

M E M O R A N D U M

**To:** Mayor Schneier and Town Commissioners  
**Cc:** Howard Tipton, Town Manager  
**From:** Maggie D. Mooney, Esq., Town Attorney  
**Date:** February 28, 2023  
**Subject:** Tolling Agreement with Long Bar Pointe LLC for Alleged Claims  
Associated with June 2020 Wastewater Line Leak

As discussed previously, following the discovery of the June 29, 2020 wastewater line leak, representatives from property owner Long Bar Pointe, LLC contacted the Town of Longboat Key and placed the Town on notice that they sustained unspecified damages from the leak and the Town's emergency pipeline repair work. Further, Long Bar Pointe indicated that they intended to pursue a claim against the Town for the alleged damage. Since the initial notification, there have been numerous meetings between the Town and Long Bar Pointe representatives relating to: the Town's need for a temporary easement to perform the mangrove restoration work required pursuant to the FDEP Consent Order on Long Bar Pointe's property; the scope of the Town's existing wastewater pipeline easement; the Town's redundant wastewater pipeline plans; the Town's need for an access agreement to reline the existing wastewater pipeline; and Long Bar Pointe's alleged damages. To date, Long Bar Pointe has not quantified the scope of its alleged damages or monetized its claim to the Town.

Recently, the Town requested a Temporary Access Agreement from Long Bar Pointe to provide access to the Town's contractors to perform relining work on a portion of the wastewater line that runs through the Long Bar Pointe property. Carlos Beruff, the Managing General Partner of Long Bar Pointe, indicated his agreement to such access but conditioned the execution of a Temporary Access Agreement upon the Town entering into a separate Tolling Agreement that would extend the applicable statute of limitations period for Long Bar Pointe to bring its alleged damages claim. The Temporary Access Agreement is also being provided to the Town Commission on this Meeting Agenda as a separate consent agenda item.

Generally, claims for damages under Florida law must be brought within a four (4) year statute of limitation of the injury. See, Fla. Stat. 95.11 (3). A Tolling Agreement extends a litigation filing deadline and allows parties to negotiate and possibly resolve their dispute without litigation by maintaining and preserving the parties existing rights. A Tolling Agreement was drafted and negotiated for consideration by the Town Commission. At the time of this Memorandum's preparation, Long Bar Pointe's legal counsel indicated that their client consents to the form and content of the attached Tolling Agreement, and requested that the Town Commission approve the agreement first. A summary of the relevant Tolling Agreement terms are as follows:

- Assuming both parties execute the Tolling Agreement in March 2023, the agreement would suspend the statute of limitation for a ten (10) month period.
- The Tolling Agreement will expire on January 30, 2024.
- The Tolling Agreement states that its sole purpose is to preserve the parties' rights, including the respective parties' claims and defenses.
- There is no admissions of liability.
- The Tolling Agreement's admissibility in court is limited to addressing statute of limitation issues that arise.

The Tolling Agreement does not limit the Town's right or defenses if a claim for monetary damages is ultimately received from Long Bar Pointe. This agreement will ensure that the Town Staff can continue to work with Long Bar Pointe representatives cooperatively, rather than forcing an adversarial lawsuit due to an impending statute of limitation deadline.

It is the collective recommendation of the Town Manager, special counsel Ed Steinmeyer and I that the Town Commission approve the attached Tolling Agreement with Long Bar Pointe LLC and authorize the Town Manager to execute the Tolling Agreement on the Town Commission's behalf.

**Recommended Motion:** Approve the Tolling Agreement with Long Bar Pointe LLC and authorize the Town Manager to execute the Tolling Agreement on the Town Commission's behalf.

#### **Attachments**

Tolling Agreement (Available in Town Clerk's Office)

**End of Agenda Item**