# Cooper St. building owners sue Aspen

Lawsuit alleges City Council abused its discretion in rejecting redevelopment plan

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ASPEN — Owners of the Cooper Street Pier building are suing the city on allegations that the Aspen City Council abused its discretion when it voted to deny an application that would allow the property to be redeveloped.

The lawsuit was filed by JS Cooper Street LLC, headed by Joshua Saslove, and a host of other LLCs controlled by such Aspen businessmen as Ron Garfield and Nikos Hecht. The suit, filed this week in Pitkin County District Court, came almost a month after the majority of the City Council voted to deny plans to subdivide the property. The lawsuit names the city of Aspen and its five elected council members as defendants.

The suit, which was filed by David Lenyo of the Aspen law firm Garfield & Hecht, asks the court to make the council's decision null and void. It also asks the court to grant subdivision approval and award the building's owners costs and expenses related to the matter.

Subdivision is required so that legal interests in the building can be separated and a mixed-use building can be constructed.

The lawsuit alleges that because the application in question is a request for subdivision approval, the City Council is limited on its review of the project and can't legally deny it on its merits related to land use.

And because the council rejected the application based on land-use issues, it exceeded its jurisdiction and acted in an arbitrary and capricious manner, the lawsuit alleges.

Jim True, assistant city attorney, declined to comment on the lawsuit, saying he has not had a chance to review it. Saslove was unavailable for comment.

Council members who voted against the project said it doesn't meet the goals of the Aspen Area Community Plan, specifically that it doesn't provide enough affordable housing.

Councilman Dwayne Romero cast the lone vote in favor of the project.

The denial came despite an apparent legal threat leveled by Lenyo, who filed a 28-page brief with the City Council in October. The "memorandum of law" laid out several arguments explaining why Lenyo's clients have a right to redevelop one of Aspen's oldest eating and drinking establishments.

The legal threat didn't sit well with Mayor Mick Ireland.

"I will fight it to the last tax dollar," Ireland said at the Nov. 14 council meeting before voting on the application. "This council is not going to be dictated on what it's going to do."

During that meeting, Lenyo told the council the brief was meant only to be informational and to help in the decision-making process.

"We did our best to address the factual and legal issues in our application," Lenyo said, adding, it wasn't meant to dictate how the council should vote. He also added that in his decades of experience, he has never experienced "such a hostile response."

The lawsuit argues that the city of Aspen exceeded its jurisdiction because it denied the subdivision application based on design and employee housing requirements, which is under the purview of the land-use code.

In addition, the redevelopment had the final approval of the Historic Preservation Commission, the Planning and Zoning Commission and city staff. The commissions and the staff agreed the design of the building, including height, size, mass, scale, views and employee housing criteria met the provisions in the land-use code.

“As a result, City Council has no jurisdiction to reopen the review and design standards applying to the proposed redeveloped building,” the lawsuit reads.

The proposal had secured approval to demolish the existing three-story building and develop a four-story commercial and residential building, comprising 3,827 square feet of net leasable space divided between the basement, first and second floors. A 2,008-square-foot free-market condo would take up the third and fourth floors.

The building’s owners argue that the redeveloped property would reduce the amount of commercial leasable space by 546 square feet and would increase the existing residential unit located on the top building by only 42 feet.

The lawsuit also points out that there is no provision in the land-use code that authorizes the City Council to approve or deny subdivision approval based on the number of employee housing units in the development.

Further, the lawsuit alleges that the building’s owners exceeded the city and housing office’s requirements by paying $309,525 in a cash-in-lieu payment rather than putting affordable housing on site.

Lenyo argues that the City Council exceeded its jurisdiction also because it attempted to impose conditions on his clients that go beyond the land use code.

Councilman Jack Johnson voted against the project, saying it would create unnecessary public costs related to how the building was designed and how it would have been spatially divided.

He said at the Nov. 14 meeting that the project fails to meet the general requirements of the AACP because it would generate traffic and impact the transportation system. Johnson argued the businesses that would have been located there would have produced more employees than would be housed.

Johnson said at the time that it's not the act of subdividing but the result of it that produces a negative impact on the community. Ireland said the totality of the project's impact is what was under scrutiny, not the subdivision itself.

City Councilman J.E. DeVilbiss also voted to deny the project. Because Steve Skadron voted to deny the redevelopment as a former Planning and Zoning commissioner, he recused himself from reviewing the project as a city councilman.

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