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October 31, 2012

Tropical Bay Property Owners Assoc.
Attn: Maryann Yentzer
P.O. Box 430522
Big Pine Key, Florida 33043

Dear Ms. Yentzer:

I have the "Tropical Bay Special Bulletin" dated October 28, 2012. Please advise the board of the following.

I gather that the board is seeking to invoke a deed restriction and/or covenant relating to the canals. Be aware that any such restrictions or covenants are invalid and unenforceable and the board has no authority to seek to enforce the same as to navigable waterways.¹ The power to regulate navigable waterways is delegated to the Federal government under the commerce clause of the United States Constitution and may not be affected by individual covenants. As the board may know the courts have historically struck down covenants that purport to take action deemed unconstitutional, pre-empted and illegal. Such covenants which were unfortunately routine earlier in the century, such as prohibitions of sales of land to blacks and prohibitions of sales of land to those of the Jewish religion, are illegal. Such is the case here. Any reliance on "Corp of Engineers' rulings..." is inappropriate, misplaced and of no authoritative value.²

I would be glad to meet with the board and explain in detail the unconstitutionality of your proposed action. I will be down the weeks of November 5th and November 12th and if you like we can try to arrange a mutually agreeable date and time.

Without conceding the viability of any covenant the board seeks to enforce I would nonetheless point out that any allegation that our boat "will interfere with navigation on any canal" is without any merit. Our boat is 9 ½ feet wide and I am advised that the canal is

¹I believe that the board's proposed proscription as to "new" boatlifts is not pre-empted by the constitution. Nonetheless, it is subject to challenge under the second problem noted elsewhere in this letter.

²I suspect that the covenant as to parking boat trailers on lots is invalid although that question is not at issue at this juncture.


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thirty feet wide. I have never seen a boat on the canal that would have any difficulty when piloted by a competent skipper, navigating without any difficulty through a twenty foot opening. Moreover I would add that our boat is in the water at most for two week increments four times a year, thus making the situation which you contend to be a problem even less of an issue.

Accordingly, the board is now on notice that any attempted enforcement action would be of an invalid and illegal covenant and otherwise an invalid action and as such in bad faith and without any substantial justification. In the scenario I would take all such steps as are necessary to protect our rights as guaranteed by law and seek to have the covenant adjudicated invalid, and pursue all other remedies, collectively and individually, for our damages, defenses, and fees.

Finally, and most significantly, I would respectfully suggest to the board an alternative method of dealing with situations such as this should they arise in the future. In the five years that we have been a part of this wonderful community we have complied with all lawful regulations and sought to be good neighbors. It would have been much more productive in this situation had the board suggested to your complainant that he or she come to me directly for a resolution. Despite the board's action that is not too late to do so. Please have your complainant contact me on cell at 410-610-2929 and I will be glad to meet with him or her and discuss the situation. It would be my pleasure to make any reasonable accommodation and I am sure that an amicable resolution could be reached in short order.

Very truly yours,



Laurence W.B. Cumberland

LWBC/bal