

## WEBER COUNTY'S REPORT ON THE OGDEN VALLEY INCORPORATION

In January of 2023, the Lieutenant Governor's Office received a request for feasibility study for a proposed city in the Ogden Valley. The request contained over 500 signatures. Weber County assisted the Lieutenant Governor's Office in processing this request.

Many of the County's departments were involved in providing this assistance, including the offices of the treasurer, clerk/auditor, recorder/surveyor, attorney, and geographical information systems. The process is complex. It requires extensive time and attention from County employees, and it requires careful navigation through state law.<sup>1</sup>

Here is a summary of the County's experience:

- (1) The County helped the Lieutenant Governor verify whether the signatures in the request meet the requirements of Title 10, Chapter 2a of the Utah Code.
- (2) The County was able to verify only a portion of the signatures in the request. The majority of signatures were provided on behalf of an entity, such as a trust or business. These signatures could not be verified, because the signers did not provide documentation showing that they are authorized to sign on behalf of the entity. The County completed as many verifications as possible with its limited resources, then submitted the results to the Lieutenant Governor for further review and action.
- (3) Taking into account **only** the signatures that the County was able to verify, the request does not meet the required percentages for private land acreage and property values.
- (4) If those who signed on behalf of an entity were to provide documentation showing that they are authorized to represent the owner, then the request will meet the required percentage for land acreage but will fall just short of the required percentage for property values.
- (5) At one point, the County miscalculated the percentages of acreage and property values. The County immediately corrected this miscalculation. **The incorporation process was not affected by this.**

The Lieutenant Governor is ultimately responsible for verifying all signatures in the request and determining whether to reject or certify the request.

For more information about the County's involvement and results, please see the "Question and Answer" segment below.

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<sup>1</sup> Weber County interpreted and applied state law with guidance from the Weber County Attorney's Office. Deputy County Attorney Brandan Quinney has reviewed and approved this report and has provided the citations to the applicable state statutes.

**This “Question and Answer” segment provides more details of the County’s involvement in processing the request for feasibility study. We hope this segment helps provide more clarity.**

All citations are abbreviated to the specific section (§) of Utah Code, Title 10, Chapter 2a: Municipal Incorporation. For example, Title 10, Chapter 2a, Section 204, Subsection (1)(a) is abbreviated to “§ 204(1)(a)”.

**Q1** Who provides final approval of the property owner signatures in the Ogden Valley request for feasibility study?

**A:** The Lt. Governor’s office provides final approval of ‘all’ signatures. § 204(1).

**Q2** What is Weber County’s role when asked for assistance by the Lt. Governor’s office?

**A:** Weber County’s role is to provide “assistance” to the Lieutenant Governor’s Office as they determine whether the request for feasibility complies with Utah law. See § 204(1)(a). The County’s assistance includes assistance in determining whether the request:

“is signed by the owners of private real property that: (i) is located within the area proposed to be incorporated; (ii) covers at least 10% of the total private land area within the area; and (iii) is equal in value to at least 7% of the value of all private real property within the area[.]” Quoted from § 202(1)(a).

**Q3** Did Weber County verify all of the signatures?

**A:** The County lacks the resources to verify all signatures in the Ogden Valley request, but it was able to verify a portion of them and report those verifications to the Lieutenant Governor. **The Lieutenant Governor is ultimately responsible for verifying all signatures and determining whether to reject or certify a request.** § 204(1).

**Q4** What assistance did the Lt. Gov.’s office request from the County?

**A:** On January 13, 2023, the Lieutenant Governor’s Office requested that the County:

(1) verify all signatures of property owners that signed the initial request, § 202(1)(a);

- (a) this includes verifying whether the signer is the owner of the property for which they are signing, § 102(2)(a), and if not, whether the signer is an authorized representative of the owner, § 102(3)(b);
- (2) verify whether each property being signed for is located within the proposed city, § 202(1)(a)(i);
- (3) determine the total acreage of all private properties signed for in the request, § 202(1)(a)(ii);
- (4) determine the total acreage of all private properties located within the proposed city, § 202(1)(a)(ii);
- (5) determine the total market value of all private properties signed for in the request, § 202(1)(a)(iii); and
- (6) determine the total acreage of all private properties located within the proposed city. §202(1)(a)(iii).

## Q5 What were the findings of Weber County's signature tests?

**A:** Through January and February 2023, The County—with its limited resources—was not able to verify “all” signatures. However, the County was able to assist the Lieutenant Governor by making the following findings:

- (1) **550** properties were signed for in the request for feasibility study.
- (2) **9** of the properties are located outside of the proposed city. The County excluded these properties from all other findings, since these properties do not meet the requirement under § 202(1)(a)(i). Aside from these nine, the County analyzed **541** properties to determine whether the signer is the owner of the property (or is signing on behalf of the owner) and whether the signature of that person is authentic.
- (3) **328** of the properties are owned by an entity, such as a trust or business. The entities themselves are the record title owners of their respective properties, and therefore the individuals who signed for these properties are representing the property owners. These signatures were not accompanied by documentation that substantiates the signer's representative capacity. The County cannot determine whether these individuals have the authority to sign on behalf of the entity owners.
  - (a) **264** of these signatures belong to the person signing on behalf of the owner.
  - (b) **61** of these signatures cannot be authenticated by the County, because the County does not have access to a record of that individual's signature for comparison. (This

commonly occurs for an individual who is not registered to vote in Utah or who has never voted in Utah.)

- (c) **3** of these signatures do not match the signature on file for the individual named in the request, and therefore the County cannot determine whether the signature is authentic.
- (4) **213** of the properties are owned by individuals. These individuals are the record title owners of the property for which they signed.
  - (a) **181** signatures belong to the individual named in the request;
  - (b) **30** of these signatures cannot be authenticated by the County, because the County does not have access to a record of that individual's signature for comparison.
  - (c) **2** of these signatures do not match the signature on file for the individual named in the request, and therefore the County cannot determine whether the signature is authentic.
- (5) Taking into account all of the findings above, the County can determine that **181** properties were signed by the record owner **and** the signature of that person has been authenticated. The County can say for certain that these signatures may be counted towards the request for feasibility study thresholds. The County lacks the necessary information and/or resources to verify the remaining **360** properties and signatures.
- (6) Total acreage of all properties within the proposed city: **35,827** (corrected from 50,270; see Q8 and Q9 below)
- (7) Total acreage of all **541** properties with signatures: **6,045.14**
- (8) Total acreage of the **181** properties with County-verified signatures: **487.76**
- (9) Total market value of all properties within the proposed city: **\$3,982,646,656** (corrected from \$4,189,734,441; see Q8 and Q9 below)
- (10) Total market value of all **541** properties with signatures: **\$472,266,313**
- (11) Total market value of the **181** properties with verified signatures: **\$157,187,201**

## Q6 What did Weber County do with the initial test results?

**A:** On March 1, 2023, the County delivered its findings to the Lieutenant Governor's Office. The initial findings showed that the **181** properties with verified signatures equal **0.9%** of the total land

acreage and **3.7%** of the total market value. The required threshold is 7% of total land acreage and 10% of total property value.

### Q7 What did the Lt. Gov.'s office do after receiving these findings?

**A:** On March 2, 2023, the Lieutenant Governor issued a rejection notice to the incorporation sponsors.

### Q8 Did one of the sponsors find a mistake in the calculations?

**A:** Yes, on March 7, 2023, one of the sponsors informed Weber County that the total land acreage and market value in its calculations included *all* property within the city boundary instead of just the *private* property. The County immediately checked its calculations, determined that the sponsor was correct, and notified the Lieutenant Governor's Office of the mistake.

### Q9 Did Weber County fix this mistake?

**A:** Yes, on March 8, 2023, one day after discovering this mistake, the County resubmitted new calculations to the Lieutenant Governor's Office, taking into account only the *private* property within the proposed city boundaries. The corrected findings now show that the **181** properties with verified signatures equal **1.3%** of the total private land acreage and **3.9%** of the total private market value. The incorporation sponsors were notified of this new calculation.

The County was quick to correct its mistake and notify the responsible parties. Even with this corrected calculation, the number of properties and signatures that the County is able to verify fall short of the required thresholds.

### Q10 Did the Weber County Attorney's office bring to light a Utah State law that requires further scrutiny of certain signatures of property owners that own property in the name of a trust or corporation?

**A:** Yes. The Weber County Attorney's office opined that Weber County cannot verify a large number of signatures because documentation was not included to show the signers can sign in behalf of these trust or company owned properties.

Under Utah law, those who sign on behalf of a property owner must also provide documentation that substantiates their representative capacity. This documentation must accompany the request. The statute reads:

“(3) For purposes of each provision of this part that requires the owners of private real property covering a percentage or fraction of the total private land area within an area to sign a request or petition:

(b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and

(ii) the person provides documentation accompanying the request or petition that substantiates the person's representative capacity[.]” § 102(3)(b).<sup>2</sup>

## Q11 How does the documentation requirement affect the Ogden Valley request for feasibility study?

**A:** The majority of people who signed the request for feasibility study signed on behalf of an entity that owns the property, such as a trust or a business. These signatures must be accompanied by documentation proving that the signer is a representative of that property owner. Because this documentation was not included with those signatures, the County reported to the Lieutenant Governor that those signatures cannot be verified on behalf of the property owners under §§ 102(3)(b) and 202(1)(a).

The County's report to the Lieutenant Governor's Office shows that if the signers on behalf of entities were to provide documentation showing that they are authorized to represent the owner, then private property with verified signatures will equal **11.4%** of the total private land acreage and **9.8%** of the total market value. This meets the 7% acreage threshold, but it falls slightly short of the 10% market value threshold.

The Lieutenant Governor determines whether the documentation provided under § 102(3)(b) is sufficient.

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<sup>2</sup> This statute has governed municipal incorporations since before July 1997. See Utah 1997 H.B. 2001, showing Subsection (3)(b) as still existing law at the time.