

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 97-2005

BEING A BY-LAW TO DETERMINE HOW THE COST OF DIVISION FENCES SHALL BE APPORTIONED, AND TO REPEAL BY-LAW NO. 100-2003

WHEREAS Section 11(2) of the *Municipal Act 2001*, S.O. 2001, c. 25 (the "Act"), provides that a lower tier municipality may pass by-laws respecting matters within the spheres of jurisdiction;

AND WHEREAS Section 11(1) of the Act specifies that "structures, including fences and signs" is a sphere of jurisdiction under which a lower tier municipality may pass by-laws;

AND WHEREAS the Council of the Corporation of the Town of Milton deems it desirable to enact a by-law to apportion the cost of division fences, and to repeal By-law No. 100-2003;

NOW THEREFORE the Council of the Corporation of the Town of Milton hereby enacts as follows:

1. For the purposes of this By-law:
 - (a) "Actual Cost" means the total cost of the construction, reconstruction, maintenance or repair of a division fence, and includes the value of the material used and the value of the labour performed to complete the work;
 - (b) "Adjoining Owner" means the person(s) who owns land adjoining the land on which another land owner desires to build a division fence;
 - (c) "Basic Cost" means the cost of installing, constructing or reconstructing a 1.2 metre (4 ft.) chain link fence;
 - (d) "Division Fence" means a fence marking the boundary between adjoining parcels of land and located on the actual property line;
 - (e) "Grade" means the average elevation of the finished surface of the ground beneath the fence;
 - (f) "Municipality" means the Corporation of the Town of Milton;

- (g) "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;
- (h) "Zoning By-law" means the Zoning By-law for the Town of Milton, as amended from time to time.

Fencing Regulations

- 2. 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.
- 3. All fencing, including fence height and location, shall comply with the provisions of the Zoning By-law.
- 4. No fence in a residential, industrial or commercial zone shall be constructed of or contain razor ribbon, barbed wire, glass shards, or any other hazardous material.
- 5. Notwithstanding section 4 of this By-law, barbed wire is permitted to run across the top of a fence in an industrial/commercial zone, provided the barbed wire slants inwards.

Apportionment of Cost for Division Fences

- 6. The apportionment of costs for the construction of a division fence must be considered by the owners of adjoining lands prior to the construction of the division fence.
- 7. An owner of land may construct and maintain a division fence.
- 8. Where owners of adjoining lands are in agreement or are able to reach agreement on the details of construction, repair or replacement of a division fence, each of them shall construct, repair, replace or maintain 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.
- 9. Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section 8 of this By-law, on the details of construction, repair or replacement of a division fence, an adjoining owner desiring to construct, reconstruct or repair a division fence may do so subject to complying with the following requirements:

- (i) the owner must serve the adjoining owner(s) with a notice of intent to construct, repair or replace the division fence, by registered mail;
 - (ii) the notice of intent must contain the following information:
 - 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;
 - the construction, repair or replacement of the division 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 division fence from the adjoining owner(s) in accordance with the formula set out in section 11 of By-law 97-2005;
 - 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.
 - (iii) a copy of By-law 97-2005 must be attached to the notice of intent to construct.
10. The standard 1.2 metre high chain link fence to be used for the purposes of calculating the basic cost shall be:
- (i) not greater than 38 mm diamond mesh;
 - (ii) constructed of galvanized steel wire not less than No. 12 gauge or of minimum 14 gauge steel wire covered with a vinyl coating forming a total thickness equivalent to No. 12 gauge galvanized wire;
 - (iii) supported by at least 38 mm diameter galvanized steel posts each covered by a minimum of 15.24 cm of concrete from grade to a minimum of 1.2 metres below grade, such posts to be spaced not more than 3 metres apart. Top and bottom horizontal rails shall be provided of 32 mm minimum diameter galvanized steel, except that a 6 mm minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail. A vinyl coating may be substituted for the galvanized coating.
11. The cost of construction of a division fence shall be assigned as follows:
- (i) 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

- (ii) the owner shall pay the balance of the actual cost.
- 12. The cost of reconstruction or maintenance of a division fence shall be borne equally by the owner and the adjoining owner.
- 13. The cost of repairs to a division fence shall be borne by the owner if he/she caused the damage necessitating the repair. The cost of repairs to a division fence shall be borne by the adjoining owner if he/she caused the damage necessitating the repair. Subject to section 13 of this By-law, the cost of repairs to 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.
- 14. If a tree is thrown down by accident or otherwise so as to cause damage to a division 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.

Line Fences Act

- 15. The provisions of this By-law shall apply to urban residential areas. The provisions of the *Line Fences Act*, R.S.O. 1990, c. L. 17, as amended, shall apply to all non-urban residential areas.
- 16. Where an urban residential use abuts an agricultural use, the *Line Fences Act* shall be applied to apportion the cost of a division fence on the mutual lot line(s).
- 17. For the purpose of this By-law, "urban residential area" shall include: residential, hamlet and estate residential zones as described in the *Zoning By-law*.

Enforcement

- 18. 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 division 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.

By-law Does Not Apply

- 19. 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.
- 20. This By-law does not apply to noise barriers located on public lands.
- 21. This By-law does not apply to fences erected under Swimming Pool Fence By-law No. 80-2003, as amended.

Penalty

- 22. Every person who contravenes provisions 3 to 5 of this By-law is guilty of an offence. Pursuant to the provisions of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, upon conviction a person is liable to a fine of not more than \$5,000 exclusive of costs.

Severability

- 23. When a court of competent jurisdiction declares any section or part of this By-law invalid, the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

Repeal of By-law

- 24. By-law 100-2003 is hereby repealed in its entirety.

Effect

- 25. This By-law shall come into force on the date it is passed.

READ A FIRST, SECOND AND THIRD TIME and FINALLY PASSED this 8th day of August, 2005.

Gordon A. Krantz Mayor

Troy McHarg Town Clerk