

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Finance Committee

Date: April 30, 2018

Time: 7:00 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Agenda Items to be addressed:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 APR 25 A 10: 24

Item for Discussion: Joint Meeting for Finance and Legislative and Legal Affairs Committees:

1. 04-23-2018 – **Order No. 18-1007239:** Communication from the Mayor regarding MCDA transfer request in the amount of \$400,000.00 which moves funds from Open Space Stabilization to the Marlborough Community Development Authority to convey 19 properties to the City of Marlborough, including a large parcel on Winter Street abutting Stevens Park.
-Refer to Finance Committee and Legislative and Legal Affairs Committee
2. 04-02-2018 – **Order No. 18-1007219:** Communication from the Mayor regarding transfer request for Marlborough Economic Development Corporation (MEDC) Land Acquisition in the amount of \$1,075,000.00 which moves funds from Undesignated to MEDC to satisfy a Purchase and Sales Agreement.
-Refer to the Finance Committee
3. 04-23-2018 – **Order No. 18-1007241:** Communication from the Mayor regarding City of Marlborough Management Letter for FY2017.
-Refer to the Finance Committee
4. 04-23-2018 – **Order No. 18-1007242:** Communication from the Mayor regarding General Laws Acceptance – Local Option Marijuana Sales Tax.
-Refer to the Finance Committee
5. FY19 Finance Committee Budget Review Schedule

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.



IN CITY COUNCIL

Marlborough, Mass., APRIL 23, 2018

ORDERED:

That the MCDA transfer request in the amount of \$400,000.00 which moves funds from Open Space Stabilization to the Marlborough Community Development Authority to convey 19 properties to the City of Marlborough, including a large parcel on Winter Street abutting Stevens Park, be and is herewith refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE & FINANCE COMMITTEE.**

CITY OF MARLBOROUGH BUDGET TRANSFERS --

	DEPT:	Mayor				FISCAL YEAR:	2018		
		FROM ACCOUNT:				TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
<u>\$1,035,628.06</u>	<u>\$400,000.00</u>	<u>83600</u>	<u>32918</u>	<u>Open Space Stabilization</u>	<u>\$400,000.00</u>	<u>24518102</u>	<u>50114</u>	<u>MCDA</u>	<u>\$0.00</u>
	Reason:	Real estate transfer with Community Development Authority							
	<u>\$400,000.00</u>	Total			<u>\$400,000.00</u>	Total			

ADOPTED

ORDER NO. 18-1007239



City of Marlborough
Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

2
Arthur G. Vigeant
MAYOR
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
J. Milano
EXECUTIVE AIDE
2018 APR 19 A 10:38
Patricia Bernard
EXECUTIVE SECRETARY

April 19, 2018

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Transfer Request – Marlborough Community Development Authority

Honorable President Clancy and Councilors:

Please find enclosed a transfer request in the amount of \$400,000.00 from the Open Space Stabilization account to the Marlborough Community Development Authority. I am proposing this transfer in exchange for the Marlborough Community Development Authority Board's approval to convey 19 properties to the City of Marlborough, including a large parcel on Winter Street abutting Stevens Park.

I have enclosed an order of acceptance for each of the parcels as well as a map and image of each parcel in relation to abutting lots. I have also enclosed a proposed friendly eminent domain taking order to ensure that we will obtain clear title for each of these parcels.

The property varies from small parcels on Main Street to the large open space on Winter Street. The 2.1-acre Winter Street lot was made available for sale by the MCDA in 2014. The MCDA received a \$400,000.00 bid that was rejected for several reasons.

I believe it is important for the City to control of each of these parcels and this transfer adequately compensates the MCDA. These funds will be used by the MCDA to assist financing the renovation project for the 42-unit elderly, affordable housing on Pleasant Street. Under the state's program, this \$400,000 will be leveraged to obtain over \$1 million in additional state funding. This MCDA project with state funding assistance will include a gut renovation of all units to ensure that residents have spacious, clean, and quality living spaces.

If you have any questions, please do not hesitate to contact me or Doug Bushman. We are both available to meet with the City Council as needed. Thank you for your consideration.

Sincerely,

Arthur G. Vigeant
Mayor

Revised Motion to Approve Land Transfer to City of Marlborough

WHEREAS, Marlborough Community Development Authority (MCDA) is the owner of record of the real property parcels listed in this motion and has no continuing need for such parcels of land and therefore ownership of such surplus lots will be transferred to the City of Marlborough, with any conditions noted below:

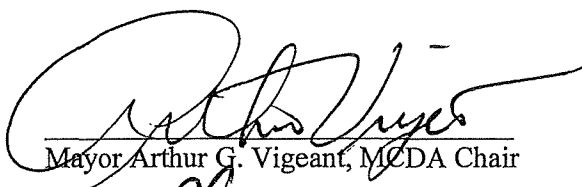
WHEREAS, this motion revises the Land Transfer motion that the MCDA Board approved at its April 6TH, 2018 public board meeting and includes all of the real property parcels listed below:

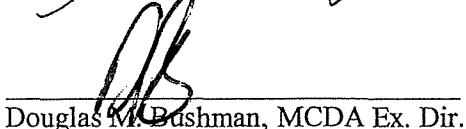
#	Street	Map	Block	Notes
1	Winter Street	68	52	Full Transfer
2	Newton & Weed Streets Raffaele Petroluongo Parking Deck	69	452	Transfer Excludes Parking Garage
3	Weed Street	69	455	Full Transfer
4	Weed & Main Streets	69	461	Full Transfer
5	Main Street	69	477A	Full Transfer
6	Main Street / Parking Lot	70	25	Full Transfer
7	Main Street / Parking Lot	70	29A	Full Transfer
8	Main Street / Parking Lot	70	30	Full Transfer
9	Main Street / Parking Lot	70	30A	Full Transfer
10	Main Street / Parking Lot	70	31	Full Transfer
11	Main Street	70	33A	Full Transfer
12	Main Street	70	34	Full Transfer
13	Main Street	70	77A	Full Transfer
14	Weed Street / Raffaele Petroluongo Parking Deck	70	128	Transfer Excludes Parking Garage
15	Weed & Court Streets / Carl R. Rowe Parking Deck	70	131	Transfer Excludes Parking Garage
16	Weed & Court Streets	70	131A	Full Transfer
17	Weed Street (adjacent CityHall)	70	135A	Full Transfer
18	Weed Street	70	141	Full Transfer
19	Weed & Main Streets	70	142	Full Transfer

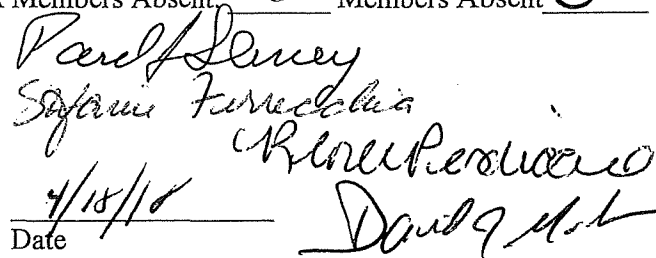
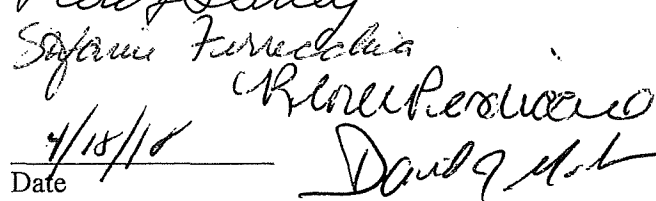
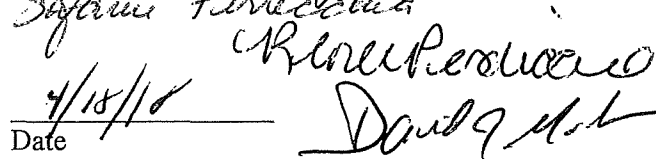
WHEREAS, that the land and parcels listed in this motion is be transferred to the City of Marlborough for a fee of Four Hundred Thousand Dollars (\$400,000.00), payable to the MCDA upon such transfer.

THEREFORE, BE IT FURTHER RESOLVED, this motion authorizes the Mayor of the City of Marlborough, and Chair of the MCDA, to negotiate the transfer of the properties listed above to the City of Marlborough and to execute such documents as deemed necessary for the conveyance of such land. Passage of this motion extinguishes the legal and property rights held by the MCDA with the real property parcels listed above.

Motion Approved: ✓ 11-5 MCDA Members Absent: 0 Members Absent 5
 Signatures of MCDA Members Approving this Motion:


 Mayor Arthur G. Vigeant, MCDA Chair


 Douglas M. Bushman, MCDA Ex. Dir.




4/18/18
 Date

4-18-18
 Date

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor

FISCAL YEAR: 2018

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$1,035,628.06

\$400,000.00

83600

32918

Open Space Stabilization

\$400,000.00

24518102

50114

MCDA

\$0.00

Reason:

Real estate transfer with Community Development Authority

Reason:

Reason:

Reason:

Reason:

\$400,000.00

Total

\$400,000.00

Total

Department Head signature:

Auditor signature:

Comptroller signature:

Done L
Bud

STABILIZATION FUND ANALYSIS FY18:

	Open Space	Future Growth (sunset 6/30/18*)	Downtown Econ Development	Undesignated	Total
7/1/2017 TOTAL	1,028,071.76	675,000.00	800,000.00	11,182,140.95	\$13,685,212.71
9/30/2017 Interest Jul, Aug, Sept	2,660.05			6,437.55	
11/27/2017 CO# 17-1007094(from free cash)				1,100,000.00	
12/31/2017 Interest Oct, Nov, Dec	2,813.51			6,808.84	
2/28/2018 Interest Jan, Feb	2,082.74			5,040.30	
 Total	 1,035,628.06	 675,000.00	 800,000.00	 12,300,427.64	 \$14,811,055.70

* sunset clause that states funds will be transferred to undesig stab acct if not utilized by 6/30/18

ORDERED:

That pursuant to § 14 of Chapter 40 of the General Laws of Massachusetts, the City, acting by and through the City Council of the City of Marlborough, does hereby accept title, by deed or deeds of conveyance, from the Marlborough Community Development Authority to the fee simple interest in certain parcels of below-described land, said deed or deeds to be recorded herewith at the Middlesex County South Registry of Deeds:

That certain parcel containing about 91,476 square feet, or 2.1 acres, more or less, located on Winter Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 68, Parcel 52, and recorded at the South Middlesex County Registry of Deeds at Book 18454, Page 26;

That certain parcel containing about 35,283.6 square feet, or 0.81 acres, more or less, also known as Newton Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 69, Parcel 452, and recorded at the South Middlesex County Registry of Deeds at Book 12444, Page 415, but not including the buildings and structures thereon;

That certain parcel containing about 2,178.0 square feet, or 0.05 acres, more or less, also known as 0 Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 69, Parcel 455, and recorded at the South Middlesex County Registry of Deeds at Book 13494, Page 553;

That certain parcel containing about 2,014.0 square feet, or 0.046 acres, more or less, also known as 0 Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 69, Parcel 461, and recorded at the South Middlesex County Registry of Deeds at Book 13427, Page 726;

That certain parcel containing about 5,096.52 square feet, or 0.117 acres, more or less, on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 69, Parcel 477A, and recorded at the South Middlesex County Registry of Deeds at Book 12537,192;

That certain parcel containing about 23,522.4 square feet, or 0.54 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 25, and recorded at the South Middlesex County Registry of Deeds at Book 12506, Page 480;

That certain parcel containing about 2,613.6 square feet, or 0.06 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 29A, and recorded at the South Middlesex County Registry of Deeds at Book 12558, Page 546;

That certain parcel containing about 2,613.6 square feet, or 0.06 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City

of Marlborough as Map 70, Parcel 30, and recorded at the South Middlesex County Registry of Deeds at Book 12697, Page 152;

That certain parcel containing about 435.6 square feet, or 0.01 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 30A, and recorded at the South Middlesex County Registry of Deeds at Book 12450, Page 321;

That certain parcel containing about 12,632.4 square feet, or 0.29 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 31, and recorded at the South Middlesex County Registry of Deeds at Book 12450, Page 321;

That certain parcel containing about 435.6 square feet, or 0.01 acres, more or less, located off of Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 33A, and recorded at the South Middlesex County Registry of Deeds at Book 12965, Page 119;

That certain parcel containing about 1,742.4 square feet, or 0.04 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 34, and recorded at the South Middlesex County Registry of Deeds at Book 12532, Page 584;

That certain parcel containing about 435.6 square feet, or 0.01 acres, more or less, located on Main Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 77A, and recorded at the South Middlesex County Registry of Deeds at Book 12910, Page 555;

That certain parcel containing about 26,571.6 square feet, or 0.61 acres, more or less, being a portion of Florence Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 128, and recorded at the South Middlesex County Registry of Deeds at Book 13494, Page 553, but not including the buildings and structures thereon;

That certain parcel containing about 35,709.2 square feet, or 0.82 acres, more or less, located on and across Weed Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 131, and recorded at the South Middlesex County Registry of Deeds at Book 13494, Page 551, but not including the buildings and structures thereon;

That certain parcel containing about 2,613.6 square feet, or 0.06 acres, more or less, also known as a portion of Weed Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 131A, and recorded at the South Middlesex County Registry of Deeds at Book 12558, Page 553;

That certain parcel containing about 348.0 square feet, or 0.117 acres, more or less, located off Weed Street, Marlborough, MA and shown on the Assessor's Map of the City

of Marlborough as Map 70, Parcel 135A, and recorded at the South Middlesex County Registry of Deeds at Book 13494, Page 551;

That certain parcel containing about 5,227.2 square feet, or 0.12 acres, more or less, also known as a portion of Weed Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 141, and recorded at the South Middlesex County Registry of Deeds at Book 13494, Page 551; and

That certain parcel containing about 435.6 square feet, or 0.01 acres, more or less, also known as a portion of Weed Street, Marlborough, MA and shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 142, and recorded at the South Middlesex County Registry of Deeds at Book 923, Page 170.

ADOPTED

In City Council
Order No. 18-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY

ATTEST:

ORDERED:

Eminent Domain Order of Taking

WHEREAS, the City Council of the City of Marlborough has determined that the public welfare, safety, and common convenience require that legal interests in certain parcels of land located in various places in Marlborough, Massachusetts, as more particularly described herein, be taken by eminent domain as general corporate property, confirming and making clear the title of the City of Marlborough to said parcels of land and for other municipal purposes, and that the taking by eminent domain is reasonable and necessary to carry out the aforementioned purposes; and,

WHEREAS, in order to promote the public welfare, safety, common convenience, and necessity, it is necessary to take by Eminent Domain the easement interests in the land for the purposes and duration described herein; and,

WHEREAS, all preliminary requirements of Massachusetts General Laws Chapter 79 having been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, and in the exercise of the power and authority conferred by said laws, does hereby take by Eminent Domain the permanent easement interest in the following described land, including all trees and other vegetation thereon.

DESCRIPTION OF LAND TAKEN AND AWARD OF DAMAGES

For each of the below parcels of land, the fee simple interest is hereby taken, by eminent domain, from owner the Marlborough Community Development Authority (hereinafter, "Owner" or the "CDA"), **exclusive of the structures or buildings located thereon**. The ownership of said parcels and each of them are supposed to be as stated herein, but said fee simple interest and each of them are hereby taken whether the ownership is as stated herein or otherwise. The CDA has agreed to accept \$1.00 (one dollar) as adequate compensation and damages for this taking, having waived and released the City of Marlborough from all claims resulting from the taking, and having waived its right to appeal or contest said taking. Accordingly, the City Council hereby makes the award for damages to the owner of record, the Marlborough Community Development Authority, in the amount of \$1.00 (one dollar).

Assessors' Map & Parcel No.	Owner's Book/Page (Middlesex County South Registry of Deeds)	Address or Street Location	Area (S.F. ± /Acres±)
68-52	18454/26	Winter Street	91,476/2.1
69-452	12444/415	Newton Street	35,283.6/0.81
69-455	13494/553	0 Main Street	2,178.0/0.05
69-461	13427/726	0 Main Street	2,014.0/0.046

DESCRIPTION OF LAND TAKEN
(continued)

Assessors' Map & Parcel No.	Owner's Book/Page (Middlesex County South Registry of Deeds)	Address or Street Location	Area (S.F. ± /Acres±)
69-477A	12357/192	Main Street	5,096.52/0.117
70-25	12506/480	Main Street	23,522.4/0.54
70-29A	12558/546	Main Street	2,613.6/0.06
70-30	12697/152	Main Street	2,613.6/0.06
70-30A	12450/321	Main Street	435.6/0.01
70-31	12450/321	Main Street	12,632.4/0.29
70-33A	12965/119	off Main Street	435.6/0.01
70-34	12532/584	Main Street	1,742.4/0.04
70-77A	12910/555	Main Street	435.6/0.01
70-128	13494/553	a portion of Florence Street	26,571.6/0.61
70-131	13494/551	on and across Weed Street	35,709.2/0.82
70-131A	12558/553	a portion of Weed Street	2,613.6/0.06
70-135A	13494/551	off Weed Street	348.0/0.117
70-141	13494/551	a portion of Weed Street	5,227.2/0.12
70-142	923/170	a portion of Weed Street	435.6/0.01

ADOPTED
In City Council
Order No. 18-
Adopted

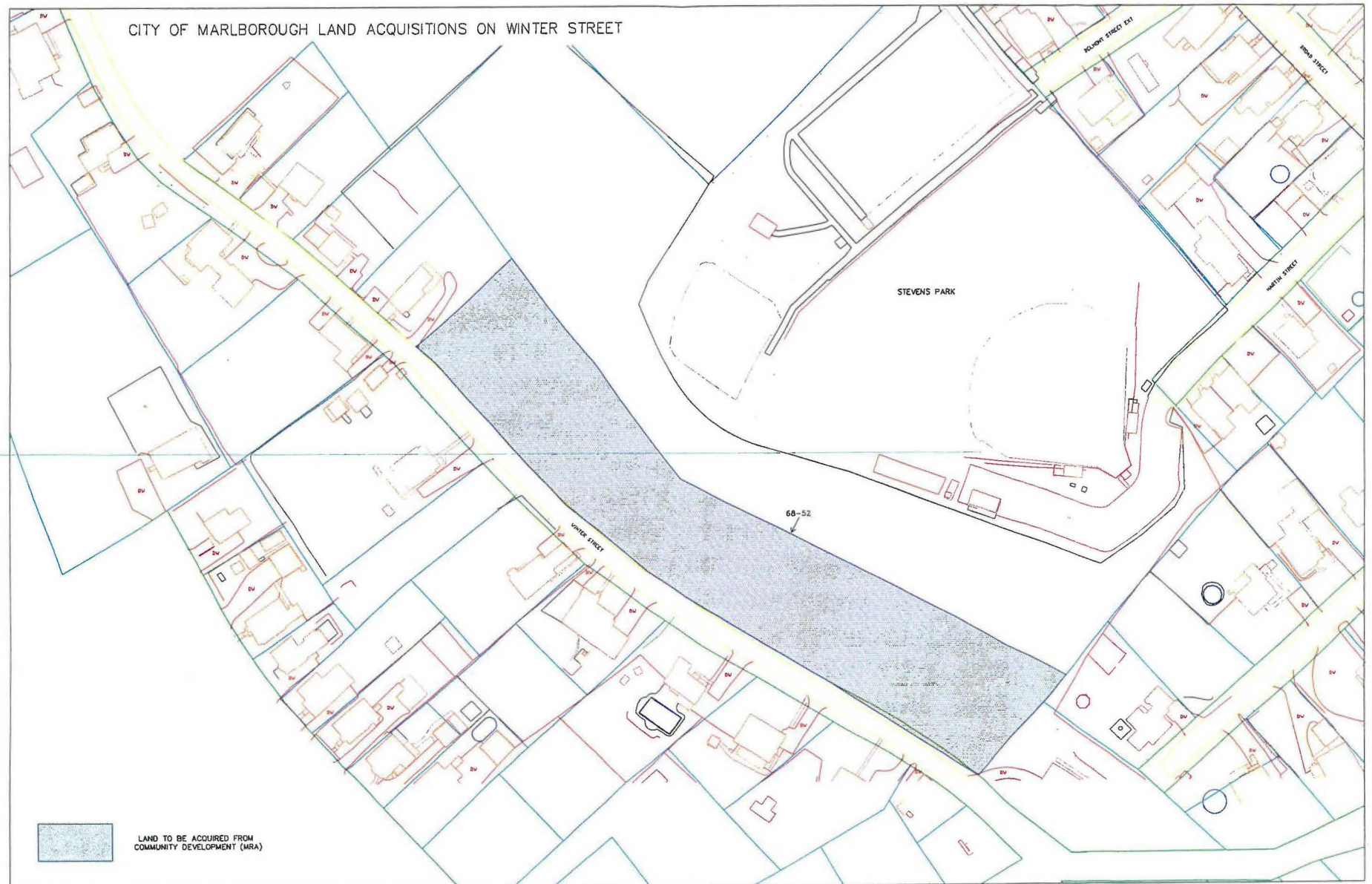
Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST

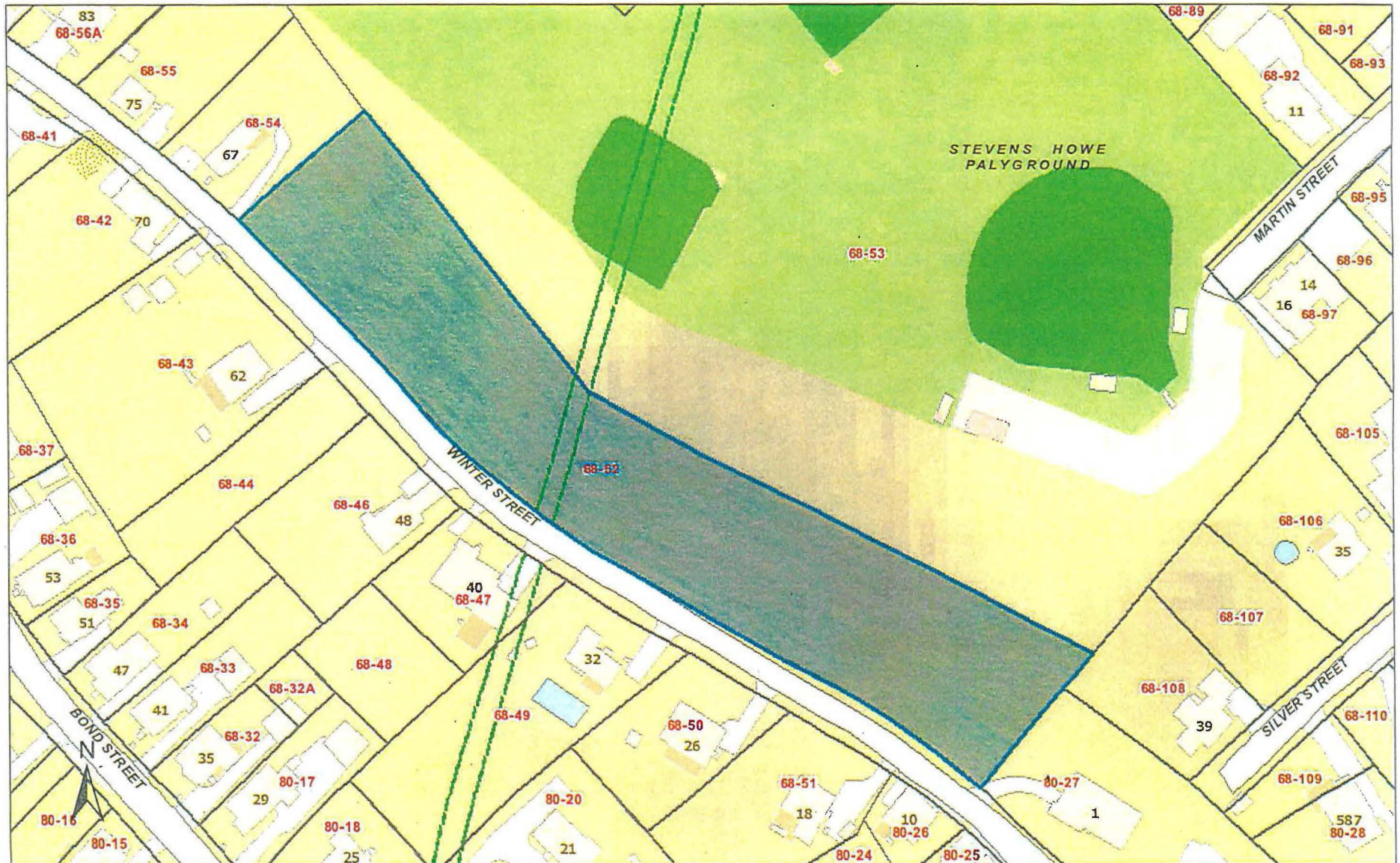
LAND ACQUISITIONS FOR THE EXTENSION OF WEED STREET AND WALKWAYS & STAIRS AND MAIN STREET PARKING LOTS



CITY OF MARLBOROUGH LAND ACQUISITIONS ON WINTER STREET



Map 68 Parcel 52 - 2.1 Acres on Winter Street



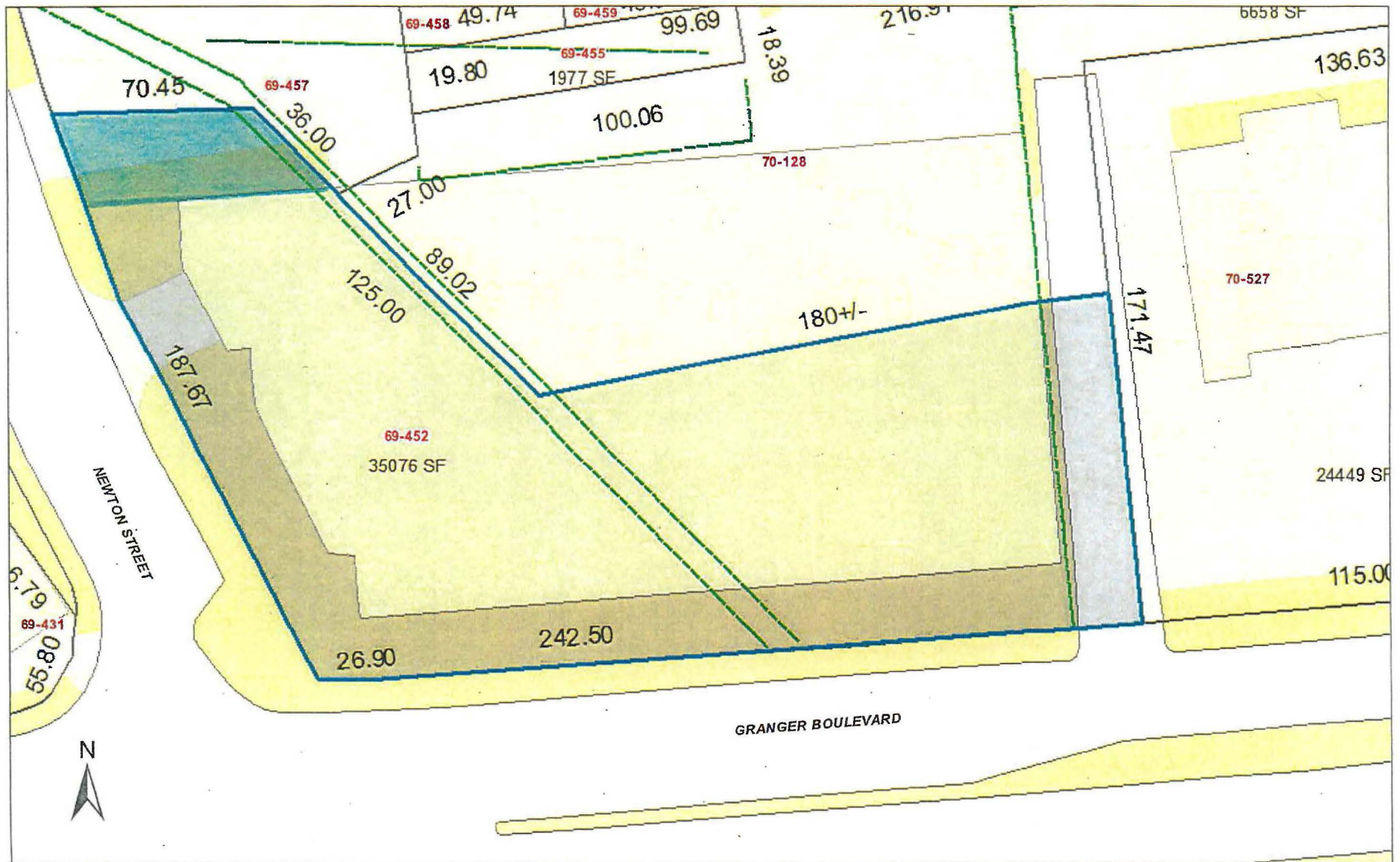
March 21, 2018

City of Marlborough



All Marlborough GIS data is to be considered a generalized spatial representation that is subject to revisions. This information is provided as a visual representation only and is not to be used as a legal or official representation of legal boundaries. This web site is not intended to be used as the exclusive basis for decision-making.

Portion of Map 69 Parcel 452 - Approx. 2,260 s.f.



Legend

1 inch = 40 feet

March 22, 2018

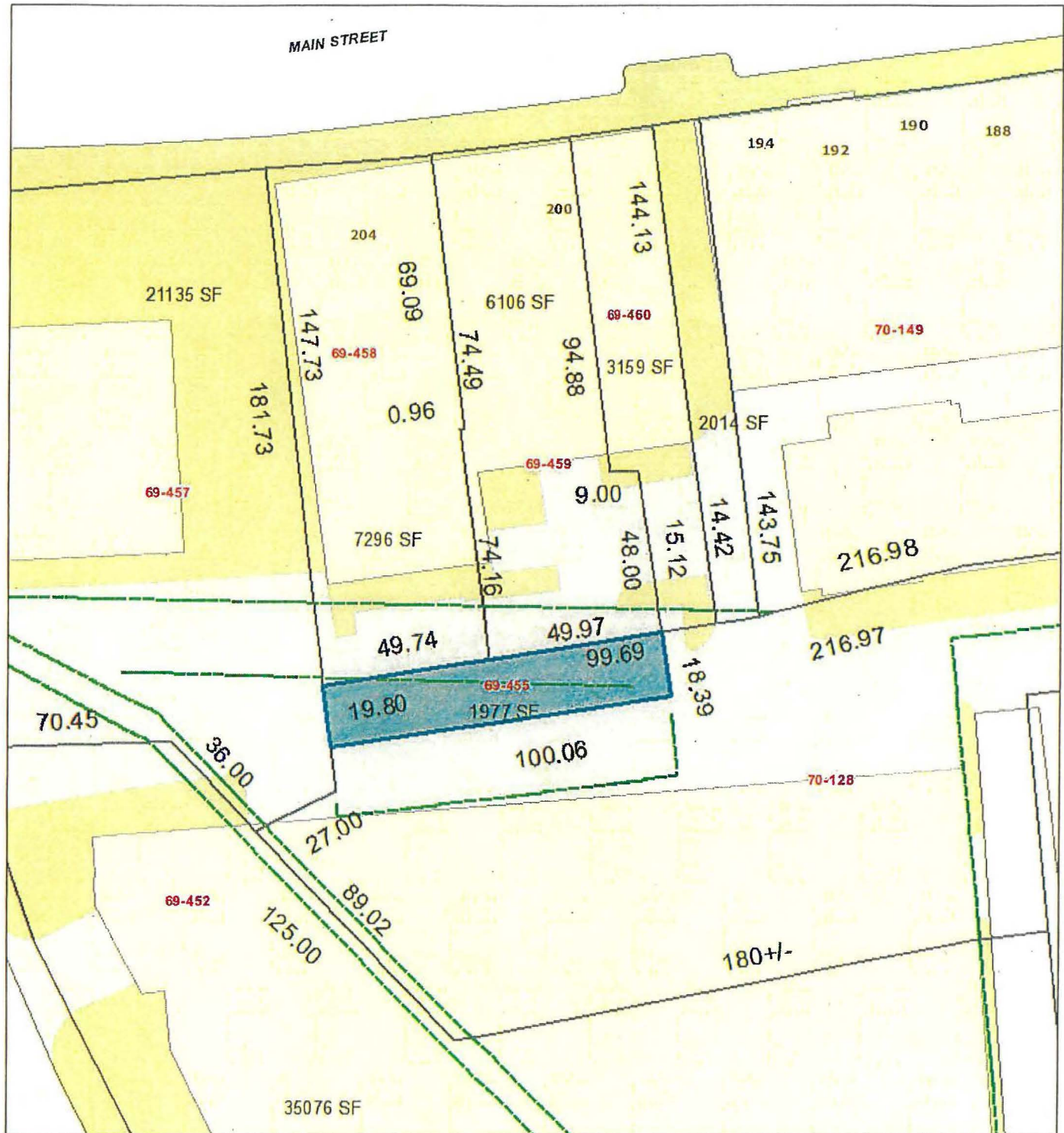


City of Marlborough



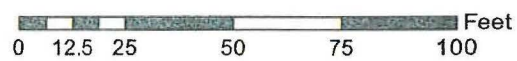
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Map 69 Parcel 455 - 1,977 sq.ft.



March 21, 2018

1 inch = 40 feet



Parking Lots

Type

Paved

City of Marlborough
Massachusetts



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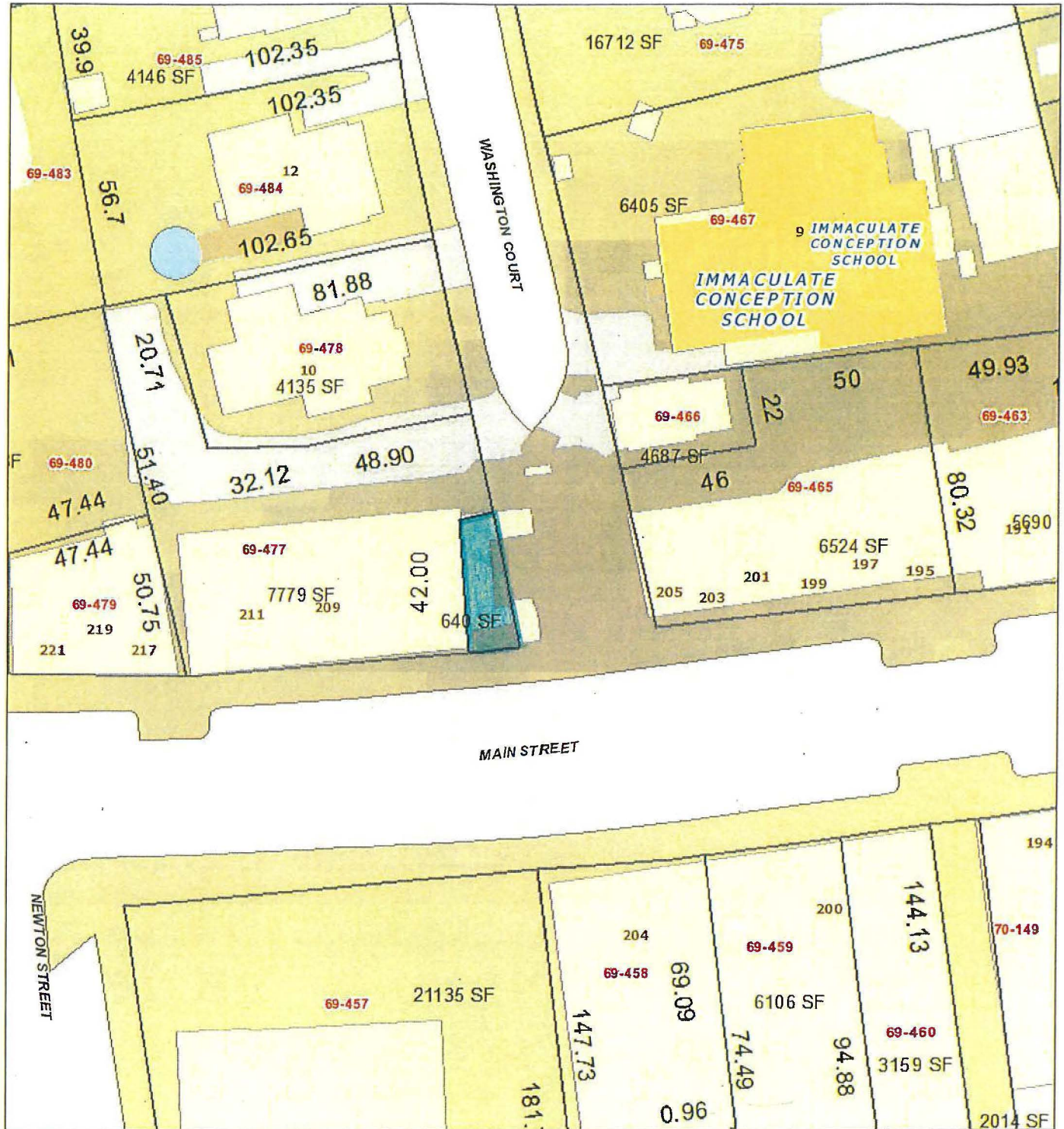
6524 SF
69-465 201 199 197 195 69-463 69-462 70-80
640 SF
MAIN STREET
186 182 190 188 194 192 200 204 135 SF 181.73 69-458 69-457 6106 SF 74.49 0.96 147.73 144.13 3159 SF 94.88 69-460 69-459 9.00 48.00 15.12 14.42 143.75 201 SF 216.98 216.97 665 70-527 69-452 177 174 171 168 165 162 159 156 153 150 147 144 141 138 135 132 129 126 123 120 117 114 111 108 105 102 99 96 93 90 87 84 81 78 75 72 69 66 63 60 57 54 51 48 45 42 39 36 33 30 27 24 21 18 15 12 9 6 3 0
1977 SF 100.06 180 +/- 36.00 27.00 89.02 125.00
70-128 70-149

March 21, 2018

Paved

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Map 69 Parcel 477A - 640 sq.ft.



March 21, 2018

Driveways

Type

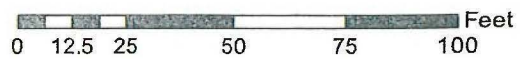
Paved

Parking Lots

Type

Paved

1 inch = 40 feet

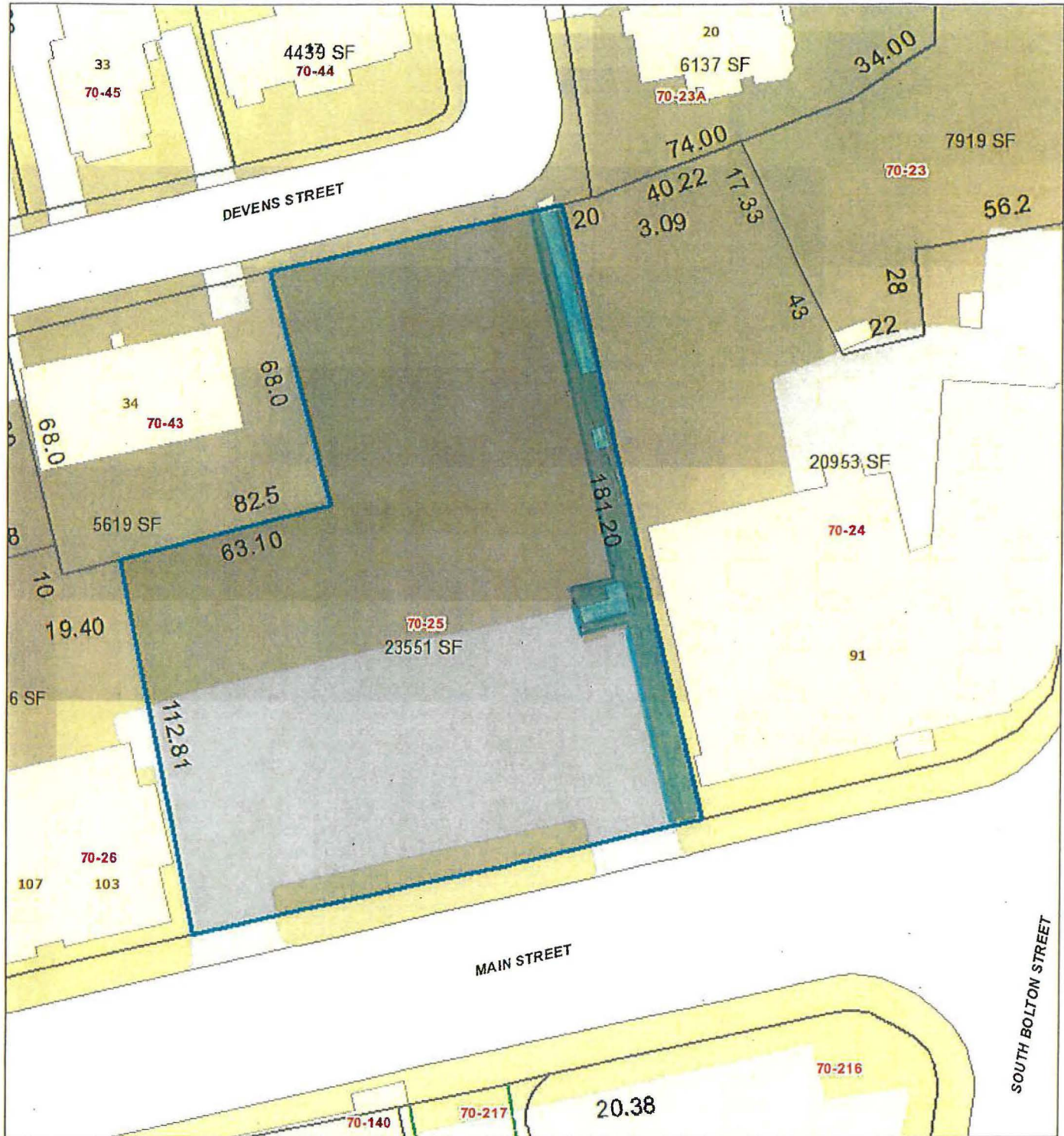


City of Marlborough
Massachusetts

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Portion of Map 70 Parcel 25 - approx. 2,200 sq.ft.



--- Easements
--- Parking Lots
--- Driveways
Type
--- Paved
--- Paved

1 inch = 40 feet

0 12.5 25 50 75 100 Feet

March 21, 2018

City of Marlborough



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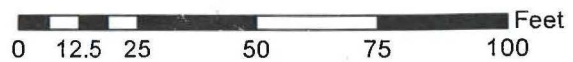
Map 7 Parcel 29A - Approx. 2⁰⁰1 s.f.



Legend

1 inch = 40 feet

March 23, 2018

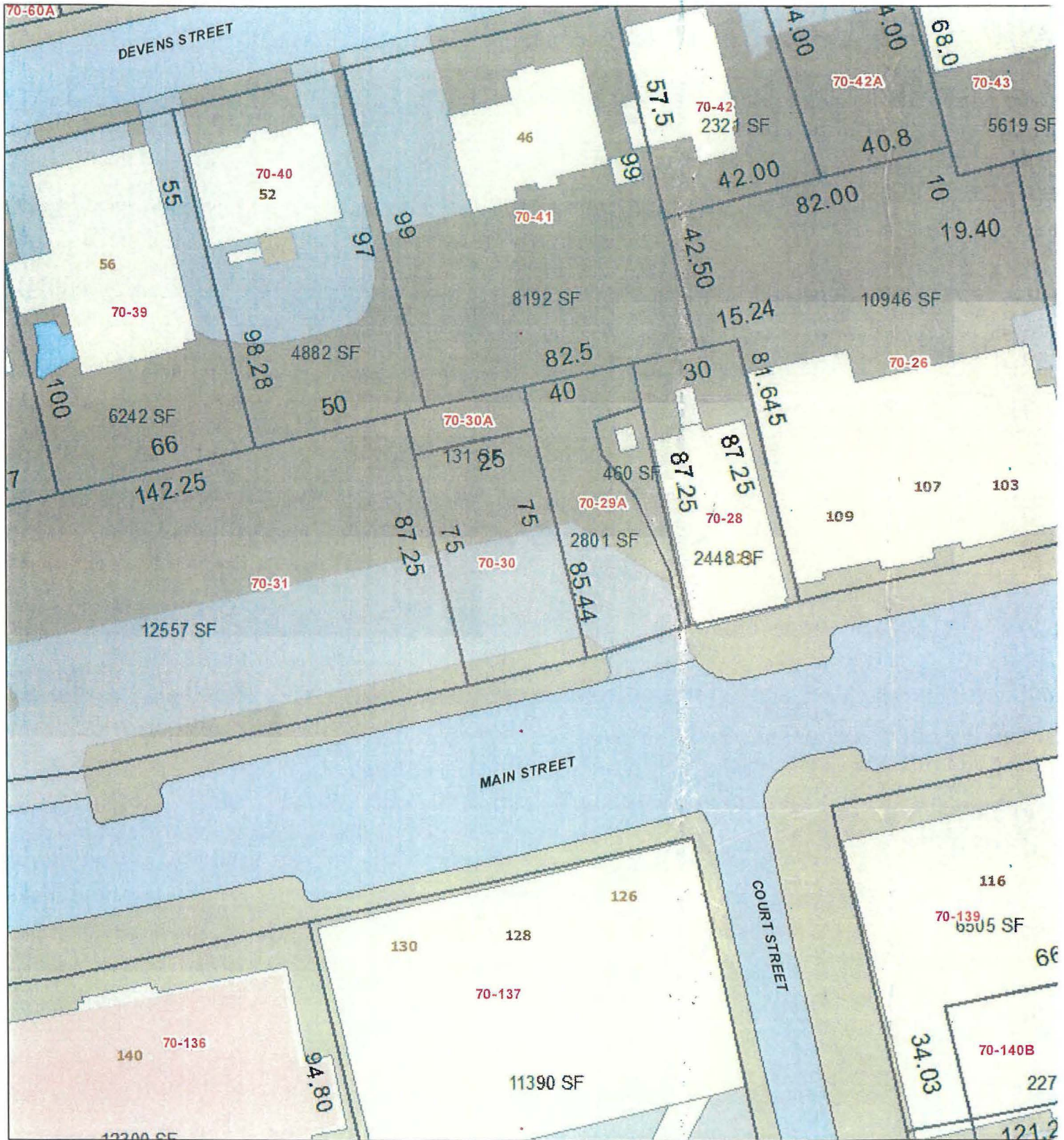


City of Marlborough
Massachusetts

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Map 70 Parcel 30 - Approx. 2,005 s.f.



Legend

1 inch = 40 feet

March 23, 2018

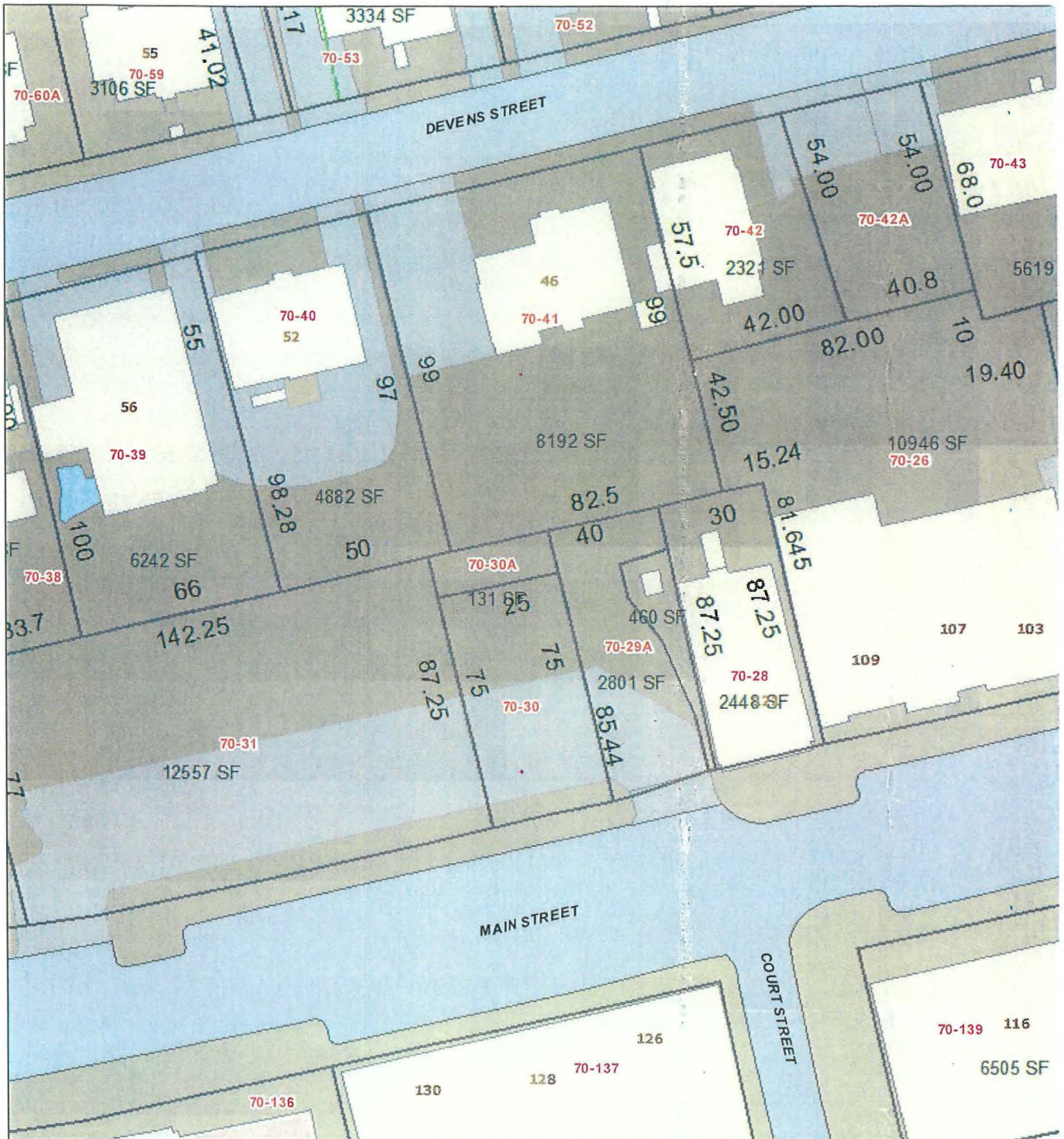


City of Marlborough
Massachusetts

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Map Parcel 30A - Approx. 1 s.f.



Legend

1 inch = 40 feet

March 23, 2018

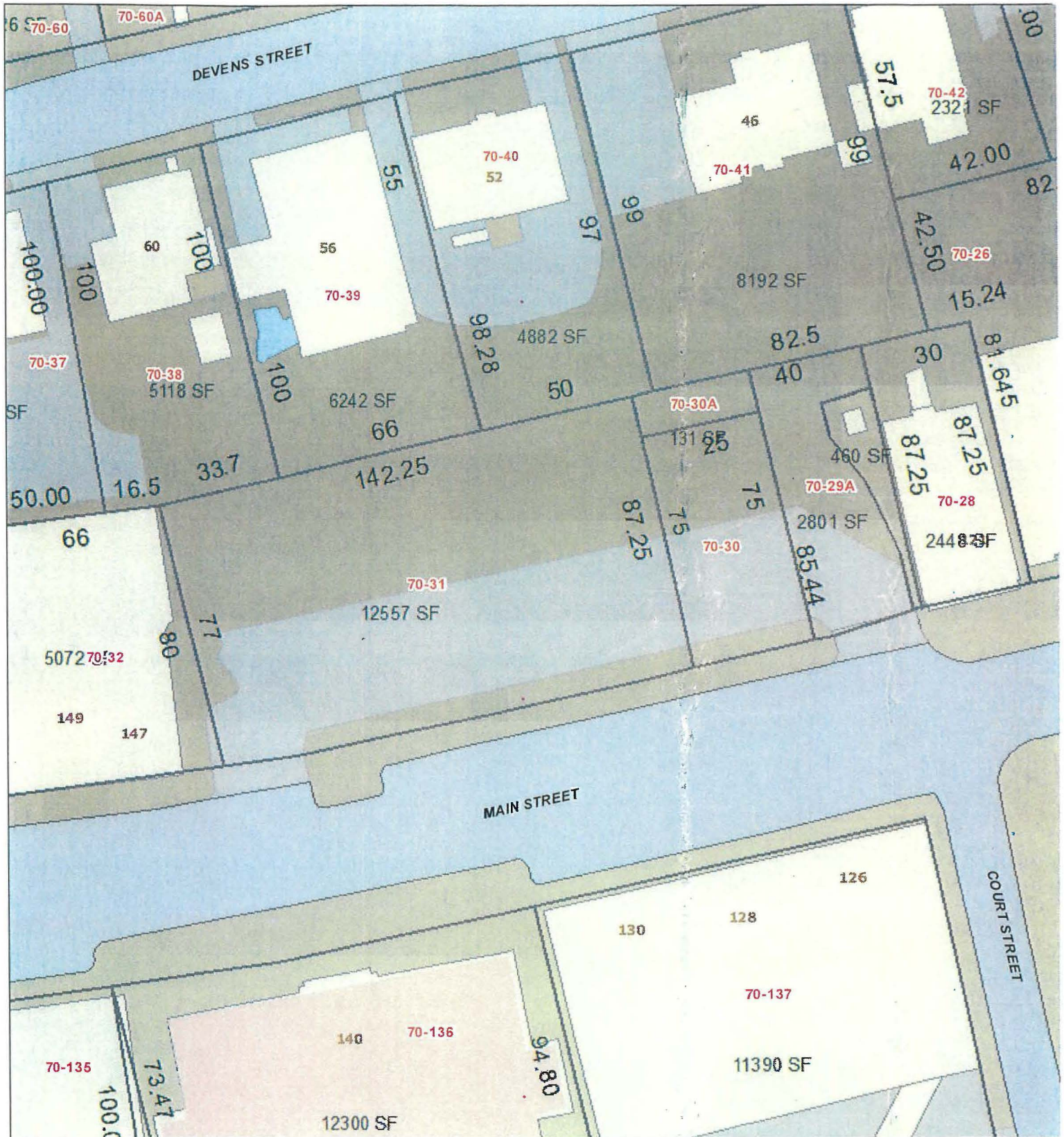


City of Marlborough
Massachusetts

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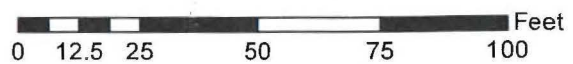
Map 7^A Parcel 31 - Approx. 12[±]57 s.f.



Legend

1 inch = 40 feet

March 26, 2018

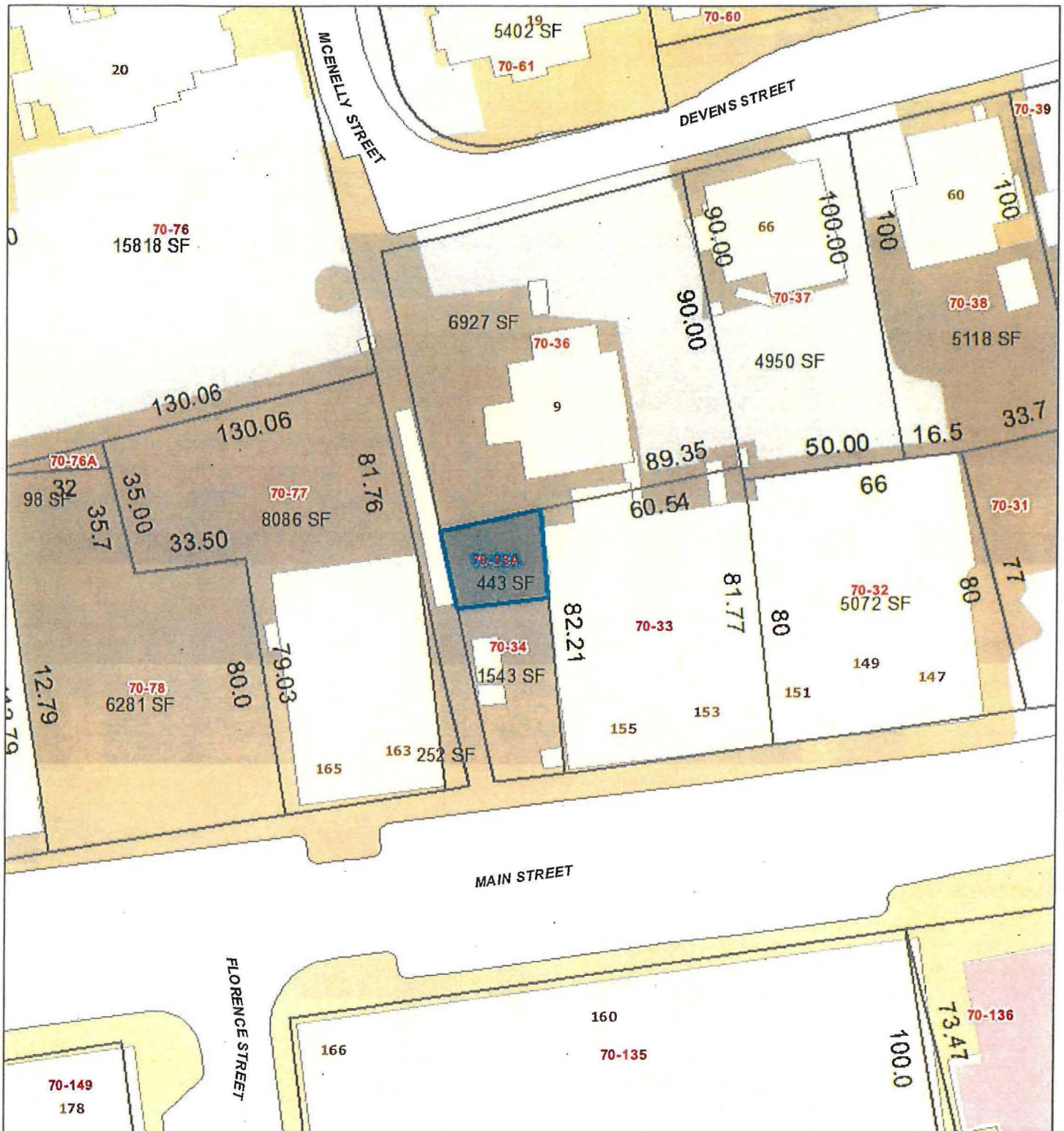


City of Marlborough
Massachusetts

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Map 70 Parcel 33A - 443 sq.ft.



March 21, 2018

Driveways

Type

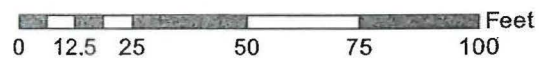
Paved

Parking Lots

Type

Paved

1 inch = 40 feet

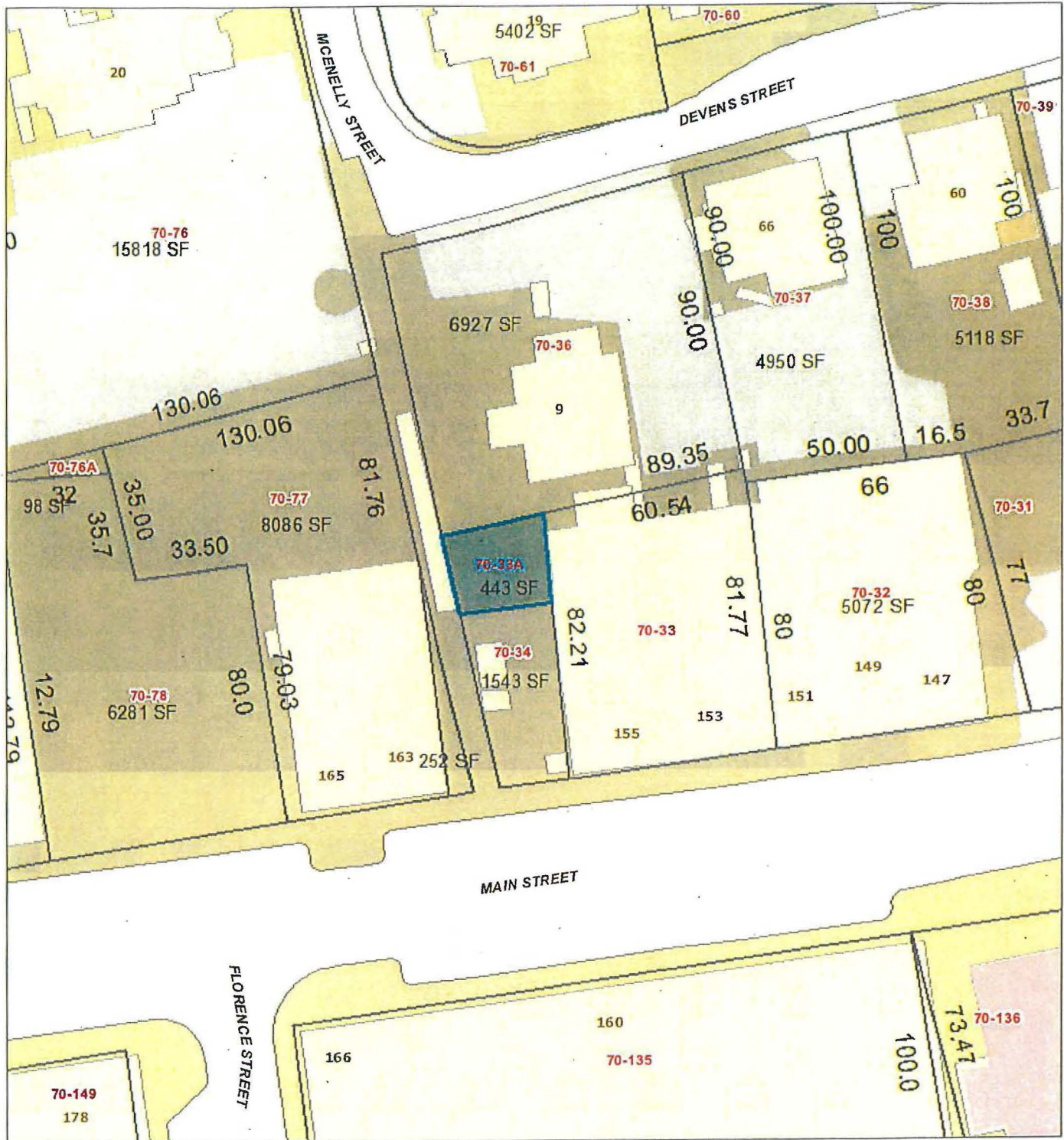


City of Marlborough
Massachusetts



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Map 70 Parcel 33A - 443 sq.ft.



March 21, 2018

Driveways

Type

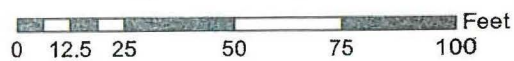
Paved

Parking Lots

Type

Paved

1 inch = 40 feet



City of Marlborough
Massachusetts



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Map 70 Parcel 34 - 1,543 sq.ft.



March 21, 2018

Driveways

Type

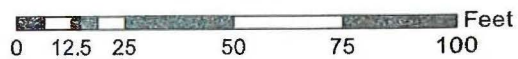
Paved

Parking Lots

Type

Paved

1 inch = 40 feet



City of Marlborough



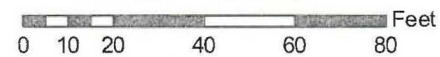
All Marlborough GIS data is to be considered a generalized spatial representation that is subject to revisions. This information is provided as a visual representation only and is not to be used as a legal or official representation of legal boundaries. This web site is not intended to be used as the exclusive basis for decision-making.

Map 70 Parcel 77A 252 sq. ft.



Legend

1 inch = 40 feet



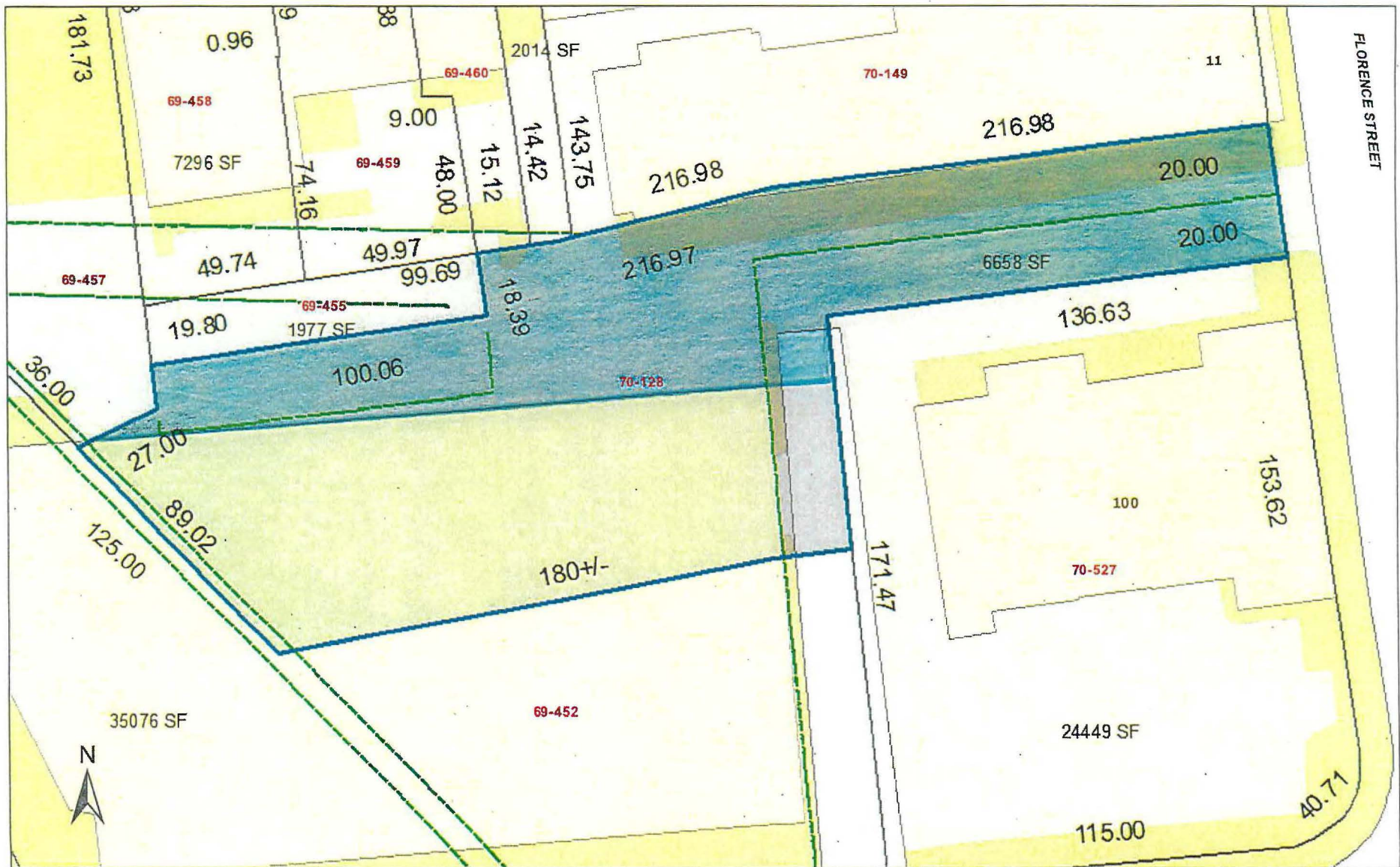
April 11, 2018

City of Marlborough



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Portion of Map 70 Parcel 128 - 14,310 s.f.



Legend

1 inch = 40 feet

March 22, 2018

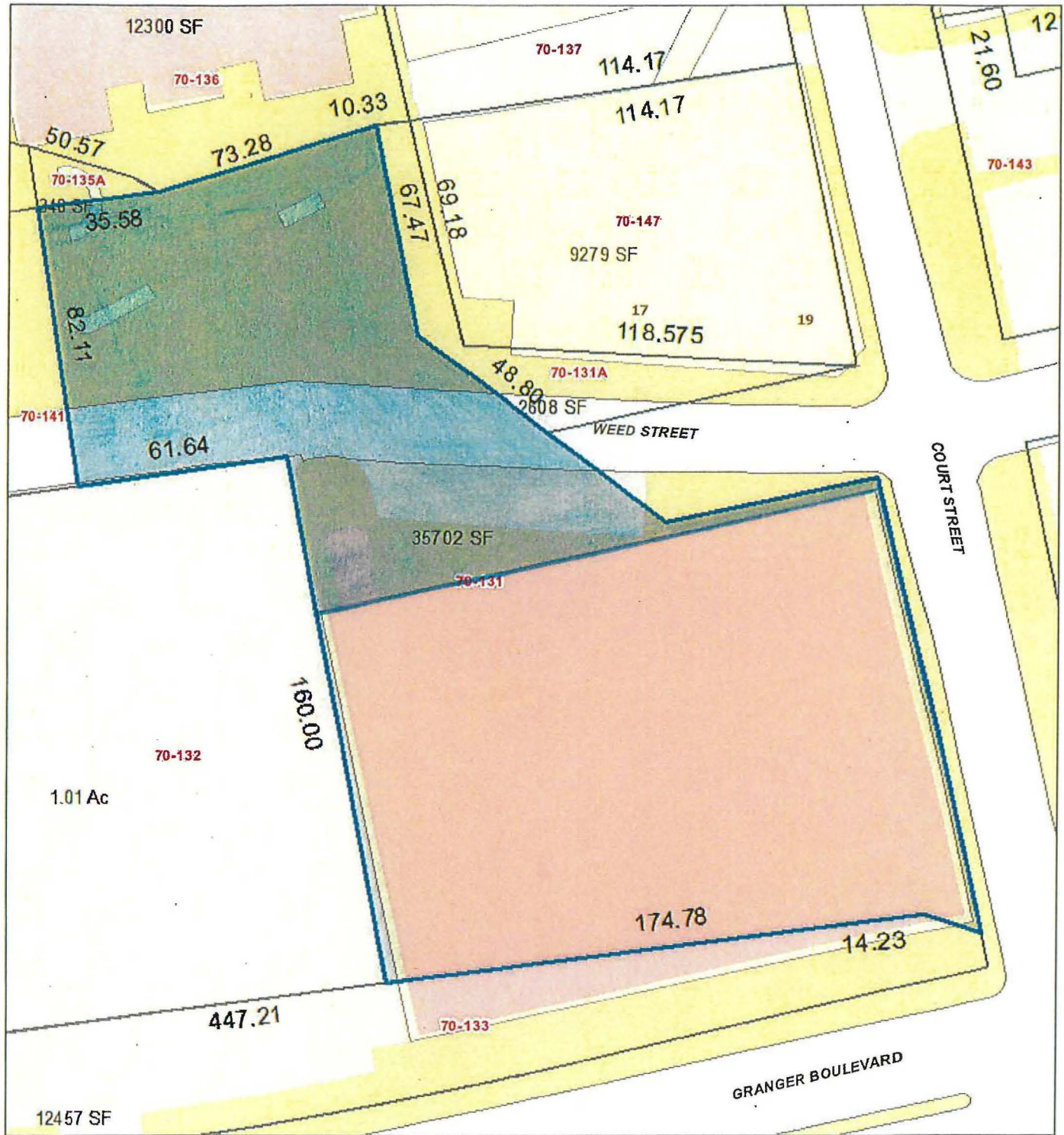
City of Marlborough



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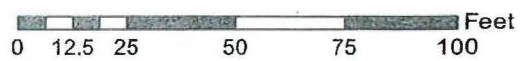
Portion of Map 70 Parcel 131 - Approx. 14,200 s.f.



Legend

1 inch = 40 feet

March 22, 2018

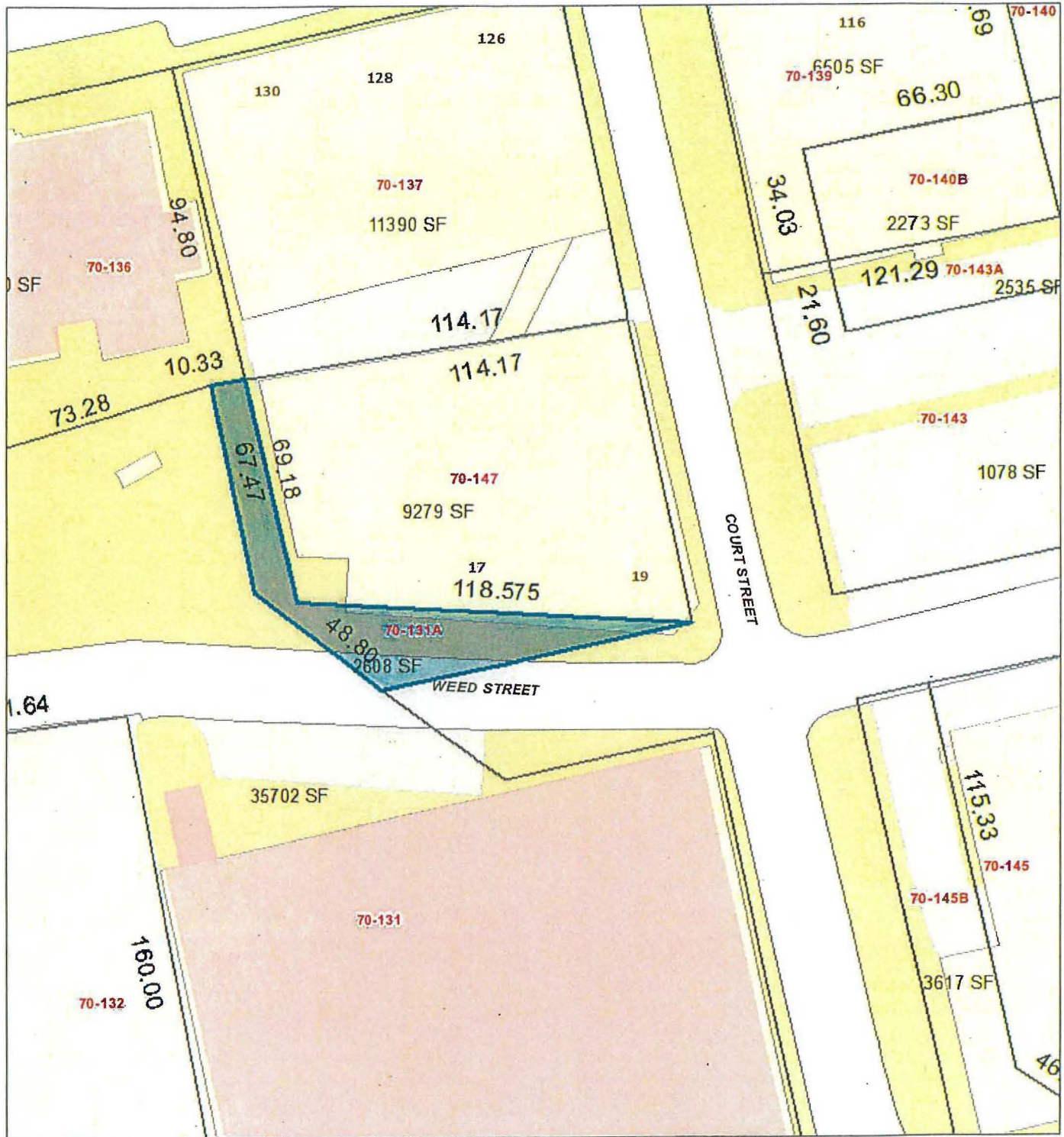


City of Marlborough

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Map 70 Parcel 131A - 2,608 sq. ft.



March 21, 2018

Parking Lots

Type

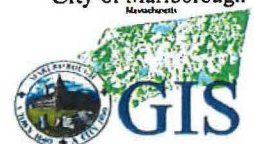
Paved

1 inch = 40 feet

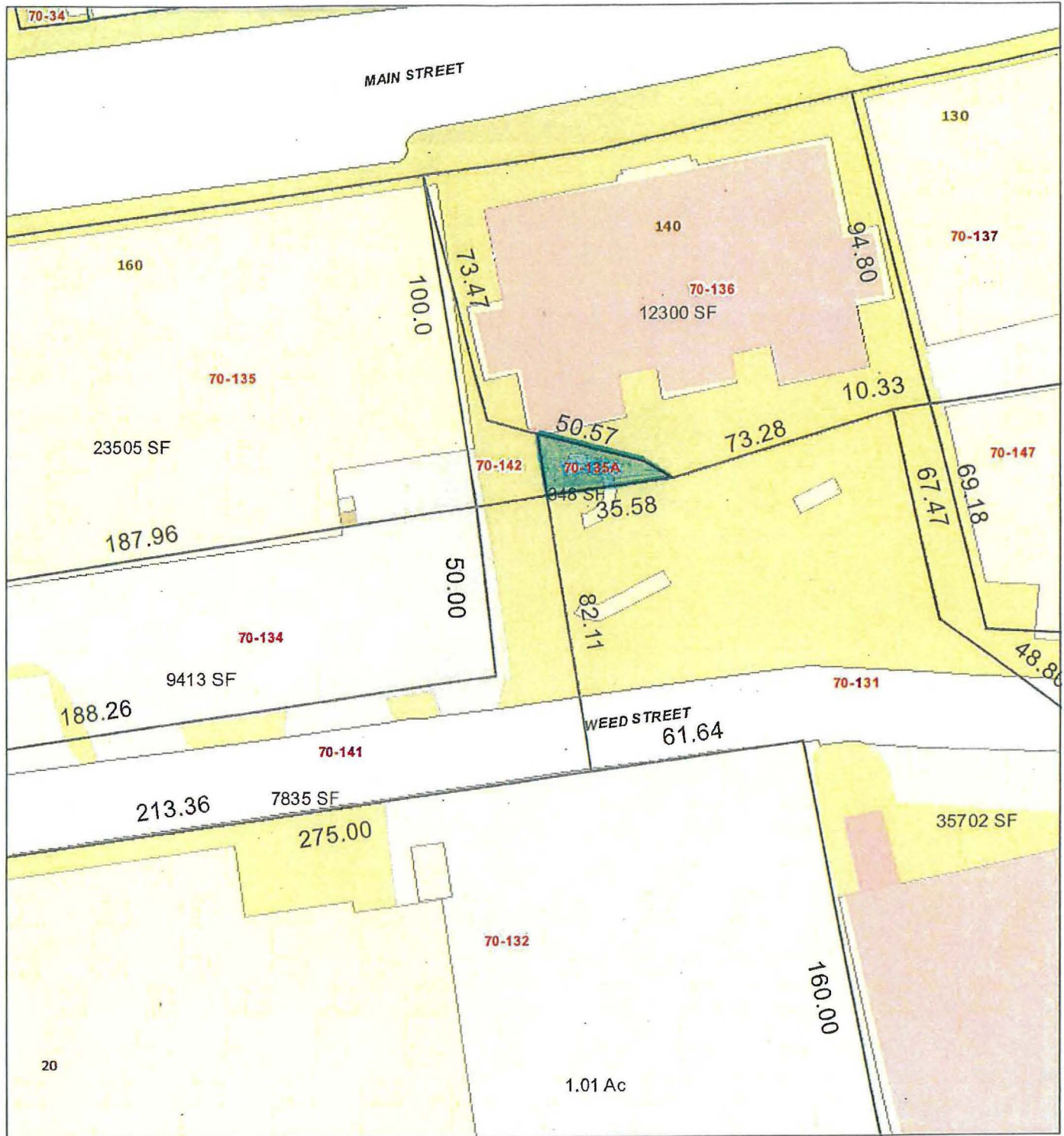


City of Marlborough

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Map 70 Parcel 135A - 225 Sq. Ft.



Parking Lots

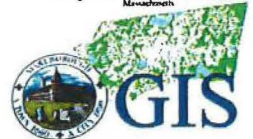
Type

Paved

1 inch = 40 feet

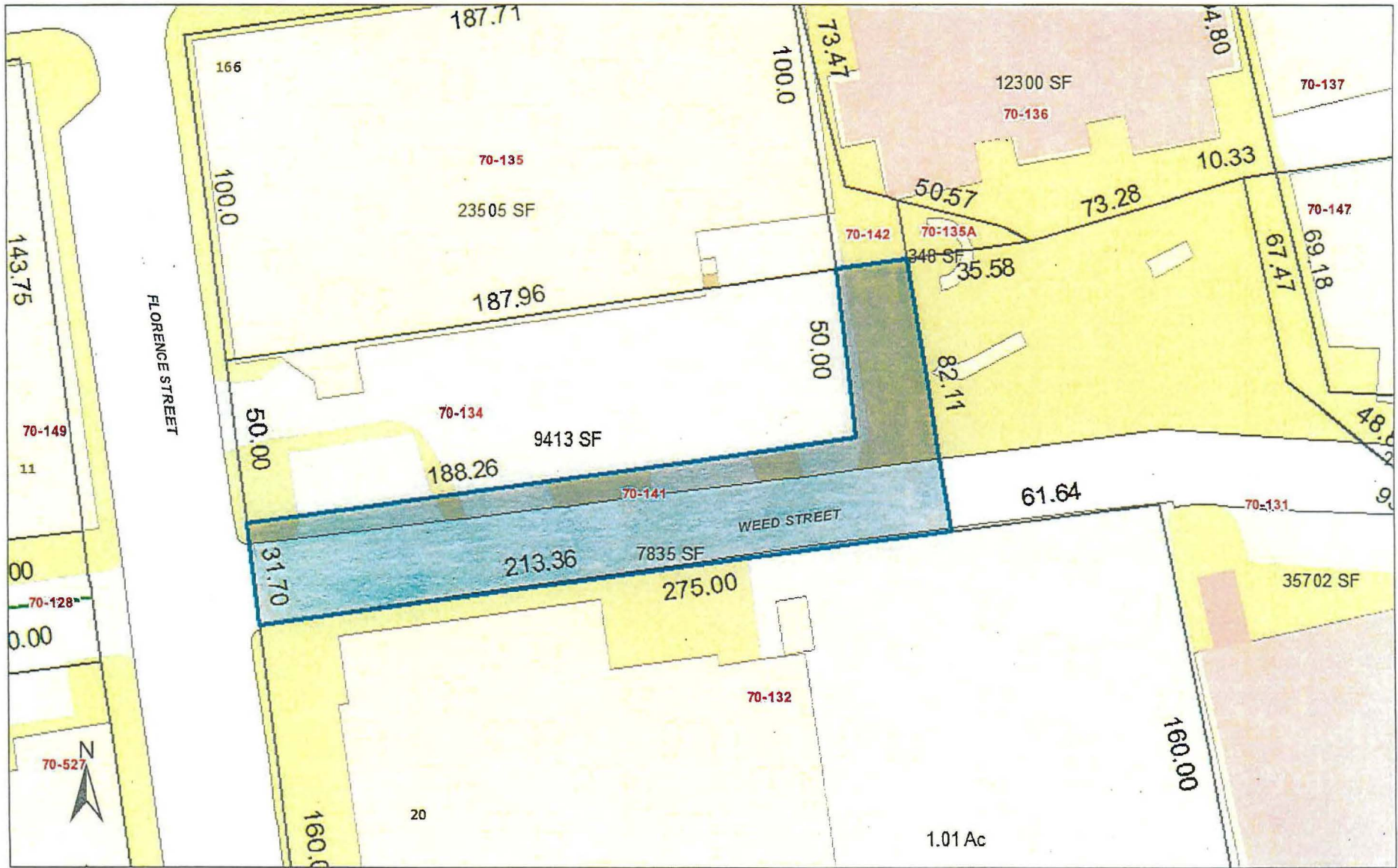


City of Marlborough



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Map 70 Parcel 141 - 7,835 s.f.



Legend

1 inch = 40 feet



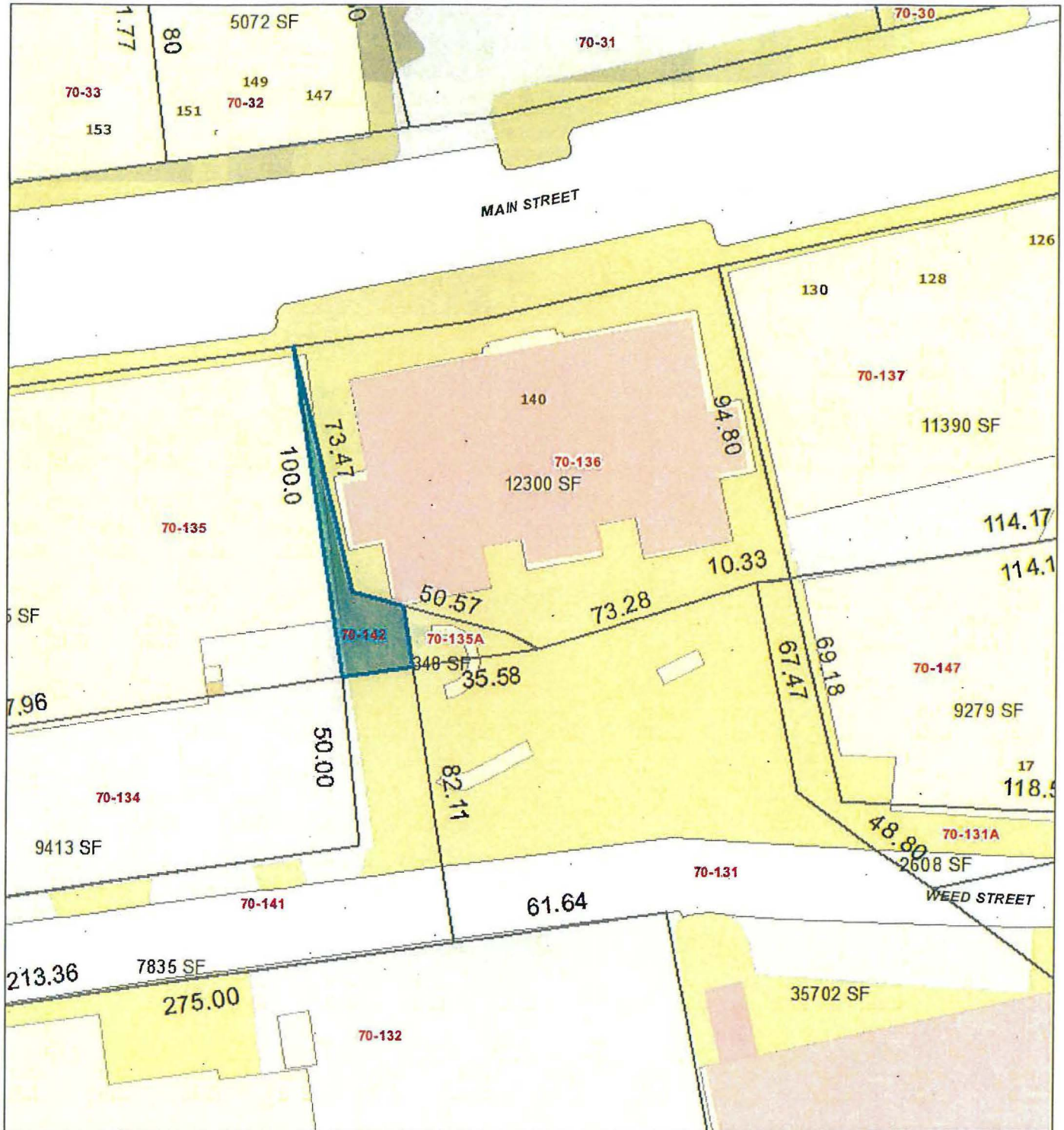
March 22, 2018

City of Marlborough



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Map 70 Parcel 142 - 436 Sq. Ft.



March 21, 2018

Driveways

Type

Paved

Parking Lots

Type

Paved

1 inch = 40 feet

0 12.5 25 50 75 100 Feet

City of Marlborough



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IN CITY COUNCIL

Marlborough, Mass., APRIL 2, 2018

ORDERED:

That the transfer request for Marlborough Economic Development Corporation (MEDC) Land Acquisition in the amount of \$1,075,000.00 which moves funds from Undesignated to MEDC to satisfy a Purchase and Sales Agreement, be and is herewith refer to **FINANCE COMMITTEE.**

CITY OF MARLBOROUGH BUDGET TRANSFERS --

DEPT:		Mayor		FISCAL YEAR:		2018			
FROM ACCOUNT:		TO ACCOUNT:							
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
<u>\$8,284,083.16</u>	<u>\$1,075,000.00</u>	<u>10000</u>	<u>35900</u>	<u>Undesignated Fund</u>	<u>\$1,075,000.00</u>	<u>11740006</u>	<u>53950</u>	<u>MEDC Funding</u>	<u>\$0.00</u>
Reason:					Land acquisition per Fossile purchase & sale agreement				
	<u>\$1,075,000.00</u>	Total			<u>\$1,075,000.00</u>	Total			

ADOPTED

ORDER NO. 18-1007219



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 MAR 29 A 11:34

City of Marlborough

Office of the Mayor

140 Main Street

Marlborough, Massachusetts 01752

Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

www.marlbrough-ma.gov

Arthur G. Vigeant
MAYOR

Nicholas J. Milano
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

6

March 29, 2018

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

fin

Re: Transfer Request for MEDC Land Acquisition

Honorable President Clancy and Councilors:

Please find enclosed for your review a transfer request in the amount of \$1,075,000.00 from the Undesignated Fund (Free Cash) to the MEDC.

I am requesting these funds in order to satisfy the attached Purchase and Sale Agreement that was signed between the City, the Marlborough Economic Development Corporation (MEDC), and Geraldine Fossile, Trustee of Lincoln and Mechanic Realty Trust.

At my recommendation, the City and MEDC have been working with the Fossile family to collaboratively develop a long-term plan for these five parcels located at the corner of Mechanic and Lincoln Streets. These parcels are crucial to better connecting Downtown Marlborough with French Hill and the Assabet River Rail Trail. The City has made many attempts through several different administrations to control these properties and with your assistance, we would be able to accomplish it.

By securing control of these parcels through the enclosed purchase and sale agreement, MEDC and the City can attract a developer who is interested in a comprehensive, high quality project for Marlborough. This is imperative to unlock further investment in French Hill and it is preferable to one story retail or other unattractive uses that have been discussed for this site.

It is my intention that we find an interested developer and assign our rights in the Purchase and Sale to them, rather than finalizing a purchase of the land. The P&S provides a total of six months for the City and MEDC to either complete the purchase or assign our rights to purchase.

Within the six months of the agreement, the City and MEDC have 90 days to conduct any necessary due diligence on the property to ensure that the property does not pose any environmental risks. The Agreement may be terminated within that 90 days if the City is not satisfied.

These funds will only be used for this intended purpose and if we are successful at assigning our rights, the funds will be transferred back to the City.

Thank you again for your continued partnership. I will be available to discuss this proposal in detail with the City Council, but please do not hesitate to contact me in the meantime with any questions or concerns.

Sincerely,



Arthur G. Vigeant
Mayor

Enclosures

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor

FISCAL YEAR: 2018

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$8,284,083.16

\$1,075,000.00

10000

35900

Undesignated Fund

\$1,075,000.00

11740006

53950

MEDC Funding

\$0.00

Reason:

Land acquisition per Fossile purchase & sale agreement

Reason:

Reason:

Reason:

Reason:

\$1,075,000.00

Total

\$1,075,000.00

Total

Department Head signature:

Auditor signature:

Comptroller signature:

Don L.
Bridgman

From: Cynthia Panagore Griffin
Sent: Monday, April 2, 2018 5:47 PM
To: Ossing
Subject: Follow-up thoughts - MEDC, etc.

Hi Mike:

After our conversation, I had the following additional thoughts regarding the propriety of the City's transfer of money to MEDC to acquire property for economic development purposes:

- A. **First topic** – why MEDC is appropriate for acquisition of the property:
1. MEDC is a non-profit economic development corporation created by a special act known as Chapter 20 of the Acts of 2007.
 2. Per Chapter 20 of the Acts of 2007, MEDC is a “public instrumentality separate from the city” created “to aid the city...in the speedy and orderly development or redevelopment of unused, obsolete, underused or underdeveloped areas...necessary to support the economic vitality of the city.” (Section 1(h)).
 3. MEDC is authorized to expend City money for the purposes for which it was created, including land acquisition for economic development. Section 1(a)(9) of the Acts provides: “The general court finds that the acquisition, planning, clearance, development rehabilitation or rebuilding of...unused...substandard and undeveloped areas for commercial, industrial, residential, institutional and public facility purposes are public benefits *for which public funds may be expended for the welfare of the city and the commonwealth.*” (Italics added).
 4. The Ch. 20 of the Acts of 2007 includes a long list of MEDC's powers and authorities, including a catch-all: “[MEDC may] do all acts and things necessary or convenient to carry out the powers expressly granted in this act.” (Section (b)(20) of Ch. 40, Acts of 2007).

Similar organizations, also created by specials acts of the General Court, include the Worcester Business Development Corporation, the Shrewsbury Corporation, the Plymouth Development Corporation, and the Provincetown Pier Corporation. I have not researched the details of these corporations, other than that they have similar structures and missions to MEDC.

B. **Second topic** – why MGL c. 30B does not apply to MEDC:

1. MGL c. 30B governs acquisition of services and the acquisition or disposition of real property.
 2. Chapter 30B applies to governmental bodies, which are defined as “a city, town, district, regional school district, county, or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county.”
 3. MEDC is not a governmental body. It is not a city or town, nor is it an agency, board commission, authority, department or instrumentality of the City. Rather, per Chapter 20 of the Acts of 2007, MEDC is a “public instrumentality separate from the city.”

In summary, MEDC was created for the purpose aiding the City in economic development; the City may provide funds to MEDC in support of MEDC's mission; MEDC may utilize City funds for economic development projects; and MEDC is not subject to MGL c. 30B.

I hope the above will help put to rest any concerns of the Council.

Best-
Cynthia

Cynthia Panagore Griffin, Esq.

Assistant City Solicitor
Legal Department
City of Marlborough
140 Main Street
Marlborough, MA 01752
tel: 508-460-3771
fax: 508-460-3698

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AGREEMENT FOR ACQUISITION OF REAL PROPERTY

This Agreement for Acquisition of Real Property (hereinafter, "Agreement") is entered into this 7th day of March 2018 by Geraldine Fossile, Trustee of Lincoln and Mechanic Realty Trust, owner of the herein described parcels of land located in Marlborough, Middlesex County, Massachusetts 01752 (hereinafter, "SELLER"), the MARLBOROUGH ECONOMIC DEVELOPMENT CORPORATION (hereinafter, "MEDC") and the CITY OF MARLBOROUGH, a municipal corporation with a principal place of business at 140 Main Street, Marlborough, Middlesex County, Massachusetts 01752 (hereinafter, "CITY") (hereinafter, collectively, "BUYER").

WHEREAS, SELLER has agreed to sell and BUYER is willing to purchase or take by friendly eminent domain certain real property, as more particularly described herein, for the public purpose of economic development and redevelopment;

THEREFORE, in consideration of the premises and mutual obligations of the parties, each of them covenants and agrees with the other as follows:

- A. DESCRIPTION OF REAL PROPERTY: Five (5) contiguous parcels of land located on Mechanic Street and on Lincoln Street in Marlborough, MA 01752 and shown as Parcel 337 on Assessors' Map 69, containing 0.799 acres or 34,821.86 square feet of land, more or less; Parcel 338 on Assessors' Map 69, containing 0.5801 acres or 25,269.15 square feet of land, more or less; Parcel 338A on Assessors' Map 69, containing 0.3457 acres or 15,058.7 square feet of land, more or less; Parcel 339 on Assessors' Map 69 containing 0.1615 acres or 7,034.9 square feet of land, more or less; and Parcel 339A on Assessors' Map 69, containing 0.4424 acres or 19,270.94 square feet of land, more or less, for total area of 2.33 acres or 101,455.55 square feet, more or less. For further description, see deed recorded with Middlesex South Registry of Deeds in Book 16332, Page 373 (hereinafter, collectively, the "Premises" or "premises").
- B. COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES: This Agreement is subject to compliance with any and all applicable requirements of the Massachusetts General Laws, Special Laws, regulations, and the ordinances of the City of Marlborough relative to acquisition of land by the CITY and to the sale of land by the SELLER. *Pursuant to M.G.L. c. 43, § 30, whenever the price proposed to be paid for land for any municipal purpose is more than twenty-five per cent higher than its average assessed valuation during the previous three years the land shall not be purchased, but shall be taken as aforesaid.* The parties acknowledge that MEDC is not subject to the provisions of M.G.L. c. 43, § 30.
 1. MEDC'S ACQUISITION BY PURCHASE; PURCHASE PRICE: Subject to the terms and conditions of this Agreement, the agreed purchase price for said premises shall be One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) (hereinafter, the "Purchase Price"). The Purchase Price shall be due to SELLER and payable by MEDC on the Closing Date as provided in paragraph 6. herein.

GF

\$ 25,000.00 earnest money deposit; to be paid by MEDC upon execution of this Agreement

\$1,075,000.00 to be paid at Closing at the time of delivery of the Deed

\$1,100,000.00 Total

2. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES: Included in the sale of said Premises shall be the improvements thereon, the buildings, structures, drainage, sewerage and other subsurface utility pipes, castings and appurtenances thereto, fixtures, fences, gates, trees, shrubs, and plants.
3. TITLE DEED: Subject to the terms of this Agreement, said premises are to be conveyed by a good and sufficient Quitclaim Deed (hereinafter, the "Deed") running to MEDC and said Deed shall convey a good and clear title thereto, free from encumbrances, except for:
 - (a) Provisions of existing building and zoning ordinances;
 - (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such Deed;
 - (c) Any liens for municipal betterments assessed after the date of this Agreement; and
 - (d) Easements, covenants, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for municipal purposes, or purposes appurtenant thereto.

MEDC, at its sole expense, may elect to obtain an owner's policy of title insurance with respect to the Premises and SELLER agrees to cooperate with MEDC, and the Title Company to facilitate the issuance of such policy, provided that such cooperation does not require the SELLER to incur any additional expenses and/or to accept any additional or increased liability.

4. PLANS: If said Deed refers to a plan necessary to be recorded therewith, the MEDC shall be responsible for such plan with the Deed in form adequate for recording or registration. The survey for said plan will be at MEDC'S expense.
5. CITY'S ACQUISITION BY EMINENT DOMAIN TAKING TO ACQUIRE TITLE FOR PURCHASE PRICE IN EXCESS OF THE AMOUNT ALLOWABLE UNDER M.G.L. c. 43, § 30: SELLER hereby waives any right to claim additional damages in excess of the Purchase Price, as herein described, in the event that MEDC is unable to procure an assignee to this Agreement or said assignee fails to complete the acquisition of the Premises as provided in paragraph 6. (a) iv., and CITY, by and through its City Council elects to acquire title to the Premises by a friendly eminent domain for the negotiated price of One Million One Hundred Thousand and 00/100

Dollars (\$1,100,000.00), less the earnest money deposit paid to SELLER by MEDC pursuant to this Agreement, which negotiated price exceeds the amount allowable for a purchase by the CITY under M.G.L. c. 40, § 30. At CITY'S request, SELLER shall execute a Waiver of Damages, Appraisal, and Relocation Benefits under M.G.L. c. 79A, and shall deliver it to CITY at the Closing. SELLER acknowledges that CITY shall have the right to deduct from said negotiated price any real estate taxes, amounts that are to be paid to mortgagees from closing proceeds, and such other taxes and charges that are customarily apportioned between a buyer and seller as of the closing date. The provisions of this paragraph shall survive delivery of the Deed hereunder.

6. MEDC'S AND CITY'S CONTINGENT PERFORMANCE; CLOSING:

- (a) The obligation of MEDC or the CITY to proceed with the acquisition of the Premises pursuant to this Agreement is subject to and contingent upon the following:
- i. CITY shall have a period of ninety (90) days following the execution of this Agreement to complete CITY'S due diligence (hereinafter, the "Due Diligence Period"), the satisfaction of which Due Diligence shall be at the sole discretion of the CITY. Said Due Diligence Period may be extended by written agreement of the parties; and
 - ii. SELLER shall have a period of ninety (90) days of the execution of this Agreement within which SELLER shall provide to BUYER, at SELLER'S sole expense, an opinion of a certified Licensed Site Professional (hereinafter, "SELLER'S LSP") pertaining to each of the five (5) separate parcels which comprise the Premises, which opinion (a) is based on visual inspection, information provided by SELLER, documentation on file with the MassDEP and any other resources as may be required in the professional judgment of the SELLER'S LSP (hereinafter, "LSP Opinion") and (b) provides that, pursuant to M.G.L. c. 21E and 310 CMR 40.0000, a condition of no significant risk of harm to health, safety, public welfare or the environment exists and there are no Activity and Use Limitations, and (c) provides a risk assessment for any unknown environmental liabilities.

In lieu of, or in addition to, said LSP Opinion, SELLER may within ninety (90) days of the execution of this Agreement provide to MEDC and the CITY a letter from MassDEP providing, pursuant to M.G.L. c. 21E and 310 CMR 40.0000, that a condition of no significant risk of harm to health, safety, public welfare or the environment exists at the Premises, and there are no Activity and Use Limitations at the Premises. Any costs relating to said letter shall be solely at SELLER'S expense; and
 - iii. MEDC shall endeavor to procure a responsive and responsible assignee to which assignee MEDC shall assign its rights and obligations under this

Agreement, MEDC shall notify SELLER and CITY in writing within ninety (90) days of the execution of this Agreement whether it has procured an assignee, and in the event that MEDC has not procured an assignee or MEDC elects not to purchase the premises within one hundred and twenty (120) days of the execution of this Agreement, the CITY will thereafter commence procedures for a friendly eminent domain taking as provided in paragraph 5, and the CITY shall provide to SELLER a copy of all communications with the Marlborough City Council regarding the purchase or friendly eminent domain taking of the Premises; and

- iv. In the event that MEDC is unable to procure an assignee to this Agreement, or said assignee fails to complete the acquisition of the Premises hereunder or if MEDC elects not to purchase the premises, CITY's attainment of a favorable vote of the Marlborough City Council which authorizes CITY to acquire the Premises by a friendly eminent domain taking, as provided in paragraph 5. herein, for the herein stated consideration and which authorizes an appropriation of sufficient funds for that purpose.

- (b) Subject to the foregoing provisions 6.(a)i, 6.(a)ii, and 6.(a)iii, final settlement of MEDC'S and SELLER'S purchase and sale obligations hereto, including but not limited to delivery of the Deed, shall occur at 10:00 A.M. on a date which is six (6) months from the date of execution of this Agreement, or if said date is a Saturday, Sunday or legal holiday, on the first working day thereafter, or as altered or extended by written agreement of MEDC, the CITY and SELLER (hereinafter, "the Closing Date" or "date of closing").

In the event that the herein described contingencies are not satisfied, this Agreement shall automatically terminate and be null and void, and all deposits made hereunder by MEDC, together with interest, if any, earned thereon, shall be paid to the SELLER as liquidated damages without further recourse against the CITY or MEDC in any event. It is agreed that time is of the essence of this Agreement.

- (c) On the Closing Date, MEDC's attorney shall record the municipal lien certificate and the Deed and deliver to the appropriate parties all closing documents. It is agreed that the MEDC'S attorney shall have no liability to the SELLER for the performance of her services in relation to the purchase and sale of the Premises, and that the performance of said services by MEDC's attorney does not constitute an attorney-client relationship between SELLER and MEDC'S attorney. Real estate taxes on the Premises, which shall be paid by SELLER, shall be prorated as of the day of closing based upon the latest tax bill. SELLER agrees to pay all statutorily required transfer taxes or deed stamps, if any, relating to the sale of the Premises. Each party shall be responsible for his/her/its own legal expenses.

- (d) Before the Closing Date, to the extent that chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act) applies, CITY shall have complied with the provisions of said chapter 30B.
- (e) In addition to the Deed, unless otherwise indicated, at Closing SELLER shall deliver to MEDC, as a condition of MEDC'S obligations under this Agreement, the following:
- i. IRS Form W-9, Taxpayer Identification Number and Certification, said form being attached herewith as Attachment "A;,"
 - ii. Certificate of Non-Foreign Status pursuant to IRS Code 26 CFR 1.1445-2 said certificate being attached herewith as Attachment "B;,"
 - iii. Municipal Lien Certificate from the City of Marlborough's Collector; and
 - iv. Any additional forms or documents as may be required by BUYER'S counsel.
7. POSSESSION, CONDITION OF PREMISES: Full possession of said premises is to be delivered at the time of the delivery of the Deed, said premises to be in the same condition as they are now, reasonable use and wear thereof excepted. The SELLER agrees to deliver the Premises at the time of delivery free of all personal property of SELLER not being conveyed to MEDC, including all debris and trash upon the Premises. MEDC shall be entitled to personally inspect said Premises prior to delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.
8. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM: If the SELLER shall be unable to give title or make conveyance, or to deliver possession of the Premises all as herein stipulated, or if at the time of delivery of the Deed the Premises does not conform with the provisions hereof or is not completed, the SELLER shall use reasonable efforts to remove any defects in title, provided that SELLER shall not be required to spend in excess of \$2,500 (Two-thousand Five-hundred dollars) exclusive of voluntary encumbrances and attorney's fees, to delivery possession as provided herein, in which event the time for performance hereunder shall be extended, by written notice from the SELLER to the MEDC, for a period designated by SELLER in their sole discretion, not in excess of sixty (60) days, and if a shorter period than sixty (60) days is designated, SELLER may further extend the time for performance one or more times, by written notice from the SELLER to the MEDC, but in no event beyond such sixty (60) day period.

MEDC and SELLER hereby authorize their respective attorneys (if any, as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time of delivery of the Deed. MEDC and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent of such extensions, that either party

has disclaimed the authority granted herein to bind them. For the purposes of this Agreement, facsimile and pdf signatures shall be construed as original.

9. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.: If at the expiration of any such extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage for said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then MEDC's sole and exclusive rights shall be to elect either: (a) to require that the deposit made hereunder be forthwith refunded, whereupon the deposit shall be refunded with interest and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto; or, (b) at the Closing Date or any extended time for performance, MEDC shall accept such title and possession as the SELLER can deliver to the Premises in its then condition, and pay the Purchase Price with deduction as agreed upon by MEDC and SELLER, in which case the SELLER shall convey such title and deliver such possession.
10. MEDC'S ELECTION TO ACCEPT TITLE: MEDC shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said Premises in its then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the Premises to their former condition either:
 - i. pay over or assign to the MEDC, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration; or
 - ii. if a holder of a mortgage in said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be paid over or assigned, give to the MEDC a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
11. ACCEPTANCE OF DEED: The acceptance of the Deed by the MEDC shall be deemed to be a full performance and discharge of every agreement and obligation of SELLER herein contained or expressed, except of this Agreement which expressly provide that any obligation of SELLER shall survive the Time of Closing, and such as are, by the terms hereof, to be performed after the delivery of said Deed.

12. USE OF PURCHASE MONEY TO CLEAR TITLE: To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded within a reasonable time following delivery of the Deed in accordance with prevailing conveyancing practices.
13. INSURANCE: Until the occurrence of either (a) delivery of the Deed at Closing, or (b) a taking by eminent domain by the City, SELLER shall maintain insurance on said Premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
(a) Appropriate types of coverage and endorsements for the subject premises, including but not limited to fire and casualty	SELLER shall maintain coverage and endorsements in present amounts
(b) Extended Coverage	Risk of loss to remain with SELLER until delivery, acceptance, and recording of Deed

Commencing with the date of the Closing or the friendly eminent domain taking, the CITY or MEDC, respectively, shall be responsible for maintaining insurance on the Premises.

14. ADJUSTMENTS: With respect to the Premises, real estate taxes for the fiscal year in which the Closing takes place, and water and sewer charges and other municipal charges or fees, if any, shall be apportioned and full value shall be adjusted as of the Closing Date, or extended time for performance of this Agreement, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by MEDC herein to SELLER at the time of delivery of the deed. If the amount of any of the same shall not have been ascertained prior to the time for performance of this Agreement, such amount shall be estimated on the basis of the most current data then available, and the parties shall re-apportion such item after delivery of the Deed when the appropriate data shall have been ascertained. The respective obligations of the parties under this paragraph 14. shall survive delivery of the Deed.
15. DEPOSIT: All deposits made hereunder shall be made payable to the SELLER, who shall hold said deposit in FDIC-insured non-interest bearing escrow as escrow agent subject to the terms of this Agreement, and shall be duly accounted for at the Closing.
16. CITY'S AND/OR MEDC'S DEFAULT; DAMAGES: If the CITY and/or MEDC shall fail to fulfill the CITY'S and/or MEDC'S agreements herein, all deposits made

hereunder by MEDC together with interest, if any, earned thereon, shall be retained by the SELLER as liquidated damages and this shall be the SELLER'S sole remedy at law or in equity.

17. WARRANTIES AND REPRESENTATIONS: BUYER acknowledges that BUYER has not been influenced to enter into this transaction, nor have they relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.
18. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.: If the SELLER or MEDC executes this Agreement in a representative or fiduciary capacity, only the principal of the estate represented is bound, and neither the SELLER or MEDC so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
19. ASSIGNMENT BY MEDC: At its sole discretion, MEDC may assign to a third-party its rights and obligations under this Agreement. As used in this Agreement, the word "MEDC" shall also mean "MEDC or its assignee."
20. CONSTRUCTION OF AGREEMENT: This instrument, which may be executed in multiple counterparts in accordance with paragraph 29. herein, is to be governed and construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by the CITY, MEDC and SELLER. The headings used in the numbered paragraphs of this Agreement are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties thereto.
21. INSPECTION RIGHTS: BUYER or its designees shall have the right, at any time, to enter the Premises, at BUYER'S own risk, for the purposes of inspections, tests, surveys, and other such activities as BUYER deems necessary or appropriate pursuant to the CITY'S Due Diligence, for showing the Premises, and the like. Said right of access shall be exercised only after reasonable notice to SELLER. To the extent permitted by law, BUYER shall hold SELLER harmless against any claim by BUYER or its designees of any harm to BUYER or its designees arising from said entry and shall restore the Premises to substantially the same condition as prior to such entry if the Closing or a taking by eminent domain does not occur.
22. SELLER'S COVENANTS: As used in this paragraph 22., "Acquisition" shall mean both a closing on purchase by MEDC, or its assignee, and a friendly eminent domain taking by the CITY. SELLER covenants and agrees as follows:
 - (a) Henceforth through Acquisition, SELLER shall not consent to any request to make and/or extend any lease, contract, option or agreement affecting the

Premises which would grant any third party any rights to such land, except with written consent of BUYER;

- (b) Henceforth through Acquisition, SELLER shall not consent to any request or cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Premises, except with written consent of BUYER;
- (c) Henceforth through Acquisition, with the exception of ordinary landscape maintenance, including but not limited to mowing of grass, raking leaves, and trimming of trees and shrubs, and except as may be required by SELLER'S LSP relating to the LSP Certification under this Agreement, SELLER shall not consent to any request by any third party to erect any structures and/or remove any vegetation, soils or minerals from the Premises or to disturb or suffer the disturbance of the existing contours and/or other natural features of the land in any way whatsoever except with written consent of BUYER; and
- (d) At or prior to the Acquisition, SELLER shall pay in full all outstanding amounts due to third parties arising from any work or services performed at or on the Premises by such third parties and in the event that any mechanics lien or materialmen's lien is filed by any such third party in connection with such work. SELLER hereby assents and agrees to indemnify and hold harmless the MEDC and the CITY, their officials, employees and agents, with respect to such claim.

Each of the above covenants is material and is relied upon by MEDC and the CITY. Except insofar as SELLER has advised MEDC and the CITY to the contrary, each of the above representations shall be deemed to have been made as of the closing and shall survive the Closing. If, before Closing, SELLER discovers any information or facts that would materially change the foregoing representations, SELLER shall immediately give notice to BUYER of those facts and information, and BUYER shall have the right to terminate the Agreement if the information or facts is substantive, or to extend the time of Closing to allow the issue to be addressed.

23. SELLER'S REPRESENTATIONS: SELLER represents to BUYER that to the best of SELLER'S knowledge:

- (a) SELLER holds good and clear, record and marketable title to the Premises in fee simple;
- (b) SELLER has full power and authority to enter into this Agreement;
- (c) SELLER has not entered into any leases, license, or other occupancy agreements (whether written or oral) in effect with respect to any part of the Premises;

- (d) There are no parties in possession of the premises, and no work has been done on the Premises which would entitle anyone to a mechanic's lien and or to file notice of contract relating to the premises as of the date of this Agreement;
- (e) The premises are not the subject of any outstanding agreements, options, rights of first refusal or other contracts with any party pursuant to which any such party may acquire a right to purchase or acquire any interest in the premises. Neither the execution and delivery of this Agreement nor SELLER'S performance of its obligations hereunder will constitute a breach or default under any agreement to which the SELLER is bound;
- (f) There is no litigation or proceeding pending or threatened, that would affect a transfer of title to the Premises;
- (g) During the SELLER'S period of ownership of the Premises, SELLER has not used, nor has it permitted the use of by any other person or entity, any portion of the Premises for the purposes of storage, generation, manufacture, disposal, transportation or treatment of any hazardous materials under applicable state and federal laws which may require any cleanup, remediation or other corrective action pursuant to such applicable laws;
- (h) SELLER'S execution of this Agreement does not violate any other contracts, Agreements, or any other arrangements of any nature whatsoever that SELLER has with third parties; and
- (i) There are no petitions in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or other action under Federal or State bankruptcy laws pending against or contemplated by SELLER.

Each of the above representations is material and is relied upon by MEDC and the CITY. Except in so far as the SELLER has advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall survive the Closing. If, before Closing, SELLER discovers any information or facts that would materially change the foregoing covenants, warranties or representations, SELLER shall immediately give notice to BUYER of those facts and information.

In the event of a breach of any representation set forth in paragraph 23. prior to Closing, MEDC may elect either (i) to waive such breach and proceed to Closing with no reduction in the Purchase Price, or (ii) terminate this Agreement upon written notice to SELLER, in which case the parties shall have no further obligations under this Agreement other than those obligations, if any, that expressly survive the termination of this Agreement.

24. TITLE STANDARD: Any title matter or practice arising under or relating to this Agreement which is the subject of a title or practice standard of The Real Estate Bar

Association for Massachusetts, Inc. at the time for delivery of the Deed shall be governed by such standard to the extent applicable.

25. NOTICE: Whenever, by the terms of this agreement, notice shall or may be given either to MEDC, to BUYER, CITY or to SELLER, such notice shall be deemed to have been given only if in writing and either delivered by hand or sent by registered or certified mail, postage prepaid, as follows:

if intended for the MEDC or BUYER to: Meredith Harris, Executive Director
MEDC
91 Main Street
Marlborough, MA 01752

with copy to: Arthur G. Vigeant, Mayor
City of Marlborough
140 Main Street
Marlborough, MA 01752

Cynthia Panagore Griffin, Esq.
City of Marlborough Legal Dept.
140 Main Street
Marlborough, MA 01752

if intended for CITY or BUYER, to: Arthur G. Vigeant, Mayor
City of Marlborough
140 Main Street
Marlborough, MA 01752

with copy to: Cynthia Panagore Griffin, Esq.
City of Marlborough Legal Dept.
140 Main Street
Marlborough, MA 01752

and, if intended for the SELLER, to: Geraldine Fossile, Trustee
Lincoln & Mechanic Realty Trust
424 South Street
Marlborough, MA 01752

with a copy to: Sandra R. Austin, Esq.
Law Office of Sandra Rennie Austin
40 Mechanic Street, Suite 305
Marlborough, MA 01752

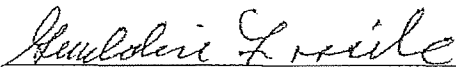
or such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when deposited in the mail within the continental United States.

26. OPPORTUNITY TO CONFER WITH LEGAL COUNSEL: The parties hereby acknowledge that they have been offered the opportunity to seek and confer with qualified legal counsel of their choice prior to signing this Agreement.
27. NEXT BUSINESS DAY: If the period by which any right, option or election must be exercised, or by which any act must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, Federal or Commonwealth of Massachusetts holiday, such time shall automatically extend through the close of business on the next business day.
28. BINDING ON SUCCESSORS: This Agreement shall be binding not only upon the parties, but also upon their respective heirs, personal representatives, assigns, and other successors in interest.
29. COUNTERPARTS: This Agreement may be signed and delivered in counterparts with the same effect as if each party had signed and delivered the same copy. When each party has executed and delivered a counterpart, all counterparts together constitute one Agreement. A copy of the executed Agreement that has been faxed or sent electronically shall have the same force and effect as the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SELLER:

GERALDINE FOSSILE, TRUSTEE
LINCOLN AND MECHANIC REALTY TRUST:

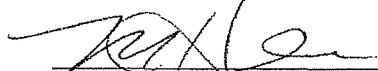


Geraldine Fossile

Date: 3-15-2018

MEDC

MARLBOROUGH ECONOMIC DEVELOPMENT CORPORATION
BY ITS DULY AUTHORIZED EXECUTIVE DIRECTOR:

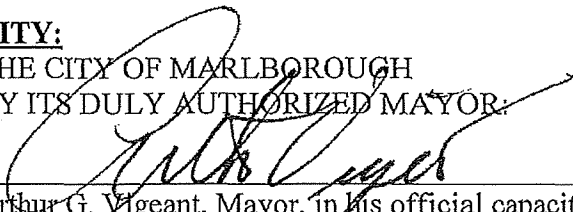


Meredith Harris, Executive Director, in her official capacity

Date: 3/19/18

CITY:

THE CITY OF MARLBOROUGH
BY ITS DULY AUTHORIZED MAYOR:



Arthur G. Vigeant, Mayor, in his official capacity

Date: 3/15/18

LIST OF ATTACHMENTS

ATTACHMENT "A"	IRS Form W-9, Taxpayer Identification Number and Certification
ATTACHMENT "B"	Certificate of Non-Foreign Status (IRS Code, 26 CFR 1.1445-2)

ATTACHMENT A

Form **W-9**
(Massachusetts Substitute W-9 Form)
Rev. April 2009

Request for Taxpayer Identification Number and Certification

Completed form should be
given to the requesting
department or the department
you are currently doing
business with.

Name (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I-See Specific Instruction on page 2)

Business name, if different from above. (See Specific Instruction on page 2)

Check the appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶

Legal Address: number, street, and apt. or suite no.

Remittance Address: If different from legal address number, street, and apt. or suite no.

City, state and ZIP code

City, state and ZIP code

Phone # ()

Fax # ()

Email address:

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instruction on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number

□□□-□□-□□□□

OR

Employer identification number

□□-□□□□-□□□□

Vendors:

Dunn and Bradstreet Universal Numbering System (DUNS)

DUNS

□□□□□□□□

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Services (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am an U.S. person (including an U.S. resident alien).
- I am currently a Commonwealth of Massachusetts's state employee: (check one): No ☐ Yes ☐ If yes, in compliance with the State Ethics Commission requirements.

Certification Instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply.

Sign
Here

Authorized Signature ▶

Date ▶

Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify you are not subject to backup withholding

If you are a foreign person, use the appropriate Form W-8. See Pub 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

What is backup withholding? Persons making certain payments to you must withhold a designated percentage, currently 28% and pay to the IRS of such payments under certain

conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- You do not certify your TIN when required (see the Part II instructions on page 2 for details), or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the Part II instructions on page 2.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name. If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first and then circle the name of the person or entity whose number you enter in Part I of the form.

Sole proprietor. Enter your individual name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Other entities. Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Part I - Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box.

If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see How to get a TIN below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are an LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* above), and are owned by an individual, enter your SSN (or "pre-LLC" EIN, if desired). If the owner of a disregarded LLC is a corporation, partnership, etc., enter the owner's EIN.

Note: See the chart on this page for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office. Get Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3876) or from the IRS's Internet Web Site www.irs.gov.

If you do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments.

The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Part II - Certification

To establish to the paying agent that your TIN is correct or you are a U.S. person, or resident alien, sign Form W-9.

For a joint account, only the person whose TIN is shown in Part I should sign (when required).

Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

Dunn and Bradstreet Universal Numbering System (DUNS) number requirement. The United States Office of Management and Budget (OMB) requires all vendors that receive federal grant funds have their DUNS number recorded with and subsequently reported to the granting agency. If a contractor has multiple DUNS numbers the contractor should provide the primary number listed with the Federal government's Central Contractor Registration (CCR) at www.ccr.gov. Any entity that does not have a DUNS number can apply for one online at <http://www.dnb.com/us/> under the DNB D-U-N Number Tab.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to give your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws.

You must provide your TIN whether or not you are required to file a tax return. Payors must generally withhold a designated percentage, currently 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payor. Certain penalties may also apply.

What Name and Number to Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ⁴
5. Sole proprietorship	The owner ³
For this type of account:	Give name and EIN of:
6. Sole proprietorship	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

If you have questions on completing this form, please contact the Office of the State Comptroller, (617) 973-2468.

Upon completion of this form, please send it to the Commonwealth of Massachusetts Department you are doing business with.

ATTACHMENT B

CERTIFICATE OF NON FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform _____
(the "Transferee") that withholding of tax is not required upon the disposition of a U.S. real property interest by _____
(the "Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. That the Transferor is the owner of the following described property, to wit:

Block: _____ Lot: _____ County: _____

Premises: _____

2. The Transferor is not a non-resident alien for purposes of the U.S. income taxation (as such term is defined in the Internal Revenue Code and Income Tax Regulations).

3. The Transferor's U.S. taxpayer identification number (Social Security Number) is _____

4. The Transferor's address is _____

5. The Transferor understands that this certification be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS CERTIFICATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE, AND I FURTHER DECLARE THAT I HAVE AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.

DATED: _____

BY: _____

BY: _____

BY: _____

BY: _____



IN CITY COUNCIL

Marlborough, Mass., ~~APRIL 23, 2018~~

ORDERED:

That the Communication from the Mayor re: City of Marlborough Management Letter for FY2017, be and is herewith refer to **FINANCE COMMITTEE.**

ADOPTED

ORDER NO. 18-1007241



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

4
Arthur G. Vigeant
RECEIVED FOR
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
Michael J. Villano
EXECUTIVE AIDE
2018 APR 19 A 10:39
Patricia Bernard
EXECUTIVE SECRETARY

April 19, 2018

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

GIN

Re: City of Marlborough Management Letter for Fiscal Year 2017

Honorable President Clancy and Councilors:

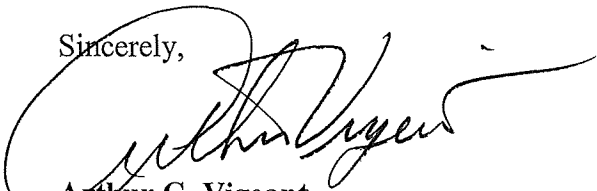
Please find enclosed a copy of the City of Marlborough's Management Letter for Fiscal Year 2017 from our outside auditors, Roselli, Clark, & Associates.

I am proud of the hard work of Auditor Diane Smith and Comptroller / Treasurer Brian Doheny in helping obtain another clean audit. We continue to make progress on recommendations from Roselli, Clark, & Associates past audits. We have reviewed their Fiscal Year 2017 audit closely.

Our strong AA+ credit rating ensures that we are able to secure good value in the bond market. Thank you for your continued collaboration, oversight, and assistance on maintaining Marlborough's strong financial standing for future generations.

If you have any questions, or would like to discuss either of these documents in detail, please do not hesitate to contact me, Brian Doheny, or Diane Smith.

Sincerely,


Arthur G. Vigeant
Mayor

Enclosure

CITY OF MARLBOROUGH, MASSACHUSETTS

MANAGEMENT LETTER

YEAR ENDED JUNE 30, 2017

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ROSELLI, CLARK & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS

500 West Cummings Park
Suite 4900
Woburn, MA 01801

Telephone: (781) 933-0073

www.roselliclark.com

The Honorable Mayor and City Council
City of Marlborough
Marlborough, Massachusetts

In planning and performing our audit of the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Marlborough, Massachusetts (the "City") as of and for the year ended June 30, 2017, in accordance with auditing standards generally accepted in the United States of America, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

This communication is intended solely for the information and use of management, the Mayor, City Council and others within the City, and is not intended to be, and should not be, used by anyone other than these specified parties.

Roselli, Clark & Associates

Roselli, Clark & Associates
Certified Public Accountants
Woburn, Massachusetts
December 13, 2017

OVERVIEW

Throughout fiscal year 2017, the local, state-wide and national economies continued to strengthen. Unemployment rates are low and property values are rising. The City continues to experience new growth. A number of significant commercial and industrial building projects are underway, which will further strengthen the City's already impressive property tax base. Furthermore, several large corporations have relocated to the City, recognizing its affordable housing, vibrant restaurants, good location and proximity to many institutions of higher education.

The City's financial condition continues to be strong. The City has not increased its property tax rates (subject to Proposition 2 ½) in many years. Rather, property tax growth has come in the form of new growth within the City. Despite this, the City enjoys nearly \$33.6 million in unused levy capacity.

In its governmental funds financial statements, which most closely resembles the City's statutory accounting records, the City's unassigned fund balance in its general fund exceeded \$33.1 million at June 30, 2017. This is an approximate \$3.4 million increase from the prior year and is indicative of strong revenue growth. Included in the unassigned fund balance at June 30, 2017 and 2016 was approximately \$13.7 million and \$11.6 million in stabilization funds, respectively.

Liquidity in the general fund is often measured by comparing both the unassigned fund balance to the current year's total fund expenditures. Credit rating bureaus often refer to this as a "reserve ratio." At June 30, 2017, the unassigned fund balance in the general funds approximated 22% of total general fund expenditures. Furthermore, the total fund balance in the general fund approximated 27% of that same amount. The City's reserve ratio of 22% at June 30, 2017 is very strong and was consistent with the prior year's reserve ratio.

The City has been at the forefront in Massachusetts in establishing and funding an OPEB trust to assist the City in funding its future postemployment health benefits to its employees. At June 30, 2017, the City's OPEB trust totaled nearly \$7.8 million. The City contributed \$1.3 million to its OPEB trust in fiscal year 2017 and expects to continue making material future contributions to mitigate this future obligation. The monies in this trust are principally overseen and managed by a third party investment manager with significant experience with Massachusetts municipalities.

The City's budgetary flexibility, strong reserve ratio and planning/funding for its future obligations has undoubtedly been seen as positive factors to Standard & Poor's Financial Services LLC ("S&P"). S&P assigned the City an AA+ credit rating, which signifies that the City's general obligation bonds are of investment grade, high quality and very low credit risk. Furthermore, this is the second highest credit S&P issues on long-term debt; the highest being rated as AAA.

The remainder of the report reflects informational items and findings and recommendations. This discussion is intended to provide the City and its management with recommendations for improvement in accounting and financial operations. The City should review these recommendations and, if determined to be cost-effective, implement these improvements. Items that have been repeated from past letters to management are so indicated.

INFORMATIONAL ITEMS

New Financial Statement Disclosures – OPEB Part 1

The City adopted Governmental Accounting Standards Board, or GASB, issued Statement No. 74, *Financial reporting for Postemployment Benefit Plans Other Than Pensions*, in fiscal year 2017. Other postemployment benefits are commonly referred to as “OPEB” and includes health and welfare plans and other similar benefits provided to City retirees exclusive of pension benefits. The City’s current policy is to contribute 60% to 70% of the cost of retiree health insurance costs, which represents the largest component of OPEB.

The adoption of this accounting standard resulted in additional disclosures within the City’s financial statements and the inclusion of the effects of retiree benefits paid and received (both from the City and its retirees) in the City’s fiduciary funds financial statements.

FY 2018 New Accounting Principle – OPEB Part 2

As discussed in previous letters to management, the City will be required to report the full amount of its net OPEB *liability* in its government-wide and proprietary funds financial statements in fiscal year 2018. The City currently reports a net OPEB *obligation* in its government-wide financial statements calculated under GASB 45.

The City net OPEB *liability* is significantly greater than its net OPEB *obligation*. The City’s independent actuary determined that its net OPEB *liability* at June 30, 2017 was approximately \$114.5 million versus a net OPEB *obligation* of approximately \$48.7 million.

The City’s independent actuary will remeasure the City’s net OPEB liability at June 30, 2018. The City will present this figure in its fiscal year 2018 affected financial statements. This will result in a further deterioration in the City’s unrestricted net position.

The City established an OPEB trust fund several years ago and has made substantial contributions to it. As it stands at June 30, 2017, the OPEB trust fund is approximately 6% funded.

As we have indicated in several previous letters to management, the City should continue to include OPEB in its long-term planning.

Changes to Single Audit Requirements – Need for Internal Control Framework

In our previous two letters to management, we notified the City that there were a number of changes made to single audits. One of the requirements under the new Uniform Guidance (the successor to the OMB A-133 compliance supplement) is that all federal award recipients are required to establish an internal control system based on a recognized internal control framework such as the Green Book or COSO.

To date, the City has made little progress in this area. We continue to recommend that the City’s finance team, inclusive of the School Business Manager, prioritize this matter to properly establish and document their internal control system this year.

Student Activities in the News

On November 27, 2017, the *Boston Globe* reported on the Boston Public Schools' use of student activity accounts to pay employees "under the table" and for purposes unrelated to student activities. These violations of federal and state tax law and Massachusetts General Laws were uncovered by an IRS audit. The *Boston Globe* article spotlights the need for continued oversight of the operation of a school district's use of student activity accounts as well as the risks associated with their misuse. Furthermore, as these matters were made public in the state's most widely circulated daily newspaper, this may lead to additional rules and regulations being issued by the Commonwealth related to student activity accounts. We recommend that the City provide a copy of this article to all school principals as a training tool and to continue its diligence in managing this fiduciary activity.

We are pleased to report that the City's schools undergo independent reviews of their student activity accounts on a rotational basis in accordance with recommendations set forth by the Massachusetts Department of Elementary and Secondary Education and MASBO. In our reports on the City's student activities for its elementary schools and its middle and high schools dated June 17, 2015 and November 15, 2015, respectively, there were a number of areas in need of improvement district wide and at the individual school level. The next scheduled period of independent review of the City's schools will be for fiscal year 2017 at the elementary schools. We recommend that the City and its school district revisit our previously issued reports on its student activity funds and ensure that progress has been made in areas in need for improvement.

Fraud Prevention Measures

As previously reported to management, the City needs to take a number of steps to address fraud risk including (i) performing risk assessments, (ii) developing a written fraud policy and (iii) performing periodic internal reviews and "audits" within its departments. These recommendations are discussed in greater detail in our January 9, 2015 letter to management.

There have been several very public instances of municipal fraud in area communities that heighten the public's awareness of this risk. We continue to stress the need for increased diligence in risk assessment, particularly in departments that accept cash from residents and businesses that are outside the reach of the City Collector. Furthermore, we continue to stress the need to perform period spot internal reviews or "audits" of departments by the City Auditor.

Improvements Since our Previous Letter to Management

The City has addressed many of the matters discussed in our previous letter to management, most notably:

- In October 2017, the City Council approved an order to adopt an abbreviated budget authorization format for all departments effective fiscal year 2018. This change is expected to afford more budgetary flexibility and efficiencies.
- Custody of student activity depository accounts was transferred from the City's schools to the City Treasurer in accordance with Massachusetts General Law.
- The City Auditor conducted an analysis of the City's capital projects funds and corrected prior year account processing errors, which resulted in the elimination of many deficits. This also resulted in the restatement of the City's June 30, 2016 capital projects' balances between City, water and sewer funds.

- The City implemented a fixed asset database in fiscal year 2017 and is now accounting for capital assets and their associated depreciation.

Items We Continue to Highlight

The following summarizes findings and recommendations we made in our previous three letters to management that have not yet been addressed by the City. You should refer to those letters for specific details.

- The City's water and sewer departments function as enterprise funds. However, enterprise fund legislation has never been sought for these operations. Adopting such legislation would permit the City to better insulate its general fund from shortfalls resulting from these operations, which negatively impact the City's free cash calculation and general fund operations.
- The City has not yet formalized its policies and procedures into a comprehensive manual. We recognize that such a program, without outside assistance, is potentially a multi-year endeavor. However, the development of formal policies and procedures for key financial processes is not only a key element in any internal control system, but an invaluable tool in the event of personnel turnover.
- The City's allocation of pension benefits to its water and sewer operations is not based on common allocation methodologies. As a result, these operations are assessed larger percentages than would typically be assessed. We've recommended that the City revalue its pension allocation methodology to employ a system based on actual payroll paid.
- The Marlborough Community Development Authority ("CDA") and Marlborough Housing Authority share a number of resources. Recently, the Marlborough Housing Authority has been invoicing the CDA for its share of these costs using a formula it developed with the assistance of an outside accounting firm. However, a formal cost sharing agreement between these two entities does not exist. We recommended that a simple, yet formal cost sharing agreement be executed between the two entities.

FINDINGS AND RECOMMENDATIONS

Capital Asset Maintenance

As discussed in the *Improvements Since our Previous Letter to Management* portion of this letter to management, the City recently implemented a fixed asset database to account for its capital assets. Upon review of the details included in this fixed asset database, there are numerous fully-depreciated capital assets (particularly vehicles) that have likely been disposed in previous years. The inclusion of these fully-depreciated capital assets in the City's financial statements does not have an impact on the City's reported net position or its net investment in capital assets. However, the reported gross value of capital assets and associated accumulated depreciation are overstated as a result of the inclusion of these fully-depreciated capital assets, which are no longer in operation.

We recommend that the City evaluate its capital asset registers and identify capital assets that are no longer in operation and take the necessary actions to dispose of these assets in the City's fixed asset database.

* * * * *



IN CITY COUNCIL

Marlborough, Mass., _____ APRIL 23, 2018

ORDERED:

That the City of Marlborough hereby accepts section 3 of c. 64N of the Massachusetts General Laws, as amended, to impose an excise on the retail sales of marijuana for adult use at the rate of 3 percent, said excise to be deposited into the General Fund, be and is herewith refer to **FINANCE COMMITTEE**.

Councilor Juairé recused.

ADOPTED

ORDER NO. 18-1007242



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
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Arthur G. Vigeant
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2018 APR 19 A 10:39
Patricia Bernard
EXECUTIVE SECRETARY

April 19, 2018

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

JIN

Re: General Laws Acceptance – Local Option Marijuana Sales Tax

Honorable President Clancy and Councilors:

I recommend that the Marlborough City Council accept Massachusetts General Laws Chapter 64N Section 3 which would permit the City of Marlborough to impose a 3 percent local sales tax on the "sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the City."

As with other local option taxes, the tax would be collected by the Department of Revenue and disbursed back to the City.

If marijuana companies will be permitted to operate in Marlborough, I believe we should ensure that Marlborough collects this local sales tax to continue supporting our operating costs.

Thank you for your consideration. If you have any question, please do not hesitate to contact me.

Sincerely,

Arthur G. Vigeant
Arthur G. Vigeant
Mayor

Patricia Bernard

Enclosure

Chapter 55 of the Acts of 2017

AN ACT TO ENSURE SAFE ACCESS TO MARIJUANA

Approved, July 28, 2017

SECTION 13. Said chapter 64N is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section:-

Section 3. (a) A city or town that accepts this section in the manner provided in section 4 of chapter 4 may impose a local sales tax upon sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town to anyone other than a marijuana establishment at a rate not greater than 3 per cent of the total sales price received by the marijuana retailer as a consideration for the sale of marijuana or marijuana products. The marijuana retailer shall pay the local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth.

(b) All sums received by the commissioner under this section shall, at least quarterly, be distributed, credited and paid by the treasurer and receiver-general upon certification of the commissioner to each city or town that has accepted this section in proportion to the amount of the sums received in that city or town. Any city or town seeking to dispute the commissioner's calculation of its distribution under this subsection shall notify the commissioner, in writing, not later than 1 year from the date the tax was distributed by the commissioner to the city or town.

(c) This section shall take effect in a city or town on the first day of the calendar quarter following 30 days after its acceptance by the city or town or on the first day of a later calendar quarter that the city or town may designate.

ORDERED

That the City of Marlborough hereby accepts section 3 of c. 64N of the Massachusetts General Laws, as amended, to impose an excise on the retail sales of marijuana for adult use at the rate of 3 percent, said excise to be deposited into the General Fund.

ADOPTED

In City Council
Order No. 18-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY

ATTEST:



Bulletin

BUL-2018-3

LOCAL OPTION EXCISE ON RETAIL MARIJUANA SALES

TO: Assessors, Accountants, Auditors, Treasurers, Clerks, Mayors, Selectboards, City/Town Managers, Finance Directors, City/Town Councils, City Solicitors and Town Counsels

FROM: Sean R. Cronin, Senior Deputy Commissioner, Division of Local Services

DATE: April 2018

SUBJECT: New Local Excise on Retail Sales of Marijuana for Adult Use

This *Bulletin* provides information about the procedures for implementing the local option excise on retail sales of marijuana for adult use. The Department of Revenue (DOR) collects the local excises in addition to the state taxes on these sales and distributes the collections on a quarterly schedule.

The local excises become operative only if accepted by a city or town. Acceptance is by majority vote of the municipal legislative body, subject to local charter. G.L. c. 4, § 4. Questions about the charter requirements in your community should be referred to municipal counsel. As further explained in this *Bulletin*, acceptance of the local excise, or amendment of the excise rate, must occur at least 30 days in advance of the first day of a calendar quarter in order to become operative for that quarter.

Communities must report their acceptance or amendment of these local excises to the Division of Local Services (DLS) in the manner prescribed by this *Bulletin*.

If you have questions about these notification requirements, please contact the Municipal Databank at databank@dor.state.ma.us.

LOCAL OPTION EXCISE ON RETAIL MARIJUANA SALES
General Laws Chapter 64N, § 3
Applicable to Retail Sales of Marijuana for Adult Use on or after July 1, 2018

A city or town may impose a local excise on the retail sale of marijuana for adult use by accepting G.L. c. 64N, § 3. The maximum excise rate communities may impose is 3%. A community may adopt any rate up to that maximum. A city or town that accepts the excise may also amend its excise rate at a later date. If a city or town in which a marijuana retailer is located accepts G.L. c. 64N, § 3, all sales by the marijuana retailer that are subject to the state excise on marijuana retail sales will also be subject to the host community's local excise.

Acceptance or Amendment Procedure

Acceptance of the local excise on retail marijuana sales, or amendment of the local excise rate, is by majority vote of the municipal legislative body, subject to local charter. To accept, the city or town must vote to accept G.L. c. 64N, § 3 and specify the local excise rate. The following or similar language may be used:

VOTED: That the city/town of _____ accept G.L. c. 64N, § 3 to impose an excise on the retail sales of marijuana for adult use at the rate of _____ percent.

The following or similar language may be used to amend the local rate:

VOTED: That the city/town of _____ impose the local excise on the retail sales of marijuana under G.L. c. 64N, § 3 at the rate of _____ percent.

or

VOTED: That the city/town of _____ amend its local retail marijuana sales excise rate under G.L. c. 64N, § 3 to the rate of _____ percent.

Acceptance or Amendment Effective Date

A community's acceptance of the local excise on retail sales of marijuana, or amendment of its excise rate, becomes operative on the first day of the next calendar quarter after the vote, provided that date is **at least 30 days** after the vote to accept or amend. If not, the acceptance or amendment becomes operative on the first day of the second quarter after the vote. A community must accept the statute on or before May 31, 2018 in order for the DOR to begin collecting the excise on any marijuana retailer that begins operating on July 1, 2018, which is the earliest retail sales may begin in the state.

For the start dates of each quarter and last date an acceptance vote will take effect for that quarter, please see the attached schedule for local option excises collected by the DOR.

A city or town may make the acceptance or amendment operative at the start of a later quarter by including the later start date in the vote ("to take effect on January/April /July/October 1, 2____.")

Notification Requirements

The city or town clerk must notify the Municipal Databank within the DLS whenever the statute is accepted or revoked, or the excise rate is amended. (“[Notification of Acceptance/Revocation/Amendment of Excise Rate-Marijuana Retail Sales](#)”). The notice is to be submitted **within 48 hours** of the vote. **Without timely notice, the DOR cannot begin collecting the excise or new excise rate for the city or town.**

If you have questions about these notification requirements, please contact the Municipal Databank at databank@dor.state.ma.us or 617-626-2384.

Excise Revenue

Excise revenue belongs to the general fund of the city or town. To use estimated excise revenues in the tax rate for any fiscal year, a city or town must have accepted the **statute before that rate is set.**

Local Option Rooms, Meals and Marijuana Excise Tax Timetable

First Year of Adoption:

FY Quarter	Quarter Start Date	Local Action Deadline*	Month Tax Assessed by Establishment	Month Tax Revenue Collected by DOR	Distribution Date	Number of Months Revenue will be Collected**
Quarter 1	July 1st	May 31st	July	August	September 30th	10 Months
Quarter 2	October 1st	August 31st	October	November	December 31st	7 Months
Quarter 3	January 1st	December 1st	January	February	March 31st	4 Months
Quarter 4	April 1st	March 1st	April	May	June 30th	1 Month

Subsequent Years After Adoption:

FY Quarter	Quarter Start Date		Months Tax Assessed by Establishment	Months Tax Revenue Collected by DOR	Distribution Date	
Quarter 1	July 1st		May, June, July	June, July, August	September 30th	
Quarter 2	October 1st		August, September, October	September, October, November	December 31st	
Quarter 3	January 1st		November, December, January	December, January, February	March 31st	
Quarter 4	April 1st		February, March, April	March, April, May	June 30th	

* Once local option has been adopted, no further local action required.

** After first year of local adoption, communities will receive full year of revenue.

FY19 FINCOM Budget Schedule

In anticipation of the Mayor submitting to the Council the FY19 budget, below is a proposed timeline for reviewing the budget that I would like the Councilors, the Mayor and Department Heads to provide comments on to ensure the FINCOM FY19 budget meetings can be conducted efficiently.

May 3, 2018 – Mayor Submits FY19 budget to the Council (this starts the 45 day review period). **Action:** Solicitor Rider to provide the official date that the Council must act on the budget – my math indicates June 17. Since it is a Sunday it moves to June 18.

May 7, 2018 – FY19 budget on the council agenda and sent to FINCOM.

NOTE: Between May 3 and May 8 – Councilors review budget to identify departments that may require discussion at FINCOM meetings.

May 8, 2018 (6 PM to 10 PM) – FINCOM meeting – Mayor presents budget overview and revenue projections. FINCOM starts deliberation on budget.

May 9, 10, 14 and May 15 (6 PM to 10 PM) -FINCOM continues (If needed) and concludes budget review.

May 21, 2018 – Public hearing on FY19 budget. FINCOM reports out the FY19 budget recommendation.

June 4, 2018 – Council votes on FY19 budget

Please identify dates that may cause a conflict. Recognize that not every date request will be granted but will make every effort to address scheduling challenges.

For reference purposes, **the FY18 budget** was discussed and voted on in FINCOM in one meeting on April 26, 2017 (6:00 PM to 10:05 PM). A summary of the April 26, 2017 FINCOM meeting is below:

- The FINCOM voted 5 – 0 to approve a \$409,195.00 reduction to the Mayor's FY18 budget of \$156,990,717.00. The FINCOM voted 5 – 0 to approved a FY18 budget of \$156,581,522.00. This represents a 4.66% increase from the FY17 budget or an increase of \$6,972,449.00.

Below summarizes the \$409,195.00 reductions:

- Council Secretary/Research Assistant line item 50350 by \$6,195.00
- Public Facilities Electricity line item 52120 by \$400,000
- Assabet Valley School Committee line item 50349 by \$3,000

For reference purposes, **the FY17 budget** was discussed and voted on in FINCOM in one meeting on May 11, 2016 (6:02 to 9:19 PM). A summary of the May 11, 2016 FINCOM meeting is below:

- The FINCOM voted 5 – 0 to approve a \$254,205.00 reduction to the Mayor's FY17 budget of \$149,863,278.00. The FINCOM voted 5 – 0 to approved a FY17 budget of \$149,609,073.00. This represents a 4.78% increase from the FY16 budget or an increase of \$6,821,311.00.

Below summarizes the \$254,205 reductions:

- Councilors Salary Account 11110003-50070 - \$4,205.00
- Interest on BAN Account 17520006-59254 - \$50,000.00
- Sewer Service Fund Legal Services Account 600080004-53110 - \$200,000.00