

Alert

To the immediate attention of the Clerk and Council

June 13, 2005 – Alert 05/051

MAH releases Report on *Line Fences Act* (TIME SENSITIVE REQUEST)

Issue: *The Line Fences Act and Abandoned Rail Right of Ways* report by Dr. Wayne Caldwell is now available for review and comment.

Background:

Section 20 of the *Line Fences Act* makes municipalities who have purchased federal or provincial railway lines in their entire width responsible for “constructing, keeping up and repairing the fences that mark the lateral boundaries”. Although the *Line Fences Act* permits municipalities to write by-laws setting out the fees, procedures and details of fences provided under the *Line Fences Act* for disputes between neighbours, the *Municipal Act*, s. 98, specifically prohibits a by-law that sets out the same for railway lands. These rules mean that the municipality must absorb all costs related to maintaining existing fences that existed to protect property owners from active railways, and recent court rulings have interpreted the legislation to require new fences where none existed before. While there may be some necessary protection from damage to agricultural properties from trail uses on former railway lands, it is unclear why the municipality should pay 100% of the costs for a fence that was not necessary while an active railway line existed.

The Minister of Municipal Affairs and Housing (MAH) asked Dr. Caldwell in February 2005 to consult with representatives of key stakeholders to identify all issues related to line fence responsibilities on abandoned rail rights-of-way and develop possible solutions; to identify areas where no consensus has been reached; and to provide non-binding advice to the Minister on changes to Section 20 of the *Line Fences Act* and on other actions. The report can be found on the [Ministry website](#).

After the consultations led by Dr. Caldwell, representatives from AMO and Ontario Goods Roads Association (OGRA) wrote Minister Gerresten to express their disappointment with the direction as presented because the consultation failed to put forward any substantial changes to Section 20. Since then, AMO has received over 40 supportive resolutions in response to its March 24 FYI on the Ministry of Tourism and Recreation’s Ontario Trails Strategy and a rash of lawsuits have been launched against the owners and operators of several trails across the province.

The Ministry will receive comments on this matter until **July 29, 2005**. Questions and comments are to be directed to: Ruth Melady, Senior Policy Advisor, Municipal Governance and Structures Branch, Ministry of Municipal Affairs and Housing, at telephone number 416-585-6754 or by e-mail at: ruth.melady@mah.gov.on.ca.

AMO Position:

AMO's members have also clearly and repeatedly stated that they support trails as a practical means of rural economic development and diversification. In fact, trails currently inject more than \$2 billion into the Ontario economy annually. AMO fully agrees with the Ministry of Tourism and Recreation's position that "trails promote physical activity, enhance environmental appreciation, contribute to the protection of green space and environmental and cultural/heritage resources and offer an alternative to traditional emissions-intensive transportation models."

However, AMO believes the costs of fencing (construction and maintenance) should be borne jointly by both abutting landowners if they are concerned about protecting their personal interests, and that the Line-Fence Viewer's Award and Referee's Award (Form 10 O. Reg 666/79) should be made enforceable and associated costs recoverable. The Ontario economy stands to lose, as municipalities will not purchase railway lines (and build trails) if the ongoing costs are prohibitive.

AMO does not agree with the Report's assumption that landowners do not benefit from trail development and that the status quo is a satisfactory option. The suggested Fencing Strategy will do nothing to stop landowners from demanding frivolous fences and launching court challenges if the municipalities do not meet these demands.

AMO emphasizes that the goals of the agricultural community and municipalities are not mutually exclusive in this regard: both stakeholders benefit from strong local economies that can only be achieved by preserving and protecting farms that abut these abandoned rail right-of-ways. Municipalities are prepared to pay a fair share for fencing of lands that abut abandoned rail right-of-ways where the landowner has a genuine need for fencing due to an existing pastoral livestock operation. Municipalities are also keenly interested in improving the *Trespass Act* and developing limits on joint and several liability to ensure that both private landowners and municipalities are protected from property damage and frivolous lawsuits.

This information is available in the Policy Issues section of the AMO website at www.amo.on.ca

For more information, contact: Scott Vokey, Policy Advisor at 416-971-9856 extension 334.