

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 2, 2008

SUBJECT: Resolution for permanent closure of easement(s) on the James E. Schultz, Debra L Kaufman and Lynn S. Gosnell property

ATTACHMENTS: (1) Petition to close easements on the James E. Schultz, Debra L Kaufman and Lynn S. Gosnell property  
(2) Map of easement closure area  
(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 easement(s) on the James E. Schultz, Debra L Kaufman and Lynn S. Gosnell property, 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.

July 8, 2008

Bill Moyer, Chairman Henderson County Commissioners  
1 Historic Courthouse Square  
Suite 1  
Hendersonville, NC 28792

Dear Bill,

When we were negotiating with Biltmore Farms about the sale of some of our property to them, we found that we had a title problem e.g. "cloud" because of some lots and streets on a recorded plat that was created in 1926 were never opened. While we were investigating various ways to solve this problem, the economy had a downturn and Biltmore Farms, cancelled their contract with us. We hope to someday have a buyer for this property which our plans indicate will have a significant economic impact to Henderson County. When negotiating with a potential buyer we hope we can have this problem resolved. We have been advised that the county government can help solve the problem.

I have attached the following:

- A copy of a recorded plat from 1926
- General Statute §153A-241 regarding closing unopened streets
- A drawing showing the 1926 plat super imposed on our property

We have talked to all of our immediate neighbors along Halsbury Avenue (see the attached list) that are effected by our land and they are supportive in seeing that the streets named on the plat are properly closed and the closing be properly recorded. The streets are **Blackstone Street, Lyttleton Street, Alderson Drive, Sterling Lane and Maitland Terrace**. A further confusion is that several of our parcels of property have wording that says Halsbury Avenue (previously called Maitland Terrace).

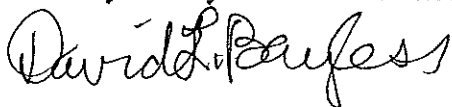
Since the wording on the plat says:

The Hendersonville Real Estate Company, its successors and assigns, by recording or publishing this map, or conveying or contracting to convey any lands or interests therein by reference thereto does not dedicate or intend or offer to dedicate or to vest to or in any person, set of persons, or corporation, either by grant or estoppel, express or implied, any right, easement, license, or privilege in or to any lands, parks, highways, roads, streets, service drives, water ways or water courses shown thereon, except as are specifically granted and defined in a deed or contract made by said company, its successors or assigns.

We have been advised that the County Commissioners can declare the streets in Block 17, 18, and 19 closed using the General Statute procedure for closing streets that were never opened? What do we need to do to help facilitate this process?

Does the County Commission have the authority to take the lots shown on the plat out of the Greater Druid Hills subdivision?

Thank you for your consideration in this matter,



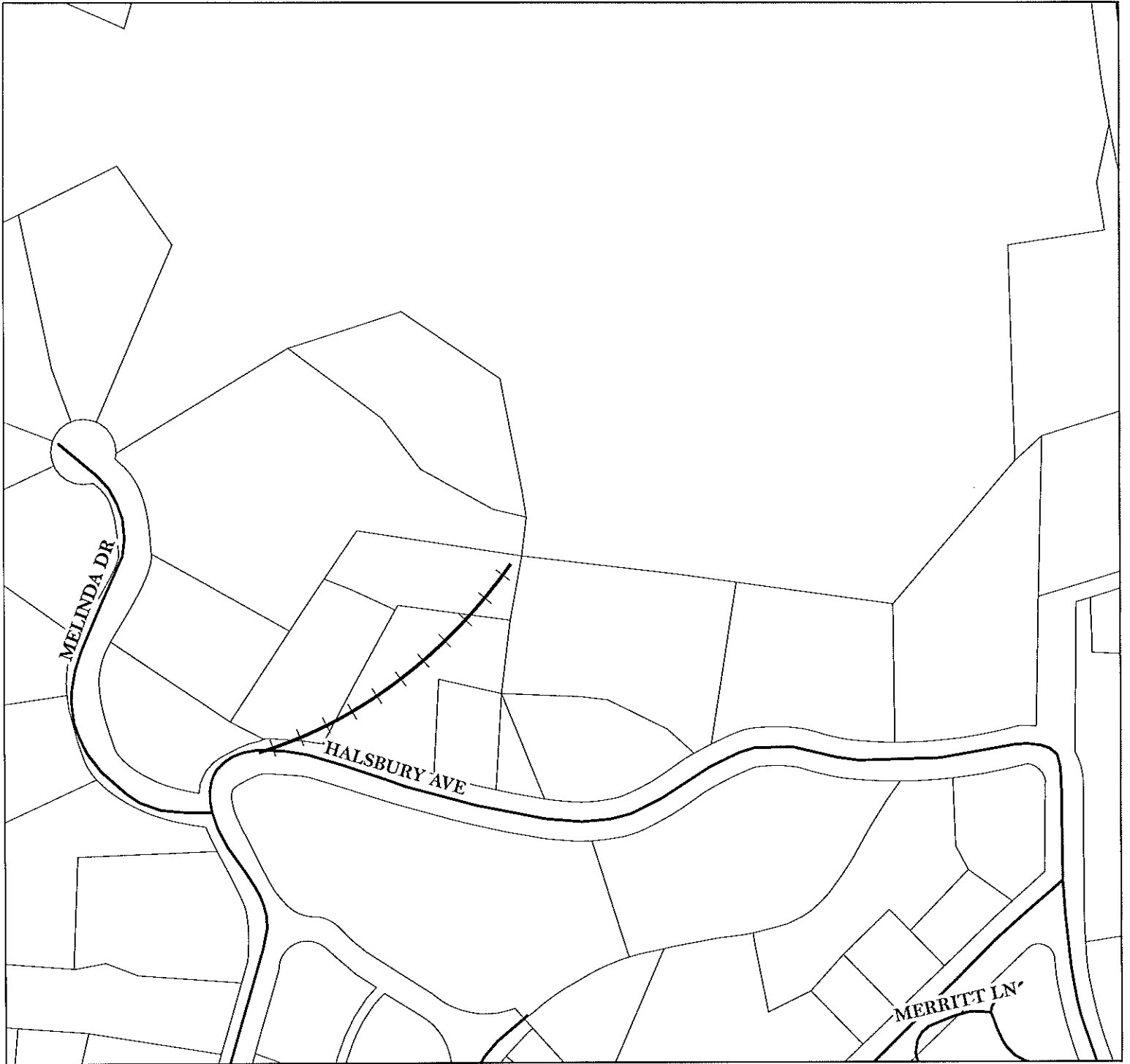
David L. Bayless  
290 Randy Drive  
Hendersonville, NC 28791

Property Owners on the north side of Halsbury Avenue

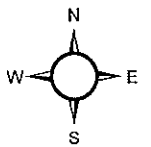
Owner	REID	Parcel Number
David and Nancy Bayless	9931235	9660-31-2378.000
David and Nancy Bayless, Curt and Beverly Mosher	9931234	9660-31-4452.000
David Michael Bayless	9941082 & 9941081	9660-21-8255.000 & 9660-21-8492.000
Jimmy and Teresa Schultz	9904851 & 9954119	9660-21-5386.000 & 9660-21-6510.000
Jimmy Schultz and Lynn Gosnell	9904850 & 0111509	9660-21-6277.000 & 9660-21-7243.000
Debbie Kaufman	0103784	9660-21-4336.000
Tommy MacInnes	9966040	9660-21-2208.000
Ron Calvert	9966039	9660-21-2452.000

# EASEMENT CLOSURE MAP

James Schultz, Debra Kaufman and Lynn Gosnell Property



Approximate location of easement to be closed



**§ 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.)

**RESOLUTION OF INTENTION TO CLOSE EASEMENT ON THE PROPERTY'S OF  
JAMES E. SCHULTZ, DEBRA L KAUFMAN, AND LYNN S. GOSNELL, PARCEL  
IDENTIFICATION NUMBER'S 9660216510, 9660214336 AND 9660215386**

**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 easement on the above property owners;

**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 James E. Schultz, Debra L Kaufman, and Lynn S. Gosnell, if the easement exists as shown by the red line on the attached map.
2. This resolution shall take effect immediately upon its passage.

**ADOPTED THIS** the \_\_\_\_ day of September, 2008

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

**BY:** \_\_\_\_\_  
**William L. Moyer, Chairman**

**ATTESTED BY:**

\_\_\_\_\_  
**Elizabeth W. Corn, Clerk to the Board**

**[OFFICIAL SEAL]**