
Tay Valley Township Private Unassumed Roads Options Assessment

Prepared for

Tay Valley Township



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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:

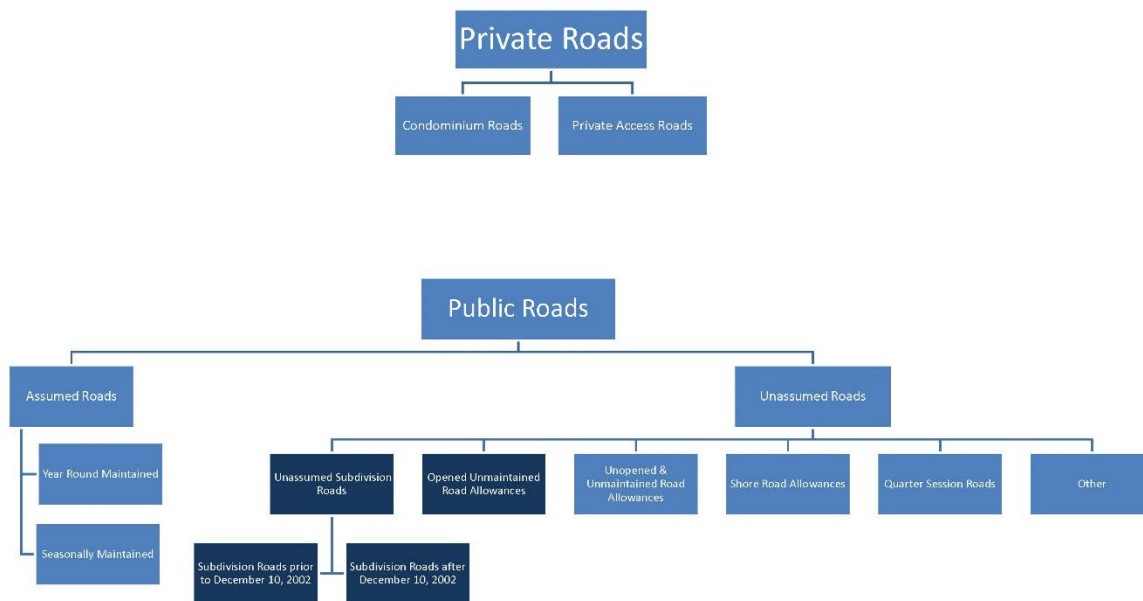
- Liability
- Maintenance
- Financial
- Health & Safety
- Risk Reduction Tools
- Road Standards
- Situations where Option is Preferred
- Impact on Benefiting Property Owners

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)