

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** May 16, 2018

**SUBJECT:** Request by Thomas E. Plott to close a part of a road right of way, off Muirfield Court (Rugby Highlands subdivision)

**PRESENTER:** Charles Russell Burrell

**ATTACHMENT(S):** Petition to close easement, including  
Subdivision plat  
Tax parcel report, REID 110628  
Copy of N.C. Gen. Stat. §153A-241  
Supplemental information from applicant, including:  
Letter from NC Department of Transportation  
Subdivision plat  
Plat of section proposed to be closed  
Proposed Resolution of the Board of Commissioners

**SUMMARY OF REQUEST:**

Thomas Plott has requested that this Board close a public road/easement for a portion of the 60 foot wide right of way off of Muirfield Court in Rugby Highlands subdivision.

**Threshold requirements:** Under N.C. Gen. Stat. §153A-241, the Board can close any public road or easement which meets the requirements of that statute (copy attached). The requirements are:

- The road or easement must be located within the County and not within any municipality.
- The road or easement must not be under the control and supervision of the North Carolina Department of Transportation.

This property is located outside any municipality in Henderson County according to the County's GIS, and is not a part of the DOT system according to the attached letter from Steve Cannon, District Engineer.

**Procedure required:** Under §153A-241, the following procedure is required to be followed by the Board.

1. The Board must first adopt a resolution "declaring its intent to close the public road or easement and calling a public hearing on the question."

2. The public hearing be noticed in a way “reasonably calculated to give full and fair disclosure of the proposed closing”.
3. The notice of the public hearing must be published in the newspaper once a week for three (3) weeks.
4. A copy of the resolution adopted above must 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”.
5. A notice of closing and of the public hearing must be “prominently posted” in at least two places along the road or easement.
6. The Board must hold the public hearing, and hear “all interested persons” on the issue as to whether the closing “would be detrimental to the public interest or to any individual property rights.”
7. After the hearing, the Board must be “satisfied that closing the easement is not contrary to the public interest”.

If the Board is inclined to begin this process, a proposed resolution is attached.

County staff will present further information on this matter.

**BOARD ACTION REQUESTED:**

Approval of the resolution to begin the road/easement closing process.

If the Board is so inclined, the following motion is suggested:

***I move that the Board adopt the proposed Resolution,***

Henderson County  
North Carolina

Before the Board of Commissioners

**Resolution on Proposed Road or Easement Closing**

BOARD OF COMMISSIONERS ENACTMENT 2018-\_\_\_\_\_

WHEREAS, N.C. Gen. Stat. §153A-241 allows for the closing by a county of any public road or easement located within the county but not within a municipality; and

WHEREAS, the Board of Commissioners of Henderson County has received a petition from Thomas E. Plott for the closing of a road or easement indicated on the plat for Rugby Highlands subdivision (Henderson County Registry Plat Cabinet A, at Slide 25A) as the apparent northern extension of "Muirfield Court", as shown as the red-hatched area indicated on the attached copy of plat recorded as Slide 11083, Henderson County Registry; and

WHEREAS, the Board of Commissioners of Henderson County, following the procedures required by §153A-241, are adopting this Resolution declaring their intent to possibly close the public road or easement, and of their intent to hold a public hearing on the question.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board of Commissioners shall hold a public hearing on the 20<sup>th</sup> day of June, 2018, at 9:00 o'clock a.m., on the issue of whether to close the public road/easement noted above.
2. A notice of this public hearing, giving full and fair disclosure of the proposed closing, shall be published once a week for three (3) weeks.
3. A copy of this notice shall 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.
4. A copy of this Resolution and the public hearing notice shall be prominently posted in at least two places along the road or easement.

---

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

5. At the conclusion of the public hearing, the Board of Commissioners will determine whether or not closing the public road or easement is contrary to the public interest and (in the case of a road) whether any 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 their property. If the Board finds that such closing would not be contrary to the public interest and that, in the case of a road, that no individual would be deprived of reasonable means of ingress or egress, the Board may grant the closing of the public road or easement.

Adopted this the 16<sup>th</sup> day of May, 2018.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
J. MICHAEL EDNEY, Chairman

Attest:

\_\_\_\_\_  
TERESA L. WILSON, Clerk to the Board

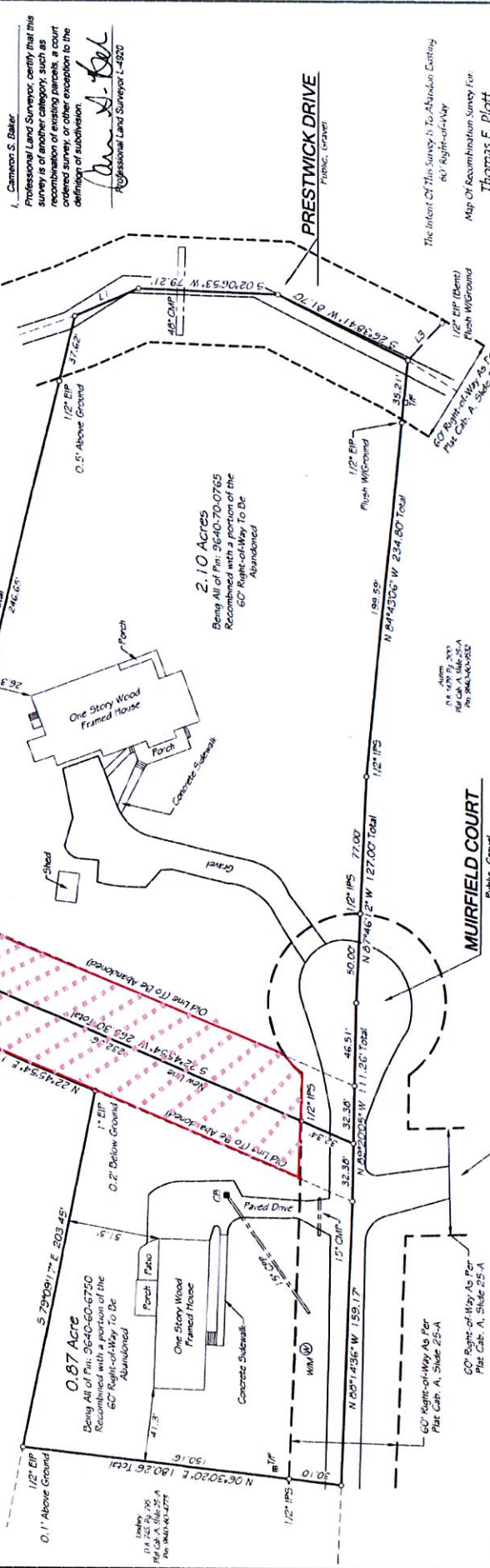
Slide 11083

State of North Carolina, County of Henderson  
 filed for registration on the 10th day of 2018  
 at 2:10 to clock P.M. and recorded in  
 side 11083 in the office of the  
 Register of Deeds of Henderson County.  
 By: William Lee King Deputy  
William Lee King

State of North Carolina, County of Henderson  
 I, John R. Flowers III Review Officer of Henderson County,  
 certify that the map or plat to which this certification is affixed  
 meets all statutory requirements for recording.  
 Date: 2-20-2018



**Vicinity Map**  
 Cameron S. Baker certifies that this plat  
 was drawn under my supervision from an actual survey under  
 the provisions of Chapter 422, N.C. General Statutes,  
 page 807, that the ratio of reduction is correct and that  
 all distances and bearings does not exceed 1:10,000 and that  
 this map was prepared in accordance with G.S. 42-30 as amended  
 Witness my hand and seal this 20th day of FEB. 2018.  
Cameron S. Baker  
 Professional Land Surveyor No. L-4820



**John R. Flowers III & Eleanor S. Flowers**  
 Owners  
 P.O. Box 578 • Horse Shoe, NC 28742  
 D.R. 617 By 1837  
 P.M. 9440-70-0785  
 D.R. 1115, Pt. 556  
 John R. Flowers & Eleanor S. Flowers  
 P.O. 9640-60-6750  
 Hendersonville Township Henderson County, NC

**ASSOCIATED LAND SURVEYORS**  
 P.O. BOX 578 • HORSE SHOES, NC 28742  
 (828) 890-3507 • NC BUSINESS LICENSE NO. C-2774  
 SCALE: 1" = 40 Feet DATE: FEBRUARY 20, 2018  
 FORM NO. 5-18-1007 FORM REV. 4/51

BOOK 2018 PAGE 11083 (1)  
 87818  
 This document presented and filed:  
 02/20/2018 02:46:56 PM  
 WILLIAM LEE KING, HENDERSON COUNTY, NC

Legend:  
 EIP = Existing Iron Pipe  
 CS = Existing Iron Stake  
 I/S = Iron Pin Set  
 U = Unimproved Property  
 RW = Right-of-Way  
 WM = Water Meter  
 CD = Catch Basin  
 CTF = Corrugated Plastic Pipe  
 CMF = Corrugated Metal Pipe  
 TF = Electrical Transformer

Line	Bearing	Distance
L1	S 23°41'16" E	39.07'
L2	N 22°42'24" E	26.13'
L3	S 47°17'44" E	20.31'

L2-L3 Are Tie Lines

Notes:  
 1. Property is subject to all easements, restrictions and right of ways of record.  
 2. The locations of underground utilities are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities vary from locations shown herein. Additional search for encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.  
 3. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.  
 4. The certification of survey and plat was prepared for the entry named in the title block herein and does not extend to any other entry, unless recertified by the professional land surveyor.  
 5. This survey, including any related materials, including but not limited to, project plans, deed and R/W recording information, field notes, survey reports, record title report, calculations, working drawings, estimates and other documents prepared or prepared by the surveyor as instruments of service shall remain the property of the surveyor unless otherwise stated in writing.  
 6. This drawing is not valid unless the original signature and stamp are attached. Any reproduction or variance to this survey by electronic or any other means are not to be considered issued by the professional surveyor.  
 7. Property is currently zoned R-2 as per Henderson County GIS.  
 8. Property is located in Zone X (Minimal Flood Hazard) as per FIRM Map Panel 9140.  
 9. Map # 37003640000 effective date: 1/01/2006.  
 10. Property is located in the Upper-French Broad River WS-IV Water Supply Watershed.



**§ 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.)