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Aquifer protection...

03.26.09 - 10:27 am

Grand County Citizens for Clean Water (a project of Living Rivers) would like to thank the T-I for their recent coverage on the issue of closing Matrimony Spring for reasons of bacterial contamination (March 12 and 19, 2009).

We would also like to remind the community that our group distributed a publication as an insert in the T-I (March, 2008) called “A Look at Johnson’s Up-On-Top” (www.livingrivers.org/pdfs/Johnsons.pdf.)

In that publication we presented information about how our community groundwater can be contaminated if the county and the state School and Institutional Trust Lands Administration allow development, such as Cloudrock, to occur on known aquifer recharge areas. This also applies to Moab city’s recently approved development on SITLA lands at Lions Back.

The recent news about Matrimony Spring demonstrates the risk of water contamination from development above an aquifer recharge area. Developers and politicians demanded further evidence that our water could be contaminated by surface activity. The health department is telling us that “an unknown contaminant is entering the water flow somewhere upstream” of Matrimony Spring and that “more dangerous contaminants could follow.”

The aquifer recharge area of Matrimony Spring does not have any development outside of the non-functional tram, and yet the spring is now polluted. It is absurd to continue believing that development on sensitive lands will not put our drinking water at risk.

Considering the peaceful demonstration and the vandalism last week at Matrimony Spring, the people have confirmed that access to our area’s pristine water is indeed a serious community issue. If the remedy for Matrimony Spring means spending tax dollars to provide water infrastructure to sanitize the spring for consumption, we can only imagine what the tax burden would be to decontaminate the culinary springs and wells of the city and county – especially if the pollution includes toxic chemicals.

It would seem prudent at this time for the city, county and SITLA to get serious about legislating for the protection of our aquifers and drinking water with strict ordinances that prevent development of any kind on aquifer recharge zones.

—John Weisheit, Living Rivers

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City narrowly approves Lionsback pre-annexation

by Jeannine Wait

contributing writer

10.30.08 - 09:38 am

With Jeff Davis absent, Kyle Bailey and Sarah Bauman voting against and Gregg Stucki and Rob Sweeten voting for, Moab Mayor Dave Sakrison cast the deciding affirmative vote necessary for Moab City Council approval of a pre-annexation agreement that will incorporate the property slated for building the controversial Lionsback resort near Sand Flats into the city limits. Councilman Bailey originally proposed to table the vote, but the motion died for lack of a second.

The 175.12-acre property is currently owned by the state School and Institutional Trust Lands Administration, and SITLA officials have said the land has been flagged for sale to developers because of its close proximity to town and other factors. Until a couple of years ago, the property was leased to a private party who operated the Lions Back camp park at the site.

A draft of the pre-annexation agreement was reviewed by the Moab City Planning Commission and recommended to the city council. A few changes were made to the agreement to address public, city council and commission concerns over water storage, workforce housing and water source protection. The developers of the proposed Lionsback resort have said they are currently considering several options for water storage. Those final decisions must be made and presented to the city before final annexation is considered, city officials said.

According to city staff, the workforce housing definitions have been clarified, and water source protection language has been strengthened to make it clear that the project, in its entirety, will meet the most strict zone 2 water source protection standards and that there will be no pollution sources in any part of the project.

“I think the citizen concerns on water protection have been well addressed,” said Sakrison.

Both Sweeten and Stucki commended the developers for being very willing to work with the city. “The best way for us to regulate the usage of this area is to put it under our control,” Sweeten said.

“If we vote no,” Stucki said, “the property still sits on the aquifer and this development will be much much better than if it goes to the county.”

But council member Sarah Bauman said she is “highly against this annexation.”

“In my mind, the whole reason for annexing this property is to increase city revenue which is against the annexation guidelines,” Bauman said. “Now is our

chance to do something right and deny the pre-annexation.”

Before casting the deciding vote, Sakrison said that the SITLA officials who own the property told him, “We will find another developer if these guys walk away.”

Telluride, Colo. developer Mike Lawler, who is one of the Lionsback partners, spoke briefly at Tuesday’s meeting. “We’re going to do this right,” Lawler said. “Our goal is to make this a LEED- [Leadership in Energy Efficiency and Design] certified development.

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City reapproves Lionsback Resort plan, with conditions

by Jeannine Wait
contributing writer
07.10.08 - 10:06 am

The Moab City Council, by a 4-0 vote on Tuesday, approved a preliminary master plan development (MPD) for Lionsback Resort, that included conditions recommended by the Moab City Planning Commission.

The vote was a redo of the council's June approval of the plan, and was required because the conditions, which include zoning the project within the city's new sensitive area resort zone, determining responsibility for Sand Flats Road, and annexation of the property into the city, were inadvertently omitted from the July 24 council motion, council members said.

Several area residents voiced objections to the Lionsback development, located at the site of the former Lions Back campground, during Tuesday's meeting. Harold Shephard of the Moab-based Center for Water Advocacy told the council that more public notice and opportunity for comment at public hearings should have been provided local residents. Julianne Fitzgerald said the development should be denied for many reasons, including its potential impact on the public drinking water supply, road and safety issues, the impact of increased traffic on recreation, and the possibility of failure of the project due to economic conditions.

Moab Mayor Dave Sakrison said that the Lionsback project has been proceeding openly through the developing process for at least two years. All the documents are available and city staff is available to answer citizen concerns, he said.

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Edward Willey: DON'T develop Lion's Back

04.05.06 - 06:24 am

Don't annex land . . .

Please do not annex the lands around Sand Flats.

Please do not create a special zoning classification or ordinance for the proposed Lions Back Resort. Please do not spend so much time, energy and money on a project that would jeopardize such a beautiful and important area as Sand Flats. Please tell Mr. Badger and Mr. Lawler that the city would prefer to protect and preserve this land instead.

The impact to the Sand Flats Recreation Area would be enormous and devastating. If the homes were filled with the average Utah family, there would be an extra 650 people or so living up there. Look at the impact one week of Jeep Safari does to that area. Now imagine that many people there all the time!

They would be driving their 350 cars (not to mention the construction vehicles) from the corner of Dave's market, past our elementary school and up a narrow, winding road populated with pedestrians and bicycles. When that many cars visit the area in Easter the place shuts down. Do we want new traffic lights at Dave's, at the cemetery, at the entrance to this resort? They would seem unavoidable.

I have been told that the aquifer that feeds Matrimony Springs sits right below this area. Do we want to risk contaminating that water supply?

And, does the city council really believe that the

lights from 130 homes plus a 48-unit condo and a lodge, along with “other amenities,” wouldn’t be visible from town? Maybe the actual light fixtures themselves won’t be, but the glow certainly will. And what about the light pollution into Sand Flats itself?

I hope Jeff Davis is right. I hope the people of Moab won’t allow the city council to trade Sand Flats for impact fees and real estate transfer assessments, no matter how lucrative the deal.

–Edward Willey

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Lion's Back draws few comments

by Ron Georg
and Jeannine Wait
contributing writers

05.15.08 - 01:34 pm

The Moab City Council approved the acceptance of an annexation petition for the 175.12-acre Lions Back resort property on Sand Flats Road on Tuesday night. The overall development will utilize less than 30 percent of the property, preserving some 73 percent as open space, city officials said. That decision qualifies the developers to request application of the Sensitive Area Resort Zone (SAR). At full development, Lions Back Resort will include a resort lodge with spa, pool, restaurant and conference/meeting room, 189 free market residential lots for dwellings of varying sizes and styles, 18 workforce/employee housing units, condominium units and commercial and storage areas to support the lodge facilities.

The city recorder will now review the Lions Back petition for certification within 30 days as it proceeds through the annexation process. If certified, it will go back to the Moab City Planning Commission for review and its recommendation to City Council and a public hearing date.

The city planning commission held a public hearing on the Lions Back development during its regular May 8 meeting. While there was some vocal opposition to the proposal it was limited to a few citizens.

Two of the three people who spoke against the proposal have a vested interest in local development. "It may surprise you when you hear some of my comments," Kris Hurlburt said. "I'm a real estate broker. I am also the first house at the bottom of the hill. Coming here tonight, I almost got hit by a bicyclist. I won't even be able to get out of my driveway once this gets going."

Concerns about increased traffic on Mill Creek Drive were central to comments on the development. "It's pretty quiet in the middle of March," Hurlburt said of the traffic study for the development that was conducted in March. "The traffic study said that once this is up and running with the first two phases, that puts an additional 1,800 to 2,000 cars a day on Sand Flats Road. There are days already when I can't cross the street."

With Rotary Park and the Mill Creek Parkway on the other side of the street, Hurlburt expressed concern for the quality of life in her neighborhood. "One of the beauties of this town is being able to walk, and go down to the park, to access the trail system, it's wonderful. I won't be able to do that anymore. But more importantly, I mean, I'm old, but this is a neighborhood full of children."

Her other concern with the traffic, which could include up to 10 years of

construction vehicles, is the noise it will bring. "It's already so noisy in this town. This is not just going to be noise during regular working hours," Hurlburt said. "There's going to be a restaurant, a hotel, there's going to be services needed. Those trucks need to go up there bright and early so they can restock for the day."

Hurlburt did offer solutions, though costly, for the developer. To protect the sanctity of the neighborhood and the cemetery, she proposed sound barriers. To enhance safety, she suggested bike lanes up and down Sand Flats Road as well as pedestrian access, and she recommended a safe route across Mill Creek Drive. "There should be a tunnel or a bridge or something to get to the park. Not just a crosswalk – people here don't stop at crosswalks."

Julianne Fitzgerald is also a real estate broker, but she wanted more than mitigation – she wants the project stopped. "I'm a real estate broker; I've been in real estate for years and years, and I believe in private property rights, but we also have to look at the higher, better good for our community," Fitzgerald said.

"I'm very surprised that this has gotten as far as it has," she said. "I'd like to say, just because we can doesn't mean we should. This area up there is pristine. The amount of impact that's already happening up there is pretty much all it can handle. It's an illogical place for a commercial resort."

That didn't mean that Fitzgerald didn't like the plans, per se. "It is a beautiful project – but it's in the painfully wrong location. You have the right to do this project – I don't know if you have the moral right," she said. "This is an inappropriate use for this property. Yes it was commercial, yes it was a campground. But a campground is completely different than this subdivision."

However, the School and Institutional Trust Lands Administration holds the lease on the property, and representative Bryan Torgerson said that a commercial resort was always SITLA's intent for the property. "The lease was approved for a hotel and a spa. Unfortunately the lessee was never able to get it off the ground," he said.

Moab City Manager Donna Metzler followed up the public hearing with an outline of the annexation agreement, which she said contains stipulations beyond a standard agreement. "Of note, this also contains provisions for dealing with Sand Flats Road, mainly improvements to the road, and a funding mechanism for maintenance," she said. "It's very important to make sure the annexation is in the city's interest, and taking over maintenance of the road without compensation would not meet that criterion."

Metzler also noted another benefit to the city. "Another highlight of the annexation agreement is a voluntary real estate transfer tax of .5 percent collected at the time of sales. It's an assessment on each sale, and those funds are dedicated to affordable housing and trails so there's an additional benefit that comes back to the city."

However, Fitzgerald speculated that may be a moot point in the future. “Is anyone paying attention to the economy right now? I’m in the lodging business. The numbers in lodging are going down in Salt Lake, the cost of gas is affecting traveling. Are we willing to gamble this beautiful area on a commercial venture that people might not want to come to anymore because they can’t afford to get here?”

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Residents prepare for Lionsback litigation

by Ron Georg

contributing writer

10.02.08 - 10:21 am

After a four-and-a-half hour hearing on Aug. 20, followed up by a shorter meeting a week later, the Moab City Board of Adjustment denied an appeal of the Moab City Council's approval of the preliminary plan for the Lionsback Resort. The proposed development would be located just below the entrance to the Sand Flats Recreation Area where the former Lions Back Campground once operated.

Now, appellants Julianne Fitzgerald and Harold Shepherd intend to appeal that BOA denial, with an eye toward a potential court challenge.

At issue in the next challenge will be board of adjustment member Jeanette Kopell's dual role as both a BOA member and a planning commissioner. The appellants claim that because Kopell was involved in the planning commission decision to recommend the project, she was not eligible to rule on the appeal.

"We're going to be appealing on that basis, because, of course, Jeanette Kopell sat on the board of adjustment, and I asked that she be recused at our first hearing, and was denied on that," Fitzgerald said. She said they'll have to bring their complaints about the process to the BOA once more. "We have to go again in front of the Moab City Board of Adjustment, and then they're going to turn us down again, and that's when we're going to file a lawsuit."

A lawsuit would likely challenge city code, which requires a member of the planning commission to sit on the BOA, in light of a 2005 change made to state code by the Utah legislature. According to the state legislation, "An appeal authority may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority."

City officials are confident the city code is not in conflict with state law. "The planning commission isn't a land use authority – the city council is," Moab City Planner Jeff Reinhart said. It was a city council decision at issue in the appeal.

Fitzgerald still believes in her original challenge to the project. "There are so many things wrong with this, that you can't just pick one item and say, 'oh because of this,'" she said. "The single access road – that is a public health and safety issue. If there's an accident on the two-lane road, and someone up above has an asthma attack, how do you get up there? It's just absurd to have one way in and one way out."

Reinhart said all of the issues have been addressed by the developers, including access. The developers will make improvements, based on a traffic study, to the Sand Flats Road, and then they'll take over its maintenance.

“They appealed to the board of adjustment, and that was denied because all of their concerns were unfounded,” Reinhart said.

While the city issued all of the legally-required public notices regarding the project, Fitzgerald is also miffed that more people directly impacted by the project weren't contacted. Even residents who are listed in the project's documentation weren't necessarily contacted, she said.

“They say this is the first time we've heard [about the project], it was all rush-rush,” Reinhart said. “No, it's been a two-year process to get them where they are now. In November of last year is when the planning commission started reviewing the concept. Nobody showed up.”

The idea of “getting them where they are” also irks Fitzgerald. “Who does city staff work for, the developers or the citizens?” she asked. “Why are they devoting so much staff time and energy to pushing this through?”

Part of the reason the staff is spending so much time is to defend the appeal, Reinhart said. “Because that appeal was so confusing and disjointed, it took me a full week just to draft the rebuttal,” he said. “We had the city attorney, and we've had just about every staff member involved on some level, because there are all these different facets where they said, ‘your whole code stinks.’ Well, how do you answer that? You go through it step by step.”

Both sides have lamented the lack of communication. “The tragic part is we have it all right here, the answers to all those questions,” Reinhart said. “They just had to come in and ask.”

The developers agree. “Our biggest challenge is making sure all the correct information is given to the public,” Lionsback developer Mike Badger, of Telluride, Colo., said. “We've had several workshops and we've had public hearings, and if people need additional information we're happy to sit down and talk with them... We'll make a special trip if somebody wants us to. It's important that everybody get the right information.”

City staff feels confident that the sensitive area resort zone they created in anticipation of Lionsback is more than adequate to ensure public health and safety. Additionally, Reinhart points out that the developers have gone above and beyond most requirements, including open space and watershed protection.

They'll treat the area, about a third of which overlaps the Skakel Spring protection zone, as a zone 2 protection area, which means stricter standards for sewage and drainage. “They've done a lot of work above and beyond what the code requires,” Reinhart said.

The opponents of Lionsback are hanging their hats on issues involving watershed

and public safety, but Fitzgerald acknowledges that there's a larger context to her concerns. "One of the points we have on our petition is that economic conditions being so shaky, if they go ahead and rip up this undeveloped, unique place for the infrastructure, which is what always goes in first, and then no sales ensue, we'll be stuck with that," she said.

Badger, who owns the Gonzo Inn with his business partner Mike Lawler, seems unfazed by the current conditions. "The Gonzo's been a successful project for us, and we're very bullish on Moab. Moab is a treasured place to recreate and play," he said.

Fitzgerald and Shepherd will pursue their cause, under the moniker Save Our Unique Lands of Moab (SOUL of Moab). "We're moving forward, and needless to say, with this week's financial market, I figure the longer we can stall this, the more the economy is going to work in our favor," Fitzgerald said.

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Stand up to SITLA...

07.24.08 - 08:31 am

To the city:

I've been informed that you are telling people you have not had a single letter or phone call in opposition to the proposed Lionsback Resort development. This is surprising to me because I have not heard of a single person (outside of the developers and the city) who is in favor of it. It seems that everyone who knows about this project is horrified by it.

There can be no satisfactory "mitigation" – it's in the wrong place, period. With this kind of trophy sprawl we are going to kill the goose that laid the golden egg – the goose being our unique rural character, and the egg being the tourist economy that has been historically pursued (if Moab becomes a real estate economy, we'll be like all the foo-foo towns we say we hate).

It would be nice if the council would provide some real oversight instead of counting letters. Saying you had meetings for two years doesn't make the case that you are representing the people of Moab. It seems the only ones with anything to gain are SITLA and some Telluride developers who are playing Moab Monopoly with Utah state land they don't even own. It's time for the council to stand up to SITLA, and stand up for Moab's right to enforce its master plan.

How many have pictured Sand Flats Road, one of our golden gateways, as a high-speed suburban boulevard all the way to the Lions Back campground, with commuting resort workers, resort guests in their limos, carpet cleaning trucks, construction traffic and dismayed recreationists?

It's not a scenario that history will be proud of.

—Jon Kovash

Moab

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Stop Lions Back development...

07.10.08 - 09:08 am

There is a current development that is moving way too fast for our city, in my opinion.

This proposed “mini-city” on the rocks is planning the following: One hotel, which would include 50 condominium rooms and a convention center; 60 condominium “club casita” units; 86 single-family “village casita” units (ranging from 2100 to 3100 square feet); 43 single family “hillside casita” units; 9,000 square feet of common facilities (spa, laundry, restaurant, bike shop); 25,000 square feet of onsite patron storage units; 5,000- to 6,000-square-foot onsite patron vehicle maintenance shop (nice way of saying gas station?); 18 onsite employee housing units.

The location for this development (Lions Back) is absolutely in the wrong place. Not only are we unclear as to the effect it would have on our single source aquifer, which is our only drinking water supply for the city, but the single access road would become a freeway with the increased traffic (in spite of the developers’ “traffic study,” which was done two years ago). Local residents will be vying for position on the road which goes right past Red Rock Elementary School as well as Rotary Park for 10 years, the developers themselves say. If there were an incident on Sand Flats Road, it would effectively shut down any access to the top or bottom.

The noise from construction vehicles, as they lumber up and down the face of the rocks, will be ceaseless and wholly obnoxious to a normally quiet desert town.

I’m not sure what economic forecast these particular, non-Moab residents are using to determine the viability of sales and usage of this project, but my question echoes out, “Who is going to buy these high-end homes? And who is going to stay in their upscale hotel?” Rising gas prices affect everything. I am a real estate broker and I can tell you, we don’t have a line of folks just knocking themselves out to purchase high-end property, especially when it is so damaging to an area that the locals will spurn it.

I am pretty confident that if this mistake happens, we will lose more than the landscape at Lions Back. We will lose a segment of our loyal tourists who come to bike, jeep and camp up in the Sand Flats Recreation Area and, thus, revenue for local businesses and the city.

A phrase I used countless times as I raised my children seems appropriate here: “Just because we can, does not mean we should!” As a community, we need to wake up! Speak up! If they tear up the land on Lions Back and then can’t sell anything, what will we be left with?

Please go to www.ipetitions.com/petition/lionsback and help stop the annexation of Lions Back. If the city doesn't annex, they cannot build! The time is short – we only have until July 14 to protest. Let's work together and end this insanity!

—Julianne Fitzgerald

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Wrong for Moab...

07.31.08 - 07:38 am

Like it or not, the Slickrock Bike Trail is a unique, world-class, world-famous recreation area. To put a huge residential development immediately adjacent is land-use planning so poor it defies belief. (SITLA).

The old saw about increased tax base never proves out because, like a dog chasing its tail, as revenues increase so does demand for services.

Please tell Moab City Council members that you oppose annexation of the Lions Back property.

Lionsback Resort – it's just wrong for Moab.

—Bruce Dissel

Moab

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**Moab Local Green Party, Living Rivers, Julianne Fitzgerald, and Natalie McDowell,
Petitioners and Appellants, v. Moab City, Moab City Planning Commission, and
Moab City Board of Adjustment, Respondents and Appellees. LB Moab Land
Company, LLC, Intervenor and Appellee.**

Case No. 20100931-CA

COURT OF APPEALS OF UTAH

2012 UT App 113; 276 P.3d 1230; 706 Utah Adv. Rep. 44; 2012 Utah App. LEXIS 112

April 12, 2012, Filed

PRIOR HISTORY: [***1]

Seventh District, Moab Department, 080700176. The Honorable Lyle R. Anderson.

[**1232] LLC's (LB Moab) preliminary development plan for Lionsback Resort, pursuant to Moab City's master planned development (MPD) ordinances. We affirm the district court's decision.

COUNSEL: Joel Ban, Salt Lake City, for Appellants.

Christopher G. McAnany, Grand Junction, Colorado, for Appellees Moab City, Moab City Planning Commission, and Moab City Board of Adjustment.

Jody K. Burnett and Timothy J. Bywater, Salt Lake City, for Appellee LB Moab Land Company, LLC.

JUDGES: William A. Thorne Jr., Judge. WE CONCUR: Carolyn B. McHugh, Presiding Judge, James Z. Davis, Judge.

OPINION BY: William A. Thorne Jr.

OPINION

[**1231] THORNE, Judge:

[*P1] Moab Local Green Party, Living Rivers, Julianne Fitzgerald, and Natalie McDowell (collectively, Moab Local Green) appeal from the district court's decision upholding the Moab City Board of Adjustment's (the Board) approval of LB Moab Land Company,

BACKGROUND

[*P2] LB Moab is seeking to develop a parcel of land in Moab, Utah. LB Moab's proposed project is the Lionsback Resort, a mixed use residential, commercial, and hotel development named for a prominent nearby geological feature, the Lion's Back sandstone ridge. Due to the location of [***2] the proposed development, LB Moab was required to seek approval for the project as an MPD pursuant to Moab City's MPD ordinances.

[*P3] Moab City's MPD ordinances provide for a four-stage review process for proposed MPDs: (1) a preapplication meeting; (2) a concept review; (3) a preliminary review; and (4) a final review or site plan review. *See generally* Moab, Utah, Mun. Code § 17.65.080(A). LB Moab apparently completed its preapplication meeting without incident or challenge. LB Moab then submitted an application for a concept review. Moab City's Planning Commission (the Commission) reviewed LB Moab's concept plan at an October 2007 public hearing and approved the concept plan subject to certain conditions. No appeal was taken from the Commission's concept plan approval.

[*P4] LB Moab then submitted its preliminary MPD application for the Commission's review. The Commission apparently considered LB Moab's application to be sufficient for review. The Commission reviewed LB Moab's preliminary plan at a May 2008 public hearing and recommended its approval. The Moab City Council (the City Council) discussed the matter at two meetings in June and July 2008, after which it also approved the preliminary [***3] plan, again subject to certain conditions.

[*P5] Moab Local Green appealed the approval of the preliminary plan to the Board. Among other issues,¹ Moab Local Green argued that there was insufficient evidence to allow approval of the preliminary plan because certain required materials had not been included in LB Moab's application for preliminary review. The Board reviewed the materials submitted by LB Moab in its preliminary MPD plan review application and conducted a two-day public hearing in August 2008. The Board then determined that the Commission and the City Council had complied with applicable ordinances and that their approval of LB Moab's preliminary plan was supported by substantial evidence.

1 The other issues that Moab Local Green raised below, such as challenges to the adequacy of public notices, are not raised in this appeal.

[*P6] Moab Local Green then filed an action in district court seeking review of the Board's decision.² Moab Local Green argued that the Board's decision was arbitrary, capricious, or illegal because there was insufficient evidence that LB Moab's preliminary plan as approved contained each of the many specific elements required by Moab Municipal Code section 17.65.100, [***4] which governs the content of preliminary MPD plans. *See generally id.* § 17.65.100. Among the missing elements, Moab Local Green argued that the preliminary plan failed to contain required materials pertaining to archaeological and cultural resources; traffic, trails, and circulation; stormwater drainage; landscape design; and covenants, codes, and restrictions (CC&Rs).

2 For simplicity, we refer solely to the Board rather than distinguishing between acts of the Board and the Commission or City Council.

[*P7] The district court affirmed the Board's decision, explaining,

It is important to note at the outset that the challenged decision was not a final approval of a subdivision. Rather, it is a preliminary approval of a Master Planned Development ("MPD") within the City of Moab's Sensitive Area Resort Zone. A review of LB Moab's Final MPD Plan lies in the future.

....

[**1233] A common thread which runs through [Moab Local Green's] arguments is the idea that the [City] Council and the [Board] are required to exalt form over substance, require the submission of documents with the right titles, and interpret every provision of each statute or ordinance in the [manners] most favorable to petitioners[, Moab [***5] Local Green]. This is not the law. The Council and the [Board] stand as arbiters between those who pursue development and those who would forbid it. Under the direction of state law, the City of Moab has adopted processes for resolving those conflicts. As long as the Council and the [Board] are substantially complying with those processes and acting on the bases of substantial evidence, the court should not act as a nit-picking referee on a crusade to expose any error, no matter how minor.

Nothing in the record persuades this court that the approval of the [Lionsback Resort] Plat was illegal, based on arbitrary or capricious determinations or resulted from substantial failure to comply with proper processes. The decision of the [Board] is accordingly affirmed.

Moab Local Green now appeals the district court's decision to this court.

ISSUE AND STANDARD OF REVIEW

[*P8] Moab Local Green argues that the district court erred by finding that there was substantial evidence to support the Board's approval of LB Moab's preliminary MPD plan.³ "When a district court reviews an order of a local land use authority and we exercise appellate review

of the district court's judgment, we act as if we were reviewing [***6] the land use authority's decision directly, and we afford no deference to the district court's decision." *Pacific W. Cmty., Inc. v. Grantsville City*, 2009 UT App 291, ¶ 13, 221 P.3d 280 (internal quotation marks omitted). "[O]ur review is limited to whether a land use authority's decision is arbitrary, capricious, or illegal." *Id.* (internal quotation marks omitted).

3 Moab Local Green also raises an argument that development of the Lionsback Resort is governed not only by Moab City's MPD ordinances but additionally by its general subdivision ordinances. However, this appeal is from the approval of a preliminary plan under the MPD ordinances, and Moab Local Green has failed to present argument in its appellate briefing as to why any failure to comply with the subdivision ordinances would preclude the approval of a preliminary plan under the MPD ordinances generally or under the circumstances of this case. For these reasons, we deem this issue to be inadequately briefed. *See generally Brussow v. Webster*, 2011 UT App 193, ¶ 10, 258 P.3d 615 (mem.) ("An issue is inadequately briefed when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the [***7] reviewing court." (internal quotation marks omitted)), *cert. denied*, 268 P.3d 192 (Utah 2011). Accordingly, we decline to address it.

ANALYSIS

[*P9] Moab Local Green argues that the district court erred by upholding the Board's approval of LB Moab's preliminary MPD plan when there was insufficient evidence to establish that the plan contained certain required elements. Moab Local Green reasons that the review criteria established in the municipal code required the Board to "determine whether . . . [t]he site plan satisfies the requirements pursuant to this and all other applicable ordinances." *See generally* Moab, Utah, Mun. Code § 17.65.030(A)(1).⁴ Moab Local Green then points to municipal code section 17.65.100, which states that "[a] complete preliminary development plan application shall include" certain elements, which are enumerated in section 17.65.100(A)-(N). *See generally id.* § 17.65.100. Reading the two ordinances together, Moab Local Green argues that section 17.65.030(A)(1) required [**1234] the Board to ensure that LB Moab's

preliminary plan contained each and every element listed in section 17.65.100(A)-(N) and that the Board's approval of a preliminary plan that did not contain each [***8] and every such element constituted an illegal act.

4 Moab Local Green's appellate brief also cites *Utah Code section 10-9a-801(3)(d)* for the asserted proposition that "the statutory scheme that allows for judicial review contemplates determination of whether a land use decision violates an ordinance." *See generally Utah Code Ann. § 10-9a-801(3)(d)* (2007) ("A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made . . .").

[*P10] We assume, for purposes of this appeal, that Moab Local Green has established that at least some aspects of LB Moab's preliminary MPD plan failed to contain elements enumerated in municipal code section 17.65.100(A)-(N).⁵ However, Moab Local Green has not convinced us that these omissions render the Board's preliminary approval of the plan illegal. We agree with the district court's general observation that this is a preliminary, rather than final, MPD plan review, and we do not read municipal code section 17.65.030(A)(1) as applying to such preliminary reviews. Perhaps more importantly, section 17.65.100 draws a clear distinction between the [***9] elements required in an approved preliminary MPD plan and those that are to be included in a "complete preliminary development plan application." *See id.* § 17.65.100 (emphasis added). The deficiencies identified by Moab Local Green all go to the completeness of LB Moab's application for preliminary review rather than to the adequacy of the plan itself.⁶ For these reasons, we affirm the district court's decision.

5 For example, section 17.65.100(C) mandates that a complete preliminary MPD plan application contain a traffic, trails, and circulation plan that "shall incorporate the . . . design features of all motorized and nonmotorized streets, trails and parking areas." Moab, Utah, Mun. Code § 17.65.100(C). Neither Moab City nor LB Moab directs us to any place in the record showing the design features of nonmotorized trails, and LB Moab conceded before the Board that the issue of trail surfaces had yet to be decided and "will have to be submitted in [the] final plan." Moab Local

Green also makes a persuasive argument that LB Moab's drainage plan's conclusion that "developed flows will not have a significant impact on existing drainage" is inadequate to satisfy the ordinance's requirement [***10] that drainage plans demonstrate "no net increase in off-site stormwater discharge." *See id.* § 17.65.100(E)(3) (emphasis added).

6 Moab Local Green also makes a brief, general assertion that deficiencies in LB Moab's application necessarily precluded the Board from complying with its obligation to determine whether the preliminary MPD plan "accommodate[d] and preserve[d] any features of historic, cultural, or archaeological value." *See Moab, Utah, Mun. Code* § 17.65.030(A)(6). However, Moab Local Green has not identified any such features other than the project's namesake Lion's Back sandstone ridge and has not persuaded us that the Board exceeded the bounds of its discretion in approving LB Moab's preliminary MPD plan based on the information presented.

I. Review and Approval Requirements Under Moab City's MPD Ordinances

[*P11] We begin with an overview of Moab City's MPD review and approval process, as governed by municipal code sections 17.65.030 to 17.65.110. As noted earlier, "[t]here are four required review steps to a master planned development approval." *Moab, Utah, Mun. Code* § 17.65.080(A). These four steps are the preapplication meeting, the concept review, the preliminary review, and [***11] the final review or site plan review. *See id.* Whether a particular MPD undergoes a final review or a series of site plan reviews is dependent on whether the project is phased. *See id.* § 17.65.080. "[An MPD] that has an approved preliminary development plan shall only be required to complete a final plat or site plan review for individual phases or portions of the development. Any [MPD] without phasing shall complete a final development plan review." *Id.* Each step of the review process is further defined by ordinance.

[*P12] By far, the step with the least guidance and fewest requirements is the preapplication meeting. The Moab Municipal Code merely states that "[a] preapplication conference shall be held with the planning

staff and/or planning commission in order for the applicant to generally describe the proposed development concept and receive professional recommendation based upon the city's requirements; and to become acquainted with the master planned development procedures and related requirements." *Id.* § 17.65.080(A)(1).

[*P13] The remaining steps are governed in considerably greater detail, and each has its own dedicated code section. The second [**1235] stage review plan, or concept plan, "shall [***12] include an area plan that depicts the development site concept including the locations of existing infrastructure and buildings." *Id.* § 17.65.090. Additionally, a concept MPD plan "shall include" a vicinity plan, a site inventory, a conceptual layout, architectural concepts, and the establishment of key observation points. *See id.* § 17.65.090(A)-(E). The requirements for each of these five additional components are set out in substantial detail. *See id.*

[*P14] The third stage of the MPD review process, the preliminary review, is at issue in this case.

The preliminary development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes, and other significant features. Components of this submittal may be combined into one or more site plans or reports provided that they are clear, legible and successfully demonstrate their purpose.

Id. § 17.65.100. The ordinance then states that a "complete preliminary development plan application shall include the following components," *see id.*, and lists these mandatory components as a significant features plan; an open space plan; a traffic, trails, and circulation plan; a utility plan; a grading [***13] and drainage plan and report; a landscape and irrigation plan; a signage plan; an exterior lighting plan; an architectural design plan; a phasing plan; a proposed set of CC&Rs; other reports, studies, or illustrative renderings as required by ordinance or by the land use authority; and a title report. *See id.* § 17.65.100(A)-(N). Most of these components are individually defined in considerable detail.⁷ *See id.*

⁷ For example, the required traffic, trails, and

circulation plan

shall incorporate the location and design features of all motorized and nonmotorized streets, trails and parking areas; including:

1. Circulation of automobile traffic;
2. Cross-sections of all street types;
3. Emergency vehicle access areas;
4. Parking areas and total numbers of spaces;
5. Proposed trails or other pedestrian infrastructure; and
6. Proposed links to off-site trails and public access areas.

Moab, Utah, Mun. Code § 17.65.100(C).

[*P15] The fourth and final stage of the MPD approval process is the final development plan review or site plan review. *See id.* § 17.65.110. A final plan has ten mandatory components similar in nature to those required in the preliminary plan application. *See id.* § 17.65.110(A)-(J). These [***14] components "shall . . . [be shown] in detail" in the final plan. *See id.* § 17.65.110. One of these ten components is the "Site Plan," defined as a "[d]etailed site plan with complete dimensions showing precise locations of all buildings and structures, lot or parcel sizes and locations, designations of open spaces and special use areas, [and] detailed circulation pattern including proposed ownership." *Id.* § 17.65.110(A). The other nine components include such elements as a parking plan, an engineering plan, and proof of title to the developed property. *See id.* § 17.65.110(B)-(J).

[*P16] The municipal code also has a specific ordinance governing the review and approval of MPD plans. *See id.* § 17.65.030. Municipal code section 17.65.030 enumerates various criteria that are to be considered in reviewing MPDs. *See id.* § 17.65.030(A). Among other required review criteria, section 17.65.030(A)(1) requires that, "[i]n reviewing a master planned development, the land use authority shall determine whether . . . [t]he site plan satisfies the

requirements pursuant to this and all other applicable ordinances." *Id.* § 17.65.030(A)(1). The other review criteria include such considerations as the preservation [***15] of open space, pedestrian access, and the preservation of natural and historic features, *see id.* § 17.65.030(A)(2)-(7), and whether the MPD "advances the purposes of this chapter as stated in the objectives and characteristics," *id.* § 17.65.030(A)(8).

II. Section 17.65.030(A)(1) Does Not Apply to Reviews of Preliminary MPD Plans

[*P17] In its ruling dismissing Moab Local Green's claims, the district court observed,

[**1236] It is important to note at the outset that the challenged decision was not a final approval of a subdivision. Rather, it is a preliminary approval of a Master Planned Development ("MPD") within the City of Moab's Sensitive Area Resort Zone. A review of LB Moab's Final MPD Plan lies in the future.

We agree with the district court's implicit recognition that, generally, preliminary approvals have a greater degree of flexibility than final approvals. It would seem that one purpose of the preliminary approval process is to identify issues that need to be corrected before final approval, which would imply that preliminary approval may be granted conditionally subject to identified flaws being corrected prior to final approval.⁸

8 Indeed, the preliminary MPD plan approval in this case was [***16] subject to conditions.

[*P18] Nevertheless, we see no reason why Moab City could not limit that flexibility by ordinance if it chose to do so. Moab Local Green argues that Moab City did just that in enacting municipal code section 17.65.030, and particularly section 17.65.030(A)(1). *See generally* Moab, Utah, Mun. Code § 17.65.030(A)(1) ("In reviewing a master planned development, the land use authority shall determine whether . . . [t]he site plan satisfies the requirements pursuant to this and all other applicable ordinances."). We disagree, however, with Moab Local Green's interpretation of that ordinance.

[*P19] Moab Local Green is correct in stating that the Board must actually do those things that it is mandated to do under the municipal code. *See Springville*

Citizens v. City of Springville, 1999 UT 25, ¶ 30, 979 P.2d 332 ("The City was not entitled to disregard its mandatory ordinances."). "While substantial compliance with matters in which a municipality has discretion may indeed suffice, it does not when the municipality itself has legislatively removed any such discretion." *Id.* ¶ 29. Thus, we agree with Moab Local Green that the Board could not approve LB Moab's preliminary MPD plan without [***17] performing those acts that it was required to do by the municipal code, as indicated by the word "shall." *See* Moab, Utah, Mun. Code § 1.04.020(24) ("'Shall' is mandatory and 'may' is permissive.").

[*P20] Although section 17.65.030(A)(1) uses the mandatory language "shall," it applies only to "site plan[s]," not preliminary MPD plans. *See id.* § 17.65.030(A)(1). The municipal code expressly defines a site plan as a component of a *final* MPD plan, *see id.* § 17.65.110(A), subject to review as a part of the final MPD plan or, for phased projects, independently, *see id.* § 17.65.080. We do not necessarily disagree with Moab Local Green that the general review requirements of section 17.65.030 apply to all MPD plan reviews, including preliminary reviews. However, by its own terms, section 17.65.030(A)(1) applies only when the Board is reviewing a "site plan," which the municipal code identifies as a component only of the final MPD review process.⁹

9 We recognize that the term "site plan" could be read as a generic reference to all types of plans involving the site and that the ordinance governing preliminary MPD plans does use the term, once, in that generic sense. *See* Moab, Utah, Mun. Code § 17.65.100 [***18] ("Components of [a preliminary MPD plan] may be combined into one or more site plans or reports . . ."). However, every other reference to site plans in the MPD ordinances appears to refer to the specific "site plan" that must be included in the final MPD plan.

[*P21] Thus, while section 17.65.030(A)(1) does contain mandatory language that the Board is obligated to follow, it applies only to site plans, which are not a part of the preliminary MPD plan or review process. We therefore conclude that the Board did not violate section 17.65.030(A)(1) when it failed to ensure that LB Moab's preliminary MPD plan contained all of the elements required under section 17.65.100(A)-(N).¹⁰

10 For purposes of this appeal, we have simply assumed that section 17.65.030(A)(1)'s requirement that the Board "determine whether" an MPD plan complies with all applicable ordinances is synonymous with a requirement that the Board "ensure that" the plan so complies.

III. Section 17.65.100(A)-(N) Governs Applications, Not Plans

[*P22] Although we have determined that municipal code section 17.65.030(A)(1) [**1237] does not apply to the preliminary MPD plan review process, that does not completely resolve Moab Local Green's assertion [***19] of illegality. If section 17.65.100 sets its own mandatory requirements for preliminary MPD plans, then the Board was required to follow those requirements regardless of the inapplicability of section 17.65.030(A)(1). *See Springville Citizens, 1999 UT 25, ¶ 30, 979 P.2d 332* ("Municipal zoning authorities are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof.").

[*P23] However, section 17.65.100 draws a clear distinction between a preliminary development *plan* and a preliminary development plan *application*. The only mandatory requirements for a preliminary MPD plan are that it "shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes, and other significant features." Moab, Utah, Mun. Code § 17.65.100. Moab Local Green does not argue that LB Moab's preliminary MPD plan fails to include any of these elements. Rather, Moab Local Green asserts failures to comply with the requirements enumerated in section 17.65.100(A)-(N), which are elements of a "complete preliminary development plan application." *See id.*

[*P24] This distinction has dispositive implications for Moab Local [***20] Green's illegality argument. Because the requirements of section 17.65.100(A)-(N) govern only "application[s]" for preliminary MPD plan review, they seem to be aimed squarely at the developers who draft MPD plan applications and not at the reviewing authority. The Board--or more accurately, the Planning Commission or City Council, *see id.* § 17.65.080(A) (incorporated chart)--likely has the discretion to refuse to even consider a preliminary MPD application until the application fully complies with section 17.65.100(A)-(N). Similarly, the Board is under

no obligation to approve an application merely because it is complete. But it does not follow that the Board is precluded from considering an incomplete application if the Board is of the opinion that the preliminary plan can be adequately reviewed based on the contents of a particular incomplete application.¹¹

¹¹ We are not suggesting that the Board has unlimited discretion to consider and approve incomplete applications regardless of their content. Rather, the Board likely has the discretion to accept incomplete applications so long as the contents allow the Board to adequately apply the review requirements imposed by municipal code section 17.65.030. [***21] See Moab, Utah, Mun. Code § 17.65.030.

[*P25] This is also not the first time that this court has been presented with a challenge to a plan's approval based on allegations that the proponent's application for review was incomplete. In *Sierra Club v. Department of Environmental Quality*, 857 P.2d 982 (Utah Ct. App. 1993), the Sierra Club challenged the approval of an operation plan under Utah's Solid and Hazardous Waste Act on the grounds that the application for review failed to include required "evidence that emergency response plans had been coordinated with local and regional emergency response personnel." See *id.* at 983-84. We made the following observations about the review application process:

A determination by the Board that an application is "complete" . . . is an internal procedural decision preceding any public involvement in the permit process. Only the applicant receives notice of the completeness determination. The "completeness" label merely shows that the applicant has addressed any notices of deficiency and the Executive Secretary can now prepare a draft plan approval for public review and comment. The determination of completeness is not intended to protect any interests of [***22] Sierra Club or any interests of the general public.

Id. at 987. Although we made these observations in the context of the approval at issue in *Sierra Club*, we see nothing in the Moab Municipal Code's MPD review

process that is facially inconsistent with our description of the application process.

[*P26] In light of the municipal code's requirements for preliminary MPD plans and [**1238] applications and our treatment of the incomplete application challenge in *Sierra Club*, Moab Local Green has not convinced us of any error by either the Board or the district court. The requirements that Moab Local Green seeks to enforce apply to applications for preliminary MPD plan review, not to preliminary MPD plans themselves. Although municipal code section 17.65.100 does establish some minimal requirements for preliminary MPD plans, Moab Local Green has not alleged that those requirements have not been met in this case.

CONCLUSION

[*P27] Although we assume that Moab Local Green has identified at least some aspects in which LB Moab's preliminary MPD plan and application for review failed to comply with all of the required elements of Moab Municipal Code section 17.65.100(A)-(N), we see no illegality in the Board's ultimate [***23] approval of LB Moab's plan. Moab Local Green identifies no aspect in which LB Moab's preliminary MPD plan itself--as opposed to LB Moab's application for plan review--fails to satisfy any requirement of the municipal code. And Moab Local Green has not raised any argument that the Board lacks the authority to consider preliminary MPD plan review applications merely because they are not complete under section 17.65.100(A)-(N). For all of these reasons, we decline to disturb the Board's decision dismissing Moab Local Green's claims that the approval of LB Moab's preliminary MPD plan was illegal.¹²

¹² We note that, even had we agreed with Moab Local Green's illegality argument, it would only have entitled Moab Local Green to a remand to the district court, where it faced the "difficult--if not impossible--burden" of demonstrating prejudice from the Board's decision. See generally *Gardner v. Perry City*, 2000 UT App 1, ¶ 20 n.7, 994 P.2d 811. Prior to obtaining any judicial relief, Moab Local Green would have been required to "establish that [it was] prejudiced by the City's noncompliance with its ordinances or, in other words, how, if at all, the City's decision would have been different and [***24] what relief, if any, they are entitled to as a result." See *Springville Citizens v. City of Springville*, 1999

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UT 25, ¶ 31, 979 P.2d 332. In the context of a preliminary MPD review, such a showing may be further complicated by a pending final MPD review process.

William A. Thorne Jr., Judge

[*P28] WE CONCUR:

Carolyn B. McHugh,
Presiding Judge

James Z. Davis, Judge