

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2023-076

A by-law to apportion the cost of division fences, and to repeal By-law 1991-084, and amending By-law 1994-81

**WHEREAS** subsection 11(3)7 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, (the "Municipal Act") provides that a municipality may pass by-laws within the sphere of jurisdiction titled Structures, including fences;

**WHEREAS** subsections 98(1) and (2) of the Municipal Act provide that a by-law may be passed by a municipality stating that the *Line Fences Act*, R.S.O., Ch. L.17 (the "Line Fences Act") does not apply to all or any part of the municipality, subject to the continuing applicability of section 20 of the Line Fences Act;

**WHEREAS** the Council of the Corporation of the Town of Oakville deems it necessary to regulate the apportionment of costs for division fences and establish a process for the public to independently apply, while the municipality remains impartial and does not become directly involved in property line fence disputes;

**COUNCIL ENACTS AS FOLLOWS:**

**1. Definitions**

(1) For the purposes of this By-law:

"Adjoining Owner" means an owner whose parcel of land abuts a parcel of land whose owner is seeking to construct, replace, maintain or repair a division fence, but does not include the Town or any other public authority;

"Basic Cost" means the cost of constructing, reconstructing or repairing a division fence for an amount of money not exceeding the cost of constructing, reconstructing or repairing a 1.2 metre (4 foot) high fence with the following specifications:

- (a) 4cm (1 1/2 inch) diamond mesh;
- (b) constructed of 14 gauge steel wire covered with vinyl forming a total thickness equivalent to No. 12 gauge galvanized wire;
- (c) be supported by 4cm (1 1/2 inch) diameter galvanized steel posts encased in 5cm (2 inches) of concrete from grade to a minimum of 0.6

metre (2 feet) below grade, such posts to be spaced 3 metres (10 feet) apart;

- (d) top and bottom horizontal rails shall be provided with 3cm (1 1/4 inch) diameter;

and includes the value of the material used plus applicable taxes but does not include the value of the labour performed to complete the work plus applicable taxes;

“Business Day” means a day from Monday to Friday, other than a holiday as defined in section 87 of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F;

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

“Owner” includes:

- (a) the registered owner(s) of the property; and
- (b) the person, for the time being, managing or receiving the rent from a building on the property, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the building on the property were let;

“Public Authority” means the federal or provincial government, crown agents, school boards and regional municipalities to whom the context can apply but does not include the Town;

“Public Highway” means lands owned by the Town and designated as a common and public highway, including any street, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;

“Quote” means a written estimate of the total basic cost of the construction, replacement or repair of a division fence;

“Town” means the Corporation of the Town of Oakville;

## 2. **Applicability**

- (1) From and after the date of enactment of this By-law, the provisions of the Line Fences Act, except for section 20 of the Act, shall no longer apply in the municipality.
- (2) This By-law does not apply:
  - (a) to any lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by the Town or other public authority, or to lands that are being held by the Town or other public authority as an unopened road allowance or for future public highway purposes;
  - (b) to fences erected under the Town's Pool Enclosure By-law 2006-071; or
  - (c) where an owner has initiated proceedings under the Line Fences Act prior to the date of enactment of this By-law.
- (3) Nothing in this By-law shall constitute an exemption from the requirements of any site plan agreement, subdivision agreement or other development agreements and applications approved by the Town, any other by-law in effect, applicable legislation or regulations thereto, including but not limited to the Town's Fence By-law 2002-034, Zoning By-law 2009-189, Zoning By-law 2014-014, or the *Ontario Heritage Act*, R.S.O. 1990, c. O.18.

## 3. **Notice of Intent**

- (1) An owner may construct, replace or repair a division fence.
- (2) Where owners of adjoining lands are in agreement or have reached an agreement about the construction, repair or replacement of a division fence, each shall be responsible to either:
  - (a) construct, repair, or replace, as applicable, their agreed upon portion of the division fence; or
  - (b) assume their agreed upon portion of the cost of any work required for the construction, replacement, or repair of the division fence.
- (3) Where owners of adjoining lands cannot agree and have not reached an agreement in accordance with subsection 3(2), an owner seeking to

construct, replace or repair a division fence may do so subject to complying with the following conditions:

- (a) the owner must serve a notice of intent on the adjoining owner, in writing by registered mail or by personal delivery, to advise that they intend to construct, replace or repair a division fence, and such notice shall contain, at a minimum, the following information:
  - (i) whether the owner intends to construct, replace or repair a division fence;
  - (ii) copies of at least three (3) quotes for the fencing work to be undertaken;
  - (iii) a paragraph stating that the construction, repair or replacement of the division fence will commence after fourteen (14) business days of the mailing or personal delivery of the notice of intent and the owner may seek payment of a contribution for the basic cost of the division fence from the adjoining owner in accordance with this By-law;
  - (iv) a paragraph stating that the adjoining owner may obtain up to three (3) additional quotes, to be presented to the owner by registered mail or by personal delivery, not later than ten (10) business days from the date on the notice; and
  - (v) a complete copy of this By-law.

#### **4. Apportionment of Cost of Division Fence**

- (1) The cost of constructing, replacing or repairing a division fence shall be paid as follows:
  - (a) the adjoining owner shall pay fifty percent (50%) of the basic cost; and
  - (b) the owner shall pay the balance of the cost to construct, replace or repair the division fence.
- (2) Any division fence constructed, replaced or repaired within an area designated as a heritage conservation district pursuant to Part V of the *Ontario Heritage Act*, R.S.O. 1990, O.18 is subject to all requirements for obtaining a permit pursuant to such legislation.

## **5. Damage**

- (1) Where an existing division fence is damaged by an owner or a person permitted on their property, such owner shall be entirely responsible for the cost of the repairs to the division fence.
- (2) Subject to subsection 5(1), the cost of repairing a division 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) Where a tree causes damage to a division fence, the owner of the land on which the tree is or was located shall be responsible for the cost of the repairs to the division fence and the cost of removing the tree, or part thereof.

## **6. Enforcement**

- (1) An owner desiring to enforce the provisions of section 4 or section 5 of this By-law shall serve or cause to be served on the adjoining owner 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 owner serving the notice may take appropriate proceedings under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 to recover the proportionate share of the cost of the work from the adjoining owner.

## **7. Repeal**

- (1) By-law 1991-084 and amending By-law 1994-81 are repealed on the day this By-law comes into force and effect.

## **8. References**

- (1) References in this By-law to any legislation or by-law means as may be amended or successor by-laws or legislation, and includes any regulations thereunder.

## **9. Severability**

- (1) In the event any provisions of this By-law are deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

## **10. Title**

- (1) This By-law may be known as the "Division Fence By-law."

**11. Effective Date**

- (1) This By-law comes into force and effect on the date it is passed.

PASSED this 19th day of June, 2023

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MAYOR

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CLERK