

**DATE:** July 15, 2024

**REPORT NO:** C-02-2024

**SUBJECT:** Options relating to filling the vacancy of the Office for one (1) Councillor position for Ward Three (3)

**CONTACT:** Justin Paylove, Acting Director of Legislative Services/Clerk

**OVERVIEW:**

This report will provide information to Members of Council regarding options for filling the vacancy of the Office for one (1) Councillor position for Ward Three (3).

**RECOMMENDATION:**

1. That Report No. C-02-2024 titled, "Options relating to filling the vacancy of the Office for one (1) Councillor position for Ward Three (3)", dated July 15, 2024, be received; and
2. That the Clerk be given direction that the vacancy of the Office for one (1) Councillor position for Ward Three (3) for the remainder of the 2022-2026 term of Council be filled through option # \_\_\_\_\_, as detailed herein.

**ALIGNMENT TO STRATEGIC PLAN:**

Theme # N/A

**BACKGROUND:**

Councillor Terry Bell vacated his seat on Tuesday May 28, 2024.

Subsequently, at the next meeting of Council on Monday, June 24, 2024, Council adopted the following resolution:

1. That, the Office for one (1) Councillor position, for Ward Three (3) (Smithville) 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 Three (3) in the Township of West Lincoln was declared vacant on June 24, 2024.

The *Municipal Act* further states in Section 263(5) that Council has no more than 60 days (by August 23, 2024) 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).

### **Historical Experience in West Lincoln:**

The Township of West Lincoln has had Council vacancies before:

- 1997 – Due to the death of Ward One (1) Councillor - Edward Beres; and,
- 2010 – Resignation of Ward Three (3) Councillor - Joe Maloney - Immediately following the municipal election of that year; and,
- 2016 – Resignation of Ward Three Councillor, Alex Micallef; and

- 2020 – Resignation of Ward Two Councillor, Christopher Coady

In August of 1997, as the result of the death of Alderman Edward Beres, Ward one (1) Councillor, Council directed the Clerk to take the appropriate action to advertise for applicants for the position of Ward one (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 vacancy on West Lincoln Township Council for the remainder of the 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 three (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 three (3) following approximately 16 months serving on Council was accepted with regret. Following much discussion at the April 25, 2016 Council meeting, a motion was carried that the vacancy for the Office for one (1) Councillor Position for Ward three (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. Cheryl Ganann received the highest number of votes between four candidates that ran in the by-election.

On October 26, 2020, the resignation submitted by Councillor Christopher Coady as Councillor for Ward two (2), following approximately two years of serving on Council, was accepted with regret. Following discussions held on November 16, 2020 at the Administration/Finance/Fire Committee Meeting, it was decided that an appointment would be most appropriate, as the Niagara Region had the orange “restrict” level of COVID-19 pandemic measures in place at the time, which imposed operating limitations on restaurants, bars, sports and recreation facilities and meeting places. It was decided that the runner up, Shelley Ann Bradaric, would be the most logical choice of appointees as she was within 50 votes of the successful candidate.

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 the vacancy;
- Progression and time remaining in the term of Council;
- Transparency, fairness and public participation relative to the selected process; and
- The impacts on financial and staff resources.

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 is not disqualified from holding office under the *Municipal Act*, 2001 or any other Act.

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

In the past and as noted above, Council has appointed an individual to fill a Council vacancy using two different approaches:

In 1997, an advertisement calling for applications was published, resulting in five applications being received. From the five applications received, Council decided on Ms. Mary Braico to fill the vacancy of Ward one (1) Alderman for the remainder of the term of Council.

For the second approach, which was the method used in 2010 and 2020, Council chose to appoint the candidate with the next highest vote total in the ward. Immediately following the 2010 municipal election, the elected member of Council for a Ward three (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. In 2020, this approach was chosen after considering the restrictions and guidance from the Niagara Region regarding the COVID-19 pandemic.

A potential third option, not tried within the recent history of the Township, is the nomination of an individual(s) by Council among qualified electors, with the majority of Council votes appointing to the position of Ward three (3) Councillor.

If Council chooses to consider appointing one of the candidates who ran for this position in the 2022 election, the person must be approached to determine if they would consent to the appointment and to determine if they are still eligible and qualified.

The results for the candidates who ran for the Ward three (3) Councillor position in the 2022 Municipal Election and were not elected (in descending order of number of votes) is as follows:

Results – Ward 3:

Mark Wanders	693 votes
Clarence Vanderhout	525 votes

As noted above, Mr. Mark Wanders, who ran in the 2022 Municipal Election and received 693 votes, had the next highest number of votes behind Terry Bell, who received 1671

votes and William Reilly, who received 1938 votes, both of whom were elected to the two available Ward three (3) Councillor positions following the election.

### **OPTION 2 – Fill Vacancy by Holding a By-Election**

The process to fill a vacancy via by-election is prescribed by the *Municipal Elections Act*. In summation, a by-election is to be conducted following the same rules as a regular election, with the exception of some unique time frames and deadlines.

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 no later than by August 23, 2024. If Council chooses to hold a by-election, staff recommend that a by-law be presented for adoption at the Council (All Committees) meeting on Monday, August 12, 2024, in order to provide staff adequate time to prepare for the by-election. Providing staff as much time as possible under the *Municipal Elections Act* to conduct a by-election is preferable, as the Clerk's Department must coordinate the election while still completing their regular work tasks, like supporting the administration of Council and Committee meetings. This is different than during a full election, as Council and Committee meetings are often reduced or cancelled entirely during the election and pre-election periods.

#### **Proposed Timelines for Holding a By-Election: (if a by-law is adopted at the Council (All Committees) Meeting on August 12, 2024)**

Monday, June 24, 2024	Declaration of vacancy
Monday, August 12, 2024	Adopt a by-law to conduct a by-election
Tuesday, August 13, 2024	Nomination Period Begins
Friday, September 20, 2024 @ 2 p.m.	Nomination Day; Nomination Period Ends
Monday, November 4, 2024	Voting Day

### **FINANCIAL IMPLICATIONS:**

#### **OPTION 1 - Appointment Option**

Option 1(a):

There would be a slight cost if Council decides to appoint by application (Option 1(a)), with the main expense being for advertising, which is estimated to be less than \$1,000. There would be no direct election costs other than advertising.

Option 1(b) and (c):

The cost to appoint the third place Candidate (Option 1(b)) or a qualified elector (Option 1(c)) 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. This would be the most resource-efficient method.

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

**OPTION 2 - By-Election Option**

The estimated cost to run a by-election would be approximately \$25,000 to \$30,000. This includes the hard costs of equipment, supplies, advertising, etc. as well as soft costs such as labour. The Township does have an election reserve, which is funded through the tax base at an annual amount of \$36,000. This election reserve is intended to be used to fund the regular election which is held every four years. The current balance in the election reserve is \$81,285. If the current allocation of \$36,000 is made in 2025 and 2026 the balance in the reserve for the 2026 election would be \$153,285. The 2022 election costs were approximately \$144,000, indicating that there will be sufficient funds in the election reserve to fund the regular election in 2026. In the case of a by-election, staff would recommend that a transfer from the contingency reserve be used to fund the costs.

**INTER-DEPARTMENTAL COMMENTS:**

This report has been reviewed by the Interim Chief Administrative Officer/Treasurer.

**CONCLUSION:**

Direction must be given to staff regarding the method Council wishes to utilize to fill the vacancy of the Office for one (1) of the Councillor positions for Ward three (3).

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

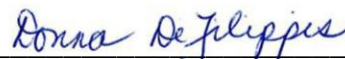
- Option 1(a)** - Appointment by Call for Applications
- Option 1(b)** - Appointment of the Third Place Candidate
- Option 1(c)** - Appointment of a Qualified Elector
- Option 2** - Direct Clerk to Conduct a By-Election
- Option 3** - Defer Decision to the August 12, 2024 Council Meeting

**Prepared & Submitted by:**

**Approved by:**



Justin Paylove, Clerk



Donna DeFilippis, CAO