

THE CORPORATION OF THE TOWN OF
NEW TECUMSETH

BY-LAW

Number 2007-101

"DIVISION FENCE BY-LAW"

A by-law to exempt the Town of New Tecumseth from the *Line Fences Act*

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (*"the Municipal Act, 2001"*), as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS Section 9 of the *Municipal Act, 2001*, provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 11 of the *Municipal Act, 2001*, provides that a lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction described in the *Municipal Act, 2001* and subject to certain provisions as outlined in the *Municipal Act, 2001*;

AND WHEREAS Subsections 98(1) and (2) of the *Municipal Act, 2001* provide that a by-law may be passed by a municipality stating that the *Line Fences Act*, R.S.O., Ch. L.17 (*"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*;

NOW THEREFORE the Council of the Corporation of the Town of New Tecumseth enacts as follows:

1. DEFINITIONS

In this By-law:

- 1.1. Actual cost means the total cost of the construction, replacement, maintenance or repair (as applicable) of a division fence, other than a fence described in Subsection 1.3, and includes taxes, the value of the material used and the value of the labour performed to complete the work.
- 1.2. Adjoining owner means the person who owns the land adjacent to land of another land-owner seeking to build a division fence.
- 1.3. Basic cost means the total cost of construction, replacement, maintenance or repair (as applicable) of a four (4) foot high, 1-1/2 inch mesh, steel chain link fence.
- 1.4. Construct a Fence means to construct, erect, build, install, alter, reconstruct or replace a fence, or cause or permit another person to do so, and "construct a pool fence" has a corresponding meaning.
- 1.5. Designated Official means a By-law Enforcement Officer or Chief Building Official for the Town of New Tecumseth, or as otherwise determined by the Town.
- 1.6. Division Fence means a fence marking the boundary between abutting parcels of land.
- 1.7. Fence means a barrier or partition erected or grown, including shrubs and hedges, which may or may not define the boundary line of a property but shall not include a building or structure as defined in the *Ontario Building Code Act* or Regulations for the Town of New Tecumseth Zoning By-law. In the case of an outdoor swimming pool, a fence may include buildings or structures, but shall not include shrubs and hedges.
- 1.8. Owner means an owner, lessee, tenant, mortgagee in possession and the person in charge of any property.
- 1.9. Person shall include a Firm Partnership, Company, Corporation, or Contractor of Owner.

- 1.10. Public Highway means a street or highway being a Provincial highway or under the jurisdiction of the County of Simcoe or the Town of New Tecumseth, or assumed by the municipality or being constructed under an Agreement with the Town.
- 1.11. Town means the Council of the Town of New Tecumseth.
- 1.12. Public Authority means the federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply but specifically excludes the municipality.
- 1.13. Unopened road allowance means lands owned by the municipality but which have yet to be designated as a public highway by the enactment of a by-law.

2. PROVISIONS

- 2.1 From and after the date of enactment of this by-law, the provisions of the Act, except for Section 20 of the *Line Fences Act*, shall no longer apply in the municipality.
- 2.2 The provisions of this by-law do not apply in the following circumstances:
- a) 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.
 - b) where an owner has initiated proceedings under the *Line Fences Act* prior to the date of enactment of this by-law.
- 2.3 An owner of land may construct, replace, repair and maintain a division fence.
- 2.4 Where the owners of adjoining lands are in agreement or are able to reach agreement on the details of construction or replacement of a division fence, each of them shall construct or replace a reasonable proportion of the division 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.
- 2.5 Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section 6 above, an owner desiring to construct or replace a division fence may do so subject to complying with the following requirements:
- (a) the owner must deliver a notice (the "Notice of Intent") to the adjoining owner by registered mail, advising of his or her intent to construct or replace a division fence;
 - (b) the Notice of Intent must contain the following minimum information:
 - (i) a copy of three (3) written quotes for the actual cost or basic cost for the fencing work to be undertaken;
 - (ii) a paragraph stating that "the construction or replacement of the division fence will commence fourteen days after the date of mailing of this Notice of Intent and the owner may seek a contributory payment for the work to the division fence from the adjoining owner in accordance with the applicable by-law";
 - (iii) a further paragraph stating that "the adjoining owner may obtain three (3) additional quotes for presentation to the owner not later than ten business days from the date of mailing of the Notice of Intent"; and
 - (iv) a complete copy of this by-law must be attached to the Notice of Intent.
- 2.6 In cases where the cost of construction or replacement of a division fence is in dispute, the cost shall be apportioned as follows:
- (a) the adjoining owner shall pay fifty percent (50%) of the basic cost or fifty percent (50%) of the actual cost, whichever is the lesser, having considered all the fencing quotes exchanged, and
 - (b) the owner shall pay the balance of the actual cost.

- 2.7 Subject to Section 2.8 and 2.9, once a fence has been erected, the cost of repairs or maintenance to a division fence shall be borne equally by the owner and the adjoining owner.
- 2.8 The cost of repairs to a division fence shall be borne:
- a) by the owner if her or his invitees caused the damage necessitating the repair.
 - b) by the adjoining owner if her or his invitees caused the damage necessitating the repair.
 - c) subject to Section 2.9, equally by the owner and the adjoining owner if the damage necessitating the repair was caused by natural disaster.
- 2.9 If a tree is thrown down by accident, carelessness, negligence, deliberate intent or otherwise, so as to cause damage to a division fence, the owner of the land on which the tree stood shall, at his sole expense, forthwith remove the tree and repair the fence.
- 2.10 Where the municipality is the adjoining owner of lands other than lands as described in Subsection 2.2(a), the cost of construction, replacement, repair or maintenance of a division fence shall be assigned as follows:
- (a) the owner shall pay 99% of the cost of the work;
 - (b) the municipality shall pay 1 % of the cost of the work.
- 2.11 Compliance with this by-law does not exempt an owner or the adjoining owner from the requirement to comply with By-law 2007-100, the Fence By-law.
- 2.12 Any division fence constructed, replaced, repaired or maintained within an area designated as a heritage conservation district pursuant to Part V of the *Ontario Heritage Act*, R.S.O. 1990,0.18, as amended is subject to all requirements for obtaining a permit pursuant to such legislation.

3. ADMINISTRATION, ENFORCEMENT AND PENALTY PROVISIONS

- 3.1 The administration and enforcement of the By-Law shall be under the authority of the Designated Official.
- 3.2 Every person or owner who contravenes any provision of this By-Law is, upon conviction in a court of competent jurisdiction, therefore guilty of an offence and shall be liable to a fine as provided under the Provincial Offences Act.
- 3.3 In this By-Law, where any person is directed to do any matter or thing, in default of it being done by the person directed or required to do it, such matter or thing may be done at his or her expense by the Town of New Tecumseth or its agents and such expense may be recovered by action or in like manner as Municipal taxes.

4. TITLE

- 4.1 This by-law shall be cited as the "Division Fence By-Law".

5. EFFECTIVE DATE

- 5.1 This by-law shall come into force upon the date of its final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 14TH DAY OF MAY, 2007.

MAYOR

CLERK