

THE MUNICIPALITY OF LAMBTON SHORES

Report CL 24-2024

Council Meeting Date: December 3, 2024

TO: Mayor Cook and Members of Council
FROM: Stephanie Troyer-Boyd, Director of Corporate Services
RE: Pinehill Cemetery

RECOMMENDATION:

THAT Report CL 24-2024 "Pinehill Cemetery" be received; and

THAT staff proceed with negotiations with the United Church of Canada for the mutual transfer of the Pinehill Cemetery; and

THAT draft 2025 include an additional \$ 71,000 for expenses relating to the operation of the Pinehill Cemetery.

SUMMARY

The purpose of this report is to present Council with information with respect to the continued operation of the Pinehill Cemetery.

BACKGROUND

On October 22, 2024, Council received a presentation by the community requesting that the municipality assume the operation of the Pinehill Cemetery. Council passed the following resolution after the presentation:

THAT it is Council's intent not to close Pinehill Cemetery, and

THAT staff prepare a report to transfer ownership by mutual consent.

The Pinehill Cemetery is owned by the United Church of Canada (UCC). It is not owned by the nonoperational board or the Trustees of the Thedford United Church.

The Pinehill Cemetery can only be officially "closed" if it is declared inactive by the United Church of Canada or deemed abandoned by the Superior Court. The municipality lacks the authority to close the cemetery.

This report will provide Council with various options to consider with respect to the Pinehill Cemetery. The report will inform council of their obligations regarding cemeteries as outlined in the *Funeral, Burial, Cremation Services Act 2002* (FBCSA).

Pursuant to subsection 101.1 (1) of the *FBCSA*, a cemetery may be transferred or declared abandoned by application to the Superior Court of Justice, if the owner of the cemetery:

- a) Cannot be found
- b) Is unable to maintain it, or
- c) Is not a licensed operator and there is no licensed operator for the cemetery.

An application to the Superior Court of Justice may be made by the Crown, the local municipality, the owner or operator, or the Registrar, *FBCSA*, Ministry of Government and Consumer Services.

If an application to the Superior Court of Justice proceeds, the following steps would be taken:

- The municipality would be responsible for the cost of an abandonment application, unless the cemetery is not declared to be abandoned by the judge, in which case the owner of the cemetery is responsible for the cost of the application
- The municipality is responsible for the cost of a survey of the land involved and the maintenance of the cemetery during the application
- A judge to whom an application is made, upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery to be abandoned
- Upon declaration that a cemetery is abandoned, the judge will convey the cemetery and the land on which the cemetery is situated to the municipality
- Once the declaration/order is registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations with respect to the cemetery, and the assets, trust funds and trust accounts related thereto, that the previous owner had.
- The process for the transfer of the site to the Municipality also includes the transfer of any Care and Maintenance Funds or Accounts that cemetery operator may have had.

It is unlikely that an application to the Superior Court of Justice to abandon the cemetery would be approved since none of the three instances in subsection 101.1 (1) are applicable to this situation.

Staff understand that the board of Pinehill Cemetery has resigned, leading to a pause in cemetery operations until a decision is made about its future. This decision should be undertaken by the cemetery's owner, The United Church of Canada. The United Church of Canada (UCC) intends to wait for community efforts aimed at ensuring the cemetery's continued operation—whether through municipal management or by forming a new board—before proceeding with any action regarding their property.

Stakeholders, including the United Church of Canada, the Bereavement Authority of Ontario (BAO), the inactive Cemetery Board, and the community, appear in favor of

the municipality assuming operation of the cemetery as a practical approach for maintaining its activity. Through discussions with the United Church of Canada, they have identified three potential options for the Pinehill Cemetery:

- 1) Mutual Transfer: An agreement to transfer ownership to Lambton Shores.
- 2) Community Engagement: Continue discussions with the community group to establish a new cemetery board.
- 3) Declaration of Inactivity: Declare the cemetery inactive and transfer it to the municipality under this status.

United Church of Canada Options

1) Mutual Transfer - The Bereavement Authority of Ontario (BAO) has indicated that the municipality has no obligation to accept an active cemetery. As indicated earlier in this report, The Funeral, Burial and Cremation Services Act, 2002 (FBCSA) and associated Ontario Regulations specifically Ontario Regulation 30/11, require that an abandoned cemetery become the responsibility of the local municipality. An abandoned cemetery is one that is not active (not new plot sales) and the requirement would be to maintain the cemetery property and honour any existing interment rights.

The BAO encourages the transfer to, and acceptance of, the responsibility related to a cemetery but advises it is solely the decision of the municipality. A municipality may voluntarily accept responsibility for the cemetery that is not in compliance with the legislation and may arrange to have the land on which the cemetery is situated deeded/transferred to the municipality. Staff have no reason to believe the Pinehill Cemetery is not in compliance with legislation.

If Council wishes to operate an additional cemetery, the process to transfer by mutual consent has been developed by the BAO. The transfer will involve three considerations that will need to be transferred to the municipality: a) the cemetery license b) finances (both operating and care and maintenance fund) c) the property.

The BAO has developed a form to ease the processing of transferring a cemetery from one licensed operator to another. The Transfer by Mutual Consent form (attached) not only provides acceptance of the transfer by both parties but addresses key issues that should be discussed and determined as part of the transfer process. The BAO states that ideally with the cemetery administration being transferred, the land should also be transferred to the Municipality. As land transfers can take a bit to process, the BAO assures that the cemetery site licence transfer can be completed ahead of the land transfer. Despite this assurance from the BAO, staff would not advise taking over operations of the cemetery in advance of a land transfer. Staff have not discussed the land transfer with the United Church of Canada but expect that it is their intention that the municipality would accept the transfer of the property as well. The BAO has provided the Application to Transfer a Care & Maintenance Fund which would involve the Financial Compliance Division of the BAO who will assist with the fund transfer including obtaining Registrar's Consent to move the funds.

Alongside any formal transfer of Pinehill Cemetery, it will be necessary to adopt an updated cemetery by-law to ensure consistency with the other municipal cemeteries in Lambton Shores. It's important for both Council and the community to understand that Pinehill Cemetery will be aligned with the existing standards of Lambton Shores cemeteries, encompassing aspects like pricing and maintenance standards. As it is staff's understanding that the Pinehill Cemetery board has disbanded, we trust there would be no opportunity for a rush of lot sales at a cheaper price before the municipality assumes operations.

2) Community Engagement – Both the United Church of Canada and municipal staff acknowledge that cemetery operations could continue seamlessly with a functioning board in place. The UCC has been approached by a community group to establish a new board for overseeing Pinehill Cemetery's operations. Given the community's strong support for the cemetery, it is reasonable to anticipate that sufficient interest exists to form such a board. The municipality would not be involved should this option be pursued.

Additionally, the municipality is capable of providing financial support to private cemeteries within its jurisdiction. Although there is currently no formal policy, the municipality already offers annual funding to one privately operated cemetery. There are multiple examples of formal Cemetery Grant Programs among Ontario municipalities, and Council could consider directing staff to create a similar program. This would provide financial assistance to private cemeteries, enabling them to sustain operations with reduced financial pressure while maintaining their autonomy. Implementing a municipal funding program would be more cost-effective for taxpayers than directly assuming responsibility for any cemetery.

3) Declaration of Inactivity – Staff anticipate that this option will be pursued by the UCC if the previous two options are unsuccessful. This approach resembles the transfer by mutual consent, but without the sale of additional lots. The municipality would assume responsibility for maintaining the property and fulfilling any existing interment rights. This method is the most common way to transfer a cemetery to municipal control. The UCC has expressed a preference to avoid applying to the Superior Court of Justice and would rather proceed with a straightforward transfer of the inactive cemetery to the municipality if the preceding alternatives do not materialize.

Council does have the authority to ensure the continued operation of Pinehill Cemetery as an active cemetery by assuming its management. Alternatively, the community can maintain operations by establishing a new board, similar to the former operational model. Both paths offer viable means to keep the cemetery active.

ALTERNATIVES TO CONSIDER

Mutual Transfer – Council may consider proceeding with the transfer of Pinehill Cemetery as an active site through the mutual consent transfer process. Acquiring an active cemetery would introduce approximately 600 sellable lots but also entail significant one-time and ongoing operational expenses. The existing municipal

cemeteries already boast ample available lots, with Beechwood offering approximately 2,250 and Arkona about 500. Managing an additional cemetery would require substantial administrative resources, and our current workforce lacks the capacity to maintain this property. It is important to note for Council that the Pinery Cemetery on Klondyke Road is a joint venture between Lambton Shores and South Huron, currently administered by a board without impacting the municipal budget annually. Additionally, there are three other privately operated cemeteries within the municipality that may have an interest in the implications of this decision.

Pros: continued operation to satisfaction of community

Cons: significant upfront and ongoing operational costs, current workforce capacity is insufficient to manage additional properties, existing municipal cemeteries already have a substantial number of sellable lots, community will see a change in operations and flexibility

Consideration: If community support is prioritized, this solution is acceptable. However, Council should be aware that the need for increased resources and budget implications pose significant challenges.

Community Engagement – This option available to the UCC does not involve the municipality. However, as previously suggested in this report, it stands as a viable alternative for the UCC. Should the Council decide against a mutual consent transfer, this would be the UCC's subsequent step. In such an event, Council could consider establishing a formal cemetery grant program. This approach is commonly adopted by municipalities to facilitate the continued private operation of local cemeteries.

Pros: Avoids significant municipal operational burden and expense, establishment of a cemetery grant program can provide structured support without direct oversight, continued operation to satisfaction of community

Consideration: Ideal if the goal is to continue operation and satisfy community, enabling grant support aligns with fostering community-based solutions.

Declaration of Inactivity – This is the final option under consideration by the UCC. Should this option be pursued, the municipality would incur costs related to ongoing maintenance of the cemetery, as well as administrative expenses for recordkeeping and arranging interments.

Pros: Lower immediate operational costs compared to taking over an active cemetery, avoids immediate workforce strain

Cons: Continues to incur maintenance expenses covered by tax levy, limited by funding through CMF interest only, requires budget adjustments, interments limited to existing interment rights

Consideration: Suitable if the focus is minimizing immediate operational burden, despite an increase in tax-funded expenses.

RECOMMENDED ACTIONS

Given the options and considerations, staff's recommendation should be strategically aligned with budget constraints, operational capacity, and long-term management efficiency. Based on Council's response to the community presentation, staff believe

that the importance of financial implications and operational capacity is outweighed by the priority given to community satisfaction.

FINANCIAL IMPACT

Mutual Transfer – Choosing the option of transfer by mutual consent involves the highest costs among the three options we've considered. Due to insufficient workforce capacity for managing an additional cemetery, staff would need to hire a part-time employee. This role would focus on the collection and integration of all cemetery records into our current software system and managing cemetery operations. The associated cost for this position is estimated at \$40,000. The duration for the initial setup is unknown at this time, and it's uncertain whether this position will remain necessary after the completion of this phase. Staff will evaluate the continued need for this role after one year.

Additional costs include one-time expenses of about \$ 8,000 for software purchases and \$ 5,000 for legal expenses. Ongoing expenses related to assuming control over an active cemetery include grounds and marker maintenance, in addition to increased staffing workloads, which are not currently accounted for within the budget. Presently, there is a \$ 32,000 operational shortfall for cemetery operations, funded by the tax levy. Looking ahead to 2025, it is anticipated that \$ 48,000 will need to be allocated from taxes to support all three cemeteries, in addition to the \$53,000 in one-time costs.

Community Engagement - This option would not impose any financial impact on the municipality unless Council decides to implement a Cemetery Grant Program.

Declaration of Inactivity - Transferring the cemetery as inactive will also have an impact on the tax levy. The ongoing costs for managing an inactive cemetery would include grounds and marker maintenance, as well as additional staffing resources. These expenses are not currently budgeted. Currently, there is a \$ 32,000 operational shortfall in cemetery operations, which is covered by the tax levy. Staff estimate that in 2025, \$ 48,000 will need to be provided through taxes for all three cemeteries. Additionally, one-time legal fees for this transfer are expected to be around \$ 5,000.

Council should be aware that it is a common misconception that the Care and Maintenance Fund (CMF) is adequate to cover all cemetery maintenance costs. Legislation restricts access to the principal amount of the CMF, only allowing the interest earned from this fund to be used for ongoing maintenance of the cemetery.

CONSULTATION

Steve McAuley, CAO

Ashley Farr, Director of Community Services

Janet Ferguson, Director of Financial Services

Rev. Mark Laird, Executive Minister, Antler River Watershed Regional Council