



SILVER SPRINGS SINGLE FAMILY  
ASSOCIATION

**SPECIAL MEETING WITH ATTORNEY**

John Morris of Morris & Sperry

To discuss the **DRAFT** of CCRs (not the Bylaws)

At St. Luke's Church at 6:30 pm on March 3, 2017

We have had enough interest in the information we sent earlier, and by what we said at the March 2, 2017 meeting that we think this is a good time for transparency and to share underdrain information the BOT has kept under wraps. We think our neighbor Home Owners deserve to know what has, and is, really going on.

I will try to explain what I have gathered about the underdrain matter since 2006 when they were figuratively dredged up after Bill Noland found his rusty water heater in his crawl space. I am doing this because a seriously large amount of the changes to the SSSFHOA CCRs in Morris & Sperry's Draft are laid in support of the underdrains system, a system the Homeowners have not been fully informed of its serious implications for the Homeowners. Know all this correspondence is my opinion formed from my experience serving on the BOT in 1985, at its inception, for 6 years as secretary, and again in 2008; living here since 1982; documenting the activities of our neighborhood; and posting them to the [Community website](#) since 2000.

The underdrains were a 'temporary' 1979 solution, for the 857 acres that created the Silver Springs East Development, and was implemented to drain water to make the land buildable, only the Silver Springs Single Family subdivision was included in the underdrain construction. A Special Notice in July 6, 1979 by the Silver Springs Developer Vern Hardman (S.S.D.) names SS Phase 1A Lots 1-64 recorded to inform: "This Notice to builders regarding subsurface water instructs the use of wider footings or extending the foundation down to the gravel base. Basements built are at owners' risk." Later the developer recorded documents naming Phase 1A and 1B.

Document: <http://www.silverspringscommunity.com/wp-content/uploads/1979-SpecNotice-E157606.pdf>

In the subsequent almost forty years the perfunctory underdrains have laid dormant without maintenance or issue, except what Bill Noland has tried to force onto the neighborhood, and that he and a couple others have furtively used HOA funds and authority (against the wishes of the Home Owners or their knowledge) to explore and roto-root tree and landscape roots from the path of the underdrain on his property and the property of some neighbors. Other more adequate solutions have not been discussed, such as the example of neighbors who successfully installed

French drains around the perimeter of their homes and installed sump pumps and subsequently have ended their ground water problems (without damage to their trees, gardens, landscaping, or their neighbors property rights).

What clearing underdrain sections for the perceived efficacy of the aged pipes has accomplished is to move water from higher elevation developments (ex. Canyons Resort) and subdivisions (ex. Snyder's Mill and the other SS Community subdivisions) south through SSSF Phases A,C, and LLSS to the north SSSF Phase B lots thereby increasing the drains running water load and expanding the presence of water from the south properties to the north properties. Some of these north properties along and contiguous to Meadows Drive conceivably would not experience the amount of water now occurring if it were not for the conduction of spring water and artesian water and runoff water from out of the south areas into the north area lots on Meadows Drive, Willow Loop, Willow Lane, etc.

There were questions about whether the original 1973 landowner, PIC of Colorado, should have or did disclose the water conditions of these 857 acres that became Silver Springs East.

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

There are questions about whether Summit County should have been more proactively inspecting development sites before, during, the construction process.

Documents: <http://www.silverspringscommunity.com/utilities/water/underdrain-system/#physical> Section 6: Physical UD Information

In 2014 Rick Hovey assigned to me the task of finding as much underdrain info as possible. To find a 'smoking gun' that proved whether or not the SSSFHOA owned or was responsible for the underdrains. Rick was astonished at all the information I found and he voiced concern that the Home Owners were not being fully informed by the BOT. Yet he chose to ignore it all, to not share the alternatives with the Homeowners, to not post the opposing view on the SSSF BOT website, to squelch - not allow - discussion at meetings. My alternative was to post as much information as possible on the Community website.

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

I don't remember high ground water, subsurface water, the existence of artesian springs, artesian wells, spring overflows, snow melt run-off, etc; (or the possibility of sink holes being created by the plan to unclog the underdrains to facilitate the stream of underground water to move more rapidly thereby dislodging and carrying away soil), being addressed at the SSSF Annual meetings along with alternative solutions to harness the underground flow for the benefit of ALL the Home Owners. The letters to the Home Owners from the BOT have been in favor of the underdrains without mention of the negative aspects, opposition to their plans or alternative methods for de-watering. The BOT website ignores Home Owner input and participation.

What I do know is this:

-The BOT has not disclosed the many negative effects of continuing to force the Home Owners to accept the underdrains. The Draft CCRs provided by John Morris are basically a serious immersion throughout the documents of the underdrains into our daily lives even though we, the homeowners, have voted to ignore them and leave well enough alone. As you heard at the March 2, 2017 meeting our Home Owners are very concerned and upset with the content of this dangerous document. The consequences of these Draft CCRs are that Noland can enter and damage private property at will. That there will be high cost assessments for repair, maintenance, replacement and installation of more underdrains. Over the years these assessments were distributed among all 188 Home Owners equally. This Draft CCR document assesses the INDIVIDUAL Home Owner (See Article 4 subsection 4.2(b). Cause of damage, or action by the BOT, is not explained.

-The 40 year old "trash" perforated plastic pipe that was left underground on 94 SSSF lots (the other 94 do not have underdrains) is to be designated as an "asset" for legal purposes that will detrimentally affect the status of our neighborhood in the areas of violations/fines, liens on property, BOT organization, liability, insurance coverages, and state laws.

-Noland and the BOT have not provided a **cost analysis** of the work they seek to perform on the underdrains. If they have this analysis they have not shared it with the Home Owners, shame on them. What Rick Hovey told me was that the County engineers and others had given to him a general cost per lot of hundreds of thousands to well-over a million dollars. These two men don't care about the expense of their plan, they seem to figure individual owners and their individual insurance will eat the costs of their misguided project without blinking an eye. We have not seen from the BOT or Noland a comparison report on alternate methods of working on the underdrains, viz. French drains, sump pumps, diverting the underground flow into the storm drains instead of making a perforated conduit flow through private property; or to divert the water into the existing open drainage channels and/or into the neighborhood ponds. Other alternatives are available.

-March 2, 2017 John Morris kept saying that the HOA owns the underdrains (obviously this stand makes SSSF his cash cow). He gave no proof. What he did not say is that Noland and the BOT can not show title or deed to the underdrains; no proof of transfer or purchase or receipt of any kind; the BOT and SSSFHOA did not exist until 1985, so our BOT certainly did not pay to have underdrains installed in 1979-1982; the SSSFHOA was not an involved party in the developer-County agreement to finish the underdrains, nor party to the County reimbursing the developer-builder his \$150,000 underdrain bond to Ray Fry.

— **March 3, 2009** – [Letter from Summit County Attorney David R. Brickey's Deputy Attorney Helen E. Strachan](#). "I could find no records in our Summit County Attorney's Office file that fulfill your request" for documentation of underdrains ownership or responsibility by the SSSFHOA. "Please consider this the final decision of Summit County."

[August 13, 2004 – To Mark Offret, Public Works Director:](#)

"...my reading of those minutes does not lead to a conclusion that the homeowners...would be responsible for public improvements such as storm (sp) drains."

[December 15, 2004 to Kevin Callahan, Public Works Administrator:](#)

“...my reading of those minutes does not lead to a conclusion that the homeowners...would be responsible for maintenance of the groundwater drainage system.”

[December 28, 2004 from Robert W. Atkins Summit County Attorney to Craig Smith:](#)

The Plats do not purport a specific dedication of groundwater drainage systems to Summit County. Consequently, Summit County is not obligated to maintain such systems.”

The Summit County Attorney wrote to me and the BOT on Sept 11, 2014 "the ownership and maintenance of the underdrains is a private matter between the land owners within the various subdivisions and the owner's association." We, the SSSF Home Owners, have the final say in whether we will accept ownership or the liabilities of the underdrains, and whether we want to hand over our private property rights to the BOT and Bill Noland.

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

I am linking here a list of all the documents I have found for Silver Springs for your perusal and information.

Documents link: <http://www.silverspringscommunity.com/our-community/silver-springs-sf/index-hoa-docs/>

Your second question: When and where to lay blame?

Attorney Ted Barnes told me the BOT would only be considered neglectful if the HOA owned the underdrains and was responsible for their maintenance and repair. Here is the rub: When Bill Noland (since around 2006 to present), Skip Dominick (HOA pres 2006-2008), Bill Gunter (usurping HOA pres 2009-2010), Rick Hovey (HOA pres 2013-2015) and unfortunately others, and a couple East Meadows Drive homeowners (as Noland's committee members) 'secretively' began working on the underdrains and in most instances, without HO authority, began using HOA funds to pay for work on private property, other than their own property, to roto-root drains, to unearth man-hole covers, etc. and to pay several attorneys for their advice (contradicting each other), these men worked against the votes of the Home Owners, against the rules in our charter docs, and did little or nothing to notify the Home Owners of the work and expenditures they were making. They therefore created a situation wherein a court may or may not deem the underdrains to become the HOA, property. I have also been told since these men did all this under protest of the Home Owners (and as posted on the Neighborhood's Silver Springs Community website) they may be personally culpable for their actions.

The only redemption these men have at this point is to step aside to allow a committee of Home Owners to produce a cost analysis of alternative methods for "de-watering" the mentioned five lots and if there are others, at the March 2, 2017 meeting.

I have been told by our current HOA President, by neutral attorneys, by a couple Home Owners, that the reason the BOT wants to keep our underdrain problem on the hush is that they fear

surmised ramifications that the BOT or individuals working for the BOT could be sued by a Home Owner's insurance company. The BOT fears that if a Home Owner suffers water caused property damage, then the Home Owner sends a claim in to their insurance company, though the insurance company is responsible to pay for the claim, the insurance company may decide to sue the SSSFHOA BOT for negligence. This 'secret' is likely more smoke and mirrors. What is certainly ludicrous in this reasoning is that the insurance company should not be able to hold the HOA liable for a system they do not own and that has become defunct. Here comes the problem again: The actions of certain men in our HOA to force ownership of the underdrains onto the unwilling Home Owners is the underlying germane fear of the culpable.

This fear should not be leading the discussion (or believed to be a real concern) for actions by the BOT vs the Home Owners. The Home Owner claims for damage (none we know of since inception of SSSFHOA in 1985) would likely be so small and the case of the underdrains to be proven to be an HOA 'asset' is so convoluted, ungrounded and nebulous that it would not be a lucrative outcome for the insurance company to bother to bring suite. Try again BOT.

My experience and witness is that these men chose to create a huge problem in favor of their own interests and they chose to do it by collusion at the Homeowners expense. I have documented on the posted Minutes and in Reports, how many times the above men undermined Home Owner participation and input and logical disagreements with the nature of their activities regarding the underdrains. In 2013 the BOT even went so far as to cheat on the legitimate count of the election to keep a candidate that did not agree with them off the board. And in 2014 Hovey would not allow the announcement of the majority "Ignore the Underdrains" vote of the Home Owners. Of course Robert Rosing, the Morris Sperry attorney present to represent the BOT, made a lame excuse for disallowing the Home Owners to voice their opposition to the underdrains. This made me physically ill as I recognized just how smug and belligerent the BOT(Hovey) were becoming in their bullying position against not only me but particularly in their stand to disenfranchise the Home Owners and to make their wishes immaterial to the policies of the SSSF Home Owners Association.

To condone this action the Draft CCRs remove important voting opportunities for the Home Owners to voice their choices, such as for Special Assessments. The 66 2/3% vote by the Home Owners has been replaced with a blank check to the BOT from the unsuspecting Home Owners.

Also the election and business decisions that now require a Home Owner majority vote of 66 2/3% (or 125 votes) was modified down to 25% (or 47 votes).

The Home Owners are being disrespected, their authority is being diminished, and the Home Owners are in danger of becoming even more extraneous in the management policies, process and expenditures within their neighborhood. The Draft CCRs will make Home Owner private property rights clouded by a blanket lien on each and **every property** by transferring each deed to Morris Sperry debt collector attorney Quinn Sperry at the time the 2017 CCRs are recorded. This is the malicious fiduciary duty interpretation you can read in the new Draft CCRs the BOT is positioning before us. We Cannot Allow These Documents To Pass. To Protect our Property we Must Vote NO, and we must insist that a group of Home Owners, other than the

usual threesome, are allowed to make the count of the ballots. Unfortunately, there have been miscount errors in past elections.

When I learned that the SSSF BOT had a \$2 million D&O (Director & Officer) policy, and recently learned it includes coverage for unelected volunteers who serve at the BOT's pleasure for committees such as the Arch and Underdrains committees, I felt that they are trying in retrospect to cover the unauthorized activities they have been active in pursuing. The Home Owners are being billed to provide liability insurance to the very people who are responsible for the disenfranchising, the bad feelings, property liens, annoyances, usurping of authority, etc. that diminishes the cohesiveness and friendliness of our neighborhood.

**What we must focus on is our legal retention of our Private Property Bundle of Rights namely the right of control of our land, the right of quiet enjoyment of our property, the right of full possession of our real estate, the right of exclusion to limit who may or may not enter our property (except legal easements) and the right of disposition.**

**Note: The 2017 Draft CCRS expands the easement on our property from 8' to the entire lot to allow Noland and the BOT to enter our property at any time without notification to the owner.**

While reading the 2017 Draft CCRs, by page 19 of 48, we realized there is nothing salvageable in the document. The whole thing is skewed against the Home Owners in favor of the BOT and the attorneys. It is interpretable as a prevalent, devious land grab scheme. **The BOT and their attorneys have written a contract whereby if we vote for adoption of this document we are assigning our property rights to the BOT and their attorneys, and we are giving away our freedom to use our property according to our needs, rights and desires.**

There are a number of Home Owners who are asking, "**Why do we even have or need an HOA?**" The monthly BOT meetings are attended by an average of ten people. Some presidents were good at hiding the meeting place or holding meetings where all would not feel safe attending. If you look at who has been running our HOA during the last two decades the same names continually appear. Volunteers or candidates they don't want to include are omitted from the election ballots or votes are miscounted-misreported. Ask yourselves, "When has the HOA really done anything worthwhile for you?"

The Annual Election Meetings are usually attended (ex. 2013 only 22 people) by so few that an Replacement Meeting in November has become the norm. At the Replacement Meeting the BOT can conduct all business and election of Trustees by the majority of the attendees only. This is one way that a few people control the HOA. The 2017 Drafts reduces the quorum requirement to 47 votes from the 188 possible.

The BOT needs the HOA so they can play their power games and manipulate and lord over the neighborhood. That is another reason they want the HOA to become the owners of the underdrains. If the HOA owns the underdrains then it cannot be dissolved because they are the maintenance crew stipulated by state law, at the costs to the individual Home Owners. Keeping the underdrains means keeping the BOT in power over our lives.

That is also why time is of the essence to dissolve the SSSFHOA. This course is very doable, regardless of what the BOT and their attorneys say about it. It is a fact: We do not have to continue to have 'taxation' and policy imposed on us without proper representation.

Here is another aside: Attorney Ted Barnes wrote to the BOT in a letter that he interprets the law to say that the underdrains are "common areas," and as such, according to law, the underdrains should be under the auspices of the Master Association. The sole function of the Master Association is to maintain, repair, insure and be responsible for all "common areas" within the Silver Springs East Development's 857 acres.

Currently the Silver Springs Master Association is holding over a quarter of a million dollars from 512 members of the MA in its bank account. If, as Frank Weinrauch suggested, that money could be a fund to assist hardship case Home Owners who need to install French drains around the perimeter of their homes and sump pumps in their crawl spaces, that would be a much better solution and use of Home Owner MA and SSSF resources; and a far less contentious and ruinous situation for our Silver Springs Home Owners.

To attempt to follow any course of action that pins blame onto any one person or persons or entity(ies) will be won only by the courts and the attorneys. The contention will diminish our quality of life, our property rights, our property values, and flatten the Home Owners' wallets.

To accomplish this and to not lose our dignity and sanity to a load of attorney legalese, we as a group of Neighbors need to look at all the facts and determine what our best mutual option will be. **More and more Home Owners are coming to the conclusion that we DO NOT NEED A HOA in our Single Family subdivision.** SSSF does not own any common area property nor any structures, etc. The lots are all built out, our neighborhood architecture is set. There is little for a HOA to manage. We should not be forced to follow a litany of rules established by bossy, elected' people; we should not be paying fees and assessments or have hired people telling us where to keep our lacrosse equipment; there is no purpose to any of this. Many neighborhood situations can be monitored by the Summit County departments and regulations. The County manages and regulates building codes, roads, pet problems, neighborhood safety, etc., Mountain Regional Water Special Service District has jurisdiction over state and local water rights, use, safety and issues under their purview.

Of course, John Morris, the BOT attorney demeaned the County's abilities, rules and function, but what else would you expect him to do when he has prepared to add another layer of rules and expenses with a potentially lucrative contract for his law firm that will allow him to assess and bill us for frivolous offenses, lien our properties and transfer their ownership to his law firm. **WE CAN'T LET THAT HAPPEN!**

The Pros and Cons for keeping the HOA are a matter for future discussion. For now, Home Owners need to be informed of the content of the 2017 Draft CCRs and Bylaws the BOT has presented to us for Acceptance. When they are read it does not take long to see how insidious

and over-reaching they are and how dangerous they are to our private property ownership and our freedom to use our property according to our personal needs.

I know this is long. I hope it answers some of your questions, though I am sure it has spawned more questions. There is much more information at the [Silver Springs Community website](#). Use the Home Page - Search function field (top left side). Type in search words and it will bring up link and page locations. The search results are not in customary form. I am sure you will figure them out. Some results may be on adjoining pages.

Hope we can count on you to help us during the next months as we involve ourselves in the work needed to protect our neighborhood, from wolves in sheep pelts, seeking to continue to deceive us.

Best regards,

Clay & Lucy Archer