

# THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

## BY-LAW NO. 2022-31

### A BY-LAW TO REGULATE DRIVEWAYS, NEW AND ALTERED ENTRANCES, THE MAINTENANCE AND PROTECTION OF BOULEVARDS AND TOWNSHIP RIGHT OF WAYS WITHIN THE TOWNSHIP OF WEST LINCOLN (ENTRANCE & BOULEVARD BY-LAW)

**WHEREAS** pursuant to provisions of subsection 11 (2) (6) of the *Municipal Act, 2001*, S. 0. c. 25 as amended a municipality may pass by-laws respecting the health, safety and wellbeing of persons;

**AND WHEREAS** subsection 11 (2) (8) of the *Municipal Act* provides that a municipality may pass by-laws respecting the protection of persons and property;

**AND WHEREAS** subsection 27 (1) of the *Municipal Act* grants a municipality the power to pass by-laws in respect of highways over which it has jurisdiction;

**AND WHEREAS** subsection 28 (2) of the *Municipal Act* grants a municipality jurisdiction over all road allowances located in the municipality that were made by the Crown surveyors [subsection 28 (2) (a)] and all road allowances, highways, streets and lanes shown on a registered plan of subdivision [subsection 28 (2) (b)];

**AND WHEREAS** section 446 of the *Municipal Act, 2001* provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do so under this by-law, but has failed to do so and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE** the Municipal Council of the Corporation of the Township of West Lincoln enacts as the following, to be known as the Entrance and Boulevard Bylaw:

## 1. INTERPRETATION

### 1.1 Definition(s)

**"Apron"** shall mean that section of driveway contained within the boulevard;

**"Back Lot Property"** shall mean that portion of a property where the rear yard is adjacent to a municipal road allowance;

**"Boulevard"** shall mean the portion of a highway on either side of a roadway, but does not include a sidewalk or traffic island.

**"Boulevard Garden"** shall mean a cultivated assortment of plants contained within a municipal boulevard. Such plants must be non woody and not noxious as defined in the *Weed Control Act R.S.O. 1990 c.w.5* and deemed not to be "Herbaceous Ground Cover"

**"Culvert"** shall mean a structure that channels water under an obstruction such as a road or driveway and is typically embedded as to be surrounded by soil.

**"Dangerous Items"** shall mean anything deemed to be dangerous or a public safety hazard to the traveling public at the discretion of the Director of Public Works for the Township of West Lincoln;

**"Director of Planning"** shall mean the Director of Planning, Building and By-law for the Township of West Lincoln, or designate;

**"Director of Public Works"** shall mean the Director of Public Works & Engineering, or designate.

**"Entrance"** shall mean the area between the front property line of a lot to the edge of pavement within a municipal right of way providing access to parking areas.

**"Entrance and Boulevard Construction Permit"** shall mean a permit issued under the

regulations of this bylaw.

**"Herbaceous Ground Cover"** shall mean, but is not limited to, turf grass and plant materials which can be maintained at a height of 8 inches (20 cm) or less and deemed not to be a "Boulevard Garden"

**"Highway"** shall mean a common and public highway, common and public walkway, street, road, avenue, parkway, square, place, bridge, viaduct, trestle, or any other way open to public use, and includes the area between the lateral property lines thereof;

**"Lot"** shall mean a parcel of land, the boundaries of which are defined in the last registered instrument by which legal title to the said parcel of land was lawfully and effectively conveyed or which is a whole lot as shown on a registered plan of subdivision pursuant to the provisions of the *Planning Act*;

**"Lot Line"** shall mean any boundary of a lot;

**"Maintenance"** shall mean an action required to maintain a boulevard in compliance of the "Entrance and Boulevard By-law" including but not limited to, cutting, watering and removal of debris;

**"Municipal Law Enforcement Officer"** shall mean an employee of the Township who has been appointed by by-law to enforce the provisions of Township by-laws;

**"Noxious Weed"** means a plant that is deemed to be a noxious weed under subsection 10 (2) or designated as a noxious weed under clause 24(a) of the *Weed Control Act* R.S.O. 1990 c.w.5; ("mauvaise herbe nuisible")

**"Owner"** shall mean the person or persons shown in the Land Registry Office record or records of the land at the registry office, or Municipal tax roll, as having title to the land or responsibility for it, as well as the tenant and person or persons lawfully in possession of, or exercising control over, the property;

**"Parking Area"** shall mean an area of a lot or boulevard consisting of one or more driveways, parking aisles and parking spaces located outdoors or in a structure.

**"Roadway"** shall mean the portion of a highway that is improved, designed, or ordinarily used for vehicular traffic, and includes a curb and shoulder;

**"Township"** shall mean the Corporation of the Township of West Lincoln;

**"Township Right of Way"** shall mean land owned by the Corporation of the Township of West Lincoln as opened or unopened road allowances for the purposes of operating a public highway under the Municipal Act, 2001, a public walkway, municipal services, or public utilities, but excludes Township owned lands operated as parkland, creeks and watercourse and related public trail systems.

**"Zoning Bylaw"** shall mean the Township of West Lincoln Bylaw 2017-70, as amended, or any successors thereto.

## 2. GENERAL PROVISIONS

- a. This By-law shall apply to all Driveways, Entrances, Boulevards and Township owned Right of Ways within the boundaries of the Township of West Lincoln.
- b. Alterations to existing driveways, entrances, boulevards and Township owned Right of Ways, as well as new driveways and entrances require approval from the Township, unless exempted in Section 6.
- c. It is the responsibility of the applicant or owner to obtain the necessary utility locations prior to any excavation work.
- d. The applicant or owner shall obtain a Niagara Peninsula Conservation Authority (NPCA) Permit for any work requiring said permit prior to the issuance of a Township Entrance and Boulevard Construction permit.
- e. A security deposit of \$1,250.00 shall be provided to the Township with the submission of any application made under this bylaw. Additional security may be required depending on the scale and nature of the project, as determined by the Director of Public Works. The security shall be released in accordance with the following:

- f. The applicant has requested in writing the release of the security deposit
- g. All affected areas pertaining to the project have been restored, including the compaction of backfill material and the placement of topsoil and sod, and in accordance with Township Engineering Standards and the Ontario Provincial Engineering Standards (OPS), to the satisfaction of the Director of Public Works.
- h. All conditions of the permit have been satisfied to the satisfaction of the Director of Public Works.

## **2.1 New and Altered Driveways and Entrances within the Right of Way**

- a. Prior to the construction of any new driveway or entrance, or the alteration to existing driveways or entrances within or abutting a Township Road Allowance, an Entrance and Boulevard Construction permit must be applied for and issued by the Township of West Lincoln using the form found in Schedule 'A'. The application shall include the following items:
  - i. A detailed site sketch showing the location and dimensions of the proposed driveway and entrance and any other entrances already existing on the subject property. The sketch must be to scale and show any relevant above or below ground information such as telephone poles or other infrastructure.
  - ii. The applicable application fee.
  - iii. The applicable application security deposit.
  - iv. Certificate of Insurance
- b. Only the Owner of the lot which abuts the portion of Highway where a new or altered entrance or driveway is proposed can make such application to the Township.
- c. All Driveways and Parking Areas are to be constructed in accordance to the Township Zoning Bylaw 2017-70, as amended from time to time.
- d. The Township reserves the right to refuse new entrances or driveways within the Township's Road allowance if, in the opinion of the Township, the location of a new or altered driveway or entrance creates a safety concern, or drainage concern or other reason, as determined by the Township's Director of Public Works.

## **2.2 New or Replacement Culverts**

- a. Any person requiring the construction or replacement of a culvert or bridge over a drain or watercourse within a highway in order to give access to private property, shall be permitted to have the same constructed upon application for a permit to the Corporation.
- b. The minimum diameter of any culvert or bridge shall be fifteen inches (15") and the minimum length shall be thirty feet (30') for residential and forty feet (40') for agricultural/commercial /industrial. These dimensions may be increased at the discretion of the Director of Public Works, if required by the size of the drain or watercourse, or to prevent obstruction or flooding or for reasons of safety.
- c. The type and material of the culvert used shall be determined by the Director of Public Works or designate

## **2.3 Alterations to Boulevards**

- a. Prior to undertaking of any alteration within the Township's Boulevard, an Entrance and Boulevard Construction permit must be applied for and issued by the Township of West Lincoln using the form found in Schedule 'A'. The application shall include the following items:
  - i. A detailed site sketch showing the proposed alterations. The sketch must be to scale and show any relevant above and below ground information such as telephone poles or other infrastructure and provide dimensions are areas of the proposed work.
  - ii. The applicable application fee.
  - iii. The applicable application security deposit.
  - iv. Certificate of Insurance
- b. Only the Owner of the lot which abuts the portion of Highway where a new or altered entrance or driveway is proposed can make such application to the Township.

- c. The Township reserves the right to refuse boulevard alterations if, in the opinion of the Township the boulevard alteration creates a safety concern, maintenance concern or drainage concern or other reason.

## **2.4 General Maintenance of Boulevards**

- a. Every Owner of any lot which abuts a Highway shall keep the Boulevard neat and free of any and/or all rubbish and debris.
- b. Every Owner of any lot which abuts a Highway shall ensure that a boulevard containing herbaceous round cover is cut and maintained at a height of no more than 20 cm (8 inches).
- c. Every Owner of any lot which abuts a Highway shall ensure that a Boulevard containing a Boulevard Garden is maintained at a height of no more than 76 cm (30 inches).
- d. Every Owner of any lot which abuts a Highway shall ensure that a Boulevard containing a Boulevard Garden does not obstruct or overlay any sidewalk or curb abutting the Boulevard Garden.
- e. Every Owner of any lot which abuts a Highway in the Township of West Lincoln shall leave a 3 metre clearance around municipal fire hydrants.

## **2.5 Damage**

- a. No person shall damage, construct or reconstruct a sidewalk, curb, apron driveway or boulevard without the written permission of the Director.
- b. For the purposes of Section 2.4 a), "Person" shall not include the Township, the Regional Municipality of Niagara, a utility or a contractor hired by the Township, Region or utility.
- c. Height of herbaceous ground cover need not be maintained in:
  - i. areas that are designated as Environmental Protection or Agriculture under the applicable Zoning By-law;
  - ii. when a boulevard abuts public lands.
- d. Every owner shall:
  - i. maintain any hedges or fences on their property to ensure that the hedges or fences do not encroach onto the boulevard;
  - ii. shall obtain special permission from the Municipality for the removal and/or planting of trees within the boulevard;
  - iii. not alter an area of the boulevard that is regularly maintained by the municipality.
- e. The Township or any other authorized utility reserves the right to excavate any boulevard for the repair of any infrastructure. The Township of West Lincoln will attempt to contact and notify the homeowner in advance. Any restoration is at the discretion of the Township of West Lincoln and, if any plants are removed the Township will not incur the expense to replant.
- f. For boulevards on which the owner or occupier of commercial or residential property fronting upon any boulevard has either installed, or has allowed to remain, rocks, trees, shrubs, other types of vegetation or any other type of decorative covering or fencing, such owner or occupier shall ensure that such coverings and physical structures, in the opinion of the Director of Public Works or designate, do not obstruct, interfere with, impede, or affect the following:
  - i. Road maintenance including snow removal;
  - ii. Utility services;
  - iii. Pedestrian use of sidewalks;
  - iv. Traffic sight lines in compliance with the Township of West Lincoln Zoning By-law;
  - v. Clearance of at least 3 metres from any fire hydrant or fire hydrant valve in compliance with the by-law to provide for the regulation of water supply in the Township of West Lincoln ("Water Conservation By-law");

- vi. Public health or safety.

### **3. FAIL TO COMPLY WITH ORDER ISSUED UNDER BY-LAW**

- a. Where any Person damages a boulevard by any means or is in default of the provisions of this By-law, a letter will be sent from the Township to the Owner requiring that the damage and/or default be remedied. If no action is taken within the time frame set out in the Notice, the Township may repair the damage or take remedial action to cut and trim the grass, weeds, herbaceous plants and other vegetation growing on the boulevard and charge the cost back to the Owner.

### **4. PENALTY**

- a. Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to a fine recoverable under the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.
- b. Every person who contravenes any provision of this By-law and each Owner, when given a Penalty Notice in accordance with the Township's Administrative (Non-Parking) Penalty By-law, is liable to pay the Township an administrative penalty in the amount specified in the Township's Administrative (Non-Parking) Penalty By-law, as amended from time to time.

### **5. ENFORCEMENT**

- a. Municipal Law Enforcement Officers are hereby authorized and empowered to enforce the provisions of this By-law.
- b. Municipal Law Enforcement Officers and persons under their direction may, at any reasonable time, enter onto lands within the Township to determine if the provisions of this By-law are being complied with or may enter onto any lands within the Township to carry out remedial actions required to bring the property into conformity with this By-law.
- c. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.

### **6. EXEMPTIONS**

- a. This By-law shall not apply where the obstruction is permitted under a valid and binding encroachment agreement or permit between a person and the Township of West Lincoln.
- b. This By-law shall not apply to any sign that is in compliance with the Township of West Lincoln Sign By-law.
- c. This By-law shall not apply along Regional Roads.
- d. This By-law shall not apply to driveways, parking areas, culverts or boulevards constructed under approval or requirement of an engineering, planning or similar agreement, limited to Plans of Subdivision.
- e. The persons listed below shall be exempt from the provisions of this bylaw:
  - i. The Corporation of the Township of West Lincoln
  - ii. The Regional Municipality of Niagara

### **7. DAMAGE TO BOULEVARD**

- a. A By-law Enforcement Officer may enter upon any land or property at any reasonable time with proper identification to determine if the owner is complying with the provisions of this by-law and may take photographs of the property's condition.
- b. Where a property is not maintained in accordance with the requirements of this By-law:
  - i. The Township may serve the owner a Work Order in writing directing the owner of the property to bring the property into conformance with the requirements of this By-law; and,
  - ii. The owner shall repair, remove or clean up all contraventions identified on the Work Order within seven (7) days of the Work Order being served.

### **8. SERVICE**

- a. Service of any document, including an order, under this By-law may be given in writing in any of the following ways and is effective:
  - i. When a copy is delivered to the person to whom it is addressed;
  - ii. On the 5<sup>th</sup> day after a copy is sent by registered mail to the person's last known address;
  - iii. Where service is unable to be done under subsections 8.1 (1) or (2), notice maybe given by placing a placard containing the terms of the document or order in a conspicuous place on the property to which the document or order relate and shall be deemed to be sufficient service on the Owner or Occupant.

## **9. FAILURE TO COMPLY**

- a. Where an owner, having been served with a Work Order, fails to comply with the Work Order within the time specified, a By-law Enforcement Officer or the Township's employees or agents authorized for this purpose may, upon producing appropriate identification when requested, enter onto the property at a reasonable time and carry out any or all of the work described in the Work Order.

## **10. SEVERABILITY**

- a. If any section, clause or provision of this By-law, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention of Council for the Township that all remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof may have been declared invalid.

## **11. SCHEDULES**

- a. Schedule 'A' – Entrance Boulevard Construction Permit Application, and Schedule 'B' Administrative Monetary Penalties, form part of this bylaw.

## **12. BYLAWS REPEALED**

- a. Previous Bylaws being the Boulevard Maintenance Bylaw 2016-64 and the Culvert Bylaw, 97-98, amended by Bylaw 2002-119, be and is hereby repealed.

## **13. EFFECTIVE DATE**

- a. This By-law shall come into full force and effect on May 1, 2022

**READ A FIRST, SECOND AND THIRD  
TIME AND FINALLY PASSED THIS 25<sup>th</sup>  
DAY OF APRIL, 2022.**

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**MAYOR DAVE BYLSMA**

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**JOANNE SCIME, CLERK**