



## Foreword

The PIPOA has levied a 35% Stealth Tax on you, the Members, and you did not even know it. In the coming pages we will show you how this happened, how outrageously unfair it is, and how it continues today.

The contents of this article are some of the most stunning, in-depth PIPOA revelations we have ever tackled. The research goes back almost 3 years. Along the way we have talked with more than 50 people and requested thousands of pages of records. We have talked with 4 attorneys with deep knowledge of this PIPOA. We have visited the Nueces County Law Library and the Nueces County Clerk's office. What we write today will likely surprise you with new information for both Members and the PIPOA. We hope it will inform all and have an immediate effect on eliminating the disparity between the ELITES and Members like you and me.

Jumping to the end, here are the conclusions that we arrive at:

- As Members of the PIPOA we pay Cam fees, but there are some special Members who receive all the services and rights of being a member, but do not pay CAM fees.
- Seven months ago, in December of 2019, the PIPOA created a new class of Member that we are calling the ELITE Member.
- These ELITES own property within the PIPOA and have the right to vote in our elections. However, they are never invoiced for CAM fees.
- The PIPOA refuses to invoice these ELITES for their current CAM fees or attempt to collect the millions in back CAM fees owed when the PIPOA failed to invoice these ELITES.

- The PIPOA continues to maintain ELITE properties using the money collected from Members who do pay. In effect, we are being secretly taxed to carry the ELITES on our backs.
- The ELITES benefit from the services provided by the PIPOA including maintenance of their bulkheads, common areas, and boat ramps, paid for with money collected from the rest of the Members.
- There is no justification to be found within our governing documents, nor any written agreements that support the creation of this ELITE class.
- This is profoundly wrong in every respect of the word. We suspect it will make you just as mad as it has us.

We also note that the PIPOA believes everything is going superbly. They believe that they do not need the \$3.6mil in unpaid funds or the additional \$400k per year in CAM fees that they choose to not invoice to ELITES. They believe they have plenty of money and that you and I are happy to continue paying the full load.

But they would be wrong. We, like you, are unwilling to continue to pay for the PIPOA's largesse toward the ELITES. It is time for a profound change.

We hope you will read the full article and draw your own conclusions.

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## Carrying the Load for the ELITES

The journey begins with the formation of the Padre Island Investment Corporation (PIIC) in the early 1970's where there was one class of Member. They were the original landowners "FOUNDERS" who owned 8,446 lots to be converted into the community we live in today.

As FOUNDERS, they managed the development and paid no additional fees beyond their substantial investment in the creation of our community.

As lots were sold, the purchaser became part of the new class we will call "MEMBERS". MEMBERS pay an annual fee into a Common Area Maintenance fund and have the right to vote in corporate matters.

By 1980 the PIIC was converted to the Padre Isles Property Owners Association (PIPOA), a nonprofit corporation organized using published Articles of Incorporation, Covenants, and Bylaws. These Articles set out a Board of Directors who would behave in accordance with the Bylaws. The duty now fell to the PIPOA Board of Directors to manage the PIPOA in strict accordance to the wishes of the MEMBERS as conveyed with the Bylaws.

The Bylaws instruct the PIPOA Board to assess and collect fees from all members in accordance with the rules found within their respective Covenants. As the PIPOA Board is expressly prohibited from interpreting any of the governing documents, other than the FOUNDER exceptions that existed until late 2013 (*discussed later in this article*), the Bylaws do not permit the waiver of any members' CAM fees. No other exceptions can be found.

Now let us move forward to 2007 when the PIPOA led a drive to increase everyone's fees for the purpose of addressing the increasing bulkhead maintenance costs. This was a very contentious process that resulted in a covenant change in a majority of (but not all) the subdivisions to increased CAM fee rates. The existing MEMBERS were grandfathered at the older rates. As properties turned over new MEMBERS would begin paying the new higher rates. With this filing they inadvertently created what we are calling a new LEGACY class of Member.

So, by 2008 we now had three classes of members:

1. FOUNDERS who paid no fees per the Bylaws
2. LEGACY who paid grandfathered rates per the 2007 Bylaw changes
3. MEMBERS who paid the new higher rates

Now we arrive in the summer of 2013 where the PIPOA Board had an eye on increasing funding and, without the approval of Members and, without ever telling the Members, altered the Bylaws and began handing them out to new Members.

Prior to 2013 the PIPOA Bylaws supported the continuance of the FOUNDERS class and set out a specific definition within the Bylaws. Here is the text as found in these pre-2013 Bylaws.

4. 07 Assessments shall be levied with respect to each lot only after PIIC or its successors shall have fulfilled its contractual obligations, if any to:
  - a) Grade, excavate, and/or fill the lot to bring it to the elevations approved by the City of Corpus Christi, Texas in accord with the specifications filed with the City;
  - b) Install paved streets abutting the lot;
  - c) Install bulkheading of canals abutting the lot, if applicable;

- d) *Install water main and sewage disposal facilities so that the lot owner is able to, at his expense, tap into such facilities and procure water service and sewer disposal service to his lot.*

And as a tradeoff for not paying CAM fees FOUNDERS forfeited any voting rights.

*1.03 a) "no Voting Member shall have a right to vote nor be counted in determining a quorum so long as his/her lot is not being assessed or charged a maintenance fee by reason of Section 4.07 of the Bylaws."*

In September of 2013, the PIPOA Board amended the full Bylaws and struck the FOUNDERS benefits, instantly converting all FOUNDERS to LEGACY status. There are no minutes from those discussions, but we do know that the PIPOA Board had a law firm assisting them. From this filing any reasonable person would conclude that the PIPOA Board made an informed decision to eliminate the FOUNDERS class and intended for all Members to begin paying CAM fees and voting from that point forward. The FOUNDERS class went away and those Members, having held their property prior to 2007, now became LEGACY members because their covenants contained the original unamended rates.

Unfortunately, the record shows that the 2013 PIPOA Board failed to instruct the PIPOA on the new rules for former FOUNDER members. The result being the PIPOA never assessed fees and they never sent them voting ballots. All successive Boards, through and including our present Board, have continued to improperly supervise the PIPOA invoicing and collection procedures.

In December of 2019 we discovered this problem and notified the PIPOA Board in a series of letters stating that a large group of Members were not receiving ballots or being invoiced for CAM fees. The Board then forwarded our correspondence to their Attorney of Record and learned three things:

1. We were correct
2. All 8,446 Members can vote
3. All 8,446 Members should receive invoices

The timing here is important. The PIPOA Board of Directors learned 7 full months ago from their Attorney of Record that all Members were to be invoiced for CAM fees. Additionally, we have come to learn that some lot owners, in long ago developed areas, are also inexplicably still not being billed for CAM fees. These lots are interspersed within fully developed subdivisions among other owners who are paying their fees.

By our projections, from the period of September 2013 through December 2019 these LEGACY members accumulated a debt to the PIPOA of approximately \$3.6mil. While we have done our due diligence and have come up with this estimate, we will leave it to the PIPOA to do their own research and publish their data for the Members to consider. For now, the number stands at a debt of \$3.6mil. This year, the PIPOA should have correctly invoiced all Members of our 8,446 lots for their CAM fees. And yet, they have continued the practice of not invoicing these LEGACY members an amount that we estimate to be around \$400k per year.

From the first of December 2019, we now see the secret creation of the new ELITE class of members. We define this class as those members who are so special that the PIPOA refuses to invoice them or make any attempt whatsoever to collect the \$3.6mil or the annual \$400k number. Yet the PIPOA sent them ballots so they can vote in our elections, and the PIPOA spends our monies to maintain their bulkheads and all the common areas for their enjoyment.

We have already heard the specious argument that “they changed their covenants, so this is no longer a problem”, but we note that some of these ELITES hold properties across many subdivisions where valid covenants remain in place. Looking across your neighborhoods there will be empty lots owned by ELITES, right next to LEGACY and MEMBER properties. This is just another bogus argument designed to deflect the PIPOA Board from stepping up and doing what is right for all Members.

We have heard the flawed argument that “the limitations are in the Covenants and we just can’t fix that” but that is simply not true. The FOUNDER benefits were set out in the pre-2013 Bylaws and were never found in the covenants. Furthermore, with the recent Bylaw filings with Nueces County, our current Bylaws are our dedicatory instruments and they no longer contain any FOUNDER benefits.

Up until our December letter, it would have been difficult to understand the full depth of this problem. Many prior records were destroyed by the former office staff. During the reconstruction of the office it would have been difficult to understand without the recent database updates and the specialized research we did. But, once revealed in our December letters, and after having received advice from their Attorney of Record, the actions of the PIPOA have purposely created this ELITE member class. We find this PIPOA behavior particularly disturbing.

The PIPOA recently acknowledged the ELITE status when in March 2020 they sent them voting ballots and included their counts in our Annual Meeting quorum.

The PIPOA recently confirmed the ELITE status when this Spring they steadfastly refused to send them CAM fee statements.

Over the past 3 months a PIPOA Board Member has (in our opinion) engaged in a series of delaying tactics that have kept the full PIPOA Board from invoicing the ELITES.

We have recently heard the argument that somehow the trading of these properties in a bankruptcy strikes the obligation to the ELITES, but we can find no evidence that is true. If the parties in those land transactions failed to properly notify the courts of their obligations to pay CAM fees, and to discharge their debts, then it is their problem to solve. For us, we still have an obligation to invoice them and an expectation of collecting these large debts.

As recently as the June 2020 PIPOA Board meeting, we witnessed Board Members discussing these ELITE members and calling for an end to the stalling tactics. Finally, after 7 months, this was the first time the PIPOA admitted to having a problem.

In May of 2020, as part of our research for this article, we submitted a records request for a list of the ELITES as well as the PIPOA policy concerning invoicing and collections from ELITES. We put in this request already knowing who the ELITES were because we were the ones who did the research and sent them the list. We already knew from other records the existing policies. What we were unprepared for was the PIPOA lying to us and denying such a list existed. This has caused us to go back over prior records and reconsider what was true, what was a lie of omission, and what was outright deception. We no longer trust that when Members request documents per Texas law that those responses will be complete and truthful. We have made the PIPOA Board of Directors aware of this deception and they have yet to show any concern.

So, at this point, the PIPOA, with no authorization from the Members, have created an ELITE class of Members.

- ELITES can vote but they never have to pay.
- ELITES have full services, and we pay for providing those services.
- Our burden per Member is 35% higher because ELITES do not pay and the rest of us must carry their load.

The PIPOA is mandated by Federal Law, Texas State Law, and the IRS to operate under the rules laid out in three documents:

1. Your Covenants
2. The Articles of Incorporation
3. The Board of Directors Code of Conduct, known as the Bylaws

The Covenants set out the fees Members are to pay in support of Common Area Maintenance. This is absolute with no method for the PIPOA to waive this fee.

The Articles of Incorporation establish the PIPOA as a nonprofit corporation with specific rules that must be followed. Article 9 calls for a vote of the Members to approve any expenditure for any project that is greater than 20% of the annual operating budget.

The waiving of this debt, and the ongoing waiving of CAM fees, constitutes a PIPOA investment in the development of businesses that do not benefit the Members and therefore fall under the definition of Article 9. In no stretch of the imagination would the Articles of Incorporation permit the PIPOA to waive these massive fees without first seeking the permission of the Members through a special election.

The Bylaws are the rules which we, the Members, set out to control the behavior of the Board of Directors in their administration of the PIPOA. The Bylaws instruct the PIPOA to inspect the covenants and assess and collect fees from all 8,446 Members, no exceptions. The PIPOA is not permitted to interpret the Covenants or the Bylaws. They have no authority to waive any CAM fees, yet it is clear to us that this is exactly what they are doing with this new ELITE class of members.

So, we can see across all our governing documents that:

- |                             |              |
|-----------------------------|--------------|
| ✓ Covenants                 | NO AUTHORITY |
| ✓ Articles of Incorporation | NO AUTHORITY |
| ✓ Bylaws                    | NO AUTHORITY |

Yet they continue to flaunt the rules with impunity, setting themselves above all the Members. They have forgotten that they work for the Members and not the other way around.

We read weekly in the Island Moon about how well the PIPOA is doing and how our every need is being handled. That is a highly informative disclosure. The PIPOA tells us that things are going so well that they have no need for the \$3.6mil in ELITE fees currently in arrears. Things are going so well that they do not need the \$400k in ELITE CAM fees for the current year.

We also note that they are telling us something much more important. They are telling us that they are awash with money and that you and I are paying too much. They are telling us to keep paying that stealth tax to carry the burden of the ELITES on our backs. In essence, they are telling us that things would be just as good if we were only paying a fraction of what we all currently pay.

Finally, something from the PIPOA that we wholeheartedly agree with. We are paying too much, and they can accomplish the tasks that we have authorized in the covenants by collecting much lower CAM fees from the Members.

We have no way of knowing if the ELITES ever will pay, but we cannot know until we send them an Invoice. Collecting these large debts is what attorneys and accountants are there to figure out. We have an \$11MIL war chest for such times and it seems like this would be a good use for some of the high-priced legal experts we employ these days. Hiding this information and failing to follow proper legal advice seems to be just another example of an out of control organization that has lost its way and forgotten its core mission.

So, after having read this article, we invite you to step outside and look toward any empty lots within your neighborhoods. Some of these are owned by MEMBERS who are paying CAM fees, and some are owned by ELITES who are secretly exempt from paying such fees.

While all this complex research is great stuff, the bottom line never changes. This is just wrong, wrong, wrong. No amount of legal Jiu jitsu can justify supporting a hidden ELITE class of members while forcing the rest of the MEMBERS to play by the rules, all the while carrying the ELITES on our backs.

In the coming weeks, the ARCH will be announcing a project that we believe will force the PIPOA to reevaluate its work, and to refocus the services they perform back on the tasks that the Owners have authorized through our Covenants.

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