

MINUTES OF TRUSTEES MEETING

Oct. 18, 1988

Scott Welling, attorney representing Silver Springs, introduces himself.

Scott continues by informing the Trustees of the discussions he has had with Dale Boschetto regarding the common areas and American Savings' position with regards thereto, and the proposed sale of what he calls common areas, for lack of concrete definition of what the common areas are. In his review of documents and CC&Rs and what he has been able to determine is a Master Plan for the subdivision; there are no designated common areas. Scott stressed he feels the whole situation entails the definition of the common areas?

Lynn Stevens asked if the Association could review a map of the original PUD proposal. Scott asked if it is a proposal. Lynn indicated it is what the County agreed to. Scott asked Lynn if it is recorded. Lynn responded that this particular one isn't, but they have indicated they have one that is but haven't been able to find it. Lynn refers to map and an area which is classified as open section and all of Silver Springs. When it was finally approved for financing, it was approved under a PUD.

Scott refers to a map along with a legend that was sent by Jerry Smith from the Summit County Planning Dept. Jerry indicated to Scott that the Master Plan as far as he knew for Silver Springs, in reading the minutes of meetings of the Planning Commission of the last couple of months, is in question as to whether or not the true or recorded plat map Master Plan was this or something else.

Lynn indicated all the maps currently found, including the most recent maps and those on the windows of the water company, revert back to the map being shown. The only other map that anyone has been able to find, including himself, that is different in plan, was the one being shown and it points out even stronger what the original intent was on the lake. Lynn showed the area where people received the idea of a walkway around the lake because in the original plan there was such a walkway, near Bill Ligety's home. Bill Ligety added there are no houses there. Further, Lynn indicated it has common area around the lake and a walkway on the lake and that was when Ray Frye came in. Common areas remained all the way around the lake, but no walkway.

Lynn pointed out on the map the small lake, the large lake and two other smaller ponds planned but have been scratched. He indicated over by Willowbend West it is completely different with swimming pool and tennis courts - which were planned and carried right on through. The intent was somewhat like this and Lynn has nothing to the contrary.

Scott asked Lynn to clarify the common areas around the lake, which was indicated in white on the map. Lynn responded that the common area is the white area, the small strip of land around the lake, and the area all the way around the lake. The dark brown area is the walkway. Lynn pointed out the peninsula and water company area and compared them to another map which doesn't show them because they did not know it at the time.

Scott asked Lynn if there is a distinction between the waterway and the easement from either side, and what he might consider Homeowner Association common area. Lynn responded yes, there is a distinction. It was originally designed to have 15 feet on each common area and because they needed more creek bed it became an easement. It's not really an easement - the people don't own any of the area. He explained it is water company property to be used for the common purpose of the people in general of Silver Springs. That was the original intent as per letters from Kathy Lawson.

Scott asked as it stands right now, is access permitted along the waterway to the homeowners? Lynn responded yes. Bill Ligety asked if there is anything in writing that we've seen? Lynn responded only from Lee Poplovsky.

A Trustee asked what areas American Savings is proposing to purchase and their relation to the common areas. Scott responded American Savings, as he understands them, wants to sell the area along the affected adjacent lot owners. They want to sell area H to the Homeowners Association for a nominal consideration. Dale Boschetto indicated that in 1986 they offered to give the Association everything that is color shaded (referring to the map) except for green.

A question was asked if it can be discerned from the map whether it was intended as common area. Lynn responded he can discern and if one would look closely all of the lots end way before they reach the lake. Its original intent was for sewer lines, water lines, and some power lines, etc. Lynn continued to describe the map and its history, etc.

Scott reiterated that the common areas have yet to be answered regarding their intentions and designations, and do these designations have legal affect? Designations with legal affect are maps that would be recorded with the County Recorder having a legend describing a certain amount of open space and with a legal description of the common areas. He stressed the Association does not have such. He recommended the next best thing would be to have a Master Plan describing something similar to what has been adopted by the County. He indicated if this is to be a Master Plan, then there are problems. He asked how much common area is there supposed to be? Open space is designated on a legend with a total of 55.1 acres which includes everything - any possible open area - he stressed it doesn't mean common area. He explained common area is that which can be accessed or utilized by the Homeowners Association membership. These areas are not defined. There is language in various letters, proposals and formal-typed documents from 8-10 years ago indicating there was supposed to be four acres of common area. The Association has nothing showing what should be owned and deeded to the Homeowners Association. He indicated the Association has maps that seem somewhat precise, but there is no legal description of this.

Lynn indicated he would be able to get Tom Spencer, one of the original developers, to testify that throughout the project the property and all common areas were described to exception. This was done to get more money out of the bank, which they did.

Scott informed the Trustees that it makes some sense, from the developer's point of view, to have their common areas floating and undefined and only have them set

down to earth at the point when all the different aspects were plotted for the Silver Springs development itself. Because of the transfer of ownership, he believes there was a bankruptcy of a subsequent developer to the original, and the bank took back a number of parcels and the deeding was never done. He indicated it is very clear in the covenants and conditions for the subdivision that the developer, his successors and assigns shall deed the common areas to the Homeowners Association. In fact, in some of the supplemental declarations to the original, when subdivisions 1E and 1B and the townhouses were incorporated within the subdivision itself, there were very plain restrictions in those supplemental declarations that no lots could be sold within the townhouse parcels, or whatever it might be, until the declarant that the developer had deeded the common areas therein to the Homeowners Association. While lots have been sold, no common areas have been deeded.

Scott stressed the Association has come to a point where it's so far past the fact that development itself and sales have come to define what the common areas are, and it is a matter of what is leftover and what is less desirable. He indicated some people tend to characterize American Savings as the successor of interest to the original developer which brings up the question, "if you have circumstances such as a proposed sale to adjoining lakefront, lakeview lots, such as Bill Ligety, what are you selling?" He stated American Savings says, "we'll give you parcel H, a large park open area, if you'll not bother us about parcels I and K, and whatever else there is, and let us sell them." The Homeowners Association doesn't have record title to any of this but it is supposed to have record title to something. Scott asked the Trustees if the Homeowners Association and its Trustees are giving up which is rightfully theirs in the first place? Is it within their power to make this deal with American Savings? Since they don't have the designations, don't have legal descriptions that are of record with the County or have been literally adopted by the Planning Commission, the next best way to have a definition of common area is through the Planning Department. Scott asked the Trustees if the Association is in that situation. If so, then the question is is it the Trustees fiduciary duty to the membership of the Homeowners Association to cut deals with banks to allow the sale of property? If they restricted the sale to just parcel H and nothing else, what have the Trustees done in terms of following through on the original intent?

Lynn indicated when he took over the water system he discovered that American Savings owned the bottom of the lakes. They were supposed to be deeded along time ago to the water system. American Savings had no intent on owning this, in fact they thought they owned lots. When Lynn showed American Savings the tax bill they scrambled to get rid of it and then the water system took over. At the bottom of the lakes was also the discretion of the property around the lake, which is the 15 feet on each side, on the high side where the rock is around the lake, which is also to be owned or controlled by the water system.

Scott asked Lynn if the lake is presently constituted, described legally? Lynn responded it is now. Before it was described to exception, but now there is a legal to it and that is due to the County sitting down and putting the description into the computer. Lynn indicated he had his people survey and confirm this which was then handed over to the bank. The bank agreed and it was recorded.

Scott indicated when dealing with peripheral properties and allowing the bank to sell them, you are also stripping any possible participation by the water company of their proper ownership and easement or control of once again intended lakefront area. Lynn added this also deprives the sewer district from driving in.

Scott explained that American Savings is trying to make a deal to get the Homeowners Association to back off any claim. He indicated there does appear to be a legal description arising out of the foreclosure several years ago by the bank. It foreclosed and they took a number of ownerships of development parcels and some of what are now being designated as intended common areas. There are legal descriptions that do not indicate any deed or anything else that quotes common areas. The bank took it back through foreclosure, but does not want to give the official warranty deed to the property right now. Scott feels this is a conservative attitude often expressed by banks when dealing with foreclosure.

Scott indicated he is not sure where the proposal is right now. He was reading a letter from American Savings as of August 7, which explains their current position. American Savings found a map and plans that designate the parcels and the uses of the parcels. However, two months later we're in a posture of sale? They went to the Planning Commission to get some idea of what has been adopted.

Dale informed the Trustees that in 1982 Grant Wartina and Ray Price submitted a specific site plan with tennis courts, recreational facilities, and swimming pool to be developed as a recreational center. They submitted it to the County and was approved, and the County went back to that approval in their October 8 minutes, but there is an approved specific site plan as a recreational facility. This is how they came up with that determination.

It was asked whether Dale has a copy of the approved site plan. He responded that he does not, but does have a verbal description of the minutes.

Scott indicated two years ago the same law firm representing Silver Springs sent a letter to Dale indicating certain parcels were considered common areas, including I, K and H. American Savings wanted to determine if the Association considered any more parcels or acreage to be common areas so that they may all be brought together and properly transferred as of record.

Scott noted he has not seen any specific discussions in any meeting regarding the water company's rights. It seems an easement was intended at some point, if not outright ownership, and that issue, which has not been litigated or discussed vocally at this point by the water company, may be the stronger objection of the sale of those parcels. They may have equal, if not superior, rights to use and control of ownership of those parcels. Scott stressed there may be an innocent party, the water company, that may be affected by what the homeowners do. He indicated he would be a little suspect of the title that passes if the swap was made and the bank did sell those slots to the adjacent homeowners. He would question the title that would be given, but obviously for the recipient to determine.

Lynn informed the Trustees that the water company's attorney agreed that if the use of the property in question becomes detrimental to the water company, then

title to the property would become highly questionable. The legal opinion was based on the water company's right to be able to get through that property for normal maintenance.

A Trustee commented that it seems the water company has clearer title than anyone to this land and maybe it is them that should be pressing the issues. Scott responded perhaps. The CC&Rs are fairly consistent in stating that the developer is under no obligation to designate anything as common area. He believes at this point no one has designated common areas in a legally-acceptable or sound way.

Scott indicated there are a couple of matters which constitute circumstantial evidence. The developer said something in front of the Planning Commission 10 years ago and the Planning Commission took that into account for preliminary approval. Because of this he believes the case is definitely stronger that representation was made in reliance and not only by the Planning Commission in approving the subdivision, but was made by many of the homeowners when buying their lots. Scott stressed it would be his advise to the Trustees to make an effort to define all common areas. Scott further indicated American Savings will say they were not a voluntary successor in interest. If it comes down to it the Association can bind them to the types of commitment found in the CC&Rs and that fundamentally says that the common areas should be deeded over. Scott feels the Association needs to define the common areas and what can the Association get American Savings to deed over?

Lynn asked Scott if there is any way the Association can get American Savings to deed by special warranty deed instead of quit claim, and is there any way the Association can go to the Planning Commission and make them designate the common areas? Scott responded they might effectively prevent any desire to convey those properties away. There was enough representation at the Planning Commission meetings to give an idea of what the intent was. They made decisions. Scott does not feel they made decisions based on a legally sound basis, they made no findings of facts. They did the best they could without being involved in a law suit. They have said they are not going to stamp a specific common use upon parcels I and K, but will stamp that use on parcel H. Scott believes it can be challenged.

Scott asked if there is a recorded easement? Lynn responded yes. He further noted a sewer line easement and the water company irrigation line. Access is described under the care of the lake and there are four points in which to access the lake. Lynn indicated the four point access on the map and where vehicles have access.

Scott indicated what needs to be determined is the present proposal before the Homeowners Association which states, "give the Association I and K and don't bother us any more, and the Association won't bother American Savings about H." Scott asked the Trustees how far did they want to go if they wanted to reject that table for now, and how far did they want to go in compelling a designation and a conveyance of what they believe to be the common areas? How much is it worth to the homeowners?

Randy Spagnoletti felt the Master Plan needed clarifying and people's perception of the Master Plan and representation before Planning Commission when they

approved the Master Plan. He feared the property around the lake is commercial property, if the Association compromised its position. Randy indicated he personally knows there are a lot of low-end developers who would like to build less expensive houses up against the expensive homes because this is the only piece of property that has sewer on both ends and water, etc. He feels the Association should not set a precedent to the reverse.

Lynn informed the Trustees that Hy Saunders put a water line up to the road (referring to the map), illegally, as the State Health Department does not know about it, and he does not have approval from the State Engineer's office as well. He does have approval to put it along the easement of the state road. The road people are aware. His intent is to try and do his own development, a subdivision. Hy doesn't have the proper water line so he has to purchase those rights at \$131 per acre foot per year as compared to the water company's \$31 per acre foot per year. That would raise rates. If anything should happen contrary to the Master Plan then the certificate of convenience could be jeopardized which protects this type of thing from happening. More connections would help lower rates. When someone comes in and takes a piece of this and that, there is no way for the water company to protect its certificate of convenience which would help bring rates down. The water company has been working for 3-4 years to make sure systems are proper and well maintained so property sells easily. They are interested in low cost housing.

Buz Sandberg asked if Quail Meadows and other condominiums are involved in the park? Dale responded yes. In the original approval of the Master Plan their representations show four acres of park land, not open space, specifically park land. He indicated he opened this subject before American Savings and County Commissioners but they didn't want to hear it. He believes there is a problem of who is sitting on the County Commission at this time. He feels the important issue is if the Association is willing to accept this, are willing to deal and negotiate, then the Association would receive no respect in the future.

A Trustee asked how many entities does the Association have to deal with if the Association stands up? Dale responded right now American Savings owns the bulk, the 40 acres north of the lake.

Randy asked what is required to take the original Master Plan to the Planning Commission and have them designate the use? Lynn responded another community did this by taking a common vote of the people within the community and then taking this to the Planning Commission. The Commission then tied it to that common vote. Randy further asked if everyone is pretty much in agreement, how can American Savings fight? It is the approved plan.

Randy feels if the Association went to the Planning Commission, he couldn't imagine why American Savings would say, "no, we won't go along with these just being single family homes, no we don't want this lake, we don't want this open space." He couldn't see how they would take exception to anything on the plan if the Association said they just wanted to lock in the plan for perpetuity.

Bill Ligety feels the Association should get American Savings on their side at this time as they want an easy politically-acceptable solution. He also feels if things are clear on the plan then now is the time to go to American Savings.

Lynn suggested not to go to American Savings, but go to the Planning Commission and have the Commission suggest that to the Commissioners, which would be similar to a zoned area. The Association would have its zoned areas for those kinds of uses. Bill feels no way is the County Planning Commission going to impose zoning or plat something without the owner's permission. Dale feels the Association is not going to get them on our side. Bill disagreed.

Randy believes if the Association took the Master Plan, the way it is spelled out, to get the Planning Commission's sealed approval, then that is the Master Plan. They have done it once, why not again? If American Savings has a problem with the Master Plan, they would go to the hearing and try to stop it. He feels the Association needs to get the language out from the original approval process.

Bill's concern is they went through those meetings so many times and the County's recordkeeping was less precise than it is today. It is very murky as to what was discussed and what was required.

Scott asked the Trustees to clarify what they mean by the Master Plan. Do they mean a walkway or a common area surrounding the entire lake? Randy responded he believes most people agree that 15 feet back from the riffraff belongs to the water company and that is supposed to be open or common area for the expressed use of the Homeowners Association.

Scott informed the Trustees there is imprecise indications of some perimeter space to be used for a different purpose, not to be private. What is the definition of it and how does it overlay with water company concerns? Bill responded the Trustees should find different definitions and intents at different points in time, such as the proposal for a maintained paved walkway and no lots on the east side.

Randy indicated the one thing that is consistent is the area which they designated as recreation. There is no exception to anything currently on hand regarding the open area that wraps all the way around the lake. Lynn noted there are no more versions from developers than what he had collected.

Randy expressed his concerns that he would like to see this thing over with so the Association can get on with other issues. He asked the Trustees if the 15 feet from the riffraff is a problem with anyone? Bill responded he doesn't believe anyone can debate that the water company owns that ground.

A Trustee commented it is clearly represented as common area and it has been represented as such since the inception of the development. Scott agreed, but asked who owns it? The Trustee further commented he didn't believe it mattered, however, Scott differed. He feels the liability question is very large compared to who owns it. If you want to own it, the perimeter walkway, that is one thing, but the homeowners want to own it. If you simply want to designate it as common area and get permission from the owner to have the easement to be used as a walkway, that is another thing, but he doesn't know if you want to own it. A Trustee commented it was the original intent to have the common properties deeded over to the Association, whether the Association owns it or not.

Randy indicated the Association doesn't own the lakes and are not about to buy them, but the Association does have common use of the lakes. They belong to the water company.

Lynn explained that the original intent was to have most of the common areas along any surface waters deeded over to the water system, and the water system would manage those areas in favor of the Homeowners Association. Should the Association cause harm to the waterways, then the water company would have the power to step in and correct, parcel H included. The lakes, while owned by the bank, were being tagged between \$5,000 and \$12,000 per year for taxes, depending upon the body. Currently the highest tax is \$125 per year for the large lake.

A Trustee commented he believes the Homeowners Association should petition the County to make a zoning ruling on the intent of these lands and the question of ownership would become new, because the intent of the land would become narrowed down to just one purpose and that is common land. Another comment was they may have only designated parcel H for park use, not the border and that is the concern. Scott responded they did take I and K - the sliver parcels that Bill and others are interested in. They took those out of the common area so they could be sold and not dedicated common. A Trustee asked what gave them the idea they could do this? Scott responded he did not know. It is not in the minutes. It's a supportable decision.

A Trustee commented maybe people would like to buy land that is owned by the Silver Springs Homeowners Association? Scott responded this can't be done. Land can be transferred to a public agency, authority or utility, but can't be sold. He cautioned the Association needs to be careful when dealing with the bank because they are literally proscribed from selling the common area.

Randy believes the Trustees were addressing the letter from the bank, and he believes Scott is recommending that the Trustees say, "we're sorry, but that is not our property to deal with." Scott suggested exploring with the bank the nailing down of the common areas.

Bill feels as soon as the Association gets parcel H then the Association is faced with a rather substantial expense of improving it and feels there could be a way of nailing down the common areas. He feels a way to get that improvement is to say to American Savings, "okay, the Association will accept parcel H, but instead of giving us the whole thing we would like for you to go through the subdivision procedure at your expense and break out those two lots and market them with the revenue you owe to us." He believes it is an idea and as a Board should explore ideas. Dale responded that the Association is prohibited from selling common areas, period. The Association needs to get a description of what all the open space is going to be. What is going to be deeded common area and move forward from there.

A Trustee commented he believes the Association should tell Summit County what it considers the common areas are, that this is the Association's opinion and the Association wants the County to rule on the intent of the common areas. Lynn responded the Trustees would have to get all of the Associations involved so the County knows all of Silver Springs is behind this concept.



A Trustee commented that from the letter he believes it is beyond the Association's ability to convey these lands in this fashion. The Association and the bank are obligated to the picture, the bank now owns this property and for better or worse that is the intent of the ownership of the property. The Association would be in violation in conveying the little sliver by saying to the bank, "oh, you could sell that." He believes that is what the Association should tell the bank and then simultaneously go to the Commission and indicate the Association will appeal their determination made a month ago.

Scott informed the Trustees it was time to make a motion for a direction the president should follow in this regard. Randy made a motion that the Association respond to the letter and graciously accept parcel H for their nominal fee the way they wanted to do it through the water company. And what is proper - a warranty deed and not a special warranty deed.

Bill Ligety asked that the records show he was abstaining his vote due to being a party to the agreement.

Randy asked if it was wise to mention that the Association is still 100% opposed to the conclusion of any previously considered open space? Dale responded the Association cannot accept it as conditions outlined in the letter. Outlined is a breach of their fiduciary responsibilities of the Association as a whole to the tendering over of properties that were perceived to be or are considered to be through prior representations as open space, that the Association intends to appeal the decision that the County made. He believes the Association has a note that the Association does not believe the County made a letter on the decision on the use of the property. All they made was a decision on whether or not it can be transferred by title.

Scott noted the Association wants to explore the possibility of settling the common area issue in its entirety. Dale indicated he would deal with this with Scott as there was no need to do so as a committee.

Scott reiterated the motion as "authorize the President to coordinate a response to the bank's proposal and express the opinion and objective of the Trustees on behalf of the homeowners as to the common areas and their definition of straightening things out with the County." Randy made the above motion which was seconded by Dale. Dale indicated there was a quorum per Lucy's proxy and it only takes 4 to be a quorum. There was no discussion. Favor 4, opposed 0, abstention 1.

A final question was made asking who owns the property adjacent to the small lake for which Dale responded American Savings.