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Evaluation of Jan 2025 LRB Feasibility Study For The Kane Creek Preliminary Municipality

Kane Creek is the first “Preliminary Municipality” being processed by the Lt. Governors office. Three have been applied for since but Kane Creek is the first with a completed Feasibility Study and a scheduled public hearing. LRB Public Finance Advisors produced this Feasibility Study. They also produced the Feasibility Studies for the 4 incorporations in progress on the Lt Governors “Incorporations” website.

S.B. 258 went into effect on May 1, 2024, amending the Utah Municipal code adding part 5 “Incorporation of a Preliminary Municipality”. The structure of part 5 of the code appears to be partially based on part 2 of the municipal code “Incorporation of a Municipality”. There is however a clear distinction between the two. Part 2 is for incorporating an existing fully developed area, with an existing population, in an unincorporated part of a county. The incorporation must be approved by and voted on by the existing population. Part 5 on the other hand is for incorporating a fully undeveloped area with no population. Incorporating a preliminary municipality would allow the developers of a proposed development to avoid any zoning regulations set forth by the county and to establish their own zoning rules.

Understandably LRB has modeled their feasibility study for the Kane Creek Preliminary Municipality Incorporation after previous feasibility studies they’ve produced for Municipal Incorporations. The primary goal of the LRB studies for both preliminary municipality incorporation and regular municipal incorporation is to determine if revenues exceed expenditures for the newly incorporated municipality over a 5-year period.

There is however one substantial difference between the evaluation of a preliminary municipality and standard municipality. Revenues for the standard municipality will be based on an existing development and an existing population with an established tax base. But revenues for the preliminary municipality will be based on projected revenues collected mainly through sales and property taxes on property not yet built.

There are numerous reasons why these projected revenues could be inaccurate, one of which is the source of data used to perform the analysis and generate the study. LRB has most likely used build data provided by the developers, the sponsors of the preliminary municipality, to generate their report. The developers can be expected to provide optimistic values on the properties they plan to sell as well as an aggressive construction schedule. They of course would like to maximize profits, but their optimistic perspective would also reflect well in the feasibility study and prompt LRB to recommend incorporation, which they have done.

This feasibility study format seems appropriate for a standard municipal incorporation application. But it doesn't seem as appropriate for a preliminary municipality incorporation evaluation. For the preliminary municipality application, in addition to examining the feasibility of the revenue stream, it seems prudent that a separate analysis, by an independent entity, should be performed to assess the feasibility of the proposed development itself. Can it realistically be built within the time frame offered by the developer? Will the market support a development of this magnitude and in this price range? This is critical information needed to accurately determine the fiscal viability of the project. The developers should not be the only source providing this information.

Utah municipal code section 10-2a-504(4) generally states the feasibility study must show the revenues over the 5-year period after incorporation will exceed expenditures by at least 5%. This feasibility study shows revenues exceeding expenditures by 22.7%. There are numerous reasons why I believe this proposed preliminary municipality will not meet the 22.7% number or exceed 5%.

I'm a retired mechanical engineer who has also spent many years building custom homes. I've spent many hours reviewing the drawings and documentation provided by the Kane Creek developers and have a pretty clear understanding of what this project will entail. Based on my experience and observations I want to provide just a few of the numerous reasons why I believe Kane Creek will come nowhere near hitting the required 5% revenue margin:

1) It may take a year from the date of the public meeting before Kane Creek is officially incorporated. They will not be able to start any construction until that time, possibly March of 2026.

2) Phase 1 of the project addressed in the LRB study will be built entirely within a flood plain which needs to be raised an average of 10' with fill, to lift it above the flood plain. The developers started this process in January of 2024 but were only able to fill 26 of the 70 acres in phase 1 before they were forced to stop. It was determined they were using well water illegally in this fill process and the state shut off their water. It took them 4 months to complete the 26 acres. It will take at least another 8 months to complete the remaining 44 acres after officially incorporated if they are able to complete this fill at the same rate as the first 26

acres. But, it may take longer than 8 months because their source of fill material is diminishing and they may need to bring it in from further away.

3) Before any housing unit can be sold, the developers will need to build a wastewater treatment plant from scratch, just 2' above the floodplain. This will first require carving a cave out of solid rock with a 24' ceiling and a footprint large enough to park 15 full-sized school buses. Then they will have to assemble the equipment in the new cave and install the elaborate infrastructure in the phase 1 flood plain to pump the sewage from hundreds of homes uphill to the treatment plant. They can't start on the wastewater treatment plant until Kane Creek is incorporated.

4) The LRB study, probably based on data provided by the developers, projects a population of 180 by the end of year 1 which is 2026. This equates to 78 housing units, in addition to the 15,000 sf of commercial and 10,000 sf of overnight accommodations space planned for year 1. It's the commercial and overnight space which will generate most of the revenue shown in the LRB study. But given that construction may not start until early 2026 when Kane Creek is incorporated, it's unlikely any of the proposed properties will be completed until late in 2027. As such there will be no revenues generated in 2026, or 2027, years 1 and 2.

5) No taxes can be collected by Kane Creek until they've transitioned from an incorporated preliminary municipality to a town. This transition process can't start until the population exceeds 99, which equates to 42 housing units. It's unlikely this will happen until at least the middle of year 3 or 2028 given the numerous and complex infrastructure requirements which must be met first. Fully transitioning to a town could take 6 months or more once the 99 threshold is met which could be early 2029. This means it's unlikely taxes will be collected in 2028 or year 3. With no revenue generated in the first 3 years and expenses remaining the same the revenue margin would be -10% not 22.7% as stated in the LRB study. This is all based only on Phase 1 since it's unlikely they'd be able to build and generate revenue from phase 2 or 3 until at least 2029.

6) The calculated 5 year expenditures for Kane Creek in the LRB study are based on comparable per capita expenditures for communities of a similar size. But, these similar communities are all existing, developed and incorporated municipalities. They all have their general governmental service as well as wastewater treatment and culinary water services in place. Kane Creek has none of this in place. The price tag to build the wastewater treatment and culinary water services may run in the tens of millions, and this has to happen before the first house is sold, and long before Kane Creek can collect tax or charge for these services. The LRB study clearly states that it's "*assumed the cost for a*

general government office and public works facility will be paid by the developers during Phase I'.

Is this a reasonable assumption? Do we know that the sponsor will pay to build these facilities? Do we know they have the financial resources to do so without generating any revenue to help with these expenses?

There is also the simple question of whether the market will support what the developers want to build and sell. Is there a market for 478 units with an average price tag of $2.36 million? It's a substantial unknown, a question no one can answer. But it appears to be a risk the developers are willing to take.