STAFFORD Virginia

#8

BOARD OF SUPERVISORS
Agenda Item

Meeting Date:	January 8, 2013
Title:	Authorize a Public Hearing to Consider a Reduction from Class 3 to Class 4 Misdemeanor for Swimming in a County Reservoir
Department:	County Attorney/Utilities
Staff Contact:	Charles L. Shumate, County Attorney
Board Committee/ Other BACC:	Public Safety Committee
Staff Recommendation:	N/A
Budget Impact:	N/A
Time Sensitivity:	N/A

ATTACHMENTS:

1.	Background Report	3.	Proposed Ordinance O13-06
2.	Memo dated January 3, 2013	4.	Proposed Resolution R13-15

X	**Consent Agenda**		**Other Business**		**Unfinished Business**
	Discussion		**Presentation**		**Work Session**
	New Business		**Public Hearing**		**Add-On**

REVIEW:

X	County Administrator	
X	Utilities	

DISTRICT:	N/A

Attachment 1
R13-15

BACKGROUND REPORT

Stafford County Code § 17-28 prohibits swimming, bathing, and wading in a terminal reservoir. A person violating this provision is guilty of a Class 3 misdemeanor. The Board's Public Safety Committee met and discussed this penalty at its July 31, 2012, September 18, 2012, and December 18, 2012 meetings. The Committee voted 3 to 0 to recommend to the Board that the penalty for swimming, bathing, and wading in a terminal reservoir be reduced to a Class 4 misdemeanor.

While staff has no recommendation on the classification of the offense, the January 3, 2013 memo included as Attachment 2 reiterates the importance of prohibiting recreational activities that result in human contact in the County's reservoirs.

Virginia Code § 18.2-11 and Stafford County Code § 1-11 set the penalty for a Class 3 misdemeanor as a fine of not more than $500 and for a Class 4 misdemeanor as a fine of not more than $250.

Proposed Ordinance O13-06 (Attachment 2) would reduce the penalty for swimming, bathing, and wading in a terminal reservoir to a Class 4 misdemeanor. Proposed Resolution R13-15 would authorize the County Administrator to advertise a public hearing to consider lowering the penalty.

Department of Utilities

Memorandum

To: Board of Supervisors

From: Harry Critzer
Director of Utilities

Subject: Swimming in Reservoirs

Date: January 3, 2013

At the Board's May 5, 2009 meeting, a public hearing was held on proposed amendments to the County's Terminal Reservoir Ordinance which regulates activities in and around the County's public drinking water reservoirs. Subsequent to the public hearing, Board members discussed the proposed amendments and directed staff to address a number of issues including allowing swimming and wading in the terminal reservoirs.

Staff contacted the Virginia Association of Counties Group Self-Insurance Risk Pool (VACoRP) which provides property and liability insurance for the County and advises the County on risk management issues. When asked about permitting swimming in the County reservoirs and having signs saying "No lifeguards – Swim at Your Own Risk", VACoRP's response was:

> "Allowing swimming at a naturally occurring beach is okay. VACoRP would strongly recommend against allowing swimming in a man-made reservoir without lifeguards. VACoRP would certainly entail significant legal expense in defending a wrongful death case. If the case is lost, it could be a very large claim. The signs may help some in defense, but the county would certainly be taking on significant risk by allowing swimming in a man-made reservoir." In addition, they said that "Lifeguards should be provided if swimming is allowed and they should be open-water lifeguards."

Staff also contacted the Culpeper Regional Office of the Department of Health (VDH) for input. The Virginia Administrative Code, at 12VAC5-590-830(E), states that "In order to protect the public health and guarantee a supply of pure water, terminal reservoirs shall not be utilized for body contact recreation and boats powered by gasoline engines. Large terminal reservoirs may be used for body contact recreation and boats powered by gasoline engines provided a buffer zone acceptable to the division and water purveyor is furnished." Staff asked for a definition of a "large terminal reservoir", but no definition could be found. The Regional Director responded that "Although we prefer that body contact recreation and use of gasoline motors be prohibited … we understand the public's desire for

recreational opportunities. It is our strong view that protection of the source for drinking water purposes should be the highest concern and priority. The County needs to carefully consider the development of a management plan that best protects the reservoirs as public drinking water sources." We were referred to the American Water Works Association (AWWA) policy on reservoir protection.

> In the AWWA Statement on Policy on "Recreational Use of Domestic Water Supply Reservoirs", it states that AWWA "supports the principle that water of the highest quality should be used as the source of supply for public water systems." It further states that "Recreational uses of domestic water supply reservoirs ... can add sources of microbial, physical and chemical contaminants to the drinking water produced from the reservoirs. Water utility decisions on permitting recreational uses of water supply reservoirs should consider the following issues: (1) the potential for water quality degradation, (2) the public health risk, (3) the acceptance of such health risk by the customers, (4) the current required level of treatment, and (5) additional treatment requirements, uncertainties, and costs that may be incurred." The AWWA policy also states that "Body-contact recreation (e.g., swimming, water skiing, wind surfing) and use of two-cycle gasoline engines on boats should be discouraged or prohibited. In addition, boat inspection/washing stations and restrictive use of live bait should be considered to prevent the introduction of foreign and invasive species (such as zebra mussels or non-native algal species) that could potentially destabilize a reservoir's ecology and water quality."

Staff also conducted a survey of localities in Virginia as well as a few in Maryland to determine which ones permitted swimming in their reservoirs. Of 30 public water supply reservoirs, not one permitted swimming regardless of the size of the reservoir.

Staff strongly recommends, based upon the comments received from VACoRP and the Department of Health, written policy of the American Water Works Association, and the survey conducted of other public drinking water reservoirs in Virginia and in Maryland, that the Board continue to prohibit swimming or wading in the terminal reservoirs.

O13-06

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the __ day of __, 2013:

MEMBERS:	VOTE:
Jack R. Cavalier	
Paul V. Milde III	
Ty A. Schieber	
Gary F. Snellings	
Cord A. Sterling	
Susan B. Stimpson	
Robert "Bob" Thomas, Jr.	

On motion of , seconded by , which carried by a vote of , the following was adopted:

AN ORDINANCE TO AMEND AND REORDAIN STAFFORD COUNTY CODE, SECTION 17-28, "PROHIBITED ACTIVITIES AT TERMINAL RESERVOIRS," TO REDUCE THE PENALTY FOR SWIMMING IN A TERMINAL RESERVOIR

WHEREAS, the County is concerned with protecting the public health, safety, and general welfare, and preserving the sanitary conditions of the County's terminal reservoirs; and

WHEREAS, the County is also concerned with public safety and the illegal use of terminal reservoirs for swimming, bathing, and wading; and

WHEREAS, the penalty for swimming, bathing, or wading in a terminal reservoir is a Class 3 misdemeanor; and

WHEREAS, the Board's Public Safety Committee considered the penalty and voted 3-0 to reduce it to a Class 4 misdemeanor; and

WHEREAS, the Board carefully considered the recommendations of staff and public testimony, if any, at the public hearing; and

WHEREAS, the Board finds that this ordinance promotes the health, safety, and welfare of the County and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the ___ day of ___, 2013, that Stafford County Code, Section 17-28, "Prohibited activities at terminal reservoirs," be and it hereby is amended and reordained to read as follows, all other portions remaining unchanged:

Sec. 17-28. - Prohibited activities at terminal reservoirs.

(d) Any person violating any provision of this section or of rules and regulations adopted hereunder shall be guilty of a class 3 misdemeanor~~.~~, except for a violation of subsection(b)(2) of this section. Any person violating subsection (b)(2) of this section or any rules or regulations adopted to enforce subsection (b)(2) of this section shall be guilty of a class 4 misdemeanor.

AJR:CLS:rmm

R13-15

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 8th day of January, 2013:

MEMBERS: VOTE:
Jack R. Cavalier
Paul V. Milde III
Ty A. Schieber
Gary F. Snellings
Cord A. Sterling
Susan B. Stimpson
Robert "Bob" Thomas, Jr.

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO ADVERTISE A PUBLIC HEARING TO CONSIDER AMENDING AND REORDAINING STAFFORD COUNTY CODE, SECTION 17-28, "PROHIBITED ACTIVITIES AT TERMINAL RESERVOIRS"

WHEREAS, the County is concerned with protecting the public health, safety, and general welfare and preserving the sanitary conditions of the County's terminal reservoirs; and

WHEREAS, the County is also concerned with public safety and the illegal use of terminal reservoirs for swimming, bathing, and wading; and

WHEREAS, the penalty for swimming, bathing, or wading in a terminal reservoir is a Class 3 misdemeanor; and

WHEREAS, the Board's Public Safety Committee considered the penalty and voted 3-0 to reduce it to a Class 4 misdemeanor; and

WHEREAS, the Board finds consideration of the proposed amendment promotes the health, safety, and welfare of the County and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 8th day of January, 2013, that the County Administrator be and he hereby is authorized to advertise a public hearing to consider amending and reordaining Stafford County Code, Section 17-28, "Prohibited activities at terminal reservoirs."

AJR:CLS:rmm