



- Silver Springs Single Family HOA

## REPLACEMENT MEETING & ELECTION

### REPORT & MINUTES

Monday, November 3, 2014

St. Luke's Episcopal Church at 7 p.m.

This Replacement meeting was called to order by President Rick Hovey. A quorum at a Replacement Meeting shall be any number of Members in person or by proxy who shall conduct the Association business. [Bylaws Entry 244976 Article III Section 5 Quorum]. A few as five have done so.

Board Members present: Rick Hovey, Mari Dougherty-VP, Paul Stangeland-Treasurer, Steve Fassett-Arch Com (last meeting as a board member).

Board Members absent: Rose Carriel

Also representing the Board: Robert Rosing, attorney with Morris & Sperry; Kate Khaleel, of PMA; Julia Loughlin, first meeting attended (placed on board by Hovey without Owner vote), Nominating Committee Chair; Robyn Bailey, Master Association manager (critical conflicts of interest, placed on board by Hovey, not elected by Owners);

Homeowners in Attendance: Clay and Lucy Archer, Chris & Carina Bachman, Randy Cassidy, Marilyn Cier?, Mike Collett, Brian Connolly, Harry & Janet Fuller, Grant & Kathy Hedges, Bradley Hornsby, Lisa Hovey, Peggy Jorquera, Bill Kahn & Becky Brady, Harold Kaufmann, Bill Klusman, Chris Legris, Matthew Lindon & Tracet Douthett, David Nilsson, Bill Noland, Rebecca Page, Paul Reddy, Michael & Deanna Pratt, Jerry Romero, Karen Schoepfoerster, Randy Spagnoletti, Fred Spencer & Karen Brooks, Frank & Linda Thomas, Frank Weinrauch, Hunt Williams, [70 total attendance]

Julia Loughlin, Chair of the Nominating Committee called for nominations from the floor. A nomination that had been voiced prior to the ballots being distributed was repeated at this time for Chris Bachman and now accepted. Robyn Bailey, Tracey Douthett, and Jerry Romero presented their biographies. Randy Cassidy read the biography provided by Lisa Kirchenheiter. Lisa's bio had been emailed a number of times by the neighborhood group to the Owners. A motion was made and adopted to close the call for nominations. The call for ballots was made from the attendees and collected. The Election Committee of Julia Loughlin, Randy Cassidy, and Marilyn Cier retired to count the ballots and to add them to the several dozen Proxies. A protest was made to remove Cier from the count until the allegations that she participated in election indiscretions during the 2008, 2010, 2013 elections were cleared. The Board took no action.

During the last two months it was brought to Hovey's attention that candidates biographies and the November through the following October Association Budget should be provided to the Owners before the Annual October meeting. These notifications should have been included in the envelope the board sent to the Owners for the October meeting notice. This has been the expected process prior to 2008. **All budgets are to be approved by the majority vote of the Owners during the annual meeting and prior to implementation.** The last few boards have been derelict in this fiduciary duty. Blaming the Master Association Budget timing is an issue that has been worked out annually. The MA holds over \$225,000.00 in windfall fees from the illegal 2010 special assessment that was not voted on by the Owners as prescribed in the charter documents. A refund to the MA 500+ Owners has been discussed but not implemented. A decrease in the portion of the SSSF contribution to the MA will eliminate Hovey's proposed \$100 increase in March 2015. As it stands now the SSSF annual fees of \$275 provide \$175 to the MA, \$100 to the SSSF Association. That ratio can be reversed to eliminate a 2015 dues increase. Do the

Owners know what their budget pays for? Very little benefit, unless you live on one of the lakes.

#### COMMITTEE REPORTS:

[Master Association](#): MA Manager, Robyn Bailey reported the MA subdivision membership is again 12 subdivisions since the MA/Bill Noland's \$64,000+ lawsuit to force the Quail Meadows Townhomes (9 owners) to become MA members has been closed by the court.

-Bailey did not address whether the MA's attorney Ted Barnes has completed the MA Bylaws or whether the MA is continuing to work under the [1990 Draft Bylaws](#) provided by developers Mike Barnes and Rick Widdows. (Should it be considered a Conflict of Interest for Ted Barnes to represent the MA and the SSSF simultaneously? Particularly in the matter of which HOA is responsible for the underdrains???)

-The MA holds over \$225,000 in their account (there is also a \$35,000 Reserve Account required by the State). The windfall amount is in part from the illegal assessment dictated by Noland when he served as an appointed, not elected, volunteer president of the MA in 2010. The MA expenditures are predominantly for the maintenance of the two ponds/lakes that are accessible only by approximately 48 of the 500+ MA property owners. The MA has as yet not corrected the error of pond/lake assessments for lake view Owners vs little view or access Owners.

-The MA received homeowner request to use some of this windfall to build another, larger, pavilion on the SW end of the Park, or to build a clubhouse/meeting structure that would benefit more than 48 homeowners. The MA Board did not investigate nor support these ideas.

-The MA made more [pond/lake dam](#) repairs during the summer. The [Creek Easement](#) between Silver Springs Drive and Silver Springs Road has been dry for quite a while. Though this easement does not belong to the

MA nor the SSSFHOA, an expenditure of around \$17,000 was approved by the MA Board to bulldoze the dry creek bed, remove a beneficial tree without consent of the two homeowners who enjoyed its presence, to move around large landscape boulders, to line the dry bed with a heavy rubber liner, then cover the liner with several tons of river rock. This creek bed remains dry because the little lake weir prevents flow into it. Storm drains are now its source of water. Damage was done to the lawn and irrigation lines of the dominant homeowner who has maintained this creek parcel. Photos are on the Community website.

- Bailey listed work by her company at the Park. There are protests by homeowners that Greenleaf Yard Maintenance has taken a heavy hand in removing trees and duck nesting areas along the 444 feet of common area lake beach and severe trimming of trees and shrubs in the Park. Photos are on the Community website. Bailey replied that her employees keep the willow and aspen trees trimmed up to a height that prevents the branches from touching her employee mowers and discourages children from the enjoyment of climbing the large trees.

- From the audience there was a question of whether Greenleaf had a legal contract with the MA that included liability issues, whether it was a current contract, and whether the MA Board was taking bids from competing contractors for the work performed at interims of annually or every other year. After 30 years (1985-2015), the board is looking into it.

- There was a question of whether Bailey, as the manager of the MA, as the bookkeeper of the MA, as the owner of Greenleaf Yard Maintenance hired by the MA, and performing as a business partner of [PMA](#) the property management company for the Silver Springs Single Family Homeowners Association presents a series of [Conflict of Interest](#) scenarios. Bailey is now also on today's election ballot for a trustee position on the SSSFHOA board. The checks and balances necessary to avoid collusion and receiving of personal gain from official duties seem to have been neglected by both boards who owe all the Owners their fiduciary duty.

SSSFHOA BUDGET: Paul Stangeland, figurehead Treasurer now that [PMA](#) performs all the invoicing, payables and receivables for this HOA, presented an outline of the last twelve month's expenditures. The preliminary budget for 2015 on which Homeowners were to vote as an approval for the next 12 months (mostly 2015) was not available and not approved by the 70+ present homeowners. This being a replacement meeting the present voters were sufficient to carry or deny the budget.

-The SSSFHOA Budget includes the MA assessments. The MA has a full treasury and has no intention of increasing their \$175 fee. What they should be considering is refunding the 2010 illegitimate assessment.

- Attorney Fees Out of Control -The current year (Nov 2013- Oct 2014 expenditures were published as \$11,660.15) legal fees are over budget (\$5,000) due to Gunter and Rick Hovey's perpetual use of two different attorneys to advise them, not as they would have you believe on the documents rewrite but on how rectify board furtive spending during the last few years on the underdrains and how to continue with the Alliance Engineering contract on the underdrains in a manner that would "legally" circumvent the vote of the Owners; and on how to implement a personal agenda, an agenda that so far has proved to be contrary to the votes and wishes of the Owners and the fiduciary duty of the Board.

---The attorneys used during this budget period are Ted Barnes @ \$350 per hour, and Robert Rosing @ an estimated \$185 per hour. In 2014 Rosing attended the Board meetings so he could continually advise Gunter and Hovey, in my opinion, on matters that would have been transparent if the SSSF Bylaws and CCRs had been followed. It takes more time and preparation to squirm through policy when there is a hidden agenda. Also, on a regular basis, billable opinion letters regarding the underdrains were provided by Barnes to be read to the Board and mailed to the Owners.

Matters that the Board President needed attorney advice for are:

--- Advice on everything from whether to allow homeowners attendance at

“open” board meetings to ask questions, contribute information or participate in the meetings;

---How to determine if Owner input was disruptive to the president’s agenda, and how to discourage Owner participation. (Ostracize them.)

---How to get away with justifying the expenditure of Association funds on the underdrains, a project that has been rejected three times by the Owners, and that if identified as common areas are a MA responsibility.

---On how to answer Owner concerns and questions without answering the questions with truthful Owner relevant and SSSFHOA protective replies;

---On how to explain why Hovey and Gunter quietly (secretly) on January 27, 2014, [recorded our HOA as a DBA of the developer’s 1979-1986 HOA](#) (answer is an example of legal jargon that excludes Owner rights, neglects a large quantity of information, and gives Noland his false “prime directive”) without truly answering the question;

---On how to slip the \$91,000 Alliance Engineering contract, pressed by Noland, past the Homeowners by circumventing the required special assessment 66% majority vote from the Owners. Hovey said he made a mistake when he wrote that the dues would be increased by \$100 (then on the spot without the board), he off-handed told the October 13, 2014 meeting attendees to forget the increase. Hovey is expected to again increase the annual Owner “dues” in Spring 2015 and spread out the contract over time to circumvent the Owner vote on funding the underdrain work.

--- On to how to handle (ignore) Owners and their contributions. How to ignore protests and the vote by Owners, ignoring the neighborhood written [Compiled Facts to Consider](#) to the Board before more money is spent. These Considerations were collected by the Owners regarding the methods expected to be used by the Board to handle the Pandora’s box of the [36-](#)

[year abandoned underdrain system](#) that was **voted down in 1985, 1993, 2014 by the homeowners**, that is **three times!**

--- [And to ignore the letter by first SSSFHOA Board President Dale Boschetto \(1985-1989\) regarding the underdrain issue.](#)

---On how to ignore the litany of information (included on [the Community website](#)), four attorney firms hired by our last few HOA boards wrote letters of opinion that were inconclusive, incomplete, vacillated, and were drafted to support the wishes and actions of their clients, the furtive HOA Board (not the Owners, though the Owners paid for the attorneys). As an Owner I tried to obtain information from these attorneys and I was literally chased out of one office by the attorney and told point blank by others that **their duty was ONLY to the Board not the Owners!** The proof is that these attorneys support the position of the board while they ignore the wishes of the Owners, and ignore this very important Summit County declaration:

[Letter from Summit County Deputy Attorney Dave Thomas](#) to Lucy Archer and Rick Hovey: “In discussing this with Derrick Radke [Public Planning Director], **the ownership and maintenance of the underdrains is a private matter between the land owners within the various subdivisions [\[of Silver Springs East\]](#) and the owner’s [\[Master\] association](#).** What the County can definitively state is that such underdrains are not public improvements owned or maintained by Summit County.” [\[Sept. 4 to 11, 2014\]](#)

**-RE-WRITE OF CHARTER DOCUMENTS** -The Board is to form a committee to [re-write the SSSFHOA Articles, Bylaws, and CCRS in 2015](#). Hovey told Lucy Archer in September 2014 he was selecting her to head this re-write committee, “...after all, who has spent more time [collecting all our documents, archiving and pouring over them](#), and documenting the areas that need clarification and updating?”

After being unable to change Archer’s position to uphold the SSSFHOA charter documents and the voted wishes of the Owners, Archer feels that

Hovey thence forward ostracized Archer from further input and participation in Association issues and affairs in order to remove opposition to his agenda.

Archer has an offer from a SSSF resident attorney who will work with the homeowner committee to rewrite our documents without cost to Association members.

-It appears Hovey decided to ask for RFP bids to [re-write the SSSF documents](#) in an effort to include the underdrains in the SSSFHOA documents therefore bypassing Owner votes and the Summit County statement.

Bid from [Robert Rosing of Morris-Sperry](#) – base fee \$7000, five pages of additional fees. This RFP expired on September 2, 2014. Their predominant service is as Debt Collectors.

Bid from [Sam Bell of Bell Law](#) –base fee \$3,500, has provided pro bono advice to SSSFHOA Owners since 2008. One page document.

Bid from [Michael B. Miller of Vial Fotheringham](#) - \$1,400 for review and Owner ballot. On two pages details other fees for work performed by associates and paralegals at lower rates. Their predominant services are to HOAs. View their website at: [www.vf-law.com](http://www.vf-law.com) provides many helpful articles, classes, and assistance.

Without fanfare or Homeowner participation, Hovey selected Robert Rosing and the Board, as trained to do, bobbed their heads in unison. Rosing explained that our current documents are in bad shape. That is with amendments recently interpreted to support the interests of certain individuals rather than the entire Association membership. Rosing said it has been difficult for him to advise the Board on how to enforce the latest accepted revision (and Hovey's underdrain agenda). Since around 2009 the last boards have been misconstruing the intent of our Association documents, the underdrains are NOT in any versions or amendments,

Hovey seeks to include statements made between 1979-1982 by the developer's SSEast HOA. Throw in the mess created when Gunter and Hovey recorded the developers HOA as DBA our Silver Springs Single Family HOA, and ignore the [history of Silver Springs East](#) and the organization of our SSSF HOA on October 14, 1985.

**Is it really our documents that are a mess; or are the individuals that have been elected to uphold them that are creating interpretation issues and who want to manipulate the content?**

It is stated that there has to be a vote of 66 2/3% of the homeowners to adopt the re-written documents. The way our recent boards have been operating the last several years, can we rely on a legitimate or verifiable vote count? Check the Minutes for election controversies in 2008, 2010, 2013 – to name some examples.

CCR Compliance Report: In Rose Carriel's absence, Kate Khaleel from PMA read that there were 72 violations that have received letters notifying the owner of an issue on their private property. Of these, 58 issues have been resolved. There are 14 issues that remain open. There have been 7 fines issued. A lien was placed on one home where unemployment hardship was being experienced. This Owner had not paid two annual dues then another was billed for the current year. On September 29, 2014 Morris-Sperry sent this Owner a very gripping letter. The \$250. Plus \$250. Plus \$275 at 18% interest and legal fees were now \$1,201.02. By the time the Homeowner was aware that Morris-Sperry, PMA, and the Board had placed a lien on her home, the total of which was due by December 15, 2014, had become \$1,316.15. SSSF Owners contributions paid and removed this lien on Dec. 12, 2014.

-The major problem this summer was with boat and RV Parking. The vacant Parcels J or R could be developed with a portion of the MA windfall funds for short or long-term storage of these items. These parcel could also be offered for purchase to the adjoining homeowners.

UNDERDRAINS REPORT: This topic has recently become an undisguised agenda item, the board turned over an hour of this Annual meeting to Bill Noland, the retired engineer with crawlspace water issues, a serious conflict of interest, to describe how underdrains work. This is patent gull to continue to push an agenda item that the 70 Homeowners in attendance have repeatedly voted to not be included in our charter documents, to not be funded with Association money, and to not have the board make it an issue, an obligation, a responsibility, a liability to the Owners for its function or existence. Less than a handful of Owners may benefit.

Rick Hovey has made a number of statements and has written letters to the Homeowners stating that the several attorneys who have made opinions on the underdrains (Lincoln Hobbs, Craig Smith, Dave Thomas, Scott Welling, Ted Barnes, and Ted Barnes) all concur that they are the responsibility of the Association. Nothing could be further from the truth. Decide for yourself. All these letters are on the Homeowner's website at : [Underdrain System/ attorney letters](#).

Without a vote by the Homeowners to proceed, the Board gave Alliance Engineering the authorization to complete the first phase of mapping the system. The lack of snow this winter will not provide a good sense of flow this spring for the second phase. The third phase will be the critical and damaging phase that will include digging up lines in yards, under driveways, in the street, under your sprinkler lines and tree roots, if considered blocked. That is when the underdrains work will become very expensive. Whether the blockage is in your yard or your neighbor's yard your property could be damaged and altered.

Noland presented a video of the inside of the drainage system. The underdrain pipes are black, corrugated, perforated, and approx. 6" in diameter. The video I saw were of light tan, smooth sided, 8-10" in diameter pipes, these were the County maintained storm drain infrastructure pipes. Can you believe what is being shown?

While Noland was rambling Rick Hovey stood up to walk over to talk to Julia Loughlin. It occurred to me that this was a good time for me to ensure that Loughlin had counted the number of ballot votes for our Homeowner agenda item "Ignore the Underdrains". I approached Hovey and asked if this agenda vote had been counted. Hovey explained his point of view. I explained that the Homeowners had been meeting in neighbor homes to discuss the underdrains and the board's position on non-disclosure of many topics critical to making the board's position to accept the Alliance Engineering proposal for \$91,000. I told Hovey that I felt it was dishonest to piecemeal the expenditures in order to sneak them into the budget though the board knew the Homeowners had not voted on proceeding with this contract.

At this point Robert Rosing approached us to request Hovey and I move to the vestibule to continue our discussion. Rosing joined us. Rosing began by saying that HOA President Dale Boschetto's (1985-1989) letter stating that our SFHOA was never a part of the developer's 1979-1986 HOA. That our residents never attended their meetings, never voted, never served on their board, never paid dues to it, in no way were we part of it, therefore the developer's organizing documents do not apply to the SSSFHOA. Rosing then said that the documents go with the lots. I responded that if that is the case then the developer's documents were written for the 857 acre tract named Silver Springs East and for all 12+1 subdivisions that comprised Silver Springs East. The developer's documents language was closer to the function of the Silver Springs Master Association not to the Silver Springs Single Family Association. Advice received by Ted Barnes was tainted because Barnes is the Master Association's attorney and is reportedly re-writing their documents. If you look at the original recorded plats and documents of the Silver Springs Subdivisions you will see that nearly every one included in its name or description the name "Silver Springs." We went round and round. Hovey said he was mad because he had not been invited to any of the neighborhood meetings, since he had

not been invited by his neighbors he was not going to cooperate with the document produced at the meetings or with the vote count tonight.

I was visibly shaking and close to physical shock. Hovey asked me if I was OK. "No, I'm not OK. How can I be OK when you are telling me that you are going against the wishes of the Homeowners, the source of your election and authority, and that you are ignoring all this information and the County Attorney's declaration based on the say so of a few misguided men who think they are being noble because they helped four or five members to access Association money to install sump pumps, clear pipes of roots, and make other miscellaneous adjustments to their private property. Why didn't you address the "Facts" document compiled by the Homeowner groups? Do you consider yourself above the will of the neighborhood? Where is your fiduciary duty? Where is that "democratic board" you keep espousing but never sustaining?" Anyway, we returned to the auditorium, Noland was still spewing his water movement slides, showing the wrong pipes (the screen showed tan colored, smooth, large pipes probably the storm drains. The underdrains are black, perforated, corrugated 6" diameter pipes), and acting like he was pulling the wool over everyone's eyes and enjoying every minute of it.

Rosing took some time to state that the fiduciary responsibility of the Board includes making business decisions with the guidance of professionals (in this case professionals are advising the Board to tear into private property with bulldozers). He did not mention that the County Attorney had told Hovey that "In discussing this with Derrick Radke [Public Planning Director], the ownership and maintenance of the underdrains is a private matter between the land owners within the various subdivisions [\[of Silver Springs East\]](#) and the owner's [\[Master\] association](#). What the County can definitively state is that such underdrains are not public improvements owned or maintained by Summit County."

Summit County does NOT hold a mandate for SSSFHOA to **own or maintain** the underdrains. The 1979 [Developer's Silver Springs East](#) SSSHOA documents recorded prior to 1985 do not apply to the SSSFHOA.

Rosing said if the Board did not follow advice of outside professionals, specifically regarding the 36 year old defunct underdrain system, they could be found negligent. On the other hand, if the Board does not allow the Homeowner's to vote as required on assessments such as the \$91,000 Alliance bid, and ignores the thrice vote of the Homeowners to "Ignore the underdrains" they will be found negligent of fiduciary duty.

Matt Lindon, one of the three known homeowners with crawlspace water issues, most probably artesian vertical water that will not be remediated by a horizontal, lateral underdrain system, gave some interesting highlights of water issues in the Basin and in Silver Springs East Master Association. Matt said there are homes with their own "underdrain system" by personally taking care to install sump pumps. Water issues have been non-existent to these homeowners for over five years, "My sump pump has only started up once, early on after we moved in five years ago."

Julia Loughlin announced the board election results:

Homeowner supported candidate Lisa Kirchenheiter – 37 votes  
Matt Lindon's wife, Tracey Douthett – 27 votes.

Both will serve on the Board. Though both received more votes than everyone on the current Board elected in 2013.  
Bachman, Bailey, Romero were not elected.

Lucy Archer asked if Hovey was going to allow the announcement of the number of votes by the Homeowners to "Ignore the Underdrains."

Without hesitation and without asking for a vote by the Board of whether to announce the number of votes, Hovey said he would not allow the Homeowner votes against the underdrain to be announced.

Archer then made a motion to have the number of votes to "Ignore the Underdrains" be announced. Chris Bachman seconded the motion. There was a chorus of "Hear, hear" with homeowners in attendance.

The only thing heard from Rosing was "Now we have a seconded motion."

Ignoring the will of the Homeowners Hovey then asked for a motion to adjourn the meeting at 9:00 pm.

There was literally one single clap, and a roomful of dark, angry faces.

Someone said to Hovey, "Congratulations, you managed to piss off everyone in the room."

Note: A straw vote was counted after the meeting and determined that more than  $\frac{3}{4}$  of the attendees had participated in neighbor meetings, or stated on the phone, email, or in person that they would be voting to "Ignore the Underdrains."