

Stream Flo Industries Ltd.
4505 74 Avenue
Edmonton, AB T6B 2H5

City of Red Deer Assessment Department
4914 48 Avenue
Red Deer, AB T4N 3T4

Attention: B. Lutz, City Assessor

Via email: brian.lutz@reddeer.ca
(paper copy to follow)

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

Hearing: 30 September, 2010

Panel: Presiding Officer M. Chilibeck; R. Fitzpatrick; D. Hoar

Decision# CARB0262-022/2010

Roll 9700165
207, 39015 Hwy 2a
Red Deer, Alberta
Assessment (2010) \$570,400

For the Complainant:
S. Cobb – Assessment Advisory Group

For the Respondent:
R. Kotchon, Assessor
A. Meckling, Assessor

At the outset of the hearing the Complainant confirmed that the only issue before the Board is assessed value. It was agreed by both the Complainant and the Respondent that the subject property is contaminated with hazardous chemicals. This forms the basis of the Complainant's argument - that the assessed value of \$570,400 does not reflect the property's market value owing to contamination issues.

The subject property is located in North Red Deer in the Chiles Industrial Park that was annexed from Red Deer County in October 2009. The property encompasses 2.36 acres with fenced storage yard and a 7,440 square foot industrial warehouse constructed in 1981. The assessment is calculated by using the depreciated replacement cost method.

ISSUE 1: MARKET VALUE OF CONTAMINATED PROPERTY

The primary argument put forth by the Complainant relied on provincial legislation including the *"Municipal Government Act"* R.S.A. 2000 Ch. M-26 (MGA) and the *"Matters Relating to Assessment & Taxation"* AR 220/2004 (MRAT). The Complainant referenced s. 3 of MRAT and s.289(2) of MGA which provides that an assessed value is the estimated market value as of July

01 with a condition date as of December 31 of the assessment year. In this case the complaint is against the 2010 assessment used for 2010 taxation and therefore the assessment year is 2009. Market value as defined in the MGA means the amount of money that might be realized if property were sold by a willing seller to a willing buyer. Based on this, the Complainant argued that a willing buyer with knowledge of the contamination would pay no more than \$1,000 for the subject property and is requesting a change in the assessed value to same.

The Complainant stated that the owner has incurred remediation expenses of approximately \$500,000 for the subject property and that the anticipated expense to complete the remediation process is approximately \$500,000 to \$1 million. In support of this assertion, the Complainant provided a report prepared by Nichols Environmental dated 16 December, 2009 which includes identification (location) of the contamination and bore holes, the actions taken since May, 2003 to November, 2009 and related costs from June, 2003 to March 2010.

The Complainant acknowledged an existing portable lavatory rental business operating on the subject property and provided a copy of the lease agreement that commenced on August 1, 2009 which includes the Tenant paying rent of \$5,000 per month and having the right of first refusal (dependent on resolution of contamination issues) to purchase the subject property.

The Respondent argued that the Complainant failed to supply current, specific data relative to the status of the remediation and contended that the estimated cost as provided by the Complainant, to complete the remediation is arbitrary. The Respondent questioned the absence of a contamination order from Alberta Environment. The Respondent provided the Board with Municipal Government Board Orders relating to contaminated land: MGB 093/08; MGB 043/02 & MGB 005/02.

The Respondent stated that they used the assessed value of \$770,000 made by Red Deer County in 2008 – prior to annexation, less an allowance of approximately 26% for contamination, to establish the assessed value for the 2009 assessment year. The Respondent stated that when he became aware of the contamination of the subject property (in November 2009) the assessed value was adjusted. To determine the amount of the adjustment for contaminated land, the Respondent used a valuation analysis completed on a comparable, contaminated property within Red Deer. The analysis of the comparable pointed to a loss in value between 20-30%. The 2009 land assessment (as determined by the County of Red Deer) was reduced by 26% and the improvement assessment (as determined by the County of Red Deer) was reduced by 35% to arrive at the assessed value of \$570,400 for the 2009 assessment year.

The Respondent supported the assessment by two methods; by the replacement cost method wherein the Marshall & Swift valuation was used to calculate the depreciated cost of the improvements and by the capitalized income method.

The replacement cost method indicates the land value at \$282,400 and the improvement value at \$288,000. In the capitalized income method, the \$5,000 monthly rent was used to calculate the value for the property, land & improvements, at \$539,500.

The Board is of the opinion that the use of a percentage allowance to address a contamination issue is neither reasonable nor fair because the relationship between percentage and actual dollar value is significantly different. The Respondent did not enter into evidence the details of valuation analysis referred to in his argument therefore the Board cannot evaluate its relevance to the subject property. While the Board does not have sufficient information to support or reject the calculations of the Respondent, the Respondent demonstrated that if he had used the income approach to valuation, it would support the assessed value of the subject property.

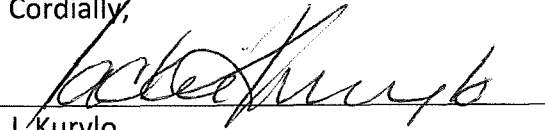
The Board notes that although the property was vacant as of July 01 (the valuation date), the lease agreement between the portable lavatory business and the owner is dated July 20, 2009 and effective on August 1, 2009 which is within the 2009 assessment year. The subject property is being utilized (as evidenced by the lease documents) as of the physical condition date of December 31. The Board finds this demonstrates that the property has value in excess of the minimal value suggested by the Complainant.

The Board finds that the exact nature and degree of contamination on the subject property as of December 31, 2009 is unknown and the estimated cost to complete the remediation (\$500,000 - \$1m) is based on the remediation costs spent to date and is not a true approximation of future, potential costs. The Board notes that the report prepared by Nichols Management has not been supported with other professional opinions – as such, it provides the Board with a sketch of the contamination and remediation carried out as of March 2010 however, the Board finds the report is too vague and too general as to any potential remediation required; therefore the Board placed little weight on it. The Board finds there is insufficient evidence of a loss in market value of the subject property due to contamination to warrant an assessment reduction greater than already allowed by the Respondent.

Based on the forgoing, the decision of the Board is to make no change to the assessment and confirm the 2010 assessment at \$570,400.

Dated at the City of Red Deer in the Province of Alberta this 29 day of October, 2010 and signed by the Appeals Coordinator for the Presiding Officer on behalf of all three panel members who agree with this decision.

Cordially,



J. Kurylo

for: Myron Chilibeck, Presiding Officer

xc: MGB (via email only: mgbmail@gov.ab.ca)
Assessment Advisory Group (via email only: eila@aagroup.ca)

The Municipal Government Act provides the right for you to appeal this decision to the Court of Queens Bench on a question of law or jurisdiction of the Board within 30 days of receiving this letter.

If you have any questions concerning these matters, please contact the Regional Assessment Review Board Clerk at 403.342.8132.