

HSIA Board of Directors Response to the Singleton Letter

The letter recently mailed to all Hillsmere residents by Mr. Singleton, one of the three plaintiffs suing to seize the strip of community property between their house and the water by adverse possession, was full of incorrect and misleading statements. The HSIA Board of Directors decided that it was important to set the record straight and respond to their letter.

The three plaintiffs are Mr. and Mrs. Singleton (117 East Bay View), Mr. and Mrs. Hertz (129 East Bay View), and Mr. Sahandy (133 East Bay View).

The letter started by saying that the HSIA board planned to build a "public boardwalk over our properties". First, the land in question is NOT their property and never has been. It was specifically set aside for ALL Hillsmere residents to use as a community beach. The title to this land (the "beach strip") is in HSIA's name. The seventeen lots on East Bay View only go back 150 feet from the road (Mr. Sahandy's lot, at 133 East Bay View, is odd shaped but does not go all the way to the water). The rest of the land between their property line and the water is owned by HSIA in trust for all the residents of Hillsmere. Furthermore, there was never any plan to build a boardwalk. This idea was mentioned by the former HSIA president but never considered by the board.

The next point the letter made was that allowing access to this community property would mean that "strangers would be walking near our houses". They also said that the behavior and activities of these "strangers" would cause "noise, vandalism, theft, and garbage". First, let's make no mistake about who these undesirable strangers are. It's you and your neighbors. It wouldn't be bus loads of people from Baltimore walking on the beach strip, it would be the same people who take their children to the beach, play on the swings, and go for a walk in the evening to enjoy the sights of the Chesapeake Bay. The rest of the community is accustomed to neighbors walking near their homes. Why should these waterfront residents be any different?

The letter also says that the 1952 deed that gave the land to HSIA in trust for all the residents of Hillsmere had "legal ambiguities" about who owned the property. This is completely false. The deed is completely clear on who owns the land. The deed says much more than that. It said that HSIA shall hold the property "for the use and benefit of all Hillsmere lot owners". It further says that HSIA shall "protect and defend" the use of the property as a "beach recreational area" and "for no other use, intent, or purpose whatsoever". It goes on to say that nothing in the deed shall deprive the lot owners of Hillsmere of any of the rights to the use of the property.

Another incorrect assertion the letter makes is that "HSIA ... assumed for more than 20 years that the strips of land in our yards were indeed our property". While HSIA did not require the fences that encroached upon community property to be removed as it should have, it never made any such assumption. In fact, the incident that started this whole controversy was the building of a pier at 119 East Bay View after HSIA refused a permit because the pier would be on community property. The fact that no piers have been built along the beach strip is proof that HSIA never assumed that the property belonged to anyone else.

The statement that the Court of Special Appeals ordered all the lot owners in Hillsmere to be made defendants "apparently because the Court felt the Board may not have been keeping you informed" is blatantly untrue. There is no such statement in the court's opinion.

HSIA, in it's legal briefs, contends that the 1952 deed is a "passive trust" and that because of this the property is owned by all the lot owners in Hillsmere as tenants in common. The Court of Special Appeals did not directly rule on this assertion. We still contend that it is true. The letter quotes from page 54 of the opinion. The entire statement is much more informative. It says:

Here, nothing in the Deed and Agreement appears to give title of the Community Beach to (all) the lot owners, but the document confers a right to use the beach. To that extent all lot owners have an interest in this matter. Among other things, the transfer of title of a portion of the beach (to the plaintiffs) surely will augment the value of their properties while perhaps diminishing the value of the properties of other lot owners in the Subdivision. Moreover, we cannot be certain from the status of this case that the other lot owners' rights to use of the entire beach have been protected.

The idea that Mr. Singleton and the other plaintiffs were forced to write the letter because of "false and misleading statements by the head of the Board" is difficult to understand. While the HSIA President clearly feels strongly about this issue, he has taken great pains to make sure what he has written in the Sea Breeze is accurate and truthful.

The letter goes on to say that when you are personally sued that you will have no financial or other liability if you choose not to respond. That is correct. However, the letter also says that only if you have documented proof that you regularly used the beach strip can you then hire a lawyer and possibly get a right to use the land. That is completely false. First, if ANYONE has documented proof or testifies that they walked the community property between 1980 and 2003 then they will have no adverse possession case and ALL of us will have retained the right to use that land. Furthermore, you have every right to either retain a lawyer or represent yourself and remain in this case. To suggest that if you didn't personally walk that land then you must drop out of the case is incorrect and appears to be an attempt to keep you from acting to protect your rights.

The letter suggests that HSIA should have accepted the offer of \$135,000 to settle the case by selling them the land. If HSIA were to consider selling the land (if that is even legally possible) the value of the land is closer to \$1.5 million. The piece of land Mr. Singleton alone is trying to take from the community is nearly a fifth of an acre and is worth more than \$500,000. To suggest that HSIA sell them the land for less than a tenth of it's actual value is unrealistic and ignores the rights of every property owner in Hillsmere. The letter also says HSIA has "spent over \$30,000 of your tax money on legal fees". Again, this is false. We have spent approximately \$15,000 in legal fees plus about \$6,500 in surveying costs. That comes to about \$18 per lot owner.

On January 24th, the HSIA Board of Directors made an offer to settle the lawsuit in a way that would address many of the plaintiff's concerns without abandoning the Board's obligation to protect and defend the community's commonly held property. In return for dropping the claims of adverse possession and removing any fences, hedges, and "No Trespassing" signs on community property, HSIA would agree to never build or put up any fences, playgrounds, docks, or even benches. HSIA offered a guarantee, binding on future boards, that the only development that could ever be done would be a ground level walkway, similar to the walkway at the community beach. In addition, Mr. Singleton would be allowed to keep the part of his pool that is on community property and put up a fence as required by county code for a pool. It's a good offer that protects the rights of all the property owners in Hillsmere.

The Board apologizes that this situation has resulted in your being threatened with a lawsuit by these three homeowners. It is our sincere hope that they will not take this action that will only result in more anger and resentment in our community.

Board of Directors,
Hillsmere Shores Improvement Association