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## Court rules against city, SITLA in Lionsback case

By [Doug McMurdo](#)  
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The Utah Court of Appeals sided with citizens opposed to plans to build an overnight lodging development near the Lionsback feature at Sand Flats Recreation Area, but former Moab City Attorney Chris McAnany said the project isn't going away.

*Photo by Carter Pape*

A three-judge panel with the Utah Court of Appeals in a legal opinion issued Friday ruled against the City of Moab, the Utah Schools and Institutional Trust Lands Administration and LB Moab Land Company LLC regarding a dispute over the proposed Lionsback Resort adjacent to the Sand Flats Recreation Area.

The Lionsback development is one of the more litigated in Moab history. Here's a recap of the case, which dates back a dozen years 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 – on 175 acres of SITLA land, according to the Court of Appeals.

Construction was delayed for a number of reasons, including a prior appeal in which the city prevailed, until a little more than 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 are requested that alter 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 SITLA – which essentially threatened to build the development without any city oversight if it went through with holding another public hearing.

Former City Attorney Chris McAnany, who continues to represent Moab in the Lionsback litigation, certainly thinks that is a viable scenario.

"I see a risk that in the future SITLA may elect to opt out of local zoning control entirely," said McAnany. "The law currently gives SITLA the right to do that. It is possible that citizens and local governments could have virtually no input on important land use decisions if SITLA elects to withdraw from local regulation and develop on its own. That was an outcome that the City of

Moab worked to avoid in the case of the Lionsback project.

The citizen plaintiffs – Living Rivers, Lucy Wallingford, Kiley Miller, John Rzczycki, Carol Mayer, David Bodner, Meeche Bodner, Sarah Stock and Josephine Kovash – took their concerns to court and lost when former Seventh District Court Judge Lyle Anderson sided with the city and the plaintiffs appealed the decision, leading to October’s hearing and subsequent opinion released last week.

While the court ordered the city to hold its public hearing, it isn’t known what SITLA might do. Will it agree or will it attempt to build a major 175-acre overnight lodging development without any city input or oversight?

“Obviously we’re disappointed and respectfully disagree with the opinion,” said Jody Burnett, an attorney for SITLA and LB Moab Land Company. “I don’t know what the next steps are until I talk to my clients.”

McAnany was put in the difficult position of arguing the case on SITLA’s side after he and the City Council in place at the time initially agreed the proposed changes were major and subject to the public hearing requirement, but backed off when SITLA said it would move forward without city input.

On Tuesday he said there were two options that could be taken, saying, “The city has not decided how to proceed in light of the Court of Appeals opinion. The developer or SITLA could elect to drop further appeals and either: 1) ask the city to approve the Zoning Status Agreement following planning commission review and a public hearing; or 2) grant final approval to the original development plan.

“Alternatively, the city, SITLA, or the developer could petition for writ of

certiorari to the Utah Supreme Court. Either way, I doubt the Lionsback development is going to go away.”

McAnany said he was disappointed with the decision, which he said sets a precedent that will make it harder for Utah municipalities to settle land use disputes. He noted the Moab City Council held four public hearings over a period of months “to carefully evaluate the merits of the Lionsback agreement.” Despite this, he said the Utah Court of Appeals found the process insufficient.

“Local governments are often tasked with difficult decisions in which competing sides may each have persuasive legal arguments,” said McAnany. “Sometimes that means that the parties must compromise on key points. Elected local leaders should have the ability to reach agreements resolving land use disputes without fear of a court overturning their decisions on technical grounds.”

The plaintiffs hold a different view.

John Weisheit of the Colorado River advocacy group Living Rivers applauded the court’s ruling. “The plaintiffs are very pleased with the decision of the appellate court, which reverses the district court opinion of [former] Judge Lyle Anderson. We would like to express our thanks to the citizens that helped fund this legal campaign and also to our attorney, Dan McDonald, who did a splendid job defending the rights of voters and citizens in Moab and Grand County.”

Weisheit also credits the court’s opinion with bolstering land use codes – as Moab’s rules clearly require major changes to already approved developments

to be subjected to further public hearings.

“This decision strengthens the integrity of existing land use codes in the State of Utah and demonstrates that the voice of the people must be respected,” said Weisheit.

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