



Strengthening Community Through Workforce Housing

AGENDA  
REGULAR MEETING OF THE APCHA BOARD OF DIRECTORS  
WEDNESDAY, FEBRUARY 6, 2019

The Meeting will be held in the **BOCC Meeting Room**  
Pitkin County Administration and Sheriff's Office Building  
530 East Main, Aspen, Colorado @ 5:00 p.m.

**5:00 Call to Order**

**Rules of Decorum** - APCHA Board meetings shall be conducted in a fair and impartial manner that allows the business of APCHA to be effectively undertaken. Citizens, APCHA staff and APCHA Board members alike must be allowed to state their positions in a courteous atmosphere that is free of intimidation, profanity, personal affronts, threats of violence, or the use of APCHA as a forum for politics. All remarks shall be directed to the APCHA Board as a whole, not to APCHA staff or to the public in attendance. Members of the public shall not approach the dais without first seeking and obtaining the permission of the Chairperson or presiding officer. Warnings may be given by the Chair at any time that a speaker does not conduct himself or herself in a professional and respectful manner and anyone whose loud, defiant, threatening, personal, vulgar, uncivil or abusive language or behavior impedes the orderly conduct of an APCHA Board meeting shall, at the discretion of the presiding officer, be barred from speaking further and may be ejected from the meeting.

**5:01 – 5:10 Public Comment**

**5:10 – 5:20 Executive Director's Comments**

**5:20 – 5:30 Director's Comments**

**5:30 – 5:35 Consent Calendar** (these matters may be adopted together by a single motion)

- Minutes of the January 16, 2019 Regular Meeting
- Resolution No. 01 (Series of 2019), Denying the Appeal of Bert Przybylski of the Notice of Violation Dated December 13, 2018
- Resolution No. 02 (Series of 2019), Denying the Appeal of Kurt Keller of the Notice of Violation Dated October 3, 2018

**5:35 – 7:00 Policy Discussions**

- Governance Conversation – Amendments to the Fifth Amended and Restated IGA
- Notice of Amendments to the Employee Housing Guidelines sent to City Council and BOCC
  - Hearing Officer and Schedule of Fines Notice of Adoption and Callup
- Deferred Maintenance and Capital Reserves
  - Staff is working on a comprehensive plan to present to the Board in March or April.

**Miscellaneous Attachments/Information**

- Future Agendas

**Adjournment**

**NEXT MEETING: FEBRUARY 20, 2019**

**NOTE: All times are approximate; agenda items may be heard prior or after the estimated times shown.**



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**MINUTES OF THE JANUARY 16, 2019  
REGULAR MEETING OF THE  
ASPEN/PITKIN COUNTY HOUSING AUTHORITY**

**CALL TO ORDER:** Ron Erickson, Chairperson, called the Regular Meeting to order at 5:00 p.m. The January 16, 2019, meeting was held in the Board of County Commissioners Room, County Building, 540 E. Main Street.

**ROLL CALL:** Ron Erickson, Rick Head, Valerie Forbes, Chris Council, Becky Gilbert, Dallas Blaney, Carson Schmitz were present. John Ward was absent. Thomas F. Smith, Legal Counsel, was also present.

Staff Members in Attendance: Mike Kosdrosky, Executive Director; Bethany Spitz, Compliance Manager; Cindy Christensen, Deputy Director; and Andrew Miller, Administrative Assistant II.

**Rules of Decorum:** The Rules of Decorum for APCHA Board Meetings were read by Ron Erickson.

**PUBLIC COMMENT:** Erickson opened the meeting to Public Comment for anything not part of the agenda.

- Cliff Weiss, President of Twin Ridge HOA, addressed the Board suggesting the APCHA have preferred vendors for deed-restricted owners and HOA's to work with that have a set contract and prices. Kosdrosky said this was something the APCHA and the Board would like to do, and invited Mr. Weiss to meet with him for further discussion to put together something to bring forward to policy makers.
- Adam Frisch, City Council, stated that on January 29, 2019 there will be a work session on affordable housing. Potential topics are credit program, housing mitigation, lodging incentive program, etc. On February 5, 2019, the City of Aspen and City Council will have continued talks on the APCHA governance.
- Phyllis Mattice, Assistant County Manager, stated that the County's impact fees are too low, and they are working toward an increase. Mattice also gave an update on the Basalt Vista project. There are walls and roofs; inside work will start very soon.
- Lee Mulcahy addressed the Board stated that his father was involved with Habitat for Humanity. Mulcahy stated that all have the right to acquire and possess property, along with three liberties. Mulcahy quoted the document that he provided the meeting before that was provided to the Court.

**EXECUTIVE DIRECTOR COMMENTS:**

- Introduction of Andrew Miller, new Administrative Assistant II. He works at the front desk of the main office and will be taking minutes at future Board meetings
- Thanks to the Board for attending meetings and looking forward to a new, productive year.

#### **DIRECTOR COMMENTS:**

- Blaney thanked the Board for attending the meetings as he was out of town so much and thanked Chris Council for the informative letter.
- Forbes thanked the Board for a great response for volunteering with Habitat for Humanity.
- Erickson stated that the Affordability Study was passed a year ago, he asked when that discussion would be moved forward. Kosdrosky responded that this policy, as well as a few more, will be going to City Council on February 11.

**CONSENT CALENDAR: Head made a motion to approve the Minutes of the January 2, 2019 Regular; Gilbert seconded the motion. Blaney abstained. Motion passed.**

#### **COMPLIANCE HEARINGS:**

- Compliance Hearing Request from Bert Przybylski, 422 Teal Court, Centennial: Bert Przybylski the applicant was absent, Cliff Weiss represented the applicant. Spitz addressed the Board on the compliance issue. The complaint originally came in on August 24, 2017, alleging that Przybylski had not been residing in the unit for some time and a renter was in the unit. On December 1, 2017 a Leave of Absence was approved for Przybylski until November 30, 2018 by APCA for further medical treatment.

Spitz stated Przybylski notified the APCA that he would not be returning before his leave of absence expired due to medical treatments. The APCA issued a Notice of Violation. Mr. Przybylski said he does want to return in his letter to APCA he just doesn't know when due to his recovery time being unknown. The 1999 APCA Guidelines allow for at most a two-year leave of absence and a further extension is not permitted by the Guidelines.

Spitz stated Przybylski has had an approved renter in the unit since November 28, 2017. Bert has been very open and honest with APCA recently and has cooperated with our requests; however, Mr. Przybylski did not originally request a leave of absence.

Spitz stated the APCA recommends that Przybylski be required to sell his unit as he has violated the leave of absence policy as he has been gone for more than two years. However, the APCA understands in Przybylski's current recovery and should be given a 3-month window to list his home for sale.

Smith stated the Board has dealt with medical conditions in the past and has previously advised that there is nothing in the rules to exempt any type of illness as a valid excuse. Blaney asked about the 1999 guidelines and stated that they sounded like a strict policy. Blaney then stated if we offer an exemption, we could be opening ourselves up to future legal issues. Smith stated that if we allow for medical conditions to deviate from the Guidelines, then we would have to do that consistently.

Mr. Weiss addressed the Board. Mr. Weiss stated he has known the applicant for 40 years. Przybylski had to wait almost a year to get accepted into the program. Weiss stated that he will be on “drugs” for the rest of his life and that there are still a lot of unknowns in his diagnosis. Weiss updated the Board on what Przybylski has gone through since receiving his new lungs. Weiss stated it is still unknown if Przybylski will be allowed to return.

Head stated that a letter in the Board packet mentions the applicant returning to Colorado at a lower altitude and that there are a lot of unknowns. Weiss stated that there are phases of care for the applicant. Weiss stated that he was here to make sure the Board had as much knowledge to the uniqueness of his medical condition and communicate the applicant’s wishes. Weiss agreed that medically it is unknown on whether he will be able to return.

Erickson opened the floor to public comment. There was no public comment. Erickson closed public comment.

Smith stated that these cases cannot be looked at without compassion. The Board is confronted with cases like this all the time. Smith also stated, that we must apply the rules equally to all and as it stands today, the Board is not able to allow longer than a two-year leave of absence.

After a short deliberation, **Head made a motion that based on the evidence provided by APCHA, Mr. Przybylski violated the leave of absence policy, therefore, must list 424 Teal Court, Centennial, Aspen, Colorado, for sale in accordance with the Guidelines and his deed restriction. However, the APCHA understands in Mr. Przybylski’s current recovery he should be given a 3-month window to list his home for sale. Council seconded the motion. ROLL CALL VOTE: Erickson, Head, Forbes, Council, Gilbert, Blaney, and Schmitz voted yes; All voted in favor. Motion passed.**

- Compliance Hearing Request from Kurt Keller, 6 Ajax: Kurt Keller, the applicant, was absent, Kim Keller, the applicant’s sister, and Nicky Hennings, were present representing the applicant. Spitz addressed the Board on the compliance issue. In 1978 approval was given by City Council to develop the Manor House which would include one deed restricted employee housing studio unit. That unit would initially be occupied by a Mr. Stewart and then would be sold through the housing authority. In 1994, the APCHA filed a Notice of APCHA Restrictions with the Pitkin County Clerk and Recorder’s Office. This filing provided notice to the public that even though there was no recorded deed restriction per se, the property was deed restricted.

Spitz stated that: 1) the developer/applicants’ attorney at the time of land use approval represented to the City that “the resale and right of first refusal restrictions applicable to

employee housing would be a part of the sale,” and the minutes of the meeting approving the project stated that “the applicant has given a studio unit for employee housing”; 2) the representations of the developer/applicants for development approval are legally enforceable; 3) the unrecorded requirements of a development approval are legally enforceable; 4) the developer pursued development and received the benefit of the approvals; 5) the Notice of APCHA Restrictions recorded by APCHA provided notice to prospective purchasers of the deed restricted status of the unit; and 6) Keller had actual or constructive knowledge of the deed restricted status of the property as a result of the Notice of APCHA Restrictions recorded before he purchased the property.

Spitz stated four years after the Notice was recorded on the property, in 1998, Mr. Keller purchased the property for roughly \$60,000 more than the price should have been. In 2000, the APCHA requested compliance with the Notice of APCHA Restrictions on the property as Mr. Keller had not responded to staff’s requests for compliance. However, the Notice did not require Mr. Keller to return an affidavit and the staff believed Mr. Keller to at least be living in the Unit. In 2016 through an investigation, APCHA discovered a Craigslist rental posting for Mr. Keller’s building. APCHA sent an affidavit to Mr. Keller using the address on file with APCHA and the Pitkin County Assessor’s office and it was returned as undeliverable. In 2017, Mr. Keller’s sister sent a letter to the APCHA stating that her brother had been living with her in California. In conversations with a family representative, the APCHA was told that the APCHA should stop contesting that a deed restriction is in place as the APCHA put a deed restriction on the property after Mr. Keller purchased the unit. This was placed 4 years prior to Mr. Keller purchasing the unit.

Spitz stated in 2018, the APCHA mailed a Notice of Violation to Mr. Keller’s address on file with the Assessor’s office, APCHA as well as Mr. Keller’s sister’s address in California. The address on file with the Assessor and APCHA was not valid.

Spitz stated the Notice is important as well as it states that the owner and buyer of the property must be qualified by APCHA meeting the employment and income qualifications and the property must be sold at a price at or below a Maximum Sales price determined by APCHA. Mr. Keller was never a qualified buyer. He never submitted a qualification packet. Furthermore, this unit has been vacant for at least two years if not longer.

Spitz stated the APCHA recommends that Mr. Keller be required to sell his unit. The APCHA Program is for eligible households who reside in their unit at least 9 months a year and work full-time in Pitkin County.

Smith stated that the 1978 City Council minutes contained the approval, they were clear that the unit was under jurisdiction and limited to that market. Smith stated that a buyer can have a notice in two ways, actual notice and constructive notice. The recordation of the

notice by APCHA advising of the deed restricted nature of the unit provides constructive notice that it is deed restricted. Smith stated that the law is clear, precise requirement on the merits is not required, the deed is a valid and enforceable from the time adopted. Council asked for Smith to speak as to why the lawsuit by the HOA was dropped. Smith stated he did not recall why that case was dropped. Gilbert asked for clarification on what the Board is trying to decide. Erickson stated the major issue is the maximum sales price and the discrepancy of what the purchase price was at the time Keller bought the unit and what was allowed at that time.

Ms. Keller addressed the Board. Ms. Keller stated that the applicant had signed power of attorney to speak on his behalf. Ms. Keller stated that the applicant has lived here most of his life and that the condominium is his only asset as well as his only experience with a real estate transaction. Ms. Keller stated that the applicant finds the current situation upsetting and the family agrees that this is unfair and immoral. Ms. Keller stated that the applicant bought the unit in 1998 at fair market price and during the purchase, the HOA told him there was no deed and no deed restriction. The applicant has paid full market value taxes on his property and since buying there has been no effort to enforce any deed restrictions. Ms. Keller stated that in the 1970s there was a proposal to seek approval to make unit 6 deed restricted but that there is no proof that this was ever more than a proposal. Ms. Keller stated that the APCHA finally recorded notice of deed restriction and the HOA filed a lawsuit of illegal taking, the HOA sold to Mr. Keller in 1998 with no restriction on the deed and was assured by all parties that there was no deed restriction. Ms. Keller stated that no representative from the APCHA came to Mr. Keller to talk to him about being a qualified buyer. Ms. Keller stated the HOA lawsuit was dropped after Mr. Keller bought with the HOA stating there was still no need. If Mr. Keller had known about the deed restriction he would have bought something else in 1997 on the free market, he has lost 20 years of appreciation.

Council asked Ms. Keller when the applicant spoke with a realtor and when did the applicant leave. Ms. Keller responded in 2014 and that Mr. Keller left approximately ten years ago but he had been back and forth to help family. Head asked what Ms. Keller was requesting. She responded that the applicant would like to sell the unit at free market value. Council asked Smith if there is a statute of limitations on the guidelines to which he responded there is no statute of limitations on real estate unless stated. These do not expire, unless the document states as such. Gilbert asked how the APCHA arrived at the sale price of \$153,000. Spitz responded that it was based on CPI.

Erickson opened the floor to public comment. There was no public comment. Erickson closed public comment.

After a short deliberation, **Head made a motion that based on the evidence provided by APCHA, Mr. Keller was never qualified through the APCHA and violated the work**

requirement and residency requirement, therefore, must list 6 Ajax, Aspen, Colorado, for sale in accordance with the Guidelines and his deed restriction; Gilbert seconded the motion. ROLL CALL VOTE: Schmitz, Blaney, Gilbert, Forbes, Head, and Erickson voted yes; Council voted no. Motion passed.

Council stated that he struggled with his vote based on the sales price. Not sure what it should be but believed that \$153,000 was not a fair price; however, Mr. Keller should be required to sell.

#### **NEW BUSINESS:**

- Land Use Review for a Minor Amendment to a Subdivision, 955 King Street: Chris Bendon, applicant's representative, was present to represent the case. Christensen summarized the application stating that the applicant came forward a year to request a change in the Category. The property was out of compliance by renting to a tenant that was not Category 1. The property is back into compliance. The applicant is requesting a change in the category to Category 3, 4 or 5. Christensen stated that based on APCHA's analysis, there is still a huge need for lower category units and upper category units. Based on the history of the unit, staff has provided two options for the Board to consider: 1) make no change in the unit's income category designation (i.e., do nothing) or 2) recommend a change to Category 4 at a fee-in-lieu mitigation cost of \$249,718 since there is a need for additional Category 4 units relative to Pitkin County working households.

Bendon stated that the current owners have owned for 20-25 years. The previous tenant had made a big commission and couldn't requalify. Bendon stated the previous tenant is no longer there and they have a qualified tenant in the unit now. The applicants still have a desire to recategorize the unit, out of their own sense of safety after having a series of experiences with Category 1 applicants that made it challenging for the owner. Bendon sat with Kosdrosky and asked what the biggest need was and Categories 3, 4, and 5 were in the discussion. Bendon stated he understands the staff recommendation but doesn't 100% agree, the applicants have hesitation about the fee, Bendon doesn't see a requirement in the Land Use code but would like to move this forward to City Council with the Board's approval to change the category of the unit.

Forbes raised concern about discriminating against how people act based on their category. Forbes stated that the owners are responsible for background checks. Blaney stated that he agrees with Forbes, this feels like a gross mischaracterization of people.

Erickson opened the floor to public comment. There was no public comment. Erickson closed public comment.

After further discussion, **Council made a recommendation to keep the unit as is at Category 1 as originally approved; Head seconded the motion. ROLL CALL VOTE: Erickson, Head, Forbes, Council, Gilbert, Blaney, and Schmitz voted yes. All voted in favor. Motion passed.**

The meeting was adjourned at 7:00 p.m.

THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

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A. Ronald Erickson, Chairperson

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Michael A. Kosdrosky, Secretary



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## MEMORANDUM

TO: APCHA Board of Directors  
FROM: Cindy Christensen, Deputy Director  
THRU: Mike Kosdrosky, Executive Director  
DATE: February 6, 2019  
RE: **Approval of Resolution No. 01 (Series 2019), Denying the Appeal of Bert Przybylski of the Notice of Violation Dated December 13, 2018**

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### ISSUE:

Consideration of a resolution denying the appeal requested by Bert Przybylski requiring the sale of his home at 424 Teal Court, Aspen, Colorado.

### BACKGROUND

The Board held a hearing at their Regular Meeting held January 16, 2019 to consider an appeal of a Notice of Violation requiring Mr. Przybylski to sell his property at 424 Teal Court, Aspen, Colorado. The Board upheld Staff's decision and is considering approval of Resolution No. 1 (Series of 2019) requiring Mr. Przybylski to list said property within 14 days of the Order stipulated in the Resolution.

### RECOMMENDATION

Staff recommends that the Board make a motion as follows:

**"The Board approves Resolution No. 01 (Series of 2019), Denying the Appeal of Bert Przybylski of the Notice of Violation dated December 13, 2018."**



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**Resolution No. 01**  
(Series of 2019)

**A RESOLUTION OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY BOARD  
DENYING THE APPEAL OF BERT PRZYBYLSKI OF THE  
NOTICE OF VIOLATION DATED DECEMBER 13, 2018**

**RECITALS**

**WHEREAS**, on December 13, 2018, APCHA staff issued a Notice of Violation (“NOV”) to Bert Przybylski asserting that he is in violation of the Deed Restriction and the APCHA Guidelines in connection with his ownership of deed restricted property located at 424 Teal Court, Aspen, CO 81611, “the Property,” by failing to return to residency on the property after a two-year leave of absence; and

**WHEREAS**, in accordance with the NOV, the Deed Restriction, and the APCHA Guidelines, Mr. Przybylski requested an appeal hearing before the APCHA Board in order to contest the NOV and the requirement that he list the Property for sale; and

**WHEREAS**, on January 16, 2019, the APCHA Board conducted a quasi-judicial hearing at which Mr. Przybylski was not present because of his medical condition but was represented by Mr. Cliff Weiss. The APCHA Board considered written evidence, testimony and arguments at the hearing from APCHA staff and Mr. Przybylski’s representative. At that time, the APCHA Board denied the appeal and directed its staff and attorney to prepare a resolution containing its decision. Accordingly, the APCHA Board enters the following findings of fact, conclusions of law and order.



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**FINDINGS OF FACT**

1. APCHA is a multi-jurisdictional housing authority established by intergovernmental agreement between the City of Aspen and Pitkin County (“the IGA”) in accordance with CRS 29-1-204.5. The IGA authorizes APCHA to administer and enforce the affordable housing program, including deed restrictions, and to adopt guidelines for the administrative and enforcement of the deed restrictions (“the Guidelines”).

2. The Property is encumbered by the Centennial Condominium Occupancy and Resale Deed Restriction and Agreement, executed by Mr. Przybylski, recorded on July 2, 1997, at Reception No. 405925 of the records of Pitkin County, Colorado (“the Deed Restriction”).

3. The Deed Restriction and the applicable APCHA Guidelines specify that owners may be granted a leave of absence, not to exceed two years in duration.

4. On December 1, 2017, APCHA approved a one-year leave of absence. When Mr. Przybylski did not return to the Property at the end of that year, APCHA granted a de facto extension of one year, which expired on November 30, 2018.

5. Mr. Przybylski did not, and has not, returned to reside on the Property after expiration of the second year of the leave of absence. He admits that he is not able to return to the Property as a result of his health and the need to reside in the Phoenix, Arizona, area for close medical monitoring and access to physicians following surgery. He is not able to state when, if at all, he will be able to return to the Property.

6. On December 13, 2018, APCHA staff issued a Notice of Violation to Mr. Przybylski, providing him with a further opportunity to demonstrate compliance. He did not do so and he requested a hearing before the APCHA Board. Mr. Przybylski did not produce evidence of compliance at the hearing.

**CONCLUSIONS OF LAW**

1. The Deed Restriction and the APCHA Guidelines require that the owner of the Property must be a full-time resident as defined therein. Paragraph 9 of the Deed Restriction requires that the Owner must occupy the property and his sole and exclusive place of residence and reside on the Property for a minimum of nine months out of any twelve-month period.

2. While the Deed Restriction does not include any exceptions from the residency requirements, the APCHA Guidelines permit a leave of absence not to exceed two years, which was granted by APCHA in this case to accommodate Mr. Przybylskis’ need to obtain medical treatment in Phoenix, Arizona.



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3. A leave of absence beyond two years is not permitted for any reason.
4. Neither the Deed Restriction nor the APCHA Guidelines include an exception from the residency requirements based on medical condition or health-related issues.
5. The evidence demonstrates that Mr. Przybylski does not meet the residency requirements of the Deed Restriction and the APCHA Guidelines, and that he could not commit to meeting these requirements in the future.
6. The APCHA Program is for eligible households who work full-time in Pitkin County or who are qualified retirees who must occupy their deed restricted property as their sole and exclusive place of residence, living in their home a minimum of nine months out of the year. Mr. Przybylski does not meet these requirements.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY AS FOLLOWS:**

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the APCHA Board of Directors denies the appeal and approves the recommendation of APCHA staff, that Mr. Przybylski is in violation of the applicable residency requirements, and he is required by paragraph 9 of the Deed Restriction to list his property at 424 Teal Court, Aspen, Colorado 81611, for sale by no later than May 1, 2019, at a maximum resale price to be determined by APCHA staff in accordance with the Deed Restriction.

**ADOPTED AND APPROVED THIS 6<sup>th</sup> DAY OF FEBRUARY 2019** at the Aspen/Pitkin County Housing Authority's Regular Meeting.

ASPEN/PITKIN COUNTY HOUSING AUTHORITY

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A. Ronald Erickson, Chairperson

ATTEST:

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Michael A. Kosdrosky, Secretary

**MEMORANDUM**

**TO:** APCHA Board of Directors  
**FROM:** Cindy Christensen, Deputy Director  
**THRU:** Mike Kosdrosky, Executive Director  
**DATE:** February 6, 2019  
**RE:** **Approval of Resolution No. 02 (Series 2019), Denying the Appeal of Kurt Keller of the Notice of Violation Dated October 3, 2018**

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**ISSUE:**

Consideration of a resolution denying the appeal requested by Kurt Keller requiring the sale of his home at 6 Ajax, 107 Aspen Mountain Road, Aspen, Colorado.

**BACKGROUND**

The Board held a hearing at their Regular Meeting held January 16, 2019 to consider an appeal of a Notice of Violation requiring Mr. Keller to sell his property at 6 Ajax, 107 Aspen Mountain Road, Aspen, Colorado. The Board upheld Staff's decision and is considering approval of Resolution No. 2 (Series of 2019) requiring Mr. Keller to list said property within 14 days of the Order stipulated in the Resolution.

**RECOMMENDATION**

Staff recommends that the Board make a motion as follows:

**"The Board approves Resolution No. 02 (Series of 2019), Denying the Appeal of Kurt Keller of the Notice of Violation dated October 3, 2018."**



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**Resolution No. 02**  
(Series of 2019)

**A RESOLUTION OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY BOARD  
DENYING THE APPEAL OF KURT KELLER OF THE  
NOTICE OF VIOLATION DATED OCTOBER 3, 2018**

**RECITALS**

**WHEREAS**, on October 3, 2018, APCA staff issued a Notice of Violation (“NOV”) to Mr. Kurt Keller asserting that he is in violation of the residency and employment requirements of the APCA Guidelines applicable to his property, Unit 6, Ajax Condominiums, 107 Aspen Mountain Road, Aspen, CO 81611, “the Property”; and

**WHEREAS**, in accordance with the NOV, the Deed Restriction, and the APCA Guidelines, Mr. Keller requested an appeal hearing before the APCA Board in order to contest the NOV and the requirement that he list the Property for sale; and

**WHEREAS**, on January 16, 2019, the APCA Board conducted a quasi-judicial hearing at which Mr. Keller did not appear in person but was represented by his sister, Kimberlee Keller, of Sebastopol, California. The APCA Board considered written evidence, testimony and arguments at the hearing from APCA staff, its attorney, and Ms. Keller. At that time, the APCA Board denied the appeal and directed its staff and attorney to prepare a resolution containing its decision. Accordingly, the APCA Board enters the following findings of fact, conclusions of law and order.

**FINDINGS OF FACT**

1. APCA is a multi-jurisdictional housing authority established by intergovernmental agreement between the City of Aspen and Pitkin County (“the IGA”) in accordance with CRS 29-1-204.5. The IGA authorizes APCA to administer and enforce the affordable housing



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program, including deed restrictions, and to adopt guidelines for the administrative and enforcement of the deed restrictions (“the Guidelines”).

2. On August 28, 1978, the Aspen City Council granted final subdivision approval for condominiumization of the Manor House, now known as Ajax Condominiums. The property is Unit #6 of the Ajax Condominiums (Hearing Exhibit F).

3. In connection with the application, the applicant’s attorney represented to the Aspen City Council that Unit #6 would be restricted to employee housing in accordance with the City’s restrictions applicable to employee housing (Hearing Exhibit E). The City’s approval states that “The applicant has given a studio unit for employee housing.”

4. On December 14, 1994, APCHA recorded a Notice of Aspen/Pitkin County Housing Authority Restrictions (“the Notice”), at Reception No. 377158 of the records of the Pitkin County Clerk and Recorder (Hearing Exhibit D). The Notice stated that the Property is subject to the residency and employment requirements of the APCHA Guidelines as a result of the action of the Aspen City Council referred to above.

5. Mr. Keller purchased the Property in 1998, approximately four years after the recordation of the Notice.

6. On October 3, 2018, APCHA staff issued a Notice of Violation to Mr. Keller based upon violations of the residency and employment requirements of the APCHA Guidelines, and requiring that he cure the violations, list the Property for sale, or request a hearing before the APCHA Board to dispute the Notice of Violation. Mr. Keller requested a hearing.

7. At the hearing on January 16, 2019, APCHA staff presented evidence, including Exhibits A through G attached to the staff Enforcement Hearing Memorandum, demonstrating that Mr. Keller is not in compliance with the residency and employment requirements of the City of Aspen’s approval referred to above.

8. Mr. Keller did not produce any evidence at the hearing to refute the evidence contained in the staff Enforcement Memorandum. In fact, it is admitted that Mr. Keller does not reside on the Property and that he does not work in Pitkin County because he now a resident of California where he is cared for by his sister.

9. The sole basis for the appeal is the assertion by Mr. Keller that the Property is a free-market unit and not subject to the requirements applicable to employee housing.

**CONCLUSIONS OF LAW**

1. The APCHA Board agrees with the opinion of its attorney, as reflected in Hearing Exhibit G, that in Colorado, governmentally imposed use restrictions such as those at issue in this case which are contained in zoning ordinances are not subject to the recording requirements



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of Colorado law, and that they need not be recorded in order to be enforceable against subsequent purchasers, such as Mr. Keller, even if he had no actual knowledge of the restrictions.

2. Based upon the Aspen City Council's approval of the Manor House Final Subdivision and the conditions thereof, Unit #6 is subject to the requirements of the APCHA Guidelines.

3. The developer of the Ajax Condominiums represented to the Aspen City Council that Unit #6 was employee housing, and the developer received all of the benefits of the City's approval of the project. Therefore, it is bound by its representations and the conditions of the approval, which run with the land and are binding on subsequent purchasers.

4. Even though the conditions of the City's approval are binding on Mr. Keller in the absence of actual knowledge thereof, the Notice recorded by APCHA means that Mr. Keller had actual and/or constructive knowledge of the status of Unit #6 as employee housing at the time that he purchased the Property.

5. The APCHA Guidelines require that an Owner of the Property must occupy the Property as a principal/primary residence and at least nine months per year.

6. The evidence demonstrates that Mr. Keller has not, and does not, occupy the Property as his principal/primary place of residence. Rather, the evidence demonstrates that Mr. Keller resides in California as his primary place of residence, and therefore he does not meet the residency requirements of the APCHA Guidelines.

7. An Owner of the Property is required to work full-time in Pitkin County, i.e., 1500 hours per calendar year.

8. The evidence demonstrates that Mr. Keller does not work the required number of hours in Pitkin County. Therefore, he does not meet the employment requirement of the APCHA Guidelines.

9. The residency and employment requirements are enforceable by APCHA, which may require the sale of the Property by an owner who is in violation of the APCHA Guidelines.

10. The APCHA program is for eligible households who work full-time in Pitkin County and occupy their employee housing as their sole and exclusive place of residence, living in their home a minimum of nine months out of the year. Mr. Keller does not meet the applicable requirements.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY AS FOLLOWS:**



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**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, Mr. Keller's appeal is denied. The APCHA Board approves the recommendation of APCHA staff that Mr. Keller has violated the residency and employment requirements of the APCHA Guidelines, and therefore he is required to list the Property for sale in accordance with the APCHA Guidelines, at a price to be determined by APCHA staff in accordance with the APCHA Guidelines, within 15 days of the date of this Resolution.

**ADOPTED AND APPROVED THIS 6<sup>th</sup> DAY OF FEBRUARY 2019** at the Aspen/Pitkin County Housing Authority's Regular Meeting.

ASPEN/PITKIN COUNTY HOUSING AUTHORITY

\_\_\_\_\_  
A. Ronald Erickson, Chairperson

ATTEST:

\_\_\_\_\_  
Michael A. Kosdrosky, Secretary