

CORPORATION OF THE TOWNSHIP OF PERTH SOUTH
BY-LAW #26-2007

Being a By-law Concerning Fences
in the Township of Perth South

WHEREAS the *Municipal Act*, S.O.2001, c. 25, as amended, Sections 8 , 11 and 15, authorizes the passage of by-laws to prescribe the height and description of lawful fences;

AND WHEREAS the *Municipal Act*, S.O.2001, c. 25, as amended, Sections 8, 11 and 15 also allows municipalities to pass by-laws to determine how the cost of division fences shall be apportioned;

AND WHEREAS the *Line Fences Act*, R.S.O.1990, c. L.17, as amended, Section 5(2) states that the Council of every local municipality may provide by by-law that no arbitration or other proceeding requiring the attendance or re-attendance of fence viewers shall be scheduled between the 1st day of November and the 31st day of March in the next following year or during such shorter period between those as may be set out in the by-law.

AND WHEREAS the Corporation of the Township of Perth South has determined it expedient to pass such a by-law for the benefit of all landowners and residents of the Township.

BE IT THEREFORE ENACTED AND ADOPTED BY THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF PERTH SOUTH.

1. In this by-law:
 - (a) a "lawful fence" means a fence authorized by this by-law as to height and description;
 - (b) a "line fence" means and is synonymous with a line fence within the meaning of the *Line Fences Act*, R.S.O.1990, c.L.17, as amended, and is a fence constructed to mark the boundary between the land of an owner and an adjoining owner;
 - (c) a "division fence" is a fence constructed, under the authority of the *Line Fences Act*, R.S.O.1990, c.L.17, as amended, along the centre line of an unopened road allowance lying between the lands of two owners and not enclosed by a lawful fence, and marking the division line.

PART I
PROCEDURES

1. All calls regarding a request for a fence-viewer should be referred to the Clerk or designate of the Municipality of Perth South, who shall encourage the parties to settle in a civil manner prior to going to the dispute.

2. Upon receipt of a call, the Clerk or designate shall forward a letter "by registered mail" or by personal delivery and information package to the landowners for review. The landowner shall be requested to review the package with the adjacent landowner to see if the dispute can be resolved. The Clerk or designate shall encourage the landowner to settle in a civil manner.

3. Should the landowner wish to proceed, and an agreement could not be reached with the adjacent landowner, the landowner must submit *Form 1*, "Request for Fence-Viewers" This obligates the Township to appoint fence-viewers. A file will be opened and Council shall be so informed.

4. The Clerk or designate shall then contact fence-viewers to determine the availability for a hearing date.

5. Once a date has been set, notice must be sent by registered mail or personal delivery to both the owner that made the application and the owner of the adjoining land of the date that the fence-viewing will take place.

- The notice must be given using *Form 2*, "Clerk's Notice to Parties (Dispute)", as prescribed by the regulations, be signed by the clerk (or such other person designated by council), and specify the time and place of the fence-viewing.

- The date of the fence-viewing cannot be less than one week from the date that notice of the meeting is served, and not more than 30 days from the date that the clerk was notified that a fence-viewing was requested.

- If the owner of the adjoining land is not the occupant of that land, then the occupant and not the owner must be notified.

- The notice shall be sent by registered mail or hand delivered to the owner's or occupant's residence.

6. The clerk or designated person must notify three fence-viewers, and also a fourth fence-viewer as an alternate, by registered mail or personal delivery using *Form 3*, "Clerk's Notice to Fence-Viewers (Dispute)", as prescribed by the regulations, of the time and place that their services will be required. This notice must be served at least one week before the date of the fence-viewing.

7. When, in the clerk's opinion, weather or ground conditions make it impractical for the fence-viewing specified in the notice to take place, the clerk may postpone the fence-viewing to a later date. Where there is a postponement, the clerk must:

- notify those persons entitled to receive notice of the fence-viewing that it has been postponed;

- establish a new date for the fence-viewing, to be not later than 15 days after the date named for the original meeting;

- notify the persons entitled to receive the original notice of the new fence-viewing date on *Form 2* by registered mail or personal delivery.

8. After the fence-viewers have submitted *Form 4* to the municipal clerk's office, the clerk then certifies the award, and a copy of the certified award is sent by the clerk to

the owners and occupants of the adjoining lands at their last known residence. Unless otherwise proven, the copies of the award shall be deemed to have been received by the recipients seven days after mailing. A copy of the report shall also be forwarded to Council.

9. An owner wishing to appeal must notify the owner or occupant of the adjoining land to that effect within fifteen (15) days of receiving a copy of the fence-viewers' award. A notice of appeal must be submitted using *Form 5, "Owner's Notice of Appeal."* The clerk must then send the appeal to the Ministry of Municipal Affairs and Housing, Municipal Programs and Education Branch, along with a \$50.00 cheque from the appellant, made out to the Minister of Finance, or the clerk must otherwise comply with the appeal provisions as they may be set, and or amended from time to time, by the Ministry of Municipal Affairs and Housing and/or the Province of Ontario.

10. Attendance or re-attendance of Fence-Viewers shall not be scheduled between the 1st day of November and the 31st day of March in the next following year. If fencing is required, it is to be erected during the period from May 1st to November 1st.

PART II LAWFUL FENCES

11. A lawful fence for the purposes of the *Municipal Act, Line Fences Act* or any other Act or by-law in force in the Township shall have a height of not less than four (4) feet (1.22 meters) and may be constructed of a sturdy, durable and substantial material including wire, wood, steel or aluminum provided that it shall be constructed to any of the following minimum standards of construction:

(a) Woven Wire Fence

A woven wire fence shall have a vertical height of not less than forty-two (42) inches (106.68 cm):

(i) the woven wire fence shall be strung parallel to the ground, the bottom to have a distance of not more than 8 inches (20.32 cm) above the ground and shall be sufficiently taut and strained, anchored and securely fastened to vertical upright posts of wood and metal construction and which are securely anchored in the ground to support the taut woven

(ii) The vertical fence posts shall be no more than 16.5 feet apart (5 meters) and shall be constructed with 1 wood and 2 steel fence posts and securely anchored in the ground to support the taut woven wire fencing material.

(iii) wood posts shall have a minimum diameter of at least 5 inches (12.7cm) at the narrowest point.

12. The provisions and standards of this by-law as herein before set out shall be deemed to be minimum standards and are not designed or intended to limit or restrict the use of a greater or higher degree of standard, both in quality and construction, where the parties affected may so mutually agree amongst them or where such greater standards are required by other Federal, Provincial, County or local by-law.

13. A fence constructed to standard, that is of a higher standard than that prescribed as minimum by this by-law shall be deemed to be a lawful fence.

PART III LINE FENCES

14. There shall be appointed not less than three fence-viewers for the Township of Perth South to carry out provisions of the *Line Fences Act* R.S.O.1990, c.L.17, as amended, and other fencing duties required by other Provincial, County laws and by this and other by-laws.

15. The provisions of the *Line Fences Act*, R.S.O.1990, c.L.17, as amended, shall apply to the determination as to how the cost of division fences shall be apportioned between adjoining landowners, provided that in all cases the fence-viewers shall attempt to equally apportion those sections of the fence that each adjoining landowner may be responsible for and the fence-viewers shall have regard to the degree of difficulty in the construction of a particular section of a line fence with a view to determining that the material and construction costs of each adjoining landowner should tend to be the same, and notwithstanding that such determination may result in one adjoining landowner being responsible for a greater length of line fence than the other.

16. In the event of a conflict, or in the event of a disagreement as to whether any fence may constitute a lawful fence, the fence viewers appointed by the municipality under the *Line Fences Act*, R.S.O.1990, c.L.17, as amended, shall be the sole arbitrators and shall make such inquiries and determination as may be required of them to ascertain whether any such fence meets such minimum standards and is a lawful fence, and their decision shall be binding.

17. The fence viewers appointed by the municipality may determine what additional work must be carried out before a fence would be deemed to be a lawful fence.

18. Unless the parties otherwise agree or there is a pre-existing agreement or determination by a previously made Line Fence Award as to what portion of a line or division fence an adjoining owner may be responsible to maintain, the following rule of interpretation shall be deemed applicable, namely:

- (i) That portion of each straight or curved line section of the property boundary between adjoining landowners and the landowner lying to the right of the midpoint of the straight or curved line section of property boundary as determined from a position standing opposite that midpoint on the landowners property while facing the adjoining landowner's property shall be the responsibility of that landowner and that section lying to the left shall be the responsibility of the adjoining landowner, unless the fence-viewers otherwise determine.

19. When a railway company sells an abandoned railway line, the new owner is not responsible for the entire costs of a line fence unless an abutting farming business has made a written request. The usual fence viewing arbitration process continues to apply to all other lands abutting an abandoned railway line.

PART IV
GENERAL

20. Notwithstanding any special provision in any other general or special by-law previously passed and in force, the provisions set forth in this by-law shall prevail.

21. Any person who contravenes any of the provisions described above shall be guilty of an offence and upon a conviction shall be subject to a fine as prescribed in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

22. The provisions of this by-law shall take full force and effect with the passing hereof.

READ A FIRST AND SECOND TIME THIS 15 DAY OF May,
2007.

READ A THIRD TIME AND FINALLY APPROVED THIS 15 DAY OF
May, 2007.

Ronald McKay
REEVE

[Signature]
CLERK