



Staff Report

Administration

Report To: Committee of the Whole
Meeting Date: February 25, 2020
Report Number: FAF.20.026
Subject: Options to Fill Vacant Councillor Office
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.20.026, entitled "Options to Fill Vacant Councillor Office";

AND THAT Council direct staff to proceed with Option ____ to fill the vacant Councillor Office.

B. Overview

In accordance with the *Municipal Act*, S.O. 2001, c.25, when the seat of a Member of Council becomes vacant, Council is required to declare the seat vacant and determine if the seat will be filled by By-election or Appointment. A vacancy can occur on Council in several different ways, including the death or resignation of a Member, when a Member becomes disqualified from holding office, is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council, is appointed or elected to fill any vacancy in any other office on the same council, or forfeits his or her office under this or any other Act.

The *Municipal Act* requires Council to fill a vacant Council office, within 60 days of the vacancy, unless the vacancy occurs within 90 days of the election.

C. Background

On January 30, 2020, Councillor Rob Potter was appointed as the Deputy Mayor for the Town of The Blue Mountains. This appointment created a vacancy in the Councillor position, and on February 10, 2020 Council declared the Councillor seat to be vacant in accordance with the requirements of the *Municipal Act*. The February 10, 2020 Council resolution is provided below for information:

Moved by: Peter Bordignon Seconded by: Andrea Matamoros

THAT Council receive Staff Report FAF.20.022, entitled "Declare Office of Councillor to be Vacant";

AND THAT, in accordance with section 262 of the *Municipal Act, 2001*, Council of the Town of The Blue Mountains does hereby declare the office of Councillor to be vacant, Carried.

Past Vacancies

Since 1998, the Town of The Blue Mountains has realized a number of Council vacancies. During the 2003 to 2006 term of Council, Councillor Holden passed away in 2004. Council appointed Michael Martin for the balance of the term as he was next in the poll results in the 2003 election.

In the 2014 to 2018 term of Council, Councillor Michael Seguin resigned in 2018. As the resignation was after March 31 in an election year, Council opted to fill the vacancy "by lot" from a slate of candidates that had filed their nomination papers for the Councillor position in the 2018 election, and wished to be considered for the appointment.

More recently, with the resignation of Deputy Mayor Bartnicki in January, 2020, Council appointed Councillor Rob Potter as the Deputy Mayor for the balance of the term. Of note, following the 2018 election, Councillor Potter was appointed as the "Alternate Member of Council to Grey County Council" for the 2018 to 2022 term of Council as Councillor Potter had received the most votes for the Councillor position in the 2018 election. Following the appointment of Deputy Mayor Potter, Councillor Sampson was appointed as the "Alternate Member of Council to Grey County Council", being the next candidate in the poll results for the 2018 Municipal Election willing to be appointed.

Changing Council Composition

Staff confirm that changing the Council composition at this time is not permitted. The *Municipal Act* states that a by-law is required to be passed to change the council composition, which would come into effect after the first regular election following the passing of said by-law. If the by-law to change the council composition is passed before voting day in the year of a regular election, the change in composition shall not come into force until after the second regular election following the passing of the by-law.

Municipal Act, 2001

The Municipal Act, 2001 establishes two ways to fill a vacancy, by appointment or by holding a by-election. Section 263 of the Municipal Act provides that:

Filling vacancies

263 (1) If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,

- (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or
- (b) require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*.

Section 263(5) establishes the rules applying to filling vacancies.

Rules applying to filling vacancies

263 (5) The following rules apply to filling vacancies:

1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262, the municipality shall,

- i. appoint a person to fill the vacancy under subsection (1) or (4), or
- ii. pass a by-law requiring a by-election be held to fill the vacancy under subsection (1).

2. Despite paragraph 1, if a court declares an office to be vacant, the council shall act under subsection (1) or (4) within 60 days after the day the court makes its declaration.

3. Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy. 2001, c. 25, s. 263 (5).

Section 264 of the *Municipal Act, 2001*, provides that a person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person he or she replaced.

Section 256 of the *Municipal Act* sets out the eligibility requirements for persons qualified to be elected or to hold office as a member of a Council of a local municipality. In summary, every person who is entitled to be an elector in The Blue Mountains may be appointed. To be an elector, the person under consideration must, on voting day, (a) reside in the municipality or be the owner or tenant of land there, or the spouse of such owner or tenant, (b) be a Canadian Citizen, (c) be at least 18 years old and (d) not be prohibited from voting.

Under section 258 (1) of the *Municipal Act, 2001*, the following are not eligible to be elected as a member of a council or to hold office as a member of a council: an employee of the municipality; a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman, registrar or an investigator of

the municipality; a person who is not an employee of the municipality but who holds any administrative position of the municipality; a judge of any court; a member of the Legislative Assembly or of the Senate or House of Commons of Canada; and a public servant.

D. Analysis

This report provides a number of options available to Council to fill the vacancy, it being noted that this list is not exhaustive, and that Council has the option of filling the vacancy in accordance with any option not listed herein, provided that it is in compliance with the legislation.

Option #1 Pass a By-law Requiring a By-Election be Held to Fill the Council Vacancy

Council has the option of passing a by-law authorizing a by-election. The *Municipal Elections Act* (“MEA”) states that if such a by-law is passed, that the nomination day would occur a maximum of sixty (60) days from the passing of the by-law (potentially mid-May, 2020), with voting day occurring forty-five (45) days after nomination day (potentially end of June, 2020). The MEA states that a by-election must be held “as far as possible” in the same manner as the regular election, which would include telephone and electronic voting, with a voting centre open in the Town Hall.

A by-election may be the most democratic option to fill the vacancy, but it will also be the most expensive. The 2018 Municipal and School Board election cost \$51,868. These costs included the costs to retain the internet and telephone voting provider and Canada Post to mail the Voter Information Letters. Though the by-election would be only for a single vacant council seat, the cost would be very similar to the previous election as the same steps are required, including mailing the voter information letters and updating the Voter’s List.

Option #1 Pass a By-law Requiring a By-Election be Held to Fill the Council Vacancy.

Option #2 Appointment of a Former Candidate to Fill a Vacancy

If Council chooses to fill the vacancy by appointing a Candidate from the 2018 municipal election, two options are put forward below for Council consideration, it being noted that the Candidate must be eligible for appointment. The results of the 2018 Municipal Election are provided as Attachment #1 to this staff report.

Option #2a) Appoint the Candidate with the next highest number of votes in the 2018 municipal election for the office that has been declared vacant for the balance of the term of Council.

Note, Option #2a) provides direction to the Town Clerk to contact the Candidate with the next highest number of votes in the 2018 municipal election (Councillor position), to determine if they wish to accept the appointment. The Town Clerk may require specific forms to be completed by the Candidate. This Candidate will have the first right of refusal for appointment. Failing acceptance or if ineligible for appointment, the Town

Clerk will then contact the next runner-up in the poll results for the Councillor position until a Candidate is willing to accept the appointment.

Option #2b) Appointment of a Former Candidate to Fill a Vacancy in accordance with a selection process outlined by Council.

Note, Option #2b) requests direction from Council as to the selection process.

Option #3 Appointment of An Eligible Elector to Fill a Vacancy

If Council chooses to fill the vacancy by appointment of an Eligible Elector, the process shall generally be in accordance with the attached "Procedure to Appoint an Eligible Elector to Fill a Vacancy" (Attachment #2).

Option #3 Appointment of An Eligible Elector to Fill a Vacancy in accordance with the "Procedure to Appoint an Eligible Elector to Fill a Vacancy" as attached to Staff Report FAF.20.026

E. The Blue Mountains Strategic Plan

Goal #2: Engage Our Communities & Partners

Objective #1 Improve External Communication with our Constituents

Objective #3 Strengthen Partnerships

Goal #4: Promote a Culture of Organizational & Operational Excellence

Objective #5 Constantly Identify Opportunities to Improve Efficiencies and Effectiveness

F. Environmental Impacts

None

G. Financial Impact

There will be significant costs to fill the vacant Council seat, similar to the cost of the 2018 election, if Council directs that a by-election be held to fill the vacancy.

H. In consultation with

Shawn Everitt, CAO

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Corrina Giles, Town Clerk, townclerk@thebluemountains.ca

J. Attached

1. The Blue Mountains 2018 Municipal and School Board Election Results
2. Procedure to Appoint an Eligible Voter to Fill a Vacancy.

Respectfully Submitted,

Corrina Giles
Town Clerk

Shawn Everitt
Chief Administrative Officer

For more information, please contact:
Corrina Giles, Town Clerk
townclerk@thebluemountains.ca
519-599-3131 extension 232

Results Report

Town of The Blue Mountains

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10/23/2018 20:18:33

Number of ballots cast:	4785
Number of blank ballots:	1

Mayor

Candidate		Votes
ARDIEL, Gail		1505
SOEVER, Alar		2029
WILDING-DAVIES, David		1215
	Number Of Undervotes:	36
	Number Of Overvotes:	0
	Total Number Of Votes:	4749
	Total Number Of Blanks:	36

Deputy Mayor

Candidate		Votes
BARTNICKI, Odette		2167
MARTIN, Michael		1801
MITCHELL, Paul		667
	Number Of Undervotes:	150
	Number Of Overvotes:	0
	Total Number Of Votes:	4635
	Total Number Of Blanks:	150

Results Report

Town of The Blue Mountains

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10/23/2018 20:18:33

Councillor

Candidate		Votes
BORDIGNON, Peter		2469
HOPE, Paula		2048
MATROSOVS, Andrea		2063
MAXWELL, Alex		1280
PETTIT, Terrence		1506
PORTER, June		1731
POTTER, Rob		2689
SAMPSON, Rob		2398
URAM, Jim		2162
WHITE, John		1627
	Number Of Undervotes:	3952
	Number Of Overvotes:	0
	Total Number Of Votes:	19973
	Total Number Of Blanks:	88

Conseiller, Conseil Scolaire Viamonde

Candidate		Votes
BELCOURT, Guy		0
CARUSO, Saveria		2
LAPOINTE, Eric		7
	Number Of Undervotes:	4
	Number Of Overvotes:	0
	Total Number Of Votes:	9
	Total Number Of Blanks:	4



Town of The Blue Mountains

32 Mill Street, Box 310
THORNBURY, ON N0H 2P0
<https://www.thebluemountains.ca>

Procedure to Appoint an Eligible Elector to Fill a Vacancy

The following procedure will be followed by Council when appointing an Eligible Elector to fill a Vacancy:

A. Definitions:

In this procedure:

"Candidate" means an **Eligible Elector** who has submitted an Application for Appointment to the Town Clerk, in accordance with this procedure, and who has been certified as a Candidate by the Town Clerk.

"Chair" means the Member of Council presiding at the Council Appointment Meeting

"Container" means any box prepared by the Town Clerk to be used in the drawing of the names of individual Candidates as required in these procedures.

"Council Appointment Meeting" mean the regular or Special Meeting of Council where Council will appoint an eligible elector to fill the vacant Council seat.

"Eligible Elector" means a person who is a qualified elector in accordance with the *Municipal Elections Act, 1996*.

"Slate of Candidates" means a list of all the individual Candidates, who have been nominated in accordance with this procedure, for appointment to fill the Vacancy.

"Town Clerk" and **"Deputy Clerk"** means the Clerk and Deputy Clerk of the Town of The Blue Mountains.

B. General

1. Council is required to declare a seat vacant in accordance with the Act and may resolve to fill the vacancy by appointment of an Eligible Elector. Council will fix the date of a meeting when this decision will be made.
2. To be considered for Appointment, an Eligible Elector must meet all the requirements to hold the Vacant office, and must not otherwise be disqualified from holding that office.
3. It is the Eligible Elector's sole responsibility to meet any deadline or otherwise comply with any requirement established by Council or the Town Clerk as part of the appointment process.

C. Notice Process

1. Notice of Council's decision to appoint an Eligible Elector to fill a vacancy shall be posted by the Town Clerk on the Town's website and in a local newspaper having general circulation in the area.
2. The Notice will include the eligibility requirements to fill the Vacancy, the deadline to submit Nomination papers to the Town Clerk, and the date of the Council Appointment Meeting.

D. Application and Review Process

1. All interested Eligible Electors must complete and submit the following original documents to the Town Clerk:
 - a. Nomination Paper – Form 1
 - b. Endorsement of Nomination – Form 2, including 25 signatures providing endorsement
 - c. Declaration of Qualifications – Council, Form 1A
2. The Town Clerk shall provide notice to the certified list of Candidates of the date and time for the Council Appointment Meeting. Candidates are solely responsible for attending the Council Appointment Meeting which will not be rescheduled due to a Candidate's conflict.
3. Any Council agenda documentation related to Candidates will be published in alphabetical order by surname.

E. Procedure at the Council Appointment Meeting:

1. At the Council Appointment Meeting, the Chair will provide a brief statement of the purpose of the meeting and the general order of proceedings to be followed.
2. The Clerk will provide to the Chair, a list of the names of those individuals who have indicated, in writing, their interest in being appointed to the vacancy, and have been certified by the Town Clerk. The Chair will call for a motion from Council in the following form:

“That the following individuals, who have signified in writing that they are legally qualified to hold office and consented to accept the office if they are appointed to fill the vacancy, be considered for appointment to fill such vacancy.”
3. All Candidates will be sequestered in an adjacent room until it is their time to address Council. Each Candidate will be offered a maximum of five (5) minutes each, with no extension, to address Council prior to the first round of voting. The order of speakers will be drawn by the Town Clerk from a box containing the names of all the Candidates.

D. Acclamation Procedure:

1. If the Slate of Candidates includes only one (1) Candidate, the Town Clerk will declare that Candidate elected and a resolution or by-law will be prepared and submitted to Council for enactment.

E. Voting Procedure:

1. If the Slate of Candidates includes more than one (1) Candidate, rounds of voting will be conducted as follows:
 - a) The Town Clerk will provide Members of Council a voting card on which to indicate their choice of Candidate in writing.
 - b) The Town Clerk will read out the names of all Candidates alphabetically by surname, and will display the names on the screen.
 - c) Each Member of Council is entitled to vote for one (1) Candidate in each round of voting.
 - d) The Clerk will ask Members of Council to vote by displaying their voting card with choice of Candidate clearly written on it. Members of Council will display the voting card at the same time and in a manner that is clearly visible to the Town Clerk and the public.
 - e) Once a voting card has been displayed by a Member of Council no changes shall be permitted.
 - f) The Town Clerk will record the votes, announce how each Member of Council has voted and will announce the results at the end of each round of voting.
2. If, at the end of each round of voting, a Candidate receives the votes of more than one-half of the Members of Council present, the Town Clerk will declare the Candidate to be elected and a resolution or by-law will be prepared and submitted to Council for enactment.
3. Rounds of voting shall continue until a Candidate has received more than one-half of the votes of the Members of Council present, or until a tie is broken in accordance with section **E.4f)** of the procedure.
4. Where a round of voting does not result in a Candidate receiving more than one-half of the Members of Council present:
 - a) The Candidate with the fewest number of votes will be automatically excluded from the Slate of Candidates in the next round of voting.

Example: in a contest with three Candidates and six Members of Council present, a Candidate will need a minimum four (4) votes to be Appointed:

Candidate A - 3 votes

Candidate B - 2 votes

Candidate C - 1 vote

In the above scenario, as no majority vote was achieved, Candidate C is eliminated from further voting, and another round of voting will occur.

- b) In any round of voting one (1) vote shall be considered the lowest number of possible votes. Where Candidates receive zero (0) votes, they will be automatically excluded from the Slate of Candidates in the next round of voting.
- c) If a tie exists between two or more Candidates for the fewest number of votes received, the Town Clerk will draw all but one (1) Candidate's name from a Container to continue in the subsequent round of voting. The name of the Candidate not pulled by the Town Clerk will be excluded from the Slate of Candidates in the next round of voting.
- d) The Town Clerk will ask if any Candidate present wishes to withdraw their name from the Slate of Candidates for the next round of voting.
- e) The Town Clerk will conduct another round of voting with a revised Slate of Candidates in accordance with Section E.1 of this Procedure.

Equal Votes for All Candidates

- f) Where, after a round of voting, the votes cast are equal for all the Candidates, the following procedure will be observed:
 - i. if there are three (3) or more Candidates remaining, the Clerk will draw all but one Candidate's name from the Container to continue in the Slate of Candidates. In other words, the Candidate not pulled by the Town Clerk is eliminated from the contest.
 - ii. If only two (2) Candidates remain, the Town Clerk will break the tie by pulling the name of the successful Candidate from the Container. The Candidate whose name is pulled by the Town Clerk will be declared elected and a resolution or by-law will be prepared and submitted to Council for enactment.

General Voting Rules

- g) Each of the pieces of paper used by the Town Clerk to draw the names of Candidates in accordance with the requirement of Sections E.3, E.4c) or E.4f) of this Procedure will be created by the Town Clerk and will be equal in size and type and will contain the name of one Candidate only.

- h) Only the Town Clerk or Deputy Clerk may handle the pieces of paper or the Container referenced in this procedure.