

BY-LAW NUMBER 2012-121

OF THE

CORPORATION OF THE TOWNSHIP OF UXBRIDGE

**BEING A BY-LAW TO PROVIDE FOR THE
APPORTIONMENT OF COSTS OF DIVISION FENCES**

WHEREAS subsection 5(3) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS paragraph 10 of subsection 10(2) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended provides that a municipality may pass by-laws respecting Structures, including fences and signs;

AND WHEREAS section 98 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended provides that a municipality may provide that the *Line Fences Act* does not apply to all or any part of the municipality, but despite such by-law being passed, section 20 of the *Line Fences Act* continues to apply throughout the municipality;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
TOWNSHIP OF UXBRIDGE HEREBY ENACTS A BY-LAW AS FOLLOWS:**

SHORT TITLE

This by-law may be cited as the "Division Fence Cost Sharing By-law".

Section 1-Definitions

1. For the purposes of this by-law,
 - (a) "Actual Cost" means the total cost of the construction of a division fence and includes the cost of the material used and the value of the labour performed to complete the work.
 - (b) "Adjoining Owner" means the person who owns land adjacent to land of an Owner.
 - (c) "Basic Cost" means the cost of constructing a 1.2 metre high steel chain link fence which:
 - (i) has a diamond mesh not greater than 40 millimetres, and galvanized steel wire not less than 2.680 millimetres diameter (11 guage); and
 - (ii) is supported by at least 38 millimetre diameter galvanized steel posts encased in a minimum of 50 millimetres of concrete from grade to a minimum of 60 centimetres below grade; such posts to be spaced not more than 3 metres apart; and
 - (iii) top and bottom horizontal rails of 32 millimetres minimum galvanized steel.
 - (d) "Construct" means to build from new where no division fence was existing.

- (e) "Division Fence" means a fence marking the boundary between adjoining parcels of land, not under common ownership.
- (f) "Owner" means the owner of land who initiates procedures pursuant to the by-law to install and apportion the costs of a division fence and includes the person managing or receiving the rent for the land or premises whether on his own account or as agent or trustee for the Owner.
- (g) "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.
- (h) "Repair" means to restore an existing division fence to its original state of good repair.
- (i) "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 an or have an inferior appearance or quality on that side of the fence which faces the adjoining property.
- (j) "Township" means The Corporation of the Township of Uxbridge.
- (k) "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.
- (l) "Work" means to construct a division fence.

Section 2 – Right to Construct, Reconstruct or Repair

2.1 An Owner of land may construct, reconstruct, and repair a division fence.

Section 3 – Written Agreement

3.1 Where the Adjoining Owner has agreed, in writing, to the construction, reconstruction, repair, or upgrade of a division fence, each owner shall be responsible for fifty percent (50%) of the actual cost of the work, unless otherwise provided for in the written agreement.

Section 4 – No Written Agreement

4.1 Where the adjoining owner has not agreed, in writing, to the construction, reconstruction or repair of a division fence, the Owner desiring to construct, reconstruct or repair a division fence shall serve or cause to be served upon the Adjoining Owner, by registered mail, a notice of his or her intention to do so at least nineteen (19) days prior to the commencement of any work or execution of any contract in relation to the work to be undertaken. The nineteen (19) day notice period shall commence on the date following the day the notice is mailed. The notice shall include;

- (a) a copy of the Township of Uxbridge Division Fence Cost Sharing By-law;
 - (b) a date for beginning the work to be undertaken;
 - (c) a complete breakdown of the costs of the division fence;
 - (d) not less than two (2) estimates for the cost of the work for the division fence; and
 - (e) a request for payment calculated as set out in the By-law.
- 4.2 Where the Adjoining Owner has not agreed in writing, to the construction of a division fence, the cost for the work shall be paid 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 less; and,
 - (b) the Owner shall pay the balance of the actual cost.
- 4.3 Where the Adjoining Owner has not agreed in writing, to the reconstruction or repair of a division fence, each owner shall be responsible for fifty percent (50%) of the actual cost of the work.

Section 5 – General Provisions

- 5.1 Unless otherwise agreed, the cost for the work shall be paid within thirty (30) days of completion of the work.
- 5.2 Where an Owner or Adjoining Owner is in default of his obligations pursuant to this By-law, a person desiring to enforce the provisions of this By-law shall, within ninety (90) days after completion of the work, serve or cause to be served on the defaulting person, a notice by registered mail requiring compliance with this By-law. The notice shall specify that if the default is not rectified within thirty (30) days after service of the notice, the person enforcing this By-law may rectify the default and may take appropriate proceedings under Part IX of the Provincial Offences Act to recover the proportionate share of the cost of the work and additional costs of rectifying the default from the defaulting person.
- 5.3 Any division fence constructed, reconstructed or repaired pursuant to the provisions of this by-law shall comply with the provisions of the Township's Fence By-law.
- 5.4 Where the Township is the Owner or Adjoining Owner under the provisions of this By-law, The Township shall be exempt from Section 5.2 and where an Owner or Adjoining Owner is in default of his obligations pursuant to this By-law, the Township desiring to enforce the provisions of this By-law shall, within ninety (90) days after completion of the work, serve or cause to be served on the defaulting person, a notice by registered mail requiring compliance with this By-law. The notice shall specify that if the default is not rectified within thirty (30) days after service of the notice the Township may recover the costs not paid, by adding the costs to the tax roll and collecting them in the same manner as property taxes.

Section 6 – Notice

- 6.1 Any notice pursuant to this By-law shall be given in writing by registered mail and is effective:
- (c) on the date on which a copy is hand delivered to the person to whom it is addressed;
 - (d) on the fifth (5th) day after a copy is sent by registered mail to the person's last known address.

Section 7 - Exceptions

- 7.1 This By-law does not apply to:
- (a) any land that constitutes a public highway, including land abutting a public highway that is held as a reserve by the Township or other public authority to separate land from the highway, or to land that is being held by the Township or other public authority as an unopened road allowance or for future public highway purposes;
 - (b) any lands in the Township zoned Shoreline Residential (SR), Residential Cluster (RC), Estate Residential (ER), Hamlet Residential (HR), Environmental Protection (EP), and Rural (RU) in the applicable zoning by-law of the Township;
 - (c) an owner wishing to upgrade an existing division fence that is in a state of good repair;
 - (d) any person that is under a legal requirement, either by an Act, Regulation, By-law, or any other legislation, to erect and maintain a division fence.
- 7.2 Notwithstanding anything in this By-law, Owners and Adjoining Owners may enter into agreements with respect to the sharing of any costs with respect to division fences in any proportion.
- 7.3 The cost of repairs to a division fence shall be borne by the owner if the damage necessitating the repair was caused by him or his invitees. The cost of repairs to a division fence shall be borne by the adjoining owner if the damage necessitating the repair was caused by him or his invitees.
- 7.4 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 natural disaster.
- 7.5 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 sole expense forthwith remove the tree and repair the fence.

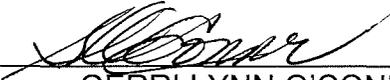
Section 8 - Administration

- 8.1 This By-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the Township or by any governmental authority having jurisdiction to make such restrictions or regulations.
- 8.2 If there is a conflict between a provision in this By-law and a provision of any other Municipal By-law, the provision that establishes the highest standard to protect the health, safety and welfare of the general public shall apply.

Section 9 – Severability

9.1 In the event any part or provision of this by-law is held invalid, the remainder of the by-law shall continue in force.

READ a FIRST, SECOND and THIRD time and finally passed this 16th day of July, 2012.



GERRI LYNN O'CONNOR
MAYOR



DEBBIE LEROUX
CLERK