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Court complaint challenges city's latest decision on Lionsback

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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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