

THE CORPORATION OF THE TOWN OF WASAGA BEACH

BY-LAW NO. 2020-92

A By-law to exempt the Town of Wasaga Beach from the *Line Fences Act*, R.S.O. 1990, c. L17 with Apportioning Costs of Division Fences

WHEREAS pursuant to Section 9 of the *Municipal Act, 2001*, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act, to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues; and shall be exercised by by-law;

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 Subsection 98(1) and (2) of the *Municipal Act, 2001* provides that a Bylaw may be passed by a municipality stating that the *Line Fences Act*, R.S.O., Ch. L. 17 (“Line Fence 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*;

AND WHEREAS section 26 of the *Line Fences Act*, R.S.O 1990, c. L. 17, provides that Act, with the exception of section 20, does not apply to land subject to a by-law for apportioning the costs of division fences passed under the *Municipal Act, 2001*, S.O. 2001, c. 25;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WASAGA BEACH HEREBY ENACTS AS FOLLOWS:

1. DEFINITIONS

1.1 “**act**” or “**Act**” means the *Line Fences Act*, R.S.O. 1990,C.L17 as amended;

1.2 “**Actual Cost**” means the total cost of construction of a new fence, replacement of an existing division fence with a new division fence, maintenance or repair of a division fence and includes the value of the material used plus applicable taxes and the value of the labour performed to complete the work plus applicable taxes;

1.3 “**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 Municipality of Wasaga Beach or any other public authority;

1.4 “**Basic Cost**” means the total cost of construction or maintenance of:

- a) a Basic Agricultural Fence; or
- b) a Basic Residential Fence;

1.5 “Construct” means to build from new where no division fence was existing;

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

1.7 “Owner” means;

- a) A registered owner of land; or
- b) A person managing or receiving rent for land; or
- c) And where more than one person is an owner, they shall be considered to be a single owner for the purposes of this bylaw;

1.8 “Reconstruct” means to replace an existing division fence that is not in a state of good repair, using the same standards and quality of materials and building to the style as the existing division fence;

1.9 “Repair” means to restore an existing division fence to its original state of good repair;

1.10 “State of Good Repair” shall mean;

- i. The division fence is complete and in a structurally sound condition and plumb and securely anchored;
- ii. Protected by weather-resistant materials;
- iii. Division fence components are not broken, rusted, rotten or in a hazardous condition;
- iv. All stained or painted division fences are maintained free of peeling paint or stain; and
- v. That the division fence does not present or have an inferior appearance or quality on that side of the fence which faces the adjoining property;

1.11 “Town” means The Corporation of the Town of Wasaga Beach;

1.12 “Upgrade” means to replace an existing division fence using standards and quality of materials and building to a style superior to the existing division fence;

1.13 “Work” means to construct a division fence.

2. APPLICATION

- 2.1** From and after the date of passing of this Bylaw, the provisions of the Act, except for Section 20 thereof, shall no longer apply in the Town.
- 2.2** This By-law may be cited as the “Division Fence By-law”
- 2.3** The provisions of this Bylaw do not apply to;
- a)** to any lands forming part of a Public Highway, to lands abutting a Public Highway that are held as a reserve by the Town or any Public Authority, or to lands that are being held by a Town or other Public Authority as an unopened road allowance or for future Public Highway purposes;
 - b)** where an Owner has initiated proceedings under the Act prior to the date this By-law is enacted;
 - c)** to fences that have already been erected with the exception of maintenance. (An Owner that has already constructed a Division Fence is not eligible for contribution of costs from the Adjoining Owner, except for subsequent maintenance); or
 - d)** to fences that are constructed or maintained which are not located on the actual property line.

3. PROVISIONS OF CONSTRUCTION OR REPLACEMENT

- 3.1** An owner of land may construct, replace, repair and maintain a division Fence, subject to compliance with the provisions of this By-law, any other By-law that related to fences, including the Town’s Comprehensive Zoning By-law, as amended or any By-law passed in substitution thereof.
- 3.2** Where the owners of adjoining lands are in agreement or are able to reach an agreement on the details of construction, replacement, and repair or maintenance of a division fence, each of them shall meet their obligations within the agreement reached between the owners, regardless of any provisions to the contrary in this Bylaw.
- 3.3** Where the owners of adjoining lands cannot agree or reach an agreement as referred to in the section above, an owner desiring to construct, replace, repair or maintain a division fence may do so subject to complying with the following requirements:
- a)** the Owner must deliver a “Notice of Intent” to the Adjoining

Owner by registered mail, advising of his intent to construct or maintain the Division Fence, a sample of which is attached to and shall form part of this By-law as Schedule "A";

- b)** the Notice of Intent must contain, at a minimum, the following information:
 - i. a copy of three (3) written quotes for the Actual Cost and/or Basic Cost for the fencing work to be undertaken;
 - ii. a paragraph stating that the construction or maintenance of the Division Fence will commence fourteen (14) business 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 this 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 (10) 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".

3.4 Where the cost of, construct, replace, repair and maintain of a division fence described in 3.3 is in dispute, the cost shall be apportioned as follows:

- a)** adjoining owner shall pay fifty percent (50%) of the lowest exchanged quote, or fifty percent (50%) of the actual build cost, whichever is lower, having considered all the fencing quotes exchanged; and
- b)** the owner desiring to construct or replace the division fence shall pay the balance of the cost; and
- c)** collection if disputed shall be done through section 4.1

3.5 Once a Fence has been constructed, the cost of maintenance to the Division Fence shall be borne equally by the Owner and the Adjoining Owner, in accordance with Section 3.4, save and except the following:

- a)** the cost of repairs to a Division Fence shall be borne by the Owner if their invitees caused the damage necessitating the repair;

- b) the cost of repairs to a Division Fence shall be borne by the Adjoining Owner if their invitees caused the damage necessitating the repair;
- c) the cost of repairs to the Division Fence shall be borne equally by the Owner and the Adjoining Owner if the damage necessitating the repair was caused by natural disaster.
- d) collection if disputed shall be done through section 4.1

- 3.6** Where a tree causes damage to a division fence, whether by accident, carelessness, negligence, deliberate intent or otherwise, the owner of the land on which the tree stood shall, at their sole expense, forthwith remove the tree and repair the fence.
- 3.7** Where the Town is the adjoining owner of lands other than lands described in 2.3, the cost of construction, replacement repair or maintained of a division fence shall be the sole responsibility of the owner, unless an agreement is made in writing prior to the construction, replacement, repair or maintains of the division fence prior to starting work.
- 3.8** 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, O.18, as amended, is subject to all requirements for obtaining a permit pursuant to such legislation.
- 3.9** Notwithstanding anything in this Bylaw, owners and adjoining owners may enter into agreements with respect to the sharing of any costs with respect to division fences in any proportion. This Bylaw applies where no agreement can be reached.
- 3.10** Division fences can be removed when the owner and adjoining owner are in agreement.

4. ENFORCEMENT

- 4.1** Where an owner or adjoining owner is in default of their obligations under this Bylaw, a person desiring to enforce the provisions of this Bylaw may take enforcement actions using any legal means available to them, including the initiation of proceedings under Part IX of the *Provincial Offences Act*, R.S.O. c. P. 33.

5. SEVERABILITY

- 5.1 If any section or sections of this Bylaw or part thereof, is found in any court of law to be illegal or beyond the power of the Town to enact, such section or sections or part thereof shall be deemed to be severable and all other section or parts of the Bylaw shall be deemed to be separate and independent thereof and to be enacted as such.

6. FORCE AND EFFECT

- 6.1 This Bylaw shall come into force and take effect immediately upon the passing thereof.

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED
THIS 25TH DAY OF AUGUST, 2020.**

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Nina Bifulchi, Mayor

Dina Lundy, Director, Legislative Services & Clerk

SCHEDULE 'A'
SAMPLE LETTER # 1 TO ADJACENT OWNER IN ACCORDANCE WITH TOWN
OF WASAGA BEACH DIVISION FENCE BY-LAW 2020-XX

Date:

To:

Dear ?,

Re: Notice of Intent - Proposed Fence Between _____ (list property)

As you are aware, it is our desire to construct a boundary (division) fence between your property and ours, as we have expressed to you on several occasions. To date, we have been unable to reach a satisfactory agreement regarding the cost share of the proposed fence.

Notwithstanding the lack of agreement, we would like to go ahead with the construction of the fence in accordance with the Town of Wasaga Beach By-law # xxxxxx, a copy of which is enclosed for your information. Also enclosed are three quotes for the construction of (describe the type of fence, height, length etc.).

The proposed fence complies with Town of Wasaga Beach applicable By-laws with respect to height and Zoning.

The construction of the fence, in accordance with the lowest quote received, will commence on (date – fourteen (14) business days from the date of this notice). You may also obtain three (3) further quotes and provide us with a copy of them not later than ten (10) business days from the date of this Notice and we can then discuss all of the quotes before making a decision.

If we do not hear from you prior to the expiration of the fourteen (14) business day period, we will go ahead with the construction of the proposed fence.

We look forward to reaching an amicable agreement.

Yours truly,

(Name)
(Address)
(contact info)

**SAMPLE LETTER # 2 TO ADJACENT OWNER IN ACCORDANCE WITH TOWN
OF WASAGA BEACH DIVISION FENCE BY-LAW**

Date:

To:

Dear ?,

Re: Compliance with Town of Wasaga Beach Division Fence By-law

Further to our letter of (date), construction of the division fence between our properties was completed on (date).

The Town of Wasaga Beach By-law xxxx, a copy of which was previously provided to you, requires that the cost of a division fence be shared between the property owners.

As pointed out in our previous letter, the fence was constructed according to the lowest of three (3) quotes received. Enclosed is a copy of the invoice for a total of \$ xxxxxx . Your share of the cost is \$xxxxxx .

Please provide payment of this amount to us not later than (date 30 days after notice). If payment is not received within this time frame, we will proceed to recover your share of the cost through legal action. We sincerely hope it will not be necessary to proceed further.

Yours truly,

(Name)
(Address)
(contact info)