

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** October 7, 2013

**SUBJECT:** Petition to Permanently Close a portion of 9<sup>th</sup> Avenue West

**PRESENTER:** Commissioner Young

**ATTACHMENTS:** Yes

1. Memo regarding the closing of 9<sup>th</sup> Avenue West between Oakland Street and North Church Street
2. Map of area
3. NCGS § 160A-299
4. Petition to Permanently Close a Street/Alley

#### **SUMMARY OF REQUEST:**

The County recently purchased the “Boyd Property” on Asheville Highway for the future expansion of Hendersonville High School. Currently, 9<sup>th</sup> Avenue West between Oakland Street and North Church Street bisects the property, complicating the planning process. Due to the lengthy process to obtain street closure approval, the Board of Education has requested that the County join with them in petitioning the City to close the street.

#### **BOARD ACTION REQUESTED:**

The Board is requested to authorize Staff to join with the Board of Education, in petitioning the City of Hendersonville to close 9<sup>th</sup> Avenue West between Oakland Street and North Church Street.

#### **Suggested Motion(s):**

*I move the Board authorize Staff to join with the Board of Education, in petitioning the City of Hendersonville to close 9<sup>th</sup> Avenue West between Oakland Street and North Church Street.*

**JOINT FACILITIES COMMITTEE MEETING**  
**September 24, 2013**

**MEMO: Closing of 9<sup>th</sup> Avenue West**  
**Between Oakland Street and North Church Street**

Ninth Avenue West between Oakland Street and North Church Street is bordered by Hendersonville High School and property owned by Henderson County. There are no other landowners adjacent to or contiguous with this portion of 9<sup>th</sup> Avenue West. (Copy of map attached)

The procedure to permanently close a street is set forth in North Carolina General Statute § 160A-299. (Copy attached)

**Step One:**

The process begins with the submission of a Petition to Permanently Close a Street that is submitted by the adjacent landowners, Henderson County and Henderson County Board of Public Education. Copies of the deeds showing ownership of the adjacent property, a survey of the portion of the street to be closed and an administrative fee are submitted with the Petition. The fee is listed as \$1,000.00 and we have obtained a quote from a local surveyor who has agreed to do the survey at a reduced rate of \$800.00 or less. The survey would show the road as being divided in the middle between the adjoining land owners.

**Step Two:**

The City Council will consider the Petition. If they agree, they will adopt a resolution to permanently close the street and call for a public hearing on the resolution. The proposed resolution shall be published once per week for four successive weeks. Each landowner adjoining the street will be given written notice of the proposed resolution. Notice shall also be posted in two places on the street.

**Step Three:**

Public hearing is held. Anyone may speak at the hearing on question of whether it is in the public interest to close the street.

**Step Four:**

City Council adopts resolution. A period of 30 days will run during which an appeal of the decision may be made.

**Step Five:**

City Council will issue an Order Permanently closing the street which will be recorded with the Henderson County Register of Deeds.



**§ 160A-299. Procedure for permanently closing streets and alleys.**

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. 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 in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

The provisions of this subsection regarding division of right-of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.

(d) This section shall apply to any street or public alley within a city or its extraterritorial jurisdiction that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown on plats but that have not been accepted or maintained by the city, provided that this section shall not abrogate the rights of a dedicator, or those claiming under a dedicator, pursuant to G.S. 136-96.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) A city may reserve its right, title, and interest in any utility improvement or easement within a street closed pursuant to this section. Such reservation shall be stated in the order of closing. Such reservation also extends to utility improvements or easements owned by private utilities which at the

time of the street closing have a utility agreement or franchise with the city.

(g) The city may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the city council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the city declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34; 1981, c. 401; c. 402, ss. 1, 2; 1989, c. 254; 1993, c. 149, s. 1.)



### CITY OF HENDERSONVILLE PLANNING DEPARTMENT

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Phone (828) 697-3088 ~ Fax (828) 697-3014

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### PETITION TO PERMANENTLY CLOSE A STREET / ALLEY

The following are required to constitute a complete application for closing a street or alley:

- ~This form including the signature(s) of property owner(s) adjoining the street or alley.
- ~ Appropriate fee.
- ~A copy of the deed indicating ownership of the property.
- ~A survey plat (8 1/2 " by 11") of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ~ A typed boundary description of the area to be closed, in digital format if possible.

Date

Name of street/alley

List 10 digit PIN or 7 digit PID number

Are you proposing to close a street or alley?       STREET       ALLEY

Are you closing all or a portion of the street/ alley?       ALL       PORTION

Applicant Name

Address

Phone

Fax

Email

Property Owner: Name

Address

Signature \_\_\_\_\_

Property Owner: Name

Address

Signature \_\_\_\_\_

Official Use:  
DATE RECEIVED: \_\_\_\_\_ BY \_\_\_\_\_ FEE RECEIVED \$ \_\_\_\_\_