

THE CORPORATION OF THE TOWN OF FLAMBOROUGH
BY-LAW NO. 96-27-F

Being a by-law to regulate the description of fences
adjacent to Town property. '

WHEREAS pursuant to section 210, paragraphs 25 - 30 of the Municipal Act, R.S.O. 1990 c-M.45, the Council of the Corporation of the Town of Flamborough, hereinafter the "Town", may pass by-laws for, among other things, prescribing the description of fences throughout the whole or part of the municipality and for apportioning the costs of division fences;

AND WHEREAS the Town owns, leases and has management and control over property, hereinafter "Town property", throughout the municipality adjacent to private property where fences exist or may exist;

AND WHEREAS these fences have or may have gates that provide private access to Town property;

AND WHEREAS the Town provides public access to Town property;

AND WHEREAS the existence of private gate access may be a factor in legal proceedings resulting from injury to person or property on Town property or private property;

AND WHEREAS the Town wishes to limit exposure to legal liability that may result if private gate access to Town property exists;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF FLAMBOROUGH ENACTS AS FOLLOWS:

DEFINITIONS

"Bordering Property"	means land that is adjacent to Town property.
"Cemetery"	means land that is used as a place for the interment of the dead.
"Conservation Lands"	means land used for the management of natural resources, fish and wildlife.
"Fence"	means any structure, hedge or freestanding wall used to delineate a property boundary or erected within any property boundary.
"Forestry Area"	means land used for the raising and harvesting of wood and forest products.
"Gate"	means any structure used as part of a fence to facilitate access through the fence.
"Natural Area"	means land that has not been manipulated to any great extent by humans or is recovering from earlier manipulation and which is not dependent on human skills to maintain its life sustaining balance.

“Parkland”	means land used for recreational activities including but not limited to playfields, pedestrian and bicycle paths, tennis courts and picnic pavilions.
“Public Walkway”	means land open to pedestrian traffic, constructed as per the Town’s standard FS-320 and generally located within an urban subdivision as a link between roadways or egress to public parkland.
“Authorized Transportation Route”	means land approved by the Town to be used as a bike path/pedestrian route and may be located adjacent to a waterway, parkland or other Town property,
“Storm Water Management Pond”	means a retention structure used to control the post development stormwater drainage to pre-development levels.
“Town”	means the Corporation of the Town of Flamborough
“Town Property”	means land or water that is owned, leased or under the management and control of the Corporation of the Town of Flamborough.
“Waterway”	means a river, stream, watercourse or an area usually lowlands (floodplain) but joining the channel of a river, stream or watercourse which has been or may be covered by flood water during a regional flood or a one in one hundred year flood.
“Wetland”	means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.

1.0 All fences bordering Town property which is used as or defined herein as a cemetery, conservation land, public walkway, storm water management pond, waterway without an adjacent authorized transportation route or wetland shall not contain gates or provide any means of access to Town property. In situations where a fence surrounding an area as designated above has not been located on the boundary lines, the lands between the boundary line and the fence area shall be treated as a natural area and be governed by Section 2.0 of this law.

2.0 All fences bordering Town property which is used as or defined herein as a natural area or forestry area shall not contain gates or provide any means of access to Town property except where:

- (a) the fence and gate design and installation meet Town standards and specifications as determined from time to time by the Town Engineer;
- (b) the owner of the bordering property is required by the Town and agrees to enter Town property to perform maintenance tasks on behalf of the **Town**;

- (c) the owner of the bordering property enters into an Agreement with the Town outlining the entry duties and obligations as referenced in section 2.0 (b) and agreeing to save harmless the Town from any legal liability arising from the existence of the gate; and
- (d) the Agreement referenced in section 2.0 (c) is registered on title to the Town property at the bordering property owner's expense.

3.0 All fences bordering Town property not covered by sections 1.0 and 2.0, including but not limited to parkland, and waterways with an adjacent authorized transportation route shall not contain gates or provide any means of access to Town property except where:

- (a) the fence and gate design and installation meet Town standards and specifications as determined from time to time by the Town Engineer; and
- (b) the owner of the bordering property registers on title to its property a restrictive covenant in the form attached hereto as Schedule "A" to this By-law at its own expense.

4.0 All fences bordering Town property shall be constructed on the property line or within the bordering property boundaries in accordance with Town standards and specifications as determined from time to time by the Town Engineer.

5.0 All fences and gates bordering Town property constructed by the bordering property owner shall be paid for and kept in a good state of repair by the bordering property owner, irrespective of where the fence is located.

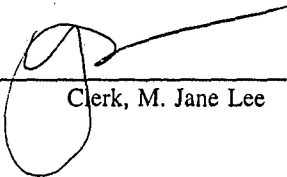
6.0 The requirements of this by-law are in addition to the requirements of any other municipal by-law regulating fences.

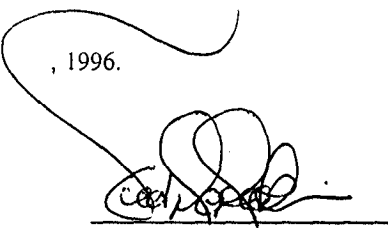
7.0 Where a fence or gate does not comply with the terms of this By-law, or, in the opinion of the Town Engineer, does not meet the good state of repair standard, the Town may remedy the deficiency and collect the cost thereof by action or in a like manner as municipal taxes.

8.0 Any person who contravenes any provision of this by-law is guilty of an offence and on conviction, subject to the maximum fine as set forth in the Provincial Offences Act, R.S.O. 1990, c-P.33, as amended from time to time. At the time of the passing of this by-law, the maximum fine set is \$5,000.00.

READ AND PASSED THIS 25 DAY OF March

, 1996.


Clerk, M. Jane Lee


Mayor, Ted McMeekin