

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 20 May 2009

SUBJECT: Request for road closing

ATTACHMENT(S):

1. Petition
2. Proposed Resolution
3. Aerial Overview
4. N.C. Gen. Stat. 153A-241

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 to close two continuous portions of an unopened easement/alley bordering two properties of James & James, Environmental, Inc., having an address of 3801 Asheville Highway and 11 Old Park Road, both of Hendersonville, NC. Surveys showing the two portions of the easement to be closed are attached.

The petitioner's representative will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the Proposed Resolution, and setting public hearing.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the proposed resolution, and set a public hearing on the road closure for July 6, 2009, at 7:00 p.m.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

Petition Under §153A-241

Closing public roads or easements

NOW COMES James & James Environmental Management, Inc, a North Carolina corporation, by and through its attorney, Angela S. Beeker, 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 portions of the public road or easement as shown on Exhibits "A" and "B" 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, upon information and belief those properties have the following PIDs: 0113789, 0114140, 0112655, 0105398, 0103733, 0114705, 0106720, 0105841.
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.

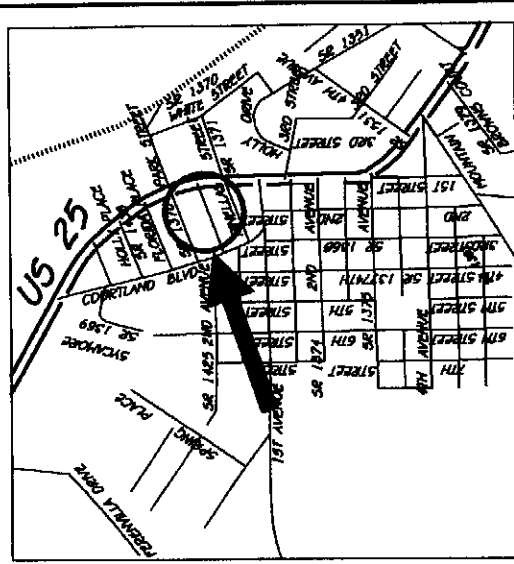
This 4th day of May, 2009.

Whitmire & Beeker

A handwritten signature in black ink, appearing to read "Angela S. Beeker", is written over a solid horizontal line.

Angela S. Beeker
Attorney for Petitioner
1612 Asheville Hwy, Suite 4
Hendersonville, NC 28791
828-692-8201
beekera@bellsouth.net

EXHIBIT A

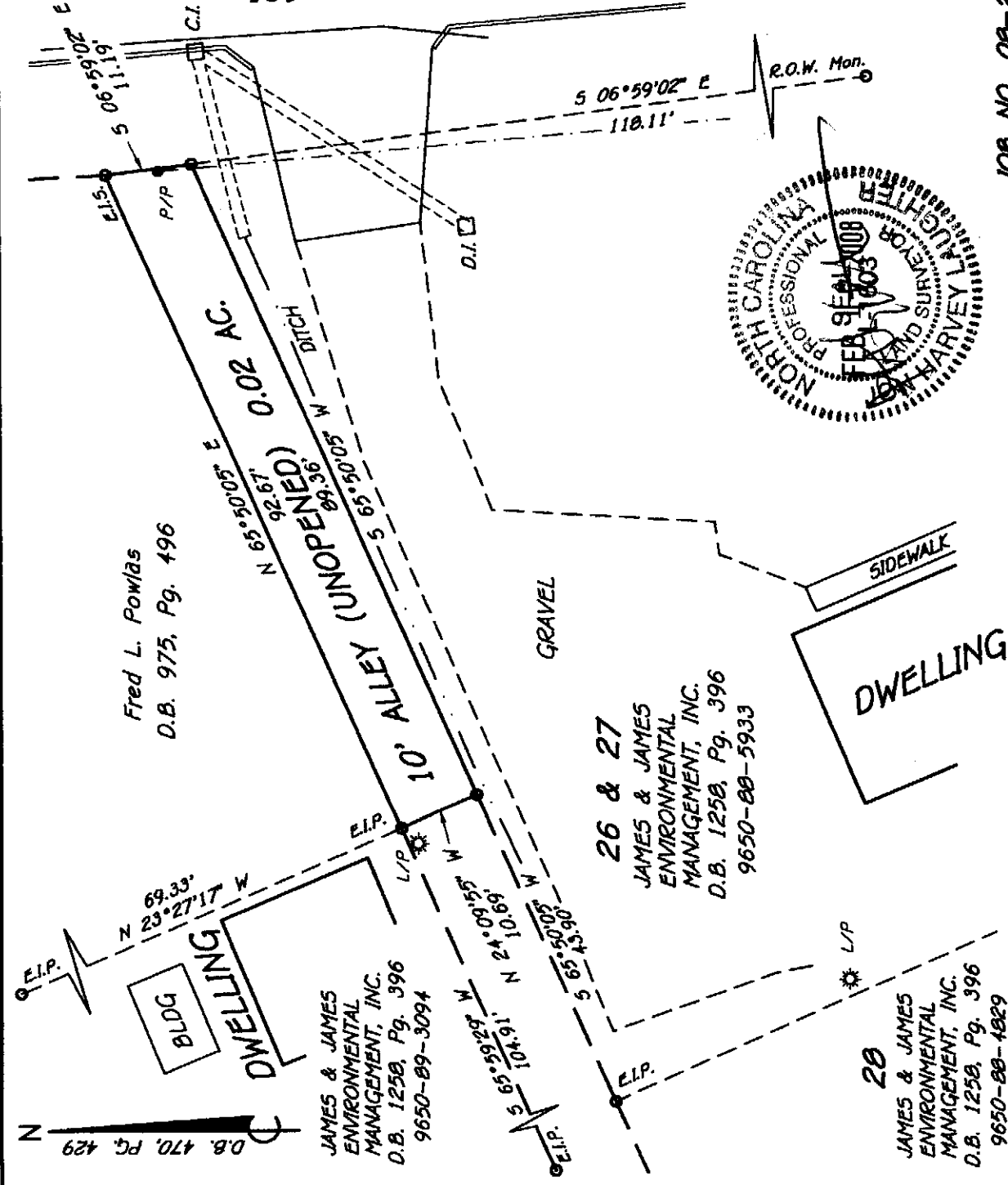


VICINITY MAP

MAP OF SURVEY
made for
**JAMES & JAMES
ENVIRONMENTAL
MANAGEMENT, INC.**

**REQUEST FOR
ROAD CLOSURE**

**U. S. 25
ASHEVILLE HIGHWAY
105' R.O.W.**



JOB NO. 08-292

HENDERSONVILLE TWP.	HENDERSON COUNTY, N.C.		
<p>LAUGHTER, AUSTIN AND ASSOCIATES, P.A. 131 FOURTH AVENUE EAST HENDERSONVILLE, NORTH CAROLINA 28792 (828) 692-9089</p>			
CREW CHIEF DJA	CHECKED BY	DATE	SHEET NO.
DRAWN BY TPW		2/16/09	1 OF 1
CORR. FILE 08292		SCALE 1" = 20 FT.	DRAWING FILE 08292rc2
FLOOD MAP PANEL NUMBER 370125 0085		TAX PARCEL NUMBER 89-3094	9650-88-4829, 5933

RESOLUTION DECLARING INTENTION TO CLOSE UNOPENED EASEMENT BORDERING
PROPERTY OF JAMES & JAMES, ENVIRONMENTAL MANAGEMENT, INC., PARCEL
IDENTIFICATION NUMBERS 0105841 AND 0114140

WHEREAS, James & James Environmental Management, Inc, is the owner of those parcels having an address of 3801 Asheville Highway and 11 Old Park Road, both of Hendersonville, NC, having parcel identification numbers of 0105841 and 0114140 respectively; and

WHEREAS, James & James has requested that the Henderson County Board of Commissioners close two continuous portions of the unopened easement/alley lying adjacent to and between said parcels; and

WHEREAS, surveys of the two continuous portions of said easement/alley is attached hereto as Exhibits A and B; and

WHEREAS, the unopened easement/alley proposed for closing is NOT under the supervision and control of the North Carolina Department of Transportation; and

WHEREAS, N.C.G.S. 153A-241 authorized the Board of Commissioners to close such easements after adopting a resolution declaring its intent to close the easement and calling a public hearing on the questions;

NOW THEREFORE BE IT RESOLVED that the Board of Commissioners declares that it is the intent of the Board of Commissioners to close the portions of the above-described easement/alley shown on Exhibits A and B attached hereto.

THIS the ____ day of _____, 2009.

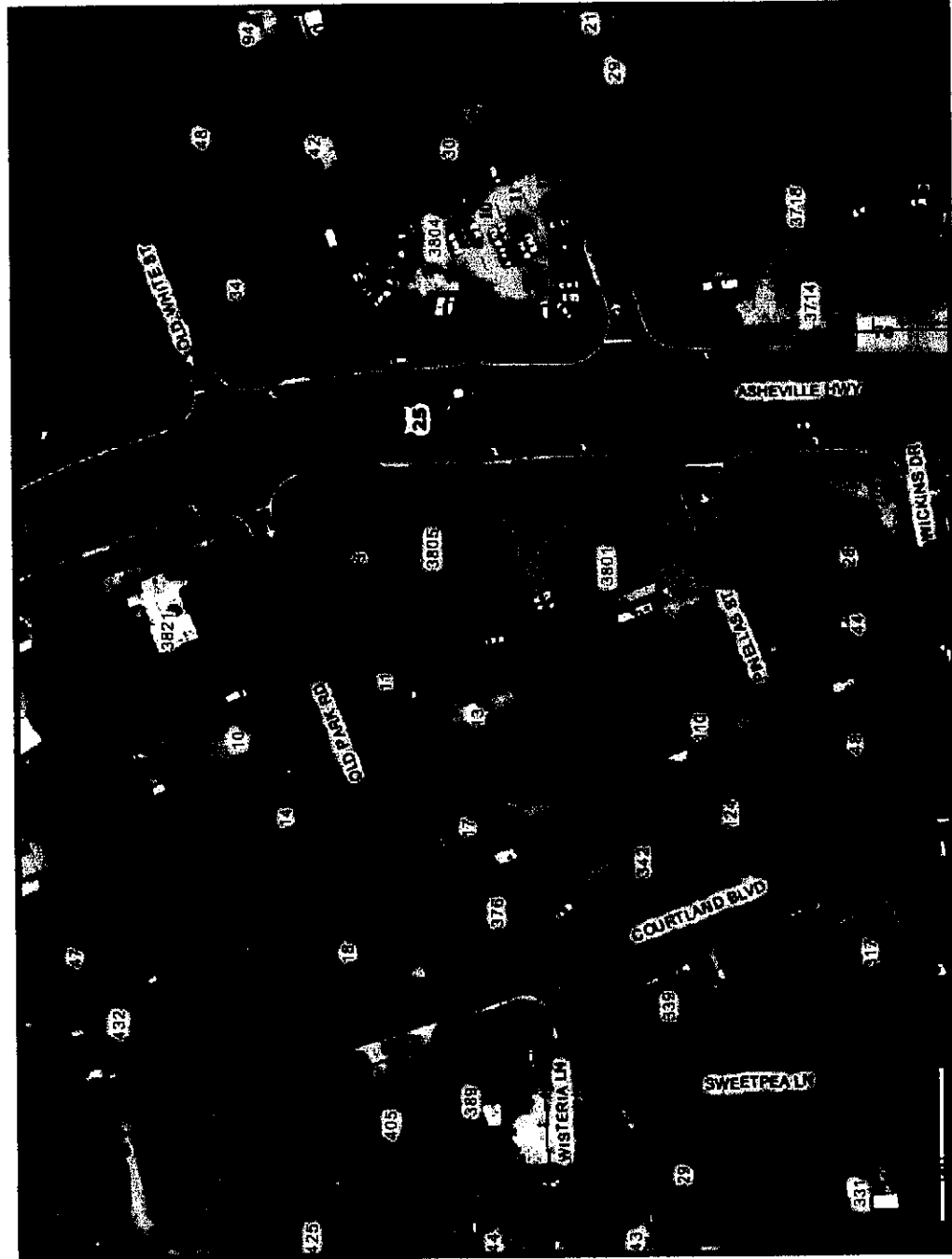
THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

Attest:

Clerk

Aerial Overview of Proposed Road Closing



LEGEND

- NC_State_Line
- County_Boundary
- Parcels
- Lot_line_hooks_Mailer_lines
- Parcel Hooks
- Parcel Leader Lines
- Parcel Lot Lines
- SC_Counties
- NC_Counties
- Streets
- Collector
- Local Road
- Major_Roads
- Addresses
- Municipal_Boundaries
- FLAT ROCK
- FLETCHER
- HENDERSONVILLE
- LAUREL PARK
- BILLS CREEK
- SALUDA
- Aerial_Photos_2007

Monday, May 4 2009



WARNING: THIS IS NOT A SURVEY!

This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The County and mapping company assume no legal responsibility for the information contained on this map.

West's North Carolina General Statutes Annotated Currentness
Chapter 153A. Counties
Article 12. **Roads** and Bridges
§ 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