

Item Title: Public Hearing to Close the Right-of-Way for Old Kit Creek Road (SR 1639) in the Research Triangle Park Area (Petition ROW-C-01-17)

Specific Action Requested:

That the Board of Commissioners holds a public hearing and closes the right-of-way for Old Kit Creek Road (SR 1639).

Item Summary:

Background

Rights-of-way are the strips of publicly dedicated land that are intended for the construction of roads, which are generally centered within the rights-of-way. In North Carolina, public rights-of-way/roads are either state-maintained (i.e. North Carolina Department of Transportation, NCDOT) or they are municipally-maintained. There are no county-maintained roads.

The subject right-of-way, and the adjoining properties, are located in the Research Triangle Park area and are bordered by Davis Drive to the west, Kit Creek Road to the north, and an access ramp to the Triangle Expressway/NC 540 to the east and south. The Old Kit Creek Road right-of-way bisects land that is known by The Research Triangle Foundation as Site 20 and consists of Tract "A", which is 9.699 acres, the subject Old Kit Creek Road right-of-way, and Tract "B", which is 15.196 acres. The subject right-of-way is 0.19 miles long and constitutes an area of 1.692 acres. The requested closure includes the Old Kit Creek Road right-of-way and two triangular sections on either side of the Old Kit Creek Road intersection with Davis Drive (see attached survey). The subject right-of-way is 60 feet wide and contains an existing gravel roadway that is 20 feet wide.

This petition for closure of the right-of-way of Old Kit Creek Road (SR 1639) is submitted by Ed Sconfienza of the Site Group, on behalf of Integrated DNA Technologies (IDT) (see attached letter). Site 20 was recently cut out of a much larger, 642-acre +/- parcel that is owned by the Research Triangle Foundation to allow for the sale of the subject site to IDT, who acquired the property on December 22, 2016.

History of Old Kit Creek Road and Purpose of Right-of-Way Closure

This right-of-way is being requested for closure because the public road is no longer needed as Old Kit Creek Road was replaced by Kit Creek Road in a more northerly alignment thereby rendering Old Kit Creek Road obsolete. NCDOT had requested that this segment, east of Davis Drive, be kept open for a while because it provided access to a residential area, and, subsequently, to some construction trailers that were used by contractors during the construction of the Triangle Expressway/NC 540. That access is no longer needed because the relevant homes were acquired as part of the highway's right-of-way, and the construction trailers were removed upon completion of the work on the highway.

The closure of the right-of-way for this segment of Old Kit Creek Road will allow for that right-of-way area to be recombined with Tract "A" and Tract "B" as shown on the attached survey, thus allowing the creation of a new lot, Site 20, that is more functionally usable as a unified development site. The construction of IDT's facilities on Site 20 will result in economic development, increase the tax base, and create jobs - all of which are in the public interest.

Right-of-Way Closure Process

The North Carolina General Statutes (NCGS) section 153A-241 authorizes the County to close rights-of-way that are **not** under the "control and supervision" of NCDOT. In this case Old Kit Creek Road was constructed many years ago and it was accepted and maintained by NCDOT up until January 21, 2014 when NCDOT deleted it from its active road maintenance program. However, the right-of-way remains open until formally closed. The Board of Commissioners unanimously approved a motion back in February 2017 to request that the State Board of Transportation close the subject right-of-way. That course of action was based upon the planning staff's previous discussions with the NCDOT staff regarding how to proceed with this right-of-way closure request.

Based upon a recent interpretation of NCGS 153A-241 by NCDOT, it is now their position that their 2014 abandonment action voided any and all of their "control and supervision" interest in the Old Kit Creek Road right-of-way, and that the authority to permanently close this right-of-way now lies with the Wake County Board of Commissioners.

In preparation for the public hearing the Wake County planning staff took the following measures:

- Published legal advertisements once per week for two consecutive weeks in the News and Observer newspaper.
- Mailed letters to all property owners adjoining the subject right-of-way that are not a party to the request.
- Posted signs in two locations along the subject right-of-way.

An exempt plat will be filed upon the closure of the right-of-way (if approved) to recombine Tract "A" (north of Old Kit Creek Road), Tract "B" (south of Old Kit Creek Road), and the Old Kit Creek Road right-of-way into one 26.587-acre lot. In this case all of the adjoining land is owned by Integrated DNA Technologies, Inc. (IDT), who is requesting the right-of-way closure. As per § 153A-241 "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".

Coincidental replacement easements have been agreed to between IDT and Frontier Communications of the Carolinas, LLC and Duke Energy Carolinas, LLC to create a 15-foot wide easement for each utility company centered upon the existing gravel road that lies within the Old Kit Creek Road right-of-way. All parties have further agreed that these easements are subject to being reconfigured and moved to another location within Site 20 to allow for a fuller development potential of the site.

Staff Findings

1. The closure of the Old Kit Creek Road right-of-way will not deny access to any property owner.
2. Old Kit Creek Road was deleted from NCDOT's road maintenance program in January 2014.
3. Old Kit Creek Road is not listed in the Wake County Thoroughfare Plan and the right-of-way closure will not be detrimental to the public interest.
4. The adjoining property owners (IDT), The Research Triangle Foundation, and NCDOT are in support of the request to close the Old Kit Creek right-of-way.
5. The closed right-of-way area, if approved, will be recombined with the adjoining properties to form a unified development site that will result in economic development, increase the tax base, and create jobs—all of which are in the public interest.

Staff Recommendation

That the Board of Commissioners closes the right-of-way for Old Kit Creek Road.

Attachments:

1. Petitioner's Letter of Request
2. Survey of the Subject Right-of-Way and Adjacent Parcels
3. Aerial View Map
4. NCDOT Maintenance System Abandonment
5. Ordinance for Right-of-Way Closure