

## **Hillsmere Waterfront Homeowners Threaten Lawsuit to Seize HSIA Community Property**

by Bill Shuman, Vice President, HSIA

A controversy, that has been brewing for several years, is about to come to a head as a group of Hillsmere Shores waterfront homeowners have hired lawyers and are threatening to sue HSIA. The issue centers on a strip of waterfront set aside by the original developers as a community beach. HSIA recently had the property surveyed and asked the homeowners to remove all hedges and fences that had been erected, impeding access to this community property. Their response was a series of letters from lawyers challenging HSIA's claim of ownership and demanding that HSIA give them the land. In addition, most of the letters stated that anyone "trespassing" on this community property would be arrested.

### **HISTORY:**

The stage was set back in 1952 when Hillsmere Estates, the developer, set aside a strip of land as community beach. This strip connects the current beach area at the end of Hillsmere Drive with the sand spit where the marina is now located. The 17 lots (101 to 131 E. Bay View) only go back 150 feet from E. Bay View (with the exception of 133 E. Bay View which is irregular in shape). This strip of land was formally deeded to HSIA in 1965 "for the use and benefit of all Hillsmere lot owners". The deed also stipulated that the land could only be used as a community beach. From the very beginning some of the 17 lot owners erected fences and hedges to keep other residents from walking on this community property. HSIA did not take any action except to deny HSIA permits for building piers.

The current controversy began approximately two years ago when one of the lot owners requested a HSIA permit to build a pier. This request was denied by the HSIA board and the lot owner was informed that they could not have the permit because the pier would be on HSIA community property. The pier was soon built without HSIA approval.

The HSIA board began to investigate and last October approved a contract with C.D. Meekins (an Annapolis engineering firm) to survey the community property between the current beach and the marina (now referred to as the "beach strip"). The results were very informative. They plotted the property line of each of the 17 lots as well as the line between the HSIA community property and the "mean high water" (average high tide) line. Any beach exposed when the tide is lower than "mean high water" belongs to the state or federal government and anyone is allowed to walk on it. The survey showed that the HSIA community beach, which is about 1,750 feet long, ranged from approximately 8.4 feet wide at 131 E. Bay View to 75.7 feet wide at 117 E. Bay View. Unfortunately, the HSIA land behind 103 and 105 E. Bay View has completely washed away due to wave action so the community beach is not continuous at the present time. However, at less than high tide continuous access can be easily achieved. The home owners at 103 E. Bay View have placed "Private Property – No Trespassing" signs in the sand behind their house. Since the signs are on their property line, any beach exposed between the signs and the water is NOT private property and anyone can walk on it. The survey also plotted the 1972 water line based on aerial photographs. This line is very important since the state will allow property owners to restore eroded beaches to this line. If the 1972 water line is taken into consideration, then the HSIA community beach is continuous and about 8 feet wide behind 103 E. Bay View. It should be noted that other agencies besides the state must approve beach

restoration permits so it is not definite that HSIA could restore the beach, even if it chose to. However, this remains a possibility to “reconnect” the ends of the community beach.

At the January HSIA board meeting, a resolution was unanimously approved that directed the HSIA lawyer, Mike Ragland, to notify the 17 lot owners to “remove any fences, shrubbery, and other encumbrances” from HSIA property. Mike Ragland, an Annapolis attorney, is a long time resident of Hillsmere and has served as HSIA president.

On February 15<sup>th</sup>, a letter was received from one of the lot owners stating that the land between his lot and the water no longer belonged to HSIA but he now owned it by adverse possession. The beach strip is at it's widest at his lot so he would be seizing roughly 100 x 72 feet or 0.17 acres of HSIA community property. Not only did he build fences on HSIA community property, but also constructed an in-ground pool that is partly on HSIA property. On March 14<sup>th</sup>, HSIA received a letter from the lot owner's lawyer demanding that HSIA execute a deed giving the him ownership of the HSIA land at their house. If HSIA did not agree by March 28<sup>th</sup> they would file a lawsuit. The letter went on to say that if we didn't agree (and they filed suit) then they would demand HSIA pay their legal fees since “the facts and law in this case are so clear that any attempt to defend it would be in bad faith”. In other words, they contend that if HSIA did anything except give them the land without a fight then HSIA would be acting in a deceptive or frivolous manner and would be liable for damages.

On March 14<sup>th</sup> a letter was sent to 7 of the lot owners that had erected encumbrances on HSIA community property. The previously mentioned lot owner was not sent a letter because HSIA was dealing with his lawyer. Several other of the lot owners had minor encumbrances but were not sent letters at that time. The letters stated the facts, described the encumbrances, and set a May1, 2003 deadline to have them removed.

When HSIA received the first letter stating a lawsuit would be filed within two weeks, a board vote was taken via email to authorize Mike Ragland to respond to the threat and start to prepare a defense. A formal motion to spend up to \$5,000 defending our community property was approved at the April 24<sup>th</sup> board meeting.

HSIA has received letters from lawyers for 9 of the 17 lot owners. All indicate that they are seizing the community property between their house and the water by adverse possession. They all threaten to file suit against HSIA unless we give them the land. In addition, most of the letters stated that if anyone were to attempt to walk on “their” property they would be arrested for trespassing. One of the 9 lot owners is currently a member of the HSIA Board of Directors. Mike Ragland is scheduled to meet with all the lot owner's lawyers on April 29<sup>th</sup> to discuss the case. The current status of this issue is and will be reported at each HSIA Board Meeting and General Meeting.

#### **COMMUNITY USE OF THE BEACH STRIP:**

The land that the lot owners are trying to seize is designated as a “community beach” and cannot be used for anything else. We could not, for example, build a community center, put in basketball courts, or other improvements. The only possible use of this strip of land is to establish an area where all Hillsmere residents can walk along the beach, enjoying the sights, sounds, and smells of the Chesapeake Bay. Some people have said that HSIA intends to use the beach strip as a dumping area for spoils from the planned dredging of Duvall Creek and the channel. The board is NOT considering such an action. It is unlikely that HSIA would be

permitted to do so, even if it wanted to. The interest of the board is first and foremost to protect the ownership of community property on behalf of all the residents of Hillsmere.

#### **ADVERSE POSSESSION:**

The primary issue raised by the lot owners is adverse possession. Generally speaking, a person may claim adverse possession if they have occupied another's land in an open, notorious, hostile and continuous manner for 20 years without being challenged. Most of the lot owners have not even been in their homes for 20 years and are trying to include the previous owners time in their claim. There are many legal issues and court rulings that complicate the assertion of adverse possession. Another factor is that they are not trying to seize land belonging to their neighbor. Instead they are trying to seize land belonging to ALL of their neighbors (the residents of Hillsmere). The fact that the beach strip is community property and has clear legal restrictions on what it can be used for must also be considered. Mike Ragland feels that HSIA has a strong case to make in it's favor, should this go to trial.

#### **Q & A:**

##### **CAN HSIA WIN THIS CASE?**

Absolutely. Asserting adverse possession is not that simple. The fact that the land the lot owners are trying to seize is community property greatly complicates this case and greatly increases our chance of winning.

##### **HOW MUCH WILL IT COST?**

Mike Ragland estimates that the cost of defending this case up to, but not including, the appeals court level could cost as much as \$25,000. There is a good chance that it could cost much less but it could cost more.

##### **HOW WILL HSIA PAY FOR THE DEFENSE?**

HSIA has confirmed with the county that these legal expenses are a valid special tax expense. If HSIA spends \$25,000 to defend against this attempt to seize community property, it would cost each special tax payer less than \$25 (one time).

##### **IF HSIA LOSES, WILL WE HAVE TO PAY THE LEGAL COSTS OF THE LOT OWNERS TOO?**

Absolutely Not. The only way that could happen would be if HSIA had absolutely no basis for defending against the lawsuit but went to court anyway. HSIA has numerous valid issues that, if decided in the community's favor, would result in a win for the community.

##### **HOW CAN HSIA GET SPECIAL TAX MONEY NOW?**

HSIA cannot change the special tax budget until a year from next July (2005 tax year). However, HSIA has confirmed that it can borrow from our General Fund now, put the amount in the 2005 special tax budget, and pay back the General Fund when we get the special tax money. We have approximately \$50,000 in our general fund that is not earmarked for any expense so borrowing to pay our legal costs will not impact any ongoing community activities.

##### **"I HEARD THAT CAPE SAINT CLARE WENT BANKRUPT OVER LEGAL FEES". COULD THAT HAPPEN TO US?**

Absolutely Not! Cape Saint Clare is NOT a special tax district. The cost to each special tax payer would be less than \$25 (one time) based on the anticipated cost. If necessary, HSIA could spend much more than that and still have the per taxpayer cost be very, very low.

**WHAT IF HSIA DOES NOT DEFEND AGAINST THIS CLAIM?**

There are many "downsides" to not defending against this attempt to seize HSIA community property. First, HSIA would lose the ability to establish the beautiful walkway for community residents that was part of the original vision for Hillsmere. Second, HSIA would be sending a message to all the 17 lot owners (and every other lot owner in Hillsmere) that they can do what ever they want, simply threaten a lawsuit, and get away with it. Third, the HSIA board is obligated to protect the rights of all Hillsmere residents and could not, in good faith, fail to act, and finally, there is a very remote chance that the ownership of ALL Hillsmere community property could be in jeopardy.

**CONCLUSION:**

The situation our wonderful community finds itself in is quite unfortunate. This kind of strife is never a good thing. However, it is important for our community to come together to protect it's interests. All of the 17 lot owners along the beach strip knew (or should have known) that they were not buying water front property with riparian rights. HSIA is not trying to take something away that ever belonged to the 17 lot owners. The HSIA Board of Directors is simply acting to prevent a few lot owners from seizing community property.

It should be noted that although the HSIA board has approved this course of action, not all of the HSIA board members are in favor of this effort.

The HSIA board encourages all residents of Hillsmere to contact us with their concerns, opinions, and questions about this important community issue. You may contact Bill Shuman directly by phone at 410-269-6711 or by email at [bshuman@harborsoftware.com](mailto:bshuman@harborsoftware.com). You can also call the HSIA message line at 410-263-4456 (24 hours) or email [admin@hillsmershores.net](mailto:admin@hillsmershores.net). In addition, all of the HSIA board members are listed in the front of the Sea Breeze.

-Bill Shuman  
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