

So, every bad thing that happened to Jimmy Bailey over the last 4 years was not my fault, nor the fault of any other Board member. Sounds like a strange way to start out but if you read the memo Jimmy prepared at the request of the investigator, you'll understand why I feel it is incumbent to start that way.

That memo has been characterized as a grievance, but I don't believe it is. It was written **after** Jimmy quit and **after** KICA settled any claims Jimmy may have against it. Indeed, the sequence of events is (1) in March 2021 Jimmy advised Dave Morley that he might have a grievance against KICA, (2) when the Board was advised of this possibility, it voted to hire an investigator and (3) before the investigator could really get started, Dave Morley negotiated a settlement with Jimmy. I never advised a client to settle first, and ask questions later, so I (and other Board members) voted against settling until the Board could speak with counsel and be fully informed of the basis for Jimmy's possible grievance. Other relevant facts about the memo include (1) it wasn't submitted until two days before Jimmy left KICA, (2) I, and other Board members, didn't see this document, and were not told of its existence or content, until July 2021, (3) it was marked as a Confidential Attorney-Client privileged document until this week when that notation/legend was removed from the document, (4) it is incomplete insofar as various references and all exhibits (which are not confidential) are being omitted at the direction of the Board Chair, (5) while the memo is Jimmy's perspective on various things, his rendition is, at best, incomplete and does not include support for many of his statements, and (6) in July 2021 the Board was told by counsel that the report, which included Jimmy's memo, could not be released to anyone outside the Board. As such, the Board reviewed the report and agreed 9-0 that every member of the Board would destroy his or her copy of the report, including Jimmy's memo. For all of these reasons, and because the timing of this release is suspicious, I, again, find myself writing a dissent to explain why I voted against releasing the memo and to give context to its contents.

## BACKGROUND

When hired in 2012, Jimmy stated "the core of the job is working with people, providing good customer service, and maintaining good relationships to ensure that everything is handled well." I believe Jimmy correctly described the core responsibilities of the COO's position. How Jimmy performed the "core of the job" was where I, and I believe others, had issues.

## THE FACTS

In my experience, both as a KICA member and a Board member, Jimmy would sometimes ignore requests directed at him, or answer requests with information which later proved incomplete or inaccurate. If you have had either of these experiences you know how frustrating it can be. Perhaps more troubling was that, if questioned about the seemingly faulty information, Jimmy often would not admit an error but, rather, would just become defensive. Additionally, in my view, Jimmy never fully embraced the customer service aspect of dealing within an 8,000+ member organization and working for, and with, those members, including the member Board representatives. I believe the concerns Jimmy raised in the memo derive primarily from the approach he adopted in his role as COO. For example,

- The Preserve problem, which arose well before I was on the Board, was created by inaccurate information Jimmy provided to both Preserve owners and the then Board. While Jimmy casts others, including me, as being at fault in those interactions, he does not mention that the then Board Chair apologized to my wife, Maura, another owner from the Preserve, and me in front of Jimmy, KICA's counsel and the Board for the way we, and our neighbors, had been treated.
- The expansion of the bike path and heating of the family pool both became issues because Jimmy informed the Board that both projects were much more difficult, and time consuming, than they were. Happily, KICA's staff was able to deliver those amenity enhancement projects quickly and without complication or difficulty.
- Jimmy claims he accurately advised the Board on staff plans for family access to the adult pool in the fall of 2020. Those plans were not raised at the August 31, 2020 Board meetings (one private, one public). Rather, in the middle of a lengthy weekly update email dated September 4, 2020 Jimmy first advised that staff was planning to permit "open swim" in the Oceanview pool during the mornings when the family pool was being used for exercise classes but that the Oceanview pool would be "adult only" every afternoon. Then, right before KICA changed access to the adult pool, Jimmy sent a several paragraph update to the Board in which he simply said that KICA was going to designate one of the swim sessions in the heated pool open to families. Jimmy never advised the Board that KICA's plan had changed and that it now planned to allow family access to the adult pool during the popular adult afternoon session. So, while Jimmy faults me for remaining quiet when he was asked a question about the adult pool issue during his Java with Jimmy session in October 2020, I believed then, and still believe today, that the information he provided the Board was, at best, incomplete and therefore, was not "notice" of KICA's plan to permit families in the adult pool in the afternoon.
- Jimmy was obviously unhappy with his review at the end of 2020, his 2020 bonus and 2021 compensation. However, the memo does not mention my limited role in that process. In late 2020, like all Board members, I sent my written review of Jimmy to Dave Morley and KICA's HR Director. While, in the memo, Jimmy casts aspersions about my review, after submitting it, I sent my review narrative to Jerry McGee who responded that my evaluation of Jimmy was "thoughtful, detailed and accurate." Completing Jimmy's review was the sum and substance of my involvement in Jimmy's 2020 evaluation – that's it. Thereafter, without Board involvement, the HR Committee, which included Dave Morley and Diana Mezzanotte, received, compiled and analyzed all the reviews and information for Jimmy's evaluation. The whole Board never saw this information. It is my understanding that Dave Morley selected the information to be included in Jimmy's 2020 review and that he drafted the written evaluation (with review by the HR Committee). Dave Morley then presented the review to Jimmy without the whole Board seeing it, authorizing it or even knowing what was in it. Predictably, after seeing the review, several Board members had issues with it, and wanted changes to it, but because it had already been given to Jimmy changing it would have been futile. Board questions about the bases for some of the comments in the evaluation also could not be answered. When the whole Board received Jimmy's evaluation, it also received a

recommendation from the HR Committee on a measure which should be undertaken by Jimmy going forward. The Board approved this measure to go into effect in early 2021. I was subsequently advised that within a week or so Jimmy ceased participating in the recommended activity, unbeknownst to many Board members.

## OBSERVATIONS

1. In any grievance situation, the actions or inactions of the immediate supervisor of the person filing the grievance are at issue. Given that the COO reports to the Board through the Chair, the Chair was Jimmy's supervisor. Through his memo, Jimmy says he raised certain concerns with Chairs Diana Mezzanotte and Dave Morley "on several occasions." While I do not know what, if anything, either did with respect to Jimmy's communications, I know neither spoke to me, nor any other Board member as far as I know, about Jimmy's concerns. Indeed, in this same time period I served as a Chair of the Community Outreach Committee, Board Outreach Committee and Governance Committee. In these roles, I was and have been a public face of the Board. Presumably, if Jimmy's espoused view was true, I would not be serving in these capacities.

2. When expanding the Board, Dave Morley and others peddled a narrative that David DeStefano and I would "like to make day-to-day operational decisions." Notably, Jimmy's memo does not mention that. What is clear from the memo is that I actually had limited interaction with Jimmy during the time I was a Board member: a handful of emails and no identified one-on-one problematic conversations. In fact, in the one face-to-face conversation referenced by Jimmy which occurred shortly after I was elected to the Board, Jimmy leaves out that I proposed we not dwell on the past, we learn from our mistakes and we move forward. Jimmy also claims there were improper actions at Board meetings, but doesn't cite to any specific example and none has been identified. Indeed, my interaction with Jimmy while on the Board was so limited that Jimmy said in his handwritten December 2020 Christmas card note to me, **"I'm sorry that the events of 2020 have prevented opportunities to get to know one another better."** Does that sound like someone who felt under siege?

3. Jimmy includes information about his medical condition, much of which I did not know. According to his memo, this condition arose before I was on the Board, and I was not advised he had any medical condition until after I joined the Board. Certainly, all of us wish Jimmy the best as he battles these issues. However, as a legal matter, I have been told that Jimmy never sought an accommodation, which would be necessary for an American with Disabilities Act (ADA) claim.

## CONCLUSIONS

I realize the opinions of our members about Jimmy are mixed. I believed he needed to improve in delivering the "core of the job." Jimmy chose to quit rather than work to improve. Some of you may view that as a loss, and some may not. In my opinion, our management team at the beginning of 2022 is much stronger than it was a year ago.

I have been criticized for being direct. I am and always have been a forthright person. In fact, when I was a young lawyer the managing partner of my firm said to me, "In politics you have to suck up to a lot of people who you find distasteful. I don't think you could do that." He was right then and is right today; over the past two years, I have often remembered that conversation.

But you should know that, as a Board member, I call it like I see it because I take my fiduciary duties seriously. Those fiduciary duties include the Board's role in overseeing KICA and the COO. That requires asking questions and making sure we are getting good answers. The Board and the COO serve you, our members. If I don't believe that is being done, I will be direct with those I believe are falling short of the mark. That is not involvement in day-to-day operations. That is making sure we are fulfilling our duties as Board members and that the COO is delivering on "the core of the job." Isn't that the KICA you want?

Finally, the Board Chair shared a copy of his community announcement with Board members on Thursday evening. It is not accurate but my attempt to get him to change the announcement to make it accurate was unsuccessful. Although incorrect, it is notable for saying the quiet part out loud: Jimmy's memo is being released to affect the election. Is this the Kiawah you want instead?