

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. SUPPLEMENTAL STATEMENT OF THE CASE – FACTS.....	1
II. ARGUMENT	2
A. Standard of review on all issues in this appeal is “de novo”.	2
B. The individual respondents are subject to judicial review, in the form of declaratory and injunctive relief, for violation of their own Bylaws.	7
C. Liability is not sought against any defendant.....	9
D. Open Public Meetings Act.....	9
E. Declaratory Relief.....	13
F. Injunctive Relief.....	17
G. “SLAPP” Statute	19
III. CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<u>Broyles v. Thurston County</u> , 147 Wn. App. 409 (2008)	8
<u>Emmerson v. Weilep</u> , 126 Wn. App. 930, <u>rev. denied</u> 155 Wn.2d 1026 (2005)	19, 20
<u>Foothills Dev. Co. v. Clark County</u> , 147 Wn. App. 409 (2008)	7
<u>Kauzlarich v. Yarbrough</u> , 105 Wn. App. 632 (2001).....	19, 20
<u>Kitsap County v. Smith</u> , 143 Wn.App. 893, 180 P.3d 834 (2008).....	3, 4
<u>Lilly v. Lynch</u> , 88 Wn.App. 306, 945 P.2d 727 (1997)	6
<u>Loeffelholz v. CLEAN</u> , 119 Wn. App. 665 (2004).....	12
<u>Nolan v. Snohomish County</u> , 59 Wn. App. 876 (1990)	7
<u>Nolette v. Christianson</u> , 115 Wn.2d 594, 800 P.2d 359 (1990).....	3, 5
<u>Port of Longview v. Int'l. Raw Mats., Ltd.</u> , 96 Wn. App. 431 (1999).....	19, 20, 22
<u>Seattle v. State</u> , 103 Wn.2d 663, 668, 694 P.2d 641 (1985).....	18
<u>Segaline v. State of Washington, Dept. of L&I</u> , 144 Wn. App. 312 (2008)	21
<u>Stratton v. U.S. Bulk Carriers, Inc.</u> , 3 Wn. App. 790 (1970).....	11

Statutes

RCW 4.24.500-.510	22
RCW 42.30.020	11, 12
RCW 7.24.060	5

Rules

CR 12	2
CR 59	6
CR 65	19

I. SUPPLEMENTAL STATEMENT OF THE CASE – FACTS

Respondent Kitsap County’s attorney has recited certain “facts” which are either incorrect, unsupported by the record, or have no bearing on the issues on appeal. First, the respondents refer to the County’s decision to indemnify the individual respondents. *Respondent’s Brief at 4*. Respondents then state that “the County assumes liability for their actions. . . .”. But as is clearly established in CAGEH’s opening brief, and as was apparent at the trial court level, nothing in CAGEH’s Complaint sought to hold anyone *liable* for anything. The County has again misrepresented what the claims are all about.

Respondents also speculate and misstate the circumstances of the resignation of a Mr. Sid Knutson from the GHAAC. *Respondent’s Brief at 5*. Knutson resigned; the record is clear on that. *CP 246*. The issue is not whether Laurie Wiegenstein was or was not appointed in his place; the issue is that the neighborhood in question never had the chance to appoint *anyone* to the position (regardless of who it might be), because Mr. Knutson and his friends on the GHAAC made sure that the process of appointment would not be followed. The County consciously chose to stand by and acquiesce in that via Ann Blair’s refusal to take any action. *CP 242, 250*.

The Respondents also misstate the facts as to service of process and discovery by CAGEH. Only 7 individuals were served with process,

or with discovery. The other 34 individual defendants were never served and never subject to the jurisdiction of the trial court. They chose to submit to the court's jurisdiction by virtue of the decision made by their attorneys, paid for by Kitsap County. The County cites to no part of the record to support its incorrect statement of these facts. Moreover, it should be self-evident that being served with process and with written discovery are routine events for any defendant in any civil action, and those events have absolutely no bearing on the issues that are before the court on appeal. But the County wants to draw attention to them because they think it will make them look good and CAGEH look bad, and thus somehow affect this court's analysis and decision on appeal.

II. ARGUMENT

The issues on appeal have been thoroughly addressed in the trial court and in CAGEH's opening brief on appeal, and CAGEH therefore will keep this reply brief focused on the few arguments of respondents which warrant further attention.

A. *Standard of review on all issues in this appeal is "de novo".*

The respondents correctly state the standard of review for appeals from a CR 12(b)(6) motion is "de novo". The respondents' motions to dismiss were brought pursuant to CR 12 (*CP 155-161*) and this is the correct standard of review for all of the issues in controversy in this case.

However, the respondents' statement of the standard of review from a declaratory judgment action is out of context and erroneous. Upon review of a trial court's denial of a request for declaratory relief under the Uniform Declaratory Judgments Act, RCW 7.24, issues of law are reviewed de novo; findings of fact are reviewed to determine if they are supported by substantial evidence. Nolette v. Christianson, 115 Wn.2d 594, 800 P.2d 359 (1990). In the instant case, respondents' motion to dismiss appellant's declaratory judgment action was brought pursuant to CR 12(b)(6). The court neither engaged in any factual inquiry nor made any findings of fact. The issue was presented and should have been decided strictly on the pleadings. The court had to decide, as a matter of law, whether or not appellant stated a claim upon which relief could be granted.

Respondents incorrectly rely on Kitsap County v. Smith, 143 Wn.App. 893, 180 P.3d 834 (2008) for the proposition that dismissal of a declaratory judgment action is always within the discretion of the trial court. Respondents again take this ruling out of context. In this case, the trial court, considered declarations from four County employees and three private citizens submitted by Kitsap County to prove that another County employee, Smith, recorded private conversations in violation of the

Privacy Act, RCW 9.73. The trial court engaged in a fact finding hearing after which it found no justiciable controversy existed between Kitsap County and Smith upon which it could render declaratory judgment. On appeal, this ruling was reversed by Division II which found that whether or not conversations with public employees could be surreptitiously recorded to be an issue of major public importance. The Court remanded to the trial court for consideration of the County's declaratory judgment action.

In Kitsap County v. Smith, the court stated:

“A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. “
(citing Lu v. King County, 110 Wash. App 92, 99, 38 P.3d 1040 (2002)).

The trial court in Kitsap County v. Smith engaged in a factual inquiry about whether or not the County's claim constituted a justiciable claim under the Uniform Declaratory Judgment Act (UDJA), RCW 7.24. The abuse of discretion standard would apply (and the trial court was reversed based on this standard).

In Nolette, the Court did consider that there was a two pronged review of declaratory judgment actions:

We commence our discussion by delineating the appropriate standard of review. In declaratory judgment actions, appellate review may ensue in two situations. First, under the Uniform Declaratory Judgments Act, trial courts have discretion to determine whether to entertain a declaratory judgment action. Accordingly, an appellate court may be called upon to determine whether the trial court erroneously exercised its discretion either to consider or refuse to consider such an action. Second, in cases in which a court decides the declaratory judgment action on its merits, an appellate court may be called upon to determine the propriety of the lower court's grant or denial of declaratory relief.

Nolette at 599.

The trial Court's discretion as to a declaratory judgment action lies in RCW 7.24.060:

Refusal of declaration where judgment would not terminate controversy.

The court may refuse to render or enter a final judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

In the instant case, the trial Court offered no explanation or legal analysis to explain its ruling. The trial court did not engage in any fact finding, the results of which would suggest that declaratory judgment would not terminate the uncertainty or controversy giving rise to this proceeding. This leaves unanswered the purely legal question of whether

or not appellant's claim, as a matter of law, states a claim upon which relief can be granted. Why appellant's claim should survive this motion has been discussed in great detail in appellant's opening brief, pp. 11-16 and in section II, E. of this brief. Review of this strictly legal issue is "de novo".

Likewise, reconsideration of a ruling on a CR 12(b)(6) motion does not magically change the standard from "de novo" review to that of "abuse of discretion". Respondents misplace their reliance on Lilly v. Lynch, 88 Wn.App. 306, 945 P.2d 727 (1997). In this case, the Court correctly found that a motion for reconsideration of a summary judgment motion based on new supplemental declarations by one of the parties was within the trial court's discretion, since the trial court had discretion under CR 59 as to whether or not to consider the new evidence. CR 59(a)(4). In the instant case, the Court was presented with a pure matter of law. The fact that the Court reconsidered its original ruling, for which the standard of review would have been "de novo", does not bring the purely legal issue within the trial court's discretion. To so hold would bring absurd results. Any time a trial court either granted or denied a motion for reconsideration on a purely legal question, it would unilaterally change the standard of review from "de novo" to "abuse of discretion".

B. The individual respondents are subject to judicial review, in the form of declaratory and injunctive relief, for violation of their own Bylaws.

First, the respondents' reliance on Nolan v. Snohomish County, 59 Wn. App. 876 (1990) and Foothills Dev. Co. v. Clark County, 147 Wn. App. 409 (2008) is inapposite because those cases involve facts very different from those at bar. Nolan involved a land use application by Nolan, and an adverse decision on same by the County's hearing examiner, which was affirmed by the County Council. Nolan sued the County, and the trial court dismissed, on the basis that the County Council was an indispensable party. In reversing, the court of appeals stated:

RCW 36.32.120(6), read together with RCW 36.01.010 and .020, makes clear the legislative intent that in a legal action involving a county, the county itself is the only legal entity capable of suing and being sued. It follows that a county council is not a legal entity separate and apart from the county itself. Jurisdiction over the Snohomish County Council is achieved by suing Snohomish County. No purpose would be served by naming both the County and the County Council in this proceeding. The County argues that they are both indispensable parties, but the law gives no support to such a contention.

Nolan, 59 Wn. App. at 883.

The Nolan court relied in part on Foothills Dev. Co. for the

proposition that a board of county commissioners was not a separate legal entity with the capacity to be sued. Nolan at 881. Broyles v. Thurston County, 147 Wn. App. 409 (2008), which respondents also cite to, involved a claim against an elected official (the prosecuting attorney), which the court relied on in its holding – that is, a situation analogous to the Nolan and Foothills cases.

This case does not involve the County commissioners as defendants, or a County council, or County employees, or elected or appointed officials. Rather, this case involves an unusual fact pattern and an unusual body, the GHAAC. The individual respondents are private individuals who appointed themselves – so far as can be determined – to the GHAAC and claim to represent various neighborhoods, with the County affording them special status and formal recognition, including expenditure of County resources and the provision of County legal assistance to help them advance their personal, private interests and goals. The GHAAC Bylaws created certain obligations on its members, and the residents of the affected areas have a right to see that those GHAAC members *follow their own Bylaws*.

C. Liability is not sought against any defendant.

Respondents devote a section of their brief to arguing about liability. But none of CAGEH's claims sought to impose liability on anyone. The County claims that "Kitsap County is responsible for this group" (*Appellant's Brief at 15*), but in fact Kitsap County has shown that it takes no responsibility for *who* the members of the group are, or whether they complied with their own Bylaws in becoming members or taking action as such. The only "responsibility" the County has demonstrated to date is an after the fact decision to decide to pay for lawyers to represent the interests of the private individuals who call themselves GHAAC members. Respondents offer no authority or citation to the record to the contrary.

D. Open Public Meetings Act

At the first hearing in the trial court, the issue on the respondents' motion – and of CAGEH's cross-motion – was whether or not the individuals were proper defendants. The respondents styled their motions as being based on improper joinder – *not* on whether the substantive claims would prevail at trial. As the County put it, "Kitsap County and the Individual Defendants move to dismiss the 41 Individual

Defendants because they are not proper parties to this lawsuit and that the Plaintiff has failed to assert any claims against the Individual Defendants.”
CP 87.

Respondents’ motion therefore focused on whether the individual defendants should have been named at all – i.e., what defendant or defendants should the claims properly be asserted against? – and also on the unusual theory that no claims had been asserted against them, which of course was not correct at all. *CP 9, 81-82.*

In that setting, the only focus was (1) were the individual defendants proper parties, and (2) were *any* claims brought against them? The *merits* of the OPMA claim were not part of the respondents’ motion at all. Thus, CAGEH was free to devote its argument to whatever theory or facts most clearly addressed the “proper defendant” issue, and was not required to specifically address the OPMA claim at all. The trial court, however, chose to treat the respondents’ motion as one to dismiss the OPMA claim on the merits, which it never was.¹

Thus, the manner in which the OPMA claims come before this court on appeal is most unusual, and the various cases cited by the

¹ At least, this is the best that can be gleaned from the record, because of the trial court’s refusal to make any kind of decision in open court or explain the reasoning behind any decision it made.

respondents do not offer useful guidance. Stratton v. U.S. Bulk Carriers, Inc., 3 Wn. App. 790 (1970), was an appeal from a jury verdict, in which the appellant (defendant below) argued for the first time on appeal that it had owed no duty to the plaintiff. The court correctly concluded that because this issue had not been raised or argued below, it could not be raised on appeal. The other cases cited by respondents involve essentially the same situation – i.e., a decision on the merits, after a full opportunity to work the case up, and then an issue being raised for the first time on appeal. In contrast, this case involves a Complaint filed only a month or so prior to the hearing, with no opportunity for discovery to be conducted, and a motion brought by the respondents under CR 12(b)(6), which *assumes the allegations of the Complaint to be true.*

The respondents then proceed to argue the merits of the OPMA claim – which is improper, because that was not properly before the trial court. But assuming this court determines it needs to address the merits, the respondents’ argument is incorrect. First, the respondents claim that that the GHAAC does not meet RCW 42.30.020(2)’s definition of “governing body” because the GHAAC does not “take action.” *Respondent’s Brief at 18.* But the definition of “governing body”

expressly includes any body which “. . . takes testimony or public comment.” RCW 42.30.020(2). And, “action” is defined to include “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.” RCW 42.30.020(3). There can be no dispute that the GHAAC takes public comment at its meetings, or at least is charged with so doing. *See, e.g., CP 55 (Bylaws, Art. VI, Sec. 1(f))*. Thus, the respondents’ focus on the “taking action” portion of the definition in RCW 42.30.020(2), and an Attorney General opinion re same, does not resolve the question.

Moreover, the GHAAC Executive Committee falls within the scope of the OPMA, as expressly set forth in RCW 42.30.020(2), which refers to “governing body as including “. . . any committee thereof. . . .” And, the GHAAC meets the definition of a public agency set forth in RCW 42.30.020(1)(c). Respondents also argue that the Executive Committee could not take “action” under the OPMA because no “quorum” would be present, and cites to RCW 42.30.202-.030 and Loeffelholz v. CLEAN, 119 Wn. App. 665 (2004), for that proposition. But the statutes do not refer to a quorum at all, and Loeffelholz’s reference to a quorum being required (119 Wn. App. at 701, fn. 107) refers to case law which

simply stands for the unexceptional proposition that if a few members of a body discuss things together, but there is not a quorum, then no “action” can be taken and hence the OPMA cannot apply. Here, if the Executive Committee is a “governing body” as defined in RCW 43.20.020(2), then the correct inquiry is whether Executive Committee meetings were held where *a quorum of Executive Committee members* were present.

Ultimately, a detailed and “as applied” analysis of the OPMA claim cannot be presented on appeal by either CAGEH or the respondents, because the trial court improperly cut this claim off at the knees before CAGEH had a chance to secure discovery and evidence to flesh out exactly what has taken place.

E. Declaratory Relief

This issue was thoroughly brief by CAGEH in its Opening Brief. The respondents claim that Bainbridge Citizens United v. Wash. State. Dept. of Nat. Resources, 147 Wn. App. 365, 198 P.3d 103 (2008) supports them, but that case involved a very different scenario, as the respondents freely admit: the plaintiff there was trying to get the court to *order* a state agency to take a specific action. In brief, the plaintiff was frustrated at DNR’s failure to force a fleet of privately owned vessels to abandon their moorings in Eagle Harbor, which the plaintiff claimed were illegal,

trespassed on public tidelands, and in violation of DNR's own regulations.

The court held that this kind of claim was not proper under the Declaratory Judgment Act, RCW 7.24:

The UDJA provides that:

A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, *may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise* and obtain a declaration of rights, status or other legal relations thereunder.
RCW 7.24.020 (emphasis added).

Declaratory judgment actions are proper "to determine the facial validity of an enactment, as distinguished from its application or administration." (citations omitted). The specific grant of power in RCW 7.24.020 is not, however, an exhaustive list of the general powers to seek declaratory relief. RCW 7.24.050.

Rather, the UDJA grants, trial courts the general power to "declare rights, status and other legal relations" if "a judgment or decree will terminate the controversy or remove an uncertainty." RCW 7.24.010, .050.

But the trial court lacked specific authority to issue a declaratory judgment for this action because United did not raise a "question of construction or validity." RCW 7.24.020. The sole question that United presented was whether the Department properly *applied* or *administered* WAC 332-30-127 and WAC 332-30-171(8) when it exercised its discretion and chose not to enforce these regulations against alleged Eagle Harbor trespassers in the manner United demanded. Neither party contends that the regulations are ambiguous and courts do not engage in judicial construction of unambiguous regulations. (citation omitted). Because United does not challenge the regulations' facial validity, a declaratory

judgment is not an available remedy under the power specifically enumerated in RCW 7.24.020.

Further, the trial court did not have the general power to enter a declaratory judgment under RCW 7.24.050. Again, United's sole claim was that the Department improperly applied or administered two provisions when it declined to enforce them against alleged trespassers who were not parties to this litigation. A claim such as this, of an agency's enforcement of a regulation, does not touch upon "rights, status [or] other legal relations." RCW 7.24.010. And a declaration that the Department should prosecute trespassers would not "terminate the controversy or remove an uncertainty" but, rather, would reopen the controversy of whether the individuals did trespass and retain the uncertain result of prosecutions. RCW 7.24.050. Accordingly, the trial court did not have general power to issue a declaratory judgment under RCW 7.24.050. Summary judgment on this claim was proper.

Declaratory judgments are not meant to compel government agencies to enforce laws. If the UDJA allowed otherwise, the negative implications would be endless. Courts would be forced to supervise administrative agencies, a function we have long found contrary to the judiciary's proper role.^(fn6) And citizens could bring diverse, and even contradictory, actions in each of our 39 counties to compel an agency to act--or decline to act--upon its enforcement power in accord with their individual interests and priorities. The uniform rules committee and our legislature apparently foresaw such consequences when they adopted the UDJA. Accordingly, our legislature has declined to allow actions where, as here, citizens attempt to act as private attorneys general to dictate a state agency's enforcement decision. *See* RCW 7.24.020, .050. This is not the proper subject for a declaratory judgment and the trial court did not err in granting summary judgment to the Department.

Bainbridge Citizens, 147 Wn. App. at 1037-38 (footnotes omitted).

It should be obvious that the case at bar is very different. CAGEH is not seeking a ruling on the discretionary decision to enforce a law or

regulation, and the societal ills and practical difficulties envisioned by the Bainbridge Citizens court are not present here. The basic issue is this: the GHAAC has been formed to act on a broad variety of topics for all residents and citizens of a large portion of north Kitsap County. It has Bylaws that the County has approved. Those Bylaws create certain obligations as to how GHAAC members are appointed, and what they do as GHAAC members. The County supplies the GHAAC with a variety of special benefits and consideration, paid for by the public, including lawyers and legal advice.

The individual respondents say they are GHAAC members and claim to rightfully have that status. CAGEH contends that the basic question of whether those persons got their positions as the Bylaws require, and whether they acted consistent with the Bylaws, are proper issues for adjudication by the court – and that the citizens of the north Kitsap area which the GHAAC claims to represent are entitled to have the GHAAC members follow their Bylaws, and have the right to seek judicial review and relief if those individual respondents have not followed the rules – and *especially* if those individual respondents were never properly selected and appointed by their neighborhoods and organizations.

It is difficult to understand the respondents' claim that they have no

interest in the subject matter of the lawsuit. *Respondent's Brief at 28*. If this were true, they would not claim to be GHAAC members. CAGEH's claims go directly to their claimed status, and the validity of their conduct as such, and it is difficult to see how they could be *more* interested than that.

In the end, it was up to the individual respondents to demonstrate under CR 12(b)(6) that as a matter of law, they were *improper* defendants and could not be subjected to the jurisdiction of the court. They failed to do that in the trial court, and have failed to do so here.

F. Injunctive Relief

For essentially the same reasons, CAGEH is entitled to injunctive relief against the individual respondents. Has CAGEH or its members suffered an invasion of their rights? Absolutely. In the trial court, the respondents did not argue that the Bylaws were unenforceable or merely "advisory Bylaws" (as if such a thing existed), so that is not in issue. Thus, the only way the court could agree with the respondents is if the court concludes that a citizen has no basis to complain when someone appoints themselves to act for that citizen and everyone else in a given area, with material support from the local government, and then fails to follow the very rules that were adopted to allow that "representative"

framework to exist in the first place. Our legislature has seen fit to afford very clear protections to persons in condominium and homeowners associations, to ensure that the governing documents of those entities are followed, that elections are performed “by the book”, and that the Boards of those organizations follow their Bylaws and rules. See, e.g., RCW 64.38, RCW 64.34. If persons who voluntarily purchase such properties and subject themselves to the governing documents for same (Declaration, Bylaws, etc.) are afforded such rights, then it would stand logic on its head to conclude that citizens who *never* voluntarily agreed to be part of the GHAAC, or to be represented by the GHAAC, have *no* rights to seek enforcement of the GHAAC Bylaws that were adopted by Kitsap County in giving the GHAAC and its members their special status and benefits. As stated in Seattle v. State, 103 Wn.2d 663, 668, 694 P.2d 641 (1985), “[p]rotection for the integrity of the political process, as well as individuals' rights, is within the zone of interests protected by the equal protection clause. Seattle, 103 Wn.2d at 668. The Seattle court stated:

The primary purpose of the equal protection clause is the protection of individuals' rights, including the right to vote. However, in cases involving the right to vote, the courts have also expressed a concern as to the effects of the denial of the right to vote on the integrity of the democratic process.

Id (citing Reynolds v. Sims, 377 U.S. 533, 555 (1964)).

The respondents' argument that the individuals would be bound by an injunction against the County, pursuant to CR 65(d), is misplaced. No authority is submitted by the County to show how CR 65(d) would apply here, where the individuals very clearly are not "officer, agents, servants, employees, or attorneys" of the County. Nor does the County explain how the individual respondents would be found to be "persons in active concert with [the County] . . .", where the allegations of the Complaint and the record before the trial court showed that the County had no involvement at all in the specific conduct and issues that are the basis for the claims against the individuals – i.e., their self-appointment, without any County oversight or participation, as GHAAC members.

G. "SLAPP" Statute

The applicable and controlling law on this issue is set forth in Port of Longview v. Int'l. Raw Matls., Ltd., 96 Wn. App. 431 (1999) and Emmerson v. Weilep, 126 Wn. App. 930, rev. denied 155 Wn.2d 1026 (2005). The SLAPP statute simply does not apply here.

The respondents claim that Kauzlarich v. Yarbrough, 105 Wn. App. 632 (2001) holds that the statute applies to all civil claims. *Respondent's Brief at 35.* In that case, Kauzlarich had been a part to a divorce action, and later sued his ex-wife's attorney, Yarbrough, after

losing a child custody modification battle. Kauzlarich claimed that Yarbrough had defamed him when, in the prior proceeding, Yarbrough advised the trial court that Kauzlarich had made death threats against him. Kauzlarich, 105 Wn. App. at 637. The court went on to hold that the court was an “agency” within the statute’s meaning:

“In this case, Yarbrough gave information to the Superior Court Administration in regard to his request for security in the courtroom during the trial that involved Kauzlarich. Yarbrough allegedly provided information about Kauzlarich's death threats during this communication. Given the legislative purpose and history, RCW 4.24.500 applies in this case. Thus, Yarbrough's request for security in the courtroom to the Superior Court Administration was a privileged communication under the statute.”

Kauzlarich at 651.

The court then stated “Yarbrough is covered under this statute. This statute bars all civil claims, including Kauzlarich's claims of defamation, fraudulent concealment, and negligent or intentional infliction of emotional distress.” Id. at 652.

As should be evident, Kauzlarich involved claims for damages, based on alleged defamation (with a few other theories of recovery thrown in). They were based on the communication by Yarbrough to the court. Kauzlarich is consistent with Port of Longview and Emmerson, and in no way supports the conclusion that the statute applies to civil claims *not* seeking to hold the defendant liable for damages. To the extent the court’s

language at p. 652 suggests otherwise, it is simply a case of imprecise wording – at worst – and does not control here.

Moreover, CAGEH is not seeking to impose civil penalties against the individual respondents based on the claims under the Open Public Meetings Act, as the respondents seem to think. CAGEH’s Opening Brief merely pointed out that such penalties are available under RCW 49.30, so as to demonstrate that if penalties against individuals are provided for by the Act, then the Act would logically allow for declaratory and/or injunctive relief directed to those same individuals for violation of the Act.

Segaline v. State of Washington, Dept. of L&I, 144 Wn. App. 312 (2008), likewise dealt with claims for damages under defamation and related theories, all of which arose out of L&I having posted a “no trespass” order against Segaline after L&I permit counter staff became concerned that he would physically assault them. For example, his claim for “negligent supervision” was (as far as can be gleaned from the opinion) “based upon” the L&I supervisors allegedly not having properly supervised the personnel who later communicated their concerns to law enforcement. The point here is simply that the statute can apply not just to defamation claims – i.e., claims where the communication itself is the liability-producing event – but to related claims in which proof of the

communication and of the surrounding circumstances are part of the plaintiff's *prima facie* case. Thus, if the claim were for negligent supervision, part of the proof would necessarily include proving that (1) the bad communication took place, (2) better supervision would have prevented that from happening, and (3) the supervisor was negligent in not doing that better job of supervision.

Ultimately, the SLAPP statute is very much in derogation of the common law, and that the court has properly construed the language of RCW 4.24.500-.510 in Port of Longview as being limited to claims seeking liability for damages. No such claim is made here, nor are CAGEH's claims "based on" communications to the County; they seek instead to secure a court declaration as to whether respondents were really properly appointed as GHAAC members.

The respondents' last argument is a generalized public policy based claim that letting individuals be subject to a civil action for declaratory or injunctive relief is somehow wrong. The tragic scenarios painted by the respondents do not support expanding the scope of the SLAPP statute beyond its proper boundaries, as set forth in Port of Longview. Nobody is trying to limit the respondents' ability to make their various political voices heard, or to spend time working on efforts to get the County to do

the things that the respondents want done. The key fact here, the element which makes this case so profoundly different from other situations where a county appoints an advisory board, is that in this case Kitsap County let various individuals appoint themselves to a “community council”, then undertook a “formal relationship” with that council (and approved its Bylaws) so that the council members can fulfill some of the functions of the county commissioners, and purport to act for the various neighborhoods and groups they claim appointed them. In that setting, where the respondents themselves claim a special status within and/or with respect to County government (a special status the County quite openly advertises), on behalf of all residents within the Hansville area, there is absolutely nothing wrong with them being subject to judicial review as to how they got there.

III. CONCLUSION

All of the issues now on appeal in this case are pure matters of law. Review is “de novo”

CAGEH has stated valid claims against the individual respondents for failing to follow their own by-laws that should survive respondents CR 12(b)(6) motions. The actions or inactions of the individual respondents

are subject to judicial review. If CAGEH proves its case, on the merits, it is entitled to declarative and injunctive relief to remedy the transgressions of the individual respondents.

This court should reverse the trial court, reinstate CAGEH's Sixth and Seventh causes of action against the individual GHAAC defendants, and allow those claims to be resolved on the merits.

Likewise, this court should rule that the individual GHAAC defendants' affirmative defenses based on improper joinder, and on RCW 4.24.500-.510, be dismissed with prejudice and that the trial court award CAGEH its attorney fees and costs incurred in obtaining that dismissal.

Finally, pursuant to RAP 18.1, this court should award CAGEH its attorney fees and costs on appeal, as detailed above, because the RCW 4.24.500-.510 defense alleged by the individual GHAAC defendants was improper and fails as a matter of law.

NO. 39041-8-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

**CITIZENS FOR ACCOUNTABLE GOVERNMENT IN EGLON AND
HANSVILLE,**

Appellant,

v.

KITSAP COUNTY, et al.,

Respondents.

DECLARATION OF SERVICE

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I hereby certify, under penalty of perjury of the laws of the State of Washington, that on this date I delivered true and correct copies of the following documents:

1. Appellant's Reply Brief

To the following attorneys of record:

Shelley Kneip
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Kitsap County Deputy Prosecutors
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on December, 2009 by United State First Class Mail.

I declare under oath and penalty of perjury that the foregoing statements are true and accurate.

SIGNED at Kingston, Washington on this 16th day of December, 2009.


Susan Miedema
Secretary to
Gerald A. Kearney