

**A RESOLUTION BY THE CHEROKEE COUNTY, KANSAS BOARD OF COMMISSIONERS
ACTING AS FENCE VIEWERS, PURSUANT TO K.S.A. 29-201**

WHEREAS when a controversy arises between adjoining land owners regarding construction, repair, and/or maintenance of a partition fence, either party may apply to the fence viewers to assign to each party his or her equal share to be kept up and maintained.

WHEREAS the board of county commissioners, in each county in this state, or their designees, shall be fence viewers in each township of such county. K.S.A. 29-201.

NOW THEREFORE the Cherokee County Board of Commissioners hereby resolves:

Procedural Background

1. On March 13, 2025, Mr. Levi Snow submitted a written request for the Board to conduct a fence viewing at his property located at 3583 SE 45th Street, Columbus, Kansas (Parcel ID 011-127-35-0-00-00-015.02-0), hereinafter referred to as "Parcel A".
2. The adjoining property (Parcel ID 011-127-35-0-00-00-015.06-0), hereinafter referred to as "Parcel B", is owned by JSM Trust.
3. Reasonable notice was provided to each party as required by K.S.A. 29-304.
4. The Cherokee County Commissioners, in their capacity as fence viewers as designated by K.S.A. 29-201, conducted a fence viewing on April 7, 2025 at 11:00 a.m. Levi and Robynn Snow, owners of Parcel A were present at the fence viewing. Matthew and Samantha Wyatt were present as representatives of JSM Trust, the owner of Parcel B.

Factual Findings

5. Parcels A & B share approximately 773.36 feet of common boundary line; to wit: 434.36 feet on the east side of Parcel A and 339 feet on the south side of Parcel A. See Exhibit A.
6. The Snows have started construction of a wooden privacy fence on the Southeast Corner of Parcel A.
7. The Wyatt's have started construction of a barbed wire fence along the boundary line between Parcels A & B.
8. Both parties state they wish to have their respective parcels enclosed.

9. Both parties state they intend to graze livestock on their respective parcels; specifically, Mr. Wyatt expressed his intent to graze cattle while Mr. Snow expressed his intent to graze goats.
10. On or about April 1st, 2025, and before the April 7th fence viewing, a three-wired or five-wired barbed fence was seen running along the southern shared property line by Commissioner Jack Garner. Survey markers were also observed at the property line.
11. At the April 7th fence viewing, parties observed that barbed wires that had been cut and posts that had been removed and the fence that had been standing was in a state of disrepair on the ground.

Legal Authority

12. The owners of adjoining lands shall keep up and maintain in good repair all partition fences between them in equal shares, so long as both parties continue to occupy or improve such lands, unless otherwise agreed. K.S.A. 29-301.
13. If any party neglect to repair or rebuild a partition fence, or the portion thereof which he ought to maintain, the aggrieved party may complain to the fence viewers, who, after due notice to each party, shall examine the same, and if they determine that the fence is insufficient, shall signify it, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they may judge reasonable. K.S.A. 29-302.
14. If such fence be not repaired or rebuilt accordingly, the complainant may repair or rebuild it, and the same being adjudged sufficient by the fence viewers, and the value thereof, with their fees, being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient, the sum so ascertained; and in case of neglect to pay the same for one month after written demand, may recover it, with interest at the rate of one percent per month, by action in any court of competent jurisdiction. In any such action the court shall allow the prevailing party a reasonable sum for attorney's fee. K.S.A. 29-303.
15. When any controversy shall arise about the rights of the respective owners in partition fences, or their obligations to keep up and maintain the same in good repair, and if they cannot agree among themselves, either party may apply to the fence viewers of the township in which such fence may be situated, who, after a reasonable notice to the other party, shall proceed, on application as aforesaid, to view such fence, and assign to each party, in writing, his equal share or part of such partition fence, to be by him kept up and maintained in good repair; which assignment shall be recorded by the register of deeds of the county in a book to be provided for that purpose, and shall be final, conclusive and binding upon the

- parties, and upon all the succeeding occupants of the lands, and they shall be obliged thereafter to maintain their respective portions of said fence. K.S.A. 29-304.
16. If a party neglect or refuse to erect or maintain the part of the fence assigned him by the fence viewers, it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to recover the ascertained cost thereof, with interest at the rate of one percent per month and a reasonable attorney's fee to be fixed and allowed by the court, by action in any court of competent jurisdiction; and the amount recovered, with costs, shall be a lien against the land chargeable with the same. K.S.A. 29-305.
 17. All assignments of the fence viewers shall be certified and signed by them and shall contain a certain description of the lands divided by such partition fence and the names of the owners thereof. [irrelevant portion omitted]. K.S.A. 29-306.
 18. When in any controversy between owners of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the owners had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recovered in the manner hereinbefore provided. K.S.A. 29-307.
 19. All partition fences shall be kept in good repair throughout the year, unless the owners of the land on both sides otherwise agree. K.S.A. 29-308.
 20. No person not wishing his land enclosed, and not occupying or using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence dividing between his land and that of an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fence as in this act is provided. K.S.A. 29-309.
 21. When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous to occupy his land in severalty and the other refuses or neglects, on demand, to divide the line where the fence should be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may notify the fence viewers who shall give written notice to both owners that unless said owners agree on the erection of said fence, the viewers will, in not less than twenty nor more than 40 days, divide and assign said line and, in writing, assign a reasonable time (having regard to the season of the year) for making the fence; and if either party neglect to comply with the decision of the viewers within

the time assigned, the other party, after making his own part, may make the other part, and recover the ascertained value thereof, with interest at the rate of one percent per month, together with the fees of the fence viewers as above provided and a reasonable attorney's fee to be fixed and allowed by the court. K.S.A. 29-310.

22. When land which has been unenclosed is enclosed, the owner thereof shall pay for one half of each partition fence between his land and the adjoining lands, the value to be ascertained and stated in writing, under their hands, by the fence viewers, in case the parties cannot agree; and if the owner enclosing as aforesaid shall neglect, for sixty days after the value has been so ascertained and demand made, to pay the same, the owners of such partition fences may recover, with interest, as hereinbefore provided; or the party enclosing may, at his election, rebuild and make half of each of such partition fences, and if he neglect so to do for sixty days after making such election, he shall be liable as before provided. K.S.A. 29-313.
23. A person building a fence may lay the same upon the line between his own land and the land adjacent, so that the fence may be partly on one side of such line and partly on the other; and the owner shall have the same right to remove it as if it were wholly on his own land. K.S.A. 29-316.
24. The foregoing provisions concerning partition fences shall apply to fences standing wholly upon one side of the division line, and used as a partition fence. K.S.A. 29-317.
25. If an adjoining landowner is given the statutory authority to repair or to rebuild a partition fence, then, by implication, the adjoining landowner should be permitted to enter on the land of the other adjoining landowner for that purpose. *Muhl v. Bohi*, 37 Kan.App.2d 225, 234-35, 152 P.3d 93 (2007).

ORDERS AND FINDINGS ASSIGNING PARTITION FENCE RESPONSIBILITY

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF CHEROKEE COUNTY, KANSAS, SITTING AS FENCE VIEWERS PURSUANT TO K.S.A. 29-304, hereby find as follows:

1. That the barbed wire fence observed by Commissioner Garner on or about April 1st, shall be deemed the partition fence for the shared boundaries between Parcel "A" and Parcel "B" described above.
2. The assignment of responsibility for the upkeep, maintenance and repair of the partition fence line described above shall be as follows:

- a. The owners of parcel "A," are hereby assigned full responsibility for the repair of the barbed-wire fence that had been standing on the southern shared property line, to be built with the same specifications as set forth in K.S.A. 29-105(a)
 - b. The owners of parcel "A" and the owners of parcel "B," are hereby assigned responsibility for the upkeep, maintenance and repair of a barbed-wire fence, with the same specifications as set forth in K.S.A. 29-105(a) along the eastern shared property line with the owners sharing the cost of such upkeep, maintenance and repair on a 50/50 basis.
 - c. After the construction of the barbed-wire fence along the southern and eastern shared property lines is completed, the owners of parcel "A" and the owners of parcel "B" are hereby assigned responsibility for the upkeep, maintenance and repair of said barbed-wire fence on a 50/50 basis.
3. That the partition fence described above shall be maintained and kept in at least as good a condition and state of repair as is required by Kansas law.
 4. This Assignment shall be recorded by the Register of Deeds of Riley County, Kansas, pursuant to K.S.A. 29-304.

BE IT RESOLVED this 14th day of April 2025 by the Cherokee County Board of Commissioners.

Approved:

Attest

Myra Carlisle-Frazier

Myra Carlisle-Frazier
County Commissioner

Rebecca Brassart

Rebecca Brassart
County Clerk

Jack Garner

Jack Garner
County Commissioner

Cory Moates

Cory Moates
County Commissioner

