

2010

Moab Local Green Party, Living Rivers, Julianne Fitzgerald, Natalie McDowell v. City of Moab, Moab City Planning, City of Moab Board of Adjustment, LB Moab Land Company, LLC : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Moab Local Green Party v. City of Moab*, No. 20100931 (Utah Court of Appeals, 2010).
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IN THE UTAH COURT OF APPEALS

MOAB LOCAL GREEN PARTY, LIVING
RIVERS, JULIANNE FITZGERALD, and
NATALIE MCDOWELL
Plaintiff/Appellants,

Utah Court of Appeals No. 20100931

District Court No. 080700176

v.

CITY OF MOAB, MOAB CITY PLANNING
COMMISSION, and the CITY OF MOAB
BOARD OF ADJUSTMENT,
Defendants/Appellees,

LB MOAB LAND COMPANY, LLC
Intervenor.

BRIEF OF RESPONDENT/APPELLEE CITY OF MOAB

Appeal from the Judgment and order of the Seventh Judicial District Court,
Case No. 080700176, Judge Lyle R. Anderson

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UTAH APPELLATE COURTS
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B. Fees and Costs. In any civil enforcement action under this chapter the city, upon showing proof of a violation under this chapter or any approval or agreement pursuant to this chapter, shall be entitled to recover its reasonable attorney fees and court costs in addition to any other relief authorized herein. (Ord. 06-17 (part), 2006)

Chapter 17.66

PLANNED UNIT DEVELOPMENTS*

Sections:

- 17.66.010 Intent.
- 17.66.020 Small scale planned unit developments.
- 17.66.030 Large scale planned unit developments.
- 17.66.040 Permitted uses.
- 17.66.050 Standards and requirements.
- 17.66.060 Design standards.
- 17.66.070 Procedures generally.
- 17.66.080 Vicinity plan and environmental analysis.
- 17.66.090 Preliminary plan.
- 17.66.100 Preliminary documents.
- 17.66.110 Planning commission actions.
- 17.66.120 Planning commission procedures.
- 17.66.140 Public hearings.
- 17.66.150 Final plan and approval.
- 17.66.160 Filing fees.
- 17.66.170 Stage construction permitted.
- 17.66.180 Performance guarantee.
- 17.66.190 Bond duration.
- 17.66.200 Default.
- 17.66.210 Final disposition and release.
- 17.66.220 Failure to comply.

* Prior code history: Prior code Section 27-23-11.

17.66.010 Intent.

The intent of this chapter shall be to set down regulations under which development can be carried out that will achieve a better relationship between open space and buildings, greater harmony between the development and the

and intensity, open space or any other requirements and conditions contained in the MPD shall not be permitted without prior review and approval by the planning commission. If approved, amendments shall be clearly depicted as a revision to approved plans.

A. Minor Changes. Minor changes in the location and placement of buildings may be authorized by the Moab City planning department staff where unforeseen circumstances, such as engineering requirements, dictate such change. When in question, the Moab City planning staff may determine whether the changes shall be classified as a minor or major, or may refer the question to the land use authority, if deemed necessary.

B. Major Changes. Major changes, such as alterations in structural types, in the shapes and arrangements of multiple lots and blocks, in the allocation of open space or other land uses which increase density and/or intensity of the project, in project phasing, and all other changes which significantly affect the overall design or intent of the project shall be referred to the land use authority, after which the authority shall consider and shall either approve or deny, the changes in the final development plan. If such changes are authorized, the developer shall submit a revised plan showing the authorized changes. (Ord. 06-17 (part), 2006)

17.65.140 Compliance with the approved development plan.

A. Enforcement. If the Moab City planning staff determines that the development substantially differs from the approved plans, the city shall notify the developer in writing. Thereafter, if the violation or departure from approval conditions is not cured or abated, the building official or zoning administrator may issue orders to the developer including, but not limited to:

1. Revoking MPD plan approval;
2. Revoking or terminating the issuance of building permits;
3. Commencing a civil action to enjoin or abate the violation of this chapter or any MPD plan or development agreement;
4. Enforcing any remedies in any development agreement; and/or
5. Proceeding with any other remedies authorized pursuant to U.C.A. Section 10-9a-802, 10-9a-803.

17.65.120 Development agreements.

Once the land use authority has approved either the (a) phased preliminary master planned development or, (b) final master planned development, the approval shall be put in the form of a development agreement. The development agreement shall be in a form approved by the city attorney, and shall contain, at a minimum, the following:

- A. A legal description of the land;
- B. All relevant zoning parameters including all findings, conclusions and conditions of approval;
- C. An express reservation of the future legislative power and zoning authority of the city;
- D. A copy of the approved master plan, architectural plans, landscape plans, grading plan, trails and open space plans, and other plans which are a part of the planning commission approval;
- E. A description of all developer exactions or agreed upon public dedications;
- F. The developer's agreement to pay all specified impact fees;
- G. The form of ownership anticipated for the project and the specific project phasing plan;
- H. Financial guarantees for all required improvements;
- I. Final covenants, conditions, and restrictions.

The development agreement shall be ratified by the land use authority, signed by the city council and the applicant, and recorded with the county recorder. The development agreement shall contain language which allows for minor, administrative modifications to occur to the approval without revision of the agreement. The development agreement must be submitted to the city within six months of the date the project was approved by the land use authority, or said approval shall expire. (Ord. 06-17 (part), 2006)

17.65.130 Amendment procedures.

An approved MPD, or subsequent revision thereto, shall be binding as to the general intent and apportionment of land for buildings, sewage disposal, storm management, sensitive area protection, stipulated use, circulation pattern, domestic water and landscaping. Amendments that change the character, basic design, building density

17.65.110 Final MPD.

After the preliminary plan has been approved by the planning commission, the applicant shall submit prints of a final plan to the planning commission through the zoning administrator for approval thereof, showing in detail the following information:

A. Site Plan. Detailed 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, detailed circulation pattern including proposed ownership;

B. Building Plans. Preliminary building plans, including floor plans and exterior elevations;

C. Landscape Plan. Detailed landscaping plans produced and stamped by a registered landscape architect showing the types and sizes of all plant materials and their locations, decorative materials, recreation equipment, special effects, and sprinkler or irrigation systems;

D. Parking Plan. Dimensioned parking layout showing location of individual parking stalls and all areas of ingress or egress;

E. Engineering Plan. Detailed engineering plans and final subdivision plat showing site grading, street improvements, drainage and public utility locations. Also, submission of the engineering feasibility studies if required by the zoning administrator;

* F. Covenants. A copy of protective covenants, articles of incorporation, bonds and guarantees, as required by the zoning administrator and/or the city attorney;

G. Title. A certificate of title showing the ownership of the land;

H. Certificate of Acceptance. A certificate of acceptance by the city council for any dedication of public streets and other public areas, if any, that are made by the owners;

I. Accuracy of Survey. A certificate of accuracy by an engineer or land surveyor registered to practice in the state of Utah.

J. Consistency with Approvals. All final MPD submittals shall be reviewed for consistency with this chapter and all preliminary MPD approval conditions. (Ord. 06-17 (part), 2006)

6. Sign lettering style and logos;
7. Accompanying ornamental structures;
8. Landscaping beds around permanent signs;

and

9. Drawings and illustrations of proposed sign types.

H. Exterior Lighting Plan. The exterior lighting plan shall indicate the location, size, height, typical design, material, color, and method and direction of proposed illumination and lighting.

I. Architectural Design Plan. Conceptual architectural renderings or perspective drawings that indicate elevations, exterior wall finishes, and visual character of proposed buildings types.

J. Phasing Plan. If applicable, the phasing plan shall delineate construction and anticipated platting schedule of various sub-areas within the development.

K. Codes, Covenants and Restrictions. An MPD shall submit a proposed set of codes, covenants and restrictions which shall be recorded following approval of their content and the approval of the final MPD. Covenants shall demonstrate compliance with the use restrictions, architectural plans, and attributes of the development, and shall provide a mechanism for enforcement of restrictions, as well as provisions for the ownership and maintenance of common areas, open space, and other project improvements.

L. Other. Any other applicable studies or reports as required by the land use authority or staff, or as required by other provisions of the Moab Municipal Code. Such reports include, but are not limited to, geotechnical reports, soils reports, slope inventories, and traffic impact analysis reports.

M. Illustrative Renderings. Illustrative conceptual design, drawings, visual aides, models, sections, or any other requirements the land use authority feels would help understand the concept.

N. Title Report. The applicant shall deliver an ownership and encumbrance report, title commitment, or similar report showing current ownership of the subject real property and including copies of all deeds or other instruments affecting title to the MPD site. The application shall be signed by the current owner of record.
(Ord. 06-17 (part), 2006)

site, including sewers, water mains, all underground facilities including telephone, cable television, or data lines, location of fire hydrants or other emergency infrastructure.

E. Grading and Drainage Plan and Report. The grading and drainage report shall include stormwater management, erosion control, and grading plans describing the methods by which surface water, natural drainages, flooding, erosion and sedimentation loss, and hydrological hazards will be controlled during and after construction. Individual plans shall include:

1. Existing topography, including elevations, and the clearly delineated location and depth of all proposed fills and cuts of finished earth surfaces, as well as any mapped floodways or FC-1 zoned areas; and

2. Locations and proposed details for storm sewers, detention/retention structures, diversions, waterways, drains, culverts and other water management or erosion control measures.

3. All grading and drainage plans shall demonstrate that the proposed development will result in no net increase in off-site stormwater discharge and no net increase in the base flood discharge depth, as defined in the city's flood damage prevention ordinance.

F. Landscape and Irrigation Plan. The landscape plan shall show all existing and proposed landscaping, planting details, and irrigation. The plan shall include information such as the total number of existing trees on-site, the trees to be removed, trees to be planted on-site, and a plant list that indicates plant quantity, spacing, size, and root type. The landscape plan shall be prepared by a licensed landscape architect.

G. Signage Plan. A signage plan shall be submitted in order to ensure long term aesthetic compatibility of signage throughout the MPD. The signage plan shall describe the location, size, materials and design of all signage in the development, including, but not limited to:

1. Temporary signs and signs that will exist during the sales and marketing of the development;

2. Individual tenant or building signage;

3. Directional and way finding signage;

4. Sign colors, materials, and illumination methods;

5. Location and size;

nificant 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.

A complete preliminary development plan application shall include the following components:

A. Significant Features Plan. A significant features plan shall include natural and cultural features from the concept site inventory that will be protected through delineation of open space or have been integrated into the design of the MPD by other means. Areas of natural or geologic hazard shall be delineated in the significant features plan.

B. Open Space Plan. The open space plan shall include delineated areas within the development conveyed to common open space as described in Section 17.65.040(B) of this chapter; and shall consist of the following:

1. The total acreage of open space and acreage of each open space tract;

2. The percentage of open space in relation to the gross acreage of the development;

3. The delineation of all open space types as outlines in Section 17.65.040(B) of this chapter; including:

- a. Listed acreage of all designated natural or naturalized open space, passive recreational open space, active recreational open space, and public pedestrian amenities,

- b. Percent of designated open space types in relation to the total acreage of all open space.

C. Traffic, Trails and Circulation Plan. The 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.

D. Utility Plan. The utility plan shall show existing and proposed utility infrastructure within the

1. Topography at minimum two-foot contour intervals;
2. Slope inventory showing slopes between twenty-five and forty-five percent and slopes in excess of forty-five percent, including areas of geologic hazard;
3. Natural streams, drainages, washes, and mapped floodways or FC-1 zoned areas;
4. Tree or shrub groupings of four thousand square feet or more;
5. Specimen trees; to include all noninvasive trees measuring five-inch caliper and greater;
6. Significant rock outcroppings or formations;
7. Historically or culturally significant landscapes or structures; and
8. Prominent viewpoints and vista areas.

C. Conceptual Development Plan. The concept development plan shall include a conceptual layout of all parcels, open space, rights-of-way, building envelopes, and other features, including the conceptual phasing of the development and a statement of the overall project design features; and listing or depiction of the following:

1. Total gross acreage of the site;
2. Proposed total number of lots or units;
3. Total estimated square footage residential and commercial footprint; and
4. Existing easements, rights-of-way, and interests affecting the site.

D. Architectural Concepts. Architectural concepts shall include information sufficient to describe architectural styles, color schemes, general building heights, and materials.

E. Key Observation Points. During the concept review phase, the planning commission shall establish areas of critical view shed concern by determining key observation points that may exist along nearby public roads, public gathering spaces, or other areas deemed by the planning commission to be visually impacted by the proposed development. (Ord. 06-17 (part), 2006)

17.65.100 Preliminary MPD.

The preliminary development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes, and other sig-

submittal requirements if the following site characteristics exist:

1. No slopes over twenty-five percent exist on the parcel;

2. The parcel does not contain significant cultural or natural landscape features, including but not limited to watercourses, rock outcroppings, forested or vegetated groupings over four thousand square feet;

3. No portion of the parcel is zoned FC-1; and

4. No portion of the parcel is currently being used for agricultural purposes; provided that all of the listed site characteristics exist, the following submittal requirements shall not be required: site inventory, and significant features plan. Under the above listed conditions, city staff may further reduce submittal requirements as deemed appropriate.

C. Appeal Procedure. Any person adversely affected by any decision under this chapter may appeal to the board of adjustment by filing a notice of appeal with the city recorder within fifteen days from the date of the administrative decision in issue. In any appeal, the complaining party shall have the burden of proof, and the appeal body shall not overturn the decision unless it was clearly erroneous under applicable law. The board of adjustment decision shall be issued in writing.

D. Exhaustion of Remedies. No person may challenge in district court any decision under this chapter until that person has exhausted all administrative remedies and a final decision is issued by the appeal body. Any such action shall be commenced no later than thirty days from the date of the final appeal decision. (Ord. 08-30, 2008; Ord. 06-17 (part), 2006)

17.65.090 Concept MPD.

The concept development plan shall include an area plan that depicts the development site concept including the locations of existing infrastructure and buildings and shall include the following:

A. Vicinity Plan. The vicinity plan shall include the location of the property, all adjacent parcels, and existing public or private streets and trails.

B. Site inventory including:

required to complete a final plat or site plan review for individual phases or portions of the development. Any master planned development without phasing shall complete a final development plan review.

All master planned developments shall be required to follow the following approval process:

A. Steps to Approval. There are four required review steps to a master planned development approval:

1. MPD Preapplication Meeting. 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;
2. Concept MPD review;
3. Preliminary MPD review;
4. Final MPD review; or site plan review.

Master Planned Developments, Approval Process and Authority

Step	Task	Advisory	Approval	Public Hearing	Appeal
1	Pre-Application Meeting(s)	Staff	Staff	*	*
2	Complete Application, Fees	Staff	Staff	*	*
3	Concept MPD	Staff	Planning Commission	*	BoA**
4	Preliminary MPD	Planning Commission	City Council	Planning Commission (except mixed use MPD in commercial zone)	District Court
5	Final MPD	Planning Commission	City Council	*	District Court

** Board of Adjustments

B. Reduced Submittal Requirements for Mixed-Use Developments. Mixed-use master planned developments in C-1, C-2, C-3, C-4 and C-5 commercial zones may have reduced

this requirement for corner lots with two public street frontages.

L. Landscaping and Trees Required. In addition to the landscaping requirements of Chapter 17.09 of this code, the following landscaping treatments shall be required of all mixed-use MPD in established commercial zones:

1. Street trees of an approved variety shall be planted along all public streets unless otherwise agreed upon during the preapplication conference. All trees shall be a minimum of two inches caliper measured at four feet above the root ball at the time of planting and shall be planted at minimum intervals of thirty feet on center.

2. As an alternative to some of the required street trees, developments may provide pedestrian-scaled light fixtures at the same spacing. However, no less than one tree per sixty lineal feet of the required walkway shall be required. To increase business visibility and accessibility, the responsible official may allow breaks in the required tree coverage adjacent to major building entries.

3. Nonvegetative ground covers, including but not limited to, rocks and small stones, crushed rock, cinders, and bark shall cover no more than twenty percent of the landscaped ground surface. Areas covered by such non-vegetative ground covers shall be broken up as much as possible by live plant materials. (Ord. 06-17 (part), 2006)

17.65.070 Phasing.

A. Phasing. If the proposed MPD is to be constructed in phases, the project as a whole shall be portrayed in the application and shall require preliminary MPD approval. Subsequent development phases shall be approved through final MPD approval process. (Ord. 06-17 (part), 2006)

17.65.080 MPD review procedures.

The master planned development review process is intended to provide a means of consolidating various reviews for large scale projects into a single master plan application and review. A master planned development that has an approved preliminary development plan shall only be

F. Sidewalks. Sidewalks and pathways along the facade of mixed-use and retail buildings one hundred or more feet in width (measured along the facade) shall be at least twelve feet in width. The walkway shall include an eight-foot minimum unobstructed walking surface and street trees placed no more than thirty feet on-center per landscaping requirements.

G. Rear Setbacks. Mixed-use or commercial buildings abutting residential properties outside of the master planned development shall have a minimum rear setback of twenty-five feet from the MPD perimeter boundary. Residential-only structures shall not be subject to this provision.

H. Side Setbacks. No interior side setbacks are required for mixed-use buildings except when such a building abuts a residential property outside of the master planned development, in which case the minimum side setback required shall be the same as in the underlying zoning district.

I. Parking. All off-street parking areas within a mixed-use MPD shall be, when possible, located at the rear or side of a building or complex of buildings, away from public streets and screened from view. Shared drive access routes between commercial developments and parking areas are encouraged to reduce the number of curb-cuts and pedestrian conflicts on a public street.

1. The total number of parking spaces required for a mixed-use project may be reduced by five percent.

2. A reduction of parking standards up to twenty percent may be granted based upon justification shown within a parking impact study. The study shall be subject to review and modification by the city of Moab planning and engineering staff.

J. Facade Transparency. A minimum of fifty percent of any street-facing building facade between three feet and eight feet in height shall be comprised of windows that allow views into and out of indoor spaces. Where unavoidable conflicts with mechanical or other engineering structures occur, this requirement may be reduced and substituted with staff approved architectural detailing.

K. Entrances and Doors. Commercial or mixed-use buildings adjacent to public streets shall have a primary entrance door facing a public sidewalk. Entrances at building corners are encouraged and may be used to satisfy

5. Outdoor seating areas used by restaurants may be counted toward the total open space and pedestrian priority area requirement.

6. The developer(s) and/or property owner(s) of a mixed-use development shall establish an arrangement to assure the city of a continued standard of maintenance and responsibility of the common open space and recreational facilities. The management and maintenance arrangement shall be approved by the city prior to the occupancy of any buildings within the development.

7. Applicants must successfully demonstrate how the proposed pedestrian area meets all of the following criteria:

a. Paved walking surfaces of either concrete or approved alternative paving;

b. At least two linear feet of seating area (bench, ledge, etc.) or one individual seat per sixty square feet of plaza area or open space (up to fifty percent of seats may be moveable);

c. Location in areas with significant pedestrian traffic to provide interest and security, such as adjacent to a building entry; and

d. Utilization of decorative pavement patterns, tree grates, artwork, landscaping, information kiosks, lighting, fountains or other visual amenities.

D. Ground Floor Commercial Required. A minimum of twenty-five percent of the total gross ground-floor footprint area of all buildings within a mixed-use MPD shall be devoted to commercial uses when proposed in underlying commercial zones. "Ground floor" is defined as all slab, at grade, or otherwise constructed building floor areas accessed from a public or private street, sidewalk, or parking area, including floors accessed by stairs or ramps from outside a building.

E. Street Side Setbacks. A mixed-use or commercial building in any master planned development within a commercial zone shall have at least sixty percent of the length of a building facade abut front and street side property lines where adjacent to a public street. The remaining length of facade shall not be more than thirty feet away from street side property lines. This requirement may be modified by up to fifteen feet if wider sidewalks that include designed pedestrian amenities are proposed.

pedestrian plazas or landscaped courtyards, and street-scapes shall include amenities pedestrian-friendly amenities such as wider sidewalks, enhanced landscaping, pedestrian-scale lighting, and street furnishings.

1. Ground floor residential units shall be directly accessed from landscaped courtyards or pedestrian plazas when not adjacent to public streets.

2. Townhomes and all other multifamily dwelling units with private exterior ground-floor entries shall provide at least twenty square feet of landscaping adjacent to the entry. Landscaped area may be shared between units at a minimum of ten square feet per unit.

3. Single-family detached, duplex housing and cottage housing. All proposed ground-floor single-family units shall contain a minimum of four and a maximum of twelve cottages/units located in a cluster to encourage a sense of community among the residents. A development site may contain more than one cottage housing development.

a. All cottages shall be within sixty feet walking distance of the common open space or pedestrian amenities.

C. Pedestrian Priority. Pedestrian priority areas are areas within a mixed-use MPD development where primary design consideration shall be given to pedestrians rather than vehicles. Such areas shall be subject to the following provisions:

1. All mixed-use developments shall include at least one pedestrian priority area.

2. A pedestrian priority area shall be located between all residential and nonresidential areas or uses and shall be designed to integrate the different types of land uses to the greatest extent practicable.

3. Additional pedestrian priority areas may be required based on site design variables such as the number and location(s) of residential and nonresidential components. In all cases there shall be at least one pedestrian area meeting the requirements of this section for each three hundred feet of public street frontage.

4. The required pedestrian area, plaza or similar gathering space shall have a minimum area of one thousand square feet and a minimum dimension of twenty feet.

city of Moab shall be recorded in conjunction with the final MPD plan that provides that the common open space shall be used and maintained solely for purposes consistent with the MPD approval, and that it shall not be subject to further development. (Ord. 07-07 (part), 2007; Ord. 06-17 (part), 2006)

17.65.050 Reduction of physical design requirements.

A. Right-of-Way Width. In approving a master planned development, the land use authority may reduce the total right-of-way width of any private streets that would otherwise be required by subdivision regulations and other provisions of this code to a minimum of twenty feet. Streets dedicated to the city for public use shall have a minimum right-of-way width of thirty-three feet.

B. Sidewalks. In lieu of required sidewalks the land use authority may approve acceptable substitutes such as accessible trail ways or separated multi-use paths, provided that the substitute promotes pedestrian circulation and suitable access by persons with disabilities within and through the development and will be maintained.

C. Curb and Gutter. Master planned developments may substitute required city standard curb and gutter improvements with an acceptable alternative that fulfills similar purposes.

The alternative to curb and gutter shall be approved by the city engineer and public works director and should be incorporated into the stormwater management plan. (Ord. 06-17 (part), 2006)

17.65.060 Supplementary regulations for mixed-use MPD developments within commercial zones.

A. Commercial Establishment Size Limits. The gross floor area of any single retail commercial establishment, building or commercial tenant space within any master planned development shall not exceed twenty-five thousand square feet. This provision shall not override more restrictive existing limits on commercial establishment sizes within the underlying zone of the master planned development site.

B. Site Layout for Residential and Commercial Buildings. Buildings shall be oriented to the street,

Zone	Open Space Type	Residential MPD	Mixed-Used MPD
	Passive Recreation (minimal infrastructure)	Max. 40%	*
	Active Recreational (infrastructure)	Max. 20%	*
R-2, R-3, R-4			
	Natural or Naturalized	Max. 100%	*
	Passive Recreation (minimal infrastructure)	Max. 70%	*
	Active Recreational (infrastructure)	Max. 20%	*
RC-1, C-1, C-2, C-5			
	Natural or Naturalized	*	Max. 100%
	Passive Recreation (minimal infrastructure)	*	Max. 80%
	Public Pedestrian Amenities	*	Max. 60%
C-3, C-4			
	Natural or Naturalized	*	Max. 50%
	Passive Recreation (minimal infrastructure)	*	Max. 60%
	Public Pedestrian Amenities	*	Max. 100%

D. Conveyance of Open Space. Common open space tracts provided by a master planned development shall be conveyed as follows:

1. To a nonprofit corporation, homeowners association, or trust owned or to be owned by the owners of lots or dwelling units within the master planned development, or via an undivided conveyance to the owners of units within a cooperative or condominium development. If such a corporation or trust is used, ownership shall pass with the conveyances of the lots of dwelling units; or

2. To the city of Moab and accepted by it for a park, open space, agricultural, or other specified use or uses;

3. In all cases, the conveyance shall be approved by the city's land use authority and shall be in a form approved by the Moab City attorney; and

4. In all cases, where common open space in a master planned development is conveyed pursuant to the requirements above, a deed restriction enforceable by the

scape within the master planned development and adjacent properties.

2. Passive Recreation. Passive recreation areas mean open space that has minimal introduced infrastructure. Passive recreation areas may contain trail-based hiking, biking, horseback riding, wildlife viewing, picnicking, landscaped parks and similar minimally invasive activities and related infrastructure.

a. Any introduced infrastructure for passive recreation shall be visually unified with the surrounding natural landscape or overall architectural design motif in terms of color, materials and scale.

3. Active Recreation. Active recreation areas mean open space that may contain introduced infrastructure related to sports fields and other facilities. Active recreation areas may contain equestrian facilities, courts and fields, outdoor entertainment areas, plazas and other gathering spaces.

a. Infrastructure for active recreation shall be developed in a visually unified design scheme directly related to other development infrastructure such as dwellings or commercial uses in terms of color, materials, and scale.

4. Public Pedestrian Amenities. Public pedestrian amenities mean open space that contains introduced infrastructure related to the public streetscape and has a pedestrian priority, including public plazas, outdoor gathering areas, pedestrian malls, outdoor entertainment areas, sidewalk cafes, pocket parks, fountains and other public gathering spaces.

Maximum Allowable Type of Open Space
(maximum percent of required open space acreage)

Zone	Open Space Type	Residential MPD	Mixed-Use MPD
SAR			
	Natural or Naturalized	Max. 100%	Max. 100%
	Passive Recreation (minimal infrastructure)	Max. 30%	Max. 30%
	Active Recreation (infrastructure)	Max. 15%	Max. 15%
RA-1, R-1			
	Natural or Naturalized	Max. 100%	*

zones, shall be conveyed as publicly accessible common space in the manner provided for in subsection C of this section.

**Minimum Percentage of Open Space
Required (Gross Acreage)**

Zone	Residential MPD	Mixed-Use MPD
SAR	70%	70%
RA-1	60%	*
R-1	60%	*
R-2	60%	*
R-3	50%	*
R-4	50%	*
RC-1	*	25%
C-1	*	20%
C-2	*	20%
C-3	*	15%
C-4	*	15%
C-5	*	20%

C. Types of Open Space. In order to allow maximum design flexibility while providing the required open space dedications, all preliminary or final MPDs shall designate types of open space within the approved plan. Open space designations are not required to be separate parcels, but shall act as a general guide in balancing the need for both natural open areas and recreational or public amenities. These provisions intend to allow a certain percentage of the required open space dedication to be developed with recreational or public amenities and infrastructure, as outlined in the matrix below. The following open space classifications shall be allowed as per the maximum allowable type of open space list below:

1. Natural or Naturalized Open Space. Natural or naturalized means open space left in its current natural state or returned to a traditionally native natural state by means of landscape restoration.

a. Whenever practical, natural open space should be conveyed in areas adjacent to the master planned development site boundaries and specifically adjacent to other off-site natural open space, thus creating larger contiguous areas of natural open space across parcel boundaries.

b. Vegetation should reflect and complement the natural characteristics of the surrounding land-

restrictions of building height, required parking, landscaping and other applicable ordinances.

3. Moderate-Income Housing Density Bonus. An additional moderate-income housing density bonus of fifteen percent (.15 times the maximum yield density) may be granted provided that a majority (>50 percent) of total bonus density units meet moderate-income housing requirements as outlined in the Moab Moderate-Income Housing Plan.

a. Moderate-income dwelling units used as the basis for approving a moderate-income housing density bonus shall be subject to a recorded deed restriction conforming with all applicable city affordable housing ordinances and policies.

4. Lot Size. No minimum area of lots shall apply within an MPD.

5. Setbacks. No minimum per-lot setbacks shall apply within an MPD, except perimeter setback requirements within a mixed-use MPD.

6. Emergency Access. Each lot shall have a minimum of one twenty-foot wide dedicated emergency access to a public or private street. Staff may approve the sharing of access between multiple lots provided that emergency vehicle access is available.

B. Open Space Required. All master planned developments shall be required to convey common open space as outlined in the provisions and matrix below. In cases where acreage of floodways or slopes in excess of forty-five percent is greater than required minimum open space acreage, all floodways and slopes in excess of forty-five percent shall be protected from development and shall increase the required open space.

1. SAR Zones. Not less than seventy percent of the site area within a SAR zone shall be conveyed as open space in the manner provided for in subsection C of this section.

2. Residential Zones. Not less than fifty percent of the site area within R-3 and R-4 residential zones, or sixty percent in R-1 and R-2 residential zones, shall be conveyed as open space in the manner provided for in subsection C of this section.

3. Commercial Zones. Not less than fifteen percent of the site area within C-3 and C-4 commercial zones, or twenty percent in C-1, C-2, and C-5 commercial

7. Floodways, ridges as expressed within the hillside development ordinance, areas of geologic hazard, and slopes in excess of forty-five percent shall be protected from development;

8. The master planned development advances the purposes of this chapter as stated in the objectives and characteristics.

B. Special Conditions. The land use authority may, in its discretion, apply such special conditions or stipulations to the approval of a master planned development as may be required to maintain harmony with neighboring uses or landscape and to further promote the objectives of this chapter, the Moab City general plan, and other applicable land use ordinances. Such conditions may include, but are not limited to, increased buffering or screening, special landscape requirements, architectural material or color requirements, and site layout for view shed and vista preservation. (Ord. 06-17 (part), 2006)

17.65.040 Standards and requirements.

A. General Provisions. The following provisions shall apply to any master planned development, regardless of the requirements of the underlying zoning district:

1. Yield Density Determination. The maximum yield density for residential units in an MPD shall be determined by the maximum units per acre in the underlying zone. The maximum possible residential MPD units shall be determined by the total acreage of the proposed MPD parcel times the underlying zoning units per acre. Maximum units per acre in zones not explicitly describing a maximum unit per acre number shall be calculated by dividing the minimum single-family lot size by one acre; resulting in the maximum units per acre for that zoning designation.

a. Density reductions as applied by the hillside ordinance or other density-reducing provisions within the municipal code shall not apply, provided that minimum open space acreage is met, and floodways and all slopes in excess of forty-five percent are protected from development.

2. MPD Density Bonus. A residential density bonus of fifteen percent (.15 times maximum yield density) shall be granted for master planned developments in the SAR zone and residential zones. Residential density in commercial zones shall not be limited except for spatial

5. Commercial floor space requirements in mixed-use MPD may be reduced when supplemented by moderate-income housing.

6. Mixed-use MPD setback requirements when adjacent to residential zones may be decreased when supplemented with other buffering or public amenities.

7. Setback requirements on commercial buildings adjacent to public streets may be reduced to a zero lot line when the areas are used for outdoor gathering spaces, courtyards, pocket parks and other pedestrian amenities.

H. Allowed Uses. Uses allowed in the MPD overlay are those specified under each underlying zone, except that multifamily residential development shall be permitted in the RA-1, R-1 and R-2 zones to achieve open space and density requirements of this chapter. (Ord. 07-07 (part), 2007; Ord. 06-17 (part), 2006)

17.65.030 Considerations for approval.

A. Review Criteria. In reviewing a master planned development, the land use authority shall determine whether:

1. The site plan satisfies the requirements pursuant to this and all other applicable ordinances;

2. Buildings and structures are adequately grouped so that the corresponding required acreage is set aside as common open space or public amenity as required by this chapter. To the greatest degree practicable, common open space shall be designated as larger contiguous parcels and not divided into small unconnected parcels located in various parts of the development;

3. Pedestrians can easily access common open space;

4. The site plan establishes, where applicable, a consciously designed buffer to sensitive natural features, including natural drainages and visually significant ridges or other landscape features included in the required site inventory;

5. Individual lots, buildings, structures, streets, and parking areas are situated to minimize and mitigate the alteration of natural features, natural vegetation and topography;

6. The site plan accommodates and preserves any features of historic, cultural or archaeological value;

in the SAR zone pursuant to this and all other applicable ordinances. The minimum size for a MPD in the SAR zone is forty acres.

C. Commercial (C) Zones. Mixed-use master planned developments shall be permitted as of right for developments equal to or greater than one contiguous acre in commercial zones pursuant to this and all other applicable ordinances.

D. Residential (R) Zones. Residential master planned developments shall be permitted as of right for developments equal to or greater than three contiguous acres in all residential zones pursuant to this and all other applicable ordinances.

E. Permitted Developments Within Zones. The following matrix shows the permitted development options for master planned development types within underlying zones:

Type	SAR	RA-1	R-1	R-2	R-3	R-4	RC-1	C-1	C-2	C-3	C-4	C-5
Residential MPD	P	P	P	P	P	P	NP	NP	NP	NP	NP	NP
	40 ac.	Minimum 3 acres										
Mixed-Use MPD	P	NP	NP	NP	NP	NP	P	P	P	P	P	P
	40 ac.											

P = Permitted, NP = Not Permitted

F. Conflicts. When provisions within this chapter expressly allow for a deviation from an existing city code, all provisions herein shall apply.

G. Exceptions. The land use authority shall have the discretion to grant exceptions from portions of this chapter for any of the following conditions:

1. Commercial establishment size limits may be increased.

2. Open space/amenities dedications in a mixed-use MPD may be varied to allow up to fifty percent of the required "public amenities" area to be privately owned.

3. Adjustments may be made in open space allocations for purposes of satisfying the requirements for differing types of open space, provided the adjustments are consistent with the overall intent of this chapter.

4. Public street widths may be less than thirty-three feet with public works and engineering approval.

17.65.010 Objectives and characteristics.

A. The intent of the master planned development (MPD) process is to provide greater flexibility and, consequently, more creative and imaginative design than generally is possible under conventional zoning regulations. An MPD should promote more economical and efficient use of the land by providing better coordination of necessary infrastructure, site amenities, and protection of natural systems.

B. The MPD process should encourage innovative planning and provide a variety of housing types and configurations, resulting in more mixed-use development, improved protection of open spaces, and increased transportation options.

C. Encourage developments that recognize the relationship between buildings and their use, open space and public spaces, pedestrian vitality, ecological process, and varied forms of transportation, providing opportunities for innovative and diversified development.

D. Preserve, to the greatest extent possible, the existing natural and cultural landscape features and amenities that may not otherwise be protected through conventional development. (Ord. 06-17 (part), 2006)

17.65.020 Applicability.

The master planned development designation may be applied as an overlay within the city's zoning districts as noted in this section. An applicant may elect to develop a project as a master planned development in compliance with the requirements of this chapter. In addition, the city requires that the development in the sensitive area resort (SAR) zone be processed using the provisions of this chapter.

A. Type of Development. An MPD may be developed as a residential MPD or a mixed-use MPD.

1. Residential MPD. A residential MPD consists entirely of residential uses and shall not contain any commercial uses or mixed-use structures. A diversity of housing types and sizes is encouraged.

2. Mixed-Use MPD. A mixed-use MPD consists of both residential and appropriate commercial uses that are allowed by-right in the underlying zoning.

B. Sensitive Area Resort (SAR) Zones. Residential or mixed-use master planned developments shall be required

large-scale project and the nonexempt employee(s) wage and benefit rate in effect during the billing cycle. (Ord. 95-09 (part), 1995)

17.57.060 Failure to pay charges.

If any person or organization refuses or fails to pay a bill issued by the city for nonexempt city staff time directly related to a large-scale development project within thirty days from the date of billing thereof, the city recorder shall notify said person or organization that the city shall cease all technical and administrative work on the designated project after ten days from the date of notification. Before city staff shall resume any technical or administrative work, all delinquent charges including a penalty of one and one-half percent per month shall be paid in full. The city recorder is authorized to enforce the payment of all delinquent charges by an action in law in the corporate name of the city. (Ord. 95-09 (part), 1995)

Chapter 17.65

MASTER PLANNED DEVELOPMENTS

Sections:

- 17.65.010 Objectives and characteristics.
- 17.65.020 Applicability.
- 17.65.030 Considerations for approval.
- 17.65.040 Standards and requirements.
- 17.65.050 Reduction of physical design requirements.
- 17.65.060 Supplementary regulations for mixed-use MPD developments within commercial zones.
- 17.65.070 Phasing.
- 17.65.080 MPD review procedures.
- 17.65.090 Concept MPD.
- 17.65.100 Preliminary MPD.
- 17.65.110 Final MPD.
- 17.65.120 Development agreements.
- 17.65.130 Amendment procedures.
- 17.65.140 Compliance with the approved development plan.

BRIEF OF RESPONDENT/APPELLEE CITY OF MOAB

APPENDIX A

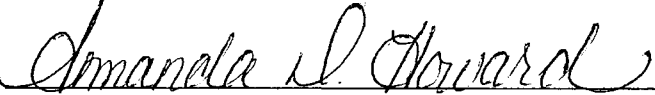
**MOAB MUNICIPAL CODE CHAPTER 17.65
(MASTER PLANNED DEVELOPMENTS)**

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2011 I caused two (2) true and correct copies of the foregoing ***DEFENDANT-APPELLEE CITY OF MOAB'S MOTION FOR ENLARGEMENT OF TIME TO FILE IT'S RESPONSE BRIEF*** to be served via U.S. First Class Mail to the following:

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occurred. Springville Citizens for a Better Community v. City of Springville, 1999 UT 25 ¶ 31.

CONCLUSION

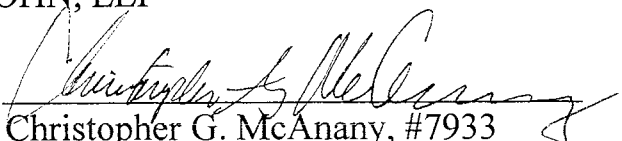
It is evident that the objective of the Green Party is to obstruct and delay the Lionsback project in any way that it can. In every proceeding the tactics have been to interpose a variety of objections which sound significant, but which do not amount to anything when held up to scrutiny. Throughout, the City has attempted to discharge its duties by carefully administering applicable ordinances and its own hearing processes. Substantial evidence exists in the record to show careful review of this Project, and that the decisions were neither arbitrary, nor illegal. Accordingly, this Court should affirm the decisions of the City Council, the Board of Adjustment, and the District Court.

Finally, this Court should consider award of reasonable attorney fees and court costs to the City in connection with the instant appeal. As set forth above, many of the arguments advance by Appellants are unsubstantiated and border on the frivolous.

Respectfully submitted this 18 day of May, 2011.

DUFFORD, WALDECK, MILBURN &
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By:


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code, all provisions herein, shall apply.” Municipal Code § 17.65.020(F).

Moreover, the City has by ordinance established that MPD review procedures are mandatory for developments within the City’s Sensitive Area Resort Zone (“SAR”). This zoning designation provides that:

“all development projects in the SAR zone shall be defined as master planned developments and shall follow the provisions of the master plan development ordinance.” Municipal Code, § 17.32.040(A) (Appendix C, attached).

The Lionsback property was zoned SAR by the City. See Def 1536-1537 (Planning Resolution 13-2008). The record surrounding the adoption of the SAR and MPD ordinances is clear that the two were intended to be applied together. See Def 1540-1542 (Staff Memorandum Describing the Lionsback Review History). Thus, the MPD process was required for this Project, which could not have been reviewed under any other general subdivision ordinances of the City.

Finally, the Green Party was in no way prejudiced by the utilization of the MPD process. Without a doubt, the MPD ordinance entails a host of substantive and procedural requirements which far exceed those mandated under the general subdivision ordinance. Therefore, the Green Party cannot show that the failure to review the Project pursuant to Chapter 16.08 resulted in any cognizable harm to its interests. Even if Chapter 16.08 applied, any such error is harmless because the Green Party cannot show that a different or more favorable result would have

Municipal Code, Chapters 16.04 – 16.16 (Appendix B, attached), applies to the Lionsback Project, apparently in the belief that some aspect of the MPD approval for the Project runs afoul of the more general subdivision provision [Appellants' Brief, p. 41]. But, after asserting that this provision applies, the Green Party fails to offer any evidence or argument to substantiate that it was harmed in any way by the City's utilization of the MPD procedure.

In fact, the record is crystal clear that the Lionsback Project was to be reviewed pursuant to the MPD process. The agreement between Moab LB and SITLA specifies this process, Def 774-775, as does the Pre-Annexation Agreement between the City and Moab LB. Def 776, et seq. The development application submitted to the City also specifies that the Applicant sought MPD approval, not approval under any other City ordinance. Def 836.

Second, the MPD ordinance supersedes conflicting general ordinances. The MPD process was specifically designed to facilitate creative planning that harmonizes development with natural surroundings in a way that goes beyond the “cookie cutter” attributes of traditional subdivision development. See Generally Municipal Code, § 17.65.010⁵. To that end, the MPD ordinance provides that “when provisions within this Chapter allow for a deviation from an existing city

⁵ For example, MPD developments in the Sensitive Area Resort zone, including the Lionsback Project, are required to dedicate 70% of the project area to open space. Municipal Code, § 17.65.040. Subdivisions created pursuant to the provisions of Chapter 16.08 have no such requirement.

covenants are not required to be finalized until such time as the development is ready to proceed for final MPD approval.

It is undisputed that this action involves the appeal from approval of the preliminary MPD plan for the Lionsback Resort. Def 544-566 (Appellants' BOA Brief); Def 525 (BOA Decision). No final approval has been sought or given in this action, and final covenants are therefore not required. As such, the Green Party's argument predicates error on a requirement that is not yet required to be satisfied.

That said, Moab LB did submit a detailed set of Preliminary Design Guidelines governing such matters as site development; landscape guidelines; architectural control; lighting; construction regulations; and the like. Def 696-771. In relevant part, the Guidelines specify that a property "owner is obligated to comply with these Guidelines and all other applicable laws and regulations." Def 700. The Guidelines encompass those items typically addressed in subdivision covenants, and expressly cover many of the design elements that are encouraged under the MPD ordinance. The Guidelines were reviewed as part of the approval process, and would likely form the basis for recorded covenants at such time as Moab LB proceeds to final MPD approval. There is no error on this point.

f. The General Subdivision Ordinance Does Not Apply to the MPD Process.

The Green Party states that the general subdivision ordinance in the

areas and private lot areas. Def 739-771. In turn, a Planting Plan contains detailed descriptions and phasing of landscape methods, Def 1516-1529. The Planting Plan shows tree planting locations, spacing, and species detail. Id. at 1529. Record evidence shows that the landscaping requirement was met. It is not necessary that these submittals be labeled as a single document, as the MPD ordinance provides that “..components of this submittal may be combined into one more site plans or reports provided that they are clear, legible and successfully demonstrate their purpose.” Municipal Code§ 17.65.100. The fact that landscaping requirements are found in different submittals in the application is thus not a basis for error.

e. Final Covenants, Conditions, and Restrictions are Not Required at the Preliminary MPD Stage.

The Green Party relies upon Section 17.65.100(K) of the MPD ordinance for the proposition that the approval was erroneous because Moab LB failed to submit proposed covenants, conditions, and restrictions in its application. In relevant part, the ordinance states:

“An MPD (*sic*) shall submit a proposed set of codes, covenants and restrictions which shall be recorded following approval of their content and the approval of the final MPD...”

Although the quoted language is located in the section of the ordinance dealing with preliminary MPD approval, the plain language of the ordinance provides that

Grading Plan depicts cuts and fills, as well as locations for culverts, curbing, inlets, and the like. Def 1490-1491. Furthermore, this document shows existing contour line elevations and areas of grading and fill, with approximate fill depths. Id. City staff concluded that erosion and drainage impacts had been satisfactorily addressed in submittals by the Applicant. Def 1538-1539 (City Engineer's Review Memorandum).

The Green Party failed to offer any evidence, whether expert or otherwise, to show that the design calculations or methodology in the Preliminary Drainage Report were in error. There is no evidence, other than conjecture, that Project would have a negative impact on stormwater drainage⁴. Moreover, the assertion that the City disregarded [Appellants' Brief, p. 38] grading, drainage, and fill issues is again patently false.

d. Landscaping Design Guidelines Were Provided by the Applicant.

Appellants argue that landscaping details provided for the Project were inadequate, stating that landscape design must be specified in a single document [Appellants' Brief, p. 39]. First, comprehensive Design Guidelines specifically addressing landscaping were submitted. Def. 710-712. These guidelines included listing of approved and prohibited plant species for landscaping in both common

⁴ The City Engineer noted that there was no way that drainage from the Project could negatively affect other subdivisions in the area, which are separated from the Project by a ridge. He also noted that the areas downstream of the Project site include vacant SITLA and Bureau of Land Management Property. He noted that no significant increase in peak stormwater discharge was likely. Def 1538.

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Although the Green Party implies that the Project may negatively impact the nearby Slick Rock Trail, nothing in the record shows this. In fact the Slick Rock Trail is not on the Project site and is accessed via Sand Flats Road. Some of the improvements, including widening, paving, and striping of Sand Flats Road to include bike lanes, will benefit access for other recreational uses. These issues were discussed at the BOA hearing. Def 481. Again, the Record amply demonstrates that the City gave careful consideration to traffic, circulation, and trails associated with this Project.

c. **Record Evidence Shows Satisfactory Attention to Grading and Drainage Issues.**

The Green party claims that stormwater drainage issues were not properly considered by the City [Appellants' Brief, p. 36]. However, the record shows that Moab LB submitted a detailed Preliminary Drainage Report. Def 1186-1296. The methodology employed in that report included dividing the Project site into dozens of sub-basins and calculating discharge rates associated with a 100 year flood event. In the report the design engineer noted that "over 70% of the existing site will remain open space and will not be disturbed as part of this development". Def 1202. The report continues by noting that the comparison of historic flows to post-development rates "it appears that the developed flows will not have any significant impact on existing drainage." Id. Finally, the report contains design details for culverts, curbing, inlets, and drainage channels. Def 1230, et seq. The Preliminary

Preliminary Street Plan also detailed total parking spaces. Id. at 1487. Pavement design recommendations were made as part of the Preliminary Geologic and Geotechnical Site Assessment. Def 1319-1322. The Concept Plan, Def 1374, shows internal trails, all access roads, internal roads, and the Hells Revenge four wheel drive road³. Although the internal trails are shown on the maps in grey, a color that does not contrast well with contour lines shown on the maps, the trail system is depicted. Road and trail plans were reviewed by City staff and deemed acceptable. Def 1544. Indeed, the record shows very careful review of access and traffic issues by City staff occurring prior to any of the hearings in question. Def 295-301 (Meeting Minutes between the City Staff and Moab LB regarding road, access, and utility issues).

The transcript shows that the trail system was discussed and reviewed at the BOA hearings at several points. See Def 462, 471, 473, 480. The Green Party representative at the BOA hearing basically conceded that some of the maps he had seen depicted the trail system. Def 468. The BOA was evidently satisfied that trail and road access had been adequately addressed, and there is nothing arbitrary in this finding.

³ The Hells Revenge Road is an existing four wheel drive road which crosses the Project site. The parties have not attempted to determine title or legal status of the existing road, but it has been depicted on all maps for the Project, which show that it will connect to Sand Flats Road, an existing County Road.

archeological evidence consists of the geotechnical engineer's observation that trash and other debris had been buried at various places on the Site. Def. 876-877.

These attributes were clearly considered as part of the record.

The Green Party notes that Moab LB submitted a Site Inventory, Def 1511, which depicts the location of the Lion's Back Fin, a natural sandstone outcrop, on the site. However, there is no suggestion that this feature will be affected or damaged in any way by the proposed development. In fact, this feature is abutted by proposed open space. See Def 1375. The record clearly shows that the City considered existing site conditions and cultural features. Based upon this record the City could rationally conclude that these features either: a) would not be harmed (in the case of Linonsback Fin); or b) that they were not significant enough to warrant protection (in the case of the campground facilities). The Green Party fails to offer any evidence to show how or why this determination was erroneous.

b. Record Evidence Shows that Traffic, Trails and Circulation Were Considered.

The Green Party argues that the submittals were insufficient to satisfy the requirement that the design show the location of vehicular and pedestrian access, circulation, parking and the like. This argument is specious.

The record shows that a Traffic Impact Study was submitted, Def 1059, and considered by the City. A Preliminary Street Plan was submitted, which included road layout, parking, street cross sections, and related details. Def 1487-1490. The

preserves natural or cultural features; and the like. *Summarizing* Municipal Code, § 17.65.030A (Appendix A, attached). The MPD ordinance additionally specifies that the applicant submit a significant features plan showing natural features “that will be protected through delineation of open space” or “integrated into the design of the MPD by other means.” Municipal Code § 17.65.100A. As set forth below, the required submittals depicting significant features exist in the record and were given consideration by the City.

The Green Party’s argument that an archeological study is required is misplaced. Nothing in the MPD ordinance mandates that archeological studies be conducted by the applicant, and there is no record evidence offered by the Green Party to show that the Project area contains archeological resources. The SITLA property comprising the Project was formerly used, for a period in excess of 20 years, as a commercial campground with numerous primitive roads and ATV trails. Def 873. Uncontrolled camping and ATV use resulted in deterioration to the area which was noted at several points the Administrative Record. See Def 1540, 1538 (Staff Reports Describing Surface Impacts). Existing improvements on the Project include a campground office, camping sites, shower facilities, and outbuildings, but nothing which could remotely be considered culturally significant. Def. 875-76 (Engineer’s Site Observation); Def. 471, 463 (hearing testimony describing condition of the site). Depending upon one’s point of view, the only record

The Court went on to conclude that there were no arbitrary or capricious determinations by the City. R. 422. The cited portion of the Trial Court's order was focused on a number of procedural challenges made by the Green Party before the BOA and the trial court which are not subject to appeal here ². As such, the Green Party's argument apparently relies on a portion of the Trial Court's order which is taken out of context.

a. Natural and Cultural Features are Depicted in the Record and were Given Consideration.

The thrust of the appeal is that that the Lionsback preliminary MPD plan fails to satisfy a number of approval criteria found at Section 17.65.030 of the Moab Municipal Code. The Green Party does not attack the legality of the MPD ordinance itself. Thus, the ordinance must be regarded as valid for all purposes in this action. U.C.A. § 10-9a-801(3)(a)(i).

The Green Party asserts that the approval was arbitrary because there is nothing in the record to establish that the MPD plan preserves significant cultural or archeological resources [Appellents' Brief, pp. 32-33]. In relevant part, the City's MPD approval criteria require that the land use authority determine whether the plan: a) satisfies code requirements; b) preserves open space; c) promotes pedestrian access; d) buffers development from significant natural features; e)

² For example, at the trial Court the Green Party made a number of challenges with respect to notice given for various hearings, the composition of the appeal panel, and due process issues. R. 317-344. The Green Party has apparently abandoned those points of error, as they are not mentioned in this appeal.

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provisions of the MPD ordinance. In particular, there is substantial evidence in the Record to show that the City considered, and found satisfactory proof of compliance with its ordinances providing: a) that natural features be depicted and considered; b) that traffic, trails, and circulation be considered; c) that drainage and grading requirements are satisfied; d) that landscaping is addressed; and e) that covenants will be satisfactorily addressed at final approval. In addition, the City maintains that this Application, which covered lands in the Sensitive Areas Resort Zone, could only be reviewed as a Master Planned Development under applicable City ordinances.

ARGUMENT

1. SUBSTANTIAL EVIDENCE SUPPORTS THE CITY'S CONCLUSION THAT THE PROJECT COMPLIES WITH THE MASTER PLANNED DEVELOPMENT ORDINANCE.

At the outset, the Green Party mischaracterizes the Trial Court's decision with respect to the standard of review, stating that the court erroneously applied a "substantial compliance" standard. Opening Brief, at p. 31. This assertion, which devoid of any citation to the record, appears to misstate the order of the Trial Court which, in relevant part, simply states:

"As long as the Council and the BOA are substantially complying with those processes and acting on the basis of substantial evidence, the court should not act as a nit-picking referee on a crusade to expose any error, no matter how minor." R.421.

Memorandum to BOA). At the conclusion of the August 28, 2008 hearing the BOA unanimously denied the appeal. Def 512. Thereafter, the BOA issued a written notice of decision on September 11, 2008. Def 525-526. In summary the BOA concluded:

- all public notices for meetings reviewing the Application were proper;
- the Project satisfied the requirements for the Sensitive Areas Resort Zone;
- the Project complied with the Master Planned Development Requirements;
- the Project will employ adequate measures for the protection of water resources;
- adequate domestic water supplies exist to serve the Project; and
- the Appellants were not affected entities or adjacent owners entitled to receive written notification of land use proceedings under applicable law. Id.

Thereafter, on October 9, 2008, Appellants commenced an action in the Seventh Judicial District Court seeking review of the decision pursuant to U.C.A. § 10-9a-801, et seq. R. 03-26. Following review of the record and briefing by the parties the District Court sustained the decision of the BOA and dismissed the action. R. 418-422. The instant appeal followed.

SUMMARY OF ARGUMENT

As now framed by Appellants, this appeal centers on two issues: 1) did the City's approval of the Project comply with the Master Planned Development Ordinance; and 2) did the City err when it failed to apply the standards in its general Subdivision Ordinance to the Lionsback application?

The City responds that substantial record evidence exists to sustain the decision of the BOA in concluding that Lionsback application satisfied the relevant

decisions would be contingent upon final annexation of the property. The annexation of the Project site is complete, and no appeal or other challenge to the annexation was filed by the Appellants or any other party. The annexation is not thus not subject to dispute or challenge in this action.

An initial review of the Lionsback Concept MPD plan was held before the Moab Planning Commission in October, 2007. A public hearing on the application was held before the Moab Planning Commission on May 8, 2008. Following that hearing the Planning Commission voted, on May 22, 2008, to recommend favorable approval of the application, subject to conditions. Def 1536-1537. On July 8, 2008 the Moab City Council approved the preliminary MPD, subject to the conditions recommended by the Planning Commission.

On July 23, 2008 the Appellants filed a notice of appeal with the Moab BOA respect to the City Council decision approving the Lionsback Preliminary MPD. Def 542-566. Hearings were held before the BOA on August 20 and 28, 2008, during which the Green Party, Moab LB, and the City presented evidence and argument. A recording of those proceedings was kept and a transcript was prepared. The transcript can be found in the record at at Def 384 through 522.

The BOA appeal covered a host of substantive and procedural issues, the bulk of which are not subject to dispute in the instant appeal. See Def 533-695 (City's Response Memorandum to BOA); and Def 1029-1036 (Moab LB Response

claiming property interests which may be affected by the proposed development.

Intervenor LB Moab Land, LLC (“LB Moab”) is the land use applicant.

The Lionsback Resort (the “Project”) is proposed for a parcel of land totaling approximately 175 acres situated on the east side of the City and owned by the Utah State Institutional Trust Lands Administration (“SITLA”). Moab LB and SITLA have entered into development agreements covering all of the lands that are subject to this case. The Project calls for the phased construction of single family homes, a hotel with attached restaurant and retail facilities, various recreation facilities, employee housing, and open space. Development is centered on approximately 30% of the area of the Project site, with the balance of approximately 70% of the site being set aside as open space.

On or about September 20, 2007 Moab LB submitted its Master Planned Development Application to the City of Moab. Concurrently, on September 17, 2007 Moab LB and SITLA petitioned for annexation of the Project site into the municipal limits of the City of Moab. Def 792¹. The parties proceeded to process the annexation concurrently with the land use review, as provided in the terms of a Pre-Annexation Agreement. That agreement provided that all zoning and planning

¹ The Trial Court did not integrate the Administrative Record into its record. Therefore, references to the Administrative Record herein are identified as Def 01, et seq. References to the Trial Court Record utilize the numbering given by the Court Clerk, and are referred to as R. 01, et seq.

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record a court must determine only whether a reasonable person could not reach the same decision as the board. Patterson, 893 P.2d at 604. It is not this Courts' prerogative to weigh the evidence anew. Id. It is the burden of an appellant to marshal all of the evidence in favor of a decision and show that, despite that evidence, the decision or findings are not supported by substantial evidence. Id. at FN 7. By ordinance, the City of Moab mandates that in appeal proceedings before the Board of Adjustment the Board "shall not overturn the decision unless it was clearly erroneous under applicable law." Moab Municipal Code, § 17.65.080C. (Appendix A, attached). Ultimately, the standard of review applied by an appellate court is identical to the standard applied by the district court. Harmon City, Inc. v. Draper City, 2000 UT App 31, ¶ 7, FN 3. Thus, the issue here is whether the BOA decision upholding the action of the Moab City Council was arbitrary and capricious.

STATEMENT OF THE CASE

This matter is an appeal from a decision of the Moab City Council granting approval to a Preliminary Master Plan Development Plan for a mixed use residential, commercial, and hotel development proposed for land annexed to the City and known as the Lionsback Resort. The Appellants Moab Local Green Party, Living Rivers, Julianne Fitzgerald, and Natalie McDowell (collectively: "Green Party" or "Appellants") are, respectively, environmental groups and persons

STATEMENT OF JURISDICTION

This matter was transferred from the Utah Supreme Court pursuant to U.R.A.P. 42(a) on January 3, 2010. This Court has jurisdiction pursuant to U.C.A. § 78A-4-103(2)(b) and (2)(j).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the City of Moab Board of Adjustment (as applicable: “City” and “BOA”) and the District Court correctly determine that approval by the Moab City Council of a Preliminary Master Planned Development Plan (“MPD”) for the Lionsback Resort Development complied with applicable City ordinances.

Standard of Review: A reviewing court shall: “i) presume that a decision, ordinance, or regulation...is valid; and ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.” U.C.A. § 10-9a-801(3)(a). A municipal land use decision is arbitrary and capricious if it is not supported by substantial evidence. Springville Citizens for a Better Community v. City of Springville, 1999 UT 25, ¶ 24. In turn, a finding of illegality requires a determination that the “decision...violates a law, statute, or ordinance in effect at the time the decision was made.” U.C.A. § 10-9a-801(3)(a)(d).

Boards of adjustment have substantial discretion and their decisions are accorded substantial deference by reviewing courts. Patterson v. Utah County Board of Adjustment, 893 P.2d 602, 603 (Utah App. 1995). In reviewing the

TABLE OF AUTHORITIES

Cases

<u>Harmon City, Inc. v. Draper City</u> , 2000 UT App 31, ¶ 7, FN 3	4, 5
<u>Patterson v. Utah County Board of Adjustment</u> , 893 P.2d 602, 603 (Utah App. 1995)	4, 5
<u>Springville Citizens for a Better Community v. City of Springville</u> , 1999 UT 25, ¶ 24.....	4, 20

Statutes, Ordinances, and other Authority

U.C.A. §10-9a-801	8
U.C.A. § 10-9a-801(3)(a)	4
U.C.A. § 10-9a-801(3)(a)(d)	4
U.C.A. §78A-4-103(2)(b)	4
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Moab Municipal Code

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ADDENDUM

Appendix A – Moab Municipal Code Chapter 17.65 (Master Planned Developments)

Appendix B – Moab Municipal Code Chapter 16.04 – 16.16 (Subdivisions)

Appendix C – Moab Municipal Code Chapter 17.32 (SAR, Sensitive Area Resort Zone)

BRIEF OF RESPONDENT/APPELLEE CITY OF MOAB

APPENDIX B

**MOAB MUNICIPAL CODE CHAPTER 16.04 – 16.16
(SUBDIVISIONS)**

Title 16SUBDIVISIONSChapters:

<u>16.04</u>	<u>Definitions</u>
<u>16.08</u>	<u>Procedure</u>
<u>16.12</u>	<u>Preliminary Plat</u>
<u>16.16</u>	<u>Final Plat</u>
<u>16.20</u>	<u>Required Improvements</u>
<u>16.24</u>	<u>Design Standards</u>
<u>16.28</u>	<u>Administration and Enforcement</u>

Chapter 16.04DEFINITIONSSections:

16.04.010 Definitions.

16.04.010 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Alley" means a public way which affords a secondary means of access to abutting property.

B. "Benchmark" means a mark affixed to a permanent or semipermanent object along a line of survey to furnish a datum level.

C. "Building line setback" means a line within a lot or other parcel of land, so designated on the plat of the proposed subdivision, between which line the adjacent boundary of the street upon which the lot abuts, the erection of an enclosed structure or portion thereof is prohibited.

D. "Collector street" means a street which carries traffic from minor streets to the major street system, including the principal entrance streets of residential development and the primary circulation streets within such a development.

E. "Cul-de-sac" means a minor street having one open end and being terminated at the other by a vehicular turnaround.

F. "Easement" means the quantity of land set aside or over which a liberty, privilege or advantage in land without profit, existing distinct from the ownership of land, is granted to the public or some particular person or part of the public.

G. "Final plat" means a map or chart of a subdivision which has been accurately surveyed by a registered surveyor and such survey is marked on the ground so that streets, alleys, blocks, lots and other divisions thereof can be identified.

H. "Lot" means a portion of a subdivision or parcel of land intended as a unit for building development or transfer of ownership.

I. "Lot width" is the width of the lot measured along the minimum building setback line.

J. "Major street" means one of the principal thoroughfares, as shown or designated on the master street plan.

K. "Marginal access street" means a minor street which is parallel to and adjacent to a major street and which provides access to abutting properties and protection from through traffic.

L. "Master street plan" means a plan labeled "Master Street Plan of Moab City," including maps or reports or both, which have been approved by the planning commission and city council as required by law.

M. "Minor streets" means any dedicated street serving as the principal means of access to property, which street is not shown on the master street plan as a principal thoroughfare.

N. "Official map" means any map adopted by the city council under the provisions of Title 10, Chapter 9, Section 7, Utah Code Annotated, 1953, as amended.

O. "Other public dedication" means parks, playgrounds, drainage channels or other areas of land to be dedicated to public use.

P. "Preliminary approval" means an approval, with or without recommended alterations, given to a preliminary plat by the planning commission and provides the necessary authority to proceed with the preparations of the final plat.

Q. "Preliminary plat" means a map or chart of a proposed subdivision.

R. "Setback lines" means the shortest distance between the property line and the foundation, wall or main frame of the building.

S. "Subdivider" means any person laying out or making subdivision for the purposes of first sale, offering for sale or first selling for himself or others of the subdivision or any part thereof.

T. "Subdivision" means a described tract of land which has been divided into three or more lots, tracts or parcels of five acres or less in area. (Ord. 13-81 (part), 1981: prior code §22-1-1)

Chapter 16.08PROCEDURESections:

- 16.08.010 Preliminary procedure.
- 16.08.020 Exceptions--Final plat.
- 16.08.030 Exceptions--Exceptional conditions.
- 16.08.040 One main dwelling structure to a lot.
- 16.08.050 Vacating or changing a subdivision plat.

16.08.010 Preliminary procedure.

Before dividing any tract of land into two or more lots, a subdivider shall:

A. Prior to or coincident with the submission of the preliminary plat, file with the zoning administrator a completed subdivision information form or forms to be furnished by the zoning administrator;

B. File with the zoning administrator for examination and subsequent approval or disapproval by the planning commission, after a public hearing noticed according to Utah State Code 10-9a-207 eight black and white prints of the preliminary plat prepared in conformance with the provisions of this title. Prints shall be filed at least fifteen days prior to the planning commission meeting at which time the plat may be considered, and shall be accompanied by a filing fee in conformance with the following schedule:

1. The fee schedule for subdivisions shall be established by resolution.

C. Within one year after receiving approval of the preliminary plat by the planning commission, unless such time is extended by the planning commission, submit the original and three copies of the final plat to the planning commission for final approval or disapproval, as the case may be;

D. The city administrator shall present, after the planning commission has given approval to the plat, the original of the final plat to the city council for their decision;

E. Following final approval by the city council, the final plat bearing all official signatures and/or approvals as herein required shall be submitted to the of-

fice of the county recorder for recording by the subdivider. A sepia, autopositive, CD disc or other reproducible copy together with two standard prints of the final plat shall be supplied to the zoning administrator. Failure on the part of the subdivider to record a final plat of a subdivision within a period of ninety days following approval by the city council shall render the plat invalid and reconsideration by both the city planning commission and the city council will be required before its acceptance. (Ord. 06-11 (part), 2006; Ord. 06-01 (part), 2006; Ord. 13-81 (part), 1981: prior code §22-2-1)

16.08.020 Exceptions--Final plat.

In subdivisions of less than five lots, land may be sold after recording of a plat, if all the following conditions are met:

A. The subdivision plan shall have been approved by the planning commission, the planning coordinator, the city engineer, the city attorney, other agencies the zoning administrator deems necessary, and the city council;

B. The subdivision is not traversed by lines of a proposed street, and does not require the dedication of any land for street or other purposes;

C. Each lot within the subdivision meets the frontage width and area requirements of the zoning title or has been granted a variance from such requirements by the board of adjustments;

D. All final plat requirements shall be complied with;

E. All provisions of Chapter 16.20 of this title shall be complied with; and

F. The water supply and sewage disposal shall have been approved by the utility supervisor. (Ord. 13-81 (part), 1981: prior code §22-2-2)

16.08.030 Exceptions--Exceptional conditions.

In cases where unusual topographic or other exceptional conditions exist, variations and exceptions from this title may be made by the city council, after the recommendation of the planning commission, provided that such variation and exceptions may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this title. (Ord. 13-81 (part), 1981: prior code §22-2-3)

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B. The subdivision is not traversed by lines of a proposed street, and does not require the dedication of any land for street or other purposes;

C. Each lot within the subdivision meets the frontage width and area requirements of the zoning title or has been granted a variance from such requirements by the board of adjustments;

D. All final plat requirements shall be complied with;

E. All provisions of Chapter 16.20 of this title shall be complied with; and

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16.08.040 One main dwelling structure to a lot. Except for a guest house or group dwelling permitted in the zoning title, not more than one main dwelling structure shall occupy any one lot. (Ord. 13-81 (part), 1981: prior code §22-2-4)

16.08.050 Vacating or changing a subdivision plat. Any proposed vacation, alteration, change or amendment to a subdivision plat must comply with the Utah State Code provisions 57-5-5.5 through 57-5-8. (Ord. 92-04, 1992)

Chapter 16.12

PRELIMINARY PLAT

Sections:

- 16.12.010 Preparation--Generally.
- 16.12.020 Description and delineation.

16.08.040 One main dwelling structure to a lot.

Except for a guest house or group dwelling permitted in the zoning title, not more than one main dwelling structure shall occupy any one lot. (Ord. 13-81 (part), 1981: prior code §22-2-4)

16.08.050 Vacating or changing a subdivision plat.

Any proposed vacation, alteration, change or amendment to a subdivision plat must comply with the Utah State Code noticing requirements of 10-9a-205 and the requirements of vacation or change in platted subdivision outlined by the Utah State Code 10-9a-608.

Application/ Action	Advisory Body	Land Use Authority	Appeal Body	Required Public Hearing
Prelim Plat		Planning Commission	B of A	Yes PC
Final Plat	Planning Commission	City Council	District Court	No
Amend Plat**		City Council	District Court	No
Amend Plat	Planning Commission	City Council	District Court	Yes PC & CC
Modify Lot Lines		City Council	District Court	No
Subd Ord/ Amend	Planning Commission	City Council	District Court	Yes PC
Condo. Conversion	Staff	Planning Commission	Board of Adjustment	No
New Condo. App.	(See procedures for site plan, subdivision, or planned developments, as applicable)			

** If all owners within the plat sign to permit amendment and it is not (1) a multi-residential, industrial or commercial subdivision nor does it (2) involve vacation of a public R-O-W, CC can approve without public hearings by PC or CC.

Proof of sewer or water availability for noncity authorities. Developer is required to submit a letter from a sewer and water authority stating that the authority can and will provide water or sewer or both, to any subdivision, multi-residential or industrial development located within the Moab City where the city is not the provider of such services. The required letter shall be submitted

prior to preliminary plat approval and shall provide size, condition and capacity of water and sewer lines that are intended to provide such services to the development. (Ord. 06-10 (part), 2006; Ord. 06-01 (part), 2006; Ord. 92-04, 1992)

Chapter 16.12

PRELIMINARY PLAT

Sections:

- 16.12.010 Preparation--Generally.
- 16.12.020 Description and delineation.
- 16.12.030 Existing conditions.
- 16.12.040 Proposed subdivision plan.
- 16.12.050 Preliminary plan approval.

16.12.010 Preparation--Generally.

The preliminary plat, prepared on tracing paper twenty-four inches by thirty inches, shall contain the information herein specified and comply with the requirements set out in Sections 16.12.020 through 16.12.040. (Ord. 13-81 (part), 1981: prior code §22-3-1(part))

16.12.020 Description and delineation.

In a title block located in the lower right-hand corner the following shall appear:

- A. The proposed name of the subdivision;
 - B. The location of the subdivision, including:
 - 1. Address,
 - 2. Section, township and range;
 - C. The names and addresses of the owner, the subdivider, if different than the owner, and of the designer of the subdivision;
 - D. The date of preparation, scale (no less than one inch to equal one hundred feet) and the north point.
- (Ord. 13-81 (part), 1981: prior code §22-3-1(1))

16.12.030 Existing conditions.

The plat shall show:

- A. The location of and dimensions to the nearest benchmark or monument;

B. The boundary line of the proposed subdivision indicated by a solid heavy line and the total acreage encompassed thereby;

C. All property under the control of the subdivider, even though only a portion is being subdivided. Where the plat submitted covers only a part of the subdivider's tract, a sketch of the prospective street system of the unplatted parts of the subdivider's land shall be submitted, and the street system shall be considered in the light of existing master street plans or other planning commission studies;

D. The location, width and names of all existing streets within two hundred feet of the subdivision and of all prior platted streets or other public ways, utility rights-of-way, parks, and other public open spaces, permanent buildings and structures, houses or permanent easements, within and adjacent to the tract;

E. The location of all wells, proposed or active and abandoned within the tract and to a distance of at least one hundred feet beyond the tract boundaries;

F. Existing sewers, water mains, culverts or other underground facilities within the tract and the distance of at least one hundred feet beyond the tract boundaries including pipe sizes, grades, manholes and their exact location;

G. Existing ditches, canals, natural drainage channels and open waterways and proposed realignments;

H. Boundary lines of adjacent tracts or unsubdivided land, showing ownership where possible;

I. Contours at vertical intervals of not more than two feet, high water levels of all watercourses, if any, shall be indicated in the same datum for contour elevations. (Ord. 13-81 (part), 1981: prior code §22-3-1(2))

16.12.040 Proposed subdivision plan.

The subdivision plan shall show:

A. The layout of streets, showing location, widths and other dimensions of (designated by actual or proposed names and numbers) proposed streets, crosswalks, alleys and easements;

B. The layout, numbers and typical dimensions of lots;

C. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision;

D. A tentative plan or method by which the subdivider proposes to handle storm drainage for the subdivision. (Ord. 13-81 (part), 1981: prior code §22-3-1(3))

16.12.050 Preliminary plan approval.

Following a review of the preliminary plat by the planning commission, the planning coordinator, the city engineer, the utility supervisor, the utility companies and other agencies as required by the zoning administrator, the planning commission shall hold a public hearing before acting on the plat as submitted or modified. If the plat is approved, the planning commission shall express its written approval with whatever conditions are attached, by returning one copy of the preliminary plat, signed by the zoning administrator to the subdivider. One signed copy shall be given to the city engineer and one copy retained by the zoning administrator; other copies to be distributed as determined by the zoning administrator. If the preliminary plat is disapproved, the planning commission shall indicate its disapproval in writing and give reason for such disapproval by means of signed copies. The planning commission action can be appealed to the board of adjustments within thirty days of written notice to the subdivider. The receipt of a signed copy of the approved preliminary plat shall be authorization for the subdivider to proceed with the preparation of the final plat. No construction of the subdivision shall commence until final approval has been given and the plat recorded. (Ord. 06-01 (part), 2006: Ord. 13-81 (part), 1981: prior code §22-3-2)

Chapter 16.16FINAL PLATSections:

- 16.16.010 Preparation--Generally.
- 16.16.020 Description and delineation.
- 16.16.030 Standard forms to be included.
- 16.16.040 Time limit for recordation.

16.16.010 Preparation--Generally. The final plat, which must be prepared by a licensed land surveyor on a sheet of tracing linen twenty-four inches by thirty inches and made with approved waterproof black drawing ink, shall be so drawn that the top of the sheet faces either north or east, whichever accommodates the drawing best and shall comply with the provisions set out in Sections 16.16.020 through 16.16.040. (Ord. 13-81 (part), 1981: prior code §22-4-1(part))

16.16.020 Description and delineation. The final plat shall show the following:

- A. The name of the subdivision;
- B. Accurate angular and linear dimensions for all lines, angles and curves used to describe boundaries, streets, alleys, easements, areas to be reserved for public use and any other important features;
- C. An identification system for all lots and blocks and names of streets. Lot lines shall show dimensions in feet and hundredths. Actual house numbers, as assigned by the city engineer, shall be shown;
- D. True angles and distances to the nearest established street lines or official monuments, which shall be accurately described on the final plat and shown by appropriate symbols;
- E. Radii, internal angles, points and curvatures, tangent bearings and the length of all curves;
- F. The accurate location of all monuments and fire hydrants to be installed shown by the appropriate symbol. All United States, state, city or other official benchmarks, monuments or triangulation stations in or adjacent to the property, shall be preserved in precise position;
- G. Dedicate to the city all streets, highways, and other public lands included in the proposed subdivision;
- H. Pipes or other such physical monuments as shall be placed at each lot corner;
- I. Where it is proposed that streets be constructed on property controlled by a public agent or utility company, approval for the location, improvement and maintenance of such streets be obtained from the public agency or utility

company and entered on the final plat in a form approved by the city attorney. (Ord. 13-81 (part), 1981: prior code §22-4-1(1))

16.16.030 Standard forms to be included. The final plat shall contain the following:

- A. A registered professional engineer or land surveyors' "Certificate of Survey";
- B. The owners' "Certificate of Dedication";
- C. A notary public's "Acknowledgement";
- D. The city planning commission's "Certificate of Approval";
- E. The city engineers' "Certificate of Approval";
- F. The utility supervisors' "Certificate of Approval";
- G. The city attorney's "Certificate of Approval";
- H. The city council's "Certificate of Approval";
- I. Certificate of filing to be completed by county recorder;
- J. The planning coordinator's "Certificate of Approval." (Ord. 13-81 (part), 1981: prior code §22-4-1(2))

16.16.040 Time limit for recordation. Failure on the part of the subdivider to record a final plat of a subdivision within ninety days following the approval by the city council shall render the plat invalid and reconsideration by both the city planning commission and the city council will be required before its acceptance. (Ord. 13-81 (part), 1981: prior code §22-4-1(3))

Chapter 16.20

REQUIRED IMPROVEMENTS

Sections:

- 16.20.010 Certification required.
- 16.20.020 Sewers and sewerage facilities.
- 16.20.030 Stormwater drainage.
- 16.20.040 Storm drainage.
- 16.20.050 Street improvements.
- 16.20.060 Performance bonds.

16.20.010 Certification required. No final plat of a subdivision of land shall be recorded, except as provided in Section 16.08.020, without receiving a statement signed by the city zoning administrator certifying that the improvements described in the subdivider's plans and specifications meet the minimum requirements of all ordinances of the city, that they comply with the recommendations of the city engineer, the planning commission, the planning coordinator, the

BRIEF OF RESPONDENT/APPELLEE CITY OF MOAB

APPENDIX C

**MOAB MUNICIPAL CODE CHAPTER 17.32
(SAR, SENSITIVE AREA RESORT ZONE)**

xii. Outdoor Storage Areas. All outdoor storage areas for materials, trash, mechanical equipment, vehicles, or other similar items shall be screened from street view by a minimum six-foot high screening device. Such screening device shall consist either of plant material or a wall constructed of or finished with materials to match the main building of the site. (Ord. 02-04 (part), 2002)

Chapter 17.32

SAR, SENSITIVE AREA RESORT ZONE

Sections:

- 17.32.010 Objectives and characteristics.
- 17.32.020 Use regulations.
- 17.32.030 Area, width and location requirements.
- 17.32.040 Special provisions.
- 17.32.050 Supplementary regulations.

17.32.010 Objectives and characteristics.

A. The sensitive area resort zone [SAR Zone] has been established as a zone in which large-scale master planned resort communities can be established in a more creative fashion than is possible under conventional zoning. At the same time, the SAR zone preserves the spectacular beauty and natural character of the surrounding landscapes.

B. The SAR zone is designed to facilitate development in harmony with the surrounding landscape, natural formations, and vegetation. The SAR zone allows developers to create resort communities, intermixing private residences, overnight accommodations, and commercial activities in accord with resort operations and activities. A major aspect of the SAR zone is preservation of the natural feel and look of the landscape, preservation of internal and external view sheds, and emphasis on pedestrian and nonmotorized transportation within the developments themselves.

C. Characteristics of the SAR zone include:

1. Promotion of large-scale master planned resort communities;

2. A mix of housing types including overnight accommodations, monthly rentals, employee/workforce housing, and private homes in a variety of dwelling types, including one-family dwellings, multifamily dwellings, lodges and hotels;

3. Promotion of design concepts that minimize the disruption of ecological processes, thereby preserving the recreational and aesthetic character of the area;

4. Building form, massing, and coloring that complements, rather than contrasts with, the surrounding landscapes;

5. Building designs that present an appealing visual appearance;

6. A de-emphasis on automobile travel within the development;

7. Streets, parking areas and other automobile infrastructure that, to the extent practicable, are visually minimized;

8. Buildings clustered together and an abundance of pedestrian and nonmotorized trails;

9. Trail access from developments to nearby scenic and recreational areas;

10. Significant preservation of open space;

11. Preservation of existing topography by encouraging minimal excavation and site grading;

12. Retail businesses primarily providing goods and services to overnight guests and to development residents;

13. Special attention to limiting the effect of night lighting on surrounding areas and on the night sky.
(Ord. 06-16 (part), 2006)

17.32.020 Use regulations.

A. Permitted Uses. Permitted uses include:

1. Residential:

Single-family dwellings;

Multifamily dwellings;

Condominiums;

Live/work units;

Caretaker or guard residences;

Employee/workforce housing.

2. Overnight Accommodations:

Hotels;

Condominiums/town homes;

Bed and breakfast.

3. Retail and Commercial:

Spas/personal care services;
 Restaurants (indoor and outdoor seating);
 Private clubs/taverns;
 Conference facilities;
 Recreational facilities (tennis courts,
 golf courses, stables, etc.);
 Theaters (indoor);
 Theaters (outdoor);
 Recreational tour companies, outfitters and
 guide services;

Vehicle rental businesses (under five thousand square feet total floor space including outdoor storage);

Individual retail units (under five thousand square feet total floor space);

Grocery and convenience stores (under five thousand square feet total floor space);

Art/photo galleries;

Artisan/hand manufacturing;

Professional offices;

Home occupations;

Parking lots associated with permitted
 uses.

4. Public or Civic:

Municipal facilities and services;

Schools;

Public buildings and public parks.

5. Accessory:

Accessory buildings and uses.

B. Prohibited Commercial Uses. Commercial uses shall be prohibited if the uses:

1. Detract from the ambiance and character of a resort area;

2. Create impediments to the enjoyment of the surrounding natural environment;

3. Visually detract from the surrounding landscape; or

4. Pose an environmental threat to wildlife, water resources, or other natural resources and attributes of the area.

Examples of prohibited uses include but are not limited to: industrial, manufacturing and warehousing busi-

nesses, automotive service facilities, retail outlets five thousand square feet or larger, gasoline and fuel stations, and freight transportation services. (Ord. 08-03 (part), 2008; Ord. 06-16 (part), 2006)

17.32.030 Area, width and location requirements.

A. Minimum Development Area. All development projects in the SAR zone must have a minimum of forty acres.

B. Area, Width, Location and Density. There shall be no area, width and location requirements within the SAR zone, with the exception that there shall be a maximum density of two dwelling units per acre. For the purposes of determining the maximum density of a development, total acreage of the development, including open space, shall be used.

C. Height Limits. Building and structure height limits shall be as follows:

1. The maximum allowable height for residential and commercial buildings and structures shall be thirty feet.

2. The maximum allowable height for accessory buildings shall be sixteen feet.

3. Wireless telecommunications towers shall be permitted provided the conditions as set forth in Moab City Code Chapter 17.76 are met and that the towers' design meets the intent of the SAR zone. (Ord. 06-16 (part), 2006)

17.32.040 Special provisions.

A. Master Planned Development Required. All development projects in the SAR zone shall be defined as master planned developments and shall follow the provisions of the master plan development ordinance.

B. Open Space.

1. A primary aim of the SAR zone is the preservation of the wide open character of Moab's enveloping desert and canyon landscape. To maintain this character,

C. See also Moab Sign Code (Chapter 15.44 of Moab City Code). (Ord. 06-16 (part), 2006)

Chapter 17.33

FC-1 FLOOD CHANNEL ZONE

Sections:

- 17.33.010 Objectives and characteristics.
- 17.33.020 Use requirements.
- 17.33.030 Area, width and location requirements.
- 17.33.040 Supplementary regulations.

17.33.010 Objectives and characteristics.

The primary purpose of the FC-1 flood channel zone is to facilitate the protection of life and property from damage because of floods. Territory within this zone is characterized by open land which is free of structures and buildings that are likely to be damaged or which will likely cause damage to other property during reoccurring floods. (Prior code § 27-12-1)

17.33.020 Use requirements.

Only the following uses shall be permitted in the FC-1 flood channel zone:

- A. Agricultural uses, farming, truck gardening and the growing of nursery stock;
 - B. Temporary corrals, pens and coops which are constructed of material that will not damage other property in the event of a flood;
 - C. The care and keeping of animals and fowl subject to the rules and regulations of the board of health;
 - D. Revetments and other flood protection structures;
 - E. Public parks and playgrounds.
- (Ord. 08-03 (part), 2008; Ord. 94-12 (part), 1994; prior code § 27-12-2)

17.33.030 Area, width and location requirements.

There shall be no regulations pertaining to area, width or location of building requirements in the FC-1 flood channel zone. (Prior code § 27-12-3)