

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA CIVIL ACTION

ANDREW J. KOMISKE,
Plaintiff,

vs.

CASE NO: 24-CA-245

TROPICAL BAY PROPERTY
OWNERS ASSOCIATION, INC., a
Florida not for profit corporation,
Defendant. _____/


NOTICE OF FILING AFFIDAVIT

COMES NOW, Defendant, ANDREW J. KOMISKE, by and through his undersigned attorney, gives notice that the attached Affidavit of William G. Boles, has been filed with the Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Portal to all counsel of record this 14th day of February, 2025.

LAW OFFICE OF JURSENSKI & MURPHY, PLLC
15701 South Tamiami Trail
Fort Myers, Florida 33908
Tel: (239) 337-1147
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By: 
Mark R. Wagner, Esq.
Florida Bar No.: 1025774

AFFIDAVIT OF WILLIAM G. BOLES

Monroe County, Florida

BEFORE ME, personally appeared **WILLIAM G. BOLES**, who being first duly sworn, on oath, depose(s) and say(s) that:

- 1. My name is William G Boles. I am over 18 years of age. I am sui juris. I make the statements herein on my own personal knowledge.**
- 2. I am an owner of the real property located at 30342 Falcon Lane, Big Pine Key, Florida 33043 ("Property"). The Property is my legal residence.**
- 3. In October of 2020, the MLS real estate listing offering the Property stated that it was subject to a mandatory homeowners association.**
- 4. The buyer's agent's standard Florida sale/purchase contract presented the Property as subject to a mandatory home owners association.**
- 5. The real estate closing attorney, Wolf|Stevens, PLLC, that handled the legal aspects of the real estate transaction, including document review, found the property to be subject to a mandatory home owners association.**
- 6. The closing documents ("The HUD") prepared by and executed 12/03/2023 included a \$100 estoppell fee paid to the Tropical Bay Property Owners' Association, Inc. ("TBPOA"). The HUD also included a \$240 HOA charge plus a \$23.77 credit to the seller for 12/03/2020 to 12/31/2020 HOA dues. I believed membership in the TBPOA was mandatory.**
- 7. Prior to moving to the Property. in January, 2020 I resided on Barbour Island, Georgia from 1998 to 2012. That island was subject to the Barbour Island Property Owner Association, Inc. ("BIPOA"). I served as an officer of the BIPOA, as Secretary and President, for approximately twelve years.**
- 8. I resided in Coral Key Village on Conch Key, Florida from October 2012 until January 2020. The operation of Coral Key Village is subject to the Coral Key Village Homeowners Association, Inc., ("CKVHOA"). I served as a Board member of the CKVHOA for three years and as Treasurer for two. I built and maintained the website for CKVHOA as I had previously done for the BIPOA.**
- 9. As a newcomer to Tropical Bay, moving to the Property in January, 2020, I began to learn about my new neighborhood; about my neighbors; and all the neighborhood rumors. I was hearing about the HOA; about everyone's accumulated gripes and opinions. I believed that my previous experience with homeowners associations would be useful.**

10. Over the next two years, I interacted with TBPOA Board members and learned the Association history. I showed what I had done with other HOA websites. I volunteered to assist with the TBPOA website. I worked on committees.
11. I was appointed to "help with the website" in the 2/17/21 Board meeting. A motion was passed that I was to be given the password and "anything else he needs".
12. In the Board Meeting of June 23, 2022, a committee of 10 was created to update/redo/rewrite/re-evaluate/ the Deed Restrictions and the Association Bylaws. I was a member of that committee. The focus was initially on Deed Restrictions. It was soon recognized that reworking the Bylaws was a more urgent need. I advocated for a more revision so that the more important and less controversial changes could be made.
13. In August 2022, TBPOA President Paul Rogers resigned.
14. In the September 2022 Board meeting Mary Kong and I were voted to fill the two Board vacancies.
15. The document revision committee continued its work. I had put two by-law drafts forward before I came down with Covid on December 10. Over the next two weeks, Mary Kong made 43 additions/changes to the working draft.
16. The most controversial change was to Section 3, paragraph 2, where she inserted the following underlined words and removed the stricken word and, thus producing the following sentence, "The amount of any increase in dues, in excess of \$50 from the previous year, or any additional fee initiated by the Board of Directors and must be approved by the affirmative vote of 51% of the properties entitled to vote at any meeting of property owners where the subject matter is on the agenda where proper notice was given. These changes effectively reversed the meaning and intent of the sentence which was clearly intended to require member approval of any dues increase.
17. I sought to place an agenda item on the annual member meetings in January 2023 to allow member vote on amending the by-laws to reverse the dues increase in "excess of \$50" language. It was not allowed. Neither was a motion to seek member approval of the meeting agenda allowed. In the New Business section of the meeting, no motions from the floor were allowed.
18. The Board has increased the dues by \$50 per year, without member approval, in 2023 and 2024.
19. These increases violated all subdivision deed restrictions by raising dues over the \$50 maximum. The relevant part of all subdivision deed restrictions are in the ANNUAL ASSESSMENTS Section, the language reads. "The annual assessments levied by the association (which shall not exceed \$50 per annum unless approved by the majority of the members) shall be used

exclusively to promote the health safety welfare interaction of the residents....". This language has been interpreted by all Boards, beginning in the year 2000, to mean that they could raise dues by \$50 per year without member approval. The history of dues charged by the Association is as follows:

Year	Assessment	Notes
1979	\$20/\$30	\$20 per lot \$30 per house
1981	\$30	Dues \$30 per property
1984	\$30	Dues held to \$30 per property (\$5 legal, \$26 gen fund.)
1985	\$30	1/16/85 dues \$30 per property. Financial committee was formed to determine dues.
1986	\$50	10/86 dues to \$50 per property 12/6/86 combined lots are one property, one charge per annual meeting
1987	\$40	5/87 1st budget - billing to coincide with tax rolls \$40 per property
1992	\$45	Dues up to \$45. # of lots don't match treasurer books.
1994	\$45	Dues became mandatory for 1st and 2nd additions.
1997	\$50	Dues to \$50 per property
2000	\$75	Dues to \$75 per property (went to "per lot" in 2007)
2010	\$100	Dues to \$100 per lot
2013	\$125	Dues to \$125 per lot
2022	\$150	Dues to \$150 per lot
2023	\$200	Dues to \$200 per lot
2024	\$250	Dues to \$250 per lot

20. My efforts to propose the actions described above brought my relationship with several individuals on the Board from cooperative to very adversarial.

21. From my prior experience with other HOAs, I recognized many problems with the status and operation of TBPOA. I name the following items to establish reference points for potential follow-up. Some are minor, only listed as an opportunity for improvement. Some were corrected by the by-law amendment or Board action. Others are uncorrected and remain as violations of Florida Statutes or as conflicts with provisions in the Association's governing documents. I offered the following:

a. Thirteen is an excessive number of Directors. It is unusual for an HOA to have more than six. It is typical in the TBPOA that officers who are not directors are only involved as committee members. They have been excluded from "Executive" Board meetings.

b. The ability of the Board to unilaterally amend the by-laws w/o consent of the members. I initiated actions in TBPOA

and two other HOAs to require member approval of by-law changes.

- c. The Board has chosen to incorrectly interpret the governing documents on several points. I believe the TBPOA would lose a complaint made on any of the following.
- i. The Board has chosen to interpret Deed Restriction language which prohibits 'Trailers' being used for habitation into a claim that it means that boat trailer parking on residence lots is prohibited. All TBPOA lots are on navigable canals. (A C&D letter from the HOA attorney and relevant correspondence is available as an Exhibit).
 - ii. There was a Board policy of charging the cost of routine mowing of vacant lots to the owners of lots with residences.
 - iii. Illegal hedging of mangroves on all properties (and the charging the cost of this action to all members) (I have much correspondence with the FL DEP available as an Exhibit)
 - iv. The costs for mangrove hedging/trimming on the twenty seven lots trimmed (eight were County owned) was paid from the general fund, hence by all members.
 - v. No owner input/participation at board meetings was permitted until the end of the meeting... after all business had been conducted (contrary to FS 720.303(2)(b))
 - vi. Board member terms were not staggered. All were "elected" in a block every two years.
 - vii. Officers were directly elected rather than being decided by the Board at an organizational meeting.
 - viii. No "election" was normally held because a slate of only 13 was "nominated". Therefore no election by member ballot was necessary. I could find no instance where the nominated "officers" were not elected. The result of this procedure was a self-perpetuating cabal.
- d. It is an accepted legal principle that "evidence of an intent to conceal is also evidence of consciousness of guilt....". I can show:
- i. that some TBPOA Board members knew about the functioning of FS 712 to extinguish deed restrictions.
 - ii. that the TBPOA President misinformed their own counsel about matters of fact.
 - iii. that the TBPOA Secretary, who chaired by-law and deed restriction revision committees, intentionally withheld committee information from the other Board members.

- iv. that the TBPOA Vice President has violated his fiduciary responsibility by giving incorrect legal interpretations to board members. (the Vice President is a Maryland Attorney)
- v. Husband & wife Board members acted with impropriety:
 - 1. David & Mary Kong,
 - 2. Paul & Janet Rogers,
 - 3. Nancy & Michael Bloch.
- vi. Nancy Bloch perpetuated a secrecy policy of withholding information from the Board.
- vii. The general policy of operating the HOA as if totally controlled by the Officers and not actively involving the other directors.
- e. The numerous disagreements among the board members motivated Linda Bechtel to create a spreadsheet listing disputed issues. It has a column for the answer of each Board member. This spreadsheet bore no fruit at the time but now stands as testimony to the issues raised and answers given.
- f. Argument w/Michael Bloch over proactive policy for DR enforcement, (Documented)
- g. Destruction of records of the Association by Nancy Bloch and Mary Kong.
- h. In 2024 the Board purchased new insurance for Board member liability which raised annual premiums from ~ \$1,100 to ~\$12,000 per year.
- i. Requirements imposed by Florida Statute 720 upon the TBPO which required HOA actions to preserve deed restrictions from extinguishment were not performed. Any deed restrictions which might otherwise have been in effect were extinguished by the functioning of the MRTA.
- j. There exists a contract between Monroe County and the TBPOA specifying the terms for the County payments to TBPOA for mowing of County-owned lots in place of paying "dues" or having membership responsibilities to the HOA.

22. Following is my account of a Nov 26, telephone call with Paul Rogers: After having requested information from the TBPOA Board, in an Email of Nov 19, 2024 - "What is the real status of the Tropical Bay POA?", that Email is attached as Exhibit "A" , including the three documents attached thereto. Having received no answers to that email, I called TBPOA President, Paul Rogers to follow up. Paul Rogers was appointed President in the Board meeting of September 19, 2024, to replace David Kong who had resigned. The Board meeting minutes for the September 19, 2024 meeting are attached as Exhibit "B". The

phone conversation between Paul Rogers and me lasted 28 minutes and 58 seconds. The conversation began in a confrontational mode with Mr Rogers asking why I am bothering him with allegations and questions about the Association that I am not even a member of. He continued, that I was old, and did I not have better things to do with my life than disrupt the Association by writing letters. I asked Mr. Rogers why a respected broker with a successful real estate business would take on the potential liability of resuming the role of president in an HOA that is under serious legal challenges. Mr Rogers told me that the TBPOA had already completed the revitalization of one subdivision and would do the same with the others. He was very positive that the HOA would win the legal case. Mr Rogers continued by pointing out that I was not receiving collection notices for assessments. We went back and forth about this a bit as I tried to recall the date of the last email asking for payment. I was shocked that Mr. Rogers was admitting to me that the Board was not attempting to collect unpaid assesments from me. I have subsequently been told that the Association is not billing four other Tropical Bay owners.

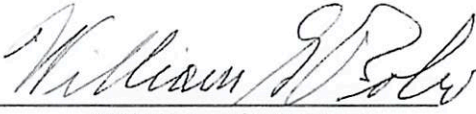
23. On January 5, 2025, I emailed TBPOA Treasurer, Linda Bechtel, to confirm what Mr Rogers said to me on Nov 26. I also told her that I thought it very strange that the TBPOA has made a defacto admission of knowledge that the deed restrictions have been extinguished by their pursuit of subdivision 2 revitalization, while at the same time, the Association is in the middle of a court case where the defense (the HOA insurance attorney) argues the opposite. An exchange of emails with Ms Bechtel and Mr Rodgers then followed. On Jan 12 Ms Bechtel emailed me, "Yes, TBPOA is trying to collect your outstanding invoice (attached)". In 2024, invoices were sent to me on Feb 11, Apr 03, Jun 11, Jul 13, Aug 21, and Oct 13.
24. On Jan 12 Mr. Rogers emailed me, "Bill pay your dues and be a part of the POA. End of story.". I responded with a request for him to confirm what he had told me on Nov, 26, "...that I was no longer considered to be a member of the POA."
25. On January 13 I received an email from Mr. Rogers which stated that my lots 3 & 4 in Tropical Bay Third Addition, "..are very much part of the POA.", and, "I said to you and will say again, pay your dues and be a contributing member of this POA and great neighborhood. As you know, the association attorney will speak as to the "status" at the upcoming annual meeting. I look forward to seeing you then."
26. The above stated events January 5 to January 13 reverse what Mr. Rogers told me in our Nov 26 telephone conversation.

27. This affidavit is made for the purpose of stating events of history of the Tropical Bay Property Owners' Association, Inc. and elements of the history of its governing documents which relate to the functioning of applicable Florida statutes to effect changes upon the legal status of the TBPOA to clarify the authority of the TBPOA over the owners of real property located within the Tropical Bay subdivisions and the obligations which these same owners might have to respond to the demands of the TBPOA. This affidavit contains specific, detailed facts based on personal knowledge and not simply conclusory statements.

28. I now state:

- a. My statements of facts, opinions, and beliefs should not be regarded or construed as an action to place any cloud of title upon any lands of the Tropical Bay subdivisions.
- b. While some statements this affidavit may be regarded as self-serving, the statements are based on my own knowledge. I have set forth specific, detailed facts. I have attached or can furnish exhibits to provide supporting evidence from other sources to corroborate the stated facts.

Further Affiant sayeth naught.



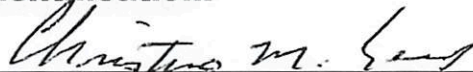
William G. Boles

State of Florida

County of Monroe

The foregoing instrument was sworn to and subscribed before me by means of physical presence or online notarization, this 30 day of January, 2024 by William G. Boles, who is personally known or has produced a driver's license as identification.

(NOTARIAL SEAL)



Notary Public

Printed Name: Christina M. Geide

My Commission Expires: 4/19/2027

