 2.7 acres, there was insufficient evidence to prove that the entire property was contaminated. Furthermore, the Board pointed out that there was no evidence that the EPA or UDEQ would require any sort of a clean-up on this residential property. Finally, the Board offered evidence that the problem had been partially cured when the Schmidts placed additional topsoil on portions of the 2.7 acres.

¶ 5 In its findings of fact, conclusions of law, and final decision, the Commission found that the fair market value of the land was zero but that the fair market value of the home was \$398,166. It explained this result in the following manner. While "[t]he normal method of calculating the value of a contaminated property is to deduct the costs of remediation from the value

of the property as calculated before any deduction for contamination... in this case, it would result in a negative value... If a property had a negative value, that would also imply that the property was uninhabitable." Because petitioners and their small children live in the home, and "in very nice circumstances," the Commission reasoned that the property must have some positive value. The normal valuation methodology was not used because it produced a number that did not reflect reality. Since the Commission determined that the property had "value-in-use,"^{FN1} it came up with an alternative methodology. The Commission treated the land and the home separately. It did this because the building itself was not contaminated and the harm to the value of the overall property was due to the contamination in the soil. It therefore set the value of the land at zero and the value of the building at \$398,166, a figure reached by using the standard replacement cost new less depreciation method. The result was a valuation for the house and land of \$398,166.

^{FN1}. "Value-in-use" was defined by the Iowa Supreme Court in Boekeloo v. Board of Review of Clinton, 529 N.W.2d 275 (Iowa 1995), when it held that "[t]he transitory absence of a market does not eliminate value.... The mere fact that a property is unmarketable does not mean it has no value, especially when it is being used for its intended purpose." Id. at 278.

¶ 6 The issue before this court is whether the Commission committed reversible error in fixing the property's value at \$398,166. We first address the standard of review. We have held that the choice of valuation methodology used in fixing the value of a property is a question of fact. See *692 Beaver County v. Utah State Tax Comm'n, 916 P.2d 344, 355 (Utah 1996) (holding that Commission's decision to reject a certain valuation methodology is a finding of fact). Therefore, we "grant the commission deference concerning its written findings of fact, applying a substantial evidence standard of review." Utah Code Ann., § 59-1-610(1)(a) (1996). Furthermore, "when reviewing an agency's decision, this court does not ... reweigh the evidence." Questar Pipeline Co. v. Utah State Tax Comm'n, 850 P.2d 1175, 1178 (Utah 1993).

¶ 7 Under this standard, we uphold the Commission's findings of fact if they are "supported by substantial evidence based upon the record as a whole." Cache County v. Property Tax Div. of Utah State Tax Comm'n, 922 P.2d 758, 767 (Utah 1996) (emphasis added) (quoting Zissi v. State Tax Comm'n, 842 P.2d 848, 852 (Utah 1992)). "Substantial evidence" is that quantum and quality of relevant evidence which is adequate to convince a reasonable mind to support a conclusion. See Cache County, 922 P.2d at 767; Utah Ass'n of Counties v. Tax Comm'n of Utah, 895 P.2d 819, 821 (Utah 1995); First Nat'l Bank v. County Bd. of Equalization, 799 P.2d 1163, 1165 (Utah 1990); Hercules Inc. v. Utah State Tax Comm'n, 877 P.2d 169, 172 (Utah Ct.App. 1994). In addition, a party challenging the Commission's factual findings bears the burden of marshaling all evidence supporting the findings and showing that this evidence is insufficient. See Kennecott Corp. v. Utah State Tax Comm'n, 858 P.2d 1381, 1385 (Utah 1993); First Nat'l Bank, 799 P.2d at 1165.

¶ 8 Both the Schmidts and the Board challenge the Commission's factual findings. The Schmidts argue that the Commission erred in valuing the home and the land separately. The Board argues that the Commission erred in fixing the land's value at zero and argues that the Commission should have used the Board's valuation for the house and land, making a percentage reduction for stigma instead.

¶ 9 The Commission was not bound to accept either the Schmidts' or the Board's valuations; it "ha[s] the discretion to adopt a figure that [falls] somewhere between ... polarized estimates." Utah Ass'n of Counties, 895 P.2d at 823. What is required of the Commission is that it value the property based on its "fair market value." See Utah Code Ann., § 59-2-103(1) (1996).^{FN2} "Fair market value" has been statutorily defined as: "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Id., § 59-2-102(8) (1996).^{FN3} In arriving at the fair market value, this court has said that the Commission uses one of the following recognized approaches: cost, income, and market. See Beaver County, 916 P.2d at 347. The cost approach determines the property value based on its replacement cost less depreciation. See id. The income approach determines property value by computing the present value of anticipated income. See id. The market approach determines property value by examining the prices at which comparable properties have been bought and sold. See id.

had other evidence that the simple mathematical deduction of clean-up costs from the initial appraisal did not reflect the real usable value of the property, or the actual impairment that resulted from the contamination. The Schmidts brought new topsoil onto the property. They live on the property in a large house with their small children. They have a vegetable garden on the property and consume the vegetables. No agency had required any clean-up or had even done an evaluation of the property. Based on all this, we cannot say that the Commission's valuation was not supported by substantial evidence. The evidence is sufficient to convince a reasonable mind to accept it as supporting the Commission's conclusion. This is particularly the case where, as here, the propriety of the Commission's methodology of valuing the land and the house separately is a question of fact and not law.

¶ 12 In conclusion, we affirm the Commission's valuation of the property at \$398,166.

¶ 13 Chief Justice HOWE, Justice RUSSON, and Judge JACKSON concur in Justice ZIMMERMAN'S opinion.

*694 ¶ 14 Justice STEWART concurs in the result.

¶ 15 Having disqualified herself, Associate Chief Justice DURHAM does not participate herein; Court of Appeals Judge NORMAN H. JACKSON sat.

Utah, 1999.

Schmidt v. Utah State Tax Com'n

980 P.2d 690, 369 Utah Adv. Rep. 34, 1999 UT 48

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Westlaw

Not Reported in P.3d

Not Reported in P.3d, 2005 WL 2045823 (Utah App.), 2005 UT App 360

2005 WL 2045823 (Utah App.)

Salt Lake County Bd. of Equalization v. Utah State Tax Com'n, ex rel. Baggett
Utah App.,2005.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Utah.

SALT LAKE COUNTY BOARD OF EQUALIZATION, Petitioner,

v.

UTAH STATE TAX COMMISSION, ex rel. Daniel BAGGETT, Respondents.

No. 20030598-CA.

Aug. 25, 2005.

Original Proceeding in this Court.

Thomas W. Peters, Salt Lake City, for Petitioner.

Mark L. Shurtleff , Michelle Bush , Randy M. Grimshaw , Maxwell A. Miller , and Matthew D. Wride , Salt Lake City, for Respondents.

Before Judges BENCH , DAVIS , and GREENWOOD .

MEMORANDUM DECISION

GREENWOOD , J.

*1 Petitioner County Board of Equalization of Salt Lake County (the Board) appeals Respondent Utah State Tax Commission's (the Commission) valuation of Daniel and Vicky Baggett's (the Baggetts) contaminated land at \$0 for the year 2002.^{FNI} We affirm.

^{FNI} The Commission differentiated between the value of the land and that of the building thereon—the Baggetts' home. To wit, while the Commission valued the land at \$0, it valued the home at \$244,900 because “there is still value in use as [the Baggetts] resided at the subject property and used it for its intended function without significant limitations.” This method was also used by the Commission in Schmidt v. Utah State Tax Commission, 1999 UT 48, ¶ 5, 980 P.2d 690, discussed later in this decision.

The Board first argues that the Commission was incorrect to utilize the valuation methodology from Schmidt v. Utah State Tax Commission, 1999 UT 48, 980 P.2d 690, citing factual differences between Schmidt and the case at bar. “[T]he choice of valuation methodology used in fixing the value of a property is a question of fact.” *Id.* at ¶ 6. “Therefore, we ‘grant the commission deference concerning its written findings of fact, applying a substantial evidence standard of review.’” *Id.* (quoting Utah Code Ann. § 59-1-610(1)(a) (1996)). “We have interpreted this ‘substantial evidence’ standard to mean ‘that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.’” Bradshaw v. Wilkinson Water Co., 2004 UT 38, ¶ 37, 94 P.3d 242 (quoting Bradley v. Paxson City Corp., 2003 UT 16, ¶ 15, 70

P.3d 47 (quotations and citation omitted)).

The Commission's reliance on the *Schmidt* valuation method is supported by substantial evidence. Indeed, the facts of the instant case are substantially similar to those in *Schmidt*. For instance, in *Schmidt*, the Board challenged the Commission's valuation of the Schmidts' land at \$0. See 1999 UT 48 at ¶¶ 1, 5. Like the Baggetts' property, the Schmidts' property was located in an area contaminated from late nineteenth century smelter operations. See *id.* at ¶ 2. Letters from the Environmental Protection Agency (the EPA) and Utah Department of Environmental Quality (the UDEQ) stated that testing of the Schmidts' soil revealed lead and arsenic levels warranting remediation; an environmental remediation company estimated that the cost of remediation would be \$1,042,252.05; and "letters from several banks ... denied permanent financing for the property after the contamination was discovered."*Id.* at ¶ 3. Based on this information, the Commission reduced the valuation of the Schmidts' land to \$0-subtracting the cost of remediation from the land's value. See *id.* at ¶ 5. Affirming the Commission's valuation of the land at \$0, the Utah Supreme Court determined that the Commission's valuation was supported by substantial evidence. See *id.* at ¶ 11.

The facts of *Schmidt* closely track those of the instant case, with some differences. First, the Schmidts were unable to obtain financing, see *id.* at ¶ 3, whereas the Baggetts qualified for conventional financing to purchase their property. However, there is no evidence on the record that the Baggetts' lending institution knew about the contamination, and it is undisputed that the Baggetts did not know. Second, in the *Schmidt* case, the land was not in a Superfund site, see *id.* at ¶ 4, while the Baggett's property is. Yet, this is not germane because although the Baggetts' land is in a Superfund site, the remediation has not even commenced and there is no certainty about when it will be done. Thus, the facts in the case before us are sufficiently similar to warrant application of *Schmidt*.

*2 Second, the Board asserts that the Commission improperly admitted, as expert testimony, Mr. Baggett's estimation of the remediation cost attributable to his land. Regardless of Mr. Baggett's qualifications as an expert, his estimate of remediation cost was a simple mathematical calculation, not requiring expert testimony. Therefore, the Commission did not abuse its discretion by admitting Mr. Baggett's testimony.

Finally, the Board contends that the Commission's \$0 valuation of the Baggetts' land was not supported by substantial evidence. "The Commission has the discretion to take that conflicting evidence into account and to arrive at a number in between."*Id.* at ¶ 11. As in *Schmidt*, we afford the Commission this discretion. There was evidence on the record, in the form of Mr. Baggett's testimony, that remediation costs would exceed the Assessor's \$103,700 valuation of the land, even if his estimates were off by fifty percent. Furthermore, the Board's evidence that comparables experienced little or no decline in value due to contamination was undercut by the dissimilarity of the comparables, in that they were not contaminated.^{FN2} Accordingly, because reasonable minds could be persuaded that the fair market value of the Baggetts' land was \$0, the Commission's valuation is sustained by substantial evidence.

^{FN2} The Board called this court's attention to *Nielsen v. Board of Equalization of Salt Lake County*, App. No. 04-0605 (Utah State Tax Comm'n Feb. 22, 2005), for the position that the Baggetts' land should not be valued at \$0. However, while Nielsen's real property is in the same contaminated area as the Baggetts' land, Nielsen did not argue that the contamination warranted a reduction in the value of his land apart from the value of his home. See *id.* Therefore, *Nielsen* is not helpful.

We affirm the Commission's decision.

We concur: RUSSELL W. BENCH, Judge, JAMES Z. DAVIS, Judge.
Utah App., 2005.

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Not Reported in P.3d, 2005 WL 2045823 (Utah App.), 2005 UT App 360

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