

October 2, 2018 **WHAT YOU MISSED AT THE BOARDS TOWN HALL MEETING**

Those of you who did not attend the board's "Town Hall" tonight missed a true dog and pony act organized to promote what the underdrain committee was attempting to sell to the Homeowners. Attorney John Richards low level buffoonery fell short without a sale. The meeting began late because the chairs and tables were not ready at 6:00 pm for the attendees. I counted 31 lots represented. For twenty minutes Richards held up a sheaf of papers while he said, "you have approved and like the content of your HOA documents" and how he was updating them to better incorporate new state statues. Bad start. I don't think anyone in the room "likes" our 1985 and 1994 documents much less the sheaf of 1979 through 1982 Developers HOA documents he was touting. To make his act worse, Richards repeatedly tried to convince this audience that they were responsible for the underdrains by quoting the 1982, July 7- Entry 193368, 4pg doc, Amendment of Article VIII, Duties & Powers [of the Developers]" wherein Developer Vern Hardman's "duties to own and/or maintain the private streets and street fixtures, the underdrain system and all other property acquired by the [Developers] Association" in 1982 is outlined. We are not the developers!

This description obviously refers to the condo projects south of our subdivision that were being built in SS between 1979 and 1982 and water needed to be drained from the original building lots. It is not known if James Crestani was given authority or instruction to write and record this amendment shortly after the original document was recorded. SSSFHOA was not created until October **1985**.

At close to 6:30 pm one of the Homeowners (Rand Howard?) in the back stood up and inquired when the real CCRs discussion was going to begin because so far the meeting was a waste of his time. This question gave Richard's "pony" a start but not sufficient to move the discussion into the realm of the draft CCRs content. Richards continued with his chronology of HOA laws.

Robertshaw explained that all voting would be done electronically. Bachman asked for clarification on Robertshaw's letter to the Homeowners saying there would be no proxies and no hardcopy ballots. Robertshaw said they were trying to streamline the vote (by eliminating those who choose not to vote using their own computer?). The count of the vote was in question since only a couple individuals would be able to access the totals. The trust level for the board's election announced results is definitely dubious. Where are the numbers and where is the proof from past elections?

There was a long discussion about how these CCRs were drafted. Richards said they tried to strike a balance between the developers 1979-1984 SSHOA and the SSSFHOA documents. Both included a lot of "burden and baggage" that does not pertain to our subdivision or our 21st century lives. Tracy Tanner asked if stripping all the old documents down to use them as a template would be as effective as starting all over with completely new Covenants, Conditions & Restrictions. Richards outlined his process of creating a redline document version, referencing the developers HOA 1982 documents, and the Morris & Sperry template CCRs was not possible because "the content and the process don't jive together." The allocated intention could create unintended consequences; he was suspicious of adaptability if using the developers' 1982 content to layer in what is needed and appropriate for our 2018 neighborhood.

Homeowners commented that they have never had any input on the drafting of any of the board documents they are being forced to accept. Membership in the HOA and adherence to its rules was thrust upon nearly everyone in this room and in this neighborhood when they bought their homes and

property here. Several agreed that the best course of action is to completely withdraw all ties to the Developers HOA and to all the subsequent documents and to begin with a complete fresh start.

There was much concern over the use, and expense from the attorneys office to vet and create the redline version of the CCRs. The value of "redlining" using red text to indicate removal or addition of edited text for tracking changes in a document was agreed to be too impervious for quick study. Homeowner Tracy Tanner suggested the attorneys instead provide "white papers" for describing the content of their CCRs using this format for an indepth report to present each Article or subsection. Richards agreed that process would be faster and less expensive; redlining could take 30 to 60 days while white papers might be done in a couple hours.

Chris L. stated he was getting confused with the non-sequential use of how the documents flowed and how that related to our situation; the use of frameworks, templates, redlining, and the order of discussion, amendments, voting, more discussions, more amendments, re-voting, more discussions, all these within three weeks, 30 days, perhaps even 60 days, we would vote again, uncertainty of process. The board's annual meeting on the 25th then could be the springboard to extend this process another 30 days or more into December. What Richards did not consider is that four of the current trustees, Robertshaw, Reynolds, Noland, and Reddy (for Dittmer) terms expire on the second Tuesday of October the date of each year's annual meeting. A new board will be installed and may not be willing to continue with this charade created to wear down the Homeowners into compliance to underdrain CCRs.

There were Homeowner comments that over time the HOA should become more efficient with the use of technology, however the opposite seems to be the case with a board that keeps Homeowners at a distance, disenfranchises them, upbraids their rights and authority over the board, and pretty much does whatever they want without regard to the Bylaws or best interests of all the Homeowners.

There was a discussion on how effectively the board is delivering ballots, proxies, and other correspondence to the Homeowners. The 2017 Election received many complaints that Owners had either or both, not received notification or a ballot. Robertshaw defended his board by saying, as he has done in the past, that the Homeowners are "apathetic and unwilling to participate on the Association committees or attend meetings, and elections." Someone else from the front table made similar comments. It is fact that Robertshaw has turned away volunteers that do not suit him personally.

Lucy Archer disagreed with the characterization. The Homeowners know that she keeps in touch and also visits them at their homes to have face to face conversations and give them neighborhood information. Archer continued that the description Robertshaw provides of the Homeowners is not how she finds neighbors to be. They are quite concerned but do not know how to break through the wall of isolation the board performs behind. There are Bylaws the board does not follow, or misinterprets. There are too many new rules the Homeowners are not familiar with and that causes them to feel disenfranchised from the HOA , there are many rules that have been made that they had no opportunity to agree or vote on. On issues and elections that they have voted on as a majority by write-in (to ignore the Underdrains, or to elect candidates they like) have been ignored by the board. The Owners see that the elections are controlled by the Nomination Committee, as are the outcomes.

The board has limited the Owner participation at board meetings; communication is channeled by the use of "Tickets" that are ignored. Homeowners became mandatory Members of the association at the

time of purchasing their homes. For these reasons and maybe others, the Owners don't feel they have a stake in this association or its proceedings. There is little incentive to show up to meetings or to vote.

Chris Bachman cited the board itself has admitted a 70% delivery rate for emailed items. It appears that rate may be much lower. Owners in the audience said they have provided their email address a number of times yet still are not receiving correspondence from the board. For the 2017 election the majority of Homeowners we talked to reported they never received Annual Meeting notification or election voting instructions or ballots; proxies are unacceptable. The trustees serving on the board have very little Owner voted support. This year it seems the same problem with Members notification of this meeting or the Annual Meeting has occurred. The efforts of neighbors sending out emails and fliers correspond to which association meetings have the largest turnout.

Richards told us that our HOA CCRs has another problem with the underdrains using our current documents. If we have insurance, repair, maintenance, and lawsuit expenses the board has to have levying powers to collect large assessments from the Membership. The dirty word "underdrains" was out and from c. 6:40 to 7:45 there was a heated discussion. The board and the six homeowners who have been helped by the board to remedy water on their private property, and the remaining opposing majority that views the underdrains as a dead issue, enormous liability, and too costly to carry out Noland's plans to repair and expand them, engaged the agitated group. Richards was trying to convince the audience that if the underdrains plan is not implemented to Noland's liking and equal to the pressure he creates at each board meeting since 2006, then there will be a huge catastrophic water event created in our neighborhood. What all the water resource professionals at Weber Basin Conservancy, Mountain Regional Water, Summit Water, State Engineers Office, Water Rights Division, State Water Resources, U.S. Geological Survey, and others, have told me is that our association does not have a permit or right to alter or claim rights to the underground water. Each office told me that the catastrophic water event likely in Silver Springs is that we will run out of water. With much work and expense by Mountain Regional and other water professionals, a source for water for our subdivision is tenuous; currently water is being piped twenty miles from Rockport Reservoir to Silver Springs. Today the water level at Rockport is at 29% of capacity.

Richards was obviously oblivious to the majority disapproval of making our lives revolve around the HOA CCRs and Noland's urge to dig up our neighborhood. The forty year old limited system that has been described in contracted reports for the board is reported to have a life cycle of thirty years making the underdrains already obsolete. The engaged audience, asked questions and voiced concerns about property values being lowered by the unearthing of what is thirty +10 years of forgotten lengths of buried perforated plastic piping. Buyers will be scared off by the private property underdrain trenching and perpetual assessments they will not benefit from. The intensity with which this topic was deliberated by the homeowners should have been a sure indication to the board and their attorney that placing the underdrains so dominantly within the CCRs was a death knell for their acceptance.

When Brian Zilvitis was our HOA president I went to his office to discuss the underdrain neighborhood dispute. We discussed that there is much more to this than the board or Noland have included in their website or in the tidbits of underdrain information they dole out. The board is supporting a one-sided scenario. Brian told me the board is hesitant to be too forthcoming with information as they are concerned that their primary source of possible lawsuits is the homeowners themselves!!! He said that if the board gives Noland permission to tear into private Owner property, damages will certainly occur. If the Owner files a claim to his property insurance company to pay for the damages, and if the claim is

large (which the County told Rick Hovey it will be in the \$100,000 and up range), then the insurance company, with their deep pockets, could in turn sue the HOA for claims related to damages from work on an unsanctioned system that is not approved by the Association Members. This is the reason Noland and the board, who is failing in their fiduciary duty to ALL the Owners, would be at-fault sitting ducks.

When board president Skip Dominick went to the Summit County Commission Meetings, between 2004 and 2005, to petition for their assistance in helping himself, Noland, Yokubison, Lindon, Collette and Wilson with the high water table and the buried 8' to 10' under drains, Skip was turned down.

June 1, 2005 – [Summit County Board of Commissioners](#) Business Meeting Minutes: SSSFHOA Pres. Domenick told Commissioners “it is not practical for the homeowners association to maintain the drainage system.” Skip hoped the County would take over the maintenance and repairs. Commissioner Woolstenhulme commented that **“the problem is the individual homeowners’ problem** and not the County’s responsibility.” Commissioner Richer pointed out **that the proper procedure is to inform all the homeowners for their disposition on the situation and to ascertain whether the homeowners are willing to accept a special assessment to get the work done.”** [Votes have been cast and the Owners majority voted in 1985, 1994, 2008, 2015 that they are NOT willing to take on this costly never-ending liability! There is much Noland and the board has not told us about the true costs.] **Chair Woolstenhulme cautioned that, if the County -and the HOA- has no liability, they should be careful about taking action to resolve the problem. “ Placing the underdrains under the auspices of the HOA will lead to nothing but ever expanding layers of conflict.”**

Tonight is proof that Noland’s plans are continuing to do nothing more than creating confusion, conflict and anger in our neighborhood. The benefits are undocumented and the overwhelming majority will not be assisted but rather endure costs and constraints of many types. A cost analysis has never been provided to the Owners though the Owners requested one since 2014.

Do we or the HOA even own the underdrains or have any legal claim to them? It was discussed that there is no title to transfer from the developer. Neither Noland nor the HOA have immutable rights for the system, even the developers’ rights proved to be temporary. Tracy Tanner asked if our HOA had a [“Summit County Open Space Cooperation and Preservation Agreement”](#) for the underdrains or even for the easements wherein they lie. The attorney and all officers nodded no, what is that?

–September 11, 2014 – [Letter from Summit County Deputy Attorney Dave Thomas](#) to Lucy Archer and Rick Hovey: “In discussing this 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 [of Silver Springs East] and the owners’ association. What the County can definitively state is that such underdrains are not public improvements owned or maintained by Summit County.” The Homeowners have the final say as to the underdrains disposition, and the large majority have said loud and clear to continue to “IGNORE THE UNDERDRAINS!”

Hunt Williams, the pro Homeowner trustee on the SSSFHOA board, spoke up to say that the underdrains were a 1979 last minute installation on 50 lots to drain water so that builders could install infrastructure utilities and foundations. See [July 1979 Special Notice to lot owner builders.](#)

He added that Noland’s plans to make the underdrains such a prominent focus of the draft CCRs, if passed, will become a cloud on the Silver Springs SF property titles, property values will sink. Certain things are fundamental to property rights, primary are clear titles without stigma.

Randy Cassidy then walked to the center of the audience to voice his concerns with the assessments for the underdrains, the manner in which they are structured, the amounts, the uncalculated analysis and the limited benefits to the majority. State law requires that reserve funds be voted and accepted by Homeowners. I don't remember ever voting on underdrain reserve funds or assessments. This is where laws can get messy for the board.

One critically important aspect of HOA lawmaking is that Homeowners need to be aware that EVERYTHING that is included in these draft CCRs, even obvious flaws or items in dissension like the underdrains, once recorded become entrenched liabilities. Any State and Federal protective laws for secure property rights that are contradicted within these documents will be nullified. The CCRs have the power to govern and be applicable first and foremost, becoming a law unto themselves in our neighborhood, but only if the Owners are coerced into voting to sanction them. The underdrains must be voted on at this election to silence the instigator and his dual committees. To have portions of passed CCRs removed is a tedious, expensive amendments undertaking. These circumstances are a significant incentive for Owners to REJECT these entire documents. The draft CCRs have NO redeemable value for our neighborhood or to our personal property rights and ownership, neither for the sweet enjoyment of our homes and neighborhood, neither for personal control of our private and communal lives.

It was nearly fifteen minutes past time to adjourn. There had been no discussion of the CCRs specifically Article by Article. This meeting was a let down if you were expecting to be tutored on the content and interpretation of such stringent and spurious documents that will rule our neighborhood and our lives for decades to come.

As usual Noland spread out his tattered underdrain maps to show to owners if they are one of the 50% who have underdrains on their easements or not. This meeting was over and we were no better informed on the CCRs than we had been when we arrived. As Homeowners and neighbors we are going to have to continue to share information and hold explanatory get-togethers. And then vote to reject both of Noland's committees, his one person underdrain committee and (this month's two-person) CCRs rewrite committee; also we must clearly deny further expenditures for the underdrains and for attorneys. **Four of the 7 trustees, Robertshaw, Reynolds, Reddy and Noland, terms expire on October 9, 2018.** Hunt Williams has one more year on his term. If you would like to be on our Homeowners Election ballot contact me to add you.

REMINDER: Please attend the Tuesday October 9, 2018 Homeowners' Annual Meeting and Election at Parleys Park Elementary School at 7 p.m. We will be voting for many important items and new trustees. We look forward to your support.



Working for Positive Outcomes,
Lucy Archer
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