



What you should know about the ACC

The Architectural Control Committee (ACC) was established with the original filing of your covenants. Sometime between 1965 and 1976, as the various tracts of land were gathered up into today's community, a set of covenants was filed with your land deed that set out the ACC and their powers to control what and how things would be built on the Island.

In the early 1980's, as the City eyed the growing tax base and residents wanted City services, Corpus Christi began to annex our subdivisions. One by one we were gobbled up until by 1990 we were officially part of Corpus Christi.

At this point the Island was now required to secure and follow City building permits and code. Prior to annexation all permits were issued and enforced by the ACC, but since annexation the City has never acknowledged or supported our Covenants or our right to control the look and feel of our community.

In 1992, with the subdivisions now all part of the city, and the last of the original land developers gone, the ACC was completely revamped with a uniform covenant amendment filing across all neighborhoods. You can see the exact wording of that amendment as an exhibit to this article.

But generally, the 1992 amendment brought us the following changes:

- The ACC no longer had authority to modify the covenants at will.
- The ACC no longer had final authority on all permitting decisions. That now fell to the PIPOA Board.
- The PIPOA Board now had an absolute duty to oversee the ACC and its decisions.
- The ACC was prohibited from issuing any permit that in any way encroached on the Bulkhead system. That duty fell to the PIPOA Board.

- The PIPOA Board was granted the authority to hire experts and to charge those expert fees to the Builder.

Unfortunately, successive PIPOA Boards over the last 30 years have never taken their oversight duties seriously, and to this day the damage continues.

Over a year ago the PIPOA Board sought a legal opinion on their authority to override the ACC and issue variances. They were told very clearly that they did NOT have that authority. The PIPOA Board of Directors is limited by the Bylaws to only approve permits that are exactly what is found in the covenants. They are prohibited from “interpreting” the covenants and must strictly apply them. While they can override an ACC decision that is in error, they cannot override any ACC decision that is proper.

Next comes the problem of waivers. The PIPOA issues a Resale Certificate each time a property changes Owners. On that Resale Certificate they certify that the property meets all current standards. But no matter what the property condition was, they issue the new Owner a certification declaring the property to be in full compliance. All building conditions, whether valid or not, found on the property you purchased are approved with the issuance of your Resale Certificate. Over the years, since way back in the early 90’s, more than 25,000 variances were issued. Probably a lot higher but its not worth fine tuning this number at this point. Let us just say that it has been a massive problem and that with each variance another bite was taken out of the ACC.

Next, we come to PIPOA Board Oversight, or rather the lack of it. This was not an optional part of the ACC but, as described in our covenants, was an absolute crucial component. For almost 30 years successive PIPOA Boards have failed to read and understand the critical 1992 amendments, and have subsequently failed to supervise or support the ACC. That problem continues through today as we write this article.

The PIPOA Board does not hire experts to ensure proper engineering and architectural permits. They allow the ACC to issue permits that encroach on the bulkhead systems. They allow the ACC to issue variances. They do not take immediate and consistent legal action. They issue blanket Resale Certificate waivers. And, finally, they set about the conditions that have caused the ACC to fail to the point that the damage is irreversible.

These PIPOA Boards have become complicit in turning the ACC into what is now a toothless paper tiger.

Just when you thought it could not get any worse, a devastating shot through the heart of the ACC just happened. The PIPOA Board was recently notified by their attorney that because 50+ years ago the PIPOA was incorporated as a TRUST, they did NOT have the authority to collect any fee from any Builder for any project, and they could not

subsequently fine any Builder for any substandard work. While we have not yet seen the full details of this opinion, trust us when we tell you it is real, and it is a big problem. The PIPOA Board, rightfully so, is examining the opinion and the consequences, but get ready because it is about to damage the ACC to the point of no return.

So, can we bring back the ACC?

- The ACC problems begin with the City issuing permits without considering the PIPOA's building requirements. The PIPOA should be lobbying the City to change this and not issue permits until the ACC has issued an approval stamp. We note that the City has already declined to consider our covenants in their permitting process, and all the Island Builders already know this. It is just you, the Owners, that are learning of this important disclosure for the first time.
- The ACC's problems continue with the PIPOA Board's ongoing failure to supervise the ACC and their permitting practices. The PIPOA Board can change their behavior today without touching the covenants. They should be doing the job we have charged them with in our covenants.
- The ACC continues to cycle through volunteers, only to have them quickly resign due to lack of support from the PIPOA Board. The PIPOA can solve this problem today by better training and supervision of the ACC so that the ACC issues proper decisions that the PIPOA Board can wholeheartedly support.
- The PIPOA Board could strengthen the ACC function by immediately adopting a policy of filing suit for every infraction, no matter how minor. However, decades of ignorance and waivers might make it exceedingly difficult to prevail in such court actions. We certainly think the Owners would scream if we saw next year's budget increase by \$200k to cover legal fees for harassing Owners.
- The PIPOA was incorporated more than 50 years ago as a TRUST. Under that structure they cannot issue any fines, and that seems to include Builder fees or fines. The cure for this is to shut down the entire corporation and re-form under some yet to be defined new structure. This would require rewriting the Articles of Incorporation, rewriting everyone's covenants, and rewriting all new Board Bylaws and procedures. Not to mention getting all 8,446 Owners to agree to every single line in every single legal filing. Let us just say this is impossible so we will not waste your time digging into the analysis.

Recently we have learned that the PIPOA Board is talking about modifying the Covenants to cure problems with the ACC. This Board already has oversight that is not being accomplished, so why would additional covenant changes make any difference?

What more power do they want or need? We feel there is too great a risk with the value of your properties to trust the PIPOA with any covenant changes that would solve none of the ACC's problems.

No article covering the ACC would be complete without a mention of the costs that we, the Owners, are having to pay. The PIPOA has begun to spend increasing amounts of monies pushing paper from PIPOA desk to PIPOA desk in support of the "free volunteer" ACC function. In the past year alone, they have spent more than \$10,000 on legal opinions as to why the ACC is broken and why it cannot be fixed. While this used to be a free volunteer function that cost the members little or no CAM fee money, now it appears in the budget as a growing line item.

Finally, we come to something very disturbing that we discovered while researching this article. For more than a year the PIPOA has been in possession of TWO legal opinions, from two different law firms, informing them that they could not issue fines of any nature. Yet they hid it from you, the Owners. And for more than two years the PIPOA has been in possession of a legal opinion stating that the PIPOA Board had no authority to grant a waiver to a Builder. Yet, once again, they hid it from the Owners. There are not enough adjectives to describe their deception in the hiding of this key information from the Owners. Certainly, it is anything but "Open and Transparent" behavior as they like to boast about in the Island Moon.

So now we have arrived at a point where the ACC and decades of Boards have damaged neighborhoods resulting in the first of what we believe are many lawsuits to come. After hundreds of hours of record gathering and research, over the past 3 years, we conclude that while the ACC continues to live on in the covenants it is nothing more than a toothless paper tiger.

The Padre Island Arch Group
www.PadreIslandARCH.com

EXHIBIT : The 1992 ACC Amendments

1. The Architectural Control Committee, hereinafter called "the Committee ", shall be composed of five members appointed by a majority vote of the Board of Directors of the Padre Isles Property Owners ' Association, Inc., hereinafter called "The Board". 'The Committee shall function under the policies established and direction given by the Board; provided, however, the policies and direction promulgated by the Board shall, in no event, be in conflict with the provisions of these Covenants. Should a conflict occur, the provisions of the Covenants shall control.

- a. The Committee shall review all plans for construction on property subject to the covenants to verify that the requirements of the covenants and standards established by the Property Owners Association are met.
- b. The term of office of a Committee member shall be three years. A member shall not serve more than two terms of office, consecutive or otherwise. Upon the effective date of approval of this amendment, the term of office of current members shall be deemed to have expired and the Board shall appoint a new Committee. The terms of office for members of the newly appointed Committee shall be adjusted whereby the expiration dates of no more than two members shall occur in any one of the years following the appointment year, i.e., set up a 1-2-2 rotation that will be followed thereafter.
- c. Should a vacancy occur on the Committee prior to the expiration of a normal term of office, the Board will, by a majority vote, appoint a qualified person to fill the unexpired portion of the term.
- d. Terms of office for all members shall begin on January 1, except for those appointed by the Board upon approval of this amendment, who shall begin serving immediately and continue until January 1, 1993, when they may be re-appointed or replaced at the Board's discretion for the initial three year term.
- e. The Chairman of the Committee, whose chairmanship shall be one year, shall be appointed or removed by a majority vote of the Board.
- f. A member of the Committee may be removed with or without cause by a majority vote of the Board.
- g. No member of the Committee, or his/her designated representative, shall be entitled to or accept compensation for services performed hereunder.
- h. A member of the Board shall not also serve as a member of the committee.
- i. A majority of the Committee may designate or remove a representative to act for it. Members of the Committee may designate a representative to act on their behalf. such representative designated to act for the Committee as a whole, or such representatives designated individually by Members shall be subject to confirmation by the Board.
- j. Consultants, paid or otherwise, advisors, inspectors or any individual performing services required by the mission of the committee shall be appointed by the Board. Individuals so appointed shall be technically and/or professionally

qualified to perform the service for which appointed. The Board shall be authorized to establish such fees as may be necessary and appropriate to cover the cost of technical and/or professional services required by the committee. The committee may recommend to the Board such individuals as may be appropriate to perform such services.

- k. A property owner who disagrees with a decision of the committee will first appeal to the Committee for reconsideration and present reasons therefor. Following reconsideration by the Committee, a property owner who still disagrees with a decision of the Committee may appeal to the Board for a review. The Board shall give full consideration to such request and make such decision as it deems appropriate in each case. The decision of the Board shall be controlling.
2. No building, structure or improvement of any nature shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of such building, structure or improvement have been approved by the Committee as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation and meeting the other standards set forth in this instrument. In addition, no substantial change in the originally approved finish grade elevation of any lot shall be made without the prior written approval of the Committee.
 3. Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved", and returned to the lot owner. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval
 4. The Committee's approval or disapproval as required in these covenants shall be in writing. If the Committee, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, and if no suit to enjoin the construction is commenced prior to the completion of such construction, then approval is presumed
 5. The Committee shall have the right and authority to waive, modify, alter, change or approve any term, condition or restriction, except those restrictions pertaining to construction that affects the integrity of the bulkheads .
 6. The Committee shall have the authority to interpret the general intent, effect, and purpose of these restrictions.

Social Media Post on June 27, 2020

The Tiger We Hold by the Tail is Made of Paper.

When you purchased your property in the Padre Isles Property Owners Association (PIPOA), you were given a stack of documents as part of your purchase. You even had to sign a document at closing stating you had received them. Maybe you read them, maybe you glanced at them or maybe you ignored them since they are long and cumbersome to read. But you agreed to them.

These documents are the Covenants for your neighborhood (the PIPOA has many), the Articles of Incorporation for the PIPOA, and the Bylaws of the PIPOA. We mention them in this order because that is the legal hierarchy.

Your Covenants are the most important because they determine what you can and cannot do with your property. Over the years, the Covenants have been modified giving us what we have today. Which are hard to read and even harder to fully understand.

Prior to 1992, your Covenants granted complete control over the Covenants to a group defined as the "Architectural Control Committee", commonly referred to as the "ACC". The membership of the ACC was controlled by the developers.

But in 1992, the Covenants in all the PIPOA neighborhoods were amended to now assign control of the ACC to the PIPOA Board of Directors. And with this assignment, the Board was also assigned oversight responsibility to make sure that the ACC enforced the Covenants as written.

Unfortunately, since 1992, the Board has not consistently fulfilled this responsibility. And now, we have hundreds, if not thousands of properties on the Island that do not adhere to the Covenants. And at this point, trying to enforce them is difficult (if not impossible) because you cannot suddenly decide to enforce something when all you have to do is look around for the many existing exceptions to the rule.

It is also compounded by a 2019 legal opinion from our Board Attorney that says that because of our organization's definition as a Trust, we are not allowed to collect fees or fines. A practice that has been long in place but has been determined to be illegal. This includes the PIPOA practice of collecting builder deposits for construction projects as well as fining property owners for infractions. This important opinion has been hidden from the Members by our "Open and Transparent" administration.

We go into the issue of Covenants in more depth in the attached document. But our conclusions are summarized as follows:

- The ACC's problems continue with the PIPOA Board's ongoing failure to supervise the ACC and their permitting practices. The PIPOA Board could change their behavior today without touching the covenants. They should be doing the job we have charged them with in our covenants.
- The PIPOA Board could strengthen the ACC function by immediately adopting a policy of filing suit for every infraction, no matter how minor. However, decades of ignorance and waivers might make it exceedingly difficult to prevail in such court actions.
- The PIPOA was incorporated more than 50 years ago as a TRUST. Under that structure they cannot collect ANY fees or fines. The only cure for this is to shut down the entire corporation and re-form under some yet to be defined new structure. This would require rewriting the Articles of Incorporation, rewriting everyone's covenants, and rewriting all new Board Bylaws and procedures. Not to mention getting all 8,446 Owners to agree to every single line in every single legal filing. Let us just say this is impossible so we will not waste your time digging into the analysis.

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