

This document addresses the challenge of maintaining the ponds

Background: The three ponds were *constructed* in 1970 as an integral part of EHSA. They are not natural ponds. Statements in documents obtained by the Board indicate that the ponds were designed to serve as: (a) “detention basins” to capture the influx of water from Harkness Brook and run-off of surface and ground water from storm drains on the surrounding streets and (b) “the central aesthetic feature” of EHSA. The ponds store the water and limit its rapid outflow into the ravine leading to the Fort River. Without the moderating effect of the ponds, the outflow would rapidly erode the banks of the ravine. Below are two photographs that show the pond in earlier days. The first shows the lower pond during winter in the late 1970s. The child is standing near the edge of the existing bank on the side of the pond. The water level is approximately 4 ft above its current level. The developer dug out the ponds and then elevated the bank at the end of the lower pond to raise its level.



The second picture shows the lower pond during the fall of 1985. Note the absence of water lilies, which only grow when the water level is less than 3-4 ft. The picture illustrates the aesthetic contribution of the ponds to EHSA and also shows the previous water level.



Around 2000 it became clear that the ponds were filling with silt from the roads and Harkness Brook. Also, the bank at the outlet of the lower pond had eroded and needed to be restored to its original height. The accumulation of silt was causing the upper pond to broaden and potentially flood a nearby house. The erosion of the bank at the outlet of the lower pond permitted water to rapidly leave the pond with the result that the ravine on the other side of Stony Hill Road was becoming deeper and wider. Common Land that bordered the ravine was eroding away and, even more seriously, the property of some downstream houses was being lost. The foundation of one house is now only about 12 ft from the edge of the ravine. As evidence of the widening ravine, the third picture shows trees that were once on Common Land but that now rest on the side of the ravine.



Actions of the Board. A major effort is needed to restore the ponds to their original condition. Silt must be dredged from the bottom of the three ponds and the bank at the outlet of the lower pond must be raised to its original level. To achieve these goals, we contracted with an environmental consulting firm to prepare engineering plans and obtain the necessary permits. By 2005, the plans were complete and all permits had been obtained from the Conservation Commission of the Town of Amherst, the Army Corps of Engineers, the Department of Environmental Protection, and other relevant agencies. Our dues were increased by \$10 for this phase of the pond project. The cost of obtaining the plans and permits was approximately \$3,500. Just as we were about to begin the restoration phase, one of our members submitted a petition to classify the ponds as Certified Vernal Pools *without informing us*. The margins of the ponds serve as breeding areas in the

spring for a number of species, *none of which is an endangered species*. After being blindsided by this action, the Board engaged in a series of efforts over several years to reverse the certification of the ponds as vernal pools. We also wanted to preserve the breeding areas, but restrictions about what can be done in the vicinity of vernal pools would prevent us from restoring the ponds. The effort to decertify the ponds as vernal pools required us to hire a second consulting firm at an additional cost of \$1,500 of our dues. One basis for reversal was that the petitioner had not informed the state certifying agency that the ponds were man-made to function as detention basins. Also, the certifying agency was not aware that the dredging proposal prepared by our environmental consultant protected the breeding areas of the affected species. In spite of our efforts, which were strongly supported by several independent experts and by our consultants, we were unsuccessful: The certifying state agency has taken the position that the presence of breeding areas for non-endangered species trumps all other considerations.

The Board is now engaged in a final effort to restore the ponds. We discovered in summer, 2010 that the certifying agency had just granted permission to dredge a vernal pool in Richmond, MA. That vernal pool was approved for dredging when it was argued that dredging would improve the habitat of the breeding species. Given this new information, we contracted with yet a third consulting firm—the one that had prepared the successful petition to dredge the vernal pool in Richmond. Our dues were again used to hire the new firm. We have now reached the point at which the certifying agency has approved, in principle, the conditions under which we can dredge our ponds and the new consulting firm believes that we can meet those conditions. This effort has required an additional expenditure of \$1,800. The Board is now turning to you—the members—for a special assessment to restore the ponds. The funds required to accomplish this task have unfortunately increased during our 6-year struggle to counter the action of one of our members. The Board now has only enough funds for the new consulting firm to obtain the necessary permits again. (All our original permits expired during the delay.)

Proposal under development. The majority of the Board recommends that we complete restoring the ponds. If this is not done, some of our neighbors run the risk of flooded houses and others of losing their property to the widening ravine. Also, the area now occupied by the ponds will become a marshy bog that cannot sustain frogs. Frogs are important because without frogs there are no tadpoles and without tadpoles there is nothing to eat mosquito larvae. [On a PC, place the cursor over the following link and hold down Control (Ctrl) while left-clicking. See <http://www.youtube.com/watch?v=-swzsAsmP3E>] In short, unless the ponds are restored, EHSA will have at its center a mosquito-infested bog adjacent to our

largest open field and one-third of the houses. Additionally, the central aesthetic feature of EHSA will be destroyed with a harmful effect on the property values of us all. Indeed, a resident whose house borders one of the ponds has stated that he will sue the membership unless the ponds are restored. Because the ponds are part of the Common Land of EHSA, we have the same legal responsibility for maintaining the ponds as we do for the wooded areas.

The importance of the ponds to EHSA is especially clear to long-time residents. Our children boated on the ponds in the summer and skated on them in the winter. Ducks nested on the banks of the ponds in the spring and wildlife—herons, otters, turtles, and many other species—were plentiful throughout the year. We enjoyed annual picnics and sports on the large field adjacent to the pond. Some of our children were married in tents erected on the fields. All residents of EHSA—both house-owners and condo-owners—benefit from the ponds either directly through their use or indirectly through their effect on the appearance of the community and on property values. Future sales of condos and houses are both enhanced by the exclusive access of members to the fields and ponds.