

Lawsuit Community Meeting Questions and Answers

The following questions were asked at the community meetings held on July 20th and 22nd. They have been grouped by subject area. Thanks to board member Kate Penn for compiling this information.

I. Service of Documents

1. **Q: Are they legally allowed to serve by Certified Mail?**
A: Yes, provided the defendant signs for receipt of the package
2. **Q: Don't they have to serve defendants the entire package of the suit, including the paperwork from the original suit?**
A: Yes, but HSIA, as a defendant, has received this package, and cannot file a motion on behalf of those defendants who have not. Paperwork for filing such a motion will be posted on the website (Motion to Quash Service of Process).
3. **Q: I am defending myself, and understand there are deadlines and paperwork to be filed. Would HSIA put the documents defendants need on the website, so we can print and mail them?**
A: Yes, HSIA will post all pertinent documents on the website. See the "What Should I Do?" article in this Sea Breeze.
4. **Q: Is it to our (HSIA & defendants') advantage to drag out the suit?**
A: No; currently the land is in contention and the community may not legally use it until the suit is settled. Therefore, dragging it out only delays the community getting use of the property.
5. **Q: Why should I sign the "Waiver of Service" provided by HSIA?**
A: If you waive service by signing the HSIA document, that means you will not receive any future filings made by the defense, however, you will receive notices from the plaintiff. You can view any motions or other documents by the defense on the HSIA website, www.hillsmereshores.net.
6. **Q: From a legal standpoint, is it better to make them serve me or to just waive notice by filing one of the forms about the case?**
A: If you have not yet been served, and you waive notice, you are made party to the suit anyway. You risk not receiving paperwork from the plaintiff, and becoming in default.
7. **Q: Does avoiding service benefit HSIA?**
A: No. If you refuse service, the plaintiff may ask the judge to allow you to be "served" by posting your name on the courthouse door.
8. **Q: Can this suit move forward before everyone is served?**
A: The hearing in October regarding HSIA's motion will occur regardless. It is not yet clear how the court will schedule hearing the suit itself.

II. Your rights as a Defendant

9. **Q: What does it mean to default?**
A: If you take no action after you have been served, the Plaintiff will file for a default judgment. This means you do not contest the plaintiff's claim on the land.
10. **Q: Why shouldn't I default?**
A: If you feel strongly about the issues involved then staying in the case sends a message to the court and the plaintiffs that the community cares about this lawsuit.

11. **Q: What is the difference between “opting out” and “default judgment”?**
A: There is no real difference. If you “opt out” by doing nothing then a default judgment will be entered against you.
12. **Q: What are my options as a Defendant?**
A: First, you can stay in the suit or Default. If you default, you are not contesting the claim. Second, if you stay in the suit, you may hire a lawyer or defend yourself. If you choose to defend yourself, you may join HSIA’s defense or file your own motions. See the “What Should I Do?” article in this Sea Breeze.
13. **Q: Does staying in the suit as a defendant help HSIA or the defense?**
A: It may. From a strictly legal standpoint, the judge must weigh the case equally whether there are one or one thousand defendants. However, we encourage anyone who is willing to stay in the suit, if only to make a public demonstration of our feelings on this matter.
14. **Q: Does it help HSIA’s case to join in the Motions?**
A: See the previous answer. The main benefit is to you.. it means you don’t have to respond to the lawsuit until 15 days after the motions are ruled on, probably some time in November.
15. **Q: Why should I sign the paperwork provided by HSIA?**
A: See the “What Should I Do?” article in this Sea Breeze.
16. **Q: What is the deadline to join HSIA’s motions?**
A: You must act within 30 days after you are served.
17. **Q: If my spouse and I live at the same address, should we each file separate paperwork?**
A: Each of you is an individual party to the suit. Spouses should sign separate forms.
18. **Q: I own multiple properties in Hillsmere Shores; do I need to file multiple forms?**
A: No, you are only a defendant once no matter how many properties you own.
19. **Q: I plan to hire my own lawyer, should I still sign the paperwork provided by HSIA?**
A: No, if you are hiring your own lawyer then he or she will advise you on what actions to take.
20. **Q: What is the simplest thing for me to do if I want to stay in?**
A: Sign the paperwork to join HSIA’s motions, which will allow you to piggy-back HSIA’s defense through the October hearing. You can keep informed of the progress of the case via the Hillsmere Shores website. See the “What Should I Do?” article in this Sea Breeze.
21. **Q: I understand there are deadlines for filing. What are they and when do they start?**
A: Once you have been served you have 30 days to file your intention to remain a defendant in the case. You may file on your own behalf, hire a lawyer to file, or sign to join HSIA defense.
22. **Q: What happens after the hearing in October?**
A: That depends on the results on the hearing. There may be additional hearings or the actual trial may be scheduled.
23. **Q: If I’ve signed to join the Motions with HSIA, what happens after the hearing in October?**
A: We will keep you informed about what happens next. Keep in mind that you can decide to “opt out” after the hearing by simply not responding by the 15 day deadline.
24. **Q: Other than speaking at the case, how can I show my support of defense?**
A: While as a defendant you have a right to participate, we ask you not to disrupt or take away from the time allotted to HSIA for its defense. You can show your support by staying in the case and joining HSIA in its motions.
25. **Q: Will it benefit me or HSIA if I hire a lawyer?**

A: Perhaps, if you can find a lawyer who can add arguments above and beyond the HSIA defense. Otherwise you should save your money and piggy-back HSIA's defense.

26. Q: I'm relatively new to the community, I have little to add, but I'm not happy about the lawsuit. Do the number of defendants affect the outcome?

A: Not particularly. If you really just want out, go ahead and default. However, if you want to show solidarity, you can join HSIA's defense; you will have to do nothing else until after the October hearing but will be counted as a defendant.

27. Q: Do renters have any legal standing in this suit?

A: No, only property owners are defendants.

III. Details of the Case; Explanation of Adverse Possession

28. Q: What is "Adverse Possession", simply explained?

A: If your neighbor puts a fence a few feet over your property line and for 20 years you don't say anything about it or enter the property then it belongs to your neighbor. Adverse possession must be an open, hostile act (like putting up the fence on your property).

29. Q: What is the range of dates for Adverse Possession? When did I need to walk on the property to contest this suit?

A: 1980-2003

30. Q: Why can't we use the land now?

A: Currently the Plaintiffs have 20 years Adverse Possession and are now just suing for the title. It is the defendant's obligation to disprove that claim. Ultimately, the court will rule on who owned the land as of 2003, not as of the court's decision. Therefore, the land may now belong to the plaintiffs or it may belong to us. The court will decide.

31. Q: Is there a plat available that shows the property lines and the contested area?

A: Yes, there was a survey done by HSIA that shows the property. A copy can be viewed on the web site.

32. Q: Did I have to know this was community property when I used it in order to benefit the case?

A: No. Intent is not an element of an Adverse Possession case.

33. Q: Do the "No Trespassing" signs have any bearing on the case?

A: Yes, in that it demonstrates that the Plaintiffs have taken the property in a hostile manner for their exclusive use.

34. Q: Do the bulkheads or pier increase or decrease the validity of the Plaintiff's argument?

A: The pier was put up by a property not involved in the lawsuit. The plaintiffs are contending that the bulkheads are one of the boundaries they erected as part of their adverse possession.

35. Q: Did the Plaintiffs have permits from HSIA to build their fences?

A: We don't know that for sure. We are still looking through existing HSIA records to see if we can find copies of such permits.

36. Q: Can we currently walk on the community property adjacent to the other 14 lot owners?

A: Theoretically, yes. However, it is not a good idea to do so until this case is resolved. Any adverse possession period, that other properties might claim, ended in 2003 when we told them to remove their fences and hedges. Walking on the other properties now would not preserve HSIA ownership.

37. Q: Must an affidavit of use be only for the three properties suing us? If I walked on the strip, but not specifically on the section abutting the plaintiff's property, is this pertinent?

A: For this particular case, you must walk on the contested property between the plaintiff's property and the high tide mark. However HSIA would like to hear from

anyone who has used the beach strip since 1980 in order to head off any possible future claims from other property owners.

38. Q: Is there a continuous piece of land from the park to the marina?

A: Yes, the community property is between the mean high tide line and the platted property line. The original survey showed that there was a break at the second house from the beach due to erosion. A more recent survey, after Hurricane Isabel, showed a continuous strip several feet wide in that area. However, it is only riprap, not dry land.

39. Q: If my kids used the property is that helpful? What if a person renting walked on the property?

A: Yes. Even though kids and renters are not owners, they have permission from the owners to use community property. Therefore their using the land helps our case.

40. Q: What proof do you need that I used the property?

A: Documented proof is not required. A sworn affidavit is acceptable.

41. Q: Is there a legal definition for "use" of the property?

A: Simply entering the property for any reason (walking, crabbing, fishing, playing, etc.) is considered "use". However, entering the property at the plaintiff's request or invitation, such as attending a party or doing yard work, does not count.

42. Q: Regarding the motion to include mortgage companies: if the mortgage company holds legal interest does that take individual owners out of the case?

A: No. You hold the equitable interest; the mortgage company holds the legal interest.

43. Q: What is the ramification if my mortgage company is sued? Will they take action against my loan?

A: No. They may be concerned that the lawsuit affects their equity. However, the lawsuit has no effect on you property directly. It only affects your right to use the community property. A letter from our lawyer is on our web site that explains this. You can send a copy to your mortgage company if they are concerned.

44. Q: If plat is recorded does Adverse Possession still apply?

A: Yes, the State of Maryland does not honor that theory of law.

45. Q: How long do you expect this to last?

A: As with all legal matters, it could drag on for years.

46. Q: Why did we previously lose (in the lower courts) and how can we now win?

A: When the plaintiffs sued everyone it motivated people who had not previously come forward to do so. We now have several affidavits from people who used the disputed property. We also have found corporate records we thought were lost. In addition we found the tax sale we were looking for. We have more evidence now to argue this case. However, we still need more people to come forward who walked the property!

47. Q: What if one defendant files a continuance?

A: This will be for the judge to determine.

III. How does this affect me?

48. Q: Could a default judgment show up on my title?

A: This suit and/or a default judgment may cloud the title to your property. However, the deed allows a right to use HSIA community property; because the title to your home is only for the land your home is on, it should not be a problem. A letter you can send to your mortgage company explaining this is available on our web site.

49. Q: Could a default judgment show up on my credit?

A: Only financial claims can be reflected on your credit report and must be reported by a creditor. This suit is only for title to the land, therefore it will not appear on your credit report.

50. **Q: If my deed includes the common areas, does my title insurance cover this?**

A: No, your title insurance is only for your lot, not for rights granted based on your ownership.

51. **Q: I am selling my home. Am I still party to this suit?**

A: If you were served prior to signing the deed of sale, you are; you can either default or write a letter to the court explaining you no longer own property in the community. The new owner is not a defendant. If you were served after signing the deed of sale, you are not, and it is the Plaintiff's duty to discover the new owners and serve them.

52. **Q: I am selling my home. How should I disclose this suit to potential buyers?**

A: You should discuss this with your realtor. It is probably a good idea to disclose it and to provide a copy of the letter available on our web site explaining why it doesn't affect your property directly.

53. **Q: Will this reduce my property value if we lose?**

A: It may – it does reduce your right to use waterfront land.

54. **Q: What is my personal liability?**

A: None. Although the suit mentions claims for recovering court costs and legal fees, there is no legal precedent that would allow Plaintiff to do so in this type of case. The suit specifically states that they are not seeking financial damages or awards other than title to the disputed property..

III. HSIA's Defense

55. **Q: Are special tax funds being used to defend this lawsuit?**

A: Yes. Defending title to community land is a legitimate expense for the Special Tax funds.

56. **Q: Is the use of HSIA tax dollars approved by the county?**

A: Yes. We specifically received approval to use Special Tax funds for this case.

57. **Q: Is there any personal liability for HSIA's board, past or present?**

A: No. The statute of limitations is three years, so the time for such a claim expired three years after any action taken by a board member. Even if there was, our liability insurance would cover any damages.

58. **Q: Does county have any responsibility for allowing Singleton to build over their property line?**

A: Yes. That should not have been allowed. However, the county has not kept records from that time period. HSIA is checking with the Army Corp of Engineers, which will likely have records.

59. **Q: If HSIA wins, will it have to reimburse plaintiffs for past expenses related to maintaining the community property?**

A: No, we have no obligation to pay for their bulkheads. However, if we win we will be responsible for preventing further erosion. This can be accomplished by riprap and other much less expensive remedies than bulkheads.

60. **Q: What liability will HSIA have for the property or to the adjacent owners if we win? Is HSIA prepared to maintain the property?**

A: Whatever liability we have currently for 14 of the undisputed lots we will have on these 3 if we win. Should we give away community property because we have to maintain it?

61. **Q: Did HSIA finance any improvements after Hurricane Isabelle and are we prepared to make repairs in the future if we win the suit?**

A: No, there was little or no damage directly to community property due to Hurricane Isabel. The major damage to the second property from the beach was on privately owned property. The only other damage was erosion to the hill behind two houses in the middle of the beach strip. Again, this was not community property.

62. Q: For those who fixed the property, has HSIA made offer to assist w/recovery?

A: No, see previous answer.

63. Q: If we win, would we own the bulkheaded property?

A: If we win, we would own the original property per the deed and any improvements installed on that land.

64. Q: If they lose, can they buy the property?

A: If they lose, they will have no particular claim on the property. The deed for the property does not allow HSIA to sell without agreement of all property owners. However, we have offered to explore legal ways to sell part of the disputed property so they can have most of the yard area while still maintaining a community waterfront but these offers have been rejected by the plaintiffs.

65. Q: Worst case scenario? If they win, can HSIA get an easement to access the land that is our property in between these lots?

A: We will have to investigate that, but have not yet considered it. The rule for an easement is by necessity and HSIA property would otherwise be landlocked, so there is justification for it.

66. Q: Have we considered selling? Has the Plaintiff made offers to buy the property?

A: The Plaintiff has offered HSIA \$135,000 to buy it's interest in the property, but has not made an offer to purchase the property outright. The deed for the property requires agreement of all property owners in order to sell. Although it has not been offered, HSIA would consider such an arrangement if the price reflected the value of the land and if the funds would be significant enough to truly benefit the entire community.

67. Q: Do we have legal grounds to counter-sue?

A: No

68. Q: If we were to win the lawsuit, what are HSIA's plans to do with the property?

A: HSIA will maintain the land in accordance with the deed, as a community beach. We have offered to agree (and to be legally bound) to build no improvements other than a ground level walkway.

69. Q: Have we exhausted all efforts to settle out of court? Have we considered Arbitration?

A: We have made several attempts to offer a negotiated settlement. However, all such offers have been rejected. The plaintiffs offered \$135,00 for HSIA's interest in the property. HSIA rejected this offer because it was one tenth the property's value and because it would have forced HSIA to abandon representing the community's interest in the property.

70. Q: Why have E. Bay View owners not been previously notified they don't own this property? Did they think they were buying property with riparian rights?

A: Their deeds are specifically non-riparian. If they were misled when they purchased their properties, their real estate agents may be liable. There is no evidence that they did not know their properties were non-riparian.

71. Q: Do E. Bay View properties have riparian rights?

A: No.

72. Q: Do they pay waterfront taxes?

A: This question has been raised many times. There is no such thing as "waterfront taxes". It is unclear if they are paying the same as comparable properties that are riparian.