

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2016-096

Vacating a Portion of N.W. 101st Avenue, Pursuant to ORS 368.326 to 368.366

The Multnomah County Board of Commissioners Finds:

- a. The public road, commonly known as N.W. 101st Avenue, affected by this proposed vacation, was originally created by a deed recorded on June 27, 1946, in Book 1070, Page 49, Multnomah County Deed Records, Multnomah County, Oregon.
- b. The portion of the public road to be vacated is more particularly described in Exhibit 1, attached hereto. Multnomah County does not maintain nor have plans to develop the portion of N.W. 101st Avenue proposed for vacation.
- c. Elizabeth J. Denny, petitioner, has submitted a petition to vacate a portion of this public road in compliance with ORS 368.341(3). A copy of the petition is attached to this Resolution as Exhibit 2.
- d. At the location of the area proposed for vacation, the centerline of N.W. 101st Avenue is the boundary line between the City of Portland and Multnomah County. Multnomah County is the Road Authority for the westerly one-half of this road, and the City of Portland is the Road Authority for the easterly one-half of this road. The City of Portland, by Ordinance No. 187750 passed May 18, 2016, vacated the abutting easterly one-half of this road.
- e. Pursuant to ORS 368.351, the above referenced petition indicates the owners' approval of the proposed vacation and it contains the acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated.
- f. In addition, the appropriate county road official has filed a written report pursuant to ORS 368.351(1) that contains an assessment that the proposed vacation of public property is in the public interest. The Agenda Placement Request filed in this matter contains the official's report.
- g. Pursuant to ORS 368.351, the County may make a determination about this vacation without additional notice and publication required under ORS 368.346.
- h. As required under MCC 27.054, the County has received a total of \$1265.00 from the petitioners, of which \$200.00 applies to a feasibility study performed by the County. The remaining \$1065.00 will be applied to the vacation proceeding. The total costs for this vacation, including administrative costs, are \$2628.72. Administrative costs include staff time for research, review, analyses, and document preparation. The balance owed by the petitioners at the date of this hearing is \$1364.00.
- i. Upon vacation, the portion of N.W. 101st Avenue described in said Exhibit 1 will remain subject to the rights of any existing public utility that has improvements located within that former public road.

- j. Vacation of the County's right-of-way interest in the portion of N.W. 101st Avenue, described in said Exhibit A serves the public interest.

The Multnomah County Board of Commissioners Resolves:

1. Subject to the petitioner's payment of all funds due as provided above under MCC 27.054, the portion of N.W. 101st Avenue, as more particularly described in the attached Exhibit 1, is vacated as a public road, excepting the easement rights any existing utilities may have in the vacated property under ORS Chapter 368.
2. Pursuant to MCC 27.054, the total cost for this vacation proceeding incurred by the County is \$2628.72; and Elizabeth J. Denny, the petitioner, is directed to pay the remaining amount of \$1364.00 to the County.
3. The Transportation Division of the Department of Community Services will record and file this Resolution in accordance with ORS 368.356(3), only upon receipt of the total amount due under MCC 27.054; as set forth in Resolve Clause No. 2.
4. Upon the recording and filing of this Resolution, the County Surveyor will mark the plat, if applicable, as provided under ORS 271.230, and title in the underlying property shall vest as provided under ORS 368.366.

ADOPTED this 29th day of September, 2016.

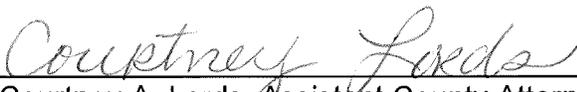
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Deborah Kafoury, Chair



REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Courtney A. Lords, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Director Department of Community Services.

**C CASWELL / HERTEL
L SURVEYORS, INC.**

Professional Land Surveyors
info@chsurveyinc.com

• 6150 S.W. 124th Avenue •
Beaverton, Oregon 97008-4724

Telephone 503/644-3179
Fax 503/644-3190

Road Vacation Petition

EXHIBIT 1

LEGAL DESCRIPTION
FOR
DENNEY PORTION OF
NW 101st AVE
ROAD VACATION

A TRACT OF LAND, BEING A PORTION OF NW 101ST AVE, IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF THAT PROPERTY CONVEYED TO THE ELIZABETH J. DENNEY TRUST AS DESCRIBED IN DEED RECORDED IN DOCUMENT NO. 2011-034916; THENCE S17°46'30"E ALONG THE CENTERLINE OF SAID ROAD 19.07 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING S17°46'30"E ALONG SAID CENTERLINE 43.11 FEET TO AN ANGLE POINT; THENCE S13°05'30"E ALONG SAID CENTERLINE 214.94 FEET TO THE TERMINUS OF SAID CENTERLINE; THENCE S76°54'30"W ALONG SAID TERMINUS 25.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID ROAD; THENCE N13°05'30"W 213.92 FEET TO AN ANGLE POINT IN SAID RIGHT-OF-WAY LINE; THENCE N17°46'30"W ALONG SAID RIGHT-OF-WAY LINE 36.24 FEET; THENCE N59°03'45"E 25.67 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 6352 SQUARE FEET. REFERENCE IS MADE TO COUNTY SURVEY NUMBER 34854 AND BY THIS REFERENCE IS MADE A PART HEREOF.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Albert Hertel 8-1-14

OREGON
JULY 18, 1980
ALBERT HERTEL
1896

RENEWAL DATE: 6/30/2015

Road Vacation Petition

EXHIBIT 2

We have secured 100% approval from the Forest Heights Home Owners Association and 2/3 approval of the surrounding property owners. Elizabeth Denney wishes to proceed with the process of vacating the lower 12,902 square feet of unimproved road section of NW 101st Ave. The only adjacent properties are owned by Forest Heights HOA tax lot 1N1W26-300 & Elizabeth Denney tax lot 1N1W26-400. Vacating the road will remove the public right of way on the unimproved section of road eliminating the ability for people to trespass on owned parcels on either side and at the roads end. The existing road/right of way provides the only access to the portions of land owned by Forest Heights HOA & Elizabeth Denney. The Denney Family has worked with the Forest Heights HOA to grant easement on the lower section of our land for a sewer project for the expansion of Forest Heights HOA development. The Denney Family looks forward to working together with the Forest Heights HOA, City of Portland & Multnomah County to secure the completion of the road vacating project that will benefit both parcel owners upon completion. The use of this property after the vacation process would be left as open green space and restricted access to the Parcels listed above.

The Denney/ McDowell Family

Names and addresses of all persons holding any recorded interest in the property to be vacated below.

Owner Name & tax lot ID

Elizabeth Denney, tax lot 1N1W26-400

Forest Heights HOA, tax lot 1N1W26-300

Address:

3131 N.W. NW 101st Ave, Portland, Oregon 97229

2033 N.W. Miller road, Portland, Oregon 97229

**C CASWELL / HERTEL
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REGISTERED
PROFESSIONAL
LAND SURVEYOR

Albert Hertel 8-1-14

OREGON
JULY 18, 1980
ALBERT HERTEL
1896

RENEWAL DATE: 6/30/2015

FOREST HEIGHTS HOMEOWNERS ASSOCIATION, INC.

2033 NW Miller Road, Portland, OR 97229

PHONE: (503) 297-9400 FAX: (503) 297-9408

E-MAIL: contactus@fhhoa.com

**SPECIAL MEETING
MINUTES**

Thursday, October 1, 2015
Forest Park Elementary School

Attendance:

Units represented in person: 7

Units represented by proxy: 355

Board Members Present: None (Secretary assigned to Jennifer Callaghan by Secretary Kravitz)

Association Staff Present: Jennifer Callaghan, General Manager

Richard Metzger, Maintenance Supervisor

Association Legal Council Present: Attorney Stuart Cohen

OPENING

The meeting was called to order at 6:15 p.m. by Attorney Cohen

ESTABLISHMENT OF QUORUM

General Manager Callaghan verified that a quorum of twenty percent (20% or 362 members) were either represented in person or by proxy.

VACATION OF PUBLIC EASEMENT ON 101ST ST

Ballots were counted and verified by Attorney Cohen. Final tally of votes submitted:

169 Voted YES

10 Voted NO

94% in favor.

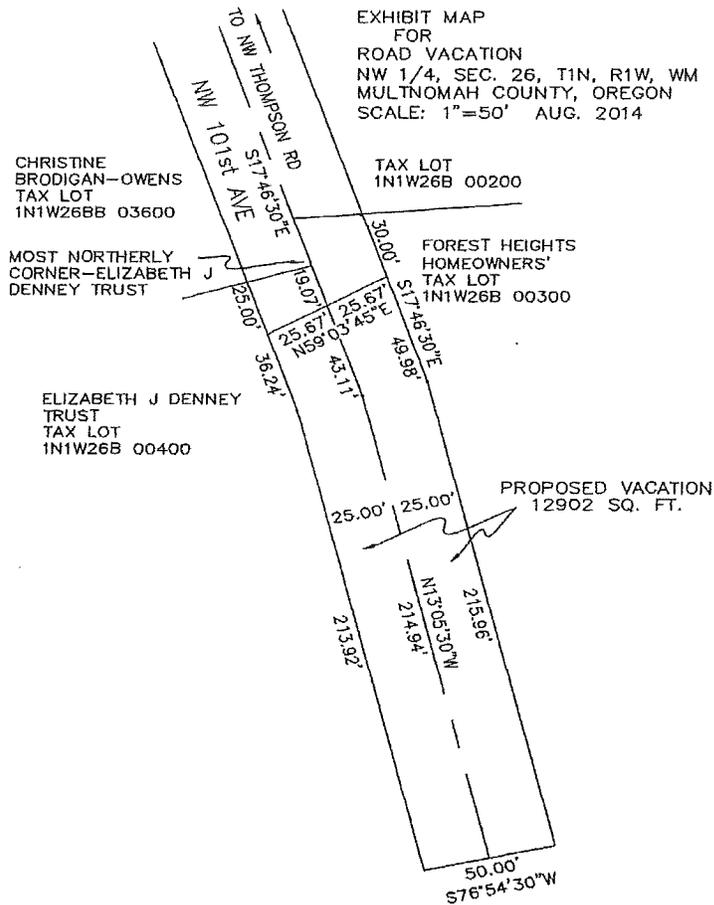
ADJOURNMENT

The Annual Meeting was adjourned by Attorney Cohen at 6:25 p.m.

Respectfully submitted,

Robert Kravitz, Board Secretary 10/13/15

The Forest Heights Home Owners Association, FHHOA board members & Forest heights homeowners, we the real owners of the following described property owned by Forest Heights Home Owners Association tax lot 1N1W26B/00300. Do acknowledge and consent to the vacation of all that portion of the lower 215.96 feet consisting of 6550 square feet of the unimproved road section NW 101st Avenue in the city of Portland, Multnomah County as shown on the attached map.

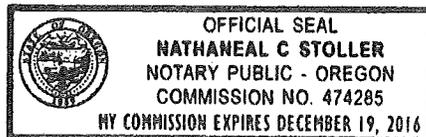


President FHHOA *[Signature]*

Notary *[Signature]*

Date 10/14/15

Washington County



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EXHIBIT "A"

LEGAL DESCRIPTION
FOR
EAST HALF
NW 101st AVE
STREET VACATION

A TRACT OF LAND, BEING A PORTION OF NW 101ST AVE, IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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LAND SURVEYOR

Albert Hertel 6-7-14

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RENEWAL DATE: 6/30/2015

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LEGAL DESCRIPTION
FOR
NW 101st AVE
ROAD VACATION

A TRACT OF LAND, BEING A PORTION OF NW 101ST AVE, IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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Albert Hertel 8-1-14

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1896

STREET VACATION PETITION

The petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the affected area (as shown on the attached Affected Area Map). All signatures must be in ink.

I, the owner in fee simple of the following described property, consent to the vacation of all that portion of NW 101st Avenue, in the City of Portland, Multnomah County, Oregon, as shown on the attached Street Vacation Map, and as more particularly described on Exhibit A of this petition (or where the City of Portland is owner, consent to the vacation of the above named street for the purpose of Council jurisdiction and consideration, PCC 17.84.060).

IF PROPERTY OWNER IS A COMPANY, YOU MUST PRINT NAME & TITLE OF SIGNER

Forest Heights Homeowners Association 2033 NW Miller Rd Portland OR
Property Owner's Name (Please Print) Property Address 97229

STUART ROBERTS 1N1W26B 300
Signature Property Description

Stuart Roberts FH HOA
Print Name (include Title if Applicable) (Property Description Continued if needed)

STUART ROBERTS - PRESIDENT
FOREST HEIGHTS HOME OWNERS ASSOCIATION
Signature

Print Name (include Title if Applicable)

**Please use Lot/Block/Subdivision, or
Tax Lot/Section/Township & Range,
property description.**

ORDINANCE No. 187750

Vacate a portion of NW 101ST Ave south of NW Thompson Rd subject to certain conditions and reservations (Hearing; Ordinance; VAC-10104)

The City of Portland ordains:

Section 1. The Council finds:

1. On November 2, 2015 the Office of the City Auditor certified a petition for the vacation of the easterly 25 feet of a portion of NW 101ST Avenue south of NW Thompson Road. The petition was initiated by Elizabeth J. Denney (the "Petitioner"), who owns the adjacent property to the west of the street vacation area.
2. The Forest Heights Homeowners' Association owns the abutting property to the east of the vacation area. All of the vacation area will revert to them and they have stated support for the vacation as proposed.
3. NW 101ST Avenue has a total width of 50 feet. The westerly 25 feet of the street is located outside of the City of Portland limits and is under the jurisdiction of Multnomah County. This portion of street is currently being vacated through the Road Vacation process under Multnomah County Code Section 5.10.225. The westerly 25 feet of the street will revert back to the Petitioner upon approval of the vacation by City Council.
4. The petition states that the reason for the vacation is to consolidate property and to restrict trespassing on the Petitioner's property.
5. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the City Engineer and Planning and Sustainability Commission, as provided in the City Engineer's Report, dated March 8, 2016 and on file with the Office of the City Auditor and the Bureau of Transportation.
6. In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation.
7. Other procedural requirements of ORS 271 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest that said portion of street be vacated.

NOW, THEREFORE, the Council directs:

- a. The following described street area is hereby vacated:

As described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof.

Contains 6,550 square feet, more or less.

- b. The vacation of the above-described street area is granted subject to the following conditions and reservations:

1. In accordance with ORS 271.120 and City of Portland policy, this ordinance (this "Ordinance"), shall not cause or require the removal or abandonment of any sewer, water or gas main, conduit of any kind, wire, pole or thing used, or intended to be used, for any public service. Subject to Paragraph 3 below, this Ordinance will reserve an easement for the owner of any such utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild, and/or enlarge any and all such thing; that no building or structure of any kind shall be built or erected within a distance of ten (10) feet from the centerline of any such utility, except with the prior written consent of the City Engineer and the owner of the utility and that any and all contemplated building plans in said vacated area shall be submitted for approval to the City Engineer and to the Director of the Bureau of Development Services, to the end that such construction may be so adjusted with reference to all public utilities in said areas as to cause a minimum of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereinafter reconstructed, renewed, replaced and/or enlarged. Removal or relocation of existing utilities in the street vacation area will require written agreements between the Petitioner and owner(s) of the utilities.
2. Notwithstanding b1, this Ordinance will serve as a full release of City interests in the street vacation area and will provide City Bureaus with the authority necessary to take all other legal actions as may be reasonably necessary (including the issuance of quitclaim deeds acknowledging the release of any interests) to achieve this intent.
3. If any property, encumbered by an easement reserved in this Ordinance, is ever rededicated as public right-of-way, that portion of the easement located in the rededicated right-of-way shall automatically be terminated.
4. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
5. In the event the Petitioner fails to fully comply with the above conditions

187759

within one year of Council adopting this Ordinance, City Council may repeal this Ordinance at its sole discretion.

Section 2. Petitioner shall file with the City Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of this Ordinance.

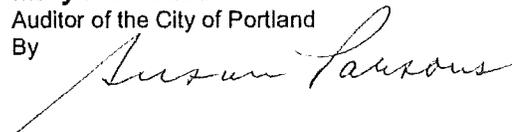
Section 3. Notice is given that the street vacation will not be effective until a certified copy of this Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording this Ordinance are that 30 days have passed after final Council passage of this Ordinance, that all conditions of this Ordinance have been met, and that all vacation costs have been paid.

Section 4. After the prerequisites to recording this Ordinance have been met, the City Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition Section, PBOT, which shall, at the expense of the Petitioner, file with the recorder, the assessor, and the surveyor of the county in which said property is located, the certified copy of this Ordinance and the acceptance, and any map, plat or other record which may be required by law. The Right-of-Way Acquisition Section shall return the recorded Ordinance to the Auditor and retain a copy in RWA File No. 8040.

Passed by the Council, MAY 18 2016

Commissioner Steve Novick
Prepared by: Lance D. Lindahl;
Date Prepared: March 29, 2016
RW # 8040

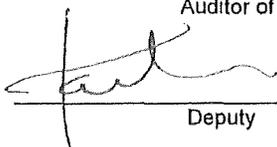
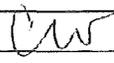
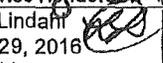
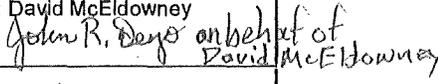
Mary Hull Caballero
Auditor of the City of Portland
By



DEPUTY

Agenda No. **187750**
ORDINANCE NO.
 Title

Vacate a portion of NW 101ST Ave south of NW Thompson Rd subject to certain conditions and reservations (Hearing; Ordinance; VAC-10104)

INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK	CLERK USE: DATE FILED <u>MAY 03 2016</u>
COMMISSIONER APPROVAL	Mary Hull Cáballero Auditor of the City of Portland By:  Deputy
Mayor—Finance and Administration - Hales	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	ACTION TAKEN:
Position 4/Safety - Novick 	
BUREAU APPROVAL	MAY 11 2016 PASSED TO SECOND READING MAY 18 2016 9:30 A.M.
Bureau: Transportation	
Development, Permitting & Transit Group	
Manager: Christine Leon 	
Assistant Director: Maurice Henderson 	
Prepared by: Lance D Lindahl 	Supervisor: David McEldowney RWA:  on behalf of David McEldowney
Date Prepared: March 29, 2016	
Impact Statement	
Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document	
If "Yes" requires City Policy paragraph stated in document.	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter 	
Council Meeting Date May 11, 2016	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: Total amount of time needed: (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 5 Minutes (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Novick	✓	
Hales	✓	

187750

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EXHIBIT "A"

LEGAL DESCRIPTION FOR EAST HALF NW 101st AVE STREET VACATION

A TRACT OF LAND, BEING A PORTION OF NW 101ST AVE, IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 1 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

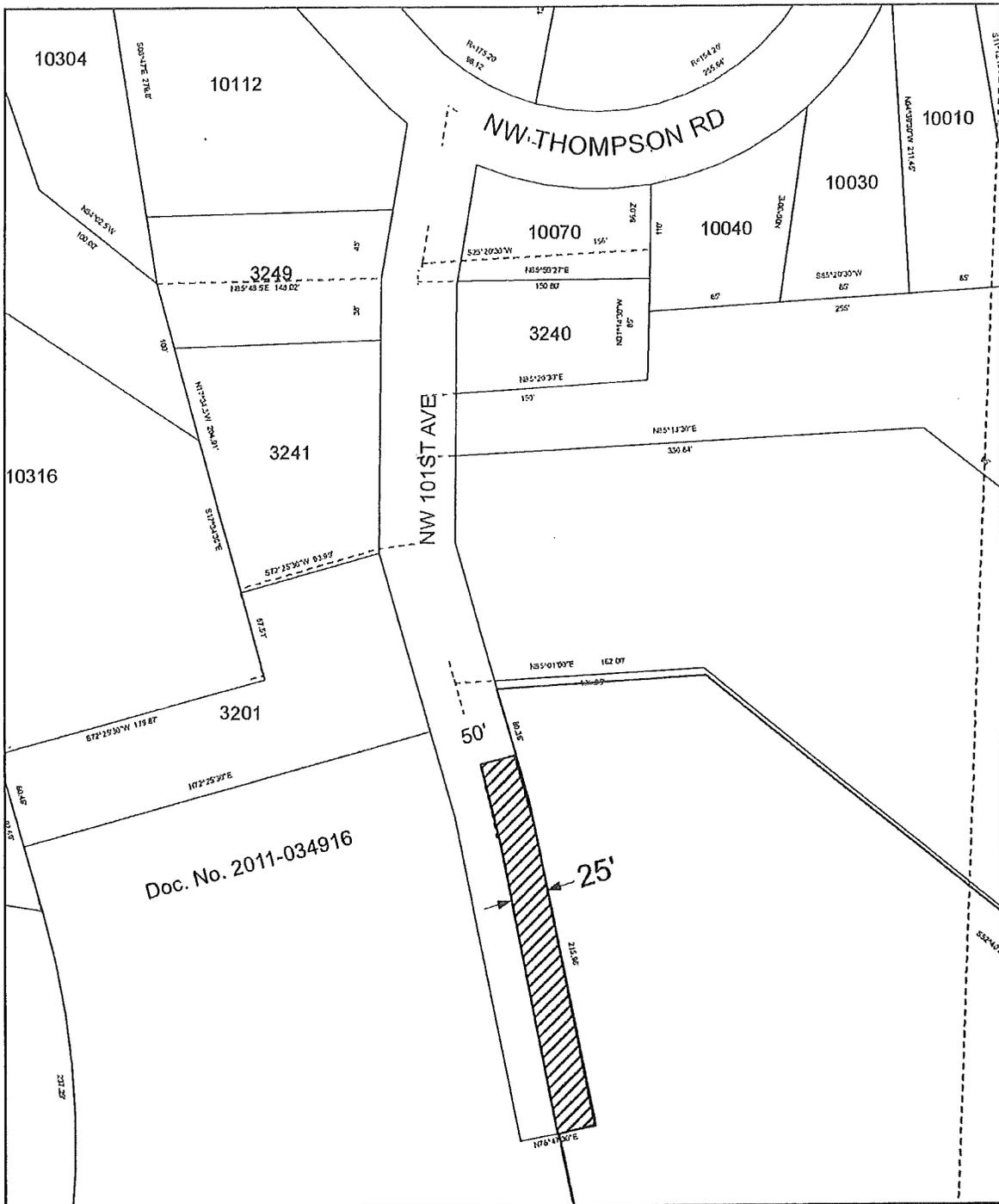
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OREGON
JULY 18, 1980
ALBERT HERTEL
1896

RENEWAL DATE: 6/30/2015



NW 101st Avenue south of NW Thompson Road

Petitioner: Elizabeth J. Denney

 Area Herein Vacated



R/W: 8040 1/4 Section: 2719 Section: 1N1W26B

1 inch = 100 feet



June 6, 2014

Joseph McDowell
3131 NW 101st Ave.
Portland Oregon
97229

Subject: NW 101st Avenue Roadway Vacation

Dear Mr. McDowell,

Thank you for contacting me in regard to the proposed vacation of the lower 256 feet of NW 101st Ave. that adjoins your property. A recent site visit revealed that the road is unimproved, steeply graded and unsuitable for suburban fire apparatus. Two outbuildings do exist off the terminus of NW 101st Ave. however both are construed as Agricultural Buildings and are exempt from fire access requirements. Based on the above, the fire district has no objection to vacation of the county road as proposed.

If you have questions or need further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Drew S. DeBois'.

Drew S. DeBois
Deputy Fire Marshal/CFI
20665 SW Blanton Street
Aloha, Oregon
97078

Copy: File