

SURFACE RIGHTS ACT
(hereinafter "the Act")

Before:

SURFACE RIGHTS BOARD
(hereinafter "the Board").

IN THE MATTER OF certain lands subject to a surface lease (L.S. 12 & 14-9 well sites) in the North West Quarter of Section 9, Township 49, Range 7, West of the 5th Meridian, in the Province of Alberta (hereinafter referred to as "the said land").
Excepting thereout all Mines and Minerals.

B E T W E E N:

EXXONMOBIL CANADA ENERGY,

Operator,

- and -

MILDRED PAULINE CURTIS (also known as MILDRED P. CURTIS),
HEATHER J. WOOLLEY
and
DEBORAH I. WILLIAMS,

Lessor.

DECISION

Upon application by the Lessor for review of the rate of compensation payable in respect of a surface lease in the said land; and upon the Board being satisfied that conditions precedent to the application had been met; the Board held a hearing on the application on February 18, 2003, at Edmonton, Alberta.

PRESIDING BOARD:

- S. S. Schumacher, Q.C., Presiding Chairman
- J. E. Logan
- F. Weber

APPEARANCES:

For the Operator:

- Peter L. Miller, with the Law Department of ExxonMobil Canada Energy, Counsel;
- Douglas C. Rowden, Land Agent, with ExxonMobil Canada Energy; and
- Don L. Hoover, AACI, P.Ag., with Serecon Valuation & Agricultural Consulting Inc.

For the Lessor:

- Daniel P. Carroll, with the law firm Field Atkinson Perraton, Counsel;
- Mildred Pauline Curtis, Landowner;
- Deborah Williams, Landowner; and
- Kevin C. Zeiner, AACI, with Shaske & Zeiner Appraisal Consultants Ltd.

EXHIBITS FOR IDENTIFICATION:

Exhibit A: Copy of the surface lease as filed with the application.

Exhibit B: Letter of Application for review, on behalf of the Lessor, dated July 19, 2002.

EXHIBITS FILED:

Exhibit 1: Map of L.S. 12 parcel.

Exhibit 2: Map: Preliminary Study of South Part of L.S. 12.

Exhibit 3: Residential Subdivision: Example Venture Realty Inc.

Exhibit 4: Tentative Subdivision Plan.

Exhibit 5: Kevin C. Zeiner: Appraiser's qualifications.

Exhibit 6: Lessor's appraisal.

Exhibit 7: Operator's written presentation.

Exhibit 8: Operator's appraisal.

Exhibit numbers 1 to 6, inclusive, were filed for the Lessor. Exhibit numbers 7 and 8 were filed for the Operator.

SUMMARY OF THE EVIDENCE:

Evidence taken under oath.

Lessor's Evidence:

Mr. Dan Carroll, of Field Atkinson Perraton, presented the case for the Lessor, calling on Mrs. Curtis and Mrs. Williams to outline the history of the subject lease and Mr. Zeiner to support the Lessor's request for compensation.

Mrs. Curtis told the Board that she is 79 years old and was born in Drayton Valley. As a child she lived on the quarter section directly north of the said land and became the owner of this land in the early 1960s. Over the years she has developed the property containing the subject sites into housing, schools, and a hospital. Mrs. Curtis told the Board that the subject lease was signed on June 23, 1954. At this time the said land was used for farming. Since then, Mrs. Curtis indicated that she has sold most of the lots except for eight that she kept for rental housing. Presently, she still owns four lots and the two parcels containing the subject sites. She noted that she has been unable to sell the L.S. 14 site as the lease occupied this entire parcel. In 1998 Mrs. Curtis indicated that she included her two daughters as joint tenants on the title pertaining to the L.S. 12 site (Certificate of Title No. 982 312 555) and is the sole title holder (Certificate of Title No. 782 205 270) on the L.S. 14 site.

Mrs. Williams, who is Mrs. Curtis' daughter, told the Board that she and her sister Heather Woolley became joint tenants along with their mother on the land containing the L.S. 12 lease in 1998. Their intention was to subdivide the land into lots for sale.

Mrs. Williams submitted a survey of the general area containing the said land (Exhibit 1). The site's specific circumstances indicated that only the most southerly part of the L.S. 12 site could be developed. Mrs. Williams introduced Exhibit 2, which illustrates three possible concepts for subdividing the subject and shows the 100 meter radius of the setback restricting development due to the presence of the wellsite.

On the issue of subdivision, Mrs. Williams testified that she, her sister, and Mrs. Curtis had met with the town manager. The Town of Drayton Valley expressed a positive interest in subdivision however, there were some reservations concerning the effect of the 100 meter setback on the overall developability of the subject.

Mrs. Williams went on to outline a subsequent meeting with Mr. Fritz Gruber who has developed land in Drayton Valley. Their discussion revolved around aspects of subdivision approval, servicing, and the sale of lots (Exhibit 3).

Mrs. Williams provided the Board with a tentative plan showing a proposed subdivision of the L.S. 12 parcel (Exhibit 4). This plan assumes that if the well head was removed then 75 lots could be created. Average lot sizes would be 6,533 square feet in area and yield 5.3 lots per acre. However, with the well head and 100 meter radius setback, Mrs. Williams testified that the L.S. 12 parcel would yield 21 lots on its south end. Several other lots would also be possible as they would not be affected by the setback. However, Mrs. Williams argued that these lots would be difficult and uneconomical to service as they are severed from the south portion containing the 21 lots that are feasible under the present circumstances.

Mrs. Williams stated that she, her sister, and her mother intend to immediately subdivide and sell the 21 lots. When asked about the delay between acquiring the L.S. 12 site and subdividing, Mrs. Williams testified that they had tried to negotiate with the Operator and these negotiations have impeded subdivision due to time restrictions.

Mr. Kevin Zeiner presented his appraisal to the Board (Exhibit 6). He identified that the effective date of his estimate of compensation is June 2001. For clarification Mr. Zeiner noted that the subject lease is located in LS 12 and 14 in the NW ¼-9-49-7-W5M in the town of Drayton Valley. Other salient facts are as follows:

	LSD 12	LSD 14
Total Parcel Size	14.13 acres	3.67 acres
Area Under Lease	5.00 acres	3.67 acres
Land Use Classification	UR Urban Reserve - Holding District	R1, Recreational - General Recreation District
Highest and Best Use: Development as permitted under existing land use guidelines		
Per Acre Value (land under lease)	\$54,400.00	\$54,400.00
Estimate of land use as if vacant, Of land required:	\$272,000.00	\$199,648.00

Mr. Zeiner declared that in his opinion compensation should be based on typical land lease rates for vacant land at 10% of market value. In arriving at a final estimate of market value for the subject lands Mr. Zeiner utilized the Cost of Development Method (Exhibit 6, pages 21 to 26). This method is frequently utilized in the valuation of vacant development land in the absence of directly comparable market data. This method projects the development of a hypothetical subdivision and estimates gross proceeds from lot sales less the cost of development. A market value is then projected from these net cash proceeds. Mr. Zeiner argued that the two subject parcels are immediately developable as they are surrounded by existing houses and all services are available. Therefore, he testified that he proceeded with his analysis on the assumption that the well sites were absent.

In his analysis Mr. Zeiner investigated factors including lot yield, gross income estimates, absorption rates, development costs, developer’s profit and discount rates. A summary spreadsheet of Mr. Ziener’s findings (Exhibit 6, page 25) is as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Absorption					
%	22%	22%	22%	22%	10%
# Lots	20	20	20	20	9
Price per Lot	\$35,500.00	\$37,275.00	\$39,139.00	\$41,096.00	\$43,151.00
Gross Sales	\$710,000.00	\$745,500.00	\$782,780.00	\$821,920.00	\$388,359.00
Less:					
Development Costs	\$1,254,900.00	\$0.00	\$0.00	\$0.00	\$0.00
Financing	5.0% \$35,500.00	\$37,275.00	\$39,139.00	\$41,096.00	\$19,418.00
Sales Commissions	3.0% \$21,300.00	\$22,365.00	\$23,483.00	\$24,658.00	\$11,651.00
Marketing/Advertising	1.0% \$7,100.00	\$7,455.00	\$7,828.00	\$8,219.00	\$3,884.00
Property Taxes	1.0% \$7,100.00	\$7,455.00	\$7,828.00	\$8,219.00	\$3,884.00
Land Titles/Legal	0.5% \$3,550.00	\$3,728.00	\$3,914.00	\$4,110.00	\$1,942.00
Total	<u>\$1,329,450.00</u>	<u>\$78,278.00</u>	<u>\$82,192.00</u>	<u>\$86,302.00</u>	<u>\$40,779.00</u>
Net Sales	(\$619,450.00)	\$667,222.00	\$700,588.00	\$735,618.00	\$347,580.00
Developers Profit	10.0% <u>\$71,000.00</u>	<u>\$74,550.00</u>	<u>\$78,278.00</u>	<u>\$82,192.00</u>	<u>\$38,836.00</u>
Net Cash Flow	(\$690,450.00)	\$592,672.00	\$622,310.00	\$653,426.00	\$308,744.00
Present Value @ 10%	<u>(\$627,682.00)</u>	<u>\$489,812.00</u>	<u>\$467,551.00</u>	<u>\$446,299.00</u>	<u>\$191,706.00</u>
Total Value Estimate					
Year 1	(\$627,682.00)				
Year 2	\$489,812.00				
Year 3	\$467,551.00				
Year 4	\$446,299.00				
Year 5	<u>\$191,706.00</u>				
Total Value	\$967,686.00				
Rounded To:	\$968,000.00				
	or \$54,400.00 per acre				

On the basis of his analysis Mr. Zeiner is of the opinion that the most probable value would be \$54,400.00 per acre. Considering the 5.00 acres required for the well site on LS 12 and the 3.67 acres on LS 14, the indicated compensation in the form of loss of use or annual rental would be as follows:

	LSD 12	LSD 14
5.00 acres @ \$54,400.00 per acre	\$272,000.00	-
3.67 acres @ \$54,400.00 per acre	-	\$199,648.00
Annual Lease percentage:	10%	10%
Compensation payable – loss of use	\$27,200.00	\$19,965.00

Mr. Zeiner argued that conditions have changed dramatically since the initial signing of the lease. The original lease occurred when the land was vacant farm land and original compensation was set accordingly. At present, the lands are situated within a residential subdivision and would most likely also be developed. However, the location of the existing lease on LS 12 renders a larger part of the site undevelopable due to the 100 meter radial setback. This is a form of injurious affection that must be taken into account in the determination of compensation. His estimate of the area affected by the setback is 4.35 acres.

Mr. Zeiner indicated that the above described (Exhibit 6, page 27) adverse effect (injurious affection) would be calculated as follows:

$$4.35 \text{ acres} \times \$54,400.00 \text{ per acre} \times 10\% \text{ lease rate} = \$23,664.00$$

In addition to the previously calculated compensation, noise and nuisance must be considered under adverse effect. Mr. Zeiner has determined that this should be in the amount of \$1,900.00 per annum.

After his analysis of all factors affecting the value of the subject property, Mr. Zeiner concluded that annual compensation payable to the owners is as follows:

	LSD 12	LSD 14
Loss of Use	\$27,200.00	\$19,965.00
Adverse Effect		
* nuisance and noise	\$1,900.00	Nil
* non-usable land	\$23,664.00	Nil
Total Compensation	\$52,764.00	\$19,965.00

Mr. Zeiner directed the Board's attention to a number of informational factors concerning the subject lease. Page 10, of Exhibit 6 shows the location of the subject lease within the Town of Drayton Valley, page 11 shows the site plans, and pages 14 and 15 show the well sites. Mr. Ziener also noted pages 16 and 17 which outline land use classification parameters affecting the subject lease and the remaining lands.

Mr. Zeiner outlined the process utilized to ascertain the highest and best use of the two parcels (Exhibit 6, pages 19 and 20). With respect to the LS 12 site, he found the highest and best use to be for future residential development in accordance with its districting and locational context. As for the LS 14 site, Mr. Zeiner noted that it is zoned P-1, Recreational-General Recreation District. However, he found that if the subject was not zoned for recreation purposes it would most likely be developed for residential housing if not purchased by the municipality for parkland at a bareland price based on the surrounding single family residential housing.

Operator's Evidence:

Mr. Miller, counsel for the Operator presented the Operator's case which included testimony from Doug Rowden and Don Hoover. Mr. Miller noted that the Town of Drayton Valley has grown up around many oil installations. As a result the Operator has undertaken to review compensation on its holdings in the town. Mr. Miller argued that although agricultural valuations can no longer apply to the subject lease their development is not imminent and therefore, Mr. Zeiner's analysis is hypothetical and based on speculative assumptions.

In light of the above, Serecon has been engaged to develop a formula approach to determine fair compensation applicable to over 100 in or near town sites, all with potential for development. Of these, only two landowners remain who wish to test this formula through the Surface Rights Board process.

Mr. Rowden made a verbatim presentation of the Operator's written submission (Exhibit 7). He stated that the subject lease sites contain producing oil wells with the facilities situated on teardrop production pads with childproof fencing and locked gates. The Operator generally visits these sites on a daily basis.

By way of history, a surface lease was acquired to include both 12- 9 and 14-9 on June 23, 1954 between Socony-Vacuum Oil Co. of Canada, Ltd. and Lucy Belle Dodson.

A rental review notice was sent by Mobil Oil Canada on July 6, 1999 to advise of the right to a review of annual compensation. The Operator provided Mrs. Curtis et al. with a full appraisal report in June of 2001. In July 2001 the Operator received notice that Mrs. Curtis would be represented by legal counsel regarding all matters pertaining to the negotiation of rental compensation for the subject lease.

Mr. Rowden noted that the Operator has made an offer of annual rental compensation based on values provided by Serecon Valuation & Agricultural Consulting Inc. through their independent appraisal of the properties in question. Accordingly, the Operator’s offer of annual compensation is as follows:

12-9-49-7-W5M (5.00 acres)	
Loss of Use – 5.00 acres @ \$1,250.00/acre.....	\$ 6,250.00
Adverse Effect	<u>\$ 6,000.00</u>
Total	\$12,250.00
14-9-49-7-W5M (3.67 acres)	
Loss of Use – 3.67 acres @ \$1,250.00/acre.....	\$ 4,588.00 (rounded)
Adverse Effect –Nil	<u>\$ 0.00</u>
Total	\$ 4,588.00
Total Offer of Annual Compensation	\$16,838.00

Mr. Rowden highlighted a chart representing 17 existing surface lease locations within the Town of Drayton Valley (Exhibit 7). These leases are based upon Serecon’s valuations and have been successfully negotiated without any extra or unrecorded compensation.

Rental Review Comparables “Town of Drayton Valley”(Township 49 Range 7 West of the 5th Meridian)

EMC FILE #	LOCATION	ACRES	LAND DESIGNATION	APPRAISED LOSS OF USE	APPRAISED ADVERSE EFFECT	TOTAL
40117	12-16	2.98	Residential	\$600/ac.	\$1500.00	\$3300.00 (rounded)
41143-b	8-16	6.46	Residential/Recreation	\$600/ac.	\$6000.00	\$9900.00 (rounded)
42728	4-16	6.99	Residential/Recreation	\$600/ac.	\$3000.00	\$7194.00
42962	8-17	3.82	Industrial	\$5000/ac.	\$ 2500.00	\$21,600.00
42692	2-17	1.2	Industrial	\$5000/ac.	\$1500.00	\$7500.00
43298-a	Ptn. 12-8	1.1	Residential	\$600/ac.	\$750.00	\$1410.00
43298-b	Ptn. 12-8	3.42	Residential	\$600/ac.	\$1500.00	\$3552.00
	14-8	2.31	Residential	\$600/ac.	\$750.00	\$2136.00
42086	16-8	1.99	Residential	\$600/ac.	\$1500.00	\$2700.00 (rounded)
42063	2-8	4.49	Commercial/Mixed Service Industrial	\$1000/ac.	\$1500.00	\$5990.00
42063	8-8	2.70	Commercial/Mixed Service Industrial	\$4000/ac.	\$1500.00	\$12,300.00
42022	16-9	3.51	Residential	\$600/ac.	\$6000.00	\$8106.00
42138	10-9	7.32	Residential	\$1250/ac.	\$6000.00	\$15150.00
41282	10-5	6.37	Industrial	\$500/ac.	\$1000.00	\$4185.00
41282	16-5	4.37	Industrial	\$500/ac.	\$1000.00	\$3185.00
44323	4-9 (valve site)	0.05	Residential/Commercial	\$600/ac.	\$500.00	\$600.00 (rounded)
42164	4-9	1.13	Residential/Commercial	\$1000/ac.	\$750.00	\$1880.00
41575	4-9	2.10	Residential/Commercial	\$1000/ac.	\$750.00	\$2850.00
42164	6-9	2.45	Residential	\$600/ac.	\$750.00	\$2220.00

Mr. Rowden stated that in the Operator’s opinion, the most cogent comparable pertaining to the L.S. 12 subject lease is the 10-9 location that features an appraised loss of use in the amount of \$1,250.00 per acre and an appraised adverse effect of \$6,000.00. This property is currently being developed for residential use.

With respect to the L.S. 14 subject lease, the Operator is of the opinion that the 16-9 lease is the most cogent comparable as it is zoned for residential use, with an appraised loss of use of \$600.00 per acre and an appraised adverse effect of \$6,000.00.

Mr. Hoover presented his appraisal (Exhibit 8) to the Board. Mr. Hoover reviewed the summary of salient facts and conclusions, area data, subject property data, photographs, land use and zoning (Exhibit 8, pages 1, 4, 6, 7, 8, 9, 10, 11).

Following his summary of preliminary matters Mr. Hoover provided the Board with a detailed account of his methodology and findings in respect of loss of use and adverse effect (Exhibit 8, pages 13 to 22).

Loss of Use:

Mr. Hoover stated that his intent was to determine a range of values that would represent annual compensation for well sites in the residential area of Drayton Valley.

Mr. Hoover chose to determine the amount of rental income for residential rental properties that are applicable to the subject sites. The subject sites have been considered to be in the same state as they currently exist, which is unserviced land. Further, as the land within the well site boundaries are unserviced and the landowner(s) have not incurred the costs of servicing these lands, Mr. Hoover has calculated the rental return to unserviced land.

Following on this, Mr. Hoover stated that the net return for the bareland will equate to the annual amount the landowners are able to acquire on the open market. In making this estimate, Mr. Hoover determined market value of the bareland, rental incomes for residential properties, the rental value attributable to the bareland value and the annual loss of use.

In his examination of bareland sales, Mr. Hoover estimated that undeveloped bareland in Drayton Valley that could be utilized for residential purposes has a current value of \$8,500.00 per acre. Mr. Hoover also considered the residual value accruing from the sale of fully developed lots.

Mr. Hoover testified that he then calculated residential rental income and expenses and arrived at a net return per annum of \$6,975.00 on houses valued at \$150,000.00 or greater.

Upon consideration of the net return and dividing this between bareland, improvements, and the buildings Mr. Hoover arrived at the following annual loss of use estimations. He noted that he had assumed a yield of four lots per acre in order to determine the per acre values:

	Per Lot	Per Acre	Percentage
Improved Residential Sale > \$150,000.00			
Total Property Net Return.....	\$6,975.00.....	\$27,900.00	100.0%
Developed Lot Net Return.....	\$1,450.00.....	\$5,800.00	20.8%
Bareland (undeveloped) Net Return	\$307.00.....	\$1,228.00	4.4%

Taken together, the above calculations indicate an estimated annual net return on bareland (undeveloped) of \$1,250.00 per acre.

Adverse Effect: L.S. 12 Site:

Mr. Hoover presented his findings in regards to adverse effect (Exhibit 8, pages 20, 21, 22). Mr. Hoover reviewed previous Board Decisions to identify a pattern or principle that is applicable to the circumstances under review. Mr. Hoover found that Board awards for adverse effect are minimal where the highest and best use of adjacent lands is industrial. He also noted that there is a pattern of higher adverse effect compensation for sites closer to a farm residence. Mr. Hoover argued that his analysis provides a reasonable proxy in estimating the adverse effect of a well site close to a residence. However, Mr. Hoover stated that the adverse effect in an urban setting does not relate to impacts on the landowners' residences as all residential lands that may have been developed by the owner of the well site area are now owned by different parties.

As compensation for adverse effect is arbitrary or subjective, it is Mr. Hoover's opinion that adverse effect for a residential highest and best use would fall in the range established in the market and through Board Decisions of \$1,500.00 where impacts are minimal to a maximum of \$6,000.00. Mr. Hoover noted that this is a wide range but each site is governed by specific circumstances such as proximity to development and the nature of installations and operations on a given site.

With respect to the L.S. 12 site, Mr. Hoover is of the opinion that compensation for adverse effect should be \$6,000.00 per annum.

Adverse Effect: L.S. 14 Site:

Mr. Hoover stated that this subject property is surrounded by development and is ready for residential development. However, Mr. Hoover argued that the purpose of adverse effect is to offset any impact on the remaining land of the owner for nuisance, inconvenience and noise that might be caused by the Operator or its operations. In this instance there is no remaining land. The title is the well site with nothing left exterior to the site. Therefore, Mr. Hoover is of the opinion that if there is no residual rights to impact, there is no adverse effect.

FINDINGS OF FACT:

A surface lease was acquired to include both the LS 12 and the LS 14 sites on June 23, 1954 between Socony-Vacuum Oil Co. of Canada, Ltd. and Lucy Belle Dodson.

The effective date of review is June 23, 2000.

The subject sites are producing oil wells with the facilities situated on teardrop production pads and fenced with childproof fencing and locking gates.

The LS 12 site is zoned UR, Urban Reserve – Holding District.

The LS 14 site is zoned P-1, Recreational – General Recreation District.

The Lessor does not reside on either of the subject properties.

Current annual compensation for both subject sites together is \$9,069.00 per annum.

DETERMINATION OF COMPENSATION:

A rate of compensation must logically be presumed to compensate for those losses or damages which are of a recurring or continuing nature during the term of the lease. Generally, these include the loss of an area of productive land and the adverse effect, nuisance and inconvenience to the normal use and occupation of the remaining land.

As the Board was not privy to the initial fixing of the rate, it can only premise that what factors were considered by the parties on the execution of the lease are compatible with that now presented in evidence before the Board, subject of course to any changes in circumstances which may have occurred during the intervening period.

Under the provisions of the Act, consideration of a rate of compensation is to be given in respect of loss of use of the area granted (section 25 (1)(c)), and the adverse effect, nuisance, inconvenience and noise arising or that might arise from the area granted and the operations conducted thereon (section 25(1)(d)).

The issue facing the Board is that of determining fair and reasonable annual compensation payable by the Operator to the landowners for the use of the two subject sites.

Both the Lessor and the Operator admitted difficulties in finding comparable market data to support their respective valuations of loss of use and adverse effect. In turn, both parties have selected surrogate methodologies to support their position as to what constitutes appropriate compensation.

The Cost of Development approach taken by Mr. Zeiner projects the development of a hypothetical subdivision and estimates gross proceeds from lot sales less the cost of development. An estimate of the Lessor's loss of use is then calculated on the basis of projected net cash proceeds.

In contrast to the above, Mr. Hoover has elected to determine annual loss of use by projecting rental income from residential rental properties that are comparable to the subject parcels.

Upon examination of the evidence presented, the Board finds the approach adopted by the Operator to be more firmly grounded in terms of methodology and empirical fact. On the other hand the Board finds the approach taken by the Lessor to be overly reliant on speculative assumptions.

Both parties agree that the subject lands are likely to be developed at some point in the future. The Board believes that the Lessor harbours a sincere intent to undertake this development. Notwithstanding, the Board cannot substitute the Lessor's intent to subdivide for the fact that the said land remains undeveloped.

Although the Lessor has undertaken to produce a tentative subdivision plan (Exhibit 4) the Board finds this to be an insufficient indicator of the actual losses incurred. The absence of a formally prepared and municipally approved plan for subdivision places Mr. Zeiner's subsequent calculations pertaining to the cost of development and the imputed net proceeds from the sale of the resulting lots firmly in the realm of speculation. More directly, until such time as the lots are developed and sold there is no convincing evidence that the landowners have suffered the losses they are claiming.

In turning to Mr. Hoover's method, the Board finds his chosen methodology more plausible in establishing an appropriate rate of annual rental. In particular, the Board finds the \$1,300.00 assumed rental rates to be generous in the context of Drayton Valley and the subsequent calculations of bareland income to be reasonable under the circumstances.

The Board does however, disagree with the Operator's assumption of lot yield at four lots per acre. After subtraction of lands for park reserve, roadways, and other municipal services, the Board agrees with Mr. Zeiner's contention that planning officials and engineering firms consider a lot yield of five lots per acre to be typical. Therefore, the Board will replace the Operator's offer of compensation from \$1,250.00 to \$1,550.00 per acre for loss of use.

ADVERSE EFFECT:

The Board finds Mr. Hoover's analysis of adverse effect to be reflective of the range of circumstances affecting this aspect of compensation. Therefore the Board finds Mr. Hoover's estimate of compensation for adverse effect pertaining to the LS 12 site in the amount of \$6,000.00 to be fair and reasonable and so fixes.

The Lessor has made an additional claim of \$23,664.00 for adverse effect (injurious affection) on 4.35 acres affected by the 100 meter setback from the well head. The Board finds this claim to be based on the same assumptions underpinning the Lessor’s claim for loss of use. As stated previously, the Board finds the Lessor’s position to be overly speculative. Subdivision and the subsequent sale of lots has not yet occurred. Therefore, the losses claimed are hypothetical. Further, through cross-examination the Board found that relaxation of the setback by the Operator and municipal approval may be possible in the future. With this in mind the Board rejects this aspect of the Lessor’s claim.

With respect to the LS 14 site, as the subject lease occupies the entire 3.67 parcel, there is no remaining land and hence no adverse impacts on the remaining land. In their respective appraisals, the parties agree on this point. Accordingly, the Board finds the adverse effect on the LS 14 site to be nil.

SUMMARY OF COMPENSATION:

LS 12 Site

Loss of Use: \$1,550.00 x 5.0 acres	\$ 7,750.00
Adverse Effect:	<u>\$ 6,000.00</u>
Subtotal	\$13,750.00

LS 14 Site

Loss of Use: \$1,550.00 x 3.67 acres	\$ 5,700.00 (rounded)
Adverse Effect:	nil
Adverse Effect on non – usable land	<u>nil</u>
Subtotal	\$ 5,700.00

TOTAL COMBINED ANNUAL COMPENSATION FOR THE LS 12 AND LS 14 SITES:

LS 12 Site	\$13,750.00
LS 14 Site	<u>\$ 5,700.00</u>
TOTAL.....	\$19,450.00

Compensation in the above amount is payable by the Operator commencing at the effective date of review of June 23, 2000 and for each subsequent year after until the lease is surrendered or compensation is varied through a private agreement between the parties or by the Surface Rights Board.

In the event that the said land is developed and the lots are sold before the next rent review in 2005 the Lessor may apply for a rehearing under Section 29 of the Surface Rights Act.

The Board finds that a fair and adequate rate of compensation payable by the Operator under the Surface Lease is \$19,450.00 per annum, effective June 23, 2000.

An Order will issue varying the rate of compensation payable under the Surface Lease from \$9,069.00 to \$19,450.00 per annum, effective June 23, 2000, and payable on that date in each year thereafter unless and until varied by a further review.

INTEREST:

Under Section 27(15)(c), the Board may make an order regarding the payment of interest that it considers appropriate. The Board considers the Bank of Canada rate on the due date of the rental payment to be appropriate interest on the balance of annual compensation due. On June 23, 2000, the Bank rate was 6.00%, on June 23, 2001, the Bank rate was 4.75%, and on June 23, 2002, the Bank rate was 2.75%.

COSTS:

In considering costs it is the Board’s opinion that the fundamental principle in fixing costs is that a party entitled to an award of costs is entitled to be reimbursed for any reasonable costs reasonably incurred in and incidental to the proceedings before the Board, and necessary to the determination of fair compensation for that which gave rise to the hearings.

The Lessor claimed costs in the amount of \$9,827.81* and provided the Board with a detailed breakdown of same. Of this total, Solicitor costs amounted to \$5,585.94, appraisal costs amounted to \$3,441.88, and the Lessor claimed \$800.00 for preparing for, traveling to, and attending the hearing.

* Calculation error

The Operator argued that the costs claimed by the Lessor is “an order of magnitude over what is normally before the Board”. However, counsel for the Operator also stated that the Appraiser’s and Lessor’s respective invoices are reasonable.

Counsel for the Lessor argued that the circumstances surrounding this hearing are not ordinary. As the subject lease is located in an urban setting this is in effect, a test case with commensurately complex legal and appraisal issues.

The Board is of the opinion that this is an unusual case framed by unusual circumstances. In this instance the Board feels that the Lessor has a right to test the Operator’s offer through the Board’s hearing process. The Board also notes that the vast majority of reviews of compensation require less elaborate preparation and costs are commensurately lower.

The Board, having considered the above comments hereby awards costs to Mildred Pauline Curtis in the amount of \$8,241.88 and fixes same.

Legal Cost.....	\$4,000.00
Appraisal.....	\$3,441.88
Personal.....	<u>\$ 800.00</u>
Total.....	\$8,241.88

Dated at the City of Edmonton in the Province of Alberta this 15th day of April, 2003.

SURFACE RIGHTS BOARD

CHAIR