



Docket **LF13-101**
Order **LF14-001**

IN THE MATTER of an
investigation pursuant to Section 15 of the
Prince Edward Island Lands Protection **Act**

BEFORE THE
COMMISSION

on Friday, the 10th day of January, 2014.

John Broderick, Acting Vice-Chair
Michael Campbell, Commissioner
Leonard Gallant, Commissioner

Order

IN THE MATTER of an
investigation pursuant to Section 15 of the
Prince Edward Island Lands Protection Act

Order

WHEREAS by Notice of Investigation dated July 12, 2013, the Commission commenced an investigation pursuant to Section 15 of the *Prince Edward Island Lands Protection Act* (hereinafter, the “*Act*”) and Commission Rule R98-1 pertaining to Dan W. Lufkin and Cynthia Lufkin (hereinafter, the “Respondents”);

AND WHEREAS pursuant to Section 5 of Commission Rule R98-1, the Commission appointed E.W. Scott Dickieson, Q.C. as the Investigating Officer in the matter;

AND WHEREAS pursuant to Section 4 of the *Act*:
“a person who is not a resident person shall not have an aggregate land holding in excess of five acres or having a shore frontage in excess of one hundred and sixty-five feet unless he first receives permission to do so from the Lieutenant Governor in Council”;

AND WHEREAS the Respondents, by deed February 5, 2008, registered January 31, 2013 each acquired a 50% interest in parcels #432690 (9.09 acres) and #936005 (2.4 acres) from Peter Lufkin, Cheryl Lufkin, Amos Galpin, Elise Lufkin Galpin, Susan Pattison, Margaret Lufkin Bishop, James Faber, Alison Lufkin Faber, Abigail Lufkin, Michael Ford and Joyce Ford;

AND WHEREAS it appears to the Commission that the Respondents each had an aggregate land holding in excess of five acres prior to the acquisition of 50% interest in parcels #432690 and #936005;

AND WHEREAS the Respondents each acquired a 50% interest in parcels #432690 and #936005 without applying for or receiving the necessary Executive Council approval;

AND WHEREAS one of the Respondents, Cynthia Lufkin passed away, subsequent to obtaining a 50% interest in

parcels #432690 and #936005, automatically transferring 100% interest in the parcels to Dan W. Lufkin;

AND WHEREAS a Notice of Investigation was sent to the Respondents dated July 12, 2013;

AND WHEREAS the Investigator's Report, as prepared by Investigator E.W. Scott Dickieson, Q. C., was submitted to the Island Regulatory and Appeals Commission on November 8, 2013, and a copy was provided to the Respondents;

AND WHEREAS Mr. Graham Stewart, as legal counsel for the Respondents presented written submissions in response, by letter dated December 16, 2013;

AND WHEREAS, the Commission has considered the Investigator's Report, the Respondent's submission thereto and other relevant material before it;

THE COMMISSION HEREBY FINDS that the Respondents contravened the *Act* when they each acquired a 50% interest in parcels #432690 and #936005 from Peter Lufkin, Cheryl Lufkin, Amos Galpin, Elise Lufkin Galpin, Susan Pattison, Margaret Lufkin Bishop, James Faber, Alison Lufkin Faber, Abigail Lufkin, Michael Ford and Joyce Ford without approval from the Lieutenant Governor in Council, while they were non-residents of the Province as defined by subsection 1.1(k) of the *Act*.

THE COMMISSION HEREBY ORDERS that Dan W. Lufkin come into compliance with the *Act* by;

- making application for 100% interest in parcels #432690 and #936005 pursuant to Section 4 of the *Act*, and
- paying the applicable non-resident application fee of \$550.00; and
- paying the penalty imposed by the Commission in this Order;

all of which is required to be done on or before February 10, 2014.

THE COMMISSION HEREBY IMPOSES, pursuant to clause 15.1(1)(a) of the *Act*, a penalty in the form of \$5,000.00 for the aforementioned contravention of the *Act*, on or before February 10, 2014.

THE COMMISSION FURTHER IMPOSES, pursuant to subsection 15.1(2) of the *Act*, a daily penalty of \$100.00,

- to commence on February 11, 2014; and
- to continue until such time as the Respondent satisfies the Commission that the requirements of the *Act* have been met;

DATED at Charlottetown, Prince Edward Island, this 10th day of January, 2014.

BY THE COMMISSION:

(Sgd.) John Broderick
John Broderick, Acting Vice-Chair

(Sgd.) Michael Campbell
Michael Campbell, Commissioner

(Sgd.) Leonard Gallant
Leonard Gallant, Commissioner

TAKE NOTICE that any person or corporation that fails to comply with a demand made under Subsection 15(2) of the **Act** is liable to a penalty, pursuant to Subsection 15.1(1) of the **Act**, of not more than \$10,000, together with a per diem penalty not exceeding \$500 each day non-compliance continues.

AND FURTHER TAKE NOTICE that Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13.(2) of the **Act** provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.