



#### Abstract

In Common Law it has been established that highways are public roads which every citizen has the right to use. It has also been established that the word "road" is used synonymously with "highway". Within the Roads Act Chapter R-15, a "highway" is defined as "all that area within the boundary of every road or street or right-of-way which is designed for or intended for or used by the general public for the passage of vehicles. "

This report and opinion apply the author's experience and research used as Provincial Chief Surveyor, to provide opinion on the Status of Public and Private Highways, entrance way locations and designation of highway classification. Ongoing research into the Laws of Public Highways as a Prince Edward Island Land Surveyor since leaving the post of Provincial Chief Surveyor has also been applied to this report.



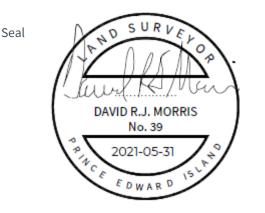
MORRIS GEOMATICS & ENGINEERING LTD. P.O.BOX 21016 | CHARLOTTETOWN PE | CANADA | C1A 9H6

tel:

(902)-213-0487 email: info@morrisgeomatics.ca web. morrisgeomatics.ca

**REPORT ON THE STATUS OF THE EAST SUFFOLK ROAD EXTENSION** SUFFOLK **TOWNSHIP 34 QUEENS COUNTY PRINCE EDWARD ISLAND** 

Certified Correct: May 25, 2021 David R.J. Morris, P.Eng, PEILS, CLS



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## **1. INTRODUCTION**

Disputes in land ownership, right of access and water rights are not uncommon of Prince Edward Island, and generally find their root in the ambiguity and language used in the documents produced to delineate the extents of such rights and interests. Quite often, the translation from what was measured on the ground to what is written into legal documents are in conflict.

The production of documents without means of a survey prepared delimiting the extents of the interest can be problematic when relied upon in the future. When documents include natural boundaries, another level of complexity is added into the equation.

As professional Land Surveyors, re-tracing the boundaries of un-surveyed parcels of land to define the extents of an interest, we must understand the complexities of the survey and the implications of the opinions that are provided when posting such opinions on the ground.

While a Land Surveyor may be quick to apply common law and current precedents to the survey that is currently being prepared, it must not be lost to understand what laws existed at the time the lands were subdivided and most importantly, the intent of the parties that created the parcel.

This report and the associated plan have been prepared to support an application for a development permit by David and Jaycee Sabapathy (Applicant) on lands fronting on the East Suffolk Road Extension. During the application process, the Government of Prince Edward Island Department of Transportation and Infrastructure (TI) denied access from East Suffolk Road Extension, deeming the road classified as "non-essential".

Rather than approve the Applicant's access, TI provided an alternative solution and document known as a "Development and Maintenance Agreement" (DMA). A requirement of the DMA was production of a legal survey plan to delimit and demarcate the non-essential section of East Suffolk Road Extension to be used to access the classified "Seasonal" section of road.

Once provided with the option to acquire a development permit, the Applicant contacted Author to provide an opinion on the extents of the classified road and the DMA, with knowledge that Author had a background on such matters while in office as the Provincial Chief Surveyor.

The Author's Opinion letter was provided to TI in July 2019. TI provided a response to the Applicant in late August that a DMA was required to develop their parcel of land located on a "nonessential road."

The Author was contracted by the Applicant to provide a legal survey plan required for the DMA. The results of the legal survey established that the Applicant's lands fronted on a section of road classified as "Seasonal", that required an "Entrance Way Permit" to be registered in the Land Registry Office (LRO), prior to a development permit being granted.

TI has refused to accept a legally established, certified opinion on the extent of title to a section of the East Suffolk Road Extension. TI has not provided a certified opinion to refute the author's opinion.

This report follows on the methodology used by the Author to research and determine the extent of title to complex situations that are heavily influenced by politics.

All Surveyors, when tasked with making a boundary determination, must look at various forms of evidence. The evidence includes documentary records from the land registry offices, plans and files held by other



surveyors, physical evidence found on the ground, verbal evidence, and interviews of those knowledgeable of the site and conditions. The process of gathering this evidence can cause bias in a surveyor's opinion, particularly from survey records and verbal evidence. To ensure that bias is not introduced, a rigid path of data gathering, and analysis is made.

- Pertinent deeds are gathered, title searches are carried out where required and sketches are put together of the properties based on the deeds.
- Statute Law pertinent to the survey is gathered and analyzed.
- Known survey records are collected and data is input for staking of field evidence.
- Aerial photography is studied for information pertinent to the task.
- Instructions are created and provided for field staff to undertake field observations.
- Field data is processed, and evidence sheets compiled for analysis.
- Documentary evidence is overlaid on the physical evidence to establish patterns of occupation and eventually to create an opinion on a boundary. Previous survey evidence is not used in the first round of analysis. A second overlay is made with existing surveys to see if they match preliminary boundary reconstruction.
- Preliminary results are tabulated, and a preliminary opinion determined.
- Preliminary results are compared to statute law, case law and the actions of those that make reliance on such laws.
- Meetings with individuals to gather testimonial evidence of boundary information for comparison with evidence from preliminary results for confirmation and or review further.

- Review of Land Surveyor files for additional information when required.
- Resolution of final opinion, and demarcation of boundaries.

## 2. THE LAND SURVEYOR'S OPINION

#### 2.1. JUDICIAL FUNCTIONS OF THE LAND SURVEYOR

A Land Surveyor's practice is governed, not just by the laws of the three levels of government, but also by their professional association. Above all, however, the Land Surveyors is governed by their own integrity and ethical standards.

A Land Surveyor is a public officer. The Land Surveyor does not represent a single client when establishing a property boundary, but rather represents society at large. Every boundary monument marks a boundary between at least two unique properties. The surveyor, therefor, must be fair and impartial to all parties; They cannot give undue consideration to their client's interests in disregard to the interests of their client's neighbor and potential adversary. The responsibilities of a Land Surveyor are quite different than those of a doctor, lawyer, engineer or accountant, each of whom normally need act only with the interests of a single individual in mind. They must preserve in all their work the judicial mind and the impartial attitude of an arbiter, rather than the bias of an advocate.

Essentially the Land Surveyor is a gatherer of facts, a land information sleuth. Their duty is to determine the physical and topographic characteristics of a parcel of land and to establish the facts as to the position of boundaries on the ground. Based on these facts, they must form an opinion as to the location of all boundaries and the extent and shape of the parcel and or interest. In searching for evidence of those boundaries and interests, they are obligated to conduct an exhaustive



search for the original location of boundary monumentation. They must precisely document all evidence and measurements defining those boundaries, and they must re-monument those boundaries for the benefit of future generations. In exercising these functions, the Land Surveyor is acting in the capacity of an officer of the province, working to preserve and perpetuate the survey fabric which contributes to the identification of individual land parcels and rights. Having completed all this documentation and research, the surveyor has arrived at an opinion.

"The surveyor should remember that he may be called upon to explain and justify his operations before a court of law, and in order to be able to do so with confidence and assurance, he should always satisfy himself thoroughly that the evidence which he creates, or uses in the course of his field operations, is as good as the best that any other surveyor can point to. Many people are prone to think that if a registered Land Surveyor re-establishes a boundary line, his decision as to the location is final and conclusive. That is not so. It is true that very often adjoining owners in dispute over a boundary will voluntarily submit their differences to a Land Surveyor and will agree to abide by his decision rather than go to law about it. It is also true that the law recognizes the qualified Land Surveyor as an expert in calculation and precise measurement and allows due credit to be given to his judgment and experience in cases where evidence requires appraisal. But if dispute remains, surveyors have no more authority than any other men to determine boundaries. The location of any boundary or corner in dispute, is, in the final legal analysis, a question of fact to be determined exclusively by the courts and the surveyor's role is not that of a judge but, at best, that of an expert witness skilled in

finding, appraisal and recording of evidence by which the facts in question may be determined.<sup>1</sup>

At any time, the surveyor's opinion may be challenged, and a court having reviewed their research, evidence, and procedures, may either affirm their decision or substitute its own opinion, thus fixing the boundary by court order.

Nevertheless, for all intents and purposes, the surveyor's work is usually accepted by landowners and in most cases the surveyor is, in all practicality, the final boundary arbiter. Neighbours in most cases, are content to accept the work of a Land Surveyor or may agree to the appointment of a Land Surveyor as a mediator. In the Alberta Arbitration Act, Dominion and Alberta Land Surveyors are identified under the definition of "Professional arbitrator" presumably because of their experience in the settlement of boundary line disputes. To search through the reams and reams of Canadian legal decisions, one would find few surveyor's decisions that have in fact been set aside by the judiciary.

Boundaries are not approximate. By definition, a boundary is the line which determines the limit between two parcels of land and as such is the exact point of beginning of one parcel and ending of another. It is a line of no width. A surveyor engaged to mark the boundaries between two or more properties must do a complete survey, searching for all available evidence of the original boundaries, marking them on the ground, preparing and filing any necessary plans or documents to record their work in a public repository such as the Registry of Deeds. They must be then prepared to stand behind their work and defend it in a court of law if it is called into question. To do any less than a complete job is an abrogation of one's professional responsibility.

 $<sup>^{\</sup>rm 1}$  J.H. Holloway, "Principles of Evidence", The Canadian Surveyor, (1952) Vox XI-2m pgs. 31-42

Land Surveyors, like other persons in responsible positions, must swear an oath of office. A Surveyor is bound by their oath as well as by their professional ethics, to uphold the law and act without prejudice, to act neither in favor of their client nor against their client's neighbour. In all their dealings, they must act with total impartiality, respecting the rights to all parties.<sup>2</sup>

The Land Surveyor, in exercising their duty to re-establish the boundaries of private or public property, must be familiar with statute and case law relative to boundary retracement. The Land Surveyor must always remember that their function is to determine and analyze the facts and make decisions in accordance with legal precedent for other surveyors and courts of law will follow in their footsteps. A Land Surveyor's decisions are always subject to challenge and appeal to a court of law. The process dictates that the Land Surveyor put himself in the position of a judge and making a decision, since the boundary always defines the extents of two or more properties. When conflict occurs, there will be both a winner and a loser.<sup>3</sup>

The forgoing are extracts from Chief Justice Cooley of the Supreme Court of Michigan (1864-1885), extensive paper on the Judicial Functions of the Land Surveyor, Ken Allred's Chapter on the Surveying Profession, Survey Law in Canada and excerpts from the Canadian Surveyor. Regardless for whom a Land Surveyor is entrusted to carry out their work (government, client, or employer) they are bound by the following:

- The surveyor must be fair and impartial to all parties.
- The surveyor is bound to uphold the law and act without prejudice.
- The surveyor must act, neither in favour of their client nor against their client's neighbour.

- The surveyor must be familiar with statute and case law relative to boundary retracement.
- The surveyor must be prepared to stand behind their work and defend it in a court of law if it is called into question.
- The surveyor must preserve in all their work the judicial mind and the impartial attitude of an arbiter, rather than the bias of an advocate.
- The surveyor is governed by the laws of government, their professional association and above all, their own integrity, and ethical standards.

#### 2.2. OPINION ESTABLISHED BY STATUTE LAW

Under the Land Surveyors Act L-3.1, the following sections apply:

1(f) "<u>land survey</u>" includes a survey by photogrammetric, electronic or astronomic or other method, of land, water and airspace, for the purpose of preparing plans and documents or giving advice connected with:

*(i)The establishment or location of a boundary or the determination of any right or interest encompassed by the boundary, and* 

(ii) The determination of the location of any object for the purpose of certifying the location of that object with respect to a boundary;<sup>4</sup>

1(g) "Land Surveyor" means a person who has been issued a certificate under section  $8;^5$ 



 <sup>&</sup>lt;sup>2</sup> G.K. Allred, "The Surveying Profession", Survey Law in Canada, (1989), pgs., 471-474
<sup>3</sup> Ibid, pgs. 498

7. No person shall practice or hold himself out as a Land Surveyor or perform a <u>land survey</u> unless he is a member of the Association. 2001, c.10, s.7.<sup>6</sup>

16. (1) A Land Surveyor has, with respect to all matters relating to the survey or lands and for better determining the corner, boundaries or limits or elevation of any county, township, polling district, section or other legal division of lot, parcel, or tract of land, all the powers of a commissioner under the Public Inquiries Act R.S.P.E.I. 1988, Cap. P-31 for the examination and compelling of witnesses in relation to such matters.<sup>7</sup>

Accordingly, the *Land Surveyors Act* L-3.1, provides authority for a Prince Edward Island Land Surveyor to prepare documents and provide advice on the location of a boundary and right or interest encompassed by the boundary. In addition, the powers of a commissioner under the Public Inquiries Act are bestowed upon the Land Surveyor to gather evidence.

Under the Land Survey Act L-2.1, the following section applies:

1(a) "<u>land survey</u>" or "survey" means the establishment, location, or definition on the ground of any boundary, limit or any angle of any land, size, location, parcel, claim, common, easement, road, street, lane, district, municipality, country (sic) or township, or any other location or division of lands or right over lands, whether for ownership, title or authority or the origin of any of them.<sup>8</sup>

Accordingly, the *Land Survey* Act L-2.1, provides authority for a Prince Edward Island Land Surveyor, to establish on the ground, the limits to the title and authority to the division of any road within Prince Edward Island.

Under the land Survey Act L-2.1

(2) The Lieutenant Governor in Council shall appoint a chief surveyor for the province.<sup>9</sup>

(18) Division lines, determination of: Should any division line affecting the boundaries of several parcels of land, whether the division line is between townships, subdivisions of townships, estates or sub-divisions of estates, or otherwise is indefinite of location, then the chief surveyor may cause the division line or such part thereof as requires location to be surveyed and established, and shall file in the office of the proper Registrar of Deeds a plan of the survey, and thereupon the location of the division line shall be for all purposes as determined by the chief surveyor. 2013, c.39, s.18.<sup>10</sup>

Accordingly, the position of Provincial Chief Surveyor is established, and authority is provided to establish any boundary that is indefinite in location.

Under the Roads Act R-15, the following section applies:

(2) All highways laid out or constructed prior to August 10, 1985, shall be a minimum width of sixty-six feet unless determined otherwise by the chief surveyor for the province. 1985, c.38, s.2; 2010, c.43s.2<sup>11</sup>



 <sup>&</sup>lt;sup>6</sup> Land Surveyors Act, R.S.P.E.I. 1988, Cap L-3.1, s. 7
<sup>7</sup> Ibid, s. 16
<sup>8</sup> Land Survey Act, R.S.P.E.I. 1988, Cap L-2,1, s. 1a

<sup>2.3.</sup> PROVINCIAL CHIEF SURVEYOR'S OPINION

 <sup>&</sup>lt;sup>9</sup> Land Survey Act, R.S.P.E.I. 1988, Cap L-2,1, s. 2
<sup>10</sup> Ibid, s. 18
<sup>11</sup> Roads Act, R.S.P.E.I. 1988, Cap. R-15, s.4(2)

Accordingly, the Road Act R-15 provides authority to the Provincial Chief Surveyor to establish the extents of a highway.

Within the Division of Land and Environment, in the Department of Transportation and Infrastructure, the Properties Section has compiled a Policy and Procedure Manual.

Under Section R, Instruction 6, entitled Rights-of-Way Status, dated June 12, 2002 by the Manager of Provincial Lands, the following sections apply:

3.3 The authority to establish the status of rights-of-way on behalf of the Minister of Transportation and Infrastructure rests with the Provincial Chief Surveyor.<sup>12</sup>

*4.1(c) In the event of the following:* 

- No file exists, or
- No determination has been made or
- If the Property Agent has reason to question the determination, or the client disputes the finding.<sup>10</sup>

4.1(d) In dealing with the situation as noted in item 4.1(c) the Property Agent will advise the client, in writing (as per Exhibit "B"), that the file has been forwarded to the Provincial Chief Surveyor for review and determination and that all further inquiries regarding this matter are referred to the Provincial Chief Surveyor. Also, all copies of correspondence are to be copied to the Provincial Chief Surveyor.<sup>11</sup>

Through Statute Law and Policy, The Minister of Transportation and Infrastructure has appointed the Provincial Chief Surveyor as the authority to determine the extents of title and associated rights and interest to the Public Highways within the Province of Prince Edward Island. Authority to determine the status of a public road is not provided to any other government official.

#### 2.4. OPINION ESTABLISHED THROUGH CASE LAW

As Land Surveyors, opinions on matters related to boundaries have often been tested and accepted through decisions of the courts and tribunals. Such decisions become the foundation for future decisions required to be made by the Land Surveyor.

A comprehensive library on case law related to boundary law, road law and water law, provides the surveyor with the resources required to assist in the settlement of an opinion.

The author has been involved as expert on several decisions of the court. Of relevance to the Status of Roads, expert opinion was provided in the case PESCAD 14, 2006, Govt of PEI vs Gillis, where evidence included the comparison of various roads to the road in question.

Other case law of relevance to the East Suffolk Road Extension and the access to the Applicants lands that has been used in development of the opinion.

- Heiminck v. Edmonton, 1898 CanLII 31, (SCC), 28 SCR 501
- The Grand Trunk Railway v. The City of Toronto, 1906 CanLII 1, (SCC), 37 SCR 210.
- Toronto Transportation Commission v. Village of Swansea, 1935 CanLII 4 (SCC) [1935], SCR 455
- Thompson Lumber & Building Supplies Ltd et al. v. Minster of Highways, 1964 CanLII151 (ON CA).



 $<sup>^{\</sup>rm 12}$  PEI Department of Transportation and Infrastructure, Properties Section – Policy and Procedural Manual, 2002

- Norway Pine Cabins Ltd. v. Minster of Highways for Ontario, 1966 CanLII 263 (ON CA)
- Ducharme v. Tache, 1978 CanLII 2623 (MB CA)
- ▶ Pitre et al v. Robisnon, 1978 CanlII 3334 (PE SCAD)
- McNabb v. Walmsley, 1989 CanLII 8973 (PE SCTD)
- Babineau v. Minister of Transportation 1991 CanLII 5690 (NBQB)
- McNabb v. Walmsley, 1991 CanLII 8181 (PE SCAD)
- Doyle, et al v. MacDonald et al 1999 CanLII 7228 (PE SCTD)
- Empringham Catering Services Ltd. v. Regina (City), 2002 SKCA 16 (CanLII)
- Roper v. Charlottetown, IRAC Order LT03-01
- Clow v. Clow, 2003 PESCTD 37 (CanLII)
- ▶ O'Hanley v. Wheatley & Gulf Surveys 2005 PESCTD 20 (CanLII)
- ▶ Govt.PEI v. Gillis, 2006 PESCAD 14 (CanLII)
- ▶ Goldsen v. Birnbach & Govt.PEI 2006 PESCTD 23 (CanLII)
- Bassett v. Mitton 2011 PESC 09 (CanLII)
- Cary and Christen v. Govt. PEI, IRAC Order LT10-08
- Sargent v. Govt.PEI, IRAC Order LT11-02
- Bassett v. Mitton 2012 PECA 13 (CanLII)
- Mackay v. MacKenzie 2015 PESC 21 (CanLII)
- Mackay v. MacKenzie 2016 PECA 16 (CanLII)
- Banks, et al v. Province of New Brunswick et al, 2019 NBQB 003 (CanLII)

# **3.INTERPRETATION AND ANALYSIS**

## OF APPLICABLE STATUTE LAW

It is the position of TI, that the Applicant's lands fronts on a portion of the East Suffolk Road designated as "non-essential" and that an entrance way

has been denied. TI has suggested that an entrance way can be approved if the road is upgraded, and a DMA be completed.

The courts have consistently protected a person's right to ingress and egress to their lands from public highways. Case Law used in formulation of the opinion of this report will be presented in the subsequent chapter that follows.

The author presents his interpretation of the statute law applicable to the East Suffolk Road Extension fronting on Applicant's lands, the Development and Maintenance Agreement, and TI and Planning's application and implementation of the Statute Law with respect to maintenance, entrance ways and development approvals.

#### 3.1. ROADS ACT R.S.P.E.I. 1988, CAP R-15

The Roads Act R.S.P.E.I. 1988, Cap R-15 defines a Public Highway as:

2. "Common and Public Highway" defined: All parts of the townships of the province reserved in the grants or patents thereof for public roads, all roads laid out by virtue of any statute and all roads whereon public money has been expended for opening them or for keeping them in repair shall be deemed to be common and public highways unless where the roads have been altered or closed or shall be altered or closed according to law; but farm lanes shall in no circumstances be deemed to be common and public highways. R.S.P.E.I. 1974, Cap. R-15, s.2.<sup>13</sup>

Common Law has established that highways are public roads, which every citizen has the right to use. "*A highway is a way over which the public at* 

<sup>&</sup>lt;sup>13</sup> Roads Act R.S.P.E.I 1988, Cap R-15, s. 2



*large have a right of passage, whether it be a carriage way, a horse way, a foot way, or a navigable river.* <sup>"14</sup> It is also been established that the word "road" is used synonymously with "highway".<sup>15</sup> As confirmation of this interchangeability of terms, one only has to look to the definition of "Public Road" as defined under the Planning Act Subdivision and Development Regulations:

1.(q) "public road" means all parts of the townships of the province reserved in the grants of patents thereof for public roads, all roads laid out by virtue of any statute and all roads whereon public money has been expended for common and public highways except where the roads have been altered or closed, or shall be altered or closed according to law, and excluding, in all circumstances, farm lanes.<sup>16</sup>

Within the Roads Act, highway is further defined. It does however restrict the common law use to vehicles:

(g) "highway" means all the area within the boundary lines of every road or street or right-of-way

(i) outside the limits of any city or town, or

(ii) within the limits of a city or town if designated under section 27 or 29, which is designed or intended for or used by the general public for the passage of vehicles, and includes any bridge over which any such road, or street or right-of-way is laid.<sup>17</sup>

To ensure no further confusion between "highway" and "road" is made, a review of the statutes and regulations was carried out for an independent definition of the word "road".

Road Act R.S.F	FI 1988	Can R-15	Silent!
RUdu ACL R.S.F	.E.I. 1900,	Cap R-15.	Silenti

	Highway Access Regulations:	Silent!
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- Highway Traffic Act, R.S.P.E.I. 1988, Cap H-5: Silent!
- Planning Act R.S.P.E.I. 1988, Cap P-8: Silent!
- Subdivision and Development Regulations: Silent!

While not a definition of "road", the definition of "roadway" is found in the Highway Traffic Act, R.S.P.E.I., 1988, Cap H-5 as:

1, (q3) "roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder unless the shoulder is paved, and where a highway includes two or more separate roadways the term "roadway" refers to any one roadway separately and not to all of the roadways collectively.<sup>18</sup>

From this definition, it is clear that "roadway" cannot be confused with "road". Based on the foregoing, "road" and "highway" have the same meaning within the statute law and encompasses all the area within the legally established boundaries of the public right-of-way. For clarity, "roadway" refers to the improved, travelled portion of the highway.

Under the Roads Act, regulations were made to designate a classification of highway from which standards for an entrance way is permitted. The Roads Act is silent on the criteria and maintenance required for each



<sup>&</sup>lt;sup>14</sup> Thompson, Issac Grant, *Practical Treatise on the Law of Highways*, 1879, pg 1

<sup>&</sup>lt;sup>15</sup> Angell, JK, Durfee, T, A Treatise on the Law of Highways, Third Edition, 1886, Pg 4

<sup>&</sup>lt;sup>16</sup> Planning Act R.S.P.E.I 1988, Cap P-8, Subdivision and Development Regulations s. 1q

<sup>&</sup>lt;sup>17</sup> Roads Act R.S.P.E.I. 1988, Cap R-15, s. 1g

<sup>&</sup>lt;sup>18</sup> Highway Traffic Act, R.S.P.E.I.1988, Cap H-5, s. 1q

classification of highway, with exception, that a highway designated as non-essential is not maintained.

#### **3.2. HIGHWAY ACCESS REGULATIONS**

The Highway Access Regulations (HARS) was created to ensure entrance ways onto public roads met criteria used to create a safe stopping distance (SSD).

Criteria does not exist to determine how a highway was classified or for assessment and correction of roads known to be mis-classified. There is no standard for cross-section, material surface, lanes, passable, impassable, or otherwise. Under HARS, a highway that is overgrown and impassable could be classified as Seasonal; a highway that is maintained and is provided with year-round service could be non-essential.

The language around entrance ways within HARS is somewhat ambiguous. Rather than require an entrance way permit to all highways using the SSD which would be less ambiguous, it places a higher restriction of access in some cases to a lower class of highway.

Under HARS, an entrance way permit is required to construct or change the use of an entrance way opening to an "arterial highway", limited access arterial highway, or a seasonal highway. <sup>19</sup> The application for a permit to an arterial highway is very limited in scope.

Under HARS, an entrance way permit is not required for a collector highway<sup>20</sup>, or a local highway<sup>21</sup>, however authorization is required.

Now when looking to the scenic heritage road and non-essential highway, things get confusing. Under HARS, both designations are silent on the requirement of SSD.

On a non-essential highway, the Minister shall not issue an entrance way permit to authorize placement of a new entrance way<sup>22</sup>, however the Act is silent on authorization without permit.

The regulation on a non-essential road likely stems from the name itself and not from land identification. Non-essential means "not required", the highway not being required could be closed at law without affecting the adjoining landowners or the public, it would suggest that the lands fronting on this classification of highway, have other means of access. This however is rarely the case and in such cases the designation would appear to be incorrect.

A person's right of ingress and egress to access their lands from public highways is well established in case law and supported by the Supreme Court of Canada<sup>23</sup>.

On a scenic heritage road, a person shall not place a new entrance way or change the use of an entrance way<sup>24</sup>. The Minister may issue a permit where the new entrance way would be the only means of access to the property<sup>25</sup>. This last clause is consistent with a person's rights of ingress and egress to their lands.

#### 3.3. DEVELOPMENT & MAINTENANCE AGREEMENT

Development on non-essential roads most likely has been an issue for Government since the implementation of the HARS. Rather than amend

13



<sup>&</sup>lt;sup>19</sup> Roads Act R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations s.3

<sup>&</sup>lt;sup>20</sup> Ibid, s.29 <sup>21</sup> Ibid, s.31

<sup>&</sup>lt;sup>22</sup> Ibid, s.36

<sup>&</sup>lt;sup>23</sup> Russell, W.D., *Russell on Roads* (2008), pg. 145

 $<sup>^{24}</sup>$  Roads Act R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations s.37 (1)  $^{25}$  Ibid, s.37 (2. b)

HARS to recognize a landowner's right to access lands, Government created a policy and an agreement. "The Development and Maintenance Agreements" recorded in the Land Registry Office, provide little to explain how an entrance way is created, approved or otherwise. The DMA and policy are also in conflict with HARS and the Planning Act R.S.P.E.I 1988, Cap P-8, Subdivision and Development Regulations.

A review of the DMA entered by Ivor Sergeant filed in the Land Registry Office under Document #1004, in 2008 reveals the following:

- Clause 1, 3, 6, 7, 8, 9, 10, 12, 14 refer to maintenance responsibilities.
- Clause 2, 4, 5 refer to the transfer of liability to the grantee.
- The Agreement is silent on approval of an entranceway to the Applicant's property.

The policy under which the DMA operates adds some confusion regarding entrance ways. Within the first section of the policy, it states:

"The Department of Transportation and Public Works (TPW) has on the advice of legal counsel, determined that <u>entranceway permits</u> <u>are not required under the Roads Act or Highway Access</u> <u>Regulations for development involving access across or along a</u> <u>non-essential road</u>"<sup>26</sup>

Under the Planning Act, for development that does not involve the subdivision of land it states:

Entrance ways (4) Notwithstanding any other provisions of these regulations, no <u>development permit</u> shall be issued in respect of a development involving the change of use of an entrance way or the

creation of an entrance way to any highway <u>where an entrance way</u> <u>permit is required</u> unless an entrance way permit has first been granted by the Minister of Transportation and Public Works.  $(EC693/00; 137/09)^{27}$ 

It is evident from both HARS and the Planning Act that an entrance way permit is not required.

## 4. SEASONAL HIGHWAYS

When tasked with determining the status of a highway, the opinion derived requires a comparative analysis of other known highways within the local vicinity and sometimes other known roads. In the case of the East Suffolk Road Extension, a comparison of other known seasonal highways is made. Traits of each highway is presented followed by a summary of similar traits.

Before making the comparison of roads, we need to look at the interpretation of several documents published for reliance by the Province of Prince Edward Island.

<u>"Geolinc" Mapping</u>. While not without error and a disclaimer for such, the mapping is relied upon by professionals working with real property law as the base from which to provide opinions. It is generally accepted that where a parcel of land is without a PID for taxation assessment that the parcel comprises a "public highway". It is also accepted that there a many "public highways" that are included within the taxable land base of a PID, that the Province has not put effort in the map and catalogue. These would be the "nonessential highways."



<sup>&</sup>lt;sup>26</sup> Nonessential Roads, Application for Subdivision or Development off nonessential roads, TI Properties Section, 2008, No. N, Instruction 1, s. 1.1

<sup>&</sup>lt;sup>27</sup> Planning Act R.S.P.E.I. 1988, Cap P-8, s.4

- <u>"Provincial Road Atlas" 2014 revision</u>. Like the "Geolinc" mapping, the Road Atlas is not without error, and a disclaimer for such is included within. The highways' location is based on the centerline of all non-restricted use roads that are drivable with a surface of more than 5 metres and no barriers denying access. The Atlas depicts the various designations for roads and includes local paved and local unpaved roads as the lower class of public roads.
- Roads Act R.S.P.E.I. 1988, Cap R-15 designates and classifies a road without reference to driving surface, i.e., local, or seasonal.

#### 4.1. COTTAGE ROAD RI 22061 (CANOE COVE)

Cottage Road is listed in HARS Schedule D as a **Seasonal Highway**:

(178) Cottage/Shore Road RI22061: The Cottage/Shore Road in the settlement of Canoe Cove commencing at the intersection of Route 19 to the end of the road, a distance of 0.4 km.<sup>28</sup>



Photo 1 (Cottage Road, Canoe Cove, Prince Edward Island)

Cottage Road in Canoe Cove is designated as a Seasonal Highway under HARS. On the ground it looks more like a farm lane than a highway.

- The highway is a single lane roadway.
- The highway is tree-lined with an approximate width of 3.5 metres.
- The highway has no shoulders, no ditches and no backslope.
- The highway designated length in HARS is 0.4 km.
- The end of roadway occurs at the shore of Northumberland Strait at a distance of 0.58 km.
- TI maintains the highway to end of the road at the shore.

<sup>&</sup>lt;sup>28</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "D", s.178

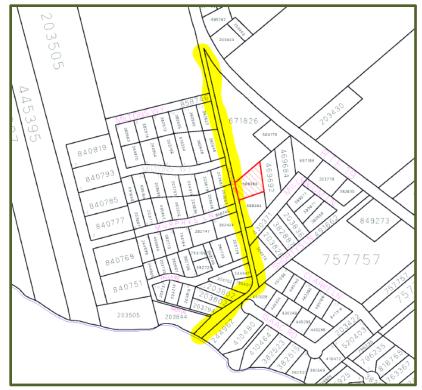


"Steve Szwarc, Director of Highway Maintenance has informed me that they grade the road to the shore in the Spring and as needed during the summer."<sup>29</sup>

- On the Provincial Road Atlas, 2014 version (Map 1), the road is designated as an Unpaved Local Road, having a scaled length of 0.6 km.
- The highway as depicted on Geolinc, (Map 2), matches the highway as designated local unpaved and the length of highway maintained.



Map 1 (Cottage Road, Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 25)



Map 2 (Cottage Road, Provincial Treasury, Geomatics Information Centre)

# 4.2. MACGILLIVARY ROAD RI 32009 (BLOOMING POINT)

MacGillivary Road is listed in HARS Schedule D as a **Seasonal Highway**:

(342) MacGillivray Road RI32009: The MacGillivray Road in the settlement of Point Deroche commencing at the intersection of Route 218 to the end of the road, a distance of 1.7 km.<sup>30</sup>



<sup>&</sup>lt;sup>29</sup> Tremblay, Wayne, Email Correspondence dated November 23, 2020.

<sup>&</sup>lt;sup>30</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "D", s.342



Photo 2 (MacGillivary Road, Blooming Point, Prince Edward Island)

MacGillivary Road in Blooming Point is designated as a **Seasonal Highway** under HARS. Visual inspection on the ground supports seasonal maintenance, however an individual parks a school bus at the shore end of the highway, suggesting it may be plowed in the winter.

- ▶ The highway is a 1 and ½ lane roadway.
- The highway is tree-lined with an approximate width of 5 metres.
- The highway has no shoulders, no ditches and no backslope.
- ▶ The highway designated length in HARS is 1.7 km.
- ▶ The end of roadway occurs at the shore of Tracadie Bay at a distance of 0.70 km.

- 1.0 km of the designated distance occurs within the waters of Tracadie Bay.
- On the Provincial Road Atlas, 2014 version (Map 3), the road is designated as an Unpaved Local Road, having a scaled length of 0.7 km.
- The highway as depicted on Geolinc, (Map 4), matches the highway as designated local unpaved and the length of highway maintained with a length of 0.70 km.



Map 3 (MacGillivary Road, Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 29)





Map 4 (MacGillivary Road, Provincial Treasury, Geomatics Information Centre)

#### 4.3. WATTS ROAD RI 32039 (GRAND TRACADIE)

Watts Road is listed in HARS Schedule D as a **Seasonal Highway**:

(562) Watts Road RI32039: The Watts Road in the settlement of Grand Tracadie commencing at a point 0.7 km from the intersection of RI32031 to the end of the road, a distance of 1.2 km.<sup>31</sup>



Photo 3 (Watts Road, Grand Tracadie, Prince Edward Island)

Watts Road in Grand Tracadie is designated as a **Seasonal Highway** under HARS. Visual inspection on the ground supports seasonal maintenance, for its full length to the National Park boundary.

- The RI index is in error referencing the Queens Point Road as its intersection which is approximately 0.5 km east of the intersection.
- ▶ The seasonal portion of highway is a single lane roadway.
- The highway is tree-lined with an approximate width of 4 metres.
- The highway has no shoulders, no ditches and no backslope.
- The highway designated length in HARS at 1.9 km from Route 6.
- The end of roadway occurs at the National Park boundary at a distance of 2.1 km from Route 6.

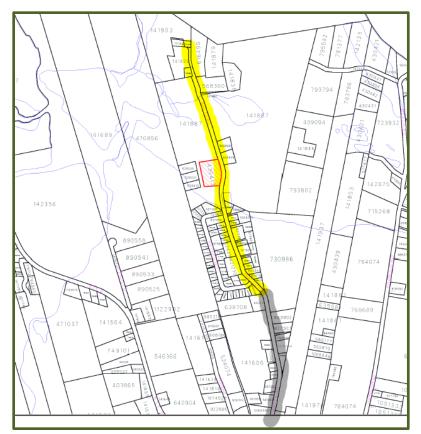
<sup>&</sup>lt;sup>31</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "D", s.562



- On the Provincial Road Atlas, 2014 version (Map 5), the road is designated as an Unpaved Local Road, having a scaled length of 1.9 km.
- The highway as depicted on Geolinc, (Map 6), matches the highway as designated local unpaved and the length of highway maintained at a length of 1.90km.



Map 5 (Watts Road, Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 26)



Map 6 (Watts, Provincial Treasury, Geomatics Information Centre)

#### 4.4. NORMANDY LANE RI 32108 (COVEHEAD)

Normandy Lane is listed in HARS Schedule D as a **Seasonal Highway**:



(616) Road Index 32108: Road Index 32108 in the settlement of Covehead commencing at a point .5 km from the intersection of Route 25 to the end of the road, a distance of 0.6 km.<sup>32</sup>



Photo 4 (Normandy Lane, Covehead, Prince Edward Island)

Normandy Lane in Covehead is designated as a Seasonal Highway under HARS.

- The first 0.5 km of Normandy Lane is surfaced in gravel and reclaimed asphalt. The first 0.5 km is not classified and would be considered a non-essential highway.
- The seasonal portion of highway is a single lane roadway,
- The seasonal portion of the highway crosses Auld's Creek,
- The highway is tree-lined with an approximate width of 4 metres,

- The highway has no shoulders, no ditches and no backslope,
- The highway designated length in HARS at 1.1 km from route 25,
- The end of roadway occurs at its intersection with the Friston Road. The last half of the highway is only passable with small offroad vehicles. This is located 1.75km from Route 25
- On the Provincial Road Atlas, 2014 version (Map 7), the road is designated as an Unpaved Local Road, having a scaled length of 1.75 km.
- The highway as depicted on Geolinc, (Map 8), matches the highway as designated local unpaved and the length of highway maintained at a length of 1.75 km.
- Maintenance records for 2016-2017 indicate 2.00 km of roadway received asphalt millings

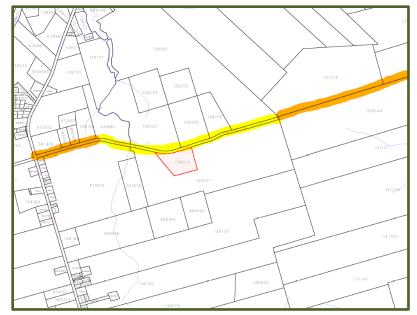


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<sup>&</sup>lt;sup>32</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "D", s.616



Map 7 (Normandy Lane, Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 26)



Map 8 (Normandy Lane, Provincial Treasury, Geomatics Information Centre)

#### 4.5. BIG POND ROAD RI 13023 (BIG POND)

Big Pond Road, is listed in HARS Schedule D as a **Seasonal Highway:** 

(98) Big Pond Road RI13023: The Big Pond Road in the settlement of Big Pond commencing at the intersection of Route 16 to the end of the road, a distance of 1.1 km.<sup>33</sup>

<sup>&</sup>lt;sup>33</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "D", s.98





Photo 5 (Big Pond Road, Big Pond, Prince Edward Island)

- ▶ The highway is a single lane roadway for its entire length.
- ► From Cross River Road to the end of the road at a fence, the roadway surface is a mix of sand and clay with a width of 3 metres.
- ▶ The highway has no shoulders, no ditches and no backslope.
- End of Road occurs at a cross fence at a distance of 1.09 km from the Northside Road.
- On the Provincial Road Atlas, 2014 version (Map 9), the road is designated as an Unpaved Local Road, having a scaled length of 1.1 km.

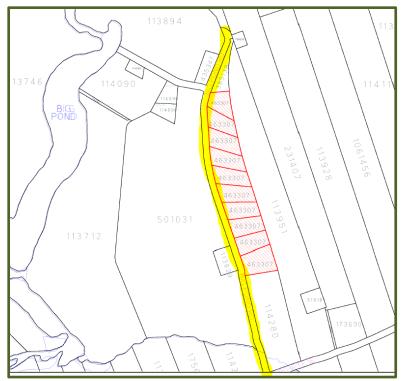
- The highway as depicted on Geolinc, (Map 10), matches the highway as designated local unpaved and the length of highway maintained at a length of 0.70 km.
- ▶ TI maintains the highway to the end of the roadway.



Map 9 (Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 46)



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Map 10 (Big Pond Road, Provincial Treasury, Geomatics Information Centre)

#### 4.6. BULL CREEK ROAD RI 13004 (BAYFIELD)

Bull Creek Road is listed in HARS Schedule D as a **Seasonal Highway**:

Bull Creek Road RI13004: The Bull Creek Road in the settlement of Bayfield commencing at a point 0.6 km south of the intersection of Route 16 to the intersection of Route 303, a distance of 3.5 km; thence in a northerly direction from the intersection of Route 16 to the end of the road, a distance of 0.8 km.<sup>34</sup>



Photo 6 (Bull Creek Road, Bayfield, Prince Edward Island)

Bull Creek Road in Bayfield is designated as a Seasonal Highway under HARS. Photo 6 shows the portion north of the Northside Road looking toward the shore.

- ▶ The highway is a single lane roadway.
- ▶ Highway is tree-lined with an approximate width of 3.0 metres.
- ▶ Highway has no shoulders, no ditches and no backslope.
- ▶ Highway designated lengthening HARS is 0.8 km.
- End of Road occurs at the shore of the Gulf of St. Lawrence at a distance of 0.93 km.

<sup>&</sup>lt;sup>34</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "D", s.122



- ▶ TI maintains the highway to end of the road at the shore.
- On the Provincial Road Atlas, 2014 version, the road is designated as an Unpaved Local Road, having a scaled length of 0.6 km.
- The highway as depicted on Geolinc, (Map 8), matches the highway as designated local unpaved and the length of highway maintained at a length of 0.70 km.



Map 11 (Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 46)



Map 12 (Bull Creek Road, Provincial Treasury, Geomatics Information Centre)

#### 4.7. TYPICAL SEASONAL ROAD

The preceding 6 highways provide a glimpse of a typical standard seasonal highway within Prince Edward Island. Three are in the vicinity of the highway that is subject of this opinion, while three are observed in other locals. Based on the assessment, it can be summarized that a typical seasonal road comprises the following:

- A single lane roadway with a width varying from 3 to 5 metres.
- A highway with no ditches, no shoulder and no backslopes.



- A road surface that has been cut out of the existing material below the topsoil and root matter and not built up with imported material.
- A surface of clay or shale.
- The highway could be mistaken as a private lane, other than the road sign at its intersection as confirmation of public.
- A typical seasonal road would not meet the standard road crosssection for a private road that services 6 seasonal dwelling lots.

## 5. REVIEW OF GOVERNMENT'S USE OF STATUTE AND POLICY'S INTENT

In recent years, TI has undertaken maintenance or allowed development and entrance ways onto public highways that do not fall within the parameters of HARS. While such actions may not be intentional, they do make it difficult for a Land Surveyor to make an objective decision on a road status for development or other purposes. Such actions cloud the application of HARS.

#### 5.1. MACINTYRE SHORE ROAD - UNDESIGNATED HIGHWAY, (DONALDSTON)

MacIntyre Shore Road, Donaldston is not listed in any Schedule of HARS, and as an undesignated highway it would be considered a "**Nonessential Highway**".



Photo 7 (MacIntyre Shore Road, Donaldston, Prince Edward Island)

A portion of MacIntyre Shore Road is assessed as private lands on Geolinc under PID 143594, and the remainder, not being classified would be considered nonessential. The highway however is maintained year-round with snow removal in the winter.

- ▶ The highway is a two-lane roadway.
- The highway has a graveled surface with an approximate width of 10 metres.
- ▶ Highway is ditched, with backslopes.
- End of the roadway occurs at a guard rail at a distance of 1.15 km from the Route 219.



- TI has been unable to provide a classification for the highway and no road status report has been issued.
- On the Provincial Road Atlas, 2014 version (Map 13), the road is designated as an Unpaved Local Road, having a scaled length of 1.1 km.
- Both the public and private portions of the road are maintained by TI. TI maintains the highway to the end of the roadway yearround suggesting that it would be assumed to be a C-3 highway.
- The highway as depicted on Geolinc, (Map 14), including the portion on private property matches the highway as designated local unpaved and the length of highway maintained at a length of 1.15 km.
- Plan 33843 LRO (Map 15), being a 5-lot subdivision approved in 2008 with a private road connecting to the highway. No DMA is associated with the approval.
- Plan 42083 LRO (Map 16), being a 2-lot subdivision approved in 2020 with access to the highway. No DMA is associated with approval.



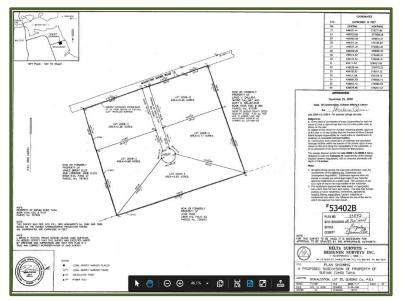
Map 13 (Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 29)

Neither an entrance way permit nor a DMA was found registered against title for the approved lots on MacIntyre Shore Road. TI has confirmed that the highway is not listed in HARS and receives maintenance.

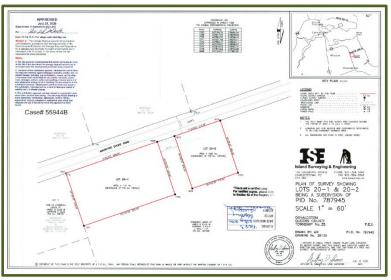




Map 14 (MacIntyre Shore Road, Provincial Treasury, Geomatics Information Centre)



Map 15 Plan 33843 LRO, 5 Lot Subdivision on MacIntyre Shore Road, Approved 11-06-2008)



Map 16 Plan 42083 LRO, 2 Lot Subdivision on MacIntyre Shore Road, Approved 07-28-2020)



### 5.2. CROSS RIVER ROAD – UNDESIGNATED HIGHWAY (BIG POND)

Cross River Road, Big Pond is not listed in any Schedule of HARS, and as an undesignated highway it would be considered a "**Nonessential Highway**".



Photo 8 (Cross River Road, Big Pond, Prince Edward Island)

While Cross River is not classified, it has had more upgrades than the road to which it attaches, being the Big Pond Road.

- ▶ The highway was improved in 2019/2020.
- The highway is ditched on both sides.
- The highway has been partially topped with reclaimed asphalt.

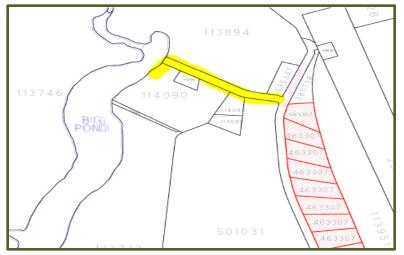
- The end of road occurs at the shore of Big Pond at a distance of 0.32 km on lands assessed as private on the taxation maps.
- On the Provincial Road Atlas, 2014 version (Map 17), the road is designated as an Unpaved Local Road, having a scaled length of 0.3 km.
- The highway as depicted on Geolinc, (Map 18), matches the highway as designated local unpaved and the length of highway maintained at a length of 0.3 km.
- TI maintains the highway to the end of the roadway.
- Plan 37211 LRO is an approved subdivision dated 12-14-2020.



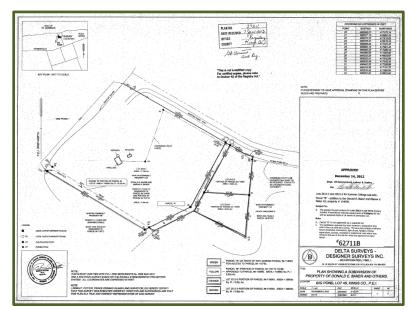
Map 17 (Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 46)

## Neither an entrance way permit nor a DMA was found registered against title for the approved lots on Cross River Road





Map 18 (Cross River Road, Provincial Treasury, Geomatics Information Centre)



Map 19 (Plan 37211 LRO, 2 Lot Subdivision on Cross Creek Road approved 12-14-2020)

### 5.3. UPTON ROAD – DESIGNATED ARTERIAL (CHARLOTTETOWN)

Upton Road is listed in HARS Schedule A-1 as an **Arterial Highway**:

4. The following highways and parts thereof are designated as arterial highways with effect from the date these regulations come into force.

(1) Upton Road, in the City of Charlottetown, from the intersection of Route 1 to the intersection of the Hurry Road. (EC390/97;449/99;336/00;433/03; 324/05; 478/12).<sup>35</sup>

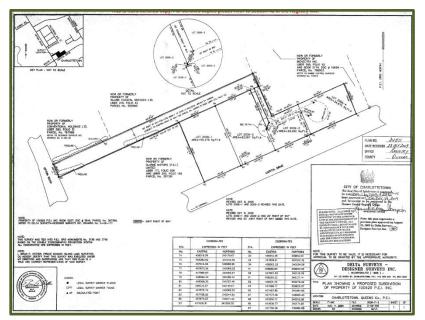


Photo 9 (Nicholas Lane at Upton Road (2015), Charlottetown, Prince Edward Island)



<sup>&</sup>lt;sup>35</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "A-1", s.4.1

The City of Charlottetown approved a plan of subdivision for a multi-unit development consisting of 4 lots with access to Upton Road provided through a private right-of-way as depicted on Plan 34511 LRO. At the time of approval, a single access clay lane provided access to Upton Road from an industrial disposal and reclamation site.



Map 20 (Plan 34511 LRO, 4 Lot Subdivision on Upton Drive approved 10-14-2009)

Under HARS, an entranceway permit cannot be issued to, establish, or change an existing entrance way where:

The entrance way would be on a segment of road having more than 3 lanes, unless the third lane is a dedicated right lane only. Photo 9, clearly establishes Upton Road did not meet this requirement.  $^{\rm 36}$ 

The entrance way would not result in an increase in average weekly vehicle trips.<sup>37</sup> Nicholas Lane provides access to Upton Road. Based on the approved plan of 2009, it would be anticipated that over 100 residential units would be accessing Upton Road, which would be a significant increase in average weekly vehicle trips.

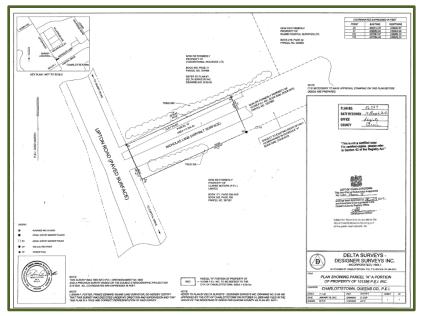
In 2012 The City of Charlottetown approved a second plan of subdivision. Plan 36597 LRO. This plan purports to create a public road where Nicholas Lane connects to Upton Road. The Plan depicts two existing entrances within the one parcel of land, a clay lane, and an asphalt lane. The parcel of land indicated to be set aside as a public road however is provided with a PID number indicating that it is likely not part of the City of Charlottetown's public road network, but rather "real property" of the City of Charlottetown.

In 2012, Alan Aitken. Traffic Operations Engineer for TI approached the author, as Provincial Chief Surveyor for an opinion on HARS and the access of Nicholas Lane to Upton Road. An opinion was provided that the access was illegal and that nothing within HARs provided a mechanism to allow the minister to grant and entrance way permit.

<sup>&</sup>lt;sup>37</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, s. 20.1b



<sup>&</sup>lt;sup>36</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, s. 4



Map 21 (Plan 36597 LRO, 1 Lot Subdivision on Nicholas Lane approved 03-13-2012)

Under the Roadway Development and Guide Policy (Draft)<sup>38</sup>, the minimum separation for approval of access onto an arterial highway, and a lower class of highway is listed at 200 metres. This measurement is consistent with guidelines established by the Transportation Association of Canada (TAC), and the SSD on an arterial highway listed at 210 metres. The distance between intersections is less than 100 metres being half the amount required under TAC and HARS and TI policy.



Map 22 (Upton Road, Provincial Treasury, Geomatics Information Centre)

HARS does not provide a mechanism to differentiate an entrance for a public road or an entrance for a private property, however the Road Act and HARS does speak to municipality approvals. In any case, a change in the use of an existing entrance way or establishment of a new entrance way cannot be re-opened until the Minister has issued a new entrance way permit.<sup>39</sup>

<sup>39</sup> Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, s. 19



<sup>&</sup>lt;sup>38</sup> Subdivision Roadway Development Guide or Policy (2016), Draft, TI, Capital Projects Division, Traffic Operations Section, s. 3.2.6

No entrance way permit has been found registered against the PID under title to the City of Charlottetown, or the PID for the private lane adjoining the City of Charlottetown lands as required under HARS s.10.(2).

#### 5.4. BELLS POINT ROAD RI 41025

Bells Point Road is listed in HARS Schedule C-1 as a "Local C-1 Highway":

(204) Bells Point Road RI41025: The Bells Point Road commencing at the intersection of Route 10 in the settlement of Cape Traverse to the end of the pavement.<sup>40</sup>

Aerial photography taken in 2000<sup>41</sup>, depicts the end of the asphalt (paved road) at the driveway of the last house to the north before the shore. Two tree lines are visible leading to the shore, however that portion of highway is not paved. No other reference to Bells Point Road is found in HARS.

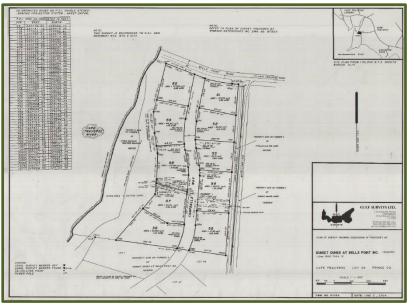


Photo 10 (Bells Point Road (2000), Cape Traverse, Prince Edward Island)

Plan 5712 LRO approved June 28, 2004 depicts the end of pavement as it was recorded in aerial photography from 2000, confirming that the highway had not been upgraded to a local highway standard prior to approval.

#### <sup>40</sup>Roads Act, R.S.P.E.I. 1988, Cap R-15, Highway Access Regulations, Schedule "C-1", s.204





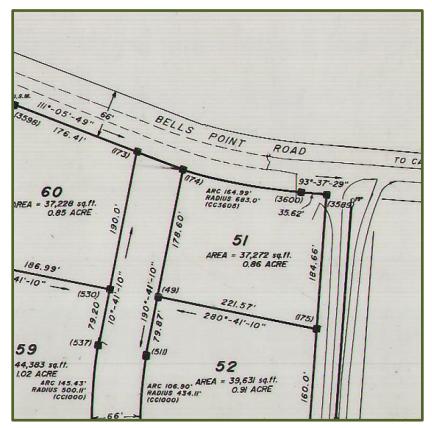
Map 23 (Plan 5712 LRO, 10 Lot Subdivision on Bells Point Road approved 06-28-2004)

A closeup of Bells Point Road (Map 24) depicts the end of the pavement and clay portion of roadway. The jagged edge of pavement is like the end of pavement depicted on (Photo 10).

Photo 11 depicts an irregular joint between two different asphalt surfacing projects. Several items to note:

- The image shows that roadway to the shore overgrown.
- The cross section of the Bells Point Road has not been constructed to a standard paved road cross-section.
- Plan 40976 LRO (Map 25) depicts a subdivision of lots off the end of Bells Point Road, approved November 19, 2018, with Lot 17-1 serviced by the section of road that would be

classified "nonessential". The plan shows the centre line of access to the shore and does not depict a paved road.

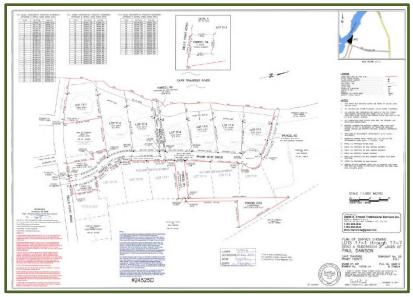


Map 24 (Plan 5712 LRO, 10 Lot Subdivision on Bells Point Road approved 06-28-2004)

#### Neither an entrance way permit nor a DMA was found registered against title for the approved lots on Bells Point Road



33



Map 25 (Plan 40976 LRO, Subdivision on Bells Point Road approved 11-19-2018)



#### 5.5. SCHURMAN POINT – SIMMONS SUBDIVISION

In 2009/2010, the residents in the seasonal development at Schurman Point requested the Government to take over the roads as public roads. The subdivision was originally approved in 1974 and comprised 65 building lots.

In October 2010, a plan of survey was approved as Plan 35675 (LRO Map 26) for right-of-way use only. No reference is made that the Plan's purpose was for public roads.

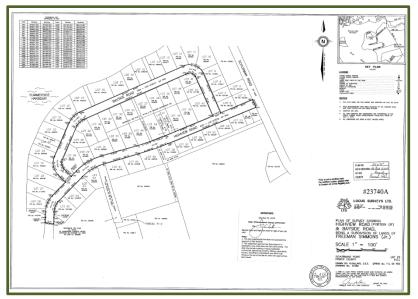
Through Document Number 308, Year 2010, Freeman Simmons conveyed his interest in the rights of ways as depicted on Plan 35675 LRO to the Government of Prince Edward Island, pursuant to the Public Works Act R.S.P.E.I., 1988, Cap 34, s. 13 (8.1)

Under the Planning Act R.S.P.E.I., 1988, Cap P-8, Subdivision and Development Regulations, effective March 21, 2009 all roads approved serving 21 lots or more were required to be public roads. At the time, TI policy required all public roads to have a paved surface prior to acceptance and built to a standard cross-section.

Photo 11 (Bells Point Road (2013), Cape Traverse, Prince Edward Island)



34



Map 26 (Plan 35675 LRO, Plan of Right of Way, Schurman Point approved 10-21-2010)

Imagery of the subdivision after approval dated 2012 (Photo 12 (Simmons Subdivision, Schurman Point, (August 2012), Prince Edward Island depicts a transition between a surface of asphalt and a surface of either gravel or clay.



Photo 12 (Simmons Subdivision, Schurman Point, (August 2012), Prince Edward Island

Photo 13 (Highview Drive (2009), Schuurmans Point, Prince Edward Island), depicts recent resurfacing of Schurman Point Road and a portion of Highview Drive. The photo depicts the asphalt surface ending at the location as depicted in the previous photo. At the time, as shown on Map 26, the road was a private right-of-way, and not a public highway. Photo 14 shows the previous year's (2012) surfacing of Highview Drive at the termination of the 2009 surfacing.

Under TI policy, a Subdivision Road Agreement was required, and no such document was filed in the LRO to indicate that an agreement was executed.





Photo 13 (Highview Drive (2009), Schuurmans Point, Prince Edward Island)



Photo 14 (Highview Drive (2013), Schuman's Point, Prince Edward Island)

TI upgraded and maintained a private right-of-way in 2009 and accepted a subdivision road that did not meet the requirements for acceptance of a public highway, under TI policy or under the Subdivision and Development Regulations of 2009.



# 6.EAST SUFFOLK ROAD EXTENSION

## 6.1. HISTORY AND BACKGROUND

On April 25, 1864, the House of Assembly resolved that a petition of William Vessey and others, and the petition of James Kennedy and others of both of Townships 33 and 34 regarding road appropriations was referred to Committee. The Committee returned with resolution for the monies to be appropriated for the service of Roads, Bridges and Wharfs that included the following:

Queens County District No. 4, Comprising Township No's 33 and 34

To opening the continuation of East Suffolk road from Lionel Garnum's (on a site proposed to be given therefor by Mr. Douse, the agent of the proprietor) towards the shore, an appropriation amount of £20 0  $0^{42}$ 

On May 2, 1866, it was reported that the sum of £24 4 6 had been expended to rebuild Saw-mill bridge and Covehead Road having and appropriation of £5 0 0, and the East Suffolk Road at Lionel Garnum's having an appropriation of £20 0  $0^{43}$ .

The Lake Map (Map 27) that follows depicts the location of Lionel Garnum's residence at the turn in the Millcove Road as the road was known at the time. The Map dated 1863 does not depict the East Suffolk Road Extension.



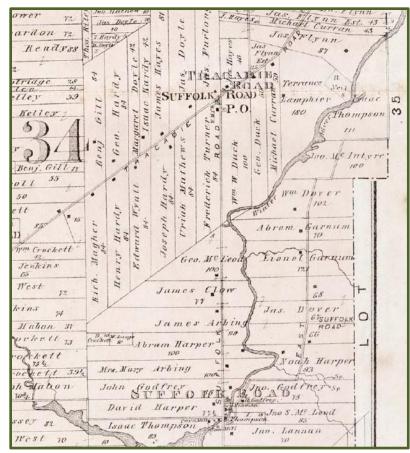
Map 27 (Lake, DJ, Topographical Map of Prince Edward Island (ca.1863) PARO UPEI-Lake map)

Map 28, being the Meacham Atlas of 1880 compiled from survey records of the period, depicts the East Suffolk Road Extension completed from the Millcove Road (referenced as East Suffolk Road) north to the shore of Winter River.



<sup>&</sup>lt;sup>42</sup> Frederik W. Hughes, "Journal of the House of Assembly of Prince Edward Island", 1864, pg 97

 $<sup>^{43}</sup>$  Frederik W. Hughes, "Journal of the House of Assembly of Prince Edward Island", 1866, Appendix "D"



Map 28 (Portion of Township No 34 (Meacham's Atlas ca. 1880

At the time the East Suffolk Road Extension was opened (1866), highways were opened over the lands of the proprietors of the townships, as reserved in the original letters patent. Fee simple was not required and records of acquisition were not made. It was not until 1869 that the first

<sup>44</sup> Morris, David, "The History of Public Roads and Rights of Ways in Prince Edward Island", (2019) recorded "right of highway over the lands" was recorded, and not until 1905 that the first acquisition of fee simple in a highway was acquired.<sup>44</sup>



Photo 15 (Aerial Photo 5064-59 (1935) Depicting East Suffolk Road Extension to Shore)

Photo 15 shows evidence of the East Suffolk Road (highlighted in yellow) leading north to the shore of the Winter River in 1935.

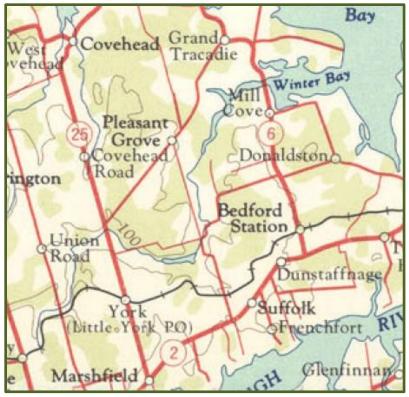


Photo 16, depicts a closeup of the portion of the East Suffolk Road Extension subject of survey and report.



Photo 16 (Aerial Photo 5064-9 (1935) at East Suffolk Road Extension subject of opinion)

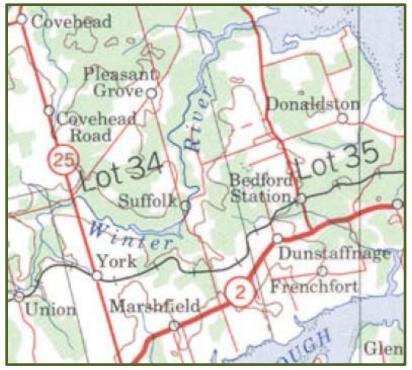
Map 29 depicts the road network for Prince Edward Island in 1964. The map does not show the portion of the highway leading north to Winter River; however, it does depict highway to the same limit as the survey plans prepared as part of this report. Map 29 (**Department of Mines and Technical Surveys, Ottawa, Canada MCR41** (1964)



Map 29 (Department of Mines and Technical Surveys, Ottawa, Canada MCR41 (1964)

Map 30 depicts the highway network similar to the 1964 imagery, suggesting it is a limit of a passable road during the period.





Map 30 (Department of Mines and Technical Surveys, Ottawa, Canada MCR41 (1974)

Photo 17 depicts the same portion of the East Suffolk Road Extension as was depicted in 1935. The highway is very visible and passable on the photo and depicts the highway heading past the property subject of this survey heading north east to the Winter River. The photo is taken 5 years before the HARS came into effect.



Photo 17 (Aerial Photo 90406-30 (1990) at East Suffolk Road Extension subject of opinion)

The following satellite imagery depicts evidence of maintenance and upkeep of the East Suffolk Road Extension over a period of 17 years.





Photo 18 (Satellite Imagery (June 2003) at East Suffolk Road Extension subject of opinion)

Roadway is visible through the foliage. Roadway leading north to Winter River would appear to become narrowed by growth.



Photo 19 (Satellite Imagery (May 2006) at East Suffolk Road Extension subject of opinion)

Between 2003 and 2006, ditches were bushed out. In addition, the route to winter river has been cleaned out.Photo 1





Photo 20 (Satellite Imagery (May 2013) at East Suffolk Road Extension subject of opinion)

East Suffolk Road Extension is very visible including section leading northeast to Winter River.

Mantha Land Surveys Inc. prepared a plan of survey in 2007 and depicts the travelled surface of the East Suffolk Road with a constant width.



Photo 21 (Satellite Imagery (August 2016) at East Suffolk Road Extension subject of opinion)

Aerial photography taken later in season, still depicts a well-travelled and maintained East Suffolk Road Extension.

Entrance way permit issued to MacLean through Document 6823, Year 2016. The permit states the road fronting the lands described in Schedule "A" is a Seasonal Highway.





Photo 22 (Satellite Imagery (July 2018) at East Suffolk Road Extension subject of opinion)

East Suffolk Road Extension is highly visible suggesting maintenance and not an abandoned highway.



Photo 23 (Satellite Imagery (July 2019) at East Suffolk Road Extension subject of opinion)

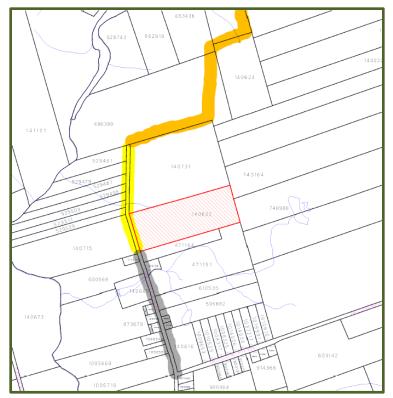
Sufficient documentary evidence exists to support the East Suffolk Road Extension a public right-of-way over the lands of the individuals that it abuts for its full length to the Winter River. The public have the right of passage as per Common law.





Map 31 (Provincial Road Atlas, 2014, Capital Projects, GIS-T Section, Page 46)

The Provincial Road Atlas depicts the location and length of the East Suffolk Road Extension in similar fashion to the 1964 and 1974 maps. The end of the travelled surface also coincides with the un-interrupted travelled route as depicted in the 17 years of satellite imagery.



Map 32 (East Suffolk Road Ext, Provincial Treasury, Geomatics Information Centre)

Map 32, above depicts a dedicated highway corridor similar to the 1964, the 1974 and 2014 highway atlases. Highlighted on the above map, the gray highlighted area represents the paved portion of roadway, and the yellow section of highway represents the unpaved portion of roadway. The orange represents the portion of highway that would be considered impassable.



### 6.2. HIGHWAY CLASSIFICATION

The East Suffolk Road Extension is referenced in three sections of the Highway Access Regulations. At the time of the certification of the associated survey plan, November 18, 2019, the law established the East Suffolk Road Extension as follows:

#### Schedule C-2

(138.1) **East Suffolk Extension Road RI32012:** The portion of the East Suffolk Road commencing at the intersection of Route 229 in the settlement of Suffolk, to the end of the pavement.

#### Schedule C-3

(214.1) **East Suffolk Extension Road RI32012:** The East Suffolk Extension Road in the settlement of Suffolk commencing at a point 0.5 km from the intersection with Route 229, for a distance of 0.2 km.

#### Schedule D

(214.1) **East Suffolk Extension Road RI32012**: The East Suffolk Extension Road in the settlement of Suffolk commencing at a point 0.5 km from the intersection with Route 229, for a distance of 0.2 km.

This section would appear to be in error as it is repetition of the same section previously referenced in Schedule C-3. The higher order description would prevail.

(216) **East Suffolk Extension Road RI32012:** The East Suffolk Extension Road in the settlement of Suffolk commencing at a point

0.7 km from the intersection of Route 229 to the end of the road, a distance of 0.4 km.

A local highway has 3 designations, C-1, C-2, and C-3. C-1 and C-2 highways are described as being paved highways with no reference to any portion being unpaved.<sup>45</sup> C-3 highways are described as being unpaved with no reference to any section being paved. HARS does not provide a definition of "paved" or "unpaved", however a "paved road" is defined within the Closing of Roads Regulations as a road topped with bituminous asphalt or concrete.<sup>46</sup>

Applying the Interpretation Act, The Interpretation of Legislation in Canada and Survey law to the HARS definition of the varied lengths for the East Suffolk Road Extension, we have the following:

Section 1: The Local Class 2 Highway being a portion of East Suffolk Road Extension that is paved as of November 18, 2019. The limit of the Class 2 highway is the "end of the pavement" being a designation within "roadway" and being a physical feature on the ground discernable from its surroundings.

Section 2: The Local Class 3 Highway being a portion of the East Suffolk Road Extension having a surface other than asphalt. Construction material, travelled surface condition, and width are not provided for in the classification. Unlike the Local Class 2 section, this section of highway does not have a physical feature to delimit its end and would be controlled by its stated length of 0.2 km. Being one order of hierarchy lower than Class 2, it would be affixed to the Local Class 2, at the end of the asphalt and have a length of 0.2 km.

<sup>&</sup>lt;sup>46</sup> Roads Act R.S.P.E.I. 1988, Cap R-5, Closing of Roads Regulations s.1 (b)



<sup>&</sup>lt;sup>45</sup> *Roads Act* R.S.P.E.I. 1988, Cap R-5, Highway Access Regulations s.15

<u>Section 3: Seasonal Highway</u> being the portion of the East Suffolk Road Extension having a surface other than asphalt. Construction material travelled surface condition and width are not provided for in the classification. Like the Local Class 2 section of the highway, its end is delimited by a feature. The limiting feature is the "end of the road" which is a legal boundary separating two parcels of land, not to be confused with the "end of the roadway" which would be the end of the travelled surface. In the case of the East Suffolk Road Extension, the end of the road occurs at the ordinary high-water mark of Winter River. This is significantly longer than 0.4 km, being the delimiting length from the end of Local Class 2 highway, however the hierarchy of evidence doctrine places a natural boundary above any measurement.

According to HARS, the East Suffolk Road Extension would be defined as follows:

- Class 2 the paved section of the highway.
- Class 3 the first 0.2 km of unpaved section of highway.
- Seasonal the remaining unpaved section of highway.

Having made an opinion of the class of road based on the interpretation of statute, a field survey was required as confirmation of the statute law.

### 6.3. FIELD SURVEYS

At request of the Applicant, a field survey was carried out commencing November 13, 2019. The survey was carried out with minimal snow cover on the ground. The following was observed in the field.

- Survey posts placed in recent surveys by Mantha Land Surveys Inc. were found marking a highway width of 20.12 metres.
- Line Trees with fencing was found on both sides of the highway.

- Ditches and backslopes combined with the fencing confirmed an occupied width for the highway at 12.19 metres.
- ▶ The roadway's clay surface from the end of the pavement north to PID 486399 was found to have an average width of 5.5 metres.
- The portion of the highway that leads north east at the boundary of PID 486399 was found to be overgrown and unmaintained.
- Ditches on the clay roadway were found to have been bushed in recent years for its full length.
- Culvert crossings were found on the clay road, and evidence of past culvert replacement.



Photo 24 (East Suffolk Road Extension, Suffolk, Prince Edward Island)

### 6.4. 2011 ROAD STATUS REPORT

As Provincial Chief Surveyor in March 2011, a Road Status Report was prepared and filed with the Supervisor of Provincial Roads. At the time the



report was prepared, snow cover on the ground was between 70 and 90 cm which made proper assessment of the road impossible.

As such, the report was qualified with the statement "The extents of the right of way would have to be confirmed through legal boundary survey"<sup>47</sup>. The qualifier applied to the full opinion, that included the extents for the various classified and unclassified sections of highway. A full survey has now been completed as part of this report.

### 6.5. GOVERNMENT MAINTENANCE RECORDS

A search of the Annual Reports for TI has found no entry of maintenance carried out on the East Suffolk Road Extension. This is known not to be the case and it is assumed that East Suffolk Road Extension is included with East Suffolk Road maintenance records. For clarity, the East Suffolk Road has a length of 1.88km and the East Suffolk Road Extension a length of 1.29km for a total roadway length of 3.19km

Records for East Suffolk Road Maintenance:

2014-2015:	Bush cutting	3.50km.
2015-2016	Re-Surfacing (Private Contractor)	1.21km.
2016-2017	Re-Surfacing (Private Contractor)	1.40km.
2016-2017	Bush cutting	6.00km.
2017-2018	Bush cutting	2.00km.
2018-2019	No report published.	
2019-2020	No report published.	
2020-2021	No report published.	

East Suffolk Road resurfaced: East Suffolk Road bushed: 2.61km 11.50km or 5.75km per side.

<sup>47</sup> Right of Way Status Report, East Suffolk Road Extension, David Morris, dated March 6, 2011.

This would support evidence on the ground of maintenance and bush cutting to the north boundary of the applicant's lands.

While searching for the records of maintenance the following irregularities were found on the comparison highways.

#### Seasonal Roads

- MacGillivary Road
  - 8km of bush cutting in one season (HARS length is 1.7 km. An extra 4+ km of maintenance has been allocated to the highway.
- Normandy Lane
  - In 2016/2017 the highway received 2.0 km of asphalt millings which is 0.9 km more the length of road indicated in HARS
- Big Pond Road:
  - o No record of maintenance

Annual reports only provide a brief statement to the annual maintenance of highways and as such a specific road sections are not listed for scraping.

"During the year, graders were used to scrape and maintain the unpaved road network."<sup>48</sup>

For instance, Big Pond Road, a known seasonal road, is scraped annually and reports no maintenance in the last 7 seasons.

For further confirmation of maintenance activities on the East Suffolk Road Extension, we are provided with documentation from TI.

Email: Gordie Lund, Maintenance Superintendent for the district dated September 28, 2018:

<sup>48</sup> Transportation, Infrastructure and Energy Annual Report 2017-2018, pg 97.



"Botom (sic) line local paved to end of pav and seasonal to end"

Notes of Garnet Taylor, dated July 2, 2019:

Called Carl (Molyneaux), He advised TIE grades, may be leaving grader blade down to <u>end of road to turn around</u>"

# 7. TESTIMONIAL EVIDENCE

Typically, prior to making a final opinion on boundary lines, rights and interest in lands, landowners etc. are interviewed to evoke information pertaining to the boundaries and rights. In this process we do not question the answers, nor do we follow up by providing any indication of our preliminary results. The questions asked are for corroboration of our results or to invoke further research on our part.

When interviewing landowners on property boundaries, the author has found that firsthand information becomes clouded as time passes<sup>49</sup>.

With regards to the East Suffolk Road Extension, the evidence spoke resoundly of a public highway having a width of 12.19 metres and being classified as a seasonal road for frontage along the applicant's property. Those to be interviewed would be government officials. It was felt that through the process of meeting with government officials, the Provincial Chief Surveyor and others that any additional information that may exist for corroboration would be attained. Such requests went un-answered.

The author has spoken at length with John Mantha, Prince Edward Island Land Surveyor who prepared plans of surveys on both sides of the East

Suffolk Road. Mr. Mantha stated he posted the road at 20.12 metres in width and has qualified the plans that a roads status required confirmation by others.

The author spoke with Serge Bernard, Prince Edward Island Land Surveyor, who provided background on his time as Provincial Chief Surveyor and government maintenance and practices at the time.

The author spoke with Matt Collins, P.Eng, Manager of Engineering Services for TI. During his employment as a summer student, he worked on the Maintenance Management System and HARS while they were being developed. He stated that HARS has many errors and has relayed to others on numerous occasions that it needed to be reviewed and corrected.

The author spoke with Boyd Woodard, a former superintendent with several road building companies on Prince Edward Island. Mr. Woodard, without providing specific cases, stated that it was not uncommon for a contractor to extend the asphalt on some roads without record, to scrape and maintain roads in excess stated HARS distance and to follow instructions from elected officials. When asked what "end of road" meant, he stated: "Where you would have to turn your vehicle around."

# 8. GOVERNMENT CORRESPONDENCE RECEIVED POST SURVEY

Following completion of the survey and certification of the Plan, a request was made to government officials to meet and discuss the results. Seven requests were made for a meeting to discuss the findings of the survey. Following the seventh request, Government responded that the matter of



<sup>&</sup>lt;sup>49</sup> In the mid 1990's the author was carrying out a survey in Fairfield and interviewed 80-yearold gentlemen regarding a boundary "Had it ever been fenced". The gentlemen had spent his

entire life on the farm and said that it had never been fenced. Wire fence was found for its entire length of 1.5 km.

the highway was closed and that no further correspondence would take place, unless a DMA was entertained. The correspondence pertaining to the status of the road was acquired by the Applicants, through FOIPP requests, and provides corroboration of a seasonal highway classification.

### 8.1. GOVERNMENT EMAILS

Email: Darren Chaisson, Director of Highway Maintenance Division, dated October 23, 2013:

"The **unpaved portion of this road is classified as seasonal** therefore we do not provide snow clearing. This is not based on the number of residents on the road, just based on it's classification in the Highway Access Regulations."

Email: Gordie Lund, Maintenance Superintendent for the district dated September 28, 2018:

"Botom (sic) line local paved to end of pav and seasonal to end"

Email: Kevin Campbell, response to Jaycee Sabapathy dated October 5, 2018:

"It appears that its **seasonal to the northern boundary in <u>question</u>...I will have to issue an Entrance Way Permit."** 

Email: Eugene Lloyd, Senior Development Officer, April 15, 2019 to Jaycee Sabapathy dated October 5, 2018:

"it would appear that <u>this parcel fronts on a Seasonal Road</u> and as such, an Entrance Way Permit will need to be created and registered for access to the property"

## 8.2. PROVINCIAL CHIEF SURVEYOR RECORDS

In 2014, Wayne Tremblay, P.Eng, P.E.I.L.S was not yet appointed as Provincial Chief Surveyor and prepared a Road Status Report on August 19. 2014. In his Summary of Findings:

"<u>The dirt portion of the East Suffolk Extension Road is classified</u> <u>as a seasonal road</u> according to HARS, section 216"

"From the northern boundary of parcels no's 104715 & 140632 <u>to</u> <u>the end of the road</u> it is occupied at a width of 12.192 metres (40') as confirmed by measurements taken in the field from remnants of fence line along the road."

Mr. Tremblay uses the term *end of the road*, which by legal definition would be at the shore of Winter River. Field notes taken by Charlie O'Brien provide confirmation that the end of the road observed was the north boundary of the Applicants property.



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Photo 25 (Field Notes of East Suffolk Road Extension, Suffolk, Prince Edward Island)

The field notes, Photos 25 and 26 depict and corroborates:

- A clay roadway with average width of 5.5 metres.
- Ditches on each side of clay roadway.
- A right-of-way width of 12.19 metres.
- Observed "end of road" at the Applicant's north boundary.

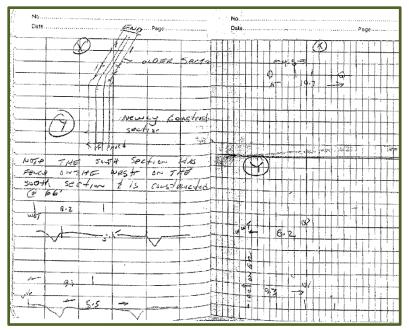


Photo 26 (Field Notes of East Suffolk Road Extension, Suffolk, Prince Edward Island)

## 9. SUMMARY OF FINDINGS

- The East Suffolk Road Extension was opened ca. 1866 as a common and public highway from its intersection with the Millcove Road to its end at the shore of Winter River.
- The clay portion of the highway were found to have an occupied width of 12.19 metres.
- The passable roadway has a cross-section equal to or better than other observed known seasonal highways.
- Evidence of maintenance was found for the full length of travelled roadway to the north boundary of the Applicant's property.
- Government employees used the term "end of road" to describe the end of the travelled roadway. While "end of road" legally



would be at the shore of Winter River, the accepted opinion for end of road as connected to HARS is taken to be the end of the travelled roadway.

The East Suffolk Road is classified as a seasonal highway for the full frontage of the applicant's property.

The boundaries to the classified sections East Suffolk Road Extension as described in HARS to the date November 18, 2019, are more particularly depicted on a "*Plan of Survey Showing the Suffolk Road Extension for David Sabapathy and Jaycee Sabapathy*" said plan being designated as Morris Drawing 19096.200.00.DL1 certified by David R.J. Morris November 18, 2019.

## **10. GOVERNMENT IRREGULARITIES**

While an opinion has been provided in the Summary of Findings, stating that the portion of highway fronting the applicant's property would be considered a "seasonal highway" TI has carried out several unilateral steps, that impact the applicant's development application during a period of dispute. Sudden and significant departure from established norms that follow, combined with the over-ride of the regulations presented in Chapter 5 further to muddy the practice of a Land Surveyor when assisting the public with development.

### 10.1. HARS AMENDMENT NOVEMBER 20, 2019

Our drawing 19096.200.00.DL1 outlining the irregularities with HARS and the East Suffolk Road Extension was submitted to Alan Aiken, TI on November 18, 2019, and subsequently two days later, a request was made to Legislative Councils Office to make an amendment to HARS and revoke Schedule "Seasonal "D" s. 214.1. This was carried out without an Order in Council.

Upon filing of the plan, a request was made to meet and discuss the findings, however Mr. Aitken, moved forward with an amendment without Executive Council approval, and refused to meet and discuss the findings of the survey.

### 10.2. HARS AMENDMENT MAY 29, 2021

Through Order in Council EC2021-444, dated May 18<sup>th</sup>, 2021, section 36 of the Highway Access Regulations was amended to now require an entrance way permit from a nonessential highway. Prior to this date an entrance way permit was not required confirmed by the Supreme Court of Canada in 1935.

There is no difficulty upon the question of the right at common law of an owner of land adjoining a public highway. He is entitled to access to such highway at any point which his land actually touches such highway for any kind of traffic which is necessary for the reasonable enjoyment of his premises and will not, as he proposes to conduct it, cause a substantial nuisance. . . . This is a right of property that was well settled at the common law. A private owner was always entitled to a full and uninterrupted access from his property that adjoined a public highway to that public highway and a municipal authority, in the absence of express statutory right to the contrary, was not entitled to deprive the private owner of the full enjoyment of this right.<sup>50</sup>

<sup>50</sup> 1935 CanLII 4 (SCC)

MORRIS

It would appear, that after more than a year objecting to the Applicants request for an entrance way permit, on the seasonal road TI in haste, has established a SSD requirement for an order of road, that does not exist.

An SSD has been established at 140 metres. This would suggest that the highway has a design speed similar to a paved collector or local highway. It can be assumed that a highway that is not designated would have no design, irregular paths, and possibly tree covered and a sight line down the path of 140 metres would be impossible. The effect of the amendment is expropriation without compensation.

Prior to the amendment, a landowner of a parcel fronting on a nonessential road had the right of access through common law. It is now questionable how many properties on undesignated highways would meet the SSD requirements.

### **10.3. UPGRADE TO SEASONAL STANDARD**

TI has proposed that the Applicant upgrade the East Suffolk Road Extension to a "Seasonal Standard". Its states that the Seasonal Standard as follows:

- Roadway 7.0 metres
- 600mm of shale
- Ditch both sides of the roadway
- Culvert crossing of 375mm diameter

A review of the Seasonal Highways presented as comparison indicated that none of those highways meet the standard presented.

The standard presented is not based on policy or otherwise and is less than the requirement the province stipulates for a 6-lot subdivision where the road is private and not public. One would question government's authority to hold a developer to a higher standard than it does itself. Where a private road servicing between 1 and 19 lots access's a seasonal highway of 1-lane, without ditches, should it have cross-section of a local highway less asphalt. It would seem out of step with the standard of a public highway. Very confusing.

## **11. REFERENCES**

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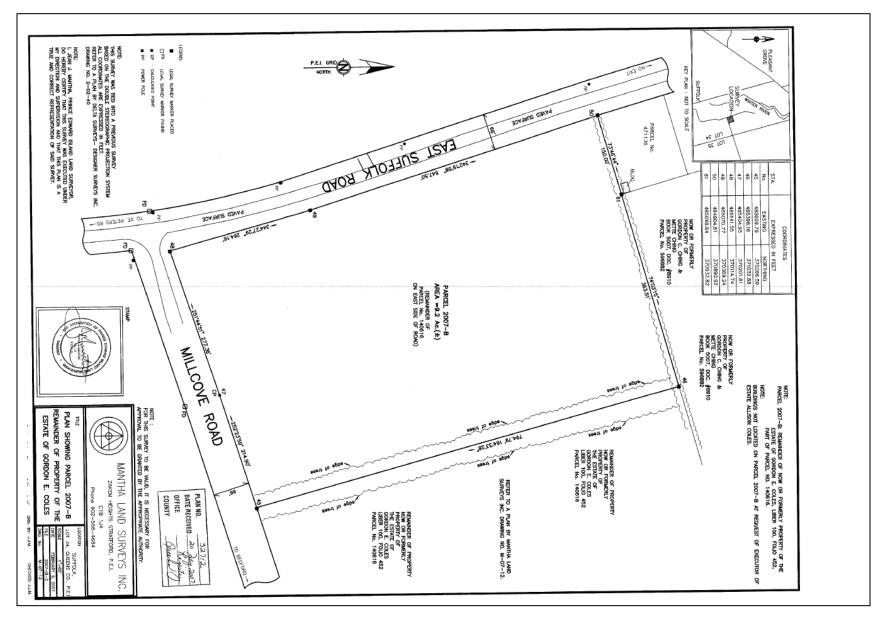
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# **12. REFERENCE PLANS**

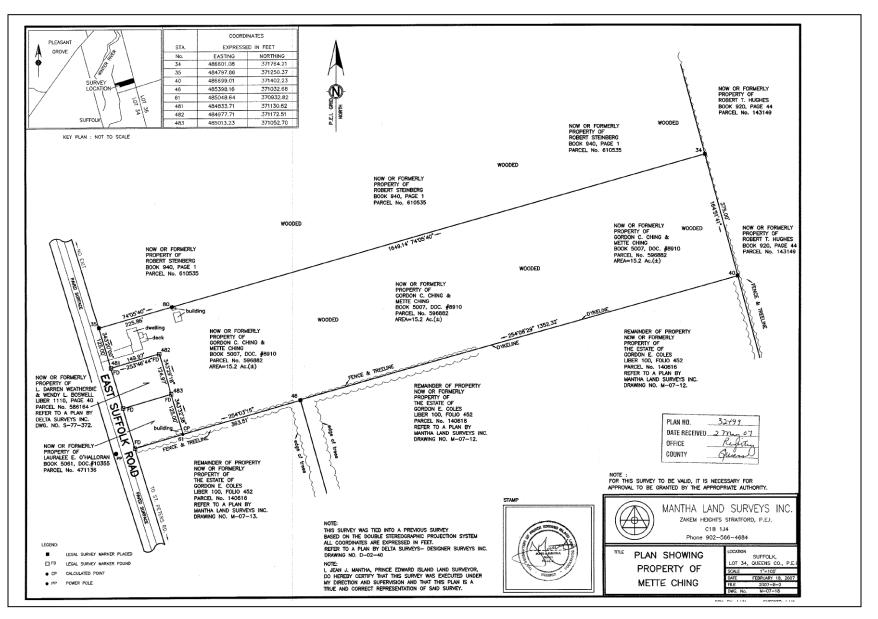








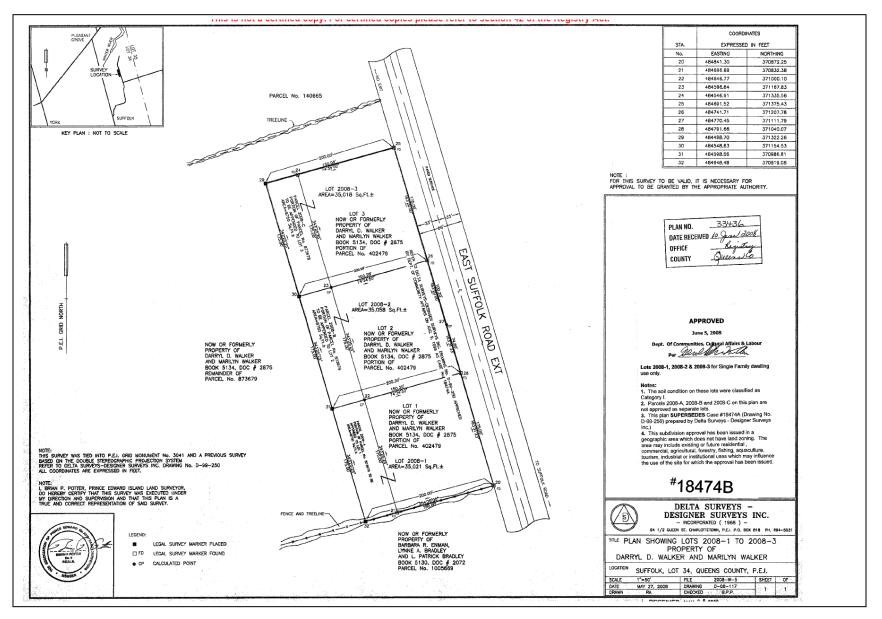
#### Plan 32499 LRO





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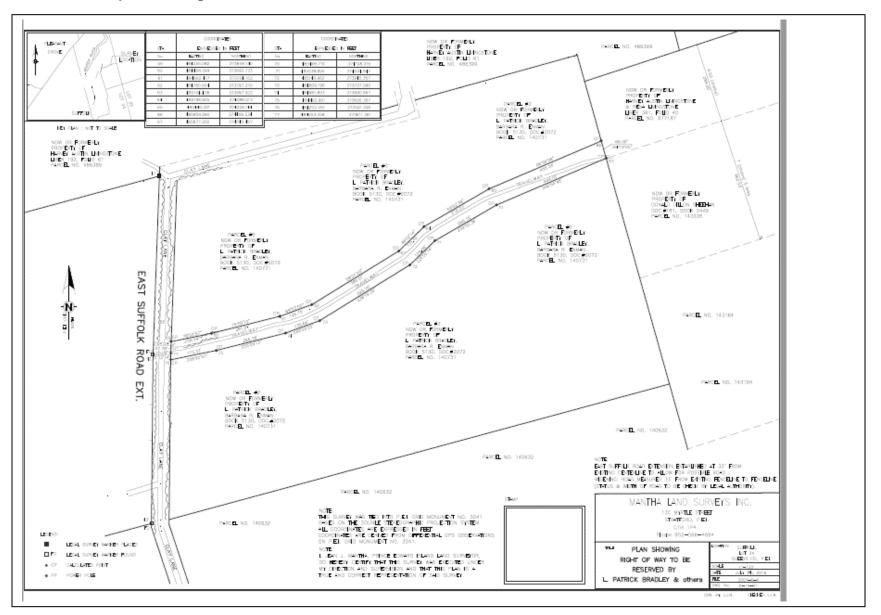
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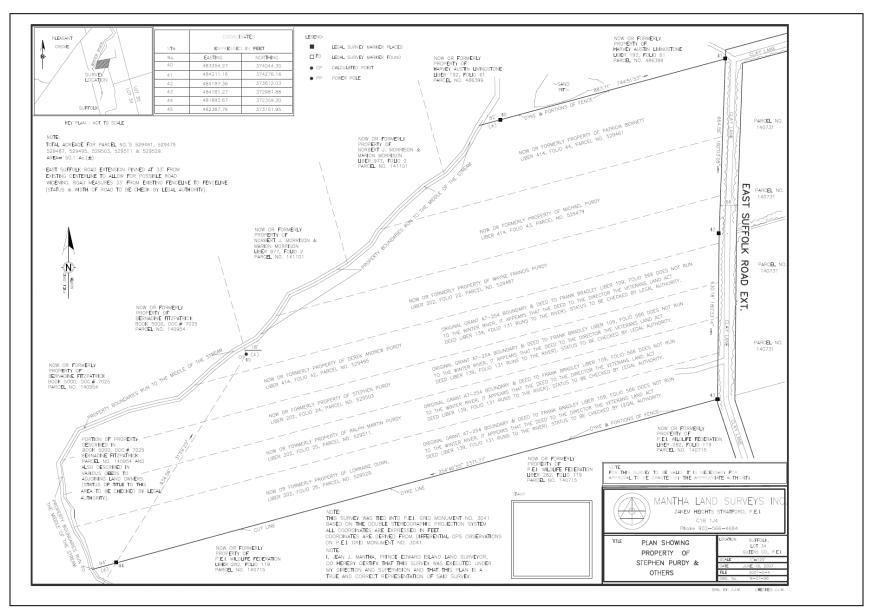
Mantha Land Surveys Ltd. Drawing No. M-16-97





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#### Mantha Land Surveys Inc. Drawing M-07-96





# A – FINAL PLAN OF SURVEY

