

GRIEVANCE AGAINST KING NEIGHBORHOOD ASSOCIATION (KNA)

Brought by Margaret O'Hartigan, KNA At-Large Position 2

September 16, 2015

This grievance is made in compliance with King Neighborhood Association Bylaws and Office of Neighborhood Involvement standards.

Background

At a Monday, September 1, 2015 KNA Board meeting, NECN employee Adam Lyons distributed a sheet of paper entitled "Standards of Conduct and Ethics for King Neighborhood Association and Committee Members Doing Business for the Board". At a Wednesday, September 9, 2015 Board meeting, the KNA Board voted 7-1 to adopt the "Standards of Conduct and Ethics for King Neighborhood Association Board and Committee Members Doing Business for the Board" (see attached.) I was the sole "nay" vote. The Board adopted these "Standards" despite my verbal protestation that the Standards as written violated and otherwise undermined KNA Bylaws adopted July 9, 2014. I had also distributed to Board members prior to the vote my two-page analysis of the proposed "Standards" that specifically included at my beginning my assertion that the proposed "Standards" undermined and removed the existing Bylaws' "requirements without actually amending the Bylaws, and is, therefore, an unlawful 'end-run' around both Bylaws and the amendment process."

The "Standards of Conduct" adopted 9/9/15:

1. violate KNA Bylaws governing election of Board members and officers (ARTICLE VII BOARD OF DIRECTORS, ARTICLE VIII ELECTIONS AND APPOINTMENTS);
2. violate KNA Bylaws ARTICLE VII's mandatory requirement that the Board of Directors "must conduct themselves according to the principles of the Duty of Due Care and Duty of Loyalty";
3. violate KNA Bylaws governing amendment of Bylaws (ARTICLE XIV ADOPTION AND AMENDMENT OF BYLAWS); and
4. finally, the adoption of the "Standards of Conduct" is just the latest in a long series of incidents by the KNA Board or its Officers of violating ONI Standards governing public records, public meetings and KNA Bylaws governing Officers' duties.

1. KNA Bylaws governing elections and appointments are simple and direct:

"ELECTIONS AND APPOINTMENTS

- A. **Eligibility** Only persons eligible for membership shall be qualified to hold an elected or appointed position."

ARTICLE IV Section A of the Bylaws governing the Board of Directors states: "The Board shall consist of a minimum of four (4) Board of Directors and a maximum of nine (9) and 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.” Acceptance of and adherence to the “Standards” is thus to be presented not just as being a condition of serving on the Board, but a *pre-condition of running* for 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.

2. The “Standards” violate KNA Bylaws governing the duties of the Board. According to the Bylaws: “The Board of Directors must conduct themselves according to the principles of the Duty of Due Care and Duty of Loyalty” (ARTICLE VII, Section D, subsection 2). Under the Duty of Loyalty, Directors must avoid any conflict between duty and self-interest – undivided allegiance to the corporation’s best interest is required. Now consider Item #4 of the “Standards”: “No King Board or Committee member or persons doing the business of the Board will knowingly misrepresent facts to the Board, other community leaders, residents or business owners of the community for the sole purpose of advancing a personal cause or influencing the community to place pressure on the Board to advance a personal cause” [my emphases]. The “Standards” undermine and weaken the Duty of Loyalty by only singling out for prohibition a Board member knowingly misrepresenting facts – i.e., lying -- to the Board *solely* for a personal cause. The “Standards” thus convey the message to its Directors and the public that the Board is not concerned with its Directors lying for other reasons.

But there is more. According to KNA Bylaws, “The Board of Directors must conduct themselves according to the principles of the Duty of Due Care and Duty of Loyalty” (my emphasis). The “Standards” Item #1 states: “Board members will use their best efforts, at all times, to make decisions that are consistent with the best interests of the overall Neighborhood Association.” KNA Bylaws *require* adherence to specific principles and execution of duties and responsibilities, spelling out “Duties of Board Officers” predicated with the mandatory “shall”; Item #1 merely states an *expectation of best effort*. “*Comply*” is being replaced by “*try*”. This point is particularly important given the many recent examples of nonfeasance by KNA Officials related in my previous grievances.

Too, the Board is clearly and publicly placing greater emphasis upon its “Standards” than the Association’s Bylaws: no signed acceptance form or oath of office promising to comply with the KNA Bylaws is required of Board members or Officers. Thus, “try” is not only replacing “comply”, but is being given greater weight and value than “comply” was or is accorded.

Finally, in articulating that “The Board representative on each of the Association Committees will be responsible to communicate these Standards to Committee members”, Item #5 is establishing Board representation on Association committees despite the fact that KNA Bylaws governing committees and liaisons nowhere require a Board member to sit on a committee (ARTICLE VII, Section G, and ARTICLE VIII).

3. The September 9, 2015 adoption by the Board by a vote of 7-1 to impose additional requirements to holding elected Association office, coupled with the Board’s simultaneous revision of duties and responsibilities, violates 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 has withheld from its membership its “Standards” – they were not posted on the Association’s website prior to the September 9 vote, nor were they handed to the many neighbors and association members who attended the September 9 meeting. Given that the “Standards” impose new criteria for holding office, such a lack of openness is inexcusable.

Lastly, it would be a specious argument to contend that ARTICLE XIV governing amendment of Bylaws was not followed because the “Standards” do not constitute an amendment of Bylaws. The incontrovertible fact is that the “Standards” change and/or undermine qualification for Office as well as duties and responsibilities of Officers. As such, they are an illegitimate attempt to circumvent the Bylaws.

4. Finally, the adoption of the “Standards” are just the latest in a long line of failing to comply with public meeting/public records requirements, as well as nonfeasance by Association Officers details of which can be found in my other grievance from last year as well as of September 2 and September 15 of this year.

HARM

The harm inflicted upon me -- as a Board member -- by the actions of the KNA Board as related in the proceeding account should be evident: the adoption of “Standards” imposing additional requirements for my holding Board membership without the legitimate accord, participation, consultation – or even informing – of the Association’s membership. Additionally, by presenting its “Standards” to potential candidates, the Board misrepresents requirements for Board membership and thus winnows a potential field of candidates to mirror its own erroneous and illegitimate view of qualifications.

The harm inflicted upon me – as a member of the Association – is shared by every member of the Association not sitting on the Board:

1. The right of the membership to determine qualification office and to the Board is denied;
2. The right of the membership to the Duty of Care and Duty of Loyalty to the Association required of the Board by the Bylaws is undermined;
3. the right of the membership to determine the process of amending the Bylaws is denied;
and
4. the right of the membership to be informed through open meeting and public records is undermined.

REMEDY

The Office of Neighbor Involvement has very little in the way of remedies to compel the King Neighborhood Association to abide by its own duly adopted and amended Bylaws. ONI can, however, make plain to the KNA Board that any financial funding by the City of Portland and its agencies depends upon conforming to KNA Bylaws and ONI Standards, and that, ultimately, continued failure by the KNA Board and KNA Officers to conform to KNA Bylaws and ONI Standards can result in ONI recognition of the Association being withdrawn.

Margaret O'Hartigan, September 16, 2015