

## THE FUTURE OF SILVER SPRINGS [WILL BE LEGAL AND TRANSPARENT]

Excerpts in black are from Gunter's April 26, 2010 Letter mailed to all the SSSF Association Members  
Archer's comments are in green, [links are in blue.](#)

Happily, during the last several weeks "tea party" communications have been floating around the neighborhood bringing long overdue attention to the board and Association problems. The intent of these informative communications is to display the discontent of the General Members regarding the \$357 assessment issued without the Members votes, to inform the Association Members about the condition of the MA, to gain the attention of the MA board to make remedies, to provide options for improved and cost effective Common area management.

The 2010 MA's \$357 assessment for work on the Little Lake is what triggered the current outcry from Association Members. If Gunter was in touch with the opinions of the majority of his constituency he would know that the opposition regarding the MA has existed for **many** years. He would know that the Association Members have held opinions of resentment regarding the lakes since the Enjoyment Easement was wrested away from General Association Member use against their wishes in favor of the lake front owners.

It is our belief that property owners "trapped" in a homeowners association have the right to responsive and competent board members and formally organized community associations. Association Members have the right to honest, fair, and respectful treatment by community volunteer leaders and managers. We believe each Member has the right to question and appeal the community leaders those decisions affecting financial responsibilities and property rights. We believe we should expect respectful conduct and positive and constructive meetings.

It is our belief that property owners have equal rights to participate in governing and informing their neighbors, have the right to attend association meetings, serve on committees, and stand for election without being bullied, ostracized, or slandered. We believe it is the right of every Association Member to have full access to association books, records, and complete details of income and expenditures.

It is our belief that a true and good leader would not be trying to push his views but rather should be listening and working to correct matters brought forth by the Association Members. A proper board should be listening to Member concerns, instead of bullying and disputing them. See: <http://www.cairf.org/research/bpharmony.pdf> ]

Various "alerts" sent out to our neighbors suggest that members should withhold payment of their 2010 Master Association assessments. If the MA does not gain the majority vote of the General Association members for Capital Improvements assessments then the assessment is NOT legitimate and the Members cannot be forced to follow rules the board does not follow. The 1990 Draft MA Bylaws were approved by the MA board on April 20, 2009.

**MA Bylaws state the following:** 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 [either in person or by proxy]."

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 between board trustees/ officers and General members provides a description of Member types: - Association General "Members" - and Board Trustee "Members". The 504 General Association Members are required to vote on capital improvement assessments. The MA board has never held or requested such a vote. The 2010 Capital Improvements totaling \$135,000 have never been approved by the General MA Association Members and are therefore, unauthorized and non-collectable until 66 2/3% of

the General Association Members votes to approve it.

Also see the same provision in the SSSFHOA 1994 CCRS. Article V. Section 4. Special Assessments for Capital Improvements. This provision is also in the SSSFHOA 1982 and 1985 CC&Rs. See other individual subdivisions' docs.

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It is documented in the MA Minutes that budget matters are decided without the approval of a majority of the 504 association members. How many times have the 504 Association Members been asked to vote on an annual MA budget or any expenditures or important matters such as whether the Association Members wanted to approve the transfer of the ponds/lakes from the County? ZERO times! The “budget process is secretive” in that the General Association Members are rarely informed or included in their development or implementation. At two recent meetings the MA officers have commented “residents can expect continually increasing assessments for community assets...” particularly the lakes.

Since the [2004 Lakes Conveyance Agreement](#) the MA Budget has continually increased for expenditures on the privatized lakes. In six years over \$180,000 has been spent on the large lake. See scanty details of the [MA Budgets](#). The [SSSFHOA board members](#) (since 2006 Domenick, Winer, Archer) have requested an accounting of each line item and have not received this information. There has not been an MA audit for twenty years. There is an \$80,000 CD mentioned in May 2008 that the MA has not accounted for. This CD was for the work on the Little Lake which the Association Members are now being asked to pay for a second time though the work was NOT done the first time it was paid for. The \$135,000 for Little Lake work accounts for \$182 of the 2010 per unit assessment.

The General Association Members do not have to live with the situation as it currently exists. The General Members were not notified of this Agreement and did not vote for its ratification. The Members can vote to change the way the MA is structured [[Utah Code 16-6a-202.](#)] so that those who pursued and benefit from the lakes transfer also are responsible for their maintenance and cost.

Current MA board members are trying to deal with contemporary issues, inherited from previous board decisions and policies. Each HOA has one vote regardless of the number of members in that particular HOA. Budget and other matters are decided by a majority vote of the HOA representatives that sit on the MA board, however capital improvements assessments require the direct voted approval of 66 2/3% of the Association Members. It is the responsibility of the respective HOAs to collect dues from each member of their subdivision if the Members approve the assessment.

Gunter doesn't think “That decisions should be approved by a majority of the 504 community members under the MA umbrella as it is impractical and unworkable , for instance, as the Park City School Board determining its budget should be decided by a majority of the individual constituents from whom the school board derives tax revenue.”

The school board is a public organization with thousands of constituents, the MA is divided into ten to twelve individual subdivisions, some which have only 9, or 14, or 22, etc. members. It should not be so difficult to obtain majority approval votes from them at annual meetings or via email.

*“If the MA board met without making budget decisions I don't think it would be an issue, but because they can impose fees in a separate unelected capacity, that is a problem. The three Summit County school boards do not send one member to meet with a representative board member from each Summit County school district school board and then decide to raise taxes for the entire county, in addition to budgeting for their respective school districts. That scenario, to*

*me, would be more of what the Silver Springs MA looks like now, untenable.” - School Board Representative*

Gunter should note that all Park City School Board budget discussions and decisions are made during a public process in open meetings and governed by those who were directly elected by voters. His comparison breaks down because there is no public witness to, or participation in, budget decisions by MA or HOA Association Members; no publishing of tentative budgets for HOA Member feedback; and there is no statutory measurement of compliance. Gunter is trying to validate MA activity by comparing it to an entity that is completely unlike what he is trying to portray the MA as being. ]

Gunter writes “There are absolutely no instances in the Master Association Articles of Incorporation that require a majority of the general membership to ratify any decision, except through their respective HOA representative.” Read HOA documents below. Is Gunter misinformed? Is he admitting the MA is regulated only by the Articles and is not required to comply with the 1990 Bylaws that the current board approved on April 20, 2009? Or is this an admission that the MA does not have formalized valid Bylaws? We have been questioning whether the 1990 difficulty of getting the 8 individual HOAs consensus resulted in the fact that approval of the MA Bylaws never occurred, **therefore a vesting of the authority of each HOA trustee to bind its HOA to the MA was never completed.**

If we say that the **MA 1990 DEVELOPERS DRAFT Bylaws are valid** then we could quote “MA Bylaws 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 IV. PROPERTY RIGHTS IN THE COMMON AREAS**  
Section 1. Members Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the common area, if any, and such easement shall be appurtenant to and shall pass with the title to every Assessed lot, subject to the following provisions: (a) The right of the Association to establish uniform rules and regulations pertaining to the use of the common area including but not limited to private streets and recreational facilities thereof.

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.**

Since the 2008 commencement of prodding of MA roles and rules the Board has shown marked improvement. We, of course, are grateful to the board members who represent their subdivisions and also perform their duties on the MA board. Serving on both boards does not give them license to ignore founding documents or to be inattentive to protocol. For example: It is believed some of the board members do not live in Silver Springs; several of them have had absences ranging from two to three+ years at a stretch, etc. Right now one subdivision has two representatives. Sometimes guest attendees are allowed to make motions or second them. See Minutes for meetings when a quorum is not present but business was transacted anyway. ]

There is one paid position for the MA, a manager who is responsible [to perform the duties of MA officers who cannot be counted on to do their jobs] for budgets, book keeping, meeting minutes, organizing and scheduling maintenance, repairs, and general upkeep of the communities' parks , street lights, tennis courts, lakes, etc. [These "responsibilities" increase the manager's salary substantially each month as she assigns this work to her own maintenance company. There has never been another bid for this work. Problems with her MA financial records necessitate the MA spend this year between \$1,000 to \$5,000 to obtain copies of bank records for a yet to be completed audit. There have been Association volunteers to do the record keeping but the MA board prefers to pay for this work.]

The MA board has disregarded rules established in the February, 1990, Articles of Incorporation [Read [1990 Articles of Incorporation](#). Article II provides for the dissolution of the MA. Article IV states the Member subdivisions are bound by the authority of the Association (the Members), its Bylaws (never completed), and duly enacted rules and regulations currently in draft form. Gunter wrote **"I will not deny that the organizational documents of the Silver Springs Master Association are lacking in certain specifics.** The MA was legally organized under State of Utah code as a **non-profit organization** in 1990, charged to maintain the common property of the Silver Springs community. "

It is undeniable that the MA has no finalized [1990 Draft Bylaws](#) , and never created CCRs by which to hold authority. An HOA attorney told us that "without bylaws the Nonprofit Act becomes the MA "bylaws". When the MA board attorney completes the new Articles of Incorporation they should classify Silver Springs property owners into three categories (-Condos, -General, -Lake view), then spell out the rights, obligations, amount of assessments, number of votes, etc, of each category and size of member subdivision. See Utah Code 16-6a-202." Re-writing the Articles to show three categories of members will eliminate the tiered assessment conflict with the individual subdivisions bylaws and CCRs .

THIS BOX CONTAINS THE COMMUNITY PROPOSAL FOR RESTRUCTURING ASSESSMENTS IN SILVE SPRINGS:

There have been many comments on the ways to appropriately change the levels of assessments within the "MA", we are sure you have heard a number of them. A number of Community members are convinced that the "MA" is documented to be only a Non-Profit Corporation, as the "MA" has neither formalized completed Bylaws, nor CCRs. It is not a true Master Association. The MA holds authority through its Articles of Incorporation only for the Silver Springs Common Areas (incidentally this authority for the Common Areas was first given to the [SSSFHOA in 1979, 1982, 1985](#) and has not changed in those CCRs to date).

An attorney from a firm that specializes in HOA cases told us the following: "Bylaws are not required under the [2008] Nonprofit Act. Without bylaws the Nonprofit Act becomes your bylaws. [meaning that amended Articles of Incorporation are all that are needed to run the "MA"] If you are attempting to classify owners into one of three categories, amend your Articles of Incorporation to allow you to create 3 classes of owners, then spell out the rights and obligations of each class... See Utah Code 16-6a-202." Amending only the Articles will save a great deal of the \$24,000 allocated this year for Legal Fees to work on legalizing the current "MA" by other means.

As you are the Committee Chair to investigate tiered assessments we want to present to you our proposal to present at the May 11th "MA" board meeting, as follows:

Proposal for the MA to be correctly recognized as the Non-Profit Corporation for property management entity to be comprised of three parts --Condos-Townhomes, General Members, Lake view Owners

#### **CONDOS-TOWNHOMES:**

- The condo subdivisions will benefit greatly from restructuring the MA into three property management parts.
- In 2010 the Condo-Townhomes are being assessed \$357 per unit by the MA for the Little Lake repairs that the General Members do not/ cannot use.

- Willowbend West Condos were the original owner of one court, Meadow Wild and Meadow Spring own the other court, both sharing one parcel of land. [See plat, photos, etc. by clicking here.](#) The tennis courts were refurbished in 2007-2008. The work is guaranteed for another 20+ years.

- The seven condo-townhome subdivisions boards can cooperate to maintain the Tennis Court parcel bringing great savings to their Members.

\$357 per unit times 126 Condos equals \$44,982 collected in one year.

That total would go a long way to maintain the Tennis court parcel for many years. The common area (tennis court) assessment could be decreased to as little as

\$48 per unit times 126 Condos equals \$6000 per year

We have added all the MA expenditures for the Tennis Court parcel (including work on the Meadow Wild/Meadow Springs court).

The total is around \$120,000 (includes the total refurbishing in 2007-2008) during twenty years (1990-2010).

Divide \$120,000 by twenty years equals \$6,000 per year.

Divide \$6,000 by 126 Condos equals \$47.62 per Condo per year. Add \$10 per unit per year for a future repair fund.

#### **GENERAL MEMBERS:**

SSSFHOA has a long history of involvement with the Park and its maintenance. (authority for the Common Areas was first given to the [SSSFHOA in 1979, 1982, 1985](#) and has not changed in those CCRs to date)

The 2.01 acre Park would be maintained by this board and its Members at a greatly reduced cost than what is currently being spent.

\$75 per Member for the Park times 189 SSSF Members equals \$14,175 per year to maintain the Park.

Again, a great savings to the Members.

Streamline the current MA organization and everybody wins.

There is concern that the MA has not implemented a bid system for the mowing/landscape work for the Common Areas. A couple of landscape companies have been contacted for bids. The bids range from \$600 to \$1,000 per month depending on how much extra landscape work is contracted for. The current company is paid \$1,100 per month and everything beyond mowing seems to be extra. Some months tripling or more the cost. It seems more responsible to obtain bids for this work at least every three years.

**LAKE VIEW OWNERS:**

-- This would provide a remedy for the unfairness felt by a majority of the 450 non-lake view owners paying for privatized water amenities that benefit only 54 lake view owners. [See email sent to all the "MA" board with [questions regarding the ownership and use of both lakes' Enjoyment Easement](#) -- at bottom of that link page.]

- This is an effort to mend a longstanding grievance in our community evidenced by the "one time only" 2005 use of tiered lake repair assessments,
- to implement a tiered assessment without conflicting with individual subdivision Bylaws and CC&Rs, and
- to allow the lake view owners more control of the lake maintenance and use without forcing the General Membership to finance these privatized amenity projects without obtaining the necessary 66 2/3% vote from them.
- to discourage "scare tactics" frequently used to sensationalize the Division of Water Rights assessment of the dams and gates on the Silver Springs two ponds/lakes. See link to [SS Dams webpage and Dam Safety letter](#) by David Marble the Asst. State Engineer for Dam Safety.

At the April 13, 2010 MA board meeting some of the lake view owners presented a proposal to the MA board to allow them to purchase the land from their back lot lines to the waters edge. This supports the statement that the lake view owners do want more control and more privatization of the lake and its perimeter.

The lake view owners would continue to do the same work on behalf of the lakes that they do now. The MA has paid for the long-term repair expenses, guaranteed good for several more decades. The lake view owners would be responsible for the \$8,000 a year for water quality chemicals, divided by 54 owners = \$150 each per year, plus any other projects they want or need to do. Use the \$80,000 the MA collected in a CD up to May 2008 to do the dam and gates work for the little pond/lake.

Gunter continues "**The current board is attempting to remedy some of the deficiencies that have been neglected during the past 20 years** and the current [unelected] MA board president, Bill Noland, has spent countless hours collecting and digesting historic documents to determine what was done in the past and what is required to establish ongoing governing policy that is clear and in compliance with current Utah laws." [We appreciate Noland's concern and efforts and the support the board is giving to him. Most of the information he is collecting and digesting has been available on the <http://www.silverspringscommunity.com/> website for a number of years but the MA board would not accept it. See [Website History](#). The MA board acted against disclosure of much of this information by removing the MA president who brought it to light. Since 2009 the MA has some new members who no longer seek to cover up the deficiencies of the boards' past. ] A significant percentage of the Master Association's legal expenditures during 2009 (\$4,000) and 2010 (\$24,000) have been used [will be used] to achieve those goals. Much of this money could be saved if the MA would simplify by using only the Articles of Incorporation as provided by the recent State of Utah amended laws.

Regardless of **these deficiencies**, the Master Association has for the past 20 years managed to maintain the public facilities of this community for the benefit of all members. [Then why can't the General Association Members use the full perimeter "Common Area" of both lakes? Why is the tennis court problem still unresolved? Why is the east section of the Park being slowly and openly encroached? Why hasn't a bridge been built to Willow Creek on the west side?]

"If you do what you've always done, you'll get what you've always gotten." Anthony Robbins. The Master Homeowners Association attempted to address some of the governance issues Tuesday, April 13, at St Lukes Church when its counsel, Ted Barnes, presented his legal opinion on the Master Association status. [The MA monthly meeting averages 10-12 attendees, this night over 75 General Association Members attended to show their interest and dissent of the MA's dealings and the \$357 assessment.] I hope those who attended had their concerns addressed. [The MA board paid Barnes for his opinion of his client's position. There was a request made for the opinion of the attorney(s) who represent the opposing opinion. We want to hear the opinion of attorneys for the subdivisions who are seeking to resign from the MA. Why isn't Barnes opinion in the Minutes of that meeting? Why isn't more than a mollifying statement posted on the website? ]

All the facts, original documents, budgets, Minutes, photos, recorded plats, histories, etc. are available at [www.silverspringscommunity.com](http://www.silverspringscommunity.com), the original MA website since 2000. Gunter "recommends that community members who believe that their neighborhood could be better managed should become involved in their respective HOA to help formulate and manage community priorities and policies. [If you do attend these meetings do not be deterred if the board president greets you, like I was greeted on April 12<sup>th</sup>, he verbally accosted me when I entered this meeting and made threats to throw me out if I tried to contribute to the meeting. Suzanne Beck and Clay Archer witnessed this attack. It was also recorded. During the meeting Gunter further threatened me, witnessed by the 27 other people in attendance.] After the meeting one attendee thanked me for taking the hits and getting the bloody nose on behalf of the Community neighbors. Information on board meeting times and locations are available on the web site.

Bill Gunter, President, Silver Springs Single Family HOA Board of Trustees, and usurper of the 2008 HOA Election.

[Gunter sent this letter using the HOA mail list, the paid bookkeeper's services, and HOA funds for copies and postage.]

# Community Leaders Have the Responsibility To:

- Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
- Exercise sound business judgment and follow established management practices.
- Balance the needs and obligations of the community as a whole with those of individual homeowners and residents.
- Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
- Establish committees or use other methods to obtain input from owners and non-owner residents.
- Conduct open, fair and well-publicized elections.
- Welcome and educate new members of the community—owners and non-owner residents alike.
- Encourage input from residents on issues affecting them personally and the community as a whole.
- Encourage events that foster neighborliness and a sense of community.
- Conduct business in a transparent manner.
- Allow homeowners access to community records, when requested.
- Collect all monies due from owners and non-owner residents.
- Devise appropriate and reasonable arrangements, when needed and as feasible, to facilitate the ability of individual homeowners to meet their financial obligations to the community.
- Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association's governing documents.
- Initiate lien proceedings only as a measure of last resort.
- Make covenants, conditions and restrictions as understandable as possible, adding clarifying "lay" language or supplementary materials when drafting or revising the documents.
- Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees.
- Develop a Community association's code of ethics.

*The more Members know the more they will care,  
The more they care the more they will participate,  
The more they participate the more our Community will reflect the lifestyle expected by the Members.*