

359A.4 Hearing — decision — order — deposit.

1. At the time and place described in [section 359A.3](#), the fence viewers shall meet to hear and decide any and all matters that are part of the controversy. The fence viewers shall issue a written order that specifies the obligations, rights, and duties of the respective parties.

2. *a.* If the fence viewers determine the erection of a fence may be unfeasible in any location which constitutes the adjoining parties' property boundary, the fence viewers shall conduct a site evaluation. The fence viewers may request assistance by the county engineer in the county where the adjoining properties' boundary is situated. The determination may be based on any of the following:

- (1) Topography.
- (2) Terrain.
- (3) Terraces.
- (4) Land slope.
- (5) Unstable ground.
- (6) The presence of surface water, drainage systems, sinkholes, or water wells.
- (7) Easements.
- (8) Utilities.
- (9) Available area.

b. If the fence viewers determine the erection of a fence is unfeasible as provided in the site evaluation, the fence viewers shall assist the parties in reaching an agreement as provided in [sections 359A.12](#) and [359A.13](#). However, if the parties cannot reach such agreement within sixty days after the site evaluation is completed, the fence viewers shall order the fence's erection. The fence shall be erected as otherwise provided in [this section](#), except for any location identified as unfeasible in the site evaluation. For that location, the fence viewers shall order the fence to be erected at the most feasible location on the property of the owner who initiated the controversy that is closest to the adjoining owner's property boundary.

3. *a.* The order shall assign to each owner the part which the owner shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made.

b. If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence viewers an amount of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the costs and fees assessed against the party in default are collected as provided in [section 359A.6](#).

4. The order shall include the names of the fence viewers. The order shall state whether a fence viewer disclosed a possible conflict of interest, and whether a substitute fence viewer was appointed due to a disqualification pursuant to [section 359A.2A](#). Any waiver of a conflict of interest signed by a party shall be attached to the order.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §1832; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.4]

C93, §359A.4

[2010 Acts, ch 1118, §6](#); [2018 Acts, ch 1081, §4](#)

Referred to in [§359A.2A](#), [359A.5](#)