

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 386
HOUSE BILL 859

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF
ZEBULON AND TO REPEAL PRIOR CHARTER ACTS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Zebulon is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF ZEBULON

"ARTICLE I. INCORPORATION AND CORPORATE POWERS

"Section 1.1. Incorporation and General Powers. The inhabitants of the Town of Zebulon, within the corporate limits as now or hereafter established shall be, and continue as they have heretofore been, a municipal body politic and corporate, under the name of the Town of Zebulon. The Town of Zebulon shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the Constitution, by the general laws of the State of North Carolina and by this Charter. The enumeration of particular powers by the Charter shall not be deemed to be exclusive, and it is intended that the Town of Zebulon shall have and exercise all powers which, under the Constitution and the laws of the State of North Carolina, it would be competent for this Charter specifically to enumerate.

"ARTICLE II. CORPORATE BOUNDARIES

"Sec. 2.1. Existing Corporate Boundaries. The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law.

"Sec. 2.2. Extension of Corporate Boundaries. All extensions of the corporate boundaries shall be governed by the General Statutes of North Carolina.

"ARTICLE III. MAYOR AND BOARD OF COMMISSIONERS

"Sec. 3.1. Composition of Board of Commissioners. The Board of Commissioners shall consist of five members to be elected by the qualified voters of the Town voting at large in the manner provided in Article IV.

"Sec. 3.2. Mayor and Mayor Pro Tempore. The Mayor shall be elected by and from the qualified voters of the Town voting at large in the manner provided in Article IV.

"Sec. 3.3. Terms; Qualifications; Vacancies. The Mayor and members of the Board of Commissioners shall serve for terms of two years, beginning the day and hour of the organizational meeting following their election; provided, they shall serve until their successors are elected and qualify.

"ARTICLE IV. ELECTION PROCEDURE

"Sec. 4.1. Regular Municipal Elections. Elections shall be held biennially in odd-numbered years on the day set by general law for municipal elections.

"Sec. 4.2. Elections to Be by Nonpartisan Plurality Method. Elections for Mayor and Board of Commissioners shall be by the nonpartisan plurality method set out in North Carolina General Statute 163-292. All elections and referendums of the Town of Zebulon shall be held and conducted as provided by the applicable General Statutes of North Carolina.

"ARTICLE V. TOWN MANAGER

"Sec. 5.1. Appointment; Compensation. The Board of Commissioners shall appoint an officer whose title shall be Town Manager and who shall be the head of the administrative branch of the city government. The Town Manager shall be chosen by the Board of Commissioners solely on the basis of his executive and administrative qualifications with special reference to actual experience in, or knowledge of, accepted practice in respect to the duties of his office as hereinafter prescribed. The Town Manager shall serve at the pleasure of the Board of Commissioners and shall receive such salary as the Board of Commissioners shall fix. In case of absence or disability of the Town Manager, the Commissioners may designate a qualified administrative officer of the Town to perform the duties of the Manager during such absence or disability.

"ARTICLE VI. ATTORNEY

"Sec. 6.1. Appointment; Qualifications; Terms; Compensation. The Board of Commissioners shall appoint a Town attorney who shall be an attorney at law licensed to engage in the practice of law in North Carolina and who need not be a resident of the Town during his tenure.

"ARTICLE VII. ADMINISTRATIVE OFFICERS AND EMPLOYEES

"Sec. 7.1. Town Clerk. The Board of Commissioners shall appoint a Town Clerk to keep a journal of the proceedings of the Board of Commissioners and maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Town Manager may direct. He shall receive such compensation and be required to give such bond as the Board may from time to time determine.

"Sec. 7.2. Town Finance Officer. The Board of Commissioners may appoint a Town Finance Officer, whose powers and duties shall be as defined in 'The Local Government Budget and Fiscal Control Act' of the general laws of North Carolina.

"Sec. 7.3. Tax Collector. The Board of Commissioners may appoint a Tax Collector whose powers and duties shall be as defined in Chapter 105 of the North Carolina General Statutes.

"Sec. 7.4. Consolidation of Functions. The Board of Commissioners may consolidate any two or more of the positions of Town Manager, Town Clerk, Town Finance Officer, Tax Collector, and any other appointive position, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions.

"Sec. 7.5. Chief of Police. The Chief of Police shall have supervision and control of the police force and shall enforce discipline therein.

"Sec. 7.6. Fire Chief. The Chief of the Fire Department shall be responsible for the efficiency and discipline of the fire department.

"Sec. 7.7. Town Departments. The Board of Commissioners may establish such departments to serve the Town as they deem appropriate.

"ARTICLE VIII. LOCAL IMPROVEMENTS AND ASSESSMENTS FOR LOCAL IMPROVEMENTS

"Sec. 8.1. Authority to Make Local Improvements. The Board of Commissioners shall have authority to make the local improvements described in this Charter, as in its discretion it may deem appropriate, with or without any petition so to do and to assess the total cost against the abutting property. The procedure set forth in this Article shall not be exclusive, but shall be in addition to any other procedure provided by law.

"Sec. 8.2. Separate Proceedings not Required. One or more local improvements may be made in a single proceeding, and assessments for one or more local improvements may be combined.

"Sec. 8.3. Definitions. Certain words and phrases will be used with the following meanings with reference to local improvements, unless some other meaning is plainly intended.

(a) A 'street' is the entire width between property or right-of-way lines of every way or place, of whatever nature, when any part thereof is dedicated or open to the use of the public as a matter of right for the purpose of vehicular or pedestrian traffic, and whether such portion devoted to traffic be divided by any railroad, or other utility right-of-way, parkway or in any other manner.

(b) A 'sidewalk' is the part of a street which is used or to be used for pedestrian traffic.

(c) A 'storm sewer' is a conduit above or below ground for the passage of storm water and may include a pumping station and outlet where deemed necessary and may also include the building of culverts over or the enclosing of streams where needed to carry off storm water.

(d) A 'sanitary sewer' is a conduit, preferably underground, for the passage of sewage and may include a pumping station and outlet.

(e) A 'water main' is a pipe for the passage of Town water for public hydrants and private and public use and consumption.

(f) A 'lateral' is a pipe connecting a storm or sanitary sewer or water main with the line of adjacent property or the curb line, being either a sewer lateral or water lateral, but does not include a building connection, that is, a pipe extending from a lateral at the property line or curb line to the house or plumbing fixture to be served.

(g) A 'roadway' is the part of a street which is used or to be used for vehicular traffic.

(h) The word 'sewer' includes both sanitary and storm sewers unless a contrary intention is shown.

"Sec. 8.4. Improvements Described. The Board of Commissioners shall have authority to make the following local improvements:

(a) Roadway paving improvements, which include the grading, regrading, paving, repaving and widening of roadways, or the improvement thereof with any

treatment designed to provide an improved wearing surface with necessary drainage, sewer inlets, manholes and catch basins and the construction or reconstruction of retaining walls made necessary by any change of grade incident to such improvement, and, in any case where the improvement is made, if the Board so directs, it may include the construction or reconstruction of curbs, gutters, drains and sidewalks.

(b) Water main improvements, which include the laying or construction of water mains, the relaying where necessary of parts of paved roadways and sidewalks torn up or damaged by the laying or construction of such mains, and, in any case where the improvement is made and the Board so directs, the laying of water laterals.

(c) Sanitary sewer improvements, which include the laying or construction of sanitary sewers, the relaying where necessary of parts of paved roadways and sidewalks torn up or damaged by the laying or construction of such sewers, and, in any case where the improvement is made and the Board so directs, the laying of sanitary sewer laterals.

(d) Storm sewer improvements, which include the laying or construction of storm sewers, the relaying where necessary of parts of paved roadways and sidewalks torn up or damaged by the laying or construction of such sewers, and, in any case where the improvement is made and the Board so directs, the laying of storm sewer laterals.

(e) Sidewalk improvements, which include the grading, regrading, construction, reconstruction and repair of paved or other improved sidewalks, the construction or reconstruction of retaining walls made necessary by the incident to such improvements, and in any case where the improvement is made, if the Board so directs, it may include the construction or reconstruction of curbs, gutters and drains, and the construction or reconstruction of all such portions of driveways as in the judgment of the Board ought to be laid in the street area.

(f) Grass plot improvements, which include the grading and planting of grass plots in the street.

"Sec. 8.5. Water and Sewer Mains between Streets; Assessment; Town Bear Costs of Right-of-Way. Whenever the Board finds it in the public interest, and it will be more economical and the interest of the property owners will best be served by construction of either water or sanitary sewer mains, or both, between streets rather than in a street, they may be constructed between streets. The cost of the construction of such water or sewer mains and laterals shall be assessed according to the street frontage in the same manner and to the same extent that it would be assessed if the improvements were constructed in a street.

"Sec. 8.6. Inclusion of More than One Improvement in Single Proceeding. (a) Uniformity of cost and kind. Any proceeding may include one or more local improvements on one or more streets, but all improvements included in one procedure shall be practically uniform in cost and kind. A proceeding may include improvements on only one side of a street.

(b) Assessment of Costs, Manner and Method. The proceeding may provide for making any one or more local improvements in or on a street or streets and for the assessment of the cost thereof, except the Town's portion, wholly against the property abutting one side of such street or streets or otherwise against such abutting property as may be designated in the petition, if one, and if not in the resolution ordering the

proceeding, in any of the following cases: (1) In any case, where there is a park land or unimproved land abutting one side or a part of one side of a street; or (2) where the land abutting one side or a part of one side of a street is of such nature or is devoted to such purpose that a special assessment against it cannot be made, or, if made would probably exceed the value of the land assessed; or (3) where the owners of all the property to be assessed agree thereto.

"Sec. 8.7. Resolution Ordering Improvements; Publications. (a) After the Board determines to make the improvements proposed, it shall adopt a resolution which shall contain:

- (1) If the improvements are to be made by petition, a finding by the Board as to the sufficiency of the petition, which finding shall be final and conclusive.
- (2) If the improvements are to be made without petition, a finding by the Board of such facts requiring authorization of improvements without petition.
- (3) A general description of the improvements to be made, and the designation of the street or streets or parts thereof where the work is to be done.
- (4) If the improvement directed to be made includes the construction of water mains or sewers, and in order to provide the mains or sewers in the street or streets to be improved, it is necessary to extend them beyond the limits of the street or streets, the resolution shall contain a provision for the necessary extension of such mains or sewers, and a further provision that the cost of such extension shall be assessed against the lots or parcels of land abutting the street or streets in which such extensions are made, but that assessments shall not be made until such time as the Board shall thereafter determine by appropriate resolution.
- (5) If the improvement directed to be made is the paving of a roadway or part thereof, or the construction of sidewalks, the resolution may, but need not, contain a direction that the owner of each lot abutting the part of the street to be improved connect his lot by means of laterals with water mains, gas or sewer pipes, or any one or more thereof, located in the street adjacent to his premises in accordance with the requirements governing the laying of laterals, and that unless the owners cause laterals to be laid on or before a date specified in the resolution, the date to be not less than 30 days after the date of the resolution, the Board will cause the same to be laid.
- (6) A designation of the proportion of the cost of the improvements to be assessed against abutting property, and of the number of equal annual installments in which assessments may be paid.

(b) Publication and Posting of Notice. The resolution after its passage shall be published at least once in some newspaper of general circulation in the Town which is qualified to carry legal notices, or if there be no such newspaper, the resolution shall be

posted in three public places in the Town for at least five days, except that in any case where the Board directed that the notice should be served or mailed instead of being published, the resolution ordering the improvements need not be either published or posted.

"Sec. 8.8. Details of Construction; Contracts for Construction. The Board shall have power to determine the character and type of construction and of material to be used and to determine any other details of plan or construction necessary to be determined in making any local improvements and to determine whether any work to be done by the Town shall be done by contract or by the Town. The Board shall have power, also, unless otherwise limited, to determine the number of water, sewer and gas laterals that shall be laid to any lot on any street to be improved. If the work or any part thereof is to be done by contract, the Board may let all the work in one contract, or it may divide it into several contracts and may let contracts separately.

"Sec. 8.9. Determination as to Cost of Improvements. Upon completion of the improvements, the Board shall ascertain the total cost. In addition to other items of cost there may be included therein the cost of all necessary legal services, the amount of interest paid during construction, the amount of damages paid or to be paid for injury to property by reason of any change of grade or drainage, including court costs and other expenses incidental to the determination of damages, and the cost of retaining walls, sidewalks or fences built or altered in lieu of cash payment for property damage, including the cost of moving or altering any building. The determination of the Board as to the total cost of any improvement shall be conclusive.

"Sec. 8.10. Corner Lot Exemptions. The Board of Commissioners shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may not provide exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

"Sec. 8.11. Preliminary Assessment Roll, Contents, Publication, Posting, Serving or Mailing. The Board shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot or parcel of land assessed, the amount assessed against each lot, the name or names of the owner or owners of each lot as far as the same can be ascertained; provided that a map of the improvements on which is shown the frontage and location of each affected lot, together with the amount assessed against each lot and the name or names of the owner or owners thereof as far as the same can be ascertained, shall be a sufficient assessment roll. If the resolution directed the making of more than one improvement, a single preliminary assessment roll for all the improvements authorized by such resolution shall be sufficient, but the cost of each improvement to each lot affected shall be shown separately. After the preliminary assessment roll has been completed, it shall be filed in the office of the Town Clerk, and there shall be published in some newspaper of general circulation in the Town which is qualified to carry legal notices, or if there be no such newspaper, the Town Clerk shall cause to be posted in three public places in the Town a notice of the completion of the

assessment roll, setting forth a description in general terms of the improvements, and stating the time fixed for the meeting of the Board for the hearing of objections to the special assessments, such meeting to be not earlier than 10 days after the first publication or from the date of posting of said notice. Any number of assessment rolls may be included in one notice. In any case where the preliminary notice was served or mailed instead of being published, this notice need not be published or posted but may be served or mailed. The serving or mailing of notices shall be completed not less than five days prior to the date fixed for the hearing of the assessment roll, and the return of the person serving or mailing the same shall, in the absence of fraud, be conclusive that the same were served or mailed.

"Sec. 8.12. Hearing; Revision; Confirmation; Lien. At the time appointed for that purpose or at some other time to which it may adjourn, the Board shall hear objections to the preliminary assessment roll of all persons interested who may appear and offer proof in relation thereto. Then or thereafter, the Board shall either annul or sustain or modify in whole or in part the assessment, either by confirming the preliminary assessment against any or all lots or parcels described thereon, or by cancelling, increasing or reducing the same. If any property is omitted from the preliminary roll, the Board may place it on the roll and levy the proper assessment. The Board may thereupon confirm the assessment roll. Whenever the governing body shall confirm assessments for local improvements, the Town Clerk shall enter on the Board minutes and on the assessment roll the date, hour and minute of confirmation, and from the time of confirmation the assessment shall be a lien on the property assessed of the same nature and to the same extent as county and city taxes and shall be superior to all other liens and encumbrances. After the assessment roll is confirmed, a copy of the same shall be delivered to the Town Tax Collector.

"Sec. 8.13. Appeal to Superior Court. If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within 10 days after the confirmation of the assessment roll, give written notice to the Board that he takes an appeal to the Superior Court of Wake County, in which cases he shall within 20 days after the confirmation of the assessment roll serve on the Mayor or Town Clerk a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he is the owner or in which he is interested shall be exclusive.

"Sec. 8.14. Error in Assessment; Power to Correct; Procedure. If it shall appear after confirmation of any assessment roll that an error has been made, the Town Clerk shall cause to be published one time in some newspaper of general circulation in the Town, or if there be no such newspaper, the Town Clerk shall cause to be posted at three public places in the Town a notice referring to the assessment roll in which the error was made, naming the owner or owners of the lot or parcel of land affected by the error if the same can be ascertained, and naming the time and place fixed for a hearing by the Board for the correction of the error, such meeting not to be earlier than 10 days from the publication or from the date of the posting of the notice. At the time fixed in the notice or at some subsequent time to which the Board may adjourn, the Board, after giving the

owner or owners of the property affected and other persons interested therein an opportunity to be heard, may proceed to correct the error, and the assessment then made shall have the same force and effect as if it had originally been properly made. No notice and hearing shall be necessary if the correction does not increase an assessment against any property not owned by the Town, or if all the property owners affected by the correction waive notice in writing.

"Sec. 8.15. Reassessment. The Board shall have the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it and thereupon to make a reassessment. In such case there shall be included, as a part of the cost of the improvements involved, all interest paid or accrued on notes or certificates of indebtedness or bonds issued by the Town to pay the expenses of such improvement. The proceeding shall, as far as practicable, be in all respects as in the case of original assessments, and the reassessment shall have the same force as if it had originally been properly made.

"Sec. 8.16. Publication of Notice of Confirmation of Assessment Roll. After the expiration of 20 days from the confirmation of the assessment roll, the Town Clerk shall cause to be published one time in some newspaper of general circulation in the Town which is qualified to carry legal notices, or if there be no such newspaper, shall cause to be posted at three public places in the Town a notice of confirmation of the assessment roll, and that assessments may be paid at any time before the expiration of 30 days from the date of publication or posting of the notice without interest from the date of confirmation of the assessment roll, but that if such assessment is not paid in full within said time, all installments thereof shall bear interest until paid at the rate fixed in the assessment resolution, but not more than eight percent (8%) per annum from the date of confirmation of the assessment roll.

"Sec. 8.17. Payment of Assessments in Cash or by Installments. The property owner assessed shall have the option of paying for improvements in cash or in not less than two or more than five equal annual installments as may have been determined in the resolution ordering the improvements. If paid in installments, installments shall bear interest at the rate fixed in the assessment resolution, but not more than eight percent (8%) per annum from the date of confirmation of the assessment roll. If any assessment is not paid in cash, the first installment with interest shall become due and payable 30 days after the publication or posting of the notice of confirmation, and one subsequent installment and interest shall be due and payable on the same day of the same month in each successive year until the assessment is paid in full; provided, however, that if the Board shall so direct installments shall become due and payable on the same date when property taxes of the Town are due and payable. If any installment with interest is not paid when due, it shall be subject to the same penalties as are now prescribed by law for unpaid taxes, in addition to the interest herein provided for. The whole assessment may be paid at any time by the payment of the full amount due with accrued interest.

"Sec. 8.18. Procedure to Enforce Payment; Mandamus Against Railroads and State Agencies; Foreclosure Against Individuals. Upon the failure of any property owner to pay any installment when due and payable, all of the installments remaining unpaid

shall immediately become due and payable, and property and rights-of-way may be sold by the Town under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. Unpaid assessments, interest and penalties owed by railroad companies and the State of North Carolina, its agencies or subdivisions, may be collected by writs of mandamus issued by the Superior Court of Wake County. Collection of assessments with interest and penalties may also be made by the Town by proceedings to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the State, and it shall be lawful to join in any bill for foreclosure any one or more lots or parcels of land, by whomsoever owned, if assessed for an improvement ordered by the same resolution, after default in the payment of any installment. The payment of said installment, together with interest and penalties due thereon and any advertising and legal costs already incurred, before the lot or parcel of land against which the same is a lien is sold or said lien is foreclosed, shall bar the right of the Town to sell land or to foreclose the lien by reason of default.

"Sec. 8.19. Assessment of Cost of Water Main and Sewer Extensions. If the resolution ordering the making of any improvement or improvements included a provision for any necessary extension of a water main or sewer or sewers beyond the limit of a street or streets, at such time after the completion of said extension or extensions as in the judgment of the Board circumstances justify the assessment of the cost thereof, the Board shall cause a preliminary assessment to be made, and the procedure thereafter to be followed with respect to such assessment and the force and effect thereof shall be as already prescribed for other assessments.

"Sec. 8.20. Apportionment of Assessments. In any case where one or more special assessments have been made, and property has been or is about to be subdivided, and it is desirable that the assessments be apportioned among the subdivisions of such property, the Board may, upon application by the owner or owners, apportion the assessments among the subdivisions. Thereafter, each subdivision shall be relieved of any part of the original assessment except the part apportioned to the subdivision, and the part of the original assessment apportioned to any subdivision shall be of the same force and effect as the original assessment.

"Sec. 8.21. Change of Ownership. No change of ownership of any property or interests therein after the passage of a resolution ordering the making of a local improvement shall affect subsequent proceedings, and the improvement may be completed and assessments made therefor as if there had been no change in ownership.

"Sec. 8.22. Lands Subject to Assessment. No lands in the Town including railroad company lands and rights-of-way and property of the State of North Carolina, its agencies or subdivisions, shall be exempt from special assessments except lands belonging to the United States which are exempt under the provisions of Federal Statutes, and the council and the officers, trustees or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any local improvements.

"Sec. 8.23. Proceedings in Rem. All proceedings for special assessments shall be proceedings in rem, and no mistake or omission as to the name of any owner or person

interested in any lot or parcel of land affected thereby shall be regarded as a substantial mistake or omission.

"Sec. 8.24. Grass Plot and Driveway Maintenance. It shall be the responsibility of the abutting property owner to maintain any grass plot or driveway between the property line and the curb of a paved street.

"Sec. 8.25. Abeyance of Certain Water and Sewer Assessments. (a) Determination by Board; effect. The Board of Commissioners may provide by resolution that assessments levied against abutting lots or parcels of land for water main improvements or sanitary sewer improvements, when in its opinion such improvements may not presently be used by the owner or owners of the abutting lots or parcels of land, may be held in abeyance without the payment of any interest thereon until such time as the Board shall determine that any such assessments shall be paid in accordance with the terms set out in the confirming resolution. A part of the assessments levied for the improvements herein set out on a street or streets or portion thereof may be held in abeyance as herein provided without holding all of said assessments in abeyance.

(b) Statutes of limitations suspended. All statutes of limitations are hereby suspended during the time that any assessment is held in abeyance without the payment of interest as provided in subsection (a). Such time shall not be a part of the time limited for the commencement of action for the enforcement of the payment of any such assessment, and such action may be brought at any time within 10 years from the date of the adoption of a resolution by the Board determining that such assessment shall be paid in accordance with the terms set out in the confirming resolutions.

(c) Retroactive construction prohibited. Nothing herein shall be construed to revive any right of action which has heretofore been barred by the Statute of Limitations.

"Sec. 8.26. Abutting Property Outside City Limits. If any lots or parcels of land abutting any local improvements are located outside the city limits, the Board shall have the power to levy assessments against such property as if said property were located inside the Town limits, but may continue and delay the levy of assessments against such property until the Town limits are extended to include such property, or the Board may provide that no water or sewer service connections shall be made to such property, pending the annexation thereof, until all assessments thereon are paid. Upon annexation, if not paid prior thereto, the Board may levy assessments for such local improvements against such property, and the procedure therefor shall be the same as provided in this Charter. Nothing contained in this section shall be construed to prohibit or restrict the Board of Commissioners and a property owner from entering into an agreement for payments in lieu of assessments.

"Sec. 8.27. Acreage Charges for Water and Sewer Connections. The Board of Commissioners may establish and collect acreage charges for making connections to the Town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water mains and sewer outfalls and the replacement or enlargement of existing mains and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, the Board may establish higher acreage charges for property

to be developed for commercial, institutional, or industrial use than those established for property to be developed for other uses, may base acreage charges for residential development on the number of dwelling units per acre of land, and may establish higher acreage charges for property located outside the corporate limits than for property within the corporate limits.

"ARTICLE IX. EMINENT DOMAIN

"Sec. 9.1. Condemnation; Authority and Procedure. If at any time the Board of Commissioners of the Town of Zebulon should need to purchase any land within or without the Town limits, deemed necessary for a public use of the city, or for other purposes authorized by this Charter or other applicable law, and cannot agree with the owner of such land as to the compensation to be paid therefor, then the Board of Commissioners of the Town of Zebulon is hereby specifically authorized and empowered to, in the name of the Town, condemn either the fee or an easement in any such land, whether the land be owned by any private person, firm or corporation, or whether it be owned by any railroad company, power company, telephone company, gas company or other quasi-public corporation, or whether the land be devoted to private or public use. The proceedings utilized by the Board of Commissioners for such condemnation and determination of the compensation to be paid may be any of the alternative proceedings provided municipalities by the general laws of the State of North Carolina or those prescribed by Article 9 of Chapter 136 of the North Carolina General Statutes; provided that the Town of Zebulon shall possess the power of eminent domain for the purpose of acquiring the fee or any lesser interest in properties already devoted to the public use and owned by a public service corporation, including public utilities as defined in Chapter 62 of the General Statutes, and electric and telephone membership corporations, only if such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties, and their operation by such public service corporation.

"ARTICLE X. REGULATORY POWERS

"Sec. 10.1. Subdivisions; Require Installation of Improvements. (a) In connection with subdivision or platting controls, the Board of Commissioners may require the improvement and grading of streets and the construction and installation of street pavements, curbs, gutters, sidewalks, and water, sewer, surface water drainage and other utility mains as a condition precedent to approval of the plat. The requirements may provide for tentative approval of the plat previous to such improvement and installation, but any such tentative approval shall not be entered on the plat. The requirements may provide that in lieu of completion of the work and installations prior to final approval of the plat, the Board may accept a bond, in an amount and with surety and condition satisfactory to it, providing for and securing to the Town the actual construction and installation of the improvements and utilities within a period specified by the Board and expressed in the bond. The Town is empowered to enforce the bond by all appropriate legal and equitable remedies. Requirements adopted hereunder may be applied throughout the area over which the Town is authorized by law to exercise platting or subdivision controls.

(b) The requirements may provide, in lieu of the completion prior to the final approval of a plat of such work and installation on land within the area over which the Town is authorized by law to exercise platting or subdivision control, for an assessment under this Charter or under Article 10, Chapter 160A of the General Statutes or other statutory authorization whereby the Town may do the work and make the installations at the cost of the owners of the property within the subdivision.

"Sec. 10.2. Applicable to Public Service Corporations. All of the provisions of this Article and of any other laws granting planning, zoning and building regulatory powers to the Town of Zebulon, together with any ordinances passed by the Board of Commissioners of the Town in the exercise of such powers, shall be applicable to and enforceable against all public utilities and other public service corporations.

"Sec. 10.3. Planning Jurisdiction. The Town of Zebulon shall have jurisdiction for planning and regulation of development as set forth in Article 19 of Chapter 160A of the North Carolina General Statutes and may exercise the powers granted by said Article within an area defined pursuant to G.S. 160A-360 extending not more than one mile beyond the corporate limits of the Town of Zebulon.

"ARTICLE XI. MISCELLANEOUS POWERS

"Sec. 11.1. Powers Additional to Other Powers. In addition to the powers now or hereafter granted to municipalities under the general laws of the State of North Carolina, the Town of Zebulon shall have the following expressed powers hereby enumerated in the succeeding sections of this Article.

"Sec. 11.2. Regulation of Business on Sundays. The Town of Zebulon shall have the power to regulate or prohibit by ordinance the conduct of business activities on Sundays.

"Sec. 11.3. Operation of Motor Vehicles upon Certain Premises. The Town of Zebulon shall have the power to regulate, by ordinance, the speed and manner of operation of motor vehicles upon the grounds and premises of service stations, drive-in theaters, supermarkets, stores, restaurants, office buildings, or other business or municipal establishments, providing parking space for customers, patrons, or the public within the corporate limits of the Town of Zebulon.

"Sec. 11.4. Forbidding Entry upon Certain Premises. Upon the owner or other person in legal possession of the grounds and premises of any service station, drive-in-theater, supermarket, store, restaurant, office building, or other business or municipal establishment, providing parking space for customers, patrons, or the public within the corporate limits of the Town of Zebulon, providing to the Police Department of the Town of Zebulon such written authority, any member of the police force of the Town of Zebulon shall have the authority to forbid any person to remain, go, or enter upon said grounds and premises to the same extent as the said owner or other person in legal possession of said premises could do himself.

"Sec. 11.5. Cemetery Lots; Sale. The Town Manager may sell cemetery lots in the Town cemeteries, subject to the rules and regulations adopted by the Board of Commissioners. All deeds or instruments conveying title to such lots shall be signed by the Town Manager and need not be attested.

"ARTICLE XII. CLAIMS AGAINST THE TOWN

"Sec. 12.1. Presentation of Claims; Suit upon Claims. (a) All claims or demands against the Town of Zebulon arising in tort or in contract shall be presented to the Board of Commissioners in writing, signed by the claimant, his attorney or agent, within 90 days after the claim or demand is due or the cause of action accrues, and no suit or action shall be brought thereon within 30 days or after the expiration of 12 months from the time said claim or demand is so presented. Unless the claim or demand is so presented within 90 days after the cause of action accrues, and unless suit is brought within 12 months after the claim or demand is presented, any action thereon is barred.

(b) No action shall be instituted against the Town for damages to or compensation for real property taken or used by the Town for any public purpose, or for the ejectment of the Town therefrom, or to remove a cloud upon the title thereof, unless, within two years after such alleged use, the owner, his executor, administrator, guardian, or next friend, shall have given notice in writing to the Board of Commissioners of the claim, stating in the notice the date that the alleged use commenced, a description of property alleged to have been used, and the amount of the damage or compensation claimed.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if a complainant suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given by him or on his behalf within six months after the termination of his incapacity; provided, that minority shall not of itself constitute physical or mental incapacity. If the complainant is a minor, his action shall not be barred if notice of claim is given on his behalf within three years after the occurrence or the infliction of the injury complained of; or, if the minor suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given on his behalf within six months after termination of the incapacity, or within three years after the occurrence or the infliction of the injury complained of, whichever is the longer period. The Town may at any time request the appointment of a next friend to represent any person having a potential claim against the Town and known to be suffering from physical or mental incapacity.

"ARTICLE XIII. CHARTER AMENDMENTS

"Sec. 13.1. Incorporation of Amendments. (a) As soon as possible after the adjournment of each General Assembly, the Town Attorney shall present to the Board of Commissioners copies of all local laws relating to the property, affairs and government of the Town of Zebulon that were enacted by such General Assembly, whether or not amending in terms of this Charter, and recommend formal changes in this Charter. Such recommendations may include suggestions for renumbering or rearranging the provisions of such laws, for providing titles and catchlines, and for such other changes in arrangement and form that do not change the law, as may be thought necessary to implement the purposes of this section.

(b) After considering the recommendations of the Town Attorney, the Commissioners may provide for the incorporation of such laws into this Charter.

(c) The purpose of this section is to enable the Town to maintain at all times a current and accurate Town Charter, organized in clear and orderly fashion and

embracing all pertinent local laws relating to the property, affairs and government of the Town."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Zebulon and to consolidate herein certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts, which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

Sec. 3. This act shall not be deemed to repeal, to modify, nor in any manner to affect any acts validating, confirming, approving, or legalizing official meetings, actions, contracts, or obligations of any kind.

Sec. 4. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 5. No provision of this act is intended, nor shall be construed, to affect in any way, any rights or interest (whether public or private):

(a) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(b) derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(a) the repeal herein of any act repealing such law, or

(b) any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

Sec. 7. (a) All existing ordinances and resolutions of the Town of Zebulon and all existing rules or regulations of department or agencies of the Town of Zebulon not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified, or amended.

(b) No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Zebulon or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. This act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 8th day of May, 1973.