

December 13, 2021

Sent by email

Keith Elder, Chair
Town of Windham Planning Board
8 School Road
Windham, Maine 04062
planningboard@windhammaine.us

**Re: *Opposition to Proposed Zoning Map Amendment to Rezone Lot 2 and
Lot 2C on Tax Map 5 from Farm-Residential District to Medium-Density
Residential District***

Dear Chair Elder,

This firm represents Crystal and Michael Turner (the “Turners”) who hold title to and reside at 3 Gunpowder Mill Road in South Windham, which is identified on Tax Map 5 as Lot 2A and is part of the Farm-Residential District (“FR”). I write on their behalf to express their opposition, and the opposition of their undersigned neighbors,¹ to the zoning map amendment proposed by Dustin Roma to rezone two vacant properties he owns off River Road—Lot 2 on Tax Map 5 and 15 Gunpowder Mill Road, which is identified as Lot 2C on Tax Map 5 (collectively the “Roma Property”)²—from its current designation as FR, which has been in place since 2005,³ to Medium-Density Residential District (“RM”).⁴ The Board, at its November 22, 2021 meeting, scheduled this matter for a public hearing, which is set to take place on December 13, 2021.⁵

The Turners and their neighbors object to the proposed amendment on three grounds:

1. The proposed rezone would drastically change the character of the area, which is primarily rural, by authorizing Mr. Roma and any future owner of the Roma Property to densely develop it into multifamily residences on smaller lots than currently allowed and without the open space requirements currently in place.

¹ See Exhibit A to this letter.

² Mr. Roma owns Lot 2 on Tax Map 5 in his name and 15 Gunpowder Mill Road through his company, Sebago Realty, LLC.

³ Prior to 2005 this area was zoned “Industrial.” It has never been subject to dense residential development.

⁴ It is the Turner’s understanding that Mr. Roma’s proposed zoning text amendment has not changed from his initial request in that it only applies to the Roma Property. The Turners were confused, then, to see that the public notice for the hearing included parcels not subject to the original request.

⁵ The Town of Windham Land Use Ordinance (“LUO”) can be amended “[a]fter review and recommendation by the Planning Board.” LUO § 107.

2. The portion of South Windham Mr. Roma seeks to redevelop as part of the RM has *not* been identified as a growth area by the Town and its residents, either in its most recent 2017 Comprehensive Plan (“2017 Plan”) or the prior 2003 Comprehensive Plan (the “2003 Plan”). Comprehensive plans are the result of a years-long deliberated process that incorporates substantial feedback from residents. If the people of Windham and the Long Range Planning Committee wanted to bring significantly denser development to this part of South Windham, they would have identified it as a growth area.
3. Supporting this proposed amendment would frustrate the process the Town *may* decide to undertake to consider at a map-wide level the degree to which it wants to preserve its more rural areas and the collaborative work that it is about to engage in with the Town of Gorham to reevaluate the Little Falls & South Windham Revitalization Master Plan; a process that will likely take over a year to complete, making any small-scale rezoning in this area extremely premature at best.

Each will be discussed in turn.

- 1. The Planning Board should not support the proposed zoning map amendment because of the serious negative consequences for nearby properties in the Farm-Residential District.**

The Roma Property and the area around it is wooded and rural. The Mountain Division Trail runs through this portion of South Windham and the Gambo Preserve is located nearby to the west. Although the land to the south and west of the proposed rezoning area is in the Industrial District, that land is mostly vacant and wooded. This part of South Windham, extending from River Road to the north and east to the Presumpscot River to the south and west, has been preserved as sparsely-developed and rural, providing its residents the quiet and solitude they sought when they purchased their properties in this area.

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Figure 1: the FR and RM roughly overlaid on a satellite image of the relevant part of South Windham

The fact that this rural area is designated FR shields it against the encroachment of the denser development patterns on the other side of River Road. The minimum lot size in the FR is 50,000 square feet as a default, which can be reduced to 20,000 square feet only if the parcel is part of a “Conservation Subdivision,” which is one of two allowed forms of subdivision development within the FR.⁶ Conservation Subdivisions have substantial open space requirements, meaning that anyone seeking to subdivide property in the FR, as Mr. Roma tentatively proposed to the Board earlier this fall, must maintain at least 50% of the area not calculated as “Net Residential Area” as open space.⁷

As an example, here is the open space designated on the subdivision plan, dated August 23, 2021, that Mr. Roma put before the Board for preliminary review as a Conservation Subdivision on Gunpowder Mill Road with the residential lots depicted in pink and the open space shown in green:

⁶ LUO § 911.K.2(a) (“All submissions for single-family subdivisions in the Farm zoning district and Farm Residential zoning district that meet the space and bulk requirements listed in the appropriate zoning district *must be* designed as a Conservation Subdivision or a Country Subdivision.” (emphasis added)).

⁷ LUO § 911.K.6.



Figure 2: sketch plan submitted by Mr. Roma for a Conservation Subdivision on Gunpowder Mill Road

This open space requirement is designed to protect the rural character of areas zoned FR.⁸ But if the Town adopts the proposed zoning map amendment, Mr. Roma and/or his successors could develop this land as a standard subdivision with lots of 20,000 square feet and *zero* required open space, thereby drastically changing the density of development in this area and transforming what is a rural part of South Windham into a packed residential subdivision with the potential for multifamily housing and as many as 42 dwelling units on site.⁹ This type of development is simply not appropriate for this part of South Windham.

While Mr. Roma has represented to the Board that he does not intend to densely develop the Roma Property, the proposed zoning change would in fact, by its very zoning designation, permit precisely that type of development, significantly harming the quality of life of all neighbors to this development who bought into the area for its rural features and spacious lots.

⁸ LUO § 913.K.1.

⁹ Planning Director Lessard flagged this issue for the Board in her November 18 report:

New Two-Family and Multifamily Dwellings are not permitted uses in the FR zone, while they are permitted in the RM zone, at a net residential density of 15,000 square feet per dwelling unit. If the property were zoned RM, based on the net area shown on the subdivision sketch plan, *42 dwelling units* could potentially be allowed.

Nov. 18 Planner Report at 2 (emphasis added).

	FR	RM (Public Water)	RM (Well)
Minimum Lot Size	50,000 sq. ft.	20,000 sq. ft.	20,000 sq. ft.
<i>Conservation Subdivision</i>	20,000 sq. ft.		
<i>Country Subdivision</i>	6 acres		
Net Residential Density	40,000 sq. ft.	15,000 sq. ft.	15,000 sq. ft.
<i>Country subdivision</i>	250,000 sq. ft.		
<i>Housing for Older Person 1 Bedroom Unit</i>		8,000 sq. ft.	
<i>Housing for Older Person Each Additional Bedroom</i>		6,000 sq. ft.	

Figure 3: Minimum lot size and density requirements that apply to the FR and RM

The Board cannot support the proposed zoning change based on a developers promise to not fully exercise his rights if given the opportunity to subdivide the Roma Property under the standards that would apply should the zoning map be amended.¹⁰

While it may be more profitable for Mr. Roma if the Town rezones this area, that is not a sufficient justification for substantially changing the development patterns in this area, particularly given neighbors' investment in nearby properties based on their reasonable belief that the Town would not change the development patterns in this area on an *ad hoc* basis untethered from any public policy objective. Whether or not Mr. Roma has made a "substantial investment to develop land along Gunpowder Mill Road," as he claimed in his request, that is not a concern for this Board, in particular, or the Town, in general. He purchased the land at his own risk with full awareness of the current zoning scheme. He cannot then use his decision to knowingly buy property that may not turn the profit he needs to push the Town to change the zoning classification to suit his apparent financial needs.

It is important for the Board, in considering whether or not to express support for Mr. Roma's zoning map amendment, that the change proposed by Mr. Roma would cleave the current FR in half, leaving two small, separate zones that would exist as islands of rural zoning surrounded by the Industrial District and RM.

Below is the current zoning map for South Windham. The base map has been desaturated and the relevant portions of the FR and RM have been colorized in green and orange, respectively.

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¹⁰ You recognized this fact during the Board's discussion of this matter at its November 22 meeting when you stated that you "agree[d] 100%" with the sentiment expressed by Board Member Yost that Mr. Roma's comments to the Board regarding how he might develop the property "doesn't mean that the person who has it next has the same intent."

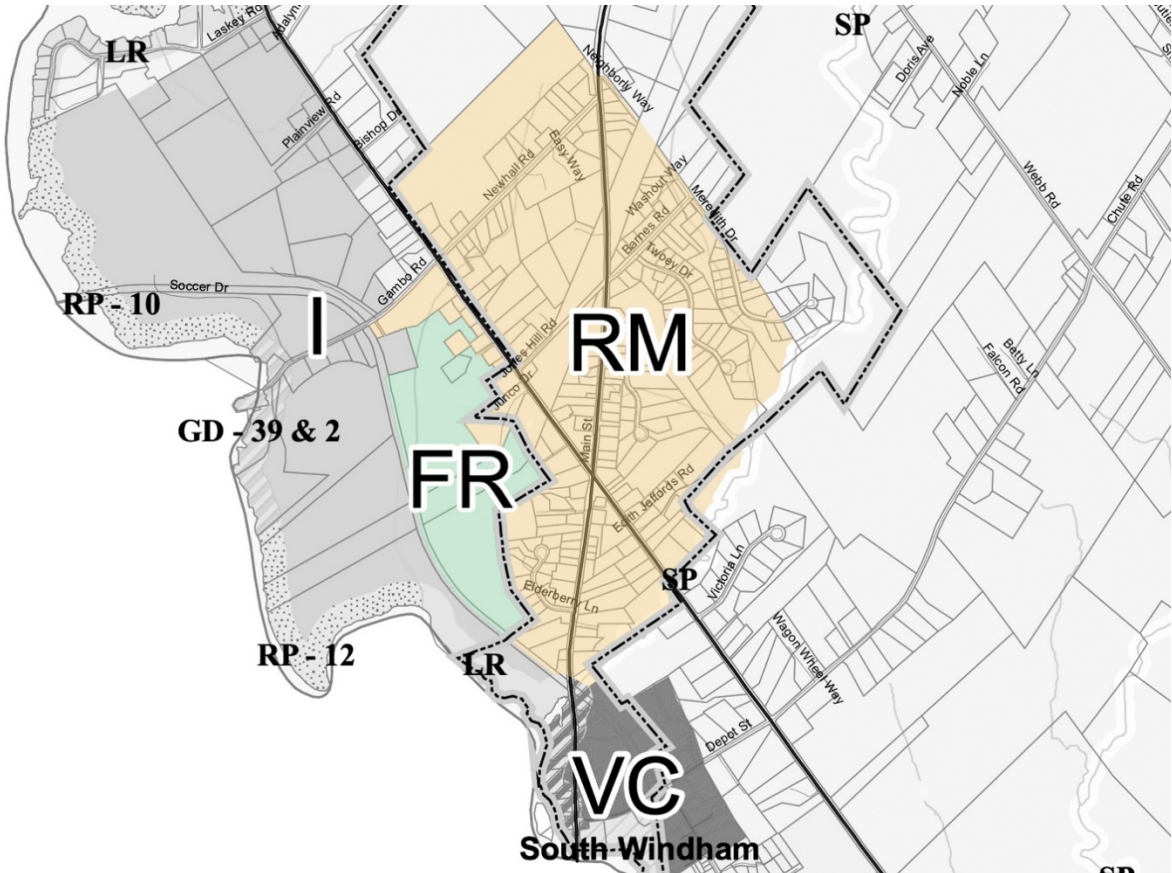


Figure 4: color overlay of FR and RM on Town of Windham Zoning Map dated August 26, 2020.
The portion of the map key that would appear in the cropped area has been deleted.

Here is the resulting zoning map should the Town adopt the proposed amendment.

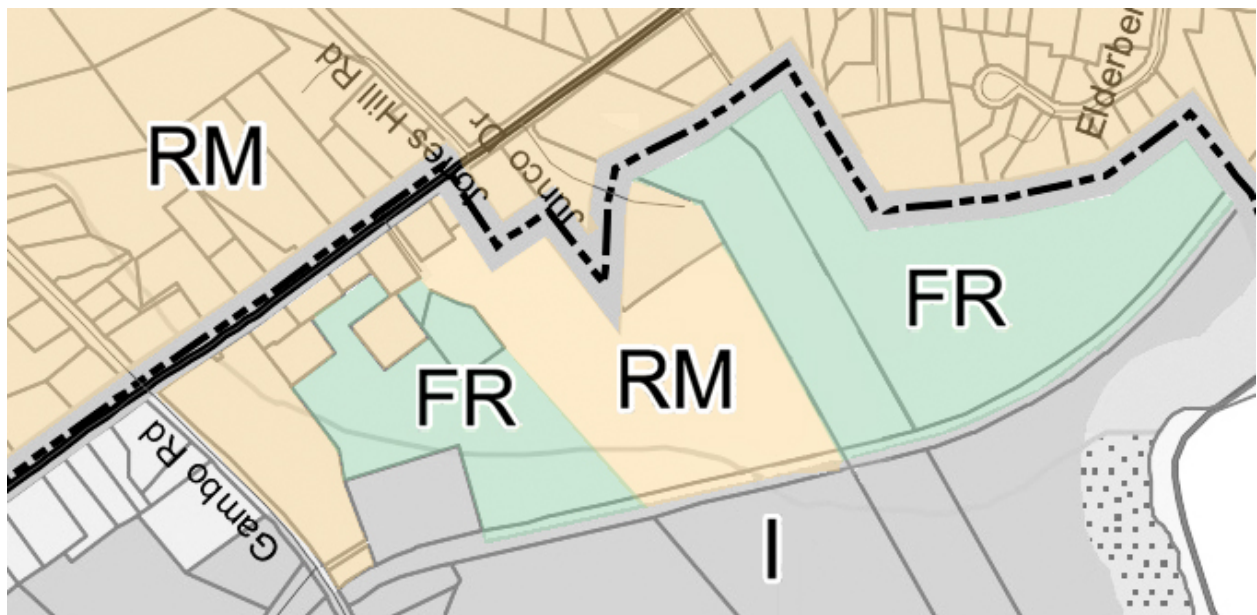


Figure 5: cropped color overlay of proposed zoning map amendment

As the applicant for the zoning map amendment, the burden is on Mr. Roma to establish that it is in the Town's best interest to divide the existing FR in two through an extension of the RM to a boundary with the Industrial District. Specifically, Mr. Roma needs to justify why this part of town should be subject to significantly denser development, particularly in light of the substantial disruption this change will cause to the rural character of this area, other than to further Mr. Roma's financial interest in his property. Mr. Roma has failed to do so; therefore, the Board should not support the proposed zoning map amendment.

2. The proposed zoning map amendment should not be supported by the Planning Board because it does not further any objective set forth in the 2017 Comprehensive Plan and does not result in the development of any growth area identified therein.

Nor has Mr. Roma explained how rezoning this area will further the objectives expressed in the 2017 Comprehensive Plan, which does *not* identify this part of South Windham as a growth area. "Section 4352(2) of Title 30—A requires all zoning ordinances to be consistent with the comprehensive plan adopted by the town's legislative body."¹¹ Indeed, a zoning ordinance must be in "basic harmony with the plan" by "striking a reasonable balance among the municipality's various zoning goals or overlap[ing] considerably with the plan."¹²

The purpose of a town's comprehensive plan and zoning ordinance are different but interrelated, such that the "plan sets out what is to be accomplished" while "the ordinance sets out concrete standards to ensure that the plan's objectives are realized."¹³ The role of this Board, then, is to determine whether the proposed zoning map amendment sufficiently furthers the objectives expressed in the 2017 Comprehensive Plan for the Board to express its support for the proposed change.

Speaking to the statutory requirement, Mr. Roma made the following representation to the Board in his initial request for the zoning change dated November 1, 2021:

We understand that the Long Range Planning Committee has been working with the Town Council and Town Planning Department on **a proposal to rezone several properties in this area of Town** to be more consistent with the Medium Density Residential zoning standards, to achieve the objectives outlined in the Town's Comprehensive Plan. We are currently working on development plans on the Gunpowder Mill Road properties and would like to design the project to be consistent with the Medium Density Residential Standards so that the project would be more in conformance with the standards **that are intended to be put in place for these properties in the near future.**¹⁴

¹¹ *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 22, 750 A.2d 577.

¹² *Rommel v. City of Portland*, 2014 ME 114, ¶ 14, 102 A.3d 1168; see *LaBonta v. City of Waterville*, 528 A.2d 1262, 1265 (Me. 1987).

¹³ *Nestle Waters N. Am., Inc. v. Town of Fryeburg*, 2009 ME 30, ¶ 24, 967 A.2d 702 (The ordinance is the translation of the comprehensive plan's goals into measurable requirements for applicants.)

¹⁴ Mr. Roma made a similar statement to the Board on November 22:

"I know there has been some preliminary discussions with the long-range planning committee and the Town Council and Planning Board just about kind of a larger-scale area .

Mr. Roma then elaborated in his revised request dated November 15, 2021, writing at length about the “South Windham Growth Area,” even though it is beyond dispute that the Roma Property is *not* within the growth area specified in the 2017 Comprehensive Plan:

The rezoning of the parcel to Medium Density Residential will also be working to accomplish the goals in the Comprehensive Plan. We have attached an excerpt from the Future Land Use Map which shows the areas surrounding the subject parcels to be located within the “South Windham Growth Area” . . . The rezoning of the property to Medium Density Residential will allow for the property to [sic] developed with the potential for duplex and multi-family housing in addition to single-family housing and will continue to **target growth in the designated growth areas**, as opposed to the more rural areas of Windham.

There are at least two significant flaws with Mr. Roma’s statements to the Board.

First, it simply is not true that the Town is considering rezoning properties in this specific area, whether currently or in the near future. As Planning Director Lessard informed the Board at its earlier meeting, the Town has, at most, engaged in a “general discussion” about potential changes to rural zoning across the entire municipality; those conversations have “not gone any further”; and the Long Range Planning Committee has *not* made any determinations as to potential zoning changes for this area.¹⁵

Second, the growth area discussed in the 2017 Comprehensive Plan neither includes the Roma Property nor “surround[s]” it. Instead, the Town has identified the area shown on the following map for denser development and growth, which is to the north of east to the area Mr. Roma proposes to be rezoned:

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. . . There was a public hearing about rezoning portions of the 202/River Road corridors into a Windham-center type zoning district . . . This is certainly in the realm of similar zoning that the town has been discussing very recently.

The approximate timestamp of his comment is at 1:13:30 on the recording of the meeting posted on the Town’s website.

¹⁵ Planning Director Lessard further informed the Board that *if* the Town was interested in considering changes to its rural zones, the Planning Department wanted to take a “first pass” at discussing and proposing comprehensive changes, a process that would be disrupted if the Board supported the *ad hoc* change requested.

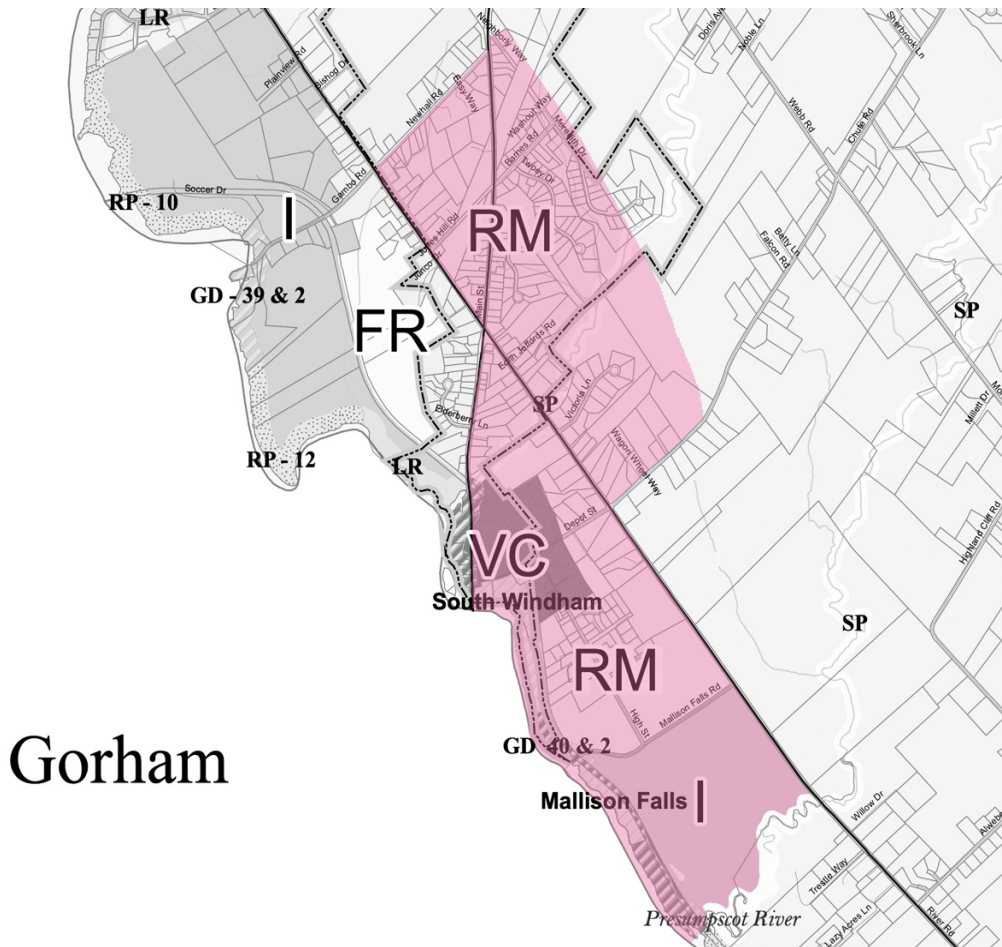


Figure 6: color overlay of growth area shown in the 2017 Comprehensive Plan and 2003 Comprehensive Plan on the Town of Windham Zoning Map dated August 26, 2020. The portion of the map key that would appear in the cropped area has been deleted.

Indeed, no portion of the Roma Property is adjacent to a growth area selected in the 2017 Comprehensive Plan.

Keep in mind that the growth areas shown for South Windham in the 2017 Comprehensive Plan are identical to the growth areas selected in the 2003 Comprehensive Plan, suggesting a purposeful attempt to *not* expand the growth area to include what is now zoned FR. In fact, none of the area in South Windham selected for growth in either plan propose denser development in a rural zone.

The residents of Windham and their representatives have twice been asked in the last twenty years to engage in a long, deliberative process to figure out the ideal areas for future development. At neither time did the Town select the portion of the FR to the south and west of River Road for such development. The Board should respect the results of this deliberative process and not discard that work on an *ad hoc* basis to satisfy Mr. Roma's financial interests in the Roma Property.

3. The Planning Board should oppose the proposed zoning map amendment because adopting it would disrupt the process that has just commenced to reevaluate the Little Falls & South Windham Revitalization Master Plan.

The fact that the Town is about to engage in a year-long, collaborative process with the Town of Gorham to figure out the appropriate development patterns for South Windham also counsels against the Board supporting Mr. Roma's request.

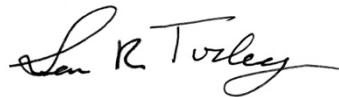
As Planning Director Lessard indicated at the Board's November 22 meeting, the Town is in the beginning stages of reevaluating the Little Falls & South Windham Revitalization Master Plan, which was drafted in 1998 and *did* include this part of town in the initial study area. This project is likely to take a year or more, making any change to the zoning map in South Windham premature and potentially counterproductive.¹⁶

Rather than support Mr. Roma's request, the Board should take a cautious approach by not supporting this zoning map amendment in order to allow the Town the time it needs to complete the analyses necessary to make an informed decision.

Because the zoning map amendment put forward by Mr. Roma harms the rural character of this part of South Windham; fails to further the objectives identified in the 2017 Comprehensive Plan; and complicates the Town's review of the Little Falls & South Windham Revitalization Master Plan, the Board should decline to recommend the proposed amendment for adoption and inform the Town Council of the reasons for its disapproval.

I appreciate your attention to this matter. Please reach out if any questions or concerns arise.

Best Regards,



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¹⁶ Planning Director Lessard indicated that the work on the revitalization plan would conclude by November 2022 at the earliest.

Exhibit A

Crystal Turner
Crystal Turner

Dec 10, 2021
Date

Michael Turner
Michael Turner

10 Dec 2021
Date

Raelene Loura
Raelene Loura
Marilyn Erickson
Marilyn Erickson

12/11/2021
Date

Jan Day
Jan Day

12/11/2021
Date

Charles Erickson
Charles Erickson
Monroe A Day
Monroe A Day

12/11/2021
Date

12/11/2021
Date

12-11-21
Date

Hazel B. Gilman
Hazel B. Gilman

12.12.2021
Date

Dean Erickson
Dean Erickson
Jean K. Carmody
Jean K. Carmody

12/12/2021
Date

12/12/2021
Date

Pamela B. Loura
Pamela B. Loura

12/12/21
Date
~~12/12~~

Stephan Loura
STEPHAN LOURA

12-12-21
Date

Jennifer Upby
Jennifer Upby

12/12/21
Date

Robert C. G. G.
Robert C. G. G.

12/12/21
Date

Brittany Bryant Joyce
Brittany Bryant Joyce

12/12/21
Date

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