

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 6, 2009

SUBJECT: Request for road closing

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

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 a portion of an unopened road/easement bordering the property of James C. Kirkpatrick, located off Spartanburg Hwy in East Flat Rock, North Carolina.

#### BOARD ACTION REQUESTED:

Approval of the Proposed Resolution, and setting public hearing.

#### Suggested Motion:

I move for the adoption of the attached resolution, and set a public hearing on the road closure for September 8, 2009, at 7:00 p.m.

**THE YELVERTON FIRM, PLLC**

210 NORTH MAIN STREET

HENDERSONVILLE, NORTH CAROLINA 28792

Telephone: 828.697.2020

Facsimile: 828.697.6522

RICHARD L. YELVERTON III, Lawyer

CHERYL M. JONES, Lawyer

June 16, 2009

Henderson County Planning Department

Attn: Curtis Griffin

100 N. King St.

Hendersonville, NC 28792

VIA HAND DELIVERY

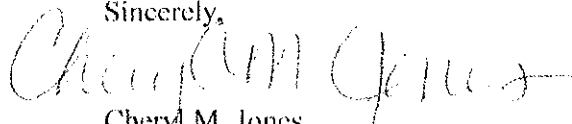
Dear Mr. Griffin:

Please accept this letter as a formal request on behalf of my client, James C. Kirkpatrick, to close a portion of that unopened Henderson County Road known as Rogers Avenue. Mr. Kirkpatrick is the owner of a parcel of real property bordering the subject portion of Rogers Avenue.

Attached is a copy of a survey prepared by Steven Lloyd Waggoner showing the portion of Rogers Avenue Mr. Kirkpatrick is requesting closed. Also attached is a metes and bounds description of the referenced portion of Rogers Avenue as well as a copy of Mr. Kirkpatrick's General Warranty Deed.

Should you have any questions, or need additional documentation, please do not hesitate to contact me at 828-697-2020 or via email at [cheryl@theyelvertonfirm.com](mailto:cheryl@theyelvertonfirm.com). Thank you for your assistance in this matter.

Sincerely,



Cheryl M. Jones  
The Yelverton Firm, PLLC

encl.

File 13166



**§ 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 OF  
JAMES C. KIRKPATRICK, PARCEL IDENTIFICATION NUMBER 9577863640**

**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 James C. Kirkpatrick 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 James C. Kirkpatrick, if the easement exists as shown by the red line on the attached map.
2. This resolution shall take effect immediately upon its passage.

**ADPTED THIS** the \_\_\_\_ day of July, 2009

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

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

**ATTESTED BY:**

\_\_\_\_\_  
**Terry Wilson, Clerk to the Board**

**[OFFICIAL SEAL]**



# EASEMENT CLOSURE PETITION



Located on property of James C. Kirkpatrick



Proposed Right of Way Closure

Printed by the Property Addressing  
Division on 06/16/2009



1 inch = 173 feet

All information or data provided (whether subscribed, purchased or otherwise distributed) is provided as is, without any warranties, including the warranties of merchantability or of fitness for a particular purpose. Henderson County and its employees make no warranties or guarantees, either express or implied. Use of the information or data subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk.

