

## Advised by Derrick Radke to talk to Civil Division



Lucy Archer <lucya0104@gmail.com> Sep 4, 2014

to Dave, Derrick

Dear Mr. Thomas,

I am writing to you regarding the Silver Springs Single Family Homeowners Association, my neighborhood since 1982.

I have been very concerned about the actions of our Board of Trustees particularly in regard to how they are handling pressure exerted by one of our residents, Bill Noland (Lot 27) since 2007, causing them to act inappropriately on the long-abandoned underdrain system in our subdivision.

As far as I have been able to discern, the system was abandoned in 1982 after the County released the bond to the developer for completion of this system built only in Phases 1A and 1B. The underdrain system is not mentioned in any of our documents since formation of our Silver Springs Single Family HOA during 1984-1985.

Phases 1C, 1D, and 1E of the SS Single Family HOA do not have underdrains nor a requirement to install them. Our contiguous subdivisions within our Master Association, though they are also descendants of the Silver Springs East Articles, Bylaws, and CCRs, were not required to install underdrains. The subdivisions directly adjoining our Master Association were not required to install underdrains. I was told that there is no other underdrain systems installed by a subdivision in Summit County.

The 1985 Snyderville Basin Development Code includes a Statement of Intent that grandfathered the 857 acres of Silver Springs East (now known as the SS Master Association or Silver Springs Community) from the new code requirements.

I feel that the Silver Springs BOT is acting irresponsibly in continuing to follow Mr. Noland's persistent requests to have the HOA open itself to baseless, unsupportable liabilities. The BOT owes its duty "to the whole tract, to all the homeowners ("dominant tenements").

In 2005 and 2006 the County Board of Commissioners advised our board not to place the underdrains under the HOA auspices as it would place the HOA-BOT in a difficult to

defend position of culpability to lawsuits from the homeowners. Yet the BOT continue to disregard duty and common sense.

The most concerning part of this issue is that Noland and former trustees have been performing work and spending HOA funds since 2007 without informing the Membership of all the implications of proceeding. In November 2014 at our Annual meeting a vocal vote on the motion that "the Board and Noland should disclose all underdrain information to the Members and allow a vote from owners on the underdrain issue" was shouted down by the former culpable trustees in a meeting of 22 attendees, most of them baffled by this agenda item. Our subdivision has 188 households, 5 or 6 have crawlspace issues that they have handled by the use of sump pumps. Two lots, 27 and 102 may have artesian activity unrelated to the underdrains. A few others have seasonal drainage channel issues, consistent clean up has remediated this concern.

Since 2008, on Tuesday, September 2, 2014 I was finally allowed to present five minutes of information to the BOT regarding the history of the underdrains. After I left the meeting, the topic of the underdrains was again opened up. The BOT voted to give Noland the authority to have Alliance Engineering confirm the anecdotal information that had already been gathered. The proposal for this "discovery phase" will cost the Membership \$91,000, without their foreknowledge or voted consent. If there is trespass and roto-rooting damage on private property, to the depth of 6'-10', with the authority of the BOT, the costs will be substantially more. Rick Hovey, SSSF president, officially since 9/2/2014, told me the digging and rooting could go into "hundreds of thousands of dollars, or even millions."

Unbelievably, the BOT does not have one shred of evidence that the Silver Springs Single Family HOA owns the underdrains or has a responsibility to perform the work. The BOT have letters of opinion from attorneys Lincoln Hobbs, Craig Smith, Ted Barnes, none of them provide any proof of the true legal position of ownership.

Derrick wrote that his understanding is that the underdrain system, such as it is, is the responsibility of our HOA but he did not cite how his understanding is supported. This is why I am taking his advice to write to you. I have worked with Clerk Kent Jones looking for Commission Minutes, and have been through the Records Indexes and Abstracts looking for anything that assigns ownership.

We found three items, all relate to the Silver Springs East Development Subdivisions Association. First is the July 3, 1979 Commission Minutes regarding the developer bond and the request that a Special Notice be recorded, herein attached.

The second is on July 5, 1979 Entry 157606 Special Notice which assigns responsibility for building in Silver Springs to the lot buyers and builders. They are to include remedies, foundation drains, for subsurface water; basements built are at owner's risk.

The third is on June 25., 1982, at the end of the three year term stipulated by the

Commissioners (as recorded on the attached Minutes) and the release of the bond to developer Ray Fry, making "that Association", the developer's association for Silver Springs East, responsible for maintaining the underdrains in Phase 1A and 1B or any future phases. "that Association" no longer exists. Entry 193367.

I am in the process of writing the first full information letter to our HOA Membership to inform them of the situation. I have been pressing Rick Hovey to include in the HOA packet to the Homeowners for the Annual Election & Meeting to be held on October 14, 2014, the two-page underdrain information I presented to the BOT on 9/2/2014. Whether or not he and the BOT will include it is another matter.

I would like you to advise me on what course of action I should pursue and whether the Silver Springs Single Family Homeowners Association are required by Summit County to pursue this damaging and costly course of action that will benefit a very few, and which will certainly stigmatize our subdivision, will raise a firestorm of anger from the Members, and possibly diminish our property values.

I look forward to your response and advice,

Sincerely,

Lucy Archer

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**From:** Lucy Archer [mailto:[lucya0104@gmail.com](mailto:lucya0104@gmail.com)]  
**Sent:** Thursday, September 11, 2014 3:10 PM  
**To:** Dave Thomas; Derrick Radke  
**Subject:** Fwd: Advised by Derrick Radke to talk to Civil Division

Hello Mr. Thomas,

I hope you have had time to read the above letter I wrote to you on September 4, 2014.

It is a long story that began around 1979 then had a 30+ year interval of quiet.

However, I have been given the task of obtaining an opinion from the Civil Division of the Summit County Legal Department to verify whether the information on the two-page flyer attached here to this letter is correct information regarding the Silver Springs Single Family Homeowners Association.

Our Association Annual Meeting is scheduled to be held on Tuesday, October 14, 2014.

We would like to know if the County agrees with the flyer conclusions regarding the ownership (each section of the underdrain 6' to 10' below the ground surface of each lot is

the property of the individual lot owner) and the maintenance of the defunct underdrains (lot owners to maintain their own property).

Your response will be greatly appreciated.

Sincerely,

Lucy Archer

**Dave Thomas** <[dthomas@summitcounty.org](mailto:dthomas@summitcounty.org)> Sep 11, 2014

to me, Derrick

In discussing this with Derrick Radke, the ownership and maintenance of the underdrains is a private matter between the land owners within the various subdivisions and the owner's association. What the County can definitively state is that such underdrains are not public improvements owned or maintained by Summit County.

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