

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** November 7<sup>th</sup>, 2022

**SUBJECT:** Set Public Hearing to close a portion of Rogers Avenue Right of Way

**PRESENTER:** Austin Parks, Planner I  
Autumn Radcliff, Planning Director

**ATTACHMENTS:** (1) Site Map depicting proposed ROW closure  
(2) North Carolina General Statute 153A-241  
(3) Applicants Petition for Road Closures  
(4) Proposed Resolution

### SUMMARY OF REQUEST:

Planning and Property Addressing staff have received the attached petition to close an unopened portion of Rogers Avenue right-of-way. 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:

The board is requested to approve the resolution and the setting of the public hearing to December 5, 2022 at 5:30 pm.

### Suggested Motion:

I move that the Board approve the proposed resolution and set the public hearing for December 5, 2022 at 5:30 pm.

# Proposed Road Right of Way Closure of Rogers Avenue

957770200 JACKSON,  
SIX, LLC; PS2 SEVEN,  
LLC; PS2 EIGHT, LLC

9577873044  
GLENN, EUGENE  
W; GLENN, SHERAN C

9577875005  
CONNER,  
JONATHAN RAY

9577768976  
JACKSON,  
NEAL E

9577861920  
JACKSON,  
NEAL ERWIN

9577865858 GLENN,  
EUGENE W; GLENN,  
SHERAN C.

9577769805  
JACKSON,  
NEAL E

9577862847  
JACKSON,  
NEAL ERWIN

9577769705  
JACKSON,  
NEAL E

9577768625 RESENDIZ-RESENDIZ,  
DIANA; RESENDIZ-TREJO, GERARDO

9577862792  
JACKSON,  
NEAL E.

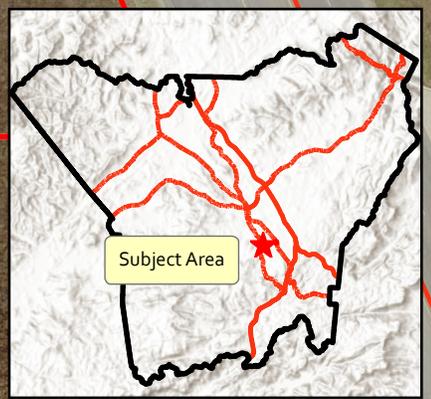
9577860673 RESENDIZ,  
GERARDO; RESENDIZ,  
LEONOR; RESENDIZ,  
VIOLETA; RESENDIZ, DIANA

9577866601 BLUE  
KIDDE HOLDINGS  
PARTNERS LLC

-  Request of Closure
-  Subject Parcels
-  Parcels
-  Major Roads
-  Streets

9577768579 GOLDKUHL,  
REGINA; GOLDKUHL,  
ROBERT D.

9577860544  
MEJIA, MARIA  
DEL ROSARIO



THIS IS NOT A SURVEY. All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).

Applicant: Neal Jackson



**§ 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

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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.

Neal Jackson has petitioned the Board for the closure of a unopened portion of Rogers Avenue 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 closing an unopened portion of Rogers Avenue at its regularly scheduled meeting on December 5, 2022, 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 7th day of November, 2022.

BOARD OF COMMISSIONERS  
OF HENDERSON COUNTY

By: \_\_\_\_\_  
William G. Lapsley, Chairman

Attest:

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Denisa Lauffer, Clerk to the Board