

The following is an account of the Santaquin City Council meeting with Summitt Creek and the residents which live on 500 South between 300 West and 500 West held November 18, 1981.

The following members of the Summitt Creek Irrigation Board were present: Clint L. Ercanbrack, Don Kay, Fred and Pat Openshaw, Claude and Karen Rowley, Joe Fowers and Warren Ahlin.

The following property owners were present: Ben and Jo Lene Alexander, Ted and Linda Kennison, Verl Hovey, David Anthony, Blaine Smith, Don Olson, Phil and Shirley Rowley and Claude and Karen Rowley.

Mayor Steele called the meeting to order at 10:07 P.M. and presided. The following Councilmen were also present: Dan Olson, Sherman Jones and Floyd Nelson. City Recorder Sam Sellers recorded the meeting.

Mayor Steele said that it was his information that the judge had continued the restraining order and asked that the parties involved get together to see if something could be worked out on the ditch down in the Alexander area. He asked if this was the understanding of the people which were there and they all indicated it was.

Mayor Steele said that some of the information which was brought out at the hearing has some direct bearing on the City. The problems are not as simple as they appeared to be at the beginning. It has been the City's position to repair the ditch and if the people want a pipe, they should pay the difference over the repair. For this purpose the City called for an Improvement District in the area which was turned down by the residents.

\* Mayor Steele then proceeded to give some history of the area. Mr. Blaine Smith received a building permit to build under the previous administration with a very small water line to his home. Mr. Smith said that he had to threaten the City to even get that. Mayor Steele said that as he came into office, it appeared that that small water line was going to be inadequate if the area was to grow. The City, therefore, upgraded the water line to its policy of at least six inches. In order to do this the City had to go back two blocks and pick up an eight inch water line and bring in to the area to connect to the six inch. This was done at an approximate cost to the City of \$30,000.

The City then entered into an agreement with Mr. Alexander to extend this water line to the West end of his subdivision. Mayor Steele said that when the City entered into this agreement with Mr. Alexander, there were already others in town who had built subdivisions on existing, dedicated City Streets. He said that it was felt at the time it would be unfair to make them become subdividers since they were already on dedicated City Streets and special agreements were entered into with these people.

Mayor Steele said that, at the time the Alexanders came before the Council, they were under the impression that the roadway to the South of the subdivision was a public dedicated street. He said that as of yesterday (November 17, 1981) the City found out that it was not, but it is private land which the Alexanders have been paying taxes on. He

said that the City was also under the impression that the property through which the ditch runs was also public land, dedicated street or that an easement for public use has been established through the property. He explained that it was under this assumption which the City entered into an agreement to work on the ditch.

Mayor Steele said that the City now finds that this road has not been dedicated as a public road. He said that this now raises some question as to whether the City could have even declared an Improvement District when they asked last time.

Mayor Steele said that this ditch routes flood water around the City and that the City feels some obligation to assist in routing this water as all citizens will benefit from this. He said that this was what the City was doing when the restraining order stopped the work. He said that the City cannot enter onto the property until the restraining order is lifted because this is private property and not public property.

Mayor Steele said that the City officials feel rather shocked about the roadway not being dedicated. The agreement with Mr. Alexander was entered into four years ago with the impression that it was and they would be like anyone else in the City. Mayor Steele said that the governing body feels as if they were misrepresented to about the roadway. Mayor Steele said that the City Ordinance #152 Section 21. g. 2. states that all lots must front on a dedicated City Street prior to a building permit being issued.

Mayor Steele said that there are currently eleven lots in the total subdivision, as shown in the map submitted, which qualifies this as a large subdivision. Mr. Alexander said that there are only nine lots in the subdivision. Mayor Steele said that the City is also looking at the area where a newer home was established as well as those in the subdivision area. Mayor Steele said the in the opinion of the City, this qualified this area as a large subdivision. Mayor Steele said that he and the Council at the time were in error partly because they did not have all of the information available as they have now. He said that at the time they declared this a small subdivision on an already dedicated street.

\* Mayor Steele said that there are differences now in the subdivisions. First the street will have to be dedicated. Mrs. Kennison said that the subdivision has already been approved and asked if the Council could go back on what has been done. Mayor Steele said that the City will be proposing voiding the agreement with Mr. Alexander and dealing with the area as a major subdivision. Mayor Steele said that City has no choice. He also said that if the road had been dedicated and the subdivision was a small one, they could continue with the agreement. Councilman Jones said that the zoning law will not allow the City to issue a building permit on an undedicated City Street. Mayor Steele indicated that the City has a number of problems in the area.

Mrs. Kennison asked if the City could condemn her house and Mayor Steele said that this is possible. He said that the City is not placing fault and they will try to work this out, however this throws it into a completely different ball park.

\* Mayor Steele said that, based on information which were testified to in court in addition to failure of the Alexanders to comply with the agreement entered into, the City will: 1. Void the agreement with Ben Alexander; 2. Declare Ben Alexander a major subdivider. He said they

will then work <sup>under</sup> ~~out~~ the requirements of the Subdivision Ordinance (#160). Mayor Steele pointed out that the ordinance requires that the subdivider pay for all the major improvements in the area.

Mayor Steele said that the City cannot follow the dictates of the Judge in declaring an Improvement District as this is private property and the City is dealing with a subdivider. The City will be in a position of deciding what can be done by dealing with the subdivider.

Mr. Kennison asked if this meant that the City was backing out on any help in doing the ditch. Mayor Steele said that this does not. Mr. Verl Hovey said that in other words they are starting from scratch. Mayor Steele said that in some ways they are but the ditch has to be done quickly. Mayor Steele said that as far as starting from scratch with Mr. Alexander, yes because he is a major subdivider. Mr. David Anthony asked if this will hold up the ditch and Mayor Steele said that it could. Mr. Anthony then asked how this will effect the City legally in that they entered into private property and started tearing out the ditch and devalued Mr. Alexander's property. Mayor Steele said that the City does not have a restraining order for devalueing property. Mr. Anthony said that it now comes out that this is private property, even though the City was not aware of it being private property, and illegally entered onto the property. He asked how will this effect the City. Mayor Steele said that he doesn't feel the City has any responsibility. Mr. Anthony then said that this means the City could go onto his property, thinking it was public property, and destroy something and then turn around after the fact and say they were not responsible.

Mayor Steele said that he felt the City had a perfect right in assisting Summitt Creek as this is an existing ditch. He said that he doesn't think there is any testimony saying this is a good ditch, in fact the opposite, of it needing to be repaired. Mr. Anthony said that there is more repair now that the City has torn it up.

Councilman Jones pointed out that this is not Mr. Alexander's ditch which the City was taking out, but it is Summitt Creek's ditch and the City was working with Summitt Creek. Councilman Jones further stated that Summitt Creek is contending that they are repairing this ditch. Councilman Jones said that any irrigation company has the right to repair their ditches. Mr. Alexander said they can repair the ditches but not enlarge them.

Mayor Steele pointed out that by declaring Mr. Alexander a subdivider, this puts the responsibility of getting the ditch done onto Mr. Alexander, whether it be a ditch or a pipe. Mrs. Kennison asked (interrupted by Mr. Alexander who said the meeting was going to his satisfaction) why it should be Mr. Alexander's responsibility to take care of an eyesore which belongs to someone else just because it goes through a subdivision. Mr. Sellers pointed out that the subdivision ordinance requires that the subdivider take the ditch and pipe it or fence it. If he fences the ditch, he will fence the people out of their property. This is the requirement even though this is not his ditch. Mayor Steele pointed out that the City just approved a subdivision down on the Northwest section of the City and they will have to pipe the ditch with the specifications of Summitt Creek. Mayor Steele again pointed out that this is the subdivider's responsibility to do this. He also said that it is the subdivider's responsibility to put in curb and gutter, dedicate the street,



dedicate 7% of the land or its value for a park, put in lights and to put in a sidewalk if it's necessary. Mrs. Alexander asked what the ruling was on this and Mayor Steele said it is the basic subdivision ordinance for large subdividers in the City. Mrs. Alexander alluded to private talks with the Mayor and some Councilmen. Mr. Sellers said that if they are declared a subdivider now they will fall under the present ordinance. Mr. Alexander said that it would suit him fine if the Council would avoid the subdivision. Mr. Sellers said that there was no way the City could do this. Mrs. Alexander said that there were some very serious problems at the time the agreement was made which were discussed in very private situations and if the Mayor wants these to be made public they would bring them out. She said that it took an attorney to straighten out the problems at that time. Councilman Jones asked if the Council could meet with the people privately so see what the problems were. Mayor Steele said yes if the Alexanders would like to. Mr. Alexander said that he thinks they have already been explained to them, and he has personally told Councilman Jones the problems before. Councilman Jones said that he could not remember anything that would be private or personal. Councilmen Olson and Nelson said that they would like to know. Councilman Jones moved the meeting be adjourned for five minutes to hear what the Alexanders have to say.

Mr. Don Olson asked if the City and the Alexanders could get together another time to work this out and if each party could present their views on what could be done. He said that he would like to know what is going to be done and the subdivision should not be drug into the ditch. They should be deciding what should be done on the ditch and not the subdivision.

Councilman Jones said that the Mayor told the people exactly what was going to happen, the City will follow the ordinance and Mr. Alexander is responsible for the ditch.

Mr. Blaine Smith brought out other areas with the same problems and Councilman Jones said that these areas will be taken care of as soon as they can get to them. Councilman Jones said that it is against the law for the Council to go against a City ordinance. A resident asked if it is fair for the people to tear down their houses after they have been built. Councilman Jones said that it against the law for a City to issue a building permit on an undedicated street. Mrs. Kennison asked who would pay the consequences. Councilman Jones said that if Mr. Alexander would dedicate the street to the City, the problem would be taken care of. Mr. Alexander said that there would no problem dedicating the street to the City, but they were here to discuss the ditch.

Mr. Alexander said that they stopped the ditch because the City and Summitt Creek had started tearing out the ditch, when they had asked for some written guidelines as to exactly what the intentions were. He said that they were 100% ignored on this request. Councilman Jones said that he had gone to Mr. Alexander and told him exactly what would take place. Mr. Alexander said that his wife came to a Council meeting and asked for written instructions of the exact intentions before any work started and they never received one single thing. Mrs. Kennison said they heard rumors the ditch was going to start, but they were not notified of the size and it was after the ditch was started that she saw the blueprints. Mr. Don Kay said that he told



Mrs. Alexander he would get the plans to her on a Friday night, but was not able to. He said that he took them to her house on the next Monday, but no one was there. Mr. Alexander said that the blueprint would not mean a thing to him unless he was an engineer.

Mr. Kay said that there was still a matter of opinion as to whether Summitt Creek still has a right in the ditch. Mr. Alexander said that the whole problem is the safety for the children that live along the street and throughout this town. He further said that there is no problem getting a right-of-way, getting the street dedicated or anything else. Councilman Jones said that the City's position is that this is the subdivider's responsibility by ordinance.

Mrs. Kennison asked if this meant the City will not help on the ditch and Councilman Jones said that the City will help.

The residents asked what the City would do and Councilman Jones said that the City will tear out the old ditch and haul it off. Mr. Don Olson asked about the fill to cover the pipe. Mr. Kay said that this will be needed. Councilman Jones said that he thought the City could do this. Mayor Steele emphasized that the City would tear the ditch out and haul the fill in.

Mr. Kay asked what the property owners were willing to do. Mrs. Kennison asked what the water company would do. Mr. Hovey said that the water company had expressed to the City that they had so many dollars to put into the ditch. Mr. Kay again said that he would like to know what the property owners were willing to put in. Mr. Don Olson asked about the cost of the ditch, to determine what they would be willing to put up. Mr. Kay said that at the time he gave the estimate, it was about \$36,000. Mr. Hovey asked what the water company had proposed to pay at that time.

Mr. Kay said that when they had proposed this to the City Council, the water company was to pay half and the City would pay half. Mrs. Kennison asked if this meant the water company is still willing to put up \$18,000. Mr. Kay said that they could not do this now without putting a special assessment on the ditch and the company could only put up \$10,000 at this point.

Mrs. Alexander asked if the County Flood Control would participate. Councilman Jones said that they might if there were some plans drawn up and the City is the only entity which could approach them.

Mayor Steele explained that the City and Summitt Creek were only going to do from Hoveys to Kennisons because that is the worst part of the ditch. He also pointed out that the City and Summitt Creek are willing and plan to improve the ditch from the highway to the West end of the subdivision and that when the people were approached on the Improvement District in the first place, it was to ask if the people would like to assist in piping the ditch.

Mr. Claude Rowley said that the people didn't want to help on the District, so the water company has spent part of the money they had set aside for a pipe and now they only have \$10,000.

Mrs. Alexander said that they had gone and talked with the County Attorney, the County Commissioners and the flood control people about the situation and they all said that you cannot tax one side of the street as this is unfair taxation and if an Improvement District is put in, it has to include all the people who benefit. She said that this is posing a problem as half of the people are in the City and half in the County. Mrs. Kennison said that if the City would work with the County, an Improvement District could be declared on both

sides of the street. Mrs. Alexander said that this is why they would not go along with the City before because it would be unfair to ask one side of the street to participate and not the other. Mr. Sellers pointed out that it would take about six months to set up an Improvement District with the County. Mr. Hovey asked why throw this possibility out the window. Mr. Sellers said that he was not rejecting the idea, but the problem needs to be taken care of by early spring. \*

Mayor Steele said that his interpretation of the meeting was that the City had asked them if they wanted to participate in a pipe and they all said a definite no. He could not remember this idea of unfair taxation coming up in the previous meeting.

Mrs. Kennison said that another idea which their attorney gave them was that they go down both side of the street and make a contract with each property owner and the water company to pay a portion, but she said that she did not like this idea.

Mr. Fred Openshaw said that the water company was made up of stock holders some of which do not directly benefit from this ditch. He said that the money raised for this ditch from the water company is assessed to all the stockholders. He said that there have been two children drown in the ditch in front of his home and that this problem is widespread. He said that it is not the size of the ditch, but the water which is dangerous. He said that the company would like to pipe all the ditches, but they do not have the money.

Mr. Smith said that he was concerned that the ditch would be larger and that he could not jump a 7 foot ditch. Mr. Smith said that they should forget about the ditch and Summitt Creek should just put it back in the way it was. Mr. Sellers asked if they would promise never to sue the City or Summitt Creek for damages as a result of flooding. Mr. Smith said they would not if they didn't send too much water. Summitt Creek pointed out that this is a flood control ditch.

Mr. Richard Johnson, City Attorney, said that the philosophy of what the City was saying and the reason the Mayor went into the subdivision, is something has to be done to change the bargaining powers. He said that the lawsuit was brought as if the City and Summitt Creek were the bad guys. Now Summitt Creek and the City are taking a different position. The legal position is that that is a subdivision down there and as far as he is concerned the whole thing is void, ie, the agreement and everything. The City has the right to start from base one and require that the subdivider put in the ditch, that he bear all the costs and the City will go that way. He said that this is what he has advised the City and they may extract whatever they need to from the subdivider to get this to happen. Mr. Alexander asked if the subdivider could pick his own size of ditch. Mr. Johnson said that he could not pick his own size ditch. Mr. Alexander asked if he was required to put a ditch three times larger than is there now. Mr. Johnson said that Mr. Alexander is required to put in the exact ditch which the City requires him to put in. Mr. Johnson said that if they cannot put in the ditch required by the City, then the subdivision is not approved. If there have been building permits issued on the subdivision, the City has the right to void those. When questioned on this last point, Mr. Johnson said that he has been on both sides of this issue with two houses over in Payson and Dave McMullin on the other side. Judge Bullock voided both

permits and both houses had been constructed. Mr. Johnson said that the houses still belong to the people as well as the property, but occupancy, building permit, etc. are still subject to governmental control. He further said that the amount of money paid would be between them and the person they bought the property from. Mr. Johnson said that the City and Summitt Creek are in a bind and they want to get the ditch through, but there is a real stalemate because the landowners are saying they cannot come onto private property, "we are not going to contribute any money," "you can't enlarge the ditch" and so something has got to be done. He said that it is obvious that the ditch will not go through on the basis of the positions everyone has maintained up to this point. He said that he thinks the best idea would be to pipe the ditch, although Summitt Creek has no obligation to do this as this is one of the hazards of a small community. He said that the only legal basis the owners' attorney has is that Summitt Creek has no authority to enlarge the ditch. He said that if the ditch is going to be piped, someone has to be willing to bear more of the cost than they are willing to bear now. He said that he gets the feeling that it is the landowners who everyone is looking at to come up with the bigger chunk. He said that is why the subdivision and the way it sits with the City is so important.

Mr. Hovey recommended charging all the people in town \$20 to \$25 per year to take care of the major problem ditch and put all the water down this ditch. Mr. Kay said that they are all major problem ditches. Mr. Hovey said that if this ditch was large enough, all the water could be sent down to the reservoir and none would have to go through town. Summitt Creek pointed out that people in town want to use this water.

Mr. Kay said that Summitt Creek is obligated to take 120 cubic second feet of water through the distribution system through the City. He said they have estimated that this ditch should carry 50 to 70 second feet of water.

The residents said that this \$20 to \$25 per household charged per year could be used to eventually pipe all the ditches in town.

Councilman Jones pointed out that the water which goes down this particular ditch is surplus water only.

Mr. Sellers said that the amount of the cost of the pipe should be figured and the amount of money available. If the costs do not come together, the City and Summitt Creek should then decide the amount of the bond which will be required in case the ditch floods. He said that if the water hits the ditch the way it is now, the whole North bank will be washed away and there will be extensive damage to residents to the North as well as the City's garbage dump being washed into Genola and Utah Lake.

Mayor Steele said that, since the people had rejected assisting with a pipe, the City and Summitt Creek were going to put in a cement ditch piecemeal. They were going to Hovey's this year and continue in the future.

Mr. Alexander pointed out that Summitt Creek is willing to put up cash for their share, yet the City is not willing to do so. He said that the City is only willing to put up labor. He said that they have offered labor for their share and asked what is wrong with this. He asked why the City could not put up any money for their share. Councilman Jones said that the City does not have any money to put up.

The residents said that they <sup>don't</sup> ~~do not~~ either. \*

Mr. Claude Rowley said that it does not make any difference to Summitt Creek whether the ditch is covered or open. He said that Summitt Creek could go in and repair the ditch for \$1,000 to \$2,000 and save themselves \$8,000. He said that Summitt Creek is willing to put in \$10,000 to make their place safe and make the whole place look better. He said that he had heard someone say that it would be fine to put it back the way it was, and this could be done for about \$2,000. He said that if they did this the people would get flooded some day. He said that this is a real possibility. He said that he hopes that it gets written down that Summitt Creek tried to protect the property owners because they are going to get flooded. He said that he pulled the boards out from under the Kennison's driveway when it flooded their basement. Mrs. Kennison said that she never saw this and Mr. Rowley said that it happened because he was there. He said that if he had not pulled the board out, the bridge and ditch would have been washed completely out. He said that the owners didn't hire the cats that went over the ditch and broke the banks down, but this happened as well when their houses were being built. He said that Summitt Creek wants to go in there and spend \$10,000 and help them fix this. He said they can also go back in there and put it in like it was and the owners will be flooded.

Councilman Nelson said that the bottom end of Alexander's property, where the Kennisons' now live, has been flooded many times during high flood water. Mr. Alexander said that a lot of this is from seeping. Mr. Kay said that he has been on the Board for 20 years and has seen it flood over.

Mr. Rowley said that the point is that they have the money to fix that section of the ditch and, if the property owners don't want this, then he doesn't know why they ought to spend their money.

Mrs. Alexander asked Mr. Rowley if he would be willing to help as he is an owner on the other side of the street and he said yes, but no one has ever asked them to help.

Mr. Anthony said that they had asked the City and Mr. Rowley said that the City has no right to ask them as they are in the County.

Mr. Hovey summarized that Summitt Creek has \$10,000 cash and the City will tear out the old ditch, why couldn't they put up the labor to put the pipe in. Mr. Kay said that the \$10,000 will not buy all the pipe. Mr. Alexander suggested that the water company put up the \$10,000, the property owners from both sides of the street and the City come up with the additional amount of the money with the owners and City coming up with half in cash and half in labor. Mr. Sellers said that the City does not have cash. Mr. Alexander said that do not have any money either. Mr. Clint Ercanbrack asked if the property owners have any equipment to put in the pipe with. Mr. Alexander said that the City should furnish them with the equipment.

A resident of Santaquin, not living on the ditch, said that he can remember paying for an Improvement District on his street which he had to pay and everyone benefited from the street, yet everyone didn't pay for it.

Mayor Steele said that Summitt Creek is willing to come up with \$10,000 to put towards the ditch and the City is willing to tear the old ditch out. He said that the City is also willing to go to the County and ask for their participation. Councilman Jones said that if



there is no plan, there would no use in going to the County as they will not help. Councilman Jones asked who will pay for the plans. Mr. Johnson asked Mr. Kay what Summitt Creek plans to do if this doesn't work out and there isn't enough money to pipe the ditch and the subdivider doesn't allow them to enlarge it. Mr Kay said they would look at the cheapest way of restoring the ditch to the same size. Mr. Johnson asked if they would cement this and Mr. Kay said he doubts it.

Mayor Steele asked about the possibility of a square ditch with a sidewalk on top. Councilman Jones estimated that the steel and concrete would run about \$17.00 per foot.

Mr. Kay was asked again about Summitt Creek's contribution and he said that they are willing to put up what it would cost to pour the proposed ditch at \$9.00 per foot.

Mr. Claude Rowley said that the costs of the pipe to the property owners would be about \$9.00 per foot or \$4.50 for both sides of the road. This did not include the rock catchers or syphons. Mrs.

Kennison said that this would benefit Summitt Creek the most and Mr. Rowley said that an open ditch would <sup>be</sup> of more benefit to them than an ~~open ditch~~ at any time because they are easier to clean. \*

Mr. Hovey asked Councilman Jones what was needed to get the County's participation and Councilman Jones said a certified engineer's plan. They will also want the specifications.

Mr. Sellers pointed out that the City does not have adequate funds to finance the property owners now. They can borrow money, but the City cannot. All the City can do is go into a deficit, then they are in trouble.

Mr. Rowley asked the Mayor to poll the owners if they are willing to committ themselves to \$4.50 per foot as this is what it will take. He said if they are not willing to go this much for their footage then it is a dead issue, and this meeting is a waste of time. The residents said that this was too much. Mr. Phil Rowley said that they would be paying \$5.00 per foot on their property plus some on each share of water. He also said that they will have to go borrow money on theirs and asked why the property owners are not willing to go and borrow money on theirs. Mr. Phil Rowley further said that everyone talking about being poor, but someone is going to have to pay for the ditch.

Mrs. Alexander asked if the City would furnish the equipment for the property owners to put the pipe in. Mr. Sellers said that liability wise they could not do this.

Mayor Steele asked the property owners if they would be willing to go \$5.00 per foot. Mr. Alexander asked that if the County goes in on it if the property owners would be reimbursed. Mayor Steele said that if the County comes in on this that all parties should be reimbursed. Mayor Steele again asked if they would help out at \$5.00 per foot plus laying the pipe. Mr. Don Olson said that this will include labor with the City participating. Councilman Jones said that the City will only take the pipe out and that all they can committ to. Councilman Jones said that the City will have more to do as they will have to move the water line to go under the pipe, so they can't committ to doing any more.

Councilman Olson asked if the City's backhoe could dig a large enough trench to bury a 36" to 42" pipe and Councilman Jones said no.

The residents asked for a minute, so Mayor Steele called a recess at

11:30 P.M..

The meeting was called back to order at 11:40 P.M.

The residents solution was divide the piping of the ditch into thirds. The City's third to be in labor. Mayor Steele said the City would tear out the present ditch. The water company's third will be the \$10,000.

Mr. Phil Rowley said that they do not own property next to the ditch which was clearly established in the courtroom. He said that the ditch is totally on the Alexander property. He said that they may as well be paying for a ditch on the North side of town. He said that this is the point they are at.

Mr. Alexander said that they have backed up a mile and Mr. Rowley said that they have and this needs to be established.

Councilman Nelson asked if the Alexanders owned the whole road of 56' wide. Mr. Alexander said that it is only a thirty foot right-of-way. Councilman Olson said that he only owns 45'.

Mr. Claude Rowley said that they own down the section line and asked Mr. Alexander if he knew where this was and he said he did.

Councilman Nelson said that the County is under the impression that they own half of the road and the City owns the other half.

Mr. Don Olson asked if the \$10,000 is all that Summitt Creek plans to put into this section of ditch and they said it was.

Mr. Kay said that he doesn't see where there should be any hee haws or hums. He said that each party should do a third whether it be labor or cash. He said that they will need a performance and labor bond put up as well and each should put a third into this as well. He said that the whole problem should be solved right there and there shouldn't be any more said about this.

Mrs. Kennison asked if they were talking about the property owners on both sides of the street and Mr. Kay said it doesn't matter which property owners to them.

Mrs. Kennison then said that it is only a matter whether the property owners on the other side will help. Mr. Don Olson said that he could not speak for his parents and they would be paying the most money and getting the least benefit.

Mr. Phil Rowley asked that if they help on the ditch here which is not on their property, shouldn't they also help with a ditch on the North or East side of town.

Mr. Clint Ercanbrack asked the property owners what they are willing to come with in cash. Mr. Hovey said that they are willing to come up \$4.50 per foot on their side.

Mr. Sellers asked who is going to come up with the balance if they run short.

Councilman Jones moved that the meeting be adjourned as they are not getting anywhere.

Mr. Anthony said that if they came up short, then it should be met by each party on the third basis. Mr. Sellers said that this would necessitate a public hearing for the other citizens to give their feelings.

Councilman Jones said that if the City would have known the property where the ditch is was private property, they would never had started on it.

Councilman Nelson seconded the motion to adjourn.

Mayor Steele said that the parties have given very definite points as to where they are. He asked the property owners to get together and work out a commitment and communicate this to Councilman Jones.

Mayor Steele reminded the people that the City is still trying to overcome a deficit and does not have a lot of money to spare. The City cannot move its cash or they will be in another deficit, which is illegal. He said that for this reason, the property owners will have to come up with some money. He said that the ditch is still a problem for the City and expect to work these out with the subdivider.

Mayor Steele continued to say that the City may be creating more problems for itself by declaring Mr. Alexander a major subdivider and then going in and helping with the ditch. Yet the City feels an obligation as the ditch poses a danger to the entire town. He said that the City's help will be to tear the ditch out which is equivalent to about one third of the costs. He said some property owners may say that this is all on Mr. Alexander's property and may feel no obligation, but as property owners they are going to have to decide on what they want to do. He said that it will cost the property owners as the ditch is in front of their homes, it is their improvement and they will not get something for nothing.

Mr. Alexander asked that if it for their improvement, then why are they forced to do this. Mrs. Kennison said that they are trying to protect their children and property. Mayor Steele said that this is the exact reason the City and Summitt Creek are trying to get this done. Mrs. Kennison said that enlarging the ditch would benefit the ditch company more than the people. Mayor Steele said that this argument doesn't hold water. Mrs. Kennison said that the City is asking them to pay to benefit the water company. Summitt Creek said that this water is no benefit to them that they would give it to anyone who wants it. Mr. Claude Rowley said that everyone is Santaquin is saddled with a flood control problem. Mayor Steele said that the property owners would be flooded less than anyone in town with a new ditch in. Mayor Steele said the danger to the children will remain as long as the ditch is there. The only way to get rid of the danger is to pipe it.

Mayor Steele emphasized that Summitt Creek is willing to give \$10,000 towards piping and the City can commit to tearing the ditch out and asked if the property owners are willing to put up the rest of the costs.

Mrs. Alexander asked if they are allowed to use their labor as part of the costs and Councilman Jones said that the City's position is that the subdivider is in charge of raising the money for the rest and the City cannot judge as to what they can or cannot do. He further pointed out that he has to work according to the specifications of Summitt Creek and the City Ordinance.

Mr. Claude Rowley asked if the property owners would be satisfied if the water company went back in and repaired the ditch as it was. Mrs. Kennison asked if their house got flooded through no neglect of her own, could she go to the water company. Mr. Rowley said she could get a restraining order anytime she wants so he guessed she could. Mr. Rowley said they would not pay for the damage.

Mayor Steele said that his opinion is that they have already had two entities who have been willing to safeguard them against this and the owners have stopped them. If they get flooded now, they should have no recourse.

Mr. Alexander said that he had sat in a court trial the day prior that almost made him sick and want to puke because of the misrepresentations. He said that on the West end of his garage there is a headgate which measures 690 square inches. He also said that the proposed ditch measures 1600 square inches. He said that in the court the representation was that the ditch would carry the same water, but this could not be true. Mr. Kay pointed out that the water travels much faster past his house and if they are going to continue to argue rather than find a solution that Summitt Creek will take this to court. Mr. Kay said that Summitt Creek has made an offer and the harrassment is causing nothing but hard feelings and, if it is going to continue, they will go home.

Mr. Claude Rowley asked if he could make a motion that they go down and repair the ditch leave it as that.

Mayor Steele called for a vote on the motion <sup>to adjourn</sup> and all voted against. Motion failed.

\* Mayor Steele recommended that the Council void the agreement with Mr. Alexander. Councilman Dan Olson moved that the Council void the agreement which was made by the previous Council. Councilman Nelson seconded the motion and it passed unanimously.


Mayor Steele recommended that the Council declare Ben Alexander as a large subdivider. Councilman Nelson moved that Mr. Ben Alexander be declared a large subdivider and come under the City's subdivision ordinance #160 and be required to abide by all the rules and regulations from the present forward. Councilman Jones seconded the motion and it passed unanimously.

\* Councilman Jones moved that if Ben Alexander <sup>the</sup> is still willing <sup>to</sup> on piping the ditch that the City work with him and irrigation company. Councilman Olson seconded the motion and it passed unanimously.


\* Councilman Jones volunteered to work with them.

Councilman Jones moved that the meeting be adjourned and Councilman Nelson seconded. The motion passed unanimously at 12:05 P.M.

Passed this 2 day of December, 1981.

  
Mayor Robert E. Steele

ATTEST:

  
Sam Sellers  
City Recorder