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December 17, 2012

Tropical Bay Property Owners Association
Attn: Harriet Lindsay-Arndt
P.O. Box 430522
Big Pine Key, Florida 33043

Dear Ms. Arndt:

It was again, a pleasure to meet you and the board members again at the meeting. I am impressed by everyone's diligence and dedication and, as I mentioned, would commend you folks in light of the thankless tasks you deal with. If it turns out that I am elected to the board I will look forward to working with you and I will do what I can to help contribute.

The specific response to your letter and the results of our research are as follows. You cite 33 USC section 403 which is not the correct section and does not apply to vessels. The correct section is 33 USC section 409 which pertains to obstruction of navigable waters by vessels. The quick response to the correct section ("it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or other craft...") is two fold. First, on the face of it, a 10' boat in a 30' canal is patently reasonable and not in violation. Second, and more to the point, 33 USC 409 may only be enforced by United States Attorney's and Federal Officers. 33 USC 413. It is not an enforcement tool nor weapon that may be used by a homeowners association for purported enforcement purposes. The TBEHOA is not legally entitled to nor does it have any authority to enforce USC.

Second, the Florida statute you cite, Fla. Statute § 327.44 is in fact correct ("no person shall...operate...a vessel... in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel.") and the response is the same. Mooring a 10' boat in a 30' canal is entirely proper and not a hazard and the Florida statute like the Federal Statute is not enforceable by a homeowners association.

Third, and most significantly, the TBEHOA has no authority to promulgate nor seek to enforce the "regulation" that it has dictated relating to tying up vessels to the sides of canals. The power of the TBEHOA are specifically set forth in the Declaration and may not exceed that unless specifically authorized by statute. Florida Statute § 720.303 et. seq.

(2012) provides for the powers and duties of the homeowners associations. Nowhere in the statute is any authority given to the associations to promulgate rules and regulations relating to canals. In short, the TBEHOA simply does not have the power to create or enforce any regulations pertaining to the canals.

I thought about this issue when I received the most recent bulletin relating to pets, and I presume it focuses mostly dogs. The bulletin indicates that the TBEHOA mandates that pets must be leashed and that owners must clean up after their pets. The bulletin cites the Florida leash law. I have not checked the Declaration with respect to dogs but regardless of any leash law, absent a provision in the Declaration specifically authorizing such regulation, the TBEHOA may not create such a regulation. It has no power nor authority to do so.

Most importantly of all, I reiterate my request to forge an amicable resolution to this issue, among neighbors. The situation cries out for a resolution and I would like to do my share. As you may know there is a large number of property owners along the Watson canal that are extremely upset with the Board's action and feel it to be unfounded. I would propose a more practical solution in light of the fact that the Board has no actual power to intervene.

I enjoyed meeting with Mr. Way and I understand now that he is on the canal committee. We left our short discussion on a positive note with, I think, the understanding that we would talk. I have some very specific proposed solutions to the situation and I would hope to meet with Mr. Way (and/or anyone else you would like) to discuss them with him. In my view communication and dispute resolution is much preferred to other means of solving differences. If you think it appropriate I would ask, respectfully, that you give me contact information for Mr. Way which would presumably be his telephone number, and I will call him when my wife and I get back down, which will be in about a week. I would like to meet with him, if you think appropriate, and try to work out a proposed solution.

Again, I commend you folks on your diligence and desire to represent the best interests of the community.

Very truly yours,



Laurence W. B. Cumberland

LWBC:ds