

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 19, 2020

SUBJECT: Closing unopened portions of Dove Haven Lane Road Right of Way

PRESENTER: Sam Starr, Property Addressing Coordinator
Autumn Radcliff, Planning Director

ATTACHMENTS: (1) Site Map depicting proposed RROW closure
(2) Applicant's letter to Henderson County Property Addressing Office
(3) North Carolina General Statute 153A-241
(4) Proposed Resolution

SUMMARY OF REQUEST:

Planning and Property Addressing staff have received the attached petition and survey to close an unopened portion of Dove Haven Lane. Under North Carolina General Statute (NCGS) 153A-241, counties have the power to close any public road or easement not within a city, except public roads or easements for public roads under control of the Department of Transportation. To close any road, the Board must:

- Vote to adopt a resolution declaring its intent to close the public road or easement.
- Call and notice a public hearing on closing the road or easement, with notice "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".
- Hold the public hearing, where the Board must "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".
- Then, if the Board "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".
- File a copy of the Board's order with the Register of Deeds.

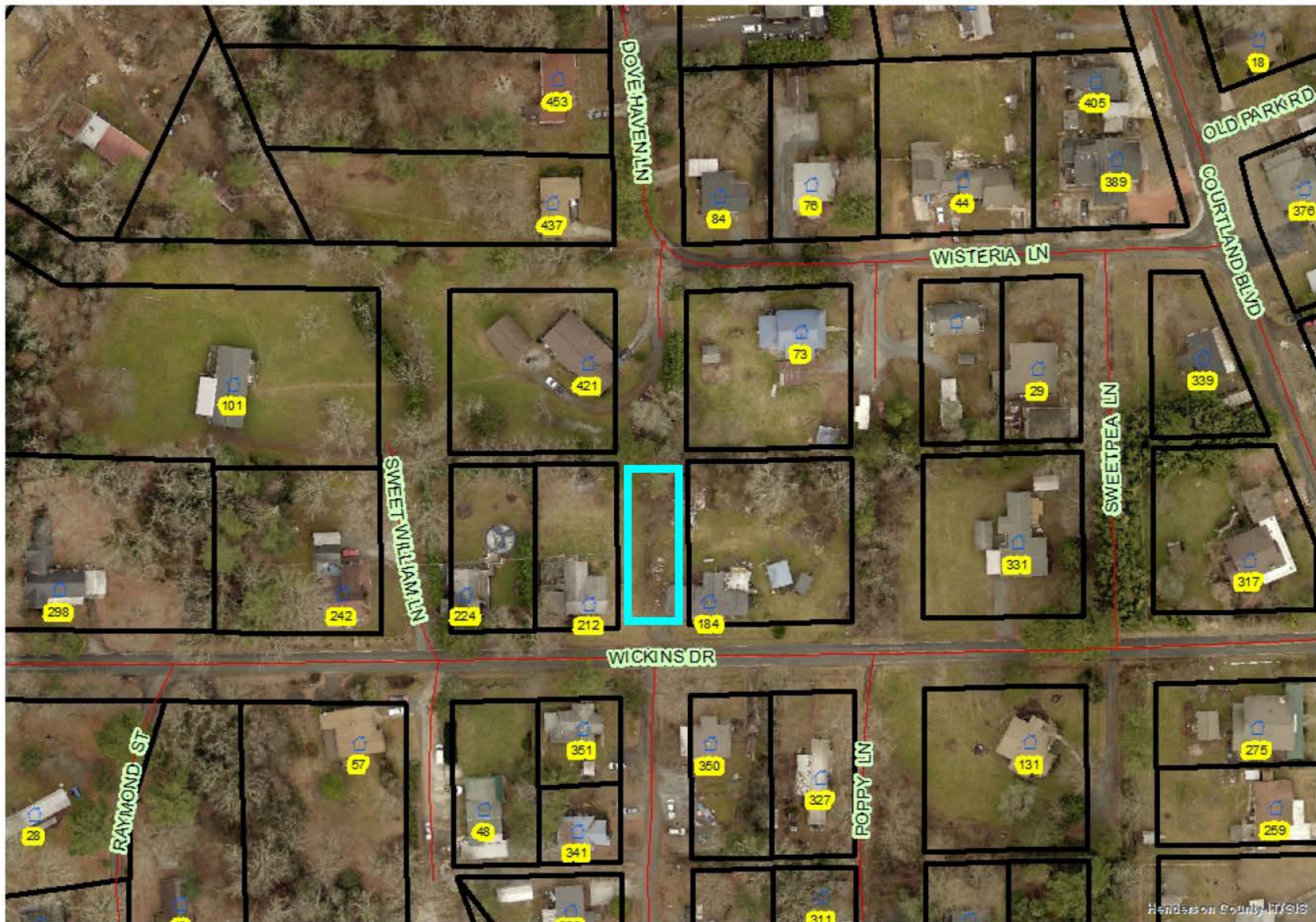
BOARD ACTION REQUESTED:

Staff recommends approval of the resolution and the setting of the public hearing to September 8, 2020 at 5:30PM or as soon as practicable thereafter.

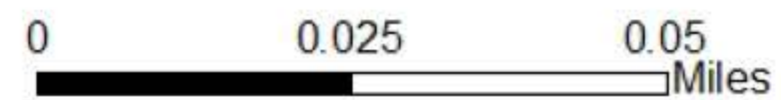
SUGGESTED MOTION:

I move that the Board adopt the proposed resolution and set the public hearing for September 8, 2020 at 5:30PM or as soon as practicable thereafter.

Site Map With Highlighted Area Indicating Proposed RROW Closure



 - Proposed RROW Closure



ROMEO, HARRELSON & COINER, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

RANDOLPH C. ROMEO Of Counsel
EDWARD L. HARRELSON (edward@chslegal.com)
FRANCIS M. COINER 1923-2004

136 S. KING STREET, SUITE B
HENDERSONVILLE, NC 28792

WWW.EDWARDHARRELSON.COM

TELEPHONE: (828) 698-2345
FACSIMILE : (828) 697-1283

July 7, 2020

Sam Starr
Henderson County Property Addressing
100 N. King St.
Hendersonville, N.C. 28792

Re: Permanent Road Closure – Section of Dove Haven Lane

Dear Mr. Starr:

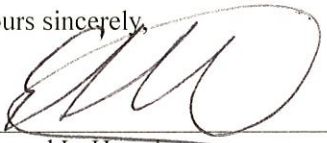
I am writing on behalf of Carolina Real Estate Pros, Inc. regarding the permanent closure of an unopened street or alley pursuant to N.C.G.S. 153A-241. Carolina Real Estate Pros, Inc. requests that the county permanently close that that section of Dove Haven Lane and the adjoining alleyway identified on the attached survey entitled "Plat of Boundary Survey for Dove Haven Lane Closure (Formerly 5th Street)" by Freeland-Clinkscales & Associates, Inc. of NC as **Tract A** and **Tract B**.

Tract A (4,562 sq. ft.+/-) adjoins the property of Carolina Real Estate Pros, Inc., identified on said plat as Lots 42 & 43; **Tract B** (4,319 sq. ft.+/-) adjoins the property of Darryl Thien, identified on said plat as Lot 46. Carolina Real Estate Pros, Inc. is joined in this request by the adjacent property owner, Darryl V. Thien.

A map of the street to be closed is attached. Carolina Real Estate Pros, Inc. and Darryl V. Thien comprise all of the affected owners of property adjoining the section of unopened street to be closed. The section of street to be closed is not necessary for access to either lot. This unopened section of street is not needed to provide access to any other property, and no nearby property owners will be negatively affected by a permanent closure of the street. The above-described properties of Carolina Real Estate Pros, Inc. and Thien and the portion of the street to be closed are also shown on that plat entitled "Map of Mountain Home, Henderson Co., NC" dated October 1914 and recorded in Plat Book 1, at Page 37 (now re-indexed to Plat Cabinet B, Slide 18-A), Henderson County Registry. Since its dedication in 1914, these portions of the streets have never been opened.

It is the desire of Carolina Real Estate Pros, Inc. and adjoining owner, Darryl V. Thien, to permanently close the unopened sections of Dove Haven Lane as indicated. It is the understanding of the parties that once closed, one half of each right of way will vest in the adjoining owner. Should you have any questions or require any further documentation, please do not hesitate to contact me. I am enclosing a check for \$450.00 for the application fee due to Henderson County.

Yours sincerely,

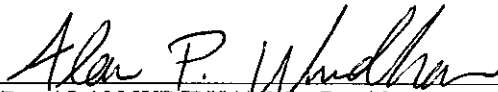


Edward L. Harrelson
ELH/lb
Enclosures

CONSENT TO REQUEST FOR STREET CLOSURE
PORTION OF DOVE HAVEN LANE

We join in this petition to permanently close the unopened streets identified in the letter of Edward L. Harrelson dated July 7, 2020.

CAROLINA REAL ESTATE PROS, INC.



By: ALAN WINDHAM, Its President

Address: 94 Tradition Way
Hendersonville, N.C. 28791

Phone: (828) 551-6949

E-Mail: Alan@CarolinaRealEstatePros.com

Owner of: 184 Wickins Dr.
Hendersonville, N.C. 28791


DARRYL V. THIEN

Address: 212 WICKINS DR.

HENDERSONVILLE NC 28791

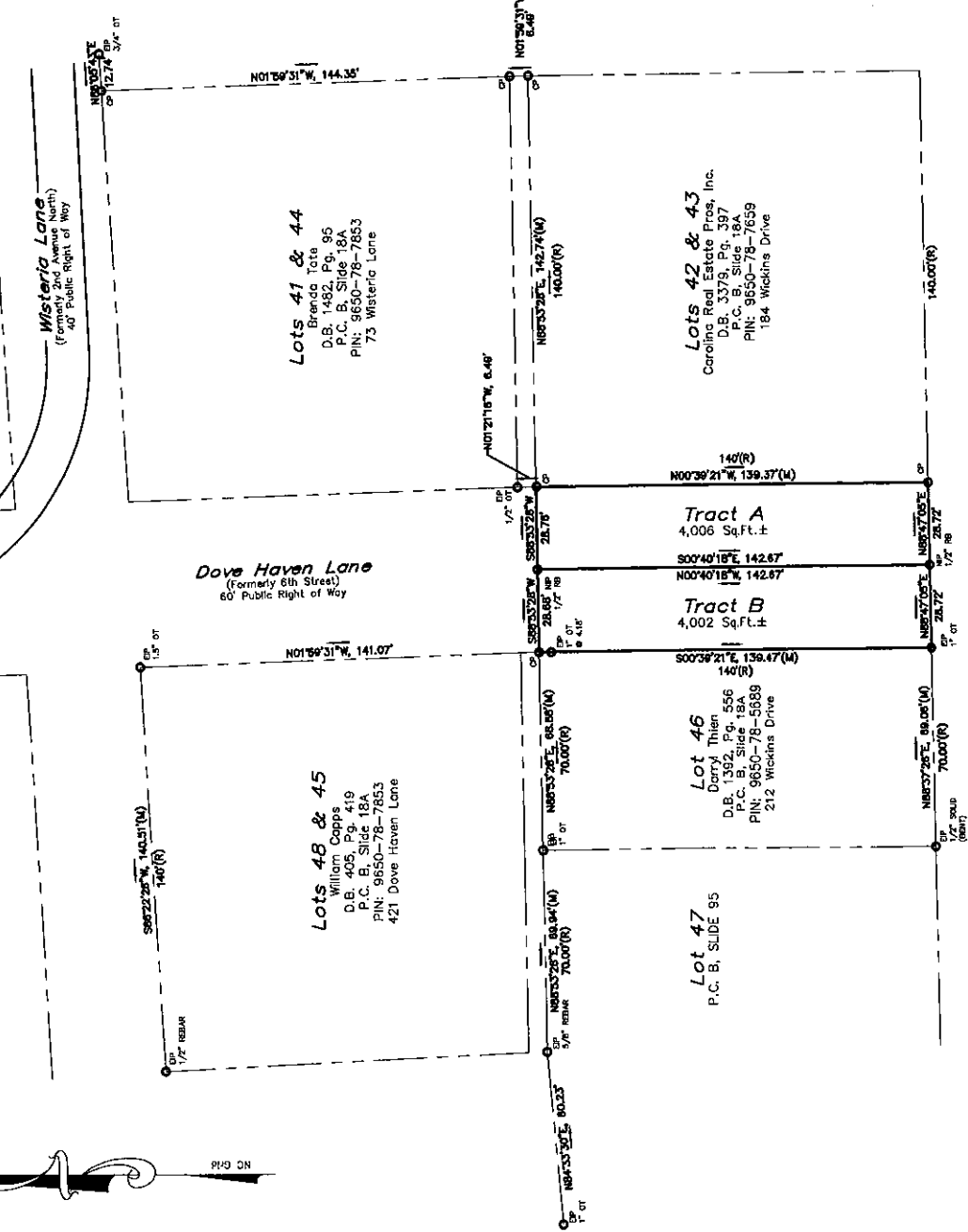
Phone: 828-290-7218

E-Mail: BURNTBUBB@GMAIL.COM

Owner of: 212 Wickins Dr.
Hendersonville, N.C. 28791



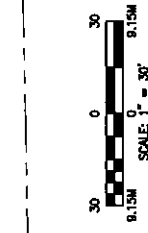
- NOTES:
- 1) The Basis of Bearings for this survey is NC Grid, based on MAD83.
 - 2) This survey was performed as a result of Henderson County issuing an unopened portion of Dove Haven Lane, formerly 5th Street.



LEGEND:

- NEW IRON PIN (5/8" REBAR)
- EXISTING IRON PIN
- CP
- CALCULATED POINT ONLY
- POWER POLE
- WATER VALVE
- GAS VALVE
- WATER METER
- FIRE HYDRANT
- SANITARY SEWER MANHOLE
- STORM DRAIN MANHOLE
- FURNACE
- CLEANOUT
- CURB INLET
- TRANSFORMER
- OVERHEAD POWER
- FENCE LINE

Dove Haven Lane
(Formerly 6th Street)
60' Public Right of Way



Wickins Drive
(Formerly 1st Avenue)
60' Public Right of Way

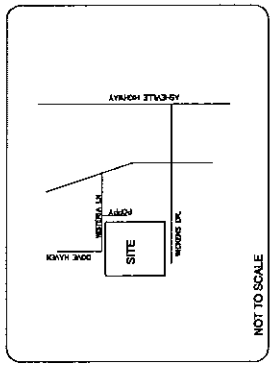
PRELIMINARY

FREELAND - CLINKSCALES & ASSOCIATES, INC. OF NC
1000 W. WILKINS DRIVE
201 2ND AVE EAST
HENDERSONVILLE, N.C. 28926
tel: 704.938.8800
fax: 704.938.8801

REGISTERED BOOK: 07/16/2020
TAX MAP: 06/16/2020
ZONING: 06/16/2020
DATE: November 25, 2020

DRAWN: F. Y. CLINKSCALES JR., P.E.
DATE: 11-25-2020

Location Map



NOT TO SCALE

I, Fulton V. Clinkscapes, Jr., certify that this plat was drawn under my supervision from an actual survey made under my license as a Professional Land Surveyor in the State of North Carolina, and that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____ Page _____ that the ratio of precision as calculated is 1:10,000; that this plat was prepared in accordance with G.S. 47-30 at the time of recording, without my knowledge, and that the license number and date of this 18th day of January, 2020, A.D.

(001)Id. This survey is of another category, such as the case of a plat which is not a plat, but is a plat, except to the definition of subdivision.

Professional Land Surveyor Fulton V. Clinkscapes, Jr.
License Number L-2874

State of North Carolina
Henderson County
County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer

Filed and recorded in the Register of Deeds Office for Henderson County on _____ day of January, 2020 at _____ o'clock _____ M. in Sides _____

Register of Deeds

Dove Haven Lane Closure
(Formerly 5th Street)
184 & 121 Wickins Drive
73 Wisteria Lane
421 Dove Haven Lane
Mountain Home Township, Henderson County
State of North Carolina
Lots 41-46 & 48, Mountain Home

OWNER
HENDERSON COUNTY

State of Oklahoma, County of Murphy, to-wit:

I, the undersigned, County Clerk of said County, do hereby certify that the within and foregoing plat of land, containing the same, was duly filed in my office on the 10th day of September, 1924, and that the same is a true and correct copy of the original thereof, as the same appears from the records of said County.

Witness my hand and the seal of said County, at the City of Muskogee, Oklahoma, this 10th day of September, 1924.

W. H. [Signature]

State of North Carolina, County of Henderson, to-wit:

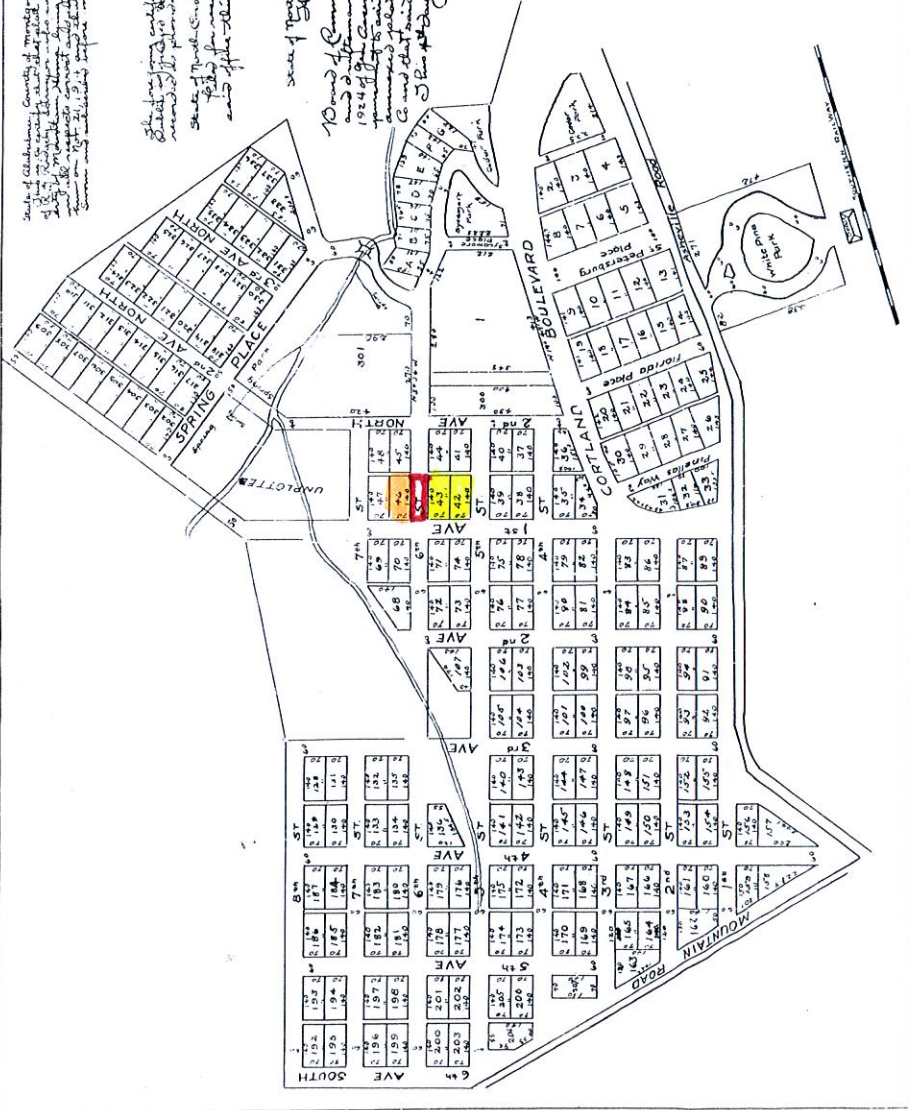
I, the undersigned, County Clerk of said County, do hereby certify that the within and foregoing plat of land, containing the same, was duly filed in my office on the 10th day of September, 1924, and that the same is a true and correct copy of the original thereof, as the same appears from the records of said County.

Witness my hand and the seal of said County, at the City of Henderson, North Carolina, this 10th day of September, 1924.

W. H. [Signature]

MAP OF MOUNTAIN HOME

HENDERSON CO., NC.
Scale 1" = 200'
Oct. 1914
H. G. [Signature]



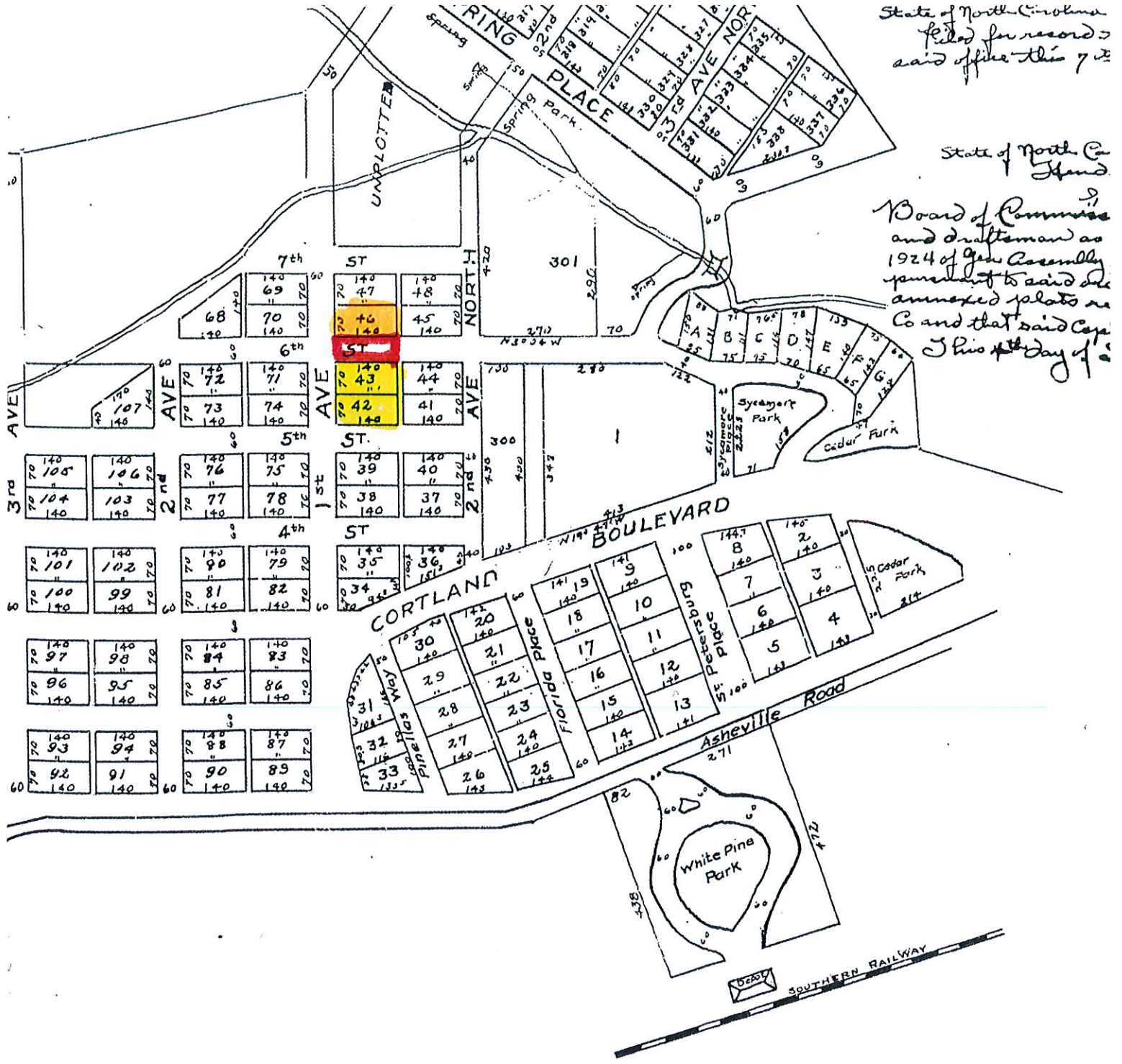
Then

Carolina Real Estate Pros, Inc.
Portion to be closed

State of North Carolina
Filed for record in
said office this 7th

State of North Carolina

Board of Commissioners
and draftsmen as
1924 of Gen Assembly
jurisdiction to said
annexed plots as
Co and that said Capt
This 10th day of



Thien

Carolina Real Estate Pros, Inc.

Portion to be closed

§ 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.)

**Henderson County
North Carolina**

Before the Board of Commissioners

Pursuant to N.C. Gen. Stat. §153A-241, this Board has the power to close public roads and easements which are not within a municipality except public roads and easements and under the control and supervision of the North Carolina Department of Transportation.

The Office of Romeo, Harrelson, and Coiner, on behalf of Carolina Real Estate Pros. Inc., has petitioned the Board for the closure of an unopened portion of Dove Haven Lane located in Henderson County which meets the criteria, above.

Prior to closing such an easement, the Board must first adopt a resolution indicating its intent to consider the same and call a public hearing on the issue.

NOW, THEREFORE, BE IT RESOLVED that the Board will consider the closing of portions of Dove Haven Lane at its regularly scheduled meeting on September 8, 2020, after a public hearing. The Board hereby calls a public hearing to be held on this issue on such date, and directs staff to provide notice, pursuant to N.C. Gen. Stat. §153A-241, of the same

Adopted by the Board by motion duly made, this the 19th day of August, 2020.

BOARD OF COMMISSIONERS
OF HENDERSON COUNTY

By: _____
Grady Hawkins, Chairman

Attest:

Teresa L. Wilson, Clerk to the Board