



Staff Report

Administration – Town Clerk

Report To: Council Meeting
Meeting Date: January 17, 2022
Report Number: FAF.22.012
Title: Options to Fill Vacant Councillor Seat for the balance of the 2018 to 2022 Term of Council
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.22.012, entitled “Options to Fill Vacant Councillor Seat for the balance of the 2018 to 2022 Term of Council”;

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

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 declaration of vacancy, unless the vacancy occurs within 90 days of the election.

C. Background

At the January 17, 2022 Council meeting, Council will declare the seat of Councillor to be vacant. This is following the appointment of Councillor Peter Bordignon as Deputy Mayor on December 15, 2021.

Past Vacancies

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

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. Rob Potter was the name drawn and was appointed as Councillor for the balance of the 2014 to 2018 term of Council.

Current Term of Council, 2018 to 2022

In the current term of Council a number of vacancies have occurred, for various reasons.

Resignation of Deputy Mayor Bartnicki, January 2020

Deputy Mayor Bartnicki resigned in January 2020, following which, Council declared the Deputy Mayor seat to be vacant.

In accordance with the Town’s Corporate Policy POL.COR.18.03 “Appointment of an Alternate Member of Council to Grey County Council”, the then Councillor Rob Potter, having received the highest number of votes for the Councillor seat in the 2018 municipal election had been appointed as the Alternate Member to Grey County Council. Council resolved to appoint Councillor Potter as the Deputy Mayor.

The appointment of Councillor Rob Potter as the Deputy Mayor, then triggered a vacancy in the Councillor position.

Appointment of Councillor Hope Following Appointment of Deputy Mayor Potter

Following the appointment of Deputy Mayor Potter, Council declared the Councillor seat to be vacant at the February 10, 2020 Council Meeting. At the March 9, 2020 Council Meeting, Council provided directed to appoint the candidate with the next highest number of votes in the 2018 municipal election to fill the vacant Councillor position for the balance of the term of Council. Council appointed Paula Hope as Councillor at the March 30, 2020 Council Meeting.

Passing of Deputy Mayor Potter, November 14, 2021, Appointment of Deputy Mayor Bordignon

Following the passing of Deputy Mayor Potter on November 14, 2021, Council declared the Deputy Mayor seat to be vacant at the November 29, 2021 Council Meeting. At the December 13, 2021 Council Meeting, Council directed that Councillor Peter Bordignon would be appointed as the Deputy Mayor, being the current member of Council with the next highest number of votes in the 2018 municipal election.

Vacant Councillor Seat, Following Appointment of Deputy Mayor Bordignon

At the January 17, 2022 Council Meeting, Council will declare the Councillor seat to be vacant.

D. Analysis

When a vacancy on Council occurs, Council is faced with the decision on how to fill the vacant seat for the remainder of the term. The *Municipal Act* provides the following two options:

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.

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. 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.

Once the seat is declared vacant, the municipality has 60 days to either appoint a person, or pass a by-law requiring a by-election be held.

The following are a number of options for Council consideration to fill the Councillor vacancy, it being noted that this list is not exhaustive, and that Council has the option of filling the vacancy in any way that is in compliance with the legislation. The [2018 Voters Guide for Ontario Municipal Council and School Board Elections](#) provides additional information on filling vacancies and notes that “sometimes councils want to put additional restrictions on appointees, such as requiring that an appointee agree not to run in the next regular election. While a Council may set this as a condition for appointment, there is nothing in provincial legislation that would prevent someone who was appointed from running in the next election”.

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 March 2022), with voting day occurring forty-five (45) days after nomination day (potentially May, 2022). 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 will also be the most costly. 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 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 #2 Appointment Process

The *Municipal Act, 2001* does not set out requirements relating to the appointment of an individual to fill a Council vacancy, other than those relating to qualifications. In order to be considered for appointment, individuals must meet the qualifications as outlined in the *Municipal Elections Act*, and listed below:

- i. Reside in or be the owner/tenant of land in the municipality, or spouse
- ii. Canadian Citizen
- iii. At least 18 years of age
- iv. Not be prohibited from voting under section 17(3) of the *Municipal Elections Act* or otherwise by law

Council will declare the Councillor seat to be vacant at the January 17, 2022 Council Meeting, and in accordance with the *Municipal Act*, if Council directs that the vacancy will be filled by appointment, the seat must be filled by March 18, 2022.

Option #2A Appointment of a Candidate from the 2018 Municipal Election to Fill the Vacancy

Option #2A has been used in the past to appoint the next-place finisher in the most recent municipal election. Should Council opt to consider the appointment of the next-place finisher, the Town Clerk would seek written confirmation and qualification and determine if the individual is interested in accepting the appointment. Option #2A could result in an Oath of Office being administered by the new Councillor by the end of February, 2022.

Option #2B Appointment by Call for Applications

Option #2B approves an appointment process which would permit interested, eligible persons to submit an application for appointment to Council. This open call for applications would be advertised, and would include a process through an application, declaration of qualifications and a recommended procedure to include an interview/presentation to Council in an open Council Meeting. This format is based on practices in other Ontario municipalities.

Staff will provide Council with a Vacancy Appointment Procedure at the next Council Meeting for approval if Option #2B is selected.

Option #2C Direct Appointment by Council

Option #2C approves an appointment process where Council appoints an eligible individual without an application process and without referencing the most recent election results

E. Strategic Priorities

1. Communication and Engagement

We will enhance communications and engagement between Town Staff, Town residents and stakeholders

2. Organizational Excellence

We will continually seek out ways to improve the internal organization of Town Staff and the management of Town assets.

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

4. Quality of Life

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

F. Environmental Impacts

None

G. Financial Impacts

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

H. In Consultation With

Shawn Everitt, Chief Administrative Officer

Will Thomson, Director of Legal Services

I. Public Engagement

The topic of this Staff Report has not been the subject of 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

No attachments.

Respectfully submitted,

Corrina Giles
Town Clerk

For more information, please contact:
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Report Approval Details

Document Title:	FAF.22.012 Options to Fill Vacant Councillor Seat for the balance of the 2018 to 2022 Term of Council.docx
Attachments:	None
Final Approval Date:	Jan 3, 2022

This report was approved and signed as outlined below:

Shawn Everitt - Jan 3, 2022 - 7:53 AM