

RESOLUTION NO. 84-41

A RESOLUTION ABANDONING SPECIAL IMPROVEMENT DISTRICT NO. 2 AND DECLARING THE INTENTION OF THE SOUTH JORDAN CITY COUNCIL TO CREATE SPECIAL IMPROVEMENT DISTRICT NO. 4 AND DIRECTING THE PUBLICATION AND MAILING OF NOTICE OF SUCH INTENTION.

BE IT RESOLVED BY THE CITY COUNCIL OF SOUTH JORDAN CITY, STATE OF UTAH:

1. South Jordan City Special Improvement District No. 2 is hereby abandoned.

2. The City Council does herewith express its intention to create a special improvement district to be known as South Jordan Improvement District No. 4, pursuant to the provisions of the Municipal Improvement District Act, Title 10, Chapter 16, Utah Code Annotated, 1953, as amended, and as more particularly described in the attached Notice of Intention to Create Special Improvement District, which is incorporated herein by reference.

3. The City Administrator is directed to cause the attached Notice of Intention to Create a Special Improvement District to be published in a newspaper having general circulation within the City, once each week for four successive weeks, the last publication to be at least five days and not more than twenty days prior to January 8, 1985.

4. In addition, not later than ten days after the first publication of such notice, the City Administrator shall also mail, postage prepaid, a correct copy of said Notice of Intention addressed to each owner of property to be assessed at the last known address of such owner using for such purpose the names and addresses appearing on the last completed real property assessment roll of Salt Lake County, and a second copy of said notice addressed to "owner" at the street number or mailing address of each parcel of improved property to be assessed within the said proposed special improvement district.

5. The City Administrator is directed to receive any protests, schedule the hearing, and perform other functions as described in the attached notice.

6. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH JORDAN
CITY, STATE OF UTAH, on this 20TH day of NOVEMBER, 1984.

T. Kay Edmunds
T. KAY EDMUNDS, MAYOR

ATTEST:

R. J. W.
CITY RECORDER

RESOLUTION NO. _____

A RESOLUTION DECLARING THE INTENTION OF THE SOUTH JORDAN CITY COUNCIL TO CREATE SPECIAL IMPROVEMENT DISTRICT NO. 2 AND DIRECTING THE PUBLICATION AND MAILING OF NOTICE OF SUCH INTENTION.

BE IT RESOLVED BY THE CITY COUNCIL OF SOUTH JORDAN CITY, STATE OF UTAH:

1. That the City Council does herewith express its intention to create a special improvement district to be known as South Jordan Improvement District No. 2, pursuant to the provisions of the Municipal Improvement District Act, Title 10, Chapter 16, Utah Code Annotated, 1953, as amended, and specifically as contained in the attached Notice of Intention to Create Special Improvement District which is incorporated herein by this reference.

2. The City Administrator is directed to cause the attached Notice of Intention to Create a Special Improvement District to be published in a newspaper having general circulation within South Jordan City, once each week for four successive weeks, the last publication to be at least five days and not more than twenty days prior to July 17, 1984.

3. In addition, not later than ten days after the first publication of such notice, the City Administrator shall also mail, postage prepaid, a correct copy of said notice addressed to each owner of property to be assessed at the last known address of such owner using for such purpose the names and addresses appearing on the last completed real property assessment roll of Salt Lake County, and a second copy of said notice addressed to "owner" at the street number or mailing address of each parcel of improved property to be assessed within the said proposed special improvement district.

4. The City Administrator is directed to receive and review any protests, schedule the hearing, and perform other functions as described in the attached notice.

5. This resolution shall become effective immediately upon passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH JORDAN
CITY, STATE OF UTAH, on this _____ day of _____, 1984.

T. KAY EDMUNDS, MAYOR

ATTEST:

CITY RECORDER

Affidavit of Publication

ADM-35B

STATE OF UTAH,
County of Salt Lake

ss.

NOTICE OF INTENTION TO CREATE SPECIAL IMPROVEMENT DISTRICT

PUBLIC NOTICE IS HEREBY GIVEN by the City Council of South Jordan City, Utah, of its intention to create a special improvement district to be known as South Jordan Improvement District No. 2 (the "District").

1. Purpose. The purpose of the District is to pay all of the cost of designing, constructing, and financing certain proposed curb, gutter, sidewalk, sewer, and storm drain facilities ("Improvements") within the District, according to the plans and specifications prepared by the South Jordan City Engineer, and to likewise pay the costs of establishing and administering the District.

2. Assessments. It is proposed that assessments to be levied to pay all design, construction, overhead, and inspection costs, the interest and other costs of interest-bearing bonds sold to finance the improvements made within the District, and costs as described below, it is further proposed that abutting property owners along the following described streets be assessed for improvements according to the area of abutting property owned by them within the District. The District and area to be assessed lies along the current termination of Brook-in-Lance Lane. The assessments will be payable in installments over a ten-year period, and bonded indebtedness will accordingly be issued for the same period.

3. Description. The District includes land lying in the vicinity of Brook-in-Lance Lane in South Jordan City, Salt Lake County, Utah, which is more particularly described as the following:

A parcel of land located in Section 24, Township 3 South, Range 1 West, Salt Lake Base and Meridian being further described as follows: Beginning at a point North 33.000 feet and East 330.000 feet from the West 1/4 corner of said Section 24; thence North 1056.020 feet; thence North 09°33'55" East, 795.236 feet; thence South 78°15'25" East, 30.022 feet; thence South 78°15'00" East, 104.307 feet; thence South 84°09'26" East, 106.782 feet; thence North 89°46'20" East, 179.630 feet; thence South 23°06'00" East, 118.410 feet; thence South 33°31'00" West, 92.000 feet; thence South 00°47'00" West, 256.500 feet; thence South 30°42'00" East, 4.615 feet; thence South 31°05'23" East, 94.059 feet; thence South 75°08'00" East, 130.00 feet; thence North 45°32'00" East, 76.500 feet; thence North 11°50'00" East, 13.450 feet; thence East 14.182 feet; thence South 23°30'00" West, 561.840 feet; thence South 03°29'50" East, 198.031 feet; thence South 20°00'03" East, 391.756 feet; thence South 89°59'56" West, 181.810 feet; thence South 02°11'42" East, 228.578 feet; thence West 538.756 feet to the point of beginning. Containing 23.937 acres or less. Basis of bearings being the East West center of section line of said Section 24 which has a bearing of North 89°59'54" East.

4. Improvements. The proposed improvements consist of a graded asphaltic road surface on a prepared base, concrete 30-inch high-back curb, concrete gutter, and four-foot concrete sidewalk, sewer lines and laterals underlying the street, and storm drain facilities to service Brook-in-Lance Lane the same area, and include restoration after excavation, removal or alteration of all existing nonconforming improvements and all other work necessary to complete the project in accordance with all applicable governmental requirements and engineering specifications.

5. Estimated Cost. The estimated cost of the improvements, as determined by the South Jordan City Engineer, is as follows:

Item	Cost
STD. 30" Highback Curb and Gutter (Includes subbase)	\$18,831.00
STD. 4" Sidewalk (Includes subbase)	7,366.00
18" RCP, Class III	8,140.00
24" RCP, Class III	5,400.00
STD. Catch Basins	2,000.00
STD. Clean-out Box	2,000.00
6" Roadbase 2 1/2 Asphalt	31,425.00
Roadway Excavation	3,108.00
Sewer Laterals	15,000.00
TOTAL	\$96,362.00

The District will pay not only the above costs, as finally determined upon construction, but also an additional estimated \$14,454.00 for overhead costs, including but not limited to engineering, legal, fiscal agent charges, costs of bond preparation and issuance, publishing and mailing expenses, expenses of collecting assessments and other incidental costs. The final cost will also include the cost of financing, including bond interest and the interest on any interim warrants issued during the time in which the improvements are under construction. If assessments are levied prior to the time all improvements in the District are entirely completed and accepted, which is intended and likely to occur, then the assessments will also include not only the estimated costs already mentioned but also an additional \$9,636.00 in order to provide improvements. Any amounts not expended for such contingencies shall be placed in the Special Improvement Guaranty Fund of South Jordan City, in order to guarantee the payment of bonds and bond issued by this and other special improvement districts for the payment of improvements made in such districts.

6. Assessments Proposed. It is proposed to levy assessments as described above on all property located within the District to pay all or a portion of the cost of the proposed improvements according to the benefits to be derived by the property.

7. Protests. All protests or objections to the improvements, the creation of the special improvement district, and/or to the carrying out of the above intention MUST BE IN WRITING, signed by the owner or owners of the property affected by such improvements, and must describe or otherwise identify the signer's property by its street address, legal description, or other means. NOTICE OF PROTEST MUST BE FILED IN THE OFFICE OF THE CITY ADMINISTRATOR OF SOUTH JORDAN CITY on or before July 12, 1984 at 5:00 p.m., at the South Jordan City Hall, 1600 West 10400 South, South Jordan, Utah.

8. Hearing. On July 17, 1984 at 8:15 p.m., the South Jordan City Council will meet at the South Jordan City Hall, 1600 West 10400 South, South Jordan, Utah, to hear and consider any and all such protests and objections to the creation of the special improvement district of any other objections relating thereto.

BY ORDER OF THE SOUTH JORDAN CITY COUNCIL, as of the 5th day of June, 1984.

Richard Worne
City Administrator

Cheryl Gierloff

Being first duly sworn, deposes and says that he/she is legal advertising clerk of THE SALT LAKE TRIBUNE, a daily newspaper printed in the English language with general circulation in Utah, and published in Salt Lake City, Salt Lake County, in the State of Utah, and of the DESERET NEWS, a daily newspaper printed in the English language with general circulation in Utah, and published in Salt Lake City, Salt Lake County, in the State of Utah.

That the legal notice of which a copy is attached hereto

Notice of Intention to Create Special Improvement District

was published in said newspaper on

June 11, 18, 25, July 2, 1984

Cheryl Gierloff
Legal Advertising Clerk

re me this 26th day of

A.D. 19.84....

Joyce L. Marlar
Notary Public



MEMO

From: Mark
To: Alan
Re: Notice/Resolution discrepancy
Date: June 25, 1984

FACTS

South Jordan desires to create a Special Improvement District. In compliance with statute, notice is running in the Salt Lake Tribune and the Deseret News. The Notice states that assessments will be levied to pay the cost of installation of the improvements. The notice also states that the "proposed improvements consist of . . . sewer lines and laterals underlying the street. . . ." In fact, the improvements which will be paid for by assessment include sewer laterals only so far as they extend to property lines, and not every piece of property will have sewer laterals extended to the property line.

This limits what laterals are included.

ISSUE

Would a further clarification of proposed improvements in the resolution invalidate the resolution?

ANSWER

No.

DISCUSSION

Utah Code 10-16-5 governs the content of notice of intention to create special improvement districts. Subsection (1) notes that the notice shall contain certain

provisions concerning purpose, method of assessment, improvements to be made, costs, etc. Subsection (2) notes that "the notice may contain such other information as the governing body may consider to be appropriate . . ." but "The failure to include this information shall in no event be deemed jurisdictional or a defect preventing the municipality from proceeding with the special improvement district." Then it adds that "The inclusion of any permitted information shall not be considered a limitation on the municipality from subsequently changing its plans in regard to any of the information so set forth." A crucial question is, does the term "permitted information" refer to information given under both subsection (1) and subsection (2), or is it referring to only information given under subsection (2)? It probably refers only to subsection (2), since the sentence is within the subsection, and not set off in a new paragraph as one would expect if the qualifying phrase was intended to apply to both sections. As well, the gist of subsection (2) is that there is information which can be included but is not necessary (permitted information), while the gist of subsection (1) is that the information contained therein is mandatory for a notice.

ie, the optional?

But failure to include required info could be fatal.

True

Assuming, then, that 10-16-5(2) does not authorize changes from the notice in the resolution, the next question becomes whether there are other statutory provisions which govern. Statute 10-16-7(1) notes that after personal notice is sent to the property owners, a public hearing is held where objections can be raised. Subsection (2) then notes

that the governing body shall consider the objections and then subsection (3) provides that they shall "adopt a resolution either abandoning the district or creating the district either as described in the notice of intention or with deletions and changes made as authorized in subsection (1)." This is probably an erroneous citation, since subsection (1) refers only to a property owner's right to file a written protest concerning the proposed improvement district. Subsection (2), however, notes that the governing body "may make such deletions and changes in the proposed improvements . . . as it may consider desirable or necessary to assure adequate benefits to the property in the district but may not provide for the making of any improvements not stated in the notice of intention . . . unless a new notice of intention is given." These are probably the guidelines referred to in subsection (3) for making deletions and changes in the proposed district.

Applying our facts to this statute, can the City alter the resolution to clearly note that the improvements only include some sewer laterals, and these will only extend to property lines? The term "laterals underlying the street" seems in itself to dictate that the improvements included in the assessment will only be those which underly the street, and "street has been defined as extending from property line to property line." Standard Optical Co. v. Salt Lake City, 535 P.2d 1150, 1153 (Utah 1975); Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949); Davidson v. Utah Independent Telephone Co., 34 Utah 249; 97 P. 124 (1908). A

clearer statement of improvements in the resolution would probably not be at variance with or a deletion not authorized by subsection (2). There is no case law which would indicate otherwise.

The case law has indicated, however, that the improvements in the notice need only be described generally. Standard Optical Co., 535 P.2d at 1153; Dawson v. Swapp, 26 Utah 250, 487 P.2d 1288, 1289 (1971). In Standard Optical, the court held that modifications and deletions from the proposed improvements which have no effects on the "aesthetic appearance or overall general utility of the project" are not violative of the provisions of 10-16 et seq. From the case it is hard to determine whether the changes which were made by the governing body were made after notice was given but before the resolution was passed or after both notice was given and a resolution passed. Regardless of this, however, the principle would probably still hold true- reasonable modification from the notice will be permitted.

As to clarification explaining that sewer laterals would not be extended to all properties, the statement of notice does not provide that sewer laterals will be extended to all properties in the district. It states merely that the proposed improvements consist of "sewer lines and laterals underlying the street" and that these improvements will cost \$15,000. I do not believe that it could be inferred that this wording implies that all properties will have sewer laterals. Therefore, to make the resolution even more specific in noting that not all properties will have laterals

would not, in my opinion, be a deletion from the original notice. Once again, it must be remembered that the improvements need only be described generally and that they need not spell out in exact detail what the resolution will state.

If the differences between the resolution and the notice were considered changes or deletions which must be justified, the statute authorizes these if the governing body "consider[s] [these changes] desirable or necessary to assure adequate benefits to the property in the district" There probably would be problems justifying any deletions on the ground that they "assure adequate benefits to the property in the district" since the deletions or changes restrict the benefits to be conferred on the property rather than assure adequate benefits. The only benefit which I can see as being conferred by the deletions would be the benefit of assuring that costs stay as low as possible, and this is a benefit to the owners rather than the property. Therefore, the changes probably are not significant, but if they are, they are probably not justified under the statute.

It might be noted that if it appears there is going to be problems and someone is going to contest the correctness of the resolution on the grounds that it deletes improvements in a manner not authorized by 10-16-7(2), and the City does not want to take even the slightest chance that the the resolution is invalid, the City may want to consider putting in the laterals, since the City is authorized under 10-16-5(e) to exceed its estimated costs. However, I feel

fairly confident that any differences between what is said in the notice and what would be said in the resolution would not constitute a change or deletion prohibited by 10-16-7(2) and the described qualifications or specifications would not affect the ordinance's validity.

CONCLUSION

The city will probably not invalidate or lose jurisdiction over the special improvement district by being more specific in its resolution when it is passed. The proposed changes which will clearly state that not all properties will have sewer laterals and that the sewer improvements extend only to property lines are probably not contradictory or even a substantial enough departure from the notice to create problems.

CERTIFICATE

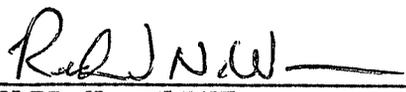
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Richard N. Warne, City Recorder of South Jordan City, hereby certify that the foregoing are true and correct copies of Resolution No. 84-1 and Resolution No. 84-10, both of which relate to South Jordan Special Improvement District No. 2, and which were duly adopted by the South Jordan City Council and signed by the Mayor of South Jordan City in all respects as provided and required by law.

For recordation purposes, the property affected by both of these resolutions is described as follows:

A parcel of land located in Section 24, Township 3 South, Range 1 West, Salt Lake Base and Meridian being further described as follows: Beginng at a point North 33.000 feet and East 330.000 feet from the West $\frac{1}{4}$ corner of said Section 24; thence North 1056.020 feet; thence North $09^{\circ}33'55''$ East, 795.236 feet; thence South $78^{\circ}15'25''$ East, 30.022 feet; thence South $78^{\circ}15'00''$ East, 104.307 feet; thence South $84^{\circ}08'26''$ East, 106.782 feet; thence North $89^{\circ}46'20''$ East, 179.630 feet; thence South $23^{\circ}06'00''$ East, 118.410 feet; thence South $33^{\circ}31'00''$ West, 92.000 feet; thence South $00^{\circ}47'00''$ West, 256.500 feet; thence South $30^{\circ}42'00''$ East, 4.615 feet; thence South $31^{\circ}05'23''$ East, 94.059 feet; thence South $75^{\circ}08'00''$ East, 130.000 feet; thence North $45^{\circ}32'00''$ East, 76.500 feet; thence North $11^{\circ}50'00''$ East, 13.450 feet; thence East 14.182 feet; thence South $23^{\circ}30'00''$ West, 561.840 feet; thence South $03^{\circ}29'50''$ East, 198.031 feet; thence South $20^{\circ}00'03''$ East, 391.756 feet; thence South $89^{\circ}59'56''$ West, 181.810 feet; thence South $02^{\circ}11'42''$ East, 228.578 feet; thence West 538.756 feet to the point of beginning. Containing 23.957 acres more or less. Basis of bearings being the East West center of section line of said Section 24 which has a bearing of North $89^{\circ}59'54''$ East.

DATED this 30th day of July, 1984.



RICHARD N. WARNE
CITY RECORDER

Subscribed and sworn before me as of this 30th day of July, 1984, by Richard N. Warne, City Recorder of South Jordan City.

Dorothy Long
NOTARY PUBLIC
Residing in: *So Jordan*

My Commission Expires:
8-17-84

CERTIFICATE

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Richard N. Warne, City Recorder of South Jordan City, hereby certify that the foregoing are true and correct copies of Resolution No. _____ and Resolution No. _____, both of which relate to South Jordan Special Improvement District No. 2, and which were duly adopted by the South Jordan City Council and signed by the Mayor of South Jordan City in all respects as provided and required by law.

For recordation purposes, the property affected by both of these resolutions is described as follows:

A parcel of land located in Section 24, Township 3 South, Range 1 West, Salt Lake Base and Meridian being further described as follows: Beginning at a point North 33.000 feet and East 330.000 feet from the West 1/4 corner of said Section 24; thence North 1056.020 feet; thence North 09°33'55" East, 795.236 feet; thence South 78°15'25" East, 30.022 feet; thence South 78°15'00" East, 104.307 feet; thence South 84°08'26" East, 106.782 feet; thence North 89°46'20" East, 179.630 feet; thence South 23°06'00" East, 118.410 feet; thence South 33°31'00" West, 92.000 feet; thence South 00°47'00" West, 256.500 feet; thence South 30°42'00" East, 4.615 feet; thence South 31°05'23" East, 94.059 feet; thence South 75°08'00" East, 130.000 feet; thence North 45°32'00" East, 76.500 feet; thence North 11°50'00" East, 13.450 feet; thence East 14.182 feet; thence South 23°30'00" West, 561.840 feet; thence South 03°29'50" East, 198.031 feet; thence South 20°00'03" East, 391.756 feet; thence South 89°59'56" West, 181.810 feet; thence South 02°11'42" East, 228.578 feet; thence West 538.756 feet to the point of beginning. Containing 23.957 acres more or less. Basis of bearings being the East West center of section line of said Section 24 which has a bearing of North 89°59'54" East.

DATED this _____ day of July, 1984.

RICHARD N. WARNE
CITY RECORDER

Subscribed and sworn before me as of this _____ day of
July, 1984, by Richard N. Warne, City Recorder of South Jordan
City.

My Commission Expires:

NOTARY PUBLIC

Residing in: _____

COVER SHEET

THIS COVER SHEET FORMS NO PART OF THE RESOLUTION AND WILL NOT HAVE THE FORCE OF LAW. IT IS AN INTRODUCTORY OVERVIEW OF THE RESOLUTION HIGHLIGHTING ONLY CERTAIN OF ITS PROVISIONS.

Some residents and property owners along Brook-n-Lance Lane have contacted the City about the possibility of installing street paving, sidewalk, curb, gutter, sewer, storm drain, and other improvements along that lane and financing such improvements through a special improvement district levying mandatory assessments.

The City has published notice of its intention to create the district, and also notified the public that a hearing will be held to consider creation of the district on July 17, 1984.

The attached resolution creates the district. It should only be passed if the City Engineer and City Attorney find that a certain number of protests have not been received. When the construction contract is let and initial bond arrangements are made, a further resolution will be proposed to finalize the financial aspects and levy the assessments.

RESOLUTION NO. _____

A RESOLUTION CREATING A MUNICIPAL SPECIAL IMPROVEMENT DISTRICT KNOWN AS SOUTH JORDAN IMPROVEMENT DISTRICT NO. 1 AND AUTHORIZING CONSTRUCTION OF IMPROVEMENTS.

BE IT RESOLVED BY THE CITY COUNCIL OF SOUTH JORDAN CITY, STATE OF UTAH:

SECTION 1. Findings.

a. Desirability of Improvements. To promote the health, safety, and welfare of the residents of the City, to beautify the City and provide for adequate drainage of runoff, it is in the best interest of the City that improvements consisting of curb, gutter, sidewalk, sewer mains, and drainage facilities ("Improvements") be installed in the area of Brook-n-Lance Lane according to plans and specifications prepared by the City Engineer and financed and administered through a municipal special improvement district.

b. Notice of Intention. Notice of the City's intention to create South Jordan Improvement District No. 2 ("District") and to construct the Improvements has been given as required by law for the establishment of a municipal special improvement district.

c. Protests. Opportunity to file protests against creation of Special Improvement District No. 2 of South Jordan City has been given as required by law, any and all protests received have been considered by the City Council in open and public session, and a public hearing of the City Council was held in which all persons desiring to be heard regarding creation of South Jordan Improvement District No. 2 were heard and their objections considered. The number of protests received is hereby found to be less than the number of protests necessary to cause abandonment of the District pursuant to Utah Code Annotated §10-16-7(3).

SECTION 2. Created.

Improvements proposed and described in the Notice of Intention to create the District are hereby authorized and South Jordan Improvement District No. 2 is hereby created.

SECTION 3. Bids.

Bids shall be obtained for construction of the Improvements and the contract therefor referred to the City Council for approval as required by Utah Code Annotated Section 10-16-8 and as otherwise provided by law.

SECTION 4. Financing. The cost of the Improvements, including overhead and administrative costs not exceeding 15% of the contract price, are intended to be financed by a bond to be repaid out of assessments to be levied according to lot area fronting on Brook-n-Lance Lane. The City Administrator is directed to proceed as necessary toward realization of these intentions and adoption thereof in a resolution of the City Council.

SECTION 5. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH JORDAN CITY, STATE OF UTAH, on this _____ day of _____, 1984.

T. KAY EDMUNDS, MAYOR

ATTEST:

CITY RECORDER

VTPO 27-24-151-009-0000,A REAL PROPERTY OWNERSHIP BEFORE NOTICE DATA
27-24-151-002-0000 B 5438 P 958 27-24-151-004-0000 B 5246 P 1101
DALTON, GLADEN G & GRACE C KEOWN, KENNETH W & SALLIE D
(JT) (JT)

11183 S 720 W
SANDY, UT 84070
27-24-151-005-0000 B 5309 P 163
CLARK, DONALD T & GAIL A
(JT)

11230 BROOKE N LANCE LN
SANDY, UT 84070
27-24-151-006-0000 B 5231 P 1208
MARTINDALE, TOM K & DEBRA F
(JT)

11294 S 600 W
SANDY, UT 84070
27-24-151-007-0000 B 5038 P 481
KENER, PAMELA L

6814 S GREENDALE RD
SLC, UT 84121
27-24-151-008-0000 B 5225 P 96
BRKLACICH, ROSE

11328 S BROOKEN LANCE LN
SANDY, UT 84070
ENTER TO CONTINUE -OR- POSITION CURSOR, ENTER FOR MORE NAMES OR PF4 FOR LEGAL
VTPO 27-24-151-015-0000,A REAL PROPERTY OWNERSHIP BEFORE NOTICE DATA
27-24-151-009-0000 B 5225 P 96 27-24-151-010-0000 B 5150 P 1174
BRKLACICH, JOSEPH M BRKLACICH, JOSEPH M

650 W 11400 S
SANDY, UT 84070
27-24-151-011-0000 B 5227 P 1478
BRKLACICH, JOSEPH M & DEBRA G
(JT)

650 W 11400 S
SANDY, UT 84070
27-24-151-012-0000 B 0 P 0
DALTON, DOUGLAS C. & ARLENE L.

650 W 11400 S
SANDY, UT 84070
27-24-151-013-0000 B 5225 P 95
BRKLACICH, ANTOME M & JOAN K
(TC)

11183 S 720 W
SANDY, UT 84070
27-24-151-014-0000 B 0 P 0
BRKLACICH, ANTONE M. & JOAN K.

5097 S ARROWHEAD CIR
SLC, UT 84107
ENTER TO CONTINUE -OR- POSITION CURSOR, ENTER FOR MORE NAMES OR PF4 FOR LEGAL
VTPO 27-24-152-001-0000,A REAL PROPERTY OWNERSHIP BEFORE NOTICE DATA
5097 S ARROWHEAD CIR
SLC, UT 84107

27-24-151-015-0000 B 5618 P 2396
HAMILTON, RAY & MYRLENE P (JT)

27-24-151-016-0000 B 5473 P 302
KENER, PAMELA L

955 S GREENWOOD DR
SANDY, UT 84070
27-24-151-018-0000 B 5616 P 2719
DALTON, DOUGLAS C &
ARLENE L (TC)

11328 S 600 W
SANDY, UT 84070
27-24-151-019-0000 B 5616 P 2719
DALTON, GLADEN G & GRACE C
(TRS)

11190 S 720 W
RIVERTON, UT 84065
27-24-151-020-0000 B 5559 P 1634
MC CABE, DONNA

11183 S 720 W
SANDY, UT 84070
27-24-151-021-0000 B 5559 P 1634
L K C CORP

553 N GLORES ST
LOS ANGELES, CA 90048
ENTER TO CONTINUE -OR- POSITION CURSOR, ENTER FOR MORE NAMES OR PF4 FOR LEGAL
VTPO 27-24-152-008-0000, A REAL PROPERTY OWNERSHIP BEFORE NOTICE DATA
27-24-152-001-0000 B 4694 P 221
ERICKSON, JOHN R & MURIEL H

% LEAVITT, ORSON
2430 E LAMBOURNE AVE
SLC, UT 84109
27-24-152-002-0000 B 5489 P 1650
JOHNSON, KENT B & SHARI (JT)

797 E PECOS DR
SANDY, UT 84070
27-24-152-003-0000 B 5474 P 1742
MILNE, DONALD B & VIRGINIA B
ET AL

11229 BROOKE N LANCE LN
SANDY, UT 84070
27-24-152-005-0000 B 4603 P 792
L K C CORPORATION

7410 S 1300 E
SLC, UT 84117
27-24-152-006-0000 B 5431 P 792
SHULSEN, META

% LEAVITT, ORSON
2430 E LAMBOURNE AVE
SLC, UT 84109
27-24-152-007-0000 B 5461 P 657
PANKOW, JENIFER V

11333 S BROOKEN LANCE LN
SANDY, UT 84070
ENTER TO CONTINUE -OR- POSITION CURSOR, ENTER FOR MORE NAMES OR PF4 FOR LEGAL
VTPO 27-24-152-015-0000, A REAL PROPERTY OWNERSHIP BEFORE NOTICE DATA
27-24-152-008-0000 B 4954 P 573
STAUFFER, BLAINE & BONNIE A

610 W 11400 S
SANDY, UT 84070
27-24-152-009-0000 B 4687 P 1170
CAZIER, CRAIG S & KAREN M

600 W 11400 S
SANDY, UT 84070
27-24-152-010-0000 B 4817 P 766
CAZIER, CRAIG S & KAREN M

598 W 11400 S
SANDY, UT 84070
27-24-152-012-0000 B 5489 P 394
MILLER, MARVIN C & NANCY C
(JT)

598 W 11400 S
SANDY, UT 84070
27-24-152-013-0000 B 4282 P 18
BECKSTEAD, DALE

11306 S 500 W
SANDY, UT 84070
27-24-152-014-0000 B 5520 P 2
REBER, CLARK L & PHYLLIS J

11350 S 500 W
SANDY, UT 84070
ENTER TO CONTINUE -OR- POSITION CURSOR, ENTER FOR MORE NAMES OR PF4 FOR LEGAL
VTPO 27-24-177-002-0000, A REAL PROPERTY OWNERSHIP BEFORE NOTICE DATA
27-24-152-015-0000 B 4793 P 1463
VERNON, ELTON & BETTY E

416 E 500 S
SLC, UT 84111
27-24-152-016-0000 B 5559 P 1634
HICKMAN, TERRY J & VICKY
(JT)

6327 S 560 E
SLC, UT 84107

9473 S HUNTS END DR
SANDY UT 84092

27-24-176-001-0000 B 5427 P 2825
BECKSTEAD, MAURICE D

27-24-176-002-0000 B 4434 P 778
REBER, CLARK L & PHYLLIS J

11350 S 500 W
SANDY, UT 84070
27-24-176-004-0000 B 4975 P 773
HANSEN, EVAN W & GENEVA B

416 E 500 S
SLC, UT 84111
27-24-177-001-0000 B 3782 P 68
MC MILLAN, MICHAEL J & ANN M

1815 E CREEK RD
SANDY, UT 84070

1942 N BECK ST
SLC, UT 84116

ENTER TO CONTINUE -OR- POSITION CURSOR, ENTER FOR MORE NAMES OR PF4 FOR LEGAL

1. **Purpose.** The purpose of the District is to pay all of the cost of designing, constructing and financing certain proposed curb, gutter, sidewalk, sewer, and storm drain facilities ("Improvements") within the District, according to the plans and specifications prepared by the South Jordan City Engineer, and to likewise pay the costs of establishing and administering the District.

2. **Assessments.** If it is proposed that assessments to be levied to pay all design, installation, construction, overhead, and inspection costs, the interest and other costs of interest-bearing bonds sold to finance the Improvements made within the District, and costs as described below, it is further proposed that abutting property owners along the following described streets be assessed for Improvements according to the area of abutting property owned by them within the District. The District and area to be assessed lies along the current termination of Brook-n-Lance Lane. The assessments will be payable in installments over a ten-year period, and bonded indebtedness will accordingly be issued for the same period.

3. **Description.** The District includes land lying in the vicinity of Brook-n-Lance Lane in South Jordan City, Salt Lake County, Utah, which is more particularly described as the following: A parcel of land located in Section 24, Township 3 South, Range 1 West, Salt Lake Base and Meridian being further described as follows: Beginning at a point North 33.000 feet and East 330.000 feet from the West 1/4 corner of said Section 24; thence North 1056.020 feet; thence North 09°33'55" East, 795.236 feet; thence South 78°15'25" East, 30.022 feet; thence South 78°15'00" East, 104.307 feet; thence South 84°08'26" East, 106.782 feet; thence North 89°46'20" East, 179.630 feet; thence South 23°06'00" East, 118.410 feet; thence South 33°31'00" West, 92.000 feet; thence South 00°47'00" West, 256.300 feet; thence South 30°42'00" East, 4.615 feet; thence South 31°05'23" East, 94.059 feet; thence South 75°08'00" East, 130.000 feet; thence North 45°32'00" East, 76.500 feet; thence North 11°50'00" East, 13.450 feet; thence East 14.182 feet; thence South 23°30'00" West, 561.840 feet; thence South 03°29'50" East, 198.031 feet; thence South 20°00'03" East, 391.756 feet; thence South 89°59'56" West, 181.810 feet; thence South 02°11'42" East, 228.578 feet; thence West 538.756 feet to the point of beginning. Containing 23.957 acres more or less. Basis of bearings being the East West center of section line of said Section 24 which has a bearing of North 89°59'54" East.

4. **Improvements.** The proposed Improvements consist of a graded asphaltic road surface on a prepared base, concrete 30-inch high-back curb, concrete gutter, and four-foot concrete sidewalk, sewer lines and laterals underlying the street, and storm drain facilities to service Brook-n-Lance Lane the same area, and include restoration after excavation, removal or alteration of all existing nonconforming Improvements and all other work necessary to complete the project in accordance with all applicable governmental requirements and engineering specifications.

5. **Estimated Cost.** The estimated cost of the Improvements, as determined by the South Jordan City Engineer, is as follows:

Item	Cost
STD. 30" Highback Curb and Gutter (Includes subbase)	\$18,831.00
STD. 4' Sidewalk (Includes subbase)	7,366.00
18" RCP, Class III	8,140.00
24" RCP, Class III	5,100.00
STD. Catch Basins	5,400.00
STD. Clean-out Box	2,000.00
6" Roadbase 2 1/2 Asphalt	31,425.00
Roadway Excavation	3,100.00
Sewer Laterals	15,000.00
TOTAL	\$96,362.00

The District will pay not only the above costs, as finally determined upon construction, but also an additional estimated \$14,454.00 for overhead costs, including but not limited to engineering, legal, fiscal agent charges, costs of bond preparation and issuance, publishing and mailing expenses, expenses of collecting assessments and other incidental costs. The final cost will also include the cost of financing, including bond interest and the interest on any interim warrants issued during the time in which the Improvements are under construction. If assessments are levied prior to the time all Improvements in the District are entirely completed and accepted, which is intended and likely to occur, then the assessments will also include not only the estimated costs already mentioned but also an additional \$9,636.00 in order to provide Improvements. Any amounts not expended for such contingencies shall be placed in the Special Improvement Guaranty Fund of South Jordan City, in order to guarantee the payment of bonds and bond issued by this and other special improvement districts for the payment of Improvements made in such districts.

6. **Assessments Proposed.** It is proposed to levy assessments as described above on all property located within the District to pay all or a portion of the cost of the proposed Improvements according to the benefits to be derived by the property.

7. **Protests.** All protests or objections to the Improvements, the creation of the special improvement district and/or to the carrying out of the above, intention MUST BE IN WRITING, signed by the owner or owners of the property affected by such Improvements, and must describe or otherwise identify the signer's property by its street address, legal description, or other means. NOTICE OF PROTEST MUST BE FILED IN THE OFFICE OF THE CITY ADMINISTRATOR OF SOUTH JORDAN CITY on or before July 12, 1984 at 5:00 p.m., at the South Jordan City Hall, 1600 West 10400 South, South Jordan, Utah.

8. **Hearing.** On July 17, 1984 at 8:15 p.m., the South Jordan City Council will meet at the South Jordan City Hall, 1600 West 10400 South, South Jordan, Utah, to hear and consider any and all such protests and objections to the creation of the special improvement district or any other objections relating thereto. BY ORDER OF THE SOUTH JORDAN CITY COUNCIL, as of the 5th day of June, 1984.

Richard Worne
City Administrator

Deseret News
6-18-84

NOTICE OF INTENTION TO CREATE SPECIAL IMPROVEMENT DISTRICT

PUBLIC NOTICE IS HEREBY GIVEN by the City Council of South Jordan City, Utah, of its intention to create a special improvement district to be known as South Jordan Improvement District No. 2 (the "District").

1. Purpose. The purpose of the District is to pay all of the cost of designing, constructing and financing certain proposed curb, gutter, sidewalk, sewer, and storm drain facilities ("Improvements") within the District, according to the plans and specifications prepared by the South Jordan City Engineer, and to likewise pay the costs of establishing and administering the District.

2. Assessments. It is proposed that assessments be levied to pay all design, installation, construction, overhead, and inspection costs, the interest and other costs of interest-bearing bonds sold to finance the Improvements made within the District, and costs as described below. It is further proposed that abutting property owners along the following described streets be assessed for Improvements according to the area of abutting property owned by them within the District. The District and area to be assessed lies along at the current termination of Brook-n-Lance Lane. The assessments will be payable in installments over a ten-year period, and bonded indebtedness will accordingly be issued for the same period.

3. Description. The District includes land lying in the vicinity of Brook-n-Lance Lane in South Jordan City, Salt Lake County, Utah, which is more particularly described as the following:

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feet; thence South 89°59'56" West, 181.810 feet; thence South 02°11'42" East, 228.578 feet; thence West 538.756 feet to the point of beginning. Containing 23.957 acres more or less. Basis of bearings being the East West center of section line of said Section 24 which has a bearing of North 89°59'54" East.

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5. Estimated Cost. The estimated cost of the Improvements, as determined by the South Jordan City Engineer, is as follows:

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24" RCP, Class III	5,100.00
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STD. Clean-out Box	2,000.00
6" Roadbase 3 1/2 Asphalt	31,425.00
Roadway Excavation	3,100.00
Sewer Laterals	<u>15,000.00</u>
TOTAL	\$ 96,362.00

The District will pay not only the above costs, as finally determined upon construction, but also an additional estimated \$14,454.00 for overhead costs, including but not limited to engineering, legal, fiscal agent charges, costs of bond preparation and issuance, publishing and mailing expenses, expenses of collecting assessments and other incidental costs. The final cost will also include the cost of financing, including bond interest and the interest on any interim warrants issued during the time in which the Improvements are under construction. If assessments are levied prior to the time all improvements in the District are entirely completed and accepted, which is intended and likely to occur, then the assessments will also include not only the estimated costs already mentioned but also an additional \$9,636.00 in order to provide for contingencies actually encountered in making the proposed Improvements. Any amounts not

expended for such contingencies shall be placed in the Special Improvement Guaranty Fund of South Jordan City, in order to guarantee the payment of bonds and bond issued by this and other special improvement districts for the payment of improvements made in such districts.

6. Assessments Proposed. It is proposed to levy assessments as described above on all property located within the District to pay all or a portion of the cost of the proposed Improvements according to the benefits to be derived by the property.

7. Protests. All protests or objections to the Improvements, the creation of the special improvement district, and/or to the carrying out of the above intention MUST BE IN WRITING, signed by the owner or owners of the property affected by such improvements, and must describe or otherwise identify the signer's property by its street address, legal description, or other means. NOTICE OF PROTEST MUST BE FILED IN THE OFFICE OF THE CITY ADMINISTRATOR OF SOUTH JORDAN CITY on or before July 12, 1984 at 5:00 p.m., at the South Jordan City Hall, 1600 West 10400 South, South Jordan, Utah.

8. Hearing. On July 17, 1984 at 8:15 p.m., the South Jordan City Council will meet at the South Jordan City Hall, 1600 West 10400 South, South Jordan, Utah, to hear and consider any and all such protests and objections to the creation of the special improvement district or any other objections relating thereto.

BY ORDER OF THE SOUTH JORDAN CITY COUNCIL, as of the 5th day of June, 1984.

Richard Warne
City Administrator

or repair parks and other recreational facilities;

(i) To remove any nonconforming existing improvements in the areas to be improved;

(j) To construct, reconstruct, extend, maintain or repair optional improvements;

(k) To acquire any property necessary or advisable in order to make any of such improvements;

(l) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the municipality;

(m) To construct and install all such structures, equipment and other items and to do all such work as may be necessary or appropriate to complete any of such improvements in a proper manner.

(2) For the purpose of making and paying for all or a part of the cost of any of such improvements (including optional improvements), the governing body of a municipality may create special improvement districts within the municipality, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim warrants and special improvement bonds as provided in this act.

10-16-5. Notice of intention to create special improvement district - Contents.

(1) Before a special improvement district is created, the governing body shall give notice of its intention to make the improvements and to levy assessments to pay all or a part of the cost of them. The notice shall:

(a) State the purpose for which the assessments are to be levied.

(b) State the method or methods under which the assessments are proposed to be levied, that is, according to frontage, according to area, according to assessed valuation, according to lot, according to number of connections, or by any combination of these methods.

(c) Describe the district. The description may be by metes and bounds, by reference to streets or extensions of streets, or by any other means reasonably describing the district, but it shall not be a defect if property which is not to be assessed is included. Different areas which are not connected or contiguous may be included in a single special improvement district and separate boundaries for each of these areas may be established, or all or one or more of these areas may be included within a single boundary.

(d) In a general way, describe the improvements proposed to be made showing the places the improvements are proposed to be made and the general nature of the improvements. The improvements may be described by type or kind and the places these improvements are proposed to be made may be described by reference to streets or portions of streets or extension of streets or by any other means the governing body may choose which reasonably describes the improvements proposed to be made.

(e) State the estimated cost of the improvements as determined by the engineer of the municipality. If the actual cost of the improvements exceeds the estimated cost, the governing body shall nevertheless have the right to levy assessments in excess of the estimated cost.

(f) State that it is proposed to levy assessments on property in the district to pay all or a portion of the cost of the improvements according to the benefits to be derived by the property.

(g) Designate the time within which and the place where protests shall be filed and the time and place at which the governing body will conduct a public hearing to consider these protests.

assessments, the estimated amount of each type of assessment for the various improvements to be made according to the method of assessment chosen by the governing body and provisions for any optional improvements. The failure to include this information shall in no event be deemed jurisdictional or a defect preventing the municipality from proceeding with the special improvement district. The inclusion of any permitted information shall not be considered a limitation on the municipality from subsequently changing its plans in regard to any of the information so set forth.

10-16-6. Notice of intention to create special improvement district - Publication - Mailing.

The notice of intention shall be published in a newspaper published in the municipality, or if there is no newspaper published in the municipality, then in a newspaper having general circulation in the municipality, except that in cities of the third class or towns where there is no newspaper published in the city or town, the governing body may provide that the notice of intention be given by posting in lieu of publication of this notice. If the notice is published, it shall be published once during each week for four successive weeks, the last publication to be at least five days and not more than 20 days prior to the time fixed in the notice as the last day for filing of protests. If the notice is posted, it shall be posted in at least three public places in the municipality at least 20 and not more than 35 days prior to the time fixed in the notice at the last day for the filing of protests. In addition, not later than 10 days after the first publication or posting of the notice, it shall be mailed, postage prepaid: (1) addressed to each owner of property to be assessed within the special improvement district at the last known address of that owner using for this purpose the names and addresses appearing on the last completed real property assessment rolls of the county in which the property is located; and (2) addressed to "owner" at the street number of each piece of improved property to be assessed. If a street number has not been so assigned, then the post office box, rural route number, or any other mailing address of the improved property shall be used for the mailing of the notice.

10-16-7. Protests by property owners - Public hearing - Resolution - Number of protests required - Failure to file protest, effect of.

(1) Any person who is the owner of property to be assessed in the special improvement district described in the notice of intention shall have the right, within the time designated in the notice, to file in writing a protest to the creation of the special improvement district or making any other objections relating to it. The protest shall describe or otherwise identify the property owned by the person or persons making the protest.

(2) On the date and at the time and place specified in the notice of intention, the governing body shall in open and public session consider all protests so filed and hear all objections relating to the proposed special improvement district. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and after all persons desiring to be heard have been heard, the governing body shall consider the arguments put forth and the protests made and may make such deletions and changes in the proposed improvements and in the area to be included in the special improvement district as it may consider desirable or necessary to assure adequate benefits to the property in the district but may not provide for the making of any improvements not stated in the notice of intention nor for adding to the district any property not included within the boundaries of the district unless a new notice of intention is given and a new hearing held.

h8

28

W. J. ...

Delivered 11th of July

June 27th

27-24-152-016
27-24-151-016

paid 24th
27-24-151-017

LAW OFFICES

LARSEN, MAZURAN & VERHAAREN

C. DEAN LARSEN
MICHAEL J. MAZURAN
HAROLO C. VERHAAREN
MICHAEL Z. HAYES
KEVIN R. HUNTINGTON
JOHN R. RILEY
ALAN B. ASAY
FRED O. ESSIG
MATTHEW C. URIE

A PROFESSIONAL CORPORATION
BOSTON BUILDING-SUITE 100
NINE EXCHANGE PLACE
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 364-3500

OFFICE ALSO AT:
McCUNE MANSION
200 NORTH MAIN
SALT LAKE CITY, UTAH 84103

June 7, 1984

Salt Lake Tribune
143 South Main
Salt Lake City, Utah 84111

RE: Publication of Enclosure

Dear Sir or Madam:

Please publish the enclosed Notice of Intention to Create Special Improvement District in both the Salt Lake Tribune and Deseret News once each week for four successive weeks, on the same day of each week, with the last such publication at least five days but not more than twenty days prior to July 17, 1984.

You may bill South Jordan City directly.

Please telephone me if you have any questions.

Very truly yours,

Alan Asay

tla

Enclosure

NOTICE OF INTENTION TO CREATE SPECIAL IMPROVEMENT DISTRICT

PUBLIC NOTICE IS HEREBY GIVEN by the City Council of South Jordan City, Utah, of its intention to create a special improvement district to be known as South Jordan Improvement District No. 2 (the "District").

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feet; thence South 89°59'56" West, 181.810 feet; thence South 02°11'42" East, 228.578 feet; thence West 538.756 feet to the point of beginning. Containing 23.957 acres more or less. Basis of bearings being the East West center of section line of said Section 24 which has a bearing of North 89°59'54" East.

4. Improvements. The proposed Improvements consist of a graded asphaltic road surface on a prepared base, concrete 30-inch high-back curb, concrete gutter, and four-foot concrete sidewalk, sewer lines and laterals underlying the street, and storm drain facilities to service Brook-n-Lance Lane the same area, and include restoration after excavation, removal or alteration of all existing nonconforming improvements and all other work necessary to complete the project in accordance with all applicable governmental requirements and engineering specifications.

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STD. Clean-out Box	2,000.00
6" Roadbase 2½ Asphalt	← 31,425.00
Roadway Excavation	3,100.00
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TOTAL	\$ 96,362.00

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BY ORDER OF THE SOUTH JORDAN CITY COUNCIL, as of the 5th day of June, 1984.

Richard Warne
City Administrator

E-81
Back June 11, 18, 25 July 2
678200800
2x8.79
123
531.36

ENGINEER'S ESTIMATE

ECKHOFF, WATSON & PREATOR

Engineers - Planners - Surveyors

PROJECT BROOKE-N-LANCE PROJECT No. ES10-81-01

LOCATION 650 West 11400 So.

OWNER South Jordan OWNER'S PROJECT No. _____

CALCULATED BY K. Watson DATE 06/04/84

NO.	QUANTITY	UNIT	ITEM	PRICE	AMOUNT
1	3274	L.F.	STD. 30" Highback Curb and Gutter (includes subbase subbase)	\$ 6.00	\$ 19,644.00
2	3274	L.F.	STD. 4' Sidewalk (includes subbase) 7,366	5.50	18,007.00
3	370	L.F.	18" RCP, Class III 8,140	24.00	8,880.00
4	170	L.F.	24" RCP, Class III 5,100	34.00	5,780.00
5	3	Ea.	STD. Catch Basins 5,400	1800.00	5,400.00
6	2	Ea.	STD. Clean-out Box 2,000	1000.00	2,000.00
7	41900	S.F.	6" Roadbase / 2-1/2 Asphalt 31,425	0.75	31,425.00
8	1240	C.Y.	Roadway Excavation 3,100	2.50	3,100.00
			SEWER LATERALS 15,000		
			Sub-Total 96,362		\$ 94,236.00
			+ 15%		
			15% Contingency/Engineering		\$ 14,135.00
			TOTAL		\$108,371.00
				61,362	

LEO M. BERTAGNOLE, INC. v. PINE MEADOW RANCHES Utah 211

Cite as, Utah, 639 P.2d 211

upon any conduct other than intentional. Particularly is this so in light of the evidentiary facts of this case.

We reverse defendant's conviction and remand the case for a new trial.

STEWART, HOWE and OAKS, JJ., concur.

MAUGHAN, J., heard the arguments but died before the opinion was filed.



LEO M. BERTAGNOLE, INC., a Corporation, Bertagnole Investment Company Limited Partnership, (Substituted), Plaintiffs and Appellants,

v.

PINE MEADOW RANCHES, a Corporation, et al., Defendants and Respondents.

No. 16900.

Supreme Court of Utah.

Dec. 31, 1981.

Property owners brought action to quiet title to section of real property containing a roadway which defendants claimed had been dedicated to the public. The Third District Court, Summit County, Ernest F. Baldwin, J., found property owners' title was subject to roadway dedicated by plaintiffs to the public, and plaintiffs appealed. The Supreme Court, Oaks, J., held that: (1) evidence was sufficient to support finding of dedication, and (2) evidence was sufficient to support finding that dedicated public highway was 30 feet in width.

Affirmed.

1. Dedication ¶15

In order to prove dedication to public, there is no need to prove landowner's intent and, rather, determination that roadway has been continuously used by members of general public for at least ten years is sole requirement for it to become a public road. U.C.A.1953, 27-12-89.

2. Dedication ¶41

In case wherein claimant alleges dedication to public of roadway, presumption is in favor of property owner and burden of establishing public use for required period of time is on those claiming it. U.C.A.1953, 27-12-89.

3. Dedication ¶44

Evidence, in action to quiet title to roadway, was sufficient to support trial court's finding that roadway had been dedicated to public use for over ten years. U.C.A.1953, 27-12-89.

4. Dedication ¶51

In property owner's action to quiet title to section of roadway, evidence supported district court's finding that dedicated public highway was 30 feet in width. U.C.A.1953, 27-12-89.

R. C. Skeen and E. J. Skeen, Salt Lake City, for plaintiffs and appellants.

Richard H. Nebeker, Stanley S. Adams, Salt Lake City, for defendants and respondents.

OAKS, Justice:

This is an action to quiet title to a section of real property. Defendant contended, and the trial court decreed, that plaintiffs' title was subject to a roadway dedicated by plaintiffs to the public pursuant to U.C.A., 1953, § 27-12-89. The questions plaintiffs raise on appeal are (1) whether such a dedication occurred, and (2) if so, the appropriate width of the dedicated roadway.

Interstate 80 follows Silver Creek Canyon from Kimball Junction into Wanship. Where the highway passes the mouth of Tollgate Canyon, there is an overpass structure with access ramps. The freeway off-

ramp leads to a dirt road extending in a northerly and westerly direction approximately 7½ miles up Tollgate Canyon and providing access to an area of 15 to 20 square miles. The first approximately 500 feet of that road crosses plaintiffs' property.

Use of the road up Tollgate Canyon, including the segment crossing plaintiffs' property, is traceable back to 1915. Often referred to as a "two-rut road," it was used by various sheepmen to trail sheep (two to three thousand head) and to transport sheep camps by wagon, truck, and jeep. Some time before 1949, both the telephone company and the gas company used the road to transport heavy equipment to locations where they buried utility lines. From the 1950s, the road was used extensively by hunters (one witness testified to seeing 40 to 50 hunters' vehicles in a single year), church groups, fishermen, campers, picnickers, and, in the words of one witness, "more lovers . . . than you can imagine." The road provides access to a test well drilled by an oil company in 1977 and terminates at a television transmitter site.

Witnesses testified to the existence of a fence ("a vestige of one" in 1940) and "a relic of a gate" across the mouth of Tollgate Canyon.¹ There was some suggestion that the route of the road was altered to avoid a gate. Another witness testified he had used the road every year since 1959 and had never encountered a gate.

In 1970, Brent Jensen, a defendant, bought acreage north of Tollgate Canyon for development purposes. By that time, the road was passable by car and had a wearing surface of 12 to 13 feet. Jensen and others continued to improve the road by grading, cleaning bar ditches, and the like. Jensen testified that he had traveled the road over a thousand times, that he was never denied access, and that up until shortly before this action was commenced he was never told by plaintiffs that the road was not public.

1. There was never a tollgate across the road up Tollgate Canyon. This canyon received its name from a tollgate across Silver Creek

By January 1, 1975, 380 mountain lots had been sold in areas served by Tollgate Road, including Jensen's Forest Meadow Ranch and Pine Meadow Ranch subdivisions. By the time of trial (November, 1979), approximately 500 lots had been sold and 120 cabins constructed. By one estimate, plaintiffs' portion of Tollgate Road provides access to over 800 landowners and 15 square miles of land.

In August, 1974, a short time after they had become aware of the development of the subdivisions and the use of Tollgate Road as an access, plaintiffs commenced this action to quiet title to Section 35, Township 1 North, Range 4 East, Salt Lake Base & Meridian, in Summit County, excluding the existing Interstate 80, rights-of-way owned by the state of Utah and Union Pacific Railroad, and other rights-of-way of record, but including approximately 500 feet of Tollgate Canyon Road. Defendants counterclaimed, alleging that the road up Tollgate Canyon had continuously existed for over 60 years and that it must be deemed a public highway by dedication.

After personally viewing the property at issue, the district court found "by clear and convincing evidence" that there had been continuous, uninterrupted use of the road across plaintiffs' land commencing as early as 1915, and that the width of the right-of-way which is reasonably necessary for such a public road is 30 feet.

At the heart of this controversy is U.C.A., 1953, § 27-12-89, which reads in full: "A highway shall be deemed to have been dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of 10 years." The language of this provision has remained unchanged since 1898. R.S. 1898, § 1115.

[1] Plaintiffs insist that the district court could not have found that they had dedicated a highway to the public because the intent of the plaintiffs to dedicate the

Road—the predecessor to State Highway 30 and later Interstate Highway 80—near the mouth of this canyon.

road to public use was not shown by clear and convincing evidence. They argue that "mere acquiescence in the use of the land by the public" does not establish this intent. Such is not the law. There is no need to prove the landowner's intent. As this Court unanimously held in *Thurman v. Byram*, Utah, 626 P.2d 447, 449 (1981):

The determination that a roadway has been continuously used by members of the general public for at least 10 years is the sole requirement for it to become a public road. It is not necessary to prove the owner's intent to offer the road to the public as contended by defendants. Section 27-12-89 deems a dedication to the public as a matter of law when the required public use is established.

[2,3] Without assigning specific error, plaintiffs argue throughout their brief that the district court's finding of a highway by dedication is unsupported by the evidence. Thus, plaintiffs stress that in cases of this type "[t]he presumption is in favor of the property owner; and the burden of establishing public use for the required period of time is on those claiming it." *Bonner v. Sudbury*, 18 Utah 2d 140, 143, 417 P.2d 646, 648 (1966). This is a correct statement of the applicable presumption at trial. On appeal, however, "it is our duty to analyze the evidence and whatever reasonable inferences may be drawn therefrom in the light most favorable to the findings and judgment." 18 Utah 2d at 142, 417 P.2d at 647. Since a claim of dedication of a public road is equitable, *Conner v. Heaton*, 205 Ark. 269, 168 S.W.2d 399 (1943), the trial court's findings on this issue will not be overturned unless the evidence clearly preponderates against them. *Jensen v. Brown*, Utah, 639 P.2d 150 (1981); *Utah County v. Baxter*, Utah, 635 P.2d 61 (1981). In the instant case, our review of the record discloses substantial evidence supporting the district court's findings.

[4] Plaintiffs also contend on appeal that the district court's finding that the dedicated public highway is 30 feet in width is unsupported by evidence. Plaintiffs ob-

ject that although the findings of fact, conclusions of law, and judgment and decree show the width as 30 feet, the district court's memorandum decision specifies the width of the roadway as 15 feet. While the memorandum decision may be useful to clarify the findings, *Sprague v. Boyles Bros. Drilling Co.*, 4 Utah 2d 344, 294 P.2d 689 (1956), it does not take precedence over the findings, conclusions, and decree, which comprise the decision of the district court. *Stevens & Wallis v. Golden Porphyry Mines Co.*, 81 Utah 414, 18 P.2d 903 (1933). In the event of a discrepancy, the findings, conclusions, and decree control and are viewed by this Court as binding. *Thompson v. Anderson*, 107 Utah 331, 153 P.2d 665 (1944). Consequently, what is before this Court on this appeal is the 30-foot figure.

Plaintiffs point out that the only evidence in the record specifically relating to the width of the roadway was Brent Jensen's testimony that in 1970 the road was passable by car and had a "wearing surface" of 12 or 13 feet. However, the width of a dedicated highway is not limited to the beaten path. *Blonquist v. Blonquist*, 30 Utah 2d 234, 516 P.2d 343 (1973). In *Jeremy v. Bertagnole*, 101 Utah 1, 9, 116 P.2d 420, 424 (1941), we stated:

A bridle path abandoned to the public may not be expanded, by court decree, into a boulevard. On the other hand, the implied dedication of a roadway to automobile traffic is the dedication of a roadway of sufficient width for safe and convenient use thereof by such traffic.

Even without considering access to subdivisions—a use to which the road was put for less than the 10-year statutory period—30 feet cannot be said to be unreasonably wide or unsupported by the evidence. The evidence of the use of the road by large flocks of sheep, sheep camps, trucks, jeeps, heavy equipment, hunters, fishermen, picnickers, campers, and sightseers supports the finding of a 30-foot width. Furthermore, the district judge determined the width of the public highway after a personal on-site inspection of the property, a fact adding weight to his finding. A 30-foot roadway is

modest in comparison to those found by this Court in previous cases involving roads in mountain canyons. *Blonquist v. Blonquist, supra* (44 feet); *Jeremy v. Bertagnole, supra* (60 feet in part, 82.5 feet for the remaining portion); *Sullivan v. Condas*, 76 Utah 585, 290 P. 954 (1930) (49.5 feet); *Lindsay Land & Live Stock Co. v. Churnos*, 75 Utah 384, 285 P. 646 (1929) (100 feet).

The district court's judgment is affirmed. Costs to respondent.

HALL, C. J., HOWE and STEWART, JJ., and J. ROBERT BULLOCK, District Judge, concur.



Ron J. VILLENEUVE and Beverly Villeneuve, Plaintiffs and Respondents,

v.

Philip D. SCHAMANEK and Gail Schamaneck, Defendants and Appellants.

No. 17343.

Supreme Court of Utah.

Dec. 31, 1981.

The Third District Court, Salt Lake County, Kenneth Rigrup, J., entered summary judgment ordering foreclosure of mortgage based on election by vendors to treat uniform real estate contract as such following delinquency in payments due and owing by purchasers' assignee, and assignee appealed. The Supreme Court held that contentions made by assignee were not reflected in record and were urged in brief for first time on appeal.

Judgment affirmed.

Appeal and Error ⇐ 169, 635(1)

Where contentions made by assignee of purchaser following summary judgment or-

dering foreclosure of mortgage were not reflected in record and were urged in brief for first time on appeal, summary judgment was affirmed.

Stephen B. Mitchell, Salt Lake City, for plaintiffs and respondents.

Gary A. Frank, Murray, for Schamaneck.

PER CURIAM:

This is an appeal from a summary judgment ordering foreclosure of a mortgage based on an election by the plaintiffs (sellers) under a Uniform Real Estate Contract to treat it as such, following delinquency in payments due and owing by the defendant. The defendant was an assignee of the buyers, named Brown, who had executed the contract to purchase.

Defendant's sole point on appeal is that there was an issue of fact that precluded the summary judgment. Stated briefly, the record and affidavit of plaintiffs reflect the following:

In March, 1978, the plaintiffs agreed to sell a duplex to Thad and Paula Brown. In August, 1979, a year and a half later, unbeknown to the plaintiffs sellers, the Browns assigned their interest in the contract to defendant, Philip D. Schamaneck, whose address was stated in the assignment to be 7040 South Campus Drive. Another assignee, Gail Schamaneck, was also named in the assignment. She turned out to be defendant's sister who had no interest in the transaction and who, by stipulation and reformation, was eliminated from this case and consequently is not a party to this appeal.

Defendant paid nothing on the contract, having moved to Nevada. Two notices of delinquency were sent to the above address, the last of which informed defendant of foreclosure unless delinquent payments were made current. Defendant's sister made one such payment of \$487.70 in October, 1979, which is the only payment ever made.

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