

# Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)

**TO: The Island Regulatory and Appeals Commission**  
National Bank Tower, Suite 501, 134 Kent Street  
P.O. Box 577, Charlottetown PE C1A 7L1  
Telephone: 902-892-3501 Toll free: 1-800-501-6268  
Fax: 902-566-4076 Website: www.irc.pe.ca

**NOTE:**  
Appeal process is a public process.

**TAKE NOTICE** that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of \_\_\_\_\_ (name of City, Town or Community) on the 20 day of February, 2020, wherein the Minister/Community Council made a decision to deny an entrance way permit on a seasonal road sought by Jaycee and David Sabapathy owners of PID 529461, by concluding the portion of the road fronting the property is a non-essential road despite evidence to the contrary. \_\_\_\_\_ (attach a copy of the decision).

**AND FURTHER TAKE NOTICE** that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows: (use separate page(s) if necessary)  
Section 28 Appeals from decisions of Minister, (1) (d) the approval of a change of use; and  
(e) any other authorization or approval that the Minister may grant or issue under the regulations (See Roads Act - Highway Access Regulations, Section 12 (1))  
Section 28 Appeals from decisions of council, (1.1) (a) that is made in respect of an application....for (i) a building, development or occupancy permit (via denial of entrance way permit). See additional info.

**AND FURTHER TAKE NOTICE** that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I/we seek the following relief: (use separate page(s) if necessary)  
See additional info attached

Name(s) of Appellant(s): Jaycee and David Sabapathy  
Please Print

Signature(s) of Appellant(s): 

Mailing Address: Unit 206-4 Prince St

City/Town: Charlottetown

Province: PE

Postal Code: C1A4P5

Email Address: jaycee.sabapathy@outlook.com

Telephone: 902-940-7279

**Dated this** 5 day of Mar, 2020.  
day month year

## IMPORTANT

Under Section 28.(6) of the *Planning Act*, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

**Service of the Notice of Appeal is the responsibility of the Appellant**

Information on this Form is collected pursuant to the *Planning Act* and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at info@irc.pe.ca.

## Notice of Appeal - Additional Information

### **Background forming the grounds for this Appeal:**

- Appellants, Jaycee & David Sabapathy, owners of PID 529461, submitted an *Application for Development (Building)* for a residential property to the Provincial Planning Section (PPS) in April 2019.
- The PPS commenced working with the Department of Transportation, Infrastructure and Energy (TIE) to obtain the necessary entrance way permit required to fulfill the requirements of the building permit application.
- After several months, TIE communicated to PPS and to the appellants that the portion of the public road, East Suffolk Extension Road (RI32012), fronting PID 529461, was considered a Non-Essential road and as such an entrance way permit could not be granted. TIE indicated to the appellants and to the PPS that in order to proceed with a building permit, the appellants would be required to execute a Development and Maintenance Agreement (DMA) with TIE. The appellants were also asked to get a survey completed of the road to accompany the DMA.
- The appellants sought the expert opinion and survey services of David Morris, former Chief Surveyor for the Province of Prince Edward Island, and currently professional engineer and owner/operator of Morris Geomatics & Engineering Ltd. Through both a review of the Highway Access Regulations (HARs) as well as performing a physical survey of the East Suffolk Extension road, Mr. Morris determined the classification for the road fronting PID 529461 is Seasonal, not Non-Essential, and falls under Schedule D, Item (216) of the Highway Access Regulations.
- Mr. Morris also conducted a review of the Development and Maintenance Agreement (DMA) and raised several flaws with how the document attempts to work around statute law including statements that contradict the HARs; the inability of the DMA to provide a legal entrance way permit; and the transfer of all risks, maintenance costs and liabilities for a public road upon the appellants through the execution of the DMA.
- The evidence gathered by David Morris was presented to TIE who agreed to review the information.
- On February 19 and 20, 2020 TIE responded to David Morris and the appellants with their conclusion on the classification of the road as Non-Essential (see review decision emails attached).

### **We, the appellants, seek the following relief:**

- 1) The correct classification of the road fronting PID 529461 on the East Suffolk Extension Road, as a Seasonal Road.
- 2) An entrance way permit for PID 529461.
- 3) Comprehensive review and ruling regarding the validity and liability associated with the Development and Maintenance Agreement (See IRAC Order LT11-02 for previous findings on DMAs).
- 4) No significant costs or liabilities associated with items 1 to 3 as stated above.

**From:** [Jaycee Sabapathy](#)  
**To:** [Wayne Tremblay](#)  
**Cc:** [Garnet Taylor](#); [David Sabapathy](#)  
**Subject:** Entrance Way Permit - PID 529461  
**Date:** Tuesday, July 16, 2019 9:51:00 PM  
**Attachments:** [20190715 Morris - Road classification.pdf](#)  
[20190715 Morris - 2008 DMA.PDF](#)

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Good morning Wayne,

My husband David Sabapathy and I have conditionally purchased a piece of property in Winter River, PID 529461. We submitted a building application to the planning office on Gordon drive mid-April. The key issue that has arisen was the matter of getting an entrance way permit to the property. The planning office put us in touch with Garnet and we have been working on next steps. Garnet has indicated this property sits on a non-essential highway and as such require we enter into a Development and Maintenance Agreement to gain access to the property.

In the process of getting quotes for a road survey required for the DMA, David Morris indicated this property does not sit on a non-essential highway. Rather, interpretation of the Highway Access Regulations should be that the property is located on a seasonal road. Attached is a detailed letter from David outlining his professional opinion on this matter. *We would ask the Department of Transportation to review and reconsider the interpretation of the Regulations to determine if this road is indeed seasonal as David Morris indicates.*

Due to communication issues between the planning office and transportation, we have obtained an extension on the closing date. However, this extension is now running out and we need to resolve this matter as soon as possible.

Thank you for taking the time to review this,  
Jaycee

**From:** [David Morris](#)  
**To:** [jaycee.sabapathy@outlook.com](mailto:jaycee.sabapathy@outlook.com)  
**Subject:** FW: East Suffolk Road Extension  
**Date:** Thursday, March 5, 2020 10:13:18 AM  
**Attachments:** [EC580-95-D-216 original.pdf](#)

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This was received February 20<sup>th</sup>, at which time Alan considered the file closed and I would assume a fixed decision.

I am forwarding another email, with more specifics./ When you have time we should talk further.

**David (Dave) R.J. Morris**, P.Eng, PEILS, CLS | **Morris Geomatics & Engineering Ltd.** | P.O. Box 21016, Charlottetown, PE, C1A 9H6 | **902-213-0487**

---

**From:** Alan Aitken <aaaitken@gov.pe.ca>  
**Sent:** February 20, 2020 1:27 PM  
**To:** David Morris <dmorris@morrisgeomatics.ca>  
**Cc:** Brett Wallace <bawallace@gov.pe.ca>; Dale McKeigan <DFMCKEIGAN@gov.pe.ca>; Eugene Lloyd <EMLLOYD@gov.pe.ca>; Stephen Szwarc <SJSZWARC@gov.pe.ca>; Sharon Slauenwhite <SNSLAUENWHITE@gov.pe.ca>; Wayne Tremblay <wltremblay@gov.pe.ca>  
**Subject:** RE: East Suffolk Road Extension

David.

Please find attached a scan of the original s. 216 of Schedule D of the HAR's.

It would seem originally that the seasonal section was 0.6km long and it started at 0.5 km from Rte 229 again for a total of 1.1 km.

I've also looked at some old (1990) aerial photography and it appears that there was a distinct change to the road at the 1.1 km mark. I was not with the Department when the HAR's were first written, or when the three amendments for this road were added, but can only conclude that since the original and amended sections refer to a total of 1.1 km that the Department made a conscious decision that this 1.1 km length was the length that was intended to be classified as C2, C3 or Seasonal.

Furthermore, as I've mentioned before the Maintenance Division has informed me that they consider it to be a non-essential highway.

You may not agree with the DMA policy put in place a number of years ago but it was implemented such that properties abutting a non-essential could develop.

Unless a change to the HAR's is made to include the section in question as a seasonal highway which would allow issuance of an EWP, or until the proponent is prepared to enter into a DMA, I consider this matter closed.

Alan A. Aitken, P.Eng  
Traffic Operations Engineer  
Transportation, Infrastructure and Energy  
[aaaitken@gov.pe.ca](mailto:aaaitken@gov.pe.ca)

902-368-5006 (ph)

902-368-5425 (fax)

>>> David Morris <[dmorris@morrisgeomatics.ca](mailto:dmorris@morrisgeomatics.ca)> 2/19/2020 5:07 PM >>>

Good afternoon Allan,

Thank you for providing your rationale in the status of the various portions of the East Suffolk Road.

We would ask that you provide further clarity regarding the following:

- the definition contained in HAR's Schedule "D", section (216), prior to the August 12, 1995 amendment;
- the date that the asphalt was extended 200 metres;
- your rationale for ignoring the hierarchy of evidence (*things which people are less likely to mistake*) within the description for the seasonal road. The description for the seasonal portion of the road states "***from Route 229 to the end of the road***".

You have stated that a DMA is required to provide access to the property. Our client is currently entitled to drive on the East Suffolk Road, it being a public highway, however they are not entitled to place a new or change an existing entrance to their property. HAR's, explicitly states, that the Minister shall not allow the foregoing to take place. Please explain how an entrance can contrary to HARs through the DMA

Under the Highway Access Regulations all highways require authorization for an entrance. The minister is forbidden to authorize an entrance way to a non-essential highway.

- **May issue** an entrance way permit **to authorize** of a new entrance or change in use for specific cases to a Arterial Highway
- **May issue** an entrance way or permit the change in the location of an entrance way onto a Limited Access Arterial Highway;
- **May authorize** a new entrance or change in use of an entrance onto a Collector Highway;
- **May authorize** a new entrance or change in use of an entrance onto a Local Highway;
- **May issue** an entrance way permit **to authorize** placement of a new entrance way or to change the use of an entrance way to an Seasonal highway;
- **Shall not issue** an entranceway permit **to authorize** placement of a new entrance **or change in use of an existing entrance** to a non-essential highway;
- **May issue** a permit for a new entrance or change in use of an existing entrance to a Scenic Heritage Road.

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**From:** Alan Aitken <[aaaitken@gov.pe.ca](mailto:aaaitken@gov.pe.ca)>

**Sent:** February 19, 2020 2:55 PM

**To:** David Morris <[dmorris@morrisgeomatics.ca](mailto:dmorris@morrisgeomatics.ca)>

**Cc:** Brett Wallace <[bawallace@gov.pe.ca](mailto:bawallace@gov.pe.ca)>; Dale McKeigan <[DFMCKEIGAN@gov.pe.ca](mailto:DFMCKEIGAN@gov.pe.ca)>; Eugene Lloyd <[EMLLOYD@gov.pe.ca](mailto:EMLLOYD@gov.pe.ca)>; Stephen Szwarc <[SJSZWARC@gov.pe.ca](mailto:SJSZWARC@gov.pe.ca)>; Sharon Slauenwhite <[SNSLAUENWHITE@gov.pe.ca](mailto:SNSLAUENWHITE@gov.pe.ca)>; Wayne Tremblay <[wltremblay@gov.pe.ca](mailto:wltremblay@gov.pe.ca)>

**Subject:** RE: East Suffolk Road Extension

David.

TIE have reviewed this issue and have concluded the following:

The East Suffolk Extension Road (RI132012) was added to the Highway Access Regulations in October of 1995, by Executive Council decision which included the insertion of s. (138.1) in Schedule C-2, s. (214.1) in Schedule C-3 and the revocation and replacement of s (216) in Schedule D.

These sections now read as follows in the HAR's and are consistent with the original approval by EC (see attached document)

*(138.1) East Suffolk Extension Road RI132012: 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.*

*(214.1) East Suffolk Extension Road RI132012: 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.*

*(216) East Suffolk Extension Road RI132012: 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.*

These amendments would conclude at the time of inclusion in the HAR's that the paved section was 0.5 km (C-2 classification), followed by 0.2km of unpaved year round highway (C-3 classification), followed by 0.4 km of Seasonal Highway for a total of 1.1 km.

Since that time it appears that the paved portion has been extended 0.2 km of pavement, in or around 2008, which would automatically extend the C2 portion to the end of what would have been C3 at the time of the inclusion in the HAR's. This extension of the C2 portion would not however shift the beginning of the C3 and seasonal portion by 0.2km. Thus, effectively the East Suffolk Extension Road would now be classified as 0.7km C2, followed by 0.4km of Seasonal Highway for a total of 1.1km. The remaining length, approximately 0.2km beyond the seasonal would be classified as non-essential. Maintenance division has confirmed that they consider this last portion as non-essential and have no intention to upgrade it to a higher standard.

Thus, should your client wish to develop on PID 529461 they have at least two options, the first being entering into a Development and Maintenance Agreement (DMA) which will permit access to the property. The second option would be that they may upgrade the road to a seasonal standard at their cost and TIE will re-classify that portion to a seasonal highway which will then permit issuance of an Entrance Way Permit. In either case they will need to consult with the Department.

Alan A. Aitken, P.Eng  
Traffic Operations Engineer  
Transportation, Infrastructure and Energy  
[aaaitken@gov.pe.ca](mailto:aaaitken@gov.pe.ca)  
902-368-5006 (ph)  
902-368-5425 (fax)

>>> David Morris <[dmorris@morrisgeomatics.ca](mailto:dmorris@morrisgeomatics.ca)> 2/14/2020 8:02 AM >>>

Thanks Alan,

Please let me know when you will be scheduled to meet again, so that I can notify my client.

Thank-you

Dave

**David (Dave) R.J. Morris, P.Eng, PEILS, CLS | MorrIs Geomatics & Engineering Ltd. | P.O. Box 21016, Charlottetown, PE, C1A 9H6 | 902-213-0487**

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---

**From:** Alan Aitken <[aaaitken@gov.pe.ca](mailto:aaaitken@gov.pe.ca)>  
**Sent:** February-12-20 1:39 PM  
**To:** David Morris <[dmorris@morrisgeomatics.ca](mailto:dmorris@morrisgeomatics.ca)>  
**Subject:** Re: East Suffolk Road Extension

David.

We met briefly last week but Wayne was not able to attend. He's back, Sharon is out until tmr. Hope to meet again soon.

Alan

>>> David Morris <[dmorris@morrisgeomatics.ca](mailto:dmorris@morrisgeomatics.ca)> 2/12/2020 10:26 AM >>>

Good morning Alan,

Just following up to your internal meeting regarding the East Suffolk Road Ext. that you had on February 3, 2020. Do you have any information that I can relay to my client.

Thank-you

Dave

**David (Dave) R.J. Morris, P.Eng, PEILS, CLS | MorrIs Geomatics & Engineering Ltd. | P.O. Box 21016, Charlottetown, PE, C1A 9H6 | 902-213-0487**

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**From:** [Alan Aitken](#)  
**To:** [Jaycee Sabapathy](#)  
**Cc:** [Brett Wallace](#); [Dale McKeigan](#); [Eugene Lloyd](#); [Stephen Szwarc](#); [Sharon Slauenwhite](#); [Wayne Tremblay](#); [David Morris](#); [david.sabapathy@outlook.com](mailto:david.sabapathy@outlook.com)  
**Subject:** RE: East Suffolk Road Extension  
**Date:** Thursday, March 5, 2020 10:24:13 AM

---

Good Morning.

1. In my response to David's 2nd email of Feb 19th I provided the following response:

David.

*"Please find attached a scan of the original s. 216 of Schedule D of the HAR's.*

*It would seem originally that the seasonal section was 0.6km long and it started at 0.5 km from Rte 229 again for a total of 1.1 km.*

*I've also looked at some old (1990) aerial photography and it appears that there was a distinct change to the road at the 1.1 km mark. I was not with the Department when the HAR's were first written, or when the three amendments for this road were added, but can only conclude that since the original and amended sections refer to a total of 1.1 km that the Department made a conscious decision that this 1.1 km length was the length that was intended to be classified as C2, C3 or Seasonal.*

*Furthermore, as I've mentioned before the Maintenance Division has informed me that they consider it to be a non-essential highway.*

*You may not agree with the DMA policy put in place a number of years ago but it was implemented such that properties abutting a non-essential could develop.*

*Unless a change to the HAR's is made to include the section in question as a seasonal highway which would allow issuance of an EWP, or until the proponent is prepared to enter into a DMA, I consider this matter closed."*

As noted in the above response I essentially indicated that to the best of my knowledge the Department made a conscious decision to only classify 1.1 km of the road. The Director of Maintenance has indicated to me on several occasions that they do not perform regular maintenance on the portion beyond the 1.1 km mark and thus consider it to be non-essential.

2. I would suggest that you should be dealing with the Director of Maintenance, Stephen Szwarc,, to confirm what upgrades would be required to bring it up to a seasonal standard but I do expect that widening and strengthening of the driving surface, and improved ditching would be required. He has mentioned to me that the area is very flat and adequate drainage of any ditch system may be very difficult to achieve.

3. A DMA will not provide you with an entrance way permit (EWP). EWP's are only issued to properties abutting arterial or seasonal highways. EWP's, are not issued for any properties requiring access to any other classification of highway. The DMA would grant you permission to construct an access and would then also enable Agriculture and Land to issue a development permit.

Alan A. Aitken, P.Eng  
Traffic Operations Engineer  
Transportation, Infrastructure and Energy  
aaaitken@gov.pe.ca  
902-368-5006 (ph)  
902-368-5425 (fax)



>>> Jaycee Sabapathy <jaycee.sabapathy@outlook.com> 3/4/2020 12:50 PM >>>

Good afternoon,

We received your response to our request for an entrance way permit via David Morris, whose services we've engaged to assist us with this process. In follow-up to your review as outlined below, we are requesting clarification on three points:

- 1) As you outlined in your email below, Schedule D Seasonal Highways, Item (216) in the Highway Access Regulations, describes the East Suffolk Ext Road as seasonal "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." **Can you please explain on what basis TIE is excluding the description "to the end of the road" in interpreting this section of the regulations?**
- 2) The road survey and accompanying letter provided by David Morris to TIE on November 18, 2019, provides physical evidence demonstrating the portion of the road declared Seasonal in Schedule D (Item 216) is of a similar standard to the portion of the road that TIE has stated is a non-essential road. **Given this, please clarify what specific upgrades would be required to make the "non-essential" portion of the road the same standard as the seasonal road preceding it?**
- 3) You have suggested we enter into a Development and Maintenance Agreement to permit us access to our property. **Please provide us with an explanation as to how the DMA can provide us with an entrance way permit to access our property? The HARs state that under s. 36 "The Minister shall not issue an entrance way permit to authorize placement of a new entrance way or a change of use of an existing entrance way to a non-essential highway".**

We submitted our building permit application on April 17, 2019 after which the planning office immediately commenced work with TIE to obtain an entrance way permit. We've waited weeks to months at a time for responses from TIE on this process despite multiple phone calls and emails from ourselves, the planning office and David Morris. The lack of response by TIE has cost us time, money and significantly delayed the development of our property.

We ask that you please respond to this email no later than end of day **Friday, March 6, 2020**. David Morris is also awaiting a response to his e-mail dated February 19, 2020.

Thank you,  
Jaycee Sabapathy

---

**From:** Alan Aitken <aaaitken@gov.pe.ca>

**Sent:** February 19, 2020 2:55 PM

**To:** David Morris <dmorris@morrisgeomatics.ca>

**Cc:** Brett Wallace <bawallace@gov.pe.ca>; Dale McKeigan <DFMCKEIGAN@gov.pe.ca>; Eugene Lloyd <EMLLOYD@gov.pe.ca>; Stephen Szwarc <SJSZWARC@gov.pe.ca>; Sharon Slauenwhite <SNSLAUENWHITE@gov.pe.ca>; Wayne Tremblay <wltremblay@gov.pe.ca>

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