HALDIMAND COUNTY

Report BME-02-2020 Establishment of a Fence By-law

For Consideration by Council in Committee on November 17, 2020

OBJECTIVE:

To seek Council approval of a Fence By-law to regulate the construction, maintenance and repairs to fences in Haldimand County.

RECOMMENDATIONS:

1. THAT Report BME-02-2020 Establishment of a Fence By-law be received;
2. AND THAT the Draft Fence By-law, included as Attachment 1 to Report BME-02-2020, be presented for enactment;
3. AND THAT in accordance with Section 98 of the *Municipal Act, 2001*, Haldimand County provides that the *Line Fences Act* does not apply to all or any part of the municipality;
4. AND THAT the proposed User Fees and Service Charges changes included in Report BME-02-2020 be approved, to be effective immediately, and staff be directed to draft the required amendments to Schedules A and O of the User Fees and Service Charges By-law.

Prepared by: Randy Charlton, CMM III, MLEO(c), CPSO Chief Building Official Manager of Building and Municipal Enforcement

Respectfully submitted: Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Staff recommends the adoption of the proposed Fence By-law which is intended to appropriately regulate fences, so that the lands can be properly developed and enjoyed by all residents and visitors of the County. The Fence By-law will replace provisions in the County's Zoning By-law and will introduce standards where there have long been gaps and flexibility where previously there has only been rigidity.

BACKGROUND:

Staff determined through a best practices exercise and in keeping with good planning practise during the drafting of the harmonized Zoning By-law, that fence standards should be removed as a zoning provision. Standards for fences would be best addressed and a recommendation to Council for a comprehensive standalone Fence By-law. This standalone Fence By-law would provide fence regulations/standards for all properties under the jurisdiction of the County. The implementation of a standalone Fence By-law is also needed to address the *Line Fences Act* administration.

ANALYSIS:

In order to fill the regulatory gap, of removing fence provisions from the harmonized Zoning By-law, presented to Council on November 17, 2020, staff has prepared a draft by-law for the construction of Fences.

Currently, the 3 zoning by-laws provide for existing provisions which are a product of the 1980s. The by-laws for the Town of Haldimand, Town of Dunnville and City of Nanticoke regulate fences in the following manner:

- A fence located between residentially zoned abutting properties may be located in any yard or setback area provided that the maximum height of 2 metres.
- A fence in any required front yard, required exterior side yard or required setback, at the maximum height of 1.0 metres.
- A fence in a sight triangle (intersecting street lines) at the maximum height of 1.0 metres.
- There are no fence regulations for Commercial, Industrial, Institutional, and Agricultural other than residential zoned lots.

The *Municipal Act, 2001*, S.O. 2001, c. 25 provides authority to a municipality to draft by-laws respecting structures, including fences and signs.

With current and future developments plans, Haldimand County continues to grow and this growth is expected to continue in the residential sector for some time, which is also fueling commercial growth. As the County grows, a more comprehensive fence by-law will not only fill in the regulatory gap by removing the fence regulations from the Zoning By-law but, also respond to the need to providing standards that can adapted to the evolving landscape.

The basic reasons why property owners desire a fence is to mark their property boundaries, maybe for privacy, to stop people from crossing their property, for pools or to keep children, pets or equipment safe and secured. Providing a fence by-law amongst other things reduces conflicts as it will clearly lay out height limitation under specific situations. A new fencing by-law is also an opportunity to respond to the increasing inquires to staff about the where's and how's about constructing fences regardless, if the fence is in a new subdivision for privacy or by the lake for lake scape aesthetics.

Using the authority found in the *Municipal Act*, the draft Fence By-law, if adopted would set fence regulations/standards for both residential zoned lots and non residential zoned lots. It's important to note that the by-law as drafted would recognize situations where fences will be deemed to comply, wherein:

- any fence that is in existence prior to the date of the enactment of this by-law and in compliance with other applicable regulations; or
- a fence erected, construct, maintain as a Normal Farm Practice; or
- a fence which is constructed as required in a registered agreement or agreements entered into with the County pursuant to Sections 41 and 51 of the *Planning Act*.

Although, any pre-existing Fence where 50% or more of the Fence along any individual lot line is replaced for any reason will need to comply with the new standards.

Along with providing for a maximum fence height in residential and non residential zones, the proposed by-law would also regulate location and heights for fences:

- within any Corner (street) Sight Triangle;
- within any Driveway Visibility Triangle;
- in a Residential zone "Abutting Lake Erie", and
- in a Residential zone "Privacy Screens".

A chart indicating the height limitations and related setbacks can be found in Attachment 1. The By-law would introduce a new concept referred to as **"**Effective Ground Level**"** which is used for calculating fence heights with a sliding scale for increasing the height of fences for lots on slopes. Calculating a fence height from the Effective Ground Level allows for an increased height in situations where there is grade change on or between lots such that the lots can achieve privacy. The Effective Ground Level concept is incorporated into the draft by-law, aimed at providing a process to 'vary/increase' the standard fence height without the need to create a committee or process to consider the 'variance/increase'. So, in effect it is a built in variance provision. This enhancement responds to the types of variances that have been submitted over the years (only 2 in the last 10 years) when rigid height provisions were contained in the zoning by-laws. Further, responding to the expectation of privacy in circumstances where lots are of varying heights can also be addressed thought the concept of permitting and regulating privacy screens, which are setback from the lot lines.

Existing fence provisions do not regulate the fence heights of non-residential lots, being those in commercial, institutional and industrial categories. The proposed by-law responds to the lack of regulations for non-residential lots by providing control over fences on these lots. This ensures that there is some degree of control over height, appropriateness of materials used and placement, thus protecting landowner rights, contributing to quality developments and ensuring a necessary amount of consistency is in place. Fence height limitations and related setbacks for non-residential lots can also be found in Attachment 1.

The draft fence by-law proposes regulations prohibiting constructed with, electrified material (except as a Normal Farm Practice) or constructed with razor wire, barbed wire, sharp projections or tires and sheet metal or corrugated metal on residential properties.

Line Fences Act

Currently, the County is required to administer the *Line Fences Act*. This Act is one of Ontario's most historic pieces of legislation coming into force on September 12, 1979. The purpose of the *Line Fences Act* is to provide a procedure for the resolution of line fence disputes between the owners of adjoining properties. Line fences are fences that mark the boundary between properties and are often referred to as boundary or division fences.

Staff have received *Line Fence Act* inquiries and on a few occasions those inquiries lead to applications requesting the County to conduct a viewing pursuant to the Act. In short fence—viewings involve hearing evidence from abutting property owners as to why they want or do not want a fence. Fence Viewers would hold a hearing to deliberate on presentations from the owners and a fence award would reflect the following:

- Location of the fence;
- Description of the fence;
- Division of responsibility;
- Start and completion dates; and
- Allocation of the costs of the proceedings.

However, in the last 8 years, staff have not had to engage the services of the Line Fence Viewers to conduct a viewing and hearing. One of the main reasons for this is, once residents find out the lengthy process, timelines and costs associated with the *Line Fence Act* process, with no guarantee that the Fence Viewers will make an award in favour of the applicant, they withdraw their application.

As an alternative to the procedures found in the *Line Fence Act*, municipalities have exercised their authorities found in the *Municipal Act*, and passed by-laws providing that the *Line Fences Act*, R.S.O. 1990, c. L.17 does not apply to any part of the municipality. The *Municipal Act's* only exception in this regard effects those properties that were formerly used as part of a line of railway and provides that the *Line Fences Act* still applies for properties formerly railway.

In place of the *Line Fences Act*, the proposed by-law incorporates a dispute resolution process for the construction, replacement, maintenance or repair of a fence marking the boundary between adjoining parcels of land. This will be a more streamlined, accessible and cost effective process. The By-law proposes that where an Owner follows the requirements within the Fence By-law than the Owner would be apportioned costs for a fence as follows:

- Construct or replace - fifty (50%) percent of the Basic Cost (chain link) or fifty percent of the actual cost, whichever is less (Basic Cost is defined in the By-law).
- Maintenance or repair - fifty (50%) percent of the cost of the maintenance or repair.
- Adjoining Owner's land/tree caused the damage - adjoining Owner shall pay the entire cost of the repair.

Where an Owner fails to pay a cost in accordance with the provisions of this By-law, the proposed by-law provides that the cost may be recovered by means of a legal proceeding not involving the County. Basically, this provides a mechanism for the easy calculation of the cost to construct or repair a fence, clarifies the responsibilities of the party seeking a division of cost and a clear direction on how to collect the costs.

The draft By-law proposes that when a person directed or required to do work in an order, the County, in addition to all other remedies it may have, may do the work or cause the work to be done at the person's expense to bring the land or Lot into compliance with the Order. In this regard the User Fees By-law should be amended to reflect an administration fee of $125.00 for the processing of contractor work to bring the owners Fence into compliance.

FINANCIAL/LEGAL IMPLICATIONS:

The draft Fence By-law was sent to Sullivan Mahoney for a legal review. As a result of the legal review, a number of comments and recommendations have been incorporated into the draft.

The User Fees and Charges By-law includes a Fence Viewing Fee that is required to be submitted along with any fence viewing requests under the *Line Fences Act*. As Haldimand County will no longer be undertaking these applications, the fee needs to be removed from the Fee By-law Schedule A. Schedule "O" of the User Fees and Charges By-law will also require amendment, in order to incorporate the proposed Fence By-law order compliance administration fee of $125.00 plus cost recovery. This fee was developed in coordination with the County's Finance Division and will be incorporated into the User Fees and Service Charges By-law. The fee is consistent with other By-law order administration fees. Staff will draft the required amendments to the User Fees and Service Charges By-law to be enacted by Council.

Future Operating Budgets will incorporate the Fence By-law Order administration fee of $125.00.

It should also be noted that few comments were received as part of the public consultation process on the new County Zoning By-law relating to fencing. In particular, comments were submitted in relation to the need for fencing regulations along the shore of Lake Erie that serve to protect visibility and access along public areas. These types of provisions have been developed and incorporated into the draft Fence By-law.

STAKEHOLDER IMPACTS:

The Fence By-law will create positive impacts, in that, it will provide a comprehensive standard for the construction, maintenance and repair for fences and fill the gap left resulting in the removal of fence regulations from the new Comprehensive Zoning by-law. The draft Fence By-law will also remove the need for staff to respond to *Line Fence Act* inquires.

Given the restrictions around public gatherings due to COVID 19, the proposed by-law has been posted on the County's website with an invitation for comments on the regulations. Public notification/invitation to comment was sent out via the County's various communication channels including social media outlets. At the time of the report only 2 comments had been received and 1 represented a positive comment as it relates to fence regulations along Lake Erie.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Height Limits and Setbacks.
2. Draft Fence By-law.