

# REPORT TO THE HSIA BOARD

## East Bay View Drive Waterfront Homeowners Letter

By Bill Shuman, HSIA Vice President

On 5/25/03 a letter was mailed to all the residents of Hillsmere Shores. The letter was from a group called "East Bay View Drive Waterfront Home Owners". The letter inferred that it was from all of the 17 lot owners but it was not signed by any of them. The HSIA board has a long standing policy of not considering or replying to anonymous letters. However, since this letter was sent to all Hillsmere residents, it is important to address the issues raised. I feel it is important to make sure the board knows exactly who is involved. HSIA has received letters from attorneys for the following lot owners demanding that we give them the community property between their house and the water or face a lawsuit:

Irma & Dale Morton	115 E. Bay View
Susan & Gregory Singleton	117 E. Bay View
Robert & Delores Harned	119 E. Bay View
Janet Adrian Revocable Trust (for Dr. & Mrs. Robert Adrian)	121 E. Bay View
Oliver & Victoria Birch	123 E. Bay View
Frigga Gibbs	127 E. Bay View
Edward & Leah Hertz	129 E. Bay View
William Koutroumpis	131 E. Bay View
Parviz Sahandy	133 E. Bay View

Note that the list includes Oliver Birch, who is currently a member of the HSIA Board of Directors. While only 9 out of the 17 lot owners are listed above, we have no way of knowing if any of them were party to the letter that was recently mailed to all Hillsmere residents.

The letter was in response to the article that appeared in the May Sea Breeze. It suggested that "inaccurate, misleading, and incomplete" statements were made in the article. It also said that I was just presenting my own views in order to "incite a certain emotional response from the community without really revealing the true nature of the facts". I want to report to the board that great care was taken to make sure only the facts were presented in the article. I have reviewed that article and can only find two items that could be considered "opinion". One is that Hillsmere residents might walk the beach strip because they could enjoy the sights, sounds, and smells of the Chesapeake Bay. The other was my contention that all the 17 lot owners knew (or should have known) that they were not buying waterfront property with riparian rights. Every other piece of information in the article came from the original deed, the survey, our attorney, HSIA board meeting minutes, or other authoritative sources. The facts about what the lot owners have done (i.e. building fences, swimming pools, etc.) came from the letters their attorney's sent to HSIA.

I would like to address the specific issues the letter raised so that HSIA board members can be prepared to answer question posed by Hillsmere residents.

1. **Original Deed:** The letter stated that some of their lots were at the water's edge and that the deed that Hillsmere Estates conveyed to HSIA never included a community beach between the current beach and the marina. The deed, dated 7/9/1965 between Hillsmere Estates and HSIA states that the property conveyed includes "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'. I have presented a copy of the original plat as well as the current survey for board members to examine. They clearly show that these statements are completely untrue.

2. **Existence of Beach:** The letter also contends that there never was a beach. Several people I spoke to do remember a beach along the entire length of the strip between the current beach and the marina. In the letter, dated 2/13/03, that HSIA received from Gregory Singleton (117 E. Bay View) claiming ownership of the community property by adverse possession, he states “In 1979, after hurricane David swept through the area, we put a bulkhead along the waterfront”. If you look at the recent survey, you will see that in almost every case the bulkheads coincide with the mean high water line and are only a few feet back from the calculated 1972 waterline. It is quite possible that the bulkheads built by the lot owners replaced the existing beach with lawn.
3. **HSIA Assumptions:** The idea that “It has always been assumed by HSIA.. that the land belonged to the lot owners” is completely false. I checked with several people, including two HSIA presidents dating back to the 1970’s, who disagree. They tell me that HSIA has always known that the land was community property.
4. **Letters from HSIA:** The letter states that “many of us have letters from HSIA which specifically state that the bulkheads that were built were placed on the lot owner’s land”. I suspect they are talking about HSIA permits. In the letter HSIA received on 4/11/03 from Oliver Birch’s attorney, he contended that since a permit for “Riprap Revetment” said that the construction was located on Lot #12, that was an official acknowledgement that the Birch’s owned the land. In fact, the county permits refer to the lot number the construction is associated with and HSIA simply copies that onto it’s permit.
5. **The Harned Pier:** Concerning the pier (with a boat lift) built by the Harned’s at 119 East Bay View, the letter says that “to get HSIA approval, two board members, including the president were asked for permission to build the pier. The board members stated that they saw no reason not to build it and the pier was constructed.” As you know, to get permission from HSIA you must apply for an HSIA permit. The Harneds did exactly that. The permit was denied by Bill Anderson because the pier would be on HSIA property. He still has the application. The day after he denied the permit, construction began. The contention that the HSIA president approved the pier construction is based on a brief cell phone conversation. Robert Emmet denies giving permission to build the pier. In any case, an HSIA officer or board member does not have the authority to give such permission. All variances (such as construction setbacks, etc.) are voted upon by the board at an official HSIA board meeting. Shortly after the pier was constructed, HSIA began investigating the issue. It took two years to get to this point but it was not ignored by HSIA. HSIA has no authority to issue a “stop work” order. Our only immediate recourse would have been some sort of legal action which was not considered at the time.
6. **Beach Walkway:** The letter attacks the article’s assertion that even though the land is designated as a “community beach” and can’t be used for anything else, it “should now be used as a walkway”. I specifically explained, in the article, that we could not “build a community center, basketball courts, or other improvements”. However, walking is certainly an accepted activity for a “community beach”. My article did not mention a physical walkway, although I think that would be appropriate (much like the narrow paved path in the current community beach). The statement, in the letter, that a walkway would be “a few feet from the back doors of many of us” is a gross misrepresentation. All home owners in Hillsmere enjoy ownership of a lot with specific enforced setbacks. The 17 lots are 150 feet in depth so most of the homes are quite a distance from the water. While it is true that a walkway could be next to their lot, they don’t enjoy any special privileges, unavailable to the other 1,200+ home owners in Hillsmere, concerning the use of adjacent property.

7. **Maintaining Bulkheads:** The assertion that HSIA would have to spend over a half a million dollars (\$30,000 x 17) to maintain the bulkheads on the beach strip is ridiculous. HSIA has no obligation to maintain the existing bulkheads other than to ensure the safety of someone walking on the community property. If a bulkhead was failing we could simply replace or increase the riprap in front of the bulkhead. In fact, most of the bulkheads already have riprap in place. Riprap is a viable, inexpensive method of preventing erosion.
8. **Legal Costs:** The letter also raised the issue of legal costs. It is correct that the \$25,000 figure in the article is for one case. However, only nine of the lot owners have threatened legal action and it is quite possible that they would combine their cases to save legal costs. In addition, one case might decide the issue or send it to the appeals court. In any case, it is unlikely that we will end up litigating 17 separate lawsuits. Even if we did, much of the costs would have been paid for by the first case (research, etc.) The board has to approve all legal costs. The lawyer does not get a blank check from HSIA. I feel that that the likely legal costs are something our community can manage for such an important issue.

Finally, the lot owners are imploring us to restore “peace and tranquility” by turning our back on their attempt to seize property that belongs to all of the residents of Hillsmere. The fact that their property values would greatly increase if they were successful was not mentioned in the letter. The letter asserts that “the playground, community beach, and swimming area have never been used to capacity”. I do not believe that that is an appropriate basis for taking community property. The letter attempts to portray the 17 lot owners as the victims of a vicious attack by HSIA designed to take away something that is rightfully theirs. In my opinion, the exact opposite is true.

Respectively submitted to the HSIA Board of Directors by,

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HSIA, Vice President