Legal Concerns Related to the Maberly Pines Subdivision Proposal

Prepared for: Maberly Pines and Adjacent Subdivision Property Owners

Date: May 6, 2026

Based on: Draft Report #CAO-2026-XX; PURWG Report (Aug 2022); Report #CAO-2023-03; Legal Opinion of Tony E. Fleming, LSO Certified Specialist in Municipal Law (Jan 2023); BluMetric Hydrogeological Review (2021; Professional Engineer's Technical Critique (2023)

Executive Summary The Maberly Pines Subdivision Completion Project cannot be assessed in isolation. A multi-year process involving a Township Working Group, independent professional engineers, an LSO-certified municipal law specialist, and the Township's own insurer has established that Tay Valley Township bears substantial legal liability arising from its predecessor townships' failure to enforce developer obligations in the 1980s. That liability context directly shapes — and arguably distorts — the 2026 proposal being presented to property owners. This report examines: (1) the Township's liability for private unassumed roads (PURs); (2) the legal position of Maberly Pines property owners; (3) the legal position of owners in adjacent subdivisions; (4) risks and benefits of the proposed June 2026 approval timeline; and (5) key legal questions that require answers before any approval is granted. Relevant legislation and case law are cited throughout.

Caveat

This report is prepared for informational purposes for property owners in and adjacent to the Maberly Pines Subdivision. It is not legal advice. Property owners with concerns about their specific legal position — particularly regarding the capital charge mechanism, the right to petition, and the security lot proceeds issue — should consult an independent lawyer experienced in Ontario municipal law before the June 2, 2026 Committee of the Whole meeting.

1. Background: The Private Unassumed Roads Problem and Township Liability

The legal framework within which the 2026 Maberly Pines proposal must be assessed begins not in 2026 but in the 1970s and 1980s, when predecessor township approved plans of subdivision without adequately enforcing developer obligations to build roads to acceptable standards.

What Is a Private Unassumed Road (PUR)?

A private unassumed road is a road owned by Tay Valley Township — and therefore a public highway under the Municipal Act, 2001 — that the Township has never formally assumed for maintenance purposes. As Tony Fleming, LSO Certified Specialist in Municipal Law, confirmed in his January 2023 opinion: roads within registered plans of subdivision are deemed public highways upon plan registration, regardless of whether they are maintained. Note that only a redacted version of this opinion was provided to the public.

> *"Notwithstanding the fact that the roads are defined as public roads, the Township has in most cases never maintained the roads and often the roads were never built to a standard that would be acceptable to the Township to assume for use or maintenance." — Tony E. Fleming, LSO Certified Specialist in Municipal Law, January 2023*

The Scale of the Problem

Tay Valley Township has at least 20 unassumed subdivision roads across 8 registered plans of subdivision, affecting approximately 278 properties. The Working Group estimated the cost of bringing all PURs up to Low Cost Bitumen (LCB) municipal standard at approximately $1,382,400 — a figure that has risen significantly since 2022 with construction inflation.

Who Is Responsible?

The Working Group unanimously concluded that responsibility rests jointly with: the developers who failed to perform their subdivision agreement obligations; and the predecessor township which failed to enforce those obligations, obtain adequate financial security, or pursue legal remedies against defaulting developers.

The Township's solicitor confirmed that the Township does have real liability under Section 44 of the Municipal Act for the condition of these roads — and that liability cannot be wished away by calling roads 'private'. There is again some ambiguity in this opinion, and the liability under s 44 merits a second opinion.

2. The Maberly Pines Subdivision Agreement: A History of Broken Obligations

The Developer: Lakeside Living Limited

Lakeside Living Limited was the developer of Maberly Pines (Plan 21, registered December 8, 1980). This was not the Township's first dealing with this developer. Lakeside Living had previously registered Plan 6 (Little Silver Lake Road) in 1976. The Working Group found no evidence that the predecessor Township adequately vetted developers' financial capacity, nor that it pursued legal remedies against Lakeside Living when it defaulted on Plan 6 obligations — yet the Township subsequently entered into a new subdivision agreement with the same developer for Maberly Pines four years later.

The Security That Was Not Used

Paragraph 9 of the Maberly Pines Subdivision Agreement dated September 2, 1980 required Lakeside Living to deposit a deed for Lot 9 and three other lots as security. If the developer failed to bring roads to acceptable standards within three years of plan registration (i.e., by December 3, 1983), the Township was entitled to register the deed, sell the lot, and use the proceeds for road improvement. However, the Acting Treasurer reported that he 'assumed' that the proceeds when into general revenue. The disposition of these funds needs to be clarified.

WARNING: The three-year deadline expired in December 1983. The roads were never completed. The Township's Acting Treasurer confirmed at a 2021 public meeting that three security lots (Lots 14, 37, and 44) were sold between 2013 and 2020 for approximately $32,000 total — and that the proceeds went into general revenues, NOT to road improvement in Maberly Pines. This appears to be a direct breach of the Subdivision Agreement's express requirement that proceeds be used for road improvement.

The 2026 proposal makes no mention of this history, nor does it account for the proceeds from those lot sales in the cost calculation presented to property owners.

3. The Township's Legal Liability Under Section 44 of the Municipal Act

The most important legal reality governing this situation is that Tay Valley Township already has liability for the condition of the roads in Maberly Pines and all other PUR subdivisions. This is confirmed by the Township's own legal counsel.

Section 44 of the Municipal Act, 2001

> *Section 44(1): "The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge." Section 44(2): "A municipality that defaults in complying with subsection (1) is, subject to the Negligence Act, liable for all damages any person sustains because of the default."*

Fleming confirmed: the unassumed roads are subject to section 44 and the Township must maintain them in a state of repair that is reasonable in the circumstances. The fact that the Township does not maintain the roads at all is not a 'circumstance' that allows the Township to argue that its conduct is reasonable.

The Defence Provisions Are Narrow

Section 44(3) provides limited defences: the Township did not know and could not reasonably have known about the state of disrepair; it took reasonable steps to prevent the default; or minimum standards under O. Reg. 239/02 were met. None of these defences is readily available for roads the Township has known about for decades, for which it issues building permits, and on which it has taken no maintenance action whatsoever.

Relevant Case Law

Stewart v. Peel (Regional Municipality), 1995 CanLII 7379 (ON CA)

Ontario Court of Appeal confirmed municipalities cannot avoid Section 44 liability simply by failing to classify or maintain roads. Knowledge of use is sufficient to trigger the duty.

Housen v. Nikolaisen, 2002 SCC 33

Supreme Court of Canada on the standard of care applicable to municipalities in road maintenance cases and the allocation of fault under the Negligence Act.

Fordham v. Dutton-Dunwich (Municipality), 2014 ONCA 891

Ontario Court of Appeal confirmed that a municipality's failure to inspect and maintain a road known to be used can constitute actionable negligence under Section 44.

Fontaine v. British Columbia (Official Administrator), 1998 CanLII 814 (SCC)

Cited by the Working Group on the standard for establishing a prima facie case of negligence on balance of probabilities — relevant to the predecessor townships' failures.

4. Road Access Agreements: Are They Lawful and Are They Fair?

Road Access Agreements (RAAs) have been the Township's primary tool since 2009 for managing PUR liability — by transferring risk to individual property owners. Both the Working Group and the Township's legal counsel examined their legality and fairness in detail.

Are RAAs Legally Required?

Fleming confirmed that neither insurance requirements nor indemnity clauses in RAAs are statutory requirements. No other property owner in the Township is required to insure municipal roads they use. The insurance requirement was not imposed by the Township's own insurer — Halpenny Insurance confirmed this explicitly. The requirement was devised internally to shift financial risk from the Township to individual lot owners.

The Fairness Problem

> *"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 any way responsible for causing, the problems associated with PURs." — PURWG Report, August 2022*

The RAA indemnity has no maximum cap, meaning property owners who sign have theoretically unlimited personal liability exposure — while the Township itself carries $50 million in primary and excess liability coverage. The Working Group found this arrangement fundamentally inequitable and recommended its elimination, as indeed did the Council in its resolution of 2019.

The 2023 Council Decision

Despite the Working Group's recommendation that the Township assume all PURs at Township expense, Council adopted Resolution #C-2023-02-03 in February 2023, directing that RAAs be maintained and that road associations be established, with the Township contributing only $5,000 per association toward setup costs and $500 annually toward insurance — effectively preserving the status quo.

5. Legal Position of Maberly Pines Property Owners

What Property Owners Did Not Bargain For

Lots in Maberly Pines were sold to purchasers beginning in 1981 on the basis of a registered plan of subdivision. Purchasers could reasonably have expected — and the subdivision agreement required — that roads would be completed to municipal standard within three years. Neither the developer nor the predecessor township delivered on this expectation. Current owners are now being asked to pay for obligations that should have been discharged in 1983.

The Capital Charge Mechanism and Property Owner Rights

- Under Section 391 of the Municipal Act, 2001, the Township may impose fees or charges for services or activities it provides. However, the charge must be imposed by by-law and must be reasonably related to the cost of the service.
- Under O. Reg. 586/06 (Local Improvement Charges), a majority of owners representing at least 50% of the assessed value of all affected lots may formally object to a local improvement charge, preventing the Township from imposing it for two years absent Ontario Land Tribunal approval. This petition right applies to the current proposal for Maberly Pines: owners representing one-half of the value of the lots to be specially charged can prevent the Township from proceeding. Given the complexity of these provisions, the property owners in Maberly Pines should be given time to see independent legal counsel.
- The Working Group explicitly recommended (Recommendation 4) that 'a Special Development Charge is NOT imposed on lot owners in Maberly Pines.' This recommendation was made on the basis that the Township's own failures created the problem. Council proceeded with the capital charge approach despite this recommendation.
- The final charge will not be set by by-law until late 2027 or early 2028, after all work is complete. Property owners are being asked to approve an estimated amount with no binding cap.

The Unresolved Security Proceeds Question

A legally significant question not addressed in the 2026 proposal is what happened to the approximately $32,000 in proceeds from the sale of security lots (Lots 14, 37, and 44). The Subdivision Agreement expressly required those proceeds to be used for road improvement in Maberly Pines. Property owners may have grounds to argue that those funds should be applied as a credit against any capital charge.

Property owners should formally request, in writing before the June Council meeting, a full accounting of the proceeds from Lots 14, 37, and 44, and a written explanation from the Township of why those funds were not applied to Maberly Pines road improvements as required by the 1980 Subdivision Agreement.

6. Legal Position of Adjacent Subdivision Owners (Rainbow Lane, Silvery Lane, Little Silver Lake Road)

Shared Developer History

Critically, all three adjacent subdivisions share the same developer: Lakeside Living Limited. Plan 6 (Little Silver Lake Road) was registered September 24, 1976; Plan 21 (Maberly Pines) on December 8, 1980; and Plan 29 (Rainbow Lane / Silver and Rainbow Lakes) on December 12, 1982. All three subdivisions share the same root cause: a developer who repeatedly failed to meet road construction obligations, and a predecessor township that repeatedly failed to enforce them.

These Subdivisions Have Their Own PUR Problems

Rainbow Lane, Rainbow Lane A, Silvery Lane, and Little Silver Lake Road all appear on the Township's list of subdivisions with private unassumed roads. Under Council's February 2023 resolution, Little Silver Lake Road was made the first priority for road association establishment, with Rainbow Lane (6th) and Silvery Lane (7th) following later. These adjacent subdivisions remain in PUR status indefinitely, with their owners still subject to RAA requirements and their attendant insurance obligations.

The Environmental and Watershed Overlap

As established by Dr. F. Johnson P.Eng. on behalf of the Little Silver and Rainbow Lakes Property Owners Association, the Maberly Pines subdivision sits within the watershed draining to Little Silver Lake and Rainbow Lake. The aquifer supplying most cottage properties around those lakes is the same fractured Precambrian bedrock aquifer that will be relied upon by new homes in Maberly Pines.

Potential Negligence Claims if Wells Are Affected

If full build-out of Maberly Pines results in aquifer drawdown affecting existing wells in adjacent properties — a risk Dr. Johnson's analysis raises explicitly — affected owners may have potential claims in nuisance and/or negligence against the Township for approving development without adequate hydrogeological review. Key cases include Rylands v. Fletcher (1868) LR 3 HL 330 (private nuisance from escaping substances) and Cooper v. Hobart, 2001 SCC 79 (duty of care in regulatory decision-making).

7. How the PUR Liability Context Shapes — and Distorts — the 2026 Proposal

Reading the PUR Working Group documents and the Township's legal counsel's opinion alongside the 2026 capital charge proposal, a clear pattern emerges: the Township's motivation to proceed is substantially driven by its desire to resolve its own PUR liability — at property owners' expense.

Assuming the Roads Eliminates the Township's Section 44 Exposure

Once roads are assumed and maintained by the Township to municipal standard, the Section 44 duty of repair becomes manageable through standard maintenance protocols. The Township's liability for unassumed, unmaintained roads — which its own insurer described as the highest-risk scenario — is eliminated. This is a substantial benefit to the Township that is not disclosed in the 2026 proposal.

The Capital Charge Converts Township Liability Into Property Owner Debt

By proceeding with a capital charge, the Township transforms a debt that properly belongs to it (arising from predecessor township failures and the misapplication of developer security proceeds) into a charge on individual property owners. The Working Group specifically recommended against this approach in Recommendation 4.

Road Associations Were Not Working

The Council's February 2023 resolution directed that road associations be established for Maberly Pines roads. The 2026 proposal effectively abandons the road association pathway in favour of direct Township assumption — a more complete liability solution for the Township, but one that costs property owners $12,434 each rather than the road association's shared insurance premium of a few hundred dollars annually.

Provincial Housing Targets Provide Political Cover

The report's reference to showing the Province the Township's 'intentions of growth and housing targets' situates the proposal within Ontario's broader housing intensification agenda. This gives the project political momentum that may make it harder for property owners to resist, even where their legal and financial objections are legitimate.

8. Risks of the Proposed June 2026 Approval Timeline

The Township proposes Committee of the Whole approval on June 2nd and Council approval on June 16th, 2026. The risks of this timeline are substantial.

Irrevocable Financial Commitments Made Before Costs Are Final

Approving the project in June 2026 authorizes: the Hydro One contract (triggering the $836,157 letter of credit obligation); the Crains' Construction road tender; and the sand dome design and tender. Once Hydro One is notified to proceed, the process is effectively irreversible. Property owners will be committed to an estimated charge with no binding cap before any of the actual costs are finalized — a situation that may not crystallize until late 2027 or 2028.

Unresolved Hydrogeological Questions

The pumping test adequacy questions raised by the engineer's review have not been publicly answered. MVCA and RVCA sign-off on hydrogeological adequacy for full build-out has not been confirmed in the 2026 report. Approving a project premised on 40+ new homes before aquifer viability for that density is established carries real risk to both future homeowners and the Township's liability if wells fail.

Insufficient Time for Independent Review

Property owners have had approximately three weeks between receipt of the April 22 letter and the May 13 information session, and will have roughly six weeks between the letter and the June 16 Council vote. This is inadequate time to obtain independent legal advice, commission a technical review of the hydrogeological questions, or organize a meaningful petition under the local improvement charge objection process.

The Security Proceeds Issue Is Unresolved

No accounting of the Lot 14, 37, and 44 proceeds has been provided. Approving a capital charge without first resolving whether those funds should have been applied to road improvements may expose the Township to legal challenge from property owners.

The Second Charge Risk Is Not Prominently Disclosed

The possibility of a second capital charge after the 10-year Hydro One connection period is disclosed only in passing. Approving the project without property owners fully understanding this contingent liability may expose the Township to claims of inadequate disclosure.

Downstream Environmental Liability Risk Unassessed

If Maberly Pines development causes aquifer drawdown or contamination affecting Little Silver Lake, Rainbow Lake, or adjacent wells, the Township may face claims from affected property owners. Proceeding without a formal Conservation Authority sign-off on the cumulative hydrogeological impact heightens this risk.

9. Benefits of Proceeding on the Proposed Timeline

In the interest of balance, the legitimate benefits of proceeding in June 2026 should be acknowledged:

Construction Cost Certainty

Crains' Construction has held its 2025 price. Every year of delay risks higher construction costs. The fuel index adjustment already added $8,000 to the 2025 bid price for a one-year delay.

Hydro One Connection Window

The 10-year clock for property owners to connect to hydro starts from energization. An earlier start means an earlier end to the deposit exposure period and better conditions for the Township to recover the full security deposit.

Reduced Ongoing RAA and Insurance Burden

Once roads are assumed, property owners in Maberly Pines are released from their Road Access Agreements, their obligation to carry $5M commercial general liability insurance, and their personal indemnity liability for road accidents. This is a genuine and immediate benefit to currently developed lot owners, but one that follows from the Township’s own delinquence in not enacting its 2019 resolution to remove the RAA.

Resolving a 45-Year-Old Problem

The longer this situation persists, the more complex it becomes. Assuming the roads ends the legal ambiguity about road status, resolves the Township's Section 44 exposure, and gives property owners clarity about their land.

Township's Own Legal Risk Reduction

Completing and assuming the roads is the recommendation of the Township's own insurer (Halpenny), its legal counsel (Fleming), and the Jp2g Options Assessment. The longer PURs remain unassumed, the greater the Township's exposure to a catastrophic road accident claim.

10. Key Legal Questions Requiring Answers Before Approval

The following questions should be put to the Township in writing before the June 2nd and June 16th meetings. Written responses entered into the public record before any vote provide the strongest protection for property owners.

A. Security Lot Proceeds — The Unresolved Accounting

- Can the Township provide a complete accounting of the proceeds from the sale of Lots 14, 37, and 44 (Plan 21), including the exact sale prices and the specific reserve or account into which the proceeds were deposited?
- The 1980 Subdivision Agreement expressly required that proceeds from security lot sales be used for road improvement in Maberly Pines. Why were these proceeds not so applied, and does the Township consider this a breach of the Subdivision Agreement?
- Will the Township credit the approximately $32,000 in security lot proceeds against the capital charge to be levied on property owners?

B. Capital Charge Legal Authority and Objection Rights

- Under what specific provision of the Municipal Act, 2001 does the Township claim authority to impose the capital charge? Is it a local improvement charge under O. Reg. 586/06, a fee under Section 391, or another mechanism?
- Do property owners have a right to formally petition against the charge under O. Reg. 586/06 or any other mechanism, and if so, what is the deadline for doing so?
- Will the Township commit to a binding maximum per-property charge, and if not, how will cost overruns be managed?

C. Hydrogeological and Environmental Due Diligence

- Has the MVCA or RVCA formally confirmed that the BluMetric hydrogeological review satisfies current Conservation Authority requirements for full build-out of the subdivision?
- Has the Township responded formally to the technical questions raised by Dr. F. Johnson P.Eng. regarding the adequacy of the single 10-hour pumping test to establish aquifer viability for 50+ dwellings?
- Has any assessment been conducted of downstream impacts on Little Silver Lake and Rainbow Lake from full build-out of Maberly Pines?

D. The Second Capital Charge

- What is the maximum potential second capital charge per property if Hydro One connections fall significantly short of the 39-connection estimate over 10 years?
- Will property owners receive formal written notice of the second charge risk before Council votes to approve the project?

E. Consistency with PUR Working Group Recommendations

- The Working Group recommended (Recommendation 4) that a special development charge NOT be imposed on Maberly Pines lot owners. What is the Township's rationale for overriding this recommendation?
- The Working Group recommended the Township bear the cost of PUR improvement as a consequence of predecessor township failures. Why is the Township not applying this principle to Maberly Pines?

11. References: Legislation, Case Law, and Key Documents

Legislation and Regulations

- Municipal Act, 2001, S.O. 2001, c. 25, ss. 8, 9, 11, 44, 391
- Ontario Regulation 239/02 — Minimum Maintenance Standards for Municipal Highways
- Ontario Regulation 586/06 — Local Improvement Charges
- Ontario Building Code, O. Reg. 332/12 under Building Code Act, 1992 (s. 3.2.5.6)
- Land Titles Act, R.S.O. 1990, c. L.5, s. 71
- Condominium Act, 1998, S.O. 1998, c. 19
- Ontario Water Resources Act, R.S.O. 1990, O. Reg. 903 (Wells)
- MECP Procedure D-5-4: Technical Guideline for Individual On-site Sewage Systems (1996)
- MECP Procedure D-5-5: Technical Guideline for Private Wells: Water Supply Assessment (1996)
- Ontario Building Code, Part 8 — Sewage Systems

Case Law

- Fontaine v. British Columbia (Official Administrator), 1998 CanLII 814 (SCC), [1998] 1 SCR 424 — Standard for establishing prima facie negligence on balance of probabilities
- Housen v. Nikolaisen, 2002 SCC 33 — Standard of care in road maintenance cases
- Cooper v. Hobart, 2001 SCC 79 — Duty of care framework (Anns/Cooper test) for regulatory decisions
- Fordham v. Dutton-Dunwich (Municipality), 2014 ONCA 891 — Municipal liability under Section 44 for known but unmaintained roads
- Stewart v. Peel (Regional Municipality), 1995 CanLII 7379 (ON CA) — Section 44 liability and road classification
- Rylands v. Fletcher (1868) LR 3 HL 330 — Private nuisance; applicable to groundwater contamination scenarios
- Anns v. Merton London Borough Council [1977] UKHL 4 — Two-stage duty of care test adopted in Canadian law

Key Township Documents Reviewed

- Draft Report #CAO-2026-XX — Maberly Pines Subdivision Capital Charge Update and Next Steps (2026)
- Letter to Property Owners dated April 22, 2026 — Maberly Pines Property Owner Information Session
- PURWG Report to Council by Lay Members (August 31, 2022) — F. Johnson, F. Barrett, G. Hill, Councillors Darling and Richardson
- Report #CAO-2023-03 — Private Unassumed Roads Legal Opinion (January 26, 2023)
- Legal Opinion of Tony E. Fleming, LSO Certified Specialist in Municipal Law (January 11, 2023, revised for public February 6, 2023) — Cunningham Swan Carty Little & Bonham LLP
- Jp2g Consultants — Private Unassumed Roads Options Assessment Report (March 29, 2022)
- Halpenny Insurance Brokers — PUR Insurance Presentation to Working Group (August 25, 2021)

- Maberly Pines Subdivision Agreement, September 2, 1980 — Lakeside Living Limited and Township of South Sherbrooke
- Council Resolution #C-2023-02-03 (February 16, 2023) — Private Unassumed Roads Direction
- Council Resolution #C-2022-09-04 (September 27, 2022) — PUR Working Group Report Receipt
- Council Resolution #C-2019-11-08 (November 19, 2019) — Elimination of RAA Requirement
- BluMetric Environmental Inc. — Hydrogeological Review Maberly Pines Subdivision, Contract #2021-PD-002 (November 30, 2021)
- Comments on BluMetric Report (January 2023) — Little Silver and Rainbow Lakes Property Owners Association website
- Tay Valley Township — Private Unassumed Roads webpage (accessed April 2026): www.tayvalleytwp.ca/living-here/roads/private-unassumed-roads/

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