

COMMUNICATION 132021

Received From: Stacey Blair, Clerk
Addressed To: Committee of the Whole
Date: February 9, 2021
Topic: 2021 Council Vacancy

SUMMARY

On January 26, 2021, the office of a member of Council was declared vacant due to the sudden and unfortunate passing of Councillor Theresa Fritz.

The next election will take place on October 24th, 2022. As this date is more than 90 days from the date of the declared vacancy, Council must choose how to fill the vacant seat for the remainder of the term. The Act provides Council with two (2) options with respect to filling Council vacancies:

263(1) Filling Vacancies – *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. 2001, c. 25, s. 263 (1).*

263(5) Rules applying to filling vacancies – *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).*

March 27th, 2021 is sixty (60) days from the date of the vacancy declaration. Council must either appoint someone to the position or pass a by-law to hold a By-Election before that date.

Past Practice

The Town of Carleton Place has experienced Council vacancies previously.

- In 1981, Allan Doucett was replaced by first-place runner up Jeff Montreuil (1980-1982 term)
- In 1984, Allan McDougall was replaced by first-place runner up Allan Code (1982-1985 term)
- In 1995, Bob Bryce was replaced by second-place runner up Brian Turner on January 26th of 1996 (1994-1997 term)

For the vacancy that occurred in 1995, although Brian Turner was the second runner up in the 1994 election for the position of Councillor, he was offered the position as the first-place candidate had moved to Toronto and was no longer able to take the position. This was confirmed with the Town's former Clerk.

The above history demonstrates that the Town's past practice has been to fill the vacant seat with the next runner up from the most recent election.

The following is a summary of the 2018 election results pertaining specifically to the race of Councillor:

Finish	Candidate	Total Votes
1	FRITZ, Theresa	2,440
2	TENNANT, Andrew	1991
3	SECCASPINA, Linda	1829

4	RANDELL, Toby	1799
5	ATKINSON, Jeff	1687
6	PARSONS, Wes	1640
7	KWISSA, Tracy	1325
8	ROGERS, Jennifer	1320
9	McCULLOCH, Kyle	1142
10	DeBAIE, Jamie	1091
11	VILLA, Paolo	1042
12	GERBAC, Carolyn	989
13	PIPER, Mark	405

Options Available to Fill the Vacancy:

As noted above, Council has two options available under the Act to fill the vacancy, with varying alternatives for appointment options. Each option has been analyzed for Council's consideration. A third option is also included for consideration.

Option 1: Appointment (three appointment alternatives are outlined)

Option 2: By-Election

DISCUSSION

Appointment Process – Discussion of Options

The Act does not set out any requirements relating to the appointment of an individual to fill a council vacancy beyond those relating to the qualifications that are required to run for municipal office.

In order to be considered for appointment, individuals must meet the following qualifications, as outlined in the Municipal Elections Act (MEA):

- Reside in or be owner/tenant of land in the municipality, or spouse thereof
- Canadian Citizen
- At least 18 years of age
- Not be prohibited from voting under section 17(3) of MEA or otherwise by law.

Council is advised that an appointee cannot be one who is disqualified from holding office by this or any other Act.

Option #1(a) – Appointment from Municipal Election Candidates:

According to the certified 2018 election results, the 6th place candidate is Wes Parsons. Should Council opt to consider appointment of the 6th place candidate from this most recent election, the Clerk would seek written confirmation of qualifications and determine if Mr. Parsons has an interest in accepting the appointment. This process could result in an Oath of Office being administered as soon as February 23rd, 2021.

It should be noted that if the 6th place candidate is not eligible or does not choose to accept this appointment, then the Clerk will contact the next candidate on the list in order of the 2018 election results until a candidate that is eligible accepts the appointment.

Option #1(a) Timeline – Appointment of Next Candidate with the Most Votes:		
January 26, 2021	Regular Council	Declare Councillor Seat Vacant
February 9, 2021	Regular Council	Recommend Filling Vacancy with Option 1(a), Appointment of 6 th Place Candidate
February 10, 2021	Clerk	Contact Wes Parsons, 6 th Place Candidate; Confirm Eligibility; Complete Necessary Paperwork
February 23, 2021	Regular Council	Presentation of By-law to Appoint New Councillor and New Councillor Takes Oath of Office

Option #1(b) – Appointment by Call for Applications:

Because the Act does not prescribe an appointment process to fill a council vacancy, Council may approve an appointment process which would permit interested, eligible persons to submit an application for appointment to Council. The call for applications would be placed in the local newspaper and on the Town’s website. The process would include an application, declaration of qualifications, and if approved by Council, inclusion of a public meeting component to allow deputations from the applicants. This method of appointment has been used in various Ontario municipalities to fill a council vacancy, including the Municipality of Mississippi Mills.

Option #1(b) Timeline – Appointment by Application:		
January 26, 2021	Regular Council	Declare Councillor Seat Vacant
February 9, 2021	Regular Council	Recommend Filling Vacancy with Option 1(b), Appointment by Application Process
February 23, 2021	Regular Council	Adoption of Council Vacancy Appointment Policy
February 25, 2021	Clerk	Initiate Notice for Application for Appointment Newspaper Ad Date: March 1 and 8, 2021
March 1, 2021	Clerk	Applications Due to Clerk
March 16, 2021	Special Council	Applicant Deputations to Council
March 27, 2021	Regular Council	Presentation of By-law to Appoint New Councillor and New Councillor Takes Oath of Office

Option #1(c) – Direct Appointment by Council:

As previously noted, the Act does not prescribe an appointment process. Council could appoint an eligible individual without an application process and without referencing recent election results. In the opinion of the Clerk, this option would represent the least favourable option in terms of transparency and democracy. This method, although available, is not recommended.

Option #1(c) Timeline – Appointment by Council:		
January 26, 2021	Regular Council	Declare Councillor Seat Vacant Recommend Filling Vacancy with Option 1(a), Appointment of sixth Place Candidate
February 9, 2021	Regular Council	
February 10, 2021	Clerk	Contact Council Nominee; Confirm Eligibility; Complete Necessary Paperwork
February 23, 2021	Regular Council	Presentation of By-law to Appoint New Councillor and New Councillor Takes Oath of Office

Option #2 - By-Election:

Council has the option of filling the vacancy by directing that a By-Election be conducted. In accordance with Section 263(5) of the Municipal Act, a By-law must be enacted within sixty (60) days after the seat is declared vacant. After the enactment of a By-Election By-law, Nomination Day must be not less than 30 days and not more than 60 days thereafter. Voting Day shall then be 45 days after Nomination Day.

By-Elections are a costly and lengthy process. Due to COVID, extra measures would be required to protect the health and safety of election workers, candidates, and electors alike.

Considerations for Conducting a By-Election:

Subsection 11(2) of the MEA provides that the Clerk’s responsibility for conducting an election includes the following:

Duties of Clerk

*(a) preparing for the election;
(b) preparing for and conducting a recount in the election;
(c) maintaining peace and order in connection with the election; and in a regular election, preparing and submitting the report described in subsection 12.1(2) [relating to the identification, removal and prevention of barriers that affect electors and candidates with disabilities].*

Section 12 of the MEA allows the Clerk to provide for any matter or procedure that is not otherwise provided for in an Act or regulation, and that is, in the Clerk's opinion, "necessary or desirable" for conducting the election, as follows:

Powers of Clerk

*12(1) A Clerk who is responsible for conducting an election may provide for any matter or procedure that,
(a) is not otherwise provided for in an Act or regulation; and
(b) in the Clerk's opinion, is necessary or desirable for conducting the election.*

Additionally, Section 53 of the MEA authorizes the Clerk to declare an emergency when circumstances have arisen that are likely to prevent the election from being conducted in accordance with the MEA, and further allows the Clerk to make arrangements that (s)he considers advisable for conduct of the election, as follows:

Emergency

53(1) The Clerk may declare an emergency if he or she is of the opinion that circumstances have arisen that are likely to prevent the election being conducted in accordance with this Act.

Given the current pandemic, this method presents the most challenges in terms of ensuring the health and safety of all stakeholders.

FINANCIAL IMPLICATIONS

Option 1(a) – Appointment of 6th Place Candidate or Qualified Elector
– Costs would relate mainly to staff time for orientation purposes. No direct election costs for this option; no advertising costs; most time efficient method.

Option 1(b) – Appointment by Application: Main expense will be advertising, estimated at \$300 maximum. No direct election costs other than advertising for applications. Second fastest option.

Option 1(c) – Costs would relate mainly to staff time for orientation purposes. No direct election costs for this option; no advertising costs; most time efficient method.

Option 2 – By-Election is estimated at \$20,000 plus costs related to staffing/overtime. The Election Reserve would accommodate this expense, however, would impact negatively on the 2022 Election Budget.

Alternatives Reviewed:

Council can choose to appoint from the 2018 Election Candidates, appoint through application, appoint a qualified elector, or direct the Clerk to conduct a By- Election. 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 6th Place 2018 Candidates – Recommended

Option 1(b) – Appointment by Call for Applications

Option 1(c) – Direct Appointment by Council

Option 2 – Direct Clerk to Conduct a By-Election

Consultation:

In the preparation of this report, the Clerk consulted with the local Ministry of Municipal Affairs and Housing Policy Advisor, the Town's former Clerk as well as Town Solicitor.

RECOMMENDATION:

THAT Council approves Option 1(a) of the Clerk's report dated February 9, 2021 and directs the Clerk to contact the next eligible candidate for the position of Councillor from the 2018 municipal election, subject to acceptance.