A. Recommendations

THAT Council receive Staff Report CSOPS.19.082, entitled “Unauthorized works on Town lands”;

AND THAT Council direct staff to develop a strategy to be implemented in the second quarter of 2020 including a communication plan to initiate the process to identify and inventory non-conforming and or unauthorized use of Town owned lands including those works or uses on open and unopen roads allowances;

AND THAT Council endorse staff to enhance enforcement and initiate the process of removal of unauthorized works and or use on Town land.

B. Overview

The Town continues to experience development, and with this development often comes the investment on private land that include significant landscaping that encroaches beyond private lands onto town owned lands. This includes trees, rocks, gardens and other landscape features along with entrances that have not been authorized by the Town and are often not constructed to Town design standards. Staff is looking for support and reaffirmation regarding the enforcement of current zoning By-laws and municipal lands use By-laws which may require the removal of existing encroachments.

C. Background

The Town has existing zoning By-laws that define parking and landscaping requirements. The Town has also developed engineering standards and municipal land use By-laws to help control the use of lands that help reduce snow plowing hazards, utility conflicts, drainage challenges and to help mitigate liability.

Staff are finding throughout the Town, in both new and long-established developments that extensive landscaping works have been completed that include placing landscape features on Town lands.

Landscaping works can often cause conflicts with both overhead and underground utilities. Trees are often planted under overhead wires, which will be require cutting in a few years.
Trees are often planted in unauthorized locations that will have roots quickly grow into the softer sand and granular material used to protect the Hydro, natural gas and communication infrastructure causing future problems. To make repairs to these services the plantings may need to be removed. Residents often expect the Town to replace these landscape features.

Driveway entrances that are improperly constructed and do not reflect the required grading can cause drainage issues and snowplowing hazards. Hard surface entrances that do not direct water to the ditches can cause icing problems in the winter. Driveways that do not follow the profile of the road are often higher than the road surface and are damaged by the snowplow and cause damage to vehicles and even snow plow equipment.

The Town has historically controlled the use of the road allowances though land use By-laws. These By-laws have been reviewed periodically and updated as required. The following outline the series of By-laws that have been established:

**By-law 95-29 (June 26, 1995)**

Corporation of the Township of Collingwood, repeals By-law 86-20.

By-law to prohibit or regulate the obstructing, encumbering and damaging of highway within the territorial limits of the Municipality.

Enacts the following:
- Adopts the Postal Standards for rural mail boxes as prescribed by Canada Post.
- All persons are required to obtain Entrance Location Permit or Mail Box Location Permit.
- Movable garbage boxes must be located behind ditch line.
- Township shall set fees for permits.
- If owner refuses to comply, Township shall remove obstruction and recover costs.
- Fine for non-compliance not more than $500.
- If parts of By-law are deemed to be ultra vires or illegal such as the set fines the rest of the By-law remains valid and binding.

**By-law 99-53**

Corporation of the Town of The Blue Mountains, repeals By-law 98-72 and Thornbury By-law 93-14.

By-law to regulate the placing, construction and maintenance of material and objects in, on, under or over highways under Town jurisdiction.

Enacts the following:
- No person shall place, construct, install, maintain or use any objects, materials, infrastructure or works in, on, under or over any highway under the jurisdiction of the Council of the Town of The Blue Mountains without first executing a Municipal Lands Work Permit Agreement...
- Fine for non-compliance between $100 and $5,000.
The By-law exists separately from “Town” By-law 95-29 which is the Entrance Permit By-law.

By-law 2003-99
Corporation of the Town of The Blue Mountains, amends By-law 99-53.

Enacts the following provision added to By-law 99-53:
- Where an order to remove has not been obeyed the Town may carry out the work contained in the order.
- The expenses incurred will be treated as taxes.

SRB.04.03 Landscaping in Town Right of Way.

In September 2003 the issue of landscaping in the ditches in the Blue Bay Subdivision was identified. By-law enforcement staff issued an order to various property owners to remove offending elements. A resolution of Council at the October 20, 2003 meeting resulted as follows:


Landscaping in Town Right of Ways Policy:
- Herbaceous vegetation, wood chips, and mulch may be placed:
  - from property line to top of back slope of ditch;
  - from property line to within 0.6m of sidewalk/ walkways/ trails with maximum depth of bed 0.3m and owner assumes all responsibility for damage
- Storm sumps shall not discharge directly to Town R.O.W.
- Municipal ditches shall be finished with top soil and sod ground cover.
- Mail boxes installed in Right of Way with provisions of permit issued for same.
- Garbage boxes (36”H x 48”W x 36”D) have a 1.0m clearance from entrance adjacent to property line.
- Headwall installed in accordance with provisions of permit issued.

EPW.14.038 May 21, 2014

Staff Report: Municipal Land Use Permit By-law

In response to an increasing level of damage to Municipal infrastructure during lot development, from either new house construction or significant construction on lots, Staff suggested a land use permit system with a damage deposit.

This report resulted in the drafting of By-law 2014-65 and the current entrance permit system. Under the current By-law all works within the Town road allowance require a permit from the Town. In the event that any works including landscaping were installed without approval by way of a permit the “Town may, at the owner’s expense, remove the encroaching buildings, structures or works from the town land and restore the town land to a satisfactory condition and may recover the cost of this work, together with an administrative fee of twenty-five (25) percent of the cost of the Town’s work from the owner in accordance with section 446 of the Act” (Municipal Act)
A copy of the By-law is attached.

Through this By-law the Town does have the authority to make repairs to town lands and assign the cost to the adjacent land owner.

**By-law No. 2015 -43 Parks & Facilities Regulations By-law**

**Section 9.0 Encroachment**

1. Unless authorized by permit or otherwise, no person shall encroach upon or take possession of any park by any means whatsoever including:
   a. The construction, installation or maintenance of any fence, storage shed, retaining wall or other structure of any kind;
   b. Keeping of any composting receptacle or pile;
   c. Placing of any string, wire, chain, rope or similar material; or
   d. Plantings, of any hedge, tree, shrub or garden on park property thereon.

**Analysis**

In the simplest of terms, no works are to extend onto municipal lands with authorization by permit.

Operations Staff have identified that the default ground cover for municipal lands should be sod installed over 150mm topsoil with an optional ground cover of woodchips. The only place that rip rap can be placed is for protection of culvert ends or scour protection for ditches where expected flows could remove staked sod (very limited locations).

Boulevard grass will be cut by the Town twice a year. The Town does ask the adjacent landowners to take stewardship of the boulevard by cutting the grass, removing litter and by keeping catch basins and culverts open and unobstructed.

The less subjectivity afforded to Staff will reduce extended negotiations with residents on what can be allowed. When some landscaping is allowed into the road allowance or town property it becomes difficult to enforce and confusing for Staff to determine what is tolerated and what is encroaching.

Some residents are not aware that the running line for cable utilities is 1.0m to 1.3m inside the Right of Way limit (next to their lot line) and the placement of these wires can be 0.5m wide. The private utility pedestal/vault locations are 0.0m to 0.3m off the property line and extend up to 2.0m into the Right of Way. The hydrants and isolation valves exist 0.3m to 1.5m into the Right of Way. The Right of Way is occupied with infrastructure through its width. These utilities are placed in the back side of the ditch to allow crews to clean and clear ditches in the future. Hence the need to control what materials are placed on town lands.

Staff are bringing this report forward due to the magnitude of encroachments onto town owned lands. It is critical to note, that this process will result in significant concerns being raised by residents once they have been notified that removal of these encroachments is required.

Through the strategy development, consideration as to what may be considered acceptable use of Town owned lands and what could be provided as authorization to use town land. Staff can use existing processes and success to help with that consideration. Staff however note it is important that any
permit or authorization be attached to the property and registered on Title. As noted, the more clarity in what is acceptable the better so consistency can be achieved.

Significant staff hours will be required to identify areas of non-compliance, notify the residents of the need to remove the works, inspecting the restoration, hiring a contractor or scheduling staff to remove and restore areas plus administration, tracking and recovery of costs.

D. The Blue Mountains Strategic Plan

<table>
<thead>
<tr>
<th>Goal #5:</th>
<th>Ensure Our Infrastructure is Sustainable</th>
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<tbody>
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<td>Objective #1</td>
<td>Develop a Long-Term Asset Management Plan for the Maintenance, Renewal and Replacement of Existing Infrastructure</td>
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<tr>
<td>Objective #2</td>
<td>Avoid Unexpected Infrastructure Failure and Associated Costs and Liability</td>
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<td>Objective #3</td>
<td>Implement Best Practices in Sustainable Infrastructure</td>
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<tr>
<td>Objective #4</td>
<td>Ensure that Infrastructure is Available to Support Development</td>
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</tbody>
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E. Environmental Impacts

Urban street trees are encouraged but their placement should be strictly controlled by Staff due to underground and overhead utilities as well as operational and safety requirements.

Boulevard grass will be cut by the Town twice a year. The Town does ask the adjacent landowners to take stewardship of the boulevard by cutting the grass, removing litter and by keeping catch basins and culverts open and unobstructed.

F. Financial Impact

Staff will be reviewing the structure of By-law Enforcement Services. Pending receiving the direction of Council to develop a strategy to initiate the process of eliminating unauthorized use of Town Land, this consideration would be part of the By-law Services review.

It is anticipated that the proactive enforcement of this existing By-law will be significant for staff to take on due to the lack of enforcement in the past.

G. In Consultation With

Planning and Development Services

By-law Enforcement

H. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. Comments regarding this report should be submitted to Shawn Everitt, cao@thebluemountains.ca.
I. **Attached**

1. Attachment #1: Town Bylaw 2014-65  
2. Attachment #2: Standard Urban Cross Section  
3. Attachment #3: Standard Rural Cross Section

Respectfully submitted,

_______________________________  
Shawn Everitt  
Chief Administrative Officer

For more information, please contact:  
Jim McCannell  
jmccannell@thebluemountains.ca  
519-599-3131 extension 271
The Corporation of the Town of The Blue Mountains

By-Law Number 2014 – 65

Being a By-law to regulate the installation of works on town land and establish a process to issue Land Use Permit.

Whereas Subsection 5(3) of the Municipal Act, 2001, S.O. 2001, C. 25, (the “Act”) as amended, states a municipal power, including a municipality’s capacity, rights, powers and privileges of a natural person, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

And Whereas Sections 11 and 27 of the Act enables the council of a municipality to pass by-laws regarding highways under its jurisdiction;

And Whereas Section 11 of the Act enables the council of a municipality to pass by-laws regarding culture, parks, recreation and heritage;

And Whereas Subsection 110(3) of the Highway Traffic Act, R.S.O. 1990, C. H.8 (the “HTA”), states council of a municipality may enact a by-law providing that a permit for use of a highway under the jurisdiction of the municipality by a vehicle in excess of the dimensional or weight limits set out in the HTA may be issued by an officer of the corporation named therein;

And Whereas it is deemed expedient by Council to pass a by-law so as to regulate the installation of works on town land where such works might interfere with operations, maintenance and construction activities of the Town and to ensure any damage to town land and town infrastructure is repaired.

Now Therefore Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. DEFINITIONS:

“application” shall mean the application form prescribed by the Director to apply for a land use permit.

“damage deposit” shall mean a sum of money paid by the owner to the Town as a condition of the issuance of a land use permit which may be used by the Town to repair any damage caused to town land during the installation of the works for which a land use permit is issued for or during the construction of any buildings or structures on the owner’s land.

“Director “shall mean the person holding the title of Director of Engineering and Public Works or the Director of Community Services for the Town or his or her designate, depending on the location of the buildings or structures or the proposed works on town land.

“highway” shall mean a common and public highway under the jurisdiction of the Town the types of which are more particularly described in section 26 of the Act and includes a highway which has not been assumed by by-law for public use.

“install” shall also mean erect, construct, reinstall, reconstruct, undertake, perform, place or store.

“land occupation agreement” shall mean an agreement between the owner and the Town permitting the installation of works on town land and the encroachment on or occupation of town land by buildings, structures or works.

“land use permit” shall mean a permit issued by the Director in accordance with this by-law for the installation of works on town land and the encroachment on or occupation of town land by buildings, structures or works.
“licence fee” shall mean an annual fee set out in the Town’s fees and charges by-law to be paid to the Town for the right for buildings, structures and works to encroach on and occupy town land in accordance with a land use permit or land occupation agreement.

“order” means an order made under section 445 of the Act

“owner” shall mean the person who, as the context of this by-law requires, is the owner of the works or the encroaching buildings, structures or works or the vehicle for which the land use permit is issued.

“person” includes a corporation and the successors, assigns, heirs, executors, administrators and other legal representatives of a person.

“staging” shall mean the placement, deposit, temporary storage, loading or unloading of equipment and materials of any kind on town land, but does not include the lawful parking of vehicles.

“Town” shall mean The Corporation of the Town of The Blue Mountains.

“Town land” shall mean any land, owned, managed or leased by the Town and shall include, but not be limited to, parkland, public open space, public waterfront access points, highways and easements in the Town’s favour and any Town owned infrastructure installed on town land.

“Treasurer” shall be the person who has been appointed by by-law as the Town’s treasurer.

“works” shall mean any works, including but not limited to, filling, grading, drainage, culverts, driveways, berms, fencing, trees, shrubs, hedges, landscaping of any kind, property entrances, utilities, private plumbing, scaffolding, patios, planters, signage, rural mailboxes or any other object or thing.

2. No person shall install or cause to be installed, either temporarily or permanently, any works on, over or under any portion of town land, without the owner having first obtained a land use permit from the Director in accordance with this by-law.

3. No person shall encroach on or occupy town land with any buildings, structures or any works without the owner having first obtained a land use permit from the Director in accordance with this by-law.

4. No person shall undertake any staging work on town land, or deposit any snow, ice or debris of any sort from private property onto town land without having first obtained a land use permit from the Director in accordance with this by-law.

5. No person shall operate:
   a. steel tracked vehicles on or over any town land, or
   b. motor vehicles and construction equipment of any kind, excluding steel tracked vehicles, on or over town land, except the travelled part of a highway, driveways and parking areas without the owner having first obtained a land use permit from the Director in accordance with this by-law.

6. The Director may refuse to issue or renew a land use permit if the Director decides, acting reasonably, that the installation of the works on town land or the continuing encroachment on or occupation of town land with any buildings, structures or any works will interfere with current or future use, operations, maintenance and construction activities of the Town on the town land. An owner may appeal a
decision made by the Director under this section to the Town Council whose decision on the appeal shall be final.

7. In the event that the Director and the Town Council refuse to issue or renew a land use permit, or the owner fails to pay the license fee when due in accordance with the land use permit or land occupancy agreement, the owner, at its own expense, shall remove the encroaching buildings, structures or works from the town land and restore the town land to a condition satisfactory to the Director. Failing which, the Director may make an order under section 445 of the Act requiring the owner to do this work.

8. In the event the owner has not removed encroaching buildings, structures or works from the town land and restored the town land to a condition satisfactory to the Director in accordance with an order, the Town may, at the owner’s expense, remove the encroaching buildings, structures or works from the town land and restore the town land to a satisfactory condition and may recover the cost of this work, together with an administrative fee of twenty-five (25) percent of the cost of the Town’s work from the owner in accordance with section 446 of the Act.

9. In the event that any damage is caused to town land by the owner or its agents, contractors and employees in the installation of the works described in a land use permit or in the construction of any building or structures on the owner’s land, the owner, at its own expense, shall repair any such damage and the Director may make an order under section 445 of the Act requiring the owner to do the work to repair the damage.

10. In the event the owner has not repaired damage in accordance with an order, the Town may, repair the damage at the owner’s expense and may recover the cost of the repairs, together with an administrative fee of twenty-five (25) percent of the Town’s cost of the repairs (“the total repair costs”), from the owner in accordance with section 446 of the Act.

11. The Treasurer is authorized to use the damage deposit to recover the whole or any part of the total repair costs owing to the Town. The Treasurer shall return to the owner any remaining balance of the damage deposit after the Town has recovered the total repair costs. Alternatively the Director may, at his or her sole discretion, direct that the whole or any part of the damage deposit be transferred into a reserve designated by the Treasurer to be utilized at a date determined by the Director to repair the damage.

12. The Application for a land use permit shall be in the form prescribed by the Director and be accompanied by the permit fee and, if applicable, the first year’s license fee and the damage deposit as set out in the application form.

13. The Director may, as a condition of issuing a land use permit, require the owner to enter into a land occupation agreement with the Town which will require among other things that the owner pay a license fee to the Town.

14. A land use permit shall expire two (2) years from the date of issuance and any associated damage deposit shall be returned less any monies that are determined to be retained to make corrective repairs in the sole opinion of the Director acting reasonably.

15. Every person who is issued a land use permit shall provide, a certificate of insurance coverage naming the Town as an additional insured party, confirmation of locating services, and records of the installed works and any other documentation that may be reasonably prescribed by the Director, and that any damage deposit associated with the land use permit shall be held until the described documentation is provided.
in a form satisfactory to the Director

16. Every person who owns works installed on town land before the enactment of this by-law must obtain a land use permit for such works if required by the Director regardless of the date of installation and circumstances of the works and whether or not such works are temporary or permanent.

17. This by-law shall be administered and enforced by the Director.

18. The Director shall have the authority to prescribe:
   a. The classes of land use permits to be issued, including the classes which require land occupation agreements and license fees;
   b. The terms and conditions for land occupation agreements and for each class of land use permit, including the expiry dates, insurance requirements and damage deposits required;
   c. The form of the applications for the classes of land use permits; and
   d. The form and terms and conditions of the permit referred to in subsection 110(1) of the HTA.

19. The Director shall have authority to execute on behalf of the Town all land use agreements required by this by-law in a form approved by the Town’s solicitor.

20. The Director shall have authority to issue permits referred to in subsection 110(1) of the HTA.

21. This by-law is not applicable to any works which have been installed on or occupy town land in accordance with an existing agreement with the Town, or installed by a person under the authority of the laws of Ontario or Canada.

22. Every person who contravenes any provision of this By-law is guilty of an offence and shall, upon conviction, be liable to a fine as provided under the Provincial Offences Act.

23. The short form wording for the title of this By-law shall be “Land Use Permit” By-law.

24. Township of Collingwood By-law No. 95-29, being a By-law to prohibit or regulate the obstructing, encumbering and damaging of highways within the territorial limits of the municipality is hereby rescinded.

25. By-law No. 99-53, being a By-law to regulate the placing, construction and maintenance of material and objects in, on, under or over highways under Town jurisdiction is hereby rescinded.

26. By-law No. 2004-125, being a By-law to prohibit the deposit of ice or snow on municipal highways is hereby rescinded.

And Further that this By-law shall come into force and take effect upon the enactment thereof.

Enacted and passed this 22nd day of September, 2014

“ORIGINAL SIGNED”
John McKean, Mayor

“ORIGINAL SIGNED”
Corrina Giles, Clerk