

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 7, 2010

SUBJECT: Public hearing to consider Abandonment of State Maintenance and closure of all know Right of Ways

ATTACHMENTS:

- (1) Power Point Presentation
- (2) Petition with amendment to abandon State maintenance
- (3) Letters contesting closure of right of way
- (4) Resolution of intention to close easement
- (5) NCDOT guidelines on road abandonment
- (6) NC Statute 153-241A

SUMMARY OF REQUEST:

Planning Department staff requests the Board to hold a public hearing to consider the abandonment of State maintenance and the closure of all known right of ways for Cave Inn Drive, SR 1661 located on the property of Tommy J. and Joan C. Heinz. Mr. and Mrs. Michael Harris are contesting the closure of said right of way because in their opinion it offers the easiest access to their property. They have the support of the Bat Cave Fire Department and the Henderson County Emergency Management office. The Board of Commissioners approved a resolution of intent to close this easement at their August 2, 2010 meeting.

BOARD ACTION REQUESTED:

The Planning Department staff requests the Board to conduct a public hearing of September 7, 2010 and approve or deny the proposed abandonment of state maintenance and closure of all known right of ways.

Suggested Motion:

Option 1: I move the Board approve the abandonment of state maintenance and closure of all known right of way.

Option 2: I move the Board approve the abandonment of state maintenance and deny closure of all known right of ways.

Option 3: I move the Board deny the abandonment of state maintenance and deny closure of all known right of ways.

Option 4: I move the Board approve the abandonment of state maintenance and the closure of the existing right of way with the stipulation that a new right of way be surveyed for access to the Harris property for emergency services.

Abandonment and closure of right of way for Cave Inn Drive (SR1661)

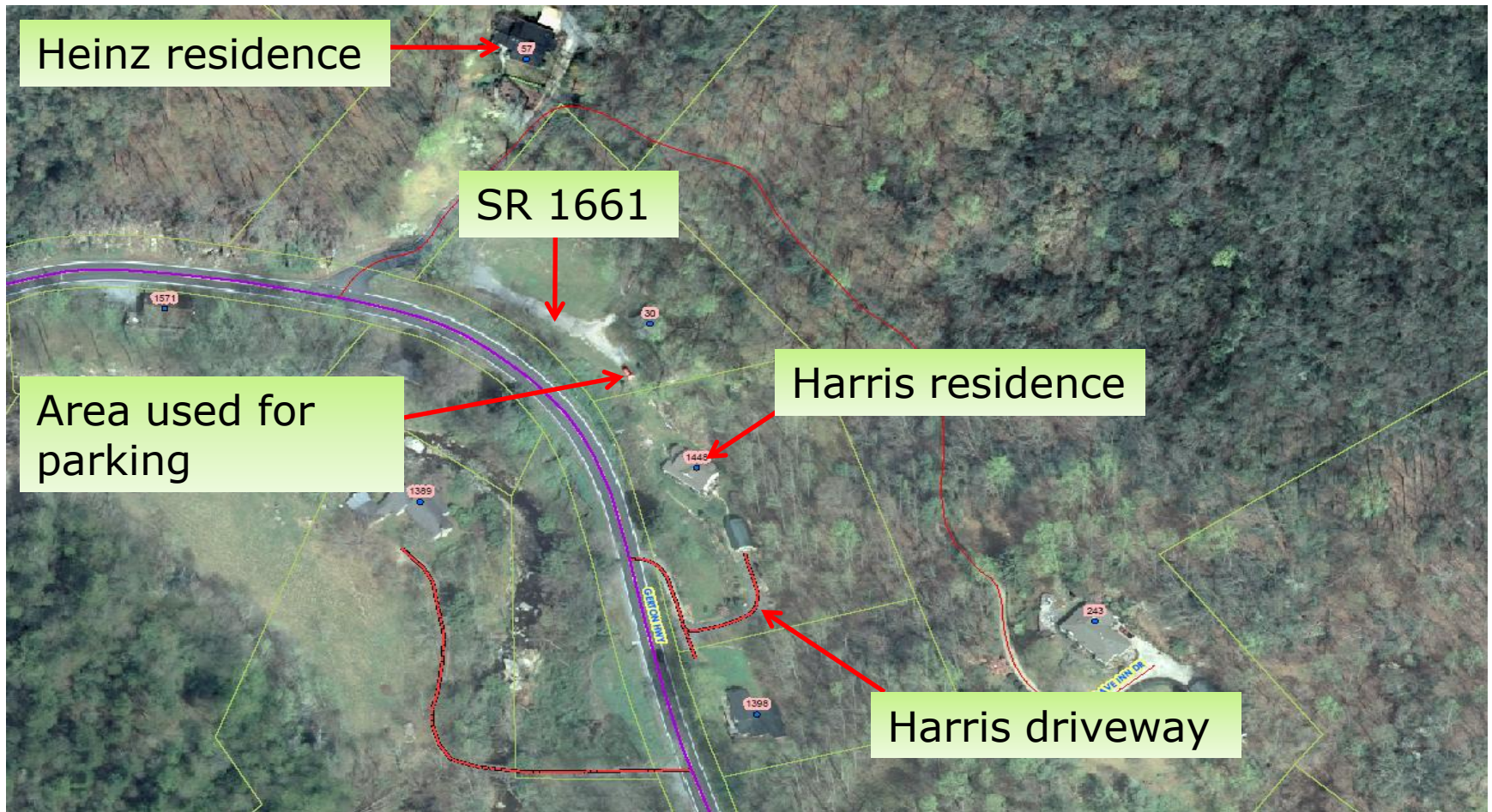


Board of Commissioners Meeting
September 7, 2010

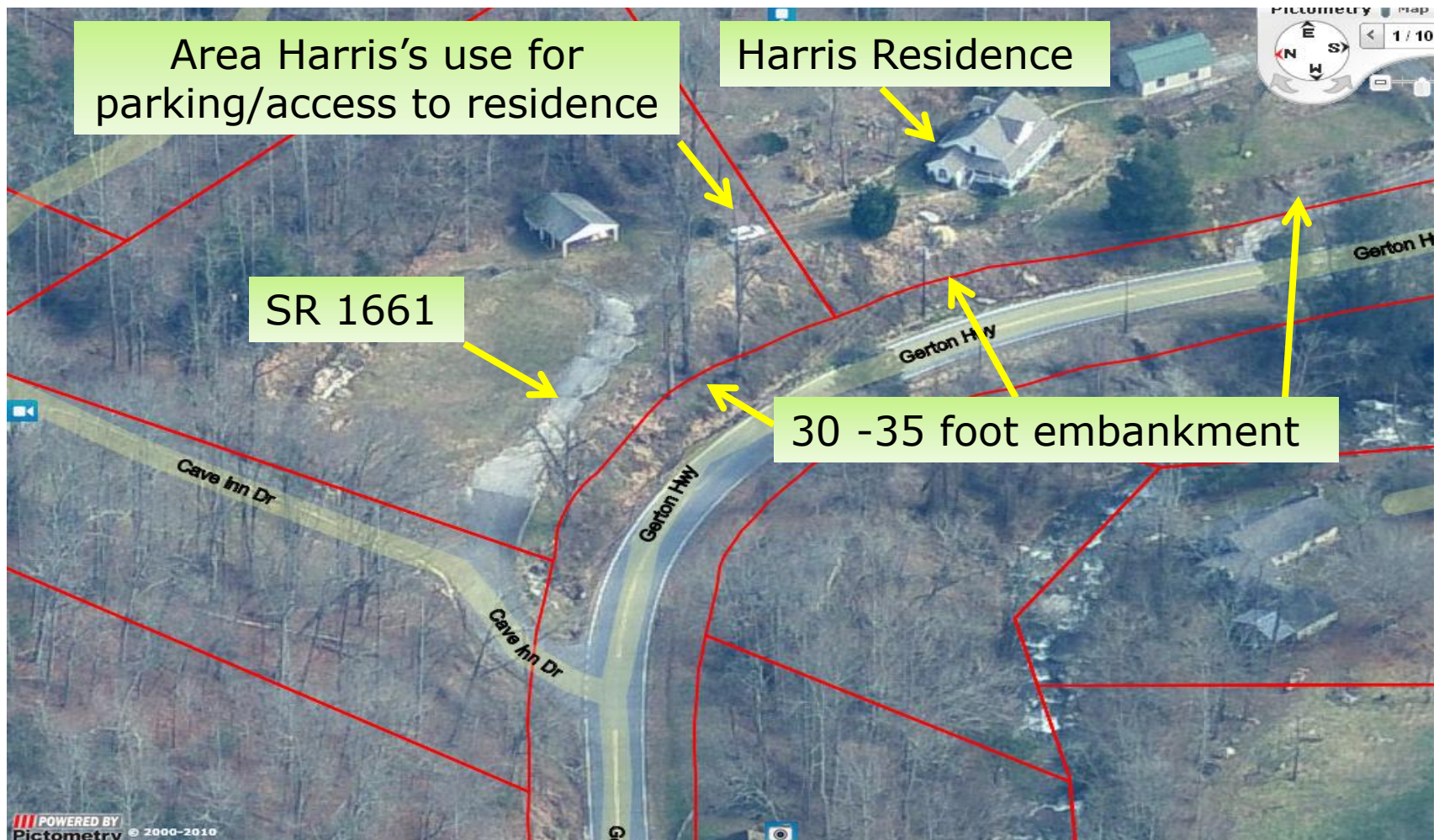
Abandonment and closure of right of way for Cave Inn Drive (SR 1661) Key Points

- May 19, 2010 Completed petition received.
- May 20, 2010 Letter received from the Harris's contesting the abandonment and closure of right of way for SR 1661.
- June 4, 2010 The Heinz's amended petition to also include closure of all known right of ways.
- June 16, 2010 Received letter from Bat Cave Fire Department not supporting the abandonment and closure of right of way.
- June 22, 2010 Received letter from Henderson County Emergency Management not supporting abandonment and closure of right of way.

Area of proposed abandonment and right of way closure



Area of proposed abandonment and right of way closure



Views of Cave Inn Drive



End of SR 1661



Looking towards Harris property



Access to Harris property from parking area



Gradual access from
parking area to Harris
residence

Harris driveway



End of Harris driveway



Access to Harris residence
(approximately 6 feet wide)

Abandonment and closure of right of way for Cave Inn Drive (SR 1661) Key Points

- ❑ Current state maintained road (Cave Inn Dr.) extends across a portion of the Heinz property.
- ❑ Harris property directly accesses US64.
- ❑ Harris driveway to US64 is steep and contains a sharp turn.
- ❑ Limited access to Harris residence via driveway on US64 (Gerton Hwy)
- ❑ Harris residence currently does not have direct right of way access to Cave Inn Drive (must cross private property).

Abandonment and closure of right of way for Cave Inn Drive (SR 1661) Key Points

- ❑ Cave Inn Drive currently available for additional emergency services access to Harris home.
- ❑ Bat Cave Fire Department and Henderson County Emergency Management are concerned that closure of right of way will limit emergency vehicle access to adjacent property (Harris residence).
- ❑ Petitioner (Heinz) recently indicated to staff they are willing to offer alternative ROW access to Harris property for emergency services access

Abandonment and closure of right of way for Cave Inn Drive (SR 1661)

□ Board Options:

1. Approve abandonment of state maintenance and closure of ROW
2. Approve abandonment of state maintenance but deny ROW closure
3. Deny abandonment and ROW closure
4. Approve abandonment of state maintenance and ROW closure with condition that a new ROW be established for emergency services access (new platting)

Abandonment and closure of right of way for Cave Inn Drive (SR 1661)

▣ Public Hearing Comments

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

August 5, 2009

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

AUG 13 2009
cc: BOC
Steve
Selena

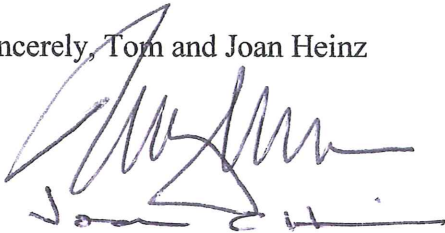
received
by Plng Dept 8-14-09

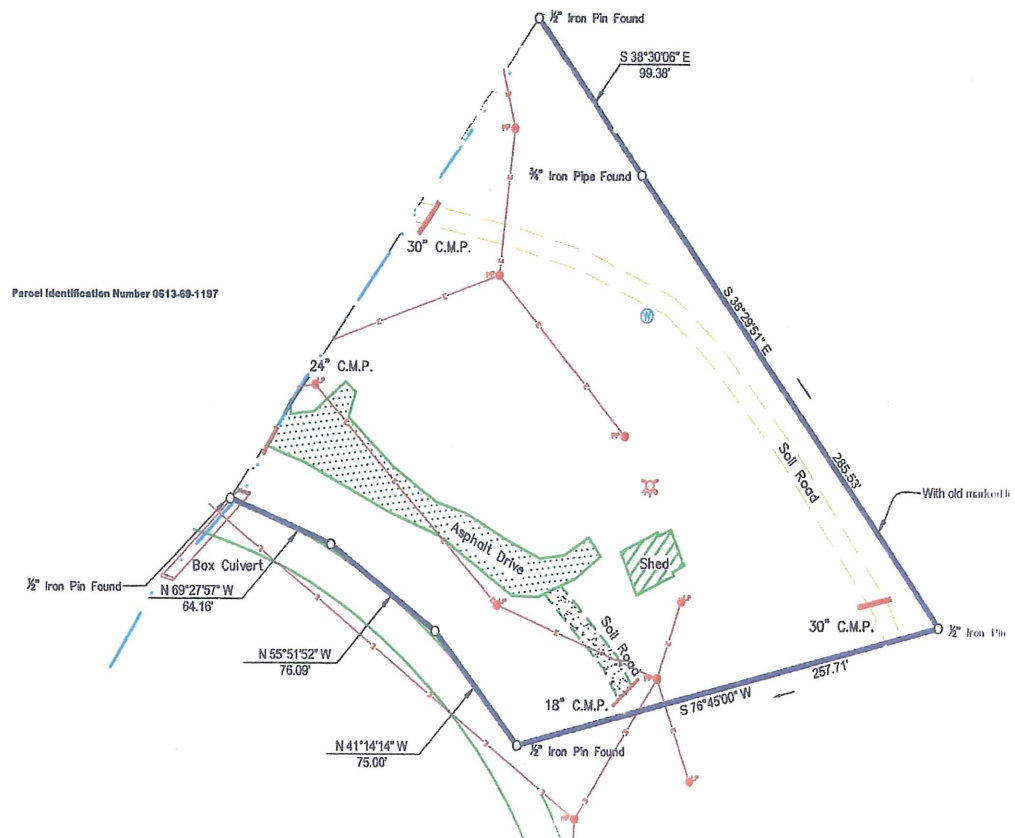
Dear Commissioners:

Request to abandon SR1661 known as Cave Inn Dr.

We are full time residents and own the property located at 30 Cave Inn Drive, Bat Cave. The site is known as the Valley Clinic and Hospital Drive. Our request involves only the portion of SR1661 located on the property at 30 Cave Inn Dr, (Approx. 120ft). Parcel Identification Number 0613-69-1197. A recent survey (see attach) shows only the section of SR1661 described in which the DOT is responsible for the maintenance. The Hospital burned down a number of years ago and the site has been vacant for years. The surface of the road is in complete disrepair and would require immediate attention if the road is not abandoned . Sections of the road are ready to collapse. (See attachments 1, 2 and 3). There are no other properties adjoining the road at the 30 Cave Inn Dr location. We would like to have the road abandoned so we can improve the properties general appearance. We would also like to stop traffic from turning around on the grass and trespassing on our property. We have requested the DOT abandon the section of road located on 30 Cave Inn Dr and have requested the Abandonment Petition (attached). Please review and inform us of your decision.

Sincerely, Tom and Joan Heinz

A handwritten signature in blue ink, appearing to be "Tom and Joan Heinz", written over a horizontal line.



Recent Survey showing 30 Cave Inn Dr., Bat Cave (SR1661) Asphalt Drive and Soil Road currently under the maintenance responsibility of the DOT.

(SEE ENLARGED SURVEY AT END OF PACKAGE)

Attachment 1



30 Cave Inn Dr., Bat Cave NC (SR1661) Eroded roadway as viewed looking South-East

Attachment 2



30 Cave Inn Dr., Bat Cave NC (SR1661) roadway as viewed looking North-West

Attachment 3



30 Cave Inn Dr., Bat Cave NC (SR1661) roadway as viewed looking North-West

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.

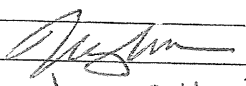

Maintained System

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.

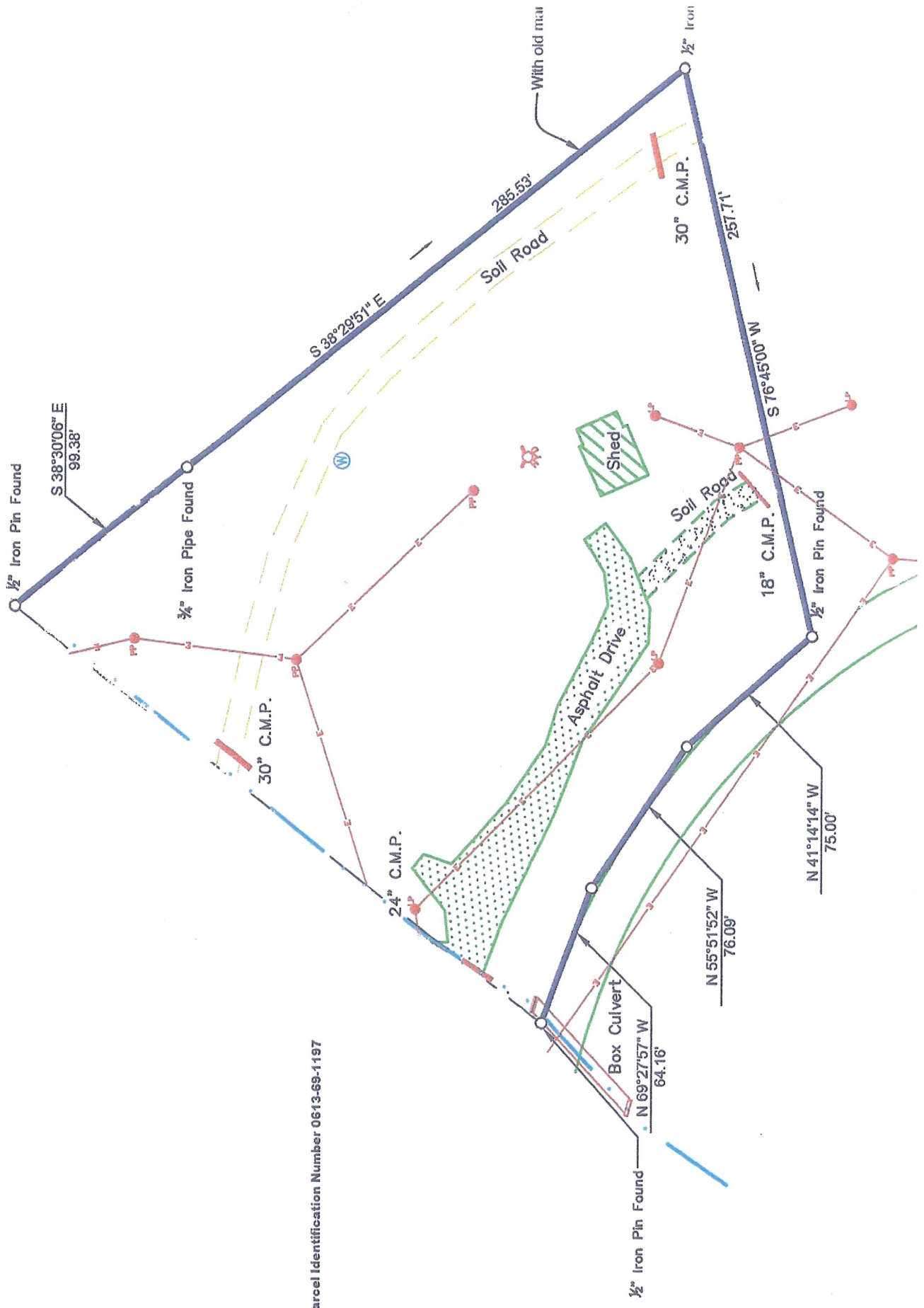
PROPERTY OWNERS

Name

Address

TOMMY J HEINZ		30 CAVE INN DR
JOAN C HEINZ		30 CAVE INN DR

(SEE ORIGINAL SIGNED PETITION AT END OF PACKAGE)



Parcel Identification Number 0613-69-1197

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

May 13, 2010

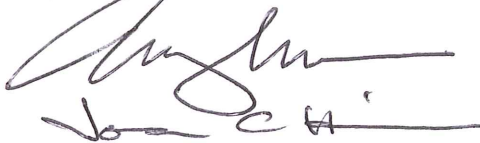
Mr. and Mrs. Tommy J Heinz
PO Box 129
57 Cave Inn Dr. Bat Cave
North Carolina, 28710

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




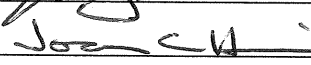
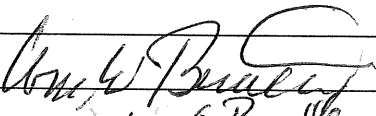
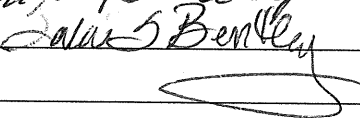
County of HENDERSON

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
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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

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



Handwritten signatures of Tom and Joan Heinz. The signature for Tom is a stylized cursive 'T' followed by 'Heinz'. The signature for Joan is a stylized cursive 'J' followed by 'Heinz'.

Bat Cave Volunteer Fire
And Rescue Dept. Inc.
P.O. Box 11
Bat Cave, N. C. 28710

June 16 , 2010

To: Rocky Hyder

Subject: STATE ROAD ABANDONMENT PETITION

Cc: Bill Moyer, Curtis Griffin

I have looked SR 1661 (Cave Inn Drive) that you and I discussed. Abandonment of this state road is very much apposed by Bat Cave Fire And Rescue Department.


This is the fire department's primary access to the residence at the south end of the property. It is very dangerous, time consuming, and maybe impossible to access the property at the at the south end of this road with large equipment using any other road than SR 1661. If there was a fire or any other need for a large vehicle at the south end of SR 1661, there is great access using SR 1661. Most if not all of SR 1661 is paved. This pavement is broken in some places but it is in far better condition than many state roads that are gravel. There is good lines of sight with no sharp cures or other obstructions on SR 1661.

I do not know what right of ways the property owner at the south end has other than the state road. I do know that with SR 1661 we have a **FAR BETTER WAY** of protecting that property than with out it.

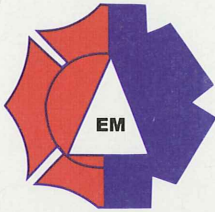
Please, DO NOT pass a resolution for state abandonment of SR 1661.

Thank you for your time regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard H. Barnwell". The signature is fluid and cursive, with the first name "Richard" and last name "Barnwell" clearly distinguishable.

Richard H. Barnwell, Chief



HENDERSON COUNTY EMERGENCY SERVICES

211 1st Avenue East
Hendersonville, NC 28792
(828) 697-4728 Fax (828) 698-6164

Rocky Hyder
Director

EMERGENCY MANAGEMENT - EMERGENCY MEDICAL SERVICES - FIRE MARSHAL
697-4527 697-4825 697-4728

June 22, 2010

Curtis Griffin
Property Addressing Coordinator
Henderson County
213 First Avenue East
Hendersonville, NC 28792

RE: SR 1661 Road Abandonment Petition

Mr. Griffin:

Henderson County Emergency Services opposes the abandonment of State Road 1661 (Cave Inn Drive) due to accessibility concerns expressed by the fire service.

If you have any questions feel free to contact me.

Respectfully:

Rocky D. Hyder,
Emergency Services Director
Henderson County, NC

attachment .

Untitled

May 20th, 2010

County Commissioners
Hendersonville NC

Re: Abandonment of State Road 1661

My name is Sandra Harris and my husband Micahel and I live at 1448 Gerton Highway..Bat Cave,nc 28710..Our mailing address is Box 118 Bat Cave N.C. 28710.

We have been notified that State Road 1661 has been petioned to be abandoned by the DOT dept by our neighbors by the last name of Hines.

My husband and I have been using that road for the past 11 years to access our property..The fire department and other emergency vehicles need access to that road in case of a fire or medical emergency at our house..When we originally bought the house we were told by the realtor that the road was ours to use..

Also we have a 350 gallon gas tank which is also serviced by that road which we use for heat in the winter.

This letter is respectfully submitted to oppose abandonment of the Road by the D.O.t..and we would appreciate your consideration in this matter...

Thank You for your Consideration

Michael and Sandra Harris

Michael & Sandra Harris

**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 the 2ND day of August, 2010

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____

[Signature]
William L. Moyer, Chairman

ATTESTED BY: _____

[Signature]
Terry Wilson, Clerk to the Board

[OFFICIAL SEAL]

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

§ 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.)