

J. Craig Smith
jcsmith@smithlawonline.com

Scott M. Ellsworth
sme@smithlawonline.com

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Skip Domenick, General Manager
Ceramatec/Microlin Technologies
2425 South 900 West
Salt Lake City, Utah 84119

via email: sdomenick@ceramatec.com

Re: Groundwater Drainage in Silver Springs

Dear Mr. Domenick:

In anticipation of meeting with the County Commission, you have asked us to review and briefly comment on the various legal grounds supporting the County's obligation to maintain the Silver Springs 1A subdivision drainage system.

The County Commission approved the Silver Springs 1A Subdivision plat at their regular meeting on July 3, 1979, with four conditions:

1. That [the ^{Developers} subdivision] conform to Dames and Moore requirements for drains.
2. [That t]he county hold \$90,000 of the bond for 3 years.
3. [That, i]f any or all drains fail within three years, the developer will fix them at their [own] expense.
4. That notification will be given to buyers that basements will be built at the owners risk. Foundation drains will be required for basements, footings will be extra wide or placed in gravel. Recorded as "Special Notice" Entry 157606 on July 6, 1979

(Minutes of July 3, 1979, County Commission Meeting.) Of particular import is the third requirement, which indicates that the developer would be responsible for the repair of any problems with the drainage system during its first three years, the county holding some \$90,000 (pursuant to the second condition) presumably to cover any repairs the developer might fail to perform. Does this indemnify County for 3 years?

The question arising from the language of the third condition, of course, is whose responsibility the maintenance of the drainage system was to become after the developer's three-year term expired in 1982. That such responsibility was intended to remain with the developer is entirely untenable, since this would render purposeless the three-year term originally set by the commission: why bother to mandate a three-year term if the responsibility for which the term is set actually extends on beyond the three

years? Equally untenable is the notion that responsibility was meant to pass to the individual owners under whose residences the system's lines pass. Unlike other utilities, the drainage system serves the entire area, not merely those residents whose property contains any portion of the pipeline system; nor, in addition, do those residents have any control over the pipelines, which lie at least ten feet beneath the surface and do not connect to their homes.

That responsibility was meant to pass to the homeowners' association is a possibility, but there are apparently no provisions in State law mandating such a conclusion. To the contrary, current Summit County Ordinances ("SCO") require various improvements to be installed by a developer, including "[s]tructural and nonstructural runoff control measures." (SCO § 10-6-1(B).) In addition, current ordinances mandate a two year "warranty" on all improvements (SCO § 10-6-4), rather than the three year term upon which the original Silver Spring 1A approval was based. This warranty consists of 10% of the development's bond or escrow account, or a bond in an amount equal to 10% of the total improvement costs. (*Id.*) This, of course, sounds remarkably like the arrangement the County made with Silver Springs Development, Inc., back in 1979.¹

Given this scenario—and assuming the current code reflects the law in effect in 1979—we find that the SCO appears to clearly require the County to assume maintenance of the drainage system. This conclusion derives from several points further on in the SCO. To begin with, the SCO plainly declares that

[t]he maintenance of all required improvements shall be assigned to an appropriate public entity (such as the county or the Snyderville Basin sewer improvement district) or private (such as a homeowners' association) entity in a dedication, contract or other agreement. Such agreement shall be accepted by the B[oard of] C[ounty] C[ommissioners] and the county attorney as sufficient to assure perpetual maintenance of the improvements.

(SCO § 10-6-5.) In the present case, however, it seems clear that no document exists assigning the maintenance of the Silver Springs 1A drainage system to the homeowners' association or indeed to anyone else *except* the County.

SCO § 10-6-10 specifies that offers of dedication "of roads, public areas, easements and parks" may be accepted only by

Application to the director and the county engineer and approval of the BCC by ordinance following a recommendation by the director and county engineer. The approval by the BCC of a plat or site plan, whether

¹ We shall have to conduct historical research into earlier versions of the SCO in order to ascertain the agreement between the current code and prior provisions, but it may very well be that, even if the current and older code provisions do not precisely agree with one another, the current SCO reflects the County's practices—codified or not—in 1979.

preliminary or final, shall not of itself be deemed to constitute or imply the acceptance by the county of any road, easement or park shown on the plat or site plan.

Here, of course, not only does the original Silver Springs 1A plat map bear the signatures of the Planning Commission Chairman, the County Engineer, the County Attorney, and the Chairman of the County Commission, but the July 3, 1979, minutes also bear witness to the approval of the Silver Springs 1A plat "upon the advise [sic] of the Planner [i.e., the planning director], Attorney and Engineer . . ." Summit County cannot, then, deny that it has formally accepted the dedication "for perpetual use of the public all parcels of land shown on [the] plat as intended for public use." (*Silver Springs 1A Plat Map*, "Owners Dedication.")

In connection with this dedication and acceptance, we turn to Utah's County Land Use Development and Management Act, which provides that

Plats, when made, acknowledged, and recorded according to the procedures specified in this part, operate as a dedication of all streets and other public places, and vest the fee of those parcels of land in the county for the public for the uses named or intended in those plats.

Utah Code Annotated § 17-27-807(1). The "parcels" dedicated and intended "for perpetual use of the public" in the Silver Springs 1A plat map include both the various roads and an "8' non-exclusive utilities ~~and Drainage easement~~^{channel} along all side lot and back lot lines as shown" (*Silver Springs 1A Plat Map*, "Legend" (emphasis added)). Self-evidently, then, Summit County was given, and accepted, a drainage^{channel} easement—that is, an easement for a drainage system—within the Silver Spring 1A subdivision back in 1979. Taken together with SCO § 10-6-5 which, you will recall, requires "[t]he maintenance of all required improvements² [to] be assigned to an appropriate public entity (such as the county . . .) . . . in a dedication, contract or other agreement," this dedication leads almost inescapably to the conclusion that the Silver Springs 1A subdivision's drainage system—which lies completely within either the public roads or utility and drainage easements throughout the subdivision—was built and dedicated, substance and maintenance, to Summit County.

This conclusion is bolstered by (a) the County's having required a bond for the system's construction, as it would for any other public improvement; (b) the County's failure to specify in any way that the responsibility for the drainage system's maintenance was to pass to a homeowners' association after the developer's three-year term ended; and (c) the fact that no document exists (at least, the County has not produced none such) assigning maintenance to the homeowners' association, as required (currently) by SCO § 10-6-5. *Passed to Developer's HOA in 1982 Crestani CCRS.*

Again, it will be necessary to perform a certain amount of historical research to verify that nothing in the 1979 law of either the State or the County contravenes our

² Including "runoff control measures" (SCO § 10-6-1(B)), colloquially known as "drainage systems" or "storm drains."

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analysis herein. It appears, however, at present, that Summit County cannot dismiss the Homeowners' Association's claim that the County bears responsibility for the drainage system's maintenance by means of a bare assertion that it believes there to be no express dedication to that effect. In our opinion, on the contrary, given the data in our possession, it appears clear that such a dedication both exists and remains in effect.

Please feel free to contact us should you have any questions or concerns.

Yours truly,
SMITH HARTVIGSEN, PLLC.

J. Craig Smith
Scott M. Ellsworth

cc: Skip Domenick
Robin Bailey
Robert Adkins, Esq.