

## Mariner's Pointe Special Member Update: August 2018

*[DISCLAIMER: This article discloses facts regarding issues related to Mariner's Pointe Resort including damages resulting from the increase in normal water level of Lake Holiday from 1760 ft. Mean Sea Level (MSL) to 1761.381 ft MSL, and information regarding the causative factors is provided. In reporting the discovered facts, opinions stated herein represent the belief and experience of the author in his attempt to inform the reader. This article is a synopsis of limited details about the activity to date and the present circumstances involved with the sale of Mariner's Pointe Resort.]*

At the will of the membership of the Mariner's Pointe Interval Owners Association, Inc., Mariner's Pointe Resort ceased operations May 28, 2016. Thousands of families enjoyed Mariner's Pointe Resort for 35-years until a cultural shift in leisure-travel demand dictated the time-sharing product evolve. However, the modern product replacing the former 'fixed' and 'floating' intervals rendered the early product obsolete. 'Boomer' owners of the obsolete product resisted upgrading to the newer technology-oriented product, and as value declined for the obsolete product, thousands of owners at multiple properties around the globe determined to relinquish their ownership back to the Association instead of an upgrade to the new product. An early 2016 referendum determined the fate of the Mariner's Pointe Interval Owner Association.

After the closing of the resort, the property and the condominium units entered a protective state of suspension except for the administrative offices. The activities center now houses records and documents relative to our existence, to prepare for organization and long-term storage. By the end of the summer of '16, the units and many amenities were 'moth-balled' and winterized in a state of readiness for the 'marketing and sale' phase of the process.

The final foreclosure of owner's accounts occurred in August 2017. With the Trustee's deed recorded, the Title attorneys prepared to convey at sale the cleared title of ownership for the property of Mariner's Pointe Interval Owner's Association, Inc., known as Mariner's Pointe Resort. The Board of Directors met in September 2017 and on the 2016 Appraisal and 2018 Tax Assessment Appraisal, determined to market the property at \$5.5 Million:

Market Value Appraisal: (February 2016):	\$5,000,000.00
Total Tax Appraisal: (2017):	\$5,099,976.00
Listing Price Determined September 2017:	\$5,500,000.00

Marketing of the Resort began in September 2017 with immediate and far-reaching interest. The most active online marketing site, LoopNet.com, and other sites of marketing influence, published the listing around October 4, 2017. By December 13, 2017, LoopNet.com had 25,649 views, and several qualified prospects. The active response to the marketing by the prospects from the commercial real estate marketplace encouraged a guarded excitement of the possibilities.

### I. ISSUES DISCOVERED AS CREATED BY INCREASED LAKE LEVEL

The weather in 2016 was below normal rainfall with a dry fall season, with only 49.94 inches of rain for the year. Weather for 2017 proved to be wet with 66.41 inches of rainfall and several significant storm events. After an August 2017 rain event that lasted from August 4th through the 18th, we noticed mold growth near the unit floors in the lower unit levels of Building #6 (60's units), less

## Mariner's Pointe Special Member Update: August 2018

growth in Building #7 (70's units), and traces appeared in a few units of Building #8 (80's units). This phenomenon had never occurred in any of our units. Believing this was due to higher than normal rainfall (moisture) for the spring & summer seasons, combined with the lack of HVAC and air exchange and since the units were out of use, the units are treated for the condition, deep cleaned and placed back online with air moving.

In October 2017, a 4-day storm hit on the seventh through the 10th causing a significant flood event. The air circulation in the units had no effect for preventing recurrent mold growth. After the August occurrence, small room-sized Ozonators placed in a few units to test whether they may deter such an environmental change had little effect. Larger Ozonators generating enough concentrations of O3 for the area of each unit are expensive, and since Ozone is an effective oxidizer, long-term continuous use has a downside related to the deterioration of various materials, synthetic and organic.

With the October event, a deeper investigation discovered the crawlspaces of Buildings #6, and #7 had standing water, and the saturation of crawlspace soils of Building #8, with shallow pools next to its foundation. These conditions may have existed in prior years since 2009 but had remained unreported as the crawlspaces have a moisture barrier above the soils and against the foundation walls and pillars. The moisture barrier obscured recognition of the constant presence of water below the plastic, and in significant flood events, the water entered the crawlspaces, then drain out as the water level subsided. The October investigation under Building #6 observed the moisture barrier (overlapping sheets of 6-mil black plastic) in a disheveled state and out-of-place due to the high floodwaters trapping air pockets under the plastic barrier, floating it away from its proper position. Upon discovery, the initial response was to install a sump-well and pump to improve drainage and evacuation of the water from the crawlspaces. However, upon further investigation it was determined that such action would be ineffective without Lake Holiday's water-level reduced to a lower position.

The discovery of the mold issue occurred after significant flood events in 2017 due to this long term increase in lake level. However, in prior years of heavy annual rainfall (as in 2009 when the weir is complete, and then in 2011, 2013, and 2015), there was no evidence of mold growth during unit occupancy. The significant flood events of 2017 with the higher than normal lake level created a serious impact on the units, as higher water levels remained undiscovered in the crawlspaces for longer periods. Without the constant HVAC use in the units, the growth of mold was inevitable. In 2017, there were two claims filed for insurance recovery due to the damages discovered. The Underwriter denied the flood damages and the storm damages were less than the deductible. Exhibit 'A' of this article provides a brief history and description of today's present situation of the lake level in dealing with the City of Crossville is covered under.

This current situation of the damages created with the increase in lake level has a significant effect upon the marketable value of the property. As the Association is attempting to sell its assets, the amount each Special Member account will receive upon the sale of the property will see the impact of the damages incurred, and the threat remaining. The Special Members as former owners of a unit week at Mariner's Pointe Resort will be the only recipients to the net proceeds from the sale. As the most significant of those lakefront owners damaged by the new weir project due to the

## **Mariner's Pointe Special Member Update: August 2018**

increase in elevation of the normal pool of Lake Holiday, the resort Association has suffered more in damage and loss of value as all the other lakefront owners have lost combined.

This circumstance leaves us with limited choices:

- 1) Sell the property at Auction and recover as much value as possible prior to entering the winter season to avoid further damages;
- 2) After the Auction, the Association's members can provide input regarding legal action against the City of Crossville seeking monetary damages, if Counsel is confident for overcoming certain known legal obstacles with our position. Such a long term pursuit would require funding support from the members to cover the legal expenses (depending on purchasing bid amount at auction), and there is no guarantee of success.

### **II. POSTURE FOR PROSPECTIVE BUYERS AND FEEDBACK REQUESTED**

In January 2018, the Board of Directors had determined that once the opportunity for negotiation had run its course with the prospective buyers at play, an auction would be forthcoming. However, significant prospective buyers responding to our marketing efforts throughout the spring and summer, seeking more detailed information regarding the issues and performing due diligence for acquisition, has taken us to the fall. The last written offer in early August was at a level under the expense to get us this far, and the terms were untenable. However, about the same time of receiving that offer, we had received another and higher tentative offer by email, which was subject to final approval by the prospective buyer's investors. After lengthy communications and information given to that particular buyer in hopes of securing a written offer, it appears the prospect determined instead to wait on an Auction.

### **III. DISCLAIMER OF OFFSALE OF UNDEVELOPED PROPERTY**

Another issue for your attention relates to an offer made by USC for the purchase and conveyance of a small parcel of the Association's undeveloped property. There are about 17 acres considered as undeveloped, and USC has approached the Board to purchase 4.23 acres. In case some of you do not recall, in 2002, USC approached the Board requesting to purchase a low-lying lot-sized parcel on the north side of the old picnic area at the North boundary next to a small parcel owned by the principals of USC, for a single residential home. The Board had no objections and stipulated that if the Interval Owners approved, the Board would convey the parcel for an agreeable price. In 2003, a referendum to the members occurred regarding a building program and approval for the Board to convey the requested parcel. The member's referendum responses to the Association were in the affirmative to that question.

During the marketing and inquiry process, several prospective buyers also inquired about purchasing only the developed core property in hopes of reducing the purchase price. More than one party mentioned interest regarding the purchase of the core area of the property offered as separate from the offer of the full parcel containing several acres of undeveloped property. This became a consideration by some prospects, in their attempt to better afford the financing of that portion of the resort recognized as the 'core area' of resort improvements, which is also the instant revenue-producing portion. The location of this undeveloped property is on the northern boundary

## Mariner's Pointe Special Member Update: August 2018

of the property. From Tennessee Avenue by the security station in the median, through the woods to the northern right of way for Holiday Court, and following the street around to Mariner's Pointe Drive to Tennessee Avenue at the resort entrance, and back to the beginning, identified as Parcel #2 containing 3.23 acres±. This parcel lies on the Left of the street Tennessee Avenue near the security check-point as the Mariners Pointe Drive intersection is approached from highway 70S, and on the left of Mariner's Pointe Drive until Holiday Court intersects with Mariners Pointe Drive as approaching the parking area for the Pointe Center. This parcel also lies next to a small parcel to the North on the West side of Holiday Court owned by T. David Burgess and wife, Velma R. Burgess.

Across the street Holiday Court, and in line with the corner markers of Parcel #2 on the West side of the R.O.W., is the street-side boundary of Parcel #1, containing 1 acre±. This boundary also joins a small parcel on the North owned by T. David Burgess and wife Velma R. Burgess. From the adjoining Burgess parcel, running with the 1,760 ft. MSL (Mean Sea Level) elevation in the shoreline of Lake Holiday, then travels with the shoreline a distance to a corner, then West and back to a corner on the East R.O.W. of Holiday Court to a point in line with a point in the parcel on the west side of the street in the curve, and back to the beginning of Parcel #1. The combined acreage of Parcel #1 and Parcel #2 totals 4.23 acres±, as the subject of the offer. These parcels, identified as a portion of the undeveloped property with the Tax Assessors Office of Cumberland County, have topographical issues contributing to their limited use for development. The Northern half of Parcel #2 (wooded) has a bluff-line transecting the parcel near the center, which creates an issue for full usage without significant site-prep expense. The topography of this parcel is steep, especially with the wooded northern half, having an elevation at the upper side of 1,832 ft. MSL, and the lower end on Holiday Court at 1,774 ft. MSL, for a fall of 58 feet in elevation. Parcel #1 also has challenges, as about 1/3rd of the parcel being the northeastern and eastern portion of the parcel is in the flood zone of Lake Holiday. In addition, a large sewer main transects the parcel diagonally across the parcel near its center, leaving a limited triangular area for the residential placement of a structure. An opportunity for your input regarding the active offer to the Board appears further on in this article.

### IV. FUNDING

The discussion by the Board regarding the above request involved another related issue of importance, funding! The Member Assessments in 2016 provided expense funding for operations to complete the process as budgeted through 2017. With the discovery of the damages due to the high-water level elevation and significant flooding events, it was obvious additional funding would be required by the end of February 2018 for funding the expenses to continue the sales effort, complete the investigation into the issues with the City of Crossville, and complete the process of liquidation. After the Board discussed the potential response by the Special Members to another assessment as needed for the funding required, it appeared unlikely the Special Members would be forthcoming with the sufficient response for yet another assessment. With this consensus, USC offered two considerations:

- A.) USC will provide the required funding for the expenses as required to complete the process through closing, by establishing an Open-Ended Line of Credit, which would allow for the withdrawal of funds as required from USC's available funds.

## Mariner's Pointe Special Member Update: August 2018

The Association will execute a Deed of Trust to USC for the Line of Credit to secure the loan. At the time of closing on the sale of the property at auction, the settlement process shall reconcile the payables and receivables under the Deed of Trust. The needed funding, estimated and submitted by Management through the Association's Budget Forecast, the Board's action made it effective immediately to cover expenses as required, and USC agreed to fund the Association the expected expenses required to complete the process.

- B.) USC would offer to purchase the above-described Parcel #1 and Parcel #2, which includes the parcel reserved for purchase by USC in 2003, as then approved by referendum of the membership.

The discussion continued with USC extending an offer to purchase said undeveloped Parcel #1 and #2, which includes the parcel originally reserved, and the total of the undeveloped property area included in this discussion is 4.23 Acres. USC's offer for the parcels as platted and attached to this article is \$164,000.00. The Board's considerations for the potential outcome of the auction in the event of a low bid, and whether the undeveloped parcels discussed would factor into the perceived value of the resort property at auction, factored into their consideration for USC's offer.

In the course of the marketing process, with multiple interested parties, two written offers and one tentative offer are submitted. Although the 'tentative' offer (subject to investor approval) would have been acceptable, the prospect did not formalize the offer. The significant losses and damages discovered and disclosed as required, were the short-term consequences for the seller, while the implications regarding the municipality posed the long-term risk for the buyer. The protection of the property against the higher water level appears far easier than the issues with the municipality. The arbitrary and questionable actions taken by the municipality discouraged any sale opportunity in the normal manner, making a sale by auction the only option available. In this case, the desirability of the real property will stand on its own with the highest bid determining the value.

### V. AUCTION AND EXPENSE REPORTING

Planned for late October, the auction company will soon confirm the Auction sale date, which will be provided to all Special members by email once determined. After the auction sale concludes and the distribution process is underway, the Board will provide a detailed expense reporting of the entire process.

### QUESTIONS, BUT FIRST...

In a previous draft of this article, the next section included information with two questions for your consideration and opportunity for a response. After editing, it was determined that the questions be placed near the conclusion after Exhibit A, in hopes the majority would read the narrative of Exhibit A, before responding to the questions. Therefore, for those members who desire greater detail, the following is Exhibit A to Management's Report regarding the issues.

# Mariner's Pointe Special Member Update: August 2018

## EXHIBIT A

Lake Holiday is not a typical lake impoundment where the level of the lake would remain static between inflow and outflow, unless a significant rain event temporarily altered the lake-level elevation. With the impoundment of the Obed River, Lake Holiday's design creates a more dynamic existence beyond the typical effect of weather. As one of the City's three water resources, the City's daily harvesting of water from Lake Holiday for distribution to utility customers has a constant effect upon lake-level elevation. The volume of water harvested by the City will vary each day, depending upon multiple factors such as the current end-user demand for water, and the supply at either of the other two impoundments. Although there have been periods when water is harvested in greater volume, an estimated average is a harvest of about 3.5 million gallons of water daily from Lake Holiday in normal conditions. Contrary to a normal lake, this constant outflow of water regardless of inflow creates a dynamic and constant movement of water-level elevation.

Add to the existing dynamic as described above, the watershed inflow depends on the weather, and a rapid and significant response at the shoreline occurs with either wet or dry periods.

The City's intent in constructing the lake was to use it only for a water resource the same as the original Meadow Park Lake. After construction completed, the debt became an issue, so in 1963, the City determined the sale of the lake dam and 1,250 acres of the surrounding watershed as an advantage. A private developer bought the property, service of the City's debt began, and the property developed into subdivisions creating property tax revenue with the city keeping the right to harvest water. It appeared to be a win-win for the city.

However, development incurs debt! The revenues generated from sales, will service that debt in a successful business plan, which is always a risk for a developer. Sales occur faster in a new development with infrastructure in place and active growth. To create much of the lake-oriented infrastructure, on, over, or near the shoreline, lowering the water level must occur for construction. Renovation of the country club into condominiums with an upscale restaurant facility began in 1980, and construction of the golf course facility began South of the lake to see new activity and development. Lowering Lake Holiday for construction occurred in both 1981 and 1983 as the developer had the need. In both those years rainfall was lower than normal and recovery of the lake's water volume took a significant time. In 1985, a new successor developer arrived on the scene with fresh money for completion of the development. For the four-years of 1985 through 1988, the average rainfall was only 48.62 inches. With the city harvesting about 3-million gallons daily during these years, the water level of Lake Holiday remained low for most of those four years. During this era, the developer was engaged in expanding growth opportunity by developing a significant subdivision within the Obed River Estates area of the Obed River. The new impoundment concept identified the proposed dam site and lake-level elevation, and the area of the new dam on the headwaters of the Obed was being cleared to provide access for core drilling the dam site to make ready for the application process for permitting.

However, in 1987, the City assumed an official posture of control of the privately-owned dam, spillway, and weir of Lake Holiday, and without due process. The City justified their actions by claiming the developer reduced the water level in the impoundment without regard for the needs

## Mariner's Pointe Special Member Update: August 2018

of the city, implying negligence. Making the claim such actions caused the lake level to be 'dangerously' low, endangering its water resources, and upsetting residents around the lake regarding their mud-front property, the City's actions created a significant conflict, which worsened after the first flood event occurred, not long after their seizure of the weir and dam controls. In the City's angst against the developer motivating their seizing control of private property, their focus was laser-beamed regarding preventing the developer from operating the weir or draw-down valve at the base of the dam to evacuate water from an already low Lake Holiday. The developer apparently assumed incorrectly that with the City's seizure also came with responsibility and liability for their actions, and under the right circumstances, liability for their failure to act. However, the decision makers appeared unconcerned. On the surface, it seemed at the time the City's decision makers did not understand that besides periods of drought; this mountain also has periods of flooding. Not too long after the seizure, significant flood damages occurred to private property due to the untrained city staff's failure to operate the flood control devices then available. Three private parties sued the City as Plaintiff and the City went on the defense. The Plaintiffs were the developer, the Association, and an owner of private property damaged in the flooding.

Understanding the reality of the events following the 1987 scenario requires comprehension of multiple scenarios at play. For example, when the city conveyed ownership of the lake and surrounding 1,250 acres of now valuable real estate to a private developer in 1963, all rights of ownership conveyed to the new owner, including the watershed control authority for the land. In this conveyance, the City kept the right to draw water from the impoundment for the City's water utility needs. Beyond the City's right to harvest water for treatment, no other right appears to exist of record for providing authority to the City regarding the water in Lake Holiday, including the right to influence or change the elevation of the waters of Lake Holiday in any manner, creating an encroachment upon the private owners of property next to the shoreline. A search for deed reference regarding such blanket authority discovered no such reference of record, and the successor developer owner of the lake during this era believed his deed provided him full rights of enjoyment and privilege as the private owner of the property, including the referenced flood control devices contained thereon as seized by the municipality.

For the period of 1980 to 1987, the developers understood their responsibility for expecting flood events and responding to the threat of floodwaters causing potential damage to private property. For the period of 1963 through to the point of discussion of drought and action for seizure of control in 1987, the City had neither shown nor communicated an interest in concerning itself with either the lake's normal pool or the flood events which had occurred. However, when the City seized the control mechanisms from the developer/owner in '87, nothing appeared typical regarding the 'taking' action of the property, particularly in regards to the city's lack of concern for flooding in the low lying areas of the developer's and private owners' property.

In seizing the property, the City as the controlling party for flood damage prevention, in our opinion, did not respond regarding the responsibility and accountability for issues causing damage. Curious whether the City already knew they were going to fall back upon the new Flood Plain created by FEMA at someone's request just months prior, of which the developer was not aware, and as a result, concern for the developer and other low-lying assets within the "new" flood zone

## Mariner's Pointe Special Member Update: August 2018

was no longer an issue. In our opinion, the City's actions created conflict, and the parties squared off for a battle of rights. By 1989, flood events due to the City's unconcern and the city staff's lack of training created repeated damages to owners of private property. A 1991 suit in Circuit Court by the Developer began after a damaging flood event. Soon after the developer filed his suit, the Association and one lakefront private property owner also sued as Plaintiffs, and all were 'joined' as one Plaintiff in the case.

The developer during this era conducted business to do one thing, service debt by developing a community. With the seizure, and then the lawsuit, the City's abundant resources soon had the developer in an unsustainable position and he had no available choice but surrender, deeding the dam and its seized 'draw-down' valve to the City. This outcome is having an everlasting effect upon the gray lines of ownership rights for 183 owners of private property.

The Association was an injured party and Plaintiff during the conflict over damages from uncontrolled flooding. When the developer could not survive the effect of the assault, the Association and one private property owner remained as Plaintiff to continue the case. With verbal assurances that the City would improve its flood control policies and use the mechanisms of flood control to prevent future occurrences of damage to private property by the City Manager of the day, the two remaining Plaintiffs dismissed their case for damages incurred by the City's negligence. This outcome contributed to the City's confidence in their position of assumed authority contrary to the ownership rights of the private property owners. One point at this juncture relates to the city not responding to the claims for damages in writing as doing so would imply acceptance of responsibility for having caused the damages.

The concern for flooding for the Association and owner of about 2,000 feet of shoreline increased in 1996 when the state (TDEC) issued a dictate that the 'draw-down valve' at the base of the dam is no longer used to aid in flood control. With this new threatening dynamic, several attempts made by the resort's Association in 1997 to discuss the threat of flooding with the city by expanding the weir from its existing 7-foot length, to the full 32-foot length of the spillway, met with marginal success with the adding of one more 7-foot weir gate. Believed at the time to be a good idea, installation of the hydraulic operation of the two gates occurred with the added new gate, which caused the bottom of the gates to open and rest at or just above the 1,760 ft. MSL mark. During flood events in the narrow spillway of the day, with both gates open, the water would exceed the height of the open gates, and the gates then became an obstruction to the flow above 1,760 ft. MSL. Discussion of the weir issue in an open Council meeting does not appear to occur again until April 2006.

By 2000, the winds of fate appeared to blow in the correct direction as the Safe Dam's division of TDEC dictated the spillway needed to meet the current code. Ironically, TDOT determined it was time to replace the bridge over the spillway. [Remember, about a decade prior, the developer had but a few days to correct the problem with the spillway, or face severe monetary penalties. After the developer deeded the dam to the City under duress, the spillway issue appeared to become less important, and the City avoided daily penalties for the correction remaining unresolved.]

The Association viewed this prospect as a blessing at the beginning, thinking the architects and engineers would create a significant solution to an age-old problem with a modern approach to end

## Mariner's Pointe Special Member Update: August 2018

the flooding issue in the process of design. The outcome of the project provided an improved scenario for major flood control by widening the weir to 220-feet and a similarly widened spillway from its original 32-feet. However, the reality of the final product of this significant project turned out to be a curse to the safety of the Association's lakefront assets and infrastructure designed and constructed to exist at 1,760 ft. MSL. These assets, existing prior to the City's assumed control, depend upon a control opportunity for rapid response to moderate flooding, which no longer exists.

With the City increasing the official normal pool elevation to 1,761.381, and no consideration for meaningful flood control in the design process for the lower lying assets existing within the 1987 flood plain, this meant the resort's lakefront assets no longer enjoyed the effect of the freeboard elevation opportunity above the 1,760 ft. MSL. Again, the appearance to us is there had been no consideration for the successor developer's significant assets constructed prior to the 1987 seizure, and the opportunity to protect these assets had been missed.

For example, the elevation at the top of the original weir gate was at 1,760 ft. MSL, as designed. Whenever a rain event of significance posed a threat, opening the weir removed an area of 15 to 16 sq. Ft. from the weir holding back lake water, allowing the flow of water through the weir and reducing the impact before the lake would flow over at 1,760 ft. MSL. When a forecast for a significant storm event occurred, the developer would open the weir early to allow as much freeboard as possible, even down to 1,758 ft. MSL, to absorb the event thereby reducing damage risk.

Under the present scenario, the weir has a similar ability, but not much better than the old weir gate, and the weir enters a flood scenario at a disadvantage due to the added elevation. Although neither designed for nor installed for flood control, the proper use of the four 24-inch valves in the weir could be helpful with proper anticipation. Use of these valves improved after the present City Manager came aboard the City's staff. Previously, one of the valves had remained non-functional for a long period after installation. When brought to the attention of the Public works Director, repair soon occurred. If one valve is not functioning, 25% of the capability is lost. However, the overflow level of the weir remains at 1,761.381 MSL. So, instead of increasing the ability for moderating flood conditions, the new weir increased the retention of water by 16-5/8ths inches above the intended 1,760 ft. MSL, before it can get relief by overflow of the weir. As floodwaters hit a saturated watershed and the water level is at weir crest, all of the floodwater increases water level above the weir crest significantly, engulfing the crawlspace infrastructure, air ducts, electrical, etc. However, according to one council member's comment, the City is "not responsible, as the property is in the flood zone!".

As stated, opening the weir gate in the old weir lowered the normal pool elevation by 25 inches from 1,760 ft. MSL, to about 1,758 ft. MSL, before the forecast expected flood events arrived. Adding 16-5/8ths inches of elevation to the normal pool above 1,760 ft. MSL, then expecting the proper response to the anticipation for flooding, was a mistake. The limited mechanical devices available for relieving a little water from the lake during a flood event must be operated timely to avoid damages to the low-lying assets of the resort, and the required actions in response to any flood threat by a responsible individual in charge to prevent damage, had not occurred. In our

## Mariner's Pointe Special Member Update: August 2018

opinion, this failure, and the apparent inaction of the city, created the damages to the resort's low-lying assets, all of which pre-dates the City's assumed authority of 1987.

For the sake of academics regarding dimensions, the weir mechanism experienced two renovations over the decades since its original construction, the remodeling and repairs to the weir with each event had an inadvertent slight effect upon the weir's elevation. A survey of the renovated weir before the new weir's construction, using the same method used for construction of the dam and Lake Holiday, showed an elevation of 1,760.3 ft. MSL, meaning after repairs are complete, the actual elevation had increased by 3.6 inches. This small increase created an encroachment on the surrounding boundaries that few noticed due to the daily dynamics of the lake level.

In the planning stage of the new weir project, the City determined to change the basis of measurement in 2006, rather than connect the new construction to the existing official and certified dimensions known to the world for about a half century. The City's determination of the new basis of elevation height used the more modern method of measuring height by use of the "Orthometric measurement of height" as determined by the Geodetic application of the hypothetical Geoid, which is an ellipsoidal grid as applied to the hypothetical globe by the use of satellites. This method uses survey grade GPS instruments to determine elevation, arrived at a value of 1,760.5 ft. MSL, which is 6-inches higher than the original certified elevation of 1,760 ft. MSL, for the basis upon which they would apply their increase of 8.75 inches as announced in the Press Releases of 2007 and 2009.

The references made in both press releases refer to the lake level as "8.75 inches above where the weir elevation was before", and this statement remains prominent today regarding their response to attempted discussion of the lake level. If the reasoning is the perceived effect that this description minimizes the actual change in the elevation in discussion, it does not compute with what was, only with the 'new' basis foreign to the reality every other party to the process has experienced. When challenged, the reference as the official basis of measurement is a copy of the 2006 Orthometric height measurement certification expressing the former weir height at 1,760.5 ft. MSL., and all reference to the 1,760 ft. MSL is avoided as if it never existed, except on the deeds of 186 parcels.

In the minutes of the April 11, 2006 regular meeting, under Item #5, "Mayor Graham reported that a public meeting was held for the property owners on March 16, 2006. The new elevation of the weir will be nine inches above the current 1,767.63 elevation (or 1,768.38 ft. MSL)." Although multiple statements are challengeable in these minutes, I will examine only this excerpt in this article; however, a copy of the minutes will appear on the website with my many comments noted. This excerpt shows one aspect of the problem. The elevation referenced is the elevation used by the engineering firm in their design of construction drawings for the new weir, and is in error by 7-feet. All the elevations in the construction drawing appear in error, and it appears the engineering firm did not know. The Mayor did not know, so the only explanation I can conjure is someone has provided the incorrect dimensions to the engineering firm for the working data. Other references in both the Minutes and in the report of the public meeting with the adjacent property owners restate this error.

## Mariner's Pointe Special Member Update: August 2018

The issues became a labyrinth for pursuit at this point as two points of view regarding reality exists. One view is the assumption by the City that they own more rights than actually documented, including authority over the water-level elevation control of Lake Holiday. Unless challenged, this assumption continues. For example, per the recorded deed and its legal description, the original spillway and weir before the new construction had not conveyed to the City by title when the former developer deeded the dam under duress. The owner of Lake Holiday (developer) and then the successor developer, Austa La Vista, holds title to that area, which includes the area where a chunk of the new weir is constructed. However, due to the lack of challenge, and the City's posture of control, plus the world's recognition of the City's authority to control, the City can assume their ownership rights now rest with the City despite the title in the name of another.

In discussions with surrounding property owners, many of the adjacent owners have another view. They did not anticipate having water encroach upon their private property to such a degree that damages and uncontrolled erosion would occur because of the outcome of the new weir project, based upon both that which they are told, and that which they are not told, regarding the project and its effect.

Despite stating the shoreline boundary of all lakefront owners in the original deeds of conveyance is the original shoreline at 1,760 ft. MSL, the water level at normal pool is at 1,761.38 ft. MSL, and it does not appear a choice exists due to the lack of challenge. Because there was no challenge to the actions taken by the City prior to the limitations period expiring, the total encroachment of about 16-5/8ths inches in water elevation now appears a part of every property owner's deviation from their original title regarding the effect of encroachment upon the surface area of the parcel owned. For some, the encroachment across the recorded boundary may be only a few inches, and so the elevation difference is academic, while for others, the encroachment takes several feet of their private property, removing it from their right of enjoyment.

In review of the City's Minutes and Press Releases, the City states an easement exists for water encroachment onto their property surrounding the water for the first 5-feet in one discussion, then for 10-feet in another discussion. Except for the 22 private property owners who executed a formal permanent easement as recorded to the City across their property, it is curious regarding how many of the remaining 161 property owners know about such an easement on their lakefront boundary, as claimed by the City. The author of this article represents the owner of about 2,000 feet of the shoreline, and in the process of dealing with the real estate, discovered documentation of a change in the subdivision regulations requiring a 30-foot setback from the water's edge. For new construction of residential buildings, this regulation is appropriate. However, such a requirement for commercial structures may not be practical in many circumstances. Structures built prior to the creation of the regulation would be, or should be grandfathered.

It is unlikely Lake Holiday's lakefront property owners were aware of or informed that increasing the elevation of the lake water's surface would equate to a like rise in the water table of the surrounding soils. Unless otherwise qualified, the typical lakefront owners as laypersons regarding engineering and the legal aspects of their lakefront existence did not comprehend the impact of the lake elevation increase with the information provided by the City during the discussion phase of the project. This fact is important to most lakefront owners, and critical to some. Whether the City's

## Mariner's Pointe Special Member Update: August 2018

certified engineer for the project failed to mention this detail to Council, or Council did not consider this issue in their process as important, it equates to the damages as subject to the complaints to the city, as well as yet undiscovered damages which may manifest as time continues to pass.

In the general sense, when the normal pool water's surface elevation increase distance of 8.75 inches above what it used to be was reported, most of the lakefront owners were thinking 8.75 inches above their boundary of reference, which is 1,760 ft. MSL. The outcome of the total elevation changes (from their deeded 1,760 ft. MSL to the new elevation at 1,761.381 ft. MSL) did not occur to them. Nor did they comprehend that such an elevation would also increase the water-table elevation of the soils on their property, as they would discover the new elevation in the lake's normal pool makes a difference in the life of those structures. Those property owners who have retaining walls, bulkheads, concrete decks, or foundations in the area of the shoreline now know, or will eventually, that when the water table is in the frost-zone, and it freezes, everything moves, sometimes drastically. When concrete is saturated and it freezes repeatedly, it affects its life span depending upon the chemical and structural make-up of the concrete mix when applied.

For buildings close to the water, if there are crawlspaces, they are wetter today than before the increase in elevation of the water table in the soils. The question regarding proximity of a structure to the shoreline is, how close is 'close'? The answer depends upon the soils in the area of concern. At the marina area of the resort, there is a pit 95-foot from the water at the bulkhead, containing meters, valves, and various connections of piping. This pit maintains a constant water level inside with the lake's surface elevation. Then, a pit dug by the city for the installation of a sewer pump station several years ago is about 160-foot from the shoreline. This pit filled with water during construction, and according to photos of the construction, appears to indicate the water level is about equal to the lake's water level at the time.

In the private sector, with typical projects such as the new weir, when property owners the environment in the area of the project could be affected by the outcome, the normal step is to perform an 'Impact Study' as a preliminary step to the design process. Often, governmental authorities will require an Environmental Impact Assessment based upon a Study. Such a study provides critical information regarding risk assessment and design considerations, but primarily provides the answers to common sense questions, which may not be asked unless such a study is performed. Unfortunately, for the property owners, the City was the Contractor and it appears the Statute of Limitations factored significantly into the outcome of actions taken with the new weir project.

Initiating a project as significant as the new spillway and weir requiring \$18 Million in local finds, without an Impact Study, is cause for curiosity regarding whether such a decision at the time was overlooked, ignored, or calculated out of consideration. As such, this provides for the impression that after the 1987 fiasco, the property assets within the flood zone area were no longer an issue taken into consideration.

In summary, considering the changes over the decades, with the developers of 1980 through 1987 until the seizure of control, moderate flooding events required developer control to prevent damages to low lying assets of the developer and the lakefront owners. After the new weir, the

## Mariner's Pointe Special Member Update: August 2018

ability to void a higher volume of water over the 220-foot weir helped with significant flood events. However, increasing the normal pool increased the potential for damages to low lying assets. After the City seized control in '87, concern for the low-lying assets of the lakefront owners no longer existed and apparently, due to the Statute of Limitations and Statute of Resolve, there is no opportunity for accountability since discovery occurred years after the completion of the project.

### Questions for your input:

**Q1:** Under the circumstances as explained, will you as a special member of the MPIOA be willing to fund your share of the litigation as necessary to attempt a pursuit of the damages and other losses resulting from the City's actions? Yes \_\_\_\_ No \_\_\_\_

[Note: There is no comprehension for the expense of this claim in state Court, and no guarantees can be asserted as to the outcome.] The Board's current opinion is that the expense to pursue may not justify the outcome, but if there is sufficient support for pursuit by the Special Membership, the Board will consider the options further. If you would like to respond to this question, please reply to the email with your response. With no response, Management assumes the lack of response is a 'No' to the question. It is recommended that you read 'Exhibit A' prior to responding with your input.

**Q2:** USC has made an offer to purchase a small portion of the undeveloped property as represented in the attached Exhibit B. The Board has considered all relative issues regarding the Offer to Purchase, as listed below:

- a. The two Parcels total 4.23 acres of the total undeveloped property.
- b. The price offered is \$164,000, which equates to \$38,770.69 per acre.
- c. The Lakefront Parcel 1 (Lot 1 on Plat Map) has significant restriction as to available space for a residential structure due to the Flood Plain and the presence of a gravity sewer main diagonal across the parcel.
- d. The wooded Parcel 2 (Lot 2 on Plat Map) has both geographical and topographical issues. The Topographical issues include a bluff-line about mid-way in the wooded area of the northern half of the parcel, which is exemplified by this portion of the parcel having a steep elevation deviating from the low end on Holiday Circle to the high end on Tennessee Avenue in excess of 50 feet. The geographical issues include the 'Fly-way' restrictions for the end of the airport runway, in that a height restriction exists for structures on this portion of the parcel. These conditions limit usability due to the expense for site preparation and topographical alteration to provide suitable development opportunity.
- e. USC has provided significant complex services since early 2016 without compensation, and the expectation for USC's compensation for USC regarding the sale of the property is significantly diminished since discovery of the issues affecting the property value.

Considering the above Q2, do you approve or disapprove of the sale of the undeveloped 4.23 acres portion of the Northern boundary to USC? Approve \_\_\_\_ Disapprove \_\_\_\_

## Mariner's Pointe Special Member Update: August 2018

[Note: If you would like to respond to these questions, please email Management with your response to: [rebecca@universalservicescorp.com](mailto:rebecca@universalservicescorp.com). With no response, Management assumes the lack of response is an Affirmative response for Approval. If you disapprove, you should state your disapproval in your email. All responses are requested as soon as possible for the Board to consider.]

**Notice:** The Board of Directors possesses full legal authority to decide the outcome on either of these questions. However, they also recognize the actions taken and to be taken are for the benefit of the 167 remaining Special Members. Therefore, it is fitting and proper for these Special Members to provide input for the outcome of such questions for the full considerations by the Board of Directors.

**Notice:** Various items of Association personal property are listed for sale on the business auction site: [auctiondeals.com](https://www.auctiondeals.com/) (<https://www.auctiondeals.com/>)

**CERTIFICATE OF OWNERSHIP AND DEDICATION**

I (we) hereby certify that I am (we are) the owner of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish the minimum building restriction lines, and dedicate all streets, alleys, walks, and ponds as shown to the public or private use noted. I (we) further acknowledge that any change to this subdivision constitutes a re-subdivision and requires the approval of the Planning Commission.

Date Signed \_\_\_\_\_ Owner's Signature \_\_\_\_\_

**CERTIFICATE OF ACCURACY AND PRECISION**

I hereby certify that the plan shown and described hereon is a true and correct Class \_\_\_\_\_ survey, with a ratio of precision of 1 to \_\_\_\_\_, performed in accordance to current Tennessee Standards of Practice for Land Surveyors. I further certify that iron pins and/or monuments have been placed as shown hereon, to the specifications of the Crossville Regional Planning Commission.

Date Signed \_\_\_\_\_ Surveyor's Signature \_\_\_\_\_

**CERTIFICATION OF EXISTING SEWER LINES**

I hereby certify that the existing sewer lines shown hereon are in place and that the lots in this subdivision are connected to city sewer (or can be connected upon approval of city & payment of required fees).

Date Signed \_\_\_\_\_ Public Works Director/  
City Engineer \_\_\_\_\_

**CERTIFICATION OF EXISTING WATER LINES AND/OR EXISTING HYDRANTS**

I hereby certify that the existing water lines and/or existing fire hydrants shown hereon are in place and maintained by the City of Crossville or \_\_\_\_\_ Utility District.

Date Signed \_\_\_\_\_ Public Works Director/  
City Engineer \_\_\_\_\_

**CERTIFICATION OF EXISTING ROADS**

I hereby certify that the road(s) shown on this plat has (have) the status of an accepted city or county maintained public road regardless of the current condition, or is a state maintained highway.

Date Signed \_\_\_\_\_ Public Works Director/  
City Engineer or County Road Supervisor \_\_\_\_\_

**CERTIFICATE OF APPROVAL FOR RECORDING**

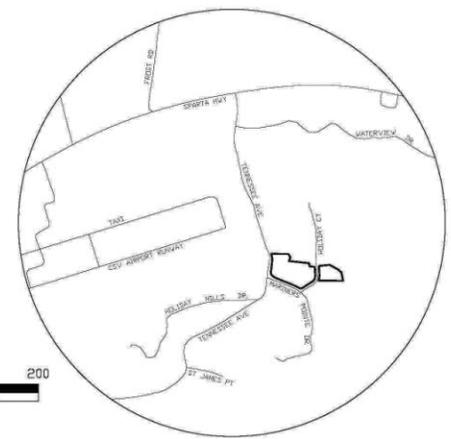
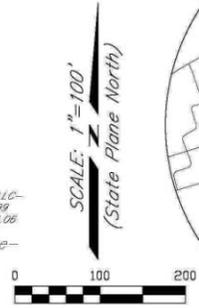
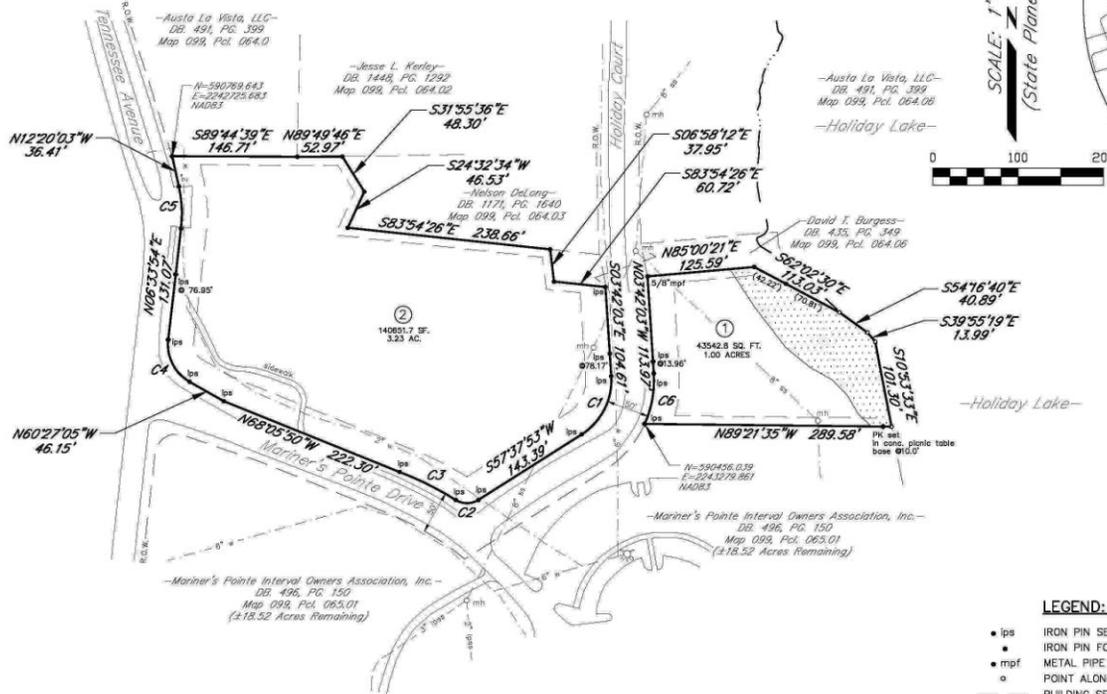
I hereby certify that the Subdivision Plat shown hereon has been found to comply with the Subdivision Regulations of the Crossville Regional Planning Commission with the exception of such variances, if any, as are noted in the Official Minutes of the Crossville Planning Commission, and that said plat has been approved for recording in the Office of the Register of Cumberland County, Tennessee.

Date Signed \_\_\_\_\_ Secretary  
Crossville Regional Planning Commission \_\_\_\_\_

**REFERENCES:**  
Deed Book 496, Page 150  
Tax Map 099, Parcel 065.01

**CURVE TABLE**

CURVE	RADIUS	ARC LENGTH	TANGENT	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	75.00'	80.29'	44.48'	61°20'15"	S26°57'46"W	76.51'
C2	25.00'	28.08'	15.23'	64°21'22"	S89°48'57"W	26.63'
C3	385.66'	73.62'	38.95'	10°58'40"	N63°29'00"W	73.56'
C4	50.00'	58.48'	33.10'	67°00'59"	N26°56'36"W	55.21'
C5	150.00'	49.48'	24.92'	19°33'57"	N02°53'05"W	49.25'
C6	125.00'	60.72'	30.97'	27°49'54"	N10°12'55"E	60.12'



- LEGEND:**
- IP: IRON PIN SET
  - IF: IRON PIN FOUND
  - MPF: METAL PIPE FOUND
  - : POINT ALONG LAKE (±1860.0')
  - : BUILDING SETBACK
  - R.O.W.: RIGHT OF WAY
  - : EXISTING WATER LINE
  - : EXISTING FIRE HYDRANT
  - : EXISTING SEWER (low pressure)
  - : EXISTING SEWER (gravity)
  - : EXISTING SEWER MANHOLE
  - : SPECIAL FLOOD HAZARD AREAS (SFHA) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

- NOTES:**
- A PORTION OF LOT 1 LIES WITHIN A FLOOD PRONE AREA AS DEFINED BY THE FLOOD INSURANCE RATE MAP NUMBER 47035C0305D EFFECTIVE DATE NOVEMBER 16, 2007, DEFINED AS ZONE "A" SPECIAL FLOOD HAZARD AREA SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD.
  - BUILDING SETBACKS SHALL BE AS FOLLOWS:  
..THIRTY (30) FEET ALONG ALL LOT LINES ABUTTING TENNESSEE AVENUE, MARINER'S POINTE DRIVE AND HOLIDAY COURT.  
..TEN (10) FEET ALONG ALL SIDE AND REAR LOT LINES
  - PUBLIC UTILITY EASEMENTS SHALL BE AS FOLLOWS:  
..TWELVE (12) FEET ALONG ALL FRONT PROPERTY LINES  
..SIX (6) FEET ALONG ALL SIDE AND REAR LOT LINES  
..TWELVE (12) FEET ALONG SIDE AND REAR LOT LINES ALONG THE PERIMETER OF THE SUBDIVISION
  - AQUATIC BUFFER ZONE:  
..THIRTY (30) FEET AS MEASURED FROM THE BANK OF ALL MAJOR DRAINS AND WATER BODIES.
  - SEWER LINE EASEMENT:  
..TEN (10) FEET EITHER SIDE OF THE CENTERLINE OF THE EXISTING SEWER LINES (20 FOOT WIDE EASEMENT)

FINAL PLAT  
FOR  
**MARINER'S POINTE RESORT DIVISION**  
Located in the First Civil District of Cumberland County, Tennessee  
PRESENTED TO  
CROSSVILLE REGIONAL PLANNING COMMISSION

DEVELOPER: MARINER'S POINTE INTERVAL OWNERS ASSOCIATION, INC. ADDRESS: P.O. BOX 2869 CROSSVILLE, TN 38557 TELEPHONE: (931) 456-4138	SURVEYOR: TARE, INC. ADDRESS: P.O. BOX 846 CROSSVILLE, TENNESSEE 38557 TELEPHONE: (931) 484-7543
ENGINEER: ADDRESS: TELEPHONE:	ACREAGE SUBDIVIDED: 4.23 NUMBER OF LOTS: 2 SCALE: 1"=100' DATE: June, 2018 TAX MAP REFERENCE: Map 099, Parcel 065.01