

**BONNER COUNTY PLANNING DEPARTMENT  
BOARD OF COUNTY COMMISSIONERS  
STAFF REPORT FOR DECEMBER 11, 2024**

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**Project Name:** Vacation of Olney Boulevard, a public right-of-way

**File Number:** VS0005-24

**Type:** Title 40 – Vacation of a Right-of-Way

**Request:** The applicant is requesting to vacate Olney Boulevard, adjacent to

**Legal Description:** See attached stamped legal description (Annex B).

**Location:** Travel on Highway 95, turn onto Lakeshore Drive, travel ~1.7-miles West.

**Parcel Number:** Adjacent to parcels RP00122000003BA, RP00122000002AA, RP00122000001BA

**Parcel Size:** Approximately 0.45-acres to be vacated

**Applicant:** Thomas Murphy, William Herrington and Mariah Hill LLC  
1732 Lakeshore Drive  
Sagle, ID 83860

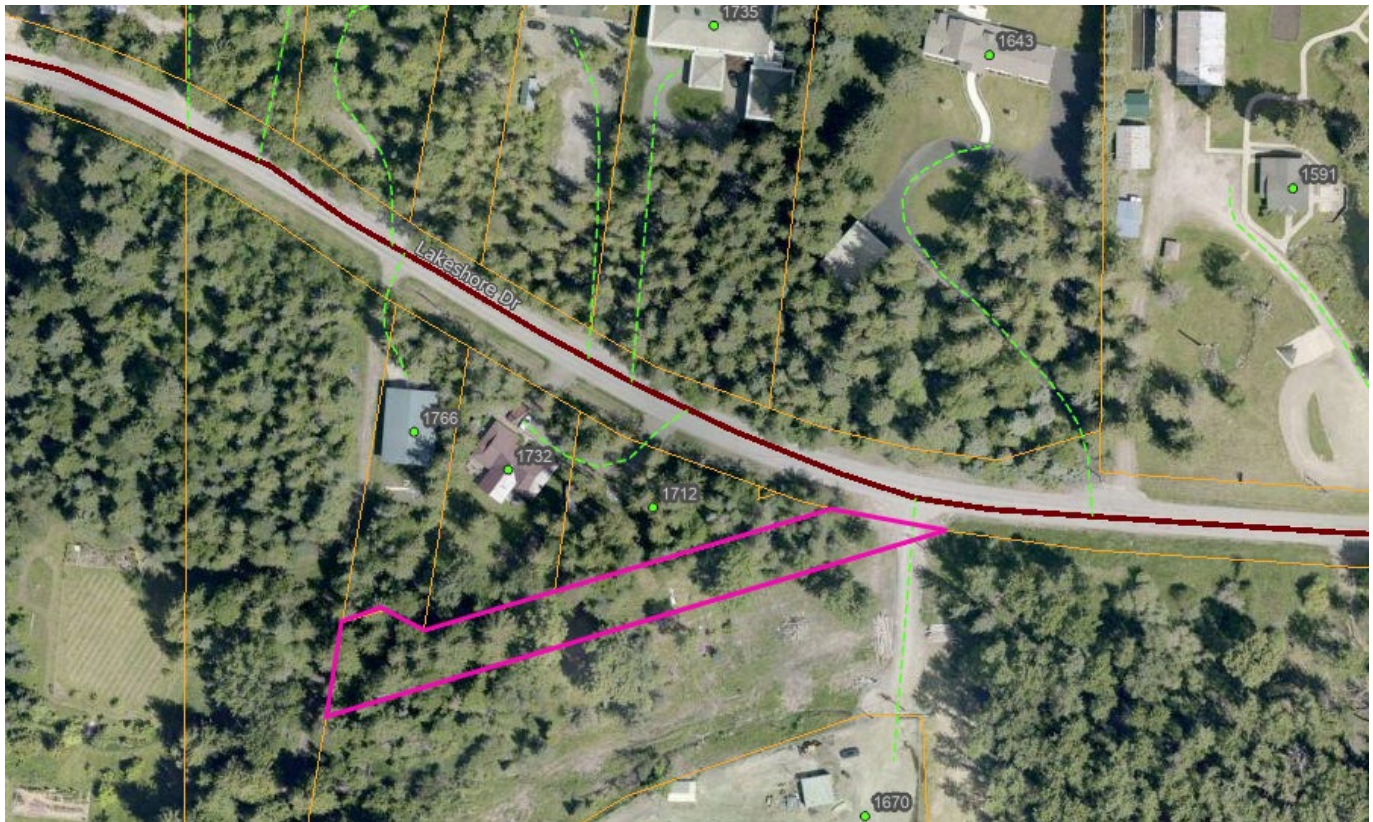
**Project Representative:** Jeremy Grimm  
Whiskey Rock Planning  
614 Creekside Lane  
Sandpoint, ID 83864

**Property owners:** Herrington, William L  
Murphy Timber Trust  
Mariah Hill LLC

**Petition filed:** September 16, 2024

**Notice provided:** Mailed: November 12, 2024  
Published in newspaper: November 12, December 4, and December 6, 2024

**Attachment:** Annex A – Public Notice to Agencies  
Annex B – Legal Description of ROW requested to be Vacated



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## **Project Summary:**

The applicant is seeking to vacate Olney Boulevard, a public right-of-way, which is adjacent to parcels RP00122000003BA, RP00122000002AA, and RP00122000001BA.

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## **Applicable Laws:**

The following sections of Idaho Code apply to this petition:

- Idaho Code, Title 40, Highways and Bridges Chapter 2, General Provisions
- §40-203 Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way

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## **Background:**

### **A. Site data:**

Area to be Vacated 0.45-acres

Easement width: 45-75 feet wide.

Easement length: Approximately 500 feet.

Structures: No structures within proposed vacation area.

### **B. Access:**

Travel on Highway 95, turn onto Lakeshore Drive, travel ~1.7-miles West.

**C. Environmental factors:**

Hydrologic Features: N/A

Flood Hazard Zone: Area to be vacated and adjacent parcels are within SFHA Zone X per FIRM Panel Number 16017C0950E, Effective Date 11/18/2009. This is not a proposal for development as defined in BCRC Title 14. No further floodplain review is required on this proposal.

Wetlands: The area proposed to be vacated is not mapped within any wetland.

Slope: The southeastern area to be vacated has some slopes of 0-30+%.

Soils: Mission silt loam, 0 to 2 percent slopes; Prime Farmland, if drained.

**D. Services:**

Fire: Sagle Fire District

Schools: Lake Pend Oreille School District #84

**E. Standards review:****Required:**

- Compliance with §40-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way:
  - *The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.*

**Provided:**

- Per the applicant's narrative, "This petition for vacation has been thoroughly researched and is the culmination of multiple years of collaboration between affected landowners. The desire to vacate the Right of Way stems in part from the owner's desire to develop the property. Due to the existing unused ROW, the present shape and size of the lot make development of Lot 4 impractical. The triangular shape of the lot, combined with building setbacks, leaves a building area of only 396 square feet, allowing for only a very small structure, not suitable for the neighborhood or intended zoning. Lot 4 is currently undeveloped and covered in vegetation and debris. Vacation of Onley Boulevard would allow for the appropriate development of Lot # 4 the of Evergreen Lodge plat and will enhance fire safety and benefit Bonner County by having additional property on the tax rolls thereby increase the tax base for the county."

**F. Public Noticing**

Agencies and taxing districts were notified of this request on November 12, 2024. A comprehensive list of the agencies and taxing districts that were notified of this request is in the attached Annex A.

Bonner County Road & Bridge Department Commented:

*The Bonner County Road & Bridge Department has no objections to the vacation of this public right of way. The road is unlikely to ever need to be constructed for public use, has already been partially vacated previously, and the vacation will not have a negative impact on the traveling public.*

*The applicant should confirm with each utility company that sufficient easements are granted as warranted in the event that utilities lie within the proposed vacation.*

### **Reply of “No Comment”:**

Idaho Department of Fish & Game  
Kootenai-Ponderay Sewer District

All other agencies either had no comment or did not reply.

### **G. Public Notice & Comments**

As of the date of this report, no public comments have been received.

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## **Staff Analysis:**

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The statutory sections referenced below were found to be applicable during staff’s review of the particular facts and circumstances as they relate to the proposed vacation.

- Idaho Code §40-203(1) sets forth the procedures for the hearing and consideration of the petition:

*The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.*

**Staff:** Staff has received feedback from Bonner County Road & Bridge that supports the proposed vacation. The Road & Bridge Department has stated this application, which the road, known as Olney Boulevard, has already been partially vacated and will likely never be developed for public use. Additionally, Road and Bridge noted that there will be no negative impacts to traffic.

- Idaho Code §40-203(2) sets forth the standards for the consideration of a petition as it relates to access to properties abutting the proposed vacation:

*No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. The burden of proof shall be on the impacted property owner to establish this fact.*

**Staff:** Based on materials submitted in this application, no real property adjoining the area to be vacated would be left without access to an established highway or public

right-of-way. Olney Boulevard has not been developed and has already been partially vacated.

- Idaho Code §40-203(3) sets forth the standards for reserving easements for utilities and other appurtenances

*In the event of abandonment and vacation, rights-of-way or easements shall be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.*

**Staff:** Vacation of this right-of-way will not extinguish any rights-of-way or easements for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances. Any utilities located in the proposed vacated portion shall be granted easements by the applicant accordingly. **SEE CONDITION 3.**

- Idaho Code §40-203(4) sets forth the standards for abandonment and compensation for vacating a public right-of-way that has been accepted as a part of a recorded platted subdivision.

“(a) When a county or highway district is to consider the abandonment or vacation of any highway, public street or public right-of-way that was accepted as part of a recorded platted subdivision, such abandonment shall be accomplished pursuant to the provisions of this section.

**Staff:** This section of the state code is applicable to the proposed vacation request. The portion of Olney Boulevard that is requested for vacation is a public right-of-way was accepted as a part of the “Evergreen Lodge” plat, recorded on April 12, 1918.

(b) When a county or highway district is to consider the abandonment or vacation of any highway, public street, or public right-of-way that was accepted as part of a platted subdivision that has never been improved or developed, such vacation or abandonment may be approved through the dedication of a new highway, public street, or public right-of-way without compensation as set forth in subsection (1)(i) of this section.

**Staff:** Per the applicant, there appears to be no plans to rededicate the right-of-way. Per Road & Bridge’s comment, this right of way is unlikely to ever be developed by Bonner County.

(c) When a county is to consider the abandonment or vacation of any private right-of-way that was accepted as part of a recorded platted subdivision, said abandonment or vacation shall be accomplished pursuant to the provisions of chapter 13, title 50, Idaho Code.”

**Staff:** This provision does not apply to this project, as no private right of way is proposed to be vacated.

- Idaho Code §40-203(5)(c)(i) sets forth the standards by which a public highway or ROW shall be deemed abandoned.

*In any proceeding under this section or section 40-203A, Idaho Code, or in any judicial proceeding determining the public status or width of a highway or public right-of-way, a highway or public right-of-way shall be deemed abandoned if the evidence shows: that said highway or public right-of-way has not been used by the public and has not been maintained at the expense of the public in at least three (3) years during the previous fifteen (15) years.*

**Staff:** It appears Olney Boulevard was dedicated by a plat, "Evergreen Lodge", on April 12, 1918. There is no evidence in the record which shows that this public right-of-way has been used by the public or developed for public use. There is no evidence in the record that shows this public right-of-way has been maintained at the expense of the public in at least three (3) years during the previous fifteen (15) years. Based on the evidence in the record this right-of-way appears abandoned.

- Idaho Code §40-203(6) Idaho Code §40-203(6) sets forth the procedure for abandonment upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest.

*All other highways or public rights-of-way may be abandoned and vacated only upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest, and such other highways or public rights-of-way may be validated or judicially determined at any time notwithstanding any other provision of law. Provided that any abandonment under this subsection shall be subject to and limited by the provisions of subsections (2) and (3) of this section.*

**Staff:** The right-of-way proposed for vacation is not being maintained by Bonner County. This right-of-way of said highway or public right-of-way is not located on land owned by the United States or the State of Idaho nor on land entirely surrounded by land owned by the United States or the State of Idaho nor does it provide the only means of access to such public lands. Approval of this road vacation will not leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way.

**Planner's Initials:** AF **Date:** December 5, 2024

**Note: The final decision rests with the governing body after the completion of the public hearing and consideration of all relevant oral and written testimony and evidence.**

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## Motion by the Governing Body:

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### BOARD OF COMMISSIONERS

**MOTION TO APPROVE:** I move to approve this petition, FILE #VS0005-24, to vacate a portion of Olney Boulevard as identified in Annex B of the Staff Report, finding that it is in accord with Idaho Code §40-203 as enumerated in the foregoing conclusions of law

#### Conclusion 1

This proposal was reviewed for compliance with the vacation criteria and standards set forth at Idaho Code, 40-203.

#### Conclusion 2

Bonner County has not received objections to the petition or application to vacate the described area.

#### Conclusion 3

The abandonment of the public right-of-way **is** in the public interest.

#### Conclusion 4

The landowner or landowners abutting said right-of-way **do** have access to his, her or their property from some other public street, public right-of-way or private road.

#### Conclusion 5

By granting this petition for vacation of public right of way, real property adjoining the subject highway or public right of way **will not** be left without access to an established highway or public right of way.

and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this meeting) and direct planning staff to draft written findings and conclusions to reflect this motion and transmit to all interested parties. The action that could be taken to obtain the vacation is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property.

**MOTION TO DENY:** I move to deny this petition, FILE #VS0005-24, to vacate a portion of Olney Boulevard as identified in Annex B of the Staff Report, based upon the following conclusions:

#### Conclusion 1

This proposal was reviewed for compliance with the vacation criteria and standards set forth at Idaho Code, 40-203.

#### Conclusion 2

Bonner County has not received objections to the petition or application to vacate the described area.



### Conclusion 3

The abandonment of the public right-of-way **is / is not** in the public interest.

### Conclusion 4

The landowner or landowners abutting said right-of-way **do** have access to his, her or their property from some other public street, public right-of-way or private road.

### Conclusion 5

By granting this petition for vacation of public right of way, real property adjoining the subject highway or public right of way **will/ will not** be left without access to an established highway or public right of way.

The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this meeting) and direct planning staff to draft written findings and conclusions of law to reflect this motion and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the vacation is to:

- 1) File a new petition with the Planning Department and meet the standards required by Idaho Code; or
- 2) Pursue such remedies as may be applicable at Idaho Code, Title 40, Chapter 2.

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## **Findings of Fact:**

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- The applicant is seeking to vacate Olney Boulevard, a public right-of-way, that is adjacent to parcels RP00122000003BA, RP00122000002AA, RP00122000001BA.
- The applicant is requesting to vacate approximately 0.45-acres of an existing Right-of-Way, per the legal description provided by the applicant.
- Based on materials submitted in this application, no real property adjoining the area to be vacated would be left without access to an established highway or public right-of-way.
- Staff has received feedback from Bonner County Road & Bridge that supports the proposed vacation.
- Staff has received no comment or feedback opposing the proposed vacation.
- Vacation of this right-of-way will not extinguish any rights-of-way or easements for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.
- Evidence in the record appears to show that this public right-of-way is abandoned. No evidence exists in the record to show that this right-of-way in use.

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## **Conditions of Approval:**

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- A-1** The above-described right-of-way vacation shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.

**Conditions to be Met Prior to Recording of the Resolution:**

- B-1** The costs for legal advertisements and recording fees shall be borne by the applicant and shall be paid.
- B-2** The petitioner shall provide easements for continued use of any existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances pursuant to Idaho Code §40-203(3).

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The complete file is available for review in the Planning Department, 1500 Highway 2, Suite #208, Sandpoint, ID. Staff reports are available online prior to the hearing at [www.bonnercountyid.gov](http://www.bonnercountyid.gov) Bonner County Revised Code (BCRC) is available at the Planning Department or online.

## **ANNEX A-RECORD OF MAILING**

**RECORD OF MAILING**

**Page 1 of 1**

**File No.: V S 0 0 0 5 - 2 4**

**Record of Mailing Approved By:**



I hereby certify that a true and correct copy of the "Notice of Public Hearing" was digitally transmitted or mailed (postage prepaid) on this **12th** day of **November, 2024**.



Jessica Montgomery, Hearing Coordinator

Assessor - Email

Bay Drive Recreation District - Email

Bonner County Airport Manager - Email

Bonner County EMS - Email

Bonner County Road & Bridge - Email

Bottle Bay Water & Sewer District - Email

City of Dover - Email

City of Hope - Email

City of Oldtown - Email

City of Priest River - Email

City of Spirit Lake - Email

Coolin-Cavanaugh Bay Fire District - Email

East Bonner Library - Email

Ellisport Bay Sewer - Email

GEM STATE MINER - U.S. Mail

Department of Environmental Quality (DEQ) - Email

Department of Lands - CDA - U.S. Mail

Department of Lands - Navigable Waters & Mining - Email

Idaho Department of Water Resources - IDWR - Email

Transportation Department- District I - Email

Kalispel Bay Sewer & Water - U.S. Mail

KPBX-FM 91 SPOKANE PUBLIC RADIO - U.S. Mail

Laclede Water District - Email

Pend Oreille School District, #84 (Transportation) - Email

Little Blacktail Ranch Water Association - U.S. Mail

Northern Lights, Inc. - Email

Northside Fire District - Email

Panhandle Health District - Email

Priest Lake Public Library District - Email

Sagle Valley Water & Sewer - Email

Schweitzer Fire District - Email

Selkirk Fire, Rescue & EMS - Email

Southside Water & Sewer District - Email

Spokesman-Review - U.S. Mail

Swan Shores Sewer District - U.S. Mail

Tamarack Village Water & Sewer - U.S. Mail

Trestle Creek Sewer District - Email

U.S. Fish & Wildlife Service - Email

West Bonner County Cemetery District - Email

West Bonner Library - Email

West Pend Oreille Fire District - Email

Avista Utilities - Email

Bayview Water & Sewer - Email

BONNER COUNTY DAILY BEE - U.S. Mail

Bonner County Floodplain Review - Email

Bonner County Sheriff - Email

City of Clark Fork - Email

City of East Hope - Email

City of Kootenai - Email

City of Ponderay - Email

City of Sandpoint - Email

Coolin Sewer District - Email

Drainage District #7 - Email

East Priest Lake Fire District - Email

Garfield Bay Water & Sewer District - Email

Granite Reeder Water & Sewer District - Email Idaho

Idaho Department of Fish & Game - Email Idaho

Idaho Department of Lands - Coolin - Email Idaho

Idaho Department of Lands - Sandpoint - Email

Idaho Transportation Department (Aeronautics) - U.S. Mail Idaho

Independent Highway District - Email

Kootenai-Ponderay Sewer District - Email

KSPT-KPND-KIBR RADIO - U.S. Mail

Lake Pend Oreille School District, #84 (Admin Office) - Email Lake

Lakeland Joint School District, #272 - Email

North of the Narrows Fire District - Email

Northland/Vyve Cable Television - Email

Outlet Bay Sewer District - Email

Pend Oreille Hospital District - Email

Priest Lake Translator District - Email

Sam Owen Fire District - Email

SELKIRK ASSOCIATION OF REALTORS - U.S. Mail

Selkirk Recreation District -Email

Spirit Lake Fire District - Email

State Historical Society - Email

Syringa Heights Water Association - Email

Timber Lake Fire District - Email

U.S. Army Corps of Engineers - Email

U.S. Forest Service - U.S. Mail

West Bonner County School District, #83 - Email

West Bonner Water & Sewer District - Email

West Priest Lake Fire District - Email

## **ANNEX B-LEGAL DESCRIPTION OF PROPOSED VACATED AREA**



**GLAHE & ASSOCIATES, Professional Land Surveyors**

P.O. Box 1863  
303 Church Street  
Sandpoint, ID 83864

Phone: (208) 265-4474  
Fax: (208) 265-0675  
Website: glaheinc.com

HERRINGTON	S3, T56N, R2W, B.M.
LEGAL DESCRIPTION-OLNAY BLVD. VACATION	BONNER COUNTY, IDAHO

A PARCEL OF LAND LYING IN THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 56 NORTH, RANGE 2 WEST, BOISE MERIDIAN, BONNER COUNTY, IDAHO, AND AS SHOWN ON RECORD OF SURVEY, INSTRUMENT. NO. 616204, BONNER COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHWEST CORNER OF LOT 1 OF EVERGREEN LODGE AS RECORDED IN BOOK 1 OF PLATS, PAGE 77, BONNER COUNTY, IDAHO, BEING MARKED BY A 3/4" PIPE WHICH LIES SOUTH 14°31'21" EAST, 570.10 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 3, MARKED WITH A 3.5" ALUMINUM CAP BY THE ARMY CORPS OF ENGINEERS, THENCE ALONG THE WESTERLY SIDE OF SAID PLAT, SOUTH 11°01'12" WEST, 79.90 FEET TO SOUTHERLY RIGHT-OF-WAY OF OLNEY BOULEVARD, AS SHOWN ON SAID PLAT AND SAID INSTRUMENT NO. 616204.

THENCE ALONG SAID RIGHT-OF-WAY, NORTH 72°11'23" EAST, 453.02 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 00 00 00 EAST, 42.01 FEET TO THE INTERSECTION OF THE SOUTHERLY LINE OF THAT PORTION OF OLNAY BOULEVARD VACATED PER COMMISSIONER JOURNAL #3, PAGE 294, APRIL 12, 1948 AND THE SOUTHERLY RIGHT OF WAY OF LAKESHORE DRIVE;

THENCE ALONG SAID SOUTHERLY LINE OF VACATED PORTION OF OLNAY BOULEVARD, SOUTH 72°11'23" WEST, 363.84 FEET;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, NORTH 59°16'02" WEST, 40.03 FEET, TO THE SOUTH LINE OF SAID LOT 1;

THENCE ALONG SAID SOUTH LINE OF LOT 1, SOUTH 72°11'23" WEST, 37.00 FEET TO THE **POINT OF BEGINNING**, ENCOMPASSING AN AREA OF 0.45 ACRES, MORE OR LESS.

Tyson L.A. Glahe, PLS

Digitally signed by Tyson L.A. Glahe,  
PLS  
Date: 2022.12.19 11:26:14 -08'00'

