



Administration and Operations Committee Report

To: To the Chair and Members of the Administration and Operations Committee
From: Jessica Kitchen, Planner - Policy Planning
Date: December 13, 2022
Report #: RPT-0225-22
Subject: Review of Fence By-Law 54-03 – County initiated project to update policies and ensure effective implementation of regulations relating to private fencing and swimming pool enclosures throughout the County.
Purpose: For Approval

Recommendation

That RPT-0225-22, Review of the Fence By-law 54-03, be approved;
That By-law 54-03 – A By-law to regulate fences, be repealed, and;
That a new Fence By-law and Swimming Pool Enclosure By-law be presented to Council for approval, and;
That both by-laws come into force and effect on January 1st, 2023.

Executive Summary

As part of good practice, municipal by-laws are reviewed periodically to update policies and ensure effective implementation. A review of [Fence By-Law 54-03](#) was initiated in early 2022 which determined the by-law was out of date. As a result, two new by-laws are proposed to address implementation barriers and update policies, procedures, and regulations.

If approved by Committee, both by-Laws will be sent to the December 20th, 2022, Council Meeting for decision. If adopted, both by-laws would come into force and effect January 1st, 2023.

Strategic Plan Priority

Strategic Priority 2 - Effective Communication

Impacts and Mitigation

Social Impacts

Regulation of fences and swimming pool enclosures, ensures the health, safety, and well-being of the community, as well as the protection of persons and property throughout the County of Brant.

Health and Safety Impacts

Fences offer privacy and seek to protect persons and property as well as keep the community safe from potential hazard and harm. Reviewing [Fence By-Law 54-03](#) helps ensure policies which seek to implement these regulations are kept current.

Private swimming pools provide a source of recreational enjoyment and physical exercise for the community. Creating a separate by-law to regulate the enclosure of private swimming pools helps ensure continued maintenance of these structures and that structures remain safe and inaccessible when unattended.

Economic Impacts

Initiated and undertaken by the Corporation this project has no financial considerations of note, save and except costs expended for advertising. Fees and charges relating to both by-laws are reviewed through Corporate Budget and do not form part of this report.

Report

As noted above, this Report is intended to provide Committee with:

- An overview of the proposed new Fence By-Law (Attachment 1);
- An overview of the proposed new Swimming Pool Enclosure By-Law (Attachment 2);
- Recommendation of approval of Attachments 1 and 2 of RPT-00225-22;
- An overview of proposed regulatory changes (Attachments 3 and 4);
- Consultation and engagement undertaken as part of this project; and
- Summary of comments and feedback/correspondence received throughout the project (Attachment 5).

Public Consultation and Engagement

While [the Municipal Act, 2001, S.O. 2001, c.25](#) does not require consultation prior to enacting or amending by-laws, establishing a method of engagement was an important first step in the project to remain transparent by communicating proposed changes and help address outdated policies. Posting of existing and early draft by-laws to www.engagebrant.ca generated discussion which helped shape the proposed new by-laws forming Attachments 1 and 2 of RPT-00225-22. Comments and feedback and correspondence received throughout the project have been collected and compiled within Attachment 5 of RPT-00225-22.

Conducted virtually consultation and engagement took the form of:

June 3rd, 2022 - EngageBrant project page launch www.engagebrant.ca/fence-and-pool-enclosure-by-laws - project materials posted for public feedback.

June 3rd, 2022 – Project Advertising – via social media platforms www.brant.ca/news, Facebook, Twitter, and Instagram.

June 3rd, 2022 – DIS Circulation – weekly ‘Developer Information Session’ update via email.

June 13th, 2022 – Corporate Project Circulation – via Jostle.

June 23rd, 2022 – Public Notification – Notice placed within the Expositor Newspaper, including how to get involved and key project dates.

June – November 2022 – Comments and Feedback/Correspondence Received (Attachment 5)

November 17th, 2022 – Notice of Public Meeting – Notice placed within the Expositor Newspaper, including how to get involved and access to project materials.

November 17th, 2022 – EngageBrant Update – Revised project materials posted.

Interdepartmental Consultation

Internal consultation began in early 2022 with Building, Clerks, By-Law Enforcement and Regulatory Services, Finance, Legal, and Planning Divisions. During the preparation of this report no further feedback was received from internal Departments or Divisions.

Background

On April 13th, 2003 Council adopted [Fence By-Law 54-03](#) to regulate private fencing throughout the County, including private swimming pool enclosures. This By-Law set standards for fences throughout the County, including height and materials. This by-law is now outdated.

The review of [Fence By-Law 54-03](#) focused on separating private swimming pool enclosure regulations to clarify divisional responsibilities, remove duplication, improve implementation, and clarify processes. Regulatory changes of note include:

- Fence height within residential interior side yards proposed to increase from 1.81m to 2.21m.
- Fence heights on residential corner lots proposed to increase from 0.91m to 2.21m.
 - The proposed by-law provides for fencing to be a maximum height of 2.21m provided a minimum 4.57 m setback from the exterior side lot line is maintained.
- Fence heights within agricultural zones proposed to increase to 1.81m within any yard from 0.90m in a front yard and 1.81m in an interior or rear yard.
 - Provided a minimum 4.57m setback from the exterior lot line is maintained.
- Fence heights within industrial zones proposed to change from no regulations, except ornamental fencing at 0.60m, to a maximum height of 3.01m for all fencing.
- Fence heights within commercial zones proposed to change from no regulations, except ornamental fencing at 0.60m, to a maximum height of 2.40m for all fencing.
- New privacy screen regulations (Section 6).
- Shift Fence Variances from By-Law Enforcement and Regulatory Services to Development Planning Division. By-Law Enforcement and Regulatory Services will still enforce the proposed new Fence By-Law.

The Fence Variance process forms Section 8 of the new Fence By-Law and will continue to allow property owners to request variations by making an application to the Committee of Adjustment. Attachment 6 contains data relating to Fence Variances collected from 2018 – October 2022 for the Committee's reference.

Updates to definitions, formatting, and terminology were also addressed through the review. Attachment 3 details all proposed regulatory changes.

A new Swimming Pool Enclosure By-Law is proposed to regulate private swimming pool enclosures, and the maintenance of these structures. Creation of a separate by-law will provide clear implementation and divisional responsibilities, as well as updated regulations for all private swimming pool enclosures (including above ground swimming pools and temporary swimming pools). Regulatory changes of note include:

- Shift implementation and review of Swimming Pool Enclosure Permits from the Building Division to By-Law Enforcement and Regulatory Services creating consistency with enforcement of these structures.
- Permit and regulate all private swimming pools (including above ground and temporary swimming pools) capable of holding 600mm of water or greater. Current regulations do not require enclosure or permit if:
 - The walls of an above ground swimming pool are 1.22 m in height, having a removable or lockable ladder, and secured cover or equivalent.
 - Temporary swimming pools (ex. vinyl, free form) are secured with a lockable cover or an equally secure alternative and locked and covered when not supervised.
- Regulation of hot tubs and Jacuzzi's with secured covers. Hot tubs and Jacuzzi's are proposed to be exempt from permit and regulations if the water surface area is less than 8.01 square metres and the cover locks and holds 90.72 kilograms. Hot tubs and Jacuzzi's which are covered and locked have been exempt from permits and regulations to date.

[The Ontario Building Code Act, 1992, O. Reg. 332/12](#) only governs public swimming pools or spas, not private swimming pools, spas, or enclosures. Public swimming pools will continue to be reviewed and inspected by the Building Division. Updates to definitions, enforcement procedures, and transitional policies were also addressed through the review. Attachment 4 details all proposed regulatory changes.

If approved, these By-Law's would not be enforced retroactively. Any private fences and swimming pool enclosures legally established prior to the By-Law's coming into force and effect could continue to exist, until such time that these are removed and/or replaced. Any new fences or swimming pool enclosures proposed upon the passing of these By-laws would need to conform with the provisions and regulations in force and effect at that time.

Analysis

Policy Review

Sections 8, 9, and 10 of [The Municipal Act, 2001, S.O. 2001, c.25](#) provide municipalities with the power to adopt and amend By-Laws to regulate fences on private property and private swimming pool enclosures.

This report proposes regulatory changes to help improve implementation relating to fencing on private property and private swimming pool enclosures throughout

the County. Proposed revisions conform with the [County of Brant Official Plan \(2012\)](#) and [County of Brant Comprehensive Zoning By-Law 61-16](#).

In considering current policy and regulatory structure, it is suggested that both By-Law's come into force and effect on January 1st, 2023. This ensures swimming pool enclosure regulations remain in force and effect until January 2023. Implementation relating to private fencing and swimming pools would remain unchanged until the effective date.

Summary and Recommendations

It is Staff's opinion that [Fence By-Law 54-03](#) be repealed and replaced with two separate by-laws to clarify implementation and regulations relating to private fences and swimming pool enclosures throughout the County of Brant.

Draft by-laws forming Attachments 1 and 2 of RPT-00225-22 were prepared in consultation with Building, Clerks, By-Law Enforcement and Regulatory Services, Finance, Legal, and Planning Divisions.

It is Staffs opinion that appropriate consideration has been given to the proposed amendments and that no negative impacts will result with approval of the proposed By-Laws.

Attachments

1. New Draft Fence By-Law
2. New Draft Swimming Pool Enclosure By-Law
3. Comparison Chart – Fence By-Law Regulations
4. Comparison Chart – Swimming Pool Enclosure By-Law Regulations
5. Project Comments and Feedback Received/Correspondence Received
6. Fence Variance Data

Reviewed By

1. Pam Duesling, General Manager of Development Services
2. Jennifer Boyer, Manager of Policy Planning

Copied To

1. Alysha Dyjach, Director of Council Services, Clerk
2. Mat Vaughan, Director of Development Planning
3. Jyoti Zuidema, Solicitor
4. Greg Bergeron, Manager of Enforcement and Regulatory Services
5. Kathy Ballantyne, Director of Parks and Facilities
6. Heather Mifflin, Director of Finance, Treasurer
7. Richard Weidhaas, Chief Building Official

By-law and/or Agreement

By-law(s) Required	Yes
Agreement(s) or other documents to be signed by Mayor and /or Clerk	No