

**TOWN OF BEAUSEJOUR
BY-LAW NO. 1760-19**

BEING A BY-LAW OF THE TOWN OF BEAUSEJOUR TO REGULATE THE GRADING OF PROPERTY AND TO ESTABLISH LOT GRADE ELEVATIONS.

WHEREAS Sub-section 294.1(2) of the Manitoba Municipal Act subject to the rights of any other party under The Water Resources Administration Act or The Water Rights Act gives jurisdiction over every drain within its boundaries to the municipality;

AND WHEREAS section 231 (b) of the Manitoba Municipal Act provides that Council may pass by-laws to enhance the ability of the municipality to respond to present and future issues in the municipality;

AND WHEREAS section 232 (1)(a) of the Manitoba Municipal Act provides that Council may pass by-laws for municipal purposes with respect to the safety, health, protection and well-being of people, and the safety and protection of property;

AND WHEREAS section 232 (1)(h) of the Manitoba Municipal Act provides that Council may pass by-law for municipal purposes with respect to drains and drainage on private or public property;

AND WHEREAS section 232 (2)(d) permits Council to establish fees or other charges for services, activities or things provided or done by the municipality;

AND WHEREAS section 245 (1), subject to Section 242 and 242(2)(b), of the Manitoba Municipal Act permits a municipality to take whatever action or measures necessary to remedy a contravention of a by- law;

AND WHEREAS the Council of the Town of Beausejour deems it expedient and in the public interest to pass a by-law to establish regulations governing the grading of property for the purposes of managing storm water runoff in order to minimize any nuisance that may be caused to property by storm water runoff, and to minimize the infiltration of storm water into the wastewater sewer system via building foundation drains;

NOW THEREFORE the Council of the Town of Beausejour in meeting duly assembled enacts as follows:

SECTION 1 SHORT TITLE

1.1 This By-law may be referred to as "The Town of Beausejour Lot Grade By-law".

SECTION 2 INTENT OF BY-LAW

2.1 The intent of this by-law is to establish regulations governing the grading and landscaping of property within the municipality for purposes of managing storm water runoff in order to minimize:

- a) The infiltration of storm water into the wastewater sewer system via building foundation drains;
- b) Any nuisance that may be caused to property by storm water runoff.

SECTION 3 LIST OF SCHEDULES AND AMENDMENT TO SCHEDULES

3.1 Attached to and forming part of this by-law are the following schedules:

Schedule "A"

- Typical Lot Grading Type I
- Typical Lot Grading Type II
- Typical Lot Grading Type III

Schedule "B"

- Precast Concrete Splash Pads for Downspout Leads and Pump Discharge
- Subsurface Drainage Piping

Schedule "C"

- Lot Grade Permit Application

Schedule "D"

- Lot Grade Fees & Deposits

3.2 Council may from time to time, by resolution, amend any schedule attached to this by-law.

3.3 Council may by resolution, deviate from this by-law under extenuating circumstances.

SECTION 4 DEFINITIONS

4.1 Unless the context otherwise requires, where used in this by-law:

Applicant - means the owner, or such other person authorized in writing by the owner to make application for a Lot Grading Permit.

Authority having jurisdiction - means an official or agency designated by the Council of the Town of Beausejour for the enforcement of any parts of this by-law.

Building - means any structure used or intended for supporting or sheltering any use or occupancy and, without restricting the generality of the foregoing, includes residential, commercial and industrial structures.

Building Lot Grade - means the lot grade elevation of the finished ground surface immediately adjacent to the foundation of a building and at the location so identified on the *Lot Grading Permit*.

Council - means the duly elected Council of the Town of Beausejour.

Downspout - means a nominally vertical pipe that is installed to carry storm water from a roof.

Elevation - means the vertical distance above or below sea level.

Finished Surface - means the completed landscaping condition of an area by covering the area with, but not limited to, sod, grass, stone, cement, wood and other substances or material.

Highway - means any place or way, including any structure forming part thereof, which or any of which the public is ordinarily entitled or permitted to use for the passage of vehicles or pedestrians, with or without fee or charges therefore, and includes all the space between the boundary lines thereof, whether or not used for vehicular or pedestrian traffic and, without restricting the generality of the foregoing, includes road allowances, street, lanes, thoroughfares, sidewalks, and other means of communication dedicated to the public as highways as defined, and also piers, wharves, ferries, and squares, and the road improvements thereon dedicated to public use, but does not include any area designated or intended and primarily used for the parking of vehicles and the necessary passageways thereon.

Land Drainage Sewer - means a sewer that carries storm water and surface water, street wash, weeping tile water, and other wash waters or drainage but exclude domestic wastewater and industrial wastes.

Lot - means a piece, plot or parcel of land or an assemblage of contiguous parcels of land in one ownership, having a frontage and/or flankage on a public road.

Lot Grade Elevation - means the elevation of the finished ground surface at any specific reference point or at any point on the slope between two reference points on a lot.

Lot Grading - means a general term referring to the combination of lot grade elevations and resultant slopes within a given lot.

Lot Grading Permit - means a written approval issued by the Authority Having Jurisdiction pursuant to this By-law, wherein the Building Lot Grade and the Lot Grade

Elevations of a specific lot are established.

Municipality – means the Town of Beausejour.

Municipal Road – shall have the same definition as per Section 285 of the Manitoba Municipal Act.

Owner – means a person in whose name a subject property is registered.

Registered Property – means a property intended for use by one or two families only.

Splash Pad - means a cast-in-place or pre-cast concrete pad rigidly attached to a building to carry runoff and weeping tile water away from the building foundation.

Storm Water - means water from rainfall or snowmelt or a combination of the two, and includes weeping tile water.

Street – has the same meaning as Municipal Road or Highway.

Street Line – means the lateral boundaries of a Municipal Road or Highway.

Wastewater Sewer - means a sewer that carries liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with quantities of ground, storm and surface water that are not admitted intentionally.

SECTION 5 APPLICATION FOR LOT GRADING PERMIT

5.1 All application for Lot Grading Permits shall be made at the offices of the Brokenhead River Planning District.

5.2 Residential Property Lot Grading Permit Applications:

The applicant shall obtain a Lot Grading Permit prior to the issuance of a building permit to construct a building on a lot. This does not apply to the construction of accessory buildings. The application shall be accompanied by:

- a) Three (3) copies of a site plan showing the location of the proposed building and any other information the Authority Having Jurisdiction deems to be pertinent to the grading of the lot.
- b) Three (3) copies of a plan showing a section of the foundation and the first floor of the building to be constructed and any additional section views which may be required for multi-level buildings.

5.3 Commercial, Industrial and Multi-residential Sites Lot Grading Permit Application:

The applicant shall obtain a Lot Grading Permit prior to the issuance of a building permit to construct a building(s) intended for use as commercial, industrial, multiple-residential or other than residential property. This does not apply to the construction of additions or accessory buildings on properties where a main building exists. The application shall be accompanied by:

- Three (3) copies of a lot grading plan for the site, prepared by an Engineer, Architect or Surveyor. This certified plan, where applicable, shall show:
 - a) Building Location
 - b) Lot Grade Elevations
 - c) Catch Basin Locations
 - d) Where applicable, Land Drainage Sewer sizes and locations
 - e) Entrances to buildings

And any other information the Authority Having Jurisdiction deems to be pertinent to the grading of the lot. In special cases, where applicable, the Authority Having Jurisdiction may waive some of the requirements of the Lot Grading Plan.

5.4 Existing Lot Grading Changes:

An owner shall obtain a Lot Grading Permit prior to proceeding with any work that may alter or otherwise change the grading of a lot or property in any manner that may affect the existing or established storm runoff from that or any adjacent property.

5.5 Timing of Applications:

The applicant shall make application for a Lot Grading Permit at least five (5) working days prior to the requirement of this permit.

SECTION 6 LOT GRADING REQUIREMENTS

6.1 Lot Grading shall be an integral part of the storm water drainage system for the Town.

6.2 Lot Grading Permit

The Lot Grading Permit shall have indicated on it the approved Lot Grade Elevations, and shall be accompanied by any lot grading plan approved in conjunction with the issuance of the permit. Any Lot Grading Plan so approved shall become part of the Lot Grading Permit.

6.3 Building Lot Grade

The building lot grade shall be as indicated on the Lot Grading Permit.

6.4 Residential Lot Grade

Residential property lot grading is typically illustrated in figures 1, 2 and 3 Schedule "A", as follows:

- a) Type 1 Lot Grading: Residential Split Lot Drainage = rear yard drains to a public lane.
- b) Type 2 Lot Grading: Residential Split Lot Drainage = rear yard drains to swale.
- c) Type 3 Lot Grading: Residential Back-to-Front Lot Drainage = rear yard drains to front street.

6.5 Perching of Residential Property

Residential property shall be graded and landscaped to achieve a "perching" of soil surrounding the perimeter of a building. This "perching" shall be constructed to provide effective positive drainage away from the building as set out in Schedule "A".

6.6 Lot Line Grading

Each lot shall be graded in such a manner as to allow storm water to drain along the lot line without ponding or obstruction, in accordance with the Lot Grading Permit.

6.7 Special Site Conditions of Residential Property

The requirements of Schedule "A" may be varied to resolve particular site conditions provided the intent of the By-law is met. Examples of special site conditions include, but are not limited to:

- a) Comer lots
- b) Restricted side yard lots
- c) Infilling of developed areas
- d) Construction of accessory structures

And such variation must be approved by the Authority Having Jurisdiction.

6.8 Commercial, Industrial and Multiple-residential Lot Grading

In designated areas of the Town, storm water runoff from commercial, industrial and multiple-residential properties may be required to be controlled so as not to exceed the maximum allowable rate of storm water discharge into the Town's Land Drainage System, as may be determined by the Authority Having Jurisdiction.

6.9 Roof Downspouts

away All building roof downspouts shall be located such that effective positive drainage from the building is achieved. All downspouts shall discharge through a suitable elbow onto a splash pad as detailed in Schedule "B" or by an equivalent method approved by the Authority Having Jurisdiction. Building roof downspouts shall not be located nor directed so as to cause storm water to drain directly onto adjacent property.

- 6.10 Sump Pump Discharge Pipe
All sump pump discharge pipes discharging weeping tile water shall be located such that effective positive drainage away from the building is achieved. These sump pump discharge pipes shall be fitted with a suitable elbow and shall discharge onto a splash pad as detailed in Schedule "C" or by an equivalent method approved by the Authority Having Jurisdiction and shall not be located so as to direct or cause discharge water directly onto adjacent property and street except where street ditches are adjacent to the property. No property owner shall discharge water directly into the Town sewer system.
- 6.11 Wastewater Sewer Connection

The Building Lot Grade Elevation shall be established at sufficient elevation to ensure that the wastewater sewer connection from the building conforms to the requirements of the Authority Having Jurisdiction.

SECTION 7 LOT GRADING CONSTRUCTION

7.1 Marking of Residential Property

The applicant, upon receiving a Lot Grading Permit, shall mark the corners of the lot or property with suitable marker stakes and shall display the address and lot number at a conspicuous location.

7.2 Provision of Building Lot Grade Stakes

The applicant shall request a Building Lot Grade Stake from the Authority Having Jurisdiction at least five (5) working days prior to the requirement of this stake.

The Authority Having Jurisdiction shall:

- a) Mark the Building Lot Grade on a stake located at the street line of the lot or such other suitable location as may be determined.
- b) Mark the corner Lot Grade Elevation upon suitable stakes at each lot corner or such other suitable location as may be determined.

The applicant shall take precautions to ensure that these Lot Grade Stakes are protected until no longer required. If replacement of the Lot Grade Stakes is required, the applicant shall pay the cost of such replacement.

7.3 Entering Upon Property

Duly authorized employees of the Municipality or its authorized agent so assigned may, pursuant to Section 239(1) and 239(3) of The Municipal Act enter upon property for the purpose of survey, observation or inspection associated with the enforcement of compliance with the Lot Grading Permit and the provision of this By-law.

The applicant shall ensure that employees of the Municipality or its agent are not interfered with in any way in the performance of the duties imposed on them by this By-law.

7.4 Compliance with Lot Grading Permit

The applicant shall ensure that all lot grading of a lot or property is completed in accordance with the requirements of the Lot Grading Permit. All Lot Owners shall complete their Lot Grading in compliance with the Building Lot and Lot Grade Elevation provided by the Town of Beausejour within two (2) years of the issuance of the Lot Grade Permit. This shall require the placement of a Finished Surface upon the said Lot.

7.5 Release of Lot Grading Deposit

The Municipality shall, upon written request from the applicant, cause the lot or property to be inspected and surveyed as required to determine compliance with the Lot Grading Permit. The Lot Grading Deposit shall be released to the applicant, or such other person authorized in writing by the applicant, when the Authority Having Jurisdiction has determined that the landscaping of the property has been substantially completed. Substantial completion shall mean the completion of the perching surrounding the building, the remaining lot grading and finished surface to a point where it complies with this by-law.

Inspections and surveys for the purpose of deposit release will generally be made during the period from May 1st to October 31st of each year, subject to snow cover and wet conditions.

When the above provisions are provided for an existing development Agreement, the development agreement shall prevail.

SECTION 8 FEES AND DEPOSITS

8.1 Fees

The applicant shall be required to pay the Municipality the applicable fee for a Lot Grading Permit, as set out in Schedule "D" attached hereto. This fee shall be paid prior to the issuance of the Lot Grading Permit.

8.2 Lot Grading Deposit

The applicant shall be required to deposit with the Municipality an applicable sum for a Lot Grading Deposit, as set out in Schedule "C". This sum shall be deposited prior to the issuance of a Lot Grading Permit. This deposit shall be retained by the Municipality until such time as the lot grading is substantially completed in accordance with Clause 7.5.

SECTION 9 RESPONSIBILITY OF PROPERTY OWNERS

9.1 Maintenance of Lot Grading

The owner shall be responsible to ensure the maintenance of all lot grades and landscape requirements which were established and approved by the Municipality prior to the passage of this By-law or established by a Lot Grading Permit.

9.2 Control of Sewer System

The owner shall be responsible to ensure that any storm water originating on his or her property is not directed nor permitted to flow onto adjacent property in a manner that would adversely affect or be detrimental to that property.

9.3 Maintenance of Roof Downspouts, Sump Pump Discharge Pipe and Splash Pads

The owner shall be responsible to ensure that roof downspouts, sump pump discharge pipe and splash pads or their approved equivalent are maintained to meet the requirements set forth in Clauses 6.9 and 6.10.

SECTION 10 REMEDIAL ACTION

10.1 Non-Compliance with Lot Grading Permit

Where the lot grading has not been completed in accordance with the Lot Grading Permit, the Authority Having Jurisdiction may give written notice by certified mail to the applicant, directing that the lot grading be completed and/or corrected.

Where required by the Authority Having Jurisdiction, the applicant shall submit as part of the corrective measures, a new Lot Grading Plan prepared by a Professional Engineer, Architect or Surveyor.

10.2 Failure to Comply with the Lot Grading Permit

Where an applicant who has been given a notice, order or direction pursuant to Clause 10.1 neglects or refuses to comply with such order or direction within the time specified, the Municipality may cause the work to be carried out and charge the cost of the work against the deposit held by the Municipality. Where the cost of the work exceeds the value of the deposit held, the Municipality may charge the cost of such excess against the applicant, and in default of payment:

- a) Recover the cost as a debt due to the Municipality;
- b) Charge the cost against the land concerned as taxes due and owing in respect of that land, and recover the cost as such.

10.3 Lack of Maintenance of the Lot Grade

Where the lot grading has not been properly maintained and drainage is not achieved in accordance with previously established and approved building lot grade and lot grade elevations or with the Lot Grading Permit and the requirements of the By-law, the Authority Having Jurisdiction may give a written notice by certified mail to the owner, directing that the lot grading be corrected.

Where required by the Authority Having Jurisdiction the Owner shall submit as part of the remedial measures, a new Lot Grading Plan prepared by a Professional Engineer, Architect or Surveyor.

10.4 Failure of Owner to Correct Lot Grading

Where an owner who has been given a notice, order or direction pursuant to Clause 10.3 neglects or refuses to comply with such order or direction within the time specified, the Municipality may cause the work to be carried out by the Municipality and charge the cost against the Owner, and in default of payment:

- a) Recover the cost as a debt due to the Municipality;
- b) Charge the cost against the land concerned as taxes due and owing in respect of that land and recover the cost as such.

SECTION 11 GENERAL PENALTIES

11.1 Any person who contravenes or disobeys, or refuses or neglects to obey any provision of this By-law for which no penalty is provided, is guilty of an offence and liable, on summary conviction of a fine not exceeding \$500.00 in the case of an individual, or \$1,000.00 in the case of a corporation, or, in the case of an individual, to imprisonment for a term not exceeding one (1) month or to both such a fine and such an imprisonment.

11.2 Where a contravention, refusal, neglect, omission or failure continues for more than one day, the person is guilty of a separate offence for each day it continues.

SECTION 12 EFFECTIVE DATE

12.1 All By-laws, resolutions and order passed relative to the grading of private property, and establishing minimum building grades to control storm water runoff to the extent that they are inconsistent herewith, are hereby repealed upon the date this By-law comes into effect.

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DONE AND PASSED in Council duly assembled, in the Town of Beausejour, in the Province of Manitoba, this day of , A.D. 2019.



Ray Schirle
Mayor



Chief Administrative Officer

Read a First Time this 8th day of January, A.D. 2019
 Read a Second Time this 29th day of January, A.D. 2019
 Read a Third Time this 29th day of January, A.D. 2019