

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 8, 2009

SUBJECT: Public hearing on the permanent closing of an easement

ATTACHMENTS: (1) Resolution adopted July 6, 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 July 6, 2009 for the purpose of closing the easement on the property of James C. Kirkpatrick, Hendersonville, North Carolina.

BOARD ACTION REQUESTED:

Staff recommends approving the permanent closure of the easement on the subject property and execution of the attached Order of Closure for recording with the County registrar.

Suggested Motion:

I move that the Board approve the closure of the easement and certify the Order of Closure.

HENDERSON COUNTY BOARD OF COMMISSIONERS

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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.

ADOPTED THIS the 6th day of July, 2009

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____

William L. Moyer, Chairman

ATTESTED BY: _____

Teresa L. Wilson
Teresa L. Wilson, Clerk to the Board

[OFFICIAL SEAL]

§ 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.)

**AN ORDER CLOSING THE EASEMENT ON THE PROPERTY OF
JAMES C. KIRKPATRICK, PARCEL IDENTIFICATION NUMBER
9577863640**

WHEREAS, the Henderson County Board of Commissioners on July 6, 2009 adopted a resolution of intent to consider closing the easement located on the property of James C. Kirkpatrick, parcel identification number 9577863640 and a public hearing thereon was held September 8, 2009; and

WHEREAS, the closing of easement on the property of James C. Kirkpatrick would not be contrary to the public interest; and no individual owning property in the vicinity of the easement would be deprived of reasonable means of egress to his or her property by the closing of said easement.

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 easement located on the property of James C. Kirkpatrick, which shall be shown on a plat to be provided by the party requesting the easement closure.

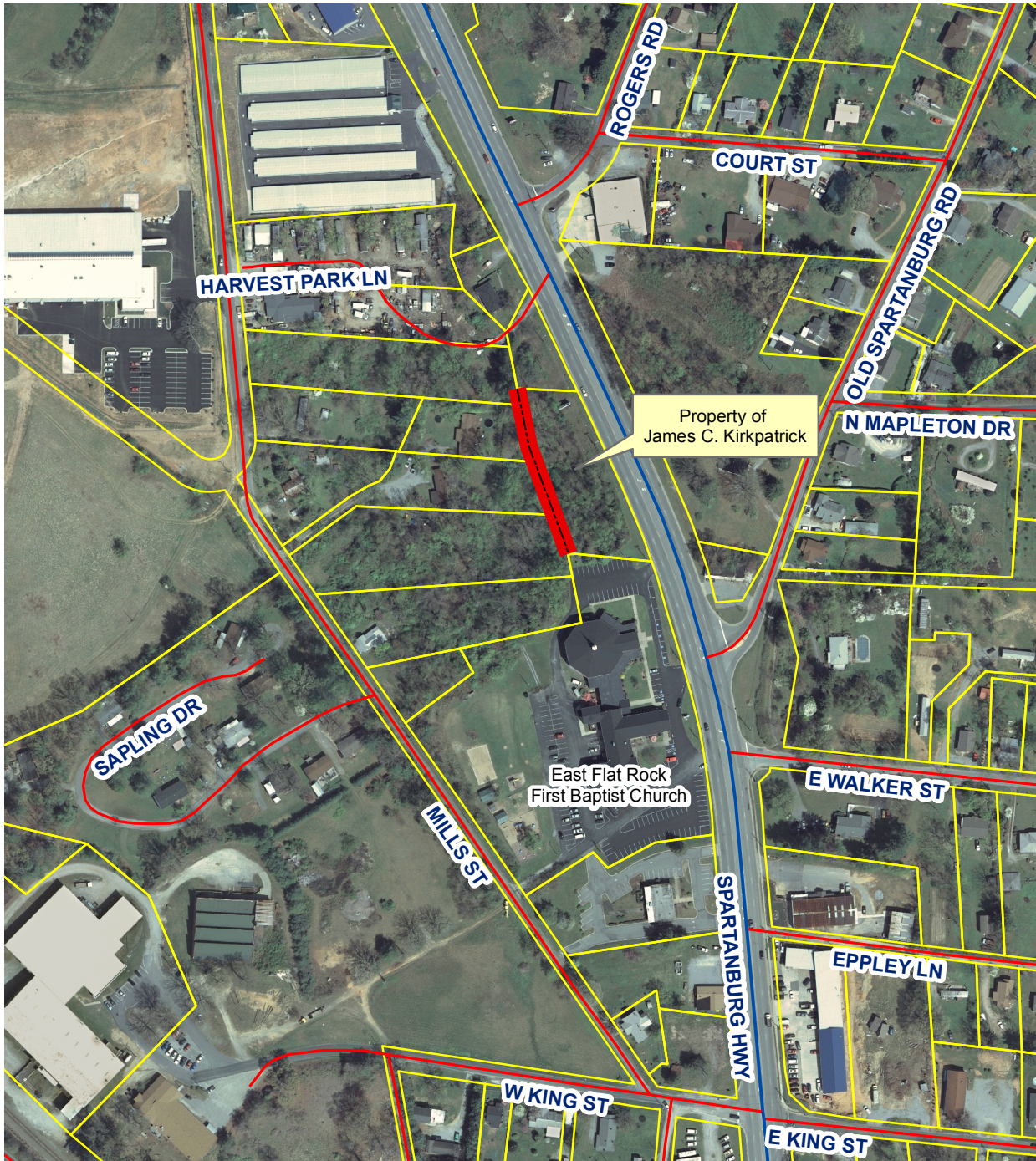
BE IT FURTHER RESOLVED that said plat shall be recorded by the requesting party, with the Henderson County registrar, upon approval by the County.

This the _____ day of _____ 2008.

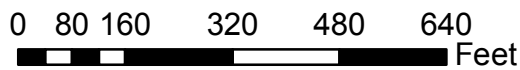


EASEMENT CLOSURE PETITION

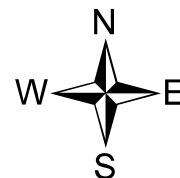
Located on the property of James C. Kirkpatrick



Proposed easement closure



1 inch = 287 feet



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