

## OUR HISTORY OF THE SSSFHOA BOONDOGGLE\* UNDERDRAINS

March **2008** - Skip Domenick SSSFHOA BOT president recruited Clay and Lucy Archer to serve as a team on the BOT. (Skip resigned at the end of this meeting). Michael Winer was also present as a quid pro quo for Skip's HOA help. Winer told us that Skip had put a lot of effort into helping him to resolve water issues under his driveway. Skip had gone to the Summit County Commission to ask them to help with Winer's and his own ground water problems. Summit County had no intention of becoming involved with the underdrains. In 2005 the County Commission advised Skip to not place the underdrains under the auspices of the HOA, it is not practical for the homeowners to maintain the drainage system. It would be dangerous and costly to do so.

A "**Special Notice**" had been recorded on 7/6/1979 (Entry 157606) stating that the [SSD Partnership] developer shall install a drainage system to control occasional, seasonal subsurface water fluctuation in this area; each property owner/home builder may desire to minimize possible damage by using wider footings or extending the foundation down to the gravel base. Basements would be constructed at the owner's risk with appropriate basement drainage provided. In effect to offset the water issue until improvements viz. utility trunk lines, roads and homes, and permanent drainage channels, storm drains, retention ponds (the ponds/lakes), roads and gutters were constructed. We moved here in September 1982, all these improvements, except for the small pond/lake, were finished.

On June 25, **1982**: an "AGREEMENT" was recorded, by and between SSD Partnership (who in 1979 had formed a Developer's Silver Springs Homeowners Association representing the 857 acres of Silver Springs East); **and** SSD successor Developer RDF Associates, Inc. (aka Ray D. Fry); **and** Summit County). Via this Agreement the County released the \$150,000 bond to provide funding as contained in Recital E to allow the Developer (RDF) to complete the SS Subdivision improvements on Phase 1A and 1B. SS developers felt 94 lots with temporary underdrains was sufficient for drainage improvements for utility trunk lines. The 1982, Summit County's "Agreement" and supervision of the underdrains ended when the County returned the \$150,000 bond to the developer's SSSHOA representative Ray Frye.

To this day, the "underdrain committee" cannot prove who owns the 1979 underdrains, or that anyone is responsible for their maintenance. The underdrains were never recorded, were never dedicated to the County. **Have never been mentioned or included in the 1985 organization of the SSSEHOA charter documents.**

The County's position on the underdrains is that they are a private matter to be settled by the authority and wishes of the Homeowners made known to their ELECTED board of trustees as has been done in 1984, 1994, 2008 and 2014. Summit County, nor any other organization, does not hold a mandate for the Silver Springs Homeowners to take on the liability, maintenance, repair, or ownership of these underdrains that lay dormant and forgotten from 1982 until around 2008 when **without authority** "a couple self-appointed custodians of the underdrains" took it upon themselves to resurrect them.

\* Definition of **boondoggle**: work or activity that is wasteful, unnecessary, questionable, or pointless but gives the appearance of having value. A boondoggle is often continued due to extraneous policy, misleading information, personal gain or political motivations.

In **August 2008**, Bill Gunter attended a BOT meeting hoping to be a member of the board. Gunter was aware of Winer's and Noland's water problems and similar problems of a couple other neighbors. He wanted to be a Good Samaritan by persuading the BOT to use its influence, authority, and financial resources to assist his pals with their private property groundwater woes. Gunter overlooked the opinions of the majority of the Homeowners, and the liability that would plague our neighborhood. Skip had been sympathetic and supportive but was no longer on the Board. Skip did not feel right about using HOA money to make his repairs; he took personal action to have two sump pumps installed in his crawlspace and French drains installed around the perimeter of his home's foundation. Skip followed the advice and example of a number of other SSSF homeowners. Skip's groundwater problem ended. Around 2012 the new owner of Skip's house stated that during the five+ years he has lived in Skip's former home on East Meadows, that he has had no ground water issues and that he has heard the sump pumps kick on only once.

Board trustees Pollard and Archer were not convinced this was an appropriate, legal, or HOA course of action, or that it would benefit all the Homeowners. They looked for a way to separate the developers HOA from the SSSFHOA. Winer, a beneficiary of HOA work on his own water problem felt compelled to support the issue exacerbated by Gunter who was a volunteer at this time, not an elected trustee. Noland was the self-appointed organizer of the initial study of the system, without County, Homeowner or water rights division approval. The way to recruit supporters was to involve other neighbors some with high ground water. Telling these folks to rely on the to-be-resurrected underdrains added participants in the plans to make the HOA and all the Homeowners pay for underdrain repairs to individual private property.

**September 2008**, Secretary Archer reminded the BOT that the upcoming board meeting would include making the final plans for the October SSSF HOA Annual Meeting and Election. The only trustees to show up were Clay and Lucy Archer. Other attendees were David Ure and Bill Miles who had asked to attend this meeting to ask for the board's support at the upcoming County Commissioner election. David Ure became a mentor to Lucy, encouraging her to continue to garner support for the vote on the new Articles of Incorporation, providing instruction and pep talks to stay the course, to do her duty though the other board members were not participating or upholding the SSSF Bylaws. It turned out to be an uplifting meeting.

Four Trustees could not be roused to assist in the preparations for the Annual Meeting. The Board secretary engaged enthusiastic neighbors to assist her in the work. Happily the new ballot included seven candidates and an opportunity to vote on the new Articles. Winer told Lucy that he was going to Spain because he had been told that nobody shows up to the Annual Meeting so it would be a waste of his time. Lucy called VP Coehlo to confer with him whether to add Winer's name to the ballot, Coehlo advised Lucy that if Winer does not answer her emails and does not formally declare his candidacy then she should not include his name on the ballot. In mid- September Pollard told Lucy she was not going to run for re-election; she wanted nothing to do with Noland and Gunter's activities "that would involve taking over the liability for reviving underdrains that the homeowners had voted against three times. They were loose cannons and would ruin Silver Springs with their sneaking around on neighbors' property doing who knows what, incurring possible lawsuits against the Board."

Bill Gunter answered Lucy's plea to assist in taking ballots to neighbors who would not be attending the Annual Meeting, so that a quorum would be achieved to elect a full slate of Board trustees.

Gunter went to Lucy's house to pick up extra ballots. He belligerently asked Lucy why Winer's name was not on the ballot. Lucy told him it was because Winer had not responded to her emails asking him if he wanted to be on the ballot. And Winer was not planning to be in town for the Annual Meeting. Volunteer Gunter, who was on the ballot for the first time, said he wanted Lucy to re-do the ballot with Winer's name at the top. Lucy told him the Annual Meeting was in two days, the Bylaws state Homeowners are to be given 10 days' notice for a Columbus Day Meeting date, but that she was willing to make an amendment adding Winer and Coursen (who also volunteered after the ballots had been distributed) and to deliver the ballot amendment, now indicating nine candidates, right away to the neighborhood Owners. Gunter strongly stated his position on the repair and ownership of the underdrains. Gunter rolled up the ballots then using them to point at Lucy, told her, "I don't care about your Articles and Bylaws, they are just old pieces of paper, we are going to do things my way."

The **October 13, 2008** Meeting had an 82% Homeowner attendance. Seven Trustees were elected, the Articles passed with a strong majority. What Gunter and Pollard did (and why Pollard changed her position to re-run for the board is a mystery) was to take over the meeting at the beginning, to challenge the Election so Winer could be added to a new ballot. Winer was absent. A few newly elected candidates became embarrassed and quickly resigned. Sue had a tug of war for the ballots.

While the remaining trustees waited for the promised meeting with the rogue trustees to review and dismiss their bogus challenge, Gunter, Pollard and attorney Hobbs, secretly organized an illegitimate Replacement Meeting for December 15, 2008. Their meeting did not have a quorum. Winer again was not elected. The Bylaws do not support their action or the length of time between the two meetings. Subsequent monthly meetings were held in their homes to exclude the October elected Trustees.

This was the beginning of the end of Trustee transparency, fiduciary duty, and board adherence to upholding of the HOA charter documents and Homeowner votes. This attitude of rogue management persists and increases in blatant disregard for Rules and laws up through November 2017, and to the present.

From **December 2008** forward for a couple years Bill Gunter ruled the Board without adherence to the Bylaws and by continuing his push to involve the Association in his misguided plans to make the Association liable and responsible for resurrecting the three decades abandonment of the temporary underdrains. His ill-conceived plans were to force all the SSSF neighbors into paying for repairs on private property. The Homeowners along the underdrains path, who have installed sump pumps and French drains around the perimeter of their foundation are the safest from overflowing seasonal surface runoff. The underdrains mitigate ground water percolated to their depth of 5' to 10' below the ground surface and are located below the utility trunk lines they protected while the lines were being installed, when you check it out, few, if any, homes in SSSF were built to this depth.

**October 2013** - Recorded in SSSF BOT Minutes a former BOT president protested "that he did not want this present body [attendees assembled at this annual HOA meeting] or the Homeowners to have a vote on this matter," knowing the Homeowners had previously blocked work on the underdrains in 1982, 1985, 1994, 2008 within the new Articles, and since, again in 2014.

Gunter, Noland, and Hovey continued their efforts to connect the developer's Silver Springs (East) HOA to the Silver Springs Single Family HOA. These men quoted Summit County discussions,

recorded documents and agreements with the developer, misrepresenting those references as belonging to the Single Family HOA even though the new Articles demonstrate and uphold the distinctly separate two entities. In an attempt to tie up a connection between the two HOAs, on **January 27, 2014**, Gunter and Hovey registered **SSSF Entity 8926368-0151** as DBA of the Developer's Silver Springs HOA **Entity 726027-0140**. At their request the Division of Corporations recorded the Developers' abandoned and reinstated SSHOA as the owner of the **SSSFHOA**.

NOTE: Don Stringham, 1980's & 90's partner and attorney for the Developer, is on record making a clear distinction statement that there were/are two separate HOA's in our Community, one is the Developer's Silver Springs HOA, 1979-1984, the other is the Silver Spring **Single Family** HOA beginning in October 1985 to the present.

The never elected Noland, retained his chairmanship of the underdrains committee since 2006, and Hovey, HOA trustee during 2013-2016, took the underdrains boondoggle to an indefensible level. They ignored the Homeowners request for a cost analysis for the unearthing of the underdrains and a comparison for implementing other available water mitigation measures. They continued to involve the **SSSFHOA** by using attorney's to advise them on how to circumvent the Bylaws and Articles to manipulate elections to discourage opposing views. They had an engineering company create "documentation of the number of underdrain manhole covers" and scheduled removal of mature tree roots for "repairs" to the underdrains, continually, quietly spending HOA funds for their activities without authority. They focused their furtive efforts on the physical aspects and hundreds of acre feet of water discharged out of our neighborhood by the underdrains; recklessly disregarding the volumes of legal and financial considerations and Owner protests. On **November 3, 2014** at an Association Replacement Meeting, after a series of homeowner gatherings in our neighborhood, a **majority vote by Homeowners** directed the BOT again to "Ignore the Underdrains." Instead of announcing the vote tally, BOT President Hovey, without conferring with the Board or the attorney seated next to him, on his own recognizance, chose to Ignore the Homeowners votes thereby disenfranchising and making the Homeowners authority irrelevant. Hovey also ignored the motion carrying a second and a third, and the assenting chant of the assembled majority of Homeowners pursuing that he declare the tally. Hovey concluded the meeting without announcing the Homeowners' victory, thereby thwarting weeks of Homeowner discussions and work!

F.Y.I. Since 2005, the BOT has paid attorneys, mostly for advice on how to circumvent the Articles, the Bylaws, advice from the County Commissioners, and the Homeowner votes against the underdrains, the sum of \$98,670. The BOT also spent \$70,661.84 for unauthorized work and reserves for the underdrains during the same period of time. Costing the Homeowners an estimated \$170,000 for the boondoggle of unearthing of the 1979 Developers' temporary system, that benefits only a few properties, and that is completely unauthorized by government offices and the **SSSF** Homeowners. Amounts were compiled from the online posted annual **SSSFHOA** Budgets pages.

In **2015**, adding insult to injury, the Hovey and Zilvitis boards contracted with the Bankruptcy and Foreclosure law firm of Morris & Sperry to draft a specious 48 page CCRs rewrite Declarations document. They additionally made Noland the chair of the CCRs rewrite Committee (though they had another more qualified volunteer and Noland also continues as the underdrains chair). The M&S Draft CCRs attempt to take over our property rights; snubs and derides Homeowner votes to ignore the underdrains, they added the underdrains into nine Articles (15 subsections); that remove the Homeowners right to vote on assessments and instead creates a blank check process from the

Homeowners to the BOT. If the CCRs pass Noland/BOT would have the authority to intrude on private property with impunity and at Noland's and the BOT's "sole discretion determine" if they want to dig into a Homeowners land, outside structures, fauna, etc. The costs to SSSF individual Lot owners for underdrain excavation, repair, or replacement could reach hundreds of thousands of dollars according to Summit County departments.

Summit County Attorney Dave Thomas wrote to Lucy Archer and the Board in **September 2014**: "*In discussing this (the underdrains) 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 [Silver Springs Single Family] and the owner's association.***"

**Summit County does NOT hold a mandate to make the SSSFHOA responsible for the 1979 Developers' SSHA agreements between 1978-1985 with Summit County. The Land and Home OWNERS together have the final say regarding what is and is not included in their CCRs. ONLY the Land / Home Owners together can decide whether they want to accept the liability and financial burden of the underdrains, or the rules or other involvements created by an ethically elected Board of Trustees.**

Short Notes from some of our Meetings with agencies and water professionals:

-The Utah Department of Water Rights stated that no application from Silver Springs has been received, much less accepted by them, requesting the installation or permanent use of an underdrain system that alters water flow energy, or that diverts the direction or quantity of water discharged from the Community ground water supply.

-Summit Water Distribution Company and Mountain Regional Water District both voiced grave reservations against any action that would remove the valuable natural ground water resource from any land within their jurisdiction. SSSFHOA underdrains committee reports their work on the underdrains has greatly increased the discharge of water out of our neighborhood at a rate of 300 to 400 acre feet of water per year. An acre-foot of water is the volume of one acre of surface area (66 feet by 660 feet or 43,560 square feet) to a depth of one foot of water. Compare this rate to the Rockport Reservoir total acre feet of water capacity of 75,730 acre feet.

The Cooper Lane springs west of our community, shared by SWDC (3/4) and MRWD (1/4) no longer provides sufficient water for the needs of our Silver Springs Community. There are many other upper elevation users competing for this water. A good percentage of water for our community is piped over 20 miles, over and through Promontory from Rockport Reservoir. Need I remind you how precious is our ground water for maintaining and supporting the life of our heat stressed mature trees and property?

-The U.S. Geologic Survey Water Resources Division wrote that we can run out of ground water if more water is discharged than recharged by nature. During periods of hot and dry weather like we have been increasingly experiencing, recharge to the aquifers we rely on for human use decreases. If too much ground water is pumped out of our neighborhood during these low rainfall periods with prolonged hotter than normal temperatures the water table can fall and wells may go dry.

In Silver Springs the underdrain outlet pipes between Lots 104 and 105 are reported to discharge our precious ground water away from our use to Willow Creek. This is a huge loss to our Silver Springs Neighborhood. In **August 2016** HOA president Brian Zilvitis was commenting on "the great job the

unearthed underdrains were doing collecting and discharging water out of our neighborhood.” You can look it up; in 2016 our area received virtually no rain from April to around September. The discharged water Brian was reporting was metered percolated water Homeowners paid for to spray and soak into their gardens, trees and lawns. Does Zilvitis understand the costs and damages the unauthorized underdrains are creating within our neighborhood?

Every organization, public and private, we talked to cautioned us to inform the Homeowners that water resources in west Summit County, especially the Snyderville Basin, are steadily being depleted as they are tenuous, shallow or difficult to put into service. Each was mortified by the notion that a neighborhood would intentionally discharge vast quantities of their valuable ground water, a precious natural resource in our alpine desert region. They encouraged and supported our efforts to provide information to Homeowners advising them of the overall picture and implications of wasting ground water. Especially without the Homeowners consent!!

Snyderville Basin has a long history of water shortages and remediation plans. Water is becoming less available more recurrently as our area populates. Reliable wells such as the Atkinson have dried up. Attempts to drill wells in the Cove and Sunpeak areas have been unsuccessful and shut down. The well on the SS large pond/lake west side peninsula has a 500’ pipe and casing nonetheless does not yield much water beyond that available by diminishing artesian movement. These water companies were unaware that the Master Association has for years been pouring a cocktail of chemicals and dyes into the pond water for control of leeches, algae, and water plants. These unauthorized chemicals can pollute culinary water as the pond water is just a few feet from the peninsula well. If the sterile cutthroat trout the MA is stocking in this pond are dying in large numbers then it is unlikely that water can be safe for human contact or consumption.

Smith & Morehouse in the Uintahs, Wanship and Rockport Reservoirs have been tapped for culinary and irrigation water for this developing Basin, and to provide water to our Silver Springs Community. No other subdivision in Summit County uses underdrains to discharge valuable ground water. The process of unearthing the temporary underdrains to discharge hundreds of acre feet of water from our land is not only misguided, it is wasteful and damaging to our property’s value, our lifestyle and well-being. The work of a couple of self-appointed men furtively working in our neighborhood, having good-intentions or not, they are ignoring the votes of their neighbors, and undoing decades of conservation efforts to keep our lawns, gardens and trees healthy and our neighborhood drinking water available to our faucets and hoses.

**We hope we can count on Silver Springs Single Family Homeowners to support the work and effort of neighbors trying to safeguard your property rights, your rights to control the actions of the board of trustees, and the right to know and influence what is going on with our water supply, and the activities that affect it. You can contact Lucy Archer 649-4663 or at [lucya0104@gmail.com](mailto:lucya0104@gmail.com). And you can visit [www.silverspringscommunity.com](http://www.silverspringscommunity.com) for expanded information. We look forward to your response to this and our future messages.**