

DATE: November 16, 2020

REPORT NO: C-09-2020

SUBJECT: Options relating to filling the Vacancy of the Office for One (1) Councillor Position for Ward 2

CONTACT: Joanne Scime, Clerk

OVERVIEW:

This report will provide information to Members of Council regarding options for filling the vacancy of the Office for the Councillor position for Ward 2 as a result of the recent resignation of Councillor Christopher Coady.

RECOMMENDATION:

- (1) That, Report No. RFD-C-09-2020, dated November 16, 2020, regarding the “Options relating to filling the Vacancy of the Office for One (1) Councillor Position for Ward 3”, be received; and,
- (2) That, the Clerk be given direction that the vacancy of the Office for One (1) Councillor Position for Ward 2 for the remainder of the 2018-2022 term of Council be filled through Option # _____, as detailed herein.

ALIGNMENT TO STRATEGIC PLAN:

Mission:

The Township of West Lincoln provides responsive customer services and quality planning, infrastructure, programs and services that reflect the needs of the community we serve.

Service:

We take pride in providing responsive, friendly customer experiences and continuously improving our interactions with the public.

Respect:

We believe in the role of every resident, business, employee and Member of Council in making West Lincoln a great community.

BACKGROUND:

Councillor Christopher Coady provided written notice to the Clerk on Tuesday, October 13, 2020 of his resignation as Councillor for Ward 2 in the Township of West Lincoln.

Subsequently, at the next meeting of Council on Monday, October 26, 2020, Council adopted the following resolution:

1. That, the resignation received from Councillor Christopher Coady, dated October 13, 2020, be and is hereby accepted with regret; and,
2. That, the Office for one (1) Councillor position, for Ward 2 (Gainsborough) in the Township of West Lincoln, be and is hereby declared vacant in accordance with the "Vacancies" provisions of the Municipal Act.

CURRENT SITUATION:

Section 259(1) of The Municipal Act, 2001, S.O. 2001, c.25 (The Act) addresses the issue of Vacant Seats. The section specifically states that the office of a member of Council of a municipality becomes vacant if the member:

- (a) becomes disqualified from holding the office of a member of Council under section 256, 257 or 258;
- (b) fails to make the declaration of office before the deadline in section 232;
- (c) is absent from the meetings of Council for three successive months without being authorized to do so by a resolution of council;
- (d) resigns from his or her office and the resignation is effective under section 260;**
- (e) is appointed or elected to fill any vacancy in any other office on the same Council;
- (f) has his or her office declared vacant in any judicial proceeding;
- (g) forfeits his or her office under this or any other Act; or
- (h) dies, whether before or after accepting office and making the prescribed declarations. 2001, c. 25, s. 259 (1).

The Municipal Act stipulates that if the office of a member of municipal Council becomes vacant (Section 260(1)), the municipality must pass a motion at its next meeting to declare the seat to be vacant (Section 263(1)).

As noted above, the Office for one (1) Councillor position for Ward 2 in the Township of West Lincoln was declared vacant on October 26, 2020.

The Municipal Act further states in Section 263(5) that Council has no more than 60 days (by December 25th, 2020) to select one of following two options to fill the vacancy (Section 263(1)):

- (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. 2001, c. 25, s. 263 (1).

In order to be eligible and qualify to hold office as a member of a Council of a local municipality, a person must be:

- Entitled to be an elector in the local municipality under section 17 of the Municipal Elections Act, 1996; and,
- Not disqualified by this or any other Act from holding office; and,
- Resides in the local municipality or is the owner or tenant of land within the municipality or be the spouse of such owner or tenant;
- A Canadian citizen;
- At least 18 years old;
- Not prohibited from voting under section 17(3) of the Municipal Elections Act or otherwise by law.

As noted above, Council is advised that an appointee cannot be one who is disqualified from holding office by this or any other Act. The Clerk is aware of one individual who would not be qualified for appointment or to be a candidate in a by-election due to failure to file required documents (i.e. financial statements), resulting in a default with the penalty of ineligibility for election or appointment to any office to which the MEA applies until after the next regular municipal election. This individual, therefore, would not be eligible for appointment.

When a vacancy on Council does occur, Council is faced with the decision on how to fill the vacant seat for the remainder of the term.

Historical Experience in West Lincoln:

The Township of West Lincoln has experienced Council vacancies previously.

- 1997 – Due to the death of Ward One Councillor - Edward Beres; and,
- 2010 – Resignation of Ward Three Councillor - Joe Maloney - Immediately following the municipal election of that year; and,
- 2016 – Resignation of Ward Three Councillor, Alex Micallef.

In August of 1997, as the result of the death of Alderman Edward Beres, Ward One Councillor, Council directed the Clerk to take the appropriate action to advertise for applicants for the position of Ward 1 Alderman. Five letters of application were received and reviewed at a Special Meeting of Council on September 4, 1997 and Council adopted a resolution appointing Mary Braico to fill the present vacancy on West Lincoln

Township Council for the balance of the present term of Council. The municipal election was held on November 10, 1997 and the new Council was installed on December 1, 1997.

In 2010, immediately following the municipal election of that year, the elected member of Council for a Ward 3 Councillor position, being Joe Maloney, resigned and the Council of the day appointed the person who had the next highest number of votes to fill the vacancy, being Lou Di Leonardo, who had consented to accept the office prior to being appointed.

On March 21, 2016, the resignation submitted by Councillor Alex Micallef as Councillor for Ward 3 following approximately 16 months serving on Council was accepted with regret. Following much discussion at the April 25th, 2016 Council meeting, a motion was carried that the vacancy for the Office for One (1) Councillor Position for Ward 3 for the remainder of the 2014-2018 term of Council would be filled by way of a by-election. Subsequently, a by-election was held on Monday, August 29, 2016 resulting in Cheryl Ganann receiving the highest number of votes among four candidates that ran for the position.

In assessing its options, Council may wish to give consideration to the following, among other things:

- Representative needs at the Township level;
- Impact of time required to fill vacancy;
- Progression and time remaining in the term of Council;
- Transparency, fairness and public participation relative to the selected process; and,
- Financial and staff resource impacts.

As stated above, The Municipal Act provides the following two options:

OPTION 1 – Fill Vacancy by Appointment

Council may appoint any person to fill the vacancy that is a qualified elector under the Municipal Elections Act, 1996 and not disqualified under the Municipal Act, 2001 or any other Act from holding office.

The Municipal Act does not prescribe a specific process Council is required to follow to fill a vacancy by appointment; however, the process Council chooses to fill the vacancy by appointment should be transparent to the public and allow for public notice in keeping with the principles of the Municipal Election Act, 1996.

In the past and as noted above, there have been two methods used by the Township for the appointment process.

In 1997, an advertising process was done resulting in five letters of application being

received. This resulted in the appointment of Ms. Mary Braico filling the vacancy of Ward One Alderman on West Lincoln Township Council for the balance of this term of Council.

Another option of appointment, which was the method used in 2010, was the appointment of the third place candidate. Immediately following the 2010 municipal election, the elected member of Council for a Ward 3 Councillor position resigned and the Council of the day appointed the person who had the next highest number of votes to fill the vacancy.

Another option is the nomination of an individual(s) by Council among qualified electors with the majority of Council votes appointing to the position of Ward 2 Councillor.

If Council chooses to consider appointing one of the candidates who ran for this position in the 2018 election, the person must be approached to determine if they would consent to the appointment and are still eligible and qualified.

The results for the 2018 election for the positions of Councillors for Ward 2 (in descending order of the number of votes cast), are provided below for information.

Non-elected- Election Results – Ward 2:

Shelley Ann Bradaric	505 votes
Eric Leith	286 votes

As noted above, Ms. Shelley Bradaric, who ran in the 2018 Municipal Election received 505 votes being the next highest number of votes to Councillor Coady who received 558 votes and Councillor Jonker who received 617 votes, has provided correspondence which was received at the October 26th, 2020 Council Meeting advising of her interest should Council decide to appoint for the Ward 2 Councillor vacancy.

OPTION 2 – Fill Vacancy by holding a By-Election

The process to fill a vacancy by a by-election is prescribed by the Municipal Elections Act (MEA) and a by-election is to be conducted in basically the same method as a regular election with the exception of some time frames.

A by-law indicating that a by-election is required must be passed within 60 days of declaring the vacancy (Municipal Act Section 263(5)(1)) which means that a by-law must be adopted by no later than December 25th, 2020. If Council chooses to hold a by-election, staff recommend that a by-law be presented for adoption at a Special Meeting of Council on Monday, December 21st, 2020, in order to provide as much time as possible for staff to prepare for a by-election. This additional timeframe will be helpful in light of the nearly two week break that the Township office is closed between Christmas and New Years. Additionally, the Clerk's Department must continue to deal with their daily duties and responsibilities including but not limited to preparation of agendas and minutes each month leading up to the by-election which is contrary during an election year whereby meetings are reduced or eliminated.

**Proposed Timelines for the holding of a By-Election:
(if by-law adopted at a Special Council Meeting on December 21, 2020)**

Monday, October 26, 2020	Declaration of vacancy
Monday, December 21, 2020	Adopt a By-law to conduct a by-election
Tuesday, December 22 nd , 2020	Nomination period begins
Friday, February 19, 2021 @ 2 pm	Nomination Day
Monday, April 5 th , 2021	Voting Day

If Council's preferred method is a by-election, specific health and safety precautions would need to be incorporated throughout the polling place to ensure that physical distancing is maintained throughout the voting process, if the pandemic is not yet concluded. Additional measures, such as purchase/rental of clear acrylic screen barriers for use between the election personnel and the electors, ensuring that only the elector touches the ballot once it has been issued, monitoring and policing the number of people permitted in a polling station at any one time, additional and stringent cleaning protocols and potential consultation with Niagara Region Public Health, etc. must all be considered. To minimize contact on the paper ballots, pricing for a ballot on demand approach would need to be explored which will reduce the number of people touching the ballot, as well as saving the cost of pre-printing ballots to accommodate voter turnout; however, it is believed that this option would be very expensive and thus increase costs substantially. Additionally, associated costs of using ballot on demand approach would include rental of ballot printers that are compatible with current vote counting equipment. Additional cost implications will be explored by the Clerk so as to incorporate all reasonable measures to protect election stakeholders.

At this time, the logistics for conducting a by-election present challenges for candidates who would need to collect the nomination signatures and campaigning door-to-door or face-to-face would be prohibited. Recruitment of election workers may also present some challenges.

The cost to conduct a by-election for Ward Two is estimated at \$25,000 to \$30,000 which would include the hard costs of equipment, supplies, advertising, etc. as well as soft costs such as labour.

OPTION 3 – Defer the decision regarding Filling the Vacancy to the November 23, 2020 Council meeting

Council can choose to defer the decision to the November 23rd, 2020 Council meeting in order to have additional time to consider the options presented.

FINANCIAL IMPLICATIONS:

OPTION 1 - Appointment Option

Option 1(a) and (b):

The cost to appoint the third place Candidate (Option 1(a)) or a qualified elector (Option 1(b)) would be relatively low with the majority of costs being staff time for orientation

purposes. There would be no direct election costs for this option such as advertising. This would be the most time efficient method.

Option 1(c):

There would be slightly higher cost if Council decides to appoint by application (Option 1(c)), with the main expense being for advertising which is estimated to be less than \$1000. There would be no direct election costs other than advertising for an application approach. This would be the second fastest option.

The majority of the costs for options 1(a), (b) or (c) would be absorbed within the current budget.

OPTION 2 - By-Election Option

Option 2:

The estimated cost to run a by-election would be approximately \$25,000 to \$30,000. The Township does have an election reserve, which is funded through the tax base at an annual amount of \$36,500. However, this election reserve is intended to finance the regular election held every four years. In the case of a by-election, the funding would come from the Contingency Reserve.

INTER-DEPARTMENTAL COMMENTS:

This report has been reviewed by the Treasurer/Director of Finance and CAO.

CONCLUSION:

Direction must be given regarding the method to be used to fill the vacancy of the Office for one (1) of the Councillor Positions for Ward 2.

For the purposes of the recommendation, Council will need to present a motion to fill the vacancy by selecting one of the following:


- Option 1(a)** - Appointment of the Third Place Candidate (Shelley Ann Bradaric)
- Option 1(b)** - Appointment of a Qualified Elector
- Option 1(c)** - Appointment by Call for Applications
- Option 2** - Direct Clerk to Conduct a By-Election
- Option 3** - Defer Decision to the November 23rd, 2020 Council Meeting

Prepared & Submitted by:



Joanne Scime, Clerk

Approved by:



Bev Hendry, CAO