

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: June 2, 2008

SUBJECT: Notice of Intent to Hold Public Hearing

ATTACHMENTS: (1) Petition to close easement on the Roland J. Mull property
(2) Map of easement closure area
(2) North Carolina General Statute 153A-241
(3) Proposed resolution

SUMMARY OF REQUEST: North Carolina General Statute 153A-241 requires that the Board of Commissioners first adopt a resolution declaring its intent to close a public road or easement. Attached is a proposed resolution declaring the Board's intent of closing the easement(s) on the Roland J. Mull property, Hendersonville, North Carolina.

BOARD ACTION REQUESTED:

Recommend approving the adoption of the attached resolution.

Suggested Motion:

I move for the adoption of the attached resolution.

STATE OF NORTH CAROLINA

HENDERSON COUNTY

PETITION UNDER G.S. SECTION 153A-241
CLOSING PUBLIC ROADS OR EASEMENTS

NOW COMES J. Roland Mull and wife, Vivian M. Mull, and Audrey M. Bell and husband, Clarence V. Bell, by and through Attorney Walter C. Carpenter, pursuant to the provisions of N.C.G.S. 153A-241, and petitions the Henderson County Board of Commissioners to:

1. Adopt a resolution declaring its intent to close the public road or easement as shown on Exhibit A which is a portion of Dania Drive, which is unopened, and to call a public hearing on the question.
2. 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.
3. Cause 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.
4. Cause a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement.
5. To conduct a public hearing and, at the hearing, 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.
6. That, after said hearing, adopt an Order finding as facts: (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.
7. Cause a certified copy of the Order to be filed in the Office of the Register of Deeds of Henderson County.

This the 22 day of April, 2008.

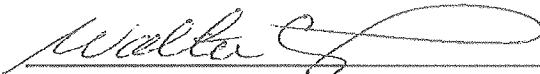

Walter C. Carpenter, Attorney
132 S. Main Street
Hendersonville, NC 28792
(828) 692-1919

EXHIBIT A

BEING that portion of Dania Drive shown on plat of Dania Farms Subdivision recorded in Plat Cabinet B, Slide 321A, of the Henderson County Registry, and which is located to the north of a line described as follows: BEGINNING at an iron stake set, said iron stake being the easternmost corner of the 0.2 acre tract as shown on map of survey made for Clarence V. Bell and wife, Audrey M. Bell, by Laughter, Austin & Associates, P.A., dated September 18, 2007, recorded in Slide 7040 of the Henderson County Registry, and running thence South 89° 01' 51" East 33.34 feet to an iron stake set. The portion of Dania Drive which is hereby closed is that portion shown on the plat recorded in Slide 7040 and labeled "unopened."

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URK'S CAMP KUAW S.R. 1749

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combination
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Java Benison
D.B. 660, Pg. 200

J. Roland Mull
D.B. 372, Pg. 409

Audrey M. Bell
D.B. 981, Pg. 540

Keith J. Tay
D.B. 1257, Pg.

2.04 AC.

2.24 AC.
TOTAL

0.20 AC.

Michael E. McCullough
D.B. 530, Pg. 997

Carol W. Jones
D.B. 923, Pg. 630

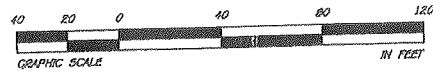
Helen Kitchen
D.B. 376, Pg. 4

DWELLING

I certify that this Plat meets applicable Zoning
Ordinance and Subdivision Ordinance Requirements
of the City of Hendersonville, N.C.

Sue Anderson
Planning Director

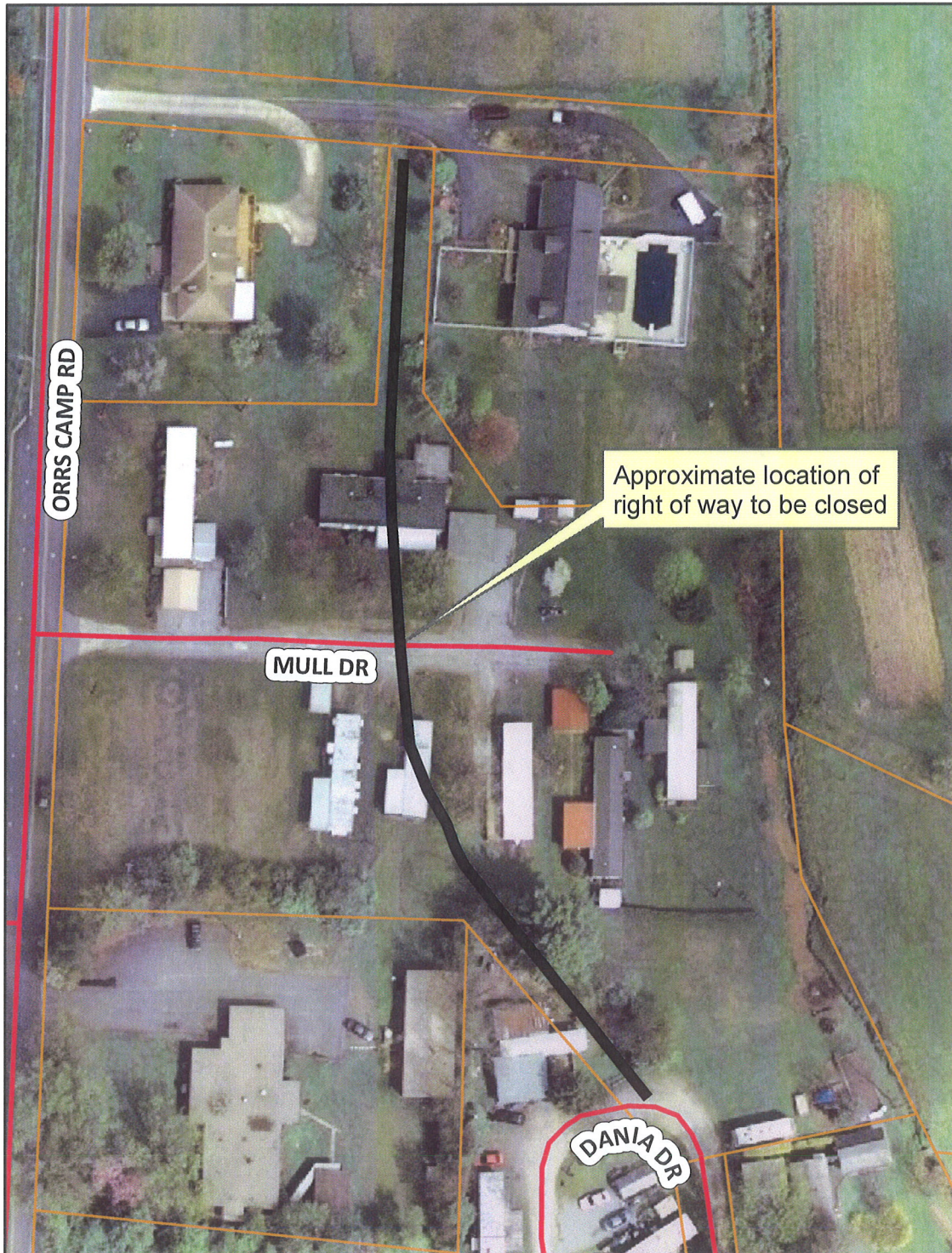
Date



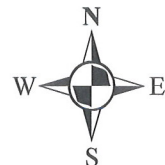
JOB

Slide 7040

Proposed Right of Way Closure for Roland J. Mull



For Official Use Only
Henderson County
Property Addressing Office
19 May 2008



§ 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.)

**RESOLUTION OF INTENTION TO CLOSE EASEMENT ON THE PROPERTY'S OF
ROLAND J. MULL, PARCEL IDENTIFICATION NUMBER 9579430149**

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 Roland J. Mull 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 Roland J. Mull, 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 ____ day of June, 2008

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]