



**MINUTES OF THE JUNE 21, 2023  
REGULAR MEETING OF THE  
ASPEN/PITKIN COUNTY HOUSING AUTHORITY**

**CALL TO ORDER:** Chairperson Carson Schmitz called the APCHA Board Meeting of June 7, 2023, to order at 3:04 p.m. The APCHA Board Meeting was held in person and through Zoom Meetings.

**ROLL CALL:** John Doyle, Ward Hauenstein, John Ward, Carson Schmitz, Kelly McNicholas-Kury, and Alycin Bektesh were present. Francie Jacober was absent.

Staff Members in Attendance: Cindy Christensen, Deputy Director, Housing Operations; Bethany Spitz, Deputy Director, Compliance; Karen Bromka, Administrative Specialist; Michael Healey, Administrative Specialist; and Tom Smith, APCHA Attorney were present. Kate Johnson, City Assistant Attorney, was present representing the APCHA Board on the Dr. Singer Appeal.

**PUBLIC COMMENT:** Schmitz opened the regular meeting to Public Comment for items not on the agenda. Schmitz mentioned that we would not be taking any public comment on the two appeals on the agenda for today.

- Peter Fornell made a public comment.

There being no further public comment, Schmitz closed the meeting to Public Comment.

**APCHA BOARD OF DIRECTOR'S COMMENTS:**

- McNicholas-Kury asked about the newly appointed member, Peter Grenney. Christensen stated she is still trying to clarify with City Council if they have officially appointed him. Peter Grenney has been appointed as the alternate community member for the Board.
- McNicholas-Kury stated the County conducted a poll regarding a housing tax. Based on results, they are not going forward with a request for a housing tax this year. She hopes for all our support and advocacy in 2024. She shared that there was a lot of commentary and concern about APCHA in the open-ended comments of these polls with relationship to people's attitudes to housing the community, and whether a tax is appropriate right now. She mentioned the Board is dedicated to community outreach, its reputation in the community. She is looking forward to discussing this further during the Board retreat.
- Bektesh questioned if the Board was able to take a stance on other matters that local governing bodies are discussing. Tom Smith responded that the Board, as a whole, are able to submit recommendations to the City, County, or any other governmental agency. There is concern about Board members who are elected officials, prejudging matters that come before them. Christensen stated that the land use reviews are done by staff. Land use reviews are not brought to the Board because of the members of City Council and Board of County Commissioners on the Board. McNicholas-Kury stated she would think that the Board as a whole could take a stance on a matter and individual members could elect to recuse. Hauenstein stated that Board members can take a

stance on an issue, but they cannot lobby for an issue. Smith stated that he would investigate this matter further. Bektesh stated that the results of Smith's research into the matter could be in an info memo in a packet.

- Bektesh wanted to confirm an informational memo was circulated going over the RFP process for selecting a hearing officer. She also stated it would be good to have for the record, mostly for the public, because the topic does come up.
- Hauenstein thanked McNicholas-Kury for being the sole member of the Board of County Commissioners for supporting a housing tax. He stated we need as much funding as possible to address the work force housing crisis. He stated that there was a 3-2 polling to Peter Grenney being on the APCA Board as an alternate member. Those board appointments are normally announced as a matter of procedure at City Council Meeting.
- Ward appreciates the Board slowing down the Lumberyard project. His concerns are around the lack of regulations pertaining to maintenance. As a Board, they must continue to work to ensure that HOAs are funded adequately, and individual owners take ownership of their unit. Ward also stated that the City does not seem to care about the members of our community down valley. The City needs to act on the entrance to Aspen before we consider putting more affordable housing on the other side of the roundabout.
- Kury asked if the City approved up to \$100,000 in maintenance grants. She stated that the County has funds that are targeted towards housing for this year's budget and rapid response funds that need to be allocated by 2024. She stated the APCA Board could make a funding request to the County for maintenance. Christensen stated that the City Council did match the amount the BOCC approved for the maintenance grant program.
- Doyle made a comment that the Lumberyard, the entrance to Aspen, and the airport are all being discussed right now. This is his reasoning for continuing the Lumberyard project without delay. These three projects are all long-term projects in close proximity to each other. They need to be looked at comprehensively. Which is why he voted to go forward.
- Ward suggested making the Lumberyard project a transit-oriented program.
- Schmitz stated that the capital reserve for new projects can be tackled at the same time. There are projects that are fully funded at the start and as time goes on, they rebate money back to the owners, or other things that happen that put the association into financial hardship. We should have a capital reserve study every X number of years and funded at a certain percent. This could be addressed in the Regulations.

**STAFF UPDATE:**

- Christensen stated that a group of City and APCA employees are producing ways to require capital reserves for new development, and what to do with the current ones. There is a lot of work going on pertaining to that subject and as soon as something is put together it will be brought to the Board for further discussion. Gillen is on vacation for a while and due back for the joint meeting on the 18<sup>th</sup> and Board Retreat on the 19<sup>th</sup>.
- Bektesh requested a debrief about the joint meeting. She would request that it be added to the agenda after the joint meeting.
- Christensen reminded everyone to sign up for notifications in order to be aware of any new sales or rental units coming up. We are having better luck filling T2 units since the income caps increased.

**AGENDA AMENDMENTS:**

- There were no proposed amendments to the agenda.

**CONSENT CALENDAR:**

**Ward made a motion to approve the Minutes of the June 7, 2023, Regular Meeting; Hauenstein seconded the motion. ROLL CALL VOTE: Ward, Schmitz, Hauenstein, and Bektesh voted yes. McNicholas-Kury abstained. Motion passed.**

**Final Disposition on the Appeal of Highlands Villas, LLC, from the Findings of Fact, Conclusions of Law and Ruling of APCA Hearing Officer dated January 20, 2023**

- Schmitz stated that Smith has brought two resolutions to the Board for review and the Board can approve either one as written or with requested changes.
- Smith stated this matter was appealed to the Board at the last meeting. A statement from APCA was made as well as arguments from Highlands Villas LLC, and MAA. The Board concluded oral arguments but did not begin its deliberations. The purpose of this meeting is to have those deliberations because there are unusually more complex questions of law present by the appeal. Smith stated that he took the liberty of preparing two potential resolutions: one going one way, the other resolution going the other. It is up to the Board what they want to do, they may ignore the drafts, or use them. He stated that he thought that would be the best way to get the deliberation started.

**Ward made a motion to approve Resolution No. 5 (Series of 2023), Denying the Appeal of Highlands Villas, LLC and Affirming the Ruling of the APCA Hearing Officer dated January 20, 2023; Hauenstein seconded the motion. Schmitz asked for comments before a vote was taken.**

- Kury stated that the decision was appropriate. The court case resulting in what is due to MAA are clear. MAA had the option of requesting a longer lease term, it is their choice to pursue. The deed restriction states the units can be leased in May and September and they do not have to leased to MAA, they could be leased to other parties, or winter seasonals. The findings were appropriate, and no abuse of discretion applied in this case.
- Ward stated there was clear duress. There is a dire need for housing, and the MAA had a real concern about securing housing. There was a violation of the deed restriction, and it was a clear and easy decision for the case officer.
- Hauenstein stated that there was a clear condition put on the deed restriction, which states that it the MAA has the right to rent the units from June to August. There was an additional restriction requested by Highlands Villas, LLC for parts of May and September. The deed restriction follows the property regardless of the sale of the property. The time constraints caused duress and pressure on MAA, and they signed the lease. They noted that the extended lease was not agreed upon by the MAA and both points are what the hearing officer made his decision on.
- Schmitz was supportive of the decision. The lease is from May 5<sup>th</sup>- September 25<sup>th</sup> but he did not see any negotiation. There was a mention of inflation in costs including HOA dues. He stated that it was very clear what the motive was. He stated that anyone who tries to get housing in this valley knows that it is difficult. Trying to move from April to June to find housing is exceedingly difficult.

- Bektesh stated their main task is to look at the deed restriction and keep those who are part of the program to those restrictions. She agreed with what has been and what was demanded outside of that. The issue of duress is what it came down to legally. The duress was stated clearly by both parties. Highlands Villas also mentioned how hard it is to find new people when they have unit turnover There is an argument that threat does not count as duress if the victim fails to pursue reasonable alternatives but yields to the threat. The fact that we are here now shows that the victim sought other alternatives including getting lawyers and asking for the notice of violation and continuing it to here. We have gone through the arguments point by point, and she found John's motion acceptable.
- Hauenstein asked if the Board wanted to comment relating to the \$30,000 fine to APCHA.
- Schmitz stated that number is the fine schedule, which dictates a \$5,000 - \$6,000 fine per violation, and there were six units.
- Ward stated that APCHA has spent legal fees on this issue that will not be recouped. That is one of the reasons why a fine system was put in place.
- McNicholas-Kury commented that because it was adjudicated in court years prior, this is a revisitation of a question that should have been settled. A violation in the context of that history is different than a first-time violation.
- Schmitz agreed with McNicholas-Kury.
- Smith stated there are a few typos that he will fix prior to getting signatures if the Board approves this resolution.

**Ward restated his motion to approve Resolution No. 5 (Series of 2023), Denying the Appeal of Highlands Villas, LLC and Affirming the Ruling of the APCHA Hearing Officer dated January 20, 2023; Hauenstein seconded the motion. ROLL CALL VOTE: Ward, Schmitz, Hauenstein, Kury, Bektesh voted yes. Motion passed unanimously.**

**Bektesh made a motion to go into Executive Session for a conference with APCHA attorney (Kate Johnson representing the APCHA Board) for purpose of receiving legal advice under C.R.S. Section 24-6-402(4)(b) regarding Dr. David Singer's Appeal to the APCHA Board appealing the Hearing Officer's written decision regarding Dr. David Singer's lease termination; McNicholas-Kury seconded the motion. ROLL CALL VOTE: Bektesh, Kury, Hauenstein, and Ward voted yes. Motion passed.**

**Bektesh made a motion at 3:59 p.m. for the Board to come out of Executive Session. Ward seconded the motion. ROLL CALL VOTE: Bektesh, Kury, Hauenstein, and Ward voted yes. Motion passed.**

**Dr. David Singer's Appeal to the APCHA Board appealing the Hearing Officer's written decision regarding Dr. David Singer's lease termination. Chris Bryan, attorney from Garfield and Hecht, and Tony Mendez attorney with Alpine Legal Services, were present representing Dr. Singer; Tom Smith was present representing the APCHA staff; Kate Johnson, Assistant City Attorney for the City of Aspen, was present representing the APCHA Board.**

- Bryan presented Dr. Singer's argument to the Board.
- Smith presented his argument on behalf of the APCHA staff to the Board.

After clarifying questions were presented and answered, **Bektesh made a motion to continue deliberations on August 16, 2023, regarding Dr. David Singer's Appeal to the APCA Board appealing the Hearing Officer's written decision regarding Dr. David Singer's lease termination. McNicholas-Kury seconded the motion. ROLL CALL VOTE: Hauenstein, Schmitz, Bektesh, Ward and McNicholas-Kury voted yes. Motion passed.**

**Bektesh made a motion at 5:30 p.m. for the Board to go into Executive Session for a conference with the APCA Attorney for purpose of receiving legal advice under C.R.S. Section 24-6-402(4)(b) regarding Dr. David Singer's Appeal to the APCA Board appealing the Hearing Officer's written decision regarding Dr. David Singer's lease termination, and not for the purposes of deliberations. McNicholas-Kury seconded the motion. ROLL CALL VOTE: Hauenstein, Schmitz, Bektesh, Ward and McNicholas-Kury voted yes. Motion passed.**

**Bektesh made a motion at 6:15 p.m. for the Board to come out of Executive Session; McNicholas-Kury seconded the motion. ROLL CALL VOTE: Hauenstein, Schmitz, Bektesh, Ward and McNicholas-Kury voted yes. Motion passed.**


**Ward made a motion at 6:16 p.m. to adjourn the meeting of June 21, 2023; Hauenstein seconded the motion. ROLL CALL VOTE: McNicholas-Kury, Hauenstein, Schmitz, Bektesh, and Ward voted yes. Motion passed. Board meeting adjourned at 6:16 p.m.**

THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY



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Carson Schmitz, Chairperson



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Cindy Christensen, Acting Secretary