



Date: 2021-07-14

From: Brittany Drury, Clerk

Subject *Line Fences Act, R.S.O., 1990*

Report LEG2021-21

Recommendation

That report LEG2021-21, *Line Fences Act, R.S.O., 1990*, be received for information, and

That Committee hereby supports exercising Section 98 of the *Municipal Act, 2001*, to enact that the *Line Fences Act, 1990*, shall not apply in the Township of Georgian Bluffs, in its entirety, with the exception of Section 20 of said Act, and

That a by-law to authorize said authority be presented at the July 21, 2021, meeting of Council.

Background

Although fence viewers were first referenced in an Act of the Province of Upper Canada in 1793, the first Ontario fencing legislation was passed in 1834. The currently recognized *Line Fences Act, R.S.O., 1990* can be traced to that 1834 statute.

In keeping with current legislation, being the *Line Fences Act, R.S.O., 1990*, (the Act) Council has appointed Fence Viewers, to facilitate the provisions of the Act, since amalgamation in 2001. The by-law to enact the last round of appointments expired in 2018, therefore, the Township currently has no actively appointed viewers, as is required by the Act.

Analysis

The original intent of fencing legislation was generated by a need to settle disputes that arose from early settlements in rural regions of the province, at a time when municipalities played an important role in serving as a mediator in such cases.

The Act operates on the premise that both parties benefit from having a fence to mark their common boundary. It provides a mechanism for resolving disagreements between neighbouring landowners over how the costs of construction, maintenance or repairs to a line fence will be shared. The arbitration procedure **only applies in two situations** where the owners are unable to reach agreement:

1. Where no fence currently exists at the boundary between the two properties, and one owner wants a new fence to be constructed to mark the boundary.
2. Where a line fence already exists, and one owner believes that it needs to be reconstructed or repaired.

In cases which the Act is found to apply, an owner can ask that a municipality assign fence viewers to resolve the dispute and issue a decision, also known as an award. A fence viewer is:

- appointed by the municipality,
- someone with broad knowledge of the community.

Three fence viewers are required to be present at a viewing, and they are only authorized to address one or both of the following issues:

- the apportionment of responsibility for the fencing work between the two adjoining owners,
- the description of the fence that is to be constructed or reconstructed on the boundary line, including the materials to be used.

After the viewing, the fence viewers issue an award and allocate the costs of the proceeding between the two owners.

The arbitration procedure is not applicable if one owner, on their own initiative, has constructed a new line fence or has reconstructed or repaired an entire existing line fence, and wishes to use the arbitration procedure to force the adjoining owner to pay part of the cost of the completed work.

The arbitration procedure only deals with disputes about fences. It does not determine the location of the boundary line between adjoining properties. Boundary line disputes must be resolved by the owners themselves. Municipalities and their fence viewers have no jurisdiction to deal with boundary issues.

According to Township records, the Township has not received a request for fence viewing since 2007. Prior to 2007, the Township facilitated and administered 4 documented requests for the arbitration process. Recognizing the seldom use of the

arbitration process at the Township, and complexity of the arbitration, the Township may elect to ‘opt-out’ of the fence viewing process. To this effect, Section 98 of the *Municipal Act, 2001*, permits municipalities, by by-law, to opt out of the *Line Fences Act, 1990*, with the proviso that Section 20 of said Act, regarding duties of owners of former railway lands, continues to apply. Unless the Township specifically moves to be exempt from the application of the Act, it will continue to apply.

In considering application of Section 20 of the Act, the Township enacted By-law 2018-067, authorizing policy REC-2018-01 – Rail Trail Fencing, attached to this report as Appendix A. Said policy applies to the Georgian Bluffs Rail Trail and the Township’s duty to carry out fencing repairs upon the request of adjacent property owners, therefore fulfilling the Township’s responsibilities as delegated by Section 20 of the *Lines Fences Act, 1990*.

Should Council move to become exempt from the Act, and therefore the arbitration process, the responsibility for mediation between property owners is shifted to said property owners, thereby becoming a civil matter and removing involvement of the Township. Essentially, at this time, Council has two options:

Option 1: Continue to recognize the <i>Line Fences Act, 1990</i> .	Option 2: ‘Opt-Out’ of the <i>Line Fences Act, 1990</i> , via Section 98 of the <i>Municipal Act, 2001</i> .
<p>What is required:</p> <ul style="list-style-type: none"> • Council to pass a by-law appointing fence viewers. Per the Act, three fence viewers must be appointed, • By-law 2018-046, rail trail fencing, will remain in effect, • Review of remuneration rates for said viewers. 	<p>What is required:</p> <ul style="list-style-type: none"> • Council to pass a by-law indicating their intent to opt-out of the Act, • By-law 2018-046, rail trail fencing, will remain in effect, • Repeal of former by-laws appointing fence viewers.

Staff recommend that Council consider Option 2, being opting out of the Act and arbitration process. In considering the seldom use of the process, and that the Township has not mediated a line fences application in 14 years, continuing the process is redundant.

Should Council move to implement Option 1, staff will advertise and seek applications for appointment of three fence viewers. Further, policies for remuneration of said viewers and internal procedures governing the arbitration process will be reviewed and updated.

Financial Impact

As the Township has not participated in a viewing process in approximately 14 years, financial impacts of opting out of the arbitration process are anticipated to be minimal. However, in no longer participating in said process, the Township will not incur costs associated with remuneration of viewers or staff time, in the event an application for viewing is received.

Strategic Priorities

The recommendation as included in this report achieves the fifth strategic goal, Deliver Effective and Cost-Efficient Services, as included in the 2020-2024 Township of Georgian Bluffs Strategic Plan.

Conclusion

Municipalities across Ontario have the ability to opt-out of fence viewing procedures, via exercising Section 98 of the *Municipal Act, 2001*. As the Township has not participated nor received an application for fence viewing in over a decade, it is staff's recommendation that Committee endorse Option 2, being to opt-out of the Line Fences Act, 1990 and the associated viewing process.

Appendix A: By-law 2018-067, policy REC-2018-01 – Rail Trail Fencing

Respectfully Submitted: Brittany Drury, Clerk

Report Approval Details

Document Title:	LEG2021-21 - Line Fences Act .docx
Attachments:	- 2018-067 - Policy REC2018-01 - Rail Trail Fencing.pdf
Final Approval Date:	Jun 26, 2021

This report and all of its attachments were approved and signed as outlined below:

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