

**REPORT OF THE MELENDY POND STUDY COMMITTEE**

**DECEMBER 1999**

OVERVIEW

The following is a brief chronology of the history of Brookline, New Hampshire and Melendy Pond. After missing an opportunity, in the 1930's, to buy the land surrounding Lake Potanipo from the Fresh Pond Ice Company, the townspeople no longer had any access to swimming and boating. It was not until the Max Cohen Memorial Grove was established that townspeople once again had an access to Lake Potanipo. Since the value of lakes and lake property for recreation and development became increasingly apparent after World War II, the town looked to the development of the Melendy Pond.

The idea of a long-term lease for Melendy Pond lots has its origin from the Brookline, New Hampshire, Town meeting held in March 1949. At this meeting, warrant article 14 read:

'To see if the Town will vote to authorize the Selectmen to sell the Melendy Pond property, also known as the Town Forest, or take any action relative thereto'.

The vote to authorize the sale was defeated, however, the action taken relative thereto was to set up a committee to study the disposition of this tract.

In March 1950, the next town meeting heard a report from 'The Melendy Pond Development Committee'. This committee proposed 2 alternative plans; a selling plan and a long term leasing plan. The latter was the committee recommendation and approved by Town Meeting. It should be noted that the committee recommended that '...an elected authority lease the land...' and that the committee suggested that '...this authority be empowered to formulate a set of regulations...'

The Melendy Pond Regulations, dated May 16, 1950, were published in the Milford Cabinet. In addition, the article contained a sketch map with hints of future plans for road development and a centralized water system. The 1950 Melendy Pond Authority Report, in the 1950 Annual Report of the Town of Brookline, states that the Authority believed that the Melendy Pond project was well underway and that it would make "an excellent summer colony." Further, the Authority reported that the camps under construction would soon begin to produce "a constantly increasing revenue for the Town in the form of taxes."

At the March 1951 town meeting there were 4 warrant articles relative to the Melendy Pond Authority. The meeting report suggests that all 4 warrant articles were voted in the affirmative, however, it is not clear that Article 19 – Incorporation of Melendy Pond Authority- and Article 21 –transfer of Town Land to Melendy Pond Authority – were ever formally pursued.

At the March 1957 town meeting, a vote authorized the town to sell, for \$1.00, land known as the 'Robbins Quarry', to the Melendy Pond Authority. Once again, there is apparently no record that this was formally pursued.

Although the town report for 1960 contains only a benign report from the Melendy Pond Authority, the town meeting warrant had two articles pertaining to Melendy Pond. In a later summary of the town meeting, it appears that – relative to article 23 - the town meeting voted to rescind all previous votes pertaining to title and transfer of land supervised by the Melendy Pond Authority. Apparently, the legal status of the land and/or the Melendy Pond Authority was an issue. Despite previous votes to sell land to the Melendy Pond Authority, the town meeting was only willing to recognize that the Melendy Pond Authority supervise the land.

At the March 1969 town meeting, warrant article 41 apparently sought to firm up the legal status of the Melendy Pond Authority. The town voted to continue the old provisions and to set new provisions under which the Melendy Pond Authority was to operate. At the same time, it seems that the Selectmen refused to deed town land to the Melendy Pond Authority. A subsequent board of selectmen finally deeded to The Melendy Pond Authority, in December 1970.

In 1985, the Melendy Pond Authority, instituted an effort to reinforce the lease condition that the Melendy Pond properties not be used as permanent residences. The Melendy Pond Authority required an annual affidavit of permanent residence elsewhere from any leaseholder and continues to do so.

In 1988, the Melendy Pond Authority ended the practice of automatically issuing 20-year leases with 20-year renewal options. Over the years, lease and option final termination dates had become totally out of synchronization. Since 1988, leases with a lease and option final termination date of 2025 +/- have been written. While there are no intentions or plans for the Melendy Pond property in 2025, the coincidence of the lease dates gives the town options other than the status quo. See Attachment A.

In 1996, the Brookline Board of Assessors added a waterfront amenity tax assessment to the cottages (houses) on Melendy Pond. Upon review, requested by some of the lessees, the board of assessors reduced the waterfront amenity assessment. Not satisfied with this action, some of the leaseholders at Melendy Pond filed for abatements with the state. The New Hampshire Board of Land and Tax Appeals affirmed the town's action. Some of the leaseholders then filed an appeal with the NH Supreme Court to have the NH Board of Land and Tax Appeal's decision reversed. The lessees prevailed in their actions, in the case, In Re Beatrice Reid, et al., 722 A.2d 489. The Supreme Court held that the leases did not specifically state the lessee was responsible to pay a tax for land amenities, as they must do when land is town owned. Even though the

assessment of amenities was pursuant to NH RSAs, since the leases did not so state that the amenities could be taxed, these lessees could not be taxed for the amenity.

As a result of the New Hampshire Supreme Court case, shortcomings in the leases were exposed, and these are being addressed by the Melendy Pond Authority. As has been the practice for several years, the Melendy Pond Authority is continuing to work to bring the existing leases to a common expiration date. This will allow the Town to address any future concerns for the use and enjoyment of the site by the lessees and the Town. Finally, due to the appeal the Melendy Pond Property and its administration was brought to the attention of the town, which resulted in the 1999 Town Meeting vote establishing the current study committee.

Today we have the opportunity to develop a new vision for the Melendy Pond property. The Melendy Pond Study Committee, authorized at the 1999 town meeting, has considered many options for the future of the pond and land. These options can be divided into two categories; short-range plans and long Range plans. Short-range options will be discussed in this report. Long range recommendations need further development.

## HOW THE MELENDY POND STUDY COMMITTEE PROGRESSED

### **Introduction**

The Melendy Pond Study Committee agreed that it would be appropriate, as part of our report, to share some of the experience and the process of reaching conclusions and preparing this report. The following is an attempt to present the flavor and some of the context of each meeting.

The diverse group appointed to this committee came from the full spectrum of backgrounds, experience, viewpoints (including eyewitness testimony from Betty Hall, as a party involved in 1949), and agendas but soon found common ground and eventually built consensus. What we propose attempts to address issues raised around the table with great effort extended to assure that any decisions were in the best interests of the Town of Brookline.

### **June 24, 1999 Meeting**

The first evening set the tone for future meetings. After the initial introduction, an issue was presented challenging the seating on the committee of two Melendy Pond leaseholders. The two leaseholders were appointed by the Board of Selectmen as the required "members at large". The leaseholders happen to be town residents as well as leaseholders and were the only volunteers for the seats. The decision to seat them was subsequently reviewed and upheld by the Board of Selectmen.

Peter Cook gave a history of the Melendy Pond Authority (MPA) and explained the recent NH Supreme Court decision, which was catalyst for the creation of this committee. Although the charge of the Committee was to address legal shortcomings, the consensus was that this committee should focus on goals and that agreement on those goals by Town Meeting would most likely dictate the future of the MPA. It is not a matter of ignoring that aspect of our charge but rather of letting logical progression control events.

There were other comments made about existing conditions of the pond itself, the leases, the activities at the pond, both current and historical, and the state of wells and septic systems. These concerns would be expanded upon at future meetings.

### **July 13, 1999 Meeting**

At this meeting, work really began towards developing goals. Members gave input from their respective boards and consensus began to appear. Concerns centered on a few main points:

**1. Water Quality** - Any decision that changed the current use of the property would have to take into consideration its effect on the pond itself because most of the existing waste disposal systems would not meet current standards.

**2. Town Resource** - It was generally agreed that this property has great potential for conservation/recreational use by the town and plans should be examined with that in mind. Many ideas were tossed around but no concrete plans developed.

**3. Fairness** - There were many leaseholders present and they were somewhat relieved to hear that all study group members had concerns and were committed to ensuring that any plans for reclaiming control of these properties by the Town would include provisions for fair treatment of the leaseholders.

**4. Taxes** - The Town loses approximately \$13,500 per year, in present dollars, in potential tax revenue by not being allowed to tax the amenity on these properties. See Attachment A. This is being remedied by adding language to any new leases when permitted. It was agreed that if at the Town Meeting the Town votes to not renew any of the leases, then the Board of Assessors would have to take action to accurately reflect the real depreciating value of the leaseholder's personal property.

### **July 27, 1999 Meeting**

This mid-summer meeting opened a new phase of discussion. Most comments around the table began to focus on various acquisition strategies. Although there was some discussion about the Town Beach, which is presently rarely used, and some proposals were suggested which would allow leaseholders individually or jointly to purchase properties, the main topic of the evening was acquisition strategy. There were ideas interjected on a variety of recreational and conservation uses, but the discussion always returned to methodologies of the Town reclaiming control over all or some of these properties. No consensus was reached, except that any acquisition plan would require a lot more work and possibly professional assistance.

### **August 25, 1999 Meeting**

Discussion continued regarding various possible future uses and strategies of how to position the Town to take any of the suggested approaches for conservation or recreational use. More detailed plans from each of the Committees began to materialize. The Melendy Pond Association, a group that includes most of the leaseholders, presented a plan to maintain the present arrangement with respect to the leases land. The Study group agreed that

"status quo" is unlikely.

The focus eventually turned to a list of proposed action items offered by Bob Parodi, which delineated the steps the Town should take to eventually resolve all the issues on the table. A version of that list is the basis of our recommendations to Town Meeting. Finally, it was agreed that a site visit might be helpful and one was planned.

### **September 9, 1999 Meeting**

Committee members visited Melendy Pond and many of the camps, prior to the meeting. For some, it reinforced the concept that leaseholders had much more than money invested in several of the camps. It was obvious that some leaseholders were exemplary stewards of their leased property.

The meeting had a brief discussion about possible uses for the 250 acres of unleased property, with the Recreation Commission expressing more interest in possible uses for that acreage rather than the Pond front properties. The remainder of the meeting was spent hammering out consensus on the recommendations for Town Meeting and assignments were given for drafting portions of our report.

It was agreed that whatever report that was sent to Town Meeting should try to be by unanimous vote of the Committee.

### **September 30, 1999 Meeting**

Drafts were presented for the various report sections and a lively discussion ensued regarding each. At this point, there were few changes requested. Some specific wording such as "summer residence" created discourse focusing on original intent vs. current real and/or perceived activities. It was decided that at this juncture, this committee would not make any recommendations regarding the Melendy Pond Authority's policies or practices.

With respect to financial issues, concerns were raised about the current and possible future uses and disposition of lease revenues, but most of the discussion centered on the creation of a non-lapsing fund to be used for acquisition of leasehold interests and the strategy and timing for raising and appropriating moneys for such a fund.

It was agreed that Peter Cook would assume the task of compiling all the pieces into a single report. In addition, it was agreed that Barbara Green Whitbeck would act as editor.

The Committee met again on October 14, 1999, and October 28, 1999,

where the draft report was reviewed and changes were made. On November 23, 1999, the Committee met to review the revised draft report and make changes. The Committee adopted a fourth recommendation to ensure any future leaseholds include payment of taxes for land amenities.

### **Conclusion**

The recommendations of this committee may or may not be accepted by Town Meeting, but the process has been informative and constructive. We were able to tap into resources representing many perspectives. We had all interested groups represented. Finally, we had the common goal - "the best interest of Brookline".



## THE MELENDY POND AUTHORITY

The following defines what the Melendy Pond Authority is and the role it has relative to the land. The Melendy Pond Authority, created in 1950, is a Town Board consisting of six members, five voting members elected at Town Meeting with one non-voting member, representing the lessees. The members oversee the leasing of the existing 28 lease lots in and around Melendy Pond. See Attachment A.

The Melendy Pond tract, which is administered by the Melendy Pond Authority, is approximately 285 acres, of which about 20 acres is Melendy Pond, 10 acres is leased land, 5 acres provides access and beach area with approximately 250 acres of woodland.

The Authority currently collects a yearly total of approximately \$2285 in lease fees from the rental of the 28 leased lots (less than \$100 per lot average). The fees are partially used to maintain the existing access road system, beach area, fire protection access, postage, bank fees etc., which costs approximately \$1510 annually.

Through the last thirty plus years the Authority has set aside these residual funds into savings accounts & certificates of deposit creating a financial resource for larger projects for the Melendy Pond Tract. In 1976, the Authority was able to use the accumulated resources to put up a non-refundable deposit of \$4500 for the purchase of the 100+ acre "Manning Morrill Land" (Tax Map Parcel B-94). In addition, in 1988, the authority also used resources to have a 2-foot contour interval topographic survey of the site prepared from aerial photogrametry. At present the Authority has cash resources of approximately \$49,000.

The Authority realizes that the uses for the Town's Melendy Pond Tract will probably change and keep changing through time, as the community's need for recreational land plus other uses increases. If the Town votes at a Town Meeting <sup>To</sup> extend any leasehold interests beyond the present lease and option dates, the Authority feels that a definitive plan must be developed to address the current leasehold interests and be specific in it's implementation. This will provide the Authority with guidance and a more precise definition of its duties and responsibilities.

## VIEWS OF THE LEASEHOLDERS

The following is the majority viewpoint of the leaseholders. Some issues and concerns have already been stated, but they can bear being repeated again.

As stated previously, in 1949 the town of Brookline voted to lease lots at Melendy Pond for recreational purposes. The lots were leased for a small fee. The lease money was to be held by the Melendy Pond Authority for use in maintaining road, driveways etc. at the pond. The leases held some restrictions including that the lots were not to be used as permanent residences, no children were to be sent to school from there and the town is not responsible for maintaining the road. The buildings on these lots are taxed the same rate as all other non-commercial buildings.

In 1993 the town reevaluated and the waterfront amenities of the land were added on to the value of the buildings. The camp owners believed this tax was unfair. The majority of the camp owners are retired and on fixed incomes. This was a great burden to some. The camp owners decided to call in an Attorney and see what they could do. They filed for abatements and ended up in a court case. The case went through the legal channels all the way to Supreme Court. After 5 years the decision was found in favor of the camp owners. The camp owners who prevailed at the New Hampshire Supreme Court had paid the higher taxes for the 5 years and were given abatement for their overpayments.

While considering all options presented, one must keep in mind that eliminating the camps would result in a loss of tax revenue. Other issues and concerns, which have been presented, should be reiterated. Like the rest of the town, the leaseholders are concerned about the water quality and septic systems at the pond. The majority of the leaseholders would prefer to have a "status quo" for the pond. They have enjoyed a quiet existence at the Pond for many years. Some of the camps have been handed down from generation to generation. It is the opinion of the majority of leaseholders that there is certainly enough land for the camps to remain and the town to have their recreation facilities on the 250 acres.

## VISION FOR THE FUTURE

As stated at the beginning of this report, over the past 60 years, the Town of Brookline has gone through several stages of visions for Melendy Pond. Due to a Town vote in 1999, the vision of future plans for Melendy Pond is back in the forefront. The following summarizes how each Town Committee would like to resolve the Melendy Pond matter.

**THE PLANNING BOARD** recommends that the land be reclaimed for "town recreation and conservation uses, including such options as swimming, boating without motors, overnight camping and parks." Hiking trails were also recommended. Some of these uses might not be possible while the leases are in effect. Overall, the Planning Board would like to see the deed revert back to the town.

**THE BOARD OF SELECTMEN** <sup>have</sup> has no recommendation at this time, except that any long-range plan should provide for maintaining water quality and preserving an important town resource.

**THE LEASEHOLDERS** have recommended that the status quo be maintained, with consecutive renewable leases offered every twenty years, or longer. If the town votes to not extend leases beyond their current terms, they hope they will be compensated for their hard work. Many of the leaseholders have put much time, money and love in their buildings and keeping the lots well kept.

**A PRIVATE CITIZEN** recommended multiple uses for the area, with some of the leases retained, some land sold to build elderly cluster housing, and some land retained for recreation and common open areas.

**THE RECREATION COMMISSION** stated that it "is not prepared at this juncture to take a firm position on the eventual disposition and use of the Melendy Pond leased lands," but is concerned that water quality and public recreational use be addressed. The Recreation Commission is particularly interested in the recreational use of the unleased property.

**THE CONSERVATION COMMISSION** recommends returning the area back to open land for passive recreational activities, including fishing, canoeing, ice-skating, ice-fishing, ice-hockey, outdoor camping, and hiking on developed trails connected to the Morrill land. Protecting water quality and shoreland and wetland protection should be the highest priority.

**THE BOARD OF ASSESSORS** recommends that the Melendy Pond Authority continue to give consideration to changing the wording on all new leases. In addition, the Board of Assessors would prefer to see the Town make an outright purchase of properties on Melendy Pond land, as they become available for

purchase. In the event the Town adopts a non-extension strategy, as recommended by this Committee the Board of Assessors would have to consider a possible course of action to use a sliding scale for taxation purposes, based on the number of years remaining in the lease, for camps/homes remaining until the end of their lease. The closer to the expiration date of the lease, the less value the properties would have.

**Summary:**

Clearly all of the Committee members have a vision for protecting the water and the land for future generations. The vision needs a lot more input from the town's residents so we can develop a proposal that represents a consensus of the majority of the town's residents. Keeping significant acreage in open land is part of this future vision. The town needs to take the time to do it right. It must not only avoid some of the problems that have already presented themselves, but it must fully realize the importance and proper use of precious natural resources in a rapidly growing town.

## RECOMMENDATIONS OF THE MELENDY POND STUDY COMMITTEE

The Melendy Pond Study Committee does hereby recommend to the Town of Brookline, 2000 Town Meeting, the following warrant articles:

1. To see if the Town will vote to direct the Melendy Pond Authority not to extend any leasehold interests beyond its individual expiration date of leases or subleases until further vote by the Town about the future of the leased land of the Melendy Pond Authority.
2. To see if the Town will vote to direct the Melendy Pond Authority to not execute any future leasehold interests or subleases or options to renew without a provision to tax the amenities associated with the land.
3. To see if the Town will vote to continue a Committee to study the legal status, propose rectification of any shortcomings, and establish long-term goals for the Melendy Pond Authority and Town of Brookline with respect to the Melendy Pond property. The Committee shall consist of: 1 Melendy Pond Authority, 1 Board of Selectman, 1 Planning Board, 1 Conservation Commission, 1 Recreation Commission, 1 Board of Assessors, 1 Finance Committee, and any number of at-large members as recommended by the Board of Selectman and to recommend action for the 2001 Town Meeting.
4. To see if the Town will vote to establish a non-lapsing fund for the purpose of purchasing leasehold interests of lessees of the Melendy Pond Authority and to raise and appropriate the sum of \$25,000 to be placed in this fund, or take any action relative thereto.

Attachment "A"

MELENDY POND AUTHORITY - SUMMARY OF LEASES AS OF 10/1/99

TAX_MAP	LEASE START DATE	RENT (\$/Year)	LEASE TERM (YRS)	RENEWAL TERM (YRS)	NET ENDING DATE	AMENITY IMPROV.	ASSESSMENT TOTAL
M23	December 9, 1983	35	20	0	December 9, 2003	15,000	21,700
M21	August 27, 1972	25	20	20	August 27, 2012	15,000	19,800
M10	June 24, 1998	90	20	0	June 24, 2018	20,000	21,200
M5	January 27, 1998	105	20.75	0	October 27, 2018	20,000	25,200
M3	April 28, 1997	120	1.62	20	December 10, 2018	20,000	30,200
M30	December 10, 1978	100	20	20	December 10, 2018	20,000	23,100
M9	February 11, 1979	55	20	20	February 11, 2019	20,000	28,500
M2	May 1, 1995	105	6	20	April 30, 2021	20,000	28,900
M17	September 4, 1991	60	10	20	September 3, 2021	10,000	24,800
M36	September 4, 1991	60	10	20	September 3, 2021	10,000	27,900
M34	October 8, 1992	60	9	20	October 8, 2021	10,000	22,400
M13	October 19, 1998	75	23.25	0	January 18, 2022	20,000	31,000
M32	September 25, 1996	115	5.5	20	March 26, 2022	20,000	39,300
M15	June 5, 1996	75	6	20	June 5, 2022	10,000	34,700
M22	November 13, 1996	90	7.25	20	February 13, 2024	15,000	20,100
M7	April 4, 1984	100	20	20	April 4, 2024	20,000	23,200
M1	April 27, 1988	60	16	20	April 27, 2024	20,000	27,600
M16	May 4, 1995	75	10.25	20	August 2, 2025	10,000	22,000
M8	August 25, 1985	105	20	20	August 25, 2025	20,000	16,800
M24	June 1, 1989	100	16.5	20	November 30, 2025	20,000	42,900
M12	June 30, 1986	60	20	20	June 30, 2026	20,000	26,100
M4	June 30, 1986	105	20	20	June 30, 2026	20,000	29,600
M11	November 6, 1986	60	20	20	November 6, 2026	20,000	33,200
M14	May 18, 1993	75	20	17	May 18, 2030	10,000	38,600
M20	July 25, 1995	60	20	15	July 24, 2030	5,000	23,800
M35	November 19, 1994	75	20	16	November 19, 2030	9,600	28,300
M6	March 18, 1992	105	20	20	March 18, 2032	20,000	30,500
M37	July 10, 1996	75	15.75	20	April 9, 2032	10,000	21,600
TOTAL		2,225				449,600	763,000

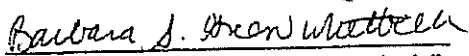
\* Note:- Amenity Assessment is not now taxed

1,212,600

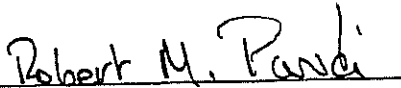
01/21/00 FAX 11:01 PM 508 575 1003  
Respectfully submitted,



Peter A. Cook, Chairperson  
Representing the Melendy Pond Authority



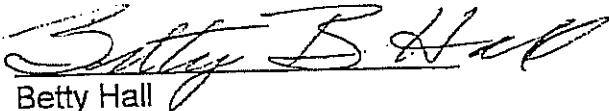
Barbara S. Green Whitbeck, Vice Chairperson  
Representing the Planning Board



Robert M. Parodi, Secretary  
Representing the Board of Selectmen



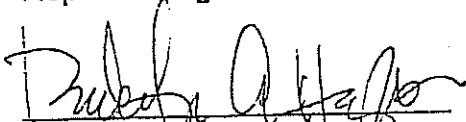
Douglas Cecil  
Representing the Recreation Commission



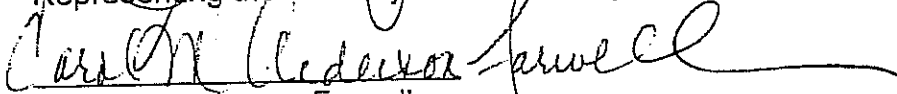
Betty Hall  
Representing the Conservation Commission



Allan Fessenden  
Representing the Board of Assessors



Randolph A. Haight  
Representing the Melendy Pond Authority



Carol M. Anderson-Farwell  
Member at Large



Pamela Austin  
Member at Large