

# Town of Lunenburg Conservation Commission

Bob Pease, Chair  
Kenneth Jones, Vice-Chair  
Richard Bursch  
Catie Childs  
Carl Luck  
Jack Rabbitt  
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Michael Larouche, Associate



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Matthew S. Marro,  
Conservation Administrator

## MINUTES

April 7, 2021  
7:00 PM

In accordance with the requirements of the Open Meeting Law, please be advised that this meeting is being recorded and available for viewing over the Lunenburg Public Access You Tube Channel

The Town of Lunenburg, in response to the COVID-19 (Corona Virus) is currently following the guidance from the Lunenburg Board of Health, Massachusetts Department of Public Health and the CDC regarding the virus and steps communities can take to prevent the spread and all town facilities are currently closed to the public. In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, all public meetings are being conducted remotely. This meeting will be able to be found on the Lunenburg Access YouTube channel within 24 hours after the meeting.

To Participate Remotely on Zoom members of the public may use cell phones, tablets or computers with audio and video capabilities. The Zoom Meeting ID is **827 3954 6648**

Town of Lunenburg is inviting you to a scheduled Zoom meeting.

**Topic: Conservation Commission**

**Time: Apr 7, 2021 07:00 PM Eastern Time (US and Canada)**

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No participant ID is needed, just press # when asked. All participants who are not members of the commission or staff will be muted by the chair. Computer and app users may use the “raise hand” feature to request to speak. To access the raise hand feature, open the participant list by clicking on participants. To raise your hand, click on the button at the bottom of the participant list. The chair will call on you and unmute you. Telephone audio users may dial star (\*) 9 to request to speak after joining the meeting. Members of the public must give their name and address before they begin speaking. Please direct all comments to the chair.

If you have trouble accessing zoom or have general questions you can send an email to [lcc@lunenburgonline.com](mailto:lcc@lunenburgonline.com) during the meeting. Emails containing questions or comments that are to be read aloud at the meeting must be signed with full name, address and phone number.

Please be aware that if you are using video, other people will be able to see you and that anything that is broadcast will be recorded.

The agenda lists all the topics which may be discussed at the meeting and are those reasonably anticipated by the Chair. Votes may be taken as a result of these discussions. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by Open Meeting Law. Each vote taken in this meeting will be conducted by roll call vote.

## **AGENDA**

### **Call to Order Announcements**

*All members present as the meeting was called to order by BP*

**Public Comment** *Comments are to be limited to 3 minutes and on a subject matter under the direct jurisdiction of the commission. Comments about current agenda items are to be made during the comment period of the specific agenda item*

JR noted that his presentation last meeting had a heckler and that person was using the chat feature and was wondering if the chat could be muted. He asked if the commission could adopt a procedure wither stopping chat or blocking a heckler. He noted that all public comment should be going through the chair. BP noted that he didn't notice it in the chat as it may have been directed to JR only. He noted that chat had been useful to him. If someone wanted to make a motion for chat they could PB had a discussion with legal and that there are no legal reason n to shut it down. ML noted that he had seen the chat at the last meeting and he felt that it was very distracting. CL noted that he has seen the value of chat however he felt it was abused and equated it with someone at a live meeting shouting comments out of order. He noted that some towns have a policy prohibiting chat and that private communications could be an open meeting law violation. He suggested that if there that type of behavior going on than we could perhaps shut it off at that time. RB suggested that it could be monitored and any person abusing chat could be warned once and then ejected from the meeting if the behavior doesn't stop. He noted that at times chat has been shown to have some useful comments.

CL moved to approve the minutes from March 17 and noted that it should be added to the minutes Cynthia Ritchie had a difficult time understanding the portal. JR noted that she also commented about not seeing the commission having goals. CC seconded. The members voted to approve the motion with JR's amendments. The motion was passed by a unanimous roll call vote

## **Appointments/Hearings –commences at 7 PM**

Appointment:

### **Public Hearing**

*Pursuant to MGL ch 131, s 40 as amended and the Town of Lunenburg Wetlands Protection and Municipal Bylaws a public hearing on a Request for a Determination of Applicability for work at 73 Peninsula Drive by Daniel Murphy will be held. Work proposed is the removal of trees within the buffer zone.*

*73 Peninsula drive was continued to April 21, 2020 at 7 PM by a motion of RB and a second by CC with a unanimous vote to approve*

*Pursuant to MGL ch 131, s 40 as amended and the Town of Lunenburg Wetlands Protection and Municipal Bylaws a public hearing on a Request for a Determination of Applicability for work at 586 Reservoir Road by Nicholas Pauling will be held. Work proposed is the replacement of an existing deck with a 3-season porch and associated tree pruning within 100-feet of a wetland resource area*

Nick Pauling represented himself, he oriented the commission to the site and outlined the scope of his work and its relation to the wetland resource areas. He proposed the addition of a three season porch enclosing the deck. He also noted the trees located on the plans that he wished to remove. The trees were small in diameter ( 3 to 4 inches). BP asked how close to the wetland the work comes. It was noted that the porch was 85 feet away and the trees were 83 feet away and the closest point of pruning would be 75 feet away. JR asked if any erosion controls were proposed. Wattles were shown on the plans. JR asked what the remainder of the terrain looked like. It was noted that it was trees and shrubs. CC asked if the landscape around the porch was grass. It was noted that it was landscaped timbers and previously disturbed. CL motioned for a negative determination. JR seconded and the commission approved the motion by a unanimous roll call vote.

*Pursuant to MGL ch 131, s 40 as amended and the Town of Lunenburg Wetlands Protection and Municipal Bylaws a public hearing on a Request for a Determination of Applicability for work at 47 Cliffview Terrace will be held. Work proposed is the placement of an aluminum framed dock.*

Matthew Moison representing himself. He outlined the proposal for a dock addition and its orientation to the lake. He also noted that a ground level deck was proposed to be placed on cement blocks. It would be a trex decking material. JR noted that there was really steep slope and asked if there was any digging in the wall to support the decking. Mr Moison noted that there was no plan to do that. He noted that he would recess the concrete blocks for leveling the deck and that should be no deeper than 6 inches. JR asked if hickory hills granted permission. It was noted that there was permission granted pending conservation commission approval. JV asked if there were any forms and pouring of concrete for the steps. It was noted that no there would not be.

CL clarified that the work was for the deck and dock. A picture CL added to the file was examined and outlined where the decking was going to go. JR offered to give the applicant some leftover silt fencing if he would put it in. The applicant agreed. They would go between the edge of water and where the decking was going. KJ noted there was a stump in the middle of the picture and was it new. Mr, Moison noted that during a windstorm the windstorm a tree split and fell and he had obtained an emergency certification. He had it removed from the water. KJ also noted that there was another proposed decking that the commission did not approve, MM noted that was a property on Sunset Lane where a patio was not approved, and the entire unit was dug into the ground. CL noted that we should examine the decking going into the ground and not having any digging. BP asked if the decking could be placed on the ground with no digging and still allow the various supports still in place. JR noted that he examined the drawing and noted that the decking was part of the dock proposal and in this case as similar to other cases there was limited access on the property. BP noted that he kayaks by the property many times and noted that the property was extremely steep and the location unique due to the steep nature of most of the property. Mr Moison noted that he can do the decking on the blocks with no digging. His original goal was not to have a raised structure however he was willing to modify his proposal. KJ noted that he had concerns that the project may spur more projects. He was concerned that it could be similar to 90 Ruth Street and indicated he may not be in favor of the proposal. JR wanted to know if the decking was to anchor the dock. Mr Moison noted that it was not. He also acknowledged KJ's concern that eventually down the road he

likely would file for further access to the water but there were no plans for the current site RB noted he would not be in favor of the dock within the no touch zone. He noted that there was multiple prior construction for the stairs. RB noted that he would like to see any potential future project added to the plans. Mr Moison noted that some of the structures were prior retaining walls original to the house and part of an original pathway. RB asked of the stairs were on the application. It was noted that no it was just repairs to existing structures. JR suggested considering allowing just the dock be approved right now and the others could be added to another application. JR noted he would support the current application that had a reduced decking.

KJ noted he was not opposed to the dock however suggested that the reminder of the work be outlined on a notice of intent. RB would be in favor of the dock only at this time and the reminder be added to a determination. CC is in favor of the dock but also would like to see the remainder of the work could be added to a plan. CL and JV agreed with the remainder of the commission with respect to the dock (removable) and wanted to see further working outlined on a plan. BP noted that historically on the property there was foot access that did promote erosion and would like to see future work placed on a Notice of Intent. He had no issues with a temporary dock. Mr Moison noted that he would be comfortable with amending his request with just the dock and would be willing to come back to the commission with a plan for future work. JV moved to continue to the twenty first. KJ seconded. CL noted that the applicant noted he was amending the proposal to limit just the dock and suggested that approval could be granted just for that. JV withdrew the motion. CL motioned to approve the plan without the platform and the dock only. KJ seconded. RB clarified it would be a negative determination. JV motioned for amending Cl's original motion to make the motion for a negative determination and that the dock be allowed to have different maximum size. Cl accepted the amendment for dock as described in the plan only and not the expanded dock. KJ seconded and the commission voted unanimously.

## **CONTINUED PUBLIC HEARINGS**

*Pursuant to MGL ch 131, s 40 as amended and Under Lunenburg Protective By Law chapter 335, The Conservation Commission will hold a public hearing on a Notice of Intent by Tom Wu and Scott Benjamin for work at Map 137 Parcel 12 at Fire Road 12 for the restoration of the buffer zone (to be continued to the April 21, 2021 meeting)*

MM noted that an engineered plan was going to be submitted and that the meeting needs to be continued. Greg Roy noted that he could have the plans in time for the May 5<sup>th</sup> meeting. JR moved to continue to the May 5 meeting. KJ seconded and the commission unanimously approved the motion to continue.

*Pursuant to MGL ch 131, s 40 as amended and Under Lunenburg Protective By Law chapter 335. The Conservation Commission will hold a public meeting on a request for a Notice of Intent by Proctor Masonry for work at 203 Fire Road 16 for the construction of replacement retaining walls and the removal of trees affecting the current wall structure.  
( to be continued to the April 21, 2021 meeting)*

MM noted that he is awaiting an engineered plan and recommended a continuance to the May 5 meeting. CC moved to continue to the May 5 meeting RB seconded and the commission voted unanimously.

*Pursuant to MGL ch 131, s 40 as amended and Under Lunenburg Protective By Law chapter 335, the Lunenburg Conservation Commission will hold a public hearing for a Notice of Intent by Cynthia Ritchie for work at 137 Flynn Road to build a natural stone wall along the waterfront to protect against future erosion of the edges of the land and beach.*

Greg Roy, was retained by the applicant and asked if the commission could continue until the April 21 meeting. Rb moved to continue to the April 21 meeting. CC seconded and the commission unanimously approved the motion to continue.

*Under Lunenburg Protective By Law chapter 335, the Lunenburg Conservation Commission will hold a public hearing for a Notice of Intent by Joann Magurn for work at 238 Fire Road 16 for the construction of a single family home with a drive way crossing.*

Joanne Magurn and Brian Butler and attorney Levine was present to represent the applicant. Brian Butler from Oxbow Associates. BP noted that the last hearing was continued to obtain a legal opinion as to the status of the filing and legal had noted that the filing was allowable. There was also an alternatives analysis requested by the commission.

Mr Butler noted that there as an alternative layout on a one-acre area that was not as intensive as the prior outlined option in the buffer zone. He did note that even though some of the work was out of the buffer zone there was a larger impact on a rear species habitat. He noted that the alternative submitted was largely impacting to the species habitat whereas although the preferred option has more impacts in the buffer zone it was the least impactful to the habitat area. He noted that the impacts on the alternative preferred by the applicant has minimized impacts to resource areas and is the least consumptive on the lot in total. He noted resource areas such as a leather leaf bog and vernal ponds that would be left untouched. He stated his opinion that the preferred alternative has no real measurable impacts. Attorney Levine noted his involvement with the project after the prior Notice of Intent. He had suggested to his client that they hire Mr Butler due to his expertise in this type of filing. He noted that they did not appeal to the courts the prior denial as he felt the Commission should have the opportunity to reconsider the proposal. He noted the revise plans had a 10 foot instead of 12 foot driveway, paving of the entire drive way and a changes of culvert. He stated the applicant wanted to work with the commission on the approval. He noted his client is trying to work with the commission and come to a positive conclusion to this matter.

CI noted that he was hoping that the alternatives analysis was limited to the one site and was submitted late last week and asked that the commission continue the hearing so they can examine the site. JR asked if DEP has issued any conclusion. Mr Butler noted that in consulting with DEP, a superseding order of conditions has been written and is being reviewed internally by DEP. JR noted that the fire department suggested a 12 foot driveway and would like to walk the site to examine the two proposals. He also noted that at the last meeting there was a hesitancy to guarantee not to further subdivide the lot. Butch Magurn noted that they wanted to leave any options open. CI disagreed with the contention that the preferred alternative was the least impactful especially if the lot could be divided in the future with future impacts. He also noted that the preferred alternative was in the most sensitive area of the site. He noted that in past experience with development adjacent to the 50 foot no structure zone that applicants have returned to ask for even further intrusion by tree cutting citing a danger to the home. He asked for a continuance to examine why the current proposed preferred alternative couldn't be adjusted. RB noted he was disappointed with the applicant's unwillingness to restrict further divisions of the lots especially after the description Mr Butler gave of the potential damage to the habitat area he previously cited. He noted that the preferred alternative is within the most sensitive are of the site. He noted that there are walls proposed within the 30 foot no touch and no structure zones off the driveway and that the purpose of it appears to be to add fill that could be utilized for future build out and not for access to the preferred alternative. He stated that it could be a way to address the concerns of future development of the site the commission expressed.

BP noted that during the prior hearing, the commission had noted that there were four members in favor. However, it was also noted that the full board was not present and felt the move to continue this request to continue in order to reduce the seven members ability to vote. RB noted that the meeting the vote took place was a former commissioners last meeting and that there was a commissioner that missed two meetings and was disqualified his ability to vote. CL noted that this situation provides an example of the straw polling being in appropriate and that commissioner's were simply awaiting the opportunity to do a further walk and resented the chairman's allegations. KJ noted that there is a full board and felt that a vote could take place. RB noted that during the meeting he, MM and BP were at with town counsel it was considered prudent to continue until DEP issues its decision of a superseding order of conditions. CL moved to continue to the April 21 meeting. RB seconded for the purpose of discussion. JR noted that the sampling poll was not a final vote and that the members could change their opinion from learning more facts as time went along in the hearing. He also noted that the vote was legitimate at the time during the prior hearing, and that there was information submitted that he felt should be considered. CC noted she agrees with the continuance in order to see what DEP says. JV feels we should do a vote tonight was we are all still here. Attorney Levine noted that he witnessed straw polls used by the commission to help the applicant and that he could not understand why CL has issue with it at this time. He noted that DEP

will issue a superseding order allowing the project and he contended that the by law did not require the applicant to submit an alternatives analysis and asked for a straw poll if there was members to approve or continue. RB noted that CI has made comments relative to the straw polling prior to this matter. He noted that in his estimation the submitted proposal was over and above what they would allow and could request an alternative asking for reduced impacts. A vote on the motion to continue was taken With RB CC CL AND JR voting yes and KJ, JV and BP voted against. MM reminded the applicant needed to agree. Attorney Levin noted agreement and asked if MM could let his client know if at the next meeting there was going to be a full commission present.

*Pursuant to MGL ch 131, s 40 as amended and Under Lunenburg Protective By Law chapter 335, the Lunenburg Conservation Commission will hold a public hearing for a Notice of Intent by Richard Tremblay for work at 386 Sunset Lane for repairs to five existing retaining wall, the construction of a kayak rack, the reinforcement of existing fencing, the removal of a stump, the replacement of 2 existing concrete patios, and the removal and replacement of an existing driveway.*

NOTE CARL LUCK RECUSED FROM THE MATTER

Greg Roy and Mr Tremblay were present to represent the applicant. Greg Roy recounted the history of the previous meeting and the revisions that were agreed too. He also showed revisions to the retaining wall and its termination.

Mr Roy reviewed the alternative layouts of the wall terminus with the applicant and Mr Luck the abutter. He noted that the wall would be saw cut right at the property line and the remaining wall would then be reconstructed. The detail on how the work would take place have been detailed on the updated plan and it was acknowledged by the applicant that permission by Mr Luck would have to be obtained. He noted that if permission were not obtained the applicant would ensure that the work would take place only on the applicants property. JR noted that due to the steepness of the slope, the blocks would have to be lowered down and asked the applicant how this could be accomplished without taking trees down. It could be completed by crane. Mr Tremblay noted that one contractor noted that he could lower the blocks during the drawdown period without going into the water. JR noted that there would need to be erosion protection installed. Mr. Roy noted that erosion protection is noted on the plans. RB asked if there would be any change in grade with the additional six feet. Mr Roy noted no there would be no changes. JV thanked the applicants for the proposal and was complimentary of the engineering. CL ( commenting as an abutter ) thanked the applicant for working with him on the abutter issues with his property . He noted that He agrees with JR's concerns on the tree issue and that the trees over 4 inches be added to the plans to allow for them to be documented for compliance monitoring. He noted that the walls would be totally exposed there would have be a draw down over four and a half feet and there is limited room for erosion protection. He cited a concern with how much room for work lakeside there was. (the comments were referring to the east side wall)

RB asked the applicant how long the work would take to do during the drawdown and if there was an emergency plan in case of heavy rain that brings up the lake level. Mr Tremblay asked to continue to consider a solution that would be considered workable. He cited that he still needs Mr Lucks approval for work on his property and was hoping to obtain such. Mr Roy noted that he could add the trees and how he was looking to access them and was willing to accept a condition requiring a preconstruction meeting at least 48 to 72 hours prior to construction to ensure the work could be timely and properly done. He noted that on other projects he could add in a detail for a turbidity curtain that could be added on site quickly and would allow work to continue without allowing silt to head into the lake. This would address the concern of a potential flash flooding rainstorm. RB moved to continue the hearing to April 21. KJ seconded and the commission voted to unanimously approve the motion to approve.

*Pursuant to MGL ch 131, s 40 as amended and Under Lunenburg Protective By Law chapter 335, the Lunenburg Conservation Commission will hold a public hearing for a Notice of Intent by Empire Management Corp for work at 757 Chase Road for the*

MM noted the applicant request a continue to May 5. A motion to continue to May 5 was made by JV and seconded by KJ and the commission vote unanimously to approve.

**Old Business:**

**Continued Workshop for continued discussion of changes of the land use regulations and the creation of a document to inform the public about the land use regulations.**

RB noted that town meeting was not a second platform for the commission to make policy. He noted the numerous public meetings and that the commission platform has been open and transparent. He noted that the town meeting platform was not in his opinion a sufficient platform to debate the issue. He also noted that attendance at town meeting can be skewed as to who organizes a larger crowd versus the open meeting process of the commission.

JR reviewed section 2.1 Hunting Hill language. He suggested that the original language from the 2011 regulation be used. MM noted the original document was a policy and not regulation. JR suggested changing language to make the firearm unacceptable. RB and KJ stated they would like to leave the current language as is. CL noted that the straw polling doesn't not consider the total issue and it should be discussed. He noted that he would like to see why there was concerns expressed and members should explain the rationale behind their decision. JV noted he would like to leave the language in place citing the second amendment. CC asked if we can ban the possession of fire arms. BP noted that town counsel noted that yes we can. CC noted that she would accept the changes were acceptable to her. BP noted that he has heard from both sides of the issue and did not know the current policy did not ban the possession of firearms and has no problem with no change to the language.

JR cited that current section 2.5 that firearm hunting is allowed on hunting hill citing state requirements. BP asked if the commission wants to open small town forest and northwest town forest to fire arms hunting. KJ and RB agreed with the changes to allow firearms hunting citing the lands are best suitable. RB noted that while there were a lot of comments against firearms hunting there are 260 hunting licenses. JR protested the action stating as not being allowed to reiterate his concerns and his new concerns. RB noted that JR had 45 minutes to expound on his view. CC noted that she would approve section 2.5 as written in the draft. CL noted that RB has some good points. The properties do indeed abut larger parcels, however, CL noted that there are state lands totaling 300 acres already in existence that hunters have access to . He noted that there are a total of over 3000 acres of uninterrupted lands they can still access without having to add the other 500 acres. There were overwhelming communications that reflect people would be afraid to use lands open to hunting. JV noted that hunting based on his research is very safe and is considered passive recreation and noted the straw polls worked and the process despite the pandemic has been well attended and very open to the public. BP noted that he was not in favor of firearms hunting. JR noted that he wanted the hours of operation in section 1.1 changed the hours of operations from dusk to dawn. RB wanted JR to expound why he wanted to changed. JR stated that the state laws allow hunting until midnight and that his research indicated that the majority of accidents happen after dusks. KJ opposed the proposed changes as there are other uses such as moonlight hikes, stargazers and snow mobile trails that are open to 10 PM and it would close it off a large sections of the users. RB indicated he would want to keep it open 24 hours. CC note she is in favor of hours of dawn to dusk. CL noted that the proposed language by JR was actually original and there was no real compelling reasons why it needs to be changed to 24 hours. JV felt that 24 hours is acceptable and that the only real species hunted at night would be coyotes and there is not a use for coyote. BP noted that he is in favor of allowing use at night citing different uses at night such as night cycling and snow mobiles. He also noted that dusk can be very early in the winter. JR asked for language to be added for drunkenness and prohibitions of containers on the property and also a prohibition of denial of use and enjoyment of the property. Drunkenness., breach of peace and glass containers be prohibited. It was noted that smoking and fires be prohibited and that no grills and fuel stoves be prohibited. KJ expressed a willing ness to add into 1.7 that open fires, smoking and alcohol be

prohibited as sufficient language. He did not see glass containers as a wide spread issue. RB asked KJ in his capacity as a fire fighter concerning regulations on open fires. KJ noted that you can't burn brush without a permit and you must be a property owner or tenant. Cooking fires are allowed by right with notification to the fire department and there must be a water source available to extinguish the fires. RB agreed with adding the language concerning open fires and he was asked for additional language. CC also agreed with the language KJ proposed. JV agreed with the language except that he was against the alcohol prohibition.

RB noted that he was voting in favor of hunting due to losses of land due to multiple factors ranging from development. He also noted that the Lane property prior to acquisition from the town and the Saliba property was open to hunting and that was taken away when the town purchased it due to its existing policy.

The Communication from Adam Costa was reviewed. CL suggested to clarify the language on what was allowed versus what was not allowed. He cited other communities with more brief documents. RB noted that the proposed regulations contain sections of what you can do, and what you can't do.

#### ENFORCEMENT:

##### **Violations (Enforcement Actions and Administrative Hearings).**

**Leominster Road- Illegal Dumping activity** (site visit to occur after snow has melted)

**EO 90 Ruth Street**

**EO-Town of Lunenburg Fire Road 12 ENF 2019 NOI FILED** Town admin signature obtained and awaiting drawing.

**NON - 9 Valley Road- Working on NOI**

**EO 615 Townsend Street- monitoring time line**

**NON 467 Lancaster Ave**

**EO Fire Road 16**

**NON 48 Oak Ridge**

**EO 205 Arbor Street**

#### **New Business**

**Update on trails grant – status report, if any.**

119 Reservoir Road : Certificate of Compliance MM requested the commission to consider a certificate of compliance to Kevin McGuinness reservoir road and noted due to the timeliness of his closing if it could be considered. Mr. McGuinness shared the screen. CL asked if this lot was one of the one required for boulder demarcation. KJ moved to use a certificate of compliance. CC seconded and the commission voted unanimously to approve with RB abstaining.

#### **Extension Permit –**

**Committee Reports – Any Updates**

#### **Administrator's Reports/action items:**

*Administrator's determination – 106 Sandy Cove Road*

KJ left the meeting at 11 PM.

CC left the meeting at 11:05 PM and note to the commission that she had emailed signage suggestions for the commission to review.

The remaining members reviewed a questions and answers documents. Language pertaining to it was reviewed as well.

The Q & A document will be posted on the cloud for Monday when MM is in the office next. CL left the meeting at 11:35 due to computer issues.

Administrator's determination was approved by a motion of RB and a second by JV with a unanimous roll call vote

RB moved to adjourn and JV seconded and the commission voted unanimously. The meeting adjourned at 11:37 PM

*Open space and land and Trail use issues and strategies:*

- *Forestry Planning/Encroachment on town open space (draft plan discussion)* **Update on Rayno/Hollis**

Communications / public comment

Adjourn

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**Meeting schedule: Next meeting is April 21, 2021 at 7PM**

