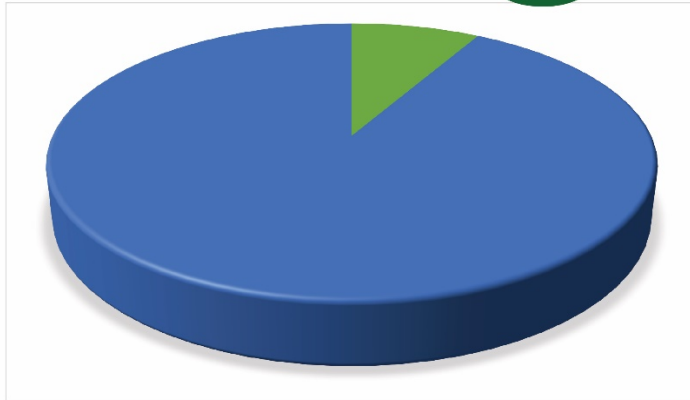


Only 9¢



Foreword

In this article we will focus on Common Area Maintenance (CAM). We will talk about what it is, who is responsible, and how your money has been spent. The research for this article examined dozens of sets of property covenants, the PIPOA Articles of Incorporation, the City of Corpus Christi annexation documents, and many years of PIPOA Financial and Audit Reports.

During the annexation of the Island in the 1980's, the City of Corpus Christi took ownership of almost all our Common Areas, but left us with the canals, the bulkheads, and the boat ramps. We will explain why the PIPOA is only legally authorized to use our CAM fees:

1. To Maintain the boat ramps.
2. To Clean the trash out of the canals
3. To Dredge the canals
4. To Maintain the bulkheads

We have paid millions in CAM fees since annexation, and those collections have risen higher and higher since the rate increase of 2007. The graphs and charts will show you how much money came in, and show you where it all went. It should shock you to see that over the past 3 years payroll has skyrocketed over 104% yet this year the PIPOA has only invested 9 cents of every dollar into the Bulkheads, their CORE MISSION.

But the most important news from this article will be the discovery of the UNLIMITED and UNCONDITIONAL WAIVER OF LIABILITY that we, the Members, have given to the PIPOA, protecting them from having to compensate you due to their negligence.

If you are a Member, then we encourage you to read this article to learn more.

The Padre Island ARCH Group
www.PadreIslandARCH.com

Common Area Maintenance

In the early 1970's a group of landowners pooled their properties to form what we know today as Padre Isles. They hired a planner and an architect who laid out neighborhoods, streets, and canals. They platted 8,446 properties. Each property had an attached set of restrictive covenants. They built the streets, dredged the canals, built most of the bulkheads, and the boat ramps. Voilà! We had a waterfront community on Padre Island.

For some reason, they chose to not write a unified set of covenants that could be filed across all properties. Instead, they filed covenants that were unique to the various subdivisions (48 different sets of Covenants by our research). While much of the language in each set of covenants is similar, each must be treated as a unique dedicatory instrument.

Within the Covenants you will find the Landowner's Agreement. This is where "Common Areas" is defined, setting out the list of bulkheads, parks, streets and other such areas that make our community an attractive place to live.

But, before we go further, let us also take a quick look at the PIPOA Articles of Incorporation. This is the legal document that sets the PIPOA up as a nonprofit corporation, and mandates rules that the PIPOA must follow or they risk forfeiture of their nonprofit status. Here is where we see that *the PIPOA can only legally spend money for the maintenance of Common Areas that the PIPOA owns*. This seems like a simple rule to understand and follow.

Taking it further, it is the Landowner's Agreement in the Covenants that creates the Common Area Maintenance (CAM) fund to be used to maintain the Common Areas.

Here are the rules as defined in the Covenants:

- The Members assign the maintenance of the Common Areas *we own* to the PIPOA.
- The PIPOA is authorized to collect an annual fee from the Members, up to a MAXIMUM SET RATE, for the maintenance of the Common Areas we own.
- The fees from all subdivisions can be pooled into a large fund.
- The PIPOA has full discretion over how those funds are to be spent, but such spending is restricted to the maintenance of the Common Areas that we own.
- The PIPOA has the authority to charge any fee they wish, so long as the fee does not exceed the maximum annual fee as set in the Covenants.
- The Members waive their rights to question the judgement of the PIPOA.

We think it is important for the reader to know that the fees we authorize in our Landowner's Agreements are not SET fees but rather MAXIMUM fees. We think there is a subtle distinction. Based upon a simple reading of the Landowner's Agreement we would have expected to see the PIPOA set a new annual fee each year based upon projected needs. In practice, the PIPOA assesses the maximum amount to each Member each year, knowing they do not have to be accountable to the Members, and knowing there is nothing the Members can do about it. This practice has resulted in decades of the PIPOA collecting oceans of cash that they did not need, enabling them to spend lavishly on projects of their choosing, and then stuffing what they couldn't figure out how to spend into the EXCESS FEES account. Today it is an \$11mil EXCESS FEES fund.

Through our research we have never come across any planning documents that give any guidance on what this EXCESS FEES account is to be used for. We do agree that a reserve fund is prudent. But, given the business practices of the PIPOA, and the things they have hidden from the Members, we do not trust them with such a massive fund. We conclude that all of this is evidence of bad PIPOA management, and perhaps it would be best if the EXCESS FEES funds were distributed back to the Members.

Now let us take a closer look at where these Common Areas are, and who is responsible for maintaining them. To do that let us begin with the City of Corpus Christi's annexation of our community.

In the late 1970's, as houses sprung up on our Island, the City of Corpus Christi began to eye the growing tax base of the new Islanders. The Islanders wanted city services like police, fire, street and sewer maintenance, and code enforcement. This seemed like a win/win so throughout the 1980's, subdivision by subdivision, Members voted to join the City, until finally in the early 1990's all of Padre Isles was part of the City.

Annexation was a legal process, with legal documents setting out the terms and conditions. Under the agreement, the City assumed ownership and responsibility for all Common Areas except for the canals, the bulkheads, and the boat ramps. Those areas remained the property of the PIPOA. The City went so far as to expressly refuse to provide any services for these areas. As a quirk of annexation, the very land that the PIPOA office sits on is owned by the City.

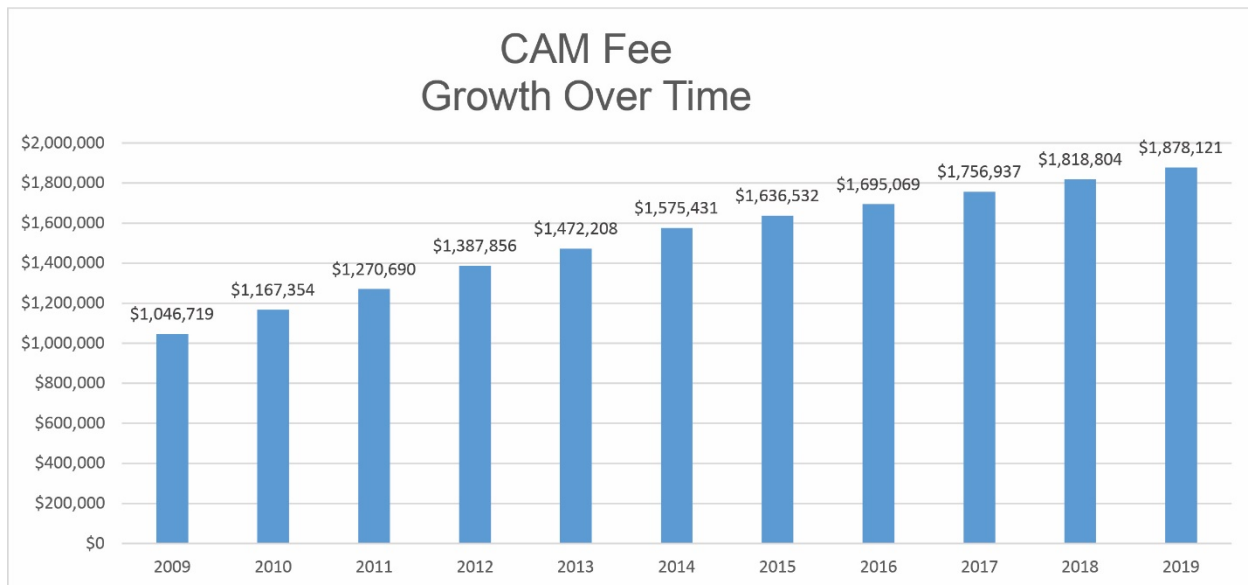
Although we were not able to ascertain the exact portion of the City's property taxes that the Island contributes, we have heard that its about 15%. The exact number is not a factor in the conclusions we reach in this article. What is important is that within the Annexation contract the City agreed to take over and maintain almost all our Common Areas. All areas, except for canals, and bulkheads, and boat ramps, were now City Property, and the responsibility of the City of Corpus Christi.

From the mid 1990's the PIPOA should have been using our CAM fees to maintain the bulkheads, the boat ramps, and the canals. The City should have been using our Property Taxes to maintain everything else. In practice, the PIPOA continued spending CAM fees on maintenance of City Property, in violation of their legal authority granted in the Covenants and the Articles of Incorporation. We certainly understand why the City never objected. The City kept the new tax base and were never asked to adequately maintain the areas within our community that they were now contractually obligated to maintain.

Over the past 30 years, millions of dollars of our CAM fees have been spent on the unauthorized maintenance of City Property. Each dollar spent was prohibited by both the Covenants and the Articles of Incorporation, yet millions have now been wasted. So, let us look at just a few charts that clearly show the waste of assets since 2009.

From the inception of the PIPOA in the 1970's, through the end of 2006, the PIPOA operated on a set of CAM fee rates that supported their needs. Then, in 2007, a covenant change was voted by the Members to increase the rates. Here is a chart showing the PIPOA revenue growth from 2009 through the end of 2019. We were unable to locate any financial records for prior years.

Its important to note that this data does not include the millions in missing CAM fees from the ELITES.



From the period of 2009 through 2019 we can see the skyrocketing Payroll of an office that has had ZERO MISSION GROWTH for the past 50 years.

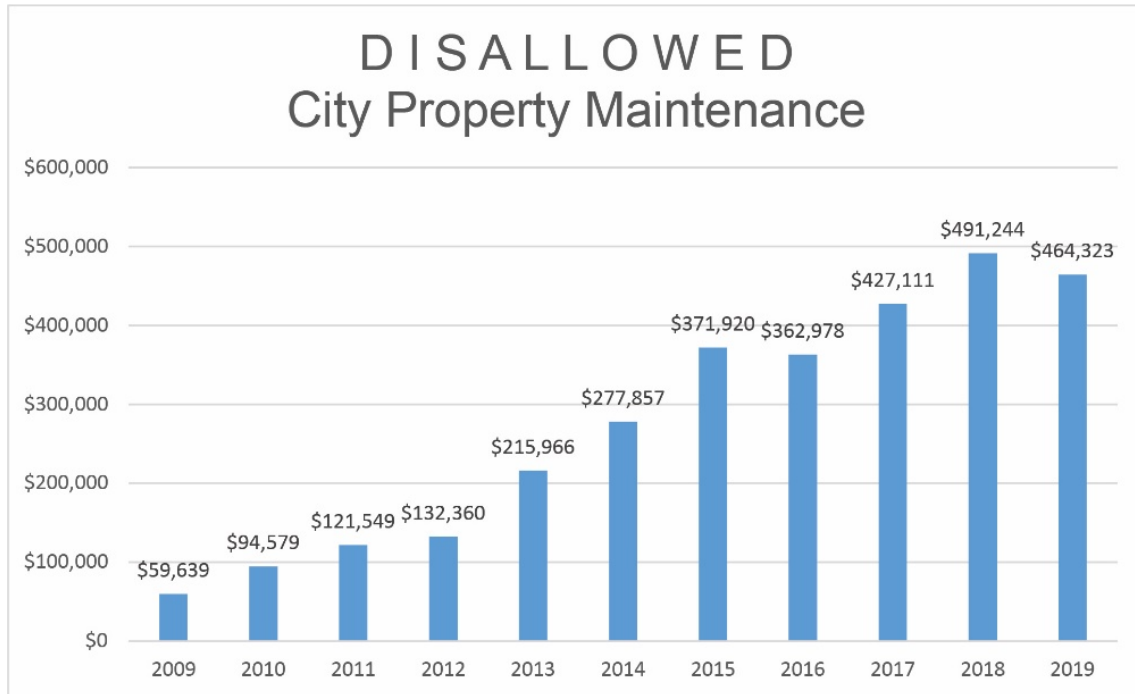


In the past 3 years alone, Payroll has risen by a staggering **104.3%**. Can anybody tell us why? We do not have more Members. The PIPOA territory has not expanded. The allowable maintenance has not expanded. We cannot even figure out how they could possibly stuff that many employees into that small office.

We understand Cost of Living Adjustments (COLA) but can anybody tell us why payroll has doubled over the last 3 years and quadrupled over the past 10 years?

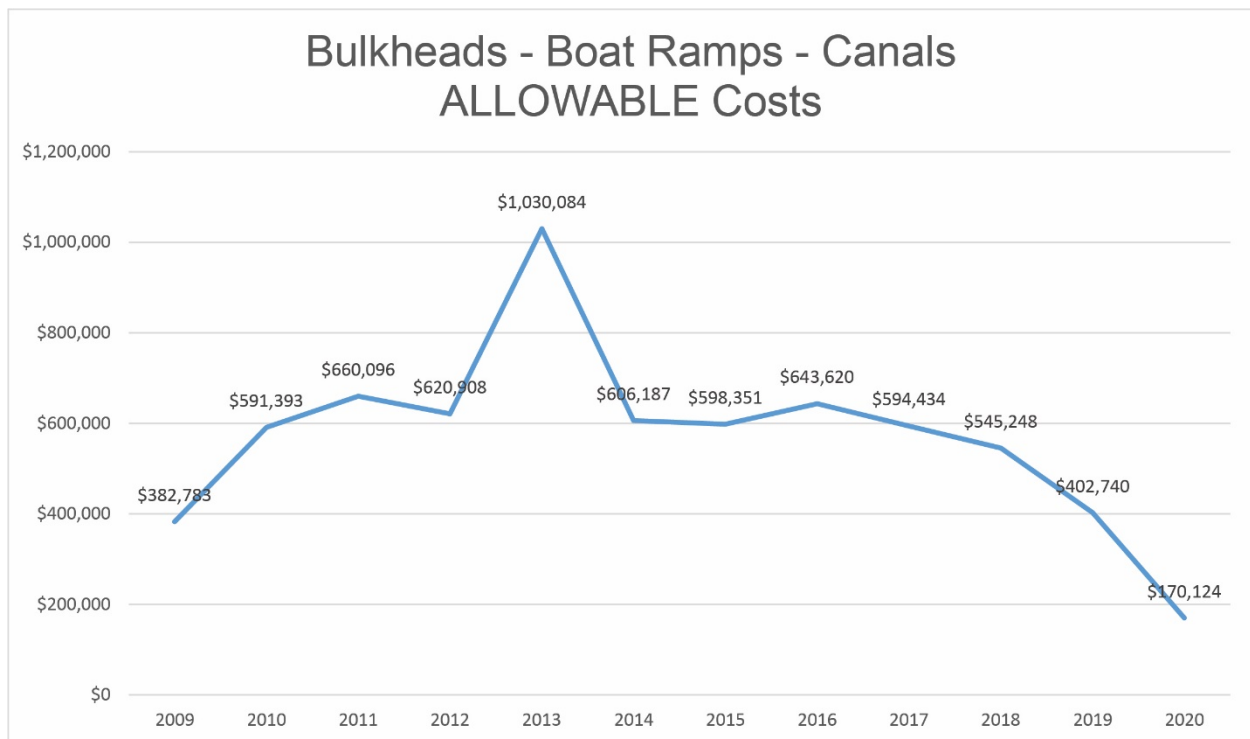
Given the current upward trend, and the exponential growth, should we expect to see payroll top \$1mil by next year?

So, what is the PIPOA doing with all that new staff that the payroll numbers seem to indicate we have? What are they spending our money on? Here is a clue. We are wasting our assets on the disallowed maintenance of City Property.



But maybe the PIPOA has been performing a whole lot of needed Bulkhead maintenance?

Nope. Not at all. In fact, in the past two years alone spending on bulkheads has dropped like a rock. Year to date it is less than 27% of the budgeted amount. This year its **less than half** of what we were spending way back in 2009.

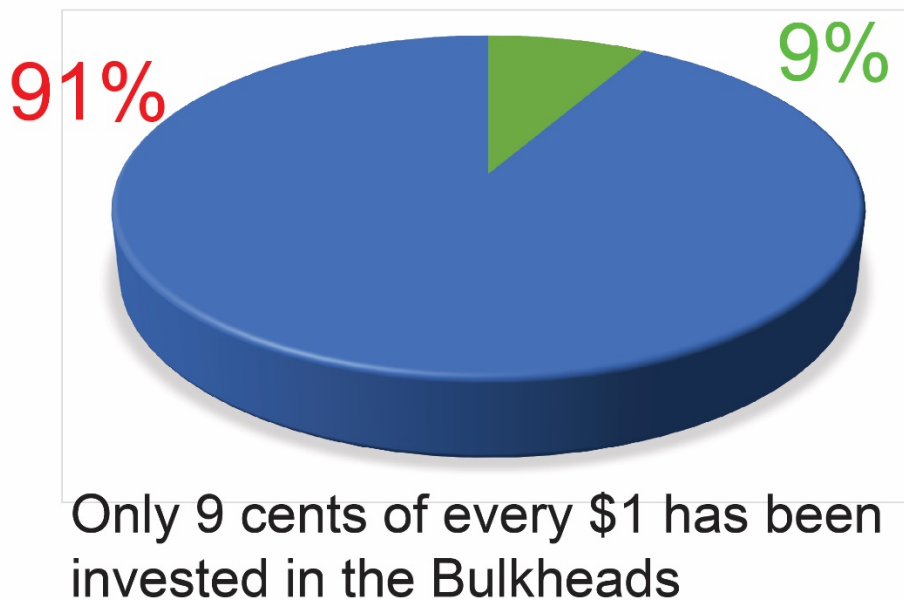


The 2013 blip on this chart was canal dredging, something that seems to no longer be of interest to the PIPOA. In the 7 years since, not a single cubic foot of anything has been dredged.

We note that 2020 Year-To-Date spending on Bulkhead Maintenance is now at or below 2009 levels. We conclude that the PIPOA believes all the Bulkheads are in perfect shape and they no longer need much money to maintain them.

Looking at 2020 year-to-date data for Bulkhead Maintenance we see that for the first half of the year the PIPOA only spent \$170,164 on their Core Mission. Of every \$1 you pay to the PIPOA in CAM fees they have only spent a measly .9 cents on Bulkhead Maintenance. No wonder they have oceans of cash to spend on boondoggle projects.

2020 Fees Collected vs Bulkhead Maintenance



Numbers are numbers. Facts are facts. The biggest fact that jumps out at us is that today we are spending a lot less on Bulkhead Maintenance than we were way back in 2009. This also informs us that the PIPOA believes the bulkheads and the canals and the boat ramps are in perfect shape. Why else would they be spending such a small amount this year?

More importantly, this tells us that if we had never had the rate increase back in 2007 that everything would be perfect. Of course, this assumes the PIPOA had maintained focus on the core mission and avoided the boondoggle spending. It also tells us that if we were to change our Covenants to roll back the fees to 2006 levels, it would have zero impact on the PIPOA's ability to continue to deliver on the CORE MISSION of maintaining our Canals, and Boat Ramps, and Bulkheads.

To be clear, our Covenants and the Articles of Incorporation LIMIT the PIPOA's spending to only:

1. Maintaining the boat ramps.
2. Cleaning the trash out of the canals
3. Dredging the canals
4. Maintaining the bulkheads

We note that while researching this article we discovered that over the past 7 years not a single cubic foot of anything has been dredged.

While reviewing the PIPOA Audit Reports we can see that over the last 3 years that PIPOA spending has gone rogue. We note:

- Growing expenditures for the hiring and support of a compliance team that is neither authorized nor able to enforce any compliance.
- Growing expenditures for the Architectural Control Committee (ACC), yet the ACC is staffed by free volunteers.
- Growing expenditures for skyrocketing office payroll costs, yet the mission of the PIPOA has not expanded.
- Skyrocketing expenses for maintaining City Property, all of which is disallowed.

Over a several year period a debit card was used to amass almost \$50,000 in charges, many of them personal, and almost none of them for allowable CAM expenditures. These charges were then hidden within the CAM expense category and were never scrutinized.

We note the continuing practice of mislabeling the disallowed maintenance of City Property under the category of "Common Area Maintenance". We consider this practice to be deceptive.

All that money we spent pulling weeds, trimming trees, and maintaining medians were things that we already paid the City to do when we wrote them our annual Property Tax checks. It is the City of Corpus Christi who is contractually obligated to maintain their City Property within our neighborhoods.

Instead of wasting our assets providing free services to the City of Corpus Christi, the PIPOA should have been downtown jumping up and down on government desks demanding the services we were promised and had already paid for.

Now we move on to something even more concerning. While the above spending practices are disturbing, what comes next is potentially devastating to all of us.

Within the Covenants the Landowner's Agreement states:

"Trustee (PIPOA) shall not be liable to an owner of any interest in such subdivision for any damage, claim or expense for the manner in which said common areas are maintained and repaired, or for failure to maintain or repair said common areas".

Did you know that when you purchased your property that you gave the PIPOA a FULL UNLIMITED WAIVER OF LIABILITY?

Did you know that, if you are injured because of the PIPOA's failure to properly maintain the boat ramps or the bulkheads that you have given the PIPOA a FULL UNLIMITED WAIVER OF LIABILITY?

Did you know that if your boat is damaged on the boat ramps through PIPOA negligence, you cannot seek restitution from the PIPOA because you have given the PIPOA a FULL UNLIMITED WAIVER OF LIABILITY?

Did you know that if your bulkhead fails, damaging your home, you must repair your property out of your own pocket because you have given the PIPOA a FULL UNLIMITED WAIVER OF LIABILITY?

We know the PIPOA must have at some point read the various Covenants. So, the PIPOA is aware of this limitation of liability as found within the Covenants. This waiver works to the PIPOA's advantage, but certainly not for the Members.

The PIPOA knows that they have no authority to alter any Covenants and cannot spend any of our CAM fees on a process of amending Covenants. That category of spending is not allowed. Besides, we would never trust them with our Covenants. Only you, in partnership with your neighbors in your subdivision, can change your covenants and strike this devastating language.

If you have read this far then you now know that:

- The PIPOA owns the bulkheads, the boat ramps, and the canals, but nothing else.
- The PIPOA charges excessive fees for the maintenance of these areas.
- The PIPOA continues the practice of illegally using our CAM fees to maintain City Property.
- As Members we have little control over how the PIPOA spends our CAM fees.
- As Members we know that millions of CAM fees have already been wasted on disallowed maintenance of City Property.
- As Members we have given the PIPOA an UNLIMITED WAIVER OF LIABILITY.
- And, sadly, we know that these practices continue as we write this article.

While this massive Waste of Assets is certainly concerning, the UNLIMITED WAIVER OF LIABILITY we found in the covenants is the more devastating discovery. It can only be removed by the Owners of each subdivision organizing to change their covenants. Left unchanged, it represents great risk to the value of your property investment.

We realize that we are pointing out flawed legal documents and horrible business practices. Many that know us also know that when we find a problem, we also work to provide a solution. Soon we will be announcing a solution that will begin to right some of these wrongs.

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