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Aspen council votes to resolve demo disputes

Rick Carroll, Aspen Daily News Staff Writer
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The Aspen City Council voted 4-1 Tuesday to approve settlement agreements with six property owners that will receive demolition allotments in 2024.

Aspen Daily News file

The Aspen City Council voted Tuesday in approval of a settlement agreement with the owners of six properties that will be eligible for demolition in 2025 after five of them issued appeals and another one sued.

The council voted 4-1 on the agreements that will require the property owners to divert 90% of all materials deemed salvageable by a deconstruction expert who would examine the waste. That's well above the 35% minimum currently required for regular holders of demo permits.

For example, and using terms of the settlement agreements, if a property owner's demolition survey showed that 50% of the project's overall weight of non-hazardous waste material could be diverted, the property owner would be required to divert 90% of that 50%. In this instance, the bottom line for the owner would be to divert 45% of all of the non-hazardous waste materials from the deconstruction.

“What these applicants did is they brought forth incentives that justified in our mind — the city attorney's office and community development — justification in granting these particular properties or entering into settlement agreements with these particular properties,” said Jim True, the city's head attorney, to the council.

The council's authorization comes after a Feb. 20 lottery was held for four available demolition allotments for 2024; six of the 10 applicants that weren't selected appealed the denials. Fourteen applicants participated in the lottery. It also follows the council's agreement in principle that was made Monday to debut a program that would require demolition projects with a disturbance area greater than 2,000 feet to divert 100% of all salvageable waste.

Citing a need to ease the stress on the Pitkin County landfill and slow down the pace and scope of residential development, the city council in June 2022 adopted an ordinance with code amendments that included a cap of six demolition allotments to be awarded each year, processing email applications on a first-come, first-served basis.

That process morphed into a debacle after the city's email server was overcome with hundreds of applications on Aug. 8, 2022 — when it began accepting applications for six demolition permits available for 2023. The losing property owners filed administrative appeals and were awarded demo permits for 2024.

Meanwhile, this week's settlement agreement with the six property owners shelved five appeals hearings scheduled for June and put a single active suit to bed.

"I will be supporting these settlements," said Councilman Bill Guth, "but I think it's unreasonable to hold these applicants to higher standards to other applicants who were lucky enough to win the lottery. These people have done nothing wrong and I think it's unfair to hold them to this standard and principle."

The agreements pertain to properties with addresses on Cemetery Lane, West Hallam Street, West Smuggler Street, King Street, Lake Street and Waters Avenue.

The Lake Street property includes next-door two addresses under the same ownership, which is called Lake House Aspen LLC. The LLC filed suit against the city asking the court to invalidate council's decision on Oct. 30 to reject the ownership's appeal to demolish two homes at 400 Lake Ave. and 410 Lake Ave. for future residential development.

One of the Lake Street properties secured a demo allotment through the February lottery but the other one did not. However, the property owner agreed to apply the 90% diversion rate to both properties when they undergo demolition, True said.

Not a typical proceeding

The council's vote on the agreements was done in public, as required, but members reached that decision with information they would typically receive during an executive session with the city attorney and city manager.

At the May 7 meeting, Guth and fellow Councilman Sam Rose said they would not authorize going behind closed doors into an executive session to discuss settlement agreements with property owners who are the victims of what they said is an unfair and flawed program. Entering an executive session required four votes; it only received three.

“I’m glad we’re talking about this in public,” Rose said. “I feel much better about it that way.”

Councilman Ward Hauenstein, who cast the dissenting vote, said he could not endorse a settlement agreement with limited legal information. An executive session would have allowed a more thorough review of the information, but True was unwilling to reveal that openly.

His objection, Hauenstein said, was because “I think that Bill and Sam deprived the city council of having legal counsel to discuss this, and I don’t feel that I’m fully informed and I think it’s a fool to enter into an agreement like this without legal counsel ... and I cannot support any one of these demolition allotment settlements.”

Guth’s take was different.

“This is an issue that’s affecting the whole community and has caused a lot of anxiety, expense and stress to many members of our community and I believe this conversation rightly belongs in public.”

Yet True wasn’t willing to answer questions posed by Guth concerning the city’s legal position and its potential to prevail in the lawsuits if they’re filed.

“That opinion is something is not something I’d like to discuss openly as to the nuances of litigation and risks that are associated with it and as such, I’m willing to say publicly that we believe our position is defensible,” he said.

Mayor Torre, who voiced his frustration with Guth and Rose last week over their move, didn’t address it Tuesday.

“I’m not supporting it because of threatened litigation,” he said. “I’m supporting this because I think that this meets the community’s expectations around the pace of development. It is meeting the community’s expectations around waste diversion ...

what I'm trying to safeguard against, Bill, is speculation to a high degree. A concern I have in the economic climate that we see going on right now, we are seeing people pay exorbitant amounts of money for something that they want to tear down and the impacts on our community, if that were to be something that became rampant or a high volume of turnover, I want protection for our community on that kind of extreme speculative development and demolition of properties, so I'm still feeling we need to refine our demo program, but I don't want it to go away."

The city also awards two allotments a year to residents who have lived in and owned their homes for at least 35 years.

rick@aspendailynews.com

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Managing Editor