

Line Fences Procedure

Approved By:
Approval Date:
Effective Date:
Revision Date:

Purpose:

The purpose of this Procedure is to ensure that Line Fence Disputes are resolved efficiently and impartiality within the Township of Douro-Dummer, as per By-law 2024-017.

Application:

To resolve Line Fence disputes within the Township of Douro-Dummer.

Definitions:

"Actual Cost" means the total cost of the construction, reconstruction, maintenance or repair of a line fence, and includes the value of the material used and the value of the labour performed to complete the work;

"Adjoining Owner" means the person(s) who owns land adjoining the land on which another land owner desires to build a line fence;

"Award" means the legally-binding decision or ruling given out by Fence-Viewers;

"Council" or **"Municipal Council"** means the municipal Council for the Township;

"Fence-Viewer" means the person appointed to carry out the duties of Fence-Viewer described in the Line Fences Act, R.S.O. 1990;

"Grade" means the average elevation of the finished surface of the ground beneath the fence;

"Line Fence" means a fence marking the boundary between adjoining parcels of land and located on the actual property line;

"Line Fences Act" means the Line Fences Act, R.S.O. 1990, c. L.17, as amended;

"Municipal Act" means the Municipal Act, 2001, S.O. 2001, c. 25, as amended;

"Municipal Clerk", "Township Clerk" or "Clerk" means the person appointed by Council to carry out the duties of the Clerk described in Section 228 of the Municipal Act, 2001;

"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, and;

"Township", "Township of Douro-Dummer" or "Douro-Dummer" means The Corporation of the Township of Douro-Dummer and includes its entire geographic area,

Procedures

Responsibilities:

Municipal Council to:

- Appoint a minimum of three (3) Fence-Viewers for each term of Council;
- Enforce the criteria determined in By-law 2024-017 needed to qualify for the position of Fence-Viewer;
- Set the remuneration rate for Fence-Viewers as part of the Annual User Fees and Charges By-law;
- Set administrative fees to be paid to the municipality by owners involved in arbitration and reviewing these fees as part of the Annual User Fees and Charges By-law;
- Prohibit fence viewings between November 1st of one year and March 31st of the next year; and
- Prohibit line fence disputes in all properties not zoned Rural (RU) or Environmental Conservation (EC), or properties that share a line fence with properties zoned Rural (RU) or Environmental Conservation (EC) zone (as outlined in the Township Zoning By-Law).

Municipal Clerk to:

- Encourage parties to settle the dispute privately, and serve as a neutral third party to avoid the costs associated with a line fence viewing;
- Ensure that there are no boundary disputes prior to the filing of Form 1 (Procedure Appendix A);
- Ensure that Form 1 is filled out completely and accurately, and provide Form 1 to the adjoining owner;
- Mail formal notices of an upcoming viewing to both owners through Form 2 (Procedure Appendix B);

- Mail notice to request the attendance of Fence-Viewers through the filling of Form 3 (Procedure Appendix C);
- Schedule the date and time for the fence viewing within thirty (30) days of the filing of Form 1 (Procedure Appendix A) unless Form 1 is filed between the November 1st of one year and March 31st of the next year, then the fence viewing will take place within thirty (30) days of April 1;
- Ensure that Fence-Viewers are paid fifteen (15) days after the filing of Form 4 (Procedure Appendix D) if no appeal is filed;
- Mail certified copies of the Fence-Viewer Award to required persons.

Fence-Viewers to:

- Listen to the testimonies of both owners and be open to the evidence presented by both owners;
- Abide by the Fence-Viewer Code of Conduct (By-law XXXX, Schedule A);
- Consider the needs and wishes of both owners, the location of the fence, the description of the fence, allocation of costs and responsibility, and the best start and completion dates for the Award (Form 4, Procedure Appendix D).

Property owners:

- Complete Form 1 (Procedure A)
- Provide accurate information on all Line Fence paperwork, and when giving testimony to Fence-Viewers;
- If filing an Award appeal, ensure that it is filed (Form 5, Procedure Appendix E) within fifteen (15) days of the filing of the Award (Form 4, Procedure Appendix D);
- Abide by the Award made by the Fence-Viewers.

Steps:

Prior to filing a fence viewing:

- Township Clerk will offer to provide mediation for the owners to reach resolution without the need for a fence viewing.

Fence Viewing request:

- Land owner will make it known to Township Staff that they request a fence viewing.
- Township Clerk will ensure that the land in question is not subject to any boundary disputes.
- Township Clerk will ensure that land in question is subject to a line fence viewing as defined in By-law 2024-017 and the Line Fences Act R.S.O 1990.

- Land owner will complete Form 1 (Procedure Appendix A) and submit it to the Township Clerk along with paying the Line Fence Viewing administrative fee.

Fence Viewing:

- Township Clerk will request the attendance of three (3) Fence-Viewers through the filing of Form 3 (Procedure Appendix C).
- Township Clerk will file and mail Form 2 (Procedure Appendix B) alerting owners of date and time of fence viewing.
- Fence-Viewers will view the fence and listen to testimonies of owners.
- Fence-Viewers will deliberate and make an Award through the submission of Form 4 (Procedure Appendix D).
- Fence-Viewers are to be paid their remuneration fifteen (15) days after the filing of the Award (Form 4 - Procedure Appendix F) if no appeal is filed.

Award Appeal:

- Owner/owners, who deem it necessary, have fifteen (15) days to appeal the Award through the filing of Form 5 (Procedure Appendix E) to adjoining owner by registered mail.
- Form 5 (Procedure Appendix E) will then be filed with the Township Clerk along with Form 6 (Procedure Appendix F).
- Township Clerk will then submit the Award (Form 4, Procedure Appendix D), the notice of appeal (Form 5, Procedure Appendix E), and the affidavit of Service Notice of Appeal (Form 6, Procedure Appendix F) by registered mail to Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), at which time the Owner filing the appeal will be charged the appeal fee to OMAFRA which is subject to change in accordance with the Consumer Price Index of Ontario.

Enforcement of an Award:

Enforcement procedures set out in the Line Fences Act R.S.O. 1990 can be utilized at the request of one owner involved in a line fence dispute. If one owner (Owner A) is looking to have the Award implemented and the adjoining owner (Owner B) is unwilling to cooperate, Owner A may utilize the enforcement procedures, applicable to the following situations:

1. The work done by one of the owners does not comply with the Award.
 - If work is completed by both owners by the assigned date but Owner A does not believe that the work done Owner B complies with the Award the Fence-Viewers may be required to reconvene.
 - To begin the process the complainant (or Owner A) must first send a notice to the other owner through registered mail requiring Owner B bring

- the work into compliance with the Award. If Owner B does not comply within fourteen (14) days Owner A may apply to the Township Clerk to have the Fence-Viewers reconvene to review what work has been done.
- The Township Clerk is responsible for setting a time and date for the review no more than thirty (30) days from Owner A's re-viewing request.
 - Township Clerk is responsible for notifying owners by registered mail in Form 2 (Procedure Appendix B) and the Fence-Viewers by registered mail in Form 3 (Procedure Appendix C), at least one week prior to the re-viewing.
 - If the Fence-Viewers find the work done by Owner B does not comply with the Award they must use Form 12 (Procedure Appendix L) to specify the action Owner B is to take to make the work comply with the Award and the date by which this work must be completed.
 - Township Clerk is responsible for sending out this determination to the owners and the occupants of the lands by registered mail.
 - If the Fence-Viewers decide that the work done by Owner B adequately complies with the Award they must use Form 13 (Procedure Appendix O) to explain their decision.
2. One owner does not do the work specified in the Award.
- If Owner A completes the work determined in the Award and Owner B does not, Owner A is required to send notice to Owner B by registered mail requiring Owner B to obey the Award.
 - If the Award is not obeyed within fourteen (14) days, Owner A can do the necessary work, and is entitled to enter Owner B's property for this purpose. The Line Fences Act R.S.O. 1990, c. L.17, s. 11 (5) makes it an offence for Owner B obstruct Owner A from entering their property for the purpose of completing the Fence-Viewers' Award.
 - When the work is completed, Owner A can institute the proceedings to recover the value of that work from Owner B.
3. One owner does not pay for their share of the work.
- If the Award outlined that Owner A is responsible for completing the work, and Owner B is responsible for paying a portion of the cost of the work to Owner A and Owner B does not pay their share, Owner A must send them written notice by registered mail giving Owner B twenty-eight (28) days to abide by the Award.
 - If after the twenty-eight (28) days, Owner B does not pay the amount determined in the Award, Owner A may institute proceedings to recover the amount and the costs of the proceedings from Owner B.

Proceedings to Recover Amount Owed

- To begin proceedings and recover all or a portion of actual costs, Owner A is to apply to the Township Clerk to have the Fence Viewers reconvene.
- The Clerk is responsible for setting a date and time for the re-viewing and notifying both owners through the mailing of Form 7 (Appendix I) and Fence Viewers through the mailing of Form 8 (Appendix J) by registered mail at least seven (7) days prior to the re-viewing date.
- Upon re-viewing, if Fence-Viewers agree that Owner B has failed to obey the Award, Fence-Viewers must prepare a certificate of default in either Form 9 (Appendix K) or Form 10 (Appendix L), certifying default of payment, and specifying the amount payable from Owner B to Owner A. The Township Clerk is responsible for sending out a certified copy of the Certificate of Default (Form 9 - Appendix K) by registered mail to the Owners and occupants of the land.
- Upon re-viewing, if Fence-Viewers determine that Owner B has not failed to obey the Award Fence-Viewers must use Form 13 (Appendix O) to explain their decision and allocate the costs of the proceedings (re-viewing Fence Viewer remuneration) to one or both Owners.
- If Owner B pays the certified amounts to Owner A, no further action is needed. If Owner B fails or refuses to pay the certified amount to Owner A, steps can be made to collect this amount from Owner B (see Procedure Section "Collection of Certified Amounts").

Collection of Certified Amounts

1. Collection in the same manner as taxes:
 - An owner who is seeking reimbursement of a certified amount defined in the Award may apply in writing to have the amount added to the collector's roll.
 - The amount is then collected in the same manner as taxes, with the same interest rate as unpaid taxes. The owner seeking reimbursement will then receive the certified amount with interest once it has been collected.
2. Action in Small Claims Court:
 - As per the Line Fences Act R.S.O. 1990 12 (9), land owners can seek reimbursement through action in Small Claims court through the filing of the certificate of default (Form 10, Appendix J) and the original Award (Form 4, Appendix D) with the Small Claims Court Clerk.
 - This action may lead to the reimbursement of Owner A through the transferring of goods and chattel (or moveable personal property) from Owner B to Owner A.

Privacy

Personal Information Collected, Used & Disclosed

- Personal Information collected and used under this policy, procedure and By-law may include an individual's general description, photographic image or likeness, address and contact information, and shall not be used or disclosed for an inconsistent purpose;
- All Township staff shall have regard for the individual's privacy and shall not use or disclose their personal information in any way that may reveal to the public the individual's personal information, unless it is pertinent to the resolution of the line fence dispute.
- Information collected in and used under this Policy Procedure and By-law will be subject to the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990, Chapter M. 56 and will be treated accordingly.

Appendix

Appendix A: Form 1 - Request for Fence-Viewers

Appendix D: Form 2 – Clerk’s Notice to Parties (Dispute)

Appendix E: Form 3 – Clerk’s Notice to Fence-Viewers (Dispute)

Appendix F: Form 4 – Award

Appendix G: Form 5 – Owner’s Notice of Appeal from Fence-Viewers’ Award

Appendix H: Form 6 – Affidavit of Service of Notice of Appeal

Appendix I: Form 7 – Clerk’s Notice to Parties (Certification)

Appendix J: Form 8 – Clerk’s Notice to Fence-Viewers (Certification)

Appendix K: Form 9 – Certification of Default (Payment Not Made)

Appendix L: Form 10 – Treasurer’s Notice of Amount Owed to Municipality by Defaulting Owner

Appendix M: Form 11 – Treasurer’s Notice of Amount Owed to Municipality by Defaulting Owner

Appendix N: Form 12 – Determination with Directions

Appendix O: Form 13 – Decision of Fence-Viewers Where No Award, Certificate, etc., is Made

Appendix P: Form 14 – Agreement

Appendix Q: Form 15 – Agreement (Where One Party is a Municipality or Local Board)