

ZONING CHANGE REVIEW SHEET

CASE: C14-2020-0063 – Pier Property Rezoning DISTRICT: 10

ZONING FROM: CS-1, LA

TO: CR

ADDRESS: 1703 River Hills Road

SITE AREA: 0.096 acres (4181.76 sq. ft.)

PROPERTY OWNER:

Tires Made Easy, Inc (Andrew S. Price)

AGENT:

Husch Blackwell, LLP, (Nikelle Meade)

CASE MANAGER Mark Graham (512-974-3574, mark.graham@austintexas.gov)

STAFF RECOMMENDATION:

The Staff recommendation is to grant commercial recreation (CR) district zoning.

For a summary of the basis of Staff's recommendation, see case manager comments below.

ZONING AND PLATTING COMMISSION ACTION / RECOMMENDATION:

August 18, 2020: APPROVED CR DISTRICT ZONING AS THE APPLICANT REQUESTED. Note: Encourage the Applicant and the MUD to discuss Federal and State environmental and water quality regulations, and dredging, and the potential to limit the number of docks on the property.

[A. DENKLER; H. SMITH – 2ND] (10-0) – DISTRICT 4 VACANCY

CITY COUNCIL ACTION:

September 17, 2020:

ORDINANCE NUMBER:

ISSUES

There is no new development proposed for the subject property. The requested CR zoning is required to repair the existing marina. There is a Travis County water district with a water intake nearby. Through their legal counsel, they expressed their concern about the proximity of the marina.

CASE MANAGER COMMENTS:

The subject property is addressed as 1703 River Hills Road. Currently there are no occupied structures or operating businesses on the 4.465 acre property.

The subject riverside and woodland property is surveyed as 4.465 acres (approximately 194,495 square feet) with approximately 212 feet of Lake Austin frontage. The requested rezoning tract is for the footprint of the existing marina (about 4,181 square feet). The marina was built to serve a restaurant that operated on the property but closed prior to 2006. The existing commercial-liquor sales (CS-1) zoning permits the bar/restaurant use as a primary land use and the Land Development Code allows a marina as an accessory use to a restaurant. Since the restaurant is not in operation, the marina becomes the primary use. The applicant stated that there are 20 boat slips and that they intend to reconstruct them in the same location. The requested commercial recreation (CR) zoning district allows a commercial marina as a primary use.

An Austin Code Enforcement Official inspected the marina and determined that the boat slips may be unsafe and require repairs. The applicants responded to the enforcement notice and applied for permits to make the required repairs. The permits were denied because the marina does not have the correct zoning. The applicants indicate that they plan to remove all dangerous structures and make repairs when they can get permits to do so.

BASIS OF RECOMMENDATION:

- 1. The proposed zoning should be consistent with the purpose statement of the district sought.*

CR – Commercial Recreation district is intended to provide for the commercial services and recreational needs of tourists and visitors to major recreational areas such as Lake Travis or Lake Austin.

The zoning is sought by the applicant in order to repair an existing commercial marina on Lake Austin. CR zoning is the only zoning district where a marina is a permitted use by right. The marina was previously allowed as an accessory use to the restaurant that is no longer operational.

Permits to repair the marina were not issued because the use is not permitted in the CS-1 zoning district. The proposed repairs were in response to a code enforcement violation. Permitting and repairs can proceed if the zoning is granted. By repairing the existing 20 slips, the owner is preserving an amenity of the property while removing potential hazards identified by code enforcement.

- 2. Zoning should not constitute a grant of special privilege to an individual owner; Granting of the request should result in an equal treatment of similarly situated properties.*

The subject property is zoned commercial-liquor sales (CS-1) and for many years prior to 2006 a restaurant and entertainment business operated there. The unique feature was that the Pier restaurant was accessible primarily by water. The property has more than 200 feet of

frontage on Lake Austin and repairing the commercial marina preserves some potential commercial opportunities for the property. The proposed rezoning is only for the footprint of the marina, 4,181 square feet.

EXISTING ZONING AND LAND USES:

	Zoning	Land Uses
Site	CS-1	Vacant restaurant, marina
North	LA	Large lot residences
South	LA	WCID Water Treatment Plant
East	LA, P	Colorado River, Emma Long Park
West	LA, Austin ETJ	Undeveloped woodland

NEIGHBORHOOD PLANNING AREA: Not applicable

TIA: No development is proposed.

WATERSHED: Lake Austin – Water Supply Rural Watershed. Impervious Cover permitted for commercial use is 20% of net site area

OVERLAYS: Lake Austin

SCHOOLS: Eanes ISD

Barton Creek Elementary School West Ridge Middle School Westlake High School

NEIGHBORHOOD ORGANIZATIONS

Austin Lost and Found Pets	River Hills Neighborhood Assn.
Bike Austin	SELTexas
City of Rollingwood	Save Our Springs Alliance
Friends of Austin Neighborhoods	Sierra Club, Austin Regional Group
Neighborhood Empowerment Foundation	TNR BCP - Travis County Natural Resources

AREA CASE HISTORIES:

There are no recent cases in the vicinity. The area west of River Hills Road is in the Austin 2-mile ETJ and east of Lake Austin is Emma Long Metro Park. To the north and south are large LA zoned properties with Colorado River frontage.

LEGAL DESCRIPTION:

BEING 0.096 OF AN ACRE SITUATED IN THE ISAAC PERKINS SURVEY, ABSTRACT No. 626, TRAVIS COUNTY, TEXAS, OUT OF A CALLED 4.465 ACRE TRACT CONVEYED TO TIRES MADE EASY, INC., AND DESCRIBED IN SPECIAL WARRANTY DEED RECORDED IN DOCUMENT No. 2008021052, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.).

RELATED CASES:

Ordinance No. 84-0193-Q – September 13, 1984, property rezoned from “A” – Residence and “Interim LA” 1st Height & Area to “C-2” 1st Height & Area.

C14-83-003.189 – **Restrictive Covenant** for a 4.476 acre tract of land recorded in 1984 requires requests for expansion or changes of the existing land use to be accompanied by a site plan and receive approval of the Land Use Commission and City Council.

C814-06-0202 – Pier Partners – Proposed PUD zoning for expanded restaurant, dry dock. Withdrawn by applicant on February 13, 2008.

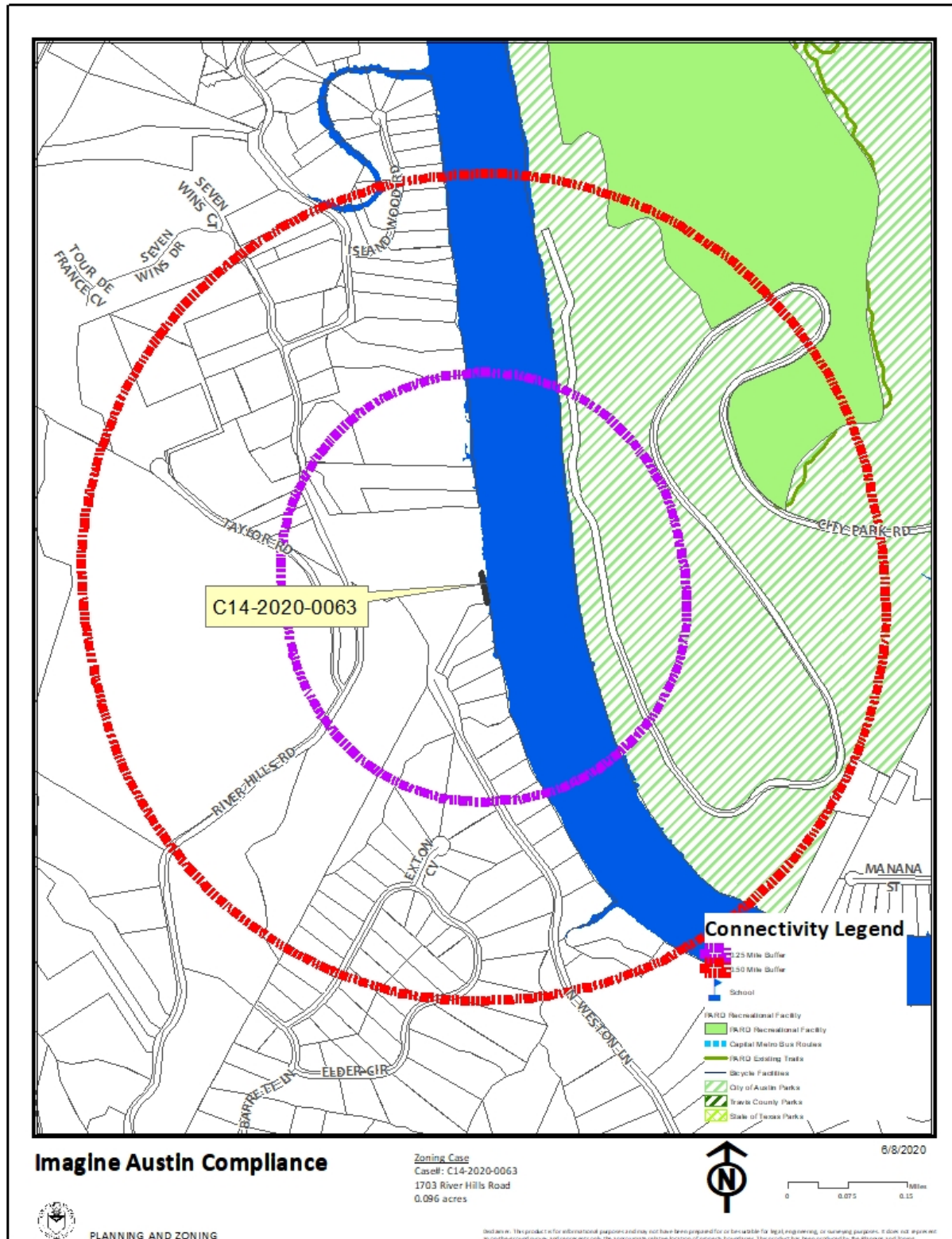
OTHER STAFF COMMENTS:Comprehensive Planning

This zoning case is located at the west side of the Colorado River on a property that is 0.096 acres in size and the existing use is a marina/pier. The property is not located within the boundaries of a neighborhood planning area. Surrounding land uses includes large single family lots with house to the north, south and west; and to the east is the Colorado River. The proposal is to rezone the existing marina/pier.

Connectivity: The area within and around the subject property has no public sidewalks, bike lanes, urban trails, or public transit options within or near the site. The mobility and connectivity options in the area are below average.

Imagine Austin

The property is not located along an Activity Corridor or Center. The comparative scale of the existing marina/pier along a river falls below the scope of Imagine Austin; and consequently the plan is neutral on the proposed rezoning.



Environmental

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is in the Lake Austin Watershed of the Colorado River Basin, which is classified as a Water Supply Rural Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Drinking Water Protection Zone.
2. Under the current watershed regulations, development or redevelopment on this site will be subject to the following impervious cover limits:

<i>Development Classification</i>	<i>% of Net Site Area</i>	<i>% NSA with Transfers</i>	<i>Allowable Density</i>
One or Two Family Residential	n/a	n/a	1 unit/2 acres net site area
Multifamily Residential	20%	25%	n/a
Commercial	20%	25%	n/a

Single family or duplex development within a Water Quality Transition Zone may not exceed a density of one unit per three acres, exclusive of land within a 100-year floodplain.

3. According to floodplain maps there is a floodplain within or adjacent to the project location. Based upon the location of the floodplain, offsite drainage should be calculated to determine whether a Water Quality Transition Zone / Critical Water Quality Zone exist within the project location.
4. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.
5. At this time, site specific information is unavailable regarding vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.
6. Under current watershed regulations, development or redevelopment requires water quality control with increased capture volume and control of the 2 year storm on site.
7. At this time, no information has been provided as to whether this property has any preexisting approvals that preempt current water quality or Code requirements.

Site Plan

- SP1. Site plans will be required for any new development other than single-family or duplex residential.
- SP2. Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

- SP3. Any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.
- SP4. The site is subject to compatibility standards. Along the *north, south, and west* property lines, the following standards apply:
No structure may be built within 25 feet of the property line.
No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
No parking or driveways are allowed within 25 feet of the property line.
A landscape area at least 25 feet wide is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
- SP5. Other development regulations for the CR zoning district are the following:
- Maximum Height: 40 Ft.
 - Maximum FAR: 0.25 : 1

Transportation

No new development or use proposed. No comments at this time.

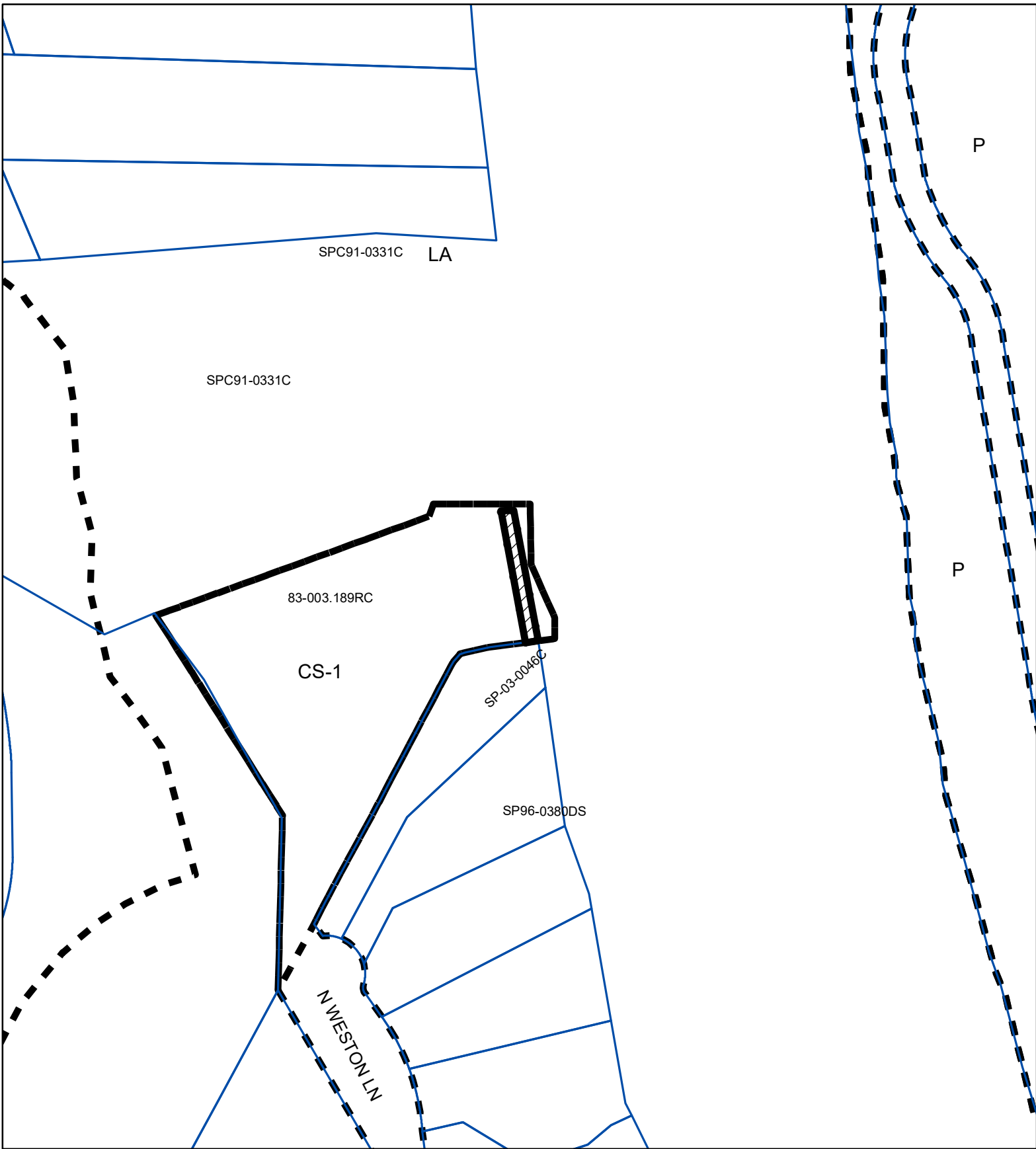
Austin Water Utility

AW1. No comments. Site is served by private water system and on-site sewage facility

EXHIBITS TO FOLLOW

Exhibit A: Zoning Map

Exhibit B: Aerial Map



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

ZONING

ZONING CASE#: C14-2020-0063

1" = 200'

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

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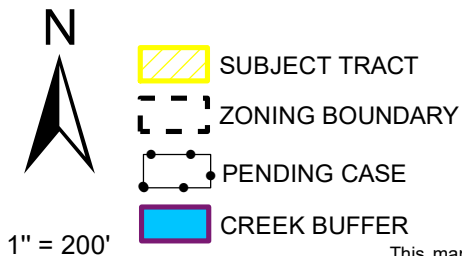
Created: 6/5/2020



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Pier Property Rezoning

ZONING CASE#: C14-2020-0063
 LOCATION: 1703 River Hills Rd.
 SUBJECT AREA: 0.096 ACRES
 GRID: D27
 MANAGER: MARK GRAHAM



This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

From: [Patrick Carlson](#)
To: [Graham, Mark](#); [Rhoades, Wendy](#)
Cc: [Amanda Surman](#); [Amanda Morrow](#); "rferguson@murfee.com"
Subject: RE: C14-2020-0063 - Travis County WCID No. 20, Existing Raw Water Intake, & Title 30 Texas Administrative Code Rule 290.41(e)(2)(B)
Date: Friday, June 26, 2020 5:13:32 PM
Attachments: [COA Notice of Rezoning Application - The Pier.pdf](#)
[Title 30 Texas Administrative Code Rule 290.41.pdf](#)
[Rezoning Application - The Pier.pdf](#)

*** External Email - Exercise Caution ***

Hi Mark and Wendy,

Thank you for your attention and assistance with Amanda Morrow's request below.

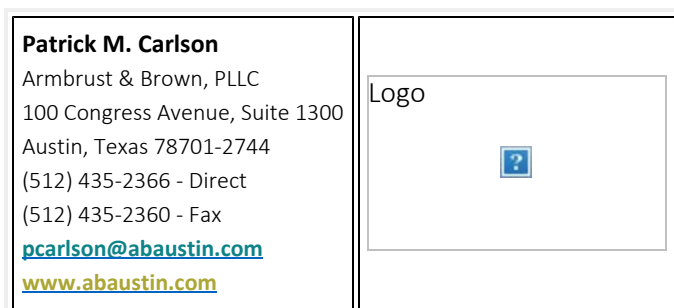
At its regular monthly meeting yesterday, the Board of Directors of Travis County WCID No. 20 discussed the owner's rezoning application (Case No. C-14-2020-0063; copy attached for reference) and related proposed use of the property, as well as the District's use and operation of its existing raw water intake that is located within 1,000 feet of the property, and the Board's concerns about the rezoning application and related proposed use of the property, which would violate Title 30 Texas Administrative Code Rule 290.41(e)(2)(B) (copy attached for reference). That TAC rule states:

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

The Board directed me (as the District's general counsel) and Robert Ferguson of Murfee Engineering Co. (as the District's engineer) to prepare and send to the City a formal letter expressing the District's foregoing concerns, including an exhibit showing the location and distance of the District's existing raw water intake in relation to the subject property. However, in the interest of time, the Board also requested that I first email you a brief note to make you aware of those concerns, the TAC rule, and how the proposed use of the property would violate that TAC rule.

If you have any questions, please do not hesitate to contact me. Thank you,

Patrick



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From: Amanda Morrow <amorrow@abaustin.com>
Sent: Wednesday, June 24, 2020 10:24 AM
To: Graham, Mark <Mark.Graham@austintexas.gov>
Cc: 'Rhoades, Wendy' <Wendy.Rhoades@austintexas.gov>; Amanda Surman <ASurman@abaustin.com>; Patrick Carlson <pcarlson@abaustin.com>
Subject: C14-2020-0063 - Interested Party/Persons

Hello Mark,

I'd like to register Patrick Carlson, as general counsel, for Travis County WCID No. 20 an interested party/entity to the Pier Property Rezoning case filed under C14-2020-0063.

Please provide a copy of all correspondences, including application material filed by the applicant, staff report, supplemental project information, notification of hearing dates, etc, to Patrick Carlson so that Travis County WCID No. 20 can be kept up to date on current actively for this project as it may directly impact the operations of the District.

Information should be directed to:

Patrick Carlson
pcarlson@abaustin.com
512-435-2366

Please let me know if you have any questions.

Amanda Morrow

Armbrust & Brown, PLLC
Director of Land Use & Entitlements
100 Congress Ave. Suite 1300
Austin, Texas 78701
512-435-2368 Direct Line
512-435-2360 Fax

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From: [Meade, Nikelle](#)
To: [Kiolbassa, Jolene - BC](#)
Cc: [Duncan, Jim - BC](#); [Aguirre, Ana - BC](#); [Denkler, Ann - BC](#); [Evans, Bruce - BC](#); [Bray, Timothy - BC](#); [Ray, Ellen - BC](#); [Ramirez, Nadia - BC](#); [King, David - BC](#); [Smith, Hank - BC](#); [Graham, Mark](#); [Harris, Jerry](#)
Subject: RE: Zoning Case: C14-2020-0063 -- Pier Property Rezoning
Date: Tuesday, August 11, 2020 4:51:10 PM

*** External Email - Exercise Caution ***

Chair Kiolbassa and Commissioners,

Unfortunately, there is critical information about the location of the water district's infrastructure that they opted to not include in their letter. We are compiling information about this issue and will get it to all of you. In short, what the district is failing to reveal is that *they* asked the State of Texas for a *variance* to be able locate the intake structure in its current location. And, they did so when not only the boat slips but also the Pier restaurant were open to the public and in full operation and – in fact - more intense than what is proposed today.

We will be providing this information to you all shortly.

Nikelle Meade
Partner

HUSCH BLACKWELL LLP
111 Congress Avenue,
Suite 1400
Austin, TX 78701-4093
Direct: 512.479.1147
Mobile: 512.992.6001
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Nikelle.Meade@huschblackwell.com
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From: Sean Abbott <SAbbott@abaustin.com>
Sent: Tuesday, August 11, 2020 3:19 PM
To: 'bc-Jolene.Kiolbassa@austintexas.gov' <bc-Jolene.Kiolbassa@austintexas.gov>
Cc: 'Gregory M Greeson (greg@collectichome.com)' <greg@collectichome.com>; Meade, Nikelle <Nikelle.Meade@huschblackwell.com>; 'bc-Jim.Duncan@austintexas.gov' <bc-Jim.Duncan@austintexas.gov>; 'BC-Ana.Aguirre@austintexas.gov' <BC-Ana.Aguirre@austintexas.gov>; 'bc-Ann.Denkler@austintexas.gov' <bc-Ann.Denkler@austintexas.gov>; 'bc-Bruce.Evans@austintexas.gov' <bc-Bruce.Evans@austintexas.gov>; 'BC-Timothy.Bray@austintexas.gov' <BC-Timothy.Bray@austintexas.gov>; 'BC-Ellen.Ray@austintexas.gov' <BC-Ellen.Ray@austintexas.gov>; 'BC-Nadia.Ramirez@austintexas.gov' <BC-Nadia.Ramirez@austintexas.gov>; 'BC-David.King@austintexas.gov' <BC-David.King@austintexas.gov>; 'bc-Hank.Smith@austintexas.gov' <bc-Hank.Smith@austintexas.gov>; 'Mark.Graham@austintexas.gov' <Mark.Graham@austintexas.gov>

Subject: Zoning Case: C14-2020-0063 -- Pier Property Rezoning

[EXTERNAL EMAIL]

Chair Kiolbassa,

Please find the attached letter delivered on behalf of Travis County Water Control and Improvement District No. 20 relating to the City of Austin Zoning Case C14-2020-0063.

Regards,



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ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

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AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2360

GREGG C. KRUMME
(512) 435-2398
gkrumme@abaustin.com

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:

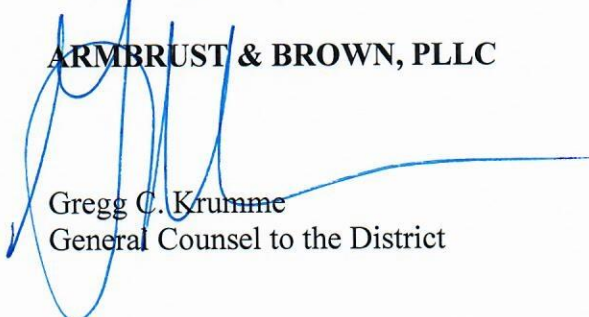
If the redevelopment of The Pier Property...results in any intakes, including existing intakes, being located within 1,000 feet of a boat launching ramps, marinas, docks, for floating fishing piers accessible by the public, *the entity responsible for the intake will be in violation of the commission's 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

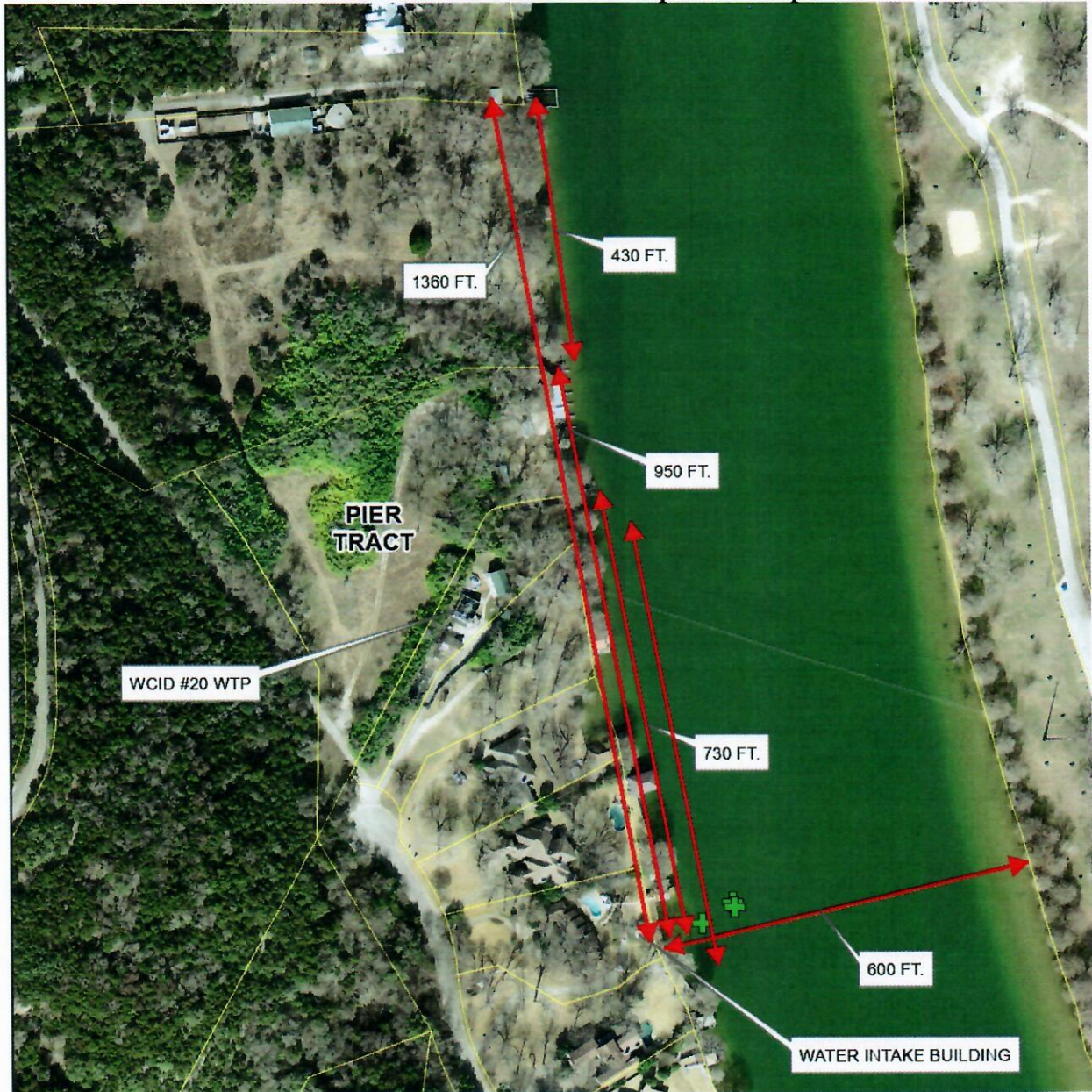


EXHIBIT "B"

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