

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** May 18, 2016

**SUBJECT:** Public Hearing to Abandon State Maintenance and permanently close a portion of Cloverdale Drive (SR 1530)

**PRESENTER:** Curtis Griffin, Property Addressing Office

**ATTACHMENTS:**

- (1) Map of Cloverdale Drive
- (2) Petition to Abandon State Maintenance
- (3) Petition to Close Portion of Cloverdale Drive
- (5) NC General Statute 153A-241 and 136-63
- (6) Order to permanently close a portion of Cloverdale Drive
- (7) Power Point Slides

### SUMMARY OF REQUEST:

The Henderson County Board of Commissioner's passed a resolution at the March 16, 2016 board meeting stating their intent to hold a public hearing for the purpose of permanently closing a portion of Cloverdale Drive (SR 1530).

North Carolina General Statute 153A-241 requires that a public hearing be held for the permanent closing of a public road or easement and that the board must adopt an order closing the right-of-way if it deems no individual owning property would be deprived of a reasonable means of ingress and egress.

North Carolina General Statute 136-63 provides that any group of petitioners may request for the abandonment of any road in the secondary system when in the best interest of the people of the county will be best served thereby.

### BOARD ACTION REQUESTED:

Staff recommends approval of the Abandonment of State Maintenance and to permanently close a portion of Cloverdale Drive and adopt the Order of Closure for recording with the County Registrar.

### Suggested Motion:

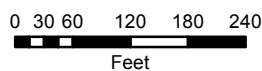
*I move that the Board approve recommending abandonment of state maintenance and closure of the right-of-way and certify the Order of Closure.*

# Proposed ROW Closing / State Road Abandonment

Cloverdale Drive (SR 1530)



 Proposed section to be abandoned



1 inch = 200 feet

Map Created by Curtis Griffin  
Henderson County Planning Dept  
Property Addressing Division  
05/02/2016







2/10/16

Lassonde Pappas & Company, Inc.  
125 Industrial Park Road  
Hendersonville, NC 28792

Curtis Griffin  
Property Addressing Coordinator  
Henderson County Planning Department  
Property Addressing Division  
100 North King Street  
Hendersonville, NC 28792

Subject: Lassonde Pappas & Company, Inc. request to close a portion of Cloverdale Drive

Dear Mr. Griffin:

The purpose of this letter is to follow up on our discussion and formally request closure of Cloverdale Drive, abandonment of the right of way and annexation of the land to Lassonde Pappas.

Lassonde Pappas recently acquired parcels located Northwest of our existing facility and we now own the property on both sides of Cloverdale Drive (SR 1530) from the Northeast side of the existing railroad crossing to the intersection of Cloverdale/North Egerton Road (SR1632). We respectfully request that the Henderson County Board of Commissioners, in cooperation with the NCDOT, support a resolution to close that portion of Cloverdale which borders our property as well as a small portion on the Southwest side of the rail crossing between a new turn around and the tracks (see Figure 1). The following key points support approval of this request:

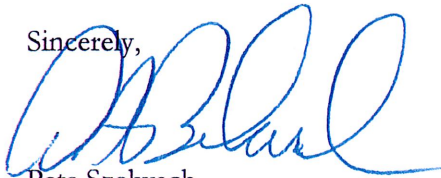
1. **Future Expansion/Economic Development.** Lassonde Pappas has operated in Henderson County since 2002, providing high paying manufacturing jobs. Closure and annexation of the road will enable Lassonde Pappas more options and flexibility to expand its operational footprint in the future.
2. **Employee Safety.** Expanding operations across Cloverdale onto the new parcel will require that our employees and vehicles (forklifts, etc.) travel between buildings. Crossing an active road by pedestrian employees and plant vehicles which are not licensed for use over the road would present a safety and DMV compliance concern.
3. **Emergency Response.** Following our phone conference on 1/11/16 with Rocky Hyder, Henderson County Emergency Services Director, we agreed that once the road is closed there will be sufficient access for emergency vehicles to respond to issues at our facilities.
4. **Public Safety.** Since Lassonde Pappas is a beverage manufacturer, part of our future expansion may require extension of plant utilities, specifically liquid and gaseous

anhydrous ammonia refrigeration lines, from our existing plant to the new parcel. Given Process Safety Management (PSM) considerations, it would be very costly and introduce a potential public safety concern if we had to cross an active DOT road (Cloverdale Drive) with overhead lines. In addition, closing Cloverdale Drive will address concerns of residential owners who likely oppose 24 hour truck traffic to/from Mountain Home Industrial Park.

5. **Future Traffic Pattern.** On 1/29/16, Blake Kehoe, Lassonde Pappas' Director of Engineering, and I met with Steve Cannon, NCDOT District Engineer, to discuss options for a turn around on the Southwest side of the railroad crossing. Upon adoption of the resolution by the Henderson County Board of Commissioners, Lassonde Pappas agrees to construct a T-type turn around at our expense and relocate existing utilities as necessary. We would also install barrier signs and remove the asphalt between the turn around and tracks to eliminate any possibility of vehicle traffic across the tracks. NCDOT and Watco would approve the final scope of work and final installation.
6. **Eliminate The Rail Crossing (see Figure 2).** On 1/18/16, I communicated with Darl Farris, General Manager of Watco, about this project and he confirmed on 2/11/16 via email that it is in the railroad's interest to decommission this crossing. They would like to remove all signalization by end of the project. Watco will support the NCDOT stipulation and permit Lassonde Pappas to construct the T-type turn around on the Southwest side of the tracks in the 50' x 50' right of way which is shared by Watco/Blue Ridge Southern RR and the NCDOT.

Lassonde Pappas thanks you for your consideration in this project. Given the points outlined above, we are confident that the Henderson County Board of Commissioners and public will support this request. Please contact me for any questions.

Sincerely,



Pete Szelwach  
Plant Manager  
Lassonde Pappas and Company, Inc.

Figure 1: Cloverdale Drive Closure and Existing Facilities

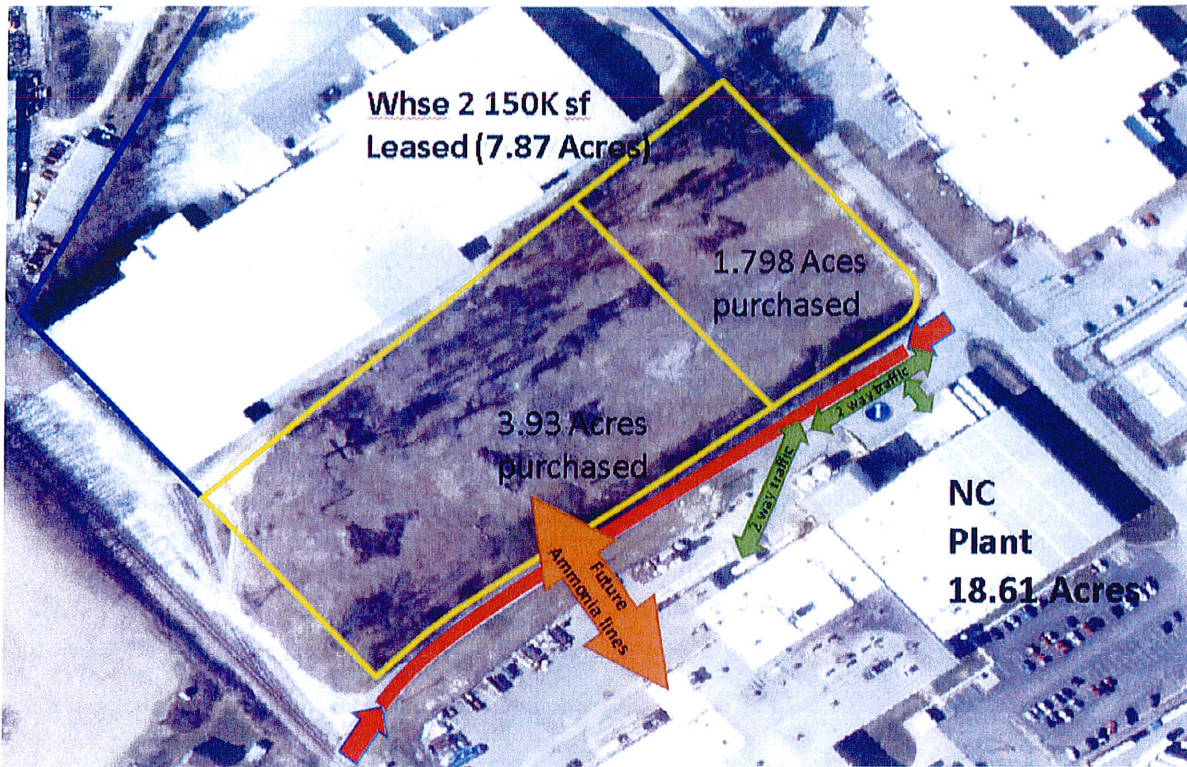
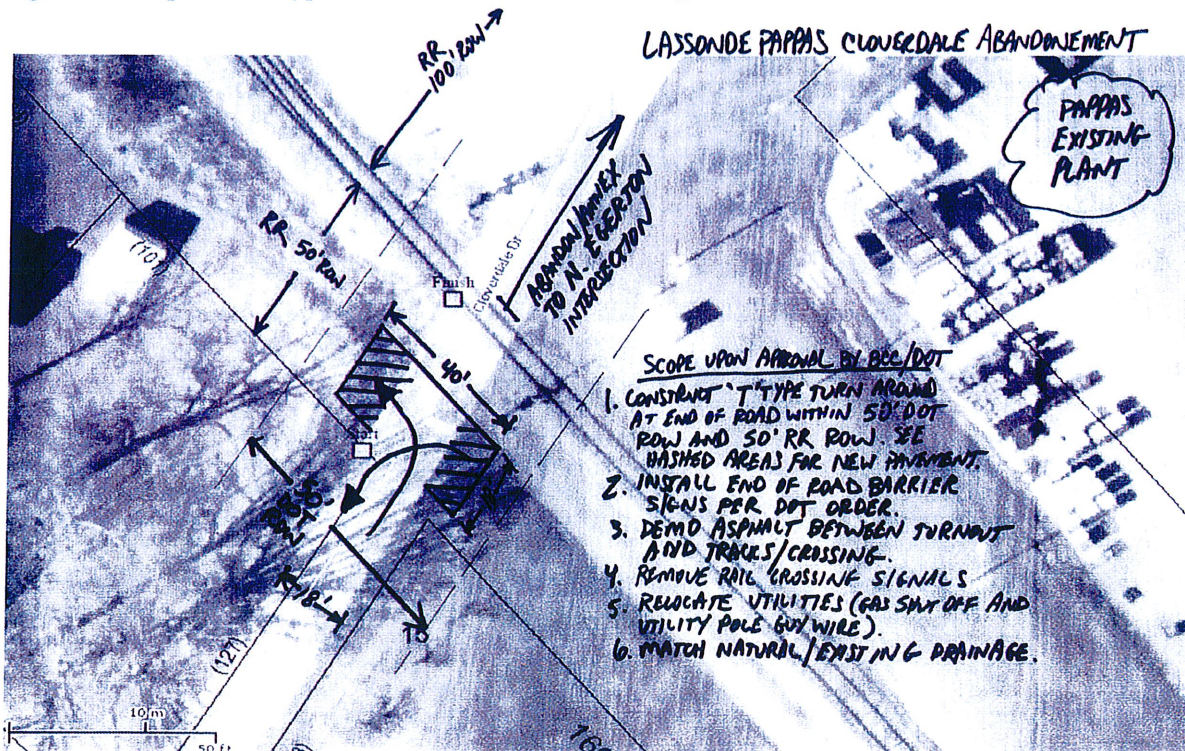


Figure 2: Proposed T-Type Turn Around / Rail Crossing Closure



**§ 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.)

**§ 136-63. Change or abandonment of roads.**

(a) The board of county commissioners of any county may, on its own motion or on petition of a group of citizens, request the Board of Transportation to change or abandon any road in the secondary system when the best interest of the people of the county will be served thereby. The Board of Transportation shall thereupon make inquiry into the proposed change or abandonment, and if in its opinion the public interest demands it, shall make such change or abandonment. If the change or abandonment shall affect a road connecting with any street of a city or town, the change or abandonment shall not be made until the street-governing body of the city or town shall have been duly notified and given opportunity to be heard on the question. Any request by a board of county commissioners or street-governing body of a city refused by the Board of Transportation may be presented again upon the expiration of 12 months.

(b) In keeping with its overall zoning scheme and long-range plans regarding the extraterritorial jurisdiction area, a municipality may keep open and assume responsibility for maintenance of a road within one mile of its corporate limits once it is abandoned from the State highway system. (1931, c. 145, s. 15; 1957, c. 65, s. 8; 1965, c. 55, s. 13; 1973, c. 507, s. 22 1/2; 1975, c. 19, s. 45; 1977, c. 464, s. 25; 1993, c. 533, s. 14.)



# Henderson County North Carolina

Before the Board of Commissioners

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## ORDER CLOSING A PORTION OF RIGHT-OF-WAY FOR CLOVERDALE DRIVE

THIS MATTER came on for hearing before the Henderson County Board of Commissioners at its regular May 18, 2016, meeting, pursuant to N.C. Gen. Stat. §153A-241, on the issue of closing a portion of right-of-way for Cloverdale Drive, and was heard by the Board after public hearing. The Board of Commissioners makes the following findings:

1. This matter first came before the Board of Commissioners on at the Board's regular meeting on March 16, 2016, on the petition of Lassonde Pappas and Company, Inc. to close a portion of Cloverdale Drive in the Mountain Home area of Henderson County.
2. At the Board's March 16, 2016 meeting, the Board adopted a resolution "declaring its intent to close" the said portion of Cloverdale Drive.
3. A map showing the area under consideration is shown on the attachment hereto, Exhibit A, (indicated by a broken yellow line).
4. A notice of this Board's May 18 hearing was published once a week for three successive weeks before the hearing in the *Hendersonville Tribune*, a copy of the resolution was 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.
5. Before the Board on May 18, the Board heard "all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights" are required by N.C. Gen. Stat. §153A-241.
6. After such hearing, the Board is satisfied and finds:
  - 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.

**WHEREFORE IT IS ORDERED** that a portion of Cloverdale Drive in the Mountain Home area of Henderson County as shown on the attached map is hereby closed. It is further ordered that Lassonde Pappas and Company, Inc. file a certified copy of this Order in the office of the register of deeds of the county.

Adopted by the Board by motion duly made, this the 18<sup>h</sup> day of May, 2016.

BOARD OF COMMISSIONERS  
OF HENDERSON COUNTY

By: \_\_\_\_\_  
Chairman

Attest:

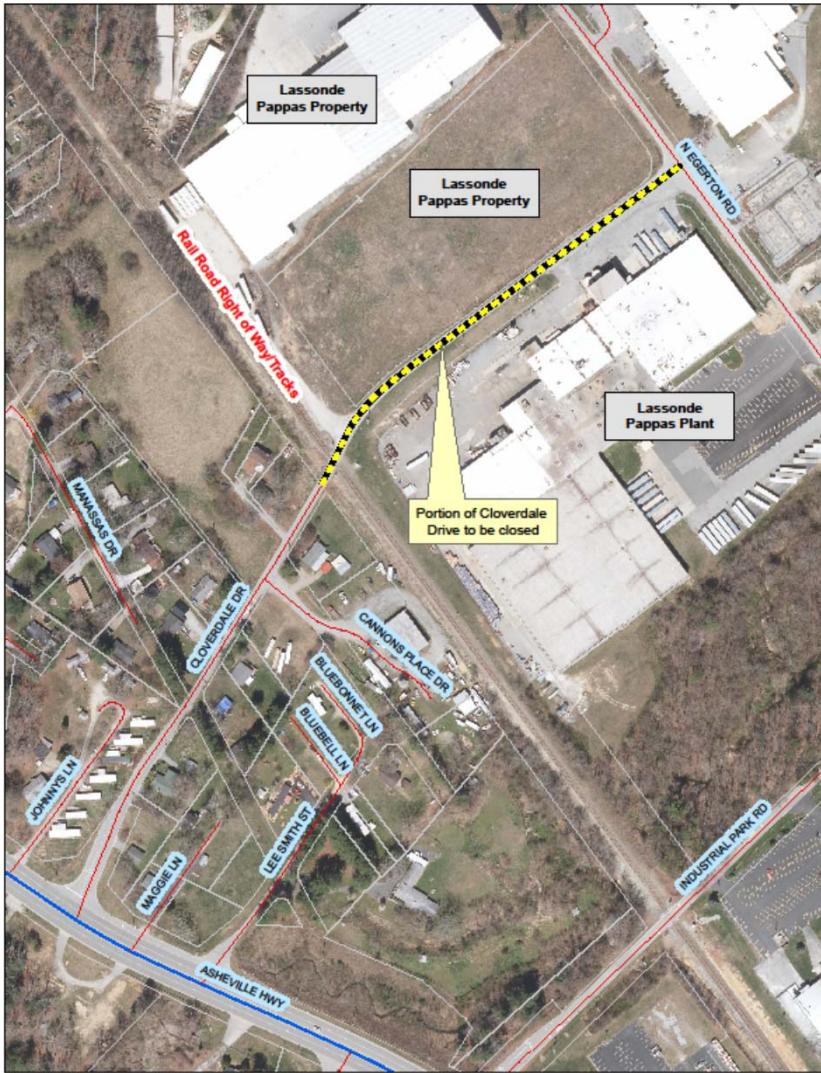
\_\_\_\_\_  
Clerk to the Board

# **Public Hearing to Abandon State Maintenance and Permanently Close a Portion of Cloverdale Drive (SR 1530)**



**Henderson County Board of Commissioners  
May 18, 2016**

*Henderson County Planning Department*



# Cloverdale Drive:

Request to Abandon State Maintenance and Close Road