

The Corporation of the City of Kawartha Lakes

Committee of the Whole Report

Report Number CLK2019-004

Date: April 9, 2019

Time: 1:00 p.m.

Place: Council Chambers

Ward Community Identifier: All

Title: Line Fences Act Review

Author and Title: Joel Watts, Deputy Clerk

Recommendation(s):

That Report CLK2019-004, **Line Fences Act Review**, be received;

That a by-law, attached as Appendix A to this report, affirming that the Line Fences Act, 1990, does not apply to any property in the City of Kawartha Lakes (with the exception of agricultural and rural properties) and establishing a procedure for equal line fence cost sharing of a basic fence, be forwarded to Council for adoption;

That the administration fee for Line Fences Act proceedings be raised to \$250.00 at the next amendment to the Consolidated Fees by-law; and

That this recommendation be brought forward to Council for consideration at the next Regular Council meeting.

Department Head:_____

Financial/Legal/HR/Other:_____

Chief Administrative Officer:_____

Background:

Every term of Council, the City of Kawartha Lakes appoints a number of Fence Viewers (currently six are appointed) to regulate and adjudicate the City's role in the Line Fences Act. The six currently appointed Fence Viewers remain appointed until successors are designated at a future meeting by Council, and all have indicated an intention to continue serving as Fence Viewers.

Prior to appointing new Fence Viewers, the Clerk's Office deems it appropriate to provide Council with information regarding the City's responsibilities and options for regulating the Line Fences Act during the new term of Council. Direction from Council is required to either proceed with the status quo, or act on adopting a new process.

Currently, staff believe it may be expedient to revisit the Line Fences Act as it applies to the municipality. The Line Fences Act is an administratively encumbering piece of legislation, and more efficient methods of settling disputes exist and have been adopted by surrounding municipalities.

At the August 9, 2018 Agricultural Development Advisory Committee meeting the following was noted:

Line Fences Act implementation for next term of Council – Joel Watts and Connor Chase from the Clerk's Office attended and gave a verbal presentation regarding some investigation they have done regarding potential options for implementation of the Line Fences Act. The goal is to remove some red tape and cost from this process in time for the next term of Council.

Suggestions were provided that Agricultural Line Fences process be retained and discontinued for non-agricultural. Costs should be charged up front for both the original application and an appeal. If both lots are designated in the Official Plan as agricultural then Line Fences Act would apply.

Moved by T. Webster and seconded by R. Bonis to receive the presentation and that the Board requests a 'Made-in-Kawartha Lakes' approach based on the System 2 model with fees up front and to be increased to current costs, to be prepared by the Clerk's Office and presented to a future ADAB meeting. Carried.

The Municipal Act permits a municipality to select between the following options for fence cost-sharing disputes:

- Continue using the provisions of the Line Fences Act, 1990 (status quo)

- Adopting a Fence Cost Sharing By-law specific to Kawartha Lakes (an option recently adopted by the Municipality of Clarington, City of Pickering)
- A hybrid-model utilizing the Line Fences Act for some disputes, and a Fence Cost Sharing By-law for other disputes (based on the location of the properties, an option recently adopted by the Town of Milton, City of Hamilton)
- Removing all application of the Line Fences Act completely

The Municipal Act states in Section 98(1):

Non-application of Act

98 (1) A local municipality may provide that the Line Fences Act does not apply to all or any part of the municipality. 2001, c. 25, s. 98 (1).

Exclusion

(2) Despite a by-law passed under subsection (1), section 20 of the Lines Fences Act continues to apply throughout the municipality. 2001, c. 25, s. 98 (2).

The Line Fences Act

The Line Fences Act, referenced in the Municipal Act, is the first and default regulatory process to settle a dispute or disagreement between neighbours regarding the construction, reconstruction or repair of a line fence (that is a fence built directly on the property line between two or more properties). The Act requires a municipality to appoint at least three (3) Fence Viewers and to fix their remuneration. These persons are paid on the basis of the visits and work they undertake, and are not generally permanent, full time employees.

It also authorizes a municipality to restrict the attendance or re-attendance of the Fence-Viewers during the winter months which has been done in this municipality for several years. Further, it provides several administrative instructions for the Municipal Clerk to undertake to assist with the processing of the request.

Where two neighbours dispute the sharing of the cost of a line fence, three fence viewers may be called out by the Clerk's Office to attend and view the situation and consult with both disputing parties. This site visit is called a Fence Viewing. The Fence Viewers are empowered to make rulings (an award) as to:

- the style and type of fence which will be constructed
- who will construct the fence and who selects a contractor
- who pays who for the construction of the fence
- who is responsible for future maintenance of the fence

- the percentage payable by each of the parties for the fence
- the percentage payable by each of the parties for the administration fees

There are provisions in the Act for appealing and for enforcing the Fence Viewers' awards. Ultimately, upon the failure of one party to pay the other (or a fence contractor), the municipality pays the party who is not in default, and places the sum onto the tax roll for the party who has defaulted.

Regarding boundary disputes, the municipality and the Fence Viewers have no jurisdiction. If either party advises the Clerk's Office or the Fence Viewers that a property line is in dispute, it is recommended that the disputing parties obtain a survey at their own cost, and have the property line staked. If the property line is agreed upon, a Fence Viewing may commence. If the property line remains in dispute, a judge is the relevant authority to adjudicate the dispute.

The original direction to the Clerk's Office to use the Line Fences Act was given in 2002, when two reports (CAO2002-35 and CAO2002-42) were drafted which recommended that council utilize powers bestowed upon them by section 98 (1) of the *Municipal Act* to exempt the City from the *Line Fences Act*. It was recognized that, under the Line Fences Act, where municipal property abuts private property, the City could be required to pay a portion of the cost of line fence and such a requirement could be a significant cost to the City.

Fence Cost Sharing By-laws

While never enacted in the history of the City of Kawartha Lakes, Fence Cost Sharing By-laws are very common in other municipalities (particularly in Durham Region). The basic premise is that disputing neighbours can divide costs associated to erecting or repairing a property line fence, without the involvement of the municipality. A Fence Cost Sharing By-law could include and define for residents:

- the basic costs that adjoining property owners are responsible for in relation to a new line fence
- what process to follow, under the Provincial Offences Act, when an adjoining owner defaults on payment
- the repair and reconstruction requirements of existing line fences

Fence Cost Sharing By-laws can be designed to encourage property owners to settle disputes informally, without involving the use of the courts. Highlights of a proposed Cost Sharing By-law might include:

- that an owner may construct a line fence to mark the boundary between his property and adjoining properties
- definitions of what a 'basic fence' is (Chain-link in residential, page-wire in agricultural/rural settings)

- that unless otherwise agreed, an adjoining owner shall be responsible for 50 percent of the basic cost of construction or the actual cost of re-constructing a line fence
- should one property owner want a higher standard of fence other than a basic fence, that property owner is 100% responsible for the additional costs
- that outside an informal dispute an owner seeking to share the cost of constructing a new line fence, or reconstruction of a line fence must serve upon the adjoining owner a notice that includes, a copy of the cost sharing by-law; the date the work is planned to commence; copies of 3 estimates received for the cost of the proposed fence; an estimate of the basic cost of the proposed fence; and a request for payment from the adjoining owner calculated in accordance with this by-law
- that notice must be served at least fourteen days prior to the commencement of any work or execution of any contract in relation to the work to be undertaken

Rationale:

The Line Fences Act exists because it provides a framework to settle disputes amongst neighbours over the erection of a boundary fence. However, the framework it provides is costly to the city, and depending on the volume of inquiries can be burdensome to Clerk's Office staff with 4-5 hours of dedicated staff time required.

Under the Act, the City Clerk's Office has the following responsibilities:

- To encourage property owners to settle their dispute informally
- To ensure prescribed forms are fully filled out (including Form 1 to start the process)
- To provide copies of all relevant materials to the parties
- To schedule the viewing between the 2 disputing parties and 3 Fence Viewers
- To ensure the attendance of the Fence Viewers
- To set out formal notice of the Fence Viewing
- To meet with the Fence Viewers following the Fence Viewing and provide administrative support to prepare an award
- To ensure that the Fence Viewers are paid
- To send out all required notices via registered mail within the prescribed timelines
- To make appeal, re-attendance, and enforcement arrangements if required

Report CLK2015-018 recommended increasing the Line Fence Administration fees to keep in line with the rising prices of the significant registered postage required by the Act. The recommendation was not adopted at that time.

In agricultural areas, where fences are large, expensive, and of considerable significance to the property owner, the Line Fences Act can be a reasonable framework to resolve disputes as significant sums of money are at stake. The administration costs of a Line Fence Dispute are often worth it to the neighbours to settle a longstanding dispute. The City Clerk's Office acknowledges, that the majority of disputes over agricultural line fence cost sharing is due to the following reasons:

- Livestock pasturing beside cash-cropping or environmental features (forest, wetlands, etc.)
- Newer hobby-farms implementing fencing beside cash-cropping, or rural severed lots
- Neighbours with a significant history of dispute

However, as acknowledged by this municipality (and many others) the significant amount of administration required by the City in disputes over fences in urban or waterfront areas that are minimal and are unreasonable relative to the process of constructing the fence itself. The administration costs are often not worth the burden for many residential property owners, who often will come to an amicable agreement with their neighbours to settle costs for who will pay what for property line fences. The City Clerk's Office acknowledges, that the majority of disputes over urban and waterfront line fence cost sharing is due to the following reasons:

- Containment of pets, and protection of children
- Remediation of negative sightlines (where one neighbour has a higher standard for yard maintenance)
- Privacy
- Protection of property from short-term rental usage
- Neighbours with a significant history of dispute

The Line Fences Act can be used in either a frivolous or vexatious manner against a neighbour to force them to pay for a portion of a fence that may or may not benefit them. The City has no option under the Act to forego implementing the significant number of hours of work required by the Act to enact a Line Fence dispute that arises from a frivolous or vexatious motive. It is recommended to propose an alternative for neighbours with a history of dispute (especially in urban or waterfront areas), that would reduce the required amount of administration for the City Clerk's Office.

One proposed solution could maintain the Line Fences Act in agricultural and rural areas of the City, where fence construction is a large endeavor and a formal adjudication process is necessary to attain a fair outcome. In other residential and urban areas however, the proposed alternative would establish a conflict resolution process (a line fence cost sharing by-law) that assumes a 50-50 responsibility by both property owners, that if required, can be enforced in a small

claims court. A draft by-law attached as Appendix A provides the framework for how this solution could be regulated.

Alternatives Considered:

Option 1

The first option (recommended and endorsed by the Agricultural Development Advisory Committee) would consist of adopting a Line Fence Cost Sharing By-law distinguishing between residential/urban land and agricultural land. It would retain the *Line Fences Act* for disputes in the agricultural and rural areas, but have a separate Cost Sharing procedure applicable to Urban, Hamlet and Waterfront properties. Property owners using a Cost Sharing By-law would not involve the City and would delegate the responsibility of conflict resolution to the neighbors themselves. Staff notes the following:

- a. The benefits of this system would reduce the bureaucracy imposed on the City by the Act. Fences in residential areas are smaller, less expensive, and typically, when a Line Fence viewing is pursued in these areas, it is out of frivolous or vexatious motive.
- b. This proposal would retain the adjudication of the Fence Viewers within the parameters of the *Line Fences Act* for the agricultural and rural lands, where fence disputes are much more significant, both in terms of expense and maintenance.
- c. The downside of this option might be that the uniform applicability of the cost sharing by-law might disadvantage some parties more than others. However, property owners may have been more willing to involve a City adjudication process, than to initiate a legal proceeding on their own.
- d. This option has been endorsed by the Agricultural Development Advisory Committee
- e. This system, or slight variations of it, is used by Milton, Hamilton, Loyalist Township, Lambton Shores.
- f. Appendix A attached provides a Draft By-law that is recommended for adoption by Council

Proposed Resolution for Option 1:

That Report CLK2019-004, **Line Fences Act Review**, be received;

That a by-law, attached as Appendix A to this report, affirming that the Line Fences Act, 1990, does not apply to any property in the City of Kawartha Lakes (with the exception of agricultural and rural properties) and establishing a procedure for equal line fence cost sharing of a basic fence, be forwarded to Council for adoption;

That the administration fee for Line Fences Act proceedings be raised to \$250.00 at the next amendment to the Consolidated Fees by-law.

That this recommendation be brought forward to Council for consideration at the next Regular Council meeting.

Option 2

The second option is to adopt a Line Fence Cost Sharing By-law establishing a procedure that property owners may utilize for all new line fences (or reconstructions or maintenance) in Kawartha Lakes. The premise assumes that both property owners will pay 50% of the costs associated for the construction of a basic new line fence, or the reconstruction of an existing line fence.

- a. It is worth noting that the municipalities which adopted this approach are mostly urban, however some municipalities with significant rural areas have adopted a blanket Cost Sharing By-law. This can be remedied by identifying two types of a 'basic cost' for a fence (Chain-link for urban residential, and page-wire for rural agricultural)
- b. This option completely removes the City's administration burden with these matters, and would reduce operating budget expenditures
- c. It would eliminate the requirement for the appointment of Fence Viewers
- d. This system, or slight variants of it, is in use by Clarington, Oshawa, Whitby and Pickering.

Proposed Resolution for Option 2:

That Report CLK2019-004, **Line Fences Act Review**, be received;

That the Line Fences Act, 1990, does not apply to any property in the City of Kawartha Lakes; and

That a Line Fence Cost Sharing By-law establishing a procedure for equal line fence cost sharing of the costs of a basic fence for all Kawartha Lakes properties be presented to Council for approval.

Option 3

A third option would be to continue with the status quo default use of the Line Fences Act. Continuing the use of the Act would

- a. Provide a reasonable adjudication where a 50-50 split of the costs would not be appropriate
- b. Retain City administration that is not mandatory, including expenditures, and staff time

- c. Hold the City to responding to Line Fence requests involving municipal property
- d. The City could retain this option, but it is recommended to increase fees to stay in line with rising postage fees, and administration costs. Increased fees in line with actual costs incurred by the City may discourage frivolous and vexatious requests for Line Fence Viewings
- e. This is the default for all municipalities in Ontario that have not specified a by-law that would exempt themselves from the Line Fences Act

Proposed Resolution for Option 3:

That Report CLK2019-004, **Line Fences Act Review**, be received; and

That the administration fee for Line Fences Act proceedings be raised to \$250.00 at the next amendment to the Consolidated Fees by-law.

Option 4

A fourth option would be the absolute abolishment of municipal authority in line fence disputes. In this case, disputes over the erection or maintenance of property fences would in no way involve the City. Responsibility for resolving such disputes would be entirely delegated to the parties in disagreement.

- a. Eliminates all City administration requirements from the Line Fences Act
- b. Does not provide an alternative for property owners to assist with cost sharing for line fences
- c. This system is used by Caledon

Proposed Resolution for Option 4:

That Report CLK2019-004, **Line Fences Act Review**, be received;

That the Line Fences Act, 1990, does not apply to any property in the City of Kawartha Lakes; and

That a by-law exempting all properties in the City of Kawartha Lakes from the Line Fences Act, 1990, be presented to Council for adoption.

Financial/Operation Impacts:

Should the City pursue a Cost Sharing By-law, the financial impact to the City would be negligible. The City Solicitor confirmed there would be no impact to any court filings with the City's Provincial Offences division.

Should the City continue to keep the provisions of the Line Fences Act, for all, or for part of the City, it is recommended to increase current administration fees that are recovered by the disputing parties. The greatest significant cost to the City is the significant amount of registered postage required by the Act. No other provisions are permitted (to distribute notices by courier or regular post). Postage rates have increased significantly, yet no changes have been made for many years to the administration fees charged to the disputing parties. Itemized listing of Registered Postage expenses to the City are available with the Clerk's Office. The Line Fence Viewing Fees are structured as follows:

Fee	Qty	Unit Cost	Cost to City	Recoverable from parties?	Actual Cost
Fence Viewer Remuneration	3	\$70.00	\$210.00	Yes	\$0.00
Fence Viewer Mileage	3	\$40.00 (avg)	\$120.00 (avg)	Yes	\$0.00
Registered Postage	8-30	\$11.00 (avg)	\$85.00 - \$315.00	With \$110 Admin Fee	\$25.00 – (\$205.00)
Staff time	4-5 hrs	\$40/hour	\$160.00 - 200.00	Part of Admin Fee	(\$160.00) – (\$200.00)
Totals:			\$575.00 - \$845.00		(\$135.00) – (\$405.00)

Fees collected over the last 4 years by the City due to the Line Fences Act proceedings and administration were as follows:

Year	Fees Collected	# of Fence Viewings	Shortfall at minimum cost (\$575.00)
2015	\$ 698.34	2	\$(451.66)
2016	\$ 1306.00	4	\$(994.00)
2017	\$ 1147.49	2	\$(2.51)
2018	\$ 942.50	3	\$(782.50)
Totals:	\$ 4094.33	11	\$(2,230.67)

Based off the fees and recoveries above, it would seem reasonable that the Administration fee should be raised to \$250.00 per Line Fence Viewing to recover all expenses, and the current minimum shortfall of \$135.00 of the \$110.00 administration fee. Increasing fees to a fiscally responsible level may also dissuade citizens from using the provisions of the Line Fences Act over frivolous and vexatious disputes.

Relationship of Recommendation(s) To The 2016-2019 Strategic Plan:

There is no direct relationship to the Strategic plan. If passed, however, it would unencumber the City from the most frivolous of Line Fence enactments and thereby free its staff to better serve the citizens of the City of the Kawartha Lakes.

Consultations:

City Clerk
City Solicitor
Manager of Planning and Supervisor of Policy Planning
Manager of Municipal Law Enforcement

Attachments:



Appendix A
2019-XXX A By-law tc

Appendix A – Draft Cost Sharing By-law

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Department Head: Ron Taylor, CAO