

THE SURFACE RIGHTS BOARD of MANITOBA

BOARD ORDER

Under The Surface Rights Act – C.C.S.M. c. S235.

Hearing:

Virtual Meeting

ORDER NO: 01-2021

File No's: 04-2018, 2019-01

Date of Hearing: December 14, 2020

Date Issued: January 13, 2021

BEFORE: Donovan Toews, Presiding Member
June Greggor, Deputy Presiding Member
David King, Member
Rhonda Russell, Member

Linda Rogoski, Board Administrator

BETWEEN:

Corex Resources Ltd. (the “**Operator**”)

– **AND** –

Parkvale Farms Ltd. / Ronald George and Cindy George (the “**Occupants**”)

*John Snoeck and Rita Leroy Snoeck (the “**Owners**” – not in attendance)*

APPEARANCES:

Corex Resources Ltd.

Mr. Murray W. Douglas, Kanuka Thuringer LLP
Counsel for the Operator

Mr. David McGuinness (Affirmed)
Executive Vice President, Land - Corex Resources Ltd.

Mr. Kirk Gilliard

Parkvale Farms Ltd.

Mr. Ronald George / Occupant

EXHIBITS:

Exhibit #1	Operator's Book 1
Exhibit #2	Operator's Book 2
Exhibit #3	Operator's Book 3

Background

On November 02, 2018 Corex Resources Ltd. requested a Surface Rights Board hearing under Section 16 of the Surface Rights Act, C.C.S.M, c.S235 (the "Act") for Right of Entry and Compensation on lands described as SW1/4 18-10-27W (the "Original Application"), followed by an application dated November 06, 2018 for an interim order under Section 21 of the Act. The Respondents were Ronald George, Cindy George, and Parkvale Farms Ltd. as "Occupant" and John Snoeck and Rita Leroy Snoeck, as "Owners".

A hearing was held on February 21, 2019 and an Order was granted on February 28, 2019. Access was granted, subject to conditions, and compensation and costs were deferred to a future hearing under the Original Application.

Parkvale Farms Ltd. / Ronald George and Cindy George the "Applicant" applied via fax dated January 9, 2019 requesting a hearing under the following Sections of the Act:

- Annual compensation review under Section 21 (1) on land described as LSD2 and LSD7 of SE ¼ 24-10-28W;
- Compensation for damages under Section 55 relating to weed control on the above lands;
- Compensation for damages under Part V Liability for Tortious Acts, Section 46 on land described as NW ½ 13-09-28W; and
- Compensation for damages under Part III Right of Entry, Section 16(3) on land described as SW1/4 18-10-27W.

The Applicant also requested the Board establish an agreement for future use of the area including the flowlines on SW1/4 18-10-27W.

Pursuant to Section 25(1) of the Act, a Notice of Hearing was sent to the parties that a virtual hearing would be held on December 14, 2020 and a site visit was scheduled for December 11, 2020. Representatives of Corex Resources Ltd., Ron George, the Board and Petroleum Branch attended the site visit, and all three properties were viewed.

The sites were considered to be clear, well maintained and there was evidence of crop grown well within the confines of each lease. Roads were gravelled and without significant buildup. A small number of frozen weeds were present on LSD2 of 24-10-28.

At the commencement of the hearing it was agreed by all parties that the Occupant would be the Applicant and Corex Resources Ltd. would be the Respondent.

DECISION:

Upon hearing the evidence and the submissions of the Parties; decision being reserved until today's date January 13, 2021:

It is the Order of this Board that:

1. Lease Payments:

Annual lease payments for 2019 and 2020 shall be set at \$3,800 for LSD 2-24-10-28W and \$4,100 for LSD 7-24-10-28W. No additional amounts or compensation adjustments are awarded for the years 2013-2018.

2. Other Matters:

No compensation is awarded for any other matter raised by the applicant.

3. Interest:

No interest shall be paid.

4. Costs:

Costs in the amount of \$1,050 shall be paid to the Applicant.

REASONS FOR DECISION

The following provides relevant information pertaining to the well sites which the Board considered when determining compensation payable:

Well Site: LSD 2-24-10-28W and LSD 7-24-10-28W

Position of the Applicant

The Applicant presented the following arguments in support of their position:

1. Annual rental payments should be \$4,000 and \$4,300 respectively for LSD 2 and LSD 7 respectively based on a comparison of values provided in Exhibit #3 (Tab1), and a comparison of land quality with general adjustments for inflation with consideration to CPI.
2. Referencing property comparisons (i.e. examples 17 and 18 in Exhibit 3, Tab1 – 'Andrew' land) new leases were recently signed at \$3,700 and \$3,800. Land values for the Andrew land had been assessed at \$236,000; by comparison the Applicant's land was assessed at \$265,000 for the same or similar acreage. Based on a comparison, he reasoned his annual payment should be approximately 10% greater than the rent for the Andrew properties (i.e. \$4,100 – \$4,200).

Position of the Respondent

The Respondent provided the following arguments in support of their position:

1. Claims related to damages cited by the Applicant should not be allowed based on a number of provisions in the Act.
2. Compensation prior to the date of application should not be considered based on provisions in the Act.
3. Regarding lease payments, the Respondent provided samples of other comparable leases in the area, and based on these comparisons in sum, concluded that the appropriate annual lease payments should be \$3,400 and \$3,600 for LSD 2 and LSD 7, respectively.

Analysis and Findings of the Board

Upon consideration of the evidence provided the Board offers the following:

1. In the matter of the lease adjustments requested by the Applicant for the period 2013 – 2019 the Board notes that Section 33(1) of the Act restricts the Board from awarding compensation prior to the date of the application. The application was made in January 2019 and therefore only amounts for 2019 and 2020 have been considered.
2. The Board finds the comparison of land values offered by the Respondent and referenced by the Applicant to be helpful. This set of data, together with reference to the Surface Rights Board Compensation Guideline Chart, the appraised value of at least one of the comparison parcels, and acknowledgement of CPI increases as suggested by Mr. George are all considered by the Board as relevant and reasonable in the effort to establish annual payment amounts and are in keeping with the criteria for decisions as provided in Section 26(1) of the Act. Consideration of these factors combined to indicate that the Applicant's land is of a somewhat higher value than the Andrew land as a reference point, and correspondingly may command a rent that is also somewhat higher.
3. Using the Surface Rights Board Compensation Guideline chart rent would result in annual rents of \$3,800 and \$4,450 respectively for LSD 2 and LSD 7 based on acreage, number of wells, and land type (pasture and crop land).
4. In the matter of the additional concerns raised by the Applicant, the Board finds that the Applicant did not complete efforts to negotiate with the Respondent, nor did the Applicant meet the requirements of sections 46(1), 46(3) and 46(4) of the Act with respect to time allowed to submit for matters of compensation. The Board also concludes that the Respondent has made reasonable and on-going efforts to address the concerns raised by the Applicant.
5. The Board believes that the Applicant bears responsibility for assuming certain risk in planting crops on leased land and the Respondent should not bear the responsibility of protecting crops sown on land that is leased for resource development purposes.
6. As regards the Applicant's request to establish new terms of agreement for crossing of the land, the Board concludes that this is a matter that must be negotiated between the Applicant and the Respondent as provided for in the *Oil and Gas Act (Manitoba)*.

2. Is the Applicant entitled to interest on any amounts owing?

The Board is of the opinion that both parties were working in good faith to resolve matters, therefore no interest shall be paid.

3. The amount of Costs, if any, to be awarded?


Since the Board found in favour of the Applicant in making an adjustment to the annual compensation amounts, the Board reviewed the sealed offer provided by the Respondent. With consideration to the compensation amounts alone, the sealed offer was found to be less than 90% of the compensation amounts so costs are awarded. The compensation amounts were \$3,800 and \$4,100 respectively for a total of \$7,900, whereas the offered amounts were \$3,400 and \$3,600 respectively for a total of \$7,000, or 88.6% of the compensation amount. It is noted that additional one-time payment amounts were included in the sealed offer as they related to additional matters (beyond annual compensation), and that these components of the offer were not considered in the calculations using the '90% rule'. The Board did not find in favour of the Applicant in these additional matters.

The following costs are therefore awarded in keeping with Surface Rights Board guidelines for compensation.

- \$150 for preparing, filing and serving the application
- \$450 for participating in the Interim Hearing
- \$450 for participating in the Hearing December 14th

No costs are awarded for preparation for the hearing or for disbursements, as it does not appear substantial effort or cost was incurred for either item.

Decision delivered this 13th day of January, 2021.



Donovan Toews,
Presiding Member