



The Corporation of the Municipality of Arran-Elderslie

Staff Report

Council Meeting Date: September 25, 2023

Subject: SRCLK.2023.09 – Appointment of Fence Viewers

Report from: Christine Fraser-McDonald, Clerk

Appendices: None

Recommendation

Be It Resolved that Council hereby,

1. Directs staff to prepare a by-law to appoint the following as Fence Viewers for the Municipality of Arran-Elderslie; Jacob Sloan, Karen Clark, Harvey Tuttle and Jim Herron for 2023 to 2026.

Report Summary

The *Line Fences Act* sets out a process which the Municipality must follow and must have fence viewers appointed to be able to resolve any fencing disputes between the owners of adjoining properties.

Background

The *Line Fences Act* provides a dispute resolution procedure between the owners of adjoining properties in most of Ontario. Line fences are fences that mark the boundary between properties and are often referred to as boundary or division fences. The *Line Fences Act* does not apply to disputes about fences that are not on a boundary line.

Analysis

In cases where the owners cannot agree, an owner can ask that a municipality assign a fence viewers to resolve the dispute and issue a decision, also known as an “award”.

The arbitration procedure **only applies in two (2) situations** where the owners are unable to reach agreement:

1. Where no fence currently exists at the boundary between the two properties, and one owner wants a new fence to be constructed to mark the boundary.
2. Where a line fence already exists, and one owner believes that it needs to be reconstructed or repaired.

A fence-viewer is:

- appointed by the municipality
- someone with broad knowledge of the community

Three (3) fence-viewers are required to be present at a viewing, and they are only authorized to address **one or both** of the following issues:

- the apportionment of responsibility for the fencing work between the two adjoining owners.
- the description of the fence that is to be constructed or reconstructed on the boundary line, including the materials to be used.

The position of Fence Viewer was posted on the municipal website and the Paisley Advocate, with interested applicants submitting their resume for consideration. Four (4) resumes were received. Staff have recommended the appointment of the four (4) applicants.

It is advisable for Council to appoint more than three (3) fence viewers so that the Clerk can exercise discretion in assigning fence viewers to each viewing without being accused of bias in favour of any owner. For example, a fence viewer who is a relative or friend of one of the owners should not be involved in arbitrating that dispute.

The Act does not specify who can serve as a fence viewer. There is no requirement that a fence viewer be a resident or elector of the Municipality. The decision remains with Council.

The question as to whether Council members can be appointed to serve as fence viewers often arises. Council members could be appointed, but it is not advisable.

Some Councils have fence viewers that are municipal staff members again this is not advisable. It would be inappropriate for a municipal staff member to be involved in a viewing especially where the municipality is one of the adjoining owners.

The arbitration procedure **is not applicable** if one owner, on their own initiative, has constructed a new line fence or has reconstructed or repaired an entire existing line fence, and then wants to use the arbitration procedure to force the adjoining owner to pay part of the cost of the completed work.

The arbitration procedure only deals with disputes about fences. It does not determine the location of the boundary line between adjoining properties.

Boundary line disputes must be resolved by the owners themselves. Municipalities and their fence-viewers have no jurisdiction to deal with boundary issues.

As many municipal staff members and fence-viewers are aware, property owners involved in a boundary dispute often approach the municipality in the hope that the matter can be resolved without the need for them to obtain legal advice and a survey.

A Municipal Council has the authority to pass a by-law to exempt all or part of a Municipality from the Act and, instead, pass a by-law assigning the costs of line-fences between owners.

Members of Council should be aware that fence viewers are performing a type of judicial function and that **Council has no authority** to provide instructions to fence viewers or to review their decisions.

Link to Strategic/Master Plan

6.5 Engaging People and Partnerships

Financial Impacts/Source of Funding/Link to Procurement Policy

At this time, there are no financial impacts as it is entirely dependent on the number of disputes that arise during the year.

Remuneration for Fence Viewers was previously set in the 2023 Fees and Charges By-law. The remuneration is:

- \$85.00 per visit plus Municipal Mileage Rate per Fence Viewer. Generally, three fence viewers are sent out to a viewing.

Once the award is decided, as per Form 4 of the Line Fences Act, these amounts are billed back to the owner and adjoining owner and the Municipality is able to recoup these fees. If there is an appeal, the Municipality must pay the Fence Viewers.

Approved by: Sylvia Kirkwood, Chief Administrative Officer