

## #5

# LBA/LBWID Liability Regarding the Dam & Parcel 165 Questions Submitted by Lake Barcroft Residents & Answers (12/3/2024)

1.

Question

At [public information] meeting, we discussed potential financial liability. Given that we know – and have known for years – of potential loss of life with catastrophic failure, would this create situation where LBA / WID could possibly be held criminally liable; e.g., manslaughter?

*Answer: The Dam is being lawfully operated in accordance with a permit issued by the Commonwealth of Virginia. For this and various other reasons, the owner and operator of the Dam, whether that is LBA or LBWID, should not be subject to criminal liability in the event of catastrophic failure.*

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2.

Question

There was an inference in one of the previous comments that once the dam is transferred to the WID, Virginia taxpayers might be liable through their taxes for repairs or upkeep of the dam and might not want to do so for lake that is open only to LBA residents. Won't LBA homeowners still be the only ones taxed for the upkeep of the dam and lake through the WID tax? Not Virginia

*Answer: The commenter's inference that Virginia residents at large are taxed for the upkeep of the Dam was incorrect. Only Lake Barcroft lot owners are taxed to pay for the expenses of the Dam. The LBWID tax is applied only to Lake Barcroft properties and revenue generated from that tax is what funds the operation and maintenance of the dam. However, the LBWID can apply for State and Federal grants to help offset the cost of capital improvements for the dam. The LBWID as a government entity (political subdivision of the Commonwealth of Virginia) can also seek special State and Federal appropriations for capital improvement projects, especially when those projects enhance overall public safety.*

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3.

Question

I know it's impossible to say for certain, but what would likely happen if, say, Alexandria, Virginia, and/or a coalition of downstream homeowners sued LBA / WID to eliminate the risks from catastrophic failure?

residents at large? And if this is true, does LBA or WID propose funding the re-armoring of the dam through the possibility of a bond that would be taken out and paid by LBA homeowners? Or how would this be paid for?

*Answer: Although anyone can file a lawsuit against LBA/LBWID, a court would surely dismiss a lawsuit by “private parties,” such as Alexandria or downstream homeowners, that is based on the hypothetical risk that the dam might catastrophically fail. A plaintiff must have a valid “cause of action” to maintain a lawsuit. Negligence and trespass are the most likely causes of action a private party plaintiff would rely on for a catastrophic failure, but those claims would be thrown out of court unless there has actually been a catastrophic failure and the plaintiff has suffered some damage or injury. Similarly, a court would not likely entertain a lawsuit by private parties seeking to enjoin the operation of the Dam so long as the Dam has a permit under Virginia law to operate, which it currently has. The standing requirement for seeking an injunction and the criteria for issuing an injunction would not be met where, as here, the Lake Barcroft Dam is lawfully operating under its permit. Finally, although there are provisions in the Dam Safety Act for requiring a dam to cease operations or be immediately repaired if a dam presents an imminent danger, only the Soil and Water Conservation Board, not private parties, has the authority to exercise those provisions. Moreover, there has been no determination by the Board that the Lake Barcroft Dam is presenting an imminent danger. See VA Code, 10.1-607, 608, 609 and 613.*