

# Town of Lincoln, Kewaunee County, Wisconsin

## Ordinance 2023-1

### Town Road and Right of Way Ordinance

The Town Board of the **Town of Lincoln, Kewaunee County, Wisconsin**, does ordain as follows:

**1 TITLE:** The title of this ordinance is the Town of Lincoln Road and Right of Ways Ordinance.

**2 PURPOSE:** The Purpose of the Town of Lincoln Road and Right of Way Ordinance is to establish the policy and procedures for all activities and construction within the Town's roads and right of ways. All such activities and construction shall be overseen and permitted by the Town Board of Supervisors through the Plan Commission.

**3 AUTHORITY:** This Ordinance is adopted pursuant to the authority granted to the Town of Lincoln under Wis. Stats. **§60.01** to "enter into contracts necessary for the exercise of its corporate powers", **§60.61** to adopt a zoning ordinance, and the Town's exercise of Village Powers under **§60.10**, **§60.22** and **§60.62**. Additional authority is cited in the body of the ordinance.

**4 DEFINITIONS:**

"Facility" shall mean "any culvert, pipes or pipelines, tile line, or any utility including electric or electric transmissions (where applicable), power, communications, light, telephone, fiber cables, or any conduits for the transmission of water, drainage, liquid manure, heat, or the placement of poles or other structures."

**5 GENERAL REGULATIONS:**

**5.1** In the Town of Lincoln, the width of all town roads shall be presumed to be 66 feet by state statute (**Wisc. Stats. §82.18**). The burden of proof to prove otherwise (that a Town right of way is not 66 feet) shall be on the challenger.

**5.2** The Town shall be responsible for maintenance of all Town roads and right of ways, including to remove, cut, or trim any trees, shrubs, or other vegetation in Town right of ways to provide safety to the user of the Town roads. (**Wisc. Stats. §66.1037(1)**). Removal, cutting or trimming shall be at the discretion of the Town board.

**5.3** Trees that have fallen onto a Town road or right of way from a private property are the responsibility of the property owner to remove. If not removed by the property owner in a timely manner, such trees will be removed by the Town or a contractor authorized by the Town. (**Wisc. Stats. §86.03(1)**). This service may be charged to the landowner at the discretion of the town board. The resulting timber removed from the fallen tree shall be returned to the adjacent property by the Town or contractor. (**Wisc. Stats. §86.03(2)**).

**5.4** No person shall plow, cultivate, alter, modify, or otherwise work the land within the right of way in such a way that a ditch or drainage may be affected. (**Wisc. Stats. §86.021**). If the Town incurs restoration costs, the person responsible shall be liable for such restoration costs.

**5.5** No person shall operate farm machinery or other machinery on, over, along, or across any Town road or right of way in such a manner that it damages the Town road or right of way. **(Wisc. Stats. §86.021).** If the Town incurs restoration costs, the person responsible shall be liable for such restoration costs.

**5.6** Any person who damages a Town road or right of way by any means whatsoever shall be liable in triple the damages **(Wisc. Stats. §86.02).**

**5.7** No person may trench, excavate, bore, dig, or make any other alteration in a right of way or in or under a town road without a Site Plan Review and a Conditional Use Permit **(Wisc. Stats. §86.07).**

**5.8** No person may trench, excavate, bore, dig or make any other alteration in a right of way or in or under a town road for the installation of any "facility" without a Site Plan Review and a Conditional Use Permit, or a driveway culvert permit. **(Wisc. Stats. §86.16).** The installation of electric or electric transmission by a commercial utility is not included in this Site Plan Review requirement although the public utility must provide the town with detailed maps showing the installation.

**5.9** No person is authorized to lay out or install any manure hose, temporary or otherwise, in a road right of way that is affixed in any manner to a support structure such as a bridge or culvert without a Site Plan Review and Conditional Use Permit **(Wisc. Stats. §86.07.2b3).**

**5.10** Unfinished work that is left to the Town to complete shall be billed to the Building Permit holder.

**5.11** Any debris or rubble left and abandoned from the completion of an excavation project shall become the property of the Town. **(Wisc. Stats. §86.10).** Any money received from the sale of such materials shall be deposited into the highway maintenance fund. If there is a cost associated with the removal and disposal of such materials, the cost shall be billed to the contractor responsible for abandoning the material.

**5.12** Any person who wishes to install a driveway culvert on a town road shall first obtain a driveway permit from the Town Zoning Administrator. **(Wisc. Stats. §66.0425 and §86.07).** Any person who wishes to install a driveway culvert on a county road shall first obtain a driveway permit from the Kewaunee County Highway Department.

**5.13** No Town road or right of way shall be encroached upon by any fence, stand, building, or other object. If such incidence occurs, the Town board shall order the person(s) responsible for the infraction to remove the non-compliant object for safety and legal reasons within 30 days of the time that notice is given. **(WI §86.04).** If there is a more compelling danger, the Town shall seek immediate removal of the object. If the removal order is not obeyed, the Town will remove the object and recover the cost of such removal from the person(s) responsible (which may include putting the cost of removal on their real estate property tax bill) **(WI §66.0627).**

**5.14** No person shall place any obstruction in any right of way ditch that impedes drainage without first contacting the town board. **(Wisc. Stats. §86.021 and §86.022).**

**5.15** No property owner shall modify a right of way ditch in any manner. No person shall dispose of or deposit any soil, gravel, fill, rocks, tree limbs or timber, lumber, vegetation, or other debris or rubbish in any



right of way or ditch. Cost of removal of such items and restoring of the right of way to its original condition shall be billed to the responsible party. (**Wisc. Stats. §86.022**)

**5.16** Mailboxes may be placed in the right of way but concrete, large timbers, and steel structures which could pose a driving hazard are not allowed. Property owners are responsible for their own mailboxes.

**5.17** Signs are not allowed to be placed on any Town road or in any right of way.

**5.18** Building and other setbacks from the road right of way can be found in the Town's Zoning Ordinance.

**5.19** No person, partnership, utility, corporation, or their agents, or employees, or contractors shall make or cause alteration, extension, or addition on or to a Town road or right of way without submitting a Site Plan Review to the Plan Commission and receiving a Conditional Use Permit issued by the Town Board of Supervisors. A Conditional Use Permit allows the applicant to secure a Building Permit in order to proceed with work on the Town road or right of way.

**5.20** All Site Plans submitted for review by the Plan Commission for any "facility" must include detailed maps depicting specific locations of the objects to be buried and their depths. The installation of electric or electric transmission by a public utility is not included in this Site Plan Review requirement although a public utility must provide the town with detailed maps. All such "facilities" shall be properly identified with underground tape and / or above ground markers as dictated by industry "best practices".

**5.21** Before any person, partnership, utility, corporation, or their agents, or employees, or contractors are issued a Building Permit to perform any work on a Town road or right of way, they may be required to provide evidence of sufficient insurance as specified in the Conditional Use Permit. Any bonding requirement is at the discretion of the Town Board of Supervisors.

**5.22** Upon completion of any work done on a Town road or right of way, all restoration must be completed within 30 days of the project completion to the satisfaction of the Town Board of Supervisors, weather permitting. In the event the applicant fails to timely complete the restoration, the Town may do so at the applicant's expense.

**5.23** The Town Chair may authorize work on any Town road or right of way in what is deemed an "emergency situation."

**5.24** Any entity that has installed any "facility" and intends to abandon such "facility" shall notify the Town of such intentions before said abandonment occurs.

**6 PENALTIES:** Any damage to a Town road or right of way due to intentional or unintentional action on the part of any party shall be repaired or reconstructed by a third party contracted by the Town, as will any clean up required. The bill for such repair, reconstruction, or clean up shall be sent to the party responsible for the damage or debris, or the Building Permit applicant. Failure to pay the full amount of the bill within 30 days will result in the balance due being charged to the party's real estate property tax bill. Damage to town roads or right of ways may result in a judgment of triple the damages (**Wisc. Stats. §86.02**).

**7 ENFORCEMENT PROCEEDURES:** This ordinance shall be enforced by the Town of Lincoln Board of Supervisors.

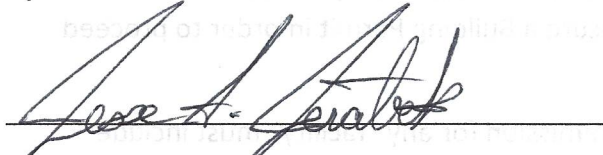
**8 SEVERABILITY:** If any portion of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**9 EFFECTIVE DATE AND PUBLICATION:**

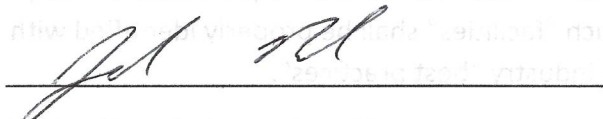
This ordinance shall become effective upon adoption and publication as required under Wisc. Stats. **§60.80.**

Adopted by a vote of 3 for and 0 against on this 3RD day of APRIL, 2023.

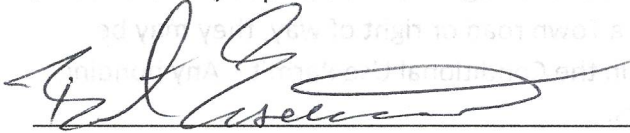
By the Town Board of Lincoln Town of Lincoln Board of Supervisors



Jesse Jerabek, Chairman



Jordan Nowak, Supervisor #1

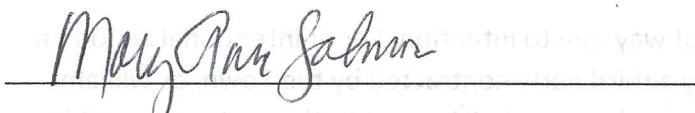


Brent Eisenman, Supervisor #2

**CERTIFICATION OF ENACTMENT**

I hereby certify that the foregoing ordinance was duly enacted by the Town Board of the Town of Lincoln on this

3rd day of April, 2023



Mary Ann Salmon, Town Clerk

2-6-2023