

Moving into 2021 there will be an increased focus on the erosion/health of our retention ponds, typically referred to as lagoons. As such, we wanted to take this opportunity to provide some history on the origin and oversight of the retention ponds to date.

Centex Corporation initiated the development of Baynard Park with construction of homes beginning in 2006. Shortly before the construction of homes, Centex began a phased development of retention ponds for watershed management/flood control. Centex was ultimately purchased by Pulte Corporation who continued buildout of new homes and completed the development of retention ponds. Therefore, some retention ponds were constructed by Centex and others by Pulte. Construction continued until the end of 2017 at which time Pulte prepared to turn over the governance of the development to a board of directors of the Baynard Park Property Owners Association (hereafter referred to as BP POA).

Near the time of election for the BP POA it was learned that Pulte had not filed an annual Best Maintenance Practices (BMP) report required by the Town of Bluffton. This report is related to storm water control, which is what our ten retention ponds provide, and it had not been filed for nine years. This lack of reporting caused significant concern for the newly elected BP POA board and prompted them to arrange a meeting with William Baugher, Watershed Management of the Town of Bluffton. The objectives of the meeting were two-fold: to investigate what, if any, fines were owed as the Bluffton ordinance provided for substantial fines for previous years of non-compliance; and, to ascertain any data the agency may have regarding potential silting or sedimentation in the retention ponds. Meeting participants included one BP POA Director, two residents from Baynard Park and William Baugher of the Town of Bluffton. A key finding from the meeting was that Baynard Park faced no fines as a result of Pulte's failure to file the BMP report for nine years. Additionally, a list of licensed engineers who had interacted in recent years with Watershed Management was obtained from the Town as a source that could be utilized to locate an engineer to evaluate whether there was evidence to support a legal claim against Pulte for any excessive accumulation of sediment on the bottom of the retention ponds.

In 2018 the BP POA sought bids from some pond management companies for testing the retention ponds for sedimentation. Upon receipt of the estimates,

the amount of the estimates caused the BP POA board concern. After discussion, it was determined the newer retention ponds (constructed in 2017) would not need to be tested. The older retention ponds constructed in 2006 would be tested for the presence of sedimentation. As a result of the testing it was learned that there was significant sedimentation in certain of the older retention ponds. In addition, it was also learned that if dredging was employed as a remediation tool it would cost \$67.00 per cubic yard.

The 2018 BP POA board undertook to negotiate with Tonja Flanagan of Pulte. Tonja is the representative that negotiates the resolution of concerns of resident associations with Pulte after Pulte has deeded the property to the resident association (i.e., BP POA). Each President of BP POA from 2018 through 2019 has negotiated with Tonja Flanagan regarding Pulte's responsibility for the remediation costs of the ponds. The results of those endeavors have been met with a steadfast refusal by Pulte to pay any costs associated with remediation of the retention ponds. In addition, in 2018 Tonja Flanagan appeared in person at a BP POA meeting and expressed that Pulte would not pay for retention pond remediation. Ms. Flanagan stated that Pulte, while it controlled the board during the construction of the development, paid dues into the association and at closing of each new home paid another sum into the development's reserves for future expenses. As prescribed, the monies in our Capital Expense reserves are to be used for maintenance/upkeep of all community amenities.

Based upon the results of the findings regarding sedimentation, the cost of dredging if employed, and Pulte's refusal to pay for retention pond sedimentation remediation, the BP POA decided to endeavor to develop evidence that would support a legal action against Pulte seeking monetary compensation for remediation of the sedimentation condition found in certain of the retention ponds. The BP POA consulted the list of licensed engineers provided by the Town of Bluffton that had business with the Bluffton Watershed Management Department in recent years.

Consultation with certain of those engineers revealed that the pre-construction drawings of the retention ponds and the "as-built" drawings of the retention ponds needed to be obtained for use by potential expert witnesses. The BP POA sought to obtain the documents from the Town of Bluffton via the filing of two Freedom of Information Act requests. In various discussions with Mr. Baugher of Watershed Management, the BP POA was informed that the original documents were submitted to Beaufort County and not the Town of Bluffton.

They were submitted to Beaufort County because Bluffton did not at the time of the initiation of the project by Centex have jurisdiction over the development of Bluffton. In 2008/2009, Bluffton acquired jurisdiction over development in Bluffton. Mr. Baugher advised that the Town of Bluffton requested all documents regarding development of Bluffton areas including Baynard Park. Mr. Baugher advised that Bluffton received a production of documents from Beaufort County but that the production was incomplete and some of the documents, such as the "as built" documents for Baynard Park, were not produced. Beaufort County asserts, per Mr. Baugher, that it produced all requested documents it possessed. The cost of acquisition of these documents from Bluffton was \$1400.00 and said documents are in our possession.

Once the said documents were obtained, copies were provided to firms who engaged in the relevant type of engineering work. In addition, an internet search for experts was done and a Clemson University professor with credible credentials was contacted. Said professor declined to undertake the evaluation of our retention ponds and render an opinion. Ultimately two credentialed engineering firms responded: Ward Edwards and Andrews Engineering.

A vice president of Ward Edwards engineers expressed that the failure of Pulte to file the nine BMP reports would not prove that Pultewas liable for the buildup of sediment in the retention ponds. Additionally, it was expressed that sedimentation is, in part, a result of erosion and the natural accumulation of other natural plant material over time including but not limited to underwater algae even if best maintenance practices are employed. It was further expressed that the investigation of the retention ponds to ascertain if there was a design defect in construction of the retention ponds and/or to determine if there had been negligence in construction would be quite expensive.

Andrews Engineering in Beaufort reviewed the drawings but did not respond to repeated inquiries seeking an estimate for the investigation of a design defect nor negligent construction.

Quality Lakes, who currently maintains our retention ponds, was also engaged for evaluative purposes at this point. Wade Bales (Quality Lakes) had previously conducted an investigation to determine the depth of the retention ponds and had been tendered a copy of the drawings. Wade advised that his degrees were in fisheries and water management and that he did not have the credentials to

testify upon the issues regarding defective design or negligent construction. The opinion of Wade Bales of Quality Lakes reveals that sedimentation is expected over time from erosion, algae, and some of the retention ponds are nearing an age when remediation is anticipated to be required. Even though our retention ponds require some remediation based on normal life cycle, our ponds are functioning and that function is not degraded.

As a result of the review of the history and evidentiary findings and opinions of experts and the seemingly dissuasive nature of their expressions, the BP POA board concluded not to proceed with a lawsuit against Pulte. It was agreed that a legal claim alleging defective design and/or negligent construction cannot be successful without a well credentialed engineer stating, based upon a reasonable degree of engineering certainty, that the design is defective and that the defect is the proximate cause of the sedimentation, and not the natural accumulation of sedimentation. A legal action filed without such an expert opinion is a frivolous lawsuit that very often subjects the filing party to economic sanctions in the form of the opposing party's legal fees, expert fees, and costs.

The BP POA is currently addressing erosion that can contribute to the sedimentation of our retention ponds. Bids have been sought and received for the remediation of an area that is eroding and said remediation will extend the useful life of an existing retention pond. The BP POA intends to undertake similar remediations prioritized based upon the acuteness of the need. Just as importantly, as stewards of your money, the BP POA board is doing the same without a special assessment. This board understands the need to be continuously conscious of the economic impacts our decisions have upon all of us while balancing the need to maintain our community and individual property values.

As infrastructure ages it requires some repair or replacement but scheduling and timing can be tools in avoiding a sudden, large cost. There is no need nor reason that every retention pond must be remediated at the same time. Further, if deemed desirable, to extend the functionality of a retention pond for a period of years, while balancing the cost with assessment income, it is probable both goals can be achieved by reducing a significant amount of the sediment but not necessarily all. Since Mr. Bales of Quality Lakes has opined that some of our older retention ponds have reached an age (14 years) when remediation of sedimentation is expected, this suggests that the ponds have silted at an

expected rate due to natural causes of erosion and the natural accumulation of plant material. In view of the fact that our older ponds are still functioning at a time when the need for remediation of sedimentation is expected strongly suggests that the ponds do not suffer from a design defect nor from negligent construction or there would have been a loss of functionality years earlier. The fact that the ponds have performed as intended for as long as anticipated without sedimentation remediation negates the need to drain the ponds and rebuild their foundations as some may have suggested. Lastly, some ponds are not in need of any current remediation.

In summary, ensuring the quality and health of our retention ponds has been and will continue to be a priority. We will engage the necessary resources and utilize our reserve funds wisely to ensure all of our amenities are maintained to the benefit of our community.

Jim, Chris, Susan, Gary, Liza