

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** August 2, 2010

**SUBJECT:** Set public hearing date regarding the closing of right of way and the abandonment of state maintenance for Cave Inn Drive (SR 1661)

**ATTACHMENTS:**

- (1) Petition to abandon state maintenance and closure of right of way for Secondary Road 1661 (Cave Inn Drive)
- (2) North Carolina General Statute 153A-241
- (3) North Carolina State Road Guidelines SR-13
- (4) Map of Cave Inn Drive and surrounding area

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

Planning Department staff requests the Board to set a public hearing to consider the abandonment of state maintenance and the closure of all know easements and/or right of ways for Cave Inn Drive (SR 1661). The state road is approximately 300 feet in length and served the old Valley Clinic before fire destroyed it a number of years ago.

North Carolina General Statute 153A-241 requires the Board to hold a public hearing when petitioned to close an easement or right of way. As general policy the Board has also held public hearings when petitioned to abandon the state maintenance of any state maintained road.

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

The Planning Department staff requests the Board to set a public hearing for September 7, 2010 at 7 p.m. regarding the abandonment of state maintenance and the closure of any known right of ways or easements for Cave Inn Drive (SR 1661).

#### **Suggested Motion:**

I move the Board set a public hearing for September 7, 2010 at 7 p.m. regarding the abandonment of state maintenance and closure of any known right of ways or easements for Cave Inn Drive (SR 1661).

## TOM AND JOAN HEINZ

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

June 4th, 2010

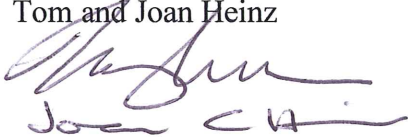
Mr. Curtis L. Griffin  
Property Addressing Coordinator  
100 N. King St.  
Hendersonville, North Carolina 28792  
828-697-4916

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 dark 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

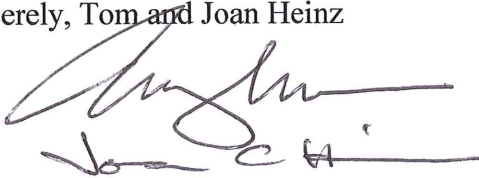
Mr. and Mrs. Tommy J Heinz  
PO Box 129  
57 Cave Inn Dr. Bat Cave  
North Carolina, 28710

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





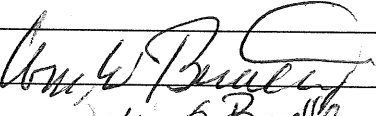


County of HENDERSON

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.)

There are many roads constructed with highway funds such as access roads to serve industries, county recreation areas, hospitals, schools, landfill roads, etc. Funds cannot legally be expended unless the road constructed is of value to the public and added to the maintenance system.

These roads are to be maintained by the NCDOT. Therefore, all such roads constructed with state funds are to be added to the State Highway System with appropriate secondary road numbers in order for State Highway Funds to be expended on them. These roads may or may not have any houses located along the road and were constructed for traffic generating qualities to qualify the road for addition.

The addition of roads to the State Highway System does not include special roads maintained to cemeteries or roads constructed for fire districts or rescue squads. It does include major entrances to schools for school bus routes in order for the county to receive additional maintenance funds on a mileage basis, but does not include the parking lots, driveways or small loop roads.

[MISC19770525.pdf](#)

**[SR-13] ABANDONMENTS / DELETIONS**

- a. When an abandonment request from a citizen, group of citizens or others is approved by resolution from the county commissioners, the Board of Transportation shall make inquiry into the abandonment, and if in its opinion the public interest demands it, the section of roadway will be abandoned.
- b. When the County Board of Commissioners will not approve the abandonment of a section of State Maintained Road from the system, and it is felt that the abandonment of maintenance service for said section of road is in the best interest of North Carolina, a section of road can be abandoned by the Board of Transportation after the property owners along the to-be-abandoned section of roadway have been contacted by registered mail or personal delivery whose whereabouts can be ascertained by due diligence 60 days prior to any abandonment action.
- c. Abandonment action by the Board of Transportation is merely to cease maintenance by the NCDOT. The closing of the section of road is the responsibility by law of the county commissioners.
- d. In keeping with the 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 (1) mile of its corporate limits once the road is deleted from the State Highway System.
- e. Either the municipality or the NCDOT may propose changes in the thoroughfare plan at any time by giving notice to the other party, but no change shall be effective until both the NCDOT and the municipal governing board adopts the deletion from one street system and the addition to the other street system.
- f. When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street and calling a public hearing on the question. If the street or alley is under the control of the Department, a copy of the resolution shall be mailed to the Department.

For copies of forms relevant to road deletions, click below:

[SR-3, Abandonment Petition](#), and

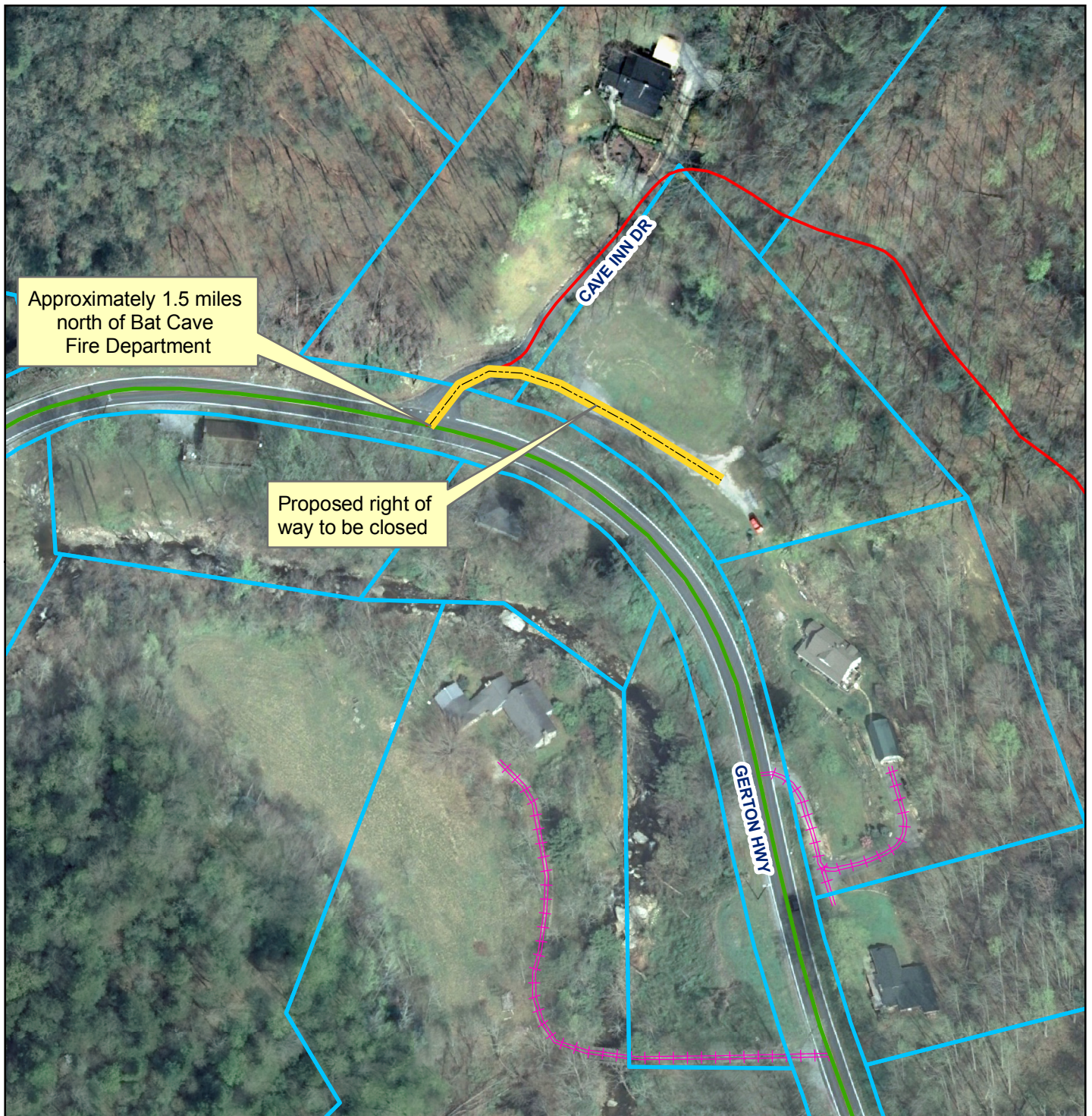
[SR-5, Secondary Road Abandonment Investigation Report](#)

[G.S. 136-44.1](#); [136-55.1](#); [136-63](#); [136-66.2](#); [143B-350\(f\),\(g\)](#); [153A-241](#); [160A-299](#)

**[SR-14] IMPROVEMENT OF ROADS ADDED TO THE HIGHWAY SYSTEM**



# SR1661 (Cave Inn Drive) Right of way closure.



Legend	
Streets	
Road Class	
<span style="color: purple;">—</span>	BOULEVARD
<span style="color: blue;">—</span>	COLLECTOR
<span style="color: lightblue;">—</span>	FREEWAY
<span style="color: green;">—</span>	INTERSTATE
<span style="color: red;">—</span>	LOCAL ROAD
<span style="color: brown;">—</span>	OUTSIDE HENDERSON COUNTY
<span style="color: green;">—</span>	THOROUGHFARE
<span style="color: magenta;">---</span>	DRIVEWAY

0 112.5 225 450 Feet

1 inch = 125 feet

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