

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 2, 2010

SUBJECT: Resolution of intent to close a public right of way

ATTACHMENTS:

- (1) Petition to close easement
- (2) North Carolina General Statute 153A-241
- (3) Proposed resolution
- (4) Map of Cave Inn Drive and surrounding area

SUMMARY OF REQUEST:

Planning Department staff requests the Board to approve the attached resolution of intent to close a public right of way.

North Carolina General Statute 153A-241 requires the Board to pass a resolution of its intent when petitioned to close an easement or right of way.

BOARD ACTION REQUESTED:

The Planning Department staff requests the Board approve the resolution of intent for the closure of any easements or right of ways that may be associated with SR 1661 (Cave Inn Drive).

Suggested Motion:

I move the Board approve the resolution of intent for closure of any known right of ways that may exist for SR 1661 (Cave Inn Drive).

TOM AND JOAN HEINZ

57 Cave Inn Dr.
P.O. Box 129
Bat Cave, NC 28710
Phone (941) 932-7523

June 4th, 2010

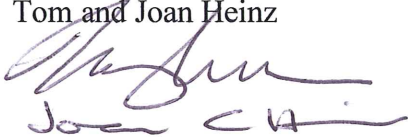
Mr. Curtis L. Griffin
Property Addressing Coordinator
100 N. King St.
Hendersonville, North Carolina 28792
828-697-4916

Dear Mr. Griffin,

Thank you for responding to our request for the abandonment of SR1661. After speaking to DOT representatives we were under the impression that the abandonment petition included right of way. Therefore, per your correspondence we would like to clarify our request in regards to SR1661. Our intent is to abandon maintenance and right of way of SR1661.

Thank you for clarifying this matter and bringing it to our attention.

Sincerely,
Tom and Joan Heinz



The block contains two handwritten signatures in purple ink. The top signature is a cursive signature that appears to be 'Tom Heinz'. The bottom signature is a cursive signature that appears to be 'Joan Heinz'.

Henderson County Board of Commissioners
1 Historic Courthouse Square,
Hendersonville, NC 28792

May 13, 2010

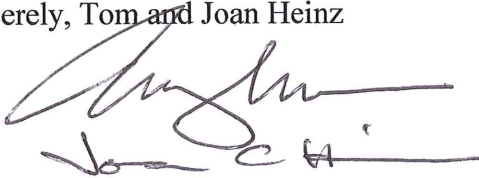
Mr. and Mrs. Tommy J Heinz
PO Box 129
57 Cave Inn Dr. Bat Cave
North Carolina, 28710

MAY 19 2010

Dear Commissioners:

Thank you for responding to our previous request for the abandonment of Cave Inn Dr., (SR1661). Per your response we have acquired the signatures of Mr. William Bentley and Mrs. Sara Bentley. (See attached NCDOT Abandonment Petition). This should satisfy the requirement to proceed with abandonment procedure.

Sincerely, Tom and Joan Heinz

Handwritten signatures of Tom and Joan Heinz. The top signature is for Tom Heinz, and the bottom signature is for Joan Heinz.

**North Carolina Department of Transportation
Division of Highways
Abandonment Petition**

North Carolina





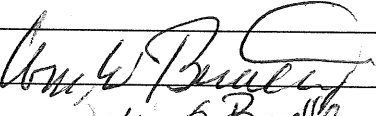


County of HENDERSON

Petition request for the abandonment of Secondary Road SR 1661 from the State.

Maintained System

We the under signed, being all of the property owners on Secondary Road SR 1661
in HENDERSON County do hereby request the Division of Highways of the Department of
Transportation to abandon the road from the State Maintained System.

PROPERTY OWNERS

<u>Name</u>		<u>Address</u>
TOMMY J HEINZ		57 CAVE INN DR
JOAN C HEINZ		57 CAVE INN DR
TOMMY J HEINZ		30 CAVE INN DR
JOAN C HEINZ		30 CAVE INN DR
WILLIAM W BENTLY		243 CAVE INN DR
SARA S BENTLY		243 CAVE INN DR
		

§ 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 OF
TOMMY J. and JOAN C. HEINZ, PARCEL IDENTIFICATION NUMBER 0613691197**

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 Tommy J. and Joan C. Heinz 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 Tommy J. and Joan C. Heinz, if the easement exists as shown by the orange color line on the attached map.
2. This resolution shall take effect immediately upon its passage.

ADOPTED THIS _____ day of August, 2010

HENDERSON COUNTY BOARD OF COMMISSIONERS

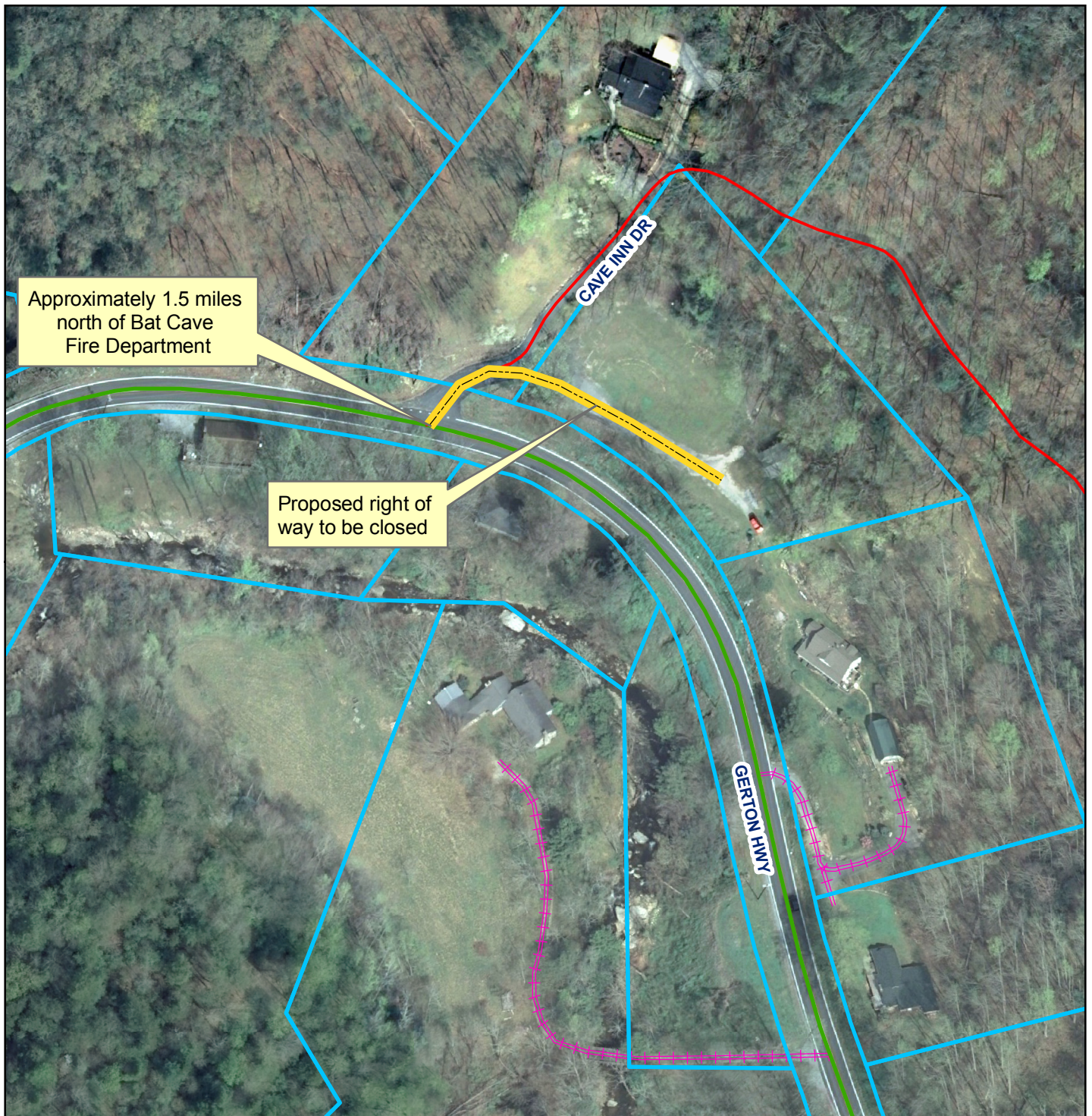
BY: _____
William L. Moyer, Chairman

ATTESTED BY:

Terry Wilson, Clerk to the Board

[OFFICIAL SEAL]

SR1661 (Cave Inn Drive) Right of way closure.



Legend	
Streets	
Road Class	
—	BOULEVARD
—	COLLECTOR
—	FREEWAY
—	INTERSTATE
—	LOCAL ROAD
—	OUTSIDE HENDERSON COUNTY
—	THOROUGHFARE
---	DRIVEWAY

0 112.5 225 450 Feet

1 inch = 125 feet

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Printed by Henderson County
Planning Department
6/24/2010

