

Port Adventure Property Owners' Association, Inc.

May 2024

To Port Adventure property owners:

This letter is to brief you on our situation at Port Adventure. The board wanted to ensure everyone has the same information.

Port Adventure was developed in stages over several years by multiple developers. Sections 1, 2, and 3 were started first as we understand it, and Sections 4, 5, and 6 were started sometime later by the same developer. Because of that, Sections 1-3 have their own unique deed restrictions and Sections 4-6 have their own unique deed restrictions. However, the deed restrictions in these six sections are similar. Section 7 and later, Section 8 were started by another developer(s), and each has its own deed restrictions. Because of this, we in Port Adventure subdivision have four (4) sets of deed restrictions. The deed restrictions are attached to the land we own and are not dependent on a functioning POA for enforcement. What that means is, we still have to follow the deed restrictions in our section whether we have a POA or not.

Over the years, the original developers fell into financial difficulties and either filed for bankruptcy or sold out. In some cases this happened several times. In the course of this, the developers did not transfer management authority to a Property Owners' Association. Our understanding is, PAPOA, Inc. was created to try to pull things together and address the needs of the subdivision. However, the people who created PAPOA, as well as the subsequent boards, didn't address the need to establish legal management authority over the eight sections right away. We do not know why. Below is an attempt to explain where that leaves us and what our options are.

Legal overview:

The deed restrictions for Sections 1-3 and for Sections 4-6 allow for amending with a simple majority of owners plus one (1). Section 7 and Section 8 provide for annulling but not amending. However, the State of Texas passed legislation a few years ago that allowed amending the type of deed restrictions (with certain provisions) that Sections 7&8 have and that was done shortly after to acknowledge PAPOA, Inc. as their managing authority.

After two discussions with our POA attorney, her opinion is as follows:

The attorney stated that she cannot find any evidence that the developers ever passed developers authority or management authority to PAPOA, Inc. Obviously, this leaves us with no basis to believe PAPOA, Inc. is the P.O.A. for our subdivision.

Our options to address this are as follows:

- 1) Seek a Declaratory Judgement from a judge acknowledging PAPOA, Inc. as managing authority for all sections.
 - a. This has the benefit of being as legally solid as possible.
 - b. Negatives with this approach are – its time-consuming (takes at least a year) and expensive (\$7,500 - \$ 10,000+). Plus, there is no guarantee a judge will rule that PAPOA is the authority. Also, it will take longer and cost more if someone challenges it. Our concern is this approach will take multiple years and many times the estimated cost she gave.

Port Adventure Property Owners' Association, Inc.

May 2024

- 2) Conduct an amendment process whereby each of the 4 sets of deed restrictions are amended to recognize PAPOA, Inc. as managing authority. That process requires a simple majority of owners agree in a signed instrument to that effect. According to the attorney, a simple majority is 50% + 1.
 - a. This approach has the benefit of being quicker, less costly, and better represents the will of the property owners in Sections 1-8.
 - b. The negative is it requires a specific process that must be meticulously followed to be certified and avoid challenges.
- 3) Amend the corporation's Articles of Incorporation to restate the company purpose as "maintenance activities on the common areas of Port Adventure" or words to that effect. We will need to amend our Bylaws as well. In addition, we will have to alter several filings with the government, but this is a straightforward process.
 - a. This option is fairly quick, inexpensive, and allows the organization to continue operating to benefit the subdivision.
 - b. A negative is the organization will rely on contributions and fund-raising activities to finance operations as opposed to collecting mandatory fees, so there will potentially be less certainty about income. The reality is this organization has rarely had more than 35–40% of owners pay into it anyway, so we believe this is a minor issue.

The attorney recommends we follow option 1 above, her reasoning being a judge's ruling is more final and less likely to be challenged.

The board believes we should move forward with option 3 and presented this information to the members at our May members meeting. Members present at that meeting voted to begin the process of transitioning to a community maintenance organization. Now, we the owners will have the opportunity to decide this issue because the first step is to have owners vote to approve this transition. Be watching your mail for a form we will send seeking your approval for this operating change. Without your approval, we cannot move forward on this.

The advantages of operating as a maintenance organization are many but we always have the right to create a P.O.A. for our subdivision in the future if that is the owner's desire. All of us working together can create a fine living atmosphere here. Whether you own property as a personal homesite or are an investor, we all benefit by pooling our resources and maintaining our infrastructure.

We are asking for donations to fund continuing operations and any road repairs we can do. Remember no dues have been requested for 2023 or 2024, so if you were willing to contribute before we hope you are still willing to contribute now.

You can donate the following ways:

Please make checks payable to Port Adventure Property Owners' Association, Inc.

Port Adventure Property Owners' Association, Inc.
May 2024

Mail donations to:
Port Adventure Property Owners' Association, Inc.
141 Quail Valley
Trinity, TX. 75862

Dropbox available in front door of Community Building at 160 Adventure Trail in the subdivision.

If you wish to pay by credit card, please send us your preferred email address at papoa@windstream.net and we will email you instructions for credit card payments.

Thank you.