

Bell and Ragland, P.A.
Attorneys at Law

Michael J. Ragland, Sr.

Charles W. Bell, Retired

Annapolis - 410-267-5944

7 King Charles Place
Annapolis, Maryland 21401

Baltimore - 410-269-6899
Facsimile - 410-269-5999

June 5, 2003

Board of Directors of the
Hillsmere Shores Improvement Association, Inc.
P.O. Box 3485
Annapolis, Maryland 21403

RE: Waterfront Property – Community Beach

Dear Members of the Board:

I am informed by your Vice-President, William Shuman, that you would like me to address the issues raised in the letter dated May 25, 2003 from “East Bay View Waterfront Residents.” I shall refer to the seventeen (17) lot owners along the Community Beach property as the 17 Lot Owners, since there is no indication which lot owners are included in “East Bay View Waterfront Residents” or whether the writer of said letter represents any or all of said property owners. Secondly, I do not believe that these lot owners own any waterfront property.

I believe that should this case go to litigation it will be shown in discovery that the documentation of each of these lot owners will reflect that they purchased only the lots as shown on the Plat of Section #1 of Hillsmere Estates. None of these lots as shown on said plat acquired have riparian rights and therefore are not waterfront property.

The letter suggests that the property has been adversely held for more than 20 years. Some lot owners have not lived there 20 years and their ability to tack prior possessions to their own is not clear. Secondly, when a property is sold at a tax sale the 20 year period is required to begin again. As the ownership of this property is acquired when a person buys a lot in the subdivision, each lot in Hillsmere Estates that has been sold at a tax sale required the adverse possession to begin anew.

The letter states “...it has always been assumed by HSIA and the lot owners that the property belonged to the lot owners.” This statement is clearly untrue. As a former President of HSIA, I and many of my successors have always known that these properties terminated before reaching the waterfront because of the property conveyed to HSIA by Hillsmere Estates, Inc. lies between the properties and the water. I recall my predecessors as President referring to these lots as having no riparian rights.

The letter of May 25, 2003 states “*The allegation that the deed that Hillsmere Estates provided to HSIA in 1965 for the beach at the end of Hillsmere Drive included a “community beach” on the strip of land between the current beach and the marina is false. There never has been a beach there.*” This statement is also clearly erroneous. The deed date July 9, 1965 clearly states:

1.. All the area shown as “Community Beach” together with the 20 foot path situated between Lots 17 and 18, Block A, as shown on a plat entitled “Section No. 1, Hillsmere Estates”, said plat being recorded among the Plat Records of Anne Arundel County in Plat Book No. 23, page 14.

I am enclosing a copy of the pertinent part of the described Plat as recorded among the Land Records. You will note that this is a single undivided lot running from the center of Hillsmere Drive to the water. The lot runs from that beginning line along East Bay View Drive to the dividing line with Lot 1, Block A, and then runs to the water. The same lot then continues along the shore line of the South River to and includes the sand spit, which you now refer to as the Marina. Both ends of this lot had and are used as a beach. The narrow center section did have a beach when the plat was drafted in 1952.

Article 26, Section 1-107 of the Anne Arundel County Code, which was previously known as Section 13-104 2(a) of the Anne Arundel County Code of 1967, and still controls the property in this subdivision, unconditionally forbids anyone to divide off parts of a single lot without first completing the County’s subdivision process. No subdivision of this lot has ever been submitted to Anne Arundel County. Clearly HSIA has made use of vast sections this lot within the last 20 years. I believe the Court of Appeals will have to ultimately decide whether sections of the lot can be acquired by adverse possession when other parts have not been held adversely and when the County Code says the lot must remain a single undivided lot unless and until the required subdivision process has been satisfied.

The reason why the County Code prohibits partitioning a lot in a subdivision is because the recognition that a portion of the lot can be taken without taking the entire lot would defeat the County’s control on property legally included within a subdivision. Adverse possession could be used to enlarge lots by taking property from parcels outside the approved subdivision. Furthermore, adverse possession could take a section of a lot and leave that lot too small to satisfy the County’s minimum lot size requirements. In this case adverse possession would have the effect of reducing the recreational parcel below the minimum’s set by the laws in effect on November 1, 1969, which control this subdivision.

Subdivisions are approved when each element satisfies the County’s planning and zoning requirements. To allow a single lot to be partitioned by deed or by adverse possession rather than by the subdivision process eliminates the County’s ability to control minimum lot size, minimum recreational area and other requirements. The County’s power to prevent this outcome by forbidding the partitioning of a single lot is a reasonable and enforceable means of preserving the County’s authority. The County has exercised that authority and the 17 lot owners can not defeat it by claiming adverse possession.

The letter of May 25, 2003 suggests that there is no limitation restricting the use of the subject property to a community beach. The deed of July 9, 1965 provides as follows:

1. That the land, piers and all other properties and rights hereby conveyed shall be used and maintained exclusively and solely as a beach, boat park and recreational

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area and for no other use, interest or purpose whatever, by the party of the second part for itself and all lot owners....

In addition to the restrictions contained in the deed of 1965, Section 13-109.2(d) of the Anne Arundel County Code of 1967 which is applicable to all land in the subdivision, clearly states: “*The entire recreation area is for the use of all future residents of the subdivision.*” These restrictions on the use of the property by a properly adopted County Code are perfectly legal, effective and binding. See City of Annapolis v. Waterman, 351 Md. 484, 745 A. 2d 1000 (2000), where Maryland’s highest Court, the Court of Appeals, declared that such conditions and restrictions on the future use of property imposed as part of a subdivision process are proper and enforceable.

The next contention contained in the letter suggests that the placement of a pier on the community beach was authorized or approved by a couple of individuals sitting on the Board. Whether this is a fact or not is irrelevant. Article 3, Section 12 of the By-laws of the Hillsmere Shores Improvement Association, Inc. specifically denies even the entire the Board of Directors the power to take any action to sell, lease or otherwise dispose of property belonging to the Association, without first acquiring the approval of the general membership of the Association. Secondly, as the deed of 1965 provides that the property was being conveyed, in part, for the use of all lot owners in the subdivision, Section 2-116 of the Real Property Article of the Annotated Code of Maryland declares that the deed of 1965 will be treated as if it was a direct conveyance to all property owners in Hillsmere.

An oral agreement to give away use of the Association’s property is unenforceable as a violation of the Statute of Frauds. Therefore, only an instrument in writing signed by all property owners in Hillsmere, including H.S.I.A., could allow someone to place a private pier on the community beach. The lot owner in question never received such a document.

The next issue addressed in the letter is one of costs. The letter says H.S.I.A. can not afford the cost of maintaining the bulkhead. I shall not address the issue that repairs may not be as outrageous as the letter suggests. It is sufficient to recognize that H.S.I.A. has no duty to maintain those bulkheads. It may legally allow them to deteriorate. Should it decide to do something, the Association could obtain permits to protect the area and bulkheads with rip-rap or other less expensive alternatives.

Referring to the discussion of litigation costs, no one can give you a fixed figure. The suggestion that the costs will be repeated seventeen times is ridiculous. If all suits were filed at the same time, the Court would almost certainly order them consolidated for the purpose of trial and appeal. If the first case is reviewed by the Court of Appeals on the issues contained in the brief I have delivered to your Vice-President, that decision would directly affect the subsequent sixteen suits.

The balance of the letter of May 25, 2003, talks about what the Board of Directors of H.S.I.A. plans to do on the community beach. You know better than I what plans you have. It is my professional opinion that any lot owner could object to any acts taken on the property that is inconsistent with using the property as a beach.

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Many beaches have sidewalks – both paved and natural. I express no opinion as to whether or not a Court will rule that a “Boardwalk” is a common facility on a “community beach.” I believe that issue will turn on a detailed description of the word “Boardwalk.” As to other potential activities on the property mentioned in the letter of May 25, 2003, I have grave doubts that the Board of Directors has legal authority to grant the County a lease or an easement to put dredging spoils on the property in dispute.

The point must be remembered that H.S.I.A. owns this property along with every other lot owner in Hillsmere and may not alone take any action inconsistent with the restrictions in the deed of 1965 or the rights of every single lot owner.

If you have any further questions, please feel free to contact this office. I am,

Very truly yours,

MICHAEL J. RAGLAND, SR.

MJR:mr