

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: October 4, 2010

SUBJECT: Continuation of Public Hearing for Cave Inn Drive

ATTACHMENTS:

1. Outline of Verbal Agreement
2. Power Point Presentation
3. Letters contesting closure of right of way
4. NCDOT guidelines on road abandonment
5. NC Statute 153A-241
6. NC Statute 136-63

SUMMARY OF REQUEST:

Planning Department staff requests the Board to continue 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 (ROW). Both parties acknowledged that the current right-of-way and road does not extend to the beginning of the Harris property. A verbal agreement was reached by the parties (attachment 1) on September 13 at a meeting with Planning Department staff. However, the Harris' have since retracted their agreement.

The Board possesses two primary options:

1. Approve the ROW closure and abandonment of state maintenance. The Harris' could appeal the ROW closure to the court of jurisdiction. The maintenance abandonment, however, is only a recommendation and NCDOT would actually render that decision. A formal order to close the ROW would be presented at a subsequent Board meeting.
2. Choose to not act on either request until both parties reach an agreement. State law does not require a Board of Commissioners recommendation to NCDOT to act on the petition to abandon maintenance. No formal action is required by the Board for this option.

BOARD ACTION REQUESTED:

The Planning Department staff requests the Board to determine which option is appropriate.

Suggested Motions:

Option 1: I move the Board recommend the abandonment of state maintenance to NCDOT and direct staff to prepare an order for closure of all known rights-of-way for Cave Inn Drive.

Option 2: I move the Board take no action until both parties reach an agreement of terms regarding this issue.

Cave Inn Drive, Bat Cave, NC

Tentative Agreement Points

- Access easement is platted and prescribed
- Inclement weather access for Harris' property via prescribed easement
- Fuel truck access to Harris property via easement
- Emergency vehicle access to Harris property via easement
- Access easement terminates when Harris' convey their property to another party
- Harris' agrees not to oppose ROW closure and state road maintenance abandonment of Cave Inn Drive
- Harris' would assume liability for any incidents that occur while someone uses access easement for Harris' property.
- Heinz' agree for road to stay in place as per plat and will maintain said access easement/road

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

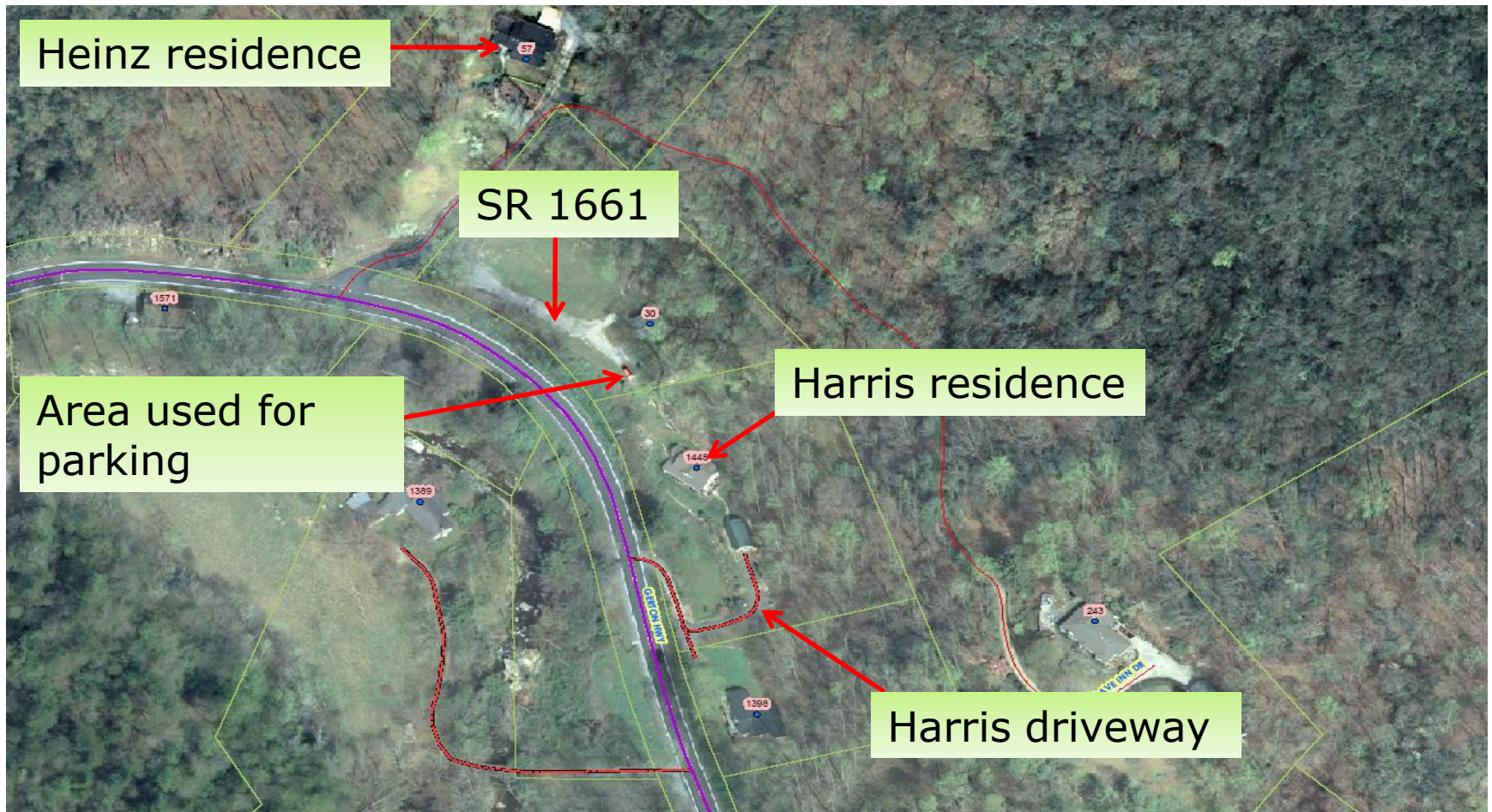


Board of Commissioners Meeting
October 4, 2010

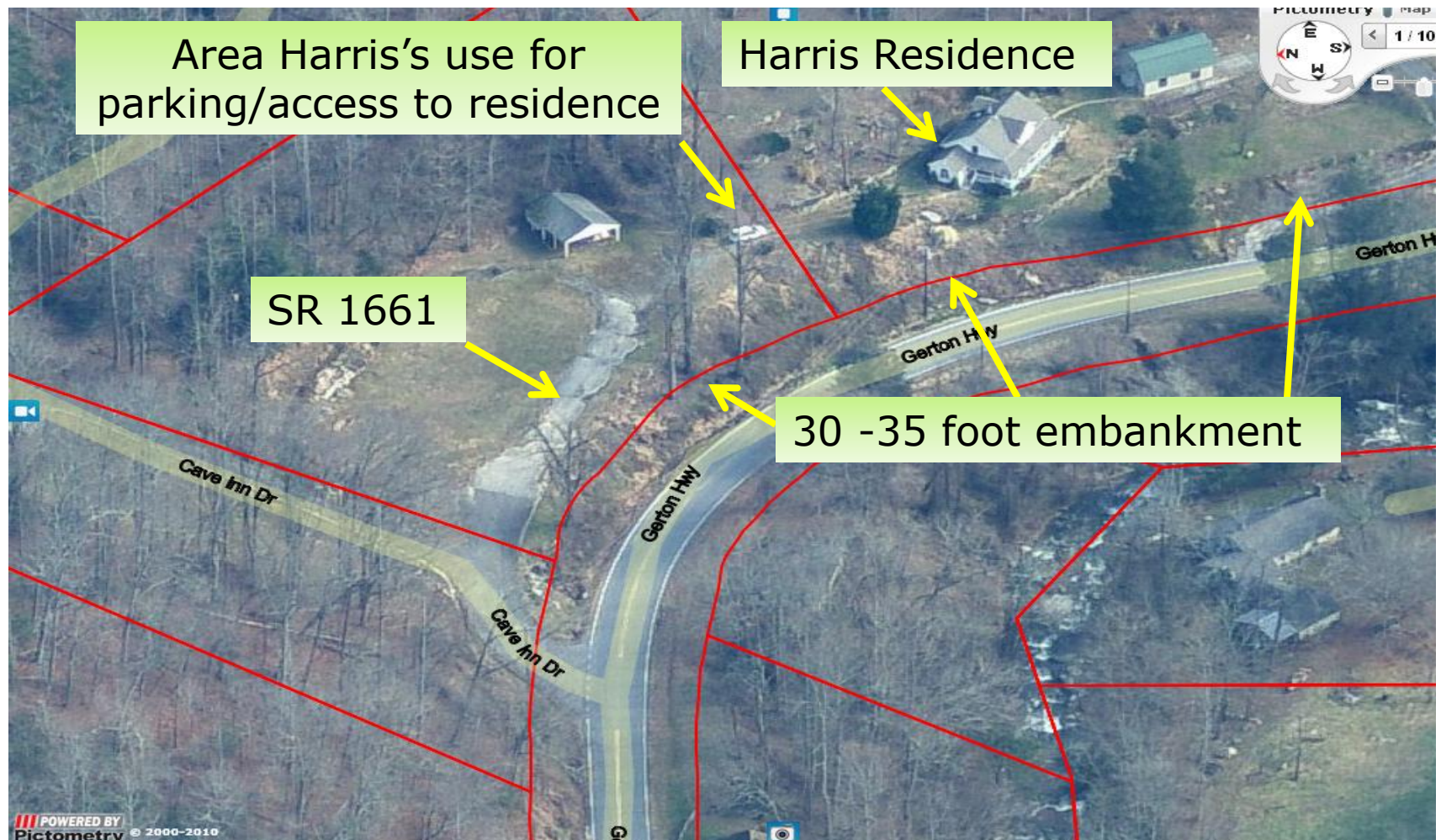
Abandonment and closure of right of way for Cave Inn Drive (SR 1661) Key Points

- 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



Parking area seen in
overhead

View looking from top of embankment to
end of SR 1661

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 US74A.
- ❑ Harris driveway to US74A is steep and contains a sharp turn.
- ❑ Limited access to Harris residence via driveway on US74A (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)

- ❑ Tentative Agreement Points:
 1. Access easement is platted and prescribed
 2. Inclement weather access for Harris'
 3. Fuel truck access to Harris property
 4. Emergency vehicle access to Harris property
 5. Agreement terminates when Harris' convey their property
 6. Harris' agrees not to oppose ROW closure and SR abandonment
 7. Harris' assume liability for damages while someone is uses easement for Harris'.

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

- Tentative Agreement Points:
 - 8. Heinz' agree for road to stay in place per plat and will maintain said 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. Take no action until both parties reach an agreement of terms regarding this issue

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

□ Public Hearing Comments

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.

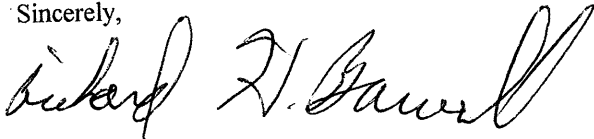
This is the fire department's primary access to the residence at the south end of the property. It is very dangerous, time consuming, and maybe impossible to access the property at the at the south end of this road with large equipment using any other road than SR 1661. If there was a fire or any other 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.

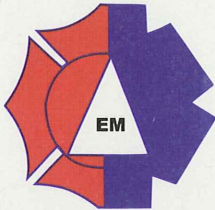
Please, DO NOT pass a resolution for state abandonment of SR 1661.

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" being more prominent and the last name "Barnwell" following in a similar style.

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

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.)

§ 136-63. Change or abandonment of roads.

(a) The board of county commissioners of any county may, on its own motion or on petition of a group of citizens, request the Board of Transportation to change or abandon any road in the secondary system when the best interest of the people of the county will be served thereby. The Board of Transportation shall thereupon make inquiry into the proposed change or abandonment, and if in its opinion the public interest demands it, shall make such change or abandonment. If the change or abandonment shall affect a road connecting with any street of a city or town, the change or abandonment shall not be made until the street-governing body of the city or town shall have been duly notified and given opportunity to be heard on the question. Any request by a board of county commissioners or street-governing body of a city refused by the Board of Transportation may be presented again upon the expiration of 12 months.

(b) In keeping with its 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 mile of its corporate limits once it is abandoned from the State highway system. (1931, c. 145, s. 15; 1957, c. 65, s. 8; 1965, c. 55, s. 13; 1973, c. 507, s. 22 1/2; 1975, c. 19, s. 45; 1977, c. 464, s. 25; 1993, c. 533, s. 14.)