

Proposal to Eliminate Risk of LBA Dam Ownership

by Larry Hoffer, LBA President, and Brenda Pierce, LBWID Trustee

Because of significant developments over the last several years related to the Lake Barcroft Dam (the "Dam"), the Lake Barcroft Association ("LBA") Board of Directors and the Trustees of the Lake Barcroft Watershed Improvement District (the "LBWID") are recommending that ownership of the Dam and the land on which it is situated be transferred from the LBA to the LBWID, the Dam operator. Our goal is to safeguard the interest of each Lake Barcroft property owner and the nature of our unique and wonderful community.

Background

LBA and its predecessors maintained legal ownership of the Dam and the land on which it is situated (Parcel 165) since the creation of the Lake Barcroft community. In 1973, when the LBWID was created, LBA entered into a contract with and granted an easement to the LBWID transferring sole authority over maintenance, operation, and financing of the Dam to the LBWID. However, LBA retained legal ownership of the Dam and Parcel 165.

Recent Changes and LBA Liability Concerns

The first significant change occurred in 2021, when LBA was notified by their insurance provider that its liability insurance policy was being canceled. The cancellation was directly related to LBA's potential liability as title owner of the Dam. Although LBA was able to secure liability insurance from another company, that coverage excludes liability related to the Dam. The LBWID, on the other hand, does have liability insurance on the Dam. Because the LBWID is a government entity (a "Political Subdivision of the Commonwealth of Virginia"), it has access to a municipal program through which it acquires its liability insurance, and importantly, it is generally protected from liability under the "sovereign immunity" defense.

The other significant change is related to the change in the Virginia Dam Safety regulations and the new, more stringent design standards to which the Lake Barcroft Dam is now being held. These new standards will require a major construction project on the Dam—the Dam Embankment Armoring Project—that is currently being planned to "armor" the earthen embankments on both sides of the concrete Dam (https://lakebarcroftwid.com/?page_id=496).

A large number of properties downstream of the Dam are at risk if there was a failure or malfunction of the Dam. The Dam's "inundation zone" includes more than 5,000 individual properties (residential and commercial) as well as major transportation facilities. In the unlikely event of a failure or malfunction of the Dam that resulted in damages or injuries from downstream flooding, LBA as owner of Parcel 165 and the Dam could be sued. The LBA Board of Directors and the LBWID Trustees believe that the most effective step to minimize risk to the LBA and its assets, including reserve funds and common properties, is to transfer its ownership of Parcel 165 and the Dam to the LBWID.

The LBWID has been the sole entity that has maintained and operated the Dam since its establishment in 1973. In those 51 years, the LBWID has possessed almost exclusive use and maintenance of the land that the Dam is situated on. The main objectives of the transfer would be to: (1) to eliminate/reduce potential liability to LBA that arises from Parcel 165 and the operation, maintenance, and repair of the Dam; and (2) to facilitate potential sources of funding for the Dam Embankment Armoring Project. The LBWID is currently pursuing various sources of funding for the armoring project, and LBWID owning the Dam would facilitate the likelihood for such funding.

This transfer should not change the existing relationship between the LBA, the LBWID, and the residents of the Lake Barcroft community. The LBWID would continue to maintain and operate the Dam and finance the costs of the Dam through the LBWID tax. The LBA would maintain ownership of the lakebed and the LBA common grounds, including the beaches, and would continue to have controlling authority over their private recreational uses. The LBWID would continue to perform duties relating to soil and water conservation for Lake Barcroft and common grounds (dredging, debris removal, erosion control, etc.) pursuant to the contract with LBA and recorded easements established in 1973, and its mandate as a Virginia Watershed Improvement District.

LBA Membership Vote and Further Information

The LBA Bylaws state that the LBA Board of Directors is required to take a vote of its membership to authorize the transfer of ownership or sale of land it owns. We will be holding information sessions to answer questions about the proposed transfer in preparation for a vote of the LBA membership later this year. We know there will be many questions and concerns, so a series of Frequently Asked Questions have been developed as a starting place (LBA webpage <https://www.lakebarcroft.org/residents/lba-dam-ownership>; & LBWID webpage: https://lakebarcroftwid.com/?page_id=620). There will also be a place on LBA's and LBWID's websites to ask additional questions - every question submitted to the website will be answered. Please visit the website to familiarize yourself with the details of this proposal and submit any additional questions. Also, please be on the lookout through Constant Contact for notice of the community information sessions and the date/location of the membership meeting, during which the vote will be taken.