

# Appeals court panel hears Lionsback arguments

Attorney: lower court decision a 'travesty of justice'

[Doug McMurdo](#) Oct. 25, 2019



The Lionsback Campground remains closed to the public. The site is currently the subject of litigation between a group of Moab area residents, the City of Moab and the Utah Schools and Institutional Trust Lands Administration. *Photo by Doug McMurdo*

A panel of judges from the Utah Court of Appeals heard oral

arguments regarding one of the more contentious development projects in Moab's history – the proposed Lionsback Resort adjacent to Sand Flats Recreation Area – in the Grand County Courthouse Friday, Oct. 18.

Appellate Court Judges Ryan Harris, Michele M. Christiansen Forster and Mary Kate Appleby heard from Dan McDonald, the attorney for a group of residents who took the city to court over Lionsback, as well as City of Moab attorney Chris McAnany and Jody Burnett, an attorney who represents the Utah Schools and Institutional Trust Lands Administration. SITLA intervened in the case as a third party litigant.

In a somewhat ironic twist, McAnany and Burnett were on the same side even though the city council in place at the time agreed with the plaintiffs – that changes the developer proposed for the resort were major rather than minor and therefore subject to additional public hearings. The file in the original trial contains an exhibit that supports McAnany, who in a letter to SITLA written in September, 2016, wrote that the changes they sought were major and therefore subject to the city's rules.

Here's the essence of the case, which dates back to 2008, the year the City of Moab approved Lionsback Resort, a project of Denver-based Invent Development Partners. At the time the plan called for the construction of 188 single-

family lots and a 50-unit hotel spread out over nine buildings – with each unit featuring three bedrooms, according to the Court of Appeals.

Construction was delayed for a number of reasons, including a prior appeal in which the city prevailed, until three years ago, when the developers sought another revision, one that, if approved, would move all the units under one roof.

City code states that minor changes to developments could be handled administratively while major changes would require the involvement of the planning commission and additional public hearings. According to the city's code, any changes that change after the "character of a development," its "density or intensity" or the amount of open space would be deemed as major.

The city agreed that the changes were minor under pressure from wSITLA, then citizens challenged that finding. The Seventh District Court sided with the city and the citizens appealed, leading to Friday's hearing.

While the case is primarily between the City of Moab and citizens upset with the plans for Lionsback, the power of SITLA came under intense scrutiny at the hearing.

McDonald noted that SITLA during the initial trial argued it is

not subject to municipal ordinances, something that McDonald said is fundamentally unfair. "You can't bind a city to provide services without [giving that city] jurisdiction or control," said McDonald, adding that SITLA can't transfer its ability to circumvent municipal laws to the Lionsback developers.

McDonald argued that the city must also follow its own rules regarding what constitutes a minor or major change. While the court's summary said the changes would not change the overall footprint, McDonald noted they would actually double it from 40,000 to 80,000 square feet, increase the number of parking spaces from 140 to 230, and increase the number of units from 50 to 150. SITLA attorney Burnett said that state agency had leverage, and that additional public hearings would not be particularly useful" since the plaintiffs were "unalterably opposed" to the project as a whole, not just the proposed revisions.

"Our clients' motives are irrelevant," said McDonald. "What is a concern is this is a major change."

"We think it is a major change," agreed City Attorney McAnany, who told the panel SITLA threatened to "take its ball and go home," and develop the project under state auspices, effectively denying the City of Moab any say in the project.

McDonald said the lower court's decision resulted in "a travesty of justice." He said citizens were "blindsided and given no opportunity to rebut."

Judge Harris said the court would take the matter under advisement, which is routine.

Following the hearing, McDonald told The Times-Independent he didn't think SITLA necessarily has too much power, but he agreed Utah law needs to provide more guidance in how far SITLA can go. "They want to have their cake and eat it, too," he said. "If a developer wants municipal services they must submit to the jurisdiction of the city."

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