

Harmonization of the Division Fence By-law

(City Council on July 4, 5 and 6, 2000, struck out and referred this Clause back to the Planning and Transportation Committee for further consideration, together with the following motions; and the Commissioner of Urban Development Services was requested to submit a report to the Planning and Transportation Committee, for consideration therewith, on the impact of the proposed amendments, such report to address, in particular, the financial implications relative to the motion by Councillor Moscoe to delete Clause No. (5), headed "Public Highway", from the proposed Division Fence By-law:

Moved by Councillor Bossons:

"That the Clause be amended:

- (1) to provide that Section 5 of the proposed Division Fence By-law apply to front fences only; and*
- (2) by adding thereto the following:*

'It is further recommended that the Commissioner of Urban Development Services be requested to submit a report to the Planning and Transportation Committee on the cost implications to the City if the City is held responsible for paying one-half of the cost of basic front or back yard fences.' "

Moved by Councillor Mammoliti:

"That the Clause be amended by adding thereto the following:

'It is further recommended that the Commissioner of Works and Emergency Services be requested to appoint as many members of existing staff he deems appropriate as Fence Arbitrators; that the Fence Arbitrators be granted the authority to make a final decision in the event of fence disputes; and that the by-law be amended accordingly.' "

Moved by Councillor Miller:

"That the Clause be amended:

- (1) to provide that the by-law be amended to maintain the current provisions of the former City of Toronto by-law within the boundaries of the former City; and*
- (2) by adding thereto the following:*

'It is further recommended that the Commissioner of Urban Development Services be requested to submit a report to the Planning and

Transportation Committee, in one year's time, on the operation of this system and whether methods to facilitate dispute resolution are required in the former Cities of Etobicoke, Scarborough, East York and North York, and how and whether the City of Toronto should apply for the required special legislation.' ”

Moved by Councillor Bossons:

“That Part (1) of the motion by Councillor Miller be amended by adding thereto the following words:

‘on the condition that fees be increased in order to pay as fully as possible for the cost of fence viewing/arbitration.’ ”

Moved by Councillor Mihevc:

“That Part (1) of the motion by Councillor Miller be amended to provide that fence viewers be continued and expanded in all former municipalities, and further that the Commissioner of Urban Development Services be requested to submit a report to the Planning and Transportation Committee on how this could be accomplished.”

Moved by Councillor Moscoe:

“That the Clause be amended to provide that Clause No. (5), entitled ‘Public Highway’, be deleted from the proposed Division Fence By-law.”

(City Council on June 7, 8 and 9, 2000, deferred consideration of this Clause to the next regular meeting of City Council scheduled to be held on July 4, 2000.)

The Planning and Transportation Committee recommends that authority be granted for the introduction of the necessary Bill in Council, substantially in the form of the draft by-law appended to the report (March 1, 2000, from the Commissioner of Urban Development Services.

The Planning and Transportation Committee submits the following report (March 1, 2000) from the Commissioner of Urban Development Services:

Purpose:

To report on the harmonization of the division fence by-law.

Financial Implications and Impact Statement:

In 1999, the City received a total of \$7,610.00 in application fees related to fence viewing. As the existing program is intended to be revenue neutral, the revenue is offset by the need to

appoint fence viewers to attend and investigate the circumstances surrounding a request for arbitration.

Recommendation:

It is recommended that the attached draft division fence by-law be received and forwarded to all Community Councils for their review and comment for the next meeting of the Committee.

Background:

As part of our program to harmonize by-laws of the former municipalities, we have directed our attention to a by-law to deal with the apportionment of costs for the construction, repair and replacement of division fences on private property.

The only municipalities that adopted a by-law to deal with costs related to division fences were the former Cities of Toronto and North York.

In the case of the former City of Toronto, a by-law was adopted pursuant to the City of Toronto Act, 1972 (No.2) which provides for the resolution of fence disputes by an arbitration panel consisting of representatives of the City and both disputing parties. The provisions of the Line Fences Act apply in respect of enforcement of and appeal from an award of the panel.

The City of North York elected to enact a by-law under the provisions of paragraph 27 of section 210 of the Municipal Act. Where the property owners are not in agreement on the details of the fence to be constructed, the adjoining owner is required to pay a maximum of fifty (50) percent of the cost of a basic four (4) foot chain link fence. In order to assist owners, an information package is made available.

Scarborough, East York, Etobicoke and York all relied upon the provisions of the Line Fences Act whereby fence viewers are appointed to attend and investigate the circumstances surrounding a request for arbitration. For the most part these requests result in an award which divides the cost equally between the parties.

Comments:

We have gathered information on the number of applications considered by the former municipalities during 1998 and 1999. As you will see from the following chart, the numbers are by no means excessive.

Municipality	Process	Fee	Applications – 1998	Application – 1999
Toronto	Chapter 182	\$100	109	65
North York	By-law 29830	None	No application required	No application required
York	Line Fences Act	\$60 +	2	0
Scarborough	Line Fences Act	\$210	8	1
Etobicoke	Line Fences Act	\$150	2	6
East York	Line Fences Act	\$110	0	0

We have been advised by the City Solicitor that only two options are presently available to the City: Either adopt a by-law pursuant to the provisions of paragraph 27 of section 210 of the Municipal Act as recommended in this report, or to appoint fence viewers pursuant to the Line Fences Act. Special legislation would be required to extend the application of the former City of Toronto by-law to the new City as a whole.

The numbers reflected in the above chart (approximately 70-120 applications a year City wide) would not in our view warrant initiating the administrative process of appointing fence viewers under the Line Fences Act.

Under the proposed by-law, an application (and applicable fee) for a fence viewer would not be required.

Conclusions:

The newly harmonized division fence by-law is designed to ensure that all property owners are treated fairly and that where there is no agreement on a fence, the adjoining owner be required to pay no more than fifty (50) percent of the cost of a basic four (4) foot chain link fence.

If, after review by Community Councils, the Committee finds it desirable to adopt the by-law, it is suggested that the City Solicitor, in consultation with the Commissioner of Urban Development Services, be authorized to prepare and introduce in Council a bill substantially in the form of the attached draft by-law.

The form of the draft by-law has been reviewed and approved by the City Solicitor.

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Authority:
Adopted by Council:

CITY OF TORONTO

BY-LAW No. –2000

For determining how the cost of division fences shall be apportioned, and for providing that any amount so apportioned shall be recoverable under the Provincial Offences Act.

WHEREAS Council has the authority under paragraph 27 of section 210 of the Municipal Act, R.S.O.1990, c.M.45, to pass this by-law;

Now therefore, the Council of the City of Toronto HEREBY ENACTS as follows:

1. General

(1) In this by-law,

- (a) “Basic Cost” means the cost of installing a 1.2 metre high steel chain link fence as a division fence;
- (b) “City” means the City of Toronto;
- (c) “Division Fence” means a fence marking or substantially marking the boundary between adjoining parcels of land;
- (d) “Owner” means the registered owner of land and includes the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on his or her own account or as agent or trustee of any other person, or who would so receive the rent if such land or premises were leased, and shall include a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for maintenance and occupancy of property.

2. Apportionment of Costs

- (1) Subject to subsection (3), an Owner wishing to construct, repair or replace a Division Fence shall send by registered mail a written notice of his or her intention to the Owner of the adjoining lands at least fourteen (14) days prior to the commencement of any work or the execution of any contract in relation to the work to be undertaken.
- (2) Where an Owner lawfully constructs, repairs or replaces a Division Fence, the Owner of adjoining lands shall be required to pay the lesser of:

(a) fifty percent (50%) of the actual cost of the work completed; and

(b) fifty percent (50%) of Basic Cost,

provided that, in the case of repair or replacement, the repair or replacement is reasonably necessary to comply with City by-laws.

(3) An Owner is not required to comply with subsection (1) before undertaking repairs to a Division Fence where the City has issued a notice or order to the Owner requiring that the repairs be carried out.

(4) Where an Owner repairs a Division Fence so as to comply with a notice or order issued by the City, the Owner of the adjoining lands shall be required to pay fifty percent (50%) of the reasonable cost of the necessary repairs.

3. Agreement between Owners of Adjoining Lands

Section 2 does not apply where the Owners of adjoining lands have entered into a written agreement with respect to the apportionment of the cost of constructing, repairing or replacing a Division Fence.

4. Enforcement

An Owner desiring to recover amounts owing under this by-law shall serve or cause to be served on the Owner of the adjoining lands a notice by registered mail requiring compliance with the By-law and if such compliance does not take place within thirty (30) days after service of the notice, the Owner serving the notice may take appropriate proceedings under the Provincial Offences Act to recover the amount owing from the Owner of the adjoining lands.

5. Public Highway

This by-law does not apply to an Owner of lands that constitute a public highway in respect of such lands.

6. Repeal and Transition

(1) The following are repealed:

(a) By-law No. 29830 of the former City of North York.

(b) Sections 182-1 through 182-12 inclusive and sections 182-16 and 182-17 of Article I of Chapter 182, Fences, of the Municipal Code of the former City of Toronto.

(2) Despite subsection (1),:

(a) By-law No. 29830 of the former City of North York continues to apply to properties affected by a notice given in accordance with section 3 of By-law No. 29830 prior to the date of enactment of this by-law until the matters in dispute have been conclusively resolved; and

(b) Sections 182-1 through 182-12 inclusive and sections 182-16 and 182-17 of Article I of Chapter 182, Fences, of the Municipal Code of the former City of Toronto continue to apply to properties affected by a notice given in accordance with section 182-8A(1) of that Chapter prior to the date of enactment of this by-law until the matters in dispute have been conclusively resolved.

ENACTED AND PASSED this day of , 2000.

Mayor

Clerk

The Planning and Transportation Committee also submits the following transmittal letter (May 3, 2000) from the City Clerk, East York Community Council:

Recommendation:

The East York Community Council, at its meeting on May 2, 2000, advised the Planning and Transportation Committee that it supports the proposed division fence by-law attached to the report (March 1, 2000) from the Commissioner of Urban Development Services.

Background:

The East York Community Council had before it a report (March 23, 2000) from the City Clerk, Planning and Transportation Committee, forwarding the report (March 1, 2000) from the Commissioner, Urban Development Services, with respect to the harmonization of the division fence by-law for review and report thereon to the Planning and Transportation Committee, together with the following proposed amendment:

“That the report be amended by directing that the Committee of Adjustment be advised that a standard condition of severance from any rail line for reasons of safety, is the installation of a 2.5 metre chain link fence as a standard to the satisfaction of the Commissioner of Urban Development Services”; and

further advising that the City Solicitor has been requested to report to the Planning and Transportation Committee on the foregoing proposed amendment when this matter returns to the Committee.

The Planning and Transportation Committee also submits the following transmittal letter (May 4, 2000) from the City Clerk, Etobicoke Community Council:

The Etobicoke Community Council at its meeting held on May 3, 2000, received the communication (March 23, 2000) from the City Clerk, Planning and Transportation Committee, respecting the harmonization of the Division Fence By-law.

Background:

The Etobicoke Community Council had before it a communication (March 23, 2000) from the City Clerk, Planning and Transportation Committee, advising that the Planning and Transportation Committee at its meeting held on March 21, 2000:

- (1) adopted the report dated March 1, 2000, from the Commissioner, Urban Development Services, headed "Harmonization of the Division Fence By law", and in so doing forwards the report to all Community Councils for review and report back to the Planning and Transportation Committee;
- (2) forwarded to each Community Council, for consideration with the aforementioned report, the following amendment proposed by the Planning and Transportation Committee:

"That the report be amended by directing that the Committees of Adjustment be advised that a standard condition of severance from any rail line for reasons of safety, is the installation of a 2.5 metre chain link fence as a standard to the satisfaction of the Commissioner of Urban Development Services"; and

- (3) requested the City Solicitor to report to the Planning and Transportation Committee on the proposed amendment when this matter returns to the Committee for consideration.

The Planning and Transportation Committee also submits the following transmittal letter (May 3, 2000) from the City Clerk, North York Community Council:

Recommendation:

The North York Community Council, on May 2, 2000, recommended to the Planning and Transportation Committee that:

- (1) the harmonized Division Fence By-law, attached to the report (March 1, 2000) from the Commissioner, Urban Development Services, be adopted; and
- (2) the amendment to the above-noted report, proposed by the Planning and Transportation Committee, embodied in the communication (March 23, 2000) from the City Clerk, Planning and Transportation Committee, be adopted.

Background:

The North York Community Council had before it a communication (March 23, 2000) from the City Clerk, Planning and Transportation Committee, advising that the Planning and Transportation Committee:

- (1) adopted the report (March 1, 2000) from the Commissioner, Urban Development Services with respect to the Harmonization of the Division Fence By-law and in so doing forwarded this report to all Community Councils for their review and report back to the Planning and Transportation Committee; and
- (2) forwarded to each Community Council for their consideration with the above-noted report, the following amendment proposed by the Planning and Transportation Committee:

“That the report be amended by directing that the Committees of Adjustment be advised that a standard condition of severance from any rail line for reasons of safety, is the installation of a 2.5 metre chain link fence as a standard to the satisfaction of the Commissioner of Urban Development Services”.

The Planning and Transportation Committee also submits the following transmittal letter (May 4, 2000) from the City Clerk, Toronto Community Council:

Community Council Action:

The Toronto Community Council advises the Planning and Transportation Committee of its endorsement of the draft by-law attached to the report (March 1, 2000) from the Commissioner of Urban Development Services, and the proposed amendment by the Planning and Transportation Committee.

Background:

The Toronto Community Council, on May 2, 2000, had before it a communication (March 23, 2000) from the City Clerk, Planning and Transportation Committee, respecting Harmonization of the Division Fence By-law, and forwarding the report (March 1, 2000) from the Commissioner of Urban Development Services.

The Toronto Community Council’s action is noted above.

The Planning and Transportation Committee also submits the following transmittal letter from the City Clerk, Scarborough Community Council:

The Scarborough Community Council, at its meeting held on May 2, 2000, deferred the following report to its next meeting scheduled to be held on May 23, 2000.

Background:

The Scarborough Community Council on May 2, 2000, had before it a communication (March 23, 2000) from the City Clerk, forwarding the report (March 1, 2000) from the Commissioner of Urban Development Services regarding the Harmonization of the Division Fence By-law, with a request that the Community Council submit its comments thereon to the Planning and Transportation Committee.

The Planning and Transportation Committee also submits the following report (May 4, 2000) from the City Solicitor:

Purpose:

To advise, as requested, on a standard condition of severance requiring the installation of a 2.5 metre chain link fence along railway lines.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting of March 21, 2000, the Planning and Transportation Committee requested that the City Solicitor report on whether a standard condition requiring the installation of a 2.5 metre chain link fence may be placed on a severance of land owned by the railway.

Comments:

The Planning Act, authorizes the Committee of Adjustment to impose conditions on any consent to sever, so long as the conditions are reasonable. The caselaw suggests that on an appeal, the Ontario Municipal Board will look to whether the proposed condition is necessary, equitable, reasonable and relevant having regard to the unique facts of each case.

The Committee of Adjustment is required to have regard among other matters, to the health and safety of the community when considering a consent application. Given that railway lines may be dangerous in an urban setting without appropriate safety measures, the 2.5 metre fencing would most likely be considered an appropriate condition to place on the severance.

Conclusions:

Conditions may be placed on a severance of land owned by the railway provided that the conditions are reasonable. The installation of a 2.5 metre chain link fence is in keeping with the objective of maintaining the health and safety of the community and could be considered an appropriate standard condition of severance for applications adjacent to railway lands.

(City Council on June 7, 8 and 9, 2000, had before it, during consideration of the foregoing Clause, the following communication (May 25, 2000) from the City Clerk:

Recommendation:

The York Community Council submits this matter to Council without recommendation.

Background:

The York Community Council on May 23, 2000 had before it a communication (March 23, 2000) from the City Clerk, advising that the Planning and Transportation Committee:

- (1) adopted the report (March 1, 2000) from the Commissioner, Urban Development Services with respect to the Harmonization of the Division Fence By-law and in so doing forwarded this report to all Community Councils for their review and report back to the Planning and Transportation Committee; and
- (2) forwarded to each Community Council for their consideration with the above-noted report, the following amendment proposed by the Planning and Transportation Committee:

“That the report be amended by directing that the Committees of Adjustment be advised that a standard condition of severance from any rail line for reasons of safety, is the installation of a 2.5 metre chain link fence as a standard to the satisfaction of the Commissioner of Urban Development Services”.

(Communication dated March 23, 2000 addressed to
the Community Councils from the City Clerk)

The Planning and Transportation Committee:

- (1) adopted the report (March 1, 2000) from the Commissioner, Urban Development Services with respect to the Harmonization of the Division Fence By-law and in so doing forwarded this report to all Community Councils for their review and report back to the Planning and Transportation Committee; and
- (2) forwarded to each Community Council for their consideration with the above-noted report, the following amendment proposed by the Planning and Transportation Committee:

“That the report be amended by directing that the Committees of Adjustment be advised that a standard condition of severance from any rail line for reasons of safety, is the installation of a 2.5 metre chain link fence as a standard to the satisfaction of the Commissioner of Urban Development Services”.

For the information of Community Councils, the Planning and Transportation Committee reports having requested the City Solicitor to report to the Planning and Transportation Committee on the proposed amendment when this matter returns to the Committee for consideration.

Background:

At its meeting on March 21, 2000, the Planning and Transportation Committee gave consideration to the report (March 1, 2000) from the Commissioner of Urban Development Services, reporting on the harmonization of the division fence by-law and recommending that the attached draft division fence by-law be received and forwarded to all Community Councils for their review and comment for the next meeting of the Committee.)

Respectfully submitted,

JOANNE FLINT
Chair

Toronto, May 16, 2000

(Report No. 6 of The Planning and Transportation Committee, was adopted, as amended, by City Council on July 4, 5 and 6, 2000.)