

**TOWN OF TUFTONBORO  
PLANNING BOARD  
October 18, 2018  
MINUTES**

**Members Present:** Matt Young, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Tony Triolo, Laureen Hadley, Kate Nesbit, Members, Russ Steensma, Alternate.

**Members Absent:** John Cameron, Chairman, Jack Parsons, Member.

**Staff Present:** Lee Ann Hendrickson, Administrative Secretary.

*Vice-Chairman Young opened the meeting at 7:02 PM.*

*Vice-Chairman Young appointed Russ Steensma, Alternate, in for Jack Parsons, Member.*

**I. Public Comment**

Steve Hunter stated that as an abutter to Christine and Scott Bailey, he is not in favor of a stockade fence to screen their vehicles and/or equipment.

**II. Consideration of Minutes  
October 4, 2018**

**It was moved by Tony Triolo and seconded by Laureen Hadley to approve the October 4, 2018 Tuftonboro Planning Board minutes as submitted. All members voted in favor. The motion passed.**

**III. Scheduled Appointments/Public Hearings  
Merrimack Valley Development Corp.  
Consolidation of 7 Lots and Re-subdivision of 2 Lots  
Tax Map #60-1-2, 29, 30, 31, 32, 33 & 34**

Matt Young distributed a letter submitted by Dave Ford, an abutter to the applicant's property, dated October 18, 2018; stating Mr. Ford expressed concern regarding the noticing of the public hearing. He stated Mr. Ford states that one of the properties noted on the abutter's list transferred owners; noting the abutter list submitted by the applicant is not accurate. He stated the public hearing would have to be re-noticed and heard at a future date.

Buddy Thomas asked if he could discuss the project informally with the Board and hear any concerns by the public.

The Board agreed to an informal discussion of the application.

Matt Young stated that anything discussed this evening would be nonbinding on both parties.

David Jordan, MHF Design Consultants, Inc., stated Merrimack Valley Development Corp. is the owner of lots located on Shaw View Drive; noting the applicant proposes to consolidate seven lots and re-subdivide two lots to be accessed by a private common/shared driveway. He stated the driveway would also serve the lot owned by Mr. Snyder.

Matt Young confirmed that the lot owned by Mr. Snyder is one of the three lots sharing the drive access.

Buddy Thomas, Merrimack Valley Development Corp., stated he proposes to maintain the existing easement on the property that accesses a back lot located in Ossipee. He stated it is no longer feasible to build the road to the subdivision and decided to consolidate the lots and re-subdivide into two lots.

Matt Young expressed concern that the Association for Zadedda Farm Lane and Black Bear Run may take issue with the proposal relative to the road and access to the private drive and the Special Assessment the owners within the association pay.

Buddy Thomas stated the association made it abundantly clear that this part of the subdivision is not associated with them; noting the reason for the name change of the road from Black Bear Run to Shaw View Road.

Nina Lupoli stated that Mr. Thomas owned Lots 1, 8 and 9 and when Lots 1 and 8 were sold, the covenant and restrictions were no longer valid and therefore, there is no need to abide by the covenant and restrictions.

Jim Rines stated he owned Lot 13 and sold it in May 2018. He stated he noticed the Right-of-Way to the Ossipee lot has been relocated and questioned the legality of such. He recommended reviewing such.

David Jordan stated the Right-of-Way was moved to coincide where the driveway would terminate. He noted he would further review such.

**It was moved by Tony Triolo and seconded by Kate Nesbit to schedule the public hearing for Merrimack Valley Development Corporation to November 15, 2018. All members voted in favor. The motion passed.**

Staff provided the applicant with the assessment card for Tax Map 60-1-24 which depicts the name and address of the new owner.

**Clark House Family Trust  
Condominium Conversion  
Tax Map #2-1-67**

Matt Young stated the Board continued the application from 10/4/18 to seek legal guidance relative to whether the Board could impose a condition relative to existing drainage issues. He noted the public hearing was closed on 10/4/18 therefore, would re-open the public hearing to allow for public comment. He distributed an opinion from Roger Murray III, Planning Board Counsel, and requested the Board release the opinion.

**It was moved by Tony Triolo and seconded by Kate Nesbit to release Planning Board Counsel's opinion, via an email dated October 18, 2018. All members voted in favor. The motion passed.**

Matt Young read Roger Murray's email/opinion and distributed copies of the email to the applicant and interested public, see attached.

*Vice-Chairman Young reopened the public hearing.*

Meredith Stanley stated she has been the only one who has done improvements; noting the only contribution she has received was \$70 from an abutter. She distributed photographs of the improvements that have been done.

Jim Rines stated drainage improvements are not applicable because the drainage issues will exist whether the application is approved or denied.

Bob McWhirter stated he is not aware of who paid for the improvements and noted he has never been approached to pay for improvements. He stated drainage issues were caused by work done on that side of the road. He stated the issue is that the application is for a subdivision. He stated a conversion to condominium still



has to follow local zoning rules; noting the application is for a subdivision of two lots. He stated he doesn't understand how the application can move forward without a variance.

Jim Rines stated the Board has obtained a legal opinion stating the application is permitted and doesn't need to go to the ZBA. He stated Roger Murray stated you can't discriminate simply because of the form of ownership and if it's allowed in any other form of ownership (which the Town's regulations allow two dwellings) then you must allow it under the condominium form of ownership.

Randy Walker stated the condominium conversion is permitted because the use is a vested nonconforming grandfathered use. He stated the water situation is not going to change and is a civil matter; noting such is not a Planning Board matter. He stated the only thing that changes is the title/deed.

Bob McWhirter stated 356 doesn't substitute for local zoning regulations. He stated he doesn't agree that the property is grandfathered. He stated the application states it is for a subdivision; noting that a property cannot be subdivided based on dimensional requirements and therefore, needs a variance.

Matt Young stated the Town allows for the construction of two residences on one lot.

Jim Rines stated by both Town and State definition, a condominium conversion is a subdivision and read the project description and a portion of his narrative relative to such.

*There being no further questions or comments, Vice-Chairman Young closed the public hearing.*

Tony Triolo confirmed that the owner can sell the unit if the condominium conversion is approved.

Matt Young stated the Board has received legal opinion stating the proposal is permitted. He stated with regard to the drainage issue, the application reflects a change of ownership.

Kate Nesbit agreed.

Matt Young reviewed the following conditions of approval;

1. Favorable review of the condominium documents by Planning Board counsel.
2. The applicant shall set the monuments (four corners of each unit).
3. The applicant shall provide a Certificate of Monumentation.

**It was moved by Kate Nesbit and seconded by Russ Steensma to approve the Clark House Family Trust application subject to the recommended conditions of approval. All members voted in favor. The motion passed.**

#### **Lane's End Marine Storage, LLC and T. Fillion Marine Storage, LLC**

##### **Site Plan Review**

##### **Tax Map #2-1-85**

Matt Young recused himself and appointed Bill Marcussen to chair this portion of the meeting.

Bill Marcussen read the application into the record.

Sue Weeks submitted a revised application form depicting the information of the new owner of the property and a letter of authorization for her and David Ladd to represent the owner, Timothy Fillion.

Staff informed the Board the application has been reviewed and deemed complete.

**It was moved by Tony Triolo and seconded by Kate Nesbit to accept jurisdiction of the application. All members voted in favor. The motion passed.**

Sue Weeks stated the proposal does not include storing boats on trailers; noting the trailers are empty. She stated 41 parking spaces that range in size are proposed; noting numbered stakes would be placed at each parking space to maintain organization. She stated the applicant received NHDES approval and Army Corps of Engineers approval.

David Ladd stated concerns from abutters two years ago have been addressed by installing a fence for screening of the trailers.

*Bill Marcussen opened the public hearing.*

Jill Cromwell asked if the Board is going to read into the record a letter previously submitted by David Spaulding when the application was originally filed.

David Ladd provided the letter to the Board.

Staff noted the Board does not have the letter.

Bill Marcussen read the letter. He noted that since the letter was written the applicant has installed a fence.

Sue Weeks noted the fence is set just under 6'.

Jill Cromwell requested the Board limit the hours of operation for moving the trailers since it is located in a residential zone.

Sue Weeks stated the service department would be unloading the boats and parking the trailers.

Tim Fillion stated the hours of operation are Monday – Saturday 8AM-4:30 however, during the busy season the hours would be 7AM-7PM.

Jill Cromwell requested the Board prohibit boat storage because the boats would be visible from above the fence and be unsightly. She requested lighting of the parking area be prohibited.

Sue Weeks stated there is a Town ordinance relative to lighting.

Jill Cromwell questioned the definition of trailer because boat trailer parking is not specified; expressing concern for RV and/or camper parking.

Sue Weeks stated there is no plan for the latter.

David Ladd stated Lanes End owns the road; noting Ms. Cromwell has no ownership of the road.

Jill Cromwell stated she has a right-of-way to travel the road.

Tom Fillion stated there is no need to install lighting and noted the light on the building can be turned off by a switch. He noted the parking area is for trailer parking only.

David Ladd stated none of the boats are shrink wrapped and stored on the Lane's End property; noting the boats are stored indoors. He stated there is no intent to shrink wrap boats or store boats in the trailer parking area.

Sue Weeks stated the proposal is not a change of use rather, an existing use.

Jill Cromwell questioned the Town's rules on signs.

David Ladd stated he gave permission to Mr. Fillion to continue to use the sign on the cul-de-sac. He noted an additional is located at the end of Lane's End Road. He stated both signs are existing permitted signs.



Sue Weeks stated no additional signage is proposed; noting the Town has a sign ordinance. She stated it is unreasonable to place a restriction on signage when such is not part of the application.

*There being no further questions or comments, Bill Marcussen closed the public hearing.*

The Board discussed and agreed to the following conditions of approval;

1. Any proposed lighting would comply with Town regulations.
2. Hours of operation associated with the watercraft trailer parking area is restricted to 7AM-7PM daily.
3. The parking area shall be limited to parking only watercraft trailers.
4. Boat storage within the designated parking area for watercraft trailers is prohibited.

**It was moved by Kate Nesbit and seconded by Russ Steensma to approve the Lane's End Marine Storage, LLC and T. Fillion Marine Storage, LLC Site Plan Review application, Tax Map #2-1-85, subject to the conditions of approval. All members voted in favor. The motion passed.**

IV. **Action Items**

N/A

V. **Discussion Items**

a. **Excavation Operation; Michael Carleton**

Matt Young stated the Board requested Planning Board Counsel review a letter and supporting information submitted by Mike Carleton to determine whether Mr. Carleton's excavation operation is grandfathered as an existing operation. He distributed an opinion from Roger Murray III, Planning Board Counsel, and requested the Board release the opinion.

**It was moved by Tony Triolo and seconded by Kate Nesbit to release Planning Board Counsel's opinion, via an email dated October 17, 2018. All members voted in favor. The motion passed.**

Matt Young read Roger Murray's email/opinion and distributed copies of the email to the applicant and interested public, see attached. He stated it is the opinion of Counsel that the excavation operation is not permitted.

Mike Carlton stated he never received a letter from the Town requesting compliance. He stated there has always been an excavation operation (from Steve Hunter to Carl Anderson to his father, Bob Carleton). He stated he is now the owner of the property. He stated he showed the letter to Jack Parsons who informed him that he would not have to go to the ZBA and therefore, filed an Intent to Excavate in August. He questioned the process with regard to permitting his operation.

Matt Young reviewed the history of excavation operations in Tuftonboro and the information provided to the Board by Mary Pinkham Langer. He stated the Board provided a relief mechanism for those operations that filed an Intent to Excavate within a specified two year period then the ZBA process for a Special Exception would be waived and only site plan review by the Planning Board would be required.

Mike Carleton stated the Town has been taxing him consistently. He noted the abutting property is causing erosion issues on his property.

Sue Weeks questioned the Town's concerns and if those concerns are regarding reclamation.

Matt Young replied yes.

Mike Carleton stated he'd like a permit and make the operation legal and requested reconsideration.

Matt Young stated the Town cannot reconsider and if he wants a permit that he would have to go through the process. He agreed the best possible use of the property is an excavation operation.

Bob McWhirter asked if the issue is that there is no letter from Mr. Carleton stating there is an excavation operation on the property.

Bill Marcussen stated part of the grandfathering is that it has to be a continued operation; noting that if the operation ceases then the owner needs to go through the permitting process. He stated when the Board passed the ordinance it was a conservative approach to resolving the issue.

Matt Young questioned the size of the parcel.

Mike Carleton replied 28 acres however, only 8 acres is the gravel pit.

Matt Young stated that if the property had fallen under the grandfathering clause then excavation could only occur within those 8 acres.

Mike Carleton stated that due to the slope of and swamp area on the property that it is only possible to excavate within the 8 acres.

**b. Harrison Property, 9 Evergreen Way; Removal of Deed Restriction**

Matt Young stated the Planning Board has received a request from Ron & Debbie Harrison (through Ted Wright) to remove a deed restriction and condition that states that Lot 1 (9 Evergreen Way) is "unbuildable until such time as the existing cottage on 7 Evergreen Way is relocated to comply with the sideline setback requirement and a new septic system is constructed for Lot 1." He stated the Harrison's are required to petition the Board for the removal of the condition prior to any construction on the lot or conveyance of the lot. In addition, he stated there was a question whether the request would require notice of a public hearing. He stated Planning Board Counsel provided an opinion regarding such and distributed said opinion. He requested the Board release the opinion. He noted he confirmed with Jack Parsons the cottage has been removed.

**It was moved by Tony Triolo and seconded by Kate Nesbit to release Planning Board Counsel's opinion, via an email dated October 17, 2018. All members voted in favor. The motion passed.**

Matt Young read Roger Murray's email/opinion and distributed copies of the email to Ted Wright, see attached. He stated it is the opinion of Counsel that a public hearing is not required

Ted Wright distributed photographs of the site showing the house has been removed; noting the issue of the septic system is moot. He stated the request is not only the request to remove the deed restriction however, it is also a request to remove the condition relative to such made by the Planning Board.

**It was moved by Tony Triolo and seconded by Kate Nesbit to amend the Planning Board conditions of approval for 9 Evergreen Way, Tax Map #62-2-15, to reflect the removal of the conditions that dictate that Lot 2, 9 Evergreen Way, is an unbuildable lot as memorialized on the deed and reflect that Lot 2 is now a buildable lot since the structure on Lot 1, 7 Evergreen Way has been removed and thus negating the condition relative to the construction of a new septic system for Lot 1, 7 Evergreen Way and setback compliance. All members voted in favor. The motion passed.**

**c. 2019 Proposed Zoning Change**

Staff distributed the following proposed zoning change; noting such was tabled last year by the Board to further review for the 2019 Warrant;



#### **10.4 RESIDENTIAL TENTING/RECREATIONAL VEHICLES**

In order to protect the health, safety, and general welfare of the community, occupancy of residential tents and recreational vehicles will be allowed provided that the following requirements are met. The Code Enforcement Officer is designated as the authority for enforcement of this ordinance.

**10.4.1 Limitations:** Such occupancy of either tents or recreational vehicles on any lot requires one of the following conditions to be met:

- A. Limit to one (1) recreational vehicle and two (2) tents at a time**
- B. Use permitted April 15<sup>th</sup>-October 30<sup>th</sup>**
- C. The lot has toilet facilities connected to an onsite operational subsurface septic waste system.
- D. Temporary maintained toilet facilities are provided on the lot at all times there is occupancy in either a tent or recreational vehicle.
- E. In case of an RV with a septic holding tank, proof of proper disposal of septic waste at a State licensed facility must be available on site at all times and presented to the Code Enforcement Officer upon request.

Laureen Hadley asked who brought forth the proposed amendment.

Matt Young replied Jack Parsons.

Laureen Hadley stated she is opposed to the change.

Steve Hunter stated the proposal is the same for a 1-acre lot or a 100-acre lot. He noted Mr. Parsons had received a complaint which prompted the proposed change.

The Board further discussed the issue and agreed to table the proposed change to the Zoning Ordinance.

#### **d. Planning Board Membership**

Matt Young stated the BOS did not appoint Fenton Varney to the Planning Board. He stated he is willing to serve as Chairman until April; noting at that time he will be unavailable due to his work schedule.

Tony Triolo asked Bill Marcussen if the BOS would reconsider their decision.

Bill Marcussen stated it is possible.

#### **e. Al Greymont/Farm Pond Subdivision Letter of Credit**

Matt Young stated the Board received a letter from Walpole Bank regarding Al Greymont's letter of credit for Farm Pond Subdivision; noting the letter of credit is expiring and requested the Board's signature for renewal of the letter of credit.

The Board requested Matt Young as Vice-Chairman of the Board to sign the renewal letter.

#### **VI. Informational Items**

N/A

#### **VII. Other Business**

N/A

#### **VIII. Public Comment**

N/A

It was moved by Tony Triolo and seconded by Laureen Hadley to adjourn the October 18, 2018 Tuftonboro Planning Board meeting. All members voted in favor.

There being no further business before the Board, the meeting adjourned at 9:10 PM.

Respectfully Submitted,

*Lee Ann Hendrickson*

Lee Ann Hendrickson





Lee Ann Hendrickson &lt;hendrickson.leeann@gmail.com&gt;

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**Clark House Condominium**

2 messages

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**Roger Murray** <rfmurray1@myfairpoint.net>

Thu, Oct 18, 2018 at 4:57 PM

Reply-To: rfmurray1@myfairpoint.net

To: jcamfam1@aol.com

Cc: hendrickson.leeann@gmail.com

John,

The Planning Board has inquired of me as to whether it can require drainage and road improvements as a condition of approval of the Clark House Condominium. For the reasons set forth below, it is my considered opinion that the Board can require such improvements in connection with a subdivision approval, but I question whether it can do so here.

Section 3.7 of the Tufonboro Subdivision Regulations provides, "The Planning Board, as a condition of approval, may require the Subdivider to pay proportionally for necessary off-site improvements to Streets and/or utilities required by the development. The Subdivider may be required to pay that portion of the costs which bears a reasonable relationship to the needs created by and the special benefits conferred upon the Subdivision." Thus, the threshold question is whether Allen Road is in such poor condition that it cannot provide safe access to proposed Unit 2. It is my understanding that no changes are being proposed to the two dwellings presently on the property or to the property itself. What is there now is identical to what will be there if the application is approved. RSA 356-B:5 provides in part, "Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership."

Section 3.7.1, governing the procedure in the event off-site improvements are required, states, "The Board must make findings, supported by the evidence in the records, that the improvements are required to accommodate the needs generated by the proposed Subdivision; the Board must determine the extent of the needed improvements; the Board must determine the anticipated costs of the improvements (including engineering and administration); and the Board must determine the proportionate share to be paid by the Subdivider." Here, the improvements must be required by the conversion to the condominium form of ownership and the applicant can only be required to pay a proportional share of those costs based on the number of properties using Allen Road.

Should you have any questions, please let me know.

Law Offices of Roger F. Murray, III, PLLC

P.O. Box 235

Wolfeboro, NH 03894

PH: (603) 569-5454

FAX: (603) 569-5455

EMAIL: rfmurray1@myfairpoint.net

**Lee Ann**

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**From:** Roger Murray <rfmurray1@myfairpoint.net>  
**Sent:** Wednesday, October 17, 2018 5:39 PM  
**To:** jcamfam1@aol.com  
**Cc:** hendrickson.leeann@gmail.com  
**Subject:** Michael Carleton Excavation Operation

John,

The Planning Board has inquired of me as to whether Michael Carleton's excavation operation on Sargents Crossing Road is grandfathered as an Existing Operation under Section 11.11.1 of the Tuftonboro Zoning Ordinance. For the reasons set forth below, it is my considered opinion that Mr. Carleton's excavation is not an Existing Operation under Section 11.11.1 and that he is required to comply with the requirements of Section 11.8 of the Ordinance.

Section 11.11.1 provides, in pertinent part, "Any owner or operator of an existing earth excavation area, that has filed a State of New Hampshire Department of Revenue Administration Notice of Intent to Excavate in the two years prior to March 14, 2017 may continue operation subject to Planning Board Site Plan Review approval and issuance of a Permit to Excavate..." It is my understanding that Mr. Carleton did not file an Intent to Excavate within the required timeframe. He therefore does not qualify as an Existing Operation under Section 11.11.1. Nor does he qualify as an existing excavation under RSA 155-E:2, I, which provides, "The owner of an excavation which lawfully existed as of August 24, 1979 from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979 may continue such existing excavation on the excavation site without a permit, subject to the following: ...(d) The owners or operators of any existing excavation area for which no permit has been obtained under this chapter shall file a report with the local regulator within one year of receiving written notice of this requirement from the regulator and in no case later than 2 years following August 4, 1989...."

Mr. Carleton has not provided the Planning Board with any evidence that the excavation lawfully existed as of August 24, 1979 or that earth material of sufficient weight or volume to be commercially useful was removed during the 2-year period prior to that date. Nor did he file the required report with the Planning Board by August 4, 1991. It is my understanding that the Town has no record of ever receiving the June 19, 1998 letter on Water Industries, Inc. stationery. Even if it had, the letter does not fall within the timeframes required by the Tuftonboro Zoning Ordinance or RSA 155-E. As a result, Mr. Carleton must first obtain a Special Exception from the Board of Adjustment and Site Plan Approval and an Excavation Permit from the Planning Board pursuant to Section 11.8 before undertaking excavation operations.

Should you have any questions, please let me know.

Roger

RSA 155-E:2, I governing existing excavations

Law Offices of Roger F. Murray, III, PLLC  
P.O. Box 235  
Wolfeboro, NH 03894



**Lee Ann**

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**From:** Roger Murray <rfmurray1@myfairpoint.net>  
**Sent:** Wednesday, October 17, 2018 3:15 PM  
**To:** jcamfam1@aol.com  
**Cc:** hendrickson.leeann@gmail.com; mvmmatt@roadrunner.com  
**Subject:** Harrison property @ 9 Evergreen

PRIVILEGED AND CONFIDENTIAL

Dear John,

The Planning Board has inquired of me as to whether a public hearing with notice to abutters is required in order to address the conditions set forth in the approval of the subdivision shown on the plan entitled, "Subdivision Plan of land in Tuftonboro, N.H. Property of Richard & Clara Sughrue," prepared by Paul L. King, dated August 4, 1992, approved by the Tuftonboro Planning Board on October 15, 1992 and recorded in Plan Book 142, Page 73 in the Carroll County Registry of Deeds. Those conditions state, "Lot 2 is approved on the condition that it is subject to the restriction that it is an unbuildable lot for residential purposes and it is unmarketable until such time as (1) the existing cottage on Lot 1 is relocated to comply with the sideline setback requirements and (2) a new septic system is constructed for Lot 1. The applicant must petition the Planning Board for removal of the above conditions prior to any construction on the said lot or conveyance of same." Identical language appears in the deed, dated July 12, 2007, and recorded at Book 2644, Page 764 in the Carroll County Registry of Deeds by which Evergreen Property, LLC acquired title to the property.

For the reasons set forth below, it is my considered opinion that a public hearing is not required to address the first condition, but that a public hearing with notice to abutters is required to address the second condition, unless a septic system is constructed on Lot 1. It is my understanding that the cottage on Lot 1 has been removed in its entirety. Once the Planning Board receives documentary evidence of the cottage's removal, the Board can vote to remove that restriction. Since the determination is an administrative, and not a discretionary one, no public hearing, no notice to abutters and no public input are required. The removal of the condition should be memorialized in a Notice of Decision recorded in the Carroll County Registry of Deeds.

If a septic system were constructed for Lot 1, the second condition could be handled in the same fashion as the first. However, it is my understanding that no new system had been constructed, nor are there plans to construct one now. The septic system for Lot 1 is not shown on the subdivision plan, but the October 10, 2018 letter from Evergreen Property, LLC to the Planning Board refers to the leach field as being located on Lot 2. Presumably, the second condition was intended to ensure that both lots are buildable. If Evergreen does not want to construct a new system, it could apply to the Planning Board to amend the original condition of approval to allow documentation sufficient to establish that Lot 1 is capable of supporting a subsurface sewage disposal system. Any application to amend the original conditions of approval would require a public hearing with notice to abutters. As with the first condition, the Board's action should be memorialized in a Notice of Decision recorded in the Registry of Deeds. There is no need to require a new deed.

Should you have any questions, please let me know.

Roger

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