Ted Barnes Legal Opinion provided to Bill Noland; see footnotes at end of this letter.

April 15, 2010

Bill Noland, President
Silver Springs Master Association
4917 E. Meadow Drive
Park City, Utah 84098

Re: Silver Springs Master Homeowners Association

Dear Bill:

I have previously written letters to you explaining my opinions about the organization and membership of the Silver Springs Master Association (the "Association"), as well as the [1]**right and responsibility of the Association to make and collect assessments from its member associations**. Those opinions are based upon a detailed review of the documents relating to the Association and its purposes, including those maintained by the Association as well as those furnished by others. They are also based on thirty years of experience with homeowners associations (including "master" associations), both as an attorney and as a sometimes board member and officer. I thought it might be helpful for you and the members of the Association's board if I were to summarize those opinions.

Based upon my careful review of this information, and having also considered other information and suggestions being circulated by letter and email within the Silver Springs community, I am and remain of the opinion that [2] **the Association was properly organized and that the current board was properly constituted** and has full authority to act on Association matters, **including the selection of presiding officers** and the [1]**making of assessments to its constituent homeowners associations**. Certainly, **the organizational documents could be improved**, an endeavor you are already pursuing and in which you have requested my assistance, but I believe that the Association is legally formed, it owns and is properly charged with maintaining lands for the benefit of Silver Springs residents, and that the individual residents are properly represented in the Association by their participation in the separate homeowners associations that make up and govern the Association. (I have separately advised you of my opinion, [3]**based on the intent and actions confirmed by the totality of the documents**, as well as approximately 20 years of conduct, that all thirteen such associations are members of and are subject to assessment by the Association.)

Let me also suggest based on my experience that working within the Association to improve it and to operate and maintain your common assets will be the best and least expensive course of action for all. It would be, for example, extremely problematic to divide valuable assets that are presently held for the benefit of all residents and convey them to groups representing fewer than all. Similarly, the suggestion that new associations could be formed now to impose different divisions and responsibilities on residents throughout Silver Springs may be well intentioned but it is frankly naïve and

would prove, as a practical matter, impossible. And, to suggest that the Association, which has operated for years and holds legal title to your lakes and other common areas, has never existed and does not have legal standing to function is to invite ongoing disputes of [4]**tremendous complexity** and expense. (If the Association does not exist, for example, it could not [5]**convey title to lakes** to a new association, assuming the hypothetical new association could be formed and imposed on all its members, and the divestiture properly approved.)

The Silver Springs parks, lakes, tennis courts and open space are valuable amenities for your community. [6]**They are owned by the Association for the benefit of your entire community**. As noted, it is and remains my conclusion that the existing Association is the legal and logical entity to own and maintain them on an on-going basis for the benefit of all. My experience in Pinebrook and other areas suggests that this is not only possible but desirable. I encourage your residents and the separate homeowners associations to work with and support the Association as they address these important matters.

Very truly yours,
CLYDE SNOW & SESSIONS

Edwin C. Barnes

FOOTNOTES provided by Lucy Archer:
I have lived in Silver Springs for twenty-eight years. I know the Community organizations can be better managed and can better represent the wishes of the majority of the property owners without conflict and with smaller budgets…

1 "The right and responsibility to make and collect assessments from member associations" comes by staging a collective meeting and vote of 66 2/3% of the 504 individual Association Members, present either in person or by proxy, usually at the Annual Association Meeting, as outlined in the documents quoted below:

If we were going to say that the MA 1990 DEVELOPERS DRAFT Bylaws were valid then we could quote
" Article III. **Meeting of MEMBERS**, Section 5A. Quorum. Fifty-percent (50%) or more of the Members, either present in person or by proxy, shall constitute a quorum for any and all purposes, **except in special assessment circumstances**, in which the express provisions **require a sixty-six and two-thirds (66 2/3%) percent vote of the members present."**

This Article should not be confused to be instructions to the board trustees as members of the MA board because Article V provides instructions for the Meeting of TRUSTEES. This separation of Articles provides a division of Member types: - Association General Members - and Board Trustee Members.]

SSSFHOA 1982 CCRS. Section 4. Special Assessments for Capital Improvements. In addition to the regular assessments authorized above, the Association may levy, in any

assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, **provided that any such assessment shall have the assent of a two-thirds majority of the combined votes of both classes of membership entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose**.

SSSFHOA 1985 CCRS. Article V. Section 4. Special Assessments. In addition to the regular assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, or costs incurred for any other Association purpose, **provided that any such assessment shall have the assent of a majority of the Members** entitled to vote at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all Members not less than ten (10) calendar days or more than thirty (30) calendar days in advance of the meeting.

SSSFHOA 1994 Compiled CCRS. Article V. Section 4. Special Assessments for Capital Improvements.:

In addition to the regular assessments authorized above the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, or costs incurred for any other Association purpose, **provided that any such assessments shall have the assent of a majority of the membership entitled to vote at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all members not less than ten (10) calendar days not more than thirty (30) calendar days in advance of the meeting.**

1994 is a Compilation of SSSFHOA CCRS. Put together four years after the MA started. In March of 2008 the MA "manager" sent the above CCRs to the Webmaster as the MA CCRs.

[2] "**the Association was properly organized and that the current board was properly constituted**" – the properly organized statement is answered below with Footnote [3]. The second part of this remark takes for granted that each individual subdivision has always held its elections according to their individual Bylaws. That only one representative was on the board from each subdivision. That the board members were elected trustees on their subdivision boards. That MA board elections were always legitimate. That board members had not missed more than three concurrent board meetings (some have not attended for years). That the board members were residents of Silver Springs (this last one is a frequent remark by residents of the three subdivisions who have non-resident presidents who have infrequent elections.)

The following quote informs further that the current board is not properly constituted: "December 8, 2009 – MA Minutes – 'Noland Solicits for "Independent President": Bill Noland [an unelected member of any board] asked the MHOA Board to consider a change to the composition of the Board making the office of President an independent position.

Noland suggested it may be more effective to have a person who is not an elected member of any of the subdivision boards and who did not directly represent the Association Members by election. Les stated the Bylaws did not allow for this change. Noland argued that the MHOA Bylaws would have to be changed to reflect his request.'"

[3] " **based on the intent and actions confirmed by the totality of the documents"**

- The MHOA was formed 20 years ago for the benefit of the Developer and Summit County, not particularly for the majority of the 512 property owners. The intent was to complete requirements set forth by the County to the Developer in order to obtain building permits.

- The **1989 Developer-Homeowners Agreement** was signed, before the Master Association existed, by seven of the 13 subdivisions. The intent seemed to be to assign the debt service for amenities such as the Tennis Court parcel that was already constructed and owned by Willowbend East and Meadow Wild-Meadow Springs; and to assign responsibility for the new Park parcel and other undeveloped "common areas" to the Silver Springs Community property owners. The SSSFHOA board negotiated for the Park parcel. The Silver Springs Water Company lakes were not conveyed at this time. This is a recorded document.

- The **1990 Articles of Incorporation** were written for the benefit of the Developers, not by the subdivision presidents, the General Members did not vote or approve them. This is a recorded document.

- The Developer Draft of the **1990 Bylaws** has never been finalized by any board member action or involvement, no one signed them; General Members have not voted or approved any Bylaws. A former long entrenched MA board member and president has interrupted a number of MA and SSSFHOA meetings to loudly insist that the MA has no Bylaws and that the recording of the Draft has removed the MA board's deniability of actions and authority taken without rules.

- The MHOA does not have CCRs, usually these outline the authority and process by which the board can assess the property owners. The 1994 SSSFHOA Compiled CCRs includes language and provisions that seem to regulate the MA as it affects the Association Members.

- The **2004 Lakes Conveyance Agreement** was signed only by one MA president. Neither the presidents nor the General Members voted or approved this agreement. Read **Lakes History** which includes aerial view photo of the dams.

In light of the above, I find your claim unconvincing that the intent and actions (and inactions) confirmed the MA and the documents. Do you mean that by the meeting of a few members (frequently less than a quorum during many months and years), and by assessing property owners without proper authority, that because the property owners trusted and paid the "MA" neighborhood group, that makes for a "de facto" membership and completes the due process to establish the founding documents? If that is the case you are presenting then that further enhances the need for change.

[4] "tremendous complexity" – we agree that the "MA" situation is greatly convoluted. We think it is too messed up to try to fix every item. Therefore, we feel since it took only one signature to transfer the lakes from the County to the HOAs. It will take only one Annual Association Member Meeting in November to gather the informed vote of the Association Members to transfer the small lake to SouthShore and to create three categories of Members in the N.P. Corporation for tiered assessments. We feel it is time to clear the board and restructure how the Common Areas are maintained and financed. You and your firm will have until the end of October to draft a viable of amendment of the Articles of Incorporation.

[5] "convey title to lakes" – the small pond is pretty much privatized due to the platted and recorded "Enjoyment Easement" around the entire perimeter and the existence of 25 homes, along all but a small strip on the west end known as the "Ross Lloyd pocket park", each home having the "Private Enjoyment Easement Agreement" attached for their exclusive use. Conveying title to this 5.24 acre pond to the SouthShore subdivision is the right action to take. {For the record, we have asked for an accounting of the $80,000 CD that the MA board had in 2008 for the work on the Little Lake. The 2010 assessment is a duplication of the collection from property owners for this very work.]

The large lake should remain as "MA" titled common area as it is accessible by 443' (one-tenth of its perimeter) on the south side along the Park. There is also undeveloped access along the west end, contiguous with Parcel R the bermed area. The 29 lake view owners are undisputedly the most benefited by this "Common Area", especially when members of this group have been so instrumental in pursuing the 2004 lakes' conveyance from the County to the Homeowners, and also pursued the wrenching of the use of the perimeter "Enjoyment Easement" from the rest of the Association Members. For both of these reasons the large lake (20.84 acres) should be financed and maintained solely by this group of property owners. This is a long existing point of discontent in our neighborhood and should be appropriately remedied. Saying that

[6] "They are owned by the Association for the benefit of your entire community" is to ignore the true opinions and actual benefit received by the rest of the Silver Springs property owners who have had these several situations hoisted upon them without their vote, informed support, or comments, then expected to finance this privatized amenity. To say that properties were sold and bought using the lakes as a Community amenity is overstated when compared to the number of new property owners who did not know there was a little lake until the 2010 assessment was issued for its improvement.

So Ted your above opinion seems to be without actual basis in fact. It appears to be an attempt to mollify the Silver Springs Community property owners into thinking all is well and good. It is your position to represent the MA board and cover for them. I do not intend to be disrespectful but it also appears that placating the property owners is also beneficial to your ability to go forward with the $24,000 for legal work that Noland and the MA board have asked you and your

firm to proceed with, namely rewriting the MA documents in an effort to rectify the past, though without admitting too much that the past is untenable.

We see no reason at this point to draft Bylaws or CCRs. Another HOA attorney has advised us "Bylaws are not required under the Non-Profit Act. Without bylaws the Non-Profit Act becomes your Bylaws. If you are attempting to classify owners into one of three categories, you will need to make sure to amend your Articles of Incorporation to allow you to create 3 classes of owners, then spell out the rights and obligations of each class in your Bylaws. See Utah Code 16-6a-202."

The Silver Springs "MA" is not truly a HOA, it is a Property Management Non-Profit Corporation. Instead of denying this it would be more beneficial to amend the only legal document the "MA" has, the 1990 Articles of Incorporation. This document could easily be amended to respond to the much discussed tiered assessment system by including three categories of Membership, as noted above. That would allow for the 29 or 54 (depending on how it is set up) lake view members to gain the control and privatization they have been requesting for years. It would also allow for the Condo-Townhome owners and single-family homeowners to not have to pay for these privatized amenities. We have been told that as the "MA" attorney you represent not only the board but primarily the Association Members. The attendance of around 75 Association Members at the April 13th meeting is an indication that they want to restructure and improve what has been done during the last two decades. The Association Members do not want to continue to finance the privatized lakes, and do not want the MA to continue to expand its role beyond maintaining the Common Areas; this is to be done within a reasonable program and budget.

We hope this clarifies the position of the Association Members who dispute the MA.

Sincerely,

Lucy Archer