

File No. 2139
Board Order No. 2139-1

August 27, 2020

SURFACE RIGHTS BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

THE NORTH EAST $\frac{1}{4}$ OF SECTION 10 TOWNSHIP 80 RANGE 15
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Longshore Resources Ltd.

(APPLICANT)

AND:

Joseph Sean Price, Shelli Lynn Price
and Phillip Andrew Stefanyk

(RESPONDENTS)

BOARD ORDER

Heard: by telephone July 15, 2020
Appearances: Chris Lamb, for the Applicant
Elvin Gowman and Shelli Price, for the Respondents

INTRODUCTION AND ISSUE

[1] This is an application by Longshore Resources Ltd. (Longshore) under section 166 of the *Petroleum and Natural Gas Act* seeking to reduce the annual rent payable under a surface lease entered July 17, 2004 (the Surface Lease). The Respondents, Joseph Price, Shelli Price and Philip Stefanyk (collectively, the Landowners) are the owners of the Lands subject to the Surface Lease. They oppose the proposed rent reduction and seek to have the rent increased. The issue is to determine the appropriate rent payable under the Surface Lease.

BACKGROUND

[2] The Surface Lease was entered on July 17, 2004 between the then owners of the Lands and the then rights holder to replace an initial lease entered in January 2003 to drill a well known as 100/10-10-8-15 W6 (the Well) on the Lands. The Well was drilled in March 2003. The Surface Lease was entered because an alternative road access to that originally proposed was used to enter the wellsite. The Surface Lease acquires 2.47 acres for the Well and 3.53 acres for road access for a total of six acres. The rent payable under the Surface Lease is \$3,100 payable annually on January 25.

[3] The Well produced until December 2007 at which time it was suspended and sat dormant for approximately seven years. In 2014, the Well was cut and capped (abandoned). A Certificate of Restoration has not been obtained from the Oil and Gas Commission.

[4] Longshore is the current operator of the Well. It is Longshore's intent to complete restoration of the site and obtain a Certificate of Restoration.

[5] The Landowners purchased the Lands in November 2018. Longshore initiated rent review discussions in October 2019 seeking to negotiate a reduction to the annual rent. The Landowners did not agree to the proposed reduction and Longshore initiated these proceedings

to have the Board determine the appropriate annual rent. The parties agree that any amended rent would take effect as of January 25, 2020.

[6] The Landowners live on the Lands. The Lands are forested and not cultivated.

PARTIES' EVIDENCE AND SUBMISSIONS

[7] Longshore submits that the rent should be reduced primarily because of the reduction in adverse effect due to the well having been abandoned. There is no longer any regular traffic to the well, wellsite equipment has been removed, and there are no odours or noise. Longshore submits the disturbed footprint has been reduced to a tear drop under 2,250 square metres, approximately 18% of the lease area. Longshore submits the Well cannot be seen from the Landowner's residence.

[8] Longshore submits evidence of 12 other agreed rent renegotiations and two with paperwork in progress for other abandoned Longshore sites in the area where the parties have agreed to a reduction in annual rent. The new rental amounts range from \$169 per hectare to \$932 per hectare with an average of \$543 per hectare (which if applied to this Surface Lease would make the rent \$1,318 annually.).

[9] Longshore submits that as the land is not cultivated, the Landowners experience minimal loss of use. Longshore submits the annual rent should be reduced to \$1,200.

[10] The Landowners submit that while the used footprint has been reduced, the Surface Lease still encumbers six acres of the Lands to which they experience a loss of rights. The Landowners submit the value of the Lands has increased significantly since 2004 when the Surface Lease was entered into. The 2004 assessed value of the Lands (land value excluding improvement value) was \$44,000. In 2020, the assessed value of the Lands (land only) had risen to \$193,000.

[11] The Landowners provided evidence of two comparable leases. The first is a mediated settlement for annual rent of \$5,000 for a 5.6 acre site five or six miles to the northeast of the Lands also with a non-producing well. The second is the Board's November 2018 rent review

decision in *Reid v. Encana*, (Order 1975-1) determining rent of \$2,500 for 3.121 acres used as an access road to a riser site through forested land.

[12] The Landowners submit the rent should be increased to \$6,200 annually.

ANALYSIS

[13] Section 154(1) of the *Petroleum and Natural Gas Act* provides a non-exclusive list of factors the Board may consider in determining compensation payable for a right of entry either periodically or otherwise. Those factors include the compulsory aspect of the right of entry, the value of the land, a person's loss of right or profit with respect to the land, compensation for nuisance and disturbance, and other surface leases or board orders. Additionally, section 154(2) provides that in determining an amount for annual rent in an application under section 166 of the *Act*, the Board must consider any change to the value of money and of land since the date the surface lease was originally granted. I will consider those factors set out in section 154 for which I have been provided evidence.

Value of the land

[14] I accept that the value of the Lands has increased significantly between 2004 and 2020 as evidenced by BC Assessment's assessed values. BC Assessment's annual assessment for tax purposes places a value on the assessment roll for land and improvements that is defined by legislation as "actual" or "market value". While the annual assessment is an opinion of a property's probable market value, the increase in the assessed value of the Lands between 2004 and 2020 provides evidence that the market value of the Lands has significantly increased during that time.

Loss of right or profit

[15] There is no evidence that the Landowners' experience loss of profit from the Lands, but their loss of rights is ongoing. Although the footprint actually used by Longshore has diminished to approximately 18% of the leased area, the Lands continue to be encumbered by a surface lease for six acres. The Landowners continue to experience loss of rights to six acres of land.

[16] The Lands are not cultivated but forested. I have no evidence of the actual use of the Lands in 2004 when rent was negotiated, but given their current state as forested land it is likely

they were also forested and not cultivated in 2004 and that the use of the Lands by its owners has not changed significantly. Although forested land does not typically involve any actual loss of profit compared to cultivated land, it is not uncommon as evidenced from the Board's decision in *Reid v. Encana* to attribute some compensation to this factor when land is forested.

Nuisance and disturbance

[17] Longshore's use of the Lands creates little in the way of nuisance and disturbance as the well has been abandoned. There is no regular traffic on the access road, and no noise or odours from the wellsite. I note, however, that the leased area comprising the access road and wellsite virtually bisects almost the entire length of the Lands from north to south. While this placement of the lease area would provide a much greater adverse effect to cultivated lands, it is not without any impact or inconvenience relative to a leased area that abuts the boundary of a parcel.

Other surface leases and Board orders

[18] Other surface leases and Board orders are only useful to the extent they can demonstrate a pattern of dealings. The evidence provided by both parties falls short. The examples of other successful rent negotiations provided by Longshore do not provide sufficient information to enable a useful comparison. There is no information as to whether the various parcels are cultivated or forested, whether they are home quarters, or as to the placement of the lease relative to a landowner's home or other activities. Presumably the range in agreed values will reflect some of these differences but without more information, the Board cannot accept either the range or the average as reflecting a persuasive pattern of dealings or meaningfully relate these rents to the circumstances of this Surface Lease. The fact that other landowners were willing to accept a reduction in rent does not persuade me that a reduction in rent is necessarily appropriate for this Surface Lease on these Lands.

[19] Similarly, the evidence provided by the Landowners does not demonstrate a pattern of dealings that persuades me an increase to the annual rent is warranted.

CONCLUSION

[21] While I accept that the nuisance and disturbance to the Landowners as a result of the Surface Lease has changed over time to the point of being minimal, and that the footprint for

Longshore's actual use of the Lands has diminished, the Landowner's loss of rights has not diminished and the Surface Lease still encumbers six acres of the Lands. Further, the value of the land, a factor which the Board is required to consider in a rent review application, has increased significantly since the rent was originally negotiated.

[21] A lessening of the nuisance and disturbance to the Landowners supports a decrease to the annual rent whereas the increase in the value of the Lands supports an increase to the annual rent. Other factors suggest neither an increase nor a decrease to the rent is warranted.

[22] Considering all of the evidence before me, I am satisfied that the reduced nuisance and disturbance is offset by the increased value of the land. I am not satisfied that a reduction to the annual rent is appropriate, nor do I find that it should be increased. I conclude that the annual rent should remain unchanged at \$3,100.

ORDER

[23] Longshore Resources Ltd. shall continue to pay annual rent of \$3,100 to the Landowners. The effective date of this rent review is January 25, 2020.

DATED: August 27, 2020

FOR THE BOARD



Cheryl Vickers, Chair