

## The Silver Springs Single Family HOA

### October 14, 2014 Annual Meeting and Election

The meeting was called to order at St. Luke's Church, Park City, Utah at 7:14 PM.

In attendance from the Board were Rick Hovey, Rose Carriel, Mari Dougherty, Steve Fassett, Paul Stangeland and Julia Loughlin (not elected, Nominated by Hovey last month). Also present were Bill Noland, Silver Springs member overseeing the underdrain system (with conflict of interest), Kate Khaleel representing PMA, and Robert Rosing, board or HOA? attorney from Morris & Sperry.

Homeowners in Attendance: Rebecca Page, Michele Devaney, Karen Schoephoerster, Carol Librizzi, Clay and Lucy Archer, Randy Cassidy, Chris Legris, Peggy Jorquera, Harry Fuller & Janet Goldstein, Carina Bachman, Jolee Pointer, Tim Dougherty, Kyle Yelderman, Lisa Hovey, two others.

Julia Loughlin is Chair of the Nominating Committee. Her non-Board member assistants are Lyn Cier and Randy Cassidy.

There were a total of 44, present (21) and proxies (23). Attendees were not allowed to submit their ballots or the proxies they brought with them. Hovey stated there was not a quorum (requires 94 lots to be represented) therefore the election and official business could not be conducted.

A Reconvened Meeting will be scheduled for Monday, November 3<sup>rd</sup> 2014. Any number of attendees will be able to conduct business during that meeting.

It was decided to have an informal informational meeting and discussion of the underdrain system. Homeowners are beginning to gather in neighbor homes to discuss the manner in which this system has been funded and worked on without homeowner approval votes.

Steve Fassett, Chair of the ARC, reported there is currently one application for review that is also requesting a variance.

Rick Hovey, SSSFHOA representative to the Masters Association, reported that the work was completed to line the stream bed behind Silver Silver Springs phase 1C with heavy plastic and river rocks. A nice young willow tree was removed during this process. This was an effort to supply more water into the big lake. The budgeted amount was \$15,000 for work on a parcel that is not owned or in the control of the MA.

Also: The state dam inspections were passed.

<http://www.silverspringscommunity.com/lakes-in-silver-springs/silver-springs-dams/>

Bubblers will be placed in the lakes to deactivate the phosphorus.

The 1989 Draft Bylaws update work continues by attorney Ted Barnes. There have been two street light repairs.

The Master Association has approximately \$234,000 cash on hand, a windfall from the over-zealous **forced** 2010 assessment for repairs on the Little Lake issued by Bill Noland to the 500+ MA homeowners without their requisite 66 2/3% vote. Noland was not elected; he was installed to serve as MA president. A reduction of \$25 per home is being discussed for 2015. A proposal was offered to build a larger, second pavilion on the west end of the park with a small portion of this MA stash.

The Creek Easement west and contiguous to SSSF Lot 17 does not belong to the SF or to the MA. Title work shows it is a “blackhole” without any ownership. Lucy Archer contacted both HOAs and Hovey, neither has taken responsibility for this small parcel for three decades. Archer then told Rick Hovey that she intends to develop the small parcel as a Memorial park for long-time resident and former HOA trustee Dick Mitchell.

With homeowner donations, some landscaping will be added and one or two stone benches with a sign displaying the name “James Richard “Dick” Mitchell Memorial Park”  
<http://www.silverspringscommunity.com/our-community/silver-springs-sf/ssf-creek-easement-parcel/dick-mitchell-park/>

Paul Stangeland, Treasurer of SSSFHOA, reported there is approximately \$54,000 cash on hand. There is \$2,226 in outstanding accounts receivable. The projected year-end net loss will be \$7,002. The presented 2015 budget has not been finalized. Rick Hovey said he made a mistake including the increase to \$350 in the board letter to the homeowners, but it has not been decided at this point so to disregard it until next spring when it could double depending on how much work is approved on the underdrains and how many revisions will be required on the CCRs re-write.

The Homeowners Meetings group recommended that the dues be frozen for at least the next two years, that to save money the board use only one attorney instead of two, and that any work the board does on their own recognizance, without homeowner approval, on the underdrains be funded with a Special Assessment that will require a 66 2/3% vote from the homeowners.

PMA has been working with the new fine structure and rules enforcement. The overall result is not measurable as the majority of the long-term offenses continue to be unenforced. PMA tours the subdivision once during the month and also relies on Board and *owner observations*. [Wasn't the board rationalization for a property management company to avoid neighbor against neighbor encounters?]

There is an RFP out for the re-write of the HOA documents. Three firms have submitted proposals and the Board will meet to select the finalist. Rick Hovey

stated that the letters were not apples to apples and need to be re-done. Updates will be posted on <http://www.silverspringscommunity.com/our-community/silver-springs-sf/admin-rules-re-write/>

The SSSF documents need to be updated to the current regulations. As a corporation, the SFHOA needs to be removed as the DBA of the 1979 developer's HOA for Silver Springs East. Dissolution should be a quick process since the shareholders/homeowners were never a part of the 1979 SSHOA, never held office, never voted, never paid dues, and importantly, in 2014 were not entitled to vote to become a DBA last January so will not be required to vote for dissolution.

Corporation's are subject to the Utah Non-Profit Corporations Act as well as the Utah Community Association Act (Title 57-Chapter 8a). The "common areas" issue needs to be resolved with the Master Association. There are 9 different iterations of the current documents with varying names and some contradict each other because the board insists on using the developers Silver Springs East 1979 documents to support their actions. The re-write needs to be completed without reference to the recitals and declarations prior to when our SFHOA was established on October 1985. Additions to bring the documents into compliance will include new state regulations.

Rick Hovey, read a statement regarding the underdrain system. He stated that though he was not thrilled about having to take on the underdrain system, the facts have been laid out. He did not include that the "facts" and legal opinions can be interpreted to deal with it or ignore it. Legal opinion from four separate attorneys is inconclusive. All these letters are at :

<http://www.silverspringscommunity.com/utilities/water/underdrain-system/>

The Summit County attorney has provided the only conclusive statement, "the underdrains are a private matter between the homeowners and their homeowners association." So far the association board has been making all the decisions ignoring the authority of the votes from the homeowners.

The advice of engineering professionals has been sought regarding the physical aspects of underdrains and the Board is relying on one proposal to move forward with the "discovery phase" from Alliance Engineering. The cost **this** year will not exceed \$3,000 unless authorized by the Board. The Alliance Engineering proposal is for \$91,000. We do not know what next spring will bring.

An email that was disseminated by one member prompted Rick to inform attorney, Ted Barnes, of the content of the email. Ted Barnes's response highlights of his letter are that exhaustive research has already been done, and he thanked the one member for all of her work and documentation of the issue. Barnes wrote there is no reason for further research. View this research at <http://www.silverspringscommunity.com/utilities/water/underdrain-system/>

**Barnes coined the phrase regarding the underdrains, "your association can choose to ignore it or fix it." The Homeowners have chosen to ignore the underdrains; Noland, Stangeland and Hovey have chosen to fix them. The Homeowners feel the board has taken on this project only by learning of the physical aspects of underdrains without studying the affects on the Homeowners, so the Homeowners have requested the following: Link at <http://www.silverspringscommunity.com/wp-content/uploads/Compiled-A-Few-Facts-to-Consider-Before-Voting-.docx>**

Synopsis:

- A--That a damage assessment for all types of repairs be calculated.
- B--That the financial costs for maintenance be pre-determined.
- C--That the ramifications and risks of taking on a 35 year old system with a life of 30 years be assessed and reported.
- D--That the liability issues being thrust upon the homeowners be examined.
- E--That the issue of whether the Master Association is responsible for the underdrains is settled.
- F--That a study of how many homeowners will benefit (6) versus how many will be adversely affected by increased costs and intrusive work on private property, and to include how many homeowners have already, since 1985, remedied their private water issues.
- G--That they assess the benefits of the lateral, 10' underground system to the three types of water found in SSSF, that is 1) surface run-off, 2) subsurface ground water, and 3) vertical artesian activity.
- H--That an investigation on other options for remedies to water issues be sought.
- I—Does a reserve study require the vote of the Homeowners?

With all of the above questions being unanswered and not studied by the board it is premature for the board to work on a system that could end up being more than the homeowners want to accept and take on.

Look for information on the link

<http://www.silverspringscommunity.com/utilities/water/underdrain-system/>

Noland explained the aspects of the discovery phase that will involve the mapping of the known and unknown 26 manhole locations in SSSF Phase 1A and 1B only. Some are located in the streets under layers of asphalt, others are on private property. The system was put in place in 1979 as a requirement of the developer by the County. The County also required that the developer record a Special Notice (Entry 157606) stating that the area had fluctuating underground water and that the lot owners and builders were responsible for building proper foundations and drains. Basements were at owner's own risk.

In 1979 the developer had to post a \$150,000 bond for three years, this bond was later released in 1982, on the advice of another engineering firm who inspected the underdrain system when the project was complete. Through a 1982 agreement between Summit County, one SSE builder developer, and the

Silver Springs East developers HOA, the responsibility for the underdrain system was assigned to the Silver Springs Homeowners Association aka the Silver Springs East Development Subdivisions Association. Also in 1982 there were amendments added to the Silver Springs East CC&R's to assign maintenance responsibility for the underdrain system to the developer's HOA.

As the houses were built the memory of the system was lost. When the Silver Springs Single Family HOA was organized in 1985 the underdrains were not included in our subdivision but were reserved as common areas. All common areas were later transferred to the Master Association when it was formed in 1989. During 2004 to 2009, heavy snow years, there were issues with run-off water in crawl spaces, water surfacing on lawns and in the street.

Responsible homeowners installed French drains and sump pumps to remedy the flow, it is not possible to know how much was due to 10' under ground 6" circumference perforated pipes. The owners who felt the HOA should be responsible to take care of their private properties became HOA board trustees and committee members.

\They used their positions to award HOA resources to personal concerns investigation and to perform roto hydro-cleaning of some lines to clear blockages and to access private property. The board members sought legal advice to offset the furtive manner being implemented to circumvent the will and policy established by the vote of the homeowners. These board members received varying opinions from the four attorneys they consulted regarding who was responsible for the underdrains. There has been little analysis into the risk, liability and responsibility for the system. The HOA selected the one engineering firm that presented a proposal, without competitive bids, Alliance Engineering was selected to conduct the work. The initial step, locating the manholes, in the discovery phase will be completed before the end of October.

Rick Hovey then asked Lucy Archer to present some of the research he asked her to collect beginning on August 7, 2014, to ascertain who is responsible for the underdrain system. Documented work can be found at: <http://www.silverspringscommunity.com/utilities/water/underdrain-system/>

Lucy Archer told the board that homeowner's title commitments issued at the closing of the sale of their home might have the July 6, 1979 "Special Notice" attached to it that informed the buyer wherein S.S.D. Inc., gives notice of fluctuating subsurface water which may affect the design and construction of buildings, owners are responsible to mitigate water on their private property. Basements are at owner's own risk.

Secondly, Buyers of Silver Springs SFHOA properties entered into a Utah Real Estate Purchase Contract (REPC) when they were buying their homes. Section 6. Title and Title Insurance. "Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance provided by Seller and as reviewed and approved by Buyer. The Provisions of this Section shall survive Closing.

Section 8. Buyer's Conditions of Purchase. Subsection 8.1. Buyer's Due Diligence shall consist of Buyer's review and approval of the contents of the Seller Disclosures and any other tests, evaluations, verifications of the Property deemed necessary or appropriate by Buyer such as: the physical

condition of the Property; the existence of any hazardous substances, environmental issues or geologic conditions....and any other matters deemed material to Buyer in making a decision to purchase the Property....Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are or are not acceptable. At this point Buyer has the right to cancel the Purchase Contract or complete the Purchase.

Lucy added that a matter with so many consequences and long-term liability and cost should be presented to the homeowners, who after being fully informed of all aspects and points of view should vote, for the THIRD time, whether or not they wanted to accept the underdrains under the auspices of their association. Robert Rosing remarked that the homeowners didn't want to be voting on every little thing, that was the job of the Board to make these decisions and that members voted on items such as changes to the CC&R's and, in some cases, the budget. Lucy asked if Rosing and Hovey considered the underdrains such a little thing then why were they going to such expense and blather to push their will onto the Homeowners.

Lucy then outlined the history of our 1979 parent tract, Silver Springs East that began the 857.5 acre community now known as the Silver Springs Master Association. See at:

<http://www.silverspringscommunity.com/master-association/silver-springs-east-1979-1989/>

Lucy outlined how each of the thirteen Silver Springs East subdivisions now fully built out were all descendants of the exact same 1979 Bylaws and CCRs. Most of the names include the name "Silver Springs" in their recording.

Gunter, Hovey and PMA's action on January 27, 2014 to register the SSSFHOA as a DBA of the Developer's non-functioning SSHOA appears as a means to support former board trustees and underdrain committee members in seemingly self-serving activities and to continue the use of Association resources for personal gain.

Lucy explained that the 1982 agreement could not assign responsibility to the SSSFHOA since it was not in existence until 1985. The Silver Springs East Developers Subdivisions HOA, aka the Silver Springs Homeowners Association, is the association that accepted responsibility for the underdrains. That Association morphed into the SS Master Association in 1989. Ted Barnes has written that "at this juncture it really doesn't matter who signed what documents decades ago, what matters is what the homeowners and their association agree to do with the underdrains."

Lucy stated that opinion corresponds with Dave Thomas, the Deputy Attorney for Summit County statement when he wrote on September 11, 2014 that "this is not a County matter but rather a private matter between the homeowners and the homeowners association." Thomas did not state that Hovey and a couple other people had the authority to encumber all the 188 homeowners with a project that benefited a few to the detriment of the many.

Harry Fuller, former Board President, expressed his disappointment that a certain member has been sending out erroneous information and attributing comments to him directly that were never made. At the Annual Meeting on

November 13, 2013, Fuller shouted down a seconded motion that required Noland and the board to provide proof of their claims that the underdrains were our Association's responsibility. Fuller was recorded shouting, "I don't want this body, and no homeowners voting on the underdrains." Tonight Fuller requested an apology for being quoted from the author of the report. The apology should be issued from Fuller for his lack of transparency on the underdrain issue when he was in office, and for his part in undermining the wishes voted by the homeowners.

Carol Librizzi asked if there were underdrains elsewhere in Silver Springs. It was pointed out there is one short line in Northshore that has not been confirmed to connect to the SSSF Phase 1A and 1B system. This will be investigated.

Matt Lindon, an engineer who worked with Jack Johnson & Associates in the very early days of Silver Springs East, stated the system was installed because the whole area was wetlands, the area around the large lake (has over a dozen artesian springs/wells), Willow Creek and Northshore were the wettest. In order to add the infrastructure, the land needed to be dried out. Some materials were written stating that has been accomplished for the most part. Many houses do have a sump pump(s). The water levels depend on the annual snow pack melt. It appears that the water he encounters on his property depends on whether the source is vertical artesian eruption, or on the amount of water that flows through Willow Creek and not the lakes area. The old stream channels are random so this also affects where ground water surfaces.

Randy Cassidy asked if the increased construction in the vicinity would lessen the water flow. It was discussed that with newer construction there is no infiltration into the sewer pipes, some water continues to flow through the storm drains. Snow making at Canyons Resort, new ponds, the new golf course water cannons, upper elevation subdivisions all have diminished the amount of runoff and groundwater now found in the Silver Springs Community.

The question was asked about how many lots actually have underdrain related issues and Bill Noland answered that it is random year to year. When the question was posed again, quietly he was heard to say "5". Since some of the potentially affected areas are County infrastructure, such as roads or sewer lines, Derek Radke of the County Planning Department said all infrastructure experiences obsolescence and periodic repairs are expected and scheduled. If the county is making a repair or performing maintenance in the same easement where the underdrain pipe in need of repair there may be an opportunity to cost share the repair with the county.

Kyle Yelderman recommended that the HOA go forward with the work as no one else is going to take care of the system. Kyle did not preclude making the decision a majority vote of all the homeowners. It might be a large expense to continue to ignore the system and it could go the other way and be a large expense to incorporate it under the auspices of our Association.

Michele Devaney asked some questions regarding the preliminary budget for 2015. She asked whether the board had produced a risk analysis to compare the cost of ignoring the system versus doing something about the system. Or has the board assembled a cost analysis of any kind. No the board has not.

Randy Cassidy feels there could be a conflict of interest as Ted Barnes is the attorney for the Masters Association who many feel is the association ultimately responsible for the underdrains, the underdrain system that Barnes has dubbed "common areas". The MA was organized to deal with all Silver Springs common areas. There have been many other opinions and yet many years later not a single Board has taken on the system. Actually in 1994 the board performed in depth research, put the underdrains issue before the vote of the Homeowners, who then voted for the second time Not to include the system in our Association documents and not to take the defunct system under the auspices of our Association.

Robert Rosing stated this is where the rubber hits the road – why should you care? If you choose to ignore the underdrain system and several basements explode and are flooded [if that ever occurred it would likely be a vertical artesian well activity that would not be remedied with this lateral system] they could possibly litigate against the HOA for negligence. [How will the litigation be able to prove the source of the water?] The homeowners' responsibility trumps the Association's. The cost to install French drains and sump pumps will be much less than taking your neighborhood association to task. Rosing is pumping scare tactics.

The developer's Silver Springs Homeowners Association was created in 1979 and this is the name that appears on the agreement with the County. The HOA has the DBA of Silver Springs Single Family HOA, but this was only created by Gunter, Hovey and PMA on January 27, 2014. Rosing said, "You can always choose not to spend the money. If litigation occurred," which it hasn't for 35 years, the special notice attached to the title may be brought up, the buyer's due diligence may be brought up, the vote of the homeowners also and the confusion of documents, but it is unlikely that it would matter and the HOA may face spending many thousands to defend against the litigation. [Or not.] Rosing said he would love that, "we lawyers love litigation, we make a lot more money that way." Hovey is on record as saying that if the HOA has to dig up just one driveway and homeowner landscaping the cost could be well over a million dollars.

The meeting was adjourned at 9:10 PM.