

TOWN OF GRANBY

Board of Trustees

MEETING DATE: JULY 14, 2020

Consent Agenda

Resolution or Ordinance

Citizen Requests

Public Hearing

Committee/Staff Reports:

TOWN CLERK

FINANCE DIRECTOR

BUILDINGS AND STREETS

ECONOMIC DEVELOPMENT

PUBLIC SAFETY

RECREATION

WATER DEPARTMENTS

MAYOR

TOWN MANAGER

TOWN ATTORNEY

Other

Executive Session

Workshop

TIME OF AGENDA ITEM: 8:50 PM

Agenda Request No. 14

MEETING TO BE HELD AT:

Town Hall, Zero Jasper Avenue

Granby, CO 80446

(14) DISCUSSION ITEM - TRUSTEE AND MAYOR VACANCIES

8:50 PM



KROBLAW OFFICE, LLC
Attorneys at Law

MEMORANDUM

To: Granby Mayor and Trustees

From: Scotty P. Krobl

Date: July 6, 2020

Re: Filling of vacancies of Trustees and Mayor

Granby staff have asked that I address the issue of the options and timing available to the BOT in connection with trustee and mayoral vacancies. The process and options are the same whether the BOT is looking at a trustee vacancy or a mayoral vacancy.

These issues are governed primarily by the Colorado Revised Statutes in Title 31:

1. Section 31-4-303 provides, in relevant part:

The board of trustees has the power, by appointment, to fill all vacancies in the board or any other office, and the person so appointed shall hold his office until the next regular election and until his successor is elected and has complied with section 31-4-401.

The statute goes on to provide:

The board also has the power to fill a vacancy in the board or in any other elective office of the town by ordering an election to fill the vacancy until the next regular election and until a successor has been elected and has complied with Section 31-4-401...

And finally the statute governing vacancies states:

If a vacancy in the board or in such other elective office is not filled by appointment or an election is not ordered within sixty days after the vacancy occurs, the board shall order an election...to be held as soon as practicable to fill the vacancy until the next regular election and until a successor has been elected and has complied with section 31-4-401...

However, the statutes governing municipal elections, particularly Section 31-10-108 provides:

No special election shall be held within the ninety days preceding a regular election.

Since the Granby municipal election is scheduled for November 3, 2020, no special election may be held after August 3, 2020.

These provisions lead to the following conclusions:

1. If an elected official resigned before June 4, 2020, then BOT must appoint or set an election.
2. If official resigns after June 4, 2020 then the BOT:
 - a. Can appoint if it does so within 60 days
 - b. Can set a special election, so long as the election is held before August 3, 2020
 - c. If the BOT does not appoint or set an election within 60 days of the date of resignation, then the Town would have to wait and fill the vacancy by election at the regular election on November 3, 2020.

Another issue raised by staff was (1) whether the Mayor Pro Tem or another Trustee could be appointed as Mayor and, if so, whether they would have to vacate their position as Mayor Pro Tem or Trustee. If the Mayor Pro Tem or another Trustee was appointed by the BOT as the Mayor (1) that person would have to relinquish their position as Mayor Pro Tem or Trustee, and (2) the appointment would end with the November 2020 election.

Finally, staff have asked whether the Mayor Pro Tem can perform the duties of Mayor and still retain her position as Mayor Pro Tem. The authority of mayor pro tem, is provided for in Section 31-4-401:

...the board shall choose one of the trustees as mayor pro tem who, in the absence of the mayor from any meeting of said board or during the mayor's absence from the town or his inability to act, shall perform the mayor's duties...

Based on these statutes, the mayor pro tem can remain the mayor pro tem and perform all the duties the mayor would perform until the new mayor is appointed or elected. Once the new mayor is appointed or elected (assuming it is not the mayor pro tem) the mayor pro tem would continue in her position as mayor pro tem/trustee and would not lose her position.

It is my understanding that Trustee Johnson resigned effective July 1, 2020 and that it is possible that Mayor Chavoustie may resign effective July 31, 2020. Using these specific dates, the options available to the BOT are:

1. Appointment someone to fill either or both positions. If the BOT wants to do so, it must exercise this option on or before 60 days of the date of resignation (September 1 and September 30, respectively).
2. Set special election. The date of the election would have to be on or before August 3, 2020. This may present a problematic timeframe for the municipal clerk.
3. Wait until the November 3, 2020 election. If the BOT has not appointed a replacement on or before August 3, 2020, then the time to appoint will have expired and there is not sufficient time to hold a special election. Therefore, the vacancies could not be filled except at the regular November 3, 2020 election.

At the November 3, 2020 election a new mayor will need to be elected, regardless of whether one is appointed in the interim.

One additional note: The mayor moving out of Town does not automatically require his resignation and he could be permitted to continue to serve and complete his term if the mayor was willing to do so and a majority of the BOT supported that decision. The statute governing appointment of planning commission members provides that if a planning commissioner moves out of Town they are automatically disqualified from continuing to be on planning commission. There is no similar statute immediately disqualifying a trustee or mayor if they move out of town. The statutes do provide a mechanism that allows the BOT to give notice to the mayor or trustee and after a hearing to vote that by moving outside town they can no longer serve, but if no such vote occurs then the trustee or mayor can be permitted to continue to serve until the end of their term. This situation has occurred where, for example, a trustee or mayor temporarily moves out of town, with the intent of returning, or where the move occurs near the end of the mayor's or trustees term and the consensus is that they should be permitted to complete matters they were working on and finish the term. As always, I am not suggesting whether the BOT should or should not pursue a particular path, but merely want to be sure the BOT fully understands the available options.

I will be glad to address any further questions the BOT may have on this issue.