

City wants shelter from potential Lionsback lawsuits

Rudy Herndon Moab Sun News | Posted: Thursday, February 16, 2017 8:45 am

If the Moab City Council votes in favor of a proposed agreement to amend a previously approved plan for the Lionsback Resort, council members fear it could subject the city to costly and drawn-out lawsuits.

To ensure that the city isn't left footing the bill for any legal expenses, the council is asking the project's team for assurances in writing that they will reimburse the city for any costs it might incur in the future.

The Moab City Council voted 4-0 on Tuesday, Feb. 14, to table consideration of a proposed zoning status agreement with developer LB Moab Land Co. LLC and Utah's School and Institutional Trust Lands Administration (SITLA) until its next regular meeting on February 28; Heila Ershadi was not present for the vote.

Council members previously voted in December 2016 to postpone consideration of an agreement for the project, which includes plans for a 150-room resort hotel and – at full build-out – 188 residential lots on SITLA-owned property off Sand Flats Road.

Moab City Attorney Chris McAnany had suggested that the city could add a clause to the agreement stating that SITLA would reimburse the city for any reasonable litigation costs it might incur.

“It's a relatively simple thing,” McAnany told the council on Feb. 14. “You could approve the agreement, subject to that condition.”

But Moab City Council member Kalen Jones said he wants that condition spelled out on paper before he votes on the proposal.

“I don't have other concerns, but I'd like to see it in writing,” he said.

The city approved a preliminary agreement for the project in 2009, but opponents challenged a previous council's 3-2 vote, and the legal dispute that followed took four years to work its way through the court



Mike Badger, right

Invent Development Partners co-founder Mike Badger, right, updated the Moab City Council on Tuesday, Feb. 14, on his team's plans for the previously approved Lionsback Resort. Utah School and Trust Lands Administration Project Manager Troy Herold is also pictured. The council later voted 4-0 to table consideration of a proposed zoning status agreement for the project. [Photo by Rudy Herndon / Moab Sun News]

system. The Utah Supreme Court ultimately declined to hear the case, allowing a lower court's ruling in favor of the city and the developers to stand as is.

However, SITLA officials and the developer say the project stalled for 18 months during former Moab City Manager Rebecca Davidson's administration.

Invent Development Partners co-founder and project developer Mike Badger told the council that he first approached city staffers with questions about a proposed plan amendment in October 2013 – when Donna Metzler was city manager – and their response was, “Please go forward.”

“We thought we were on the right track, and then Ms. Davidson came into the picture,” he said.

Badger said he began a dialogue with the former city manager, yet nothing ever happened during her time as the city's top administrator.

“For a total of 14 months, we were trying to understand what the process was, and we just ran into a brick wall,” Badger said. “We didn't get any answer from the city.”

SITLA Associate Director John Andrews said the project was floating around in a “black hole” for 18 months, although he declined to elaborate.

“I'm certainly not going to get into detail of what the issues were with the prior city manager,” he told the council. “We just want to express that what we're trying to do is give the city as much control as it would have had anyway, but get this where we're back on track and moving forward with our project.”

To get the project back on course, SITLA officials invoked an obscure state law that exempts state government agencies from municipal planning and zoning regulations.

McAnany previously informed the council that the agency would only agree to city jurisdiction on one condition: It wanted the city to classify changes it's seeking as “minor” amendments, subject only to staff-level review, and not a more comprehensive public review.

The city attorney has maintained that the amendments are a major change because, in his interpretation of the plan, the size of the hotel has tripled, from a 50-room casita-style hotel, to a 150-room hotel.

“I opined in September of 2016 ... that based on the change in the footprint of the buildings and the alignment of the buildings and structures, this would probably be a major change to the approved development plan, and hence would have to go through planning commission (and) city council review,” McAnany said. “There was disagreement from the developer and SITLA, and that's where we are today.”

Andrews said that his agency wants to categorize the changes as minor plan amendments to “short-circuit” the possibility of multi-year litigation that seemingly dogs such projects in Grand County.

“We have got, from SITLA's perspective, extreme reticence about going back into the full-on panoply of various planning commission and other public hearings – all providing the opportunity for third parties to drag us into another five years in the court system,” Andrews said.

In McAnany's eyes, the latest zoning status agreement is an attempt to resolve the months-old dispute over the definition of minor versus major plan amendments.

“This agreement is a compromise document that, by definition as a compromise, nobody gets exactly what they want,” he said.

McAnany said that under the agreement, the developers will make changes to the project's proposed wastewater system, which would consist of private sewer lines, as opposed to public ones. In response to concerns that council members and local residents have raised, McAnany said the developers will also make changes to their traffic studies of Sand Flats Road, while agreeing to conduct additional traffic studies at the end of the project's first phase.

Andrews, meanwhile, said that project developers are trying to clarify wording in the agreement – specifically the references to the number of hotel rooms at the resort.

“We recognize that the documents have got ambiguity in them, and that's part of what we're looking to work out here,” he said.

However, he said he believes that the council has already had “a lot of opportunity” to amend the proposed agreement.

“I thought it came back with more red ink than black,” he said.

While Andrews maintains that the state's code trumps any municipal zoning authority's regulations, Moab City Council member Tawny Knuteson-Boyd questioned whether the city would be exposing itself to liability if it doesn't follow its own laws.

“It's a concern,” McAnany acknowledged. “We're bound to follow our own codes, and when we depart from that, we do so at our peril.”

The zoning status agreement could resolve the dispute, he said, although it doesn't insulate the city from third-party claims.

“There could be someone who disagrees with that, and anyone can file a lawsuit at any time,” McAnany said.

Moab City Council member Rani Derasary asked for more information about whether the reference to a minor change would set a precedent, noting that she hadn't had time to adequately review the council's

Feb. 14 packet.

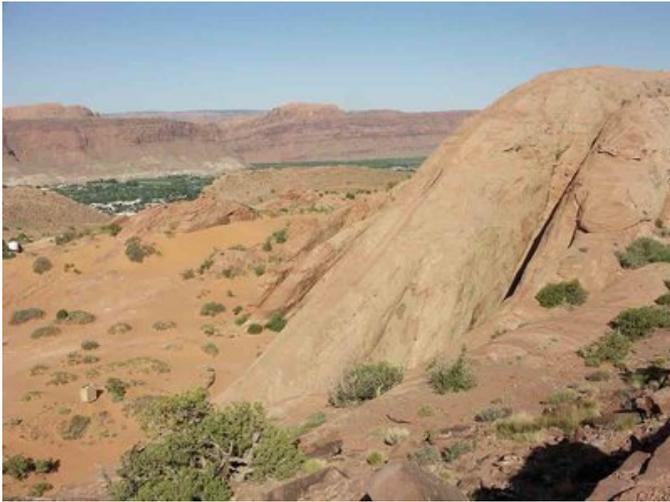
“I still feel like I need some time to absorb that, and some time to ask questions about precedent concerns,” she said.

As it is, Derasary said, she remains uneasy about the differing interpretations of the amendment that SITLA and the developers are seeking.

“I really am concerned about the difference between the major and the minor change,” she said.

City wants SITLA to pay legal expenses if new Lionsback lawsuits occur

by Rose Egelhoff
The Times-Independent
02.23.17 - 09:29 am



The Moab City Council voted 4-0 on Feb. 14 to table a decision on the Lionsback Resort zoning status agreement until its next council meeting. At the same time, council member Kalen Jones asked the city manager and city attorney to negotiate an agreement with the state School and Institutional Trust Lands Administration (SITLA) “about the

reimbursement of legal expenses should the city get sued over Lionsback.” Jones said he wants that condition to be provided in writing to the city before the council votes on the zoning status agreement on Feb. 28.

The city initially approved the Lionsback project in 2009, authorizing a plan for a 50-room hotel and 34 individual casitas on Sand Flats Road at the site of the old Lionsback Campground. The Moab Local Green Party and others sued the city over the resort development plan but the Utah Supreme Court dismissed the lawsuit in 2012, said city planning director Jeff Reinhart.

Given past opposition to the project by environmental groups and others, city officials are concerned that the city may be opening itself up to possible litigation again if the council approves changes to the project proposed by developer LB Moab Land Co. LLC as a “minor revision,” which would bypass the city’s public review process

LB Moab Land Co. LLC, has proposed to build a hotel with 50 three-bedroom units, instead of a 50-room hotel. SITLA and the developer said during the Feb. 14 meeting that ambiguities in the original plan approval did not make it clear whether the 50 units agreed upon in the original plan were one-bedroom or multi-bedroom units.

For the city, the overriding issue is whether to approve a zoning status agreement to treat the amendment as a minor change, or treat the amendment as a major change and reject the zoning status agreement. While city staff can approve minor changes, major changes must go back to the Moab City Planning Commission to be reviewed and considered.

SITLA has requested that the changes be treated as a minor change rather than a major change, said Moab City Attorney Chris McAnany.

If the change is not approved as a minor change, SITLA officials have said they could invoke a state law that exempts projects on state land from being subject to local zoning regulations, effectively ending city control over the development project.

“From SITLA’s perspective, there is an extreme reticence about going back into the full-on panoply of various planning commission and other public hearings, all providing the opportunity for third parties to drag this into another five years in the court system,” said SITLA Associate Director and Chief Legal Counsel John Andrews.

Reading from state code, Andrews said “nothing in [the municipal land code development act] may be construed as giving a municipality jurisdiction over property owned by the state.”

However, Andrews added, “If we said, we’re just going to do it, still, we’d have to provide [the city] with a development plan and schedule ... to be provided no later than the commencement of construction.” The state would still be bound to pay the city impact fees, officials said.

McAnany said the plan amendment qualifies as a major change, according to city code.

“It was the city’s position all along that this was a major change and should be processed as a major change, but SITLA said, ‘we disagree, and we have a zoning exception that exists in state law,’” said McAnany. “So this agreement [to treat the amendment as a minor change] is a compromise document, and by definition, in a compromise, no one gets exactly what they want.”

During a Dec. 20 city council meeting, Andrews said SITLA and the developer had been led to believe the city agreed the changes could be considered minor.

“The tweaks to the development were approved by staff,” Andrews said Dec. 20, adding that the developer then spent hundreds of thousands of dollars on planning and design “based on the representation that the project was moving forward.”

Andrews said that during those conversations with city staff, the developer was told the changes could be treated as a minor plan revision, meaning the process would be handled internally.

However, in the spring of 2016, city officials determined the changes should be considered a major plan revision, which would trigger a new review process, including additional public hearings, he said.

Approving the amendment as a minor change could open the city to litigation, McAnany said.

“We’re bound to follow our own codes and when we depart from that, we do so at our own peril,” said city attorney McAnany. “It doesn’t insulate us from third party claims ... anyone can file a lawsuit at any time.”

Council member Tawny Knutson-Boyd expressed a hope that jobs created by the development would benefit the community.

“I’m hoping that you’re not going to have a whole bunch of nine-dollar per hour jobs that people will struggle with and have to work two or three jobs to make ends meet,” she said.

Michael Badger of LB Moab Land Co. said his employees receive benefits and paid vacations, and that he wants them to be happy in their jobs.

Council splits 3-2 in favor of Lionsback agreement

Rudy Herndon Moab Sun News | Posted: Thursday, March 2, 2017 9:06 am

After years of delays, the developers of the previously approved Lionsback Resort have the City of Moab's official blessings to move forward with the project.

Moab City Council members voted 3-2 on Tuesday, Feb. 28, to approve a zoning status agreement with project developer LB Moab Land Co. LLC and Utah's School and Institutional Trust Lands Administration (SITLA). Kyle Bailey and Rani Derasary voted against Kalen Jones' motion.

For the project's partners, their initial victory appeared to be short-lived: Within a matter of seconds after council member and Mayor Pro Tem Tawny Knuteson-Boyd tallied the ayes and nos, council member Heila Ershadi asked if she could change her vote, throwing the status of the agreement into question.

Interim Moab City Manager David Everitt said that the developer and SITLA officials expressed concerns about that uncertain status in the hours that followed. Ershadi, in turn, said that although she still has many concerns about the project, she will stand by her original vote in support of the agreement.

"I ultimately just decided to stick with the line of reasoning I had carefully considered," she told the Moab Sun News on Wednesday, March 1.

Still, like Bailey and Derasary, Ershadi voiced misgivings about the project immediately after her vote.

"This is one of those votes that is so hard, and I think I would feel regret and dismay either way," she told the council.

Derasary said she'd love to say that the agreement is a win-win for both sides.

"But it seems like lose-lose either way we go," she said. "And so that leaves each of us individually to try and make a decision about what is best for the community now and in the future."



Kalen Jones

Moab City Council member Kalen Jones gestured toward the viewshed beyond the proposed Lionsback Resort on Sand Flats Road. Jones said he believes an agreement with the project's partners to resolve a dispute over amendments to the resort is reasonable and equitable. [Photo by Rudy Herndon / Moab Sun News]

The zoning status agreement aims to resolve a dispute over recent amendments to the project, which would be developed in phases on SITLA-owned property off Sand Flats Road.

It now includes more clearly defined plans for a 50-unit, 150-room resort hotel and – at full build-out – 188 residential lots, as well as 18 employee/workforce housing units. Nearly three-quarters of the property, or 128 acres altogether, would be set aside as open space – about four-tenths of an acre less than the amount that was outlined in the original proposal.

The city approved a preliminary agreement for the project more than eight years ago, but opponents challenged a previous council's 3-2 vote, and the legal dispute that followed took four years to work its way through the court system. The Utah Supreme Court ultimately declined to hear the case, allowing a lower court's ruling in favor of the city and the developers to stand as is.

But the developers and SITLA officials say the project stalled during former Moab City Manager Rebecca Davidson's administration. After the city terminated Davidson's contract, SITLA tried to jump-start the project by invoking an obscure state law that exempts state government agencies from municipal planning and zoning regulations.

McAnany informed the council last year that the agency would agree to city jurisdiction on one condition: It wanted the city to classify changes it's seeking as “minor” amendments, subject only to staff-level review, and not a more comprehensive public review.

The city attorney maintained that the amendments are a major change because, under his interpretation of the plan, the size of the hotel has tripled, from a 50-room casita-style hotel, to a 150-room hotel.

City gains concessions through agreement

Ershadi questioned what would happen if the council didn't approve the agreement, and while Everitt noted that the future is hard to predict, he said that SITLA has the power to withdraw completely from the city's land-use approval process.

“It has the ability to most likely develop its own water sources up there,” Everitt said. “It's certainly conceivable that they could develop their own independent, totally self-contained sewage treatment facility, and the city would have no say in what would happen with stormwater runoff...”

McAnany said the agreement that council members ultimately approved incorporates many of their past suggestions. Among other things, it includes Jones' request for written assurances that the project's backers will indemnify the city against any future lawsuits that project opponents might file.

“It is necessarily a compromise,” McAnany said. “The city is not getting everything it wants, and the developer is not getting everything it wants.”

Jones said he believes the agreement is a reasonable one, based on his review of related documents, and the comments he's heard from legal counsel on both sides.

He noted that a previous council had already approved the project, and said there was a reasonable level of ambiguity for the applicant to question the distinction between a major and a minor amendment.

“It seems like an equitable resolution of that disagreement,” Jones said.

Invent Development Partners co-founder and project developer Mike Badger declined to comment on the council's vote. But SITLA Associate Director John Andrews noted that the revised zoning status agreement includes a number of concessions that city officials sought, while resolving the disagreement over the definition of major and minor project amendments.

Among other things, it commits the developers to a future traffic study at the end of the project's first phase, as well as landscaping and drainage improvements that city officials were seeking.

“Those are part and parcel of this, but we're just trying to get procedurally beyond the dispute that we have ... without the five years of process that the prior approvals received, including the years and years in court,” Andrews told the council. “We wish to avoid that. I may be a lawyer, but avoiding litigation is something that we'd really, really like to do, and so we're trying to be as responsive to all of the technical requirements of the city, but getting us past the dispute that we have found ourselves in.”

Under the agreement, the developer will significantly widen Sand Flats Road, remove sight-line obstructions along the route and add a nonmotorized travel lane for mountain bikers and others along portions of the road. It will also connect its sewer lines to the city's future wastewater treatment plant, instead of building and operating a privately run system.

In doing so, Andrews said, the project could eliminate a potential source of groundwater contamination: An existing home on Sand Flats Road is hooked up to a septic tank, and by connecting that property to Lionsback's sewage system, he said the project could benefit the community.

Living Rivers Conservation Director John Weisheit said he believes that the council's vote to approve the agreement was a mistake, adding that the city has lost its bargaining chip.

“In my opinion, they have a right to tell SITLA that, for example, 'You can only have this much water and we're only going to take this much sewage,’” he said.

Local residents still have an opportunity, he said, to step up and discuss ways to address the long-term sustainability of the valley's water and sewer problems.

“The planning and zoning in the city and county is a mess, and the imperative thing this community has to do is get its planning documents in order,” he said.

Bailey, who voted against the previous council's motion in support of the original plan, said he's willing to go along with whatever the council wants to do at this point.

“We're in a no-win situation here,” he said. “If we don't vote for it, they're going to invoke their state's rights.”

Having said that, Bailey said he thinks the developers have done “a lot” to mitigate a number of concerns that came up in recent weeks and months.

Derasary said that she thinks there are many good things in the agreement, and she appreciates that people spent so much time working on it. But a big part of the council's job is to support the city's code, she said, and she believes that the amendments the developer is seeking amount to a major change, as defined by the city.

“I realize there may be a big price we pay, but that's why I can't support the agreement,” she said.

Ershadi said she feels much the same way that Derasary does.

“After a lot of consideration, though, I am coming down on the other side simply because I feel it's the pragmatic choice, given the options that we're dealing with,” she said.

If the council chose not to sign the agreement, she said, SITLA can walk away from the city and not have to deal with the council at all, if it wanted to.

“And I would rather have a working relationship and come to points of compromise, and it's my hope that we'll be able to do this in the best way possible,” she said.

Court complaint challenges city's latest decision on Lionsback

by Lisa J. Church and Molly Marcello
The Times-Independent
04.06.17 - 09:30 am



The proposed Lionsback Resort development is headed back to court. On March 30, a group of local property owners, along with the Moab-based nonprofit Living Rivers, filed a complaint and petition for review with 7th District Court in Moab, asking the court to set aside the Moab City Council's Feb. 28 decision to approve a zoning status agreement for the controversial 175-acre development.

The council voted 3-2 on Feb. 28 to approve the zoning status agreement with the state School and Institutional Trust Lands Administration (SITLA) and developer LB Moab Land Company, LLC.

The city initially approved the Lionsback proposal in 2008, authorizing plans for a 50-room hotel and 34 individual casitas at the site of the old Lionsback Campground on Sand Flats Road.

In 2016, developers presented revised plans for the first phase of the proposed development that included a hotel nearly double in size, consisting of 50 three-bedroom units and a parking area to be located behind the hotel. Under the new agreement approved by the city Feb. 28, that change to the lodge size and scope is deemed a "minor change" to be reviewed by city staff, rather than a major change that would require public hearings and re-approval by the city council.

In September, Moab City Attorney Chris McAnany issued a written opinion that the change should be treated as a major change under the city's land-use code. SITLA officials had said if the council did not approve the changes as a "minor revision," which would bypass the city's public review process, the project would move forward anyway, without city input. Under Utah law, developments on state-owned property are not subject to local zoning laws, so the Lionsback project could potentially move forward without the city council's approval.

The council voted 3-2 on Feb. 28 to approve the zoning status agreement. Under that agreement, a change to the Lionsback Resort plan, previously approved in 2008, will be treated as "minor change" to be reviewed by city staff, rather than a major change that would require public hearings and re-approval by the city council. Under the new agreement, SITLA and the developer also agree to pay any legal costs incurred by the city related to the Lionsback changes should a lawsuit be filed. A 2009 lawsuit brought by environmental groups concerned

about the project's potential impact on a sole-source aquifer located on the property had stalled progress of the development until courts ruled in favor of the developers in 2012.

The plaintiffs in the March 30 complaint — Lucy Wallingford, Kiley Miller, John Rzczycki, Carol Mayer, David and Meeche Bodner, Sarah Stock, Josephine Kovash and Living Rivers — contend that the city council's decision to treat the expanded lodge size as a minor change was "arbitrary, capricious, and illegal."

The complaint alleges that the decision by the city council, "in disregard to Moab's ordinance and the advice of its attorney," denies the public the right to participate in public hearings related to the proposed Lionsback changes. It also contends that since no public hearing was held in connection with approval of the new zoning status agreement, local citizens were denied the right to present evidence to the council regarding potential impacts to water sources, traffic and congestion and other public health and safety issues that could affect Grand County and Moab citizens.

"For reasons that I don't understand, the council chose not to address the question of whether the 'new and improved' Lionsback Resort Project was a minor or major change to the project as approved in 2008-09," plaintiff Carol Mayer told The Times-Independent. "I believe, based on nothing more specific than the numbers of people they propose to serve at maximum occupancy, the changes are indeed major and the project absolutely needs public scrutiny to see if it fits Moab in 2017. I believe we must look at the overall well-being of Moab and her full-time residents in the light of climate change, altered water quantity assessments, sewer capacities, current traffic issues and exploding residential and commercial development in the valley. We must not capitulate to the desires of SITLA and the developer to build a huge, high-end resort on the plateau above town. ... Therefore, because the city of Moab would not take it on, the citizens must act."

Kiley Miller, another plaintiff who is also Mayer's daughter, said she repeatedly contacted city council members asking them to revote on the matter before signing on with the complaint.

"How is nearly doubling the size of the hotel from 41,360 square feet to 81,668 square feet not a major change or more than doubling the parking spaces from 104 spaces to 230 spaces not a major change? ..." Miller said. "This kind of development should not be forced onto the community, we should have a voice in what kind of developments are allowed. SITLA is a bully trying to force its way into our home, telling us what they think we need and telling us what they think is best for us ..."

Moab Mayor Dave Sakrison and city council member Kyle Bailey declined to comment because of the pending litigation. Moab City Manager David Everitt said the city is still reviewing the complaint.

"We'll be reviewing it and responding to the court on the merits," Everitt said.

SITLA Associate Director and Chief Legal Counsel John Andrews said Wednesday that his agency and the project developers will not comment on the case while it is still pending in court. However, Andrews said SITLA will respond to the matter with the courts.

“The litigation has been filed and SITLA and the developer will be responding to that,” Andrews said. “We intend to intervene and defend our interests.”

As of press time, a hearing date had not been set in 7th District Court.

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Don't tolerate SITLA intimidation...

12.22.16 - 09:56 am

Greed and intimidation by developers should not supersede the health and safety of Moab residents.

The state School and Institutional Trust Lands' (SITLA) greed and intimidation of Moab city with regard to the proposed Lionsback development on Sand Flats Road is not acceptable to the residents of Moab and should not be acceptable to the city council.

The city can control greed and intimidation by SITLA and their associates by the control of infrastructure, water and sewer in Moab. SITLA cannot endanger the health and welfare of Moab residents.

1. All sewer lines on Sand Flats Road down to at least the cemetery need to be paid for by SITLA.
2. Sewer connections should not be guaranteed until the new plant is completed in the next 25 months.
3. Access between Moab and Sand Flats is not safe. The road is used by families on bicycles that cannot safely compete with 80,000-pound cement trucks. SITLA needs to improve access. Weight limits are needed to reduce load size.
4. Traffic at the stop sign by Dave's Corner Market is congested, with over 20 cars in line on busy weekends, and bicycles and ATVs are crossing Dave's parking lot at high speeds trying to bypass the congestion. SITLA needs to pay for a traffic light at the intersection.
5. Storm water from large developments with large parking lots is considered by Utah to be source of pollution for drinking water. Mill Creek is classified as drinking water by the state of Utah. All storm runoff needs to be processed by SITLA by separating the oils from the water prior to being discharged into Mill Creek. All pollution from parking areas will either end up in people's gardens or in the Colorado River.
6. The U.S. Geological Survey's water study did not find the 13,000 acre-foot underground river from the Glen Canyon Aquifer that was supposed to provide future growth for Moab. Large developments need to finance alternative sources of water. Moab should not jeopardize the Utah State University campus by using our remaining cheap water for greedy developers.
7. Access across county or city lands should be denied.

Moab residents need to picket any business on opening day that does not respect county or city safety codes.

—Bill Love

Fight SITLA for what's right...

01.05.17 - 10:16 am

A story in the Dec. 22 issue of The Times-Independent regarding the Lionsback Resort development included the following statement: “If the council does not approve changes to the project proposed by developer LB Moab Land Co., LLC as a 'minor revision,' which would bypass the city’s public review process, SITLA officials said the project would move forward anyway, without city input. Under Utah law, developments on state-owned property are not subject to local zoning laws, so the Lionsback project could potentially move forward without the city council’s approval.”

We have a history of fighting for our rights in this community:

The federal government wanted to locate a nuclear waste repository adjacent to Canyonlands National Park south of Moab — we fought back and the plan failed;

The state wanted to locate a industrial waste incinerator at Cisco — we fought back and the plan failed;

The state wanted to locate a juvenile detention center in the middle of our downtown residential area — we fought back and now we have The Christmas Box House instead.

In the Aug. 24, 2000 issue of The Times-Independent, Moab first learned of the Cloudrock Resort at Johnson’s-Up-On-Top. The development was a partnership between the School and Institutional Trust Lands Administration and Moab Mesa Land Company. The project had been in the planning stages for two years — without Grand County’s knowledge or input.

In the next few weeks, citizens and county officials responded to this information with concern over many issues related to the scope of the project - water, sewer, traffic, etc.

In October 2000 we were told by SITLA: “Moab can’t say no to Cloudrock.”

Citizens and elected officials fought back. After months of public hearings and meetings, the Cloudrock resort was finally approved by Grand County, subject to many conditions which were the direct result of the local citizens and officials standing up for our rights as a community to hold ANY development subject to our zoning laws.

We have shown our fighting spirit in the past. Let’s keep that spirit alive.

—Lola McElhaney

Moab

Lionsback agreement facing legal challenge

Sam McLaughlin Moab Sun News | Posted: Thursday, April 6, 2017 9:09 am

A month after the Moab City Council approved a zoning status agreement that seemed to clear the way for the Lionsback Resort development, critics of the project filed a lawsuit in district court claiming that the council's decision was illegal.

The agreement, approved 3-2 on Feb. 28, classified changes made to the project since its original proposal as "minor" amendments not subject to a comprehensive public review. Utah's School and Institutional Trust Lands Administration, which owns the property where the proposed resort would be developed by Invent

Development Partners, had made that classification a condition of accepting city jurisdiction over the development. Under state law, SITLA could be exempt from municipal planning and zoning regulations.

But the plaintiffs in the lawsuit — Lucy Wallingford, Kiley Miller, John Rzczycki, Carol Mayer, David Bodner, Meeche Bodner, Sarah Stock, Josephine Kovash and the nonprofit conservation organization Living Rivers — contend that the changes should have been classified as "major" amendments, as city attorney Chris McAnany had recommended. On March 30, they filed their complaint asking the 7th District Court to nullify the city council's decision and order public hearings.

"The main argument is this is a major change, and according to zoning laws, they need to present this to the public for their comment and concerns," Living Rivers Conservation Director John Weisheit said. "And the concerns are many."

Living Rivers is providing the financial support for the litigation. The organization also supported previous litigation against the Lionsback development in 2008.

"I was asked by the community to do this, and that's my job: I respond to the desires of the community," Weisheit said.

The plaintiffs are represented by attorneys Barbara Polich and George Poulton of Salt Lake City law firm Antczak Polich Law. Under the terms of the Feb. 28 agreement, SITLA accepted responsibility for the city's legal defense in the event of a lawsuit based on the minor changes classification.

"We're not surprised that this was filed, but we're going to review the litigation and respond



Lionsback Resort

[Courtesy image]

appropriately," SITLA Associate Director John Andrews said. Andrews confirmed that SITLA will indemnify the city for the costs of litigation, but declined to comment further on the case. He would not say whether SITLA might consider proceeding on the project without the city's cooperation.

Carol Mayer, one of the plaintiffs in the suit, said she doesn't believe that strategy is still feasible.

"I don't think that SITLA could get away with those bully tactics in this state any longer," she said.

Mayer, who lives near the site of the proposed development, hopes that the suit will create an opportunity for increased public scrutiny of the project.

"I want Lionsback to be held up against today's standards, rather than the standards that it was approved in 2008," Mayer said. "I have nothing to lose and, I think, everything to gain by having this project reevaluated by the public."

The changes made to the project proposal would triple the number of rooms at the resort — from 50 to 150 — but still leave approximately three-quarters of the property as open space.

"The land can't take it," plaintiff Kiley Miller said. "We don't have the water for these kinds of big developments."

She opposes the project, believing it would bring water-supply contamination and traffic increases an already-overrun Moab.

"This is what citizens are being forced to do to try to protect the communities they live in," Miller said of the lawsuit. "Moab is in the eye of big developers now and they want to come in and overbuild the community."

"SITLA's been bullying not only the city council, but is basically bullying the citizenry," she added. "Personally, I would very much like for this development to be scrapped."

Simultaneously with their litigation, the plaintiffs submitted an appeal to the city's Appeals Authority, also asking for the reversal of the Feb. 28 decision. Weisheit said that the Appeals Authority process is not clearly defined.

"Apparently it has never been used until yesterday," he said, the day after submitting both the appeal and the lawsuit. "Because of the uncertainty of how the appeals process works, we just filed anyway, to cover our bases."

Moab City Manager David Everitt said that the city, too, was uncertain how the appeals process ought to work in this situation.

"We're still trying to work through that too, honestly," Everitt said. "We're consulting with our attorneys

to make sure we're following the ordinances we have in place regarding Appeals Authority."

The city's land use code designates different bodies as the authority depending on where the initial decision was made, he explained, but because the zoning status agreement was a legislative decision by the city council, the appeal might in fact need to be adjudicated by a court.

"My guess is that the recourse is at the district court level," Everitt said.

He declined to comment on the contents of the lawsuit, saying that the city was still consulting with legal counsel. But a case based on the major-minor change distinction was "not a giant surprise," he said.

"It had come up that it was a possibility," he said.

If the court does invalidate the zoning status agreement, SITLA could go forward on the project without the city, he said.

"I don't know what SITLA's approach would be," Everitt said. "It certainly seems like they would still have the option."

Weisheit said that the lawsuit provides a chance for the community to be heard.

"This has created an opportunity for public involvement. They didn't have that before, but now they do," he said. "My hope is the public will step up."

Invent Development Partners co-founder Michael Badger did not respond to a request for comment. (Badger is also manager of LB Moab Land, the previous developer for the project.)

Moab City Council approves new Lionsback Resort status agreement as ‘minor change’ to original plan

by Rose Egelhoff
The Times-Independent
03.02.17 - 09:43 am



The Moab City Council voted Feb. 28 to approve a zoning status agreement with the state School and Institutional Trust Lands Administration (SITLA) and developer LB Moab Land Company, LLC, which treats a change to the previously approved Lionsback Resort plan as a “minor change” to be reviewed by city staff, rather than a major change that would require public hearings and re-approval by council.



Council members Tawny Knuteson-Boyd, Kalen Jones and Heila Ershadi voted in favor of approving the zoning status agreement, while Rani Derasary and Kyle Bailey opposed.

However, after the vote, councilmember Ershadi requested to change her vote or to revisit the issue at the next city council meeting on March 14.

Moab City Attorney Chris McAnany said although votes are final, the council does have the right to revisit a decision at its next council meeting.

“This is one of those votes that was so hard,” Ershadi said. “It’s good to know

it’s open for potential in the next meeting as well.”

However, on Wednesday morning, March 1, Ershadi contacted *The Times-Independent* to say she has decided to let her original vote stand.

“I’ve decided it’s done,” she said. “... It was a very emotional vote for me ... There was no way to come out of that feeling good. I had a huge pang of regret after voting, but ultimately I’ve come to the same conclusion I had reached before. That it’s better for the city to have oversight than to have the development being built without having to conform to city [regulations].”



Revised plans for the first phase of the proposed resort located on SITLA land at the old Lionsback Campground, now include a hotel consisting of 50 three-bedroom units and a parking area to be located behind the hotel. The original plan featured a lodge with a total of 50 single rooms.

McAnany has said this new plan constituted a major change under city code, but SITLA and the developer have said ambiguities in the code and communications from previous city officials led them to believe that they could proceed with the new plan as a minor change, without undergoing a public review, as would be required in the case of a major change.

SITLA officials had said if the council did not approve the changes as a “minor revision,” which would bypass the city’s public review process, the project would move forward anyway, without city input. Under Utah law, developments on state-owned property are not subject to local zoning laws, so the Lionsback project could potentially move forward without the city council’s approval.

The most recent version of the zoning status agreement includes several new provisions. The most significant change is a clause that holds SITLA responsible for any legal costs incurred if the city is sued for treating the plan change as a minor rather than a major change.

The agreement also specifies that future amendments to the project will be reviewed at the staff level, without public hearing processes.

In an earlier draft of the agreement, SITLA reserved the right to withdraw from the land use agreement approved by the city in 2009, McAnany said. That language was struck from the agreement approved Feb. 28.

Other changes include a provision requiring new traffic studies, since the previous studies were completed eight years ago, and the developer has agreed to make improvements to Sand Flats Road concurrent to construction of the hotel.

Prior to casting her vote, Ershadi voiced concerns about water source protection, as the resort is located near Skakel Springs, one of Moab’s primary water sources.

John Andrews, associate director and chief legal counsel for SITLA, said the proposed changes to the plan would not affect the Skakel Springs area. He added that building sewer lines up to the resort would also allow nearby residences currently on septic systems to connect to the city sewer system, eliminating a possible source of water contamination.

Jones said he supported the zoning status agreement.

“I feel this is a reasonable agreement ... The approvals for this were made by a previous council and there is a reasonable level of ambiguity for them to question the major/minor distinction,” Jones said. “It seems like an equitable resolution of that disagreement.”

He added that although the change has not gone through a public hearing process, “[The council members] have received substantive feedback from many citizens.”

Derasary spoke in opposition of the agreement, eliciting applause from several citizens in the audience.

“I’ve looked really hard at what kind of risk we’re taking if we don’t sign it and that weighs pretty heavily on me, but personally, I can’t vote to sign this agreement. Most fundamental for me is that I feel it’s a big part of our job to support our code,” Derasary said. “When I look at our code, and I look at what happened with this project, I do feel like it’s a major change ... I’m unwilling to do it ethically, I’m unwilling to do it legally, and there may be a big price to be paid but that’s why I can’t support the agreement.”

Ershadi expressed similar reservations, but ultimately decided to vote in favor of the agreement.

“It’s the pragmatic choice, given the options we’re dealing with. There is some ambiguity I believe [in city code] ... as to whether it would be litigated as major or minor,” she said. “Also, SITLA can leave and not deal with the city at all if they do, and I would rather have a working relationship and come to points of compromise.”

In response to a question from Ershadi, Interim Moab City Manager David Everitt said, “I think we’re all on the same page that SITLA has the right to withdraw completely from the city’s land use approvals process, the ability to most likely develop its own water sources up there ... They could develop their own independent, totally self-contained sewage treatment facility and the city would have no say in what would happen with storm water runoff that would be conveyed off the site.”

Andrews said SITLA and the developer are pleased with the council’s vote.

“We obviously were happy with the original decision,” Andrews said. “The purpose of this was to achieve a compromise and compromise is always a good thing.”

According to documents provided by SITLA for the council meeting, the Lionsback Resort will be built in several phases, beginning with the hotel. Future phases call for construction of 18 employee housing units as well as 188 residential casitas.

Planning commission tables request for sensitive-area resort amendment

by Rudy Herndon

Staff Writer

08.28.14 - 09:42 am

The Moab City Planning Commission wants more information before it makes any recommendations on a proposal to loosen size restrictions inside the city's sensitive-area resort zone.

By a 3-0 vote on Aug. 14, the commission tabled a request that could allow landowners near the proposed Lionsback Resort development to annex smaller properties into the city limits under the sensitive-area resort zone. Planning commission members Jeanette Kopell and Laura Uhle were absent from the meeting.

Moab City Planning Commission chairwoman Kelly Thornton said she is not necessarily opposed to the idea of annexing nearby properties into the sensitive-area resort zone. However, she questioned whether the city should be taking steps right now to encourage the development of more nightly vacation rental units in Moab.

"I don't think that we have enough evidence that it will be a benefit to the community to make this particular change," Thornton said.

The city created the zone in the Sand Flats Road and Lion's Back areas to accommodate master-planned, resort-style communities, which may include a mix of private residences, overnight rentals and commercial businesses.

According to city code, sensitive-area resort zoning regulations are designed to preserve the surrounding landscape's natural look and character. Among other things, they set limits on building heights, restrict development on each individual property, preserve open space and aim to minimize light pollution in the night sky.

Applicant Sue Dalton is asking the city for one change to the current zoning code: an amendment that would reduce the minimum size of developments in the zone from 40 acres to 24 acres.

Dalton believes the proposal could benefit neighboring property owners who might want to annex their land into the city limits.

Under the current restrictions, some of those properties are not big enough to be incorporated into the zone. But the proposed amendment would give those property owners the leeway to develop resort-style projects on their land.

"The properties that we're thinking would benefit from this would continue, kind of, that same type of development," Dalton said.

The planning commission previously continued its July 10 public hearing on the matter in order to gather more feedback about the proposal. Yet once that continued hearing came to an end on Aug. 14, Thornton said she doesn't believe she has enough information to make any recommendations to the city council.

In the future, Thornton said she wants to see a more detailed examination of the potential impacts that the change could have on the city's water and sewer services. In addition, she would like to know how it could impact the availability of affordable housing in Moab.

"I think it would be irresponsible of us to do anything at this point that just points in the direction of making it easier to bring in more nightly rental units, without taking a look at those issues," she said.

In a written narrative on the proposal, Dalton acknowledged Moab's workforce housing needs. However, she wrote that some areas in the valley are more conducive to resort communities that mix private homes with overnight rentals and commercial activities.

"This could bring in more tax dollars and help preserve the beauty that attracts these people to our area in the first place," she wrote.

Dalton believes the proposal would have another significant benefit to the public.

If smaller private properties near the Lionsback Resort are annexed into the city, utilities could be routed through them. According to Dalton, that could spare the city and various utility companies the hassle of routing those services along narrow and busy Sand Flats Road in the event of future development.

"That takes out that impact of having to [limit traffic on] that road, which is huge for our community," she told the planning commission.

Planning commissioner Wayne Hoskisson said he isn't sure if the proposal would ultimately benefit the public interest, partly because Dalton didn't come to the board with any specific development projects in mind.

"Part of it is, we're not really looking at any kind of a development, so it's hard to know whether we're really talking about something that's beneficial or not," he said.

But neighboring property owner Dave Cozzens — the only member of the public who spoke at the hearing — threw his support behind the proposed change.

"I feel like what they're wanting to do is worthwhile," he said.

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The ruination of Lionsback...

03.09.17 - 10:00 am

Front-page news reignites my dread about the ruination of Lionsback. I wonder how many Moabites are as disgusted, disillusioned, disappointed, and, yes, angry, as I am.

I wanted to know how this happened and when. I did learn that it took place before I came here. I would have been protesting if this was being proposed today. How was the state School and Institutional Trust Lands Administration (SITLA) given the OK to sell off this precious property for development? There comes a point where we have to yell, “STOP! NOT HERE! NOT EVER!”

Logically, Lionsback should have become a part of Sand Flats Recreation area. Sand Flats was recognized for the treasure that it is back in 1995 and is managed under a unique partnership between the Bureau of Land Management, Grand County and the Moab community. A true cooperative success story that we should all be proud of. Conversely, we should be ashamed of losing Lionsback.

For those of you who are mystified by the political process that allow these things to happen I urge you to research and learn. A good place to start is Jim Stiles’ “The Canyon Country Zephyr” archives: June-July 2006, “Subdivision Frenzy...Why Worry Now?” explaining how the developers simply needed Moab city to annex the SITLA’s Lionsback property to move ahead; Dec. 2008-Jan. 2009, “SITLA Looks Ahead” — you’ll read more about the workings of SITLA and Lionsback, also Cloudrock on Johnson’s Up-On-Top, plus the Spanish Valley roads to nowhere and more.

Learn all about trust lands in an internet article entitled: “The State Trust Lands” by Jon Souder and Sally Fairfax.

— Ann Ertel

Moab

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