

# **The Corporation of the City of Kawartha Lakes**

## **Council Report**

**Report Number CLK2018-001**

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**Date:** January 30, 2018

**Time:** 2:00 p.m.

**Place:** Council Chambers

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**Ward Community Identifier:** 14

**Subject:** Line Fence Matter – McCausland and Hehl

**Author Name and Title:** Joel Watts, Deputy Clerk

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### **Recommendation(s):**

**That** Report CLK2018-001 **Line Fence Matter – McCausland and Hehl**, be received; and

**That** the City Clerk be instructed to proceed with the process under section 5.01 (Payment by Treasurer) of By-law 2015-124 for the McCausland and Hehl Line Fence Matter during the time frame of November 1<sup>st</sup> to March 31<sup>st</sup> as weather permits.

**Department Head:**\_\_\_\_\_

**Financial/Legal/HR/Other:**\_\_\_\_\_

**Chief Administrative Officer:**\_\_\_\_\_

## **Background:**

In September 2016, three of the City of Kawartha Lakes Fence Viewers prepared an award for the line fence dispute between two property owners (McCausland & Hehl) in the area of Concession 10, Lots 24 and 25 of the Geographic Township of Ops.

The original award prepared by the Fence Viewers was appealed to the Deputy Referee who replaced the award on December 15, 2016 with his decision attached as Appendix A to this report. His decision also provides brief synopsis of the dispute. The fence in question has been reported as complete by Mr. McCausland to the City Clerk's Office, however payment issues still remain. This report addresses those matters.

## **Rationale:**

As part of the Deputy Referee's award, the following was stated:

"10. When the construction of the fence has been complete, Brian McCausland shall be responsible for paying the full amount of the invoice to the contractor.

11. Jeffrey Hehl shall be responsible for paying 50 percent of this amount to Brian McCausland within twenty-eight days following the day on which written notice is given by Mr. McCausland to Mr. Hehl requesting payment of this amount."

Mr. McCausland has identified to the City Clerk's Office that the fence is now complete, and has supplied evidence that he has given notice to Mr. Hehl via registered mail (on December 5, 2017) that his payment of 50 percent is now due. Mr. McCausland has stated that he has not received payment from Mr. Hehl. According to the invoice from Tom Thurston (Sturgeon View Farms and Excavating) received, the amount owed by Mr. Hehl to Mr. McCausland is \$4,470.50 (or 50 percent of the total invoice supplied to the City Clerk's Office of \$8,941.01).

By-law 2015-124 (a By-law to set a Line Fences Administration Fee for the City of Kawartha Lakes) identifies a dispute mechanism when this type of event occurs. It states the following in Section 5.01:

**5.01 Payment by Treasurer:** After the timelines and process established under section 11 of the Line Fences Act have been complied with, an owner can initiate the following procedure for payment of an amount owed.

Any administrative costs of the proceedings owed by the owner making the request to the City shall be paid by the owner to the City before payment from the Treasurer is made.

If Award states one owner to pay other owner their share of the fence:

1. The owner shall notify (by registered mail or personal delivery) the defaulting owner of the amount owing.
2. If not paid within 28 days from the date the notice was served the owner may start proceedings to recover the money.
3. After 28 days from the date the notice was served the owner desiring to institute proceedings shall notify the City Clerk to have the Fence-Viewers re-attend and certify:
  - a) The default of the adjoining owner; and
  - b) The value of the work done by the owner which according to the award ought to have been done by the adjoining owner or the portion of costs of the work done.
4. City Clerk notifies both owners and Fence-Viewers not less than one week from the service of the notice that the Fence-Viewers shall re-attend and decide whether the award has been obeyed.
5. The Fence-Viewers shall determine the value of the work done and the portion of that value payable by the defaulting owner and shall prepare a certificate of default and the amount payable by the defaulting owner to the other owner.
6. The Fence-Viewers shall specify the costs of the proceedings and apportion the costs to the owner(s) as they see appropriate.
7. The Fence-Viewers deposit the certificate with the municipality and the City Clerk shall send a certified copy to each owner.
8. Upon written application by the owner entitled to receive the amount certified, the Treasurer may pay to the owner the amount certified or a portion thereof.
9. Upon making payment the Treasurer shall notify the defaulting owner of the amount owed.
10. The amount paid to the owner by the Treasurer may be collected in the same manner as municipal taxes together with interest from the defaulting owner.

The City Clerk's Office would like to proceed with this process, however to have the original three Fence Viewers re-attend to certify the default, they would have to wait until April 1, 2018 as Section 2.01 of By-law 2015-124 states the following:

**2.01 Attendance or Re-attendance:** No arbitration or other proceeding requiring the attendance or re-attendance of Fence-Viewers shall be scheduled between the 1<sup>st</sup> day of November and the 31<sup>st</sup> day of March in the next following year unless authorized by Council.

Mr. McCausland has requested on January 10, 2017 via letter to Council (attached as Appendix B) that Council authorize the fence viewers to re-attend within the period of November 1<sup>st</sup> to March 31<sup>st</sup>. If Council adopts the recommended resolution, the Fence Viewers would be permitted to re-attend the

site during the winter, ensure that the fence is complete to the specifications of the Deputy Referee's award, and consider issuing a Certificate of Default to the City Clerk's Office. If the Fence Viewers choose to issue a Certificate of Default, this will permit the City to pay Mr. McCausland the share owed by Mr. Hehl, and collect the portion owed by Mr. Hehl in the same manner as municipal taxes.

Mr. McCausland has identified that, weather permitting, he is willing to assist with the re-attendance of the Fence-Viewers as the fence in question is some distance from the road allowance (Cheese Factory Road, and the unopened portion of Lilac Road).

### **Other Alternatives Considered:**

Council could decide not to allow the early re-attendance of the Fence Viewers and thereby enforce the provisions of By-law 2015-124. In this case, if Mr. McCausland would still wish for the Fence-Viewers to re-attend to certify any potential default, he would have to wait until April 1, 2018 at the earliest. This option would provide an inconvenience for Mr. McCausland who has already paid Mr. Hehl's share of the award to the contractor.

### **Financial/Operation Impacts:**

Should the Fence Viewers re-attend the site, they will apportion (at a percentage split set by them) the City's administrative costs of the re-attendance, and the Fence Viewer mileage expense, in their Certificate of Default to the property owners.

### **Consultations:**

City Clerk

### **Attachments:**

Appendix A – Award of the Deputy Referee – McCausland and Hehl



Appendix A - Award  
of the Deputy Refere

Appendix B – Request from Mr. McCausland



Appendix B -  
Request from McCaus

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**Department Head:** Ron Taylor

**Department File:** L01 – Fence Viewing McCausland and Hehl