

File No. CR 746

Decision No. C10/78

THE SURFACE RIGHTS ACT

Before: : IN THE MATTER OF certain lands within  
: the Plan Calgary 5390 A.M. Block 8,  
The SURFACE RIGHTS BOARD, : Lots 1 to 16 inclusive, as described  
(hereinafter referred to : in Certificate of Title No. 105 0 238,  
as "the Board"). : in the Province of Alberta.  
: Excepting thereout all Mines and  
: Minerals.

B E T W E E N:

CANADIAN OCCIDENTAL PETROLEUM LTD.,

Applicant,

- and -

STELLAR ENTERPRISES LTD.,  
MARGARET JOHNSTON,  
MINNIE SPOOR,  
and  
STANLEY DREVER,

Respondents.

D E C I S I O N

Upon the application by Canadian Occidental Petroleum Ltd., the Board by Order No. C257/77, dated August 3, 1977, granted to the Applicant the right of entry of a part of the surface of certain lands within the Plan Calgary 5390 A.M., Block 8, Lots 1 to 16 inclusive, as described in Certificate of Title No. 105 0 238, in the Province of Alberta (hereinafter referred to as "the said land"), for a well site for the Applicant's operations for or incidental to the drilling for and production of petroleum and natural gas.

The part of the said land granted to the Applicant is delineated and outlined in red on the plan attached to the Order and comprises 3.67 acres for a well site.

A hearing to determine the compensation payable by the Applicant was held by the Board on April 5, 1978, at the John J. Bowlen Building, Calgary, Alberta, in the presence of:

For the Applicant: - G. Norman  
Canadian Occidental Petroleum Ltd.  
Calgary, Alberta  
Counsel  
- R. Tamasi  
Canadian Occidental Petroleum Ltd.  
Calgary, Alberta  
Supervising Process Engineer

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- R. Godsmen  
Canadian Occidental Petroleum Ltd.  
Calgary, Alberta  
Landman
- J. D. Eagleson, A.A.C.I.  
Klassen Eagleson Associates Ltd.  
Calgary, Alberta  
Appraiser.

For the Respondents:

- N. R. Hess, of the law firm  
Barron-McBain  
Calgary, Alberta  
Counsel
- F. J. Jaremchuk  
Stellar Enterprises Ltd.  
Calgary, Alberta
- H. P. Hamilton, A.A.C.I.  
Howard P. Hamilton Appraisal Co.  
Calgary, Alberta  
Appraiser.

No other Respondent appeared although duly notified of the hearing.

The following exhibits were filed with the Board during the course of the hearing:

EXHIBIT NO.

1. Appraisal Report, prepared and presented by J. D. Eagleson.
2. Airport III Design Brief, as approved by Calgary City Council September 7, 1976.
3. Photocopy of area map showing land sales in the area of the said land, prepared and presented by H. P. Hamilton.

Mr. Tamasi stated that the Hydrogen Sulphide ( $H_2S$ ) isopleths were calculated on the Energy Resources Conservation Board (E.R.C.B.) formula on an open flow basis of 10 million cubic feet (M.M.C.F.) per day and that the well is presently producing 6.5 M.M.C.F. per day to the pipeline. He contended that anything under the 100 part per million (P.P.M.) is generally accepted as safe and anything in excess of 100 P.P.M. is considered dangerous. He advised that the existing  $H_2S$  gas pipeline located adjacent to the said land has injuriously affected the said land and that based on the E.R.C.B. formula the  $H_2S$  gas well has affected an additional 7.60 acres that lies within the 100 P.P.M. isopleth.

Mr. Godsmen stated that during negotiations the Applicant had presented the following proposals to Stellar Enterprises Ltd. for consideration:

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- (a) offer to purchase the said land (22.2 acres) for \$10,800.00 per acre.
- (b) to lease the area (3.67 acres) for five years for \$59,680.00.
- (c) to pay first year consideration for the area (3.67 acres) for \$45,000.00 and to pay annual compensation of \$3,670.00.

Mr. Jaremchuk stated that the said land is in a holding pattern for industrial development as Stellar Enterprises Ltd. is now an investment firm and pending results of this hearing the said land will be sold to an industrial developer.

During the course of the hearing the following pertinent matters were resolved:

- (a) drilling resulted in a producing H<sub>2</sub>S gas well.
- (b) the quarter section SW 15-25-29-W4M is registered in the names of the Respondents, Margaret Johnston and Minnie Spoor, and is being purchased by Stellar Enterprises Ltd.
- (c) that the Respondent, Stanley Drever, has an agricultural lease on the SW 15-25-29-W4M and makes no claim on the compensation.
- (d) the Board inspected the location on November 28, 1977, independent of either the Applicant or Respondents.
- (e) all compensation payable is to be made to Stellar Enterprises Ltd.
- (f) due to the noise exposure forecast caused by the Airport the highest and best use of the SW 15-25-29-W4M is for future industrial development.
- (g) an H<sub>2</sub>S gas line is located 350 feet south of the centre of the well site.
- (h) the matter of costs have been settled independent of the Board.

The factors which the Board may consider in determining compensation are set out in section 23 (2) of The Surface Rights Act, which reads:

"(2) The Board, in determining pursuant to subsection (1) the amount of compensation payable, may consider

- (a) the value of the land,
- (b) the loss of use by the owner or occupant of the area granted to the operator,
- (c) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,

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- (d) the damage to the land in the area granted to the operator that might be caused by the operations of the operator, and
- (e) such other factors as the Board considers proper under the circumstances."

Having inspected the premises and having considered the evidence adduced at the hearing, the Board makes the following findings on losses and damages and the compensation payable therefor:

COMPENSATION FOR THE AREA GRANTED AND RELATED DAMAGES

Section 20 (1) (a) of the Act provides that a right of entry order vests in the Applicant unless otherwise provided "the exclusive right, title and interest in the surface of the land in respect of which the order is granted other than (i) the right to a Certificate of Title (...)" . It therefore becomes incumbent on the Board to consider the market value of the area granted.

Mr. Eagleson in his letter of transmittal (Exhibit No. 1) stated the market value of the land acquired, effective August 2, 1977, was \$55,050.00 (\$15,000.00 per acre). He advised that this opinion was reached after analyzing a number of land sales in the immediate area. He indicated that from the data compiled it would appear that the per acre value of a large parcel of land in this area is relatively the same as the per acre value of a smaller parcel. He therefore feels that the value of the area acquired has no greater per acre value than that of the SW $\frac{1}{4}$  15-25-29-W4M (SW 15) en bloc.

Mr. Hamilton in his statement agreed with Mr. Eagleson that small parcels of land in this area have relatively the same per acre value as that of a larger parcel en bloc. He advised that after analyzing comparable sales (Exhibit No. 3) in this area he is of the opinion that the per acre value of the area granted (3.67 acres) was \$27,000.00 per acre in April of 1978. He contended that April of 1978 should be the effective date as the landowner should not be penalized because land values have steadily increased since the Right of Entry Order was issued on August 3, 1977.

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The Board finds the effective date for the determination of the value of the area granted is the date right of entry was issued August 3, 1977.

Having duly considered the comparable land sales in the area and having found that the most weight should be placed on the sale of three small parcels of land located immediately south of the said land mainly,

Lot 19, Block 1, Plan 2474 J.K. containing 3.57 acres which sold in June of 1976 for \$15,070.00 per acre,

Lot 20, Block 1, Plan 2474 J.K. containing 4.08 acres which sold in June of 1977 for \$22,059.00 per acre,

Lot 21; Block 1, Plan 2474 J.K. containing 2.97 acres which sold in March of 1976 for \$14,224.00 per acre, and

having regard to the location of the said land and to the fact that the said land is a larger parcel than each of the comparables, the Board finds that the market value of the said land as of August 3, 1977, was \$20,000.00 per acre.

Accordingly, Compensation for the Area Granted and Related Damages will be fixed at \$73,400.00.

#### INJURIOUS AFFECTION

Under this heading the Board will consider the damage caused to the remaining land by the Applicant's H<sub>2</sub>S gas well.

The Applicant stated that as a portion of the land was subjected to a high H<sub>2</sub>S hazard prior to its entry on the land, the only area that has been affected is an additional 7.60 acres that lies within the new 100 P.P.M. isopleth circle. Mr. Eagleson advised this was based on the assumption that as near as can be determined, no new development or subdivision would be allowed within the 100 P.P.M. isopleth, therefore the area within the 500 P.P.M. isopleth circle is irrelevant as the restriction within the 500 P.P.M. isopleth cannot be greater than those imposed on the area within the 100 P.P.M. isopleth.

He contended that based on the widely adopted concept that land which cannot be developed has a value of 50% of its market value and having regard to the fact that development will not reach the SW 15 for three to five years and considering the uncertainty of future regulations pertaining to 100 P.P.M. isopleth areas, it is his opinion that the injurious affection caused to the 7.60 acres should be calculated at the rate of one third the market value, \$5,000.00 per acre.

Mr. Hamilton stated that the existing H<sub>2</sub>S gas pipeline that is located south of the south boundary of the SW 15 is causing no injurious affection to the said land. He is of the opinion that injurious affection is being caused solely by the Applicant's H<sub>2</sub>S gas well and that his area of concern lies within the 500 P.P.M. isopleth circle around the well. Insofar as the 100 P.P.M. isopleth circle is concerned, it is his belief that when land is subdivided for industrial development the land within the 100 P.P.M. isopleth circle will not be restricted for development purposes.

He contended that the Board should take into consideration the 7.47 acres within the 500 P.P.M. isopleth around the wellhead. The area granted, 3.67 acres, should be subtracted and injurious affection using market value at \$27,000.00 per acre should be awarded on the 3.80 acres, a total of \$102,600.00.

The Board cannot agree with the evidence presented by the Appraiser, Mr. Eagleson, that only the additional 7.60 acres in the 100 P.P.M. has been injuriously affected by the Applicant's operations, it is the opinion of the Board that the area within the 500 P.P.M. isopleth will cause more planning problems than those within the 100 P.P.M. isopleth area.

The Board also cannot accept the evidence presented by the Appraiser, Mr. Hamilton, that injurious affection has been caused solely by the Applicant's operations, nor that the total area within the 500 P.P.M. isopleth circle has been rendered totally useless.

The Applicant gave evidence that the new area created by its operations that lies within the 100 P.P.M. isopleth has injuriously affected a portion of the land and it was mutually agreed by the Applicant and Stellar Enterprises Ltd. that the area affected contained 7.60 acres. The Applicant contended that due to planning difficulties, land within the 100 P.P.M. isopleth has been injuriously affected by one third of its market value and the Board finds this contention to be reasonable.

Having found that the fair market value of the said land was \$20,000.00 per acre, the Board finds that the injurious affection within the new 100 P.P.M. isopleth to be \$50,667.00.

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In regard to the area within the 500 P.P.M. isopleth, the Board, assuming a 350 foot radius (Exhibit No. 1), has calculated the acreage in the circle at 8.83 acres. The Applicant's operations have affected only the north half of this area, 4.415 acres, as the 500 P.P.M. isopleth created by the existing H<sub>2</sub>S gas pipeline affects the south half of the well site. The well site area, 3.67 acres, is in the centre of the 500 P.P.M. isopleth circle and the north half, 1.835 acres, has been granted by virtue of the Right of Entry Order, therefore the Applicant's operations have placed an additional 2.58 acres of the said land within the 500 P.P.M. isopleth area.

The Applicant, in Exhibit No. 1, contended that land which cannot be built upon has been injuriously affected by 50% of its market value. The Board is of the opinion that land which is located in a 500 P.P.M. isopleth has virtually lost any building potential it may have had and finds that the injurious affection caused is 50% of its fair market value. Having found that the fair market value of the said land is \$20,000.00 per acre, the Board finds the injurious affection caused by the 500 P.P.M. isopleth is \$10,000.00 per acre.

The 2.58 acres that the Board is concerned with lies within the 100 P.P.M. isopleth that was created by the H<sub>2</sub>S gas pipeline prior to the Applicants entry on the said land. Having found that land which lies within the 100 P.P.M. isopleth has been injuriously affected by one third of its market value, the Board finds the injurious affection caused by the 500 P.P.M. to be \$8,600.00.

Accordingly, the Board finds that \$50,667.00 for the Injurious Affection caused by the 100 P.P.M. isopleth and \$8,600.00 for the Injurious Affection caused by the 500 P.P.M. isopleth, a total of \$59,267.00 is fair and reasonable and will be so fixed.

#### ANNUAL COMPENSATION

Both parties agreed that a 11% return on the market value of the area granted would be reasonable annual compensation.

The only contentious issue in this regard was presented by the Respondent who contended that annual compensation should be awarded for the total area around the

wellhead (7.47 acres) that is located within the 500 P.P.M. isopleth on the SW 15. The Board rejects this contention as only the well site area (3.67 acres) has been granted to the Applicant and any additional acres affected have been duly considered by the Board under the heading "Injurious Affection".

Having found that the value of the area granted to the Owner is \$20,000.00 per acre, that a 11% return is reasonable and that 3.67 acres are involved, the Board finds that \$8,074.00 is fair and reasonable Annual Compensation and will be so fixed.

INTEREST

Section 23 (6) of the Act reads:

"(6) The Board may order the operator to pay interest at such rate as the Board considers just with respect to all or any part of the compensation payable under the compensation order and any interest so payable is recoverable in the same manner as the compensation."

The Board finds that interest should be awarded on the compensation payable under the headings "Compensation for the Area Granted and Related Damages" and "Injurious Affection" and that a fair rate of interest is 9% per annum from the date of the Right of Entry Order until date of the Compensation Order.

Accordingly, interest on the award will be calculated as follows:

- on \$132,667.00 at 9% per annum from August 3, 1977, until date of the Compensation Order.

In summary, the amount of compensation payable by the Applicant for this right of entry will be:

- (a) for the period from August 3, 1977, to August 2, 1978, the sum of ONE HUNDRED FORTY THOUSAND SEVEN HUNDRED FORTY ONE and 00/100 DOLLARS (\$140,741.00), computed as follows:

Compensation for the Area Granted and Related Damages	\$ 73,400.00
Injurious Affection	59,267.00
Annual Compensation	8,074.00
TOTAL	<u>\$ 140,741.00</u>



Plus interest on \$132,667.00 at 9% per annum from August 3, 1977, until date of the Compensation Order.

- (b) after August 2, 1978, and so long as the said Order No. C257/77 is in effect, for each year or portion thereof, the sum of EIGHT THOUSAND SEVENTY FOUR and 00/100 DOLLARS (\$8,074.00), to be paid on or before August 3, 1978, and on or before the 3rd day of August in each year thereafter,

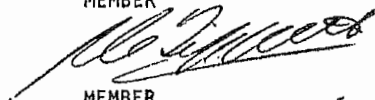
which amounts shall be payable to STELLAR ENTERPRISES LTD.

Dated at the City of Calgary, in the Province of Alberta, this 15th day of May, 1978.


SURFACE RIGHTS BOARD



MEMBER



MEMBER



MEMBER



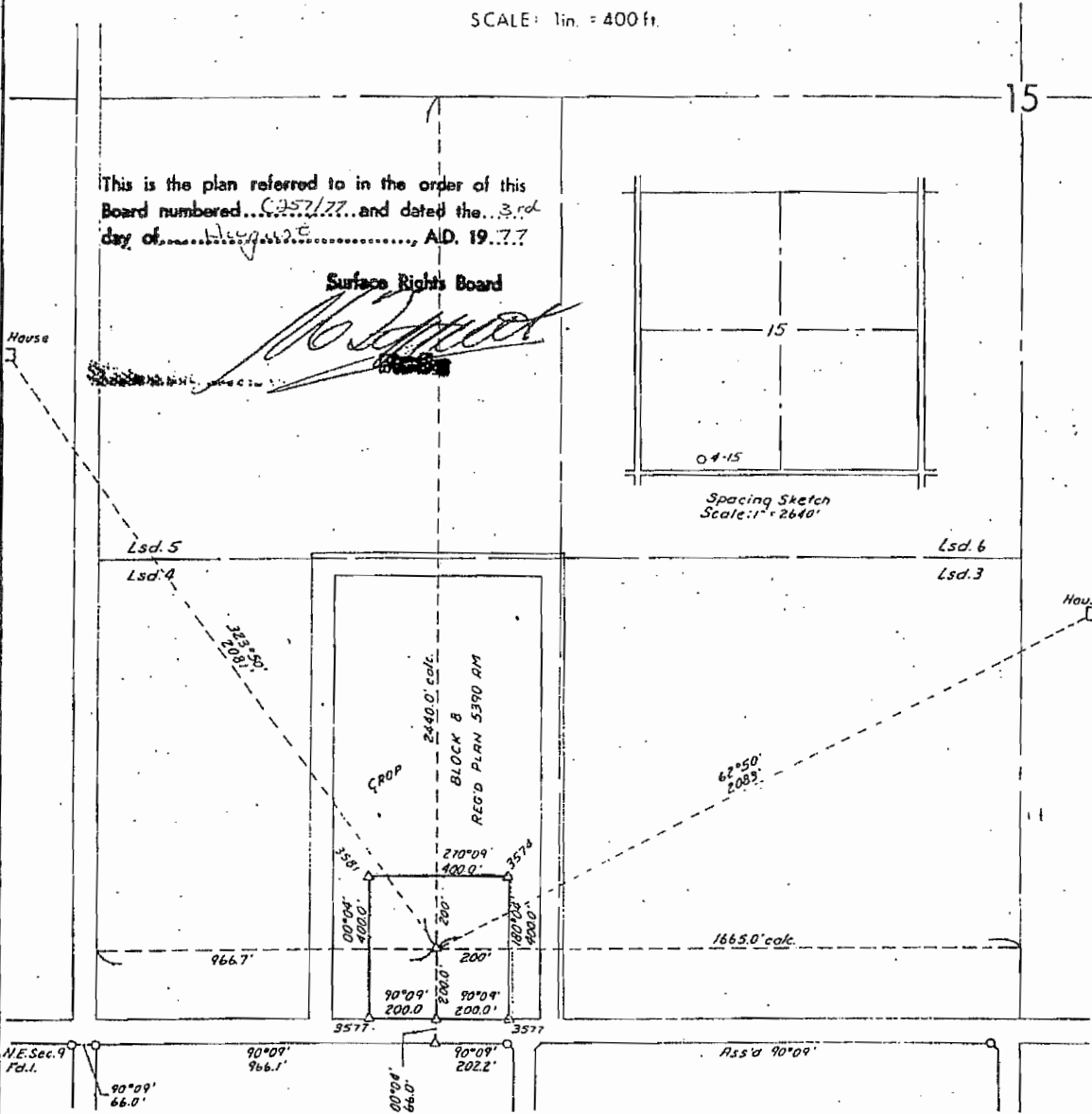
REVISED JUNE 2, 1977.  
REVISED JULY 20, 1977.

# CANOXY ET AL CROSS 4 - 15 - 25 - 29

WELL SITE ~~ACCESS ROAD~~ *Be.*

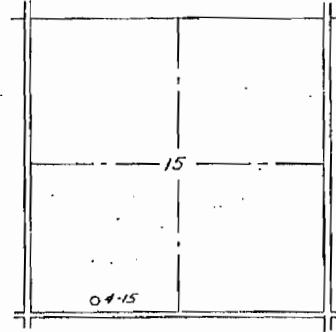
Lsd. 4 Sec. 15 Twp. 25 Rge. 29 W.4M.

SCALE: 1 in. = 400 ft.



This is the plan referred to in the order of this Board numbered...C-257/77...and dated the...3rd day of...August...A.D. 1977

Surface Rights Board



Spacing Sketch  
Scale: 1" = 2640'

I certify that the survey represented by this plan is correct and true to the best of my knowledge and was completed on the 13 day of August, A.D. 1976.

*[Signature]*  
A.L.S.

*[Signature]*  
Witness



OPERATOR: Canadian Occidental Petroleum Ltd.

ELEVATION: 3576 Ground.  
DATUM: Survey Control Man. 664 - 4.28

CO-ORDINATES:  
200.0' feet N of S }  
466.7' feet E of W } Bdy. Sec. 15 - 25 - 29 W. 4 M.

AREAS REQUIRED:  
Well Site - 3.67 acres.

TOTAL: 3.67 acres.

### LEGEND:

- Distances shown are in feet.
- Portions referred to shown thus
- Survey Monuments found shown thus
- 12" iron pipe planted shown thus

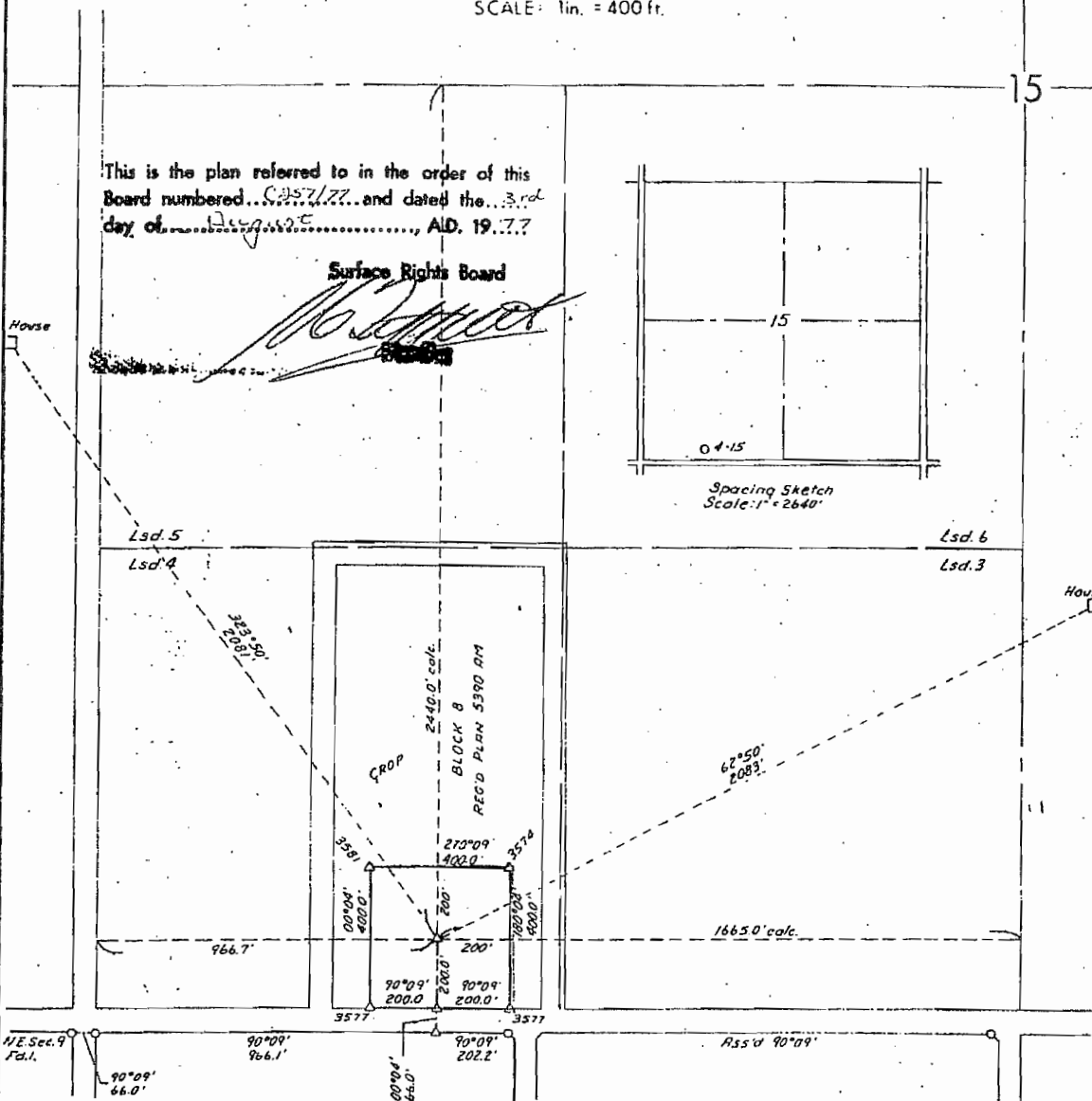
*[Signature]*  
K.B. Brown

# CANOXY ET AL CROSS 4 - 15 - 25 - 29

WELL SITE ~~and ACCESS ROAD~~ *by*

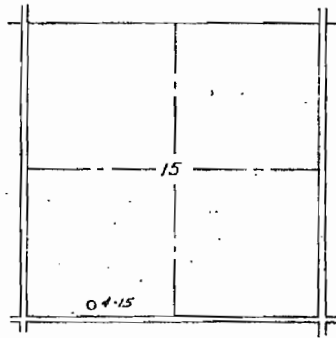
Lsd. 4 Sec. 15 Twp. 25 Rge. 29 W.4M.

SCALE: 1 in. = 400 ft.



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Surface Rights Board



I certify that the survey represented by this plan is correct and true to the best of my knowledge and was completed on the 13 day of August, A.D. 1976.

*[Signature]*  
A.L.S.

*[Signature]*  
Witness

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966.7' feet E of W }

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TOTAL: 3.67 acres.

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- Portions referred to shown thus
- Survey Monuments found shown thus
- 12" Iron posts planted shown thus

*[Signature]*

REVISED JUNE 2, 1977.  
REVISED JULY 20, 1977.

# CANOXY ET AL CROSS 4 - 15 - 25 - 29

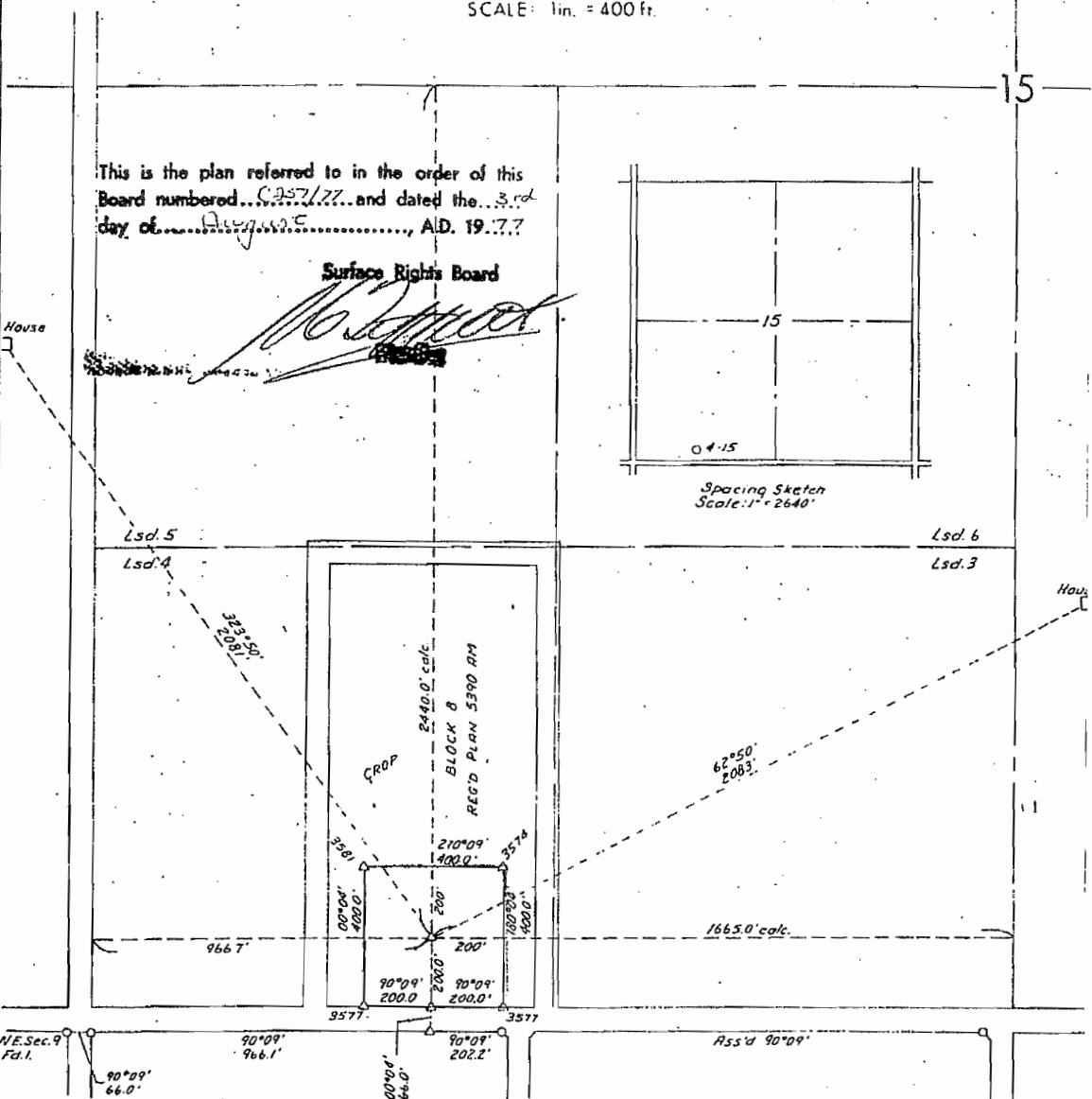
WELL SITE ~~and ACCESS ROAD~~

Lsd. 4 Sec. 15 Twp. 25 Rge. 29 W.4M.

SCALE: 1 in. = 400 ft.

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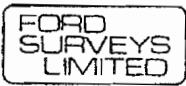
Surface Rights Board



I certify that the survey represented by this plan is correct and true to the best of my knowledge and was completed on the 13 day of August, A.D. 1976.

*J. Ford*  
A.L.S.

*John Kemp*  
Witness



OPERATOR: Canadian Occidental Petroleum Ltd.

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*K. B. Brown*