



*Strengthening Community Through Workforce Housing*

**MINUTES OF THE JANUARY 2, 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 2, 2019 meeting was held in the BOCC Meeting room, Pitkin County Administration and Sheriff's Office Building, 530 East Main Street.

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

Staff Members in Attendance: Mike Kosdrosky, Executive Director and Cindy Christensen, Deputy Director. Phylis Mattice, Assistant County Manager, was also present.

**Rules of Decorum:** Were not read as there was no one present for public comment.

**PUBLIC COMMENT:** Tom Smith provided a Statement via an e-mail from Sandy Mulcahy and a letter and document from an Aspen Times article dated January 2, 2019 from Lee Mulcahy for the record.

**EXECUTIVE SESSION:** Chris Council made a motion to go into an Executive Session pursuant to CRS 24-6-402(4)(b) and (e), for a conference with APCA's attorney for the purpose of receiving legal advice and determining positions relative to negotiations in APCA v. Mulcahy, 2015 CV 30150; Mulcahy v. APCA, 18-CV-0918-PAB-GPB; and Mulcahy and Carter v. APCA, 2018 CV 18; Carson Schmitz seconded the motion. **ROLL CALL VOTE:** Ward, Council, Erickson, Forbes, Schmitz and Gilbert voted yes. Motion passed. The Board came out of Executive Session at 5:50 p.m.

**EXECUTIVE DIRECTOR COMMENTS:**

- Thanked the Board for their efforts in December, especially with all the extra meetings.
- The governance discussion will continue around the first part of February. The Board will be provided the date as soon as it has been set.

**DIRECTOR COMMENTS:**

- Forbes asked the Board if they would like to participate in a volunteer workday for Habitat for Humanity's project in Basalt. The Board was very receptive to this idea. Forbes will get back to the Board with dates.
- Council expressed his concern for employees who work for the Federal government and the shutdown. Need to be able to work with these employees.
- Council stated his disappointment with the HPC in overruling the on-site requirement for the 517 East Hopkins project, going against APCA and the Community Development Department's recommendation.

- Erickson reiterated his concern on the request by Lift 1 and Gorsuch Haus with not doing any on-site employee housing and suggested the Board attend the worksession when these projects will be discussed. Both developers changed their minds after presenting to the Board. Council suggested doing something as a collective body.

**CONSENT CALENDAR:** Gilbert made a motion to approve the Consent Calendar; Forbes seconded the motion. Erickson had a change to the December 5, 2018 meeting minutes on percentages. Gilbert and Forbes approved the amendment. **ROLL CALL VOTE:** Erickson, Ward, Forbes, Gilbert, Council and Schmitz voted yes. Motion passed.

**Mattice updated the Board on the following:**

- The Basalt Vista Housing Project is moving right along and is on schedule.
- February 5 will be the Joint Meeting with the BOCC, City Council and the APCHA Board to discuss the governance issue.
- The County bought the Phillips Mobile Home Park where currently there are 40 residences. The County would like to set up a time with the Board to discuss this property and how it should be redeveloped.

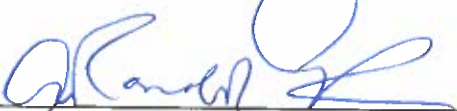
**POLICY DISCUSSION:**

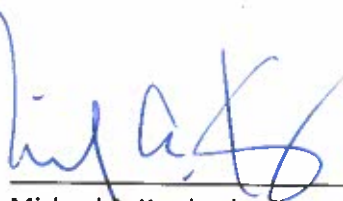
- Redefining emergency worker status procedure: Christensen stated that the Public Safety Council Policy Group approached APCHA to redefine an emergency worker. The current definition excluded some groups of emergency workers that should be included. The Policy Group recommended a more specific definition so that APCHA would be able to evaluate the status without the need for the Public Safety Council review, thereby simplifying the process. An Emergency Worker Verification form has also been created.

Council noted that the career employee (police officer) was missing. Christensen stated that this will be revised to be sure that all entities noted in the memo from Mattice will be included. The Board directed staff to bring this back for formal approval.

After further discussion, the Board adjourned the meeting 6:15 p.m.

THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

  
A. Ronald Erickson, Chairperson

  
Michael A. Kosdrosky, Secretary

## Cindy Christensen

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**From:** Lee Mulcahy, artist <leemulcahyphd@gmail.com>  
**Sent:** Wednesday, January 2, 2019 1:48 PM  
**To:** Cindy Christensen  
**Cc:** Curtis Wackerle; Carolyn Sackariason; Rick Carroll; Alycin Bektesh  
**Subject:** Statement of Sandy Mulcahy to be included in minutes for tonight's exec session

Cindy,

Thank you for including our statements in the minutes and distributing them to the APCHA board members. Mine will follow in separate email.

From Sandy Mulcahy to the APCHA board:

As an 83 year old widow, APCHA's actions shock the conscience. Meetings behind closed doors done in secret "executive" sessions are damaging to democracy.

When Aspen does something as serious as deciding whether to evict a family out of their self-built house for missing a deadline, votes should be done in public, especially by an unelected board currently being completely restructured.

Dear APCHA board member,

I would encourage you to read this article which was in today's Aspen Times:

<https://www.aspentimes.com/news/local/10-questions-with-aspens-mulcahy-family-advertorial/>

It is reprinted at the end of this statement.

We believe compromise is the way forward. All we are asking of this board is for a public hearing. We brought over 2000 signatures from citizens asking for a public hearing (now included as part of the District Court record). The City of Aspen and Mayor refused to put them in the public record, despite multiple requests.

We are willing to pay APCHA's legal bills, pay a fine for missing the deadline and do 500 community service hours to settle both suits in order to be allowed a public hearing. APCHA refused to look at the art records in the October 14, 2015 APCHA email a week later during an appointment.

Regardless of what happens in Washington DC, this is **FAR** from over. The law (C.R.C.P. 60) allows us to motion to vacate the judgment on the grounds that our due process rights were violated. This occurred in 2 main ways: (1) the NOV was issued prematurely, and (2) the court order for a case management conference was not followed. *See affidavit below in upcoming Colorado district court filing for motion to vacate judgment.*

Worse for APCHA, motions under C.R.C.P. 60 are immediately APPEALABLE and can be appealed directly to federal district court in Denver, skipping the state Court of Appeals altogether.

If we lose all-around after all further suits and appeals, we will never sell. Contempt of court in Colorado is six months. The Sheriff told the newspaper and us personally he will not evict an 83 year old widow if I am in jail. Does this citizen board want political prisoners in Aspen? If the judge keeps me in jail for remedial contempt, I will hunger strike just like my Irish ancestors did.

Political prisoners and hunger strikes have no business in Aspen's or America's history.

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**Aspen Times article, 01.02.2019**

**10+ questions with Aspen's Mulcahy family**

**1. Why does the charity that the Mulcahy family founded, Africa Water Wells, focus on water efforts in Africa?**

One in 10 people worldwide do not have access to clean water. In communities without water, children are often designated to haul water from sites miles away. Water weighs 8 pounds/gallon, so a child providing for a family of four in Sub-Saharan Africa must carry 128 pounds of water daily. That leaves little time for education. The great disaster is that the water they carry may be polluted. Water is life and that is the main focus of Africa Water Wells.

**2. How did the Mulcahy family become involved in clean water?**

In 2010, my late husband and I went on a safari in Kenya where we learned of the water crisis. Edward Lee "Bud" Mulcahy was raised on a farm without electricity or indoor plumbing outside of Seguin, Texas during the Great Depression. Not many people understand what we all take for granted today in America. Bud understood it because he lived it. On the plane between Nairobi and London Heathrow, my husband Bud said, "We are going back to do a water well," and we did our first well in 2012. One of Bud's areas of expertise was in water, specifically irrigation.



### **3. What's been accomplished so far?**

In the last six years: (1) multiple wells have been drilled, (2) alcohol/addiction counselling has been offered, (3) women's conferences have been held teaching money making skills, (4) refurbished laptops from Aspen, Basalt, Carbondale, Glenwood Springs and Texas have been donated to the local primary schools, (5) a Dallas medical team held clinics where needed medications were distributed, and finally (6) a village built a Christian school – naming it after Bud, who founded Africa Water Wells. We just recently provided the funds for a four toilet latrine at a school outside Sotik that previously had only one outhouse.

### **4. What's next?**

In March 2019, another well will be drilled with a storage tower – the first clean water for a village outside of Sotik with a population the same as Aspen. More wells to come as funds are provided. We will be carrying over used laptops again. There will be a focus on sanitation and hygiene, training in further latrine fabrication for men and soap-making classes for women.

## **5. How can someone help?**

Donations of used laptops for Kenyan primary schools are always welcome. If any volunteers in the medical field want to travel with us in March 2019 or in 2020 to help distribute medications, we have built a Sotik clinic next to the Catholic center where we all stay. Of course, funds for the drilling of wells can be given online at Grace Covenant Church <http://www.gracecovenantchurch.org> or by sending a check to Grace % AWW 3402 West Interstate 20, Arlington TX 76017. All of us volunteers pay our own way over and expenses.

## **6. Both of you are artists?**

Yes, both of us as well as sibling Cynthia Mulcahy, who is a famous Dallas-based conceptual artist not unlike Ai Weiwei, recently honored at Hotel Jerome by Anderson Ranch Arts Center where multiple Mulcahys have studied. Cynthia's recent solo exhibition "War Garden" was at Talley Dunn in Dallas this summer. Cynthia's "Seventeen Hundred Seeds" was a nature-based public art project that created a sunflower garden; and "Engines of War" was a group show she curated about American militarism at the Andy Warhol Foundation in New York. See <https://www.dallasnews.com/arts/visual-arts/2018/07/19/dallas-artist-using-watercolor-fauna-flora-sculpture-examine-century-war> MAMA Sandy will claim she's not an artist but into crafts but she's more talented than any of us kids. However, the boundaries of art and craft have long been contested.

## **7. Why do you think Aspen should count art as work?**

It's in Aspen's history and our DNA as a cultural mecca. Aspen has become more corporate but it does not need to start throwing out artists that don't make enough money, according to APCHA. Lee's work has been shown worldwide at galleries in America, China and Europe, as well as Berlin's KW Institute of Contemporary Art and the National Museum of Kenya's Nairobi Gallery.

## **8. Your family gave \$20,000 to the homeless shelters in Aspen and Arlington, Texas — Why?**

We must love on our neighbors, especially those that life has disenfranchised. Aspen spends millions on the Mayor's ridiculous ego projects but devotes little to our most vulnerable. Bud Mulcahy came from nothing and through hard work became the epitome of

the American dream. He believed that the American dream has disappeared due to the capture of our political system by big money and greed.

**9. What's going on with the City's efforts to railroad your family out of the house you built?**

We've put the case on hold while settlement negotiations occur. Aspen housing's unelected board will be voting on a settlement offer in **secret** *behind* closed doors in 2019. The whole thing is a farce. The reality of a case not of national significance just being heard by the Supreme Court is one percent. Washington DC is out of touch with the West and our ingrained values of liberty and freedom. We will stand tall.

**10. Can the government force your family to sell your self-built home despite never being late on taxes? If you guys refuse to sell, will we have political prisoners in Aspen?**

What is legal and what is just are not the same thing. My late Father had a stroke on property during construction. The house is built around Mama Sandy in order to accomodate an elderly disabled person. I plan to raise kids there. The maximum jail sentence in Colorado for contempt of court for not selling is six months. I will follow the law and serve my sentence.

City Hall's corruption is widely known. The current Mayor works for Skico, literally. The City Manager and City Attorney have been in power for decades. All routinely lie without blinking. The City Attorney bulldozed another artist's house when the artist defied him. My late Dad got into it with the Aspen's lead Attorney who would come on inspections and make ridiculous demands. Many people aren't aware of the extent of the City's power to do evil. At times, the inspectors would refuse to put their demands in writing. Even after items were approved, they would make us rip them out costing lots in both time and money. At one point, housing told us that they did not want to approve our construction because if they gave us approval, they "would never be able to get (us) out."

People need to remember Aspen's housing department ("APCHA") asked me for artistic records on October 14, 2015 and agreed to a meeting a week later – in writing. When we took the records in, APCHA refused to look at them saying they had decided to sue.



In 2014, the Washington Post reported there are up to 80,000 SWAT team raids in America annually. Multiple Aspen Police have told us that they will send in a SWAT team to remove us regardless of the Sheriff. Let's be honest: The Police in Aspen are the political sturmabteilung (Stormtroopers) for City Hall.

We just want peace and to be left alone.

### **11. Do you have any thoughts on the journalism in Aspen?**

Aspen has the same problem as Washington DC with a unique caveat. "Don't bite the hand" of someone that may feed you" comes to mind....

Great journalism should give voice to the voiceless. In Aspen, like the swamp in DC, the bias towards power is real. If the City wants the media to convey a bunch of untrue allegations, say for example, immediately before our big settlement vote, the City puts out a press release banning Lee from City Hall and the newspapers put it on the front page.

Hilariously, one of the City's lead public relations directors has her own show on Aspen public radio. Even funnier, the liberal public radio station has refused to let us advertise.

Friends, bias and fake news is real in a town where the Democrats control both City Council and the Board of County Commissioners. Everyone knows the Mulcahys are conservative tea party Republicans who believe our government at all levels is out of control. Sadly, our story is the same as the rampant tribalism confounding our nation.

Compromise is the way forward. We can show compliance per APCHA's rules. It's why we have offered to pay all of APCHA's legal expenses and pay a fine for missing a deadline -simply to be afforded a public hearing.

### **12. How do ya'll handle the stress?**

With prayer and by counting all our blessings. We're very grateful in some many ways, but especially for the community's support. Also we maintain our wicked sense of humor when dealing with Aspen's out of control government.

**13. What are your thoughts on Lester Crown, the out of state billionaire owner of Aspen Skiing and bomb-maker General Dynamics, Wall Street's JP Morgan Chase, etc.?**

Bullies rarely learn. President Eisenhower warned us about America's creeping military industrial complex over 50 years ago. It's only gotten worse. Lester has bribed politicians, lied, got called out, lied about it to Congress and got caught time and time again.

Congressman Dingall wrote the Secretary of Defense: "The election to, and the retention on, the board of directors of an individual who admittedly was actively involved in the commission of a major crime is a statement of the integrity of the management of our nation's largest defense contractor."

The *New York Times* reported that during Congressional hearings, "Crown, who was not present at the hearings, was labeled "an embezzler," "an admitted felon," "a crook."" It got so bad that a Texas Congressman John Bryant, a Democrat, told the CEO of General Dynamics: "If you can sit here," said Representative John Bryant, a Texas Democrat, "and tell a Congressional committee that you are going to let him (Lester) stay there and continue to see these classified documents, the stink in the corporation and the problem we have got with General Dynamics is sitting at this table right here." See

<https://www.nytimes.com/1986/12/07/magazine/the-ordeal-of-lester-crown.html>

**14. Thoughts on local judge Chris Seldin?**

The Bible says there's not much new under the sun. Corruption and injustice are as old as time. Look at history. Two scholars of American labor violence concluded, "There is no episode in American labor history in which violence was as systematically used by employers as in the Colorado labor war of 1903 and 1904."] Colorado schools rarely teach that our law enforcement murdered and imprisoned Americans that were simply attempting to exercise their rights to unionize and strike for higher pay and humane work conditions. With very few exceptions, Colorado's governor and the courts supported the police's illegal violence.

We might not be talking about Mayor Steve Skadron's attempts at evicting his last opponent (me) if state law required cases that involved a city or county entity to be tried in the next county over. Nevertheless, neither the Mayor nor Judge Seldin has to date refused to even give us a public hearing.

Judge Seldin admitted in court to being a member of the Aspen Institute's Lester Crown Society of Fellows for over a decade. Annual membership begins at \$2500.00. For anyone, let alone an assistant county attorney at the time, \$2500.00 is a significant yearly investment.

Despite admitting to this fact, the judge refused to recuse himself twice. Mercy and compassion are wonderful things.

### **15a. Regrets?**

Yes, we all make mistakes but oligarchy is not in the Western concept of liberty: "When political and financial elites are shielded from any consequences for their actions, they are no longer subject to the law. Instead, they become the law's masters, using the legal system for their own purposes: to safeguard and expand their perquisites; to ensure that their cheating and corruption are not punished but rather rewarded; and to keep any outsiders from challenging their superior status. The law, which was meant to keep the powerful in check, is now used instead to sustain and perpetuate their power." — Academy and Pulitzer prize winning journalist and lawyer Glenn Greenwald.

I have apologized for offending the Crowns' sensibilities with my artistic endeavors. I am so grateful for the 15 years I worked for them — teaching skiing was the best job in the world. Let's move on.

### **15b. If you guys had three wishes for the New Year?**

1. The City and the Mulcahys could make peace. Aspen can lead the nation forward.
2. That we all can love our enemies more and help the disenfranchised, including the migrants on our Southern border.
3. Revival in our community. "Blessed are the merciful," "Blessed are the peacemakers," and "Love your enemies" are just a few examples of Jesus most profound and revolutionary teachings. He said, "I am the way, the truth and the life." In this season of celebrating his birth amidst all of the corruption, injustice and oppression, we cannot lose hope. We must remember that Jesus submitted to death on a cross as an atonement for all our sins so that we, too, may have new life and love others as He taught us.

**Aspen Times article, January 2, 2019:**

**10 questions with Aspen's Mulcahy family**

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Affidavit to district court:

I, Lee Mulcahy, state that the statements in all of the above in the 60 (b)(5) motion for relief and all statements in my writ of certiorari to the Supreme Court are true. Moreover, Tom Smith and I conferred before the filing of this motion via e-mail and APCA opposes.

I, Lee Mulcahy, of lawful age, being duly sworn, upon my oath state under penalty of perjury, state on December 27, 2018, that the following is true and accurate.

1. The process that APCA, APCA's City of Aspen employees and the District Court employed; that is, depriving an individual of their home and property without a hearing at the administrative or court level; violated my rights to due process under our Constitution.
2. Aspen, Colorado is a town of 6788 residents. APCA controls over 3000 "units" in Pitkin County. Some "units" are 4 bedroom homes. Likewise, Aspen Skiing employs 4000 people in the town of 6700. My family took over 2000 signatures petitioning Aspen city council and the board of county commissioners (who jointly created APCA) "to allow a public hearing on our eviction." Notably, the

City of Aspen refused to put the petitions in the public record, despite multiple requests during public comment. However, the signatures are included in the district court's record. After submission of the petitions to the court, local judge Chris Seldin ruled on October 24, 2018 that "such a request must be directed to the local government agencies of jurisdiction."

3. I am an Eagle Scout and have volunteered thousands of hours for my community through my church, Habitat and our homeless shelters. I am an outspoken artist and Aspen chamber of commerce member. I served on the Aspen Historical Society's Board of Trustees for 8 years. My mother, a widow, has been asking the Mayor to meet with the Sheriff of Pitkin County Joe Disalvo for months. Mayor Steve Skadron simply refuses. The Sheriff believes that it is not American that we are being evicted for speaking out. As Aspen mayor Steve Skadron's only opponent, I lost overwhelmingly in the last election. The mayor owns a public relations agency that works for Aspen Skiing Company. His efforts to criminalize my dissent have been covered in both local newspapers. Over seven years ago, Aspen Skiing fired and banned me from public lands after I passed out a unionization flyer that advocated a living wage for the over 4000 employees in a town of 6800. The public lands ban took nearly seven years to be declared partially unconstitutional by the same local judge; however the ban is still in litigation.
4. Covered extensively in the local newspapers, the Aspen city council and Pitkin County board met jointly August 7th and December 11th, 2018 to discuss

restructuring APCHA and its board by adding elected officials to the appointed board. We proposed a settlement to APCHA, the Mayor and the Board of County Commissioners to be allowed a public hearing to show my compliance as an artist per APCHA's rules and their October 14th, 2015 email. The courts have thus far refused to state that my family was on a humanitarian clean water mission for the non-profit founded by my late father, [www.africawatewells.org](http://www.africawatewells.org), near Sotik, Kenya, installing a pipeline from the previously drilled water well to a medical dispensary when APCHA's final letter was sent. Furthermore, to date, APCHA has steadfastly refused to look at the records that APCHA requested in their e-mail of October 14, 2015. (See E-mail attached as Appendix B) A week later when I took my records into APCHA for a meeting (See E-mail attached as Appendix C), the Deputy Director marched out and refused to accept them.

Aspen was built around the arts. Artists have always been a part of our community. I hold a master's degree in 19th century French Art from SMU and a Ph.D. in humanities. My paintings are in and have been shown in museums in both Berlin and Nairobi and galleries all over the world including Aspen, Prague and Beijing. When I was fired from my position as a ski instructor after I passed out a unionization flyer, my non-traditional jobs have included working as a self-employed property manager; working for my family's charity aimed at providing potable water for Kenyan communities; working as a substitute teacher in the Aspen school district; working as a cab driver; working as a licensed general contractor on the construction of my residence; and working as an artist,

producing, marketing and exhibiting avant-garde, mixed media paintings, conceptual sculptures, and short films.

5. On December 21, 2018, we offered a settlement to APCHA that involved paying all their attorney fees, 500 community service hours and paying a fine for missing the NOV deadline.
6. Mr. Smith states on pages i and 9 in his November 13, 2018 brief to the Supreme Court in opposition that “Mulcahy did not raise any constitutional claims in the state courts.” This is a falsehood. In his June 3rd, 2016 order contained as Appendix B of the Petition, Judge Chris Seldin stated “Mulcahy next argues that APCHA’s procedure raises constitutional questions....” (See page App. 30 in Mulcahy Supreme Court writ previously submitted). Judge Seldin refused to answer if I had brought up constitutional questions in our recent status conference in court. (See transcript in Appendix A following)
7. In my first filing in the state case on February 22, 2016, *Defendant Edward Lee Mulcahy, Jr.’s Answer and Affirmative Defenses to Plaintiff’s Complaint*, I state on page 4 “This paragraph consists solely of legal conclusions which illustrate the arbitrary and capricious denial of Defendant’s due process rights, and no response is required” no less than three (3) times. Moreover, on page 5, I state: “Defendant admits the provisions of the Deed Restriction may be valid and enforceable to the extent that that they are not unconstitutional, unconscionable and/or violative of public policy....” In addition, I state on page 7, “Plaintiff’s claims are barred in

whole or in part, due to Plaintiff's violation of Defendant's constitutional right to due process."

8. On pages 11-12 of *Defendant's Cross Motion for Judgment on the Pleadings and Opposition to Plaintiff's Motion for Summary Judgment and Incorporated Brief* filed March 24, 2016, I state "...the Fifth and Fourteenth Amendment to the United States Constitution provide, inter alia, that 'private property' shall not be taken or damaged, for public or private use, without just compensation'. Defendant has devoted every free moment for over (4) years working to his home on the Property." I continue, "Given the constitutional issues arising by Plaintiff's conduct in this instance...."
9. The *Pro Se Defendant Edward Lee Mulcahy, Jr.'s Motion to Reconsider and to Alter Judgment and Brief* filed on June 16, 2016 states on page 11 "Mr. Mulcahy argues that to allow Plaintiff, in light of its unconscionable conduct, to deprive him of the use of enjoyment of his home, is an unconstitutional taking." In addition on page 11, I state, "The essence of due process is basic fairness in procedure.... Due process is flexible and call for such procedural protections as the particular situation demands."
10. Filed on August 17, 2016, *Pro Se Defendant Lee Mulcahy's Motion to Compel APCHA, After Demanding Future Rent During Appeal, to Allow Rental of Room(s) in House Defendant Self-Built to an Approved Renter and to Allow Defendant to Show Compliance* states on page 2, "Defendant is being deprived his constitutional rights."



11. Filed on August 31, 2016, *Pro Se Defendant Lee Mulcahy's Reply to Plaintiff*

*APCHA's Memorandum Brief in Opposition to Motion for Stay Pending Appeal*, I state on page 4: "Defendant is being deprived his constitutional rights.

Defendant was never given even an opportunity for a court hearing. Due process requires opportunity to be heard."

12. Interestingly, what APCHA's attorney Mr. Smith states in his *Brief in Opposition* with the Supreme Court (that I did not bring up constitutional issues on page i and 9) differs remarkably than what Mr. Smith writes in *Defendant Aspen/Pitkin County Housing Authority's Motion to Dismiss Pursuant to F.R.CIV.P. 12(b)(1) and 12(b) (6)* filed August 23, 2018 filing concerning case 1:18-CV-01918-PAB-GBG in which Mr. Smith admits on page 8 that "the Court nevertheless addressed a number of Mulcahy's defenses, such as statute of limitations, exceptions to exhaustion doctrine, equitable defenses, futility, **and constitutional questions**. (Order, paras.29-45)". Mr. Smith has stated he will present our settlement offer behind closed doors in executive session. Mr. Smith recently made news for suing a Basalt citizen after she filed a Colorado Open Records Act request for communications between the Mayor and City Clerk before and during an election. Subsequently, Mr. Smith resigned as Basalt town attorney. Furthermore, Mr. Smith was investigated for "dishonesty" and "conflict of interest" by the Colorado Supreme Court.

13. APCHA sent the August 25, 2015 notice of violation ("NOV") prematurely, in contradiction of their own guidelines. APCHA treated that NOV, although

wrongly issued, as the official notice triggering a mandatory response timeline requiring me to respond within 15 days. When I failed to respond within the 15 day deadline, APCHA then used that NOV as a basis for denying me a hearing and thus far, no hearing has ever been held by APCHA. APCHA subsequently used that notice in state court to assert that my defenses could not be heard at that level either, and specifically asserted that the state court did not have jurisdiction to hear my defenses. The state court agreed granting APCHA's summary judgment without discovery ever having commenced in the case. I have never been allowed a hearing at any level to present my defenses. The actions of APCHA shock the conscience. See *Spracklin v. City of Blackwell*, 293 Fed. Appx 567, 572 (10th Cir. 2008)

14. APCHA never set a case management conference despite the state court's delay reduction order specifically obligating APCHA, as the plaintiff in the action, to do so. (See December 3, 2016 delay reduction order in my *Petition for Writ of Certiorari*, Appendix D, App. 41) APCHA ignored explicit procedural requirements to provide discovery disclosures, to file a certificate of compliance, and to set a case management conference; which notably, is imperative for unrepresented parties so the court can apprise them of their rights, relevant case procedures, and ensure both sides are abiding by their requirements. See C.R.C.P. 16.1; C.R.C.P. 16. Moreover, C.R.C.P. 16(b)(2) indicates plaintiff's counsel (Tom Smith) is responsible for setting conferences. The order also required "Plaintiff shall mail a copy of this order to all parties who enter an appearance and who do

NOT file their appearance electronically.” APCHA failed to mail the order to me. I never knew about the December 3, 2015 since I was frantically trying to rip out closets and electrical lights already approved so that APCHA would give me a certificate of occupancy for our house. Notably, Colorado does not allow pro se litigants to file electronically. Accordingly, no case management order was ever entered in the case, discovery never commenced in the case, and APCHA filed its summary judgement motion without my having an opportunity to engage in discovery or otherwise have an opportunity to fairly and fully defend against APCHA’s claims. See C.R.C.P. 16 (b) (11) indicating discovery commences upon service of a case management order. APCHA acts with impunity, selectively enforces their rules, and uses them as a weapon. In my case, APCHA has acted as if they are above the law.

15. APCHA’s actions ultimately resulted in a deprivation of my property and due process rights and resulted in the order compelling me to sell my property without a proper opportunity to protect my property interests. I have had no adequate post-deprivation remedy as evidenced by my inability to obtain relief or otherwise obtain any kind of hearing at the state court level. APCHA’s actions in the state court proceeding compounded my deprivation due to its failure to abide by important procedural requirements.

16. APCHA has refused to grant me a hearing to allow me to contest the finding in the prematurely issued NOV and has irrationally and arbitrarily singled me out. Importantly, other City of Aspen and Pitkin County residents have repeatedly

been found to be in violation of deed restrictions enforceable by APCHA and, yet, APCHA has repeatedly granted other individuals subsequent hearings even after administrative deadlines to respond have passed. There is no rational basis for the difference in treatment. See *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). For example, APCHA went after me for not having a certificate of occupancy and yet looked the other way regarding my neighbors. APCHA states on page 12 of their *Brief in Opposition* to this court, that I offer no factual assertions but only conclusory allegations regarding my six neighbors. See dates on certificate of occupancies of neighbors on Forge Road provided in Appendix D as proof that the neighbors on Forge were also out of compliance of the Deed Restriction residency requirement. Also see the APCHA email obtained in a CORA detailing examples of “a situation in the past where the committee has granted a waiver of the strict APCHA housing rules.”

17. APCHA's actions were malicious, intentional, reckless or otherwise callously indifferent to my constitutional rights and specifically designed to deprive him of my equal protection rights. With respect to the full and fair opportunity to litigate exception, the U.S. Supreme Court has stated that this requirement means there is “no reason to doubt the quality, the extensiveness, or the fairness of procedures followed in prior litigation.” See *Montana v. United States*, 440 U.S. 147, 164, n. 11 (1979). In particular, in my state court case, APCHA and its attorney failed to follow procedures mandated by the presiding court, as well as the Colorado Rules

of Civil Procedure, which ultimately worked to deny me any access to discovery to fairly defend against APCHA's claims.

18. APCHA states on page 12 of their *Brief in Opposition*: "Finally, the claim that the District Court and APCHA failed to follow their own rules does not state a violation of procedural due process as guaranteed by the U.S. Constitution. An alleged violation of state or local law does not give rise to a procedural due process claim." For due process claims you have to have protected property interest and pure procedure cannot give rise to a protected property interest. I have a property interest- our land and home we built- and it cannot be deprived without proper due process. The injury isn't only that the procedure wasn't followed, but that the procedure that wasn't followed injured my right to own property. See *Hillside Comm. Church v. Olson*, 58 P.3d 1021 (Co.o. 2002) discusses this distinction. APCHA fundamentally misunderstands this doctrine and is seemingly relying on the principle that one does not have a protected property interest in mere procedure.
19. APCHA tries to construe due process as only requiring an **opportunity** to be heard; that is, a mere chance to be heard at some point in time; APCHA ignores that procedural due process requirements are more substantial than that, requiring an "opportunity to be heard at a meaningful time and in a meaningful manner." See *Becker v. Kroll*, 494 F.3d 904, 922 (10th Cir. 2007) (emphasis added) quoting *Stanko v. Mahar*, 419 F.3d 1107, 115 (10th Cir. 2005). That is, a mere chance to be heard is insufficient, it must be an actual opportunity to as opposed to some

nebulous theoretical possibility. I have alleged more than a procedural due process violation but also a substantive due process violation.

20. At its dark heart, this case is about an outspoken artist who stood up and challenged local government and Aspen Skiing on various matters, including labor and employee rights, and in retaliation for speaking out, has been targeted or otherwise treated differently in an attempt to evict him and remove him from the community. Aspen Skiing is owned by an out of state of billionaire Lester Crown whose history of bribery has been well documented by the *Chicago Tribune* & *New York Times*. Judge Seldin, previously a Pitkin County assistant attorney, admitted in court to being a member of the Aspen Institute's Lester Crown Society of Fellows for over a decade. Annual membership starts at a minimum \$2500.00 which is a significant investment for anyone, let alone a Pitkin County assistant attorney.

21. Our country was born out of an act of treason against a government out of control. Little people outside of Washington DC have lost faith in our justice system. I am grateful for every day my family has the blessings we have been given by God and we maintain our wicked sense of humor. Our constitutional rights have been violated. But know this, we will never sell and we will defend our Property with our lives, whatever it takes. I will go to jail for contempt of court and serve my penalty of six months for not selling and after that, I will hunger strike. Political prisoners and hunger strikes have no place in Aspen's history, or for that matter, America's.