



Gabriel Woytek  
Grand County Clerk/Auditor  
125 East Center Street  
Moab, Utah 84532  
(435) 259-1322  
gwoytek@grandcountyyutah.net

September 23, 2022

**NOTICE OF IMPENDING BOUNDARY ACTION –  
KANE SPRINGS IMPROVEMENT DISTRICT**

Lieutenant Governor Deidre Henderson  
350 North State Street, Suite 220  
Salt Lake City, Utah 84114-2325

Ent 549307 Bk 947 Pg 142 - 144  
Date: 13-FEB-2023 2:27:40PM  
Fee: None Filed By: JAC  
JOHN ALAN CORTES, Recorder  
GRAND COUNTY CORPORATION  
For: GRAND COUNTY

Honorable Lieutenant Governor Henderson,

In accordance with Utah State Code §17B-1-215, Grand County hereby certifies the Petition to Create Kane Springs Improvement District (the “Petition”), whose proposed boundary is located entirely within Grand County, with this Notice of Impending Boundary Action and copy of the final local entity plat. Pursuant to statute, the Petition is ready for the Lt. Governor to issue a certificate of incorporation to create the Kane Springs Improvement District (the “District”).

After adoption of a resolution by the Grand County Commission on September 6<sup>th</sup>, 2022 granting approval for the creation of the Kane Springs Improvement District, the Grand County Clerk/Auditor certified the Petition on September 13<sup>th</sup>, 2022. The election requirement of §17B-1-214(1) does not apply because of §17B-1-214(3)(a).

In response to your letter to the Grand County Commission on September 15<sup>th</sup>, 2022, the claims of procedural defect made by the Smith Hartvigsen Law Firm are inaccurate or immaterial. The facts are as follows:

1. On May 6, 2022, Kane Creek Preservation and Development, LLC and Kane Springs, LLC (the “Owners”) submitted its Request to Grand County for Sanitary Sewer Service;
2. The Request was submitted by, or on behalf of, the owners of 100% of the private property within the proposed District, and the owners holding 100% of the value of land within the proposed District;
3. There are no known residents of the proposed District;
4. Utah Statute § 17B-1-210 requires a public hearing for the benefit of “residents of the proposed District” to hear public comment on whether the requested service is needed or should be provided by the County;

5. However, Grand County does not provide sanitary sewer service, so the Request and the public hearing were both mere formalities under statute;
6. Grand County posted notice of the public hearing via publication of the Commission Agenda with Public Hearing on its website, on the Utah Public Notice Website, in physical form in the Courthouse - and posted a public notice of public hearing in a newspaper of general circulation (the Times Independent) on April 26 and May 2, which notice is above and beyond that required by Utah Code § 17B-1-211(1) and well in advance of the two-week requirement therein:
  - a. Public Notices - Times Independent;
7. The Notice included both a summary of the Request and purpose of the Public Hearing, a copy of the entire Request, the deadline for making public comment (aka protest) about the proposed District, the approval authority (the Grand County Commission), the date, time, and place for the hearing, and a map of the proposed District boundaries, all as required by Utah Code § 17B-1-211(2); see:
  - a. Agenda;
  - b. Public Notice of Public Hearing;
  - c. Request for Sanitary Sewer Service;
8. On June 7, 2022, the Grand County Commission held a public hearing on the Request, held the public hearing open until June 15, 2022 for public comment (aka protest), and properly announced the same (both on the public notice and at the public hearing);
9. In doing so, Grand County complied with law and policy related to opening and closing public hearings - Utah statute does not mandate a formal vote of the Commission to do either;
10. In addition, the specific requirements of Utah Code § 17B-1-210(5) apply only to public hearings on resolutions;
11. Grand County received no public comment about the Request, before, during, or after the public hearing;
12. No persons are legally entitled to protest the Request since Grand County does not provide sanitary sewer service, there are no known residents of the district, and all owners of real property within the proposed District made the Request;
13. On June 21, 2022, Grand County denied the Request finding that it does not provide sanitary sewer service;
14. Regardless, Utah Code § 17B-1-212 expressly states that if the County fails to act, the Request shall be deemed denied;
15. On June 23, 2022, the Owners submitted their Petition to Create Kane Springs Improvement District ("Petition"), which Petition was supplemented upon request by Grand County on August 9, 2022;
16. On August 2, 2022, the Owners, through their attorney, submitted proposed documents for the County's consideration to "facilitate" the process of finalizing creation of the proposed district, via letter;

17. On September 6, 2022, the Owners, through their attorney, submitted a letter to the County expressing support for a proposed Resolution establishing a Board of Trustees for the District comprised of three Owner agents and two County Commissioners, as set forth as one of two alternatives in the County's agenda posted four days earlier;
18. On September 6, 2022, the Grand County Commission and Clerk certified the Petition as complete and compliant with Utah Code, and the Grand County Commission adopted a Resolution creating the District and appointing the Grand County Commission as the Board of Trustees of the District, pursuant to Utah Code § 17B-2a-404(3)(a)(i);
19. Grand County received no public comment about the Resolution, before, during, or after the public meeting at which it was adopted;
20. Neither the Owners nor their attorney expressed any concern about the public hearing on the Request, or notice of the same, at any time between June 3 and September 6, despite numerous communications with the Clerk and the Commission, including the two express written communications linked above; and
21. The Owners only expressed concern after the County Commission exercised its lawful right to appoint themselves as the Board of Trustees at the time of formation.

Thus, Grand County substantially complied with all public notice and public hearing requirements - and even went above and beyond those requirements by publishing notice of the public hearing far in advance of the two-week requirement in a newspaper of general circulation in the County, which provides actual notice to more County residents than the Utah Public Notice Website.

However, to the extent your office finds the failure to post the public notice on the Utah Public Notice Website for two full weeks is a procedural error, it should be deemed immaterial. Under longstanding Utah law, minor procedural defects that do not cause prejudice are inconsequential and, here, shall not affect the incorporation of the District. *See Bank of America v. Adamson*, 391 P.3d 196 (UT 2017) (citing *Timm v. Dewsnup*, 86 P.3d 699 (UT 2003)). In this instance, there is no prejudice since there are no persons legally entitled to protest the Request; Grand County does not provide sanitary sewer service; Utah law forces a denial of service if there was no public notice, no public hearing, and no action by the County; there are no known residents of the district; and all owners of real property within the proposed District made the Request.

Thus, for the reasons above, the Grand County Clerk/Auditor certifies that all applicable requirements of Title 17B, Chapter 1, Part 2 and Title 17B, Chapter 2a, Part 4 have been met, and the District is entitled to a certification of incorporation from your office.

Thank you for your attention to this matter,



Gabriel Woytek  
Grand County Clerk/Auditor