Landowners learn lessons, make money from oil boom

By MICHELLE SCUDDER
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Although they may not be buying palatial estates or fleets of Mercedes, landowners in this area have been reaping the monetary benefits generated by the local oil boom.

The benefits have come to area landowners in the form of lease payments for their property, and/or monthly royalty payments if they have a producing well.

The tremendous growth of the oil industry in this area began three to four years ago when oil companies rapidly increased property leasing and oil exploration and development.

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Most area landowners have owned their property for many years and simply woke up one morning to find their investment in high demand by the oil companies.

Before any exploration could begin, however, the landowner (the lessor) and the oil company (the lessee) had to agree to certain terms regarding the rights, privileges, and obligations of the respective parties during the exploration and possible production stages.

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When landowners are contacted by "lease hounds" they are usually presented with what the lease hounds call a standard oil, gas and mineral lease.

Dr. Judon Fambrough is a licensed attorney and works with the Texas Real Estate and Research Center, and the agricultural economics department at Texas A&M University. Fambrough has researched the legal problems local residents have encountered while negotiating leases.

He said people simply don't understand the legal ramifications of the leases they sign, and they just sign what the lease hounds tell them is a standard lease. Fambrough said there is no such thing as a standard or universal lease form used by the oil and gas industry, but instead each company has a pre-drafted agreement that has proven suitable to it in the past.

But, he said landowners should remember that all provisions of a lease are negotiable and they may want to insert some provisions in the lease for their personal benefit and protection.

Fambrough presented his findings in a seminar for local residents and has documented his findings inhis recent publication, "Hints on Negotiating Oil and Gas Leases."

In his publication and during his seminar, Fambrough outlined the advantages to landowners of including certain clauses in their lease, and the disadvantages of not including them. Fambrough said people have generally made the same four mistakes while negotiating their leases. He said the first of the mistakes is basing royalty payments on proceeds, which means that the royalty is based on the actual revenue derived from the sale of the mineral, which may or may not be equal to its market value. Fambrough suggests basing royalty payments on market value, which will allow the royalty to follow the upward trend of oil and gas.

Fambrough said another mistake is not putting a "pugh clause" in the lease which would prevent the lessee from consolidating the leased premises with adjoining leased tracts so that all the landowners would have an interest in a common underground reservoir.

A third common mistake is failure to negotiate for sliding scales in royalties, which would base royalty payments on variables such as amount and time of production.

Another mistake landowners make, he said, is not limiting the lease to exploration and drilling for oil and gas. Instead, most landowners allow exploration and drilling of all minerals. Fambrough suggests that the landowner lease just for oil and gas, with a clause to negotiate for any other minerals.

Fambrough estimates that 80 to 90 people attended the seminar and out of those, only about five had not already signed leases.

So, landowners are discovering by hindsight what they could have done to represent and protect their interests better.

Jim Parrack, a Bryan resident who signed a three-year lease on 100 acres in Fayette County six months ago, says he is refusing to sign a lease for an additional 48 acres he owns seven miles from College Station until he gets the terms he wants in his lease. Parrack said he learned what he should look for in a lease from Fambrough's seminar and from other people's mistakes.

Parrack said that one year ago the land development company offered him $35 per acre in advance royalties payment, and $1 per acre per year rental fee. He said that now their offer is up to $75 acre in advance royalties, and $10 an acre per year rental.

Parrack said some terms he is holding out for are a three-year lease instead of a five-year, one-sixth royalty payments instead of one-eighth, and the most beneficial pricing payments. Parrack said that after he gets the terms he wants he will sign a lease, and the lease hounds are still calling him with offers.

"We're very lucky — we have extra spending money and we've paid paid for our land. We have no indication at all about how long the well will produce. We couldn't depend on it for a living because it could play out tomorrow." — Bryan resident Sam Urso.

Other area residents who signed leases several years ago have found themselves in a holding pattern if the oil company has not drilled on their property yet. Bryan resident Barbara Childers said she signed a 10-year lease on her property near Tunis seven years ago, and the company has not yet drilled on their property.

"We hope that there might be oil there, but don't count our oil barrels before they come in,"Childers said. "I know they're out there working in our area because they've found oil all around us, but we don't know when they will drill on our property, but I do wonder," she said.

Childers said the oil company paid them $15 per acre advance payment and $1 an acre per year during the 10 years.

"Our payment is not the bad part of the lease we're involved in because that's what the going price is at the time, but the bad part is that it's a 10-year lease." Childers said the oil company contacted them first about leasing their property and they did not contact a lawyer before signing their lease.

While some landowners are anxiously waiting for an oil well, other landowners took their turn waiting and found out that the wait was well worth it.

Bonnie Langham, a Bryan resident, signed a five-year lease on property near Giddings three years ago. The oil company began drilling on the property in June, 1979, but it did not contact the Langhams about royalty payments for eight months. Langham said they bought a new car and spent extra money at Christmas anticipating their royalty payments, but they did not come. She said she knew the delay was because they had signed a lease with a clause in it that said payments would be made "from time to time."

"Fools that we were, we signed that rascal (the lease) right up because we were so thrilled about getting paid $27 per acre when we had been getting $1 an acre all the years before," she said. Langham said they didn't know that it would make the slightest difference that they didn't specify their payment terms, and they didn't seek legal advice.