

To: Seabrook Island Residents and Property Owners
From: R. J. Ciancio
Date: August 21, 2019

As many of you are aware, in July of last year Atlantic Partners II, LLC ("Atlantic") made application to the Town of Seabrook Island (the "Town") for an encroachment permit to allow access from Seabrook Island Road ("SIR") to property it owns located within the municipal limits of the Town of Kiawah Island. Kiawah Development Partners, LLC (the "Developer") intends to construct a senior living facility ("SLF") on the property in question.

In October of last year, the Town's Planning Commission granted the encroachment permit subject to nine conditions. Atlantic took exception to each of those conditions, and on October 19th filed a Notice of Appeal in the Charleston County Court of Common Pleas. On January 24, 2019 at a statutorily mandated Pre-Litigation Mediation the parties, together with the Developer's building contractor Balfour Beatty Construction, LLC ("Balfour"), entered into a Memorandum of Understanding setting forth in general terms the conditions under which the Town would permit access from SIR to the SLF facility. For the last seven (7) months, the parties have been negotiating the terms of a settlement agreement (the "Agreement") setting forth in more specific terms the outline of agreement in the Memorandum of Understanding.

The terms of the settlement agreement have been posted on the Town's website. I would strongly encourage everyone to read it thoroughly. The Agreement provides the Developer and Balfour access for construction and use of the SLF subject to a number of conditions which I believe will both minimize the interruption of traffic on SIR and provide for the safety of drivers on SIR and users of the bicycle path from the gate to the Freshfields' traffic circle (the "Bicycle Path").

The next steps in the process will include: (i) review of the Agreement by the Planning Commission; (ii) a public hearing at the Seabrook Island town hall to be held at 1:00 on September 17th; (iii) submission to the Town Council for approval (first reading of an ordinance adopting the Agreement will be at 2:30 on September 17th; (iv) execution of the Agreement by Atlantic, the Developer and Balfour; and, assuming approval and execution by each of the parties, (v) submission to the Court of Common Pleas for approval on a date to be determined.

The relevant provisions of the Agreement are as follows:

Preservation of Conditions Required by Planning Commission

- Conditions numbered 2 through 8 of the Planning Commission Approval are preserved with revisions (Agreement ¶¶ 10. A. – 10. G.); Condition number 9 of the Planning Commission Approval is replaced by an affirmation of the Developer and Atlantic in respect of a condition of their application for an encroachment permit (Agreement ¶ 10. H.).

Traffic Management

- Within thirty (30) days of execution of the Agreement, and at the sole cost and expense of Atlantic, the Town will retain a traffic consultant (the “Consultant”) to prepare a traffic impact analysis (“TIA”) to quantify both the existing traffic on SIR and the traffic which can be anticipated during construction of the SLF (“Construction Traffic”). The TIA will identify the number and types of vehicles for each phase of the construction process. Based on the TIA, the Consultant will prepare a temporary traffic control plan (“TTCP”) to identify means (in addition to those specifically identified in the Agreement) to mitigate the impact of the Construction Traffic and the safety of the users of the Bicycle Path (Agreement ¶ 1.) .
- The TTCP will identify the measures which Balfour is required to take to ensure that during the construction period: (i) traffic headed to the SIPOA security gate from the traffic circle is not impaired in any significant way; (ii) Construction Traffic exiting the SLF does not cause the AM or PM peak hour delay at any point in the traffic circle to increase by more than two (2) seconds; and, (iii) traffic moving in either direction on SIR can do so in a safe and efficient manner. Balfour and the related parties are to adhere to such identified measures (Agreement ¶1.).
- The TTCP will also identify “gap acceptance times”, that is, distances (expressed in feet) required so that traffic leaving the gate does not have to slow down to accommodate Construction Traffic either entering or leaving the SLF(Agreement ¶1.). The required distances will be marked and Construction Traffic may not enter or exit SIR if a resident’s vehicle has passed such gap marker. Balfour is to employ appropriate traffic control procedures to implement the gap acceptance times, including installation of markers on SIR (Agreement ¶ 4. C.).
 - If the Consultant determines in the TTCP that it is necessary to place a limit on the number of construction vehicles per day (in addition to the limit contained in the Settlement Agreement) to ensure that the current levels of service at the intersections of SIR and at the construction site and the

traffic circle are not significantly impacted, Balfour will limit the number of construction vehicles accordingly (Agreement ¶ 1.D.).

- The TTCP will be periodically reviewed during the construction process and the Consultant will make such modifications thereto as in its profession judgement it deems appropriate (Agreement ¶ 1.F.).
- Balfour is to appoint a traffic supervisor (“Traffic Supervisor”) to implement the constraints imposed on the Developer and Balfour set forth in the Settlement Agreement and the TTCP (Agreement ¶ 2.). Prior to the start of construction, the Town and the Traffic Supervisor will meet with police and fire officials to develop contingency plans for emergency situations (Agreement ¶ 2. C.).

Construction Management

- Prior to the start of construction of the SLF, Balfour is to construct a left hand turn lane on SIR leading to the SLF entrance (Agreement ¶ 3.). All work on the left hand turn lane is to take place during non-peak hours on SIR as identified in the Thomas & Hutton traffic survey (Agreement ¶ 3. A.). During the construction of the left hand turn lane Balfour is to station a certified flagman to control inbound traffic from Betsy Kerrison (Agreement ¶ 3.C.).
- Access to the construction site through the permitted encroachment (the “Encroachment”) is limited to vehicles with three (3) or more axels. All vehicles with less than three (3) axels must enter the site through Freshfields (Agreement ¶ 4.).
- To spread the Construction Traffic, vehicles are to arrive at the Encroachment no more frequently than ten (10) minutes apart. To account for the uncertainty of traffic on Bohicket Road, we have given Balfour reasonable leeway on this requirement (Agreement ¶ 4. B.).
- Balfour’s normal workdays shall be Monday through Saturday, provided however, unless otherwise agreed by the Town, no deliveries shall be permitted to enter or exit the SIR Encroachment after 8:00AM on Saturday (Agreement ¶ 4. D.).
- Other than for construction of the left hand turn lane, concrete pours and emergency work (incidents requiring urgent response to mitigate damage to the site or surrounding environment) no Construction Traffic is permitted to use the

Easement during periods of darkness (Agreement ¶ 4. E.) or on any Town Holiday (Agreement ¶ 4. G.). Concrete pours will be coordinated by the Traffic Supervisor and the Town and will take place during “non-peak hours” as defined in the Traffic Impact Analysis of August 23, 2018 (Agreement ¶ 4. F.).

- When traffic on SIR is of particular concern (e.g., the Bill Fish Tournament) Balfour shall make reasonable accommodation for such traffic (Agreement ¶ 4. H.). No Construction Traffic will be permitted to use the Encroachment during the PGA tournament (Agreement ¶ 4. N.).
- Balfour is to keep SIR in the vicinity of the Encroachment clean of dirt and debris (Agreement ¶ 4. M.).
- It is anticipated that the Bicycle Path in the vicinity of the Encroachment will be reconfigured to improve safety for users of the Bicycle Path (Agreement ¶ 5.). The current Bicycle Path is to remain functional until the reconfiguration is ready for use (Agreement ¶ 5. A.). At all times when construction traffic is either present or anticipated, Balfour will station two (2) certified flagmen at either side of the Encroachment where it intersects with the Bicycle Path (Agreement ¶ 5. B.). Balfour is to install a warning surface to caution users of the Bicycle Path of the possibility of approaching traffic (Agreement ¶ 5. C.) and keep the Bicycle Path in the vicinity of the Encroachment in good repair and clean from debris (Agreement ¶ 5. D.).

Remedies

- At the cost and expense of Atlantic, the Town will retain a civil engineering firm to do a pre and post examination of SIR to determine the extent, if any, of any damage caused by the Construction Traffic (Agreement ¶ 6.). Atlantic and the Developer will be responsible for the cost of repair of any damage, unless they can prove to an expert retained by the Town that the Construction Traffic did not cause the identified damage. Atlantic and the Developer will post financial security in the form of a \$150,000 bond to pay for the cost of repair.
- Atlantic, the Developer and Balfour are responsible for any violation either of the terms of the Agreement or any stipulation contained in the TTCP (Agreement ¶ 8.). The first violation of certain provisions of the Agreement will result in a warning only. The second violation of those provisions and the first violation of any other provision of the Agreement or of the TTCP or any Town ordinance will result in a fine of up to \$500 as provided for in the Town’s ordinances. Atlantic,

the Developer or Balfour may contest any assessed fine before the Town's judge, and in the event of an adverse decision may appeal to the Court of Common Pleas. Three (3) violations of the same provision of the Agreement, the TTCP or any Town ordinance, twelve (12) violations of either the Agreement or the TTCP in any rolling twelve (12) month period, any violation which results in personal injury or property damage of other than a de minimis nature, or failure to pay any fine may, in the sole discretion of the Town, result in revocation of the Encroachment.

- In order to monitor compliance with the terms of the Settlement Agreement and TTCP, Atlantic will reimburse the Town for its cost of equipment to monitor the Construction Traffic utilizing the Encroachment to enter the construction site (Agreement ¶ 9.).

Survival of Rights & Remedies

- The rights and obligations of the parties set forth in paragraph 8 of the Agreement (right to revoke the Encroachment) and any other provision of the Agreement which is intended to survive termination or expiration of the Agreement by its express terms or nature and context will so survive termination or expiration of the Agreement and construction of the SLF (Agreement ¶ 15.). The Town's adoption of the Agreement by ordinance enables enforcement of terms of the Agreement as a violation of a Town ordinance.