

BEACH STRIP LAWSUIT RULING

As many of you know, HSIA has been involved in a lawsuit with several East Bay View waterfront homeowners who were trying to seize community property between their house and the water by adverse possession. On December 5th the Court of Special Appeals issued their ruling. HSIA's position was upheld by the court and the lower court's ruling was vacated. However, the issue is far from being settled.

First, a little history. It all started in 1952 when the original developer set aside a strip of land connecting the current community beach with the sand spit, where the marina is now located, as a community beach. The 17 lots along East Bay View only extend 150 feet from the road. The rest, to the water, is Hillsmere community property. From the beginning, many of these homeowners erected fences to keep residents from walking on this community property. The current controversy began about five years ago when one of the homeowners built a pier even though HSIA told them they couldn't. In October of 2002, HSIA had a survey done to establish where the actual property line was. The results were very interesting. Except for a small area behind 103 and 105 E. Bay View where the community property had completely washed away there was a significant strip of land that we owned. It ranged from 8.4 feet wide at 131 E. Bay View to a huge 75.7 feet wide behind 117 E. Bay View. In January 2003 the HSIA board approved sending letters to the homeowners directing them to remove the fences and hedges that blocked residents from walking on this property. Nine of the 17 lot owners threatened to sue claiming that they now owned the land between their house and the water by adverse possession. Only three of the homeowners actually filed suit. They were the owners of 117, 129, and 133 East Bay View. The three suits were consolidated into one for trial. We agreed that they had used the land for the required 20 years but raised several arguments in our defense. The three major arguments were:

1. **The property was not actually owned by HSIA.** We argued that because of the way the deed was written and the conditions placed by the developer, HSIA only held the title in trust for all the property owners in Hillsmere. Therefore, any lawsuit would have to be against all the owners not just HSIA.
2. **Subdivision law prevents individual ownership.** The subdivision law required that the developer set aside this land for community use. The law also states that only a home owner's association or the county may own such land and that it cannot be used for any other than the intended purpose.
3. **HSIA is immune from adverse possession claims.** There is a portion of county law that sets up certain conditions that, if met, grant a home owner's association government agency status. We clearly meet all of these conditions and as a government agency are immune for adverse

possession claims.

The district court heard the arguments from both sides and ruled against HSIA on every count. They granted the plaintiffs ownership of the disputed property. We immediately filed an appeal with the Court of Special Appeals. That court issued it's ruling on December 5th, 2005.

The Court of Special Appeals agreed with HSIA on the first argument listed above. They ruled that the property was indeed owned by every lot owner in Hillsmere and vacated the lower court ruling in it's entirety. They said that if the plaintiffs wanted to retry the suit that they would have to sue each and every lot owner in Hillsmere. This would be approximately 3,000 people since many properties are owned by multiple people (husband and wife, for example). The court did not rule on any of the other issues raised. For more information, including the court decisions, please visit our web site.

What will happen next is largely up to the plaintiffs. The cost and complexity of suing 3,000 people is quite high. I'm sure that if this happens, a lot of Hillsmere residents will be very angry that they are personally being sued. According to our lawyer, there are other conditions that could have an effect on this lawsuit. One of these are properties bought at a tax sale. If you know of any Hillsmere properties purchased at a tax sale since 1980 then please let us know.

There have been accusations from some residents, mostly from the East Bay View homeowners, that they are being victimized by HSIA. In my opinion it is quite the opposite. We did not discover some defect in their title that let us go after their property. They knew all along that the property behind their house belonged to the community. Their action is an attempt to seize community property for their own financial gain. The HSIA board should have told them to remove their fences many years ago. Had we done so then all this could have been avoided. However, the HSIA board is required to act to protect community property. This strip of land is a beautiful asset that belongs to everyone in our community. I feel that everyone should be able to walk along this piece of community property and enjoy the views that make our community special.

Bill Shuman
President, HSIA

The President's Comments are just that, the comments of the president of HSIA. The opinions expressed here are not necessarily those of the HSIA Board of Directors or any individual HSIA board members.