

## MEMORANDUM

To: Greg Horton  
From: Jimmy Bailey  
Re: KICA grievance  
Date: 4/28/21

I submit the following grievance related to treatment of me and fellow staff members by certain members of KICA's Board of Directors. As I have reached a settlement with the Association relative to any potential legal claims, this memo is intended to provide a broad overview of the toxic environment that has developed with respect to the Board of Directors, and not just those matters which rise to the level of an actionable claim.

It is my hope that transparency around these issues will result in changes geared toward a positive working environment moving forward. The conduct of several board members, including disrespectful treatment of others led to the resignation of former chair, Diana Mezzanotte on August 31, and ultimately my own resignation. KICA staff should not have to work in this environment, and if the behavior continues, I fear other talented team members will follow me out the door. Retention and motivation of the excellent staff should be a top priority, as finding replacements that are willing to make the increasingly difficult drive to Kiawah won't be easy.

I hope the results of this investigation will provide a framework for making the necessary changes. I wish KICA the best of luck moving forward.

### **Background:**

I was hired as the Chief Operating Officer of the Kiawah Island Community Association (KICA) in the Spring of 2012. During that time I have worked for 28 different board members and reported to 8 different board Chairs.

## **Performance:**

Over the last nine years, my annual reviews have been stellar and my compensation has grown accordingly. In fact, I've nearly maxed out my bonus potential each and every year, with only a year or two below the full payout, and in those years just slightly. The board provides feedback through the annual COO evaluation, which in 2017 was adjusted to include a numerical scoring system. Board members rank performance in 5 categories, and then provide an overall ranking. Rankings are (1) unacceptable (2) needs improvement (3) Acceptable (4) Exceeds Expectations and (5) Exemplary.

During the three reviews occurring since the numerical scoring system was adopted, eleven different board members have provided input on COO performance, and the three-year average for overall performance is 4.30, with a low score of 4.2. Digging a little deeper into the categories, the worst score was "Member Communications" in 2018, at 3.86, which included a 2.5 ranking from a single board member. The COO evaluation suggests performance exceeds expectations.

In 2021, the ratings dropped, with an overall score of 3.75. The Chair noted in his summary that "Feedback from the Board is much more difficult to summarize. The overall average score was 3.7, and the overall rating, as a stand alone question, was 3.75. However, there was clearly a bimodal distribution. Two board members rated you, on average, 2 points below that mean of the other respondents. On average, this lowered each rating by 0.5." Based on the Chair's summary, adding back the 0.5 would result in performance being almost identical to the prior three year average of 4.3 (exceeds expectations). Further, in 2021 a 360 degree component was added to the process, to include feedback from direct reports as well as outside organizations with whom we interact. The ratings from those groups were 4.53 and 4.60 respectively. Despite these ratings, I was told that there was a fight on the Board about my bonus, and a "compromise" was made to give me substantially less than the amount recommended by the HR Committee. This compromise amounted to the lowest bonus in all my years at KICA, despite strong performance during the most difficult operating conditions associated with COVID.

In addition to the rating system, direct reports anonymously provided the following comments:

- “turmoil generated by the board has been damaging to staff morale.”
- “When Jimmy disagrees with the decision of a member of the staff, correction is done both privately and respectfully. Publicly calling down a staff member or demeaning a staff member would not be tolerated on Jimmy’s staff, yet he is being subjected to this very behavior by members of the board of directors.”
- “The difficulty of this year is that members of the board of directors are sending staff down various “rabbit holes” each week, which take staff time away from their regular responsibilities.”

This data illustrates remarkable consistency in the performance ratings by a broad group over a 4 year period, with the lone exception of two board members in 2020.

Additional data points relative to mine and KICA’s performance include two member surveys, conducted in 2019 and 2021. This quantitative feedback from the community included 2000+ and 3000+ responses, and both indicated exceptionally high satisfaction with KICA.

There have also been a handful of community votes over the last several years where the community has overwhelmingly approved the KICA recommended action. Votes to approve a covenant change, approve a special assessment, and approve a land transaction all garnered more than the 75% required in order to pass. While these aren’t a direct endorsement of my individual performance, they certainly suggest a level of trust with our organization, which is not always the case in community associations.

### **Preserve Issue:**

When KICA was developing the 2018 budget, it was determined that a neighborhood on the island (“The Preserve”) was undercharged for additional services provided there by KICA and not in other island neighborhoods. As part of that budget, staff recommended and the finance committee and board agreed that it needed to be corrected prospectively. This resulted in a significant increase in annual assessments to the Preserve. Many members in the Preserve were



surprised and understandably upset by the increase (about \$1000 increase annually), but paid it and moved on.

Several members of the neighborhood, led by Brad McIlvain and his wife Maura launched an aggressive anti KICA campaign, claiming that the assessment wasn't legal, that KICA's accounting was wrong, and a host of other issues. (Exhibit #38). Public questioning of the legality is arguably defamatory, but the board chose to take the high road.

In a November 9, 2018 email to me, McIlvain baselessly claimed that the assessment was being done as some form of punishment: "What really seems to be driving this is somebody got their nose bent out of joint because Preserve members raised a concern about use of the dock facilities by others." (Exhibit #1) He began with this preconceived conspiracy theory and absolutely no willingness to consider KICA's position from the very beginning.

Early on, even some of his neighbors found his attacks and behavior to be unreasonable and out of line:

On December 4, 2018, Loren Beadle (Preserve resident) set up a conference call between him, McIlvain, and myself in an effort to try and sort through the issues. After the call, Loren sent me an email with the subject line "Wow," and the content of his email was as follows: "Sorry for that ... cannot believe you have to do these calls every day (or every week?)" (Exhibit #2)

On December 23, 2018, [REDACTED] sent an email to me and [REDACTED] stating:: "Thank you for meeting with us at the McIlvaine's on Monday. I'm sorry that some of the tone of the meeting was confrontational. While we disagree on the legality of the proposed assessment and we may need to go to court to sort that out, no one should be questioning your veracity, or competence, or motives. I don't. I will use whatever influence I have on the Preserve side of this process to make it as quiet and amicable as possible." (Exhibit #3).

Ever since this began, a common refrain both verbally and in writing, including emails he sent to scores of residents, has been that he asks for information and it isn't provided. An examination of the record will show that not to be the case. We have responded to probably

hundreds of emails, have met in person (including in his living room on December 17, 2018), have provided an in person meeting with KICA's attorney and the board, and have bent over backward. (Exhibit #4, #5, #8). He says that we don't provide answers, but what he really means is that he doesn't like the answers we gave him. The public perception he manipulates, however, is that we ignore him and that's completely inaccurate. Another tactic is to request information, and then communicate to others within a couple of hours stating he has asked for something and not received it.

The McIlvain's requested an extraordinary amount of information - probably 500 or more pages of invoices and other materials, which we provided. (Exhibit #6). They sent countless acerbic emails to staff and board members, and spread misinformation in the community. During this time, I'm told that they began publicly questioning my compensation and making other derogatory and defamatory comments about me in the community. A legal process involving discovery of emails, text messages, and witness interviews would likely uncover countless attacks that have taken a toll on my reputation, and untrue statements about my work have caused actual harm.

The board ultimately directed me to inform them that we'd have to agree to disagree. (Exhibit #7). That did not stop the emails and the criticism, but at least the board had moved on. New board members were elected a few months later (March 2019), and they became the new targets. Without the background, they expressed a willingness to reopen dialogue. Dave Morley, the newly elected Treasurer committed to being involved in a dialogue for the McIlvains and other Preserve owners to understand the financial issues related to the Preserve. That summer, Morley made a special trip to Kiawah from his summer home in Michigan for the purpose of attending a June 18th meeting with the McIlvains and KICA's attorney, Trenholm Walker. The meeting was unproductive.

After extensive effort, On November 19th Morley sent McIlvain the following note after a barrage of questions and accusations: "Brad, This is bordering on ridiculous. If you can convince your neighbors to take over maintenance you can make all the decisions. Otherwise, KICA will make the decisions and we aren't going to take you through every decision we make. It is too time consuming." (Exhibit #9)



It was during this same time frame that my health began to falter. I became symptomatic in late September, but by November I had acute issues. My chest was hurting daily, but since I'd had a full workup, I was confident I wasn't having a heart attack. I noticed after a couple weeks that joints in my left hand were hurting. The first time I noticed this was turning the steering wheel (left) in the car sent pain across the top of my hand, from the wrist to my knuckles. This went on for a while and eventually spread to my right wrist, as well as the middle knuckles in my left hand. Sometimes the pain in the left hand was bad enough that it hurt to pick things up and I particularly remember one morning where rubbing the shampoo into my hair was painful in my left hand.

The joint pain probably went on for about 2 weeks before I went back to my Primary Care Physician (PCP). He was alarmed by this development, and ordered a bunch of blood work, testing for rheumatoid arthritis, lupus, cancer, parvovirus, among other things. It took a few days for the results to come back, but they were all negative. My PCP prescribed a steroid, with the hope it would make me feel a little better. On day 2 of the steroid, I felt better than I had felt in quite a while, but that was short lived. This would have been around Nov 13/14. My PCP also referred me to a rheumatologist.

On Friday the 15th, I felt worse and worse throughout the day. By that evening, I could not get comfortable and was on the couch all night with aches and pains, and a rapid heart beat. Saturday morning, I went to the ER again and found my heart rate was in "A-Flutter" at 170 bpm. The ER staff tried to bring it down with IV fluids and medicine, but couldn't do so. They did a chest xray as well. Ultimately they called a cardiologist who performed a cardioversion, which involved putting me to sleep and shocking my heart back into rhythm. I was later discharged with instructions to follow up with cardiology.

The cardiologist follow up resulted in scheduling me for a cardiac CT scan at MUSC. He also consulted my PCP and they agreed on another round of blood work to look for things like tick borne disease. Blood work came back normal, but the CT scan (done on Friday November 22) showed fluid around the heart and lungs. The cardiologist confirmed that the fluid could definitely cause the type of discomfort I'd been experiencing, but there was still no explanation for why it was occurring. He said it seemed similar to mono, or Epstein-Barr virus. On the bright side, he said the cardiac ct scan indicated (as all prior cardio tests had), that my heart was

in very good shape. He also scheduled me to come in for another echocardiogram, in order to measure the amount of fluid.

On December 2, I felt awful when I woke up but went to work because of a board meeting. That afternoon, I noticed blood in my urine. At the doctors office, I registered a fever of 100.4 and they took a urine sample (sample confirmed there was blood).

On Thursday the 5th, I met with the Rheumatologist for the first time. He took some blood, and explained the results would be back in about two weeks. He was very interested, however, in my heart. He listened to it extensively, and actually put the stethoscope on me so I could hear it. My heart beat made “whooshing” sounds, whereas when he put it on his heart for me to hear, it was the typical beat. He was puzzled by this.

Ultimately, the bloodwork confirmed that the inflammation was due to an autoimmune disease, Microscopic Polyangiitis. Stress is believed to be one of the leading causes of Autoimmune disease. In addition to the medical treatment which includes infusions of Rituximab every 4-6 months, I tried as best as I could to relieve some stress. I took a meditation course and practiced some techniques aimed at improving my sleep. It hasn't just been me losing sleep. Multiple board members have shared with me that the stress of the board situation has made sleep elusive for them as well.

The summary above is merely a snapshot of the back and forth with McIlvain related to the Preserve. There are hundreds of emails to sort through, but this should give a glimpse of how things began.

### **March 2020 - Present:**

In 2020, McIlvain ran for the board and was elected. I reached out to him, acknowledged the awkwardness, but expressed a desire to work together. Unfortunately, that has not been reciprocated. In just over a year on the board, he has continued his attacks:

- He' stirred up dissent and infighting on the board:



o The 2018-2020 board chair refused to participate in the annual board retreat. He told me, "I'd find another place to work if you have to work with this guy."

o The board chair elected in March resigned from that position on August 31, as she said she could no longer deal with his abuse (Exhibit: Resignation speech where she discusses board behavior can be viewed on KICA's YouTube channel - August 31, 2020 meeting). She sent an email to the director slated to replace her about a speech he planned to give, and copied me. It said: *"You are correct. Your comments are written from the heart. People need to understand that you and the rest of the board are humans with values. I think you should give the talk. You are setting the right tone for moving forward. Your comments are positive and hopeful and hit the transparency issue, which Brad for some reason thinks he alone is honoring. In fact, letting people know why the board is in this position is transparency. (One man wrote me and asked if there was a conflict of interest issue that caused me to resign.) Saying that you have never seen a board operate like this is important because I have been saying that too and people need to understand that this type of behavior should not be considered normal or acceptable. My resignation along with your open commitment and request for a positive move forward puts Brad in the spotlight. I don't think he is capable of changing his suspicious nature, because that is who he is, but it may cause him to be less confrontational, which would be a huge relief. I am so sorry for causing all this turmoil and shifting this burden to you, but I am not strong enough to handle these issues for another 1 1/2 years."* (Exhibit #10)

o Upon being elected to replace her, the current chair discussed the inhumanity of the board, and said, "I have been involved in several boards in my life and have never seen this." (KICA YouTube Channel - August 31, 2020 Board Meeting) He has since told me that he may not make it his full term, due to Brad's abuse

- Several months later, the former chair wrote the current chair and myself a note suggesting that the board needed to adopt a "civility pledge" (Exhibit #19)



o My email and text inbox are littered with notes from board members referencing his “attacks” - On October 29th, a board member sent me and the chair a photo of a bottle of liquor, with the quote “for dealing with Brad’s attacks” (Exhibit #11)

- He’s accused staff of deleting his board member emails, and promoted other conspiracies. This resulted in KICA’s [REDACTED] [REDACTED] spending hours trying to explain our technology to him, and ultimately resulted in google engineers (google hosts KICA email) informing him that it wasn’t possible for KICA staff to do what he accused us of doing. Despite this, he refused to accept it. (Exhibit #12)
- He’s routinely accused me of misrepresenting information
- On Tuesday October 13th, McIlvain sent me an email that said: “Given the concerns being raised about the adult pool, I am expecting this issue may be raised in our Community Outreach meetings (today, Thursday and we will probably be adding a third date). I am hoping we can have a better answer than we will be looking into this a month from now”.

Me: “I think it would be appropriate to say something along these lines: The conversation around heating the pool spans multiple boards. The preference would have been to heat the family pool so everyone has access, it is larger, and it is set up for lap swimming. This option was costlier with some logistics constraints as well, so the board voted to heat the new pool. Some board members felt if we heated that new pool, everyone should be able to use it during the colder months, and have even said that contributed to their voting for it. Jimmy shared with the board on two occasions in the last month that staff was planning to schedule one session a day for families, and no one commented or contemplated the type of reaction we’ve had. Now that we’ve received so much feedback from the community, the board plans to discuss this issue at its next meeting. In the meantime, the staff will continue to try to accommodate as many users as possible”.

McIlvain: “.....**I am not going to say you raised it** because you didn’t raise it appropriately. “ (Exhibit #13).

In retrospect, I believe his email that morning was a threat. It was intended to bully me into changing KICA’s position, and if I didn’t he’d leverage public perception against me.

He then presided over the community outreach meetings, and as promised, did not mention anything about the board’s knowledge of this, even when asked about what the board knew. He and David Destefano incited anger on this issue, and fanned the flames during these sessions. They claimed no knowledge of the controversial decision, and said they were opposed to the decision. (Exhibit: KICA YouTube Channel - Community Outreach Meetings (2020)

Even in a “Java with Jimmy” session the following week (October 2020), the first resident to comment stated that she had attended the community engagement session with McIlvain and Destefano the week before and “It seems like the board members who were running that were unaware of the pool changes...” McIlvain participated in this “Java with Jimmy,” and continued to remain silent. (Exhibit: KICA YouTube Channel - Java with Jimmy, October 2020). In what is not likely a coincidence, Destefano’s wife (Diane Angelini) posted to a community Listserv (iKiawah) on 10/10/20 encouraging people to attend the Java with Jimmy. Her post was in response to other community members opposed to the pool decision (Exhibit #27).

This incident, in particular, has been damaging and defamatory. Numerous residents posted to iKiawah stating that they didn’t understand how the staff could make a decision like that without the board knowing about it. It is an opinion as to whether or not I provided appropriate notice, but I provided notice. He even responded to the email in which I provided this notice (Exhibit #26). Further, I reinforced that notice with him directly prior to the community engagement sessions, yet he willfully ignored that in an effort to damage me. The Board Chair finally published the facts months



later, but the damage was done, and those videos remain on KICA's youtube page to this day.

- On October 13, a board member wrote to the chair: "The thing that concerns me most about this, even more than the barrage on ikiawah, is Brad's treatment of Jimmy. I can't tell you how much I wish you would stop it. Brad is not Jimmy's direct supervisor. You are. When he has a problem with Jimmy, he needs to go through you. It's just not fair for Jimmy to be constantly harangued by him. We all know that he is out to get Jimmy and will use any means he can. In fact, he tried to recruit at least one person in the Preserve to run for the board in order to have a strong enough coalition to fire Jimmy. That person told him they think Jimmy is great, but I'm sure he is going after others." (Exhibit # 14)

- On October 14th, KICA held a budget working group meeting to review feedback from the Finance Committee meeting. The budget working group consists of staff, the Chair, Vice Char, and Treasurer. The working group has been in existence for years and has a formally defined role in the budget process. That morning, McIlvain emailed and asked if there was a budget meeting. Here is the email exchange that followed:

Me: "There is a budget working group meeting today, which consists of the Chair, Vice Chair, and Treasurer. The purpose of this meeting is to discuss the feedback from the 1st Finance Committee meeting"

McIlvain: "So I'm Not Invited?"

Me: "This isn't about exclusion - its just a part of our budget process as has been for some time. We have only invited those who have been invited in the past. The full board, as always, is invited to the Finance Committee meetings."

McIlvain: "It is about exclusion. That is how you operate." (Exhibit #15)

- He's sent numerous emails to neighbors in the Preserve undermining me individually, the staff, and the KICA board.

- On October 21, I had a face to face meeting with KICA's Chair, Dave Morley, KICA's Treasurer, Townsend Clarkson, and [REDACTED]. The purpose of the meeting was to discuss KICA's budget and upcoming presentations to the Finance Committee and the community. Toward the end of the meeting, Townsend stated that he felt like the Board needed to take action to deal with Brad McIlvain, whom he believes is creating a hostile work environment, and that the organization was likely to lose good staff members over his abuse. He went on to say that he believes the board risks financial exposure if it fails to deal with it.

In January of 2021, I received a 1.5 page email from Maura McIlvain, copied to Brad McIlvain and Dave Morley, which included various criticisms of KICA's management of the Preserve, laced with some questions including some that have been asked and answered many times. The email exchange reached 45 messages by the time it ended Brad had run through the door his wife opened, and was in full attack mode. (Exhibit #16)

On March 1, Chair Dave Morley announced to the community that the Board had voted to expand, and he articulated the reasons it had done so. KICA's bylaws allow dissenting directors to issue a statement as well, and the next day Brad McIlvain and David Destefano sent a communication via KICA's email system. (Exhibit: All statements available on kica.us)

In their dissenting statement, they claimed I had on two occasions provided false information to the board, implying problems with my competence and/or honesty. They were referring to two potential projects: a pool heating project and a bike path project. Their version of the story casts me in a very bad light, and this is an email sent to 8000+ people. After reading their statement, the three witnesses [REDACTED] [REDACTED] to the meetings they reference were shocked, and provided written statements saying that the message shared by McIlvain and Destefano was incorrect, yet their dissent statements that question my competence remain on KICA's website. (Exhibit #'s 28 and 29). I've faced multiple questions from property owners who've asked me to explain my actions on the bike path and pool.



In addition to making defamatory statements about me, there are other misrepresentations about whether or not the board expansion meeting was properly noticed, their getting involved in operations, etc. Various emails indicate that these statements were false. (Exhibit #'s 20, 21, 22, and 23).

On March 9th, three former KICA Chairs sent an "open letter" to the community. In it they note that they interviewed members of the KICA staff, and determined inappropriate and "bullying" behavior by board members. (Exhibit #24)

The behavior by certain board members poses serious actual risk of harm to my reputation, both personally and professionally. I have on several occasions expressed concern to Dave Morley and Diana Mezzanotte that allowing attacks to go unanswered, and leaving untrue or misleading information posted on KICA's open access website and youtube channel could harm me in any search for future employment. It arguably hurts KICA's recruiting efforts as well. (Exhibit #17)

These concerns were intensified when newly elected Board Treasurer Alex Fernandez met with me on March 17th. . He'd requested the meeting to discuss his new role. We met in the upstairs Board room at KICA offices, and when I closed the door he immediately began discussing issues that had nothing to do with KICA's finances. He immediately began telling me that "everyone knows that you are the one pushing this board expansion." He went on to say that I had access to the voting information, that I knew he was winning and didn't like it, so I conspired to expand the board. I told Alex that this was not the case, and that it was in fact Dave Morley's idea to expand the board. I also explained that we disable the functionality for staff to see election results in board director elections. He then went on to say, "Jimmy, your reputation in this community is tarnished. You should be worried about being able to find another job." He also stated that people were telling him, "Jimmy's got to go." I sent a follow up email to him referencing his comments regarding my reputation. (Exhibit #18)

On March 24th, I sent a simple note to the board outlining logistics for an April 12th meeting. This devolved into a back and forth dispute between board members after a pointed response from McIlvain. New board member Beth Zampino said, "Everything feels like an attack." (Exhibit #25)

On 3/26/21, I had breakfast with newly elected Vice Chair Jerry McGee. I requested the meeting, and told Jerry I had no agenda other than to get together face to face for the first time in a long time and discuss his goals and objectives in his new role. We had a pleasant, wide ranging discussion. During breakfast, Jerry acknowledged that Brad had told him that he wanted to get rid of a bunch of people at KICA. I did not ask him to elaborate, but based on the actions of the last couple of years, its obvious that Brad's purpose has been to cause harm to me in a way that either gets me fired or forces me to resign.

**Conclusion:**

It is obvious that regardless of legal claims, this toxic situation has created an untenable situation for me and my staff, and it must be remedied. I have been advised that the incidents of the past 12-18 months may give rise to legal claims of defamation, hostile work environment, breach of contract, and/or emotional distress. Further, there may be a claim under the Americans with Disabilities Act(ADA) related to a diagnosed disability during this period. It is my belief that witnesses should include various members of the staff, current and former board members, former elected officials of the Town of Kiawah Island, my wife and potentially my physician, and others to be determined.

Additional miscellaneous exhibits are attached to this email. These contain various emails that seem relevant to the overall situation, but I did not identify the best place to incorporate into the narrative. (Exhibit #'s 30, 31, 32, 33, 34, 35, 36, 37, 39)