

# Beach Committee Report to the Board of HSIA

October 25, 2001

## Concerning the Strip of Community Property Between the Current Beach and the Sand Spit

### 1. Background

When Hillsmere Shores was created certain areas were reserved as community property to be used for all the residents of Hillsmere Shores. Included was a strip of land consisting of the then existing beach between the current community beach and the sand spit (community marina). The 17 lots involved only extend 150 feet toward the water from E. Bay View Drive. The remainder of the land to the water is HSIA community property. Over the years these 17 lot owners have generally treated this strip as part of their property and in some cases constructed bulkheads and other structures on what is presumed to be HSIA community property. Since this strip of land was reserved to be used by all residents of Hillsmere Shores, this committee was charged with investigating options for the use and/or disposition of this land and to make a recommendation to the HSIA board.

*Note: Legal opinions referred to in this report were gathered from conversations with Mike Ragland. While we believe these to be accurate summaries of these conversations any legal issues must be directly addressed by Mike Ragland or another qualified attorney.*

### 2. Land Options

This report will look at all possible options for the use or disposition of the land in question.

#### 2.1. **Transfer Title to Lot Owners**

One option examined was to sell or transfer title to the land to the 17 lot owners to make their properties actual waterfront properties. Based on legal advice from Mike Ragland this is not possible. HSIA does not own the land. It holds "bare legal title". This means that HSIA does not have the right to sell or transfer title for the land. The only way that this could be done is if each and every property owner in Hillsmere Shores (without exception) signed the sale or transfer documents. This is, from a practical point of view, impossible.

#### 2.2. **Lease Land to Lot Owners**

The option of leasing the land to the 17 property owners was also proposed. The fatal flaw with this option is that although HSIA may enter into a lease if certain conditions are met to get community approval, HSIA may NOT restrict the right of any resident to access (walk on, use, etc.) the land. Therefore, there is no benefit to the 17 lot owners to enter into such a lease. If they are going to pay any money they will, rightfully so, expect exclusive use of the land and this cannot be granted.

#### 2.3. **Restore Entire Beach**

Another option proposed was to restore the entire beach to its 1972 shoreline. The pros and cons for this option are as follows:

#### *Pros*

- This would allow Hillsmere Shores residents to walk along the water from the existing beach to the sand spit. This would be a very beautiful walkway.

#### *Cons*

- Many of the properties, particularly at the sand spit end, have extended their bulkheads or the beach has eroded to the point where there is no beach remaining making it difficult to restore the beach.
- Although there is probably county level approval to restore to the 1972 shoreline, it is not certain that other authorities, such as the Army Corp of Engineers, would approve.
- There is some doubt as to the longevity of sand used to build up the beach. We would have to hire an engineer to determine the probability of erosion due to storms destroying the beach that we restore.
- The cost of restoring the beach has not been determined and may not be currently affordable.

### **2.4. Full or Partial Beach Restore w/ Boardwalk**

Since much of the original beach is gone and possibly covered by extended bulkheads, another option is combine beach restoration with a physical boardwalk. The pros and cons for this option are similar to the previous section (2.3) and include the following:

#### *Pros*

- This would allow Hillsmere Shores residents to walk along the water from the existing beach to the sand spit. This would be a very beautiful walkway and would be accessible during most tidal conditions.

#### *Cons*

- The cost of restoring the beach and building a boardwalk has not been determined and may not be currently affordable.

### **2.5. Partially Restore Beach**

Another simpler option would be to restore the beach for the first few hundred feet from the existing swim beach. The pro's and cons are as follows:

#### *Pros*

- Residents could use the beach for beach walking and launching small boats such as catamarans.
- This option would be more affordable and less intrusive (to the lot owners) than other options.

#### *Cons*

- Does not allow residents to walk to entire piece of land.
- Although there is probably county level approval to restore to the 1972 shoreline, it is not certain that other authorities, such as the Army Corp of Engineers, would approve.
- There is some doubt as to the longevity of sand used to build up the beach. We would have to hire an engineer to determine the probability of erosion due to storms destroying the beach that we restore.
- The cost of restoring the beach has not been determined and may not be currently affordable.

### **2.6. Do Nothing**

Finally, another option is to do nothing. The pros and cons to this option are as follows:

#### *Pros*

- There is no immediate cost to HSIA.

#### *Cons*

- Residents will be prevented from using the strip of land.

### **3. Other Issues**

#### **3.1. Adverse Possession**

Although probably not a problem since HSIA is actively investigating this issue, we must be certain to take whatever legal steps are necessary to prevent any of the 17 lot owners from claiming the property in question using a claim of "adverse possession". According to Mike Ragland if HSIA were to lose any community property by it's inaction or mismanagement then ALL community property in Hillsmere Shores, including the pool, beach, and marina could be lost. This is a complex legal issue that will not be addressed in this report.

#### **3.2. The Harned Pier**

Related to the above issue is the Harned Pier. This pier was built over HSIA community property earlier this year by the owner of lot #10 (counting from the existing swim beach). He was informed by HSIA via Bill Anderson that he could not build the pier but since he had all the required permits (except HSIA's) he built it anyway. It rests on HSIA community property and has a boat lift with a boat. According to legal advise from Mike Ragland, this situation cannot be ignored. This could result in various legal problems similar in nature to those described above under "Adverse Possession". Since the pier is on community property, it is legally the property of HSIA. Several options exist for dealing with this pier.

##### **3.2.1. Convert Pier to HSIA Use**

This option would have HSIA lease use of the pier to the Harned's and have them pay to keep their boat there.

#### *Pros*

- It would generate income for HSIA.
- If a beach access could be established, which is unlikely as this time (as described previously in this report), then the pier could be a community crabbing and walking pier.

#### *Cons*

- HSIA does not have the right to prevent any resident from using the pier and the fact that the pier has no access via the beach would effectively do so.
- There are 40-50 people on the waiting list for slips so HSIA would in effect be allowing the Harned's to bypass all those people. Since there is no access, it would be impractical to give the slip to someone on the list.
- Having another slip on a community pier could require HSIA to remove a slip from the current marina since we, as a community, were allotted a certain number of slips and all those slips were built.
- HSIA would incur insurance and maintenance costs.

##### **3.2.2. Have the Pier Removed**

One option is to have the Harned's remove the pier that was illegally built on HSIA property.

#### *Pros*

- Removing the pier would solve all the problems listed as "Cons" in the above option.
- It would assert HSIA's right to control it's property.

#### *Cons*

- It would destroy an otherwise usable structure.

##### **3.2.3. Do Nothing**

Another option is to do nothing and leave the pier as is.

### *Pros*

- This option would avoid immediate potential legal costs for HSIA however it could cause even more in the future.

### *Cons*

- This could expose HSIA to risks similar to those described under "Adverse Possession" above. Any or all of the 17 lot owners could build piers under the claim that they would be treated differently if we refused their permits.
- The cons above associated with the waiting list and number of approved slips could apply.
- Allowing this or other piers to stay unchallenged could prevent HSIA from exercising some of the options for the strip of land described above either now or in the future.

## **4. Recommendations**

The Beach Committee makes the following recommendations to the HSIA Board:

### ***4.1. Survey:***

Have the strip of land between the current community beach and the sand spit surveyed to determine exactly where the HSIA land begins. Small signs saying "HSIA property line. Beyond this sign is private property. Please do not trespass." or something to that effect should be erected just inside the HSIA property line in the least intrusive way possible. This will put current and future lot owners on notice as to where their property ends and HSIA's begins and prevent any residents from walking on private property.

### ***4.2. Land Option***

Do nothing as described above under "Land Options". The committee feels that the cost and complexity of other options would be prohibited at this time. HSIA should do nothing that prevents any of the other options from being exercised in the future.

### ***4.3. Harned Pier***

Have the Harned pier removed. HSIA should immediately take the necessary legal steps to have the Harneds remove the pier at their own expense. The cons of the other pier options are too great to consider leaving it in place.

## **Beach Committee Members:**

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