

BOARD OF COMMISSIONERS WORKSHOP

October 15, 2019

6:30pm

Old Business:

- A. Discussion of Amendment to Chapter 6 of the Angier Zoning Ordinance
- B. System Development Fee Ordinance:
 - a. Research Master Meter Regulations
 - b. Set Formula **Dan will provide information at the meeting**
- C. Unified Development Ordinance/Park & Recreation Fee
 - a. Set Formula **Dan will provide information at the meeting**
- D. E. Williams Street/N. Hickory Street
 - a. Consider Reopening E. Williams Street
- E. 210 Hwy Sidewalk Project-(Walgreen's to Fish Drive)
 - a. Update **Bill will provide an update at the meeting**

New Business:

- 1. Storm water Drainage Master Plan **Bill will provide an update at the meeting**
- 2. Water Meters-Mike Hill
 - a. Discussion at the November Workshop
- 3. HB 387 Broadband Services-**Information Purposes Only**

Open Space Requirements for New Development – Jurisdictional Comparison

UDO Definition - Open Space: *Any area which does not consist of buildings, streets, right(s)-of-way, parking, or easements, and serves as a passive or active recreational area, as conservation land, or as pervious area for watershed requirements. This area provides, or has the potential to provide, environmental, social, and/or economic benefits to the community whether direct or indirect.*

Why Do We Need Open Space? To preserve the natural environment and to lessen the impact to existing Town Park facilities by offering amenities and recreational opportunities to residents in the development.

Comparison: Percentage of Open Space Required in New Residential Developments

Angier – 5 lots or more – 15% open space if <20 acres in development, 20% open space if >20 acres

Harnett County – Differs between 0% and 30% based on zoning and min. lot size in the development

Lillington – Standard Subdivision - 25 units or more – 3%, Cluster Subdivision (No min. lot size) – 20%

Coats – No open space requirements

Erwin – PUDs require 10% open space, Developer can earn density bonuses for additional

Dunn – PUDs require 20% open space

Based on the above information gathered, Staff came to the following conclusions:

- 1) Open Space requirements vary widely in Harnett County, “Apples to Apples” comparison is difficult
- 2) Smaller Towns (Erwin, Coats, Lillington) typically allow their Board/Planning Board to review developments on a case by case basis – Each development may be approved with different requirements
- 3) Angier requires the most dedicated open space out of the 5 municipalities
- 4) Angier appears to be the only jurisdiction with a “payment in-lieu of open space” option
- 5) Angier currently requires less open space than Harnett County in developments containing lots less than 9,000 sq. ft.
- 6) Angier and Lillington are the only jurisdictions that encourage “active” open space (Improved amenities, trails, greenways, etc.)

Why Do We Need Recreation Fees? To fund the acquisition and development of new park land.

Comparison: Recreation Development Fees (Implemented by Lillington & Harnett Co.)

Lillington - \$250 per lot flat rate paid at **building permit**

(G.S.160A-372(e) doesn't allow this – “..a **developer** may provide funds..”)

Harnett County - \$500 per lot flat rate charged to developer at final plat

- Applies to all single family subdivisions

- No fee for multifamily (Staff indicated it could be added in the future)

- No formula used to calculate this fee

- Staff indicated it was their interpretation of G.S. 160A-372(e) that a formula was not required

Proposed Amendment to Chapter 6 of the Angier Zoning Ordinance

Purpose: Revising Open Space Requirements

Section 6.1. - Purpose.

The purpose of this chapter is for the preservation of open space, the purchase and development of recreational land and parks, and the protection of existing environmental resources including open space, streams, wetlands, watersheds, floodplains, soils, forest stands, specimen trees and other significant vegetation and wildlife. These elements are of economic value to the town and make it a desirable place to live and visit.

Section 6.3. - Open space requirements.

6.3.1 Applicability. The requirements of this section apply to new major subdivisions and multifamily developments with greater than five residential dwelling units. ~~(major subdivisions) in which the construction of new streets is proposed.~~ Single family developments in which all lots are five acres or more are exempt from this provision.

6.3.3 Minimum open space dedication.

Open space shall be dedicated at a ratio of 15 percent of the total area for developments less than 20 acres in size and 20 percent of the total development area for developments equal to or greater than 20 acres. At least 50% of the acreage dedicated to meet these requirements must include active recreational facilities such as playgrounds, athletic fields or walking trails as determined by the Administrator during preliminary plat or site plan review.

6.3.4 Types of open space.

All required open space shall be classified in accordance with this section. Dedicated open space shall fit into one or more of the following categories and be classified as private or public open space. Illustrations used herein are intended for general purposes only and shall not be used as a literal interpretation of requirements. The existing features plan should be used as a guide for the town and the developer to determine the most appropriate open space type and location. Also town and county plans, particularly park and open space plans, shall be considered when evaluating the most appropriate open space type.

A. Playground. Playgrounds are for active recreational use and provide sunny and shaded play equipment and play areas for children as well as open shelter with benches. Playgrounds may be part of other types of open space, such as parks, or may stand alone.

B. Square. Squares are areas for passive recreational use. Squares shall be bounded by streets on a minimum of 50 percent of their perimeter. Squares are encouraged to be entirely bounded by streets and/or lanes. Squares shall be planted parallel to all streets and shall contain canopy trees along street frontages.

C. Park. Parks may be designed for passive and/or active recreational use. Parks shall be bounded by streets on a minimum of 10 percent of their perimeter. Large parks should create a central open space which services an entire neighborhood or group of neighborhoods; or incorporates physical features which are an asset to the community (i.e. lake or river frontage, high ground, significant stands of trees). Undergrowth should be limited and landscaping shall be installed in a manner that promotes attractiveness and safety. Parks may be combined with greenways and greenbelts and may include golf courses, **athletic fields** and community gardens.

D. Green. The green is an open space which is more natural. Like the square, it is small and surrounded by buildings. Unlike the square, it is informally planted and may have irregular topography. Greens are usually landscaped with trees at the edges and open lawns at the center. Greens should contain no structures other than benches, pavilions, and memorials; ~~paths are~~ **optional brick, concrete or asphalt walking paths are required.**

E. Greenway. Greenways are large, irregular open spaces designed to incorporate natural settings such as creeks and significant stands of trees within and between neighborhoods. Greenways are typically more natural and may contain irregular topography. Greenways shall be used for certain active recreational uses including, at a minimum, trails for walking, jogging, and biking. Greenways shall connect points of interest in the community such as schools, parks, and other civic uses.

F. Agricultural preserve. Open spaces designated as agricultural preserves shall be used for active farming in the form of crop cultivation, the keeping of livestock, or equestrian facilities. Agricultural preserves are encouraged to protect areas of agricultural and rural heritage and promote compatible active agricultural operations. **No more than 50% of the acreage dedicated to meet the minimum open space requirements shall be an agricultural preserve.**

G. Nature preserve. Open spaces designated as nature preserves shall be left largely undisturbed except for the optional clearing of underbrush for the provision of a walking trail (mulch or other natural material only). Nature preserve areas are encouraged to protect large stands of trees, wildlife, and natural water features. Nature preserves are the preferred form of open space for steep slopes in excess of 25 percent grade. **No more than 50% of the acreage dedicated to meet the minimum open space requirements shall be a nature preserve.**

Section 6.5. - Payment-in-lieu-of dedication.

A. If open space within a development is physically impractical due to unusual conditions then the town may accept a fee paid in lieu of dedication.

B. Fees collected in lieu of dedications and any proceeds from such transactions or sales shall be accounted for by the town, and the funds shall be used by the town for the purposes of acquiring and developing recreation, greenway and open space areas as shown on the land development plan or in the parks and recreation and greenway/bikeway master plans and for no other purposes. The depository for such funds may be the same as permitted other funds of the town, pending their expenditure in accordance with the terms of this Code; such funds may be invested as other funds of the town. The town may, at its discretion, add additional monies to the

fund for the purposes of purchasing open space and recreational land to be used for recreational purposes.

C. Refunds shall not be granted to the developer should the project not be constructed after recording of final plat or if a reduction in density occurs.

D. Such payment in lieu of dedication shall be the product of the current assessed market value of $\frac{1}{35}$ of an acre of the land to be subdivided (as established from time to time by the Angier Board of Commissioners in subsection E. below) multiplied by the number of total acres within the boundaries of the development. ~~to be dedicated.~~

E. Payment in lieu of open space dedication shall be made in the amount of ~~\$500.00~~ \$600.00 per lot.

Water/Sewer Town Code Amendments

Sec. 17-6. - Water service deposit.

Any person desiring town water service shall, before obtaining such service, be required to make a deposit in an amount as ~~determined from time to time by ordinance of the town as prescribed by the town board of commissioners~~ stated in the current rate and fee schedule. This deposit is to be charged to ~~renters~~ tenants only; ~~homeowners~~ property owners will be excluded from the deposit requirement.

(Code 1991, § 17-6; Ord. of 4-18-1989, § 14-3)

Sec. 17-7. - Rates.

The ~~water service~~ fees, ~~charges~~, and ~~usage~~ rates for water and sewer service from the town water and sewer systems shall be as established from time to time by the board of commissioners.

(Code 1975, § 14-4; Code 1991, § 17-7)

Sec. 17-8. - Sewer service charge to commence on completion of water or sewer tap.

When a ~~water or~~ sewer tap is made by the town, the ~~flat rate water and~~ sewer service charge will start immediately upon completion.

Sec. 17-54. – Reserved. ~~Time limit for making connections.~~

~~At such time as a public water or sewer main becomes available to a property, a direct connection shall be made to the public water or sewer main within 60 days. The town board of commissioners may alter this time limit under special circumstances at the request of the property owner.~~

~~(Code 1975, § 14-11; Code 1991, § 17-32)~~

Sec. 17-55. - Installation of lines by developers.

Developers shall install water and sewer lines in accordance with the Town's latest construction specifications and standard details. These installations shall be completed with town ~~approval and~~ supervision, and then ~~turn them over~~ be turned over to the town upon final approval and acceptance by the town.

(Code 1991, § 17-33; Mo. of 4-15-1986)

Sec. 17-56. - Installation of taps by developers.

(a) In new developments, developers shall install water and sewer taps, in accordance with the Town's latest construction specifications and standard details, before the streets are paved.

(b) Taps shall be conducted only by the town staff or licensed utility contractors. ~~or licensed plumbers.~~

(Code 1991, § 17-34; Ord. of 7-21-1987(1); Mo. of 8-3-1993)

Sec. 17-57. – Acreage System Development fees.

- (a) Water and sewer System Development Fees ~~service acreage fees~~ are established as authorized by N.C.G.S. 162A-203 in order to fund the costs of capital improvements necessitated by and attributable to new development and to recoup costs of existing facilities which serve such new development. ~~recover the cost of previous capital investments in the water and sewer systems, and to build capital reserve funds for future investment in water and sewer collection distribution and treatment facilities.~~ These fees shall be based upon the size of the meter and are as established from time to time ~~by ordinance,~~ through the process outlined in N.C.G.S. 162A-205 and set forth in the rate and fee schedule of the town. These fees shall be ~~paid~~ charged as follows:

In the case of a residential or nonresidential subdivision, these fees are charged on a per lot basis and are payable prior to the approval of the final plat of the subdivision or an approved phase of the subdivision. Existing lots or parcels for which the owner cannot produce records of previously charged acreage and capacity fees shall be subject to the current System Development fees at the time a building permit is issued.

- (b) In addition to the System Development fees ~~all other charges prescribed by ordinance or resolution,~~ there shall be a regulatory fee and meter ~~an acreage fee~~ charge for connecting to the water ~~system~~ and the sewer system of the town. ~~For residential development, these charges shall be calculated on a per lot basis pursuant to the rate and fee schedule. For nonresidential development, these charges shall be based upon the meter size for the project. These charges are to be paid as follows:~~

~~(1) In the case of a both residential subdivision and nonresidential development, these fees are payable prior to the issuance of the building permit. approval of the final plat of the subdivision or an approved phase of the subdivision. Existing lots or parcels which were approved prior to August 4, 1987, shall be subject to the fee at the time a building permit is issued.~~

~~(2) In the case of a nonresidential application, or when there is no subdivision of land involved, these fees are payable prior to the issuance of the building permit.~~

- ~~(c) These fees are not applicable to land that is proposed for redevelopment, provided that the zoning classification and meter size do not change. If the meter size or zoning classification change to a higher rate of acreage fees, the resulting difference in fees must be paid.~~

(Code 1991, § 17-35; Ord. of 8-4-1987, § 14-43; Mo. of 12-2-1987(1); Mo. of 9-18-1990; Ord. of 3-5-1991)

Sec. 17-59. - Water cutoff valve; sewer lines and cleanout; contractor's water ~~deposit~~ activation

All applicants for water and sewer connections, in addition to other requirements of this chapter, shall comply with the following requirements:

- (1) There shall be installed on each water line a cutoff valve and backflow prevention device on the property owner's side of the water meter box which will provide a means of protecting the Town's water supply and stopping the flow of water without the necessity of using the town's valves in the meter box.
- (2) All sewer lines from buildings to mains shall be constructed of ~~cast-iron-soil~~ ductile iron pipe, ~~ABS schedule 40~~, or PVC. These lines shall not be smaller than four inches in diameter and should be installed with tracer wire for locating purposes.
- (3) There shall be installed on each sewer line a sewer cleanout installed within the public right of way.
- (4) All items mentioned in subsections (1) and (2) of this section must be approved by the town prior to the town's connecting water to the premises.
- (5) On new construction projects, the contractor or someone acting in his behalf must post a water ~~deposit as would be required for a renter of the property~~ activation fee prior to the town's connecting water to the premises.

(Code 1975, § 14-15; Code 1991, § 17-37; Ord. of 1-3-1989(1), § 14-15)

Sec. 17-61. - Payment of tap fee, Master Meter Required.

- (a) No water or sewer connection shall be made for any premises without first paying the tap fees as listed on the current rate & fee schedule, which can be changed from time to time by the board of commissioners. ~~, before any construction is begun by the town. No connection tap charge shall be accepted away from town hall finance offices.~~ For the purposes of this section, tap fees shall include all applicable regulatory fees, system development fees, and meter fees.
- (b) Tap-on fees are calculated for each water or sewer tap. ~~The tap-on fees and are based on the size of the water or sewer tap. number of dwelling or office units. For example, a 40-unit apartment complex would pay for 40 water and sewer tap fees. A duplex would pay for two water and sewer tap-on fees.~~ For residential and nonresidential developments with 10 or more units on a single property, including manufactured home parks, a master meter must be installed to serve the entire development. The size of the master meter required to serve the development shall be determined by the Public Works Director. For developments with less than 10 units on a single property, the property owner must install individual meters serving each unit.
- (c) When a master meter is installed, water and sewer bills will be rendered to the owner of the property. These bills will include a flat rate fee for water and sewer to be calculated using the flat rate shown in the current Rate & Fee Schedule multiplied by the number of units served by the master meter.
- ~~(e) Each dwelling or office unit will be separately metered. For example, a 40-unit apartment complex would be required to install 40 separate water meters. A duplex would be required to install two water meters.~~

(Code 1975, § 14-23; Code 1991, § 17-39; Mo. of 9-18-1990)

Sec. 17-64. – ~~Connection~~ Activation fee.

All ~~homeowners~~ residential and nonresidential building owners and tenants will be required to pay a nonrefundable ~~connection~~ activation fee as established by the rate and fee schedule. This fee is due at the time a water activation application is submitted and is charged to cover the administrative cost to establish each new water account. ~~as established from time to time by ordinance.~~

(Code 1991, § 17-42; Ord. of 2-19-1991)

Individual Water Meters vs. Master Meters – Jurisdictional Comparison

Town of Angier – Proposed Amendment:

Sec. 17-61. - Payment of tap fee, Master Meter Required.

- (a) No water or sewer connection shall be made for any premises without first paying the tap fees as listed on the current rate & fee schedule, which can be changed from time to time by the board of commissioners. For the purposes of this section, tap fees shall include all applicable regulatory fees, system development fees, and meter fees.
- (b) Tap fees are calculated for each water or sewer tap and are based on the size of the water or sewer tap. For residential and nonresidential developments with 10 or more units on a single property, including manufactured home parks, a master meter must be installed to serve the entire development. The size of the master meter required to serve the development shall be determined by the Public Works Director. For developments with less than 10 units on a single property, the property owner must install individual meters serving each unit.
- (c) When a master meter is installed, water and sewer bills will be rendered to the owner of the property. These bills will include a flat rate fee for water and sewer to be calculated using the flat rate shown in the current Rate & Fee Schedule multiplied by the number of units served by the master meter.

Fuquay-Varina Utilities Requirements:

§ 5-1010. - Water service connections/meters.

- (a) Every house or building abutting any water main and requiring a water connection shall be separately and independently connected, except as provided for in subsection (c) of this section and/or in those cases where laterals have already been laid in improved streets from such main without provisions being made for such house or building, in which case the connection may be made to an existing lateral. When two or more houses or units are connected with the same water lateral, a separate water meter shall be provided for each house or unit.
- (c) A common water meter and/or water connection will be permitted to serve more than one building or unit of the following categories as defined in section 9-4012 of the zoning regulations.
 - (1) Group housing developments;
 - (2) Unit-ownership (condominium developments);
 - (3) Multifamily developments;
 - (4) Hotels, motels;
 - (5) Hospitals;

- (6) Warehouses, industrial buildings (under one ownership and engaged in one business only);
- (7) Schools;
- (8) Churches;
- (9) Multi-story nonresidential buildings;
- (10) Flex space (no restaurant uses);
- (11) Homes for the ill or aged, including rest, nursing and convalescent homes;

Harnett County Utilities Requirements:

Section 7. Separate Water and Sewer Connections and Meters Required.

Each building shall have a separate meter, and where practicable shall have a separate water lateral. In the event that one lateral is used for two dwellings, commercial or industrial buildings, or used to serve two or more meters for the same dwelling, commercial or industrial buildings, a separate cut-off shall be provided for each meter. However, there shall be an exception to the requirement for separate water meters in the case of groups of mobile homes or apartment developments under single ownership. In the case of said groups of mobile homes or apartment developments of more than ten (10) units, one meter shall be used for the entire project unless additional meters are deemed necessary by the proper HCDPU authority, and the following conditions shall be met:

- (a) Bills will be rendered to the Owner of the property.
- (b) The bill will be calculated by a minimum charge for the master meter and for each of the total number of units included thereafter, and calculating the remaining bill based on the total consumption passing through the master meter above the minimum; provided, however, owners of ten or fewer multiple units may elect to have water metered directly to each unit and the charge therefore billed directly to the user in each unit.
- (c) Should any portion of the development be sold, the owners shall be responsible for paying whatever additional costs would be involved in bringing the divided development into compliance with this article.

City of Raleigh Utilities (Serving Rolesville, Morrisville, Knightdale, Garner, etc.)

Sec. 8-2005. - METER REQUIREMENTS; PLACEMENT OF METERS.

- (a) A separate water meter and water and/or sewer connection is required for each lot at the time of connection with water and/or sewer service. All such meters shall be placed in the street right-of-way or in a two-foot easement adjacent to the street right-of-way at such locations as the Raleigh Director of Public Utilities or his designee shall determine, provided that nothing herein shall authorize the placement of a water meter on the opposite side of the street right-of-way from the building being served. All fire hydrants maintained by the City shall be installed in the street right-of-way or in a two-foot easement adjacent to the street right-of-way. All meters shall conform to the standards and material specifications of the City. All water meters shall be installed by City forces in accordance to a fee schedule on file by the City.


Sec. 8-2006. - ADDITIONAL METERS; COMMON CONNECTIONS; ALLOWED USES.

Additional meter *locations* , water connections and/or sewer connections, in compliance with the *City* 's Unified Development Ordinance if located within the jurisdiction of the *City* , or *County* zoning and subdivision ordinances if located within the jurisdiction of the *County* , *may* be permitted. A common water connection, sewer connection and/or meter will be permitted to serve more than one (1) building of the *following categories* as those terms are used in the *City* 's Unified Development Ordinance.

- (a) Group living developments;
- (b) Townhouse developments;
- (c) Unit-ownership (condominium developments);
- (d) Overnight lodging;
- (e) Hospitals;
- (f) Warehouses, industrial buildings (under one (1) ownership and engaged in one (1) business only);
- (g) Schools, colleges, community colleges or universities;
- (h) Manufactured home developments;
- (i) Shopping centers;
- (j) Places of worship.


Harnett GIS








Harnett
COUNTY
NORTH CAROLINA


GIS/E-911 Addressing
October 7, 2019


Recycle Center 


Landfills 


Surrounding County Boundaries 

Federal Property 




City Limits 

Harnett County Boundary 


Address Numbers 


Airport 


MajorRoads


Interstate  **NC**  **US** 

Roads

Mile_Markers 

Railroad 

North Arrow 

Scale 

0 40 80 160 Feet

1 inch = 94 feet

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 387
Mar 19, 2019
HOUSE PRINCIPAL CLERK

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D

HOUSE BILL DRH30173-LM-30*

Short Title: Electric Co-Op Rural Broadband Services. (Public)

Sponsors: Representatives Arp, Szoka, Lewis, and Hunter (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT REMOVING RESTRICTIONS PROHIBITING ELECTRIC MEMBERSHIP CORPORATIONS AND THEIR SUBSIDIARIES FROM SEEKING FEDERAL GRANT FUNDS TO PROVIDE TELECOMMUNICATIONS AND BROADBAND SERVICES, AUTHORIZING SUCH CORPORATIONS TO USE EASEMENTS HELD BY THE CORPORATIONS TO SUPPLY TELECOMMUNICATIONS AND BROADBAND SERVICES, AND PROVIDING FOR THE MANNER IN WHICH CLAIMS RELATED TO THE EXPANDED USE OF EASEMENTS BY SUCH CORPORATIONS SHALL BE RESOLVED.

Whereas, electric membership corporations were created for the purpose of extending electric service to rural communities in the State, and they have effectively achieved this necessary goal for many years; and

Whereas, telephone service is also a necessity for all North Carolinians and has been successfully extended throughout the State; and

Whereas, broadband service has emerged as a necessity for all rural communities in the State; and

Whereas, the General Assembly finds that electric membership corporations and their subsidiaries, where they so choose, are uniquely positioned to pursue federal broadband funds and to leverage their right-of-way corridors and existing broadband fiber networks to provide, individually or in partnership, broadband services which will enable more rural communities to connect to broadband services; and

Whereas, broadband infrastructure deployed by electric membership corporations and their subsidiaries can coexist with electric infrastructure in right-of-ways owned or held by electric membership corporations; and

Whereas, it has been recognized that in order for electric membership corporations to effectively pursue federal funds and leverage their unique position, the General Assembly must amend certain statutes regulating the operations and rights of electric membership corporations; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 117-18.1 reads as rewritten:

"§ 117-18.1. Subsidiary business activities.

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:



1 ...

2 (d) The provisions of subdivisions (1) and (3) of subsection (a) of this section do not
3 apply to the separate business activities of an electric membership corporation that forms,
4 organizes, acquires, holds, disposes of, or operates any interest up to and including full
5 controlling interest in a separate business entity that provides or supports high-speed broadband
6 services to one or more households, businesses, or community anchor points. For purposes of
7 this subsection, the term "anchor points" includes schools, libraries, community colleges,
8 community centers, and other similar places, and the term "high-speed broadband services"
9 means Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream
10 and 3 Mbps upstream."

11 **SECTION 2.** Article 3 of Chapter 117 of the General Statutes is amended by adding
12 a new section to read as follows:

13 **"§ 117-28.1. Electric membership corporations; easements.**

14 (a) Any easement owned, held, or otherwise used by an electric membership corporation
15 for the purpose stated in G.S. 117-10 may also be used by the corporation, or its subsidiary, for
16 the purpose of supplying telecommunications and broadband service.

17 (b) Notwithstanding G.S. 1A-1, Rule 23, a class action may not be maintained against an
18 electric membership corporation or its subsidiary in a suit in trespass or inverse condemnation
19 based on a claim of expanded use of an easement. If, in a suit in trespass or inverse condemnation
20 based on a claim of expanded use of an easement, an individual property owner prevails over a
21 corporation or its subsidiary, the trespass shall be deemed permanent and the actual damages
22 awarded shall be the fair market value which, notwithstanding any other provision of law, shall
23 always be greater than zero but shall not exceed the difference between the fair market value of
24 the property owner's entire property immediately before the taking and the fair market value of
25 the property owner's property immediately after the taking. Evidence of revenues or profits
26 derived or the rental value of an assembled communications corridor shall not be admissible in
27 determining fair market value. A property owner's actual damages shall be fixed at the time of
28 the initial trespass and shall not be deemed to continue, accumulate, or accrue. Upon payment of
29 damages, the corporation or its subsidiary shall be granted a permanent easement for the trespass
30 that was the subject of the claim."

31 **SECTION 3.** This act is effective when it becomes law and applies to all claims filed
32 on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

3

HOUSE BILL 387*
Committee Substitute Favorable 4/25/19
Senate Appropriations/Base Budget Committee Substitute Adopted 10/2/19

Short Title: Growing G.R.E.A.T.

(Public)

Sponsors:

Referred to:

March 20, 2019

A BILL TO BE ENTITLED
AN ACT CONSISTENT WITH HOUSE BILL 966 TO ENACT CHANGES TO THE
GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY PROGRAM
AND TO PROVIDE FUNDING FOR THAT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-1373 reads as rewritten:

"§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.

(a) As used in this section, the following definitions apply:

...

(6) Eligible project. – An eligible project is a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a contiguous project area crosses from one eligible county into one or more eligible adjacent counties, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households are proposed to be served.

(7) Eligible recipient. – Eligible grant recipients are private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof, ~~on or after January 1, 2018; thereof.~~

...

(8a) Infrastructure. – Existing facilities, equipment, materials, and structures that an entity has installed either for its core business or public enterprise purposes. Examples include, but are not limited to, copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, battery and cabinet, network nodes, network routers, network switches, microwave relay, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.

(9) Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, ~~equipment, fiber,~~



1 ~~construction~~, backhaul infrastructure, and testing costs. The term does not
2 include overhead or administrative costs.

3 ...

4 (11a) Partnership. – A project for which an Internet service provider affirms that a
5 formalized agreement exists between the provider and one or more
6 unaffiliated partners where the partner is one of the following:

7 a. A separate Internet service provider.

8 b. A nonprofit or not-for-profit, or a for-profit subsidiary of either, and
9 the Internet service provider is being allowed access and use of the
10 partner's infrastructure, on special terms and conditions designed to
11 facilitate the provision of broadband services in unserved areas, or is
12 utilizing a financial contribution provided by one or more partners
13 where the total contribution is not less than ten percent (10%), but not
14 more than forty-nine percent (49%), of the match required by this
15 section. A county that is not engaged in providing consumer
16 broadband service may qualify as a nonprofit for the purpose of this
17 section.

18 ...

19 (12a) Prospective broadband recipient. – A household, home, business, community
20 anchor point, agricultural operation, or agricultural processing facility that is
21 currently unserved and is identified in an application submitted in accordance
22 with this section.

23 ...

24 (c) Project areas comprised of census blocks, or portions thereof, within which a
25 broadband provider is receiving ~~State or federal~~ matching funds to deploy ~~technologically neutral~~
26 ~~scalable~~ broadband service within the next 18 months are ineligible for the GREAT program. It
27 is essential for the Office to know the location of census blocks, or portions thereof, comprising
28 these areas so it can determine project eligibility. A private provider receiving ~~State or federal~~
29 ~~matching~~ Universal Service or Connect America Phase II, or nonfederal funds to deploy
30 broadband service within may qualify such an area shall, for protection by submitting within 60
31 days of the ~~effective date of this section, submit only application period~~ a listing of the census
32 blocks, or portions thereof, comprising ~~each of its the~~ federally funded project areas meeting this
33 requirement and nothing more to the Office. In future program years, the cutoff date for
34 submitting this census block data shall be ~~May 15, established by the Office, but shall be not less~~
35 than 60 days prior to the beginning date of the application period. This will enable the office to
36 update maps and advise applicants as to the unserved areas of the State that are eligible for
37 consideration in that program year. The Office shall only utilize this data to update maps of
38 census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the
39 part of a provider to submit the listing of census blocks by the cutoff date shall result in those
40 areas being eligible for inclusion under this program during the upcoming program year. The
41 Office shall use the census block data provided only for mapping of unserved areas. Upon
42 expiration of the 18-month reservation period described in this subsection, a private provider that
43 has received a reservation of census blocks shall submit written documentation by April 30 of
44 the year following the program year that broadband deployment has begun or been completed in
45 the census blocks, or portions thereof, that have been deemed ineligible by the Office due to the
46 existence of a federally funded project area. Information provided to the Office pursuant to this
47 subsection is not a public record, as that term is defined in G.S. 132-1.

48 (d) Applications for grants will be submitted at times designated by the Secretary and
49 will include, at a minimum, the following information:

50 ...

(5) An illustration or description of the area to be served and served, identifying the number of homes, businesses, community anchor points, agricultural operations, or agricultural processing facilities that will have access to broadband as a result of the project, project, including any available addresses, or other identifying information satisfactory to the Office, for the foregoing. In the event that the Office is unable to identify the proposed project area with specificity, the Office may require the applicant to submit additional information. If construction of the proposed project would result in the provision of broadband service to areas that are not eligible for funding, those ineligible areas should be identified in the application along with the eligible areas.

...

(d1) A provider submitting an application pursuant to this section shall bear the burden of proof that the proposed area to be served can, in fact, be served using the proposed technology. The burden of proof may be satisfied by the submission of data, maps, and any other information satisfactory to the Office, demonstrating that the area and number of prospective broadband recipients proposed to be served can be provided the minimum upload and download speeds indicated in the application.

(e) Applications shall be made publicly available by posting on the Web site of the Department of Information Technology for a period of at least 30 days prior to award. During the 30-day period, any interested party may submit comments to the Secretary concerning any pending application. A provider of broadband services may submit a protest of any application on the grounds the proposed project covers an area that is not an eligible area under this section. Protests shall be submitted in writing, accompanied by all relevant supporting documentation, and shall be considered by the Office in connection with the review of the application. Upon submission of evidence satisfactory to the Office that the proposed project area includes prospective broadband recipients that are served, as measured using a methodology satisfactory to the Office, the Office may work with an applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The Office may revise application scores in accordance with amended applications. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application. Following a protest that is granted for a portion of the application, the Office may release to an applicant the locations or areas declared ineligible. The information released to the applicant is not a public record, as that term is defined under G.S. 132-1, and shall remain confidential. Any provider submitting a protest shall verify that the information in the protest is accurate and that the protest is submitted in good faith. The Office may deny any protest or application that contains inaccurate information.

As a means of resolving a protest, the Office may utilize speed tests to determine if the protested area or individual households or businesses currently have access to broadband service as defined in this section. The Department shall publish the speed test methodology it uses to assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized and the manner by which the speed tests are applied shall be made by the Secretary or the Secretary's designee.

(f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.

(g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:

(1) Partnership. – Projects involving partnership ~~or affiliation by a private provider with a nonprofit or not for profit, or a for profit subsidiary of either that is required to enable certain partnership activities, or any combination thereof,~~ shall be given five points in their application score ~~where it is documented to the satisfaction of the Office that the partnership or affiliation will facilitate deployment and reduce cost per housing unit by utilizing the resources, facilities, and infrastructure of the partner or where the nonprofit or not for profit partner provides only financial support.~~ score. For the purposes of scoring under this subdivision, a county that provides a portion of the match required by this section or that has entered into an agreement with the applicant to make available its infrastructure that has been installed for the county's enterprise, nonconsumer broadband purposes, or any other property, buildings, or structures owned by the county, for a proposed project under this section shall be considered a partnership. A county may provide a portion of the match required by this section pursuant to G.S. 153A-349.60. Projects involving partnerships shall be given six points in their application score.

(2) Unserved households. – The Office shall give additional points to projects based upon the estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

Unserved Households	Points Given
700-500 or less	1
700-1999 501-1400	2
2000 and over Over 1400	3

(3) ~~Households~~–Unserved households to be served. – The Office shall give additional points to projects that will provide broadband service ~~to be based upon the percentage of the total unserved households within the eligible economically distressed county, as county that the project will serve. The number of unserved households shall be determined by using the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve a percentage of unserved households within the project area as follows:~~

% Unserved Households To Be Served	Points Given
Under 150 Less than 15%	1
150-249 15% to 25%	2
250 and up Over 25%	3

...
(6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

Minimum Download:	
Minimum Upload	Score Multiplier
<u>At least 10:1 Mbps-Mbps. up to 25:3 Mbps.</u>	0.95
<u>25:3 Mbps. or greater up to 100:10 Mbps.</u>	1.35
<u>100:10 Mbps. or greater</u>	<u>1.75</u>

(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same

score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed minimum upstream and minimum downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county; except that if funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed two million dollars (\$2,000,000) in that fiscal year.

(j) Grant recipients are required to provide matching funds based upon the application scoring pursuant to this section in the following minimum amounts:

Score	Matching Requirement
7.0-12.0 points or less	55%
Greater than 7.0, 12.0 points, but less than 14.0-17.5 points	50%
Greater than 14.0, but less than 21.0-17.5 points, up to 22.0 points	45%
21.0 points or greater	35%

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding and other grant programs. Universal Service Fund, or Connect America Fund, or other grants awarded for broadband expansion through a separate State or federal program Phase II Fund shall not be used for the required matching funds. Any other current or future federal funds may be used, including any future phase of the Connect America Fund, for the required matching funds within the parameters of this program.

...."

SECTION 2. G.S. 143B-1373(a)(5) reads as rewritten:

"(5) Eligible economically distressed county. – A county designated as a development tier one or tier two area, as defined in G.S. 143B-473.08."

SECTION 3. G.S. 143B-1373(i), as amended by Section 1 of this act, reads as rewritten:

"(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than

those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county; except that if funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed two million dollars (\$2,000,000) in that fiscal year.

No more than one-third of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for projects located in a development tier two county."

SECTION 4. G.S. 143B-1373(i), as amended by Sections 1 and 3 of this act, reads as rewritten:

"(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county; except that if funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed two million dollars (\$2,000,000) in that fiscal year.

No more than ~~one-third~~ one-half of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for projects located in a development tier two county. If the Office has not received enough grant applications for projects located in a development tier one county to disburse one-half of the funds appropriated to the fund established in subsection (b) of this section as of March 1 of each year, then the Office may allocate any unencumbered funds in the fund for projects located in a development tier two county."

SECTION 5. G.S. 143B-1373 is amended by adding a new subsection to read:

"(p) The Department may use up to one percent (1.0%) of the appropriated funds to administer the GREAT program."

SECTION 6. The Department of Administration, in collaboration with the Broadband Infrastructure Office within the Department of Information Technology shall develop, by soliciting stakeholder input, a streamlined approval process for the negotiation and execution of lease agreements for collocation, installation, and operation of broadband equipment on State-owned property pursuant to G.S. 146-29.2. In developing the approval process, the Office shall involve representatives from at least all of the following:

- (1) The land grant universities.
- (2) The Office of Attorney General.
- (3) A telecommunications provider based in this State.
- (4) An electric membership cooperative.
- (5) A fixed wireless company.
- (6) A cable provider.
- (7) At least two regional or national Internet service providers.

The Broadband Infrastructure Office shall develop a streamlined approval process of no more than 270 days from the date the formal lease proposal is submitted to a State agency. The recommended process shall focus on significantly reducing or eliminating the need for renegotiating primary lease terms, including lease amounts, once those terms have been initially agreed upon by the provider and the State agency. In addition, the Department of Administration shall establish a market-based rate for lease amounts that can be used as a basis for similar agreements across the State.

The Department of Administration shall implement the streamlined approval process on or before December 1, 2019, and shall submit a report detailing the streamlined approval process, along with a list of the stakeholders and their input, to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on or before December 1, 2019.

SECTION 7.(a) There is transferred from the General Fund to the State Capital and Infrastructure Fund the sum of fifteen million dollars (\$15,000,000) for each fiscal year from the 2019-2020 fiscal year through the 2028-2029 fiscal year.

SECTION 7.(b) There is appropriated from the State Capital and Infrastructure Fund to the Growing Rural Economies with Access to Technology Fund the sum of fifteen million dollars (\$15,000,000) for each fiscal year from the 2019-2020 fiscal year through the 2028-2029 fiscal year.

SECTION 8.(a) The appropriations and the authorizations to allocate and spend funds which are set out in this act shall remain in effect until the Current Operations Appropriations Act for the applicable fiscal year becomes law, at which time that act shall become effective and shall govern appropriations and expenditures. When the Current Operations Appropriations Act for that fiscal year becomes law, the Director of the Budget shall adjust allotments to give effect to that act from July 1 of the fiscal year.

SECTION 8.(b) If House Bill 966, 2019 Regular Session, becomes law, then this act is repealed.

SECTION 9. Sections 2 and 3 of this act become effective July 1, 2020. Section 4 of this act becomes effective July 1, 2021. The remainder of this act becomes effective July 1, 2019.