

SURFACE RIGHTS ACT  
(hereinafter "the Act")

Before:

SURFACE RIGHTS BOARD  
(hereinafter "the Board").

IN THE MATTER OF certain lands subject to a right of entry order in the South East Quarter of Section 18, Township 31, Range 1, West of the 5th Meridian, in the Province of Alberta (hereinafter referred to as "the said land").  
Excepting thereout all Mines and Minerals.

BETWEEN:

CAMINO INDUSTRIES INC.,

Operator,

- and -

HERMAN HUBERT DORIN  
and  
SHIRLEY MAY DORIN,

Respondents.

DECISION

Upon application by the Respondents for review of compensation payable in respect of a right of entry order in the said land; and upon the Board being satisfied that conditions precedent to the application had been met; the Board held an inquiry in respect of the application on June 25, 2003, at Olds, Alberta.

PRESIDING BOARD:

- W. D. Fisher, Presiding Chairman
- S. S. Schumacher, Q.C.
- L. N. Miller

APPEARANCES:

- For the Operator:
- Louise Reeve, Principal of Camino Industries Inc.;
  - Laura Gordon, Production Accountant, Camino Industries Inc.; and
  - Jim Smith, AACI, P.App., P.Ag., with Perry Appraisal Associates Ltd.
- For the Respondents:
- Mark David Dorin, son of Herman H. Dorin;
  - Herman H. Dorin, Landowner;
  - Shirley M. Dorin, Landowner; and
  - Ivan Dorin.

EXHIBITS FOR IDENTIFICATION:

Exhibit A: Copy of the Compensation Order on file with the Board.

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EXHIBITS FILED:

- Exhibit 1: Respondents' written presentation.  
Exhibit 2: Herman H. Dorin's undated written statement (circa 1980).  
Exhibit 3: Operator's notes.  
Exhibit 4: Perry Appraisal Associates Ltd.'s memo dated June 18, 2003.

Exhibit numbers 1 and 2 were filed for the Respondents. Exhibit numbers 3 and 4 were filed for the Operator.

AGREED FACTS:

1. The right of entry order bears the effective date of August 5, 1977, and shows the area occupied by the Operator to be 3.84 acres.
2. The purpose of the right of entry order is for a well site and access road.
3. The compensation order does not provide for payment of annual or other periodic compensation.

SUMMARY OF THE EVIDENCE:

*At the request of both parties the evidence was not taken under Oath.*

**Respondents' Evidence:**

The Respondents' evidence consisted of a written presentation (Exhibit 1) and a handwritten statement by Herman H. Dorin (Exhibit 2).

Exhibit 1 was presented by the Respondents' son, Mark Dorin. Exhibit 1 indicates the Respondents' preferred relief would be:

- (a) the termination of the Right of Entry Order,
- (b) an Order directing that the well be abandoned and the site reclaimed,
- (c) compensation for building a street in accordance with the area structure plan affecting the property in the sum of \$9,660.00, and
- (d) retroactive annual compensation of \$50,688.00;

or alternatively:

- (a) annual compensation for the well site and access road at the rate of \$11,193.00,
- (b) compensation for building a street in accordance with the area structure plan affecting the property in the sum of \$9,660.00, and
- (c) compensation for landscaping the site and planting trees around the site.

The evidence indicated that at the time of taking in 1977 the said land had recently been annexed to the Town of Didsbury and the parties anticipated it would soon be subdivided and developed. By compensation Decision No. C46/78 dated September 20, 1978, the Surface Rights Board made a lump sum award of \$49,775.00, including costs.

The Respondents appealed to the Court of Queen's Bench, which confirmed the Board's award but awarded the Respondents \$7,500.00 plus costs for mental anguish suffered at the time of the taking and during the resulting drilling operations.

The evidence further indicates the anticipated subdivision and development of the said land has not taken place but could happen in the near future almost 30 years later.

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**Operator's Evidence:**

The Operator's evidence was presented by Louise Reeve who is a principal, along with her husband, in Camino Industries Inc. and was based on Exhibit 3.

The evidence indicates the Operator purchased the subject well and access road based on the fact it was not subject to an annual rent which was a significant factor because of the well's low productivity, i.e. 2 barrels of oil and 1.3e3m<sup>3</sup> of solution gas per day. This converts to about 10 BOE per day which in current Canadian dollars amounts to approximately \$420.00.

The Operator produced the well from the time of its purchase in 1995 until some time in 1999 when it was suspended.

The Operator conducts its business with a work force of four plus a summer student. This group now services and operates 14 producing wells. In the course of developing these wells to their present operational status, in addition to day-to-day servicing of the wells and well sites, the Operator has built and installed compressors, pipelines and plungerlift systems all with its own resources. It was and still is the intention of the Operator to build a pipeline connection between the subject well and the gathering system for the Harmattan gas plant in order to produce the solution gas from the well. If the well was tied in and producible it would produce a gross income of approximately \$10,000.00 per month, netting out at \$6,000.00 to \$7,000.00 per month, and would probably produce for about 10 years.

**Issue:**

Can, or should, the Board grant any of the relief requested by the Respondents?

**Decision:**

It is clear that the Board has no jurisdiction:

- (a) to order the abandonment of the well drilled on the area subject to Right of Entry Order No. C263/77, and
- (b) to terminate Right of Entry Order No. C263/77 until it is furnished with a Reclamation Certificate relating thereto.

It is arguable whether or not the Board should grant the relief requested with respect to:

- (a) payment of some share of the cost of converting the existing access road into a residential street as envisioned by an Area Structure Plan, and
- (b) payment of retroactive annual compensation for the well site and access road.

The Respondents argue that paragraphs (h) and (j) on page 3 of the Surface Rights Board Decision No. C46/78 (Exhibit "A" of Exhibit 1) and an excerpt from page 7 of the judgment of Moore J., as he then was, (Exhibit "B" of Exhibit 1) apply to (a) above. These excerpts are as follows:

- “(h) The access road is temporary and will be located to coincide with final subdivision plans.
- (j) The future plans of the Applicant are to landscape the well site area, which has not been completed due to weather conditions. Trees will be planted to enhance the area.”.

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p. 7 of the Court of Queen's Bench judgment:

"... Westburne is prepared to landscape and tree the well site area, and to relocate, if necessary, the access road when and if subdivision takes place. Scrymgeour further stated that Westburne was prepared to convert the pump to a quiet electric motor once a permanent access road has been decided upon as it would be necessary to run electrical lines along the access road."

It is the opinion of the Board that it should not award compensation with respect to landscaping and permanent access road until there is at least a registered plan of subdivision. It is hoped the Operator would be involved in the development of the Plan of Subdivision.

In developing the Plan of Subdivision it is also hoped the developer and municipality would approach the Alberta Energy and Utilities Board for a relaxation of the 100 metre set back requirement as the Board has knowledge that relaxations of this requirement have been granted in other urban municipalities such as Devon and Drayton Valley.

With respect to (b) above the Respondents argued that because the Operator inadvertently raised the question of annual compensation by sending an unnecessary letter pursuant to section 27(4) of the Act (which did not apply to this matter) the Operator should be liable for annual rental. The Board does not agree with this argument. In any event if the Board was to consider annual compensation it would require evidence of what the present value of the lump sum award made in 1978 would be in 2003, which value would no doubt have a major impact on the matter of annual compensation.

Based on the foregoing analysis of the evidence and arguments presented by the parties the Board is not prepared to disturb its decision of 1978.

It would appear the general situation with respect to the development of the land is now in about the same position as it was in the late seventies when the compensation order was issued. The Board would reiterate its hope that the Operator would cooperate with the Respondents in the development and implementation of a Plan of Subdivision in order to mitigate potential claims with respect to the access road, screening of the well site and changed circumstance regarding set backs.

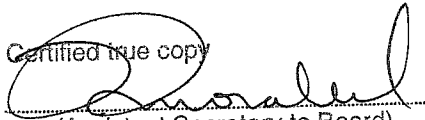
Without prejudging the matter, if there are disputes between the parties outstanding after the land is developed it is possible those matters could be addressed pursuant to section 29 of the Act.

Dated at the City of Edmonton in the Province of Alberta this 1st day of October, 2003.

SURFACE RIGHTS BOARD

(SIGNED) S.S. SCHUMACHER C.C.

CHAIR

Certified true copy  
  
(Assistant Secretary to Board)