



Strengthening Community Through Workforce Housing

**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 APCHA for further medical treatment.

Spitz stated Przybylski notified the APCHA that he would not be returning before his leave of absence expired due to medical treatments. The APCHA issued a Notice of Violation. Mr. Przybylski said he does want to return in his letter to APCHA he just doesn't know when due to his recovery time being unknown. The 1999 APCHA 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 APCHA recently and has cooperated with our requests; however, Mr. Przybylski did not originally request a leave of absence.

Spitz stated the APCHA 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 APCHA 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.

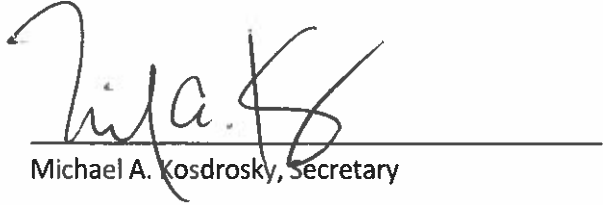
After further discussion, Council made a recommendation to keep the unit as is at Category 1 as originally approved; Head seconded the motion. ROLL CALL VOTE: Erickson, Head, Forbes, Council, Gilbert, Blaney, and Schmitz voted yes. All voted in favor. Motion passed.

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

THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY



A. Ronald Erickson, Chairperson



Michael A. Kosdrosky, Secretary