

NEW BUSINESS

2-8-16

**COMMONWEALTH OF MASSACHUSETTS
TOWN OF MIDDLEBOROUGH
BOARD OF SELECTMEN (BOARD OF HEALTH)**

**NOTICE OF BETTERMENT AGREEMENT February 1, _____, 2016
NOTICE OF BETTERMENT**

TO THE REGISTER OF DEEDS OF PLYMOUTH COUNTY

NOTICE is hereby given that the Board of Selectmen of the Town of Middleborough acting as a Board of Health pursuant to General Laws, Chapter 111, Section 127B 1/2 entered into a Betterment Agreement

Dated December 22, 2015 **with** Patrick & Jennifer Sclafani
(insert date) (insert name(s) of property owner(s))

with respect to real estate located at 51 Saddleworth Way
(insert address of property)

in Middleboro, Massachusetts and described in a deed recorded in the Plymouth County

Registry of Deeds in Book 19263, **Page** 309
(insert book and page)

or filed as Document Number _____ **with the Plymouth**
(insert document number of deed)

District of the Land Court. The purpose of the Betterment Agreement is to authorize and enable the aforesaid property owner(s) to cause the said property to be serviced properly

by a septic system funded by financial assistance from the Town of Middleborough in the sum of up to and not exceeding

Sixteen Thousand Twenty Seven & .28/100 Dollars (\$ 16,027.28).
(insert amount in writing) (insert amount in numbers)

The aforesaid property owner(s) shall be responsible to pay the Town of Middleborough for all funds advanced to the owner(s) pursuant to the Betterment Agreement together with interest.

The Betterment Agreement and this Notice shall be subject to the provisions of Chapter 80 of the General Laws relative to the apportionment, division, reassessment and collection of Assessment, abatement and collections of assessments and to interest. The lien for betterment under Chapter 80, the Betterment Agreement and this Notice of Betterment Agreement shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment.

This Notice of Betterment Agreement shall be a betterment under Chapter 80.

Allin Frawley, Chairman

Leilani Dalpe, Vice Chairman

John M. Knowlton

Diane C. Stewart

Stephen J. McKinnon

Board of Selectmen
Town of Middleborough

**Commonwealth of Massachusetts
County of Plymouth**

**On This _____ day of _____ 20____ before me the
undersigned Notary Public, personally appeared _____, proved
to me through satisfactory evidence of identification which was _____
to be the person whose name is signed on the preceding or attached document, and
acknowledged to me that he/she signed it voluntarily for its stated purpose(s).**

**Signature of Notary
Jacqueline M. Shanley**

**(Seal)
My commission expires:**



Town of Middleborough

Massachusetts

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Planning Board

Telephone (508) 946-2425
Fax (508) 946-1991

January 19, 2016

Board of Selectmen
Town Office Building
20 Center Street, Third Floor
Middleborough, MA 02346

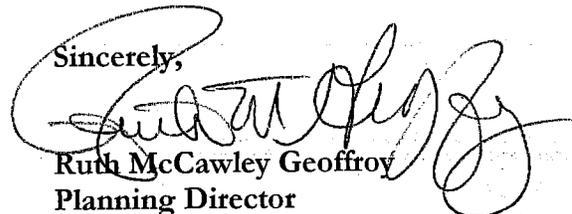
Re: Residential land classified as Forest Land under M.G.L.c.61 and /or Agricultural under M.G.L.c. 61A and Notice of First Refusal Option to Purchase such lands. Owner - J & W Properties, LLC. Map 99 Lots 1899, 2633, 2748, 3518, 3548, 4264 and 5148.

Honorable Board:

The Planning Board voted at their meeting on January 19, 2016, to recommend that the Town not exercise the Chapter 61A Agricultural and Chapter 61 Forest Land Tax Program Option for the above referenced, J & W Properties, LLC property, Assessors Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264 and 5148, located on Miller Street. The 61A and 61 Notice was sent to the Town Boards dated January 4, 2016.

If you have any questions, or wish to discuss this further, please do not hesitate to contact me.

Sincerely,



Ruth McCawley Geoffroy
Planning Director

CC: Conservation Commission
Board of Assessors



Town of Middleborough

CONSERVATION COMMISSION

20 CENTRE STREET
MIDDLEBOROUGH, MASSACHUSETTS 02346

PHONE: 1-508-946-2406
FAX: 1-508-946-2309

January 25, 2016

Board of Selectmen
Town Hall
10 Nickerson Avenue
Middleborough, MA 02346

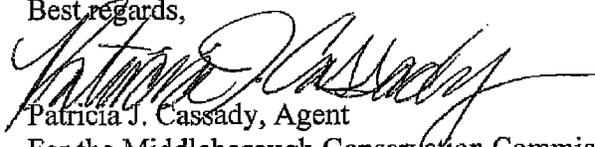
RE: Town's Option to Buy Chapter 61 & 61A Land – Miller Street (Map 99, Lots 1899,
2633, 2748, 3518, 3548, 4264 and 5148)

Honorable Board:

The Conservation Commission discussed the above-mentioned property at their January 21, 2016 meeting under communications and decided that they were not interested in pursuing the acquisition of these parcels for open space. These parcels are also not included in the current Open Space & Recreation Plan for priority protection. The Commission therefore recommends that the Town *not* exercise the Chapter 61/61A Tax Program Option for the properties.

If you have questions regarding this matter don't hesitate to contact the Conservation Department at 508-946-2406.

Best regards,


Patricia J. Cassady, Agent
For the Middleborough Conservation Commission

CC: Planning Board
Board of Assessors
Agricultural Commission
J & W Properties, LLC
Smolak & Vaughan, LLP

FILE



Town of Middleborough

Massachusetts

Board of Selectmen

MEMORANDUM

TO: Assessor's Office
Conservation Commission
Planning Board
Park Department
Zoning Board
Historical Commission
Agricultural Commission
Board of Selectmen

FROM: Board of Selectmen

DATE: January 27, 2016

RE: **Town's Option to Buy Chapter Land-Notice to sell or convert Residential land classified as Forest Land under M.G.L. C. 61 and/or Agricultural under M.G.L. C. 61A and Notice of First Refusal Option to Purchase such lands. Owner- J & W Properties, LLC Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264 and 5148**

The Board of Selectmen has received notice that **J & W Properties, LLC** owner of seven parcels of land located on Miller Street, Middleborough, MA intends to sell the property for residential use. This property is shown as Assessors Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264 and 5148.

Please submit written comments regarding this property to the Board by 12 Noon on Wednesday, February 3, 2015.

Thank you.

Attachments

January 2, 2016

Via Certified Mail

Board of Selectmen
Town of Middleboro
Attn: Allin Frawley, Chairman
Selectmen's Office
10 Nickerson Avenue
Middleboro, MA 02346

Re: Notice of Intent to Sell for residential use land which is or was taxed and classified as Forest land under M.G.L. c. 61 and/or Agricultural land under M.G.L. c. 61A and Notice of First Refusal Option to Purchase such lands

Dear Members of the Board of Selectmen:

This firm represents J&W Properties, LLC (the “Owner”), being the owner of seven parcels of land located on Miller Street in Middleboro, Plymouth County, Massachusetts, containing approximately 19.77 acres of land and being shown on the Town of Middleboro Assessors Maps as Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264, and 5148 (the “Property”). On behalf of the Owner, and in accordance with Section 8 of M.G.L. c. 61 and/or Section 14 of M.G.L. c. 61A, as applicable, this letter serves as formal notice to the Town of Middleboro (the “Town”) of the Owner’s intent to sell the Property for residential use. This notice is being sent pursuant to both MGL c. 61 and MGL c. 61A because in the past, both Chapter 61 and 61A lien restrictions have been recorded with the Plymouth County Registry of Deeds affecting title to the Property.

A copy of the Middleboro Assessors Map depicting the Property is attached hereto as **Exhibit A**. Copies of separate plans showing each tax parcel comprising the Property are also attached hereto as **Exhibit B**. For further reference and a more particular description of the Property see also deed dated February 18, 2014 and recorded with the Plymouth County Registry of Deeds at Book 44084, Page 305.

In accordance with Section 8 of M.G.L. c. 61 and Section 14 of M.G.L. c. 61A, the Owner intends to sell the Property for residential use. Attached as **Exhibit C** to this notice is a certified copy of an executed purchase and sale agreement, dated December 11, 2015, which is a “bona fide offer” within the meaning of both Section 8 of M.G.L. c. 61 and Section 14 of M.G.L. Chapter 61A, specifying the purchase price of \$665,000.00 and all other terms and conditions of the proposed sale. As provided under Section 8 of M.G.L. c. 61 and Section 14 of M.G.L. c. 61A, in the case of intended sale, the Town shall have, for a period of 120 days following the latest date of deposit in the U.S. mail of this notice to the Town, a first refusal option to meet a bona fide offer to purchase the Property.

SMOLAK & VAUGHAN LLP

Allin Frawley, Chairman
Board of Selectmen, Town of Middleboro
January 2, 2016

Both M.G.L. Chapter 61 and 61A require that the Town may only exercise its right of first refusal to purchase the Property following a public hearing. As such, we would respectfully request that if you intend to consider exercising such right to purchase that you hold such public meeting at your earliest convenience, so as to determine whether the Town would like to purchase the Property, since the anticipated closing date for this Property is due to occur in April 2016.

On the other hand, if the Town decides that it is not in the Town's best interests to exercise its right of first refusal to purchase the Property before the 120-day period expires, the Owner would respectfully request the Town to deliver a notice of non-exercise to the Owner signed by the Mayor (which shall include the name of the record owner of land and a description of the Property adequate for identification) in a form suitable for recording (with the Plymouth County Registry of Deeds) as required under Section 8 of M.G.L. Chapter 61 and Section 14 of M.G.L. Chapter 61A. For your convenience, a proposed form for such notice is included herewith as **Exhibit D**.

Finally, as required by Section 8 of M.G.L. Chapter 61 and Section 14 of M.G.L. Chapter 61A, the contact information including the name, address and phone number of both the Owner and the Owner's attorney are set forth as follows:

Owner:

J&W Properties, LLC
Attn: John Parks, Manager
31 Whitney Street
Saugus, MA 01906
781-233-2271 (Phone)

Owner Attorney:

Smolak & Vaughan LLP
Attn: Brian G. Vaughan, Esq.
21 High Street, Suite 301
North Andover, MA 01845
978-327-5217 (phone)

On behalf of the Owner, we thank you for your cooperation with this matter. We respectfully request that you contact me at 978-327-5217 should you have any questions or concerns. Thank you.

Sincerely,



Brian G. Vaughan

cc: Town of Middleboro Assessor (via certified mail)
Town of Middleboro Planning Board (via certified mail)
Town of Middleboro Conservation Commission (via certified mail)
State Forester, c/o Leo Roy, Commissioner,
Department of Conservation and Recreation (via certified mail)

SMOLAK & VAUGHAN LLP
Allin Frawley, Chairman
Board of Selectmen, Town of Middleboro
January 2, 2016

EXHIBIT A

ASSESSORS MAP

See copy of plan attached hereto.

**AFFIDAVIT OF NOTICE PURSUANT TO
SECTION 8 of M.G.L. C. 61 AND SECTION 14 of M.G.L. C. 61A**

I, Brian G. Vaughan, under the pains and penalties of perjury do hereby depose and state under oath that on this 2nd day of January, 2016, that on behalf of J&W PROPERTIES LLC, the owner of the real property shown on the Town of Middleboro Assessors Maps as Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264, and 5148, I have sent by certified mail, the attached notice of intent to convert agricultural land to each of the board of selectmen, assessor, planning board, conservation commission and state forester, being the persons and care of the parties listed on Exhibit A attached hereto, all of whom are required to be provided notice in accordance with Section 8 of M.G.L. Chapter 61 and/or Section 14 of M.G.L. Chapter 61A.

Signed under the pains and penalties of perjury this 2nd day of January, 2016.



Brian G. Vaughan

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

On this 2nd day of January, 2016, before me, the undersigned Notary Public, personally appeared Brian G. Vaughan, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the document, above, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public
My Commission expires

Notary Public
My Commission expires



JOHN T. SMOLAK
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 28, 2019

EXHIBIT A
TO AFFIDAVIT OF NOTICE

Board of Selectmen, Town of Middleboro:

Board of Selectmen
c/o Allin Frawley, Chairman
Town of Middleboro
10 Nickerson Avenue
Middleboro, MA 02346

Town of Middleboro Assessor:

Town of Middleboro Assessors
c/o Office of the Assessor
Town of Middleboro
10 Nickerson Avenue
Middleborough, MA 02346

Town of Middleboro Planning Board:

Planning Board
c/o Ruth McCawley Geoffroy, Director
Town of Middleboro Planning Department
20 Center Street (Second Floor)
Middleboro, MA 02346

Town of Middleboro Conservation Commission:

Middleboro Conservation Commission
c/o Steven Ventresca, Chairman
20 Centre Street, 2nd floor
Middleboro, MA 02346

State Forester:

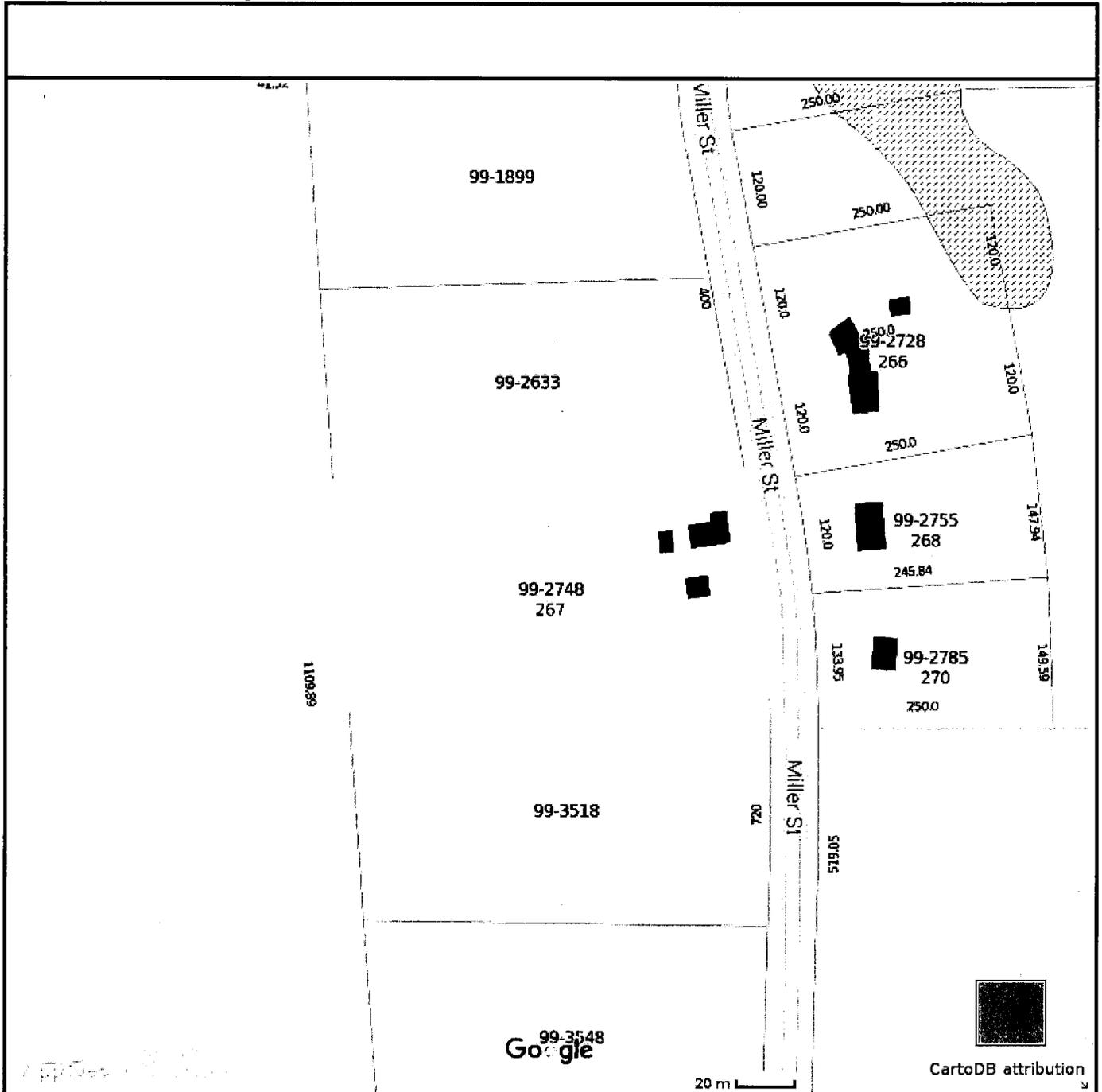
State Forester
c/o Leo Roy, Commissioner
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 900
Boston, Massachusetts 02114-2104

SMOLAK & VAUGHAN LLP
Allin Frawley, Chairman
Board of Selectmen, Town of Middleboro
January 2, 2016

EXHIBIT B

PLANS DEPICTING PROPERTY

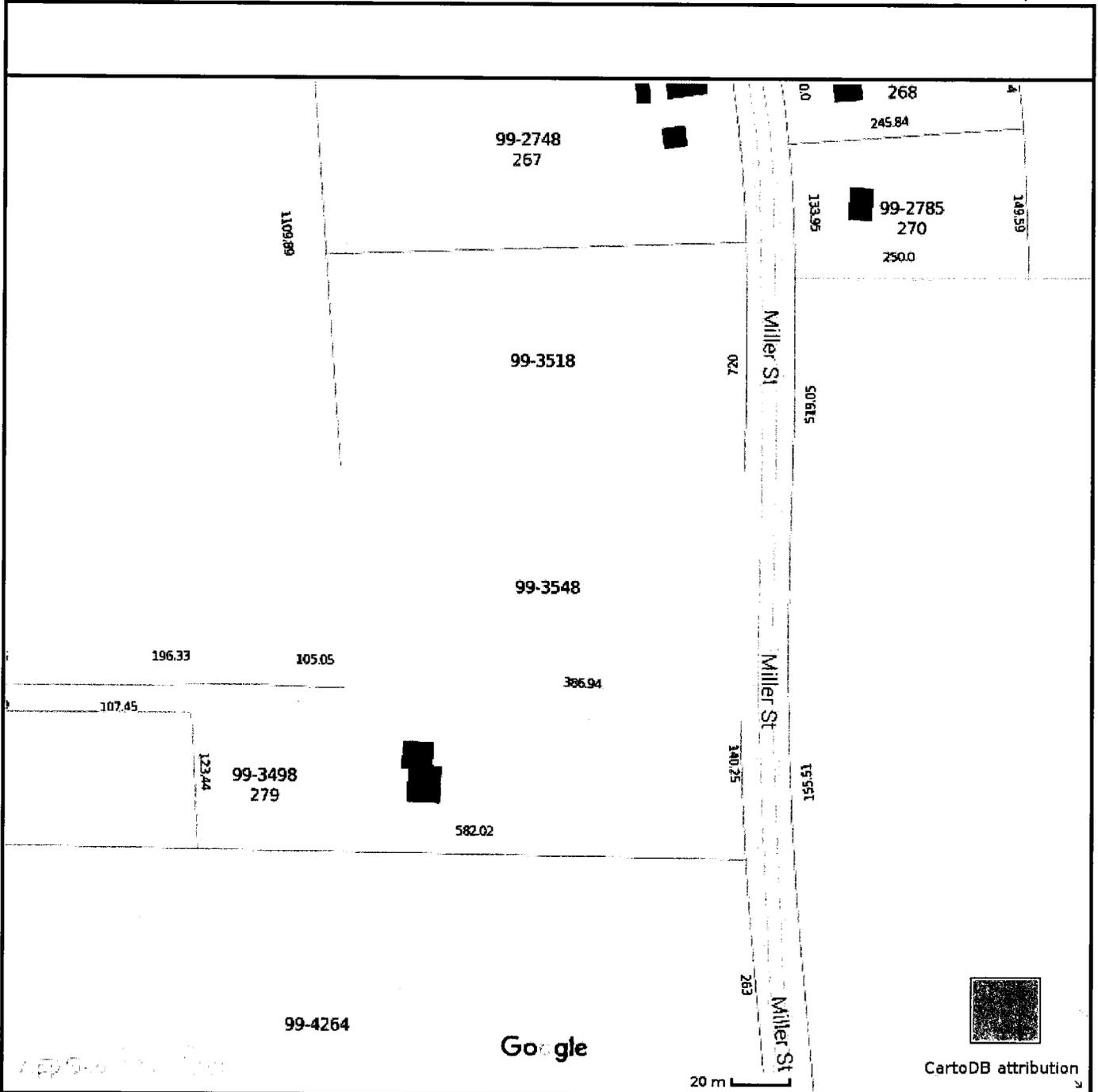
See copy of plan attached hereto.



Property Information	
Property ID	099-2748
Location	267 MILLER ST
Owner	J&W PROPERTIES LLC


MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT
 Town of Middleborough, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.
 Parcels updated 9/1/2015
 Properties updated 10/1/2015

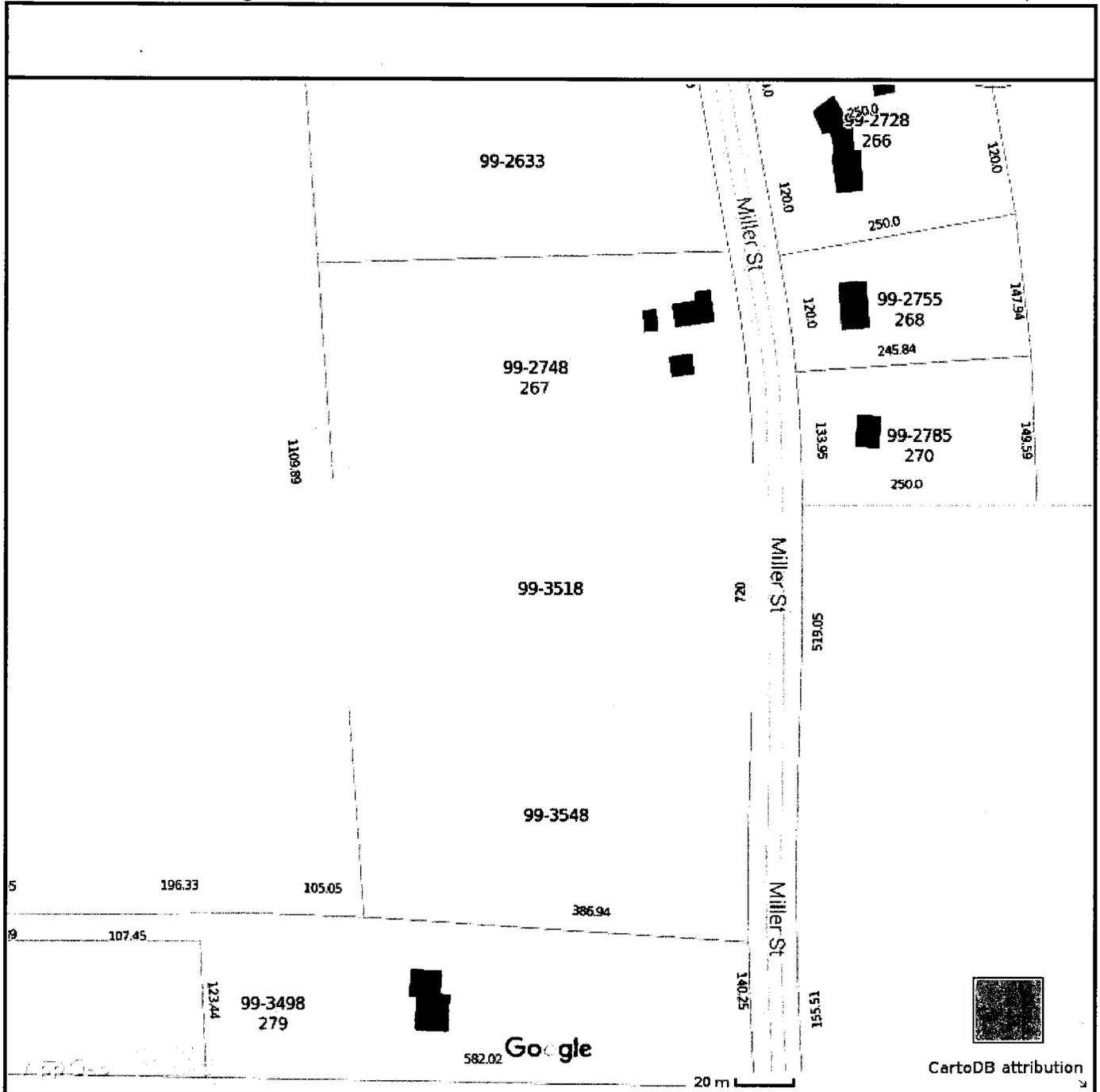
CartoDB attribution



Property Information	
Property ID	099-3548
Location	MILLER ST
Owner	J&W PROPERTIES LLC


MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT
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 Parcels updated 9/1/2015
 Properties updated 10/1/2015

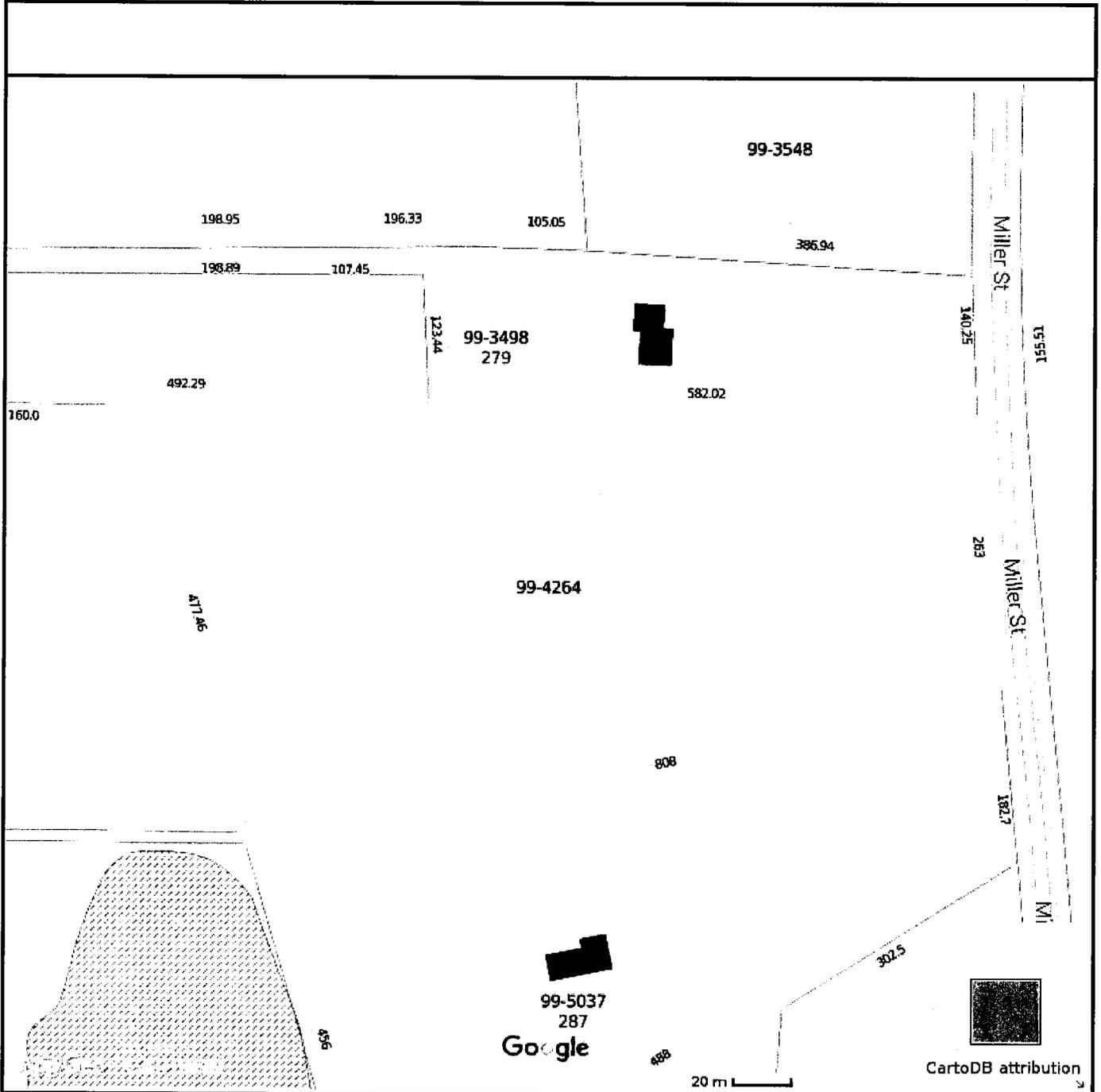
CartoDB attribution



Property Information	
Property ID	099-3518
Location	MILLER ST
Owner	J&W PROPERTIES LLC


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 Parcels updated 9/1/2015
 Properties updated 10/1/2015

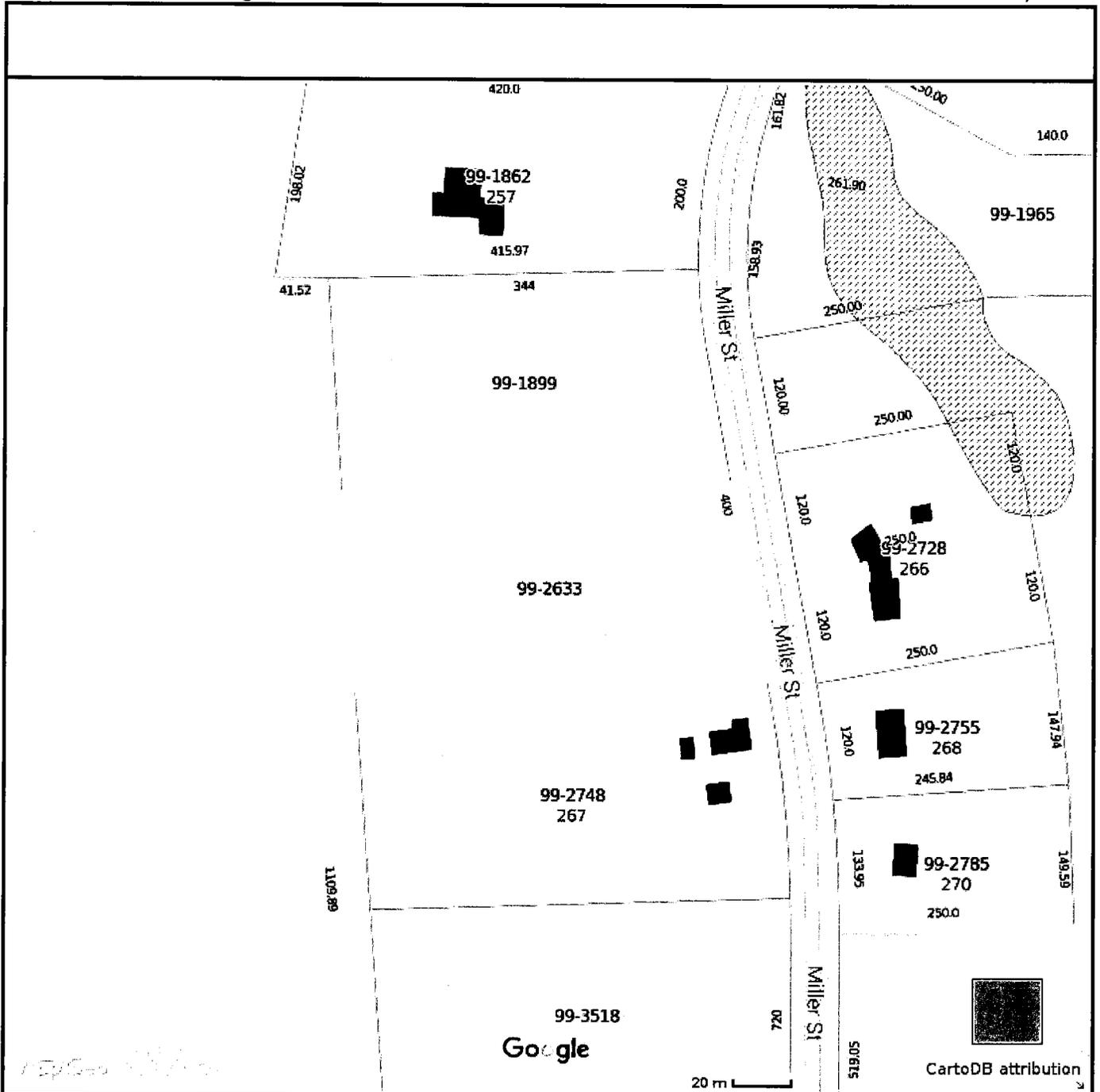
CartoDB attribution



Property Information	
Property ID	099-4264
Location	MILLER ST
Owner	J&W PROPERTIES LLC


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 Parcels updated 9/1/2015
 Properties updated 10/1/2015

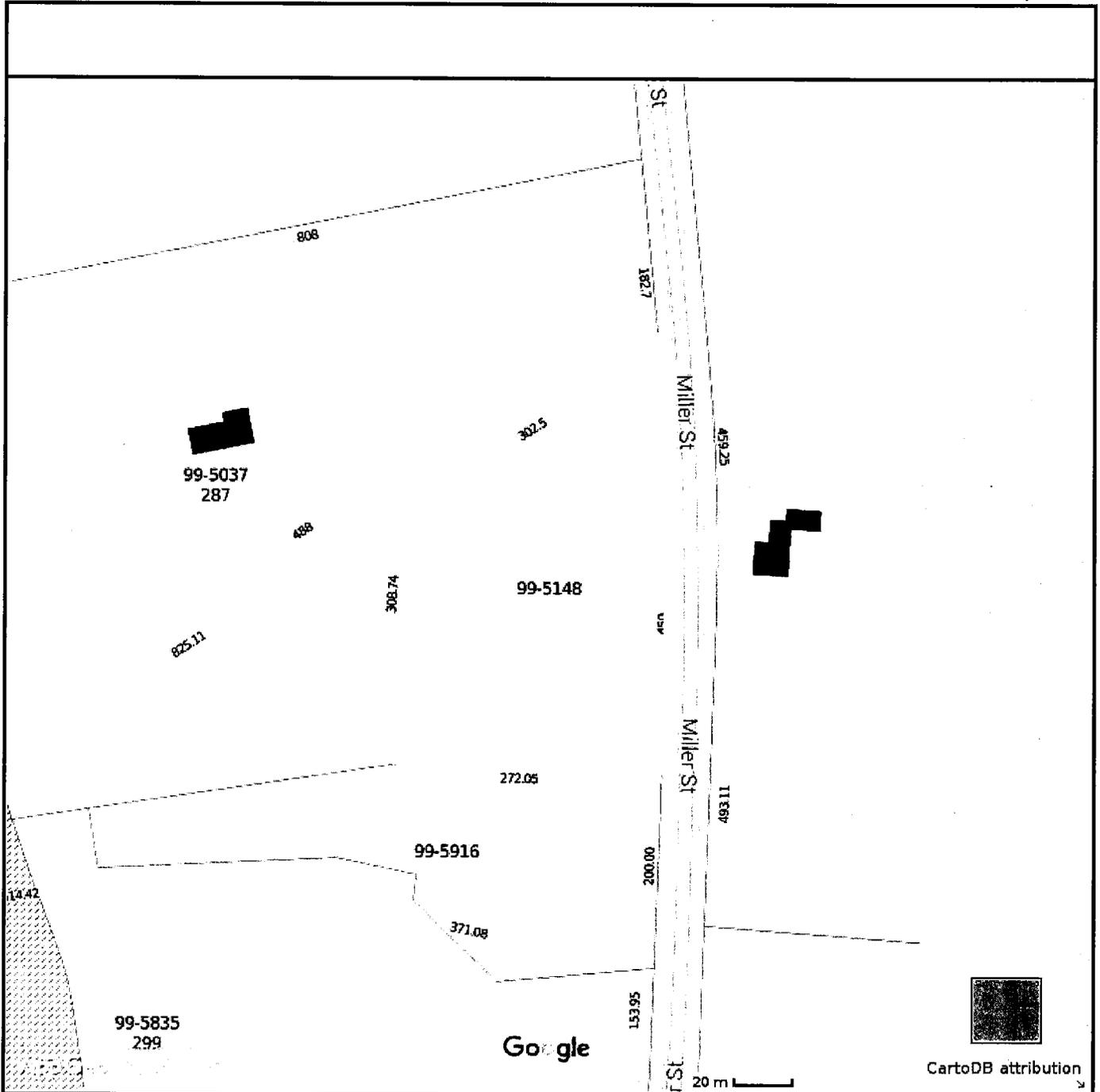




Property Information	
Property ID	099-2633
Location	MILLER ST
Owner	J&W PROPERTIES LLC


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 Parcels updated 9/1/2015
 Properties updated 10/1/2015

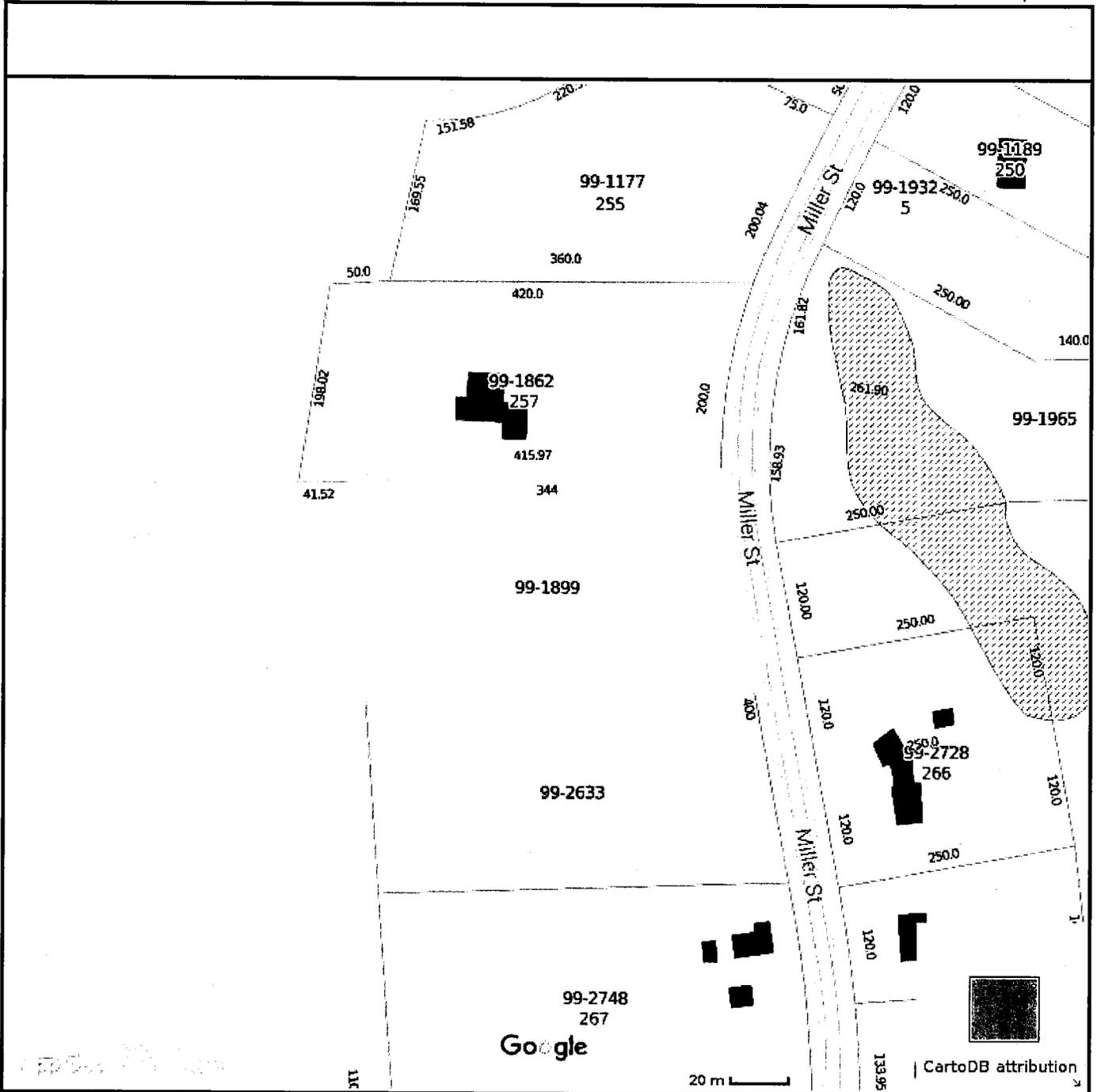
CartoDB attribution



Property Information	
Property ID	099-5148
Location	MILLER ST
Owner	J&W PROPERTIES LLC


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 Parcels updated 9/1/2015
 Properties updated 10/1/2015

CartoDB attribution



Property Information	
Property ID	099-1899
Location	MILLER ST
Owner	J&W PROPERTIES LLC


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 Town of Middleborough, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.
 Parcels updated 9/1/2015
 Properties updated 10/1/2015

CartoDB attribution

SMOLAK & VAUGHAN LLP
Allin Frawley, Chairman
Board of Selectmen, Town of Middleboro
January 2, 2016

EXHIBIT C

PURCHASE AGREEMENT

See copy of Purchase and Sale Agreement attached hereto.

ATTORNEY CERTIFICATION

I, Brian G. Vaughan, the undersigned attorney, do hereby certify that attached hereto is a true and correct copy of that certain Purchase and Sale Agreement, dated December 11, 2015, and made by and between J&W Properties LLC, as Seller, and TB Development LLC, as Buyer, concerning certain property located at Miller Street in Middleboro, Massachusetts which is shown on the Town of Middleboro Assessors Maps as Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264, and 5148.

Dated: January 2, 2016



Brian G. Vaughan
Smolak & Vaughan LLP
21 High Street, Suite 301
North Andover, MA 01845
(978) 327-5217

PURCHASE AND SALE AGREEMENT

This 11th day of December, 2015.

1. PARTIES	<p>J&W Properties, LLC, a limited liability company duly organized under the laws of the Commonwealth of Massachusetts, of 31 Whitney Street, Saugus, Massachusetts, hereinafter referred to as the SELLER, agrees to SELL and</p> <p>TB Development, ^{LLC} Inc., a ^{LLC} corporation duly organized under the laws of the Commonwealth of Massachusetts, of 113 East Grove Street, PO Box 265, Middleboro, Massachusetts, hereinafter referred to as the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:</p>
2. DESCRIPTION	<p>Those seven certain parcels of land with all the buildings and improvements situate thereon on Miller Street in Middleboro, Plymouth County, Massachusetts, and containing approximately 19.77 acres of land and being shown on the Town of Middleboro Assessors Maps as Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264, and 5148, and being the same premises as conveyed to the Seller by deed dated February 18, 2014 and recorded with the Plymouth County Registry of Deeds at Book 44084, Page 305.</p>
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES	<p>Included in the sale as a part of said premises are the buildings, structures, improvements now thereon, and the fixtures belonging to the SELLER included therein, if any.</p>
4. TITLE DEED	<p>Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:</p> <ul style="list-style-type: none">(a) Provisions of existing building and zoning laws;(b) Existing rights and obligations in party walls which are not the subject of written agreement;(c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;(d) Any liens for municipal betterments assessed after the date of this agreement which the Seller does not have notice of;(e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises as seven residential building lots;

5. PLANS	If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.
6. REGISTERED TITLE	Intentionally deleted; premises are not registered land.
7. PURCHASE PRICE	<p>The agreed purchase price of said premises is Six Hundred Sixty-Five Thousand and 00/100 (\$665,000.00) Dollars of which:</p> <p style="padding-left: 40px;">\$ 10,000.00 Is paid herewith as a deposit;</p> <p style="padding-left: 40px;">\$ 655,000.00 Are to be paid at the time of delivery of the deed in cash, or by cashier's, treasurer's, wire transfer, attorney's IOLTA check or bank check.</p> <p style="text-align: center;">-----</p> <p style="padding-left: 40px;"><u>\$ 665,000.00</u> TOTAL</p>
8. TIME FOR PERFORMANCE; DELIVERY OF DEED	Such deed is to be delivered at 10 o'clock A. M. on the 19 th day of February, 2015 or, if later, ten (10) days after the Town of Middleborough's Right of First Refusal to purchase the Property (as described in Rider A) is either waived or expires and lapses but no later than April 15, 2016, at the Plymouth County Registry of Deeds, or upon three (3) days written notice at the buyer's lender's counsel's office (also to be located within Plymouth County), unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.
9. POSSESSION AND CONDITIONS OF PREMISES	Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM	If the SELLER shall be unable to give title or to 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 do not conform with the provisions hereof, then the SELLER shall use reasonable efforts* to remove any defects in title, or to deliver possession as

	<p>provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. *For purposes hereof "reasonable efforts" shall not require the Seller to expend more than \$1,500.00 to cure any defect.</p>
<p>11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.</p>	<p>If at the expiration of the 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 on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.</p>
<p>12. BUYER'S ELECTION TO ACCEPT TITLE</p>	<p>The BUYER 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 their 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</p> <p>(a) pay over or assign to the BUYER, 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</p> <p>(b) if a holder of a mortgage on 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 so paid over or assigned, give to the BUYER 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 the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.</p>
<p>13. ACCEPTANCE OF DEED</p>	<p>The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.</p>

14. USE OF 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 simultaneously with the delivery of said deed, or suitable arrangements are made for their recording promptly thereafter in accordance with customary conveyance practices.
15. INSURANCE	N/A
16. ADJUSTMENTS	Real estate taxes for the then current year, shall be apportioned as of the day of 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 the BUYER at the time of delivery of the deed.
17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES	If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.
18. BROKER'S FEE	None.
19. BROKER(S) WARRANTY	None.
20. DEPOSIT	All deposits made hereunder shall be held in escrow by the Smolak & Vaughan LLP, as Escrow Agent ("Escrow Agent") subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. If a dispute arises between SELLER and BUYER concerning either party's right to the deposit made under this agreement, then the escrow agent shall make no disbursement of the deposits received unless and until he receives written notice from both the SELLER and BUYER, or an order from a court of competent jurisdiction, directing the disbursement of the funds or any portion thereof. In the event of litigation between BUYER and SELLER, the escrow agent may deliver the deposits to the clerk of any court in which said

	litigation is pending or to a court of competent jurisdiction and therein commence an action for interpleader. The deposits shall be held in a non-interest bearing account. If escrow agent is counsel for either party, the fact that the counsel served as escrow agent shall not prevent counsel from continuing to represent its client in connection with any dispute arising out of or relating to this Agreement.
21. BUYER'S DEFAULT; DAMAGES	If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages, and this shall be SELLER's sole and exclusive remedy at law or in equity.
22. WARRANTIES AND REPRESENTATIONS	The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): NONE
23. CONSTRUCTION OF AGREEMENT	This instrument, executed in multiple counterparts, is to be 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 enures 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 both the SELLER and to BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes 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 to it.
24. LEAD PAINT LAW	The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age. The BUYER acknowledges receipt of the Lead Paint Disclosure forms required by the Massachusetts Department of Public Health.

25. SMOKE DETECTORS & CARBON MONOXIDE DETECTORS	The SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire department of the city or town in which said premises are located stating that said premises have been equipped with approved smoke detectors and carbon monoxide detectors in conformity with applicable law. This provision shall be deemed to be satisfied if the SELLER provides a certificate of occupancy from the City of Taunton.
26. ADDITIONAL PROVISIONS	The initialed riders, if any attached hereto, are incorporated herein by reference.
27. TITLE AND PRACTICE STANDARDS	Any matter or practice arising under or relating to this agreement which is the subject of a practice or title standard of the Real Estate Bar Association shall be governed by such standard to the extent applicable.
28. NOTICES	Any notice to be given hereunder shall be deemed duly given if mailed by certified mail, return receipt requested, or delivered by any form of private delivery requiring a signed receipt, postage and charges prepaid, to the parties at their addresses set forth above.

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.

BUYER:

TB Development, ^{LLC} ~~INC.~~:


 By: Timothy Madson, Manager

SELLER:

J&W Properties, LLC:


 By: JOHN W. PATZER MANAGER

Rider "A"

1) 61A Contingency

Buyer acknowledges that this property is subject to the provisions of M.G.L. Ch. 61A. Said M.G.L. Ch. 61A requires that if any portion of the property subject to said Ch. 61A is to be sold for use other than as agricultural, it must first be offered to the Town of Middleboro. If the Town elects not to purchase the property, then it may be released from Ch. 61A and sold. Seller agrees to forthwith offer this property to the Town in accordance with Ch. 61A. This Agreement is contingent upon the non-exercise by the Town of its right of first refusal and release from Ch. 61A. Seller agrees to pay any conveyance or roll-back taxes that are imposed by the Town in regard to obtaining any such release.

2) Contingent on Perc – Buyer Provides

This Agreement is contingent upon the Buyer obtaining, at his sole cost and expense, valid percolation tests, which test results allow for the installation of standard on-site septic disposal systems on seven individual lots. In the event that such percolation test results cannot be obtained despite continued good faith efforts of the Buyer, then this Agreement is voidable at the option of the Buyer upon written notice to the Seller.

Buyer shall schedule the perc tests with the Town of Middleborough Board of Health forthwith. The Board of Health's availability to witness the perc tests is beyond the control of the Buyer.

3) Contingent upon Buildable Lots

This Agreement is contingent upon the subject parcels constituting Seven (7) residential buildable lots pursuant to the laws of the Town of Middleboro, without the necessity of obtaining any variances, special permits or other permits except for a building permit. In the event that it shall be determined prior to closing that any of the lots do not comply with this provision, then this Agreement is voidable at the option of the Buyer upon written notice to the Seller. If the Agreement is voided by the Buyer pursuant to this provision, any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

4) Lot Sizes

The size of the land inserted in section 2 of the Standard Land Purchase and Sale Agreement, 19.77 acres, was determined using the Town of Middleborough Assessors' online mapping data. This is considered to be an approximate land area. As long as each lot contains the minimum required frontage and area to be considered a buildable lot per the Town of Middleborough's zoning by-law (or is otherwise grandfathered as a buildable lot, if applicable), then any possible discrepancy from the Assessor's lot size shall not be cause for termination of this agreement.

5) Hazardous Material Contingency and AS-IS Condition

One of the seven lots, Lot 99-2748, 267 Miller Street, has old structures on the property. Buyer is purchasing this parcel as a lot for new home construction and will be demolishing the old structures. Seller has no liability for the condition of any structures on the property. The sale is subject to an inspection of the structures by the Buyer, or their representatives, to ensure that no hazardous materials exist on or in the structure. In the event that the Buyer determines that hazardous materials exist on or in the structure or elsewhere on the premises, the Buyer may elect to terminate this Agreement and receive a return of the Buyer's deposit.

In the event that the Buyer does not terminate the Agreement as set forth above and elects to accept the condition of the premises and close, the Buyer shall then be deemed to have accepted the condition of the premises in its "as-is" condition, to assume all liabilities with respect to the premises, and shall cause any hazardous materials to be removed at the Buyer's sole cost and expense and shall cause the premises to be otherwise remediated, as necessary, in accordance with all applicable laws. In the event the Buyer elects to close and acquire the premises, the Buyer hereby agrees to release, indemnify and hold harmless the Seller for and with respect to any liability, loss, damage, cost or expense arising from or in connection with the premises and from any hazardous materials thereon, from the removal thereof and from any release of any hazardous materials to the premises.

Buyer agrees that the premises will be accepted in its present AS IS condition if Buyer elects to close; Seller has made no warranties or representations on which Buyer has relied with respect to the premises, and it is the understanding of the parties that the entire agreement of the parties with respect to the transaction which is the subject of this agreement is fully and completely set forth in this Agreement. The premises is being conveyed in **AS IS** condition. The provisions of this paragraph shall survive the delivery of the deed.

6) Reimbursement of Expenses if Town Purchases Under 61A

The Sale Price set forth above includes a credit to the Buyer in the amount of \$10,000.00 for studies, percolation tests, engineering and surveying work to be performed by the Buyer during its due diligence period. In the event that the property shall not be consummated between these parties and the property shall be purchased by the Town of Middleborough as set forth in Additional Provision No. 1 above, then the Seller agrees to pay to the Buyer the sum of \$10,000.00 as reimbursement for the work performed by the Buyer during its due diligence period. Buyer shall not be required to itemize its actual incurred expenses. This amount shall be an agreed upon liquidated amount. The amount shall be due at such time as the Seller actually receives the sale proceeds from the Town of Middleborough.

7) Brokers

The parties represent to each other that neither has dealt with a broker, real estate agent or other person entitled to a broker's or real estate commission or fee in connection with the negotiation or execution of this agreement or the consummation of the transaction contemplated hereby, and each party agrees to hold the other harmless from and indemnify the other against all damages, claims, losses and liabilities, including legal fees, incurred by the other, arising out of or resulting from the failure of this representation and warranty or by any other party seeking to collect a fee or commission in connection with the transaction. This provision shall survive the closing hereunder.

8) Access and Indemnity

Until the closing, Buyer and Buyer's agents shall have the right, from time to time, at Buyer's sole cost, expense, risk and hazard, without damage being imposed upon said premises, to enter upon said premises to perform any necessary inspections, at reasonable times, and upon prior notice of at least 48 hours and in the presence of Seller or Seller's agents, from the date of this Agreement up to and including the time for the delivery of the deed hereunder. Buyer shall ensure that any parties accessing the premises are insured to the reasonable satisfaction of Seller, and shall provide Seller with certificates of insurance in advance upon request. Buyer agrees to indemnify and save Seller harmless from and against all loss, demands, causes of action, costs and expenses, claim, liability, or damage, including reasonable attorney's fees, caused by or related to any and all entries and activities as aforesaid by Buyer or Buyer's agents, and the provisions hereof shall survive termination of this Agreement for any reason and shall not be limited by the liquidated damage provisions of this Agreement.

This Rider A is executed under seal. The parties agree that in the event that any provisions of this Rider shall conflict with terms set forth in the main body of the Agreement, the terms and provisions of this Rider A shall supersede and control to the extent of such conflict.

Buyer 
Timothy Hasham, Manager

Seller 
JOHN W. PARKS, MANAGER

SMOLAK & VAUGHAN LLP
Allin Frawley, Chairman
Board of Selectmen, Town of Middleboro
January 2, 2016

EXHIBIT D

NOTICE OF NON-EXERCISE

See proposed form for notice of non-exercise of right of first refusal.

Chapters 61 and 61A

**DECISION OF TOWN OPTION
CHANGE IN USE OF CLASSIFIED LAND**

J&W Properties, LLC
Attn: John Parks, Manager
31 Whitney Street
Saugus, MA 01906

The Board of Selectmen of the Town of Middleboro, Massachusetts, has received a "Notice of Intent" to sell and/or convert to some other use land classified as Forest land and/or Agricultural land and taxed under the provisions of Chapter 61 and/or Chapter 61A of the General Laws of the Commonwealth of Massachusetts.

Description of the land pertaining to this notice:

Map 99, Lots 1899, 2633, 2748, 3518, 3548, 4264, and 5148, Miller Street, Middleboro, MA 02346

Title Reference: Plymouth Registry of Deeds Book 18104 Page 135

Owner of Record: J&W Properties, LLC

Under Chapter 61 and Chapter 61A, the Town of Middleboro has the option to purchase said land intended for sale or conversion to another use and being withdrawn from said Chapter 61 and/or Chapter 61A. This notice is to inform you that the Middleboro Board of Selectmen have voted not to exercise said option.

Middleboro Board of Selectmen:

Commonwealth of Massachusetts

Plymouth, ss _____, 2016

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were Massachusetts Driver's Licenses, to be the persons whose names are signed on the foregoing instrument, and acknowledged to me that they signed it voluntarily for its stated purpose.

, Notary Public
My Commission expires:

Jacqueline Shanley

From: Jane Kudcey
Sent: Wednesday, January 27, 2016 4:06 PM
To: Jacqueline Shanley
Cc: Robert G. Nunes
Subject: BOS meeting 2/8

Hi Jackie,

I am requesting to be put on the agenda for discussion at the BOS meeting on 2/8:

The Office of Economic and Community Development will be creating a Bike Committee. Anyone interested in joining this committee is asked to contact Jane Kudcey at 508-946-2402.

Thanks,

Jane

Jacqueline Shanley

From: Robert G. Nunes
Sent: Wednesday, February 03, 2016 6:25 PM
To: Diane Stewart; Allin Frawley; Selectman Allin Frawley; Jacqueline Shanley; jschmidt@srpedd.org
Cc: jschmidt@srpedd.org
Subject: Re: SRPEDD question

Hi Jackie,

Please place on the BOS agenda.

Bob
Sent from my iPhone

On Feb 3, 2016, at 5:07 PM, Robert G. Nunes <rnunes@middleborough.com> wrote:

Hi Diane,

Good news.

I think it should be placed on the BOS agenda

Allin, thoughts?

Bob

From: Diane Stewart [<mailto:dstewart84@gmail.com>]
Sent: Wednesday, February 03, 2016 4:56 PM
To: Robert G. Nunes; Allin Frawley; Selectman Allin Frawley
Cc: jschmidt@srpedd.org
Subject: Fwd: SRPEDD question

Hi Bob & Allin:

I am forwarding an email from Jackie at SRPEDD (who is also cc'd here).

If you recall, in the fall we had a representative from the Chamberlain School in Middleboro who inquired about putting in crosswalks on Plymouth/Pleasant Streets. You had spoken with Chris Peck, who reported that there are no sidewalks there, so it would not be ADA compliant to put crosswalks in; additionally, he noted that the road there is quite curvy and it would be dangerous to put a crosswalk in.

I was discussing it with Jackie and she mentioned that SRPEDD could do an assessment and provide suggestions. The town manager or board of selectmen would have to submit a written request for this; there is no cost to the town. There is sample letter attached.

Should this should be placed as an agenda item for a future BoS meeting? Also, if we are requesting that SRPEDD assess that intersection, are there any other intersections (e.g. Hannaford??) that we could request be assessed, as well?

Thank you!

-Diane

Begin forwarded message:

From: <jschmidt@srpedd.org>
Subject: RE: SRPEDD question
Date: February 3, 2016 at 4:16:26 PM EST
To: <dstewart84@gmail.com>

Hi!

SRPEDD can do a site assessment and provide a technical memo for recommended improvements/next steps. If the town would like to go the technical memo route SRPEDD just needs a request in the form of a letter. Attached please find a sample request letter. The letter would need to be signed by either the Town Manager or the Board of Selectmen.

Sorry for the late reply!

Jackie

Jacqueline L. Schmidt
Principal Transportation Planner
Bicycle & Pedestrian Coordinator
Tel: (508) 824-1367 x 234
Dial 711 for MassRelay
www.srpedd.org



**City of Fall River
Massachusetts**
Department of Community Maintenance
CEMETERIES • MUNICIPAL BUILDINGS • ENGINEERING • SANITATION •
PARKS • STREETS & HIGHWAYS • TRAFFIC & PARKING • VEHICLES

Engineering Division

C. SAMUEL SUTTER
Mayor

KENNETH C. PACHECO
Director
BYRON R. HOLMES, P.E.
City Engineer

December 7, 2015

Mr. Paul Mission
Transportation Planning Manager
Southeastern Regional Planning and Economic Development District
88 Broadway
Taunton, MA 02780

Dear Mr. Mission:

The City of Fall River is requesting SRPEDD's help in the conducting of three studies that deal with intersections within the City. The City Council and the Department of Community Maintenance, and Mass in Motion-Fall River have expressed an interest in these intersections as they relate to safety concerns.

The locations are as follows:

1. Volume/speed/class count on Quequechan Street in conjunction with the Quequechan River Rail Trail currently under construction. The rail trail will cross Quequechan Street. Since the original design of the crossing, there have been a Walmart and a Sam's Club built in the vicinity.
2. A signal warrant for Broadway at Bradford. This location is a heavy traffic area that does not currently have traffic signals.
3. A traffic study for Broadway at Middle. This location currently has traffic signals, pedestrian accommodations are a problem. Both this and the previous location are located on a numbered highway (owned by the City) and are along Kennedy Park. Pedestrian usage is high.

I look forward to hearing from you as to whether SRPEDD will be able to help Fall River with these important intersections.

Thank you for your consideration.

Sincerely,

Byron R. Holmes, P.E.
City Engineer