Report of the Members of the PURs Working Group
Executive Summary

This report traces the history of the Opened Unmaintained road allowances and Unassumed Subdivision roads (PURs), details the current situation and makes five recommendations. The Township's zoning by-law precluded use or building upon any lot which did not have access to an assumed street with four exceptions. A fifth exception was added in April 2009 so that the Section 3.4 now reads:

S 3.4. Frontage on an Improved Street

Not lot shall be used, and no building or structure shall be erected on a lot in any zone unless such lot has sufficient frontage on an improved street to provide driveway access. Notwithstanding the foregoing, this provision shall not apply to:

- A non-residential building or structure accessory to an agricultural or conservation use;
- A lot on a registered plan or subdivision and with frontage on a sreet which will become an improved street pursuant to provision in, and financial security associated with, a subdivision agreement that is registered o the title to the lot;
- A lot on a plan of subdivision registered before December 10, 2002, that has frontage on a street that is not an improved street, where the owner has entered into a Road Access Agreement to the satisfaction of the Township
- A lot located in a Limited Services Residential zone;
- An existing seasonal dwelling in a Seasonal Residential zone.

A reasonable reading of the five exceptions is that they are to be read disjunctively. There is no "and" between the exceptions. So, any exception can be used to exempt the property owner and permit use and building thereon with appropriate permits. This appears to be contrary to current practice imposed within the Township.

Road Access Agreements have changed substantially over the years. When introduced in 2009 it did not require the lot owner to obtain and maintain liability insurance and was two pages long. The most recent RAA is five pages long and contains terms which are considered egregious and unfair, including the requirement to obtain and maintain a $5M liability insurance.

On November 19, 2019, the Council adopted resolution C-2019-11-08 to eliminate the requirements for RAA. Subsequently this Working Group was established to review S3.4 and make recommendations for actions for PURs.

It was considered that the complex situation of PURs has arisen because of the assumed lack of due diligence to follow up on subdivision developers' obligations to hand over roads in a state acceptable for Township maintenance. Responsibility for resolution therefore rests with the TVT and should not be imposed upon taxpayers in any but a uniform manner.

The WG therefore recommends that

1. The Township bring all PURs up to municipal road standards (either “Low Cost Bitumen” or gravel road surface) at Township expense and at no cost to lot owners in affected subdivisions
   a. Exceptions may be made for the very few roads which are impossible or impractical to bring up to municipal standard
   b. The WG considered the possibility of taking a road out of public ownership. See below for details

2. Until Item 1 is done, all extant RAA are amended to remove requirements for liability insurance and indemnity to the Township, and remove lien of these requirements on title

3. The Township eliminate the requirement for future RAA to align with bullets 4 or 5 of S3.4 – lots zoned Limited Services Residential or Seasonal Residential shall not be required to enter a RAA.

4. The WG further recommends that a Special Development Charge is not imposed on lot owners in Maberly Pines.

The WG further suggests that taking a road out of Public Ownership would require unanimous consent by lot owners and the existence of an incorporated Association to do so. This may be feasible in some instances where conditions and consensus agreement exist, although S 4.5 of the Official Plan prohibits the creation of “new” private roads. Whether making an existing PUR “private” is permitted therefore requires a legal opinion.

Not considered in the WG report are: the order of priority for “assuming” the PUR; The detailed costing of necessary improvements; or the attribution of costs for ongoing maintenance of PURs during the interregnum pending that “assumption”. Detailed zoning of subdivisions is also noted as requiring future attention.

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Final Report of the Members
of the PURs Working Group ("the WG")
Prepared as at August 31, 2022

1. Definitions and Interpretation

1.01 For all purposes of this report and its Schedules, the following terms shall have the meanings set out beside them, respectively:

"Building Code" means the Ontario Building Code[1]

"CECC" means a common elements condominium corporation incorporated under Part X of the Condominium Act[2]

"Clerk" means the Acting CAO/Clerk of the Township;

"Corporation" means the Corporation of Tay Valley Township

"Council" means the Council of Tay Valley Township;

"Councillor" means a member of Council, and "Councillors" means more than one Councillor;

"Halpenny" means Halpenny Insurance Brokers Ltd., the Township's insurance broker;

"Official Plan" means the Township's Official Plan dated February 3, 2016;

"Planner" means the Township's Planner;

"Private unassumed road" means a road within a registered plan of subdivision in the Township which is owned by the Township but which has not been assumed by it, nor is maintained by it; and "private unassumed roads" means more than one private unassumed road;

"PUR" means private unassumed road, and "PURs means more than one PUR;

"RAA" means the form or template of Road Access Agreement current used by the Township, and "RAAs" means more than one RAA;

"RAA-2009 means the form or template of the Road Access Agreement which the Township introduced in April 2009;

"Staff" means office staff employed by the Township;

"Township "means Tay Valley Township;

"WG" means the Private Unassumed Roads Working Group; and

"Zoning By-Law" means the Township's Zoning By-law No 02-121[3].

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[1] Ontario Building Code, O. Reg. 332/12 made under Building Code Act, 1992, S.O. 1002 C 23 https://www.ontario.ca/laws/regulation/120332

[2] The Condominium Act, 1998, S.O. 1998, C19

[3] https://www.tayvalleytwp.ca/en/doing-business/resources/2002-121---Zoning-By-law-Consolidation---18-10-26.pdf

2. Background

1.02 Prior to April 2009, section 3.4 of the Township's Zoning By-law provided that "No lot shall be used and no building or structure shall be erected on a lot in any zone unless such lot has sufficient frontage on an improved street to provide driveway access." That prohibition was subject to four exceptions. *[Schedule 1]*
Section 2 of the Zoning By-law defines "Street" to mean "a public thoroughfare under the jurisdiction of either the Corporation, the County, or the Province of Ontario" and "Improved street" means "a street which has been assumed by the Corporation, the County or the Township and is maintained on a regular year-round basis.

1.03 PURs are public thoroughfares under the jurisdiction of the Township, but they are not "improved streets' because they have not been assumed by the Township, nor are they maintained by the Township.

1.04 On April 14, 2009 the Township passed By-law 09-018 *[See Schedule 2]* which introduced Road Access Agreements . That by-law added a fifth exception to S 3.4 of the Zoning By-law which permits the owner of lot on a PUR to erect a structure on the lot if the lot owner signs an RAA-2009 .

1.05 Notice of Passing A Zoning By-Law dated April 21, 2009 *[See Schedule 2]* states: "The effect of the zoning bylaw amendment would be to permit development on a lot without frontage on an improved street under certain circumstances where the Township is satisfied that suitable arrangement have been made for dependable access to the property". In fact, the purpose of the By-law was to permit and encourage development in subdivisions which have PURs. In practice, it would seem that "dependable access" has never been an issue or concern. The present purpose of the RAA is to minimize the Township's exposure to liability if an accident should happen on a PUR.

1.06 The RAA-2009 *[See Schedule 2]* was the Township's first Road Access Agreement. It did not require the lot owner to obtain and maintain liability insurance for the benefit of the Township, but it did require lot owners to:
(1) provide acknowledgments similar to those contained in the current RAA;
(2) indemnify the Township against all claims which may be brought against the Township as a result of the use of the road or as a result of any delay in the provision of, or any failure to provide, services or emergency vehicles to the property; and
(3) require all subsequent owners of the property to confirm that they will assume all obligations in the RAA-2009.

1.07 Over the years the wording of the road access agreement evolved, lengthened and became more complex and more onerous for lot owners. *[see Schedule 3 for a copy of the RAA used by the Township as recently as May 22,2022]*

1.08 In the summer of 2019, the owner of a lot on a PUR applied for building permit and was told by staff that an RAA was required. The required RAA obligated the applicant to provide $5 million General Commercial Liability Insurance naming the

Township as an additional insured *[See Schedule 3]*. The applicant objected to the requirements of the RAA, in particular, the liability insurance requirement. Much correspondence on the issue was exchanged. The applicant appeared as a delegation to the Committee of the Whole on November 5, 2019 to object to the form of the RAA.

1.09 On November 19, 2019 Council adopted resolution #C-2019-11-08 to eliminate the requirement for property owners to enter into road access agreements. *[See Schedule 4(a)]*. That resolution has not been amended or rescinded;

1.10 On June 23, 2020 Council established the WG by Resolution #C-2020-06-18. *[See Schedule 4(b)]*

1.11 By Resolutions #C-2020-10-04 , #C-2020-10-05 and #C-2020-10-06, all adopted on October 8, 2020 at a “Special” Council Meeting, Council set the number of members of the WG at five, and appointed Councillors Roxanne Darling and Gene Richardson and three members of the public, Frederick Barrett, Gordon Hill and Frank Johnson , as members of the WG.
[See Schedules 4(c), 4(d) and 4(e)]

1.12 On October 20, 2020 Council passed Bylaw- 2020-045 which approved the WG’s Terms of Reference. [See Schedule 4(f)] Some of its terms which the WG considers relevant include:
(a) under “Reporting Responsibility”, “The Working Group will communicate its findings and recommendations to the Committee of the Whole”
(b) under “Membership” heading “The Clerk and Planner or designates shall act as “resource persons” to the Working Group”. They were not appointed as **members** of the WG ;
(c) under “Meetings” The working Group will meet at least monthly or at the call the Chair or Clerk (or designate).”

1.13 Also on October 20, Council adopted Resolution #C2020-10-21 which declared “Council’s top six priorities for this term”, the second of which was Private Unassumed Toads. *[See Schedule 4(g)]* On November 17, 2020 Council supported a request that issues relating to the Bolingbroke Cemetery would take precedence over Private Unassumed Roads which would drop down to 3rd in the list of Council’s priorities.

1.14 The WG has held 3 meetings to date, namely, an introductory, informational video conference meeting held on August 25, 2021 and “in-person” meetings held on April 4 and May 4, 2022 at which business was conducted.

3 Documents and information reviewed and considered

3.01 Prior to the August 25, 2021 meeting, Staff provided:
(1) a list of 8 subdivisions having a total of 20 unassumed Township roads and 1 opened, but unmaintained road, allowance (Old Mine Road). The list also contained the note “1 Possible Other Subdivision with multiple roads – still being researched” *[Schedule 5(a)]*

(2) partial copies of maps showing the approximate location of the PURs in question;

(3) a list of the road names, their respective lengths, number of properties, number of vacant properties, and number of Road Access Agreements signed, etc. A revised list was presented at the May 4, 2022 WG meeting. Both lists are attached, the revised list first, followed by the August 25, 2021 list *[See Schedule 5(b)]*

(4) a list showing estimated costs of bring PURS up acceptable road standards with 3 differing surfaces {gravel, low class bituminous ("LCB"), asphalt ("HCB")}. A revised list was presented at the May 4, 2022 WG meeting. The revised list is attached as *[Schedule 5(c)]*

(5) a list of 4 possible options for dealing with the roads. *[Schedule 5(d)]*

3.02 At the August 25, 2021 WG meeting, presentations were made "virtually" by:

(1) Halpenny as to insurance issues;

(2) The Federation of Ontario Cottagers Association ("FOCA") regarding its experience with PURs, and a presentation of survey results relating to cottage roads, obtained from various cottage associations in Ontario;

(3) Bennett Lakes Estates Cottagers Association ("BLECA") – An overview of its experience as an incorporated road association having PURs within the boundaries of its subdivision;

(4) The Township's Planner regarding the documents referred to in paragraph 3.01 above.

3.03 Advice contained in the Halpenny PowerPoint presentation *[Schedule 6]* included, inter alia:

(1) page 5 -confirmation that the Township has municipal liability insurance that covers "claims arising from Township operations" - which, presumably, would include liability in relation to claims arising out of the Township's ownership of PURs;

(2) on page 5 – "… it is advisable that the Township maintain the roads to manage the risk"

(3) on pages 7-8 regarding the challenges relating to the liability insurance requirements in road access agreements:

 (a) "insurers are reluctant to quote because there could be several different policies covering each road"

 (b) "in a claims scenario, an accident could occur in front of multiple properties making liability difficult to determine"

 (c) "insurance can be expensive and difficult to secure"

(4) Page 12- its "understanding that the Township currently has PURs" and

(5) Page 12 -its recommendation "that Tay Valley retain ownership and should assume responsibility for maintaining the roads" (i.e. the PURs). "This would

reduce potential liability as the Township would be maintaining the road to Minimum Maintenance Standards and keeping records in the event of a claim".

3.04 On August 28, 2021, a WG member posed various written questions by email to Halpenny as to various insurance issues, including the amount and adequacy of the Township's liability coverage. *[Schedule 7]*. On August 31, 2021, Halpenny provided answers to those questions by email to the Clerk *[Schedule 8]*. On October, 18, 2018, at the direction of the Township solicitor, the Clerk provided an edited version of Halpenny's responses to all WG members by email. *[Schedule 9]* The responses provided indicate, inter alia, that:

(1) the Township maintains municipal general liability coverage of $5 million; and excess liability coverage $45 million;

(2) "**The requirement** that property owners who are entering into Road Access Agreements in respect of PURs **has not been imposed by the Township's insurers…**" *[Bold shading added for emphasis.]* *[Schedule 9 - Item (4) top Page 2]*

3.05 Although the question of the adequacy of the Township's insurance coverage was raised in the written questions to Halpenny, that question was not answered in the Clerk's response dated October 18, 2021. However, because it states "We have had the opportunity to review and consider the questions you have put to the Townships' Insurance Brokers regarding insurance coverages, including policies currently held by the Township," it appears reasonable to assume that the Township considers its liability coverage to be adequate.

3.06 Shortly after the August 25 meeting, Staff made copies of the following documents available on the Township website at: https://www.tayvalleytwp.ca/en/municipal-government/private-unassumed-roads-working-group.aspx#Additional-Information.

(1) the Halpenny power point presentations referred to in paragraph 3.02(1) above; *[Schedule 6]*

(2) Plans of subdivision for:

Plan 1 Sherbrooke Drive, Bobs Lake –plan regd. Jun 1, 1972
Plan 2 – Killarney Lane, Christie Lake – regd. Jun 15, 1970
Plan 9 – Hamburg-Homestead Rd, Black Lake – plan regd. Jan 20, 1978
Plan 21 – Maberly Pines –- Plan regd. Dec 8, 1980
Plan 29 – Little Silver and Rainbow Lakes – Plan regd. Dec 12 1982
Plan 30 - Bennett Lake Estates – Plan regd. Apr 24, 1985

(3) Subdivision Agreements for:

Plan 6 - Little Silver Lake Rd. – regd. Jul 10, 1980;
Plan 21 - Maberly Pines - registration date N/A;
Plan 29 – Little Silver and Rainbow Lakes - regd. Dec 23, 1982
Plan 30 - Bennett Lake - registration date N/A.

3.07 By email dated January 12, 2022 *[Schedule 10(a)]* a WG member asked the Clerk to:

(1) advise as to the Township's legislative authority to require or authorize the use of Road Access Agreements in relation to unassumed municipal roads; and

(2) have copies of all signed RAAs scanned and posted on the portion of the Township's website containing information and documents of importance to the WG. *[Note: information provided by the Township in Schedule 5(b)] indicates that 7 RAAs had been signed as of August 25, 2021.]*

3.08 By email dated February 10, 2022, the Clerk responded *[Schedule 10(b)]* that:

(1) "In response to your first question, if a piece of legislation does not specifically provide authority to a municipality to undertake a matter, then the default is the Municipal Act. Section 8 of the Municipal Act provides the municipality with the powers of a natural person and the authority to govern their affairs as they consider appropriate. Please note that the Road Access Agreement when first instituted in the early 2000's was drafted by legal counsel. It was then reviewed again at least four times since then to ensure it is up to date. It has not changed substantially;" and

(2) "With regards to copies of the RAA's. Please understand that these are not readily available, meaning they are in hard copy in the respective property files. The manual search would take a considerable amount of staff time. At this stage I am not sure the relevance of needing to review these as the goal of the Working Group is to find options to remove the need for RAA's. Just my advice, but I believe this would not be a beneficial exercise. The focus should not be dwelling on how the Township arrived at using RRA's but what is the best course of action moving forward. Please be assured that we are working on those options and are hoping to have something in front of the Working Group before the end of March, with the end goal being to have the entire process complete this term of Council."

The WG has dealt with the Clerk's responses in paragraphs 5.05 below.

3.09 On February 15, 2022 a member of the WG located and circulated to all members of the WG, the Clerk and the Planner a copy of Plan 4 which contains a PUR known as Sleepy Hollow Road. *[Schedule 11(a)]*That road provides access to approximately 35 cottage properties on Christie Lake. Plan 4 was registered on November 4, 1974. The Clerk responded by email on February 10, 2022 that "the Township is aware of this additional road, plus others in this subdivision" and "It is currently listed on the spreadsheet as "1 Possible Other Subdivision with multiple roads – still being researched" . *[Schedule 11(b)]*. *[see also paragraph 3.01(1) above]*

3.10 At the WG meeting held on May 4, 2022, Staff advised that there was another registered plan of subdivision in the vicinity of Plan 4 (i.e. Sleepy Hollow Road, Christie Lake) which contained a PUR or roads, one of which was located on an island. However, no documentation or further information with respect to this plan of subdivision has been provided to WG members.

3.11 To date, no other documentation related to registered plans or subdivision agreements is available on the Township's website or has been provided to members of the WG. In particular, no documentation has been provided or posted on the Township's website at the URL mentioned in paragraph 3.06 above with respect to:

Plan 4259 (Miner's Point)

Plan 4 (Sleepy Hollow Road – Christie Lake)

The registered plan referred to in paragraph 3.10 above.

3.12 Prior to the April 5, 2022 meeting of the WG, Staff circulated a 13 page report from Jp2g Consultants Inc, providing an "Options Assessment", of the four options referred to in Paragraph 3.01(4) above *[Schedule 16].* The "Options Assessment" was reviewed in detail at the April 5 2022 meeting, by Forbes Symon, the report's author. At the May 4, 2022 WG meeting, the members discussed the various options relating to PURs and made various findings of fact and recommendations as noted in Sections 6 and & 7 below.

4 Facts - None of which have been disputed by documentary evidence

4.01 Most, if not all, of the problems related to PURs arose in the 1970s and 1980s prior the amalgamation of the Townships of Bathurst, North Burgess and South Sherbrooke. A possible exception to the previous statement may relate to Plan 4259 (Miners Point). Staff has advised, based upon information received from the Township's legal counsel, that if a subdivision agreement for Plan 4259 had been signed, title searches disclose that the subdivision agreement had not been registered. On August28, 2022, Staff provided a partially legible copy of Plan 4259 which appears to indicate that it was registered in or about May 1954.

4.02 The Townships of Bathurst, North Burgess and South Sherbrooke amalgamated in 1998 under the name the Township of Bathurst , Burgess, Sherbrooke. The amalgamated Township was renamed Tay Valley Township in 2002.

4.03 The primary reason for the current problems relating to PURs is that the developers of the various subdivisions failed to complete construction of the roads shown on their respective plans of subdivision in accordance with the standards set in their respective subdivision agreements.

4.04 A secondary, but equally important, reason for the current problems relating to PURs is that no documentary or other evidence has been found or provided to show that any of the predecessor townships:

(1) adequately vetted the developers as to their property development expertise and experience or their financial ability to perform the obligations under their respective subdivision agreements;

(2) obtained adequate security from the developers to enable the predecessor townships to use such security to finance completion of the developers' obligations in the event that the developers, or any of them, failed to live up to their contractual obligations;

(3) used the little security obtained for the benefit of the lot owners in the one subdivision (Maberly Pines) for which security was provided;
(4) pursued legal proceedings against any of defaulting developers for breach of their obligations under their respective subdivision agreements;
(5) explained why the Township entered into new and later subdivision agreements with developers who had previously defaulted under the terms of earlier subdivision agreements, for example:
   (a) Donald McAlpine (Plan 2, June 1, 1962; Plan 4, November 4, 1974), and likely the registered plan of subdivision referred to in paragraph 3.10 above; and
   (b) Lakeside Living Limited (Plan 6, September 24, 1976; Plan21- Maberly Pines , December 8, 1980).

4.05 Paragraph 9 of the Maberly Pines Subdivision Agreement dated September 2, 1980 made between Lakeside Living Limited, as Subdivider, and the Township of South Sherbrooke *[Schedule 12]* obligates the Subdivider "to deposit with the Township's solicitor a full executed deed for Lot Number Nine in the said Plan of Subdivision, which shall not be registered, but shall remain of file with the Townships' solicitor. If within the time limit set out in paragraph 3(d) the Subdivider has not brought the said roads up to acceptable standards, the deed may be registered by the Township, and the said lot may be sold by the Township for fair market value, **it being understood that the proceeds from the sale of the said lot shall be used by the Township to pay for improvement of the roads in accordance with paragraph 3(d),** provided that if the cost to the Township is greater than the proceeds from the sale of the said lot, the Township may claim the excess from the Subdivider …" *[Underlining and bold font added for emphasis]*
The time limit set out in paragraph 3(d) is "within three years of the date of registration of the Plan". Plan 21 was registered on December 8, 1980. The three year period expired on December 3, 1983.
On August 28, 2022 Staff advised that in January 1981 the Council of the Township of South Sherbrooke accepted a conveyance of lot 31 in exchange for Lot 9. Staff has advised that Lot 9 was sold by the developer to private owners in or about 1981.
It is our understanding that at some as-yet-unknown time after Plan 21 was registered, the Subdivider transferred three additional lots to the Township, or the predecessor township) as security for the Subdivider's obligations under its Subdivision Agreement . The only documentation of which we are aware that confirms that understanding is Staff Report #C-2020-15 *[Schedule 13]* which was attached to the Agenda for the October 6, 2020 meeting of the Committee of the Whole at page 35 of 116 and which contains the following statements, inter alia:
"At its regular meeting held August 13, 2013 Council passed the following resolution:

That, Council declare lots 14, 37 and 44 on Plan 21 being a plan of subdivision known as Maberly Pines surplus to its current needs;
And that, Council authorize staff to engage a real estate broker to sell those lands on behalf of the Township."
"In 2015, lot 14 was sold and in 2018, lot 37 was sold."
Staff Report #C-2020-15 was prepared and circulated to Councillors in support of accepting an offer to purchase lot 44 "at the full asking price of $12,000, less adjustments and the deposit taken".
At its October 20, 2020 meeting, Council passed By By-Law No. 2020-043 *[Schedule 14]* which approved the sale of lot 44 Plan 21 at the price of $12,000 excluding HST.
No information has been provided as to the amounts received from either of lots 14 or 37. No information has been provided as to how the funds from the sale of any of the 3 lots have been applied by the Township.
At the Public Meeting held on September 14, 2021 regarding Development Charges, the Township's Acting Treasurer, advised the meeting in his opening remarks *[Recording of meeting at minute31:38]* that:

(1) the developer of the Maberly Pines subdivision had conveyed three lots in Plan 21 to the Township as a continuing security for performance of the developer's obligations under the subdivision agreement;
(2) all such lots had been sold by or about 2015 for total proceeds of about $32,000; and
(3) the proceeds from the sale of all such lots "have come into the general revenues of the Township."

Later in the meeting, in response to a question posed by Councillor Rainer to the Acting Treasurer, he replied that he "**assumes** that the revenue went to general revenue and ended up in the contingency reserve." [*Underlining and bold font added for emphasis- [Recording of meeting at minute 42:25].* The Minutes of the Public meeting did not report the Acting Treasurer's opening comments as indicated above, but did report his response to Councillor Rainer's question.
A review of the contingency reserve statements in the Townships audited financial statements for the years ending 2015, 2018 and 2020 show the changes in the reserves for the years in question. Those changes are inconclusive as to accuracy of the Acting Treasurer's assumption. An in depth review of the line items in the contingency reserves statements and a report by the Treasurer on that issue would be beneficial. It would appear, however, that none of the proceeds of sale received to date have yet been used to make road or other improvements in the Maberly Pines subdivision notwithstanding the words underlined and in bold font in paragraph 4.05 above.

4.06 By email dated May 4, 2022, the Township Treasurer advised that "at our first interim billing (January 2022) we sent 5,358 tax bills" *[Schedule 15]*

5 Applicable Legal principles

5.01 "Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters".[4]

5.02 From paragraph 5.01 above, it follows that the council of a municipality owes a duty of care to all to of its taxpayers and residents to take reasonable care in relation to:

(a) drafting, or approving the drafting of, the terms of subdivision agreements;
(b) monitoring the progress of each subdivision's development;
(c) enforcing compliance with the terms of the subdivision agreement.

5.03 It has not been disputed that the predecessor Townships approved plans of subdivision and entered into subdivision agreements with some, if not all, of the developers of those subdivisions. The absence of direct evidence contradicting the statements contained in paragraph 4.04 and 5.02 above is, (subject to legal Counsel's review and advice) circumstantial evidence that the predecessor Townships breached their duty of care to act reasonably and prudently to protect the interests of the Township's residents and taxpayers.
Weighing the direct evidence against the circumstantial evidence leads the WG to the inevitable conclusion that, on balance of probabilities, a "prima facie" case of negligence by the predecessor Townships has been established[5] and that such negligence was the proximate cause of the problems relating to PURs that the Township and its taxpayers and residents currently face.

5.04 Upon amalgamation of two or more townships, the amalgamated township acquires the assets of its predecessor townships and assumes their liabilities. As a result of the 1998 amalgamation, Tay Valley Township assumed, and is responsible for, all liabilities, failures and negligence of its predecessor township's obligations.

5.05 The WG considers the statement as to the powers and authority of the Township, as set out paragraph 3.08 (1) and in Schedule 9(b) above to be an incorrect statement of law. Municipalities do not have authority to do whatever they want. All municipalities in Ontario are creatures of statute. They have no authority to do anything that is not authorized by provincial law. When, and only when, an authority is conferred upon a municipality by statute, regulation or Provincial Policy Statement, does Section 9 give that municipality the capacity, rights, powers and privileges of a natural person "**for the purpose of exercising its authority under this or any other Act**" *[underlining and bold font added for emphasis.]* *[Schedule 17]*

5.06 Private Roads standards

[4] Municipal Act, 2001, S.O. 2001 c 25 *[See Schedule 17]*
[5] ***Fontaine v. British Columbia (Official Administrator)***, 1998 CanLII 814 (SCC), [1998] 1 S.C.R. 424

(1) The RAA *[Schedule 3]* states, in section 1(k) “THAT, any work on PUR shall be completed in accordance with the ‘Private Road Standards’ and the ‘Fire Department Access Route Design’ Section 3.2.5.6 of the Ontario Building Code, attached hereto as Schedule “B”.”
Schedule “B” appears to be an exact copy of the wording in S. 3.2.5.6 of the Building Code[6].

(2) The WG strongly doubts that the Township has authority or jurisdiction to set private road standards, except in limited circumstances which do not apply to PURs. The only authorities that have been offered regarding the Township’s jurisdiction to do so are:
   (a) S. 3.2.5.6 of the Building Code; and
   (b) “if a piece of legislation does not specifically provide authority to a municipality to undertake a matter, then the default is the Municipal Act. Section 8 of the Municipal Act provides the municipality with the powers of a natural person and the authority to govern their affairs as they consider appropriate” *[Schedule 9(b) and paragraph 3.08 above]* .

(3) Section S. 3.2.5.6 is in Section 3 of the Building Code. It is the last in a group of 3 sections (i.e. sections 3.2.5.4 , 3.2.5.5 and 3.2.5.6) which deal exclusively with access routes for fire department vehicles to a building (or buildings) more than 3 storeys in building height or more than a 600 m^2 in building area.

(4) Section 1.1.2.2 of the Building Code “Application of Parts 3, 4, 5 and 6**”** <u>makes it clear that S.3.2.5.6 does not apply to roads containing lots zoned or intended for residential or seasonal residential buildings.</u>

(5) For reason set out in paragraph 5.05 above, the WG is satisfied that neither section 8 or 9 of the Municipal Act gives the Township authority or jurisdiction to set private road standards. In the absence of other lawful authority or jurisdiction, the Township has failed to satisfy the WG that Township has such authority.

6 WG Findings of Fact

6.01 Most, if not all, of the problems relating to unassumed township roads are, in each case, the responsibility of two parties, namely:

(1) the developers who failed to perform their obligations under their respective subdivision agreements with the predecessor townships; and

(2) the predecessor townships which breached their respective duties of care to their respective taxpayers and residents to act prudently, reasonably and carefully to protect their interests by their failings as set out in paragraph 4.04 above.

6.02 No documentation or other evidence has been provided to indicate or even suggest that the various owners of lots in subdivisions having PURs caused or aggravated, or are in in any way responsible for causing, the problems associated with PURs.

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[6] https://www.buildingcode.online/section3.html

6.03 Notwithstanding total lack of the evidence referred to in paragraph 6.02 above, some take the position that a lot owner in a subdivision having PURs who proposes to erect a structure on requiring a building permit should, at his or her own risk and expense, reduce the Township's liability in respect of the roads as much as possible, either by having the lot owners assume ownership of the roads, or imposing insurance and indemnity requirements as a condition of issuing a building permit. In other words, Township taxpayers as group (approximately 5,300 strong) should not bear of cost of predecessor township's negligence, failures and mistakes. That cost should be borne only by those unlucky lot owners who happen to live on PURs and wish to erect a structure for which a building permit is required. Some apparently prefer a solution in which the Township is protected from the cost resulting from its predecessors' mistakes and failures, and enables the tax burden to fall unevenly and unfairly on a relative few Township taxpayers. Numbers provided by Staff *[Schedule 5(c)]* appear to indicate that the cost of bringing all PURs up to municipal road standards varies depending on the surface used. Low Cost Bitumen ("LCB") appears to be the least expensive option and gravel a more expensive option. In addition, the yearly maintenance costs appear to be much higher for gravel roads than the other two options.

Assuming the cost options provided are reasonably accurate, it would appear that an LCB surface would be the most cost effective. Using the LCB information provided:

(1) the total cost of bringing all unassumed Township roads up to municipal LCB standards is estimated to be $1,382,400; *[Schedule 5(b)]*
(2) There are 278 properties on unassumed roads*[Schedule 5(b)]*;
(3) There is potential to obtain only 104 additional RAAs; *[Schedule 5(b)]*
(4) The Township issued 5,358 interim tax bills in January 2022. *[Schedule 15]*

Calculations based on the above numbers:

(5) If only 104 lot owners paid the costs of bringing the unassumed Township roads up to the Township's LCB standards each would pay, on average, $13,292 ($1,382,400 ÷104) or $1,329± per year for 10 years, if the cost were spread over 10 years
(6) If 278 lot owners paid the costs of bringing the unassumed Township roads up to the Township's LCB standard, each would pay, on average, $4,973 ($1,382,400 ÷278) or $497± per year for 10 years, if the cost were spread over 10 years,
(7) If all Township taxpayers contributed to the cost of bringing those roads up to that same standard, the average cost per taxpayer would be $258 ($1,382,400 ÷ 5,358) or $26± per year if the cost were spread over 10 years.
(8) In each case, those lot owners with higher than average assessments would pay more, and those with lower than average assessments would pay less.

6.04 Road Access Agreements are egregiously unfair because:

(1) they shift, or attempt to shift, the financial burden of correcting the problems associated with PURs from the Township, (which, together with the developers, is directly responsible for those problems) to a few owners of lots on PURs who have signed, or will be required to sign, RAAs despite the fact that none of those lot owners are in any way responsible for causing, or contributing to, those problems.

(2) Township currently maintains liability insurance which it apparently considers to be adequate for its purposes. *[See paragraph 3.05 above]*

(3) The ONLY real benefit that the Township receives from the indemnity is that it saves the increased insurance premium cost that it might otherwise bear if the Township were to be held liable in respect of a catastrophic accident on a PUR. The Township's current premium cost is $37,000 for $5 million general liability coverage plus $6,184 for $45 million excess coverage. *[Schedule 9]* The total premium is $43,184. If the Township had to bear a 20% increase in its liability insurance premium because of its liability for an accident on a PUR, that increase would cost the Township $8,636.00 per year thereafter. If that amount were paid by 5,358 taxpayers, it would cost less than $2.00 per taxpayer, per year on average.

Nonetheless, some are of the opinion that a handful of lot owners, each of whom is a taxpayer in the Township, and none of whom are in any way responsible for the problems of PURs, should:

(a) each pay upwards of $1,300 per year or more for General Commercial Liability coverage, assuming they qualify for it at any cost; or

(b) take the initiative to form a road association to acquire the road or roads, and then arrange for the road association to obtain insurance coverage for the road. For reasons set out in paragraph 8.05 below, the WG considers this option to be impractical.

(4) The RAA indemnity is not limited to the amount of insurance coverage that the Township has required lot owners to provide. Since it has no maximum limit, lot owners who sign RAAs have potential exposure to catastrophic liability, whereas the Township currently maintains $50 million of primary and excess liability coverage. *[See paragraph 3.05 above and Schedule9(b)]*. Some are of the opinion that that result is not unfair or unreasonable.

(5) A lot owner who has signed RAAs should not be required to provide an indemnity to the Township in respect of a person who happens to be involved in an accident on a PUR, but has no connection to the lot owner or the owner's lot, nor is using such roads at the owner's invitation or with his or her permission;

(6) At the WG's May 4, 2022 meeting, the Clerk confirmed that the Township had never received a motor vehicle accident report in respect of any PUR. If that

statement is true, and we assume that it is, then history of the past 50 years tells us that the Township's current risk of exposure to, liability is minimal.

7 Recommendations

7.01 The WG is of the opinion that the recommendations which follow are listed in the order of their importance.

7.02 The WG's first and most important recommendation is that the Township bring all PURs up to municipal gravel or LCB road standards (whichever is the more cost effective for each PUR) at Township expense, all at no cost to lot owners in subdivisions having PURs - other than bearing their pro rata share of the total municipal tax burden. An exception to this recommendation could be made in respect of roads which Staff contends are, for reasons of their geography, are impossible or grossly impractical to bring them up to an acceptable municipal standard for assumption (e.g. Sherbrooke Road).

7.03 The WG's second most important recommendation is that, until such time as the first recommendation is implemented, the Township should:

(1) adopt a resolution or by-law stating that all RAAs previously signed are amended to delete the requirements that lot owners:
  (a) provide liability insurance coverage to the Township;
  (b) provide an indemnity to the Township;
  (c) replace road signage, or reimburse the Township for the cost of replacement of such signage; and
  (d) ensure that a purchaser of their lot enters into a similar RAA with the Township, and

(2) provide a copy of such resolution or By-law to each person who has signed an RAA by letter addressed to the last known address of such person.

7.04 The WG's third most important recommendation is that the Township should either:

(1) eliminate the requirement for future RAAs by registering a notice on the title of all lots which are situate in subdivisions which have PURs and are zoned to permit permanent or seasonal residential use. Such a notice would be registered pursuant to S. 71 of the Land Titles[7], as amended, and would provide notice to each subsequent owner that:
  (a) the roads within the subdivision (or some of them as the case may be) have not been brought up to municipal standards, nor have been assumed by the Township; and
  (b) until such roads are assumed by the Township, municipal services such as snow removal and road maintenance will not likely be provided by the Township and that some public services such as garbage removal, school bussing and some emergency services may be severely restricted; or

[7] Land Titles Act R.S.O. 1990 c. L.5

(2) amend its form of RAA so that, in future, its terms conform to the requirements of paragraph 7.04 (1) above.

7.05 The WGs fourth most important recommendation is that the Township not impose a special development charge on lot owners in the Maberly Pines subdivision.

8 Reasons for Recommendations

8.01 The WG accepts the premise that persons (which term includes corporations) who fail to live up to their obligations with the result that such failure causes economic loss, have, or should have, a duty (moral, if not legal) to make things right.

8.02 For the reason set out in paragraph 4.04 above, the WG is of the opinion that:

(1) the failures and mistakes of the predecessor townships have, by amalgamation, become the failures and mistakes of the Township ,

(2) such failures and mistakes are a proximate cause of the problems relating to PURs; and

(3) the owners of lots on PURs:

(a) are in not in any way responsible for the problems of the PURs;

(b) didn't receive what they bargained for many years earlier because neither the developer not the predecessor Townships did their respective jobs properly and such owners now feel, rightly we believe, that the Township is rubbing salt in the wounds; and

(4) the Township should now, and very belatedly, rectify the problems of its PURs at its own expense.

8.03 It would be grossly unfair for the Township to allocate all of the cost of its predecessors' failures and mistakes to a few township taxpayers when it should allocate all of such cost to all taxpayers.

8.04 Halpenny has recommend that, from a liability perspective, the Township should assume and maintain the PURs – without taking into consideration other issues such as cost, etc.. *[See paragraph 3.03 above and Schedule 6]*

8.05 Having considered all options outlined in the Jp2j Options Assessment, the WG is of the opinion that:

(1) only Option 2, – Road is Township owned and assumed - is practical and viable.

(2) Options1 - Taking the Road Out of Township Ownership – is neither practical nor viable for the following reasons:

(i) To implement this option, consent of ALL lot owners in a particular subdivision would be required. One dissenter could prevent the implementation of this option. The WG is of the opinion that a procedure requiring unanimous consent is unrealistic, except possibly, for the smallest of subdivisions. But there appears to be little, if any, upside to lot owners to give that consent. Nothing changes on the ground for them except that the liability question is now entirely theirs.

(ii) An unincorporated association is not "legal person"[8]. It cannot hold land. Consequently, if lot owners establish an unincorporated road association each of them would have to own a small portion of the road on which his or her property fronts. Land transfers to individual lot owners would likely require severance consents and substantial survey costs to create the required R-plans which would be necessary to divide the road into various parcels for transfer to lot owners. Individual ownership would expose owners to potential liability for accidents which occur on "their portion" of the road. It is questionable whether an unincorporated association would qualify to purchase liability insurance to protect the owners of the road. Lot owners may need to buy insurance coverage individually, if they are to have it. That is the very problem that lot owners on PURs face today. This is not a solution that is anywhere close to being practical.

(iii) An Ontario corporation is a legal person, may hold land and purchase insurance. However, this option will impose administrative burdens and costs on lot owners which they do not currently bear, including: incorporation costs; annual costs for preparation of minutes, provincial filings and their associated filing fees; annual preparation and filing of the federal T2 Corporations Tax Returns; preparation and distribution of audited financial statements (unless ALL lot owners waive that requirement), directors and officers insurance, etc., etc. The continuing costs of creating and maintaining a corporation will most likely make this option a non-starter.

Section 4.5 of the Official Plan (page 94) prohibits the creation of "new private roads and the extension of existing private roads", subject to an exception referred to in subparagraph (iv) below.

Staff have taken the position that the Official Plan does not prohibit the Township from closing a PUR and transferring it to an Ontario corporation because the road already exists. It is not being "created". While that is true, it is also true that such roads would be made "newly private". The WG believes that whether the dominant issue is "creation" or "private" is unclear at best and that a written opinion from the Township's solicitor should be obtained before proceeding in accordance with the stated position.

(iv) Section 4.5 of the Official Plan also states: "the creation of a new private condominium road shall be permitted in the Township insofar as it is **created** under the Condominium Act, 1998 as amended" and "connects directly to a public road*". [Underlining and bold font added for emphasis]*

But if a PUR currently exists, can it be "**created"** under the Condominium Act? A positive answer would appear to be inconsistent with the position

[8] https://weilers.ca/unincorporated-associations-and-trusts/#:~:text=You%20likely%20do%20not%20realize,the%20association%20cannot%20own%20property.

set out in subparagraph (iii) above. Again, the WG is of the opinion that the issue is unclear and that a written legal opinion should be obtained.
A CECC would have similar incorporation and annual expenses as a standard Ontario corporation plus some additional expenses mandated under the Condominium Act[9] (e.g. reserve fund; reserve fund study; property manager's fees; audit is mandatory if a CECC has more than 24 lot owners; if less than 25 lot owners, an audit may be waived, but only if all lot owners agree.)
The cost of incorporating and annual costs of maintaining a CECC would be costs that the lot owners do not currently have to bear. There seems to be little or no upside to this option for lot owners and some considerable cost and administrative downside. The WG does not consider this Option viable.

(v) Option 3- Road is Township Owned and Privately Maintained (Status Quo)
The Option 3 heading is misleading. Lot owners have neither an obligation to maintain a PUR, nor a right to maintain a PUR without Township permission, although those who have signed RAAs have the right to undertake "routine maintenance" an undefined ambiguous term.
Given the never-ending outcry from lot owners in subdivisions having PURs about the egregious RAA, it should be more than clear to all that the status quo is unacceptable unless the RAA is amended to delete the egregious obligations that it now contains

The forgoing Report is respectfully submitted on behalf of:

Councillor Gene Richardson	Date	Councillor Roxanne Darling	Date
Frank Johnson	Date	Fred Barrett	Date
Gordon Hill	Date		

[9] The Condominium Act , 1998, S.O. 1998 C 19