



My name is Kelly McFadden and I am a candidate for the PIPOA Board.

The Architectural Control Committee (ACC) was established by our Covenants in 1972 to oversee construction within the PIPOA. The Moon graciously offered me 200 words to discuss the ACC, but this is complicated and needs more explanation. In the Moon I made these 3 points:

1. Your Covenants are a legally binding contract where all ACC authority and limitations are described.
2. When administered properly, the ACC helps maintain property value.
3. Sweeping changes to ACC authority were made by Covenant changes in 1992. Since then, the ACC has been misinterpreting and misapplying the Covenants.

Now let me tell you why I believe the ACC processes have been flawed, and what my plan is to find solutions to these problems. The supporting documents appear at the end of this paper.

### **Reading the Covenants**

Let's begin the discussion of the ACC with a review of the Covenants that are attached to everyone's property. Back in 1972 a group of investors got together and combined a series of Island land parcels into what is today known as the PIPOA. History is a bit murky on those early days, but the founders decided to file a different set of Covenants for each of the 32 neighborhoods being established. While most are very similar, they are still 32 unique documents that must be read and understood when applying rules in a neighborhood.

And from this very starting point it immediately gets confusing. The form of the Covenants found in the Nueces County filing make them difficult to understand. The original Covenants were filed around 1972 as a complete document. All follow-on amendments are just short instructions as to lines to insert/delete/update. There is never a full and complete copy of the Covenants ever again produced. This makes it difficult to follow, unless you are an attorney, and even our attorney has missed some big Covenant issues as I've recently discovered. This can be simplified with a quick housekeeping exercise. Let's put a "clean copy" of each set of Covenants up on the POA website and make it easy for everyone to read and understand their Covenants.

### **What are the Covenants?**

The Covenants are a legally binding contract between the PIPOA and the landowner (you and I). All parties to this contract must follow the contract or they may be found in breach. The Board of Directors has no authority to amend the Covenants. That right is reserved exclusively for the Members of THE SPECIFIC NEIGHBORHOOD that is controlled by one of these 32 sets of Covenants. This is a very important point. ONLY the Members of your neighborhood can amend the Covenants that apply to your property.

### **The Authority of the ACC**

From the very beginning, until the filing of the 1992 amendments, the ACC had broad authority to both interpret as well as amend the Covenants as they saw fit. If you wanted to build on the Island you applied to the ACC for a permit. The ACC was the sole and final authority on these matters. On October 23<sup>rd</sup>, 1992 the Members of each Subdivision voted to approve the very expansive amendments that sharply curtailed the authority of the ACC. The 1992 amendments have some interesting changes that are just now being discovered. Those amendments are included at the end of this paper.

### **The Board Must Exactly Follow the Covenants**

As of 1992 the Board is the final authority on ACC permitting. The Board is responsible for supervising the actions of the ACC but the Board's authority is limited by Bylaw 2.05 (language at the end of this paper). As I read this bylaw, while the ACC previously could interpret the Covenants, under the direction of the Board they now must strictly apply the Covenants as written. This was a significant change in our permitting authority.

Today the simplest approach is for the Board to exactly follow the Covenants as written. If the Board varies then they must be prepared to explain their variance and show their decision is consistent with the Covenants as written. It always comes back to the Covenants.

### **In My Opinion**

I have reviewed the ACC language in the original 1972 Covenants, and the 1992 amendments, and the Bylaws, and here is what I have concluded:

- The Board has a duty to supervise the actions of the ACC.

- The ACC cannot amend the Covenants.
- The ACC cannot interpret the Covenants and must strictly apply the Covenants as written.
- The ACC cannot issue any permit that is not in full compliance with the Covenants as written.
- The Board, per Bylaw 2.05, must strictly follow the Covenants as written.
- The Board has no authority to overrule the ACC and grant an appeal unless it can be shown that the ACC made a mistake in applying the Covenants.
- The ACC has no authority to issue any permit that infringes on any aspect of the bulkhead infrastructure. All permits that are over or around or near any portion of the bulkhead structures must be handled directly by the Board and cannot be authorized by the ACC.
- The Board has the authority to hire expert(s) to handle all permitting decisions. In my mind, this is not an employee of the POA but an outside licensed expert. The costs for these experts are already authorized in the Covenants and are to be charged to the party asking for the permit.

### **My Approach**

The ACC is very complicated but also one of the most important functions of the PIPOA. I wish the descriptions were clearer. If I am elected to this Board, I will have my work cut out for me coming up to speed on the internal workings of the ACC. My plan begins with these 4 points:

1. I will ask the attorney to produce a “clean” copy of all Covenants and ask that they be posted on the POA website.
2. I will request a Board workshop with the attorney to cover the ACC & Covenants & the law.
3. As authorized in the 1992 amendments, I will ask the Board to hire experts for permitting instead of using homeowners.
4. As stated in the 1992 amendments, I will ask the Board to prohibit the ACC from issuing any permit that in any way infringes on any bulkhead components.

I do not question the intelligence or dedication of those in the past that have produced the ACC guidelines or issued building permits. As I've said, this is very complicated. And, as I currently understand, the current ACC guidelines have no force of law and need to be set aside. If it is determined that ACC guidelines can be used to enforce the

Covenants, then those guidelines should be voted on by the Members and filed with Nueces County for them to become a dedicatory instrument and upheld in the courts.

As a Board member I pledge to dig in and find lawful solutions to these problems. I understand that this seat belongs to the Members. I ask you to trust me with your vote.

## Supporting Documents

### **Covenant Amendment as filed with Nueces County on 10/23/1992 for all neighborhoods.**

1 • Paragraph 1 is deleted in its entirety and the following is substituted

"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 incumbent 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 of 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. Paragraph 5 is changed as follows:

So much of the first sentence of Paragraph as reads: "5. The Committee shall have the right and authority to waive, modify, alter, change or approve any covenant, term, condition or restriction ....: " is changed to read: "The Committee shall have the right and authority to waive, modify, alter, or approve any term, condition or restriction, except those restrictions pertaining to construction that affects the integrity of the bulkheads ••• " and

3. Paragraph 6 is changed as follows:

So much of paragraph 6 reads: "6. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of these restrictions" is changed to read: "6. The Committee shall have authority to interpret the general intent, effect and purpose of these restrictions."

## **PIPOA Bylaws**

**Bylaw 2.05 MANAGEMENT.** *The affairs and property of the Association shall be managed and controlled by the Board. The Board shall have authority to cause the Association to own, acquire, develop, construct, maintain, operate, repair and replace, on a non-profit basis, common areas for the protection, security, pleasure, recreation, or benefit of the Subdivisions and the owners thereof, including but not limited to, greenways, recreation areas, canals, bulkheads, seawalls, sea gates, lighting, , drainage facilities, water access areas, including boat ramps, and such other facilities in the Subdivisions for the use, enjoyment, protection and benefit if the members of the Association, and other parties designated by the Board, as the Board may deem appropriate, and they are expressly given full powers not inconsistent with these bylaws, the Articles of Incorporation of this Association, applicable provisions of law and the Protective Covenants and Landowners' Agreements covering the Subdivisions to accomplish such purposes, including the power to acquire, purchase or lease any such facilities or transfer the management responsibilities for any such facilities to others in order to provide for the maximum enjoyment of such facilities by the members and such other designated persons.*