

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 5, 2007

SUBJECT: Resolution for permanent closure of easement
on the John F Rymer property

ATTACHMENTS: (1) Petition to close easement
(2) North Carolina General Statute 153A-241
(3) Proposed resolution

SUMMARY OF REQUEST: North Carolina General Statute 153A-241 requires that the Board of Commissioners first adopt a resolution declaring its intent to close a public road or easement. Attached is a proposed resolution declaring the Board's intent of closing the easements on the John F. Rymer property at 1515 Brevard Road, Hendersonville, North Carolina.

BOARD ACTION REQUESTED:

Recommend approving the adoption of the attached resolution.

Suggested Motion:

I move for the adoption of the attached resolution.

STATE OF NORTH CAROLINA

Petition Under § 153A-241.
Closing public roads or easements.


COUNTY OF HENDERSON

NOW COMES, John F. Rymer, by and through Attorney, J Michael Edney, pursuant to the provisions of N.C.G.S. 153A-241, and petitions the Henderson County Board of Commissioners to:

1. Adopt a resolution declaring its intent to close the public road or easement as shown on Exhibit "A" attached hereto and incorporated herein by reference, and to call a public hearing on the question.
2. Cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing.
3. Cause a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed.
4. Cause a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement.
5. To Conduct a Public Hearing and at the hearing hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights.
6. That after said hearing Adopt an ORDER finding as facts (a) that closing the public road or easement is not contrary to the public interest and (b) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property.
7. Cause a certified copy of the order to be filed in the office of the Register of Deeds of Henderson County.

This 19th day of January 2007.

Law Office of J Michael Edney
Attorney for Petitioner



1509 Haywood Road
Suite C
Hendersonville, N.C. 28791-2607
(828) 692-4130

Exhibit A

JULY 15 1915

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THE W. D. RYMER ESTATE

HENDERSON COUNTY N. C.

SURVEYED BY G W & TOM JUSTICE

COPIED BY ESF
SCALE 1" = 60'

§ 153A-241. Closing public roads or easements.

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34; 1995, c. 374, s. 1.)

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Please read the [cuveats on the main NC Statutes page](#) for more information.*

**RESOLUTION OF INTENTION TO CLOSE EASEMENTS ON THE PROPERTY OF
JOHN F RYMER, PARCEL IDENTIFICATION NUMBER 9568095949**

WHEREAS, North Carolina General Statute 153A-241 requires the County Board of Commissioners to adopt a resolution for the intention of closing an easement on property;

WHEREAS, The Henderson County Board of Commissioners proposed to hold a public hearing on the closing of easements on the John F Rymer property;

NOW, THEREFORE, BE IT RESOLVED by the Henderson County Board of Commissioners, as follows:

1. The Henderson County Board of Commissioners, which is authorized to close public roads and easements, hereby makes the following declaration which is intended to constitute a Declaration of Official Intent:
 - (a) **Hold a public hearing.** The Henderson County Board of Commissioners intend to hold a public hearing on the closure of easements on the property of John F Rymer.
2. This resolution shall take effect immediately upon its passage.

ADPTED THIS the ____ day of February, 2007

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]