

**Request:** Itemized “cost of lawsuits during the last meeting.”

**Response:**

The following represent Village fiscal year expenses for the regulatory and court proceedings relating to the BHI Transportation System as compiled by the Village Finance Department.

The figures below include fees, expenses and costs of experts (including expert witnesses), consultants, financial advisors, and lawyers associated with the referenced matters.

**FY 22**

NCUC Regulatory Authority over Parking and Barge  
(including NCUC Docket No. A-41, Sub 21)

\$177,932.75 + \$9,875

NCUC Request for Approval of Transfer of Common Carrier Certificate  
(including NCUC Docket No. A-41, Sub 22)

N/A

NCUC Review of BHIT Petition to Revise Ferry Schedule  
(including NCUC Docket No. A-41, Sub 23)

N/A

Defense of BHIL’s Lawsuit Seeking Declaration that Village’s ROFR Is Invalid

N/A

NCUC Review of Regulation of Ferry Utilities  
(NCUC Docket No. A-100, Sub 1)

N/A

**FY 23**

NCUC Regulatory Authority over Parking and Barge; NCUC Request for Approval of Transfer of Common Carrier Certificate  
(including NCUC Docket Nos. A-41, Sub 21; and Docket No. A-41, Sub 22)

\$1,331,948.82 + \$37,950

NCUC Review of BHIT Petition to Revise Ferry Schedule  
(including NCUC Docket No. A-41, Sub 23)

N/A

Defense of BHIL's Lawsuit Seeking Declaration that Village's ROFR Is Invalid

\$123,572.95

NCUC Review of Regulation of Ferry Utilities  
(NCUC Docket No. A-100, Sub 1)

N/A

**FY 24**

NCUC Regulatory Authority over Parking and Barge; NCUC Request for Approval of Transfer of Common Carrier Certificate; NCUC Review of BHIT Petition to Revise Ferry Schedule: NCUC Review of Regulation of Ferry Utilities (including NCUC Docket No. A-41, Sub 21; Docket No. A-41, Sub 22; and Docket No. A-41, Sub 23; and Docket No. A-100, Sub 1)

(as of 4/30/24) \$484,775.44

Defense of BHIL's Lawsuit Seeking Declaration that Village's ROFR Is Invalid

(as of 4/30/24) \$418,259.59 + \$30,123.07

## **RESPONSES TO CITIZEN QUESTIONS**

- 1. *What is the exact purpose of the lawsuits, BHI Inc.? Will it benefit the citizen residents of Bald Head Island? Or is it for the benefit of special interest groups based on the island? If the Village wins the lawsuit, will it break up the Transportation System and sell the parking lot and barge to special interest groups?***

### **RESPONSE:**

For purposes of this response, the Village assumes the question is referring to all of the regulatory and legal matters associated with the Transportation System.

The Village's motivation and concern in each of these proceedings has been to advocate for the long-term best interests of the Island and the users of the Transportation System. The Village's efforts have focused on ensuring that all homeowners, businesses and other Island stakeholders will have access to a reliable and reasonably priced ferry, parking, and barge system not just now, but into the foreseeable future, so that the Island will be best positioned to grow, prosper and remain a destination of choice for so many members of the public. At all times, the Village has sought to pursue resolution of disputes through negotiation and collaboration and will continue to do so.

The only proceeding initiated by the Village is the petition filed with the NCUC in February 2022 seeking a declaration that parking and barge were subject to the regulatory authority of the Commission (Docket No. A-41, Sub 21).

The Village's petition was filed in light of the impending sale of the utility assets and Limited's public statements that it was willing to sell the utility assets separately to different buyers for different purposes. The Village's goal in filing the petition was to ensure, no matter who owned the utility assets going forward, that continued access to the critical utility assets (i.e., including parking) would be preserved, that access would be available on reasonable terms and conditions (which necessitates regulatory oversight), and that the assets would continue to be operated into the future as a unified system for the benefit of the public.

There was and remains the concern that, in the absence of regulatory authority, the utility assets would be subject to monopoly pricing. There was also the related concern that, in the absence of regulatory authority, portions of the utility property, including parking, could be sold for unrelated purposes, making getting to and from the island exceptionally difficult.

On December 30, 2022, the NCUC issued an order agreeing with the Village's petition that the Deep Point parking and the tug/barge operations are so intertwined with the regulated ferry operation that they are subject to the Commission's regulatory authority.

Limited and SharpVue challenged this order by filing an appeal in the N.C. Court of Appeals. That appeal remains pending in the Court.

As stated, if the NCUC decision is upheld, the Village has no intention whatsoever to break up the transportation system or to sell its components to special interest groups; to the contrary, the impetus for initiating the proceeding was to prevent such an outcome.

In the Sub 22 (Transfer Proceeding), the Village intervened in the proceeding to protect the Island's interest in connection with the potential sale of the utility assets to a new owner.

In the Sub 23 (Ferry Schedule Proceeding), the Village intervened in the proceeding to ensure that all Island stakeholders' interests are represented and protected as BHIT seeks to revise its ferry schedule from 30-minute turnarounds to 45-minute turnarounds (in addition to other material changes).

In the A-100, Sub 1 (Ferry Regulatory Proceeding), the Village intervened to oppose efforts by BHIT to eliminate NCUC regulation of its ferry operations.

In the ROFR proceeding, the Village was sued as a party defendant in the proceeding. The Village has participated in the proceeding to protect the enforceability of the ROFR granted by Limited and BHIT to the Village with respect to the Transportation System assets.

**2. Which Village Council members have access information protected from disclosure under NDA regarding the transportation system sale?**

**RESPONSE:**

The nature of the legal proceedings is that parties are required to enter into nondisclosure agreements from time-to-time, for various reasons, including the exchange of confidential information and settlement negotiations. Confidential information may be subject to different levels of protection depending on the nature of the information.

By court order, information produced in the ROFR litigation may be shared with all Council members but is subject to confidentiality restrictions imposed by the Court.

In the Sub 21 and 22 NCUC proceedings, both Attorney Eyes Only designations and non-disclosure agreements apply to much of the information concerning the proposed transaction with SharpVue and, in some cases, as to financial information. No Council members have access to information which has been designed as "Attorney Eyes Only". In some cases, for information which is not designed as "Attorney Eyes Only", Council members that executed nondisclosure agreements may have access to confidential materials under the terms of the nondisclosure agreements.

- 3. Which Village Council members meet with the Legal team to plan the litigation strategy, prepare depositions, and participate in actions in court or with administrative bodies?***

**RESPONSE:**

All Council members participate in Closed Sessions with the attorneys at least monthly. As is common with litigation matters, and for efficiency and to save costs, the Council has directed that the Mayor and Mayor Pro Tem serve as primary points of contact with the Village's attorneys and consultants on the Transportation System matters.

- 4. What does the Village think is a fair price to acquire the unified transportation system? If it's below \$47 million – why pursue a ROFR at a higher price? Alternatively, if it's above \$56 million – why intervene and challenge SharpVue's acquisition?***

**RESPONSE:**

The Village, at present, is not in a position to determine what would constitute a fair price for the unified Transportation System. There are several reasons for this, including that the Village has not been provided a *bona fide*, arms' length purchase offer or the due diligence information necessary and standard to consider such an offer; BHI Limited and Transportation disagree with the Village as to which properties are included in the transportation system. Under the ROFR, such properties include the Chandler Building, golf cart parking, and other property immediately adjacent the marina at Bald Head Island, as well as the entirety of the Deep Point parcels at Southport. The price also could be affected by regulation of the NCUC over the combined utility of ferry and tram, parking and barge operations.

- 5. What is the Village's plan to recoup legal fees, catch-up contributions or compensate the General Fund for the past several years of diverting investment into critical island needs in favor of litigation?***

**RESPONSE:**

The Village has not diverted investment from critical island needs. The General Fund is addressed in the FY 25 budget as submitted on May 3<sup>rd</sup>, 2024, to Village Council ([Click Here](#)). See also the discussion below of investment in BHI infrastructure. More generally, the legal expense to seek a resolution of the transportation system is a critical long-term investment in the welfare of the island and all of its assets.

6. ***What does the Village consider a successful outcome of the ROFR litigation? Does the Village want to buy the transportation system in the current rate environment at the current price? How much more would the transportation system cost to purchase NOW than if the BHITA purchased it THEN? What is the expected time and costs to be incurred to deliver a successful outcome?***

**RESPONSE:**

The Village would consider a successful outcome to be the purchase of the ferry and tram, parking and barge operations (or equivalent lease of some of those assets) at a fair and reasonable price. Based on EBITDA numbers published in the BHITA bond proposal of December 2020 (see p 47 [HERE](#)), BHIT/BHIL are earning significant profits off the combined system. They intend to use those excess profits to justify a significantly higher sales price. Since the NCUC ordered parking and barge to be under their jurisdiction which includes rates that impose a rate of return percentage on capital invested well below what BHIT/BHIL are now earning, we believe the system is being sold at a substantial “acquisition premium,” well above what the NCUC normally allows. A full rate case would answer this issue once and for all, but a rate case hopefully can be avoided by the Village’s or other party’s acquisition upon agreeable terms that consider the public’s interest in the System’s ongoing operation.

When the BHITA announced in late 2020 the terms of a potential transaction, the public, the Village and the LGC raised numerous questions and concerns about BHITA’s economics (including proposed asset valuation, transaction economics and its BBB- bond rating), governance and transparency. Their questions regarding the \$47.75 million sales price were not answered satisfactorily and the LGC tabled the application to authorize the bond issue for the sale.

The Village’s financial advisory firm and investment banking firm have not performed an analysis concerning the cost of a hypothetical purchase “now” versus a hypothetical BHITA purchase “then,” as the LGC did not approve the proposed BHITA purchase and because the Village has not been provided a *bona fide*, arms’ length offer to purchase the transportation system or its components. Regardless, the Village remains interested in buying the Transportation System in the current rate environment whether it be made a *bona fide* offer to purchase it or given its rights under the ROFR to match such a *bona fide*, arms’ length offer. Either would be a successful outcome of the ROFR litigation.

7. ***What does the Village consider a successful outcome from Sub 21? What evidence does the Village have to support the position that regulating parking and barge will result in lower prices? How much of an increase does the Village anticipate occurring at the first rate case for the newly regulated services? What is the expected time and costs to be incurred to deliver a successful outcome?***

**RESPONSE:**

See answer above. The Council maintains a holistic view of the various regulatory proceedings impacting the Transportation System. A successful result in the Sub 21 proceeding would be affirmance of the Commission's order by the appellate courts. The assertion of regulatory authority over parking and barge should ensure (a) that prices for those services are associated with the cost of providing service (and not priced on a monopoly-service basis), (b) that the assets are operated together as a unified system under common ownership, and (c) that system revenues are used for the benefit of ratepayers. More generally, the Council is seeking a resolution of all the matters which best protects the Island's interest in continued access to the Transportation System on reasonable terms and conditions continuing into the future. Any outcome which promotes this interest would be a successful outcome.

We have reason to believe that the Transportation System is currently earning profits substantially higher than is typically permitted under utilities regulation. That said, the result in the first rate case will be dependent on a number of factors, including issues left unresolved by the Commission's Sub 22 order, including whether acquisition premium may be recovered from ratepayers. It is impossible to estimate, at this point, future time and expense that would be incurred to deliver a successful outcome. We only know that more certainty will be provided as these issues work through the regulatory and court systems.

**8. *What does the Village consider a successful outcome from Sub 22?***

**RESPONSE:**

The Council maintains a holistic view of the various regulatory proceedings impacting the Transportation System. A successful outcome of the Sub 22 proceeding would be for a Court to require the NCUC to consider and address reasonable and substantial concerns raised by the Village and public concerning the proposed structure of the transfer and future capital and operating needs of the system, among others. The briefs of the parties in the Sub 22 proceeding may be found ([Click Here](#)). More generally, the Council is seeking a resolution of all the matters which best protects the Island's interest in ensuring continued access to the Transportation System on reasonable terms and conditions continuing into the future. Any outcome which promotes this interest would be a successful outcome.

**9. *Why does the Village think they could operate a ferry better than another owner?***

**RESPONSE:**

The issue isn't necessarily whether the Village believes it would be "better" than any other operator, the issue is what entity is best situated to serve the interests of the Island in the operation of system. The current owner has stated that it is no longer interested and willing to invest in the long terms success of the Transportation System. While there are,

potentially, other owners that would be well-suited to operate the assets for the benefit of the public over the long term, the seller has stated that the relatively small size and isolated nature of the system presents obstacles in finding a willing and qualified buyer.

As a governmental entity responsible for protecting the Island's interests and managing the Island's affairs, the Village is well-suited to operate enterprise assets such as the Transportation System. The Village's excellent credit and ability to issue bonds, apply for grants, and obtain other sources of funds, such as installment financing, would allow it to invest the capital to purchase and operate the System at lower cost than would apply to a private entity or the BHITA. The Village would also have operating efficiencies for other potential owners given its administrative and other staff, facilities and experience on the island. These advantages would allow the Village to make capital improvements to the System and operate it at lower rates than other entities could do. Also, the System revenues would stay in the System, and not be paid out to investors as profits. Further, in the case of a storm or other emergency, the Village may be able to access FEMA funds and reserves which would be unavailable to a private operator.

Many have observed the deterioration of the condition of the assets (ferries, trams, trucks, marinas), as well as the decline in service levels, especially on-time performance. Deferred maintenance and failure to make capital improvements has been ongoing for years. Village ownership would be focused on a quality transportation system available to all users, and profits redirected back into the system rather than diverted into investors' pockets.

The Transportation System is vital to the BHI community, including property owners, businesses, employees, contractors, non-profits and visitors. Vesting ownership in the Village, which is directly accountable to the public and best understands and represents the interests of the varied users of the system, would be far more protective of the welfare of BHI than could be offered by an outside third party. There is deep public concern that a private equity firm or other business without ties to the island would seek unreasonable profits from the transportation system's monopoly or otherwise would not operate with due consideration and regard for the needs of the island's varied users. In addition, the Village has experience in acquiring enterprise operations and can quickly move to integrate finance, communication, human resources and IT services into its current municipal government structure. The Village also has experience hiring managers and other staff to run day-to-day operations of varied departments (Public Safety, Public Services, Utilities, Post Office and IPC, etc.), and would retain experienced professionals to operate a quality system.

**10. *What is the current status of the projects, capital investment, and reserves for the Water Utility?***

***RESPONSE:***

The Village will address here the various investments in infrastructure, not just the Water Utility. The General Fund Expenditures in 000's:



	<b>FY 23</b>	<b>FY 24</b>	<b>FY25</b>
Public Safety*	\$3,318	\$3,585	\$3,988
Public Works**	\$2,312	\$2,267	\$2,343
Shoreline Development	\$721	\$767	\$940
IPC/PO	\$449	\$592	\$591
Contractor Services	\$377	\$490	\$509

\*Public Safety, which is the largest Department in the Village, comprises 23.57% of all General Fund Expenditures, including personnel expenses (full-time/part-time salaries, overtime wages and fringe benefit costs) of \$3.2 million or 47.25% of all personnel expenses Village-wide. Through the current FY24 and proposed FY25 budget, new equipment (including, without limitation, new ladder truck and pumper engine truck, two new ambulances, two new Quick Reactionary Vehicles [QRVs], needed air conditioning system addition to PSO bunk rooms, EKG monitors/defibrillators, firefighting gear [air packs and accessories], body and in-QRV cameras with Mobile Data Terminals with printers, and furniture) was/is funded through a combination of revenue sources that include a FEMA Public Assistance reimbursement program (\$1.78 million), private donations (\$447,030), and loans. The debt will be repaid through the Village's General Fund. A State grant for VIPER radios for Public Safety operations in the amount of \$150,000 will fund radio system upgrades required by the NC Department of Public Safety.

\*\*Public Works comprises 13.85% of the FY 25 General Fund Expenditures.

Utility rates fund the Utility Fund expenditures in a separate Enterprise Fund. This provides for testing and upgrades to assure clean drinking water, especially in light of the release of [perfluoroalkyl and polyfluoroalkyl substances](#) (“PFAS”) into the Cape Fear River. This is an emerging challenge and the Village continues to evaluate the options. An application was submitted to the Emerging Contaminants Grant Program. In addition, the engineering and design of our wastewater treatment plant expansion (planning is approximately 60% complete). Last fall, the Village obtained from the State a \$965,000 earmark for this planning. We expect to commence work in 2027.

Also, regarding wastewater, a Capital Project Fund was established for lift station improvements at the December 16, 2022, Village Council meeting. These funds were budgeted in the Utilities Enterprise Fund for FY23, and have been carried forward due to supply chain delays. Utilities staff will continue with lift station refurbishments for Phase III and look forward to the completion of Phases I and II. The current status is:

- FY22 Phase I Lift Station Upgrades Sites – although the original plan was to refurbish 15 sites at 5 per year, this was modified to 3 per year due to higher than anticipated costs. A Capital Project Fund in the amount of \$523k was approved by Council, and Council approved Phase I in awarding the contract

to Utilitech Inc. at the November 19, 2021, Council meeting for a total cost of \$455k:

1. Dune Ridge Main
  2. Stede Bonnet Main
  3. Harbor Village Main
- FY23 Phase II Lift Station Upgrades Sites (2<sup>nd</sup> Capital Project Fund approved by Council):
    1. Central Main
    2. WBHW Main
    3. Primary Main
  - FY24 – Phase III was not funded – strategic decision/noted as a “catch-up” year.
  - FY25 – Phase III Proposed Lift Station Upgrades Sites (if approved in recommended FY25 budget – staff will request approve of the 3<sup>rd</sup> Capital Project Fund):
    1. Mourning Warbler
    2. Loggerhead
    3. SBHW
  - FY26 – Phase IV Proposed Lift Station Upgrades Sites:
    1. Hammocks
    2. Royal James
    3. BHI Club
  - FY27 – Phase V Proposed Lift Station Upgrades Sites:
    1. Dowitcher
    2. Flora’s Bluff
    3. Palmetto Cove

Utilities accesses the Utilities budget for repairs of water and wastewater treatment components when required.

A priority infrastructure project is Shoreline Development (beach renourishment), which must be undertaken approximately every six years when the Army Corps of Engineers cycle does not deposit channel sand on BHI. Much of the Village’s debt obligation is tied to funding our own private beach renourishment projects. The Village lobbied for and was successful in obtaining a \$4.5 million federal earmark for the 2025 renourishment project. Other infrastructure improvements supported by various Funds include and/or have included ongoing stormwater management efforts, such as improvements to bypass lagoon and lagoon connections, and tools to survey lagoon levels; road paving, road repairs and beach access improvements; purchase of a dump truck, rock conveyor, excavator, locating equipment, and mower attachments; and repair work on the Timber Bridge.

**11. What is the expected time and costs to be incurred to deliver a successful outcome?**

**RESPONSE:**

Successful execution of the above-mentioned plan, barring any additional unforeseen issues regarding lead times, inflationary costs, etc.

**12. What does the Village consider a successful outcome from A-100 Sub 1? What is the expected time and costs to be incurred to deliver a successful outcome?**

**RESPONSE:**

In this proceeding, the NCUC is considering differing levels of regulation of the variety of private ferry systems currently serving the state. The Bald Head Island ferry is clearly the largest, shuttling by far the most riders, including employees. Most all others simply serve a very small market for leisure trips.

BHIL suggests that since Bald Head Island has so few “full time” residents, and serves a large vacation population, especially during the summer period, the BHIT ferry service should be treated like “leisure service” ferries and thus justifying a relaxed form of regulation with reduced regulatory oversight.

A successfully outcome in this proceeding would be preservation of the existing form of regulation for the BHI Transportation System. Relaxed regulatory oversight would put island stakeholders at risk of unsupervised rate increases and unilateral and unregulated service changes.

**13. Why is the Village spending money to intervene on Sub 23? What is the expected time and costs to be incurred to deliver a successful outcome?**

**RESPONSE:**

At its Council meeting on March 15, 2024, the public strongly encouraged the Village to intervene in the Sub 23 proceeding. Several persons expressed that the Village had a duty to do so, with one speaker suggesting that duty extended even to the owners of undeveloped properties on the Island who will need future access to the Island.

As stated in the petition to intervene in the Sub 23 case, the Village is a consumer of the ferry, tram, parking, and barge services itself as most all of the Village’s employees make daily trips to and from the island. Some Village employees would be negatively impacted by the proposed schedule change. The Village is also the governmental entity, acting through its elected Village Council, representing the interests

of the entire island community and its various stakeholders (residents, visitors, etc.) and responsible for ensuring, protecting, and enhancing the island's unique qualities so that it remains an accessible and enjoyable place to live, visit, and work. Additionally, the other intervenors are representing the interests of their particular organization. There are many organizations and groups whose interests are were not represented by the previous intervenors. The Council views its role as representing ALL interests as best we can.

**14. How did all of the members on the BHITA – except those appointed on BHI - get comfortable with the proposed terms of sale for the transportation system? What did the members from BHI see that other couldn't/didn't?**

**RESPONSE:**

We do not know how the other members of the BHITA got comfortable with the proposed terms of the sale for the Transportation System. The BHI appointees were banned from sharing key information due to Non-Disclosure Agreements. The then Mayor and Mayor Pro Tem could not share key information until the sales price was made public. When other Council members began to ask questions about the process and specifics of the deal, it was made clear they were not being heard by the other non-Village BHITA members, only one of whom was/is a regular ferry user.

**15. If the ferry (alone) loses money from operations, why would the Village want to buy it at all?**

**RESPONSE:**

Good question. For operating efficiencies, the Transportation System should remain a unified system, as it has since its inception. The ability to coordinate ferry and barge operations, such as during fire response or other emergency, is critical. The Transportation System, on the whole, is profitable. A unified system would avoid duplication of staff, administration and other resources. It also may avoid costly lease arrangements. A private operator could, and SharpVue has stated that it would, seek a profitable lease arrangement, such as leasing the terminal, access roads or other property to the ferry operating entity. Such an arrangement to increase profits has the potential to increase ferry rates and divert revenues from the provision of services.

**16. At one point it was publicly suggested BHI Limited should “donate” the ferry system (By Dale Folwell)...has the Village pursued asking lawyers if they will “donate” their expert services going forward with the litigation?**

**RESPONSE:**

The Village cannot address Treasurer Folwell's donation suggestion. However, the Village has not and will not ask professionals to “donate” (work for free) their valuable expertise and services.

17. ***If BHIL is successful with any tort claims for lis pendens or interference with contract, does the Village have liability insurance to cover those losses? How does the Village estimate the exposure to these types of action or other torts? Will island residents be held liable for any civil judgments levied against any current or former members of Village Council?***

**RESPONSE:**

There are no pending tort claims against the Village. BHI Limited and BHI Transportation voluntarily dismissed those claims in April 2024.

If those claims were refiled, the Village's liability insurer has taken the position that its policy does not indemnify the Village against BHIL's and BHIT's claims for slander of title and tortious interference with contract. If that position is upheld, governmental immunity would apply to those claims.

18. ***In the April 1, 2024 Message from the Mayor, the on-going work to transfer the transportation system was characterized as a "negotiation" with BHI Limited and SharpVue, by parties with "divergent interests".***

***Please clarify for BHI property owners, is the primary intent of the Village Council to collaborate with BHI LIMITED to finalize a sale to SharpVue, or is the Village Council working toward proposing an alternate solution?***

April 1, 2024 "A Message from the Mayor" excerpts:

"..... I cannot share details except to say we worked with our financial advisors to develop financial models to frame proposals that would assure the transportation monopoly remains accessible and affordable for all islanders. BHI Limited and SharpVue share our desire for resolution and know we continue to be open to advancing these **negotiations**...

... Of course, we would like to achieve that result as expeditiously as possible. However, when the parties' **interests are divergent**, it is difficult to find common ground."

**RESPONSE:**

This question misconstrues the Mayor's message. Mayor Quinn was addressing Village efforts to negotiate a resolution to the ferry litigation. The selected excerpts followed the sentence stating, "In addition to participating in third-party mediation, we have had open discussions on a variety of resolution scenarios." The primary intent of the Village Council is to assure that **all** BHI property owners, businesses, employees, contractors and visitors incur reasonable parking rates and barge fees, and to maintain adequate parking for them at Deep Point.

**19. The Village has stated that “financial advisors who are developing financial models to frame proposals that would assure the transportation system remains accessible and affordable for all islanders.” Who are these financial advisors? How much are they being paid? Was the contract out for bid?**

**RESPONSE:**

They are:

- Bond Counsel – Robinson, Bradshaw & Hinson, PA;
- Financial Advisors – First Tryon; and
- Transactional Advisors – J. Lee Lloyd, LLC

First Tryon and Robinson Bradshaw assisted the Village in previous successful bond referendum efforts and provided excellent professional services. First Tryon also provides financial modeling services, which is why the Village sought their help in determining options for purchase of the transportation system.

First Tryon’s and Lee Lloyd’s engagements were evaluated on a number of factors, including relevant experience and expertise, availability, results, and proposed fees. They were selected over other firms, after interviews. Their fees and expenses are included in the expense numbers reported by the Village.

**20. What is the Village’s motivation for buying and operating a complex transportation system such as the ferry and barge, etc.?**

**RESPONSE:**

The Village is seeking an outcome that will provide safe, timely, affordable and reliable ferry/tram and barge service, and will protect **all** BHI property owners, businesses, employees, contractors, non-profits and visitors from potentially exorbitant parking rates and barge fees. In addition, maintaining parking at Deep Point is viewed as critical. Given that access to the Island is critical to its future, the Village seeks to ensure the best possible outcome for the Island’s various stakeholders, whether that entails ownership of the Transportation System by the Village or a third party.

Moreover, the Village believes it would be a well-qualified long-term owner and operator of the Transportation System. Reasons for this include:

- the Transportation System exclusively exists to serve BHI property owners, businesses, employees, contractors, non-profits and visitors;
- Village ownership is expected to achieve significant economic advantage for the system and its users;

- The Village would reinvest profits from parking and barge operations into maintenance and capital and operational improvements; and
- Council acts as stewards of BHI and is in the best position to develop short- and long-term initiatives for the successful operation of the transportation system.

The Village also would have access to its taxing authority, eminent domain, other types of bond offerings in addition to the General Obligation bonds, installment financing, cash reserves, grants and low interest financing from other governmental agencies, and Federal Emergency Management Agency grants. This could be particularly important if there were a natural disaster or other emergency requiring immediate funds to keep the transportation system running.

**21. *What evidence do you have that George Mitchell wanted a government to run the transportation system?***

**RESPONSE:**

The Village believes that Mr. Mitchell, while he was the developer of the Island, desired to ensure that the Transportation System was operated in the best interests of the Island stakeholders. To that end, he constructed a unified Transportation System and, on August 21, 1999, Limited and BHIT granted to the Village a Right of First Refusal to acquire the Transportation System in the event it was sold. This ROFR was granted to the Village (and not to a private entity) by the Mitchell Family and, by agreement of the parties, was recorded, along with maps of certain properties, in the Brunswick County Registry, in order to provide public notice of the Agreement. The ROFR also stated that, even prior to the ROFR, “the Village was granted rights with regard to the Bald Head Island transportation system....”

**22. *In the Village Announcement of 4/29, you state: “The Village continues to be open to finding a collaborative solution to the Transportation System resolution and to working with Limited and or SharpVue in that regard.” What evidence can you present that you are working with the BHITA, Limited, and SharpVue when your appeal for Sub 22 is 18 pages long detailing why the purchase should not move forward?***

**RESPONSE:**

While the substance of settlement negotiations is strictly confidential, the Village can state that it has had numerous discussions with BHIL and SharpVue, including a third-party mediation and meetings among J. Lee Lloyd, the Village’s M&A advisor, and Lee Roberts. The Village has continued to communicate to BHIL that it is open to efforts to find a mutually agreeable resolution. Its legal analysis of the SharpVue transaction has no bearing on its willingness to seek compromise. Indeed, many matters in contentious litigation are resolved once the parties have a clear understanding of each other’s position.

**23. *When is enough, enough? Do you have an upper end of taxpayer dollars you are willing to spend? How much time do you intend to spend appealing every decision that the Courts hand down?***

**RESPONSE:**

BHIL and SharpVue appealed the Sub 21 decision regulating parking and barge, and the Village is defending that decision. The Village has appealed two decisions: the Sub 22 decision by the NCUC and the ROFR decision. We are awaiting a decision on the Sub 21 appeal, and oral argument of the Sub 22 appeal has not yet been calendared. The ROFR appeal is pending. Appellate rules and procedures are in place to help assure that fair and just results are obtained. Availing itself of that right is consistent with the Village's duty to work for the best interests of the island, including the users of the Transportation System (*all* BHI property owners, businesses, employees, contractors, non-profits and visitors). The Council carefully monitors all litigation matters to ensure that expenditures are prudently incurred and consistent with available resources.

**24. *Specifically, what does the non-disclosure agreement cover?***

**RESPONSE:**

There are various non-disclosure agreements concerning the pending legal matters. These include:

- Non-Disclosure Agreement among BHI Limited/BHI Transportation, SharpVue and the Village concerning exchange of information in the context of confidential settlement discussions, which information included proposed transaction structures.
- Consistent with Utilities Commission practice, Non-Disclosure Agreements were signed by the parties in the Sub 21 and Sub 22 proceedings. Subject information included financial information and transaction documents. Certain of this information also was subject to confidential and attorneys' eyes-only designations.
- Confidential designations were made in the Brunswick County Superior Court ROFR litigation. This included financial and transaction information, as well as witness testimony.

Non-disclosure agreements cover the exchange of confidential information. See response to Question 2 above.



**25. If the Village were able to purchase the transportation system, how long do you anticipate it would take for the Utility Commission to approve the Village as the operator of the system and what if the Village were not approved?**

**RESPONSE:**

We anticipate it would take a period of a few months and are not aware of any grounds upon which approval would be delayed or denied. If the Village was not approved, the seller would have to seek another buyer that could obtain NCUC approval.

**26. Who would actually run the transportation system? How would you work with Southport to access Deep Point, which is part of the City of Southport?**

**RESPONSE:**

In the event the Village was to acquire the Transportation Assets it would establish an organization structure dedicated to this enterprise. The Village prepared the attached chart of its proposed operational structure ([Click Here](#)). It would operate similarly to other departments that the Village runs, including Public Safety and Utilities. Village ownership would ensure that proper goals and objectives would be set, and investments made to ensure the quality transportation we used to have, have come to expect, and deserve.

As regards Deep Point, an acquisition of assets would include the existing legal rights and interests to operate the assets at Deep Point. We would continue to work with Southport as we always have, with openness, transparency, and willingness to work together (collaborative spirit) to resolve common problems/issues. The current “mutual aid” agreement with Southport’s Police and Fire Departments is an excellent example of that collaborative spirit.

**27. What role would you envision the BHITA having?**

**RESPONSE:**

If the Village obtains ownership of the Transportation System, there is not an obvious need for the BHITA’s involvement, which should streamline operations and lower costs. However, the Village remains open to all options which result in the best outcome for the Island. There could be a scenario where a version of BHITA could be a viable partner in the operation of the Transportation System assets, even in a Village ownership scenario.