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September 12, 2016

Thomas G. Kennedy, Esq.
P.O. Box 3081
Telluride, CO 81435

Re: Lionsback Resort, Moab Utah, Amended MPD Application

By: Email, tom@tklaw.net and First Class Mail

Dear Tom:

I write to respond to the letter of LB Moab Land LLC, dated August 12, 2016, and concerning the proposed amended plan for the Lionsback Resort. I was asked to review the proposal discussed in a meeting between the parties in which, among other things, Moab LB would agree to delete lots from its Phase 5 of the development to offset the increase in lodging rooms associated with the newly proposed first phase hotel concept, which calls for a 150 room hotel (referred to here as the "Deletion Option").

Concurrently, I understand that on June 30, 2016 Moab LB submitted an application for amendment of the approved preliminary master planned development for the project. That application includes the larger hotel concept along with utility changes, but without the deletion of units described as the Deletion Option.

The initial question was whether this concept would qualify as a "minor change" under the City's Master Planned Development Ordinance, MMC §17.65.130. Although a revised plan containing the Deletion Option has not been submitted for review, I conclude that the scope of the changes contemplated under either scenario would likely be major changes under the Moab ordinance.

MMC § 17.65.130 provides that amendments "that change the character, basic design, building density and intensity, open space or any other requirements and conditions" require planning commission review and approval. The "minor change" provision, subsection A, allows staff approval of minor changes "in the location and placement of buildings" where these are the product of unforeseen circumstances—such as engineering difficulties. Changes as to "structural types" and the "arrangement of multiple lots and blocks," or the

"overall design or intent of the project" are major changes requiring land use authority approval. Id. at B.

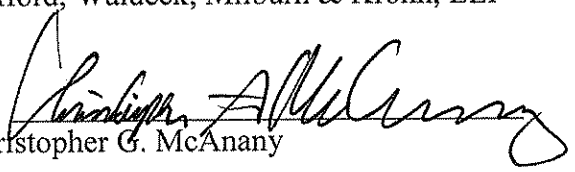
Given the scope of the changes under either the Deletion Option or the June 30 submittal, it is my conclusion that this project should be processed as a "major change" under Section 130. Under either proposal the applicant would be substantially changing the configuration, building types, phasing, and total square footage of the structures. These are not minor changes due, for example, to site constrains.

As you know, under Utah law municipalities are bound to adhere to their own land use ordinances. Although a minor change might appear to be expedient, in my opinion that would run contrary to the Moab ordinance. Similarly, attempting to process this application as a minor change would likely invite a legal challenge by other interested persons. Thus, there is both a legal reason and a practical reason to treat this as a major change. Given the past litigation history as to this project, the parties should use care to follow the review processes to the letter.

In making this determination I do not express any opinion as to the merits of the project. We concur that, regardless of the submittal Moab LB elects to pursue, the parties will need to make changes to the Development Agreement, Annexation Agreement, and related plans and specifications.

If for any reason you disagree with this position please feel free to provide me with any additional information upon which you rely. Note also that City staff is available to confer with your client as to submittals and review processes.

Dufford, Waldeck, Milburn & Krohn, LLP

By: 
Christopher G. McAnany

xc: Rebecca Davidson