

## **“Appendix A”**

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

#### **By-Law 2019-01**

### **A By-law to Regulate Cost Sharing Measures for Fences on Property Lines in the City of Kawartha Lakes**

#### **Recitals**

1. The Line Fences Act, 1990 establishes a dispute mechanism process for property owners erecting or reconstructing a fence built on a property line
2. Section 98(1) of the Municipal Act, 2001 permits a municipality to specify where and how the Line Fences Act apply within its boundaries
3. Council deems it appropriate to enact a by-law to apportion the costs of fences built on property lines

**Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2019-01.**

#### **Section 1.00: Definitions and Interpretation**

##### **1.01 Definitions:** In this by-law,

**“Actual Cost”** means the total cost of the construction, reconstruction, maintenance or repair of a line fence, and includes the value of the material used and the value of the labour performed to complete the work;

**“Adjoining Owner”** means the person(s) who owns land adjoining the land on which another land owner desires to build a line fence;

**“Basic Cost”** means the cost of installing, constructing or reconstructing a 1.2 metre (4 ft.) chain link fence which:

- has a diamond mesh not greater than 50 mm (2 inches);
- is constructed of galvanized steel wire not less than 9 gauge or steel wire covered with vinyl forming a total thickness equivalent to 9 gauge galvanized wire;
- is supported by at least 48 mm (1.88 inch) diameter galvanized steel posts encased in a minimum of 50 mm (2 inches) of concrete from grade to a minimum of 1 metre (39 inches) below grade such posts to be spaced not more than 3 metres (10 feet) apart; and
- top and bottom horizontal rails of 35 mm (1.37 inches) minimum galvanized steel except that a minimum 9 gauge galvanized steel wire may be substituted for the bottom horizontal steel rail.

**“City”, “City of Kawartha Lakes” or “Kawartha Lakes”** means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

**“City Clerk”** means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

**“Council” or “City Council”** means the municipal council for the City;

**“Fees By-Law”** means the City of Kawartha Lakes Fees By-Law, as amended, or any subsequent by-law known as the Consolidated Fees By-Law;

**“Fence Regulation By-law”** means By-law 2017-216, being ‘A by-law to Regulate Fences in the City of Kawartha Lakes’ and its successor by-laws;

**“Grade”** means the average elevation of the finished surface of the ground beneath the fence;

**“Line Fence”** means a fence marking the boundary between adjoining parcels of land and located on the actual property line;

**“Owner”** means the registered owner of the land and includes the person managing or receiving the rent for the land or premises, and the person who wishes to erect the fence;

- 1.02 **Interpretation Rules:** The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.
- 1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.
- 1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

## **Section 2.00: Fencing Regulations**

- 2.01 Every person who intends to erect a fence shall satisfy himself/herself as to the location of all property lines prior to fence construction. Any surveying costs incurred to establish such lot lines shall be borne by the owner.
- 2.02 All fencing, including fence height and location, shall comply with the provisions of the Fence Regulation By-law.

## **Section 3.00      Apportionment of Cost for Line Fences**

- 3.01 The apportionment of costs for the construction of a line fence must be considered by the owners of adjoining lands prior to the construction of the line fence.
- 3.02 An owner of land may construct and maintain a line fence.
- 3.03 Where owners of adjoining lands are in agreement or are able to reach agreement on the details of construction, repair or replacement of a line fence, each of them shall construct, repair, replace or maintain a reasonable proportion of the line fence, or shall bear a reasonable and just proportion of the cost of any work required to do so, in accordance with the agreement reached between the owners, regardless of any provision to the contrary in this By-law.
- 3.04 Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section 3.03 of this By-law, on the details of construction, repair or replacement of a line fence, an adjoining owner desiring to construct, reconstruct or repair a line fence may do so subject to complying with the following requirements:
1. the owner must serve the adjoining owner(s) with a notice of intent to construct, repair or replace the line fence, by registered mail;
  2. the notice of intent must contain the following information:
    - a. the owner must provide the adjoining owner with three (3) written quotes for the actual or basic cost for the fencing work to be undertaken;
    - b. the construction, repair or replacement of the line fence located at (address) will commence after fourteen (14) days of the mailing of this notice of intent and the owner may seek payment of a contribution for the construction of the line fence from the adjoining owner(s) in accordance with the formula set out in section 3.05 of this by-law;
    - c. the adjoining owner may obtain additional quotes to be presented not later than ten (10) business days from the date on the notice of intent, sent by registered mail.
  3. a copy of this by-law must be attached to the notice of intent to construct.
- 3.05 The cost of construction of a line fence shall be assigned as follows:
1. the adjoining owner shall pay fifty percent (50%) of the basic cost or fifty percent (50%) of the actual cost, whichever is the lesser quote submitted; and
  2. the owner shall pay the balance of the actual cost.
- 3.06 The cost of reconstruction or maintenance of a line fence shall be borne equally by the owner and the adjoining owner.

- 3.07 The cost of repairs to a line fence shall be borne by the owner if he/she caused the damage necessitating the repair. The cost of repairs to a line fence shall be borne by the adjoining owner if he/she caused the damage necessitating the repair. Subject to section 3.07 of this By-law, the cost of repairs to a line fence shall be borne equally by the owner and the adjoining owner if the damage necessitating the repair was caused by a natural disaster.
- 3.08 If a tree is thrown down by accident or otherwise so as to cause damage to a line fence, the owner of the land on which the tree stood shall at his/her sole expense forthwith remove the tree and repair the fence.
- 3.09 The cost sharing provisions of this By-law shall only apply prior to the commencement of any work and cannot be used retroactively for previously completed work.
- 3.10 Unless specifically agreed to by both parties, only new material shall be used in the construction or reconstruction of a line fence.

## **Section 4.00 Application of Line Fences Act**

- 4.01 The provisions of this by-law shall apply to all properties in Kawartha Lakes within the defined 'Urban Settlement Area' as designated by the City of Kawartha Lakes Official Plan being:
- Bobcaygeon
  - Fenelon Falls
  - Lindsay
  - Omemee
  - Woodville
- 4.02 The provisions of this by-law shall also apply to all properties in Kawartha Lakes within a 'Development Plan Area' or 'Hamlet Settlement Area' or 'Waterfront' designation areas as defined by the City of Kawartha Lakes Official Plan.
- 4.03 The provisions of the Line Fences Act, 1990, as amended, shall apply to all other properties in Kawartha Lakes not identified in section 4.01 and 4.02.
- 4.04 The provisions of the Line Fences Act, 1990, as amended, shall not apply to the properties in Kawartha Lakes identified in section 4.01 and 4.02.
- 4.05 Where a property as described in Section 4.01 and 4.02 abuts a property outside of that description, the Line Fences Act shall be applied to apportion the cost of a line fence on the mutual lot line(s).

- 4.06 Fees and scheduling for Line Fences Act administration shall be in accordance with the By-law to Set Line Fences Administration Fee for the City of Kawartha Lakes and the Fees By-law.

## **Section 5.00: Enforcement and Application**

- 5.01 Where an owner or adjoining owner is in default of his/her obligations under this By-law, the person desiring to enforce the provisions of this By-law shall, within ninety (90) days after the completion of the construction of the line fence, serve or cause to be served on the defaulting person a notice by registered mail requiring compliance with this By-law, and if such compliance does not take place within thirty (30) days after service of the notice, the person serving the notice may make appropriate proceedings under the Provincial Offences Act to recover the proportionate share of the cost of the work from the defaulting person.
- 5.02 This By-law does not apply to any lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by a municipality or other public authority, or to lands that are being held by a municipality or other public authority as an unopened road allowance or for future public highway purposes.
- 5.03 This By-law does not apply to noise barriers located on public lands.
- 5.04 This By-law does not apply to fences erected under By-law 2005-314, as amended, known as the By-law Respecting Swimming Pools and Swimming Pool Fences.
- 5.05 This by-law does not apply to an owner wishing to upgrade an existing line fence that is in a state of good repair, meaning:
- the fence is complete and in a structurally sound condition, plumb and securely anchored;
  - the fence is protected by weather resistant materials;
  - fence components are not broken, rusted, rotten or in a hazardous condition;
  - all stained or painted fences are maintained free of peeling and discolouration; and
  - that the fence does not present an unsightly appearance deleterious to abutting land or to the neighbourhood.
- 5.05 The provisions of this By-law shall not supersede any fencing restrictions or conditions as set out in a Site Plan, Subdivision or Development Agreement.

## **Section 6.00: Administration and Effective Date**

- 6.01 **Administration of the By-law:** The City Clerk is responsible for the administration of this by-law.
- 6.02 **Effective Date:** This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this      day of     , 201  .

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Andy Letham, Mayor

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Cathie Ritchie, City Clerk