



**STIRBA**  
AND ASSOCIATES

A PROFESSIONAL LAW CORPORATION

215 SOUTH STATE STREET • SUITE 750  
POST OFFICE BOX 810  
SALT LAKE CITY • UTAH 84110-0810  
TELEPHONE: 801-364-8300  
FACSIMILE: 801-364-8355

RECEIVED

APR 21 2010

DEQ  
Environmental Response & Remediation

www.stirba.com

April 26, 2010

*Vth - U.S. Mail*

Morgan Atkinson  
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF ENVIRONMENTAL RESPONSE AND REMEDIATION  
LEAKING UNDERGROUND STORAGE TANK  
P.O. Box 144840  
Salt Lake City, UT 84114-4840

RE: *Gunnison City, et al. v. Wind River Petroleum Inc., et al. - Carissa Kuhni Property*

Dear Morgan,

I am writing on behalf of our client, Carissa Kuhni. I understand that you and Ms. Kuhni have recently been in contact regarding some of her property concerns caused by the Top Stop Release and remediation efforts. Ms. Kuhni has requested that we provide you with some additional information in response to your April 16, 2010 email.

First, Ms. Kuhni is aware that any of her communication with the State, Wind River or Wasatch Environmental will be public information and discoverable for purposes of the above-mentioned matter regardless of whether you forward your most recent email exchange to Wasatch/Wind River. You may forward the conversation to Wasatch or Wind River as you see fit.

Second, we would request that you or the DERR write a letter to the Sanpete County Tax Assessor, Kenneth Bench, in support of Ms. Kuhni's position that the remediation garage and equipment should be valued at zero. Ms. Kuhni's parcel number is 2289. In 2008, Stirba & Associates successfully assisted several of our clients, including Ms. Kuhni, in their land/lot tax assessment appeals. The Sanpete County Board of Equalization determined that all of the land/lots at issue were without any value. In 2009, our firm again wrote to Kenneth Bench on behalf of a number of our clients whose land/lots were, in our opinion, overvalued based on the

SCANNED

DERR 2010-006626



# STIRBA

AND ASSOCIATES

ongoing remediation efforts. In response to Ms. Kuhni's 2009 appeal, the Sanpete County Board of Equalization reduced her land/lot value to zero, yet still assessed the garage's market value at \$11,544.00. Further, the value of Ms. Kuhni's home increased from \$84,030.00 in 2008 to \$114,317.00. I have attached documents pertaining to Ms. Kuhni's appeal of her 2008 and 2009 property tax assessment. Any further assistance from your office regarding this issue would be much appreciated.

I understand from your April 12, 2010 email that Wind River has calculated the increased utility costs to homeowners to operate the SVE systems and is planning to send checks to compensate the affected homeowners. To date, neither Ms. Kuhni herself nor our Firm has received any such checks from Wind River or their Counsel. Please let me know if there has been any progress on this issue. Additionally, seeing as Wind River has already calculated the increased utility costs, I do not feel it necessary for Ms. Kuhni to spend the time and expense to locate and copy her utility bills for the past two years. If such documentation is required, perhaps Wind River could subpoena these records from the utility company directly.

Finally, your April 16, 2010 email states that you will provide Ms. Kuhni with several documents including the CAP document(s), DERR Summary Reports and the UST Compliance File. To date, Ms. Kuhni has not received these items but I understand that these will take time to compile and process. We would request you send these items to Stirba & Associates directly and we will pass them along to Ms. Kuhni. If this is not possible, I will direct Ms. Kuhni to provide a copy to us.

I should also note that on April 14, 2010, Ms. Kuhni called to inform me that she noticed two large drums within the fenced garage/shed area on her property. She recognized these drums as those where contaminant-soaked "socks" are held until they can be transported from the property. Ms. Kuhni was very upset that Wasatch was possibly storing hazardous chemicals on her property and suspected that these drums were actually the same drums that had been removed from her property over a year ago. I contacted Lance Hess on Ms. Kuhni's behalf. Mr. Hess contacted Les Pennington and the drums were promptly removed on April 15. I share this information with you to highlight Ms. Kuhni's ongoing worry and frustration in dealing with these issues. I sincerely appreciate your efforts on her behalf and look forward to working with you reach an appropriate resolution. If you have any questions, please contact me.

Thank you.



**STIRBA**  
AND ASSOCIATES

Sincerely,

**STIRBA & ASSOCIATES**

  
**KATHLEEN ABKE**

KA/ms

Enclosures

cc: Carissa Kuhni w/out enclosures  
Peter Stirba w/out enclosures



STIRBA  
AND ASSOCIATES

A PROFESSIONAL LAW CORPORATION

215 SOUTH STATE STREET • SUITE 750  
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 Nortir 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
----	--------------------------	------



COPY

STIRBA  
AND ASSOCIATES

A PROFESSIONAL LAW CORPORATION

215 SOUTH STATE STREET • SUITE 750  
POST OFFICE BOX 810  
SALT LAKE CITY • UTAH 84110-0810  
TELEPHONE 801 364-8300  
FACSIMILE: 801 364-8355

www.stirba.com

September 14, 2009

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

Dear Mr. Bench:

Thank you for talking with me on the phone the other day. In regard to the Gunnison properties listed in Exhibit A to this letter, and expert witnesses we have hired, we have done a market value assessment as of the day of the spill, to establish our starting point in calculating market value and diminution thereof, based on the catastrophic Gunnison Top Stop gasoline leak. We have not yet finalized any reportable diminution of value appraisals post gasoline leak. Post release appraisals will occur in the future, and I will make sure you know the results. These are not typical appraisals, but deal more with expert economic analysis of how the gasoline being under the home, and the vapors which impact each home differently, affects overall property value. Our opinion is that there is a significant diminution of both land value, and improvement value, on each of the properties affected by the Top Stop leak.

Regardless, I am writing this letter to file a protest the "land or lot values" assessed on my clients' 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 building or improvement "live in" value assessed by Sanpete County, only the "land or lot values."

Our protest is based on two cases from the State of Utah, *Schmidt v. Utah State Tax Commission*, 980 P.2d 690 (Utah 1999) and *Salt Lake County Board of Equalization v. Utah State Tax Commission*, 2005 UT App 360. These cases are attached for your review. Both cases involve similar environmental catastrophes. In both cases, the taxable "land or lot value" of the contaminated property was determined to be zero. Improvements or "live in values" were valued at their actual tax rate because families were still living in, and using, their homes, similar to many of my clients. Here, just like in the cases enclosed, there is undisputable evidence that any property within the Top



STIRBA  
AND ASSOCIATES

Stop Plume is contaminated. Thus, both the Utah Supreme Court, and the Utah Court of Appeals, would expressly guide that your assessment of these property values should be zero.

In addition to protesting the land values, as you will see in Exhibit A, Jeremy Taylor's home is not inhabitable, per the State of Utah, and we are appealing both the land and the improvement value with regard to Mr. Taylor's home. I am hopeful that in regard to all other homes listed on Exhibit A, you will assess their lot value at zero, and tax only the improvements on their lots.

Sincerely,

STIRBA & ASSOCIATES,

MEB W. ANDERSON



STIRBA  
AND ASSOCIATES

Exhibit A

Properties where the lot lies directly above the indisputable Top Stop gasoline spill plume:

✓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 – per the State of Utah:

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



**Decision Letter - Real Property**  
 Sanpete County Board of Equalization  
 160 North Main, Manti, Utah 84642

Carlissa M Kuhn  
 PO Box 175  
 Guonison, UT 84634

Property Identification Number	2289
Appeal Number	251
Date of Hearing	Sept 30, 2009

October 1, 2009

Dear Property Owner,

The Sanpete County Board of Equalization reviewed your appeal and has made a final determination of your property's value as indicated below. Your 2009 tax notice will reflect any changes made by the Board.

If you disagree with the Board's decision, you may appeal to the Utah State Tax Commission. The appeal must be filed within 30 days of the date of this letter November 2, 2009. Please contact the County Auditor's office at 160 North Main, Manti, Utah 84642, or (435) 835-2142 for forms and instructions.

Respectfully, Ilene B Roth, Sanpete County Auditor

<b>Record of Final Decision - Real Property</b> Sanpete County Board of Equalization	UCA §59-2-1001 Form PT-015 PT-015.al Rev 1/00
---	---

	Pre-Board Market	Equalized Market	Adjusted Value (if changed)	Adjusted Tax Amount (if changed)
Real Estate	\$27,980.00	\$0.00	\$27,980.00	
Improvements	\$125,861.00	\$125,861.00	\$0.00	
<b>Total Value</b>	\$153,841.00	\$125,861.00	\$27,980.00	\$0.00

If taxes have been paid for 2009, any credit on the parcel will be applied to 2010.  
 Assessment changes will show on 2009 notices.

Explanation to support Board's final decision:

Lowered value of land to \$0 as per attorney's letter, subject to annual review.

**Board Authorized Signature or County Seal**

X <i>Ilene B Roth</i> Ilene B. Roth, County Auditor	Date October 1, 2009
--	----------------------

# SANPETE COUNTY

## 2009 Notice of Property Valuation & Tax Change

### «This is NOT a Bill - Do NOT Pay»

SEE THIS PARCEL NUMBER ON ALL CORRESPONDENCE

TAXING DISTRICT

000002289

004 - Gunnison City

000002289  
 KUHN CARISSA M  
 PO BOX 175  
 GUNNISON UT 84834-0000

**ILENE ROTH**  
 Sanpete County Auditor  
 Po Box 128  
 160 N Main  
 Mantl UT 84642-0128  
 (435) 535-2142

### MARKET VALUE OF YOUR PROPERTY

Property Type	Last Year's Value	Current Value	Proposed Value
BR01 Residential		84,030	114,317
BR07 Garage		0	11,844
<b>Total Property Value</b>		<b>84,030</b>	<b>126,161</b>

### LAST YEAR, CURRENT, AND PROPOSED PROPERTY TAXES

Agency	Last Year	Current	Proposed	Notes
04 Gunnison City	102.63	160.29	160.26	See 1 Hearing 11Am, Adopt 1Pm  12-17-09 7 Pm Courthouse Hearing Aug 18 9Pm Courthouse Mantl
Sanpete County	106.06	168.24	168.24	
State A&C	6.85	8.83	8.83	
28 ABO Local	13.87	21.04	21.04	
31 South Sanpete School District	328.01	475.83	475.83	
33 South Basic School Levy	57.77	98.20	98.20	
48 Sanpete County Water Cons	13.17	20.01	20.01	
41 Central Utah Water Cons	13.22	22.61	27.69	
<b>Total Property Taxes</b>	<b>637.81</b>	<b>886.21</b>	<b>971.88</b>	Detailed Review Date: 04/02/2009

Board of Equalization is for ASSESSED PROPERTY VALUES not tax dollar issues. Questions? Call or visit Assessor's Office (435) 835-2111. Applications are available at the AUDITOR'S Office 7:30 am-8pm Mon-Thurs. DOCUMENTATION establishing a basis for an appeal of Market Value is REQUIRED. Also, APPEALS ARE ACCEPTED BY MAIL, Sanpete County Auditor's Office, PO Box 128, Mantl, UT 84642 (with completed application). BOE hearings held in Commission Chambers 160 N Main, Mantl B/19/09 Noon-7pm, and 8/20/09 9am-noon, 1pm-5pm. \*\*\*Board of Equalization closes on September 15, 2009.\*\*\* Abatement programs are available to qualified individuals: Circuit Breaker, Indigent, Veterans disabled from service & Blind. Contact Auditor's office for applications. LEGAL DESCRIPTIONS ARE FOR CONVENIENCE ONLY, NOT TO BE USED FOR OFFICIAL PURPOSES. REMEMBER, YOUR FINAL TAX STATEMENT WILL BE MAILED BY NOV. 1.

## DO NOT PAY! THIS IS NOT A BILL

BEG SW COR LOT 2, BLK 10, PLAT A, GUNNISON CITY SURVEY, N89°W 85 FT, N1°E 217.80 FT, S80°E 85 FT, E 101 FT, S 3.30 C, W 101 FT TO BEG CONT .81 AC

## Personal Property Not Included In Totals



