

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** May 20, 2020

**SUBJECT:** Closing portions of Anders Avenue, Meadows Circle, and associated 10-foot alleys

**PRESENTER:** Sam Starr, Property Addressing Office

**ATTACHMENTS:** (1) Area maps depicting Rights of Way to be abandoned, and existing conditions  
(2) Applicant's letter to Henderson County Property Addressing Office  
(3) North Carolina General Statute 153A-241  
(4) Proposed Resolution

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

Planning and Property Addressing staff have received the attached petition and survey to close portions Anders Avenue, Meadow Circle, and associated 10-foot alleys. Under North Carolina General Statute (UNGS) 153A-241, municipalities have the power to close any public road or easement not within a city, except public roads or easements for public roads under control of the Department of Transportation. To close any road, the Board must:

- Vote to adopt a resolution declaring its intent to close the public road or easement
- Call and notice a public hearing on closing the road or easement, with notice "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". - Hold the public hearing, where the Board must "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".
- Then, if the Board "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"
- . - File a copy of the Board's order with the Register of Deeds.

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

Staff recommends approval of the resolution and the setting of the public hearing to June 17, 2020 at 9:30AM or as soon as practicable thereafter.

#### **Suggested Motion:**

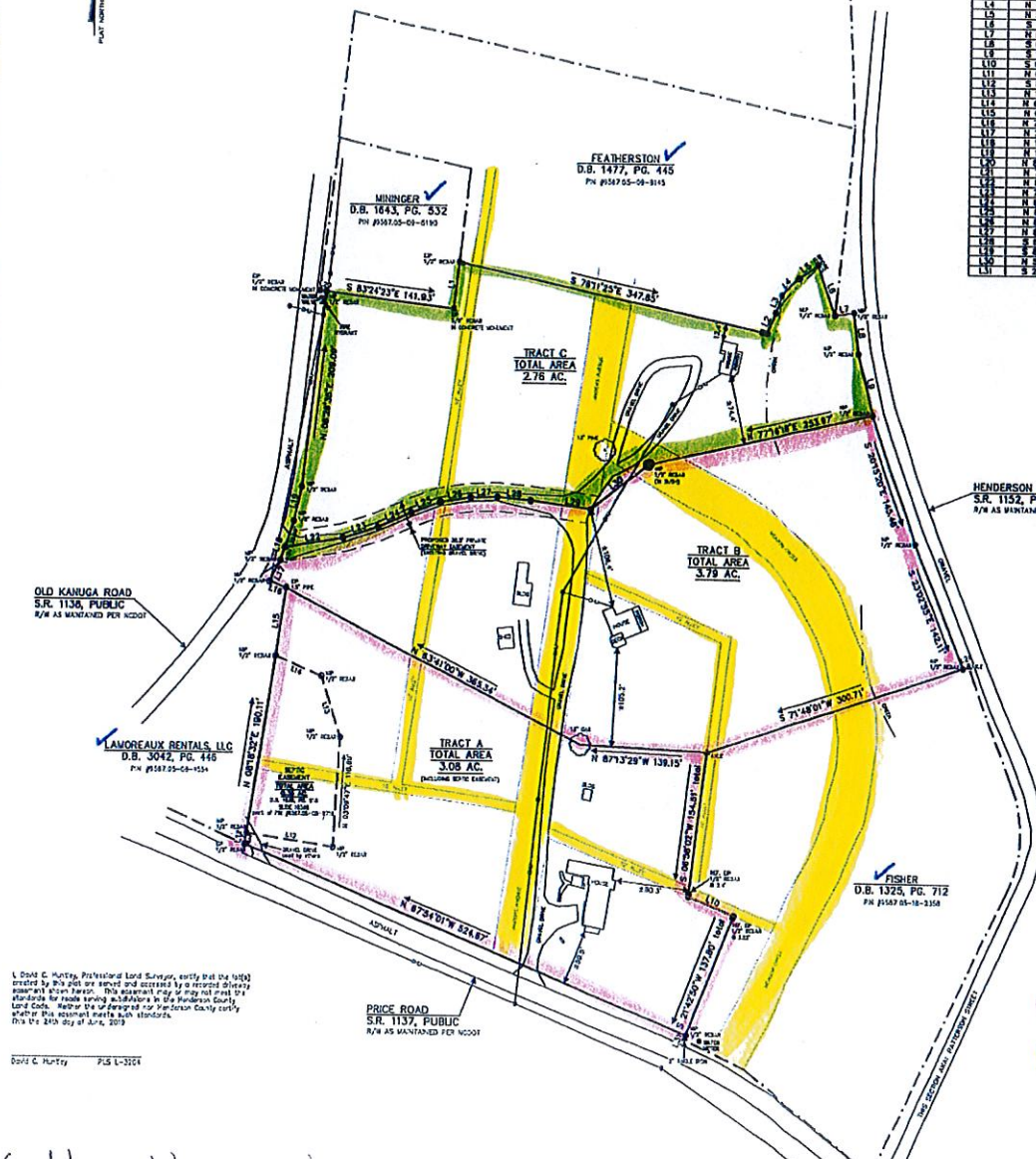
I move that the Board adopt the proposed resolution and set the public hearing for June 17, 2020.

# Map Indicating Road Closures in Yellow

THERE ARE NO STRUCTURES LOCATED ON THIS PROPERTY  
 THE NORTH-WEST CORNER PORTION OF THIS PROPERTY LIES WITHIN THE SUBDIVISION PLAT WHICH SHOWS THE REMAINDER OF THE PROPERTY LIES WITHIN A 20' BUFFER AROUND THE BUFFER  
 THERE IS A POTENTIAL STRIKE ON THE EAST PORTION OF THIS PROPERTY  
 A MINIMUM THIRTY FOOT SETBACK FOR BUILDINGS OR OTHER STRUCTURES SHALL BE MAINTAINED UNLESS OTHERWISE SPECIFIED IN THE PLAT. THE SETBACK SHALL BE MAINTAINED IN ALL DIRECTIONS UNLESS OTHERWISE SPECIFIED IN THE PLAT.  
 THIS PROPERTY IS LOCATED IN THE 142000 DISTRICT BEYOND ZONING MAP.  
 POINT OF BEGINNING OF THIS PROPERTY IS AT THE POINT OF BEGINNING OF THE 142000 DISTRICT.  
 THIS PROPERTY IS NOT LOCATED WITHIN A WATER SUPPLY DISTRICT.  
 THERE ARE NO PROTECTED WELLS ON THIS PROPERTY.  
 THESE STATEMENTS ARE MADE FOR INFORMATION ONLY.



Course	Bearing	Distance
L1	N 08°51'43"E	28.70'
L2	N 23°15'43"E	28.70'
L3	N 20°00'00"E	20.13'
L4	N 53°07'45"E	24.81'
L5	N 14°01'14"E	24.81'
L6	N 82°24'29"E	24.81'
L7	S 07°27'24"E	24.81'
L8	S 07°27'24"E	24.81'
L9	S 88°23'39"E	24.81'
L10	S 88°23'39"E	24.81'
L11	N 08°51'43"E	28.70'
L12	N 08°51'43"E	28.70'
L13	N 14°01'14"E	24.81'
L14	N 14°01'14"E	24.81'
L15	N 08°51'43"E	28.70'
L16	N 08°51'43"E	28.70'
L17	N 14°01'14"E	24.81'
L18	N 14°01'14"E	24.81'
L19	N 08°51'43"E	28.70'
L20	N 08°51'43"E	28.70'
L21	N 14°01'14"E	24.81'
L22	N 14°01'14"E	24.81'
L23	N 08°51'43"E	28.70'
L24	N 08°51'43"E	28.70'
L25	N 14°01'14"E	24.81'
L26	N 14°01'14"E	24.81'
L27	N 08°51'43"E	28.70'
L28	N 08°51'43"E	28.70'
L29	N 14°01'14"E	24.81'
L30	N 14°01'14"E	24.81'
L31	S 21°43'00"W	3.51' TO BEA



L. David C. Huntley, Professional Land Surveyor, certifies that the plat(s) created by this plat was surveyed and accessed by a recorded distance easement shown herein. This easement may or may not meet the standards for road surveying established in the Henderson County Land Code. Refer to the Ordinance for Henderson County certifying whether the easement meets such standards. This is the 24th day of June, 2019.

David C. Huntley PLS L-3204

McFerrer  
Woodin

PRELIMINARY: ELECTRONIC COPY

PORTIONS OF ANDERS AVENUE, HENDON CIRCLE, & 107 AVENUE, AS SHOWN ON RECORDED PLAT CAB B, SLICE 116 (OLD PLAT BK. 2, PG. 37), HAVE BEEN CLOSED BY JUDGMENT FOUND IN D.B. 3335, PG. 426

DEED REF:  
 D.B. 1678, PG. 165  
 D.B. 1686, PG. 618  
 D.B. 3335, PG. 426  
 PLAT REF:  
 CAB, B, SLICE 116  
 SLICE 10388  
 P.N. J0567.05-08-8719

THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND

CURRENT OWNER: HAN McFERRER REVOCABLE TRUST  
 80 0 60 120 180  
 GRAPHIC SCALE - FEET

L. David C. Huntley, certifies that this plat was done under my supervision from an actual survey made under my supervision (and description recorded in D.B. 3335, PG. 426), that the boundaries and easements are correctly recorded on this plat. The plat was prepared in accordance with G.S. 82-25 as amended. My original signature, registration number and seal are on file with the State of North Carolina. Date: 05/22/19



STATE OF NORTH CAROLINA  
 HENDERSON COUNTY  
 HENDERSONVILLE TOWNSHIP  
 TRACTS A, B & C  
 McFERRER PROPERTY  
 SPECIAL SUBDIVISION

DAVID C. HUNTLEY  
 A PROFESSIONAL LAND SURVEYOR  
 LICENSE NO. L-3204  
 EXPIRES 05/31/2022  
 SURVEY FOR  
 DRAWN FOR  
 SCALE 1" = 60' FT  
 DATE 05/22/19  
 DRAW BY H-32655

Mr. Huntley will be providing a clearer copy of the survey that shows these roads (yellow)

# Site Plan for 609 Price Road and Surrounding Properties



0.05 Miles

# ROMEO, HARRELSON & COINER, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

RANDOLPH C. ROMEO Of Counsel  
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FRANCIS M. COINER 1923-2004

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HENDERSONVILLE, NC 28792

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TELEPHONE: (828) 698-2345  
FACSIMILE : (828) 697-1283

April 17, 2020

Sam Starr  
Henderson County Property Addressing  
100 N. King St.  
Hendersonville, N.C. 28792

Re: Permanent Road Closure – Portions of Anders Avenue, Meadow Circle, & 10' Alleys

Dear Mr. Starr:

I am writing on behalf of Nan McFerren, Trustee of the Nan McFerren Revocable Trust dated September 5, 2012 regarding the permanent closure of an unopened street or alley pursuant to N.C.G.S. 153A-241. Ms. McFerren requests that the county permanently close the portions of Anders Avenue, Meadow Circle, and the adjoining 10' alleyways identified on the attached survey entitled "Tracts A, B & C – McFerren Property – Special Subdivision" by David C. Huntley & Associates, Inc. bearing Drawing No. H-6965S, dated May 22, 2019. The plat was recorded June 24, 2019 at Plat Slide 11888, Henderson County Registry. A copy of the surveyor's drawing is attached to more clearly show the locations of the portions of roads/alleys to be closed.

The portions of Anders Avenue, Meadow Circle and the 10' alleys to be closed are also described in that judgment entered in Henderson County file 19 CVD 173 on May 17, 2019, a copy of which has been recorded in Book 3335, at Page 426, Henderson County Registry. Notwithstanding the judgment, Ms. McFerren has been unable to sell a portion of the property because the title insurance company will not accept the judgment as sufficient to close the roads.

Anders Avenue runs from the public Price Road (S.R. 1137) and through Tracts A & B, the property of the Nan McFerren Revocable Trust dated September 5, 2012, being more particularly described in Book 3354, at Page 81, Henderson County Registry, and Tract C, the property of Barbara Woodin, being more particularly described in Book 3360, at Page 653, Henderson County Registry, to the Featherston tract which is more particularly described in Deed Book 1447, at Page 445, Henderson County Registry.

Meadow Circle runs from the public Price Road (S.R. 1137) through the Fisher tract described in Deed Book 1325, at Page 712, Henderson County Registry and through the above-described Tracts B (McFerren) and C (Woodin) to the above-described Anders Avenue.

The unnamed 10' alleys run from Meadow Circle on the western portion of the Fisher tract, going West to Anders Avenue and North into Tract B (McFerren) and then West to Anders Avenue; and West from Anders Avenue to the common line of the LaMoreaux Rentals LLC property and Tract A (McFerren). A

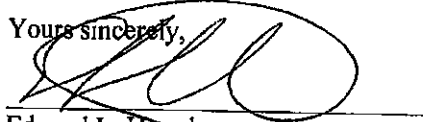
second alley runs North from the above-described Tract A (McFerren) through Tracts B (McFerren) and C (Woodin).

Meadow Circle and Anders Avenue are also shown on that plat entitled "Addition to Osceola Lake Park" by Case & Williamson Engrs. Dated January 1926 and recorded in Plat Book 2, at Page 32 (now re-indexed to Plat Cabinet B, at Slide 118), Henderson County Registry.

A map of the streets to be closed is attached. The Nan McFerren Revocable Trust, Johnnie Featherston and wife, Collette M. Featherston, Steven Mininger and wife, Ruth Mininger, Barbara Woodin, LaMoreaux Rentals LLC, and William P. Fisher comprise all of the affected owners of property adjoining the section of unopened street to be closed. The portions to be closed are not necessary for access to any lot.

It is the desire of Ms. McFerren and adjoining owners Featherston, Mininger, Woodin, LaMoreaux Rentals LLC and Fisher to permanently close the unopened portions of Anders Avenue, Meadow Circle, and the 10' alleys referenced above. Should you have any questions or require any further documentation, please do not hesitate to contact me. I am enclosing a check for \$450.00 for the application fee due to Henderson County.

Yours sincerely,



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Edward L. Harrelson  
ELH/lb  
Enclosures

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**§ 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.)

**Henderson County  
North Carolina**

Before the Board of Commissioners

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Pursuant to N.C. Gen. Stat. §153A-241, this Board has the power to close public roads and easements which are not within a municipality except public roads and easements and under the control and supervision of the North Carolina Department of Transportation.

The Office of Romeo, Harrelson, and Coiner, on behalf of Nan mcFerren, has petitioned the Board for the closure of portions of Anders Avenue, Meadow Circle, and the associated 10-foot alleyways located in Henderson County which meets the criteria, above.

Prior to closing such an easement, the Board must first adopt a resolution indicating its intent to consider the same, and call a public hearing on the issue.

**NOW, THEREFORE, BE IT RESOLVED** that the Board will consider the closing of portions of Anders Avenue, Meadow Circle, and the associated 10-foot alleyways at its regularly scheduled meeting on June 17, 2020, after a public hearing. The Board hereby calls a public hearing to be held on this issue on such date, and directs staff to provide notice, pursuant to N.C. Gen. Stat. §153A-241, of the same

Adopted by the Board by motion duly made, this the 20<sup>th</sup> day of May, 2020.

BOARD OF COMMISSIONERS  
OF HENDERSON COUNTY

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

Attest:

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