

# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

SEAN ABBOTT  
(512) 435-2334

August 11, 2020

Jolene Kiolbassa  
Chair, Zoning and Platting Commission  
City of Austin  
505 Barton Springs Road, 5<sup>th</sup> Floor  
Austin, Texas 78704  
[bc-Jolene.Kiolbassa@austintexas.gov](mailto:bc-Jolene.Kiolbassa@austintexas.gov)

Re: Zoning case number C14-2020-0063/Pier Property Rezoning (the “Zoning Case”).

Dear Chair Kiolbassa:

This letter is written on behalf of Travis County Water Control and Improvement District No. 20 (the “District”). Armbrust and Brown, PLLC represents the District, which is a conservation and reclamation district created by an order of the Travis County Commissioners’ Court on November 23, 1981, in accordance with the provisions of Article XVI, Section 59 of the Texas Constitution, and operates pursuant to Chapters 49 and 51 of the Texas Water Code, as amended. The District contains approximately 1005 acres of land and is located in western Travis County approximately one mile west of the intersection of FM 2244 and Loop 360 and generally extends from Lake Austin on the north to Barton Creek on the South.

The District is empowered, among other things, to finance, construct, own, operate, and maintain waterworks and drainage facilities and to provide such facilities and services to the customers of the District. The District operates three raw water intake pumps (the “District’s Intake”) on Lake Austin as part of its waterworks system, which serves approximately 375 total connections. 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 800 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, which provides 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, 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. (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 District’s Intake, 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**



Sean Abbott  
General Counsel to the District

cc: Gregory Greeson, President of Travis County WCID No. 20  
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"





## EXHIBIT "B"

R-  
Rudak Garcia, Chairman  
Larry R. Seward, Commissioner  
Cheryl 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](mailto: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