

“SPECIAL” COUNCIL MEETING
January 26th, 2023

Report #CAO-2023-03
Amanda Mabo, Chief Administrative Officer/Clerk

PRIVATE UNASSUMED ROADS
LEGAL OPINION

STAFF RECOMMENDATION(S)

It is recommended:

See conclusion.

BACKGROUND

What is a Private Unassumed Road (PUR)?

A private unassumed road (PUR) is a road owned by the Township and maintained by a private individual, organization, or company rather than by the Township. Since the roads are owned by the Township, the general public is allowed to travel on them. However, because they have not been assumed by the Township for maintenance purposes the private individual or organization is responsible for maintenance. These are mostly found in subdivisions approved prior to 2002.

- List of Subdivisions with Private Unassumed Roads, including list of PUR Roads (attached)

Zoning By-Law – Section 3.4 – Road Access Agreement Requirement

Since amalgamation in 1998, Section 3.4 in the Township Zoning By-Law prohibited the issuance of a building permit for a lot that did not have frontage on an improved street. Improved street is defined in the By-Law as a street which has been assumed by the Township (or Province or County) and which is maintained on a regular, year-round basis. This included a private unassumed road, which in most instances is located in a subdivision registered prior to December 10, 2002.

In 2009, the Township undertook an amendment to Section 3.4 of the Zoning By-Law to add an additional provision that would provide an exemption to the requirement to have frontage on an improved street in the case where an owner in a subdivision registered prior to

December 10, 2002 has entered into a road access agreement (RAA) to the satisfaction of the Township.

- Planning Consultants Letter re Road Access Agreement Requirement (attached)

The Road Access Agreement (RAA) was developed by the Township's legal counsel and is reviewed and updated as necessary by legal counsel every few years. In addition, the Township's insurer reviews and updates the insurance requirements contained in the agreement.

- Template – Road Access Agreement (attached)

The purpose of the Road Access Agreement was to transfer some of the risks associated with PURs from the municipality to property owners.

When Issues Began

In 2019, a private property owner who was developing their property on a PUR brought forward several questions and concerns regarding the development of properties on private unassumed roads and the requirement to enter into a road access agreement, specifically the insurance requirements, the costs of insurance and the indemnification clause.

At that time the insurance industry had changed to a "hard market", which it is still in. A hard insurance market is when there is a high demand for insurance coverage and low appetite to insure causing premiums to increase significantly.

Council at the time agreed to re-zone to Limited Services Residential (which was intended for properties on private roads, not PURs) instead of obtaining a RAA. This started the next issue whereby property owners then felt they could pick and choose from the items under Section 3.4 of the Zoning By-Law. This decision also led to Council adopting the following in November 2019:

Resolution #C-2019-11-08

"THAT, the Township eliminate the requirement for property owners to enter into a road access agreement on unassumed subdivision roads in the Township;

AND THAT, section 3.4 of the Township zoning by-law be reviewed and appropriately revised."

Although a resolution was passed to amend section 3.4 of the Zoning By-Law, until the zoning by-law was amended, that direction would not come into effect; as a result, any applications on unassumed subdivision roads still require a road access agreement.

Staff brought forward a report to implement the above resolution in February 2020. At that meeting Council discussed options for amending Section 3.4 of the Zoning By-Law. On March 3, 2020 the Public Meeting was held to receive comments on the proposed amendments to the Zoning By-Law.

At the March 10th, 2020 Committee of the Whole (COW) meeting staff recommended that based on the comments received to date, including those made at the Public Meeting, Council defer making a decision until staff are able to consult with the municipal solicitor to clarify information, answer questions that have been posed by the public, and provide options to best implement Council's resolution. Instead, Council recommended that staff draft terms of reference, to be brought back to the March 24th, 2020 Council Meeting, to establish a Working Group to clearly identify all of the issues surrounding the use of private unassumed roads and how to sequentially address all of the issues. In addition, Council identified the membership of the Working Group and had planned to make the appointments at that meeting. The March meeting did not occur due to the pandemic and after multiple meetings to finalize the Terms of Reference, they were adopted in August of 2020.

Private Unassumed Roads Working Group (PURWG)

As per the Terms of Reference, to fulfill its mandate it was anticipated the Working Group would, among other things:

- Clarify definitions for private and public roads, including the use of a term to replace the term "Private Unassumed Road". (Some felt the term was misleading)
- Review section 3.4 of the Township Zoning By-Law, Official Plan and any other relevant documentation related to private unassumed roads and road access agreements.
- Clearly identify and examine all of the issues, problems and risks surrounding the use of private unassumed roads and how to sequentially address them and various alternatives for rectifying or otherwise dealing with such issues, problems and risks in a manner that is fair and equitable to the Municipality, to all property owners who use private unassumed roads to access their property, and to Township taxpayers generally; including but not limited to:
 - insurance and liability considerations for both the Township, the property owners and those conducting maintenance
 - maintenance requirements
 - responsibility for maintenance
 - tools to minimize risk:
 - introduction of a holding zone provision in the Zoning By-Law
 - Limited Services Agreements and Site Plan Control Agreements
 - other amendments to the Official Plan and/or Zoning By-Law
 - bringing the roads up to municipal standards by the Township and/or the property owners so that the Township can assume the roads for maintenance purposes
 - development of a road grants policy for private unassumed roads
 - closing the roads, in turn creating private roads, not owned or maintained by the Township
 - community improvement plans
 - area rated development charges
 - any other related issues, problems and risks that the Working Group deems

necessary.

- Recommend to Council whether road access agreements should be required or not and the reasons. If the Working Group recommends that Road Access Agreements are required, advise Council as to:
 - the circumstances under which Road Access Agreements should be required and the reasons;
 - the recommended content for Road Access Agreements; and
 - if any, the recommended changes to the Zoning By-Law, Official Plan and any other relevant documentation.

Due to the pandemic, as well as the former CAO going on an extended sick leave, and Council direction to make another matter a priority, work on this matter was halted until mid-2021.

First Meeting – Background Information and Presentations

At the first meeting of the Working Group background information was provided on the matter along with presentations from various groups:

Background Information

- Road Diagram (describes the legal status of roads within the Township)
- List of Subdivisions with Private Unassumed Roads
- Private Unassumed Road - Maps
- Private Unassumed Road - Statistics
- Private Unassumed Roads – Estimated Costs to Upgrade
- Planning Process Related to Private Unassumed Roads – *presentation by Noelle Reeve, Township Planner.*

Presentations

- Overview of Liability/Insurance Requirements on Private Unassumed Roads for the Township, Property Owners and Contractors - Carolyn Corkery and Matt White, Halpenny Insurance Brokers Ltd.
- Federation of Ontario Cottagers Association (FOCA) – Experience Regarding Private Unassumed Roads, Ian Crawford, President.
- Bennett Lake Estates Cottagers Association (BLECA) – Overview of Experience as an Incorporated Road Association on Private Unassumed Roads in the Township, Al Schoots, Member of BLECA.

Note: Additional information, including the presentations, can be found on the Township website at <https://www.tayvalleytwp.ca/en/living-here/private-unassumed-roads.aspx>

Second Meeting – Options Report

After the initial meeting it became evident that there would not be one option that would work for all the private unassumed road situations, and that there were pros and cons to each option. As a result, the Township's planning consultants Jp2g put together an Options Assessment Report for the Working Group to consider.

- Private Unassumed Roads – Options Assessment Report (attached)

Three ownership/maintenance options were identified and assessed:

Option #1: Taking the Road Out of Township Ownership (Private Road)

Option #2: Road is Township Owned and Assumed (Public Road)

Option #3: Road is Township Owned and Privately Maintained (Status Quo)

The report then assessed the pros and cons for each option taking into consideration the following:

- Liability
- Maintenance
- Financial
- Health & Safety
- Risk Reduction Tools
- Road Standards
- Situations where Option is Preferred
- Impact on Benefiting Property Owners

Third Meeting – Discussion of Options Report

The Working Group met to discuss the Options Assessment Report and approved the following four (4) recommendations to be brought forward to Council for discussion and consideration:

Recommendation #1 – Township Assume All PURs

“THAT, Tay Valley Township bring all Private Unassumed Roads up to the minimum standards and assume all Private Unassumed Roads at no cost to the property owners;

AND THAT, public consultation on this recommendation occur prior to Council making a final decision.”

OR

Recommendation #2 – Township Assume Most PURs with some Exceptions (Assume, Except Option 1)

“THAT, Tay Valley Township bring all Private Unassumed Roads up to the minimum standard and assume all Private Unassumed Roads except, Old Mine Road, Killarney Lane, Homestead Lane and Sherbrooke Drive;

THAT, Old Mine Road be stopped up, closed and provided as a lot addition to the adjacent property owner for use as a driveway at no cost to the property owners;

THAT, Killarney Lane and Homestead Lane be transferred from the Township to private ownership at no cost to the property owners;

THAT, Sherbrook Drive, due to the complexity of its status, be dealt with separately from the rest of the Private Unassumed Roads;

AND THAT, public consultation on this recommendation occur prior to Council making a final decision.”

OR

Recommendation #3 – Take Some Roads Out of Township Ownership and Leave others As PURs (Option 1 and 3 with Maberly Pines)

“THAT, all Private Unassumed Roads remain as Private Unassumed Roads with the Township assisting the property owners on each road to set up a private road association, resulting in the road association providing the Township annually with the necessary insurance certificate instead of individual property owners, except Old Mine Road, Killarney Lane, Homestead Lane and Sherbrooke Drive;

THAT, Old Mine Road be stopped up, closed and provided as a lot addition to the adjacent property owner for use as a driveway at no cost to the property owners;

THAT, Killarney Lane and Homestead Lane be transferred from the Township to private ownership at no cost to the property owners;

THAT, Sherbrook Drive, due to the complexity of its status, be dealt with separately from the rest of the Private Unassumed Roads;

AND THAT, public consultation on this recommendation occur prior to Council making a final decision.”

OR

Recommendation #4 - All PURs remain PURs with some Exceptions and a Revised Road Access Agreement (Option 1 and 3 with Maberly Pines with Revised Road Access Agreement)

“THAT, all Private Unassumed Roads remain as Private Unassumed Roads with the Township with the road access agreement remaining in place with revised liability and indemnity sections, except Old Mine Road, Killarney Lane, Homestead Lane and Sherbrooke Drive;

THAT, Old Mine Road be stopped up, closed and provided as a lot addition to the adjacent property owner for use as a driveway at no cost to the property owners;

THAT, Killarney Lane and Homestead Lane be transferred from the Township to private ownership at no cost to the property owners;

THAT, Sherbrook Drive, due to the complexity of its status, be dealt with separately from the rest of the Private Unassumed Roads;

AND THAT, public consultation on this recommendation occur prior to Council making a final decision.”

Direction from the Working Group was for Staff to draft a report to Council for review and comment by the Working Group regarding the above recommendations.

The lay Members of the Working Group, contrary to the direction of the Working Group, drafted their own report. A revised version of this report was presented to Council in September 2022 but was not supported by staff or the Council reps on the Working Group.

- Lay Member Executive Summary and Report (attached)

Council at that meeting adopted the following resolution:

RESOLUTION #C-2022-09-04

“THAT, the Private Unassumed Roads Working Group Executive Summary and Report presented to the Committee of the Whole on September 13, 2022, be received for information;

THAT, staff be directed to provide a follow-up report that addresses the recommendations and various points and concerns arising from the Private Unassumed Roads Working Group Executive Summary and Report;

AND THAT, in the meantime, staff proceed with obtaining a legal opinion with regards to the indemnification clause and insurance requirements contained in the Road Access Agreement with regards to:

- *the reasons the clauses need to be included or not included, and if they need to be included, is there alternative wording that can be used; and the need for a Road Access Agreement or not.”*

This report addresses this resolution.

DISCUSSION

- Legal Opinion dated January 11, 2023 (attached separately)

The legal opinion outlines how “the Working Group’s conclusion 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”, is not supported by case law. The opinion also outlines how the Working Group’s opinion that “doubted” that the Township had legal authority to set private road standards, is an incorrect statement. The Working Group was wrong in law to conclude that there was any doubt about the legal authority of the Township to pass by-laws or policies respecting road standards.

The opinion outlines the Township’s legal liability associated with PURs and discusses the options available to the Township to minimize its risk and liability. Other than one additional option, the rest are as outlined in the Private Unassumed Roads – Options Assessment Report.

- If the status quo is maintained the Township’s solicitor recommends that the RAA be maintained to minimize liability. Some basic inspection and maintenance is also recommended to further manage liability;
- Road associations are a viable option that would assist in managing liability (similar to the RAA status quo option) but has the added benefit of being fairer to individual land owners;
- An option considered was to close the roads and convey them to a condominium or road association. This option is legally complex and depends for its success on the cooperation of all owners. From a liability perspective it is better for the Township as the Township would have no liability after the sale;
- While upgrading and assuming the roads for maintenance is always an option – the solicitor cautions that the costs may be significant and the underlying road design must be sufficient to allow the Township to assume the roads for maintenance.

OPTIONS FOR CONSIDERATION

The following recommendations are in no particular order. When looking at each of the recommendations, they must also be read in conjunction with the Options Assessment Report and the Legal Opinion to understand the pros and cons.

Recommendation #1 – Township Assume All PURs

For the Township to assume all of the Private Unassumed Roads that are currently listed (there are others), as a starting point it would cost between \$2,734,000 and \$4,346,800 in gravel, surface treatment or asphalt.

All roads where “cost for gravel (widening road)” is the only option (highlighted in orange), would require an engineered design costing roughly \$50,000 per road for an overall cost of \$500,000. These roads have one, or all of the following deficiencies:

- substandard width
- substandard “clear zone” along the roadway, meaning there are hazards along the existing road
- substandard horizontal curves
- substandard vertical curves

Additional costs including rock excavation and land acquisitions, to assume these roads to make the geometric improvements would be confirmed during the engineered design and added to the cost to assume the road.

Costs do not include drainage improvements (ditching, culvert replacement, etc.)

Costs do not include additional equipment required to maintain the roads as a smaller truck with a plow will need to be purchased to clear the narrow roads at a cost of \$200,000.

Costs do not include the additional facilities required to store the new equipment.

There will also be an increase in annual operating costs to maintain the newly assumed roads of between \$35,174 and \$117,357, plus the addition of a staff person to maintain the roads at a cost of \$85,000/year (includes benefits), and possibly an additional part-time or full-time staff person (project staff person) to implement the recommendation.

Estimated Capital Costs to Assume All PURs: Between \$2.7 million and \$5 million plus geometric improvements, drainage improvements and facilities.

Estimated Increase in Annual Operating Costs: Between \$120,174 and \$202,357 plus a project staff person

It is important to note that a 1% raise in levy equates to approximately \$62,300 in additional revenues for Tay Valley.

Keep in mind that a municipality has to meet a higher road standard than that of a road owned privately.

Recommendation #2 – Township Assume Most PURs with some Exceptions

(Do Not Assume Old Mine Road, Killarney Lane, Homestead Lane and Sherbrooke Drive)

Using the same financial information as the above recommendation, there would be a savings on the capital side for those roads that would be transferred into private ownership but one-time costs to make the transfer, including legal, surveying, advertising, etc. estimated at \$20,000 per road.

On the operating side projected costs would reduce slightly with three less roads and Sherbrook Drive still to be determined.

Estimated Capital Costs to Assume Most PURs: Between \$2.3 million and \$4.5 million plus geometric improvements, drainage improvements and facilities, legal costs, advertising costs, surveying costs, etc.

Estimated Increase in Annual Operating Costs: Between \$120,174 and \$186,653 plus a project staff person

Recommendation #3 – Take Some Roads Out of Township Ownership and Leave others as PURs – Road Associations

Using the same financial information as the above recommendation, for those roads to be transferred into private ownership there would be one-time costs to make the transfer, including legal, surveying, advertising, etc. estimated at \$20,000 per road. Sherbrooke Drive still to be determined.

Assisting with the creation of the road associations would require a project staff person and legal costs.

Estimated Capital Costs: \$60,000 plus Sherbrooke Drive

Estimated Increase in Annual Operating Costs: \$95,000

Recommendation #4 - All PURs remain PURs with some Exceptions and a Revised Road Access Agreement

Using the same financial information as the above recommendation, for those roads to be transferred into private ownership there would be one-time costs to make the transfer, including legal, surveying, advertising, etc. estimated at \$20,000 per road. Sherbrooke Drive still to be determined.

Revising the liability and indemnity sections of the Road Access Agreement would require legal and possibly increased insurance costs through increased premiums. Or possibly, in the event of a catastrophic claim the municipality may no longer be insurable for private unassumed roads meaning all future claims would be paid by taxes and instead of paying a claim from anything above \$5 million (this is currently what insurance covers) the municipality would now be on the hook for anything from dollar one. Some recent catastrophic claims are ranging between \$17 million and \$30 million, according to the Township's insurer.

As well, the property owners if held liable for any portion of a claim may be held personally liable if they did not have the required/adequate insurance, meaning that their personal assets such as their cottage, house, vehicles, etc. could be used to pay for their share of a claim. The Township's insurance would not cover their portion and they could possibly face bankruptcy.

Estimated Capital Costs: \$60,000 plus Sherbrooke Drive

Estimated Increase in Annual Operating Costs: \$20,000 plus increased insurance costs, plus the personal liability of property owners

FINANCIAL CONSIDERATIONS

UPDATED ON 2022-04-08 WITH 2022 BUDGET NUMBERS							
Road Name	Length (km)	Cost for Gravel (No Widening Rq)	Cost for Gravel (Widening Rq)	Cost for Surface Treatment (LCB)	Cost for Asphalt (HCB)	Yearly Operation Cost (Gravel)	Yearly Operation Cost (LCB/HCB)
Burke Lane	2.1	\$ 104,000		\$ 374,400	\$ 540,800	\$ 12,563	\$ 9,526
Homestead Lane	0.2		\$ 40,000			\$ 1,208	
Killarney Lane	0.2		\$ 40,000			\$ 1,208	
Lakeshore Boulevard	0.4		\$ 86,000			\$ 2,597	
Little Silver Lake Road	1.9		\$ 388,000			\$ 11,718	
Maple Lane	0.2	\$ 8,500		\$ 30,600	\$ 44,200	\$ 1,027	\$ 779
Meadow Lane Court	0.5	\$ 26,500		\$ 95,400	\$ 137,800	\$ 3,201	\$ 2,427
Miners Point Road	2.8		\$ 562,000			\$ 16,972	
Oak Court	0.2	\$ 7,500		\$ 27,000	\$ 39,000	\$ 906	\$ 687
Oak Road	0.2	\$ 9,500		\$ 34,200	\$ 49,400	\$ 1,148	\$ 870
Old Mine Road	0.3		\$ 60,000			\$ 1,812	
Pine Lane	1.7	\$ 85,500		\$ 307,800	\$ 444,600	\$ 10,328	\$ 7,832
Pond Lane	0.3	\$ 12,500		\$ 45,000	\$ 65,000	\$ 1,510	\$ 1,145
Pond Road	0.7	\$ 32,500		\$ 117,000	\$ 169,000	\$ 3,926	\$ 2,977
Rainbow Lane	1.3		\$ 266,000			\$ 8,033	
Rainbow Lane A	0.5		\$ 108,000			\$ 3,262	
Red Pine Lane	0.9	\$ 47,000		\$ 169,200	\$ 244,400	\$ 5,678	\$ 4,305
Red Pine Road	0.3	\$ 16,000		\$ 57,600	\$ 83,200	\$ 1,933	\$ 1,466
Scott Court	0.7	\$ 34,500		\$ 124,200	\$ 179,400	\$ 4,168	\$ 3,160
Sherbrooke Drive	1.9		\$ 380,000			\$ 11,476	
Silvery Lane	2.1		\$ 420,000			\$ 12,684	
	19.4	\$ 384,000	\$ 2,350,000	\$ 1,382,400	\$ 1,996,800	\$ 117,357	\$ 35,174

STRATEGIC PLAN LINK

Financial Sustainability: We have stable tax rates and debt ratios, and are able to fund our desired programs and infrastructure.

CLIMATE CONSIDERATIONS

Not applicable.

CONCLUSION

In reviewing the options available, staff are recommending for private unassumed roads that:

- road access agreements, including the insurance and indemnity requirements be maintained;
- Section 3.4 of the Zoning By-Law be amended so that the intent and purpose of what is intended by the section is clearer
- the Township, along with the Federation of Cottage Owners Association, assist property owners in setting up a road association for each of the subdivisions with private unassumed roads
- the Township contribute up to \$5,000 per road association to be established
- the Township contribute up to \$500 annually per road association to be established
- staff be authorized to begin working with property owners on private unassumed roads within a subdivision on the following schedule, with work being done on establishing one road association at a time:

1. Little Silver Lake Road
2. Maberly Pines Subdivision Roads – excluding Maple Lane
3. Maple Lane
4. Miner's Point Road and Lakeshore Boulevard
5. Killarney Lane
6. Rainbow Lane, Rainbow Lane A
7. Silvery Lane
8. Homestead Lane (possible alternative option)
9. Old Mine Road (possible alternative option)
10. Bennett Lake Estates
11. Sherbrooke Drive
12. Other

To be clear, this recommendation is the status quo requiring either the individual property owner or the road association to sign a road access agreement and obtain the required insurance. What is new, is that the Township will assist both in staff resources and financially, with the set-up of road associations. These road associations would then provide an insurance certificate annually. This would eliminate the need for individuals to enter the RAA and have separate insurance.

ATTACHMENTS

1. List of Subdivisions with Private Unassumed Roads, including list of PUR Roads

2. Planning Consultants Letter re Road Access Agreement Requirement
3. Template – Road Access Agreement
4. Private Unassumed Roads – Options Assessment Report
5. Lay Member Executive Summary and Report
6. Legal Opinion dated January 11, 2023 (separate)

Respectfully Submitted By:

**Amanda Mabo,
Chief Administrative Officer/Clerk**

TAY VALLEY TOWNSHIP

Private Unassumed Roads

List of Subdivisions with Private Unassumed Roads

Maberly Pines
Plan 21
Lakeside Living

Pond Road
Pond Lane
Red Pine Road
Red Pine Lane
Oak Road

Lakeside Living
Plan 29

Rainbow Lane
Rainbow Lane A

Silvery Lane

Silvery Lane

Lakeside Living

Maple Lane

Miner's Point
Plan 4259

Miners Point Road
Lakeshore Blvd

Sherbrooke Subdivision 2
Plan 1

Sherbrooke Drive

Lakeside Living
Plan 6

Little Silver Lake Road
,

McAlpine
Plan 2

Killarney Lane

Bennett Lake Estates
Plan 30

Burke Lane
Pine Lane
Oak Court
Scott Court
Meadow Lane Court

Opened Unmaintained Road Allowance Old Mine Road

1 Possible Other Subdivision with multiple roads - still
being researched

Hamburg Subdivision
(plan never registered)

Homestead Lane



April 8, 2009

Kathy Coulthart-Dewey
Chief Administrative Officer
Tay Valley Township
217 Harper Road
R.R. No. 4
Perth, Ontario K7H 3C6

BY EMAIL

Dear Ms. Coulthart-Dewey:

**Reference: Amendment to Road Access Requirement of Section 3.4, Comprehensive Zoning By-law
Our File: 98096**

BACKGROUND & ISSUE:

Section 3.4 in the Township Zoning By-law prohibits the issuance of a building permit for a lot that does not have frontage on an improved street. The provision reads as follows:

"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. 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 of subdivision and with frontage on a street which will become an improved street pursuant to provisions in, and financial security associated with, a subdivision agreement that is registered on the title to the lots;*
- *A lot located in a Limited Services Residential zone;*
- *An existing seasonal dwelling in a Seasonal Residential zone"*

The Maberly Pines subdivision (PI 21), located in Lot 13, Concession 5 and 6, in the geographic Township of Sherbrooke, was registered in the 1980s. A subdivision agreement between the owner, Lakeside Living Ltd., and the Township of Sherbrooke included a provision that the roads in the subdivision were to remain private roads until the roads were brought to municipal standards and assumed by the Corporation of the Township of South Sherbrooke.

Lakeside Living was to deposit a fully executed deed for Lot 9 to be used as security for completing the roads in the event that Lakeside Living Ltd. did not complete construction of the roads to municipal standards within 3 years of the registration of the subdivision agreement. According to Township files, there was no financial commitment received from Lakeside Living Ltd., and today the roads remain as unimproved streets owned by the municipality.

Given the status of the roads in the Maberly Pines subdivision and the effect of the above-noted zoning by-law provision, it is not possible to obtain a building permit. According to Township files

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and additional research conducted by Township staff, there are other pre-2002 subdivisions with vacant lots where Zoning By-law provision 3.4 prohibits the issuance of a building permit.

Following previous public meetings and Council/Committee discussion regarding approaches to resolve the Maberly Pines matter, it was decided that a zoning by-law amendment be brought forward to amend Section 3.4 of the Zoning By-law to provide an additional exemption.

Purpose of the Zoning Amendment:

The purpose of this zoning amendment is to add an additional provision to Section 3.4 of the Zoning By-law that would provide an exemption to the requirement to have frontage on an improved street in the case where an owner in a subdivision registered prior to December 10, 2002 has entered into a road access agreement to the satisfaction of the Township.

The effect of the zoning by-law 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 arrangements have been made for dependable access to the property.

(A road access agreement has been prepared by the Township's solicitor. The agreement serves as a pre-condition to obtaining a building permit on vacant lots where lot frontage is on an unmaintained public road).

DISCUSSION

Official Plan

Official Plan policy 2.16 Public Road Access, states:

"All new development shall have frontage on a public road that is maintained by the Township or other public authority, save and except the following:

- 1. Agriculture, forestry, and conservation uses not having an accessory dwelling or any building or structure to which the public has access;*
- 2. Residential uses located on private roads or having only water access and which are zoned as Limited Services in the Zoning By-law that implements this Plan".*

This policy mandates that all new development shall have frontage on a public road, and is implemented through Section 3.4 of the Zoning By-law. Section 3.4 includes certain exceptions that would enable development under circumstances. The proposed amendment would add an additional exception to Section 3.4.

It is our opinion that this amendment is in conformity with Official Plan. The amendment would have the same effect as the requirement for entering into a Limited Services Agreement when rezoning a property from the Seasonal Residential (RS) zone to the Residential Limited Services (RLS) zone. It should be noted that this does not constitute the creation of a new private road, but rather, it implements a new zoning provision to resolve a zoning matter with respect to existing,

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municipally-owned roads within approved subdivisions where the intent was to bring the streets to municipal standards.

Details of the Proposed Amendment:

This proposed amendment to the Zoning By-law, as advertised, would only revise Section 3.4 in the General Provisions section of the Zoning By-law. Section 3.4 (Frontage on an Improved Street) of Zoning By-law No 02-121 would be amended inserting the following new bullet immediately after the second bullet:

“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;”

The above-noted amendment, as drafted, does not provide site-specific zoning for all undeveloped subdivision lots with frontage on unmaintained roads, such as in the case of Maberly Pines. Accordingly, the zoning of the properties would remain as Residential (R). There would be no 'flag' or trigger mechanism in place on the zoning schedule that would identify the requirement to enter into Road Access Agreement prior to development. It should be noted that all zoning by-law provisions (including those within Section 3 (General Provisions)), remain applicable, and therefore all new development must comply with all relevant provisions. Although certain zoning provisions only appear in the 'General Provisions' section of the Zoning By-law (e.g. parking requirements, open storage), this does not exempt their applicability with regards to new development.

Council had previously considered the implementation of a 'holding provision' that could only be removed on the condition that a Road Access Agreement is executed prior to issuance of a building permit. It is understood that Council has decided that the holding provision was not a desirable zoning approach and prefers not to introduce a holding provision as a means to flag a requirement to comply with Section 3.4.

Should Council wish to incorporate a mechanism on the zoning schedule to clearly indicate the requirement for compliance with Section 3.4, it would be necessary to re-advertise for another public meeting, and include a more precise indication of which lots are to be rezoned. It is our opinion that there would be significant risk of an appeal to the amendment if the zoning amendment had the effect of rezoning certain lots without giving notice of which lots were to be rezoned.

It is our opinion that the amendment, as drafted, is appropriate and that there is no need to provide any further indication in the zoning by-law that refers readers to Section 3.4. This approach is in keeping with the overall structure of the Zoning By-law and the requirement for all development to comply with all relevant sections of the document.

Consultation:

M:\1998\98096\DATA\WABERLY PINES\GENERAL PROVISION 3.4\20090408-AMENDMENT TO SECTION 3.4 REPORT.DOC

Suite 200, 240 Michael Cowpland Dr., Ottawa ON K2M 1P6 Tel: (613) 254-9643 Fax: (613) 254-5867 www.novatech-eng.com

Consulting Engineers & Planners



Notice of the Public Meeting was given in accordance with the requirements of Ont. Regulation 545/06. The notice of public meeting was appeared in the Perth Courier on March 24th, 2009, and was mailed to owners of lots in the Maberly Pines subdivision and Bennett Lake Estates.

As indicated above, the notice of public meeting indicates that the proposed amendment affects Section 3.4 of the Zoning By-law. It does not provide clear indication of any specific lots that would be affected.

As of the date of this report, the following comments have been received with respect to this proposed amendment:

- Submission from Antonin Wild, letter dated April 7, 2009 (attached)

RECOMMENDATION:

This is a general amendment to the Township Zoning By-law with the intent that it addresses site-specific circumstances affecting certain subdivision lots in the Township. The amendment has been written in a manner that it is keeping with the structure of zoning by-law document, and therefore no site-specific zoning is required.

It is recommended that the Township Zoning By-law No. 02-121 be amended, as drafted.

Please let me know if you have any questions.

Yours truly,

NOVATECH ENGINEERING CONSULTANTS LTD.

A handwritten signature in black ink, appearing to read "Steve Pentz", is written over a light grey rectangular background.

Steve Pentz, MCIP RPP
Planner

THE CORPORATION OF TAY VALLEY TOWNSHIP

ROAD ACCESS AGREEMENT

THIS AGREEMENT made in triplicate this day of , **2022**

BETWEEN: **Enter full legal name of all owners,**
 Herein called the “Owner” **OF THE FIRST PART**

AND: **The Corporation of Tay Valley Township,**
 Herein called the “Township” **OF THE SECOND PART**

WHEREAS, the Owner owns the **West Half of Lot 1, Concession 1, Dalhousie, Except Part 1, Plan 26R930, Tay Valley Township, PIN 05032-0111 (LT)** (“the Property”), in the Township;

AND WHEREAS, access to the Property is from a road (the “Private Unassumed Road”) that is owned by the Township but is not an improved road and has not been assumed by the Township;

AND WHEREAS, the Township’s Zoning By-Law provides that no building shall be erected on a lot if it does not have access on an improved road unless a Road Access Agreement, to the satisfaction of the Township, has been executed;

AND WHEREAS, the Owner has applied to the Township for a building permit and requires the use of a Private Unassumed Road in order to access their Property, as described in Schedule “A”, attached hereto;

AND WHEREAS, the Owner is desirous of entering into an Agreement with the Township, Notice of which shall be registered on title to the Owner’s Property, and the Township is entitled to enforce the provisions of the Agreement against the Owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the Property;

AND WHEREAS, The Corporation of Tay Valley Township has passed By-Law No. 2017-064 granting the Reeve and Clerk the authority to sign this Agreement;

AND WHEREAS, Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides the municipality with the powers of a natural person and the authority to govern their affairs as they consider appropriate;

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the sum of TWO (\$2.00) DOLLARS paid by the Owner to the Township, the receipt of which is hereby acknowledged and in consideration of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

1. **THAT** the Owner agrees:
- a) **THAT**, the Owner acknowledges that the Private Unassumed Road has not been brought up to municipal standards and has not been assumed by the Township.
 - b) **THAT**, the Owner acknowledges that municipal services such as snow removal and road maintenance of the Private Unassumed Road shall not be provided by the Township and that some public services such as garbage removal, school bussing and some emergency services may be severely restricted.
 - c) **THAT**, the Owner reimburse the Township the cost to supply and install appropriate signage indicating that the Private Unassumed Road is not maintained by the Township and to use at your own risk, OR the Owner is to provide evidence that such sign already exists.
 - d) **THAT**, if such sign is ever removed, it must be immediately replaced.
 - e) **THAT**, the Owner provide and keep in force during the term of this agreement, Commercial General Liability Insurance as required by the Township' insurer which shall include but not be limited to the following:
 - A limit of liability of not less than \$5,000,000 per occurrence;
 - The Township shall be named as an additional insured;
 - The Policy shall contain a provision for cross liability;
 - Non-owned automobile coverage with a limit of at least \$5,000,000 including contractual non-owned coverage;
 - That 30 days prior notice of cancellation of the Policy shall be given in writing to the Township
 - f) **THAT**, if the local road association has the required insurance coverage as per item e), the Owner does not have to obtain separate insurance coverage.
 - g) **THAT**, the required insurance coverage be received and approved by the Township prior to the commencement of any work on the said Private Unassumed Road.
 - h) **THAT**, the insurance requirements as outlined in item e) and g) above shall also apply to any third party that undertakes work on behalf of the Owner on the said Private Unassumed Road.
 - i) **THAT**, the Township shall not be responsible for any maintenance, construction or repair of the said Private Unassumed Road.
 - j) **THAT**, any work, other than routine maintenance, to be done on the Private Unassumed Road' shall be itemized and approved by the Township.

- k) **THAT**, any work on the Private Unassumed Road shall be completed in accordance with the "Private Road Construction Standards" and the "Fire Department Access Route" - "Access Route Design" Section 3.2.5.6 of the Ontario Building Code, attached hereto as Schedule "B".
- l) **THAT**, the Owner must complete any work on the Private Unassumed Road to the satisfaction of the Public Works Manager and the Fire Chief of the Township. That notwithstanding that the drawings and plans have been reviewed by the Township, the Township takes no responsibility for the design or adequacy of the work to be done.
- m) **THAT NOTHING**, in this Agreement obligates the Township to assume the works as a travelled highway. However, the Township maintains its right to assume ownership of the improvements at any time without compensation to the Owner.
- n) **THAT NOTHING**, in this Agreement gives the Owner sole use of the subject Private Unassumed Road or authority to prevent use by the general public.
- o) **THAT**, the Owner hereby indemnifies, protects and saves harmless the Township, its elected officials, employees and agents, from and against any and all claims, losses, damages, liabilities, costs and expenses, including legal fees and disbursements, which may be brought against the Township as a result of the use of the said Private Unassumed Road, or as a result of any delay in the provision or any failure to provide services or emergency vehicles to the Property.
- p) **THAT**, in the event of a sale of its interest in the Property, the Owner shall cause, as part of the sales transaction or assignment, the purchaser, transferee or assignee to enter into a written road access agreement with the Township on the same terms as this Agreement and in a form satisfactory to the Township.

2. Any **NOTICE** required to be given hereunder to the Township or the Owner shall be in writing and may be delivered personally or be sent by registered mail.

3. **NOTICE** shall be given to the Owner at the address shown on the tax roll for the Owner's Land. **NOTICE** shall be given to the Township at the following address:

The Corporation of Tay Valley Township
Attn: Clerk
217 Harper Road
Perth, ON K7H 3C6

Any notice sent by registered mail shall be deemed to have been received by the party to whom it is addressed on the third (3rd) business day following such mailing.

4. **ALL COSTS** incurred by the Township in connection with the preparation, execution and registration of this Agreement shall be paid by the Owner.

5. **IF THE** Owner fails or refuses for any reason to comply with the requirement of this agreement, the Owner shall be in default and the Township may, jointly or severally on seven (7) days' notice require the Owner to remedy the default, failing which the Township may, jointly or severally without further notice and without prejudice to any other rights and remedies available to it, do such thing and perform such work as is necessary to rectify the default and recover the expense incurred in doing it by action or in like manner as municipal taxes in accordance with the provisions of Section 446 – Orders and Remedial Action, of the *Municipal Act, 2001*, as required.

6. **THAT THIS AGREEMENT** or Notice of this Agreement be registered against the title of the subject lands described in Schedule "A" attached hereto and shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns and the Township shall be entitled to enforce the provisions against the Owner and all subsequent owners of the lands.

IN WITNESSETH WHEREOF the parties hereto have executed this agreement as of the date of the first above written.

SIGNED, SEALED and DELIVERED)
 In the presence of)

_____)
Witness)

_____)
Witness)

_____)
Owners Full Legal Name)

_____)
Owners Full Legal Name)

_____)
**THE CORPORATION OF
 TAY VALLEY TOWNSHIP**)

_____)
Rob Rainer
Reeve
(I have the authority to bind the Corporation))

_____)
Amanda Mabo
Clerk
(I have the authority to bind the Corporation))

SCHEDULE "A"

Road Access Agreement
(Owners Full Legal Names)

Description of the Owner's Lands

W1/2 LT 1 CON 1 DALHOUSIE, EXCEPT PT 1, 26R930;
TWP OF TAY VALLEY
PIN 05032-0111 (LT)
Roll Number -

Description of the Private Unassumed Road

XXXX

insert map

SCHEDULE "B"

Private Road or Unopened Road Allowance Construction Standards

Minimum Width of right of way	20.0 m (66 ft.)
Minimum width of clearing	9.0 m (30 ft.)
Surface	a) width - 4.5 m (15 ft.) b) depth - 100 mm (4 in.) c) type – crushed gravel or stone
Shoulder Width	1.0 m (3 ft.) each side (including rounding)
Depth of granular base	As determined after consolidation of sub-grade material
Ditches	Minimum depth from crown of road to bottom of ditch 0.5 m (1.5 ft.). All ditches to be carried to sufficient outlet.
Culverts	CSP, concrete or plastic. Minimum 300 mm (12 in.) diameter, or larger as required.
Geometrics	Such that fire protection equipment can pass safely
Grade (maximum)	12.5%
Cross Fall	3%

Ontario Building Code

Fire Department Access Route.

The design and construction of fire department access routes involves the consideration of many variables, some of which are specified in the requirements in the Ontario Building Code. All these variables should be considered in relation to the type and size of fire department vehicles available in the municipality or area where the building will be constructed. It is appropriate, therefore, that the local fire department be consulted prior to the design and construction of access routes.

3.2.5.6. Access Route Design

- (1) A portion of a roadway or yard provided as a required access route for fire department use shall:
 - (a) have a clear width not less than 6 m, unless it can be shown that lesser widths are satisfactory,
 - (b) have a centre line radius not less than 12 m,
 - (c) have an overhead clearance not less than 5 m,
 - (d) have a change of gradient not more than 1 in 12.5 over a minimum distance of 15 m,
 - (e) be designed to support the expected loads imposed by firefighting equipment and be surfaced with concrete, asphalt or other material designed to permit accessibility under all climatic conditions,
 - (f) have turnaround facilities for any dead-end portion of the access route more than 90 m long, and
 - (g) be connected with a public thoroughfare.

Tay Valley Township Private Unassumed Roads Options Assessment

Prepared for

Tay Valley Township



217 Harper Road,
Perth, Ontario, K7H 3C6

Prepared by



Jp2g Consultants Inc.

12 International Drive, Pembroke, Ontario, K8A 6W5
T.613.735.2507 F.613.735.4513
Jp2g Project No. 21-7016C

Version 2.2 for Distribution

March 29, 2022

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1.0 Introduction

When approaching an issue such as private unassumed roads, consideration must be given to the Township Council's two main responsibilities: the corporate responsibility to consider the broader public good and minimize exposure to risk; and the responsibility to consider the interests of the individual property owners. In both cases, the issue of private unassumed roads is approached from a risk reduction/risk management perspective. The critical issue for private unassumed roads relates to being able to ensure safe access for emergency vehicles. The options identified below present various degrees of risk associated with emergency vehicle access.

It is understood that there is no one option to address all of the private unassumed road scenarios within Tay Valley Township. When considering the options, the question of which one is best suited to manage the unique situation of a given road and to address public health and safety concerns is paramount.

Going forward, it has been assumed that the intent of this initiative by the Township is to identify the appropriate mechanisms to guarantee private unassumed roads are maintained to a standard to ensure emergency vehicle access, that Council's corporate responsibilities for risk reduction are addressed, and that the burden on the individual property owners is fair and reasonable.

Three ownership/maintenance options have been identified and assessed related to private unassumed roads within Tay Valley Township. The three options are:

Option #1: Taking the Road Out of Township Ownership (Private Road)

Option #2: Road is Township Owned and Assumed (Public Road)

Option #3: Road is Township Owned and Privately Maintained (Status Quo)

It should also be stated that the Township's current approach to private unassumed roads, whereby those wishing to develop or redevelop their lands, accessed by a private unassumed road, are required to enter into a road access agreement, ensure emergency vehicle access, provide proof of insurance coverage, and be placed in the Limited Services Residential zone is a valid option and protects the interests of the Township.

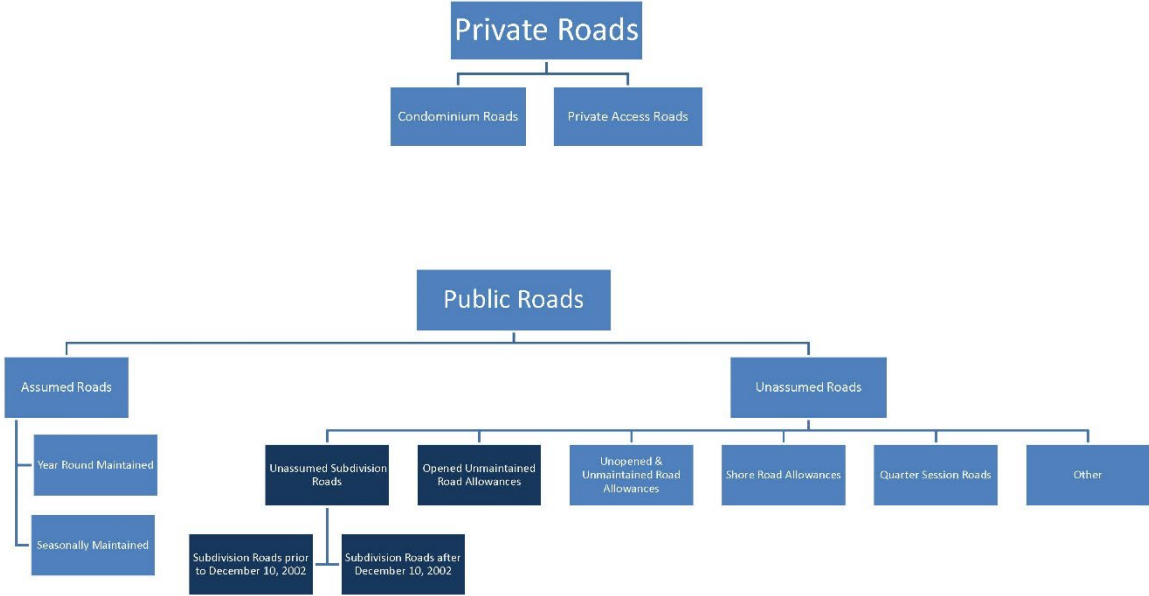
This Report is intended to further the Working Group's discussion by assessing the nature (pros & cons) of the three options under the headings of:

- Liability
- Maintenance
- Financial
- Health & Safety
- Risk Reduction Tools
- Road Standards
- Situations where Option is Preferred
- Impact on Benefiting Property Owners

2.0 Background

The Terms of Reference for the Working Group stressed the need to clearly identify and examine all the issues, problems and risks surrounding the use of private unassumed roads and how to address issues in a manner that is fair and equitable to the general ratepayers of the Township and those benefiting from the use of private unassumed roads to access their property.

For the purpose of this Report, the term “private unassumed roads” is defined as representing all roads owned by the Township but which have not been “assumed” into the municipal “public road system”. It is understood in Tay Valley Township that the majority of private unassumed roads are located within plans of subdivision, registered prior to 2002. There are some situations where the private unassumed roads are on unopened road allowances, not created through a plan of subdivision, and which are incorporated into the category of “private unassumed roads” for purposes of this report. In such situations, the Township does not maintain the private unassumed road. This is distinguished from “private roads” which are located on lands privately owned. This Report will only focus on “private unassumed roads”.



Dark Blue = Private Unassumed Roads

3.0 Option Assessment

The following assessment of the three options is intended to facilitate the Working Group’s discussions on the appropriateness for each option and situations where each option may be preferred.

3.1 Option #1 Taking Road out of Township Ownership (Private Road)

Option #1 consists of a situation where the Township currently owns a private unassumed road and transfers the land to the ownership of a “private road authority”. Ideally, the private road authority would be in the form of a common element condominium corporation or a private road corporation and represent the benefiting property owners. There may also be situations where a private road authority would be a single individual.

Under this option, the road would change from being a “private unassumed road” to a “private road”. Once this transfer takes place, the property would be handled the same as all other private roads within the Township.

3.1.1 Liability

If the lands are transferred to a private road authority such as a condominium corporation or road corporation, the majority of the liability associated with road ownership will be transferred to the new corporation.

Although the Township's liability will be greatly reduced, it will still retain limited liability due to its responsibility as the approval authority to ensure all development can be supported and that it represents good land use planning, not unlike any other existing private road.

It may be beneficial for the new road owner(s) to enter into a Private Road Authority Transfer Agreement with the Township which would detail the new road owner's maintenance program and schedule and insurance obligations.

3.1.2 Maintenance

All of the responsibility for maintenance of the "private unassumed road" would be taken on by the new private road authority. The private road authority's maintenance program and schedule could be detailed in a Private Road Authority Transfer Agreement with the Township. Maintenance programs could include reference to road surface maintenance, snow clearing, ditches and drainage, financing of program, capital repair and replacement. There is most likely some form of maintenance program already in place since the property owners have been responsible for the maintenance on the private unassumed road prior to the transfer.

The Township would continue to have maintenance responsibilities associated with Township intersection controls where the private road abuts an existing public Township road (signage, drainage, grading), similar to the Township's responsibilities where existing private roads abut existing public roads.

3.1.3 Financial

The primary benefit of this option is that it removes the Township's liability costs associated with road ownership. The Township would continue to have the financial responsibilities associated with intersection controls where the private road abuts an existing public road (signage, drainage, grading).

It is assumed that there will be legal costs, surveying costs and staff time involved with such a road transfer. The Township may also consider financial assistance in bringing the private unassumed road up to the minimum private road standard in the form of loans, grants or in-kind contributions.

3.1.4 Health & Safety

Generally, having a private road authority assume the road maintenance responsibilities of the private road would not be comparable to the Township's standard for maintaining public roads. This implies that the private road would be less safe for use by members of the public than a public road.

3.1.5 Risk Reduction Tools

As part of the transfer to the new private road authority, the Township should require a maintenance program and schedule, a report from Emergency Services that the road is of a standard that will permit emergency vehicle access, and proof of sufficient insurance. It may be advisable that this information be in the form of a "Private Road Authority Transfer Agreement" that details the terms, conditions, minimum road standards and responsibilities of the road transfer.

3.1.6 Road Standards

As a minimum, all private unassumed roads transferred out of the Township's ownership to a private road authority should meet the Township's minimum "private road standard" and be deemed to be accessible for emergency vehicles. The emergency vehicle access standard set out in the Ontario Building Code typically forms the basis of a minimum private road standard. The construction or improvement of the private road to the minimum private road standard should be a condition of the transfer of the ownership of the lands to the private road authority.

3.1.7 Situations Where Option is Preferred

This option would be best suited to situations where there is a new benefiting development proposal that has the capacity to assume ownership and maintenance responsibilities. Such situations would involve new private developments which could establish a common element condominium. It may also be an option where there is a well-organized group of benefiting property owners, similar to the Bennett Lake Estates Association. The costs to establish a condominium corporation or incorporated road authority can be considerable and therefore demonstration of financial capacity by the new road authority is recommended. The Federation of Ontario Cottagers Association (FOCA) can provide assistance to the Private Road Authority throughout the process.

3.1.8 Impact on Benefiting Property Owners

This option provides both parties with a high degree of certainty that the private road will be maintained to an acceptable standard and ensures emergency vehicle access. As such this option may result in a modest decrease in homeowner's insurance given the assurances for emergency vehicle access.

There will likely be annual fees that benefiting property owners will be required to pay to the new road authority, which may already be occurring, and it is possible that there will be operational efficiencies which the road authority may realize over historic maintenance costs.

Depending on the condition of the private unassumed road, there may be significant costs associated with bringing the road up to private road standards. These costs should be borne by the benefiting property owners, although the Township may consider financial assistance as discussed in Section 3.1.3.

3.2 Option #2 Road is Township Owned & Assumed (Public Road)

Option #2 consists of a situation where the Township would continue to own the private unassumed road. The status quo would involve situations where the Township does not provide maintenance to the private unassumed road, and the maintenance is carried out on a more informal basis by benefiting property owners. This is explored further in Option #3.

To enable this Option to evolve to the point where the Township assumes the road into the municipal road system and assumes maintenance responsibilities, it would be necessary for the road to be brought up to the minimum "public road" standard, understanding that the minimum public road standard is greater than the minimum private road standard.

In this situation, the road classification would change from "private unassumed road" to "public assumed road".

3.2.1 Liability

If the road is retained in Township ownership and assumed into the municipal road system, all the liability will rest with the Township the same as any other road within the road system. In order to manage the liability, the Township should ensure that the road is brought up to minimum public road standards, is maintained at the same standards as other similar classed roads within the municipal road system, that emergency vehicle access is confirmed, and the road is identified in the Township's insurance coverage.

3.2.2 Maintenance

Once the road is assumed into the Township road system, the Township would be responsible for maintenance similar to all other public roads within the Township's road system.

3.2.3 Financial

All financial responsibilities for the maintenance and capital repair and replacement of the road will rest with the Township, the same as all other roads within the Township's road system. As such, the road will be placed in the Township's Asset Management Plan. On an ongoing basis, maintenance cost recovery would be limited to property taxation from the benefiting property owners.

One of the due diligence undertakings the Township should consider includes assurances that the operational costs of maintaining the road and capital repair and replacement will be reasonably offset by municipal taxation revenue. The Township's costs for assuming a private unassumed road as a public road can be significant, even if the road is constructed to a standard which is acceptable to the Township. If the road is located in an isolated area where there are no other Township roads, it could place significant and long-term impacts on staff and capital resources.

It is assumed that there will be legal costs, surveying costs and staff time involved with assuming the road into the Township's road system.

Bringing the road up to minimum municipal standards may involve significant costs. Road surface, drainage, and signage would all need to be up to minimum standards. It is recommended that prior to any consideration of a request for assumption of a private unassumed road as a municipal road, the proponents of such a request should first be required to improve the road, at their own expense, to the Township's minimum public road standard. This requirement should be in addition to the requirement that the Township evaluate the impact that assuming the road would have on the Township's overall financial position.

That said, the Township does have the option to consider financing of the road improvements up to minimum standards through funds raised by benefiting property owners, the Township sharing costs with benefiting property owners, or the Township fully funding the road upgrade. There may be options to utilize a Community Improvement Plan (CIP), however much of the funds associated with CIPs are typically provided by the local municipality to the private property owners. The Township may wish to consider a local improvement charge under O. Reg 586/06 in situations where there is significant community buy-in to the plan.

If there was potential for new development along the road to be assumed, it could be possible to apply some of the associated development charge funds tied to the new development to road upgrade costs, assuming the road upgrade can be attributed to growth. For Development Charges (DCs) to be an option, the road upgrade would need to be identified in the Township's Development Charges Background Study as a growth-related works. As a result, there would need to be a "new

development” component to the upgrading of the road – i.e., there would be vacant lots that if developed would pay a DC charge and a portion of that charge would be applied to the road upgrade.

3.2.4 Health & Safety

Having the private unassumed road upgraded and brought into the Township road system would provide the highest order of protection of public health and safety, as municipalities are in the business of maintaining and operating public roads. It is assumed that a public authority maintaining a road is preferred over private operation.

3.2.5 Risk Reduction Tools

Keeping the road in Township ownership and bringing the road into the Township road system and brought up to minimum municipal standards would represent the highest order of risk reduction. The Township owning and operating a road that is constructed to minimum public road standards ensures that the Township’s liability is limited to its operational norm.

The Township must also consider that because these roads are currently owned by the Township it already has liability associated with the road even though it is privately maintained. Under Section 44 of *Municipal Act* all roads must be maintained to a reasonable standard in the circumstances. The fact that the road is privately maintained may provide some flexibility for a court to find that the “circumstances” allow for a lesser standard, but it will not eliminate liability. There is a modest financial benefit to bringing the road into the municipal road system as the Township will have better control over the maintenance, and therefore potential liability associated with the road.

3.2.6 Road Standards

Under Option #2 it is assumed the road would be brought up to minimum public road standards, to enable it to be brought into the Township road system. The Township does have the option, where conditions are physically impossible to widen or upgrade the road or where grades exceed 8%, to accept the road into the public road system at a lesser standard. As a minimum, the road should be established at the private road standard.

3.2.7 Situations where Option is Preferred

This option is the most preferred option for most situations because the Township is the best authority to own and maintain roads and has the capacity to ensure standards are maintained and thus reduce liability and ensure public health and safety. That said, this option may involve the expenditure of significant funds to bring the road up to standard. In such cases, there should be clear public interest and benefits to bring the road into the Township road system.

Ideally, this option would be pursued where the private unassumed road in question is currently up to Township standards or could easily be brought up to standards. Also, if there are public community amenities such as water access points, beaches, etc. which are accessed from the private unassumed road, this option could be considered to ensure the public has safe access to these public amenities.

Other municipalities have found that the proportion of permanent residential development on a private unassumed road is a key indicator of the likelihood for requests from benefiting property owners for the Township to assume the road. This is because, as permanent occupancy on the road increases, residents of those roads may perceive an increasing discrepancy between the taxes they pay and the services they receive despite their knowledge upon purchase of the property that the road was a privately maintained road. As the year round use of the private unassumed roads approaches that of

a public road, residents may start to expect the physical and maintenance standards of the private unassumed road to be similar to that of a public road and expect that their taxes will be used for the purposes of maintenance of the road. Thus, there is a need to monitor where the conversion of seasonal residences to permanent homes is taking place.

This option may also be favourable when the private unassumed roads are either completely or almost completely developed to Township public road standards so that finalizing the road construction with public funds is justifiable for the Township.

3.2.8 Impact on Benefiting Property Owners

This option would provide the benefiting property owners with the highest level of road maintenance of the three options, based on the assumption that the public road would be maintained to the Township's public road standard. As such, this option may result in a modest decrease in homeowner's insurance given the public maintenance of the road.

There would be no annual fees that benefiting property owners would be required to pay. Their property taxes would be used to off-set the road maintenance costs. Property values may increase by being on a public road.

Depending on the condition of the private unassumed road, there may be significant costs associated with bringing the road up to public road standards. These costs should be borne by the benefiting property owners.

3.3 Option #3 Road is Township Owned and Privately Maintained (Status Quo)

Option #3 consists of a situation where the Township would continue to own the private unassumed road but have the maintenance carried out on a more informal basis by benefiting property owners. Ideally there would be some form of association formed by the benefiting property owners to address road operation and maintenance.

In this situation, the road classification would continue to be a "private unassumed road".

3.3.1 Liability

If the road continues to be owned by the Township and informally maintained by private parties, the Township's liability will be greater than the other two options. In addition to ownership liability, the Township would still be obliged to ensure as the approval authority under the Planning Act that all development can be supported and represents good land use planning.

Ideally the Township should encourage the benefiting property owners to create some form of incorporated body or road association which would take over maintenance responsibilities and ensure minimum private road standards.

Without an identified road association, the Township would be limited to establishing agreements with the individual benefiting property owners on a case-by-case basis as new development or cottage conversion is proposed. Such agreements would address road maintenance standards, and appropriate Limited Services Residential zoning. Case by case, overtime, this approach may gradually reduce the Township's liability exposure. This is the Township's current practice.

3.3.2 Maintenance

The responsibility for maintenance would rest with the benefiting property owners, whether organized or not. As a minimum, the road should be maintained to the Township's minimum private road standard to ensure emergency vehicle access.

The Township would continue to have maintenance responsibilities associated with Township intersection controls where the private unassumed road abuts an existing public Township road (signage, drainage, grading).

3.3.3 Financial

Under this option, the Township will not have the costs associated with maintaining the private unassumed road. The Township's financial responsibilities would be limited to intersection controls where the private unassumed road abuts an existing public road (signage, drainage, grading).

All financial responsibilities for the maintenance and capital repair and replacement of the road would rest with the benefiting property owners, similar to a private road.

3.3.4 Health & Safety

The maintenance of the private unassumed road by benefiting property owners, organized or informal, is typically not of a comparable standard to that of a publicly maintained road. Such roads should be under an agreement which specifies maintenance standards, terms, and conditions in order to help minimize potential health and safety concerns.

Having the private unassumed road upgraded and brought up to a minimum private road standard would assist in ensuring health and safety concerns are addressed.

3.3.5 Risk Reduction Tools

Ideally the Township would work with a road maintenance authority representing the benefiting property owners to establish an appropriate maintenance program and schedule and ensuring emergency vehicle access. It is advisable that this information be in the form of a "Road Maintenance Agreement" that details the terms, conditions, minimum road standards, and responsibilities of the road maintenance authority.

Without a road maintenance authority, the Township should strive to have agreements with individual benefiting property owners. Such agreements would be established as a condition at the time of a development application from a benefiting property owner. This is the Township's current practice.

3.3.6 Road Standards

As a minimum, all roads owned by the Township and maintained by others should meet the Township's minimum private road standard and be deemed to be accessible for emergency vehicles. The emergency vehicle standard set out in the Ontario Building Code should form the basis of a minimum private road standard.

It is understood that there are private unassumed roads where the costs associated with bringing them up to minimum private road standard may be prohibitive. In such situations, the Township could entertain reduced standards provided access for emergency services vehicles is ensured. This standard should only be considered acceptable for existing private unassumed roads, where the use of the road is limited or seasonal. Reduced standard roads should not be considered appropriate to support new growth or development or the conversion of seasonal dwellings to permanent dwellings.

3.3.7 Situations where Option is Preferred

This option is considered to have the highest level of liability and risk for the Township and is typically associated with existing situations. The Township has ownership liability but does not have control

over the maintenance of the road which would help to reduce the risks. This option is not appropriate to support new growth and development and would ideally evolve towards a situation where the Township transfers ownership as described in Option #1, or the road is upgraded to a minimum public road standard and assumed as described in Option #2.

3.3.8 Impact on Benefiting Property Owners

This option provides the benefiting property owners with the lowest degree of certainty that the private unassumed road will be maintained to an acceptable standard and that emergency vehicle access is maintained. This type of arrangement may have a negative impact on homeowner's insurance given the more informal road maintenance arrangement.

There will likely be annual fees that benefiting property owners will be required to pay to the new road maintenance authority. Without an appropriate dispute mechanism that would be found with a corporation as the road authority, the informal, voluntary nature this option may result in some benefiting property owners not agreeing to participate, leading to higher costs spread amongst the participating benefiting owners.

Depending on the condition of the private unassumed road, there may be significant costs associated with bringing the road up to private road standards. These costs should be borne by the benefiting property owners.

4.0 Summary

Each of the options presented are appropriate for different situations. It is fair to say that there is no one option that is suitable for all the current private unassumed roads. That said, Option #1 is the preferred option for many of the situations facing the Township. Where financially feasible, Option #2 provides the highest standard for road maintenance. Option #3 represents the status quo and should evolve towards Option #1 or Option #2.

The three options for the ownership and maintenance of private unassumed roads within Tay Valley Township have been assessed in terms of the characteristics related to liability, maintenance, financials, health and safety, risk reduction tools, standards, and situations where the option is preferred.

Option #1 is the recommended option of this report. This option would be best suited to situations where there is an entity that has the capacity to assume ownership and maintenance responsibilities. This option decreases the Township's ownership liability, however the Township would continue to have liability associated with its responsibility to ensure all growth and development can be supported and represents good land use planning.

Option #2 is a very good option for the Township from a liability, maintenance and health and safety perspective. It is also likely the most expensive option given the need to bring such roads up to municipal public road standards. Assuming roads into the municipal road system comes with a cost and the full financial implications of assuming the road should be clearly understood by all parties at the onset of an assumption exercise. The first step in this option is for the current assumption of private roads policy to be updated.

Option #3 appears to represent the majority of existing private unassumed roads and is presented as the status quo option. It contains the highest level of liability and risk exposure for the Township out of the three options assessed and is the least preferred option.

The most valuable tool that the Township has available to it to manage the risks associated with Options #1, #3 is the use of agreements which spell out road standards, maintenance standards and other relevant matters. It is recommended that all options involve a form of agreement which sets out maintenance standards as well as other matters such as insurance.

It is worth repeating that the higher the percentage of cottage conversion to permanent dwelling that exists along a private unassumed road, the higher the likelihood that the Township will face requests for the assumption of the private unassumed road. This points to the need to monitor where cottage conversions are occurring and on what type and quality of road the property is located.

Private unassumed roads which are not up to the private road standard should not be considered appropriate to support cottage conversions or new lot creation or development.

The following table provides a summary of the findings.

	Liability	Maintenance	Financial	Health & Safety	Risk Reduction Tools	Road Standards	Situations where Option is Preferred	Impact on Benefiting Owners
Option #1 Private Road	Private Road Authority	Private Road Authority	Private Road Authority	Good	Road Transfer Agreement	Private Road Standard	Road Authority, growth potential	Positive, annual maintenance costs
Option #2 Township Road	Township	Township	Township	Good	Township Maintained	Public Road Standard	Low costs to improve the road, growth potential	Positive, no maintenance costs beyond property taxes
Option #3 Status Quo	Township And Property Owners on Road	Private Ad Hoc	Private Ad Hoc	Lowest	Individual PUR Access Agreement	Private Road Standard	Status quo, limited growth potential	No guarantee of maintenance, annual maintenance costs

Option #1: Taking the Road Out of Township Ownership (Private Road)

Option #2: Road is Township Owned and Assumed (Public Road)

Option #3: Road is Township Owned and Privately Maintained (Status Quo)

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 street which will become an improved street pursuant to provision in, and financial security associated with, a subdivision agreement that is registered on 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.

Version History

Draft compiled by F. Johnson Original version 29-Aug-2022

Amendment made to align with GLH “Final” report (22-08-31 V4) 6 September 2022

Amendments made to include GR suggestions 8 September 2022

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

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 Code¹

“CECC” means a common elements condominium corporation incorporated under Part X of the Condominium Act²

“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 02-121³.

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>

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 August 28, 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; Plan 21- 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-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 established⁵ 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 Code⁶.
- (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 m² in building area.
- (4) Section 1.1.2.2 of the Building Code “Application of Parts 3, 4, 5 and 6” 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.
- (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.

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 ($\$1,382,400 \div 104$) 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 ($\$1,382,400 \div 278$) 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 ($\$1,382,400 \div 5,358$) 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 Titles⁷, 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
 - (2) amend its form of RAA so that, in future, its terms conform to the requirements of paragraph 7.04 (1) above.

⁷ Land Titles Act R.S.O. 1990 c. L.5

- 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

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

Act? A positive answer would appear to be inconsistent with the position 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 Act⁹ (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.

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