

BEFORE THE OIL & GAS COMMISSION

EUGENE MARTZ,
VILLAGE OF HARTVILLE,

Appellants,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

EXCALIBUR EXPLORATION, INC.,

Intervenor.

Case Nos. 771 & 773

Review of Chief's Order 2006-116
(Excalibur Exploration)

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appearances: John K. Keller, Michael J. Settineri, Counsel for Appellant Eugene Martz; Paul J. Pusateri, Counsel for Appellant Village of Hartville; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; David E. Harker, on behalf of Intervenor Excalibur Exploration.

Date Issued: January 2, 2007

BACKGROUND

These matters came before the Oil & Gas Commission upon separate appeals by Eugene Martz [Martz] and by the Village of Hartville [the Village] from Chief's Order 2006-116. Chief's Order 2006-116 approved an application for mandatory pooling associated with the drilling of a well to be known as the Martz Unit #1 Well. The Village of Hartville owns the property that is the subject of the mandatory pooling order. Mr. Eugene Martz owns the property on which the proposed well will be drilled, and also owns another parcel of property immediately adjacent to the proposed drilling unit. Excalibur Exploration, Inc. [Excalibur] applied for mandatory pooling and intends to drill the Martz Unit #1 Well.

On October 20, 2006, Excalibur moved for intervention into both appeals of Chief's Order 2006-116. On November 14, 2006, the Oil & Gas Commission granted Excalibur's requests for intervention, and Excalibur has participated in these appeals with full-party status.

On November 8, 2006, the Appellee Division of Mineral Resources Management filed a Motion to Dismiss Mr. Martz's appeal, arguing that Mr. Martz lacks standing to bring an appeal from Chief's Order 2006-116. In support of its argument, the Division asserted that the mandatory pooling order affected only property owned by the Village of Hartville and did not attempt to pool any property owned by Eugene Martz. Responses to this Motion were filed by Mr. Martz and by Excalibur. On November 16, 2006, the Commission **denied** the Division's Motion, and Mr. Martz's appeal was allowed to proceed to hearing.

On November 16, 2006, the Commission, *sua sponte*, **consolidated** the Martz's and the Village's appeals for hearing and decision.

On December 11, 2006, these consolidated causes came on for hearing before four members of the Oil & Gas Commission. Commission member Howard Petricoff recused himself from these matters, and did not participate. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in approving Excalibur Exploration's application for mandatory pooling for the well to be known as the Martz Unit #1 Well.**

THE APPLICABLE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.27 provides *inter alia*:

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of such tract may make application to the division of mineral resources management for a mandatory pooling order . . . the chief, if satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable . . .

3. O.A.C. §1501:9-1-04 addresses the spacing of wells and provides:

(A) General spacing rules:

(1) The division of mineral resources management shall not issue a permit for the drilling of a new well . . . unless the proposed well location and spacing substantially conform to the requirements of this rule.

* * *

- (4) A permit shall not be issued unless the proposed well satisfies the acreage requirements for the greatest depth anticipated.

* * *

(C) Location of wells:

* * *

- (4) No permit shall be issued to drill . . . a well for the production of the oil or gas from pools from four thousand feet or deeper unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than forty (40) acres;

(b) Not less than one thousand (1000) feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than five hundred (500) feet from any boundary of the subject tract or drilling unit.

FINDINGS OF FACT

1. Excalibur Exploration applied for a permit to drill an oil well in Stark County, Ohio. The well will be known as the Martz Unit #1 Well. The target depth of this well is 4750 feet. The well will produce from the Clinton Sandstone formation.

2. Excalibur leased 36.49 acres from five separate landowners to establish a drilling unit for the Martz Unit #1 Well. The law requires a 40-acre drilling unit for this depth of well.

3. The land mandatorily pooled into the Martz Unit #1 is owned by the Village of Hartville. A retention basin is currently located on the Village property. In the future, the Village may utilize this property as a water well field or to expand its sewage treatment plant. The water-producing aquifer in this area is located 200 – 400 feet below the surface. This aquifer is located approximately 4,000 feet above the Clinton Sandstone formation from which the Martz Unit #1 Well will produce.

4. Excalibur has not requested any surface disturbance on the Village's property. No surface equipment, or ingress or egress to the proposed well, will be located on Village property. The wellhead is proposed to be located approximately 215 feet from the closest Village property line.

5. The Martz Unit #1 Well will be drilled on property owned by Eugene Martz. This property was previously owned by the Glenn L. Martz Trust / Unizan Financial Services Group, Trustee. In June 2003, the Trust leased the oil & gas rights for this property to Excalibur, via the execution of an oil & gas lease, with a five-year primary term. In September 2003, the property was purchased from the Trust by Eugene Martz, and transferred by deed.

6. Eugene & Rebecca Martz also own a 2.02-acre parcel of land adjacent to the identified Martz #1 drilling unit. Mr. Martz operates a small automotive parts manufacturing business on a portion of this 2.02-acre parcel. The oil & gas interests for this parcel have not been leased to Excalibur, and are owned by Martz. Consideration was given to utilizing this 2.02-acre lot as part of the Martz #1 drilling unit. If this parcel were included in the drilling unit, the unit could have been reconfigured to meet the size and spacing requirements of the law, without pooling the Village property.

7. On December 6, 2005, Excalibur sent a letter to the Hartville Village Council, asking the Village to sign a non-drilling, non-trespassing oil & gas lease for 3.51 acres owned by the Village. In the alternative, the letter requested that the Village voluntarily pool its oil & gas interests into the Martz #1 drilling unit. In its correspondence, Excalibur also explained that if the Village chose not to enter into a voluntary lease or pooling agreement, then Excalibur would seek a mandatory pooling order from the Division Chief. Excalibur requested that this matter be considered at the Village Council's December 20, 2005 meeting.

8. On December 6, 2005, during an open meeting of the Village Council, the Council voted to adopt a Resolution declining Excalibur's request to enter into a lease. On December 20, 2005, the Hartville Village Council signed Resolution No. 2-05.34, through which the Village "declined to enter into any Oil and Gas Lease with any private company. . . .". This Resolution was passed at a public council meeting, but without Excalibur in attendance. The Village Resolution recited four reasons why participating in the drilling unit would not be in the best interests of the Village. These reasons are:

- (1) The property is currently used by the Village as a retention basin and may be used in the future as a water field and for expansion of its sewer plant;
- (2) Current drilling may hinder other future development of the Village property to the detriment of the residents of the Village;
- (3) Drilling may expose the Village to questions of liability; and
- (4) The wells may not be a commercial success and may not generate any substantial revenue for the Village.

(Village's Notice of Appeal, page 4.)

9. On March 16, 2006, Excalibur Exploration submitted an application for mandatory pooling to the Division.

10. A hearing was held before the Technical Advisory Council [TAC] on May 16, 2006. After hearing, the TAC recommended to the Division Chief that Excalibur's application for mandatory pooling be denied and that other well locations and unit dimensions be considered. Following this hearing, Excalibur explored alternative locations with Mr. Martz, without success.

11. On August 29, 2006, the Division Chief issued Order 2006-116. This order mandates the pooling of the 3.51 acres of the land owned by the Village of Hartville into the Martz #1 drilling unit. On September 6, 2006, Chief's Order 2006-116 was amended, to correct a referenced date.

12. The pooling of the 3.51 acres mandated under Chief's Order 2006-116 protects the correlative rights of landowners who have leased their oil & gas rights to Excalibur for the drilling of the Martz Unit #1 Well.

13. The pooling of the 3.51 acres mandated under Chief's Order 2006-116 provides for the effective development, use and conservation of oil & gas.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm orders of the Division Chief, if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.27 requires the Division Chief to order the mandatory pooling of properties where a tract of land is of insufficient size or shape to meet the spacing requirements of the law.

3. Without the pooling of additional property, the Martz #1 Well drilling unit was of insufficient size to meet the spacing requirements of the law.

4. Excalibur attempted to enter into leases or voluntary pooling agreements with property owners, in order to meet the minimum drilling unit acreage requirements. Excalibur obtained leases from five property owners. Excalibur attempted, unsuccessfully, to obtain a voluntary oil & gas lease for the 2.02-acre Martz property. If the 2.02-acre Martz property could be included in the drilling unit, that unit would have been reconfigured in a manner that would have precluded the pooling of any Village property. Excalibur also attempted, unsuccessfully, to obtain an oil & gas lease for the Village's 3.51-acre property. Without the inclusion of either the Martz property or the Village property, Excalibur was unable to form a drilling unit of sufficient size. Excalibur's dealings with the Village and Mr. Martz were just and equitable.

5. The mandatory pooling order relating to the Martz Unit #1 Well is necessary to protect correlative rights and is necessary to provide effective development, use or conservation of oil & gas.

6. Chief's Order 2006-116, mandating the pooling of 3.51 acres of land, owned by the Village of Hartville, into the Martz Unit #1 drilling unit, was not unlawful or unreasonable.

DISCUSSION

Ohio oil & gas law is designed to protect both the public's interest in the conservation and efficient development of oil & gas resources and the private property interests of those, like the Appellants, who own land that overlies deposits of oil & gas.

The law requires that wells be drilled on tracts of land meeting certain set-back, acreage and spacing requirements. See O.R.C. §1509.24. Where the spacing requirements can not be met, a person interested in drilling a well must first attempt to create a drilling unit through the voluntary participation of landowners. See O.R.C. §1509.26. If a drilling unit can not be established by voluntary participation, the Chief may order the mandatory pooling of some lands into the drilling unit. See O.R.C. §1509.27. Mandatory pooling will not be ordered unless the conditions set forth in O.R.C. §1509.27 are met.

In this matter, without mandatory pooling, the Martz Unit #1 Well could not meet the requirements of O.R.C. §1509.24 and O.A.C. §1501:9-1-04. These laws require a 40-acre drilling unit for a well of the depth proposed for the Martz Unit #1 Well. Excalibur attempted to develop a 40-acre drilling unit for the Martz #1 Well. Excalibur obtained oil & gas leases from several landowners in the area; but remained a few acres shy of the necessary acreage for this drilling unit. The Village owns 3.51 acres, which could be utilized to create a 40-acre drilling unit. Mr. & Mrs. Martz own a 2.02-acre parcel of land, which also could be used to create a 40-acre drilling unit.

Excalibur explored leasing both the Village's 3.51-acre parcel and the Martz's 2.02-acre parcel. If Excalibur could have leased the 2.02-acre Martz parcel, the drilling unit could have been configured in a manner that would not have required the inclusion of any Village property. After several attempts, Excalibur did not reach agreement on a lease with Mr. Martz. At the Commission's merit hearing, counsel for Mr. Martz appeared to argue that Excalibur, rather than mandatorily pooling the Village's property, should have continued to negotiate with Mr. Martz to include his 2.02-acres into the drilling unit.

Having failed to obtain a lease from Mr. Martz, Excalibur reconfigured the proposed drilling unit and approached the Hartville Village Council. Excalibur requested that the Village voluntarily participate in the drilling unit, either through the execution of an oil & gas lease, or through a pooling agreement. The Village promptly adopted a Resolution, unequivocally indicating that the Village would not enter into an oil & gas lease with any company.

Excalibur made just and equitable attempts to voluntarily join either the Village or Mr. Martz into the drilling unit. Ultimately, Excalibur was unsuccessful with both the Village and Mr. Martz.

The Commission **FINDS** that, without the pooling of additional acres, the drilling unit for the Martz #1 Well was of insufficient size. The Commission **FINDS** that Excalibur's attempts to voluntarily form a drilling unit were just and equitable.

Thus, all of the statutory conditions precedent to the granting of the mandatory pooling application were met. Pursuant to O.R.C. §1509.27, when these conditions are met, the Chief must grant the mandatory pooling request. Therefore, Chief's Order 2006-116 is both reasonable and lawful, and is affirmed by this Commission.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2006-116.

Date Issued: 1/2/07

see attached sheets
WILLIAM J. TAYLOR, Chairman

JOHN A. GRAY

JAMES H. CAMERON

RECUSED

M. HOWARD PETRICOFF, Secretary

TIMOTHY C. McNUTT

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

John K. Keller, Via Fax [614-464-6350] & Certified Mail #: 7000 0600 0027 4733 6612
Paul J. Pusateri, Via Fax [330-252-5588] & Certified Mail #: 7000 0600 0027 4733 6629
Molly Corey, Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6324
David E. Harker, Via Fax [330-966-4818] & Certified Mail #: 7000 0600 0027 4733 6605

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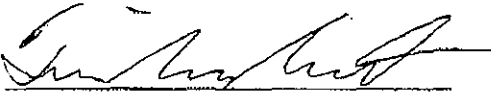
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Eugene Martz, Village of Hamilton
Appeals #771 & #773

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