

# Six Ponds News

July, 2011

(www.sixponds.org)

An Occasional Publication of the Six Ponds Improvement Association, Plymouth Mass.

## Historic Farm in the Six Ponds Area Protected from Development Wildlands Trust to Move Headquarters to Six Ponds

The Wildlands Trust of Southeastern Massachusetts has announced its intention to purchase the Douglas/Bongiovanni property on Long Pond Road near Morgan Road. The seven acre property will become the Trust's new home and headquarters, to replace their small and overcrowded site in Duxbury.

The land includes some of the few historically open fields in the Six Ponds area, fields that have been kept open since the late 19th century. The property served as the farm for the extended Howland Davis family until right after the Second World War, and has been occupied by three generations of the Percy Douglas family since that time. It is across the road from the extensive Emery Preserve, the Trust's first reservation, given by the Emery family in 1973, as well as land purchased by the Trust from Plymouth County in 2010.

The Trust's plans include renovating the house for office space, building an equipment garage and possibly meeting rooms over the old barn foundation, building greenhouses and community gardens, and more. The purchase will be funded by donations to the Wildlands Trust, which are being gratefully accepted starting now.



All Six Ponds neighbors are invited to come by, see the place, and hear about the Trust's plans, on Saturday July 30 between 10:00 a.m. and noon. The address is 17 Morgan Road.

Please contact Sam Chapin at [sgchapin@comcast.net](mailto:sgchapin@comcast.net) for additional information.

## Conservation Efforts at Bloody Pond

Most Six Pond Association members are well aware of the multiple Wildlands Trust conservation areas surrounding Long, Gallows and Halfway Ponds. This is the story, some of it still ongoing, of the conservation efforts on and around Bloody Pond.

Nearly sixty years ago the Six Ponds Association played a significant role in preventing a rest area from being built on Bloody Pond as part of the construction of the Route 3 highway. Since then Bloody Pond remains remarkably unchanged, losing only Camp Timberlane, and gaining some houses on the west side of Big Bloody along Long Pond Road.

A more recent threat to the pond, a proposed commercial development of three industrial wind turbines on the southeast side of the pond, has now been withdrawn. Instead, as a result of opposition to the project, 30 of the acres that were part of the proposal have been added to the already substantially preserved green corridor running from Long Pond Road to the southeast corner of Bloody Pond, and the remaining 40 acres involved in the proposal have been denied use for any type of commercial purpose.

### 1. History

In 1975 the Town of Plymouth, in one of its first purchases under the new conservation laws, obtained a 65 acre tract on the southeast side of Bloody Pond. The old summer cabin that was part of the property was torn down, and the property returned to a natural state.

In the 1990s, the Nature Conservancy and the Division of Fisheries and Wildlife joined together to preserve Grassy Pond, a small, wholly undeveloped coastal plain pond lying just south of Bloody Pond. Two lots were purchased outright, and Association members Parker Pond and Linda and Ethan Warren granted conservation restrictions for an additional 34 acres,

*continued on page 2*

## **Bloody Pond... (continued)**

land which bordered Grassy Pond and including adjoining wetlands. Between the preserved Grassy Pond area and the Town's conservation land on Bloody Pond lay two tracts of undeveloped land, a 15 acre parcel owned by Gerald Kelleher, and a 30 acre parcel owned by Pacor, a corporation formed by a local developer. These two lots have been the subject of further conservation efforts, one now completed, and the other ongoing.

### **2. The Wind Turbine Proposal**

In 2007, the developer filed a permit application to the Planning Board for the construction of wind energy facility consisting of three 450' industrial sized wind turbines located on the 30 acre parcel (then owned by Pacor) and an additional abutting 40 acres owned by the developer within the Caleb's Hollow subdivision. The Town granted an initial permit allowing for the construction of a test tower to measure the wind. The tower was constructed and the test data indicated the location was suitable for the proposed facility.

Local opposition to the construction of a permanent wind energy facility was successful; not only was the permit application withdrawn, but the 30 acre parcel has now been transferred to the Town Conservation Commission and added to the adjoining Bloody Pond conservation land. In addition, the other 40 acre parcel has been brought back within the restrictive covenants of the Caleb's Hollow subdivision which prevent commercial use of that property.

### **3. 30 Acre Parcel**

In 2005, Pacor bought the 30 acre parcel for \$675,000. This was a curious price for an undeveloped parcel bordering Route 3 which lacked a viable access to a Town road. The riddle of the high price was resolved as Pacor then started transferring development rights under the Town of Plymouth TDR zoning by-law from this parcel to other Pacor-owned properties. The high price allowed for the transfer of development rights for the construction of multiple homes on undersized lots, mostly in the Camp Child development off Ship Pond Road. As part of the public benefit of the TDRs, the Town was promised the land would become conservation land.

When this parcel was made part of the application for the wind energy facility, the Town made no objection despite the land being promised for conservation. Over local opposition, the Planning Board and Zoning Board of Appeals granted the permit for the test tower.

In 2008, with the downturn in the economy, Pacor filed for bankruptcy. However, before the filing, Pacor transferred the 30 acre property to the developer's wife, then failed to

disclose the transfer in the Bankruptcy filings as required.

Through research of land and court records, these transfers were uncovered by the opposition to the wind turbine project and brought to both the Bankruptcy Court's and Town's attention. The Bankruptcy trustee filed suit against the developer and the 30 acre lot was transferred back into the Bankruptcy estate. The Trustee then sought to sell the property for the benefit of creditors. The developer offered the highest price, but the Town and the project opponents objected, arguing that the property was promised to the Town as conservation land under the TDR by-law. The Bankruptcy Court judge agreed and ordered the property conveyed to the Town. In February of 2011, the Conservation Commission received a deed from the Bankruptcy Trustee to the 30 acre parcel with appropriate conservation restrictions. Instead of a wind energy facility on land the Town had allowed to be used for the transfer of development rights, the town now has 30 acres added to its Bloody Pond conservation land.

### **4. The 40 acre parcel**

While the 30 acre parcel was being litigated in the Bankruptcy Court, residents of the Caleb's Hollow subdivision filed suit against the developer in Plymouth Superior Court. When Caleb's Hollow was developed in the 1990s, the Planning Board approved 21 lots on an 80 acre parcel. The developer also recorded in the Registry of Deeds a uniform set of restrictive covenants for the development, including a restriction on commercial use, but reserved to himself as developer the right to amend or waive the restrictions. After reconfiguring lot lines to create one 40 acre lot within the subdivision, the developer then deeded the 40 acre lot to himself and his wife. He later waived the application of the restrictive covenants to this lot only.

By the late 1990s the development was fully built out, with the developer living within it on his large lot. When he proposed the wind energy facility, to be located partially on his 40 acre lot, the neighbors and subdivision residents who complained were met with his Registry of Deeds recorded right to amend and waive the covenants, and his recorded waiver of them as to his 40 acre lot. A group of Caleb's Hollow residents decided to challenge what had been done. Filing suit in Plymouth Superior Court, they won a ruling in October of 2010 declaring that a developer's retained right to amend or waive uniform covenants in a subdivision may only be exercised reasonably and not in a way that would materially alter the character of the development. The Court declared the wholesale waiver of the covenants as to the 40 acre lot was void, and placed the lot back under the uniform restrictions.

## **Bloody Pond... (continued)**

The developer's 40 acre house lot, which abuts the newly expanded Bloody Pond conservation area, should now be frozen as a single family house lot. The Caleb's Hollow Homeowners Association has the sole right to amend or waive the covenants. The Planning Board approval of the subdivision allowed only 21 lots, all now in existence and built on, so the 40 acre lot cannot be further subdivided. Besides being in a residentially zoned district, the covenants of the subdivision prevent any commercial use of the lot that might otherwise be allowed by special permit under zoning by-laws. While donating some of the lot to the adjoining Bloody Pond conservation land would be a logical next step, it is not expected.

### **5. The 15 acre Kelleher parcel**

The only parcel remaining to complete an approximate 170 acre green swath of conservation land from Long Pond Road, across Grassy Pond, and to the shores of Bloody

Pond is a 15 acre parcel formerly owned by Gerald Kelleher. With the addition of the 30 acre lot formerly owned by Pacor to the Bloody Pond conservation land, this 15 acre parcel is now completely surrounded by conservation land. It is undeveloped, and has no legal access to a town way. Mr. Kelleher recently died and the lot purportedly has been willed to an heir. The land has been under the Chapter 61B forestry program. If sold, the Town has a right of first refusal to purchase it. The Town and Wildlands Trust are both aware of the situation and are looking to add this parcel to complete the full green belt that has been created piece by piece over the last 35 years on the shores of Bloody Pond.

Conservation efforts can be long and arduous, but wonderfully worth the effort when successful. Conservation efforts on and around Bloody Pond have been one of those successes.

---

## **Paid your dues yet? If not, here's another chance!**

### **An invitation to join or renew your membership in the Six Ponds Association *2011***

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Telephone \_\_\_\_\_

email \_\_\_\_\_

Dues: \$20/household per year

Mail to: Six Ponds Improvement Association  
P.O.Box 1580  
Plymouth, MA 02362

I/we wish to add  
an additional  
contribution of:  
\$ \_\_\_\_\_

#### **Six Ponds Executive Committee 2010-2011**

Joe DeSilva (President)	Walter Morrison
Leighton Price (Vice President)	Roger Monks
Betsy Hall (Secretary)	Craig Richards
Doug Post (Treasurer)	Larry Rosenblum
Sam Chapin	Charlotte Russell
Sherm Geller	Judy Savage
Barry Meltzer	

#### **Contributors to this issue:**

Sam Chapin, Doug Post, Ethan Warren

## **Six Ponds Annual Meeting and Pot-luck Supper**

**6 pm, Saturday, August 27th  
at Wind-on-the-Pines Girl Scout Center**

Guest Speaker: Mary Lampert, founder and President of Pilgrim Watch.

Mary will present an overview of the safety concerns and relicensing issues surrounding the Pilgrim Nuclear Power Station here in Plymouth.

We will also have our usual Business Meeting, and elect officers and Executive Committee members.

Families with last names beginning with A thru M should bring a main dish. Those with last names beginning with N thru Z should bring a salad or dessert. Ice water, hot coffee and tea will be provided.

**(Please note that in accordance with Girl Scout policy - alcoholic beverages will be PROHIBITED.)**

### **Email Alerts**

Want to receive email notifications from SixPonds?

Just send an email to [info@sixponds.org](mailto:info@sixponds.org), with "email update" in the subject line.

