

BY-LAW NO. 03-14

OF

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

Being a By-law to govern the description of certain lawful fences along road allowances, between residential properties and around swimming pools within the Township of Clearview.

WHEREAS Section 11 of the Municipal Act, R.S.O. 2001 c. M25, as amended, empowers the councils of the local municipalities to pass by-laws with respect to governing the height and description of lawful fences –and-

WHEREAS Section 130 of the Municipal Act R.S.O. 2001 M 25 as amended, empowers the councils of local municipalities to pass by-laws relating to the safety and well-being of the inhabitants of the municipality – and-

WHEREAS it is deemed necessary to establish a by-law to regulate fences along highways within the Township of Clearview to facilitate handling of snow problems within the Township of Clearview,- and

WHEREAS it is deemed necessary to establish a by-law to regulate the height and material for fences within settlement areas – and –

WHEREAS it is deemed necessary to establish a by-law requiring fences be placed around swimming pools and certain ponds and to regulate the size and construction of said fences.

NOW THEREFORE BE IT RESOLVED THAT:

1. INTRODUCTION

1.1 Title and Scope

1.1.1 This is a By-law to regulate the construction and maintenance of fences within the Township of Clearview. This by-law will be known as the “**Fence By-law**” for the Corporation of the Township of Clearview.

1.2 Validity and Severability

1.2.1 Should any section, sub-section, clause, paragraph, or provision of this By-law be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability or any other provisions of this By-law or the By-law as a whole.

1.3 Interpretation

1.3.1 Words used in the singular shall have corresponding meanings when used in the plural.

1.3.2 “May” shall be construed as permissive.

1.3.3 “Shall” shall be construed as imperative.

1.4 Force and Effect

1.4.1 This By-law shall come into force and take effect on the day that it receives the approval of the Council of the Township of Clearview.

1.5 Repeal of Former By-law

By-law Number 00-29 of the Corporation of the Township of Clearview is hereby repealed.

2. DEFINITIONS

For the purposes of this By-law, the following words shall have the meaning ascribed herein:

- 2.1 **“Council”** means the Council of the Corporation of the Township of Clearview
- 2.2 **“Chief Building Official”** means the Chief Building Official for the Township of Clearview.
- 2.3 **“Owner”** includes: an assessed owner, tenant, occupant or any person having an interest, whether equitable or legal, in the land.
- 2.4 **“Fence”** means any structure constructed of posts, boards, pilings, rails, wire, masonry or similar materials or any combination thereof used to define property boundaries or to enclose or partially enclose any outdoor area, but does not include a patio enclosure.
- 2.5 **“Fence Permit”** means a permit issued by the Chief Building Official or his/her designee for the purpose of building or erecting a fence.
- 2.6 **“Height”** means the vertical distance measured between the finished grade base of the fence and the highest point of the fence. In the case of fence located on top of a retaining wall, height means the vertical distance between the top of the retaining wall and the highest point of the fence.
- 2.7 **“Highway”** includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof
- 2.8 **“Lot”** shall mean a parcel of land to which title is capable of being legally conveyed, subject to the provisions of the Planning Act, as amended, and includes any of its parts which are subject to a right-of-way or easement.
- 2.9 **“Outdoor Pool”** means any swimming pool that is not contained within a dwelling, building or accessory building that is fully enclosed on all sides and a roof.
- 2.10 **“Person”** means any human being, association, firm, partnership, private club, incorporated company, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to the By-law.
- 2.11 **“Privately owned outdoor swimming pool”** includes any body of water located outdoors on privately owned property which is contained in part or in whole by means that are not naturally occurring and which is designed to contain water or contains water to a depth of 51 centimetres (20 inches) or more and whose use includes diving, swimming, wading or bathing and includes a pond located within a residential area but does not include ponds that are solely ornamental that do not exceed 3.05 metres (10 feet) in diameter or 91.5 cm (36 inches) in depth”
- 2.12 **“Residential Area”** means all lots that are zoned for residential use or that are within the settlement area of the Official Plan as approved by Council and outlined in Schedule “D” of this By-law
- 2.13 **“Swimming Pool Fence”** means a fence as set out in Schedule ‘C’ of this By-law and includes a railing, wall, gate, door or any other form of barrier enclosing an area, of such a design as will reasonably deter a child or children from climbing over, under or through it for the purpose of gaining entrance into the enclosed area.

- 2.14 **“Swimming Pool Permit”** means a permit issued by the Township for the installation or erection of a privately owned outdoor swimming pool including the fencing for said pool.
- 2.15 **“Township”** means the Corporation of the Township of Clearview”.
- 2.16 **“Zoning By-law”** the prevailing Zoning By-law(s) in force and effect in the Township of Clearview.

3.0 OFFENCES:

3.1 Except in a residential area, no owner shall build or allow to be built or maintained along a highway within the Township any fence that does not conform to the standards as set out in Schedule “A” of this By-law.

3.2 In a residential area, no owner shall build or maintain, or allow to be built or maintained any fence that does not conform to standards as set out in Schedule “B” of this By-law.

3.3 No owner shall install or maintain a privately owned swimming pool in the Township of Clearview unless such pool or land or the part of the land on which such pool is located is protected by a swimming pool fence erected and maintained in accordance with Schedule “C” of this By-law.

3.4 No owner shall place water or allow water to remain in a privately owned swimming pool in the Township of Clearview unless a swimming pool fence has been erected around said pool.

3.5 No owner shall install or erect or permit the installation or erection of a privately owned outdoor swimming pool in the Township of Clearview without having obtained a Swimming Pool Permit.

3.6 No person shall build or erect a fence or permit or authorize the building or erecting of an fence except under the authority of a Fence Permit.

3.6.1 Section 3.6 does not apply to the erection or building of a fence outside of a residential area.

4.0 ADMINISTRATION, ENFORCEMENT AND INSPECTION:

4.1 This By-law shall be administered by the Chief Building Official of the Township or such other person or persons as Council may, by by-law, appoint and such persons shall be considered inspectors under the terms of the By-law.

4.2 This By-law shall be enforced by the Chief Building Official, a Building Inspector and/or a Municipal Law Enforcement Officer(s) or such other person or persons as the Council may by by-law appoint and all such persons shall be considered inspectors under the terms of this By-law

4.3 An inspector under this By-law

4.3.1 Has the power to enter upon and examine any yards, vacant lots and grounds other than a dwelling, at any reasonable time or times; and

4.3.2 May be accompanied by such other person or persons, as they deem necessary to properly carry out their duties under this by-law.

5. PENALTY

5.1 Every person who:

- (a) Hinders, disturbs or obstructs any Inspector in carrying out their duties under this By-law, or:
- (b) Contravenes any provision of this By-law

is guilty of an offence and, upon conviction, is subject to a penalty as provided under the Provincial Offences Act

6. Continuing Offence

- 6.1 Each day that a situation as described in Sections 3.1 to 3.5 of this By-law is allowed to continue shall constitute a separate offence under this By-law and any Judge or Justice of the Peace adjudicating on such matter may assess a separate fine for each and every day that such situation has been allowed to continue.

7. CORPORATIONS

- 7.1 Every person and an officer director, employee or agent of a corporation charged with committing an offence under this By-law is a party to the offence who;
 - (a) actually commits it; or
 - (b) Does or omits to do anything for the purposes of aiding any person to commit it, or
 - (c) Abets any person in committing it. Where two or more persons form an intention in common to carry out an unlawful purpose, and to assist each other therein, each of those who knew or ought to have known that the commission of an offence under this By-law would be a probable consequence of carrying out the common purpose is a party to the offence.

8 ADDITIONAL REMEDY:

- 8.1 An Inspector appointed under this By-law may give the owner and/or occupant of any property who contravenes Sections 3.1 to 3.5 of this By-law, a notice in writing delivered or sent to the owner and/or occupant by prepaid registered mail to their last known address directing said owner and/or occupant to remove or replace any fence within the time stipulated in the notice and notifying them that in default of compliance with the notice, the Township may perform the work at the owner's and/or occupant's expense.
- 8.2 The owner or occupant of any property who contravenes sections 3.1 to 3.5 of this By-law, may be subject to a User Fee or Charge as may be established by Council from time to time to offset the costs associated with the administration and enforcement of this By-law and shall upon demand pay such fee or charge to the Township. If the owner or occupant fails to pay the fee or charge to the Township within a period of 90 days from the date of such notice or invoice, such fee or charge or outstanding portion thereof, may be added to the tax roll for the subject property and be collected in like manner as municipal taxes.
- 8.3 In the event that the owner and/or occupant fails to comply with the directions in the notice set out in Section 8.1, the Township may do or cause to be done the work so specified and the cost thereof may be recovered from the said owner and or occupant by court action or the same may be recovered

in like manner as municipal taxes pursuant to Section 398 of the Municipal Act, R.S.O., 2001.

- 8.4 In the event that the condition of the fence presents, in the opinion of an Inspector, an unsafe, hazardous or dangerous condition or to present a danger to public health, the notice referred to in paragraph 8.1 may be dispensed with.
- 8.5 The provisions of this by-law shall apply to all outdoor privately owned swimming pools regardless of the date of construction of such swimming pools.

9. EXCEPTION

Any pond within a settlement area that exists at the time of the passage of this By-law is exempted from the provisions contained herein.

Any swimming pool that lawfully existed, having been subject to a Swimming Pool Permit, at the time of passage of this By-law is exempted from the provisions contained herein providing they remain in compliance with By-laws existing at the time of approval.

Read this 1st, 2nd, and 3rd time and finally passed this 19th Day of March, 2003.)

Original Signed by:
Mayor
Clerk

Schedule "A"
Fence By-law
By-law No.03-14
Township of Clearview

1. The erection of a board or rail fence shall be permitted along road allowances of the Township of Clearview if located on the property line subject to meeting the following specifications.
 - a. The bottom rail or board shall be at least 30.5 centimeters (12 inches) from the ground.
 - b. All other rails or boards shall have at least a 30.5 centimeters (12-inch) vertical spacing between each rail or board.
 - c. No board or rail shall be wider than 20.3 centimeters (8 inches).
2. If gateposts are larger than .3 metres by .3 metres (1 foot by 1 foot), said posts must then be located a minimum of 25 feet inside of the property line.
3. The maintenance of an existing rail or board fence shall be prohibited, where in the opinion of Council expressed by a resolution that the said rail or board fence has deteriorated or been destroyed to an extent greater than 50%.
4. If the deterioration of the rail or board fence has exceeded the limits in Item 3, the property owner must remove said fence upon notification from the Township.
5. All stone fences shall be prohibited along road allowances of the Township unless it is located a minimum of 25 feet inside of the property line.

Schedule "B"
Fence By-law
By-law No.03-14
Township of Clearview

Height – minimum requirements:

No person shall erect, construct or maintain a fence less than 1.07 metres (3 feet 6 inches) in height.

Height – maximum permissible – exceptions:

No person shall erect or maintain a fence more than 1.83 metres (6 feet) in height unless:

- (a) the portion of the fence above the height of 1.83 metres (6 feet) and less than 2.29 metres (7.5 feet) is so constructed that when viewed at 90 degrees or at 45 degrees to the line of the fence, the area of daylight visible through the fence shall be not less than 387.0 Square centimeters (60 square inches) for every 929 square centimeters (144 square inches)(41% daylight) of the portion of the fence greater than 1.37 metres (4 feet 6 inches) in height and less than 2.13 metres (7 feet); and
- (b) the portion of the fence above the height of 2.29 metres (7.5 feet) is so constructed that when viewed at 90 degrees and at 45 degrees to the line of the fence the area of daylight visible through the fence shall not be less than 838.71 square centimeters (130 square inches) for every 929.0 square centimeters (144 square inches) (90% daylight)unless;
- (c) the fence is constructed in accordance with a registered agreement or agreements entered into with the Corporation of the Township of Clearview pursuant to Sections 41 and 51 of the Planning Act R. S. O. 1990 c.P.13 as amended , or any plan approved by the Township in accordance with that section,; provided that, in the event of conflict between this subsection and any such agreement or approved plan, the provisions of the agreement or approval shall prevail

Prohibited material – exceptions

No person shall construct or maintain a fence composed wholly or partly of barbed wire or other barbed material, unless such barbed wire or other barbed material is cantilevered from the top of such fence in a direction away from adjacent properties, including highways and is at a height of not less that 1.83 metres (6 feet) above ground.

This provision shall not prohibit an barbed wire fence enclosing land assessed for farm purposes at the coming into effect of this by-law and continuing to be so assessed.

In a residential area, no person shall construct or maintain a fence composed wholly or partly by chicken wire, page wire, plastic fencing, snow fencing, wafer board, waste material or rubber tires.

Intersections- distance from – material requirements

Notwithstanding any other provisions of this by-law, no persons shall erect, construct or maintain any fence along any limit of a highway which intersects another highway between the point of the intersection and a point in the limit at which a line drawn from the building nearest the intersection intersects the limit at an angle of 45 degrees or where there is no building within 12.19 metres (40 feet) of any intersection, unless such fence shall be 1.07 metres (3 feet 6 inches) in height above the level of the center line of the traveled portion of the roadway adjacent to such property, and constructed of barbless wire and posts only, and through which objects shall be clearly visible.

Erection- on street – highway – prohibited

No person shall, without having statutory authority to do so, erect, construct or maintain in or upon any street or highway in the Township any fence, pole, post, pillar or wire or other construction.

Any fence, pole, post, pillar or wire or other construction erected, constructed or maintained on a Highway contrary to the provisions of this By-law shall be removed by the person upon whom notice is served within two weeks after receipt of notice, in writing, served on the owner or occupier of the adjoining premises. In the event of non-compliance with such notice, the Director of Public Works for the Township may cause the same to be removed at the expense of the said owner or occupier and such expense shall be a debt due by such owner or occupier to the Township and the same may be recovered in like manner as municipal taxes.

Residential Zone – maximum height along highway

No person shall erect, construct or maintain a fence on property used for residential purposes with a height greater than 1.37 metres (4 feet 6 inches) respecting the portion of the fence lying between the residential building or structure and the street line upon which the building or structure fronts.

Unightly Appearance – prohibited

No person shall build or maintain a fence that, by its construction, material, colour or design presents an unightly appearance.

Unsafe Condition – prohibited

No person shall build or maintain a fence that, by its construction or condition presents hazard to any person or domestic animal.

Schedule "C"
Fence By-law
By-law No.03-14
Township of Clearview

Swimming Pool Fences

In-Ground Pools:

Fencing around an in-ground pool shall provide protection around the entire perimeter of said pool. Every fence shall be:

1. Not less than 1.3 metres (4 feet) in height.
2. Be so constructed as to not have openings, holes or gaps larger than 3.8 cm (1.5 inches) in its shortest dimension
3. In the case of a cast iron fence, pickets shall be a minimum of 1.6 cm (5/8 inch) in diameter and picket spacing shall not exceed 10.16 (4 inches) on center. All other provisions shall apply.
4. A fence shall be so constructed that all horizontal or diagonal structural members of the fence shall be located on the inside (pool side) of the fence.
5. All fences shall be so constructed that it cannot be used in a manner similar to a ladder.
6. All fences shall be so constructed as to have the only means of entry by gates or doors.
7. All gates or doors shall be equipped with a self-closing device and a lockable latch on the poolside at the top of the gate to the intent that all gates or doors will remain securely closed when not in use.
8. All fences shall be set back a minimum of 1.3 metres (4 feet) from the nearest edge of the swimming pool

A boundary fence, which complies with the provisions of this section, shall be deemed a sufficient fence.

Above Ground Pools:

In the case of an above ground pool, where the sidewalls of the pool are a minimum of 1.3 metres (4 feet) in height and are so constructed as to prevent climbing, a fence is not required. The access to the pool must be protected. This protection may be provided by:

1. A ladder that swings up and can be locked –or–
2. A ladder, which can be removed and stored in a safe location.

Schedule "D"
Fence By-law
By-Law No.03-14
The Corporation of the Township of Clearview

For the purpose of this Section 2.1 of this By-law, the following are Settlement Areas within the Township of Clearview:

- Avening
- Brentwood
- Dunedin
- Glen Huron
- Duntroon
- Singhampton
- Nottawa
- Batteaux
- Old Sunnidale
- Devil's Glen
- New Lowell
- Stayner
- Creemore

Schedule "E"
Fence By-law
By-Law No.03-14
The Corporation of the Township of Clearview

Fees:

The fee for a Swimming Pool Permit or a Fence Permit for a fence exceeding the height of 1.07 metres (6 feet) shall be \$60.00.

SCHEDULE "F"
THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW
BY-LAW NO. 03-14
PART 1 – PROVINCIAL OFFENCES ACT

SET FINE SCHEDULE

SCHEDULE "F"

ITEM #	Column 1	SHORT FORM WORDING	Column 2	Column 3
			OFFENCE CREATING PROVISION	SET FINE INCLUDING COSTS
1	Build fence along highway – contrary to By-law		Section 3.1	\$120.00
2	Allow fence along highway – contrary to By-law		Section 3.1	\$120.00
3.	Build fence residential area-contrary to By-law		Section 3.2	\$120.00
4.	Allow fence residential area-contrary to By-law		Section 3.2	\$120.00
5.	Install pool – without approved fence		Section 3.3	\$235.00
6.	Maintain pool – without approved fence		Section 3.3	\$235.00
7.	Place water in pool – no approved fence		Section 3.4	\$235.00
8.	Allow water in pool – no approved fence		Section 3.4	\$235.00
9.	Install swimming pool – no pool permit		Section 3.5	\$235.00
10.	Install swimming pool – no pool permit		Section 3.5	\$235.00
11.	Install swimming pool – no pool permit		Section 3.5	\$235.00
12.	Build fence – no fence permit		Section 3.6	\$120.00
13.	Permit building of fence – no fence permit		Section 3.6	\$120.00
14.	Hinder Inspector carrying out duties		Section 5.1(a)	\$235.00
15.	Disturb Inspector carrying out duties		Section 5.1(a)	\$235.00
14.	Obstruct Inspector carrying out duties		Section 5.1(a)	\$235.00

NOTE: The penalty provision for the offences indicated above is Section 5.1(b) of By-law, a certified copy of which has been filed

THE HONOURABLE JUSTICE RAYMOND P. TAILLON
REGIONAL SENIOR JUSTICE
CENTRAL EAST REGION
ONTARIO COURT OF JUSTICE
PROVINCIAL DIVISION



L'HONORABLE JUGE RAYMOND P. TAILLON
JUGE PRINCIPAL RÉGIONAL
RÉGION DU CENTRE-EST
COUR DE JUSTICE DE L'ONTARIO
DIVISION PROVINCIALE

440 KENT STREET WEST
LINDSAY, ONTARIO K9V 6G8

440, RUE KENT OUEST
LINDSAY (ONTARIO) K9V 6G8

TELEPHONE/TÉLÉPHONE (705) 324-1410
FAX/TÉLÉCOPIEUR (705) 324-1411

August 5, 2003

Mr. Wes Prosser
By-law Enforcement
Clearview Township
217 Gideon Street
P.O.Box 200
Stayner, Ontario
L0M 1S0



Dear Mr. Prosser:

Re: Set Fines – Part I
Township of Clearview

Enclosed herewith is a copy of an Order and a copy of a schedule of set fines for By-law No. 03-14, as amended for the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of the wording used to describe the offences.

I have forwarded a copy of the Order and the schedule of the set fines to the P.O.A. Court at Orillia, together with a certified copy of the By-law.

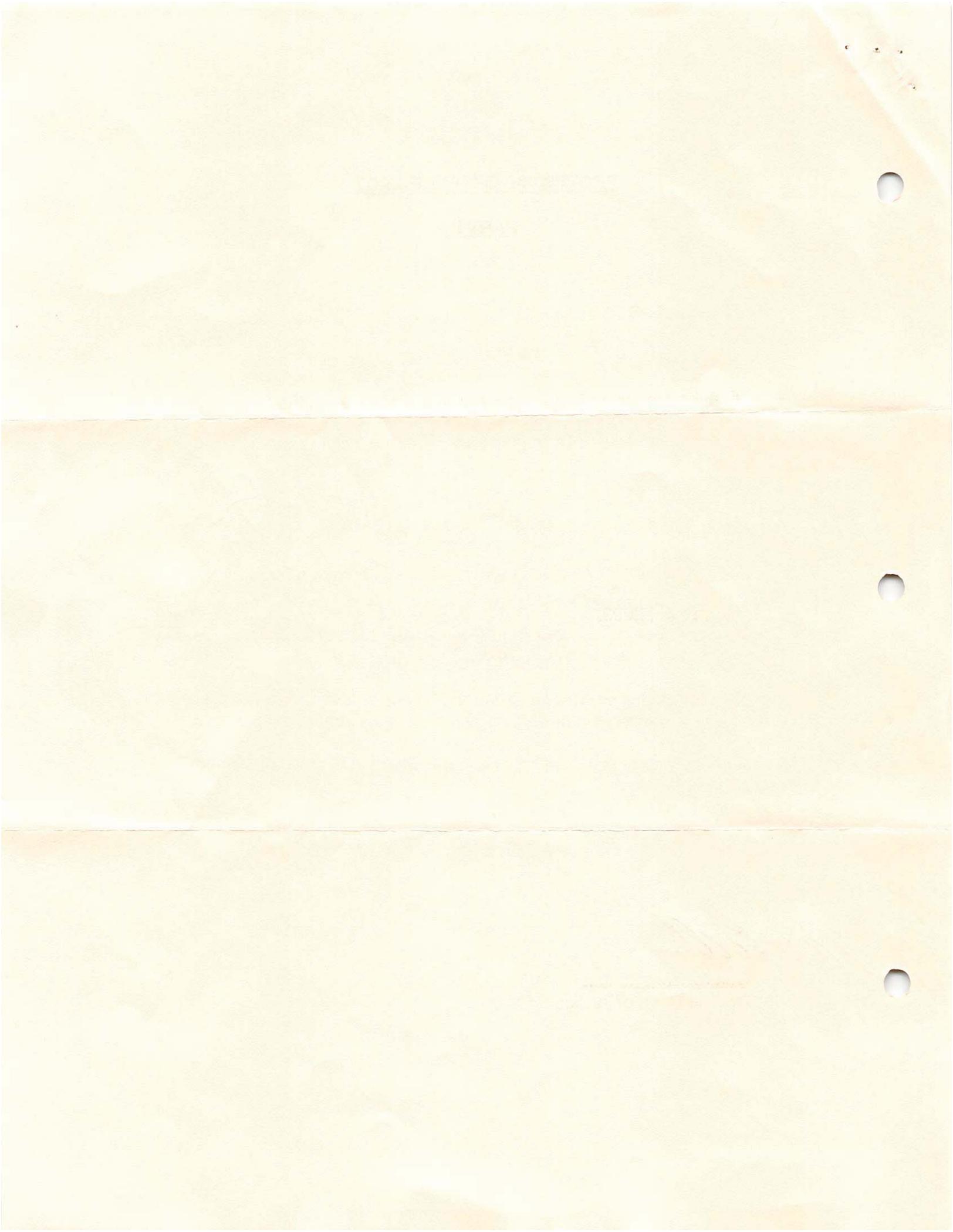
Yours truly,

A handwritten signature in black ink, appearing to read 'R. P. Taillon'.

Justice R. P. Taillon
Regional Senior Justice
Central East Region

/gs

Enclosures



PROVINCIAL OFFENCES ACT

PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the attached schedule of offences under the Provincial Statutes and Regulations thereunder and the By-law No. 03-14, as amended of the Township of Clearview, attached hereto is the set fine for those offences. This Order is to take effect August 5, 2003.

DATED at Lindsay

this 5 day of August, 2003.



Justice R. P. Taillon
Regional Senior Justice
Central East Region
Ontario Court of Justice

TOWNSHIP OF CLEARVIEW
BY-LAW 03-14
SCHEDULE "F"

A BY-LAW GOVERNING FENCES WITHIN THE TOWNSHIP OF CLEARVIEW
PART I – PROVINCIAL OFFENCES ACT

ITEM #	COLUMN 1 SHORT FORM WORDING	COLUMN 2 PROVISION CREATING OR DEFINING OFFENCE	COLUMN 3 SET FINE (INCLUDES COSTS)
1	Build fence along highway	Section 3.1	\$120.00
2	Allow fence to be built along highway	Section 3.1	\$120.00
3	Build fence- residential area	Section 3.2	\$120.00
4	Allow fence to be built – residential area	Section 3.2	\$120.00
5	Install pool – without approved fence	Section 3.3	\$235.00
6	Maintain pool – without approved fence	Section 3.3	\$235.00
7	Place water in pool – no approved fence	Section 3.4	\$235.00
8	Allow water in pool – no approved fence	Section 3.4	\$235.00
9	Install swimming pool – no pool permit	Section 3.5	\$235.00
10	Permit installation of swimming pool – no pool permit	Section 3.5	\$235.00
11	Build fence – no fence permit	Section 3.6	\$120.00
12	Permit building fence – no fence permit	Section 3.6	\$120.00
13	Hinder Inspector carrying out duties	Section 5.1(a)	\$235.00
14	Disturb Inspector carrying out duties	Section 5.1(a)	\$235.00
15	Obstruct Inspector carrying out duties	Section 5.1(a)	\$235.00

Note: The penalty provisions for the offences indicated above is Section 5.1(b) of By-law 03-14, a certified copy of which has been filed.