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Denver sues owner of Sun Valley warehouse eyed for overflow homeless shelter after sale falls through

City officials ask for court to enforce sale agreement, but owner's attorney contends that deal expired

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The city of Denver is suing the owner of a Sun Valley warehouse after a sale fell through and delayed attempts to open a new emergency overflow homeless shelter.

Denver city officials signed a contract to buy the building near Seventh Avenue and Alcott Street last fall, intending to use it for shelter overflow and city storage. The city planned by January to begin shifting overflow shelter beds to the near-downtown site from a building near Peoria Street and Interstate 70, in the far northeast part of the city, where homeless people have been bused from full shelters since May 2015, particularly on cold nights.



Homeless people line up at the Denver Rescue Mission on April 1, 2014.

Hyoung Chang, Denver Post file

But the \$4.1 million purchase agreement for the Sun Valley building fell through soon after the City Council approved it Sept. 26. After months of talks, the city filed suit last month.

The owner has contended that the city missed a deadline to make a \$75,000 payment of earnest money, voiding the deal. The city asserts that the owner's principal, Bret Kaup, used the date flap — which the city says is a misreading of the contract's timing requirement — as a pretense to back out of the deal “because (the owner) now finds the agreement to be inconvenient or undesirable,” as one city letter to Kaup puts it.

In other letters and correspondence obtained by The Denver Post, City Attorney Kristin Bronson indicated that another possible factor was that Kaup's attempt to relocate a woodworking business he owns in that building to another property had fallen through. The city had agreed to let the business stay in the building temporarily.

Bronson wrote in another letter that as discussions continued in November, an attorney for Kaup asked the city to “sweeten the pot” by paying a higher price for the building.

The owner's attorney, Jack Tanner, wrote in an e-mail to The Post on Friday that Kaup "has no alternative motivation" for pulling the purchase agreement, concluding: "The simple fact is Denver didn't perform as required."

For now, the Peoria Street site that the city leases will continue providing overflow shelter space, city officials say. But plans call for converting it as soon as possible to a [new 911 operations center](#) to accommodate [growing call volume](#), giving some urgency to the matter.

Officials are pursuing a second building for overflow shelter space and city storage. The city is seeking council approval for the \$4.6 million purchase of a second building near I-70 and Colorado Boulevard — a deal that Bronson says was in the works before the other purchase fell through, as a tandem approach to sheltering.

Denver's Road Home has said [its goal for the first city-owned shelters](#) is to offer more dignity and a different approach than homeless people have gotten at the Peoria site, which has housed up to 315 men and 120 women a night on floor mats in separate areas.

"We needed both locations for that purpose," Bronson said Friday, "and we're even now working on contingency plans, because timing is important here," with winter in full blast.

A council committee advanced a proposal to approve that second building's purchase last week. It could win approval later this month, with renovations in coming months to make it ready for use as an overflow shelter by March or April.

Meanwhile, the city filed suit in Denver District Court on Dec. 16 against 2601-2605 W. 7th Ave. LLC, the company set up as the owner of the Sun Valley property. State records show that the entity is owned by The Orville Group, of which Kaup is founder and managing partner.

"Here the buyer listed this property for sale," Bronson said. "This wasn't the city approaching a property owner and trying to convince them to sell their property. ... To turn around and now try to back out of the contract because another deal fell through is unusual. We would have preferred to work it out amicably with the owner," including, she said, by offering to let the woodworking business stay in the building longer.

Particularly frustrating, city officials say, is that they had worked to win over neighborhood groups — not often an easy task when it comes to opening a shelter. City finance officials say they also face logistical and zoning challenges, a need for pre-installed building safety features and competition for warehouse space from the marijuana industry.

Kaup's attorney, though, portrays what happened in this case as simple and straightforward.

"The contract to buy the land had an effective date of September 28, 2016," Tanner wrote in an e-mail Friday. "The city was required to post earnest money within seven business days of that date. The city did not timely post the earnest money, so the contract terminated by its own terms."

On this, the two sides disagree on a key term in the contract for the earnest money payment, a kind of security deposit.

Tanner refers to the Sept. 28 effective date as starting the seven-day clock for paying the \$75,000 into an escrow account. That's the date written in by city officials on the signature page when Mayor Michael Hancock and four other officials began signing it, after council approval.

But the contract's terms refer to the "mutual execution" of the agreement as starting the stopwatch, with no reference to the effective date. The city argues that the execution on its side didn't occur until Auditor Tim O'Brien became the last of five city charter-obligated officials to sign off on the agreement, on Oct. 4.

Until all officials sign off, the city doesn't consider contracts to be final.

In the city's view, that made Oct. 13 the deadline for the city's earnest deposit, and that is when the city made its payment, the lawsuit says.

But that morning, Kaup notified the city real estate director by e-mail that he was terminating the agreement because he considered the earnest money late.

After that point, the e-mails and letters provided by the city to The Post show the city approaching the matter as a renegotiation of some terms, but not the price. Kaup and his attorney, though, approached the city's entreaties as a request for a fresh contract negotiation and apparently upped their requested price.

On Nov. 21, Tanner wrote in an e-mail to Bronson that he had responded previously to the city's requests for the terms necessary "to re-interest the owner in a new sales transaction," which his e-mail doesn't specify.

"Your letter is far short of them, and sufficiently far short that the Owner is not interested in pursuing this any further," Tanner wrote. "So, we again consider the matter fully resolved and concluded. I am sorry for all that this did not work out."