

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: January 26, 2024
Subject: Tolling Agreement with Long Bar Pointe LLC for Alleged Claims
Associated with June 2020 Wastewater Line Leak

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 re-line the existing wastewater pipeline; and Long Bar Pointe's alleged damages.

The Town continues to need ongoing use of the temporary access and restoration area easements from Long Bar Pointe to continue to address consent order matters. In addition, based on the current preliminary engineering design for the new, redundant force main, the Town may need an additional permanent easement across Long Bar Pointe property parallel and adjacent to the Town's existing, permanent force main easement to accommodate a portion of the new force main and related connections to the existing line.

To date, Long Bar Pointe has not quantified the scope of its alleged damages or monetized its claim to the Town. 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. An initial Tolling Agreement was entered into between the Town and Long Bar Pointe on March 6, 2023, and expires January 30, 2024. Long Bar representatives recently contacted the Town and requested that the Tolling Agreement between the parties

be extended and transmitted a new Tolling Agreement for consideration by the Town Commission. The attached new Tolling Agreement is substantially similar to the terms of the initial Tolling Agreement. The following is a summary of the Tolling Agreement terms currently before the Town Commission for consideration:

- Assuming both parties execute the Tolling Agreement on or before February 5, 2024, the agreement would suspend the statute of limitation for one (1) calendar year from the effective date.
- The Tolling Agreement will expire on February 5, 2025.
- 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, Public Works Director, 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 (Available in the Town Clerk's Office)

1. Tolling Agreement dated February 5, 2024
2. Tolling Agreement dated March 6, 2023

End of Agenda Item