

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 6, 2009

SUBJECT: Public hearing on permanently closing of
easement

ATTACHMENTS: (1) Resolution adopted May 20, 2009
(2) North Carolina General Statute 153A-241
(3) Order closing easement on said property.
(4) Map of proposed easement closure.

SUMMARY OF REQUEST: North Carolina General Statute 153A-241 requires that a public hearing be held for the permanent closing of a public road or easement. The public hearing was set May 20, 2009 for the purpose of closing easements on the properties of James & James Environmental Management Inc., and Equity Trust Co., Hendersonville, North Carolina.

BOARD ACTION REQUESTED:

Recommend approving permanent closure of easements on the said property and upon approval signing attached Order of Closure for recording with the County registrar.

Suggested Motion:

I move for the Board to approve closure of the easements and certify Orders of Closures.

HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite 1
Hendersonville, North Carolina 28792
Phone 828-697-4808 • Fax: 828-698-4443

BILL MOYER
Chairman
CHARLIE MESSER
Vice-Chairman

TDD: 828-697-4580
www.hendersoncountync.org

CHUCK McGRADY
MARK WILLIAMS
LARRY YOUNG

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 and 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.

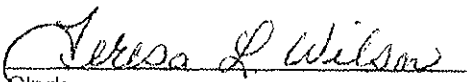
THIS the 20th day of May, 2009.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 

William L. Moyer, Chairman

Attest:


Teresa L. Wilson
Clerk



§ 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.)

JAMES & JAMES ENVIRONMENTAL MANAGEMENT INC., AND EQUITY
TRUST CO. PARCEL IDENTIFICATION NUMBERS 9650885933,
9650884829, 9650893094 AND 9650895015

WHEREAS, the Henderson County Board of Commissioners on May 20, 2009 adopted a resolution of intent to consider closing the easements located on the properties of James & James Environmental Management Inc., and Equity Trust Co. parcel identification numbers 9650885933, 9650884829, 9650893094 and 9650895015 and a public hearing thereon was held July 6, 2009; and

WHEREAS, the closing of easements on the properties of James & James Environmental Management Inc., and Equity Trust Co. would not be contrary to the public interest; and no individual owning property in the vicinity of the easements would be deprived of reasonable means of egress to his or her property by the closing of said easements.

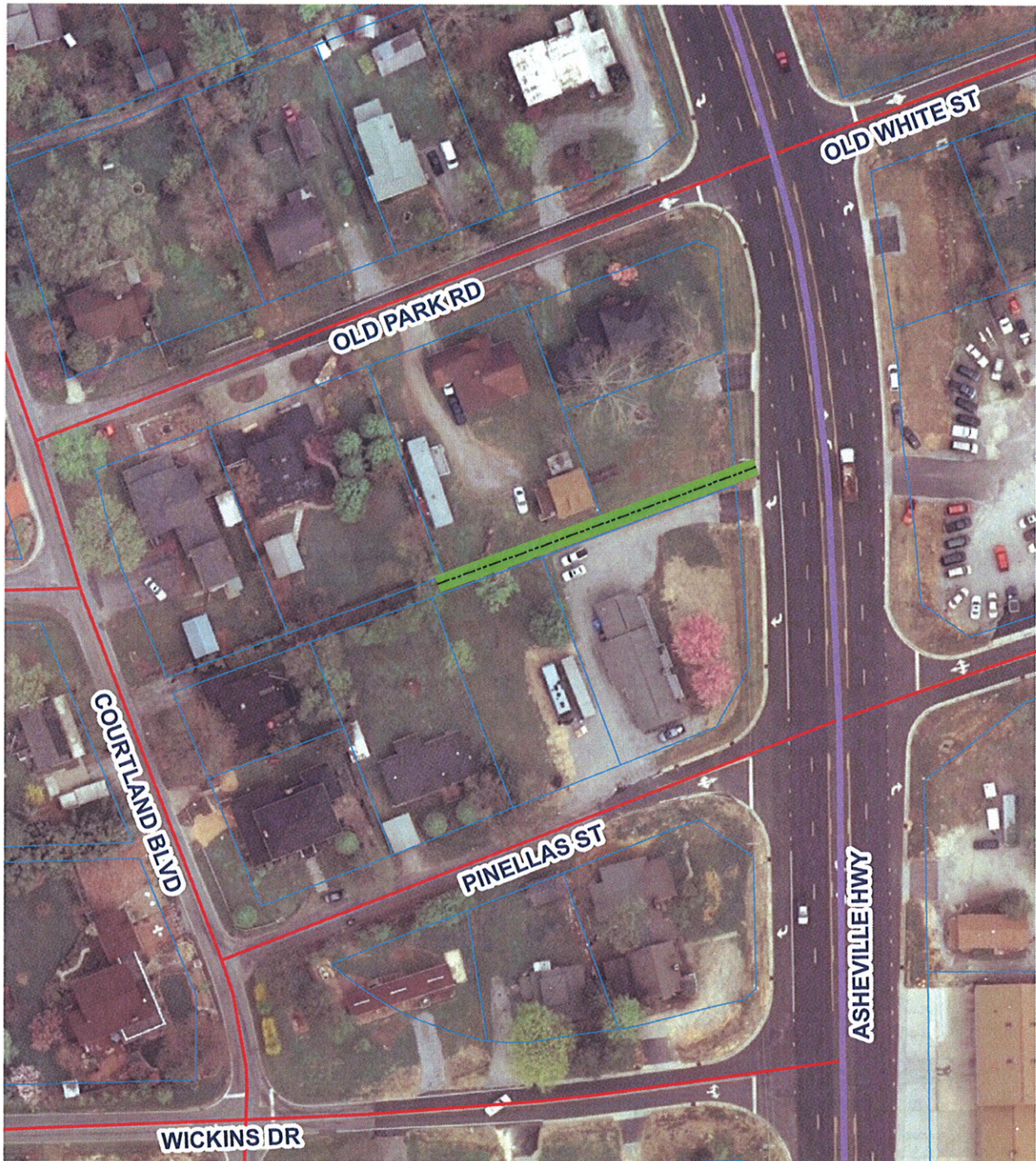
NOW, THEREFORE BE IT RESOLVED by the Henderson County Board of Commissioners hereby adopts this order pursuant to North Carolina G.S. 153A-241, permanently closing the easements located on the properties of James & James Environmental Management Inc., and Equity Trust Co. which shall be shown on a plat to be provided by the party requesting the easement closure.

BE IT FURTHER RESOLVED that said plat shall be recorded by the requesting party, with the Henderson County registrar, upon approval by the County.

This the _____ day of _____ 2009.

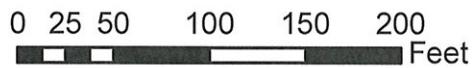


EASEMENT CLOSURE PETITION



Proposed Right of Way Closure

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



1 inch = 95 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.

