



# Board of Commissioners Meeting Agenda Item Submittal

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Item To Be Considered: **Discussion of Filling a Vacancy on the Board of Commissioners**

Board Meeting Date: **February 11, 2025**

Prepared By: **Jon Barlow – Town Manager and Francis Rasberry – Town Attorney**

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**Overview:** On January 28, 2025, Bill Justice was appointed as mayor to serve until the next municipal election in November 2025, leaving his previous commissioner seat vacant with nearly three years remaining. Conflicting rules in the Town Charter and North Carolina General Statutes create uncertainty about whether the appointed replacement will serve the full remaining term or only until the next election, requiring the Board to decide which law to follow.

**Expanded Overview:** Mr. Justice was serving a 4-year term expiring in November 2027. As a result of his appointment, there is about 3 years left on his unexpired term. Unfortunately, the process to fill Mr. Justice’s term is not straight forward. Upon review of the Town Charter and NC General Statutes there are inconsistencies between the laws.

NCGS 160A-63, *Vacancies*, provides that, if the term of the vacated office expires either following the next regular election, or if the next regular election is within 90 days after the vacancy occurs, the Board-appointed replacement serves the remainder of the unexpired term. In other words, if the office expires within 2 years or less, or if the next election is just around the corner, the appointed replacement serves the remainder of the vacated office’s term, being a relatively short period of time. Otherwise, and **specifically when the vacated office has two or more years remaining in the term, the appointed replacement serves only until the next election, and the successor elected at that election serves the remainder of the term of the vacated office, i.e., two years.**

Regarding the filling of vacancies, The **Town Charter provides otherwise.** *Section 3.3 (C), Vacancies*, of the Charter provides that, if a vacancy occurs in the office of commissioner, the board **“shall by majority vote... appoint a qualified person to fill the same for the remainder of the unexpired term.”** The Charter ostensibly allows the BOC appointee to serve the full remaining term, making no distinction between filling the seat expiring in less than two years, and one that may have nearly four years before expiration.

There is a remedy to help resolve when there is a conflict as one described above. **NCGS 160A-3, General Laws Supplementary to Charter**, sets forth rules for reconciling conflicts, inconsistencies, or overlaps between Town charter law and general law. This statute is extremely tedious and challenging to apply. However the most-applicable section provides: “(a) When a procedure that purports to prescribe all acts necessary for the ..... execution of any... power, duty, (or) function...

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**Action:** \_\_\_\_\_  
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is provided by both general law and a city charter, the **two procedures may be used as alternatives, and a city may elect to follow either one.**”

In the event the Board chooses to follow the Charter, then the process is fairly straight forward. The person appointed would fill the remaining balance of time on Mr. Justices term. If the General Statute is followed then the appointee only serves until the next election in November 2025 and may seek reelection (special election) for the remaining two years of the original 4-year term or a seat for one of the three seats that are up for reelection in November 2025.

**Background Attachment(s):** None

**Recommended Action:** Due to the inconsistencies between the Town Charter and the NCGS a determination of the preferred method to fill the unexpired term of Mr. Justice is necessary.