

**DRAFT**

**MINUTES OF ANNUAL MEETING  
ASSOCIATION OF OWNERS OF LOWLANDS AND  
MEADOWS AROUND CHILMARK POND  
AUGUST 8, 2010**

**Officers Present:**

Liz Lewenberg, President  
Steve Lewenberg, Treasurer  
Peter Bruce, Assistant Treasurer  
Steve Asher, Clerk

William Randol, Commissioner

**Call to Order**

President Liz Lewenberg declared a quorum and called the meeting to order at approximately 4:00pm.

**Rusty Walton**

The President noted the recent death of Rusty Walton, Pond Commissioner. She recalled his years of service to the Association and his depth of knowledge and his commitment to a healthy Pond. She said that the members would be asked to elect a new Commissioner to fill the vacancy later in the meeting.

**Minutes**

The minutes of the 2009 annual meeting were approved as submitted to members with the notice of Annual Meeting.

**Treasurer's Report**

Steve Lewenberg reviewed the Treasurer's Report, circulated with the notice of annual meeting. He stated that 2009 taxes had been received from approximately 2/3 of the membership and that the only material expense incurred since the Treasurer's Report was prepared and mailed to the membership was the cost of the most recent Pond opening which he estimated to be approximately \$450. He stated that the Association currently has approximately \$141,000 in its accounts. Another \$8,250 due in 2010 and earlier assessments. He said he expected \$6,000 more this year in assessments and another \$4,000 in contributions, chiefly from members of the Abel's Hill Association, who are not members of the Chilmark Pond Association. He projected that cash on hand by the end of the year would reach \$150,000.

In response to a question, the Treasurer stated the Association had the same power to levy and collect taxes as a Town. He explained that the Pond is technically owned by The Commonwealth of Massachusetts, but pursuant to the 1904 Statute [Chapter 203, 1904 Acts and Resolves], the Commonwealth gave the Association the power to administer the Pond and to levy assessments. He also said the assessment is deductible for federal income tax purposes. In theory, the Association has the power to lien against properties to collect unpaid assessments, and former treasurer Steve Cohen said the Association had done so on two occasions. The Treasurer said that traditionally, the assessment has been a flat rate per property for ease of administration, and that the Association has 125 members, with the Abel's Hill Association counting as one member. He said the criteria for membership and liability for assessments is whether one is a riparian owner with respect to the Pond and its estuaries and coves. Steve Cohen said that it had levied special assessments in the past. The Treasurer stated he expected no special assessment would be levied without the approval of the members at a meeting.

**President's Report**

The President reviewed her Report, circulated with the notice of annual meeting. She discussed the ecological challenges facing the Pond, notably the buildup of nitrogen, and the consequences of not dredging or taking other action to improve the flushing of the Pond when it is opened. She said that any long-term dredging proposal including its costs would be presented at next year's annual meeting, and that further data was now being collected to inform the decisions as to whether, where, and how to dredge or take other action to protect the ecology of the Pond.

Cris Russell suggested authorizing the preparatory work at this meeting so that the needed data would be in hand when a final proposal was presented to the membership. The President said that the preparatory work was underway and she would be happy to provide updates by email. She said the oyster project, involving seeding oysters and perhaps mussels to remove excess nitrogen from the Pond, had already gotten underway. She cautioned however that the oysters would not be edible.

The President said the preparations for the long-term dredging solution, including the necessary

permitting, would take a good deal of work and hoped that this meeting would authorize the preparatory work.

In response to a question, the President said the proposal to dredge a small area near the cut would cost about \$20,000, and would serve only as a temporary solution that would last no more than three years. Mr. Bruce said short-term dredging had been done before and had improved the flushing of the Pond for shorter periods of time. He added that every time the cut is opened, the ocean deposits sand when the cut is closed and over time undoes the effect of the dredging.

Mr. Lewenberg said that the long-term solution involving a dredge used on Edgartown Great Pond known as "Nessie" was complicated because Nessie is already obligated for other projects and any dredging could not begin until the permitting process had finished. He said the permitting alone could cost up to \$25,000 and only then could the Association "get in line" to use Nessie.

Mr. Randol said that the pond level is two to three inches below the mark on a white stake in Wade's Cove traditionally used to monitor the pond level. The President said that she will work with Kent Healy to establish measurements for both Pond and ocean level to maximize the chances of a successful opening. Mr. Randol said he did not expect to open the Pond before Labor Day in the absence of heavy rain.

Mr. Lewenberg invited the members to contribute to the review process, especially those with relevant skills and experience.

After discussion, upon motion duly made and seconded, it was unanimously

VOTED: That the Commissioners and the Executive Officers of the Association be and they hereby are authorized to spend up to \$50,000 for the purposes of research, planning, and permitting with respect to a long-term dredging project intended to restore the biological health of the both the upper and lower Pond and adjoining lands, including a review of potential grant opportunities.

Mr. Lewenberg said that the Association took the position that no permits are needed to open the Pond on the theory that the legislation authorizing the Association predated and was grandfathered under subsequent environmental legislation, and that no permits are needed to dredge in connection with the historic opening of the Pond. However, he said that the Association was subject to the restrictions of the Endangered Species Act and that the short-term dredging project had been held up by the Act's prohibition on disturbing the nesting grounds of piping plovers and oystercatchers, which qualify as endangered species under that Act.

Ms. Lewenberg said that Rusty Walton had said that nature can destroy an endangered species but the Association cannot.

In response to a question, Mr. Lewenberg said there had been five openings in the past year that had remained open long enough to drain the Pond properly.

After discussion upon motion duly made and seconded it was unanimously

VOTED: That the Commissioners and the Executive Officers of the Association be and they hereby are authorized to spend up to \$30,000 for the purpose of opening the cut including any related dredging intended to improve the draining of the Pond when opened.

In response to a question, the President reported that the Abel's Hill Association pays one assessment plus a voluntary contribution. Paul Iantosca asked whether each property owner in the Abel's Hill Association should be assessed. Mr. Lewenberg explained that those property owners touch the pond only through the Abel's Hill Association access and therefore the property owners on the north side of South Road are not assessed. Mr. Iantosca said that he and others who own beach rights are assessed individually. Mr. Cohen said that the members of the Abel's Hill Association have in the past made voluntary contributions of up to \$5,000, in excess of what a mandatory assessment would raise.

### **Nominating Committee Report**

Bill Randol nominated Matt Feinberg as Commissioner to fill the vacancy caused by the death of Rusty Walton. Mr. Feinberg stated that he was willing to serve as Commissioner. Upon motion duly made and seconded, it was unanimously

VOTED: That Matt Feinberg be and he hereby is elected a Commissioner of the Association.

In response to a question, Jane Wilkie reported that the effort to remove the invasive phragmites would continue in areas where a permit had been issued, including the Land Bank property. She asked whether the Estuary Project could be retained to assist in building the flushing model and said that the Town was unlikely to assist financially with such a project.

Ms. Lewenberg said that the high nitrogen levels in the Pond were partly caused by acid rain. Ms. Wilkie added that runoff from septic systems and fertilizer also contributed to high nitrogen levels, but that appropriate vegetation can remove up to 80% of excess nitrogen. Ms. Lewenberg said that deepening the Pond would improve biodiversity. Ms. Wilkie suggested that the Association could inform its members of steps they could take to lower the Pond's nitrogen level, including limiting use of fertilizer.

#### **Election of Officers**

Upon motion duly made and seconded, it was unanimously:

VOTED: that each of the following persons be and hereby is re-elected to the office set forth next to his or her name:

Liz Lewenberg, President  
Joan Malkin, Vice-President  
Steve Lewenberg, Treasurer  
Peter Bruce, Assistant Treasurer and Web Master  
Steve Asher, Clerk  
Clarissa Allen, Commissioner  
Bill Randol, Commissioner

#### **Authorization of Borrowings**

After discussion, upon motion duly made and seconded, it was unanimously

VOTED: That the President and Treasurer be and they hereby are authorized on behalf of the Association to borrow up to \$25,000 for emergency purposes.

There being no further business to come before the meeting, upon motion duly made and seconded it was unanimously

VOTED: To adjourn.

Adjourned.

A True Record.

Attest:

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Steven Asher  
Clerk