

Woodlake Abridged History

Mr. Artis Bryant (A.B.) Hardee, a local Moore County, N.C. developer, landholder, and founder of *Whispering Pines, N.C.*, had a vision for an additional Moore County development. In 1972, Mr. Hardee's success in *Whispering Pines* (that became an incorporated village within ten years), inspired him, to purchase a 3,000-acre tract of land near Vass, N.C. for a development that he named *Lake Surf*. The centerpiece for this tract of land was to be a man-made lake of approximately 1,200 acres and dam, capturing the natural stream output of Crain's and Cypress Creeks that fed into the *Little River*. Hardee paved about eight miles of the development's roads and started selling lots, principally on the East side of the lake.

Mr. Hardee developed a set of covenants that provided for the developer to furnish normal community services: such as street maintenance, police, trash collection, common area landscaping, and other community services normally provided by a town. After he sold the best 150 lots, he discovered his covenants did not include provisions for the property owner to reimburse his expenses for maintaining the community property. For new property sales, he amended the covenants to include reimbursement for community property care without burdening the original 150 lot owners. This reimbursement via assessments was levied on the Moore County tax value of the owner's property (millage). Mr. Hardee however, failed to include in the covenants a means that would allow him to place a lien on delinquent property assessments.

In the meantime, the property was selling, and new sections were opening (eleven sections, with many subsections within the sections that currently existed). The covenants for the new sections were the same as the covenants in the first section and had the same deficiencies (Woodlake now has over 30 separate sets of covenants, each slightly different from the other, and only the very latest have "lien" language).

Hardee hired the late Ellis Maples to design the first eighteen-hole golf course that opened in the early seventies. Ellis Maples' father was an associate of the renowned Donald Ross, and that classical influence obviously influenced his son. Ellis Maples also designed courses that are at the famed Country Club of North Carolina, Pinehurst #5, and *Whispering Pines*. His straight forward designs are models of traditional designs that blend strategic interest, with a challenging course that is fair. In its day, the Maples course, later adding ten additional holes, located on the South side of Lake Surf, were some of the best golf holes in Moore County.

In the late 1970's, Lake Surf went into bankruptcy. Whether it was the lack of a strong buyers' market that placed the development in jeopardy, or it may have been that Lake Surf was located outside the town of Vass, and some 25 minutes from the Village of Pinehurst - four decades ago, that was considered "way out." Today, Vass is well within the Pinehurst commute area and Vass continues to prosper.

In 1980, Lake Surf was sold to *Lovick Suddath and Henry Mayer*. In an effort to distance themselves from Hardee's financial difficulties, the new owners renamed the development Woodlake Country Club. At the time, Suddath told The Pilot newspaper, "The major objective is to create a financially sound foundation on which the community can prosper. Over the next few years, we plan to invest several million dollars in the club's facilities."

Mr. Mayer, a Foxfire Country Club investor for a brief period of time, eventually overextended his financial resources, and in 1983, the Carolina Bank foreclosed on his Foxfire investments. Shortly thereafter, his Woodlake investment was quickly acquired by an informal group of German investors that included the parents of Gabrielle and Ingolf Boex (Bernd Shultz and Arno Boex), Walter Schultz, and Benno Blum (Blum's portion was later purchased by Thomas Radmer). Woodlake Partners Limited Partnership was formed in July 1984 (converted in 2004 to Woodlake Partners LLC). Ingolf Boex, of Hannover, Germany (a mergers, acquisitions, and bankruptcy lawyer), and trustee for the investors, would ultimately become

the President of Woodlake Partners.

During the next decade, Woodlake would continue to grow, and most members were pleased with the various amenities and social activities. Despite a fire that destroyed the original clubhouse (1989), which was later replaced by relocating the historical Oates House from Fayetteville to Woodlake (1995), the lake remained the centerpiece and a major reason for real estate sales

In 2009, the N.C. Department of Environmental and Natural Resources (DENR), now the N.C. Department of Environmental Quality (DEQ), issued a Notice of Deficiency (NOD), that ultimately became three DENR Dam Safety Orders (DSO's); the first in 2013, again in 2015, and 2017. Despite these DENR dam deficiency citations, no repairs were undertaken by the owners of the Dam, Woodlake Partners LLC, and later Woodlake CC, Inc. As was noted, the Woodlake dam is designated as a "High Hazard" dam (Category C), because its failure could cause the loss of life and property for those living, working or transiting below the dam.

Due to Woodlake CC's failure to repair the dam, DENR required that lake levels be reduced to 218'MSL. This level was required to be achieved beginning in 2013 but was not implemented by Woodlake management until 2015. That 218'MSL level was below a depth needed for most lake-based activities, most notably the use of pontoon boats, and many Woodlake residents, formerly lake members, discontinued their lake memberships. This further weakened the financial viability of Woodlake CC. A summary of the Woodlake Dam's history – see annex # 1 for additional details.

In mid-1990, Woodlake Partners assigned to a newly formed Woodlake Property Owners Association (POA), the ownership and maintenance of roads and common areas. The POA was also entrusted with the responsibility to assess and collect from all property owners, including Woodlake Country Club, required monies to provide common services to the community.

Once a POA was functioning, it became clearly understood that the community's future was dependent upon the success of Woodlake Country Club. If club amenities eroded, home sales and values would also be impacted. After all, residents relocated to Woodlake for the enjoyment of the lake, golf courses, restaurant, social activities, and promised growth of the community. Woodlake Partners was very dependent upon club loyalty and a positive revenue stream. The community however, soon became quietly divided between residents wanting to improve community services and the club ownership coveting direct/indirect control. This division would manifest into two attempts for incorporation (1992 and 2005); both failing in many regards due to aggressive efforts mounted by Woodlake Partners.

In 1995, the Carolina Golf Development Company was formed by Ingolf Boex and his wife. Arnold Palmer Design was contracted to build an 18-hole course in the Sandhills and named The Carolina. This course, once a part of the membership amenities for Woodlake Country Club, ultimately provided Woodlake members 54 holes of golf. Without notice or explanation, in 2014, the course was closed, sold by a German insolvency lawyer, and finally settled via a Chapter 7 bankruptcy decision.

Also, in 1995, Woodlake Partners decided to complete a second course on the south side of Woodlake with the late Ed Seay, an associate of Ellis Maples. After Ellis Maples died, Seay joined Arnold Palmer Design. While developing The Carolina with Palmer Design, Boex tried to negotiate to have Seay do the Woodlake extension, but Palmer Group insisted that if Seay performed the work, the course would have to carry the Palmer name. That meant a greater expense; Boex agreed with Palmer to have Seay finish the job (a debt never paid). This explains the split personality of the Palmer course between the front and the back nine that opened in 1996.

The period of 2005-2006, became a time of turmoil, community discontent, and changes to the business operations of Woodlake Partners. There were five significant issues that would alter the future of Woodlake for the next decade: the 2005 effort for incorporation, a total revision of membership categories and fees for 2006, the creation of several spin-off companies from Woodlake Partners (GER Investments, Eye & Tee LLC, Blue Skys LLC, etc.), a major increased reevaluation for 2007 Moore County real estate, and the impending divorce of Ingolf and Gabrielle Boex. In fact, one issue generated a lawsuit between residents and Woodlake Partners over the rights to use the lake and membership categories – further

dividing neighbors. Communications between the club and members became marginal, with rumors or resident e-mails referencing club management decisions becoming the information lifeline. Club activities began to decline, Woodlake Partners associated companies increased mortgaging properties, facility maintenance was scarce, and promised capital investments were myths (both for Woodlake and The Carolina) – the “die was cast” for a community that had seen better days. To further complicate matters, Ingolf Boex was dealing with major insolvency in Germany, which would ultimately stimulate a Chapter 11 bankruptcy in the fall of 2014, and the sale/reorganization of Woodlake Country Club in the spring of 2015, to morph into Woodlake County Club Corporation (WLCCC).

On May 14, 2015, Julie Watson, former Vice President of Woodlake Partners, announced to the community, “Woodlake has a new owner, Woodlake CC Corp (WLCCC). The shareholders of the new corporation are Steiner Consulting GmbH owned by Dr. Illya Steiner and Frank Magdefessel, and J & Partners LLC (Member Manager, Julie Watson).” The new company was launched pledging capital investments to revitalize the golf courses to championship standards, repair the dam and lake, reopen the restaurant, and create a new builder program under the guidance of a director of real estate. Since the 2015 announcement, Woodlake has continued to atrophy with WLCCC failing to accomplish any promised enhancements. Without significant management changes, the future for Woodlake does not appear promising.

Annex # 1: A summary of the Woodlake Dam’s history

As far back as 1988 the dam was found to be in need of repairs due to significant cracks in the spillway. Lake Surf was drained for several months while limited repairs were made. Lake operations were sound until 1996 when state inspectors discovered additional dam structural problems.

For over ten years State dam safety inspectors found significant structural problems with the dam, in particular, with the dam’s spillway. Despite being cited by N.C. State dam safety inspectors with multiple “Notices of Deficiency” (NOD) and “Dam Safety Orders” (DSO), no remedial action was taken by Woodlake Partners LLC or WLCCC.

The N.C. Attorney General, on behalf of the State dam safety inspectors filed a lawsuit in the Moore County Superior Court that resulted in WLCCC signing a “Consent Judgment.” That Judgment required WLCCC to breach the dam within a specified time period. WLCCC failed to meet any of the Judgment’s required actions or timelines. As a result, the State took over the breach project and the dam was subsequently breached and the lake totally drained.

There remain two significant dam breach issues:

1. WLCCC's failure to meet the Consent Judgment's requirements and the possible legal consequences.
2. The State's recoupment of the breach costs from WLCCC, estimated to be \$1.5M. The demand for payment has yet to be executed.

Note: The acronyms DENR (Department of Environment and Natural Resources), DEQ (Department of Environmental Quality), & DEMLR (Division of Energy, Mineral, and Land Resources), all refer to the same N.C. State dam regulatory agency. The following DENR acronyms are used repeatedly: NOD, Notice of Deficiency & DSO, Dam Safety Order.

The Woodlake Dam has a long history of regulatory deficiencies and enforcement actions. A Notice of Deficiency ("NOD") was issued to the then owners as early as 1996. DEMLR conducted various inspections at the Dam between 1997 and 2000, identifying the following deficiencies:

- a. Joints in the concrete spillway were deteriorating;
- b. Upstream wave erosion was damaging the front slope of the Dam;
- c. Riprap in the exit channel was washing out;
- d. 15 to 18 boils* were observed in the spillway near the joint between the sloped and horizontal section of the concrete on the downstream side;
- e. Seepage was noted coming from under the 4-inch PVC seepage drainage system.

* A *boil* is a swirling turbulent upheaval of water occurring downstream of a dam. It occurs when water is flowing under the spillway structure and pushing soil material within the dam to the water surface.

As a result of these inspections, repair work was conducted on the Dam in 1998 and 1999 and eventually an impound approval was issued by DEMLR on July 9, 1999, indicating that the repair work completed was in conformance with the approved plans and specifications pursuant to the Dam Safety Act.

DEMLR performed inspections at the Dam between 2000 and 2008. No NODs, or DSOs were issued during this time period.

On February 12, 2009, an NOD was issued to the then owners, Woodlake Partners LLC, due to the following deficiencies that were identified at the Dam:

- a. Cracks in the concrete spillway;
- b. Areas of concern in the drains;
- c. Spalling** of concrete in the spillway;
- d. The bottom drain was not operating properly; and,
- e. Various other maintenance related items.

** Spalling is fragmentation or degradation of concrete where reinforcing bars are corroding from within and splitting the concrete causing areas to fall away.

A repair plan for the noted deficiencies was submitted and an approval to repair the deficiencies were issued by DEMLR on January 8, 2010. The approval letter also noted additional deficiencies that required repair, including repair of the concrete spillway and replacement of the spillway walkway and lift gates. Revised design plans were submitted to DEMLR dated January 17, 2011 and DEMLR sent a follow-up revision request letter on March 10, 2011.

DEMLR performed inspections at the Dam in February 2011 and February 2012 and, by letter, reminded the then owners of the Dam that it was still under NOD and requested a status update for anticipated repair plans.

DEMLR issued two additional NODs on March 13, 2013 and April 22, 2014, noting the same deficiencies as those identified in the 2009 NOD as well as the following additional deficiencies:

- a. Void under spillway;
- b. Void along wing wall;
- c. Void right of center at the bottom of the spillway;
- d. Sheet piling decayed;
- e. Voids around sheet piling;
- f. Seepage noted on the downstream slope

- g. Obstruction of drop inlet; and
- h. Other maintenance items.

A repair plan dated August 22, 2014 was received by DEMLR on September 5, 2014, addressing some, but not all of the deficiencies in the Dam and also proposing that repairs would take place in a structured timeline, with final as-built drawings submitted by April 30, 2015.

On September 19, 2014, the then owners of the Dam, Woodlake Partners, LLC, filed a Chapter 11 petition for bankruptcy in the U.S. Bankruptcy Court for the Middle District of North Carolina. (In re: Woodlake Partner, LLC., Case No.: 14-81035 (Bankr. M.D. N.C.))

After that, DEMLR issued a revision request letter on October 6, 2014, a new repair plan was submitted on December 4, 2014. This new repair plan included a multi-phase construction approach, with repairs to be completed by May 1, 2017.

DEMLR issued a DSO to Woodlake Partners, LLC, on December 15, 2014, requiring that within 91 days, plans and schedule for repairing or breaching the Dam be developed.

Repair plans were submitted to DEMLR on January 28, 2015, indicating that the bankruptcy court had approved continuation of work on Woodlake Dam.

On May 15, 2015, DEMLR issued an Approval to Repair for phase 1 of the repairs to Dam.

A DSO was issued by DEMLR to the Dam's new owners after bankruptcy, identified as Defendant Woodlake CC Corp., on July 27, 2015, requiring that, within 91 days, the approved plans be initiated or plans for breaching the dam be developed.

Prior to repair of the Dam, on or about October 10, 2016, Hurricane Matthew struck the Moore County area. During the evening of October 10, 2016, DEMLR received notification from a nearby property owner regarding concern for the integrity of the Dam. Within several hours of notification, DEMLR and representatives of Defendant activated the Emergency Action Plan for the Dam and determined that a large portion of the middle section of the concrete spillway had collapsed. They determined that the Dam had the potential for imminent and catastrophic failure. The water level in the reservoir was determined to be approximately 6- inches short of overtopping the Dam. Emergency measures were taken, including opening the gates of the Dam to activate the emergency spillways, and installation of large pumps, to decrease the water level in the reservoir. Subsequently, due to the failing structural integrity of the middle section of the concrete spillway, the middle gates of the Dam were closed and sand bags were placed to support closure of the middle gates by the National Guard. Based on the Dam's potential imminent failure and as part of the implementation of the Emergency Action Plan (EAP), inhabitants of communities downstream from the Dam were evacuated by local Emergency Management personnel.

Over a period of approximately 36 hours, Defendant and DEMLR determined that the water level in the reservoir was dropping. Within approximately 72 hours from initial notification, it was determined that the emergency actions taken to reduce the water level in the reservoir had significantly reduced the potential for a catastrophic failure of the Dam. Even with this reduction, the Dam was determined to still be structurally unsound.

During an on-site inspection on October 12, 2016, DEMLR noted deficiencies at the Dam, including these major structural problems:

- a. The middle section of the concrete spillway on the downstream side had collapsed;
- b. Erosion under the collapsed spillway section had occurred;
- c. The seepage drainage system had been damaged;
- d. The downstream spillway walls had been overtopped and soil erosion had occurred from behind the walls; and
- e. Most of the gates were not completely functional and were damaged.

On October 28, 2016, Defendant's engineer, Geosyntec, submitted interim conceptual design plans for repair to address the damage at the Dam from Hurricane Matthew.

On November 2, 2016, DEMLR issued an approval to complete interim emergency repairs.

On November 8, 2016, Geosyntec submitted the design package for bidding of the interim remedy to DEMLR.

On November 17, 2016, a third DSO was issued to the Defendant. The DSO identified the following deficiencies that threatened its structural integrity:

- a. During Hurricane Matthew, a large portion of the concrete spillway system collapsed on the Dam, damaged the underdrain system, and washed out a large portion of the downstream embankment of the Dam.
- b. Boils were noted downstream of the Dam while the reservoir was draining and since the reservoir has been drained, large amounts of sand and other types of soil have been found on the downstream side of the Dam which seems to indicate that undermining of the soil under the concrete spillway has occurred.
- c. Several cracks were noted in the concrete of the principal spillway of the Dam. Areas of concern are located along the right side (as viewed facing downstream) subsurface drain outlets. All joints in the principal spillway are in need of maintenance or repair. In addition, large areas of spalling concrete are present at the entrance and outfall of the spillway.
- d. A void [in the concrete spillway] of unknown size is present at the bottom of the principal spillway. Unsuccessful attempts have been made to stabilize these voids with concrete debris deposited at the end of the spillway.
- e. Voids are present along the right side (as viewed facing downstream) wing wall as well as at the subsurface drain outlet locations.
- f. Seepage was noted at various locations on the downstream slope of the Dam.

An independent Hydrologic and Hydraulic engineering modeling was completed by DEMLR staff that indicate that it is possible for the spillway to be activated during a 4.75 inch in 6-hour rain event even with the reservoir completely drained and with both bottom drains fully open.

Since October 2015, there have been at least 3 storm events that have exceeded this rainfall amount and duration in the area. Should another one of these types of storm events occur before the dam is temporarily breached, the spillway could be activated, and the flow of water could continue to damage the spillway to a point that a breach of the dam could occur at or near full pool which could cause major destruction to downstream property and potential loss of life.

The Dam is currently hydraulically deficient under applicable regulatory requirements and could potentially overtop during the regulatory design storm event. The Dam is capable of passing and/or storing 9.14 inches of rainfall in a 6-hour period without overtopping the Dam in a pre-hurricane condition (reservoir being at normal pool before the storm event), based on the Independent Hydrologic and Hydraulic analyses performed by DEMLR staff.

The regulatory minimum spillway design storm for a large high hazard dam in Moore County is a $\frac{3}{4}$ PMP- (Probable Maximum Precipitation = 22.9 inches of rainfall), as described in 15A NCAC 2K.0205(a).

The DSO ordered Defendant that: The reservoir surface elevation shall be immediately drawn down to a maximum plan elevation of 211 feet and maintained at or below that elevation until repair, alteration, reconstruction or breaching is accomplished pursuant to plans and specifications developed by a licensed engineer and approved by Tracy E. Davis, PE, CPM, Director, Division of Energy, Mineral, and Land Resources. Any devices necessary to control erosion and prevent discharge of sediment shall be installed in the interim. Re-impoundment will also require the issuance of a Certificate of Approval to Impound after a design for a new permanent spillway has been submitted to and approved by DEMLR, said spillway has been constructed under the supervision of a North Carolina licensed professional

engineer, and as-builts of said construction have been certified by a North Carolina licensed professional engineer and approved by DEMLR.

Woodlake CC Corp. shall by December 5, 2016 complete final design of the interim emergency remedy or emergency plans for temporary breaching the Dam and submit such design to DEMLR in accordance with 15A NCAC 2K.0302(b), and, Woodlake CC Corp. shall by December 8, 2016 initiate the construction of the emergency remedy or emergency temporary breach in accordance with 15A NCAC 2K.0302(b) and said construction shall be completed by March 1, 2017. All construction or breach activities at the Dam shall be conducted in a manner that will preclude the washing of sediment downstream. The DSO was delivered to Defendant's registered agent, National Corporate Research, Ltd., on November 25, 2016.

On December 6, 2016, DEMLR notified Defendant and Defendant's engineer's that plans for the final submittal of the final design of the interim emergency remedy for the Dam had not yet been submitted, as required by the November 17, 2016 DSO.

On December 9, 2016, DEMLR notified Defendant and Defendant engineer's that plans for the final submittal of the final design of the interim emergency remedy for the Dam had not yet been submitted, nor had construction begun on interim emergency remedy, as required by the November 17, 2016 DSO.

On December 20, 2016, DEMLR received notification that Geosyntec, Defendant's engineer-of-record for the Dam, had terminated their contract with the Defendant due to non-payment.

Since December 20, 2016, DEMLR has been in communication with Defendant's representative regarding emergency repair or breaching of the Dam and compliance with the November 17, 2016 DSO. Currently, DEMLR is not aware of any plan or intention by the Defendant to perform emergency repair or breach of the Dam.

WLCCC failed to complete the dam breach and the State undertook and completed the breach, and completely drained the lake.

In July of 2017, Thalle Construction Company finished completely removing the spillway, thus making the breach irrevocable.