

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 22

In the Matter of	)	
Joint Application of Bald Head Island	)	
Transportation, Inc., and Bald Head	)	
Island Ferry Transportation, LLC, for	)	<b>REPLY IN SUPPORT OF</b>
Approval of Transfer of Common Carrier	)	<b>FIFTH MOTION TO</b>
Certificate to Bald Head Island Ferry	)	<b>COMPEL RESPONSES OF</b>
Transportation, LLC, and Permission to	)	<b>SHARPVUE CAPITAL, LLC</b>
Pledge Assets	)	

The Village of Bald Head Island (the “Village”), by and through counsel and pursuant to the Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice, submits this Reply in support of its Fifth Motion to Compel SharpVue Capital, LLC (“SharpVue”)<sup>1</sup> to provide its full and complete Responses to the Village’s Fifth Set of Data Requests.

**INTRODUCTION**

SharpVue’s supplemental responses do not resolve the issues raised in the Village’s Fifth Motion to Compel. SharpVue continues to dodge basic questions about claims it made in its Amended Application. SharpVue continues to refuse to explain why it will no longer promise not to recover an acquisition premium from the ferry system customers. And SharpVue continues to unilaterally withhold documents, citing baseless trade secret designations.

SharpVue has made clear that it will not fulfill its obligation to respond fully and truthfully to the Village’s discovery requests unless ordered to do so by the Commission.

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<sup>1</sup> For purposes of this motion, “SharpVue” includes reference to SharpVue Capital, LLC and its affiliated entities.

The Village thus respectfully requests that the Commission grant its Fifth Motion to Compel and (1) order SharpVue to respond to the Village's Fifth Set of Data Requests, in full, including producing any documents referenced therein or providing any responsive documents and (2) provide such other and further relief as may be appropriate.

### **ARGUMENT**

#### **I. SharpVue must explain why it will no longer promise not to recover an acquisition premium from customers.**

SharpVue first contends that Data Request 5-12 is moot because its Amended Application no longer references an acquisition premium, citing the Commission's Order on the Village's First Motion to Compel. Opp. at 2. But SharpVue misses the point. The Village's Data Request 2-16 requested the *amount* of the acquisition premium associated with the ferry assets; because the Amended Application no longer references the acquisition premium, the Commission stated that Request 2-16 was moot. Order on First Motion to Compel at 3. Data Request 5-12 asks something different: it asks why SharpVue will no longer commit that it will not recover an acquisition premium from its customers. SharpVue's omission of this commitment, when it previously promised not to recover any acquisition premium from customers in its initial Application, is highly relevant to this proceeding.

SharpVue disputes the request's relevance, again redirecting the Commission's attention to SharpVue's alternative definition of "acquisition premium" and claiming that the term has no application here. Opp. at 2. But the Village is entitled to know whether SharpVue intends to recover from customers the difference between the purchase price and historic or net book value of the ferry system. The potential adverse impact of the transaction on ratepayers is core to the Commission's statutory inquiry under G.S. § 62-

111(a) as conceded by the Applicants in their Amended Application. *See* Amended Application, at ¶ 23 (Commission must evaluate “adverse impact on North Carolina retail ratepayers” and whether the “utility’s customers are protected as much as possible from potential costs and risks resulting from the transaction”). It is difficult to imagine a topic that is more germane to the Commission’s consideration of adverse impacts on ratepayers, and whether customers are “protected as much as possible” from costs and risk, than SharpVue’s intention to make ratepayers bear the burden of its decision to pay amounts above regulatory cost basis in acquiring the assets. This issue is treated repeatedly in Commission transfer proceedings. *See, e.g.,* Frontier Natural Gas, *Order Approving Merger Subject to Regulatory Conditions Order*, Docket No. G-40, Sub 160, at Finding of Fact 21 (Nov. 22, 2021) (Commission evaluating mitigation of cost and risks to consumers by noting applicant’s waiver of claim for recovery of acquisition premium, including premium from past mergers).

If the Commission determines that acquisition premium is not relevant in transfer proceedings, that decision will greatly impair its ability to protect the public interest going forward and will unravel decades of precedent on the issue.

SharpVue’s evasion is telling. If SharpVue does not intend to recover the premium from customers, it could easily say so—and in fact, it did say so in its initial Application. SharpVue’s reluctance to provide a direct answer to the Village’s Request 5-12 and its omission of such a guarantee from its Amended Application is significant, and SharpVue should be ordered to respond to the Village’s request.

Finally, SharpVue argues, without analysis, that requiring any response would “require legal conclusions.” *Opp.* at 3. As an initial matter, SharpVue did not raise this

objection in its discovery response (nor did it raise the objection in either of its supplemental responses). Thus, the objection is waived. *Hairston v. Hairston*, 209 N.C. App. 750, 709 S.E.2d 601 (Table), 2011 WL 532774, at \*2 (2011). Further, such an objection, even if timely raised, would be without merit. The Village has not asked a question requiring a legal response—it simply wants to know why SharpVue will no longer commit to not recovering an acquisition premium from customers. This is a factual, not a legal question.

For these reasons, the Commission should compel SharpVue’s full response to Request No. 5-12.

**II. SharpVue’s supplemental responses to Data Requests 5-2 and 5-6 are still non-responsive.**

SharpVue’s supplemental responses to 5-2 and 5-6 are wordier, but provide no additional substance. SharpVue should be ordered to respond in full to these requests.

Given SharpVue’s statement (at least twice) in its Amended Application that it manages BHI Ferry Transportation, LLC (“BHIFT”), the Village asked SharpVue to “describe the scope and extent of [SharpVue’s] management authority.” SharpVue has since supplemented its response to state generally that “day-to-day management authority will be vested with the existing management team” and that SharpVue will “work closely with existing management.” SharpVue further supplemented its response to point to various articles of organization, the operating agreement for Pelican Legacy Holdings, LLC (“Pelican”), and a Shared Services Agreement between BHIL and Pelican. SharpVue also notes that it is withholding various responsive documents under its erroneous trade-secret designation (but refuses to even identify what it is withholding).

SharpVue's response still fails to answer the Village's question. The Village still does not know what management services SharpVue is providing to BHIFT or the terms of the services, and SharpVue has not produced a copy of the governing agreement between SharpVue and BHIFT, if any. Again, the Village's question directly relates to SharpVue's *own assertion* in its transfer application concerning SharpVue's management role.

Regarding Request 5-6, given that SharpVue represented in its Amended Application that it had "reached agreement" with the management of current BHIT and BHIL operations, the Village asked SharpVue to specify the terms of that agreement. SharpVue's supplemental response fails to fully respond to the Village's request. [BEGIN AEO CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END AEO CONFIDENTIAL] If that agreement, for example, includes an understanding about profit sharing – or a bonus for consummation of the transaction – that information is highly relevant to this proceeding. SharpVue must be ordered to either amend the Amended Application to reflect that an agreement has not been reached, or provide the Village with the full details of that agreement.

SharpVue's supplemental responses to the Village's Requests 5-2 and 5-6 still fall short of its discovery obligations, and SharpVue should be ordered to respond in full.

### III. SharpVue cannot justify its erroneous trade secret designations.

As discussed in Village's First, Second, Third, Fourth, and Fifth Motions to Compel, SharpVue's unilateral decision to withhold documents it claims are "trade secrets" is not supported by law. SharpVue's latest arguments are not availing either.

#### a. SharpVue's claim that the Village is its competitor is nonsensical and, in any event, a red herring.

SharpVue, a private equity company, continues to maintain that the Village—a municipal government—is its competitor. Opp. at 3. As discussed in the Village's Reply in Support of its Second and Third Motions to Compel, this argument makes little sense given that the Village does not engage in private equity activities such as the business of attracting capital and making investments to generate return for its investors, nor is it legislatively authorized to do so.

Further, even if the Village were SharpVue's "competitor"—which it is not—that fact would not allow SharpVue to withhold documents from the Village.<sup>2</sup> Competitors routinely disclose trade secrets to each other on an attorneys'-eyes-only basis in litigation. *Addison Whitney, LLC v. Cashion*, No. 17 CVS 1956, 2020 WL 3096793, at \*12 (N.C. Super. June 10, 2020) ("The disclosure of confidential information on an attorneys' eyes only basis is a routine feature of civil litigation involving trade secrets." (quoting *Paycom Payroll, LLC v. Richison*, 758 F.3d 1198, 1202 (10th Cir. 2014))).

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<sup>2</sup> SharpVue's apparent concern is that the Village holds a right-of-first-refusal to purchase the transportation assets and that, from that perspective, the Village is a "competitor" in seeking to acquire the assets. However, (1) this proceeding is about the transfer to SharpVue – not a contest between the Village and SharpVue over purchase rights, (2) SharpVue has made no evidentiary showing whatsoever that any particular information it seeks to withhold might be unfairly used against it in any efforts by the Village to prosecute its ROFR rights, and (3), as explained below, courts routinely manage these sort of concerns by requiring confidentiality agreements – which are already in place here.

SharpVue nonetheless contends that an attorneys'-eyes-only designation is insufficient. Opp. at 5. Tellingly, SharpVue does not cite a *single case* for to support its position. Instead, SharpVue makes baseless accusations against the Village, suggesting that it will “use the information to derail SharpVue’s purchase of the assets at issue here, just as it did when the BHI Transportation Authority attempted to do the same.” Opp. at 3. SharpVue’s paranoia is unfounded.

First, the Confidentiality Agreement binds all signors—which include all attorneys in this case—from disclosing confidential information to third parties (excluding consultants engaged in the matter, the Commission, and Commission staff). Thus, there is no way the Village’s attorneys could use SharpVue’s information to “derail” the purchase, because the Village’s attorney’s use of any such information is limited to defending the Village’s interests in this proceeding.

Second, the Village did not “derail” the Authority’s purchase of the ferry system. To be clear, it was demonstrated in the Sub 21 proceeding that the LGC’s refusal to act on the BHITA’s financing application was due to Limited’s inability to substantiate the purchase price it was demanding. The proceedings before the LGC have nothing to do with the issues presented here.

Regardless, SharpVue’s apparent position that it can use “trade secret” as a sword to withhold information that might be used against it in the transfer proceeding turns discovery on its head. The Village is entitled to all information that might lead to the discovery of admissible evidence, even information that might be used against it in the proceeding.

**b. Section 62-34(c) does not authorize the kind of ex parte proceedings SharpVue contemplates.**

SharpVue next argues that N.C. Gen. Stat. § 62-34(c) authorizes SharpVue to share information with the Public Staff without disclosing that information to other parties. Section 62-34 is not so broad. Instead, § 62-34(c) authorizes the Public Staff to “examine confidential information” and imposes restrictions on the *Public Staff’s* use of that information. *E.g.*, (“The Public Staff shall not disclose confidential information except as authorized by (i) the person or entity having the right to assert confidentiality, (ii) the Commission, or (iii) a court of competent jurisdiction.”). But the statute does not immunize the party providing the confidential information from responding to discovery requests.

Nevertheless, SharpVue argues—again, without citation<sup>3</sup>—that the legislature intended to allow a party to engage in ex parte communications with the Public Staff and Commission. Nothing in the bill’s legislative history suggest that was the General Assembly’s intent. Nor could it be—such intent would conflict with N.C. Gen. Stat. § 62-70, which bars *ex parte* communications, as well as the Village’s constitutional right to due process.

**c. SharpVue’s treatment of its purported “trade secrets” belies its claim that confidentiality is necessary here.**

SharpVue argues that § 62-34 was enacted to allow the Public Staff and Commission to review confidential information without disclosing the information to intervenors. As discussed above, SharpVue’s argument is not supported by law. But even

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<sup>3</sup> Although SharpVue cites *Wachovia Capital Partners, LLC v. Frank Harvey Investment Family Limited Partnership*, No. 05 CVS 20568, 2007 WL 2570838 (N.C. Super. Ct. Mar. 5, 2007), in support of this argument, its has no relevance to this case. *Wachovia* does not analyze N.C. Gen. Stat. § 62-34. And as discussed in the Village’s Reply in Support of its Second and Third Motions to Compel, *Wachovia* is not even a trade secrets case.



§ 62-34 did authorize such ex parte communications—which it does not—the statute would not apply here because SharpVue has shared purportedly “trade secret” information with at least one of the intervenors.

Specifically, the Bald Head Association’s (“BHA”) responses to the Village’s discovery requests make clear that SharpVue has shared the name of its lender with at least BHA. A copy of BHA’s Responses are attached to this Reply as Exhibit B. In Data Request 1-14, the Village asked BHA about any changes Chad Paul or his agents made to Mr. Drumheller’s testimony. BHA stated that Chad Paul, Lee Roberts, or someone acting on their behalf asked Mr. Drumheller to change his testimony so that he did not disclose the name of SharpVue’s lender, and instead “just indicate that the proposed lender is a well-known and respected institution.” *See* Ex. B at 8. It is therefore clear from Mr. Drumheller’s testimony that BHA knew the name of SharpVue’s lender, contrary to SharpVue’s claim that this information is a trade secret.

That SharpVue shared this information with BHA belies any claim that the identity of SharpVue’s lender is a trade secret. Thus, even under SharpVue’s overly broad reading of § 62-34, which SharpVue claims allows parties to share confidential information with the Public Staff and Commission only, without providing it to “the Village or other intervenors,” the statute would have no applicability here because SharpVue is sharing purported “trade secret” information more broadly.

Thus, for these reasons, as well as those stated in the Village’s First, Second, Third, Fourth, and Fifth Motions to Compel, SharpVue should be ordered to produce the information is has erroneously designated as “trade secret.”

WHEREFORE, the Village respectfully requests that the Commission grant its Fifth Motion to Compel and (1) order SharpVue to respond to the Village's Fifth Set of Data Requests, in full, including producing any documents referenced therein or providing any responsive documents and (2) provide such other and further relief as may be appropriate.

This 15th day of February, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing REPLY IN SUPPORT OF THE VILLAGE'S FIFTH MOTION TO COMPEL has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 15th day of February, 2023.

By: /s/ Marcus W. Trathen  
Marcus W. Trathen

# EXHIBIT B

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

Docket No. A-41, Sub 22

In the Matter of	
Joint Application of Bald Head Island	)
Transportation, Inc., and Bald Head Island	) Bald Head Association
Ferry Transportation, LLC, for Approval of	) Responses to Village
Transfer of Common Carrier Certificate to	) of Bald Head Island
Bald Head Island Ferry Transportation, LLC,	) Data Requests
And Permission to Pledge Assets	)

Bald Head Association ("BHA"), by and through its undersigned counsel, hereby responds to the Village of Bald Head Island Data Request of December 16, 2022 in the above captioned docket.

BHA objects to the data requests to the extent they seek information, documents, materials, support, and or things protected from disclosure by the attorney-client privilege, the work-product doctrine, consulting expert privilege, and/or the common-interest privilege. Inadvertent disclosure of any such information, documents, material, support, and/or things shall not operate as a waiver of any applicable privilege or immunity. BHA's production of documents or information does not waive any of BHA's rights to object to these requests as not reasonably calculated to lead to the discovery of admissible evidence in this docket.

BHA information provided herein is produced on the condition that to the extent so marked is held as confidential pursuant to applicable law. BHA does not agree that all requests are relevant to a legal issue raised and the docket, and reserves the right to object to the admissibility of any of these responses, in whole or in part, at any future proceeding in this matter, on any grounds, including but not limited to timeliness, materiality, relevance, and privilege.

Robert Drumheller is most knowledgeable about the following responses and is the witness who will sponsor the answers and can vouch for their accuracy with the exception that Alan Briggs is responsible for the response to Data Request 5.b.

- 1. Please produce any and all documents identified, referred to, or relied upon in preparing your response to the Village's first set of data requests.**

**RESPONSE:**

See responses 2., 5., 9. and 14. below.

**2. Other than the documents filed as exhibits to the direct testimony of Robert Drumheller, please produce any and all documents referred to and relied upon in preparing the direct testimony of Robert Drumheller.**

**RESPONSE:**

- (1) Transcript of the Brunswick County Court House Bolivia meeting of November 1, 2022 date stamped by the NCUC November 18, 2022, Docket No. A-41, Sub 22, 107 pages.
- (2) Pelican org chart proposed organizational structure, confidential version, Exhibit JAW-7 Docket No. A-41, Sub 21, pages 28 of 34, BHIL/IT000830, 1 page.
- (3) Direct testimony of Shirley Mayfield dated July 14, 2022, Docket No. A-41, Sub 21, 7 pages.
- (4) Direct Testimony of Charles A. "Chad" Paul III dated July 14, 2022, Docket No. A-41, Sub 21, 12 pages.
- (5) Direct Testimony of Lee H. Roberts dated July 14, 2022, Docket No. A-41, Sub 21, 11 pages.
- (6) Bald Head Island Limited letter to the Village of Bald Head Island dated September 6, 2022 RE: Right of First Refusal dated August 21, 1999, 4 pages.
- (7) Electronic filing to Shonta Dunston dated October 3, 2022 from Robert Blau and Paul Carey, 7 pages.
- (8) Electronic filing to Shonta Dunston dated September 14, 2022 from Robert Blau and Paul Carey, 12 pages.
- (9) Direct Testimony of James Leonard Confidential Exhibit C, September 8, 2022 BHIL/IT 000468, 66 pages.
- (10) Confidential Direct Testimony of James Leonard of September 8, 2022 Docket No. A-41 Sub 21, 32 pages.
- (11) Confidential Direct testimony of Charles A. "Chad" Paul III of September 8, 2022, Docket No. A-41, Sub 21, 58 pages.
- (12) Public Redacted Direct Testimony of James Leonard of September 8, 2022, Docket No. A-41, Sub 21, 65 pages.
- (13) Initial Comments of the Public Staff of September 8, 2022, Docket No. A-41, Sub 21, 13 pages
- (14) Direct Testimony and Exhibits of Charles A. "Chad" Paul III, Public version , dated September 8, 2022, Docket No. A-41, Sub 21, 51 pages.
- (15) Direct Testimony and Exhibits of Shirley A Mayfield dated September 8, 2022, Docket No. A-41, Sub 21, 37 pages.
- (16) Direct Testimony of David Sawyer on behalf of the Bald Head Island Club dated September 8, 2022, Docket No. A-41, Sub 21, 12 pages.
- (17) Direct Testimony of James W Fulton Jr dated September 8, 2022, Docket No. A-41, Sub 21, 55 pages.
- (18) VBHI Julius Wright Exhibits Confidential Version JAW 1 - JAW 17, Docket No. A-41, Sub 21, 314 pages.

- (19) Direct Testimony of Dr Julius A Wright on behalf of Village of Bald Head Island, Docket No. A-41, Sub 21, dated August 9, 2022- Confidential version, 49 pages.
- (20) Electronic filing to Shonta Dunston dated August 1, 2022 from Robert Blau and Paul Carey, 18 pages
- (21) Bald Head Island Transportation 2021 annual report date stamped July 22, 2022, 4 pages.
- (22) Credit Presentation from the Bald Head Island Transportation Authority for series 2021 revenue bonds power point dated December 3-4, 2020.
- (23) Application for Transfer of Common Carrier Certificate, Docket No. A-41, Sub 22, date stamped July 14, 2022, 16 pages.
- (24) Mr. Drumheller listened to most of the testimony via utube in Docket No. A-41, Sub 21 dated October 12-14, 2022.

- 3. Please produce copies of all data requests served on BHA by any party or intervenor in Docket No. A-41, Sub 22 including, but not limited to, any requests served by the Public Staff - North Carolina Utilities Commission, together with all responses to the same.**

**RESPONSE:**

None.

- 4. Is any BHA Board member an investor or member of any entity participating in the SharpVue transaction? If so, identify such person (s).**

**RESPONSE:**

No.

- 5. Robert Drumheller testified that his testimony is offered “as a member of the BA [sic] Board.” Please clarify whether Mr. Drumheller's testimony is offered on behalf of the BHA Board? If “yes”:**

**RESPONSE:**

Yes.

- a. Does the BHA Board also purport to speak on behalf of its members of BHA?**

**RESPONSE:**

No.

- b. Provide all documents showing the extent and scope of Mr. Drumheller's authority to speak for the Board in this matter.**

**RESPONSE:**

Documents authorizing the BHA Board to take action such as the submission of testimony by Mr. Drumheller are set forth Exhibits 1 and 2 to the direct testimony of witness Alan Brigg in NCUC Docket No. A-41, Sub 21: Amendment to the Amended and Restated Unified Declaration of Covenants, Conditions and Restrictions for Bald Head Association; Amended and Restated Unified Declaration of Covenants, Conditions and Restrictions for Bald Head Association; Articles of Incorporation

- c. Provide all documents reflecting Board deliberations over the positions set forth in the Drumheller testimony.**

**RESPONSE:**

**The following documents are being produced:**

1. Communications consisting of emails exchanged in the period November 2022 to December 8, 2022 among and between all of the BHA directors.
2. December 9, 2022 Board meeting where the motion to authorize Mr. Drumheller to give testimony on behalf of the Board. Confidential notes and draft Board minutes. Approval by the Board of the Drumheller testimony.

- 6. Does any BHA Board member have a business relationship with any party to the Transaction or their officers or agents? If so, identify the Board member and the nature of the relationship.**

**RESPONSE:**

No.

- 7. Robert Drumheller testified that he, along with Alan Briggs, Ed Finley, Carrie Moffett, met with the Public Staff "to discuss issues associated with the Sub 21 filing." See direct testimony of Robert Drumheller at 10: 12-14. Please (1) state the date upon which the meeting was held; (2) describe the topics discussed at the meeting; and (3) provide copies of any document exchanged between BHA and the Public Staff at the meeting.**

**RESPONSE:**



The meeting was held on August 25, 2022. Topics discussed at the meeting included the interest of BHA in the subject matter of the docket, the role that the Public Staff would play in investigating the positions of parties in the docket and the extent to which the Public Staff would participate in the form of submitting its own position for the Commission to consider. BHA informed the Public Staff of who BHA is and reiterated its interest in the subject of the docket. No documents were exchanged between BHA and the Public Staff at the meeting.

- 8. Robert Drumheller testified he “had a phone call with Lee Roberts to discuss the issues raised during our meeting with the Public Staff and what SharpVue might agree to with the NCUC to address various key concerns we had. See direct testimony of Robert Drumheller at 10: 18-21. Please (1) state the date upon which the phone call with Lee Roberts was made; (2) describe the “issues raised during [BHA's] meeting with the NCUC” discussed on the call; (3) describe any agree[ments] . . . with the NCUC” discussed on the call; (4) identify all participants to the call; and (5) produce any notes Mr. Drumheller took relating to his phone call with Mr. Roberts.**

**RESPONSE:**

Mr. Drumheller believes the call with Lee Roberts occurred on either Friday August 26 or Monday August 29. The only participants on the call were Mr. Drumheller and Mr. Roberts. The topics discussed related to SharpVue’s willingness in principle or their receptiveness:

- (1) agreeing and committing to maintain adequate levels of parking, including providing for future growth at Deep Point during the period of their ownership.
- (2) agreeing on a linkage of parking price increases to inflation for some agreed period of years.
- (3) agreeing to some advance notification to the NCUC when in the future SharpVue wanted to sell their interest in the system.
- (4) committing that whatever was agreed between the NCUC and SharpVue would be carried forward as an obligation to any new investor at the time of a sale.

Mr. Drumheller used the term agree or agreement because he was not familiar with how the process with the Public Staff and the NCUC worked and just assumed there would be a discussion between SharpVue and the NCUC/Public Staff to formalize various understandings and ideas on these subjects.

- 9. Robert Drumheller testified that BHA met with SharpVue and Limited on November 15. See direct testimony of Robert Drumheller at 12: 1-3. Please (1) describe the topics discussed at the meeting; (2) identify the location of the meeting ; (3) identify all participants to the meeting; and (4) produce copies of any documents exchanged at the November 15 meeting between BHA, SharpVue, and Limited.**

**RESPONSE:**

A meeting via zoom was held on November 15, 2022. The participants were Chad Paul, Lee Roberts, Alan Briggs, Ed Finley, Carrie Moffett, and Robert Drumheller. No documents were exchanged at the meeting. The agenda for the meeting was based on 11 questions Mr. Drumheller sent them in advance via email which are provided as Exhibit 5 to the Drumheller testimony and the addition of a question added by Alan Briggs related to the implications of various letter exchanges between the Village and SharpVue related to the ROFR. These were the topics discussed. No documents were exchanged.

**10. What is the basis of the statement and Robert Drumheller's testimony at 13: 11-13 that investors have committed to “additional capital injections up to \$5.4 million in the future for any capital expenditures if needed”? Produce all documents supporting this testimony.**

**RESPONSE:**

The investor commitment to provide contingent equity of 20% of equity invested is mentioned on page 6 of SharpVue’s January 2022 Project Pelican Investment opportunity, which is part of the Julius Wright materials submitted to the NCUC. Lee Roberts subsequently verbally confirmed to Mr. Drumheller and others on the November 15, 2022 zoom call the calculation of the \$5.4mm investor standby equity. This amount of accessible capital is in addition to the \$2mm of cash Limited has advised they will leave in a bank account at the closing and the revolving line of credit of \$2mm that the project lender will provide.

**11 What is the basis of the statement in Robert Drumheller's testimony at 21:15 that some of SharpVue’s investors are BHI property owners? Provide all documents support this testimony and identify those investors that are BHI property owners.**

**RESPONSE:**

Mr. Drumheller had a verbal conversation about the investors with Lee Roberts primarily because he thought it would be appropriate to ask the Public Staff to do some basic due diligence on the investors to make sure there were no investors with “reputational” concerns. This issue was discussed during the Board meeting with the Public Staff. During the conversation with Lee, he mentioned that some of the investors were BHI property owners. He did not want to disclose the names to protect their identity and privacy. Mr. Drumheller indicated he understood his concern and consequently he does not know the names.

- 12. Robert Drumheller testified that BHA met with the Public Staff on November 17. See direct testimony of Robert Drumheller at 14: 11-15:2. Please (1) describe the topics discussed at the meeting; (2) identify the location of the meeting; and (3) provide copies of any documents exchanged at the meeting.**

**RESPONSE:**

A meeting with the Public Staff occurred by zoom on November 17, 2022. The BHA representatives present do not recall that any documents were exchanged during the zoom meeting. Following up on the famous advice once offered by President Reagan “trust but verify” the discussion with the Public Staff focused on their due diligence efforts on various items where they had access to the documentation that Mr. Drumheller did not have. These include verification of:

- (1) the lender financing for the closing and the revolving line of credit facility.
- (2) investor standby equity.
- (3) investor reputational issues if any.
- (4) key management agreements or legal arrangements.
- (5) key provisions of the Investment Management Agreement.

Mr. Drumheller recalls the Public Staff was also asked to confirm with SharpVue the continuing parking availability and the future parking price increase tied to inflation for a period of years. Lastly, Mr. Drumheller mentioned that Lee Roberts had made various representations about what SharpVue was willing to consider during his verbal testimony in Raleigh for the Docket No. A-41, Sub 21 hearings.

- 13. Please produce any communications between BHA on the one hand and Chad Paul, Lee Roberts, or any agent or other person acting on behalf of Chad Paul or Lee Roberts, on the other discussing, referring to, or relating to the direct testimony of Robert Drumheller. See Direct Testimony of Robert Drumheller at 16: 12-17.**

**RESPONSE:**

See response to question 14.

- 14. Robert Drumheller testified that he was “in regular contact with” Chad Paul “in connection with the preparation of [his] testimony. See Direct Testimony of Robert Drumheller at 16: 12-17. Did Chad Paul, his agents, or anyone acting on Chad Paul's behalf receive a copy or draft Robert Drumheller's testimony before it was filed with the Commission? If the answer is yes , did Chad Paul, his agents, or anyone acting on Chad Paul's behalf make or suggest any changes to Robert Drumheller's testimony? If so, please identify those changes.**

**RESPONSE:**

Mr. Drumheller's written testimony filed on December 14, 2022 was not finalized until shortly before it was submitted. It is clear the testimony relies in large part on representations made by SharpVue and/or Limited to the BHA, the NCUC, island property owners, and Mr. Drumheller as well as Mr. Drumheller's faith in the Public Staff due diligence process which he personally believes was thorough and well done. Since he was relying on much information obtained over the course of several months from Limited and SharpVue he wanted to make sure that what he said in the testimony about them was accurate. Early on he shared with Chad Paul and Lee Roberts a draft setting forth what he intended to say. Draft and correspondence is submitted. Subsequently, the parties had a three-way phone call during which they confirmed that the information and what they told him was correct. In the end they asked that he make two changes. First, they did not want him to disclose the name of their lender, and he agreed to change that and just indicate the that proposed lender is a well-known and respected institution. Lastly, they suggested that he add a last question and answer that was in the nature of a conclusion. Alan Briggs and Mr. Drumheller worked on a draft of a closing statement. Then, during email exchanges and the December Board review a Board member suggested the closing statement be much briefer. Mr. Drumheller accepted the comment of the Board member and in essence the closing statement starting on page 22 line 14 states that the Board believes that time is of the essence and that a prompt resolution of this issue is to everyone's benefit.

- 15. Robert Drumheller testified that he was "in regular contact" with Lee Roberts "in connection with the preparation of [his] testimony." See direct testimony of Robert Drumheller at 16:12-17. Did Lee Roberts, his agent, or anyone acting on Lee Roberts behalf receive a copy or draft of Robert Drumheller's testimony before it was filed with the Commission? If the answer is "yes," did Lee Roberts, his agent, or anyone acting only Robert's behalf make or suggest any changes to Robert Drumheller's testimony? If so, please identify those changes.**

**RESPONSE:**

See response to question 14.

This 21<sup>st</sup> day of January, 2023.

Edward S. Finley, Jr., PLLC

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing responses to the data request of the Village of Bald Head Island has been served this day on legal counsel for the Village, by electronic mail.

This is the 21<sup>st</sup> day of January, 2023

By: /s/ Edward S. Finley, Jr.