

**GRIEVANCE AGAINST KING NEIGHBORHOOD ASSOCIATION (KNA)
WITH REGARDS TO VOTE TO REMOVE MARGARET O’HARTIGAN
FROM BOARD OF DIRECTORS AT-LARGE POSITION 2**

Brought by Margaret O’Hartigan

January 7, 2016

This grievance is made in compliance with King Neighborhood Association Bylaws ARTICLE X Sections A and B, and Office of Neighborhood Involvement Standards SECTION VII, Subsection C sub-subsections 1 and 3.

This grievance is in response to the meeting and vote held on December 7, 2015 to remove me from the KNA At-Large Position 2. As will be shown, the removal was illegitimate for two basic reasons: 1) the meeting itself was not convened in compliance with KNA bylaws; and 2) the “reasons” the Chair and Treasurer cited for removal were not, in fact, legitimate causes. The alleged behavior was untrue and unsubstantiated. Furthermore, my actual behavior was, in fact, nothing more nor less than the legal fulfillment of responsibilities and Duty of Care and Duty of Obedience as a board member to a) assure open meetings and records, and b) investigate and bring to membership attention nonfeasance and/or dereliction of duty by board officers, as well as my right as a member under KNA bylaws to file grievances. Consequently, the “causes” cited by the Chair and Treasurer were nothing less than retaliation against me, and yet another attempt by other Board members to hide their own nonfeasance and dereliction of duty.

With regards to the first reason, the meeting itself was a violation of KNA Bylaws ARTICLE VI Sections B and C governing membership and board meetings, respectively, and a violation of ARTICLE VII Section H governing removal of a board member from the board. Consequently, my removal was also a violation of Oregon Revised Statutes 65.324 governing “Removal of directors elected by members or directors”, specifically, paragraph (9). With regards to the second reason, I was complying with responsibilities delineated in ORS 65.357 (1) and (2) and the Office of the Oregon Attorney General’s “Guide to Nonprofit Board Service in Oregon” pertaining to: active participation in the management of the organization, evaluating reports, reviewing the performance of the chair, and requesting sufficient information to carry out my responsibilities as a director, as well as inquiring into the surrounding facts and circumstances when problems exist or reports do not make sense. Consequently, the Chair and Treasurer, together with other members of the KNA Board, conducted retaliation against me for fulfilling the obligations of a board member.

Background

At a general membership meeting on May 13, 2015 I was elected to the KNA At-Large Position by a vote of 16-0. I was notified by a November 30 e-mail from KNA Chair Nick LaRue that “We

will be holding an emergency meeting to remove Margaret O'Hartigan from her position on the King Neighborhood Association board. 6:00 PM Monday 12/7/2015 NECN Headquarters. The meeting has also been posted on the KNA website." The website notice read: "Emergency Meeting – Removal of Board Member – 6:00 PM – Monday 12/7/2015 By Nick LaRue...King Neighborhood Association will be holding an emergency meeting to remove a board member. This meeting is open to all King Neighborhood Association members." After calling the meeting to order, the Chair cited "a single board member's formal grievance process and a barrage of antagonistic e-mails...Since 2014 KNA has received six formal grievances...In addition to those grievances, e-mail communications include belittling and disparaging language when an action of the board does not meet this member's satisfaction." The Chair offered no evidence and related no examples to substantiate his charges. He then asked if there was a motion to remove, KNA Treasurer Diego Gioseffi made the motion, and At-Large Board member Leigh Rappaport seconded it. Ballots were passed out, collected, and a vote in favor of removal was announced by the Chair.

Analysis

1. The meeting was not convened in compliance with KNA Bylaws.

KNA Bylaws specify no reasons for removal from the Board. ARTICLE VII Section H subsection 1 governing removal states: "Any Director may be removed, with or without cause, at a meeting called for that purpose, by a vote of the majority of the Members entitled to vote at an election of Directors." However, KNA Bylaws do not give the Chair authority to schedule such a meeting; such a meeting of membership – as with all membership meetings – are the prerogative of the Board to schedule pursuant to ARTICLE VI Section B subsection 1): "There shall be one annual meeting of the general Membership in May. The Board may schedule other Membership meetings as needed." KNA Bylaws only allow the Chair to call Special and Emergency *Board* meetings. ARTICLE VI Section C (5) and (6): "Special meetings of the Board may be called by the Chairperson or any three Directors as deemed necessary...Emergency meetings of the Board may be called by the Chairperson or any three Directors as deemed necessary." At the start of the Dec. 7 meeting the Chair admitted to calling the meeting:

Margaret: "Point of order. How was the meeting called?"

Nick: "How was the meeting called?"

Margaret: "Yes."

Nick: "It was called on the KNA website, and e-mails were sent out via mail-chimp, as well as each board member."

Margaret: "That's the medium, who called the meeting?"

Nick: "I called the meeting."

Margaret: "You called the meeting."

Nick: "I did."

Margaret: "Acting as Chair."

Nick: "Acting as Chair."

The Dec. 7 meeting was labeled an "emergency meeting" in the notice of meeting and meeting agenda posted on the KNA website. The meeting notice and agenda did not identify the meeting as a membership meeting. The agenda merely stated "This meeting is open to all King Neighborhood Association members" – but then, all meetings are to be open conforming to ARTICLE VI governing meetings: "**PARTICIPATION** Any Membership, Board or Committee meeting is open to any person." Further clarification is provided by ARTICLE VI Section B subsection 5) governing **VOTING** "Members at a *general Membership meeting* will vote on the election and removal of Board Directors..."[emphasis added]. A general membership meeting scheduled by the Board – not an emergency meeting called by the Chair – is necessary for removal from the Board of Directors. If the Chair or the Board wanted the Dec. 7 meeting for the purpose of my removal, then the Board should have scheduled a general membership meeting for that purpose – keeping in mind, of course, that as with all deliberations and decisions, the Board must – in open meeting available for public attendance -- deliberate and decide to schedule such a meeting. (ONI Standards governing Open Meetings and Public Records specifically state in SECTION VIII Subsection C that "Members of a...board, or committee, as established by the governing bylaws, shall make all decisions and conduct all deliberations toward a decision at a meeting open to the public at which a quorum is in attendance.") Inasmuch as the Board made no such public action, the ineluctable conclusion is that the Dec. 7 meeting was, in fact, a Board meeting. Oregon law governing nonprofits such as KNA is very clear: "A corporation with members shall hold a special meeting of members: (a) On call of the corporation's board of directors or of the person or persons that the articles of incorporation or bylaws authorize to call the meeting" (ORS 54.204 Special Meeting). [my emphasis]

That the Chair and Treasurer claimed during the meeting that non-board members could vote does not establish the meeting as a membership meeting, nor does it legitimize non-board member votes. As a consequence of the fact that the Dec. 7 meeting was a board meeting rather than a membership meeting then, the "reasons" cited by the Chair for my removal violate ORS 65.324(9), which holds that "If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for reasons set forth in the articles or bylaws, the board may remove the director for such reasons." As no reasons whatsoever were set forth in KNA bylaws at the time of my election, my removal at the board meeting was illegal.

The fact that KNA Bylaws require a quorum of the Board to first deliberate and decide upon such a course as scheduling a membership meeting to consider removal of a board member at a later date indicates a desire on the part of the membership amending the Bylaws on July 9, 2014 to avoid hasty or precipitate action – exactly the sort of haste evidenced by the Chair’s illegitimate calling of an “emergency” meeting for Dec. 7.

In addition to the failure of the Board to schedule a membership meeting to consider my removal, Board officers and directors repeatedly made erroneous claims regarding membership and voting rights. As ballots were passed out by the Chair, the Treasurer announced: “Yeah, everyone, *everyone* that lives in King is a member of the association”, followed by the Chair’s comment that “There’s a map at the entrance if you’re not sure, we also have the boundaries.” I interjected: “Point of order – they also actually need to be members...” and the Chair then stated: “Does everyone that has a ballot a member of King Neighborhood Association?” [sic] A non-director asked: “Meaning do we live...” and was interrupted by the Chair saying: “Meaning do you live in King? Did you sign in?” Board member Leigh Rappaport then interjected: “Did you sign in?” For the record, membership isn’t just limited to residents, but to any person 16 years of age or older who own real property, or is a designated representative of a business, a non-profit, an agency, a school, or a church within the boundaries of the neighborhood – however, the most pertinent point is that ARTICLE IV of KNA Bylaws mandate that any person meeting such criteria “must also confirm their membership in writing, including but not limited to checking the membership box on the sign-in sheet.” KNA officials were so eager to garner votes for my removal that they repeatedly misrepresented membership requirement, patently confusing people attending the meeting, and then announced a vote tally counted without cross-reference of ballots to both a sign-in sheet and prior confirmation of membership “in writing” in compliance with KNA bylaws.

2. “The “reasons” the Chair and Treasurer cited for my removal were untrue, unsubstantiated and in any case did not comprise “cause”; what the Chair and Treasurer objected to, in fact, was my executing my legal responsibilities as a board member under KNA Bylaws ARTICLE VII subsection D and ORS 65.357(1) and (2) as well as the Attorney General’s “Guide to Nonprofit Board Service in Oregon”. Consequently, the “causes” cited constitute retaliation for simply fulfilling my duties as a board member.

Both KNA Bylaws ARTICLE VII, subsection H sub-subsection 1 and ORS 65.324 authorize members to remove a director “with or without cause” – but the phrase “with cause” does not give carte blanche to those seeking to remove a director. It does not legitimize gross exaggeration, misrepresentation, lies, defamation of character, slander or libel. Nor does it authorize removal for exercising rights and duties granted under KNA Bylaws, such as voting or

filing a grievance. Nor does it authorize retaliatory removal for fulfilling the Duty of Due Care imposed by both KNA Bylaws and the State of Oregon, or the Duty of Obedience required by Oregon.

The KNA officials who sought my removal could have had the Board schedule a legitimate membership meeting to consider a simple motion to remove me “without cause” – but they instead chose to assert “cause”, as evidenced by the KNA Treasurer’s Dec. 7 motion for my removal from the Board: “I want to make a motion to remove Margaret O’Hartigan from the King Neighborhood Association board, uh, effective immediately, for disruptive, aggressive, sort of bullying and disrespectful behavior during board meeting, e-mails, conversations and abuse of the grievance process.”

The Treasurer offered no evidence to substantiate his claims – but a previously written assertion of the Treasurer’s illustrates his concept of what constitutes an “aggressive” e-mail. In his response to my July 15 e-mail to board members requesting an agenda item at our next meeting “regarding the blatant failure by an officer of the Board to comply with a unanimous vote of the Board of Directors made last August”, the Treasurer criticized my “unnecessary slightly aggressive statements”, and added “Wouldn’t it be great if we all keep our tone more friendly, whether or not we might be right?” As I’d reported in my e-mail, “the sum of \$250 that the Board voted unanimously to donate to the Jambalaya Festival was, in fact, never made” and I then cited KNA Bylaws that “The Treasurer shall:...disburse funds for the Association...in such manner as designated by the Board” and “The Chair shall:...ensure that any decisions of the Board are carried out properly.” The next day the Treasurer e-mailed: “As a new Treasurer, I think \$250 that didn’t go anywhere is not a financial problem for any of the interested parties.”

It isn’t difficult to see how a Treasurer who wrote “I think \$250 that didn’t go anywhere is not a financial problem for any of the interested parties” might be inclined to view my request for an agenda item to consider nonfeasance by KNA officials to be “disruptive, aggressive, sort of bullying and disrespectful behavior” – but that doesn’t make him right. (The Treasurer’s claim was, however, applicable to his own pattern of interrupting me to contradict me at board meetings while I had the floor, for example, on November 14.)

The Treasurer’s assertion in his motion that I abused the grievance process is utterly specious. That I employed the grievance process is inconvertible – but “use” is not “abuse”. Not only did the Treasurer offer no criteria as to what might constitute “abuse of the grievance process”, he also neglected to provide evidence or examples of such alleged “abuse” on my part. It was, in fact, the other eight members of the KNA Board who abused the grievance process, issuing responses to my grievances without the mandatory public appointment of grievance committee

members, without holding the mandatory public hearing of my grievances and without rendering a decision on the grievances in open public meeting, violating ONI Standards SECTION VII Subsections B(1) and C(3)(c) and (d) as well as ONI SECTION VIII Subsection B (3) and (4).

Indeed, the only apparent criteria as to what constituted “abuse” of the grievance process attributed to me was expressed by the Chair in his introduction to the Dec. 7 meeting: “Since 2014 KNA has received six formal grievances sapping a considerable amount of energy and morale from our meetings, our board members and the Northeast Coalition of Neighborhood staff.” “These grievances trigger substantial amount work” the Chair also asserted, and “King Neighborhood Association’s business has been severely impacted”. So the number of grievances – and the work they entailed – constituted “abuse” of the process worthy of removal from the board, while actual abuse of the process through blatant violation of bylaws, standards and state open meeting requirements didn’t even warrant a reference.

It is worth mentioning at this point that my first grievance – submitted months before my election to the Board -- objected to the KNA Board’s nearly year-long failure to issue minutes of its meetings, which the Chair neglected to mention in his desire to misrepresent the facts while once again turning a blind eye to the Board’s failures to perform its most basic duties. (And another two of the “six” grievances concerned the Board’s repeated violations of the grievance procedure.)

The Treasurer’s unsubstantiated reference in his motion to “disruptive...sort of bullying and disrespectful behavior during board meeting [and] conversations” – even if true (which it wasn’t) – doesn’t constitute “cause” under KNA Bylaws, NECN Rules or ONI Standards. Such behavior might constitute “cause” under the “Standards of Conduct and Ethics for King Neighborhood Association Board and Committee Members” approved by 7-1 vote of the Board on September 9, 2015. Comments made by the Chair at the start of the Dec. 7 meeting indicate that the Standards were seen as “cause” for my removal: “In addition to these grievances, e-mail communications frequently include belittling and disparaging language when an action of the board does not meet this member’s satisfaction.” Contrast the Chair’s unsubstantiated claim and call for my removal to the Standards’ declaration that “Inflammatory, biased, demeaning language...will not be tolerated.”

However, adoption and application of The “Standards” violated KNA Bylaws governing election of Board members and officers and violated KNA Bylaws governing amendment of Bylaws (ARTICLE XIV ADOPTION AND AMENDMENT OF BYLAWS).

KNA Bylaws governing election are simple and direct. According to ARTICLE VIII: “Only persons eligible for membership shall be qualified to hold an elected or appointed position” while ARTICLE VII Section A states: “The Board shall... be selected from individuals who qualify for

membership in the Association.” ARTICLE IV governing membership specifically declares that “Membership in the Association shall be open to any person sixteen (16) years of age or older who resides within, or owns real property within, the boundaries set forth in Article III...Any person meeting the above criteria must also confirm their membership in writing, including but not limited to checking the membership box on the sign-in sheet.”

The “Standards”, however, require that “Current and future Board members and persons running for election to the Board of Directors will be given a copy of these Standards and will be asked to sign that they have received, read and agreed to abide by them.” Not only did I refuse to sign the Standards, I submitted to the Board on September 9 a written critique of the many ways in which the Standards violated KNA Bylaws. As argued then, acceptance of and adherence to the “Standards” thus presented new conditions of serving on the Board despite the fact that no such “Standards” are articulated, referenced or otherwise identified in KNA Bylaws. The “Standards” thus violate KNA Bylaws governing elected or appointed position by imposing a new qualification to be found nowhere in the Bylaws – a qualification illegitimately applied against me on December 7.

The Board’s imposition of additional requirements to hold elected Association office also violated provisions of KNA Bylaws’ ARTICLE XIV governing ADOPTION AND AMENDMENT OF BYLAWS.

As defined within the Bylaws themselves, “Adoption of and amendments to these bylaws shall require a two-thirds (2/3) vote by the Members present at a Membership meeting” (ARTICLE XIV, Section A). However, the September 9, 2015 meeting at which the Board adopted its “Standards” was *not* a Membership meeting.

The process contained in the Bylaws for amending the Bylaws includes the following requirement: “All amendments to these bylaws must be proposed in writing and submitted to members for a reading at a general meeting before voting on their adoption may proceed at a later general meeting “ (ARTICLE XIV, Section C). In fact, the Board withheld from its membership its “Standards” for holding office – they were not posted on the Association’s website prior to the September 9 vote (or since), nor were they handed to the many neighbors and association members who attended the September 9 meeting. Given that the “Standards” imposed new criteria for holding office – and that they have patently been applied against a Board member since adoption, such secretiveness on the part of the Board is inexcusable.

Lastly, ORS 65.464(1)(a) specifically recognizes that the power to amend a corporation’s bylaws is specifically that of the members, if the articles of incorporation reserve such power exclusively to the members.

Just as the adoption of the “Standards of Conduct” was an end-run around the process of amending the KNA Bylaws, governing eligibility for office, the Chair’s and Treasurer’s references to “belittling”, “disparaging” and “disrespectful” imposed the Standards of Conduct without actually citing them or invoking language specific to the Standards. Nevertheless, the Board’s intention is apparent.

Ultimately, my behavior to which the Board objected was that – unlike the rest of the Board – I actually performed the responsibilities of a nonprofit Board member, which according to the Oregon Attorney General’s Office, requires that: “A director must actively participate in the management of the organization including attending periodic meetings of the board, *evaluating reports, reading minutes ...*” [my emphasis]. Unlike the other Board members, I read the monthly financial reports provided by NECN – and when I found a financial discrepancy I pressed to have it addressed in a Board meeting – and when stymied by the Board in that effort, filed a grievance. When I found nonfeasance and dereliction of duty by KNA officials, I sought to have that addressed by the Board in a Board meeting, and when the Board failed to do so, I filed grievances to force the issue into the public record. When – despite the Board failing to produce meeting minutes inclusive of Board member attendance – I ascertained that several Board members rarely attended Board meetings and therefore violated that particular aspect of Duty of Care and could be construed to constitute their resignations under KNA Bylaws, I sought to have the issue addressed by the Board in a Board meeting, and when the Board instead deliberated and decided the issue outside of open meeting available for public attendance, I filed a grievance in an attempt to force the issue into the public record.

And when -- in compliance with the Duty of Obedience’s requirement to ensure that the organization comply with applicable laws and regulations as well as its internal governing documents and policies – I saw that the Board refused to follow its grievance procedures and repeatedly made decisions in meetings not open to public attendance in its continued effort to hide its members’ failures from membership, I filed additional grievances. In short, the Board sought my removal to retaliate for my efforts to expose its repeated failures to comply with its own Bylaws, ONI Standards and perform Duty of Due Care and Duty of Obligation; and to prevent me from bringing to the membership’s attention the Board’s repeated violations and failures.

And as for the Chair’s false portrayal of my e-mail communications as “frequently include belittling and disparaging language when an action of the board does not meet this member’s satisfaction”, I was, in fact, complying with the necessity of dissenting in writing as a board member to disclaim responsibility for particular decisions that violated public meeting/records requirements or failed to comply with governing KNA Bylaws or ONI Standards.

Harm

The harm done to me personally by the KNA's violations of KNA Bylaws and state law is the wrongful denial to me of my duly elected position of KNA Board Member At-Large Position 2. In addition, I have suffered harm in being retaliated against for the specified reason that I filed grievances – grievances allowed by KNA Bylaws and ONI Standards. My reputation has also been damaged by the Chair's unsubstantiated yet public character assassination. Inasmuch as my grievances and e-mails to fellow board members concerned incompetence, nonfeasance, dereliction of duty and lack of board meeting attendance sufficient for removal, I was clearly retaliated against for my objections to their illegitimate actions.

Remedy

To be made whole, I must be returned to a Director position on the KNA Board – and if there is no vacancy, then one should be made by the resignation of a Board member who voted for my removal. In addition, a letter of apology from Chair Nick LaRue and Treasurer Diego Gioseffi for their slanderous comments and illegitimate actions against me should be issued to me. This letter should also be read at the next board meeting, the next general membership meeting, and published on the KNA website as well as any other venues which previously publicized the meeting that sought my removal from the Board.

Margaret O'Hartigan

January 8, 2016