



Strengthening Community Through Workforce Housing

AGENDA
REGULAR MEETING OF THE APCHA BOARD OF DIRECTORS
WEDNESDAY, FEBRUARY 20, 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 February 6, 2019 Regular Meeting

5:35 – 6:15 Compliance Hearing

- Compliance Hearing Request from Meredith Lenk, 937 West Hallam

Miscellaneous Attachments/Information

- Future Agendas
- Draft Appeal Brief to District Court and Grievance to APHCA (sic) Board and Colorado Housing and Finance Agency – Amanda Tucker & Rennie D Tucker-Meuse

Adjournment

NEXT MEETING: MARCH 6, 2019

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



Strengthening Community Through Workforce Housing

**MINUTES OF THE FEBRUARY 6, 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 February 6, 2019 meeting was held in the Board of County Commissioners Room, Pitkin County Building, 530 E Main Street.

ROLL CALL: Ron Erickson, Valerie Forbes, Becky Gilbert, Rick Head, and Carson Schmitz were present. Dallas Blaney, Chris Council, and John Ward were absent.

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

Rules of Decorum: The Rules of Decorum for APCHA Board Meetings were read by Valerie Forbes.

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

- Phyllis Mattice, Assistant County Manager, stated that the requested Guideline policy changes will be reviewed by the BOCC on March 12, 2019 at 11:00 a.m. This will include the fine schedule and creation of a hearing officer position. Mattice requested that the emergency worker procedure and definition that the Board approved last month be brought back to the Board as soon as possible for formal approval.

EXECUTIVE DIRECTOR COMMENTS:

- Kosdrosky updated the Board that APCHA staff and Board members will be participating in three days of Habitat for Humanity in conjunction with the Basalt Vista Housing Project.
- Kosdrosky stated that Dallas Blaney was unable to make the meeting due to the weather, but wanted to comment on the following:
 - Concerned about APCHA's community strategy, particularly given the plan to change the appeals process by hiring a hearing officer as well as the draconian fine structure about to be implemented. He strongly urged the Board to consider using its own funds to hire a communications firm to develop a comms strategy for these and other changes.
 - Agree with the resolutions.
 - Eager to hear about the hear about the latest scheme to restructure the IGA and reconstitute the Board. Seriously concerned about the proposed arrangement to appoint a mix of elected officials and appointed citizens and has serious doubts about the efficacy of placing elected officials on the board at all. Preference is to set up an independent board with the power to make binding decisions. Although it seems this is also one potential outcome of the proposed IGA reforms, it is not clear why elected officials feel the need to reconstitute the board to achieve this solution. From his perspective, this step

threatens to replace what is a highly functional and effective board with one that will only produce a toxic mix of elected officials from different jurisdictions, weakly moderated by a minority of citizens board members who receive their appointment to the board from these same elected officials. Assuming an equal number of city and county elected officials on the board with an uneven number of appointed citizens, which jurisdiction will have the right to appoint the majority. Could produce mistrust, tension and resentment. This type of approach may not survive long before the city and county either get a divorce or once again spend the taxpayers' money to restructure the IGA. Ultimately, the only outcome from this arrangement is one that politicizes the board (particularly during election season) and perhaps weakening APCHA in the process.

DIRECTOR COMMENTS:

- Gilbert agreed with Blaney's sentiments being against putting elected officials on the Board. Head stated that based on the February 5, 2019 work session, he is pretty sure that the change to having elected officials on the Board will happen. Kosdrosky stated that staff is looking into whether the APCHA Board can have elected officials on in it based on the State's multi-jurisdictional regulations.
- Forbes stated that those inquiring information about the Habitat building should contact Andrew Miller.

CONSENT CALENDAR: Head made a motion to approve the Minutes of the January 16, 2018 Regular Meeting, Resolution No. 01 (Series of 2019, Denying the Appeal of Bert Przybylski of the Notice of Violation Date December 13, 2018), and Resolution No. 2 (Series of 2019, Denying the Appeal of Kurt Keller of the Notice of Violation Dated October 3, 2018); Schmitz seconded the motion. All were in favor. Motion passed.

POLICY DISCUSSION:

- Governance Conversation – Amendments to the Fifth Amended and Restated IGA: Erickson stated that a fully independent APCHA is not something that will happen tomorrow but suggests that it is the only way to go. There are two options moving forward – to be a department within the City or County, or as a fiscal agent with the City or County. The major difference is who the Executive Director would report. Erickson stated that a citizen minority committee/board is not something he would be interested in serving on. Head stated that there was an opportunity to comment at the work session, but no one did. Gilbert stated that she feels we are not really recognized or really given a chance to make their voices heard and agrees with Erickson that it should be a citizen majority not an elected majority. Erickson made mention of a general atmosphere of a lack of trust for what we were appointed to do. Erickson stated that there is nothing wrong with the current Board makeup and stated that the process is slow and cumbersome making it look like nothing is getting done.
- Notice of Amendments to the Employee Housing Guidelines sent to City Council and BOCC: Phyllis Mattice stated that the BOCC has reserved an hour on March 12, 2019 for this

discussion. Linda Manning, City Clerk, stated that the City Council will be reviewing this on February 11, 2019 to decide on whether to call it up or not.

- Deferred Maintenance and Capital Reserves: Erickson stated that the deferred maintenance and capital reserves conversation were the motivating factor for City Council person Adam Frisch. Kosdrosky stated that APCHA has done the HOA study and now are in the process of putting it in report form to bring back to the Board. Kosdrosky has also met with Reserve Associates to draft a comprehensive policy to go forward.
- Forbes asked where APCHA was with the HIMS process. Kosdrosky stated that an updated RFP is ready to be distributed with a new deadline for proposals. Still aiming for the end of the year for implantation.
- Forbes stated that someone she knows applied for a building permit 8 to 12 weeks ago without any approval to date and was wondering if there is anything APCHA can to speed up this process. Christensen stated we can talk with the building department and Kosdrosky stated that we are at their mercy. Kosdrosky stated that there may be an opportunity for an HOA or on a unit level to work with the permitting authority to help expedite the process, this could be a much broader conversation at a later meeting.

The meeting was adjourned at 5:53 p.m.

THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

A. Ronald Erickson, Chairperson

Michael A. Kosdrosky, Secretary



Strengthening Community Through Workforce Housing

TO: Board of Directors
FROM: Bethany Spitz, Compliance Manager
THRU: Mike Kosdrosky, Executive Director
DATE OF MEMO: February 12, 2019
MEETING DATE: February 20, 2019
RE: **Enforcement Hearing: Ms. Lenk's Appeal of APCHA's Notice of Violation (NOV) dated December 19, 2018**

PURPOSE:

Enforcement hearing to review the APCHA's Notice of Violation (NOV) (Exhibit A) issued to Ms. Lenk pertaining to the property located at 937 West Hallam, Unit 937 Red House Enclave Condominiums Aspen, Colorado on December 19, 2018. The alleged violations of the Notice of Aspen Pitkin County Housing Restrictions and/or the APCHA Guidelines are:

1. Household Ownership of Property in the Ownership Exclusion Zone

Ms. Lenk has requested an APCHA Board Hearing.

DISCUSSION:

On December 13, 2018 the APCHA received an anonymous complaint that Ms. Lenk was recently married, and her spouse owns two other properties in the Ownership Exclusion Zone.

The APCHA conducted research into this complaint. The APCHA pulled a Marriage Certificate from the Pitkin County Clerk and Recorder's records showing a marriage date of September 29, 2018 between Ms. Lenk and Mr. Leu (Exhibit B). The Marriage Certificate shows Ms. Lenk as a resident of Basalt. The APCHA pulled two property records from the Pitkin County Assessor's website. The records indicate that Mr. Leu owns two properties in the Ownership Exclusion Zone. The first property, located in Basalt, Colorado has an estimated market value of \$3,370,700 (Exhibit C). The second property, located in Woody Creek, Colorado, has an estimated market value of \$738,000 (Exhibit D).

To be eligible and remain eligible for APCHA Housing an individual must qualify as a qualified buyer and remain qualified. The APCHA Employee Housing Guidelines defines a household as "all individuals who will be occupying a unit regardless of legal or marital status, including a married couple, whether both will be living in the unit or not" (Exhibit E). Ms. Lenk's household includes her new spouse, Mr. Leu. Together the "household" owns three properties in the Ownership Exclusion Zone.

APCHA sent a Notice of Violation letter to Ms. Lenk on December 19, 2018 providing an option to cure by selling either the deed restricted property or the two free market properties in the Ownership Exclusion Zone. In response to that letter Ms. Lenk requested a board hearing.

The evidence supporting the above violations includes:

1. Ms. Lenk's marriage certificate.
2. Ms. Lenk's spouse's property records in the Ownership Exclusion Zone.

Conclusion

The evidence cited above is proof that Ms. Lenk is no longer a qualified household under APCHA's definitions. This is a violation of Mr. Lenk's Deed Restriction and the APCHA Guidelines and requires her to sell her deed restricted property.

STAFF RECOMMENDATION:

The APCHA Program is for eligible households who do not own other property in the ownership exclusion zone. Based on the evidence and the strict application of the Guidelines, APCHA recommends the Board uphold the staff determination that:

1. Ms. Lenk is in violation of the Deed Restriction and the APCHA Guidelines; and
2. Ms. Lenk must list Unit 937, Red House Enclave Condominiums, Aspen, CO, for sale in accordance with the Guidelines and the Deed Restriction.

RECOMMENDATED MOTION:

The APCHA Program is for eligible households who do not own other property in the ownership exclusion zone.

Based on the evidence and the strict application of the Guidelines, the Board upholds the staff determination that:

1. Ms. Lenk is in violation the Deed Restriction and the APCHA Guidelines; and
2. Ms. Lenk must list Unit 937, Red House Enclave Condominiums, Aspen, CO, for sale in accordance with the Guidelines and the Deed Restriction.

EXHIBITS:

- A. Notice of Violation
- B. Marriage Certificate dated 9/28/2018
- C. Property Number 1 Owned by Ms. Lenk's spouse in Basalt
- D. Property Number 2 Owned by Ms. Lenk's spouse in Woody Creek
- E. Pertinent Provisions of the Deed Restriction and the APCHA Guidelines



210 E. Hyman, Suite 202 • Aspen, CO 81611
970-920-5050 • www.apcha.org

Strengthening Community Through Workforce Housing

NOTICE OF VIOLATION

12/19/2018

Meredith Lenk
937 West Hallam
Aspen, Colorado 81611

Via Email, Mail and Certified Mail

RE: Employee Housing Compliance – 937 West Hallam

Dear Ms. Lenk:

The Aspen Pitkin County Housing Authority (APCHA) hereby serves you with a Notice of Violation for breach of the Deed Restriction Agreement for the Occupancy and Resale of Unit 937, Red House Enclave Condominiums and APCHA's Employee Housing Guidelines (Guidelines) in regard to the home located at 937 West Hallam, Aspen, Colorado. The APCHA received an anonymous complaint that you have been recently married and your spouse owns two properties in Pitkin County. Research conducted by APCHA determined that you were married on September 29, 2018 to a Mr. Steve Leu, and that Mr. Leu owns to properties in the Ownership Exclusion Zone.

Section 2. *Requirements* of the Deed Restriction Agreement for the Occupancy and Resale of Unit 937, Red House Enclave Condominiums states:

An Owner, in connection with the purchase of this Property or Unit, must: a) occupy any Unit within this Property as his or her sole place of residence during the time that such unit is owned; b) not own, directly or indirectly through a legal entity, any interest alone or in conjunction with others, in any developed property or dwelling units in accordance with the limitations established by the Guidelines as amended from time to time; . . . f) not permit any use or occupancy of such Unit except in compliance with this Agreement; g) continue to meet the residence and employment requirements of a Qualified Buyer established by the APCHA Guidelines and as they are amended from time to time; . . .

Section 15. *Owner Residence, Employment and Continuing Compliance* of the Deed Restriction Agreement for the Occupancy and Resale of Unit 937, Red House Enclave Condominiums states:

The Property and all Units shall be and is/are to be utilized only as the sole and exclusive place of residence of an Owner.

Section 16. *Owner Residence, Employment and Continuing Compliance* of Deed Restriction Agreement for the Occupancy and Resale of Unit 937, Red House Enclave Condominiums states:

1
Lenk
12/19/2018

In the event an Owner changes place of residence or ceases to utilize the Property or Unit as his sole and exclusive place of residence . . . the Property or Unit MUST be offered for sale. . . An Owner shall be deemed to have changed his or her place of residence by becoming a resident elsewhere or accepting employment outside Pitkin County, or residing on the Property or Unit for fewer than nine (9) months per calendar year without the express written approval of the APCHA . . .

Part II, Section 7, *APCHA Eligibility*, and Part IV, Section 1 *APCHA Eligibility*, of the APCHA Guidelines states:

In order to be eligible for housing in the APCHA inventory, all persons must:

- ✓ *Work full-time (1,500 hours per calendar year) in Pitkin County;*
- ✓ *Occupy the APCHA unit as a primary residence (at least nine months per year); and*
- ✓ *Own NO other developed residential property within the Ownership Exclusion Zone*

Part VII, Section 1 *Maintaining Eligibility (B) Ownership*, states:

Owners are not required to maintain household gross income and net asset limitations, or to meet minimum occupancy requirements, but shall be required to maintain all other APCHA qualification requirements (i.e., residing in unit at least nine (9) months out of each calendar year, working full-time within Pitkin County, and not owning other residential property within the OEZ). APCHA will require all owners to complete and sign a Requalification Affidavit on a bi-yearly basis.

APCHA has the right to request additional documentation through an audit or follow up on a complaint. Failure to complete the requested forms and/or submit the requested documentation will result in a Notice of Violation and appreciation will be terminated until the homeowner is brought back into compliance. Such owners are prohibited from recouping the appreciation lost during the period of non-compliance.

Part VIII, *Definitions*, state:

Household – All individuals who will be occupying a unit regardless of legal or marital status, including a married couple, whether both will be living in the unit or not.

Primary Residence -The sole and exclusive place of residence of a person. An owner or tenant shall be deemed to have ceased to use a unit as his/her primary residence by accepting employment outside of Pitkin County, or by residing in the unit fewer than nine (9) months out of any twelve (12) consecutive months.

The APCHA hereby requests that you bring the unit back into compliance. **Accordingly, you must do one of the following by 5:00 p.m. January 3, 2019:**

1. Cure the Violation by:
 - Providing documentation that you are listing the two properties Mr. Leu owns for sale;
 - Listing 937 West Hallam for sale; or
2. Request a hearing before the APCHA Board to dispute your Notice of Violation within 15 days of the date of this Notice of Violation.

Part VII, Section 5(B)(1)(c), *Enforcement Procedures*, of the APCHA Guidelines states:

If the alleged violator does not cure the violation or request a hearing before the APCHA Board within the fifteen (15) day period, the violation identified in the NOV shall be deemed final. In the event of litigation, the failure to request a hearing as provided above shall be deemed by APCHA to constitute a failure to exhaust administrative remedies for the purpose of judicial review. At the conclusion of

the fifteen (15) day period, APCHA may pursue all remedies as provided by law or in equity, including, where applicable, a requirement that the subject property be sold in accordance with the deed restriction.

Part VII, Section 5(B)(1)(g) states:

With respect to ownership units, during the period from the date of the NOV until the violation is cured, appreciation will be terminated until the homeowner is brought back into compliance. Such owners are prohibited from recouping the appreciation lost during the period of non-compliance.

If you wish to request a hearing before the APCHA Board, please contact me to establish the date at bethany.spitz@cityofaspen.com or call me at 970-920-5137. The APCHA will need a written request by the Wednesday prior to the hearing. The written grievance may be simply stated, but shall specify: 1) the particular ground(s) upon which it is based; 2) the action requested; and 3) the name, address, telephone number of the complainant and similar information about his/her representative, if any.

If you fail to respond by **5:00 p.m. January 3, 2019** APCHA will have no choice but to refer this matter to legal counsel.

Sincerely,

Bethany Spitz
Compliance Manager

Cc: Mike Kosdrosky, Executive Director, APCHA
Thomas Fenton Smith, Esq.

THIS LICENSE VALID ONLY IN COLORADO
35 DAYS FROM DATE OF ISSUE

No.86875

NOTE: THIS IS A MARRIAGE LICENSE - NOT A MARRIAGE CERTIFICATE. IF IT IS NOT USED, THE PERSON TO WHOM IT IS DELIVERED MUST RETURN IT PROMPTLY TO THE COUNTY CLERK AND RECORDER WHO ISSUED IT.

MARRIAGE LICENSE

STATE OF COLORADO.
Pitkin County

To any person or religious society Authorized by Law to Perform the Marriage Ceremony:

GREETING:

You are hereby authorized to join in marriage

STEVE JAMES LEU

of BASALT, CO

and

MEREDITH HELEN LENK

of BASALT, CO

and of this license you will make due return to my office.



Witness, my hand and the seal of my office at Pitkin, Colorado
this 28th day of September, 2018 Issued at 10:54 AM

Janice K. Vos Caudill County Clerk and Recorder
Patricia Nadem Deputy Clerk

MARRIAGE CERTIFICATE

STATE OF COLORADO,
County of PITKIN } SS.

It is hereby certified that on the 29 day of September
A.D., 20 18 at 2:00 PM @ 1055 N. HADEN RD ASPEN
in said county, the undersigned, did join in Matrimony in accordance with the laws
of the state of Colorado and the authorization of the foregoing license

STEVE JAMES LEU

of BASALT, CO

and

MEREDITH HELEN LENK

of BASALT, CO

Witness, my hand this day and year last above written

[Signature]
Witness Signature
[Signature]
Witness Signature

[Signature]
Signature of Officiating Party
REVEREND STEVE VOZ CAUDILL
Print Title of Officiating Party
[Signature]
Party One Signature
[Signature]
Party Two Signature

RETURN TO STEVE LEU / MEREDITH LENK, PO BOX 552, WOODY CREEK, CO 81656

63 DAY NOTICE
THIS MARRIAGE CERTIFICATE MUST BE FORWARDED TO THE COUNTY CLERK AND RECORDER SHOWN ON THE TOP OF THIS FORM, BY THE PERSON OR PARTY SOLEMNIZING THE MARRIAGE,
WITHIN 63 DAYS OF SOLEMNIZATION.

FAILURE TO DO SO SHALL RESULT IN A LATE FEE OF NOT LESS THAN 20 (TWENTY) DOLLARS, PAYABLE BY THE SOLEMNIZING PERSON OR PARTY AN ADDITIONAL FIVE-DOLLAR LATE FEE
WITH THE FORWARDING REQUIREMENTS OF THIS SUBSECTION (1) UP TO A MAXIMUM OF FIFTY DOLLARS FOR
D PURSUANT TO THIS SUBSECTION (1), THE DATE OF FORWARDING SHALL BE DEEMED TO BE THE DATE OF THE
POSTMARK. CRS

14-2-109(1)
by the Office of the State Registrar of Vital Statistics, Revised 07/2014

Marriage License #: 86875
10/29/2018 at 08:53:42 AM
RECEPTION#: 651521
Janice K. Vos Caudill, Pitkin County, CO

Pitkin County Assessor

Parcel Detail Information

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[Basic Building Characteristics](#) | [Value Summary](#)

[Parcel Detail](#) | [Value Detail](#) | [Sales Detail](#) | [Residential/Commercial Improvement Detail](#)
[Owner Detail](#) | [Land Detail](#) | [Photographs](#)

Tax Area	Account Number	Parcel Number	Property Type	2017 Mill Levy
016	R006998	246534201004	RESIDENTIAL	75.224

Primary Owner Name and Address

LEU STEVE J
227 SAGE RIM CIR
BASALT, CO 81621

[Additional Owner Detail](#)

Legal Description

Subdivision: SOPRIS MOUNTAIN RANCH Lot: 34 Section: 34 Township: 8 Range: 87 PARCEL 34 PARCEL OF LAND BEING PART OF TR 75 & LOT 2 OF SEC 34-8-87 CONT 35.09 AC M/L DESC BY M/B BK 289 PG 698 BK 376 PG 703 AKA PARCEL 34

Location

Physical Address:	227 SAGE RIM CIR BASALT	
Subdivision:	SOPRIS MOUNTAIN RANCH	
Land Acres:	35.040	
Land Sq Ft:	0	
Section	Township	Range
34	8	87

2018 Property Value Summary

	Actual Value	Assessed Value
Land:	775,000	55,800
Improvements:	2,595,700	186,890
Total:	3,370,700	242,690

Sale Date:	9/13/2018
Sale Price:	1,650,000

[Additional Sales Detail](#)

Basic Building Characteristics

Number of Residential Buildings:	1
Number of Comm/Ind Buildings:	0

Residential Building Occurrence 0 Characteristics	
LOFT:	285
FINISHED BSMT:	1,520
WOOD BALCONY:	180
UNFINISHED BSMT:	266
OPEN PORCH:	279
FIRST FLOOR:	4,226
FINISHED GARAGE HEATED:	964
Total Heated Area:	6,031
Property Class:	SINGLE FAM RES-IMPROVEMEN
Actual Year Built:	1997
Effective Year Built:	1997
Bedrooms:	3
Baths:	3.5
Quality of Construction:	EXCELLENT
Exterior Wall:	WOOD SD GO
Interior Wall:	DRYWALL
Floor:	CUT STONE
Floor:	WOOD
Floor:	CARPET
Heat Type:	FORCED AIR
Heating Fuel:	GAS
Roof Cover:	METAL
Roof Structure:	GABLE/HIP
Neighborhood:	SOPRIS MOUNTAIN RANCH

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Pitkin County Assessor

Parcel Detail Information

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[Owner Detail](#) | [Land Detail](#) | [Photographs](#)

Tax Area	Account Number	Parcel Number	Property Type	2017 Mill Levy
096	R006322	246734301001	RESIDENTIAL	109.386

Primary Owner Name and Address

LEU STEVE J
PO BOX 552
WOODY CREEK, CO 81656

[Additional Owner Detail](#)

Legal Description

Subdivision: GATEWAY OF SNOWMASS MESA Block: 1 Lot: 1 FILING 1
--

Location

Physical Address:	280 GATEWAY RD SNOWMASS
Subdivision:	GATEWAY OF SNOWMASS MESA
Land Acres:	0.970
Land Sq Ft:	0

2018 Property Value Summary

	Actual Value	Assessed Value
Land:	325,000	23,400
Improvements:	413,000	29,740
Total:	738,000	53,140

Sale Date:	7/18/2017
Sale Price:	522,799

[Additional Sales Detail](#)

Basic Building Characteristics

Number of Residential Buildings:	1
Number of Comm/Ind Buildings:	0

Residential Building Occurrence 0 Characteristics	
GARAGE BUILT INTO BSMT:	286
FIRST FLOOR:	911
GARDEN LEVEL BSMT:	636
2ND FLOOR:	612
Total Heated Area:	2,159
Property Class:	SINGLE FAM RES-IMPROVEMEN
Actual Year Built:	1974
Effective Year Built:	1987
Bedrooms:	4
Baths:	3
Quality of Construction:	GOOD
Exterior Wall:	WD SID AVE
Interior Wall:	DRYWALL
Floor:	CARPET
Heat Type:	HT WTR B/B
Heating Fuel:	GAS
Roof Cover:	ASP SHINGL
Roof Structure:	GABLE/HIP
Neighborhood:	SMASS-CAP CRK-GATEWAY
Super Nbhd:	SMASS CAP CRK

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Strengthening Community Through Workforce Housing

Pertinent Provisions of the Guidelines and Deed Restriction

Section 2. *Requirements of the Deed Restriction Agreement for the Occupancy and Resale of Unit 937, Red House Enclave Condominiums* states:

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Primary Residence -The sole and exclusive place of residence of a person. An owner or tenant shall be deemed to have ceased to use a unit as his/her primary residence by accepting employment outside of Pitkin County, or by residing in the unit fewer than nine (9) months out of any twelve (12) consecutive months.

Part VII, Section 5(B)(1)(c), *Enforcement Procedures*, of the APCHA Guidelines states:

If the alleged violator does not cure the violation or request a hearing before the APCHA Board within the fifteen (15) day period, the violation identified in the NOV shall be deemed final. In the event of litigation, the failure to request a hearing as provided above shall be deemed by APCHA to constitute a failure to exhaust administrative remedies for the purpose of judicial review. At the conclusion of the fifteen (15) day period, APCHA may pursue all remedies as provided by law or in equity, including, where applicable, a requirement that the subject property be sold in accordance with the deed restriction.

Part VII, Section 5(B)(1)(g) states:

With respect to ownership units, during the period from the date of the NOV until the violation is cured, appreciation will be terminated until the homeowner is brought back into compliance. Such owners are prohibited from recouping the appreciation lost during the period of non-compliance.



MEMORANDUM

TO: APCHA Board of Directors
FROM: Cindy Christensen, Deputy Director
THRU: Mike Kosdrosky, Executive Director
MEETING DATE: February 20, 2019
RE: **Draft Appeal Brief to District Court and Grievance to APHCA (sic) Board and Colorado Housing and Finance Agency**

The attached is an informational item only regarding a case in litigation that is being handled by our attorney. It is being provided to you at the request of Ms. Tucker. No action is required of the Board.

The LIHTC was enacted as part of the Tax Reform Act of 1986 and was made permanent by the Omnibus Budget Reconciliation Act of 1993. See Tax Reform Act of 1986, Pub L No 99-514, 100 Stat 2085, codified at IRC § 42 (1998); Omnibus Budget Reconciliation Act of 1993, Pub L No 103-66, 107 Stat 312.

This Federal Program provides subsidy for its owners

Today, the LIHTC is the largest federal program that funds the construction and rehabilitation of low-income rental housing. Although the LIHTC imposes federal and state regulations on property owners similar to those that govern traditional United States Housing Act programs.

The property in question in this matter is Aspen Country Inn, one of two properties subject to the Federal Rules and Regulations of this Section 42 LIHTC Program. Of this is there is no dispute and that executive director Mr. Mike Kosodrosky, must comply with these Rules and Regulations

In order to receive tax credits, the building owner must agree to maintain the low-income units during a fifteen-year "compliance period" and must agree to an "extended use agreement" which typically requires that the units' low-income affordability be maintained for at least an additional fifteen years. This extended use agreement prohibits eviction and non-renewal of leases.

Rabin, 69 Cornell L Rev at 534 (cited in note 41) (stating that the landlord's traditional common law right to evict tenants without explanation "has been limited in every state by the federal Fair Housing Act, which prohibits discrimination ... and in most states by the doctrine prohibiting retaliatory eviction"). Retaliatory eviction protection is guaranteed in most states, either by statute or court decision. *Id.* See, for example, *Edwards v Habib*, 397 F2d 687,690 (DC Cir 1968). 44 Rabin, 69 Cornell L Rev at 535 (cited in note 41).

Issues of this Case

The sole issue in this case is that Mr. Kosodrosky, the executive director of the Aspen Pitkin County Housing Agency, spent six weeks approving defendant, a senior citizen, immigrant and mother of a registered disabled and protected child and approved her for the LIHTC Program he administered.

Two days after lease signing on February 12th 2018, Mr. Kosodrosky learned that defendant and her children were the same individuals that he had "bad blood" with twelve years earlier. This was a benign civil issue resulting in significant financial profit for Mr. Kosodrosky and his agency.

From February 12th, 2018 until the current day, Mr. Kosodrosky has launched a surprisingly hostile and aggressive attack on defendant and her children. Initially this came in multiple unlawful document demands after lease signing, and weekly "notices to vacate" for erroneous and absurd reason such as document demands for 20-year-old non-existent bank accounts, along with a refusal to allow defendant to park at her home with threat of daily immobilization of her car with a \$200 fee, and most recently the vandalism of both defendants family cars , the only cars attacked in a quiet residential neighborhood in Aspen.

Throughout this period of retaliatory harassment, it is Mr. Kosodrosky's legal position that he is legally entitled under Section 42 of the Internal Code both to evict and decide to "not renew "defendants lease as a " business decision " These statements and resultant action immediately places both Mr. Kosodrosky in violation of his employment contract and his agency in violation of their Federal Requirement as the wording of Section 42 and the HUD Rules are very clear

On June 2018, after months of unanswered phone calls, letters and emails by Mr. Kosodrosky and staff to both defendant and her attorney, he gave defendant and her family a "three-day notice " to quit or comply.

In this notice Mr. Kosodrosky entirely misquoted both the employment income of his Agency, clearly published on his web site and the Federal Income levels, also published on his web site.

In this June 2019, Mr. Kosodrosky stated that defendant did not qualify for the 1500 hour per annum requirement of Aspen County Inn (ACI) since he had disallowed any income from this employment as non -existent.

Mr. Kosodrosky also stated that her failure to include her Social Security Check, only received once in December 2017, and later clarified directly to Mr. Kosodrosky by defendant and the Social Security Administration, was reason for eviction.

HUD is very clear that this is not the case and that a required procedure of due process including notification, meetings, assistance, file review etc. are enacted. Mr. Kosodrosky violated all these requirements but instead wrote letters, all forwarded to Federal Agencies, trying to entice defendant to writing incriminating documents, which she reported and refused to do.

When defendant demonstrated that she had complied with this "three-day letter" this matter by law should have ended a retaliatory action that should never have begun. It did not. Mr. Kosodrosky continued to escalate his legal proceedings and continued to fail to respond to defendant, her attorney or any representative acting on her family's behalf.

During this time Mr. Kosodrosky denied tenancy to defendant's disabled daughter, awarding this unit of which defendant had highest priority to a family so violating the clearly stated guidelines of the Housing Authority he administers.

It is Mr. Kosodrosky's unfaltering legal position that he is correctly representing the LIHTC by a \$30,000 eviction action claiming that defendant and her family do not qualify for the LIHTC Program and although he took six weeks to process her application and signed a lease with defendant, that this should never have happened.

Mr. Kosodrosky support of this position is fourfold

1. ACI requires 1500 hours of employment for application and defendant did not have these, since he disallowed the hours of A La Car, which totaled \$13,000 in income.

2. That Federal Law and the LIHTC program and HUD, require Mr. Kosodrosky, to include the \$13,000 he formally disallowed in May 2018, and used as a reason for a \$30,000 eviction in June 2018.
3. That in October 2018, the Federal Government require Mr. Kosodrosky to use the Federal 2017 Income Levels.
4. That defendant's self-corrected (with assistance and support of the Social Security Administration) failure to include her Social Security Income was "material " and grounds for eviction under HUD and LIHTC Rules, as with the \$13,000 income defendant's income was around \$1500 over the 2017 Federal Income but still under the 2018 Income Levels.

In October 5th, 2018, Mr. Kosodrosky took this one step further and produced certain documents for the court which under oath he attested

1. That the Federal Program LIHTC Program permits the January 2018 projected income calculation as a basis for legal eviction on October 5th, 2018.
2. That no revision, update or correction of this initial income projection is required under HUD/LIHTC, and that a nine-month-old projected income estimate is "true and accurate " although he has informed the court of a \$13,000 deduction from this amount.
3. That HUD uses 2017 income levels in October 2018.

In this case. Mr. Kosodrosky discredited his own program by his unusual aggression insisting that defendant, appearing pro se, should not be permitted any exhibits nor witnesses.

Defendant could not have anticipated that Mr. Kosodrosky would blatantly misrepresent the published content of his own web site or program under oath, but he did

The judge in this matter is required to rule according to the factual and legal evidence presented and Mr. Kosodrosky brought six or so of his employees who

all testified under oath that the \$13,000 disallowed income should be included as income , that the 2017 Income Level was that desired by the Federal Government on October 2018 and that there was no requirement to adjust the "projected income" of January 2018 , ten months later with clear and declared income changes made by Mr. Kosodrosky as another avenue of eviction.

Mr. Kosodrosky has since bombarded defendant with further legal motion now demanding that she should require to pay a \$1000 transcript fee for copies of these facts to "perfect " this appeal.

Mr. Kosodrosky now wishes to deny defendant and her children the right to appeal this court ruling on the basis that she cannot afford the \$1000 fee, and this should be the legal basis for his unlawful eviction being granted by the court, regardless that he wrongly represented the fact, figures, income level and Federal Law to the court.

Legal Argument

In *Alvarez v Carpenter* the Supreme Court of Colorado addressed the issues surrounding appellants inability to pay the transcript fee.

The decision and wording of the justices ruling was very clear

Alvarez v Carpenter:

Rule 10(a) provides that the record on appeal may include "the reporter's transcript, or such parts thereof as provided under section (b) herein, * * *." (Emphasis added.)

Section (b): "* * * If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all the evidence relevant to such finding or conclusion." (Emphasis added.)

Rule 10(c), (d) and (e) provide the means of furnishing a record other than by a reporter's transcript. These provisions were promulgated specifically to reduce the cost of appellate review to the litigants and to conserve review time by the court itself.

In *Alvarez*, we determined that the purpose of the "in forma pauperis" statute in effect at the time of that decision was to enforce the guarantee contained in article II, section 6, of the Colorado Constitution that "courts of justice shall be open to every person." *Alvarez*, 173 Colo. at 290, 477 P.2d at 792.

We there implied that appellate courts as well as trial courts must be available to litigants. *Id.* at 290, 477 P.2d at 795 ("[The plaintiffs] have sought and obtained a waiver of costs in the Colorado Court of Appeals, by virtue of the provisions of 33-1-3, which 'opens' that court to them.") (emphasis in original).

In conclusion in this matter, a transcript of the trial is redundant simply as there is no dispute by both parties as to what was said and the court ruling. These are represented in three documents

1. Notice of Eviction confirms Mr. Kosodrosky's disallowing of \$13,000 in income.
2. January 2018 confirms that this \$13,000 was included in this "projected income " presented to the court as 'true and accurate " under oath by Mr. Kosodrosky in October 2019.
3. APHCA's own web site that confirms Mr. Kosodrosky's knowing misrepresentation of "employment criteria of ACI"
4. APCHAs own web site confirming that after May1st 2018 the 2017 Income Level can no longer be used
5. HUD Rules and Regulations regarding income calculation, 120-day requirement and mandates review of "any discrepancy or change of income " all of which Mr. Kosodrosky did not comply with and intentionally misrepresented under oath.

In this case the transcript of this case is redundant as the key information is defendants 2018 Tax Returns which shows her income was well under both the 2018 and 2017 Federal Levels

This document confirms that the ten-month-old projected calculation, which Mr. Kosodrosky endorsed under oath was knowingly in violation of Federal Law by including a \$13,000 amount formally disallowed.

This document shows that Mr. Kosodrosky intentionally misrepresented his program and Federal Law for a retaliatory eviction without factual foundation to the County Court and the court erred by giving credence to this misrepresentation and his \$30,000 legal attack without foundation

Defendant asks the District Court and other agencies that under *Alvarez v Carpenter* these limited documents are all that is required and Mr. Kosodrosky's bombardment of motion should end

Rule 10(c), (d) and (e) provide the means of furnishing a record other than by a reporter's transcript. These provisions were promulgated specifically to reduce the cost of appellate review to the litigants and to conserve review time by the court itself.

Respectfully Submitted

February 12th 2019

Amanda D Tucker

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the February 12th , 2019 at Aspen Colorado

Amanda D Tucker

Signature of Defendant(s)

Amanda D Tucker
PO Box 2344, Aspen, Colorado 81612 atuckermd@yahoo.com

CERTIFICATE OF SERVICE

I certify that on February 12th 2019 a true and accurate copy of this **NOTICE TO THE COURT RE TRANSCRIPTS** was served on all other parties by electronic mail to all parties

Defendant(s) Signature
Amanda D Tucker

Amanda D Tucker
PO Box 2344, Aspen,
Colorado 81612
atuckermd@yahoo.com

FUTURE AGENDAS

As of February 20, 2019

March 6, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- First Reading of Resolution No. 3 (Series 2018), Adopting Amendments to the Guidelines Redefining the Emergency Worker Procedure and Definition
- Policy discussions

March 20, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Public Hearing on Resolution No. 3 (Series 2018), Adopting Amendments to the Guidelines Redefining the Emergency Worker Procedure and Definition
- Compliance Hearings and/or Land Use Reviews

April 3, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

April 17, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Compliance Hearings
- Land Use Reviews

May 1, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

May 15, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Compliance Hearings
- Land Use Reviews

June 5, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

June 19, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Compliance Hearings
- Land Use Reviews

July 3, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

July 17, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Compliance Hearings
- Land Use Reviews

August 7, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

August 21, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Compliance Hearings
- Land Use Reviews

September 4, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

September 18, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Compliance Hearings
- Land Use Reviews

October 2, 2019 – 5 p.m. – BOCC Meeting Room, 530 E. Main

- Policy discussions

October 16, 2019 – 5 p.m. – TBD

- Compliance Hearings
- Land Use Reviews

November 6, 2019 – 5 p.m. – TBD

- Policy discussions

November 20, 2019 – 5 p.m. – TBD

- Compliance Hearings
- Land Use Reviews

December 4, 2019 – 5 p.m. – TBD