

# Township of Lucan Biddulph

## BY-LAW NO. 08-2023

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### Being a By-law of the Corporation of the Township of Lucan Biddulph respecting the apportioning of costs of division fences

**WHEREAS** Section 9 of the Municipal Act, 2001, S.O. 2001, Chapter M.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

**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 set out therein;

**AND WHEREAS** Subsection 98(1) of the Municipal Act, 2001, S.O. 2001, Chapter M.25, authorizes the Municipality to provide that the Line Fences Act, S.O. 1990, with the exception of Section 20, does not apply to all or any part of the municipality;

**AND WHEREAS** Section 26 of the Line Fences Act, S.O. 1990, 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, Chapter 25;

**NOW THEREFORE BE IT RESOLVED THAT** the Council of the Corporation of the Township of Lucan Biddulph enacts as follows:

#### 1. Purpose

The purpose of this by-law is to set out the requirements with respect to cost apportionment in relation to division fences as defined in Section 2 of this by-law. From and after the date this By-law comes into force the Line Fences Act, except for Section 20 of that Act, shall not apply to land located within the boundaries of the Municipality as defined in its Official Plan;

#### 2. Definitions

- 2.1. "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.
- 2.2. "Adjoining Owner" means the person who owns land adjacent to land of an Owner.
- 2.3. "Basic Cost" means the cost of constructing a 1.2 metre high steel chain link fence which:
  - a. has a diamond mesh not greater than 40 millimetres, and galvanized steel wire not less than 2.680 millimetres diameter (11 gauge); and
  - b. 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
  - c. top and bottom horizontal rails of 32 millimetres minimum galvanized steel.
- 2.4. "Construct" means to build from new where no division fence was existing.

- 2.5. "Council", means the Council for the Corporation of the Township of Lucan Biddulph;
- 2.6. "Division Fence" means a fence marking the boundary between adjoining parcels of land, not under common ownership
- 2.7. "Person", means an individual, partnership, corporation, association, club, business entity, incorporated group or organization, federal or provincial government, crown agent, school board or county or local municipality;
- 2.8. "Municipality", means the Corporation of the Township of Lucan Biddulph;
- 2.9. "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.
- 2.10. "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.
- 2.11. "Repair" means to restore an existing division fence to its original state of good repair.
- 2.12. "State of Good Repair" shall mean; the division fence is complete and in a structurally sound condition and plumb and securely anchored; protected by weather-resistant materials; division fence components are not broken, rusted, rotten or in a hazardous condition; all stained or painted division fences are maintained free of peeling paint or stain; and 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.
- 2.13. "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.

### **3. Agreements**

- 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 Municipality's Comprehensive Zoning By-law;
- 3.2. 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 a written agreement.
- 3.3. 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 Division Fence Cost Apportionment By-law;
  - b. a date for beginning the work to be undertaken;
  - c. a complete breakdown of the costs of the division fence;
  - d. a copy of three (3) written quotes for the Actual Cost and/or Basic Cost for the fencing work to be undertaken;
  - e. a request for payment calculated as set out in the By-law.

- 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. 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. General Provisions**

- 4.1. Unless otherwise agreed, the cost for the work shall be paid within thirty (30) days of completion of the work.
- 4.2. Any division fence constructed, reconstructed or repaired pursuant to the provisions of this by-law shall comply with the provisions of the Municipality's Fence By-law.
- 4.3. 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, 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.
- 4.4. Where the Municipality is the adjoining owner of lands, 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.
- 4.5. 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, 0.18, as amended, is subject to all requirements for obtaining a permit pursuant to such legislation.

#### **5. Enforcement**

- 5.1. Where an Owner or Adjoining Owner is in default of his obligations pursuant to this By-law, an Owner or Adjoining Owner 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.
- 5.2. Following any notice provided under section 5.1, an Owner or Adjoining Owner 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

#### **6. Notice**

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

**7. Applicability and Exemptions**

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. 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;
- c. 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 them or their 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 downed 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.

**8. Severability**

- 8.1. 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.
- 8.2. In the event any part or provision of this by-law is held invalid, the remainder of the by-law shall continue in force.

**9. Title**

9.1. This By-law shall be known as the Division Fences Cost Apportionment By-law'

**10. Final Passing**

10.1. This by-law shall come into force when it is passed and enacted by Council.

**Read a FIRST, SECOND and THIRD time and FINALLY PASSED February 21, 2023.**

  
MAYOR

  
CLERK