

THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2020-64

BEING A BY-LAW FOR PROHIBITING AND
REGULATING THE ALTERATION OF PROPERTY
GRADES, THE PLACING OR DUMPING OF FILL,
THE REMOVAL OF TOPSOIL AND THE INJURING
OR DESTRUCTION OF TREES WITHIN THE TOWN
OF LINCOLN AND TO REPEAL BY-LAW
NO. 2020-57

WHEREAS:

1. Section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that the Council of a local municipality may pass by-laws to regulate or prohibit the removal of topsoil, the placing or dumping of fill and the alteration of the grade of land and require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of grade of land;
2. Section 135 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits the enactment of a by-law by the Council of the Corporation of the Town of Lincoln to prohibit or regulate the destruction or injuring of trees in the Town;
3. Section 135(7) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may require that a permit be obtained for the injuring or destruction of trees or any class of trees specified in the by-law and impose conditions to a permit, including those relating to the manner in which destruction occurs and the qualification of persons authorized to destroy trees;
4. Section 425(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;
5. Section 436 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass a by-law to enter on land at any reasonable time for the purpose of carrying out an inspection to determine if a by-law has been complied with or to determine if a licence condition issued under a by-law has been complied with;
6. The Council of the Corporation of the Town of Lincoln deems it in the public interest and expedient to prohibit certain site alterations within the Town.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF LINCOLN ENACTS AS FOLLOWS:

1. **Short Title**

This by-law may be referred to as "The Site Alteration By-law"

2. **Definitions**

In this By-law:

- 2.1 **Applicant** means the person who applies for a permit under this by-law.
- 2.2 **Arborist** means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or equivalent and satisfies at least one of the following requirements:
 - (a) Is certified by the Ontario Training and Adjustment Board or the

International Society of Arboriculture;

- (b) Is currently accepted as consulting arborist with the American Society of Consulting Arborists;
 - (c) Is a Registered Professional Forester (RPF) as defined in the *Professional Foresters Act, 2000*, S.O. 2000, C. 18; or
 - (d) Has comparable qualifications to those set out under clauses (a) and (c) above as approved by the Director.
- 2.3 **Breast Height** refers to a point of measurement 1.4 metres from the ground.
- 2.4 **Clerk** means the Clerk of the Corporation of the Town of Lincoln.
- 2.5 **Council** means the Council of the Corporation of the Town of Lincoln.
- 2.6 **Crown** means the upper part of a tree, which includes the branches and leaves.
- 2.7 **Designated Official** means the Director or their designate.
- 2.8 **Destroy** means the removal of a tree or harm resulting in the death, ruin, or removal of an irreversible injury that may result from neglect, accident, or design.
- 2.9 **Director** means the Director of Planning and Development for the Town of Lincoln or their designate.
- 2.10 **Dumping** means the depositing of fill in a location other than where the fill was obtained and includes the movement and depositing of fill from one location on a property to another location on the same property as well as movement and depositing from one property to another property.
- 2.11 **Existing Grade** means the ground surface of lands as it existed prior to the placing or dumping of fill.
- 2.12 **Fill** means any type of material deposited or placed on lands and includes, but not limited to soil, stone, concrete, asphalt, sod, or turf either singly or in combination.
- 2.13 **Finished Grade** means the elevation of the ground surface of lands upon which fill has been placed.
- 2.14 **Incompatible Soil** means, for example, clay or loam when placed on top of sandy or gravelly soils or impervious clay subsoil when placed on top of topsoil.
- 2.15 **Officer** means the person or persons appointed by Council for the purposes of enforcing the By-law and/or a person delegated by the Director to complete tasks within the context of the by-law.
- 2.16 **Owner** includes the registered owner of the lands on which any person, firm or corporation, whether alone or with others, that has the right to possess or occupy the lands or actually does occupy or possess the lands, including a lessee.
- 2.17 **Permit** means a site alteration permit, whether Class 1 or Class 2, issued pursuant to this By-law.
- (a) Class 1 – Permit issued on behalf of the Town for the alteration of property grades, the placing or dumping of fill, the removal of topsoil
 - (b) Class 2 – Permit issued on behalf of the Town to regulate the possible

injury or destruction of trees on property within the Town.

- 2.18 **Place of Disposal** means a municipally owned storm drainage sewer, roadside ditch, a natural watercourse, or an outlet for storm drainage approved by the Corporation.
- 2.19 **Placing** means the distribution of fill on lands to establish a finished grade different from the existing grade.
- 2.20 **Ponding** means the accumulation of surface water in the area not having drainage there from where the lack of drainage is caused by the placing or dumping of fill or altering of the grade of land.
- 2.21 **Site** means lands that are the subject of an application for a Permit pursuant to the provisions of this By-law.
- 2.22 **Site Alteration** means site grading, or the temporary or permanent placing, dumping or removal of any material originating on the site or elsewhere.
- 2.23 **Soil** means material commonly known as earth, topsoil, loam, subsoil, and clay, sand, or gravel.
- 2.24 **Town** means the Corporation of the Town of Lincoln or its geographic area, as the context requires.
- 2.25 **Tree** means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity.
- 2.26 **Urban Boundary** is defined in the same manner as in the *Corporation of the Town of Lincoln Official Plan*.
- 2.27 **Zoning By-law** means the by-law regulating land use as provided for under the *Planning Act* within the Town.

3. Prohibition

3.1 No person shall:

- (a) Place or dump fill or remove fill from land, or cause or permit the placing or dumping of fill or removal of fill on any lands in the Town, including any lands that are submerged under any watercourse or other body of water, without having first obtained a permit issued by the Director unless this by-law states it does not apply or that the Director determines that such a Permit is not required;
- (b) Alter or cause or permit the alteration of the grade, on any lands in the Town, including any lands that are submerged under any watercourse or other body of water, without having first obtained a Permit issued by the Director, unless this By-law states it does not apply or that the Director determines that such a permit is not required;
- (c) Damage a tree or permit a tree to be damaged on any land within the Town unless a permit has been obtained from the Town or the subject lands or works are exempt from this by-law or the Director determines that works do not require a Permit;
- (d) Contravene the terms or conditions of a Permit;
- (e) Fail to comply with an Order issued under this by-law;
- (f) Pull down, remove, or deface an Order posted under this by-law;
- (g) Fail to produce a permit to an Officer or post a Permit in a conspicuous

location on the property in which a Permit has been issued; and

- (h) Obstruct or interfere with an Officer or any person or agent authorized by the Town in discharge of their duties under this by-law. Such action shall be considered a violation of this by-law.

3.2 Subsections 3.1(a) and 3.1(b) do not apply where the quantity of fill or topsoil removed or dumped on any one lot does not exceed 8 cubic metres for each 0.125 hectares of lot area or part thereof, provided the following requirements are met:

- (a) The placement or removal of fill does not or will not alter the grade of any part of the lot at any location by more than 0.2 metres.
- (b) The placement or removal of fill does not obstruct the flow of water in a watercourse.
- (c) The placement or removal of fill does not cause water normally contained on the lot to drain off site;
- (d) The placement or removal of fill does not cause water to be redirected to an adjacent property where that water was not previously directed to such property;
- (e) The placement or removal of fill does not obstruct or impede the flow of water from adjacent lands directed to such property;
- (f) The placement or removal of fill shall not alter the location or increase flows for site drainage directed to adjacent lands; and,
- (g) All fill placed or dumped includes only soil, stone, sod or other material acceptable to the Director and that such material is clean and free of any glass, rock, swamp material, bituminous pavement, concrete, masonry, manufactured wood, debris from open fires, polystyrene products, plastics, rubber, metals, asphalt, termites, liquid other than water, garbage or contaminants.

4. Exemptions

4.1 Section 142 (5) of the *Municipal Act, 2001*, S.O. 2001, c.25, exempts the following activities from the prohibitions of this by-law:

- (a) Activities or matters undertaken by the Town or a local board of the Town;
- (b) The placing or dumping of fill as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections or a valid current building permit where the approval for the placing or dumping of fill was granted prior to the enactment of this by-law;
- (c) The placing or dumping of fill as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under that regulation where the approval for the placing or dumping of fill was granted prior to the enactment of this by-law;
- (d) The placing or dumping of fill undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (e) The placing or dumping of fill undertaken on land described in a

licences for a pit or quarry or a Permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;

- (f) The placing or dumping of fill undertaken on land in Order to lawfully establish and operate or enlarge any pit or quarry on land:
 - (i) That has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, or
 - (ii) On which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*; or
- (g) The placing or dumping of fill undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*.

4.2 In addition to the exemptions prescribed in Section 4.1, the following activities are exempt from the prohibitions of the by-law:

- (a) The use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site lawfully permitted under Part V of the *Environmental Protection Act*, R.S.O. 1990 c.8.19, as amended, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
- (b) The construction, extension, alteration, maintenance, or operation of works under Section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990 c.P.50, as amended;
- (c) Any work conducted pursuant to, and in accordance with the provisions of, a regulation made under Section 28 of the *Conservation Authorities Act* respecting the placing or dumping of fill in any area of the Town;
- (d) Any work where soil is placed or dumped on lands for the purpose of lawn dressing, landscaping or adding to flower beds or vegetable gardens, provided that the ground elevation of the lands is not increased by more than two hundred (200) millimetres (8 inches) and there is no change in the direction, rate or quality of runoff to neighbouring properties.

4.3 Section 135 (12) of the *Municipal Act, 2001*, S.O. 2001, c.25, exempts the following activities from the prohibitions of this by-law:

- (a) Activities or matters undertaken by a municipality or a local board of a municipality;
- (b) Activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
- (c) The injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- (d) The injuring or destruction of trees imposed after as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) The injuring or destruction of trees imposed as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation prior to the enactment of this by-law;

- (f) The injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (g) The injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or
- (h) The injuring or destruction of trees undertaken on land in Order to lawfully establish and operate or enlarge any pit or quarry on land:
 - (i) That has not been designated under the *Aggregate Resources Act* or a predecessor of that *Act*; and
 - (ii) On which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*.

4.4 In addition to the exemptions prescribed in Section 4.3, the following activities are exempt from the prohibitions of the Class 2 tree permits as set out in sections 5.5 – 5.12 of this By-law:

- (a) Any lands regulated under the Niagara Region Tree By-law, known as the *Tree and Forest Conservation By-law*, as amended, as per the *Municipal Act, 2001* section 135(4);
- (b) Any land outside of the urban boundary;
- (c) Any lot that permits a single-detached or semi-detached or street townhouse residential use, as per the Town's Comprehensive Zoning By-law, as amended, and is occupied by a Residential Unit that was constructed prior to the passage of this By-law;
- (d) Removal of trees with DBH less than 20 centimetres;
- (e) Trees which are identified as dead, diseased, or of a safety risk to a property or person following inspection by an Arborist, through coordination with the Town;
- (f) Nuisance tree removal as defined in Schedule 'A' of this by-law; and
- (g) Trees that are removed as part of normal farm practices.

5. Permits and Plans

CLASS 1

- 5.1 The process for considering an application for a permit, shall include prior notice by the applicant and Town in the manner provided for in this section.
- 5.2 The applicant shall prepare a notice of the application, in the form and content required by the Director, and the applicant shall post the notice on such suitable frontages to the property as determined by the Director, at the applicant's expense and in a manner so that the notice is visible to passersby for a period of not less than 14 days prior to the date on which the Director indicates is the date of consideration of the application.
- 5.3 The Director shall so far as practical, cause notice of the application, including the date of the application, to be mailed to adjacent property owners within 300 metres of the subject property, unless the Director determines that such notice is unnecessary.
- 5.4 A person applying for a Permit shall submit the following to the Director:

- (a) A completed application, in writing, on forms prescribed by and available from the Director;
- (b) Consent of the Owner of the subject lands;
- (c) The prescribed fee for a permit as approved through Town's Fees and Charges By-law, as amended;
- (d) A control plan, the requirements of which are set out in Section 6 of this by-law;
- (e) A plan showing the design details to proper scale of any retaining wall that the applicant proposes or that may be required by the Director including the dimensions thereof and any materials to be used in construction of any such retaining wall; and
- (f) Security in an amount determined by the Director under this by-law, and the execution of a security agreement by the applicant and the registered owner of the site in a form determined by the Director, to ensure proper rehabilitation, prevent fouling or tracking of earth, mud, or debris on highways of the Town, and to secure performance of the applicant's and owner's obligations under this by-law and any permit that is issued, including as may be needed returning the site to its original condition so far as possible, carrying out the work under the permit, and complying with other provisions of this by-law including rehabilitation of the site.

CLASS 2

- 5.5 Subject to section 4.3 and 4.4 of this by-law, a Permit shall be required should three or more trees, with 20 cm DBH or greater, or listed as endangered, threatened or special concern species in the federal *Species At Risk Act*, be deliberately damaged or planned to be damaged on a property within the Urban Boundary of the Town as per the Town of Lincoln Official Plan within a 36-month period.
- 5.6 Every person making application for a Permit shall provide:
- (a) An Arborist Report verified by Town arborist, or other certified professional with a Tree Protection Plan and Tree inventory identifying the species, diameter, location, and number of all trees with a caliper measurement equal to or greater than 20 centimetres at breast height. All other vegetation is to be identified by an Arborist in masses showing the outline of canopy created by the massing in the areas of disturbance on the site;
 - (b) Photos of the site and trees affected;
 - (c) Site Plan; and
 - (d) Reason for proposed tree injury or destruction.
- 5.7 As part of the application for a Permit a Tree Replacement or Preservation Plan may be required as determined by the Director.
- 5.8 Each application shall be accompanied by the required fees payable in accordance with the Town's Fees and Charges By-law, as amended.
- 5.9 As part of the application for a Permit, the owner shall permit an Officer to enter upon his or her property and undertake such site inspections as may be required to consider the application. An Officer may undertake a site inspection prior to, during and after the proposed activity.
- 5.10 The Director may, at any time, require additional conditions be applied an

application or a Permit as necessary;

5.11 An application for a Permit shall be deemed incomplete, and no Permit will be issued if:

- (a) The application has not been completed in full;
- (b) The owner/applicant has not signed the application;
- (c) The party who will be undertaking or responsible for the injuring or destruction of trees has not signed the application;
- (d) The application fees have not been paid;
- (e) An Arborist Report, tree protection plan and tree inventory has not been submitted as part of the application; or
- (f) Any required inspections have not been undertaken.

6. Control Plans

CLASS 1

6.1 A control plan required under this by-law shall include the following:

- (a) The name and firm of an Ontario Land Surveyor who prepared the control plan, or the stamp and certification of a Professional Engineer licensed to practice in the Province of Ontario, or any other qualified person approved by the Director;
- (b) A key map showing the location of the site, and including a minimum of 30 metres beyond the site;
- (c) The number of hectares of the site and depict the site boundaries;
- (d) Specifics on the use of the site, and the location and use of the buildings and other structures adjacent and within 30 metres of the site if the use is known;
- (e) The location, dimensions and use of the buildings and other structures existing or proposed to be erected on the site;
- (f) The location of lakes, streams, wetlands, channels, ditches, other watercourses, and other bodies of water on the site and within 30 metres beyond the site boundary;
- (g) The limits of flood plain and Conservation Authority Fill Regulation lines and the applicable Conservation Authority setbacks from these lines both on the site and within 15 metres of the boundaries of the site;
- (h) The location of the predominant soil types;
- (i) The species, diameter and location of all trees with a caliper measuring 15 centimetres or greater at breast height, all other vegetation is to be identified in masses showing the outline of canopy created by the massing in the areas of disturbance on the site;
- (j) All easements and right(s)-of-way over, under, across or through the site;
- (k) The location and dimensions of any existing or proposed storm water drainage systems and natural drainage patterns on the site and within 30 metres of the site boundaries;

- (l) The locations and dimensions of utilities, structures, roads, highways, and paving both on the site and at a minimum of 30 metres from the site, including the location, size and invert elevations of all existing drainage pipes, culverts, and inlet chambers;
- (m) The existing site topography at a contour interval not to exceed 1 metre and to extend a minimum of 30 metres beyond the site boundaries;
- (n) The proposed grade and drainage system to be used upon completion of the work, which is the subject of the Permit, including the information on proposed pipes, culverts, and inlet chambers under clause (k) above;
- (o) The location and dimensions of all proposed work which is the subject of the application for a Permit;
- (p) The approximate location and dimensions of all proposed temporary topsoil or fill stockpiles;
- (q) The location, dimensions, design details and specifications of all work which is the subject of the application including all site siltation control measures or retaining walls necessary to meet the requirements of this by-law and the estimated cost of same;
- (r) A schedule of the anticipated starting and completion dates of all proposed work which is the subject of the application for a Permit including the installation of construction site control measures needed to meet the requirements of this by-law;
- (s) Provisions for the maintenance of the construction site control measures during construction;
- (t) A description of the proposed fill material including its location of origin;
- (u) The scale of the drawing; and
- (v) Any other information with respect to the site required by the Director.

6.2 Notwithstanding any other provisions of this by-law, the Director may waive the requirement for a Control Plan or waive any part of the requirement for the content of the control plan, where the requirement is unnecessary considering the limited extent of the proposed works impact on the site and the surrounding environment.

7. Security

7.1 The Director may, prior to the issuance of a Class 1 or Class 2 Permit under this by-law, require the applicant and registered owner of the site to provide security in a specified form and to require the entering into of an agreement, in the form acceptable to the Director, with the Town to provide security for an applicant's and owner's obligations under this by-law and any Permit issued. The agreement may include such requirements as the Director considers necessary to ensure that the work is completed in accordance with good engineering standards and practice, the terms and conditions of this by-law and Permit, and may be registered on title, which agreement and related documents the Director is hereby authorized to execute on behalf of the Town.

8. Issuance of a Permit

CLASS 1

8.1 A permit shall be issued where the Director is satisfied with the terms and

conditions:

- (a) That the applicant has complied with or will comply with all requirements of this By-law and Ontario Provincial Standards;
- (b) That the proposed grade and resulting drainage pattern, the proposed design of any retaining wall, the type of fill proposed to be used, if any, and the proposed method of the placing and dumping of fill or topsoil, or altering of the grade are all in accordance with good engineering standards and practice;
- (c) That any fill proposed to be placed or dumped includes only soil, stone, sod or other material acceptable to the Director and that such material is clean and free of any glass, rock, swamp material, bituminous pavement, concrete, masonry, manufactured wood, debris from open fires, polystyrene products, plastics, rubber, metals, asphalt, termites, liquid other than water, garbage or contaminants;
- (d) That the proposed placing or dumping of fill, altering of the grade, or removing or placing of topsoil will not result in:
 - (i) Erosion;
 - (ii) Flooding or ponding;
 - (iii) Blockage, siltation, or contamination of a watercourse;
 - (iv) A detrimental effect on any trees located on the lands or adjacent lands having a breast height diameter of 150 millimetres or more;
 - (v) An undue detrimental effect on the natural environment, including but not restricted to lands designated as Environmentally Significant Areas by the Town's Official Plans, Lake Ontario Shoreline, Niagara Escarpment and Areas of Natural or Scientific Interest as identified by the Ministry of Natural Resources;
 - (vi) The placing or dumping of fill or topsoil, or the alteration of grade of the land in or within 120 metres of a Provincially Significant Wetland identified by the Ministry of Natural Resources; or
 - (vii) Unsafe conditions for the abutting lands;
- (e) That the site will be rehabilitated, including replanting, to a condition which is substantially similar to or improved from the condition of the site prior to the undertaking of the work which is the subject of the Permit, immediately upon completion of grading or construction;
- (f) That the applicant, if required by the Director, has entered into an agreement as referred to in Section 7 of this by-law and has agreed to perform all of the required obligations under the agreement prior to the issuance of the Permit; and
- (g) That the work proposed under the permit does not involve contravention of the *Environmental Protection Act*, R.S.O. 1990, c. the *Ontario Heritage Act*, R. S. O. c. 0.18, zoning or land use by-laws, the *Building Code Act*, S. O. 1992 c. 23, the *Planning Act*, R.S.O. 1990, c. P.13, *Municipal Act*, S. O. 2001, c. 25, the *Drainage Act*, R.S.O. c. and the *Federal Fisheries Act*, R.S.C. 1985, c. F-14 and where such acts or by-laws require approval such approval is obtained and proof submitted or will be obtained and submitted before the work under the permit is carried out.

- 8.2 Permits shall be subject to the terms and conditions referred to in Section 7.1 unless exempted in writing by the Director.
- 8.3 The Director may impose additional terms and conditions upon the issuance of a Permit:
- (a) To deal with particular grading or drainage concerns for the work proposed, for the purpose of limiting negative effects or potential harm to proper drainage and other property;
 - (b) To require proof of testing of fill or soil to ensure the materials dumped, placed, or used to alter grade are free of contaminants;
 - (c) To require temporary construction site control measures to limit drainage, dust impacts and erosion during a period of construction or the period of a permit issued under this by-law;
 - (d) To require an adherence to a designated route for trucks carrying fill materials that is identified by the Director, or designate;
 - (e) To require temporary site siltation control measures to control drainage, dust and erosion and ensure soil stabilization until the work under the permit is complete or until permanent erosion control measures have been supplied; and
 - (f) Any other condition deemed appropriate by the Director.
- 8.4 The Director may require, as a condition of any permit issued pursuant to this by-law, that a retaining wall be constructed where:
- (a) Erosion on abutting lands may occur as a result of the work which is the subject of the Permit; or
 - (b) The finished grade of the site is of a higher elevation at a property line than that of the existing grade at the same property line of abutting lands.
- 8.5 Where a permit has been issued, no person shall undertake any dumping, placing or removal of fill or alteration of grade except in accordance with the permit, and in particular in accordance with the plans, documents or other information submitted to the Town upon which basis the permit was issued, and in accordance with all applicable terms and conditions.
- 8.6 Where an owner makes a material change to a plan, specification, document or other information following the issuance of a permit, the Director may require payment of one-half of the original permit fee and submission of revised drawings, which shall be approved by the Director prior to any dumping, placing or removal of fill or alteration of grade.
- 8.7 Notwithstanding the issuance of a permit, an applicant or owner shall comply with this by-law. Where non-compliance with this by-law is discovered following issuance of a permit, the Director may revoke it, and the permit holder shall forthwith cease all work, which was the subject of the revoked permit.
- 8.8 Where a permit has been issued, an applicant or authorized agent shall request the Director to make inspections at the commencement and completion of the work and shall request such further inspections as may be required by the Director or the conditions of the permit.
- 8.9 Subject to subsection 8.10, a permit shall be valid for a period of one (1) year from the date of issuance.
- 8.10 Notwithstanding subsection 8.9 above, a permit shall expire at an earlier date in the following circumstances and events:

- (a) A permit shall expire 180 days after the date of issuance if in the opinion of the Director the site alterations have not been commenced; and
 - (b) A Permit shall expire upon the transfer of ownership of the site unless the new owner provides written commitment to comply with all conditions under which the permit was issued, prior to transfer of the site, including in particular, compliance with this by-law, and to provide security in a form and amount acceptable to the Director, at which time any security previously provided by the original permit holder pursuant to this by-law shall be released.
- 8.11 An expired permit may be renewed once, for a period not longer than one year, within a six (6) month period from the expiry date, upon the applicant making a written request to the Director accompanied by the payment of one-half of the original permit fee.
- 8.12 A permit is non-transferable to another site.
- 8.13 In addition to the other requirements of this by-law, no person shall remove, place or dump, or cause or permit the removal, placing or dumping of fill on, or alter or cause or permit the altering of the grade of any lands in the Town, including any lands which are submerged under any watercourse or other body of water, unless:
- (a) It is done at the request of or with the consent of the owner of the site where the fill or soil is to be removed, placed, or dumped, or the grade altered;
 - (b) All fill placed or dumped includes only soil, stone, sod, or other material acceptable to the Director and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, garbage, concrete, construction debris and other contaminants;
 - (c) The drainage system for the site is provided in accordance with this bylaw and any Permit issued pursuant thereto and as otherwise required by law, in accordance with good engineering standards and practice and in such a condition that it will not result in erosion, blockage, siltation or contamination of a watercourse, flooding or ponding; and
 - (d) The fill or soil is removed, placed or dumped, any retaining wall containing such fill or soil is erected, or the grade is altered in such a manner that no flooding, ponding, or other adverse effects are caused on other lands.
- 8.14 Every person to whom a Permit is issued shall:
- (a) Provide a retaining wall, where required by the Director, which does not encroach upon abutting lands either above or below existing grade, and such retaining wall shall be constructed to the satisfaction of the Director;
 - (b) Ensure that the finished grade surface is protected by sod, turf, seeding for grass, vegetation, asphalt, concrete or other similar means, or a combination thereof;
 - (c) Ensure that fill shall not be placed or dumped around the perimeter of any existing building to an elevation higher than 150 millimetres below the top of the foundation wall of such building unless the building and its foundation are constructed in a manner which will prevent water penetration into the building and unless such building and its foundation are designed to withstand the lateral loads that the additional fill may impose on the structure;

- (d) Ensure that fill, placed or dumped around the perimeter of any existing building is sloped away from the building so as to cause water to drain away from such building;
- (e) Ensure that no trench, in which piping forming part of the drainage system is laid, shall be covered, and backfilled until the work has been inspected and approved by the Director or an Officer;
- (f) Provide and maintain such protection for trees as may be required by the Director;
- (g) Provide and maintain erosion, siltation and dust control measures as may be required by the Director;
- (h) Ensure that the work which is the subject of the Permit does not contaminate or otherwise foul any municipal roads and in the event that this occurs, ensure that any immediate safety hazard is removed or brought to the attention of the Town and all road users and that the road or roads affected are cleaned to the satisfaction of the Director within 24 hours of any request by the Director for such cleaning;
- (i) Permit entry by the Director, Officers and agents of the Director, Officer or Town to carry out reasonable inspections or to carry out work provided for under this by-law or for an inspection under an Order issued by the Court under section 144 of the *Municipal Act*, S. O.2001, c. 25 as amended, but this does not include the requirement to permit entry to any building;
- (j) Provide the Director or an Officer a report from a qualified engineer or environmental consultant possessing an expert or special knowledge in respect to the source and nature of the Fill to be placed or dumped that the Fill meets the standards prescribed by the Ministry of the Environment;
- (k) Provide a final lot grading plan under seal of an Ontario Land Surveyor identifying finished lot grades of the property subject to alteration and deviations from the approved proposed grading plan submitted for "permit" issuance;
- (l) Provide documentation showing the origin of all fill that is placed or dumped if not disclosed in the approved control plan submission; and
- (m) Ensure that all conditions of the Permit and any requirements of this bylaw are fulfilled to the satisfaction of the Director.

CLASS 2

8.15 The Director may issue a permit to destroy tree(s) where the Director is satisfied that all conditions of an application have been met, and:

- (a) That the applicant, if required by the Director, has entered into an agreement of this by-law, and has agreed to perform all the required obligations under the agreement prior to the issuance of the Permit; and
- (b) That the work proposed under the permit does not involve contravention of the *Environmental Protection Act*, R.S.O. 1990, c. the *Ontario Heritage Act*, R. S. O. c. 0.18, zoning or land use by-laws, the *Building Code Act*, S. O. 1992 c. 23, the *Planning Act*, R.S.O. 1990, c. P.13, *Municipal Act*, S. O. 2001, c. 25, the *Drainage Act*, R.S.O. c. and the *Federal Fisheries Act*, R.S.C. 1985, c. F-14 and where such acts or by-laws require approval such approval is obtained, and proof submitted or will be obtained and submitted before the work under the permit

is carried out.

- 8.16 Permits shall be subject to the terms, conditions and fees of the agreement unless exempted in writing by the Director.
- 8.17 Permits shall be subject to tree replacement conditions as per Schedule 'B' of this by-law.
- 8.18 Permit is subject to the conditions of the Town Tree Replacement Ratio Policy and the fees associated with such policy within the Town's Fees and Charges By-law, as amended.
- 8.19 Where an owner requests a material change to a plan, specification, document or other information following the issuance of a permit, the Director may require payment of one-half of the original permit fee and submission of revised documentation, which shall be approved by the Director prior to any continued work.
- 8.20 Notwithstanding the issuance of a permit, an applicant or owner shall comply with this by-law. Where non-compliance with this by-law is discovered following issuance of a permit, the Director may revoke it, and the permit holder shall forthwith cease all work, which was the subject of the revoked permit.
- 8.21 Where a permit has been issued, an applicant or authorized agent shall request the Director to make inspections at the commencement and completion of the work and shall request such further inspections as may be required by the Director or the conditions of the permit.
- 8.22 Subject to subsection 8.23, a permit shall be valid for a period of one (1) year from the date of issuance.
- 8.23 Notwithstanding subsection 8.22 above, a permit shall expire at an earlier date in the following circumstances and events:
- (a) A permit shall expire 180 days after the date of issuance if in the opinion of the Director the site alterations have not been commenced; and
 - (b) A Permit shall expire upon the transfer of ownership of the site unless the new owner provides written commitment to comply with all conditions under which the permit was issued, prior to transfer of the site, including in particular, compliance with this by-law, and to provide security in a form and amount acceptable to the Director, at which time any security previously provided by the original permit holder pursuant to this by-law shall be released.
- 8.24 An expired permit may be renewed once, for a period not longer than one year, within a six (6) month period from the expiry date, upon the applicant making a written request to the Director accompanied by the payment of one-half of the original permit fee.
- 8.25 A permit is non-transferable to another site.

9. Enforcement

- 9.1 The administration and enforcement of this by-law shall be performed by the Director and those persons designated as Officers under this by-law or as may be designated for the purposes of this by-law under other by-laws of the Town.
- 9.2 No person shall hinder, obstruct, or attempt to hinder or obstruct any person exercising a power or performing a duty under this by-law or under the Municipal Act provisions relevant to this by-law.
- 9.3 An Officer may enter onto lands, including private property, at any reasonable

time for the purpose of carrying out an inspection to determine if this By-law, including conditions of a permit, has been complied with.

- 9.4 Order to Discontinue Activity: Where an Officer or the Director is satisfied that a contravention of this by-law has occurred and in the opinion of the Officer or Director the work has occurred within a reasonable amount of time of the inspection where a contravention is observed, the Officer or Director may make an Order requiring the owner of the land or the person who caused a contravention of this by-law to discontinue the activity, and the Order shall set out:
- (a) The municipal address or the legal description of the land; and
 - (b) Reasonable particulars of the contravention and the period within which there must be compliance.
- 9.5 Service of Order to Discontinue: An Order made under subsection 9.4 may be served personally or by registered mail to the owner's or persons last known address, and in the event such service is not possible, may be given by posting a placard on the property in the manner provided for in subsection 9.8, and in the case of service by mail, deemed sufficient five (5) days from the date such notice was mailed.
- 9.6 Work Order: Where an Officer or the Director is satisfied that a contravention of the by-law has occurred within a reasonable amount of time of the inspection, the Officer or the Director may make an Order requiring work to be done to correct the contravention, and the Order shall set out:
- (a) The municipal address or the legal description of the land;
 - (b) Reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the Order; and,
 - (c) A notice stating that if the work is not done in compliance with the Order within the period it specifies, the Town may have the work done at the expense of the owner.
- 9.7 Service of Work Order: Before the Town or its agents enters on land to do the work specified in subsection 9.6, the Order shall be served on the owner of the land personally or by prepaid registered mail to the last known address of the owner of the land.
- 9.8 Placard: If the Town is unable to effect service on the owner under subsection 9.7, it may place a placard containing the terms of the Order in a conspicuous place on the land and may enter the land for this purpose, which shall be deemed to be sufficient service of the Order.
- 9.9 Should the owner fail to do work required under this by-law, after the Town has served an Order requiring compliance and the time for compliance provided has expired, in addition to any other action the Town may take or other remedy it may have, the Town may at any reasonable time and at the owner's expense, in the manner provided for in the *Municipal Act, 2001*, S.O. 2001, c.25 including interest at the rate specified there, and using any security supplied, carry out repairs on the property as follows:
- (a) Where the Town holds security to carry out the repairs, the Town may carry out such repairs as are necessary to bring the property into compliance up to the amount of the security held;
 - (b) Where the Town does not hold security or the amount of the security under (a) is insufficient to complete the repairs, the Town may carry out such repairs as are necessary to bring the property into compliance with the cost, subject to (c), not to exceed \$10,000 excluding

interest accrued; and

- (c) Where the costs of bringing the property into compliance exceeds the amounts authorized by (a) or (b), the Town may carry out such repairs to an amount or manner as may be approved by Council.

9.10 Upon application for issuance of a Permit, the property owner shall permit entry and inspection of the site at all reasonable times, to take fill samples for the purpose of determining whether material used for fill, includes only soil, stone, sod or other material acceptable to the Director and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid, garbage or contaminants or to inspect, identify species, count and/or measure any tree(s) that may have been destroyed or are specified under a permit or application scheduled to be destroyed. For purposes of an inspection under this section the Director may:

- (a) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples, measure trees and assess injury or damage, photographs necessary for the purposes of the inspection;
- (b) Order the owner of the property to take and supply at the owner's expense such tests, samples, tree counts, health, identification of species or measurements as are specified in the Order; and
- (c) Require the owner to provide mandatory third-party testing of fill material, where the amount of fill to be dumped exceeds 100 cubic metres or provide mandatory third-party reports regarding tree counts, health and/or measurements

9.11 Costs incurred by the Town under this by-law may be registered as a lien on the land upon the registration in the proper land registry office of a notice of lien or the Town may recover all costs associated with any requested testing or soils or other material, work or condition failed to be met on a permit or Order by applying those cost to the Property Tax Roll.

9.12 A Permit shall be revoked where it is discovered that it was issued as a result of misleading or false information supplied by the applicant or owner, where it has been issued in error, where non-compliance with a Town Order has occurred or any other reason the Director determines as reasonable.

9.13 Where a Permit has been revoked under this subsection or for any other reason under this by-law, the Permit holder shall forthwith cease all work under the revoked Permit.

10. Offences and Penalty

10.1 Any person who contravenes any provision of this By-law, or an Order issued under Section 9 is guilty of an offence and is liable:

- (a) On first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
- (b) On any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.

10.2 Despite subsection 10.1, where the person convicted is a corporation:

- (a) The maximum fines in clause 10.1(a) are \$50,000 or \$5,000 per tree; and
- (b) The maximum fines in clause 10.1(b) are \$100,000 or \$10,000 per tree.

10.3 If a person is convicted of an offence for contravening this By-law or an Order issued under section 9, the court in which the conviction has been entered, and any court of competent jurisdiction, thereafter, may Order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

11. Severability

11.1 In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

12. Repeal and Enactment

12.1 By-law No. 2020-57 is hereby repealed and any other By-law that is found to be inconsistent with this By-law is hereby repealed in whole or in part on the passing of this By-law.

13. Effective Date of By-law

13.1 This By-law shall come into force and take effect upon its final passing.

By-law read a first time this 16th day of November 2020.

By-law read a second time this 16th day of November 2020.

By-law read a third time and finally passed this 16th day of November 2020.


MAYOR: SANDRA EASTON


CLERK: JULIE KIRKELOS

SCHEDULE 'A' TO SITE ALTERATION BY-LAW NO. 2020-64
NUISANCE AND WEED TREES

Nuisance Trees:

Female Gingko

Weed Trees:

Autumn Olive (*Elaeagnus umbellata*)

Black Alder (*Alnus glutinosa*)

Common Buckthorn (*Rhamnus cathartica*)

Cottonwood

European or Glossy Buckthorn (*Rhamnus frangula*)

Manitoba Maple

Norway Maple

Russian Olive

Salt Cedar

Siberian Elm

Tree of Heaven

White Mulberry (*Morus alba*)

SCHEDULE 'A' TO SITE ALTERATION BY-LAW NO. 2020-64
TREE REPLACEMENT CONDITIONS

Tree Replacement Ratio

The number of replacement trees required will be determined by the diameter at breast height (DBH) of the tree(s) proposed to be removed, as outlined in the chart below.

DBH of Tree Proposed to be Removed or Destroyed	Number of Replacement Trees Required
20-29 cm	1:1
30-49 cm	2:1
50-74 cm	3:1
≥ 75 cm	4:1

DBH refers to the tree diameter measured at 1.4 metres (140 cm) above the ground.

All tree replacements are required to meet planting specifications outlined in the Town of Lincoln Tree Manual. This includes tree selection from a list of Approved Tree Species; minimum tree size, tree species diversity requirements, nursery stock requirements, and installation according to the Town's planting detail.

The tree replacement plan will be developed and undertaken to the satisfaction of the of the Director.

Cash-in-lieu Contribution

In instances where more replacement trees are required than can be reasonably accommodated on the subject site, a 'cash-in-lieu' of tree replacement may be paid to the Town to fund tree planting initiatives off-site. Alternate locations must be satisfactory to the Town and may include streetscapes, parks, and natural areas in need of tree planting. The cash-in-lieu payment shall be calculated on a per tree basis in accordance with the Town's Fees & Charges By-law.