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August 11, 2020

Jolene Kiolbassa
Chair, Zoning and Platting Commission
City of Austin
505 Barton Springs Road, 5th Floor
Austin, Texas 78704
bc-Jolene.Kiolbassa@austintexas.gov

Re: Zoning case number C14-2020-0063/Pier Property Rezoning (the “Zoning Case”). Travis County Municipality Utility Districts Nos. 3, 4, 5, 6, 7, 8 and 9.

Dear Chair Kiolbassa:

This letter is written on behalf of Travis County Municipal Utility District No. 4 (the “District”). We represent the District as well as Travis County Municipal Utility Districts Nos. 2, 3, 5, 6, 7, 8 and 9 (the “Participating Districts”). The District and the Participating Districts are conservation and reclamation districts formed by legislative statutes under the provisions of Article XVI, Section 59 of the Texas Constitution and operating under Chapters 49 and 51 of the Texas Water Code, as amended. The District, together with the Participating Districts, contain approximately 3,520 acres of land located in western Travis County approximately two miles southwest of the intersection of RM 2244 and Capital of Texas Highway.

The District is empowered, among other things, to finance, construct, own, operate and maintain waterworks and to provide such facilities and services to the customers of the District and each of the Participating Districts. The District operates five raw water intake pumps on Lake Austin as part of its waterworks system (the “District’s Intake”). These intakes provide raw water for two different water treatment plants. These water treatment plants serve approximately 991 total connections. These connections include service to Querencia Barton Creek Senior Living, two phases of the Santal Apartments, the Marquis Apartments, Omni Barton Creek Resort and Club, and two private schools. The District also provides wholesale

water service to Travis County WCID No. 19 and Barton Creek Water Supply Corporation (residents in the wholesale customers districts are not included in the connection count above). The TCEQ exercises continuing supervisory jurisdiction over the District, including the enforcement of Rules and Regulations for Public Water Systems contained in 30 Tex. Admin. Code Chapter 290, Subchapter D.

The Zoning Case relates to a portion of the property at 17003 River Hills Road, Austin, Texas (the “Pier Property”), which at one time supported a restaurant with an accessory use of a small boat dock. The restaurant ceased operations during the year 2005 and, it is our understanding, has not resumed operations since that date and that the boat dock on the Pier Property has fallen into disrepair. It is the understanding of the District that the Applicant in the Zoning Case has requested that the portion of the Pier Property containing the docks be rezoned to Commercial Recreation (“CR”) to accommodate the rehabilitation, and resumed operation, of the boat dock as a primary use.

The dilapidated dock is located approximately 430 feet from the District’s Intake, as depicted on the attached **Exhibit “A”**. To the extent the boat dock is rehabilitated and functions in its projected capacity, significant health and safety concerns would be implicated by operating a 20-slip marina in such proximity to the District’s Intake that provide drinking water to the residents of the District. Federal and state drinking water standards and the enforcement of such standards have become more sophisticated as it relates to water quality and related health issues. The formation of carcinogenic disinfection byproducts due to the presence of organic materials in raw water supplies is a significant regulatory concern which could be aggravated by the proposed use of the Pier Property.

In addition to health and safety concerns, the rehabilitation and subsequent operation of the docks could cause regulatory concerns for the District. 30 Tex. Admin. Code § 290.41(e)(2)(B) (2015) (Tex. Cmsn. on Environmental Quality) (“Rule 290.41(e)(2)(B)”) establishes the following provision relating to raw water intakes and boat docks:

Raw water intakes shall not be located within 1,000 feet of boat launching ramps, marinas, docks, or floating fishing piers that are accessible by the public.

If the zoning request is granted and the boat docks are rehabilitated, the docks will accommodate up to 20 boats. The Code of the City of Austin defines a marina as a dock for the anchoring, mooring, housing, or storing of more than three watercraft. Thus, it is possible—perhaps likely—that the District could be found in violation of Rule 290.41(e)(2)(B). In 2007, an opinion request was submitted to the Texas Commission on Environmental Quality (“TCEQ”) when a similar zoning request was pending on the Pier Property. In a response letter, attached as **Exhibit “B”**, an attorney from the TCEQ’s Environmental Law Division opined:

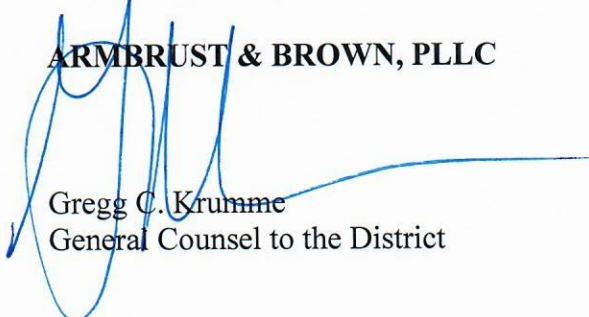
If the redevelopment of The Pier Property...results in any intakes, including existing intakes, being located within 1,000 feet of a boat launching ramps, marinas, docks, for floating fishing piers accessible by the public, *the entity responsible for the intake will be in violation of the commission’s rule and may be subject to enforcement action.* (emphasis added)

It is unknown whether enforcement action against the District would result in an interruption of service to its water utility customers, significant expenditures to relocate the raw water intakes, and/or additional other hardships to the District, including violations of federal and/or state drinking water standards.

As the granting of the zoning request could lead to both health and safety concerns and regulatory considerations for the District, the District opposes the Staff recommendation to grant the CR district zoning and hereby requests that the consideration of CR zoning in the Zoning Case be denied.

Respectfully,

ARMBRUST & BROWN, PLLC



Gregg C. Krumme
General Counsel to the District

cc: Doug Connolly, President of Travis County MUD No. 4
Nikelle Meade, Husch Blackwell LLP
James B. Duncan, Vice Chair, Zoning and Platting Cmsn.
Ana T. Aguirre, Secretary, Zoning and Platting Cmsn.
Ann Denkler, Zoning and Platting Cmsn.
V. Bruce Evans, Zoning and Platting Cmsn.
Timothy Bray, Zoning and Platting Cmsn.
Ellen K. Ray, Zoning and Platting Cmsn.
Nadia Barrera-Ramirez, Zoning and Platting Cmsn.
David King, Zoning and Platting Cmsn.
Hank Smith, Zoning and Platting Cmsn.
Mark Graham, Case Manager, City of Austin

EXHIBIT "A"
The District Intake is located at the top of this depiction

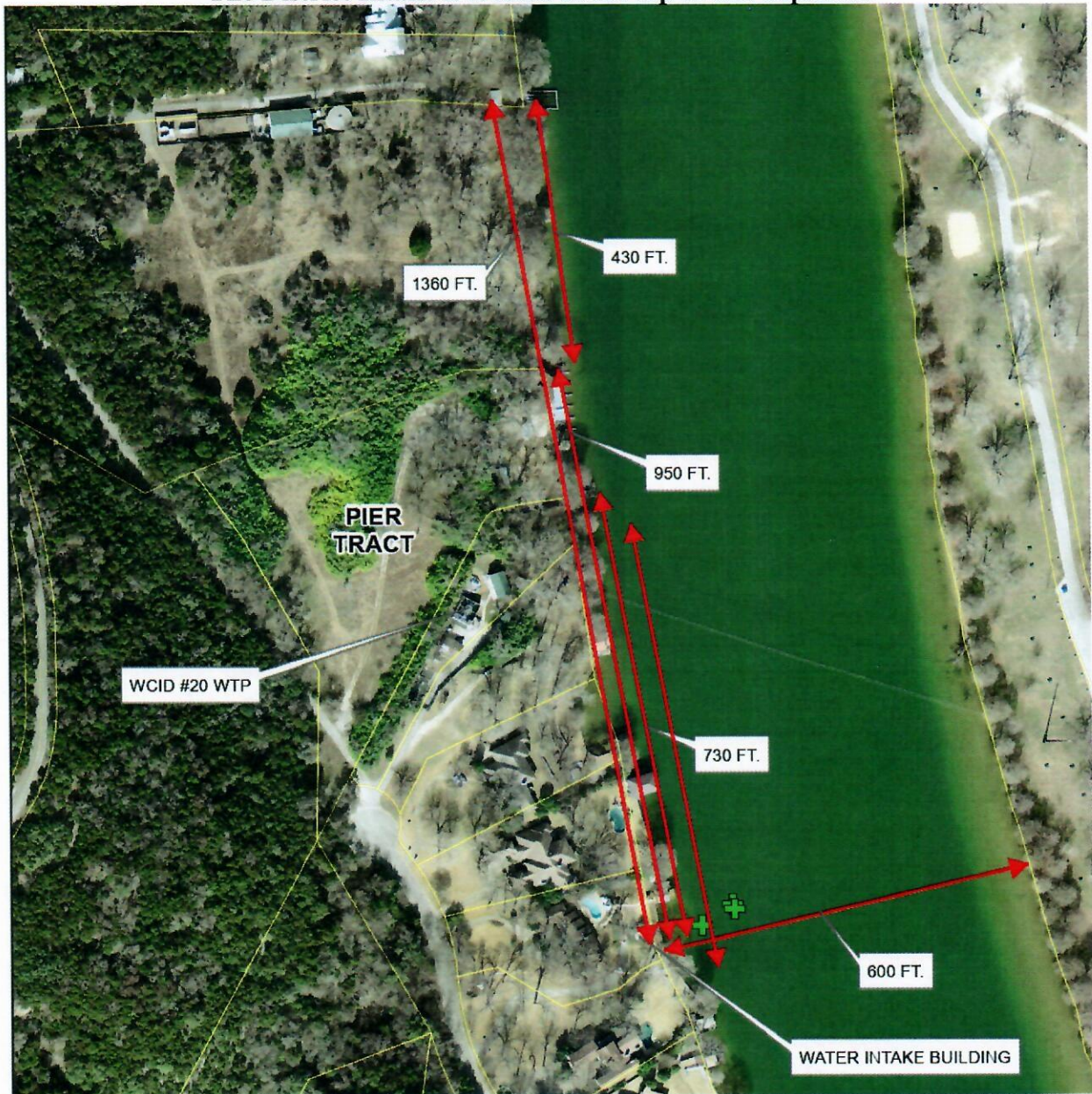


EXHIBIT "B"

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Clegg Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 3, 2007

Celina Romero
Clark, Thomas & Winters
P.O. Box 1148
Austin, Texas 78767

Re: Proposed redevelopment of The Pier property on Lake Austin

Dear Mr. Gullatt and Ms. Romero:

This letter is in response to your request on behalf of your client for an opinion from the TCEQ regarding whether its development planned for The Pier property would violate commission rules, specifically as related to the public drinking water program. It is my understanding that Travis County WCIDs #19 and #20 own raw water intake structures on Lake Austin in the vicinity of the proposed development.

Under 30 Tex. Admin. Code Section 290.41(e)(2)(B), raw water intakes may not be located within 1,000 feet of boat launching ramps, marinas, docks, or floating fishing piers accessible by the public. If the redevelopment of The Pier property by your client results in any intakes, including existing intakes, being located within 1,000 feet of a boat launching ramps, marinas, docks, or floating fishing piers accessible by the public, the entity responsible for the intake will be in violation of the commission's rule and may be subject to enforcement action. That being said, until the project is actually substantially completed, we will not be able to determine whether it includes any of the types of structures referenced by the rule or the exact distance between the structures and intakes. The agency cannot find that the project is in compliance with all of our rules based on incomplete, speculative information. The Executive Director reserves the right to pursue enforcement action in the event that the development of the property results in a breach of the 1,000-foot buffer zone required by the rule.

Please feel free to contact me by e-mail at shorton@tceq.state.tx.us or by phone at (512) 239-1088 if you have additional questions or concerns regarding this matter.

Sincerely,



Shana L. Horton
Attorney
Environmental Law Division