

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

- MEETING DATE:** December 7, 2015
- SUBJECT:** Public Hearing to Abandon State Maintenance and permanently close a portion of Middleton Road (SR 1136)
- PRESENTER:** Curtis Griffin, Property Addressing Office
- ATTACHMENTS:**
- (1) Map of Middleton Road
  - (2) Email from County Staff supporting closing
  - (3) Resolution of support from Village of Flat Rock
  - (4) Petition to Abandon State Maintenance and Close Portion of Middleton Road
  - (5) NC General Statute 153A-241 and 136-63
  - (6) Order to permanently close a portion of Middleton Road
  - (7) PowerPoint

### SUMMARY OF REQUEST:

The Henderson County Board of Commissioner's passed a resolution at the November 2, 2015 board meeting stating their intent to hold a public hearing for the purpose of permanently closing a portion of Middleton Road (SR 1136).

North Carolina General Statute 153A-241 requires that a public hearing be held for the permanent closing of a public road or easement and that the board must adopt an order closing the right-of-way if it deems no individual owning property would be deprived of a reasonable means of ingress and egress.

North Carolina General Statute 136-63 provides that any group of petitioners may request for the abandonment of any road in the secondary system when in the best interest of the people of the county will be best served thereby.

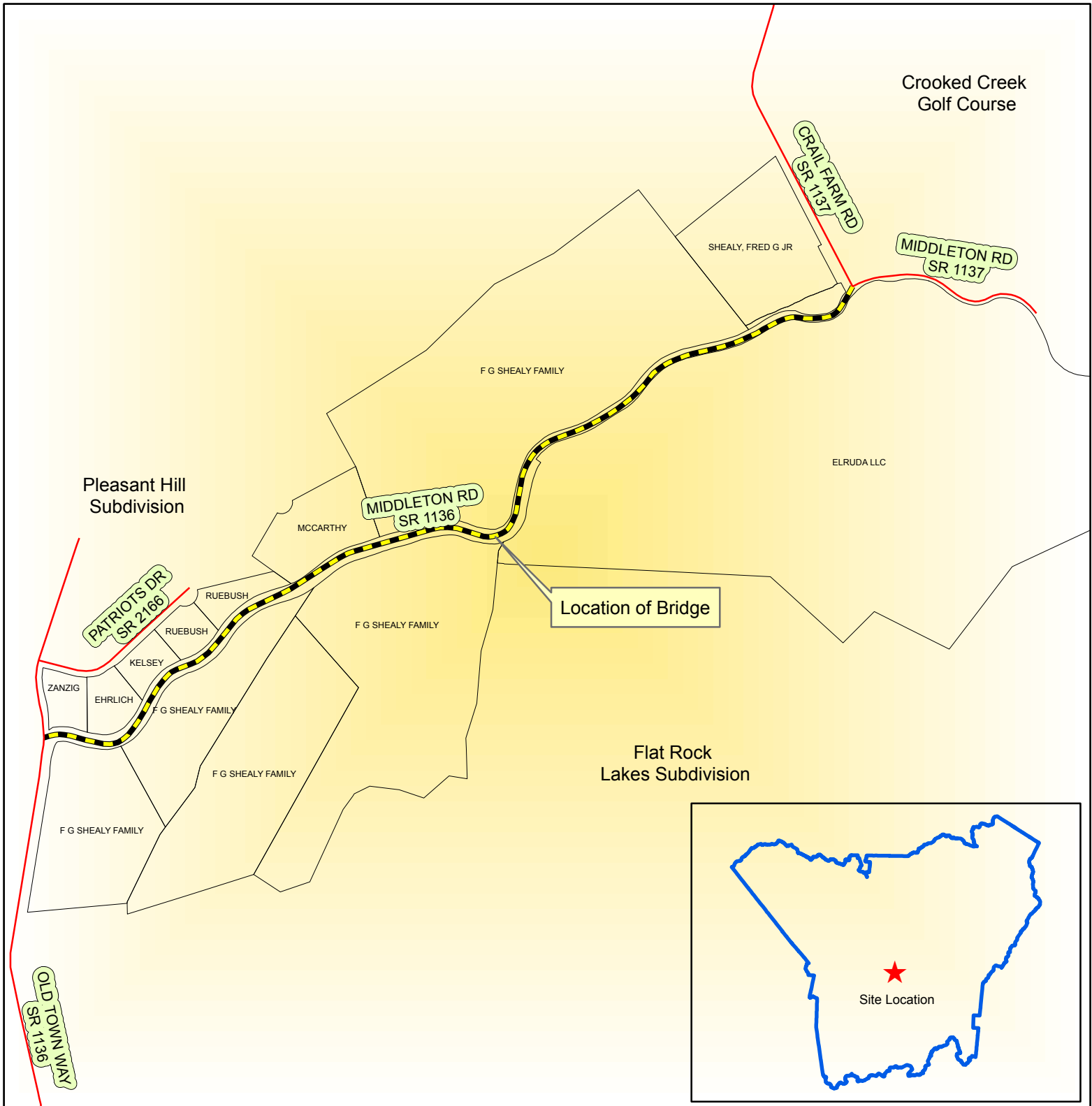
### BOARD ACTION REQUESTED:

Staff recommends approval of the Abandonment of State Maintenance and to permanently close a portion of Middleton Road and adopt the Order of Closure for recording with the County Registrar.

### Suggested Motion:

*I move that the Board approve recommending abandonment of state maintenance and closure of the right-of-way and certify the Order of Closure.*

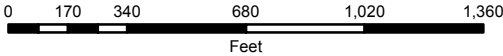
# Request to Abandon State Maintenance and Close Road



**Legend**

**Middleton Road Area**

- Section Requesting to be Abandoned and Closed
- Street



1 inch = 550 feet



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## Curtis Griffin

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**From:** Tim Garren <timgarren@vhfd.com>  
**Sent:** Monday, October 05, 2015 3:25 PM  
**To:** Curtis Griffin; Rocky Hyder; Mike Barnett; Jerry Rice; mayor@villageofflatrock.org  
**Cc:** Autumn Radcliff; zoning@villageofflatrock.org  
**Subject:** Re: PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I am fine with the closing of this section of Middleton Road. I have requested during conversation with Mr. Shealy, that if the rental home located at 785 Middleton Road is occupied that the gate be placed at or just past the drive of this home to allow us unrestricted access.

Regards,  
Tim Garren  
Chief  
Valley Hill Fire & Rescue  
Office: 828-692-2581 ext. 104,  
Valleyhillfire.com

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**From:** Curtis Griffin <cgriffin@hendersoncountync.org>  
**Date:** Monday, October 5, 2015 at 12:47 PM  
**To:** Tim Garren <timgarren@vhfd.com>, Rocky Hyder <rhyder@hendersoncountync.org>, Mike Barnett <mbarnett@hendersoncountync.org>, Jerry Rice <jrice@hendersoncountync.org>, "mayor@villageofflatrock.org" <mayor@villageofflatrock.org>  
**Cc:** Autumn Radcliff <autumnr@hendersoncountync.org>, "zoning@villageofflatrock.org" <zoning@villageofflatrock.org>  
**Subject:** PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

Good Afternoon,

Our office has been presented with a petition from Mr. Wells Shealy to abandon the state road maintenance and also close a portion of Middleton Rd. The portion of the road proposed to be closed is from Old Town Way to the Crail Farm Rd intersection. The portion of this street is located within the Village of Flat Rock, but GS 153A-241 provides provisions for the County Board of Commissioners to approve the closure due to it also currently being a state maintained road (also refer to GS 136-63 for abandonment).

One requirement is that this closing be in the "Public interest". Henderson County views this that a response from our emergency services will be required. If there is an issue with closing this section of the road, please forward your concerns. Also, if you have no concern with this closing a response is requested as well.

Respectfully request that The Village of Flat Rock provide a resolution in support/or not in support of this closing.

If any response is negative, this petition will not proceed.

Thank you in advance for your assistance,

## Curtis Griffin

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**From:** Mike Barnett  
**Sent:** Monday, October 05, 2015 4:10 PM  
**To:** Curtis Griffin; Tim Garren; Rocky Hyder; Jerry Rice; mayor@villageofflatrock.org  
**Cc:** Autumn Radcliff; zoning@villageofflatrock.org  
**Subject:** RE: PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

**Follow Up Flag:** Follow up  
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I am fine with it, It sounds like Chief Garren's suggestion is a good one.

Thanks  
Mike

Mike Barnett  
EMS Manager,  
Henderson County EMS  
Office – 697-4825  
Fax – (828) 696-0737

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**From:** Curtis Griffin  
**Sent:** Monday, October 05, 2015 12:48 PM  
**To:** Tim Garren; Rocky Hyder; Mike Barnett; Jerry Rice; mayor@villageofflatrock.org  
**Cc:** Autumn Radcliff; zoning@villageofflatrock.org  
**Subject:** PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

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If any response is negative, this petition will not proceed.

Thank you in advance for your assistance,

**Curtis Griffin**  
Property Addressing Coordinator

## Curtis Griffin

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**From:** Rocky Hyder  
**Sent:** Monday, October 05, 2015 4:17 PM  
**To:** Curtis Griffin; Tim Garren; Mike Barnett; Jerry Rice; mayor@villageofflatrock.org  
**Cc:** Autumn Radcliff; zoning@villageofflatrock.org  
**Subject:** RE: PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

**Follow Up Flag:** Follow up  
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I concur with Chief Garren and EMS Manager Barnett.

*Rocky Hyder*

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**To:** Tim Garren; Rocky Hyder; Mike Barnett; Jerry Rice; mayor@villageofflatrock.org  
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Thank you in advance for your assistance,

**Curtis Griffin**  
Property Addressing Coordinator



**Planning Department**  
Property Addressing Division

## Curtis Griffin

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**From:** Jerry Rice  
**Sent:** Monday, October 05, 2015 4:23 PM  
**To:** Rocky Hyder; Curtis Griffin; Tim Garren; Mike Barnett; mayor@villageofflatrock.org  
**Cc:** Autumn Radcliff; zoning@villageofflatrock.org  
**Subject:** RE: PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**I think we are all in agreement thus far.**

JR

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**From:** Rocky Hyder  
**Sent:** Monday, October 05, 2015 4:17 PM  
**To:** Curtis Griffin; Tim Garren; Mike Barnett; Jerry Rice; mayor@villageofflatrock.org  
**Cc:** Autumn Radcliff; zoning@villageofflatrock.org  
**Subject:** RE: PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

I concur with Chief Garren and EMS Manager Barnett.

*Rocky Hyder*

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**From:** Curtis Griffin  
**Sent:** Monday, October 05, 2015 12:48 PM  
**To:** Tim Garren; Rocky Hyder; Mike Barnett; Jerry Rice; [mayor@villageofflatrock.org](mailto:mayor@villageofflatrock.org)  
**Cc:** Autumn Radcliff; [zoning@villageofflatrock.org](mailto:zoning@villageofflatrock.org)  
**Subject:** PROPOSED STATE MAINTENANCE ABANDONMENT AND ROAD CLOSURE

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Respectfully request that The Village of Flat Rock provide a resolution in support/or not in support of this closing.

If any response is negative, this petition will not proceed.

Thank you in advance for your assistance,

**RESOLUTION NO. 199**

**REGARDING ABANDONMENT OF STATE MAINTENANCE  
AND CLOSURE OF A PORTION OF MIDDLETON ROAD**

**WHEREAS**, Middleton Road (SR 1136 and SR 1137) is a state maintained, partially paved and partially unpaved road running generally west to east from Old Town Way (SR 1136) to Little River Road (SR 1123), and located within the corporate limits of the Village of Flat Rock; and

**WHEREAS**, the owners of parcels of pastureland on both sides of Middleton Road have petitioned the North Carolina Department of Transportation (NCDOT) to abandon state maintenance of an approximately 0.7 mile, unpaved portion of Middleton Road between Old Town Way and Crail Farm Road (SR 1137), and have petitioned Henderson County to close that portion of the road; and

**WHEREAS**, its appearing that all other affected land owners along said portion of Middleton Road have joined in such petitions for abandonment of state maintenance and closure of the road; and

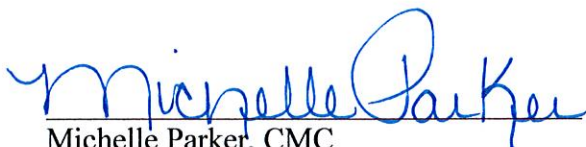
**WHEREAS**, its further appearing that such actions have been approved by the offices of Henderson County's Sheriff, Director of Emergency Management, and Director of Emergency Medical Services, and by the Chief of Valley Hill Fire & Rescue; provided, however, that unrestricted access to the one occupied residence on said road by emergency services is maintained; and

**WHEREAS**, petitioners for the abandonment of state maintenance and closure of the road have requested that the Village of Flat Rock support such petitions; and

**WHEREAS**, NCDOT and the Henderson County Board of Commissioners will not proceed with such abandonment and closure, respectively, without the village's support;

**NOW, THEREFORE**, be it resolved by the Council of the Village of Flat Rock that it has no objection to, and therefore supports, NCDOT's abandonment of state maintenance and Henderson County's closure of the aforesaid 0.7 mile, unpaved portion of Middleton Road between Old Town Way and Crail Farm Road.

**ADOPTED** this 8<sup>th</sup> day of October 2015.



Michelle Parker, CMC  
Village Clerk



Robert V. Staton  
Mayor

COPY

Petition to Close Right of Way

To whom it may concern:

We the under signed property owners, along Middleton Rd. in Henderson County wish to have this road closed to public use in accordance with statute 153A-241. The portion of this road to be closed is from Crail Farm Road to Old Town Way. All property owners along this stretch of road have signed in agreement with the closing of this road in addition, to filing a petition with the North Carolina Department of Transportation to abandon the road from the State Maintained System.

PROPERTY OWNERS

<u>Name</u>	<u>Address</u>
Daniel Ravenel	DANIEL RAVENEL
Jean Lammig	155 BIRD MOUNT DR
Walter P. ...	1408 PATRIOTS
Charles R. Jensen	1410 PATRIOTS
Kendrick Ruebush	1420 PATRIOTS DR
Wells Shewry	1470 PATRIOTS DR
M. David and Audrey M. Shaw	2533 LITTLE RIVER RD.
	121 Cub Run





North Carolina Department of Transportation  
Division of Highways  
Abandonment Petition

COPY

North Carolina

County of Henderson

Petition request for the abandonment of Secondary Road Middleton from the State.

Maintained System

We the under signed, being all of the property owners on Secondary Road Middleton  
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
<u>Daniel Ramey</u>	<u>DANIEL RAMEY 155 BIRD MOUNT DR</u>
<u>Jean Lammig</u>	<u>1408 Patriots</u>
<u>ALAN E HURLOCK</u>	<u>1410 PATRIOTS</u>
<u>CHARLES KELSEY</u>	<u>1420 PATRIOTS DR</u>
<u>Kenneth Ruebush</u>	<u>1470 PATRIOTS DR</u>
<u>Wells Sheary</u>	<u>2533 Little River Rd.</u>
<u>M. David and Audrey M. Snow</u>	<u>121 Cub Run</u>

RECEIVED

SEP 25 2015

NCDOT  
DIVISION 14 - DISTRICT 1



North Carolina Department of Transportation  
Division of Highways  
Abandonment Petition

COPY

North Carolina

County of HENDERSON

Petition request for the abandonment of Secondary Road Middleton from the State.

Maintained System

We the under signed, being all of the property owners on Secondary Road Middleton  
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>
<u>M. Deaton</u> <u>Audrey M. Shaw</u>	<u>121 Cub Run</u>

**§ 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.)

# Henderson County North Carolina

Before the Board of Commissioners

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## ORDER CLOSING A PORTION OF RIGHT-OF-WAY FOR MIDDLETON ROAD

THIS MATTER came on for hearing before the Henderson County Board of Commissioners at its regular December 7, 2015, meeting, pursuant to N.C. Gen. Stat. §153A-241, on the issue of closing a portion of right-of-way for Middleton Road, and was heard by the Board after public hearing. The Board of Commissioners makes the following findings:

1. This matter first came before the Board of Commissioners on at the Board's regular meeting on November 2, 2015, on the petition of R. Wells Shealy to close a portion of Middleton Road in the Flat Rock area of Henderson County.

2. At the Board's November 2, 2015, the Board adopted a resolution "declaring its intent to close" the said portion of Middleton Road.

3. A map showing the area under consideration is shown on the attachment hereto, Exhibit A, (indicated by a broken yellow line).

4. A notice of this Board's December 7 hearing was published once a week for three successive weeks before the hearing in the *Hendersonville Tribune*, a copy of the resolution was 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.

5. Before the Board on December 7, the Board heard "all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights" are required by N.C. Gen. Stat. §153A-241.

6. After such hearing, the Board is satisfied and finds:

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.

**WHEREFORE IT IS ORDERED** that a portion of Middleton Road in the Flat Rock area of Henderson County as shown on the attached map is hereby closed. It is further ordered that a private driveway easement be provided to the home on the property owned by Elruda LLC (Henderson County Parcel ID Number 9567228402) and that a certified copy of this Order shall be filed in the office of the register of deeds of the county.

Adopted by the Board by motion duly made, this the 7<sup>th</sup> day of December, 2015.

BOARD OF COMMISSIONERS  
OF HENDERSON COUNTY

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Clerk to the Board



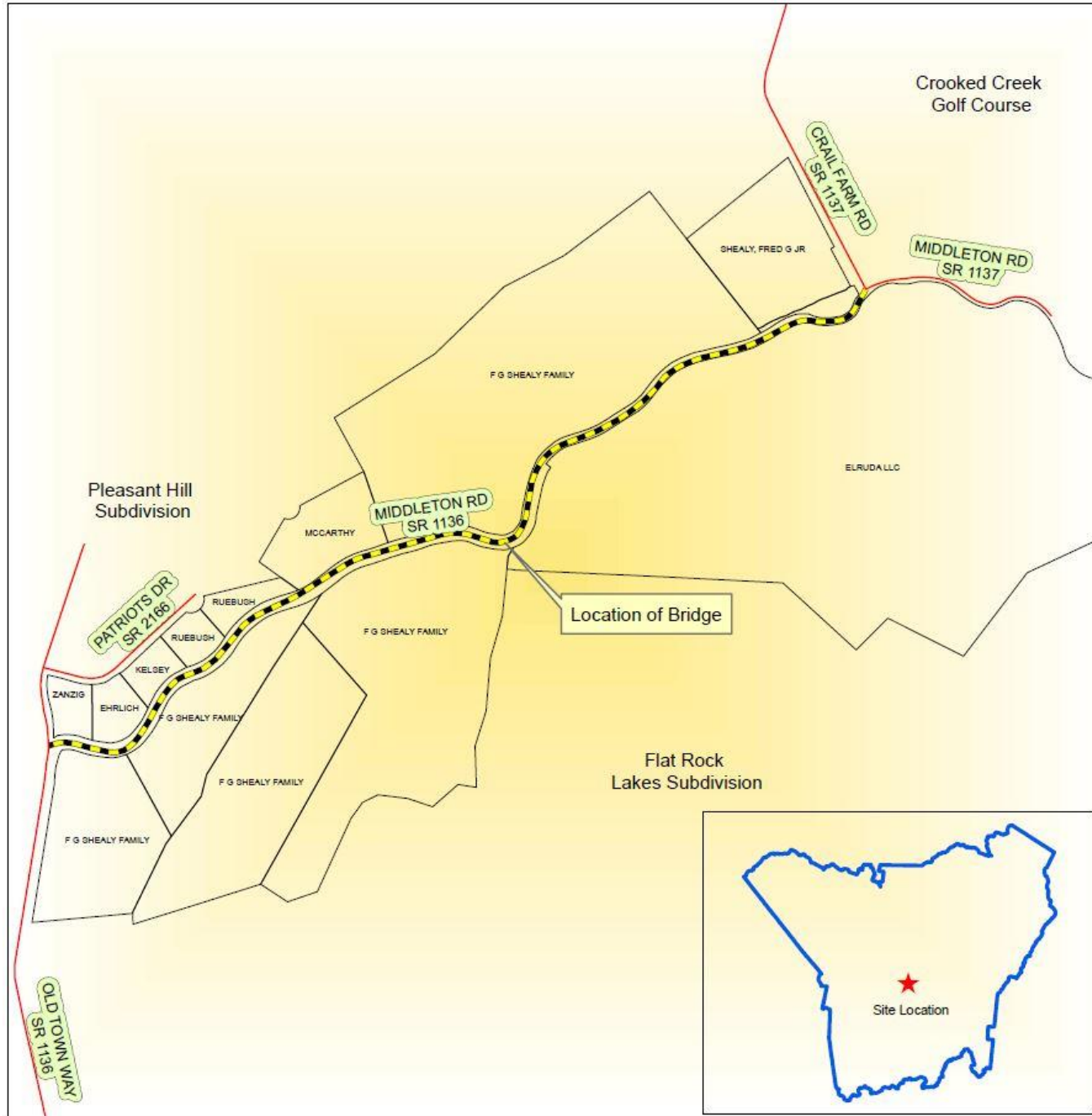
# **Public Hearing to Abandon State Maintenance and Permanently Close a Portion of Middleton Road (SR 1136)**



**Henderson County Board of Commissioners  
December 7, 2015**



# Middleton Road: Request to Abandon State Maintenance and Close Road





**Pictures taken from the Intersection of Middleton Road and Old Town Way at the Entrance of Pleasant Hill Subdivision**



**Pictures taken on Middleton Road  
Looking at Adjoining Lots in Pleasant  
Hill Subdivision**



**Pictures taken on Middleton Road  
Looking at DOT Bridge Scheduled for  
Replacement**



**Pictures taken at the Intersection of Middleton Road and Crail Farm Road**

# Public Hearing Comments

