

LAKE POINTE MUNICIPAL UTILITY DISTRICT

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS

February 10, 2022

The Board of Directors of Lake Pointe Municipal Utility District (the “District”) met in person in a regular session on February 10, 2022, at 7:00 p.m., open to the public. The District posted a copy of the notice of meeting, attached as “Exhibit A.”

President Salgo called the meeting to order at 7:00 p.m.

Item No. 1

Item No. 1 was to call to order and establish quorum. The following members of the Board were present:

Director Robert Salgo
Director Penny Handsel
Director Jody Flaws
Director Jason Rew-Hunter
Director Terry Elam

Also in attendance were William Swanks with TUMCO, Josiah Longbons with Landscape Resources, Andy Harris from the Andrews Myers law firm (representing Johnson Services Company), Steven Hawkins and Steve Terebecki from Aqua Permits LLC, Lake Pointe resident Jim Norris, Lake Pointe resident Akarsh Hebbar, Lake Pointe resident Jason Burns, and Grayson McDaniel and Kelsey Daugherty with The Carlton Law Firm.

Item No. 2

Item No. 2 was to receive public comment on items not on the agenda. Akarsh Hebbar, resident of Lake Pointe, commented on an issue with the West Travis County Public Utility Agency (PUA). Mr. Hebbar is concerned about the communications towers being built in the community for lift stations, particularly a 40-foot communication tower that was being built behind his home. Mr. Hebbar informed the Pointe HOA, the Architecture Committee, and PUA employees, and they removed the tower, but also informed Mr. Hebbar that the PUA was still planning to place the tower somewhere in the District.

President Salgo told him that the District has no jurisdiction over this matter and is limited to talking to the District’s designated representative on the WTCPUA board, Jason Bethke. President Salgo recommended using Mr. Bethke as a resource. Director Jody Flaws asked if the District has a mechanism to speak with Mr. Bethke. Director Salgo replied that Mr. Bethke is required to give a full report to the Board every month about what is happening with the PUA, but that his reports have been sparse lately. Director Rew-Hunter stated that he would talk with Mr. Bethke about the issue. President

Salgo stated that he will provide Mr. Hebbar with Mr. Bethke's contact information before the next District Board meeting. President Salgo stated that he expected the PUA to notify the District before they started constructing the towers, which it did not do. President Salgo stated that when he was informed about the tower going up by Mr. Hebbar's home, he called the PUA General Manager, Jennifer Riechers, and asked her about the project.

President Salgo stated that the PUA wants reliable communication with the lift systems, which the community would appreciate. Mr. Hebbar believes that his residence was probably one of the first to be affected by the towers, but that many more people may be affected in the future and likely will be unhappy. President Salgo stated that everyone is concerned about preserving home values.

Mr. Hebbar explained that the PUA is planning to conduct a survey of the potential tower sites. Director Elam asked Mr. Hebbar if he has been to a PUA board meeting. Mr. Hebbar replied that he has not, although he noted that their next meeting was the week of February 14, 2022. President Salgo suggested that everyone should stay active and stay engaged for the good of the community.

The Board took **NO ACTION** on this item.

Item No. 10

Item No. 10 was to discuss, consider, and take action as necessary regarding landscape services within the Lake Pointe subdivision. Mr. Longbons stated that Landscape Resources' maintenance work is on track; they are currently finishing winter cutbacks. Mr. Longbons noted that there will likely be no more hard freezes and landscaping will be ready for spring.

With regard to the retention pond on Napa Drive, Mr. Longbons explained that because the dead plants and shrubs were removed, a metal chain-link fence is now visible. A chain link fence is around most retention ponds to prevent people from falling into the pond. Mr. Longbons presented a proposal for \$19,225.00 to plant eight-to-nine-foot Nellie Stevens Holly trees to cover the fence. He explained that the Nellie Stevens Holly trees did phenomenally well in Austin during the February 2021 winter storm and deep freeze.

Mr. Longbons noted that there is concrete left behind from a chain-link fence. Because the concrete would prevent a uniform hedge row, Mr. Longbons proposes removing the concrete and old root systems.

President Salgo agreed that the chain-link fence is an eyesore but questioned whether the District has \$19,225.00 to spend on landscaping at this time. Director Elam asked if it might be a more economical idea to put up a wooden fence in front of the chain-link fence. Operations Manager Swanks estimated that a six-foot wooden fence costs approximately \$40.00 per foot. Mr. Longbons said that installing a wooden fence would be cheaper than planting hollies. Operations Manager Swanks stated that he can prepare a cost estimate for the next Board meeting. Director Handsel asked Mr. Longbons to estimate how much money it would be to plant something else in front of the fence, and Mr. Longbons agreed to present a proposal for landscaping for a wooden fence.

Director Flaws made a motion to table Landscape Resources' proposal and to get a quote for a 12-foot fence for the area for the March meeting. Director Flaws amended his motion to get a proposal for the

wooden fence and the cost of vegetation for in front of the wooden fence and to table Landscape Resources' proposal for the March meeting.

After further discussion, Director Flaws amended his motion to make a two-person committee to communicate with the Lake Pointe HOA regarding the ownership of the fence.

Director Flaws amended his motion again to appoint a committee consisting of Director Salgo and Director Elam to coordinate with the HOA. Director Handsel seconded the motion. President Salgo asked for further discussion and, hearing none, took a voice vote. The motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

Item No. 13

Item No. 13 was to discuss, consider, and take action as necessary regarding the Preserve. Steven Hawkins and Steve Terebecki from Aqua Permits gave a presentation regarding the boat dock proposal. They discussed the comments that the city of Austin gave them during the plan's initial review. Mr. Hawkins stated that the city mainly asked for notes or a slight variation in the language of several areas of the plans. President Salgo asked for a dated copy of the plans in an electronic format. Mr. Hawkins stated that the biggest obstacle dealt with ownership, as each slip must be tied to a single-family residence. Mr. Hawkins has argued to the city that this project is outside of city limits. President Salgo stated that he is confused about why the city would want one address with 16 owners. Mr. Norris replied that if there is one owner for all 15 slips, it would turn into a cluster dock.

President Salgo stated that he believed the best way to deal with the boat dock project would be to establish a boat dock HOA that determines who the recipients of the slips are, since there will likely be greater demand than number of available slips. President Salgo stated that it would be better for the boat dock to be owned by a new organization. Mr. Norris stated that they still need to discover who is willing to pay for boat slips. He would like to distribute information on Nextdoor or Facebook. Director Handsel noted that it would be necessary to ensure that everyone in the community receives this information.

Mr. Norris gave a presentation regarding a raffle process for the boat slips. He explained that that there will be 15 boat slips. A \$100,000 check would be necessary to secure a slip. Mr. Burns expressed concern that 15 homeowners would obtain slips, increase the value of their homes, sell their homes for greater profit, and that this would be unfair enrichment of some at the expense of others. Mr. Burns suggested that perhaps the organization controlling the boat dock could create a rule dictating that if anyone with a slip sells their house, their slip spot goes back into the raffle.

President Salgo said a lot of work must be done before developing anything concrete. President Salgo stated that he was worried that the community would regret the boat dock project later, since people could be partying until 4 a.m. or building campfires. Director Elam noted that the Preserve rules prohibit people from accessing the Preserve after dark. Mr. Burns said that he is worried about traffic and parking issues that could result from the boat dock. President Salgo stated that the members of the Board are the guardians of the Preserve and need to ensure that U.S. Fish & Wildlife Services does not take that away.

Next, Operations Manager Swanks explained that the fire department must wait until after nesting season to enter the Preserve to clear excess brush. Instead of working with the fire department, Operations Manager Swanks is interested in seeing if Landscape Resources could do this.

Next, Director Flaws read an email from a homeowner asking if a bike trail could be created in the Preserve. Director Flaws stated that he would forward the email to Ms. McDaniel. Director Handsel asked if the “no mountain bikes” sign in the Preserve is clearly visible. The Board agreed that it is. Operations Manager Swanks stated that the rules are no motorbikes, bikes, dogs without leashes, or ATVs.

Director Flaws stated that he would like the HOA to give an announcement to remind people of the Preserve rules. A brief discussion ensued regarding whether dogs are allowed in the Preserve on a leash. Ms. McDaniel said she would check the District records for its agreement with Parks & Wildlife.

The Board took **NO ACTION** on this item.

Item No. 4

Item No. 4 was to discuss, consider, and take action as necessary regarding Director Elam’s statement and oath. Ms. McDaniel stated no further action was needed because the Board already appointed Director Elam and he made his required statement and oath of office, which was signed and notarized before the meeting.

The Board took **NO ACTION** on this item.

Item No. 5

Item No. 5 was to review and approve minutes of the January 13, 2022, regular meeting. Director Flaws suggested revisions to the minutes. Ms. McDaniel said she would make the revisions. Director Rew-Hunter made a motion to approve the January 13, 2022, minutes with the exception of the fourth and sixth paragraphs, so Ms. McDaniel could review the recording. Director Flaws seconded the motion. President Salgo asked for further discussion. There was none, so President Salgo took a voice vote, and the motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

Item No. 6

Item No. 6 was to discuss, consider, and take action as necessary regarding the District’s financial reports and payment of the District’s bills and invoices. Director Rew-Hunter made a motion for the Board to pay the District’s bills. President Salgo seconded the motion. President Salgo asked for further discussion. There was none, so President Salgo took a voice vote, and the motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

Item No. 7

Item No. 7 was to discuss, consider, and take action as necessary regarding the District's Audit for Fiscal Year 2021. Director Flaws made a motion for the Board to approve the audit. President Salgo seconded the motion. President Salgo asked for further discussion. Hearing none, President Salgo took a voice vote, and the motion **PASSED** upon the votes of President Salgo, Director Handsel, and Director Flaws. Directors Rew-Hunter and Elam abstained from voting because neither attended the January 2022 meeting, during which the audit presentation was conducted.

The Board took **NO FURTHER ACTION** on this item.

Item No. 9

Item No. 9 was to discuss, consider, and take action as necessary regarding maintenance of the District's facilities, including the ongoing Stormwater Basin Maintenance Project. Operations Manager Swanks reported no issues and said he would obtain an estimate for the wooden fence for the retention pond on Napa Drive.

The Board took **NO ACTION** on this item.

Item No. 11

Item No. 11 was to discuss, consider, and take action as necessary regarding the ongoing activities of the West Travis County Public Utility Agency ("PUA"). The Directors noted that Mr. Bethke has not provided an update since the PUA's January 2022 meeting was canceled. Director Elam asked if Mr. Bethke serves at the Board's pleasure and if the Board can replace him. President Salgo replied that he does serve at the Board's discretion. Director Elam suggested requiring Mr. Bethke to attend Board meetings to give the Board an update on what is going on with the PUA.

The Board took **NO ACTION** on this item.

Item No. 3

Item No. 3 was to receive an update from the Lake Pointe Homeowners' Association. No representative of the Pointe HOA attended the meeting.

The Board took **NO ACTION** on this item.

Item No. 14

Item No. 14 was to discuss, consider, and take action as necessary regarding the District's website. Director Flaws presented a proposal to the Board for Google Workspace, explaining that Google Workspace would provide more options than the current network that the District uses for its website. Director Flaws recommended upgrading to a "Business Plus" account, which will cost an additional \$720.00 more than the \$360.00 the District currently spends per year. Director Flaws stated that a Business Plus account would allow materials to be shared in folders and provide storage for the Board to store all minutes in one location. Director Flaws stated that he would like to get the business plus account approved.

Director Elam made a motion to adopt Director Flaws's proposal to acquire a Google Workspace "Business Plus" account for the District. Director Rew-Hunter seconded the motion. President Salgo asked for questions and, hearing none, took a voice vote. The motion **PASSED** unanimously.

Finally, Director Elam suggested assigning accounts to directors based on title instead of individual.

The Board took **NO FURTHER ACTION** on this item.

Item No. 12

Item No. 12 was to discuss, consider, and take action as necessary regarding the Boundary (Resaca) Fence project within the Lake Pointe Subdivisions. President Salgo stated that he spoke to Cathy Mitchell with Jones|Carter on February 9, 2022, and she had not yet received the permit from the County, which the Board would like to obtain before issuing a Notice to Proceed with the project to Johnson Services Company. Director Salgo said that the County approved the License Agreement with the District, allowing for building in the public right-of-way, on January 18, 2022. President Salgo stated that Ms. Mitchell is having a difficult time getting ahold of anyone in charge of the permitting process, as most state employees are still working from home and hard to reach.

President Salgo presented to the Board a letter from Jones|Carter dated January 7, 2022, which was in last meeting's package, but was not discussed at the January meeting. The letter is in regard to additional services provided by Jones|Carter under the agreement for Professional Engineering Services, regarding the License Agreement with the County. President Salgo explained that the County had requested a License Agreement regarding portions of the project that would be built in the public right-of-way. Initially, Jones|Carter thought that the County would require the District to place funds in escrow equal to the amount needed to remove any portion of the project that was in the right of way. As many portions were in the right-of-way, President Salgo was concerned that the amount put in escrow would be significant. Accordingly, he worked with Jones|Carter to re-plan the project to remove it from the right of way. However, it was then discovered upon review of the License Agreement that the County merely required the District to carry certain amounts of insurance to cover the right-of-way encroachments, without providing funds in escrow, and, further, that the insurance-coverage amounts were already included in the District's existing insurance coverage. Because of this development, the plan to move the project out of the right of way was abandoned, and the original plan for the project location was reinstated.

In the process of investigating solutions to the project location and the right-of-way issues, President Salgo stated that Jones|Carter incurred extra work, and that Jones|Carter's letter requested that the District pay half of those costs, approximately \$6,000. President Salgo explained that he did not want to refuse to pay Jones|Carter, but that he was very disappointed in Jones|Carter for not promptly raising the issue of the project's location in the right-of-way and the consequences of that for planning and permitting. After further discussion, Director Handsel asked if the Board needed to pass a motion to approve the payment to Jones|Carter. President Salgo stated that it did.

Noting that Jones|Carter is a key service provider, Director Flaws made a motion to approve the Jones|Carter proposal for \$5,817.00. Director Handsel seconded the motion. Director Flaws amended his motion to approve the Jones|Carter proposal for no more than \$5,817.00. Director Elam seconded the motion. President Salgo called for a voice vote and the motion **PASSED** 4-1, with Director Rew-Hunter voting against the motion.

Regarding the fence project, President Salgo stated that Andy Harris, the attorney from Andrews Myers law firm, was present in person for the meeting. Andrew Berkowitz from Johnson Services Company was in attendance via Zoom. Mr. Berkowitz stated that Johnson Services Company had not made progress with providing its required submittals due to concerns with damage to trees during the fence replacement.

The Board took **NO FURTHER ACTION** on this item.

Item No. 9

The Board returned to this item. Operations Manager Swanks stated that the aerator behind the community center has not been operational about two months. Operations Manager Swanks stated that Aquatic Features provided him with a proposal to fix the aerator for approximately \$1,136.00.

Director Elam asked the Board if it would be better to have an aerator like Carlsbad Pond's aerator and explained that he could potentially accomplish this in a project he may undertake to beautify the area, but that this might occur outside a Board meeting. Operations Manager Swanks explained that he and President Salgo both have Board authorization to spend up to \$1,000.00 on maintenance dollars, but any amount beyond that needs Board approval. Director Handsel said she thought it would be nice to create a routine maintenance schedule.

Director Elam asked if the Board could create subcommittees to meet during the month and explained that he would like to create a subcommittee for the pond issue. President Salgo stated that the Board could authorize a District Maintenance and Facilities Committee under agenda item number 9. President Salgo made a motion to create a District Maintenance and Facilities Committee that Director Elam will lead. President Salgo stated that it could have as many as two members. Director Handsel seconded the motion. There being no further discussion, President Salgo called for a voice vote and the motion **PASSED** unanimously.

Next, regarding the Lake Travis School District, Operations Manager Swanks stated that the school district plans to reconstruct the shade structures around the school. The school district requested a waiver of the District's \$1,000 construction fee. President Salgo made a motion to waive the \$1,000 construction fee for the school district's shade canopy project. Director Handsel seconded the motion. There being no further discussion, President Salgo called for a voice vote and the motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

Item No. 8

Item No. 8 was to discuss, consider, and take action as necessary regarding annual review of the District's investment policy. Operations Manager Swanks provided the following proposed revision to the policy: removing BBVA Compass as an "approved bank," and adding PNC Bank as an "approved bank."

Director Rew-Hunter made a motion to approve the investment plan included as Exhibit A to the Order and Resolution in the Board packet, with the exception of striking BBVA Compass, and replacing it with PNC. President Salgo seconded the motion. There being no further discussion, President Salgo

called for a voice vote and the motion **PASSED** 4-0, with Director Elam having abstained due to briefly leaving the room.

Next, Director Flaws proposed creating a summary of the District's investment activity over the past few years. He wants to review the District's banks and investment vehicles. He noted that some of the surcharges on the District's bank invoice seemed odd. Director Flaws proposed keeping this item on the March agenda.

The Board took **NO FURTHER ACTION** on this item.

EXECUTIVE SESSION

The Texas Open Meetings Act, Chapter 551 of the Texas Government Code, authorizes the Board of Directors to convene in close or executive session for certain purposes, including receiving legal advice from the District's attorney (Sec. 551.071); discussing real property matters (Sec. 551.072); discussing gifts and donations (Sec. 551.073); discussing security personnel or devices (Sec. 551.076); and discussing information technology security practices (Sec. 551.089). If the Board of Directors goes into executive session to discuss any item on this agenda, the President Officer will announce that the Board will meet in Executive Session will be held, will note the time, and will identify the item to be discussed and the provision of the Open Meetings Act which authorizes the Executive Session. The District may meet in executive session on any agenda item or any item listed below:

- A. the District's Preserve;
- B. West Travis County PUA;
- C. Safety issues related to COVID-19; and
- D. ongoing or pending litigation involving the District.

At 9:36 p.m., the Board retired to executive session, pursuant to Section 551.071 of the Texas Government Code, to discuss ongoing or pending litigation involving the District with the District's attorney.

At 11:17 p.m., the Board returned from executive session. The Board took no action and made no motions while in Executive Session.

Item No. 12

The Board returned to this item. President Salgo moved to delay sending the formal notice of default to the surety, to direct the engineer to issue a notice to proceed, to authorize the Carlton Law Firm to draft a litigation budget, including references for a special construction-litigation attorney, and to authorize the Carlton Law Firm to send a letter to Andrews Meyers regarding what action the Board took at this meeting. Director Flaws seconded the motion.

Next, President Salgo amended his motion and moved to (1) Direct the Engineer to issue the Notice to Proceed to Johnson Services Company, (2) wait to send the formal notice of termination to the surety until ten days after the Notice to Proceed is issued, (3) direct the Carlton Law Firm to create a

litigation forecast including potential references for a special construction-litigation attorney, and (4) request the Carlton Law Firm to issue a letter to that effect to Johnson Services Company's attorneys. Director Flaws seconded the motion. There being no further discussion, President Salgo called for a voice vote and the motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

Item No. 13

The Board returned to this item. President Salgo made a motion to authorize the Carlton Law Firm to issue settlement agreements with four homeowners. Director Flaws seconded the motion, and the motion **PASSED** unanimously.

The Board took **NO FURTHER ACTION** on this item.

Item No. 15

Item No. 15 was items for future agendas.

Director Rew-Hunter stated that his trash keeps not getting picked up by Texas Disposal Systems ("TDS") trash service. He noted that last year the Board renewed their contract for five more years and suggested adding this as an item on a future agenda.

Director Handsel stated that she would like to set a definite date to receive documents before future meetings. She stated that she would like to receive information at least a week before the meeting. Director Elam asked if it was unreasonable to request all documents by the Friday before the Board meeting.

Director Rew-Hunter noted that at the last Board meeting Ms. McDaniel informed them that the District did not have authority to install natural gas facilities. Director Handsel asked if the Board needed an Agenda item for this matter. President Salgo stated that the Board could send the memorandum regarding natural gas facilities to Michael Husband if he requests it, but that otherwise the issue has been resolved.

The Board took **NO ACTION** on this item.

Item No. 16

Item No. 16 was adjournment. Director Rew-Hunter made a motion to adjourn. Director Flaws seconded the motion and it **PASSED** unanimously.

The meeting was adjourned at 11:34 p.m.

PASSED, APPROVED, AND ADOPTED this 10th day of March 2022.





Jody Flaws, Secretary-Treasurer