

PLACE: Dobbs Building, Raleigh, North Carolina  
DATE: Tuesday, October 11, 2022  
TIME: 9:30 a.m. - 12:08 p.m.  
DOCKET NO: A-41, Sub 21  
BEFORE: Commissioner ToNola D. Brown-Bland, Presiding  
Commissioner Daniel G. Clodfelter  
Commissioner Kimberly W. Duffley  
Commissioner Jeffrey A. Hughes  
Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

Village of Bald Head Island,  
Complainant

V.

Bald Head Island Transportation, Inc.,  
and Bald Head Island Limited, LLC,  
Respondents

Volume 2

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E X H I B I T S

IDENTIFIED/ADMITTED

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## P R O C E E D I N G S

COMMISSIONER BROWN-BLAND: Good morning.

Let's come back to order and go on the record. We left off -- if the witness would return to the witness stand. That would be witness O'Donnell. He remains under oath, and we left off with cross examination. And it had been represented, we were near the end. But, in the meantime, before we begin, anything else come up that needs to come to the commission's attention?

MR. SCHAUER: No.

MR. STYERS: No. Not -- not at this time.

COMMISSIONER BROWN-BLAND: All right. Give Mr. O'Donnell a minute to get settled. You ready?

THE WITNESS: Yes, ma'am.

COMMISSIONER BROWN-BLAND: All right.

Whereupon,

KEVIN O'DONNELL,

having previously been duly sworn, was examined and testified as follows:

CONTINUED CROSS EXAMINATION BY MR. STYERS:

Q. Thank you. Mr. O'Donnell, we established

1 yesterday, at the very end of the day and during our  
2 discussion, that return on investment is a ratio of net  
3 operating income over rate base, correct?

4 A. Correct.

5 Q. Okay. So while we disagree on the number, we  
6 agreed that the number and the denominator for rate --  
7 for rate base will affect the ROI calculation, correct?

8 A. Correct.

9 Q. Okay. Now, also, we established yesterday in  
10 our conversation that you are not aware of SharpVue's  
11 other investment opportunities.

12 A. No, I'm not.

13 Q. But you are, in general, familiar that  
14 private equity firms invest monies of their investors'  
15 for purchasing an interest in privately held companies;  
16 that's your understanding of what a private equity firm  
17 does, correct?

18 A. I've dealt with a few, yes.

19 Q. Okay. So, in doing so, a private equity  
20 firm, you know, evaluates opportunities in the  
21 marketplace of potential investments where they can  
22 place their investors' money; you'd agree with that?

23 A. Yes.

24 Q. Okay. And it will seek returns on its

1 investments among opportunities in that marketplace?

2 A. Yes.

3 Q. Okay. So for it to invest in a company for  
4 its investors, it needs to earn a risk adjusted return  
5 on the amount it invests compared to other market  
6 opportunities in making its decisions.

7 A. Yes.

8 Q. Okay. So, let me shift for a second now to  
9 KWA [sic] Cross Exhibit Number 5.

10 A. I've got it.

11 Q. Okay. And turn to page 12. And This is the  
12 rate case order in Docket Number A-41, Sub 7. And on  
13 page 12 there is a paragraph 5 that looks labeled; open  
14 parenthesis, 5, close parenthesis, referencing  
15 stipulation section 7B. Do you have that?

16 A. Yes. I do.

17 Q. So this -- it says this section establishes a  
18 requirement for a future audit by the Public Staff; is  
19 that --

20 A. Yeah.

21 Q. -- what's -- to be commenced on the earlier  
22 of six years from the entry of the approval order. And  
23 then it goes on from there?

24 Is that --



1 A. Yes.

2 Q. -- basically, what the order states?

3 And the order date's actually, if you're  
4 looking at the very last page, is December of 2010.

5 A. Correct.

6 Q. So we had a discussion yesterday, and some  
7 questions and answers, and were in agreement about the  
8 concept of rate shock.

9 Do you remember that discussion?

10 A. Yes.

11 Q. Okay. And you are familiar that some -- with  
12 the concept, and we agreed that rate shock -- the  
13 concern about rate shock sometimes will keep a company  
14 from earning what otherwise a rate of return might  
15 indicate was a reasonable return?

16 A. Or they -- or they can find other ways to  
17 satisfy those requirements, like in a deferred account.

18 Q. Or coming in for another rate case?

19 A. Most -- most likely deferred account, but  
20 yeah, they could do it file another rate case too.

21 Q. Yeah. Okay.

22 (Pause.)

23 Q. Do you have any knowledge as to whether the  
24 Public Staff ever performed the audit, as set forth in

1 the order -- rate case order in that paragraph?

2 A. It's my understanding that they did not.  
3 That there was some possible legislation that may come  
4 up during that time frame, and that that audit was  
5 never performed.

6 Q. Are you aware that there were meetings in  
7 2016 about whether the Public Staff would move forward  
8 with this audit?

9 A. Not firsthand. I mean, I've heard that there  
10 was a lot of debate as to whether or not there was  
11 gonna be an audit, but this is what I've heard.

12 Q. But in light of Senate Bill 391, the  
13 legislation you just referred to in your previous  
14 answer, but, to your knowledge, the audit was never  
15 performed?

16 A. That's correct.

17 Q. Okay. So you have no knowledge of the  
18 conversations between Bald Head Island Transportation  
19 and Public Staff; that Public Staff would not do the  
20 audit because of the pending legislation and the  
21 pending sale to Bald Head Island Transportation  
22 Authority?

23 A. What you just said is news to me. I don't  
24 know anything about that.

1 MR. STYERS: I have no further  
2 questions. That concludes my cross examination.

3 COMMISSIONER BROWN-BLAND: Thank you,  
4 Mr. Styers.

5 Redirect?

6 MR. SCHAUER: Thank you.

7 REDIRECT EXAMINATION BY MR. SCHAUER:

8 Q. Mr. O'Donnell, do you have KWO Cross  
9 Examination Exhibit Number 4 with you?

10 A. I think I can find it.

11 (Witness peruses document.)

12 Yes, I do.

13 Q. Do you recall yesterday when Mr. Styers asked  
14 you about the rate base calculation in this exhibit?

15 A. Yes.

16 Q. And I believe you acknowledged that the  
17 figure on line 7, on the far right, of \$3,943,335, did  
18 not include the parking assets within rate base; is  
19 that correct?

20 A. That's correct.

21 Q. Okay. I'd like you to look at another figure  
22 in this exhibit.

23 Can you look at column D, and do you see the  
24 figure of \$523,097?

1 A. Yes.

2 Q. Can you explain your understanding of that  
3 exhibit -- of that figure?

4 A. So that number came from Public Staff  
5 employee Jim Horde, where he did a calculation where,  
6 in essence, he took a levelized approach of --  
7 regulatory ratemaking levelized approach, and figured  
8 out what the revenue requirement would be for parking,  
9 had it been regulated. And he took the actual number  
10 and subtracted the two. And that result was \$523,097.  
11 And then -- so then that was placed as a credit towards  
12 the ferry.

13 So, in essence, he took -- looked at a  
14 semi-regulatory parking number and found there were  
15 some earnings, some excess earnings that would have  
16 occurred had the parking been regulated under a  
17 levelized approach, and he moved those revenues over  
18 into the regulated ferry department.

19 Q. As part of this proceeding, did you have an  
20 opportunity to examine the Public Staff's work papers  
21 from the 2010 rate case?

22 A. I did.

23 Q. And was one of those work papers an Excel  
24 workbook titled "Settlement Parking Adjustment"?

1 A. Yes.

2 Q. All right.

3 MR. SCHAUER: If I may approach the  
4 witness?

5 COMMISSIONER BROWN-BLAND: You may.

6 (Pause.)

7 MR. SCHAUER: COMMISSIONER BROWN-BLAND,  
8 if we could, I believe this exhibit would be marked  
9 KWO Redirect Exhibit 1.

10 COMMISSIONER BROWN-BLAND: It would be,  
11 so identified, yes.

12 MR. SCHAUER: Thank you.

13 (KWO Redirect Exhibit 1 was marked for  
14 identification.)

15 Q. All right. Mr. O'Donnell, do you recall  
16 reviewing the document that I just handed you?

17 A. Yes.

18 Q. All right. And can you explain the first  
19 page of this document to the Commissioners?

20 A. The first page is the sum of the revenues  
21 that Mr. Horde had developed of the annual pass  
22 revenues, daily park revenues, actual park revenues.  
23 So he came down to an actual number here of \$1,959,230.  
24 And then what he did, over on the third page of this

1 document is where the -- what I refer to as the  
2 ratemaking revenue requirement comes in and --

3 Q. So, Mr. -- Mr. O'Donnell, if I can interrupt.  
4 Could you just make sure we're all looking at the same  
5 page, when you say third page?

6 A. I'm sorry, yeah. It's entitled, on the  
7 left-hand corner, "Bald Head Island Transportation,  
8 Inc., Deep Point Parking Facility Computation of  
9 Levelized Payment." it's the third page in this  
10 material that you passed out. It's got a lot of  
11 columns to it, a lot of numbers.

12 And so what he did in this is, you can see,  
13 the first set of columns he labeled as rate base  
14 treatment of facilities. He lined up all the  
15 anticipated expenses and then, over on -- under payment  
16 schedule, he did what we call a goal seek analysis and  
17 tried to figure out what the levelized payment would be  
18 for the parking facilities over a period of 20 years.  
19 And that's where he got the \$1,436,133.

20 So, taking all those numbers back, and if you  
21 go back to the very first page here that you handed out  
22 to me, that's entitled "Bald Head Island  
23 Transportation, Inc. Docket A-41, Sub 7, Settlement  
24 Computation of Parking Revenue Contribution, Test Year

1 Ended 12/31/09, he took the revenues of one -- going  
2 down the line, 15, he took the revenues of \$1,959,230,  
3 and subtracted out the levelized payment we just talked  
4 about over on page 3 to come up to \$523,097. That was  
5 to credit that he moved over from parking into the  
6 ferry.

7 Q. All right. And looking at page 3, where it  
8 says plant, and it has the figure of over \$9.4 million;  
9 what is that referring to?

10 A. That was the original book value of the  
11 plant. Well, it was the plant value at the time of the  
12 2010 case.

13 Q. Okay. And so going back to page 1 -- I'm  
14 sorry for flipping pages -- line 16, where it says,  
15 "Revenue required for cost recovery of BHIT-authorized  
16 ROR," is that the expected revenue requirement, based  
17 on the ROR, applied to the original cost --

18 A. Yes.

19 Q. --of the parking assets?

20 A. Yes.

21 Q. Okay. Thank you, Mr. O'Donnell. I think I'm  
22 done with that exhibit.

23 Yesterday, do you recall when Mr. Styers  
24 asked you about separate corporate boundaries,

1 regarding the financial information?

2 A. Yes.

3 Q. And I believe you used the term intertwining  
4 to describe the relationship between the parking and  
5 the ferry; do you recall that?

6 A. Yes.

7 Q. Can you explain what you meant by  
8 intertwining?

9 A. Well, it's an old textile term, but basically  
10 what it means is that the threads were all tied  
11 together into a single knot or a single strand. But,  
12 basically, all the parts, kind of, fit together.

13 Q. And one of the examples of intertwining I  
14 believe you gave was the affiliate transactions between  
15 BHIT and Limited --

16 A. Yeah.

17 Q. -- am I correct?

18 A. Yes.

19 Q. Do you have a copy of the 2010 rate case  
20 order, which I believe is KWO Cross Exhibit 5?

21 A. Yes, I do.

22 Q. Could you please turn to page 13?

23 (Pause.)

24 THE WITNESS: Yes, sir.



1 Q. All right. When you were referencing  
2 affiliate transactions, were you referring to the  
3 intercompany leases discussed, for example, on page 13  
4 of the rate case order?

5 A. Yes.

6 Q. All right. Can you explain your  
7 understanding of those intercompany leases and how they  
8 were treated as part of the rate case order?

9 A. The island terminal lease was put into rate  
10 base. For example, Mr. Horde had decided that it was  
11 going to be more advantageous for the consumer to put  
12 the lease into rate base for consumers. And that  
13 lease, I believe, for the facility was owned by  
14 Limited, and they were leasing it to the ferry, and he  
15 put the lease into rate base, to the benefit of the  
16 ratepayer.

17 Q. And is that what is discussed at, Item B on  
18 page 13?

19 A. Yes.

20 Q. Can you explain your understanding of Item C,  
21 which, I believe discusses the lease for the Deep Point  
22 Terminal?

23 (Pause.)

24 THE WITNESS: This --

1 (Pause.)

2 THE WITNESS: I think this lease was  
3 a cost-based lease. I'm drawing a blank on -- on  
4 exactly that -- where that lease came from.

5 Q. Okay. Do you understand that it was treated  
6 as a cost-based lease?

7 A. Yes. It was a cost-based lease, I remember  
8 that.

9 Q. Would that be original cost?

10 A. Yes.

11 Q. Okay. Yesterday, another topic that  
12 Mr. Styers raised, was the Transportation Authority  
13 transaction; and you said that you had concerns about  
14 the credit rating of the Transportation Authority; do  
15 you recall that?

16 A. Yes.

17 Q. All right. Can you explain or elaborate on  
18 what your concerns were?

19 A. The BBB minus bond rating that I saw in some  
20 of the public information that was presented. BBB bond  
21 rating for a utility is a scary concept, particularly  
22 with a ferry on the coast. BBB bond rating -- BBB  
23 minus bond rating is one step away from junk bond  
24 status. So when a hurricane comes along and all of a

1 sudden the BBB bond rating falls below the junk, and  
2 then you've got a problem on your hands.

3 MR. SCHAUER: No further questions.

4 COMMISSIONER BROWN-BLAND: All right.

5 Are there questions from the Commission.

6 (No response.)

7 COMMISSIONER BROWN-BLAND: I have just a  
8 couple for you, Mr. O'Donnell.

9 EXAMINATION BY COMMISSIONER BROWN-BLAND:

10 Q. First, going back to intertwining.

11 Yesterday when you brought that up in one of  
12 your answers, you talked about parking restrictions?

13 A. Yes.

14 Q. What did you mean by parking restrictions?

15 A. The stipulation in the last case indicated  
16 that parking rates were going to be set at a level that  
17 they could increase only by a CPIU amount for a period  
18 of six years. So that was one of the intertwining  
19 between parking and ferry, is that that was -- that was  
20 the intertwining part of it. You know, the two  
21 depended upon one another.

22 Q. So your reference to parking restrictions was  
23 only related to the -- the amount that could be charged  
24 for parking?

1 A. Yes.

2 Q. Okay. Thank you. So with regard to your  
3 updated return on investment calculation -- and we're  
4 going to not bring out any kind of numbers, because  
5 this is in the confidential area -- but it appears that  
6 your calculation reflected more than just the change in  
7 the rate base; is that correct?

8 A. Yes.

9 Q. Okay.

10 A. It did. So I -- you're right about the rate  
11 base. I mean, we've got updated numbers. And I was  
12 struggling, and counsel knows that I was struggling  
13 when I first got the analysis in trying to find a  
14 balance on sheet four barge. And I spent a lot of time  
15 working on it.

16 But then, also, when you look at some of the  
17 income numbers, there's a financial way of calculating  
18 the net operating income and then there's the  
19 regulatory way. And when the Village's consultants,  
20 Peedin and Perry came up, they calculated it on a more  
21 of a regulatory ratemaking way; whereas, I did not. I  
22 looked at it more in terms of a financial analysis.

23 For example, I looked at actual interest  
24 expenses, whereas they looked at more of a 50/50 CAP

1 structure and -- and what the interest expense would  
2 be; whereas I took actual numbers. So, we came up at  
3 it at a little bit different viewpoint, but the end  
4 result was the numbers were -- the combined numbers  
5 were still very, very healthy.

6 Q. All right. And then the rate of return  
7 number that you confidentially filed in rebuttal is  
8 based on net operating income, while it would appear  
9 that direct -- in your direct, that you evaluated the  
10 pretax income; is that --

11 A. Well --

12 Q. Is that right?

13 A. No. I did take the taxes out on the -- the  
14 first analysis. But the thing is, I rolled all those  
15 taxes into a single entity and then taxed the  
16 calculated taxes on the combined three entities.  
17 Whereas, in the rebuttal, there was one particular  
18 entity that was showing a negative, and we -- that was  
19 a credit, actually, in the income tax. Whereas, when  
20 it rolled into all three of what I did -- you know, all  
21 three of the divisions rolled in, it all washed out.  
22 So it's just -- it's a different way of calculating.  
23 And I looked at more financial, Peedon and Perry looked  
24 at more of the regulatory aspect of it.

1 COMMISSIONER BROWN-BLAND: All right.  
2 Any questions?

3 (No response.)

4 COMMISSIONER BROWN-BLAND: All right.  
5 Questions on Commissions question? Mr. Styers?

6 MR. STYERS: None. No.

7 COMMISSIONER BROWN-BLAND: Okay.  
8 Mr. Schauer?

9 MR. SCHAUER: No. Thank you.

10 COMMISSIONER BROWN-BLAND: All right.  
11 Then Mr. O'Donnell is about to be done. I'll  
12 entertain motions from the parties.

13 MR. STYERS: Madame Chair, we would like  
14 to move into evidence KWA [sic] Cross Examination  
15 Exhibits 1, 2, 3, 4, 5, and 6.

16 COMMISSIONER BROWN-BLAND: All right.  
17 Without objection, that motion will be allowed.

18 (KWO Cross Examination Exhibit Numbers 1  
19 through 6 were admitted into evidence.)

20 MR. SCHAUER: We would like to move  
21 Exhibit KWO Redirect Exhibit 1, into evidence.

22 COMMISSIONER BROWN-BLAND: All right.  
23 That motion will be allowed as well.

24 (KWO Redirect Exhibit 1 was admitted

1                   into evidence.)

2                   COMMISSIONER BROWN-BLAND:   And the  
3                   direct exhibits?

4                   MR. STYERS:   I think they may have  
5                   already been moved in.

6                   MR. SCHAUER:   I do believe we have moved  
7                   those in at the beginning along with the testimony.

8                   COMMISSIONER BROWN-BLAND:   All right.   Out  
9                   of an abundance of caution, I'll make sure that  
10                  Exhibits KWO 1 and 2, and Rebuttal KWO Exhibits 1  
11                  and 2 are also received into evidence at this time.

12                  MR. SCHAUER:   Thank you.

13                  (Exhibits KWO 1 and 2, and Rebuttal KWO  
14                  Exhibits 1 and 2 were admitted into  
15                  evidence.)

16                  COMMISSIONER BROWN-BLAND:   All right.  
17                  Mr. O'Donnell, you may be excused.

18                  THE WITNESS:   Thank you.

19                  MR. TRATHEN:   The Village would call  
20                  Scott Gardner.

21                  Whereupon,

22                                 SCOTT GARDNER,  
23                  having first been duly sworn, was examined  
24                  and testified as follows:

1 COMMISSIONER BROWN-BLAND: All right.

2 Please be seated.

3 DIRECT EXAMINATION BY MR. TRATHEN:

4 Q. Mr. Gardner, would you give your name and  
5 address for the record, please?

6 A. My name is Scott Gardner. My address is 429  
7 South Bald Head Wynd on Bald Head Island.

8 Q. And did you cause to be filed in this  
9 proceeding direct testimony consisting of 14 pages and  
10 two exhibits, and I'd note that one of those exhibits  
11 has three subparts.

12 A. Yes.

13 Q. Do you have any corrections to your  
14 testimony?

15 A. I do not.

16 Q. If I asked you the questions in the prefiled  
17 submission today, would your answers be the same?

18 A. Yes.

19 Q. And did you cause to be filed in this  
20 proceeding a summary of your testimony?

21 A. Yes.

22 Q. Is that summary true and accurate to the  
23 best of your information and belief?

24 A. Yes.



1 MR. TRATHEN: Madame Chair, I'd ask that  
2 Mr. Gardner's direct testimony be copied into the  
3 record as if orally given from the stand and that  
4 his corresponding exhibits be marked for  
5 identification as set out in his prefiled  
6 submission.

7 COMMISSIONER BROWN-BLAND: That motion is  
8 allowed, and the prefiled exhibits are identified  
9 as they were when filed.

10 (Exhibits STG-1, STG-2, STG-2.1,  
11 STG-2.2, and STG-2.3 were identified as  
12 they were marked when prefiled.)

13 (Whereupon, the prefiled direct  
14 testimony of Scott Gardner was copied  
15 into the record as if given orally from  
16 the stand.)

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )

v. )

BALD HEAD ISLAND TRANSPORTATION, )  
INC., BALD HEAD ISLAND LIMITED, LLC, )  
and SHARPVUE CAPITAL, LLC, )  
Respondents. )

DIRECT TESTIMONY OF  
SCOTT T. GARDNER  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

OFFICIAL COPY

Aug 24 2022

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. A-41, SUB 21**

**Direct Testimony of Scott T. Gardner**

**On Behalf of the Village of Bald Head Island**

**August 9, 2022**

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND ADDRESS.**

2 A. My name is Scott Thomas Gardner. I am currently serving as the Mayor Pro Tem  
3 for the Village of Bald Head Island (the “Village”). On September 18, 2020, the  
4 Village Council appointed me to fill a vacancy on the Council. I was then elected  
5 to continue to serve on the Village Council in 2021. My current term will expire in  
6 2025. My official address is 106 Lighthouse Wynd, Bald Head Island, NC 28461.

7  
8 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS DIRECT**  
9 **TESTIMONY?**

10 A. I am submitting this Direct Testimony on behalf of the Village.

11  
12 **Q. WHERE DO YOU RESIDE?**

13 A. My wife and I have owned a home on Bald Head since 1997, and we made Bald  
14 Head our primary residence in 2017.

15

1 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
2 **EXPERIENCE.**

3 A. I have a bachelor's degree in Business and Biology from the University of North  
4 Carolina at Charlotte. I spent my thirty-three year career at Duke Energy and retired  
5 in 2010 as Director of North Carolina State Governmental Affairs.

6

7 **Q. AS A MEMBER OF THE VILLAGE COUNCIL, CAN YOU SPEAK TO**  
8 **WHY THE VILLAGE HAS INITIATED THIS PROCEEDING?**

9 A. Yes. The transportation system owned and operated by Bald Head Island Limited,  
10 LLC and Bald Head Island Transportation, Inc. (collectively, "Limited") is the  
11 lifeblood to Bald Head Island—in fact, according to the Limited's most recent  
12 Annual Report the ferry carried over three-hundred and seventy thousand  
13 passengers in 2021 alone. The passenger ferry is essential because, being a  
14 bridgeless island, Bald Head is only accessible to the public by the ferry. As no  
15 vehicles are allowed for transportation on the island, the parking facilities are  
16 integral to the ferry's operations since all passengers must leave their cars at the  
17 terminal before boarding the ferry. Similarly, the barge is the exclusive means of  
18 transporting supplies and household goods to the island.

19 If any three of these essential components of the transportation system were  
20 to become inaccessible to the public, the island community would cease to exist in  
21 its current form. Thankfully, the Commission has regulated the passenger ferry  
22 since the 1990s. The parking facilities and the barge, however, have never been

1 regulated. Members of the public have, for decades, expressed concerns that the  
2 parking and barge should be regulated, just like the ferry. For the convenience of  
3 the Commission, attached as Exhibit STG-2 are copies of citizen comments on this  
4 issue that have been previously submitted to the Commission. These comments are  
5 consistent with comments that have been made directly to me by various citizens  
6 and they are representative of the concerns animating the Village's initiation of this  
7 proceeding. Although the issue of the regulatory status of the parking and barge  
8 operations have been identified for years, the question of regulating the parking and  
9 barge has never been resolved by the Commission.

10

11 **Q. WHY HAS THE VILLAGE CHOSEN TO PURSUE THIS ISSUE NOW?**

12 A. The issue raised by the Village in its complaint has been lingering in the  
13 background the entire time that Limited has been operating the transportation  
14 system. I look at it like this: the issue of the regulatory status of the parking and  
15 barge operations was a question that was inevitably going to need resolution, it was  
16 just a matter of when.

17 With Limited's announced intention to sell the transportation system, the  
18 regulation of the parking facilities and barge has become paramount. While the  
19 current owner of the transportation system, as the island's developer, has been  
20 motivated to appease the public's concerns about the parking and barge in the past  
21 based on its own economic development interests, the future owner might not be so  
22 motivated. Absent regulation, the next owner of the transportation system will be

1 free to operate the parking and barge however they want, including by raising rates,  
2 and citizens will have no recourse. Given the island's dependency on the  
3 transportation system, the concerns expressed to the Council by islanders, and long  
4 unanswered questions regarding the regulatory status of these assets, the Village  
5 initiated this proceeding to ensure that the next owner of the ferry, parking, and  
6 barge will operate the entire system in the public interest. We believe that it is  
7 imperative that this issue be resolved now, before the assets are conveyed to a new  
8 and subsequent buyer, both for the benefit of the new owner and for the benefit of  
9 those relying on the transportation system.

10

11 **Q. HOW WOULD YOU CHARACTERIZE WHAT THE VILLAGE IS**  
12 **ASKING THE COMMISSION TO DO IN THIS PROCEEDING?**

13 A. We are asking for a determination by the Commission that the parking and barge  
14 are, like the ferry, utility assets that should be operated under the Commission's  
15 supervision for the benefit of the using and consuming public. While I am not a  
16 lawyer, I am generally familiar with the Commission's supervision of utilities from  
17 my prior career with Duke, and it seems the parking facilities are used and useful  
18 as essential components of the ferry's utility operations. My understanding of the  
19 "regulatory compact" here is that, in exchange for its certificate awarded by the  
20 Commission, BHIT is required to provide adequate service to ratepayers at just and  
21 reasonable rates. Adequate service in this instance necessarily includes the  
22 availability of parking to any ratepayer. In other words, the ratepayers, who are the

1           ferry passengers, must use and pay for parking at Deep Point to ride the ferry –  
 2           there is no alternative to this critical component of the regulated ferry transportation  
 3           service. It strikes me that the regulatory compact would require that the parking be  
 4           subject to regulation just like the passenger ferry.

5  
 6       **Q.     PLEASE PROVIDE A BRIEF OVERVIEW OF BALD HEAD ISLAND AND**  
 7       **ITS SIGNIFICANCE TO THE CITIZENS OF NORTH CAROLINA.**

8       A.     Bald Head Island is located at the mouth of the Cape Fear River and adjacent the  
 9           Atlantic Ocean. It is the most unique of the barrier islands of North Carolina in that  
 10          you can only get there by ferry, can only travel around the island by golf cart or  
 11          bicycle, has the oldest lighthouse in North Carolina, and has a state-owned  
 12          Maritime Forest making up a sizeable portion of the island. For these collective  
 13          reasons, it is a highly sought after destination for vacationers, for those who wish  
 14          to explore the island for a day (“day trippers”), and for those who seek to make the  
 15          island a home.

16  
 17       **Q.     HOW DOES THE PUBLIC REACH BALD HEAD ISLAND?**

18       A.     The public reaches the island by the transportation system owned and operated by  
 19           Limited, which includes the parking facilities, the barge, and the ferry.

20

1 **Q. WHAT MEMBERS OF THE PUBLIC RELY ON THE FERRY TO**  
2 **REACH THE ISLAND?**

3 A. There are several categories, but all members of the public rely on the ferry to reach  
4 the island. First, there are property owners and their friends and family. This might  
5 be the smallest group of passengers, though. Second, there are vacationers who  
6 typically rent by the week, and this category of passengers explodes in the summer  
7 season. Third, there are also day trippers who come over for a day to enjoy Bald  
8 Head's amenities, including the lighthouse and beaches.

9 Also, critically important, there are the workers who make the island  
10 function. These include Village employees who manage our public safety, water,  
11 waste water, solid waste management and road systems, as well as the Island  
12 Package Center. It includes contractors and tradesmen who build and repair homes  
13 and businesses, including plumbing, electrical, HVAC, housekeeping, and other  
14 building and repair services. It includes employees of the restaurants, the grocery  
15 store, the hardware store, and retail shops among others providing vital commerce  
16 to the island. It includes employees of the Bald Head Island Club and Shoals Club  
17 restaurant and recreational services. It includes employees of the non-profit  
18 organizations on the island, including the Bald Head Island Conservancy, the Old  
19 Baldy Foundation, and the Bald Head Association. Finally, it includes employees  
20 of the Bald Head Island Club and, importantly, the Club's golf course maintenance  
21 operations which serve an important stormwater and wastewater effluent  
22 management role, including during major rain events.



1 **Q. DO CITIZENS OF THE ISLAND EVER EXPRESS CONCERNS TO YOU**  
2 **ABOUT THE TRANSPORTATION OPERATIONS?**

3 A. Yes. I do hear from citizens on a regular basis expressing concerns about the  
4 transportation operations. Lately, with Limited's announcement of the sale of the  
5 transportation system there is a good bit of angst within the community regarding  
6 the future of the system, particularly given that the parking operation and barge are  
7 not currently regulated by the Commission. There is a lot of concern that the assets  
8 could be disposed of in "piece parts" or that parking and barge might be operated  
9 in a manner that is not consistent with the public interest.

10 A good illustration of these concerns is a Consumer Statement of Position  
11 letter filed in this docket on August 1, 2022, a copy of which is attached to my  
12 testimony as Exhibit STG-1. The letter was submitted on behalf of property owners  
13 on the island in support of the Village's petition in this proceeding. Approximately  
14 400 individuals signed onto the letter, which is a rather astounding number given  
15 that there are only approximately 1,250 total residences on the island and  
16 approximately 35% of these are rental properties. The individual "Comments from  
17 Signers" attached to the letter resonate with me, as they are reflective of exactly the  
18 sort of sentiments that have been expressed directly to me by citizens and property  
19 owners. People on the island care deeply about these issues, and they are very  
20 concerned that their critical ability to access the island may be compromised  
21 because of the manner in which Limited is divesting itself of ownership of the  
22 transportation assets.

1 **Q. HOW IMPORTANT IS THE PARKING AND THE BARGE TO THE**  
2 **ISLAND?**

3 A. As reflected by the comments on Exhibit STG-1, the public's access to the parking  
4 facilities and the barge is critical to the island's economy and the wellbeing of all  
5 of those on the island.

6  
7 **Q. HOW IS THE ISLAND'S ECONOMY IMPACTED BY THE PARKING**  
8 **FACILITIES?**

9 A. In myriad ways. The island's economy is fueled by tourism, and each tourist must  
10 park a vehicle in the parking facilities before boarding the passenger ferry. If the  
11 parking rates were to become cost prohibitive to tourists, the island's economy  
12 would be harmed significantly.

13 Let's first consider the impact to the island's rental market. Bald Head is a  
14 vacation destination. It is notable that some 65-70% of property owners on Bald  
15 Head are residents of North Carolina. While there are approximately 1,250  
16 residences on the island, I believe there are 250 to 300 permanent or primary  
17 residences, approximately 500-550 second home properties, where owners have  
18 sought a place to get away for weekends and vacations, and the remaining homes  
19 (approximately 450) are rental properties. A reduction in the number of vacationers  
20 would reduce the demand for rentals and the rental income for these properties  
21 would shrink. I am not a real estate expert, but my expectation based on logic is  
22 that property values would sharply fall. The reduction in rentals would further

1 impact all of the rental agencies that manage the vacation homes. The cascading  
2 erosion of the tourist economy would further impact the businesses and laborers  
3 who service the rental properties, whether by cleaning or making maintenance and  
4 repair visits.

5 I would expect the construction industry also to take a hit. My understanding  
6 is that many of the new residential homes that are being built on the island are  
7 intended to be rental properties, at least, for part of the year. It is common for a  
8 property owner to offset the cost of an island home with rental revenues. In a future  
9 of fewer tourists, the construction industry would dwindle.

10 Another obvious victim of a tourism drought would be the commercial  
11 establishments on the island. There are about eight restaurants and thirteen retail  
12 stores on the island. Each of the owners of these businesses would likely tell you  
13 that their most profitable months are in the summer tourist season. Omit those  
14 tourists, and these businesses will obviously suffer. One can logically envision  
15 shuttered store fronts and employees having to find new jobs on the mainland.

16

17 **Q. WOULD THE ECONOMIC IMPACT BE LIMITED TO THOSE WHO**  
18 **LIVE OR OTHERWISE OWN PROPERTY ON THE ISLAND?**

19 A. Absolutely not. Should the tourism industry on Bald Head Island disappear, the  
20 impact will reach beyond the island. The vast majority of workers on the island live  
21 on the mainland. These workers ride the contractors ferry in the morning to reach  
22 their weekday jobs, so that they can bring home their earnings to provide for their

1 families on the mainland. If the island is no longer able to support jobs for these  
 2 workers, the personal incomes flowing from the island would cease to support  
 3 communities in Southport, Wilmington, and elsewhere in Brunswick and New  
 4 Hanover Counties.

5  
 6 **Q. ARE THERE PUBLIC SAFETY CONCERNS AT PLAY HERE?**

7 A. The issue of safety is of the utmost concern to the Village – the entity responsible  
 8 for Public Safety on the island. The current working relationship between the  
 9 Village and Limited with the ferry and barge operation is good. During major  
 10 events like a hurricane, when the Village has called on Limited to evacuate people,  
 11 the joint effort has led to a relatively smooth evacuation. After the storm has passed  
 12 and response and recovery are necessary, the Village has worked with Limited on  
 13 getting emergency personnel and critical supplies/response vehicles to the island.  
 14 In these events, it is critical that all transportation assets – whether it be the ferry,  
 15 barge or parking – be available to coordinate an appropriate response to ensure the  
 16 safety of the public. This is yet another compelling reason to regulate parking and  
 17 barge operations with the ferry and tram to ensure proper operations of public safety  
 18 and emergency response.

19  
 20 **Q. FROM A PERSONAL STANDPOINT, DO YOU PERSONALLY USE THE**  
 21 **PARKING FACILITIES AT THE DEEP POINT MARINA?**

22 A. Yes. My wife and I use the Deep Point parking facilities quite frequently.

1 **Q. PLEASE DESCRIBE YOUR USE OF THE PARKING FACILITIES AT**  
2 **THE DEEP POINT MARINA.**

3 A. Every time we come to Bald Head, we park in the Deep Point Marina parking lot.  
4 As Bald Head is our primary home, our car is parked for many days in the Deep  
5 Point lot. Consequently, we have purchased a “Premium Parking Pass,” which  
6 allows for unlimited parking days for a flat fee.  
7

8 **Q. ARE YOU AWARE OF ANYBODY WHO HAS USED THE PASSENGER**  
9 **FERRY WITHOUT HAVING TO PARK AT THE PARKING FACILITIES?**

10 A. No. I am not aware of anybody who has used the passenger ferry to get to Bald  
11 Head without having to park a vehicle at the Deep Point parking facilities. If you  
12 need to get to Bald Head, you need to park in those parking facilities. The only  
13 exception that I am aware of is a few people who keep their own boats and have  
14 boat slips at the Southport Marina and in the Bald Head Marina. These people could  
15 get to the island without parking at the parking facilities. But most of the general  
16 public does not own a boat and, even if they did, they do not own slips in Southport  
17 and on Bald Head. Also, to my understanding, boat slips are limited in number and  
18 in demand in Southport and Bald Head Island. So I still stand by the statement that  
19 if you need to get to Bald Head, you need to park at the Deep Point parking  
20 facilities.  
21  
22

1 **Q. HAVE YOU EVER USED THE BARGE AND TUG SERVICE?**

2 A. Yes.

3

4 **Q. PLEASE DESCRIBE YOUR USE OF THE BARGE AND TUG SERVICE.**

5 A. My wife and I have had appliances, furniture, and construction material for small  
6 projects delivered on the barge. For larger projects, our contractors have used the  
7 barge to deliver larger loads of furniture, appliances, and construction material. Just  
8 recently we had two HVAC units and a water heater replaced, all of which were  
9 transported on the barge. Also, we used to have a small boat and trailer that I would  
10 transport to the mainland and back for maintenance and repair.

11

12 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS?**

13 A. Yes. I am very grateful for the Commission’s time and efforts in this proceeding.  
14 Having come from this world in my pre-retirement life, I appreciate the demands  
15 placed on the Commission’s limited time. I also realize that the issues that the  
16 Village has raised in its petition are not issues that the Commission hears about  
17 every day.

18 That said, Bald Head Island is one of the State’s natural treasures. Among  
19 its coastal destinations, the island is unique due to its natural beauty, its relaxed,  
20 vehicle-less atmosphere, and its commitment to environmental stewardship as  
21 illustrated by the Maritime Forest and the Conservancy's coastal research mission  
22 and turtle nesting program. As a consequence of these features and attractions, the

1 island serves as a vital economic engine for the southeast coast of North Carolina  
2 and Brunswick County. As such, state oversight of the monopoly transportation  
3 system serving as the gateway to the island is paramount.

4 For all these reasons, I cannot overemphasize how important these matters  
5 are to the people who care about Bald Head Island. And this group includes not  
6 just the approximately 300 citizens who have permanent residences on this island.  
7 It includes the tens of thousands of visitors every year, the hundreds (if not  
8 thousands) of employees who work on the island, the business and property owners  
9 on the island, and even the surrounding communities that benefit from a vibrant  
10 island economy.

11 To an island that is fueled by tourism, access to the island on terms and  
12 conditions that are fair and reasonable and in the public interest is essential. Without  
13 parking and without the barge there is no meaningful public access, and without  
14 access there is no Bald Head Island as we know it. I urge the Commission to  
15 exercise its authority for the benefit of the public to assert regulatory oversight over  
16 the barge and the parking facilities.

17

18 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

19 **A. Yes.**

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MR. TRATHEN: I'd also ask that his summary be entered into the record.

COMMISSIONER BROWN-BLAND: That motion is allowed as well and his -- witness Gardner's summary is received into evidence at this time.

(Whereupon, the prefiled summary testimony of Scott Gardner was copied into the record as if given orally from the stand.)



**Summary of the Direct Testimony of Scott Gardner  
On Behalf of the Village of Bald Head Island**

In my direct testimony I discuss my perspective as a resident of Bald Head Island and a Village Council member.

Bald Head Island is one of the State's natural treasures. The Island is unique due to its natural beauty, its relaxed, vehicle-less atmosphere, and its commitment to environmental stewardship. Because of these features, the Island hosts thousands of visitors each year and serves as a vital economic engine for the southeast coast of North Carolina.

Bald Head is only accessible to the public by the ferry. Thus, the transportation system owned and operated by Limited and BHIT is the lifeblood of the Island. Because no vehicles are allowed for transportation on the island, all passengers—myself included—must leave their cars at the terminal. Thus, the parking facilities are integral to the ferry's operations. Similarly, the barge is the exclusive means of transporting supplies and household goods to the island. I have used the barge myself to transport appliances, furniture, and construction material to the Island.

As I mentioned, the Island's economy is fueled by tourism, and each tourist must park in the parking facilities before boarding the ferry. If parking rates were to become cost-prohibitive to tourists, the Island's economy would be harmed significantly. Likewise, the Island's many workers, most of whom live in Southport, Wilmington, and elsewhere in Brunswick and New Hanover Counties, rely on affordable and accessible parking and ferry services to be able to go to work each day.

The ferry, parking, and barge system also has a critical role in public safety. During major events like a hurricane, the Village relies on Limited to evacuate people and to get emergency personnel and critical supplies to the Island.

Although the Commission has regulated the passenger ferry since the 1990s, the parking facilities and the barge have never been regulated—except to the extent that the Commission made decisions impacting parking in the 2010 rate case. Members of the public have, for decades, expressed concerns that the parking and barge should be regulated, just like the ferry. When Limited announced its intention to sell the transportation system, the regulation of the parking facilities and barge became paramount. Although the current owner of the transportation system, as the Island’s developer, has been motivated to appease the public’s concerns about the parking and barge in the past based on its own economic development interests, the future owner might not be so motivated. Absent regulation, the next owner of the transportation system will be free to operate the parking and barge however they want, including by raising rates, and citizens will have no recourse. Given these concerns, the Village initiated this proceeding to ensure that the next owner of the ferry, parking, and barge will operate the entire system in the public interest.

My testimony describes that the Village is asking for a determination by the Commission that the parking and barge are, like the ferry, utility assets that should be operated under the Commission’s supervision for the benefit of the using and consuming public. Without parking and without the barge there is no meaningful public access to the Island, and without access there is no Bald Head Island as we know it.

Finally, my testimony emphasizes how important these matters are to the people

who care about Bald Head Island. And this group includes not just the citizens who have permanent residences on this island. It includes the tens of thousands of visitors every year, the employees who work on the island, the business and property owners on the island, and even the surrounding communities that benefit from a vibrant island economy.

This concludes the summary of my Direct Testimony.

1 MR. TRATHEN: Witness is available for  
2 cross examination.

3 COMMISSIONER BROWN-BLAND: All right.

4 MR. RISINGER: COMMISSIONER BROWN-BLAND,  
5 under the parties' order of examination, the Club  
6 is supposed to examine Mr. Gardner prior to  
7 Transportation doing so.

8 COMMISSIONER BROWN-BLAND: All right.  
9 Mr. Higgins?

10 MR. HIGGINS: Thank you.

11 CROSS EXAMINATION BY MR. HIGGINS:

12 Q. Mr. Gardner, good morning. Dan Higgins for  
13 the Bald Head Island Club.

14 A. Good morning, Counselor.

15 Q. You're a full-time resident of Bald Head  
16 Island?

17 A. Yes.

18 Q. How long have you been a full-time resident?

19 A. Since 2017.

20 Q. Are you familiar with the Southport area?

21 A. Yes, very.

22 Q. Are you -- were you here yesterday?

23 A. I was.

24 Q. You heard some testimony yesterday, then,

1 regarding the Indigo Plantation ferry landing, which  
2 was used before Deep Point was put into service?

3 A. I am.

4 Q. Are you familiar with the Indigo Plantation?

5 A. Yes, I am. We purchased our home in 1997, so  
6 we were part-time -- we visited the island on a  
7 part-time basis, until we made the move to make the  
8 Bald Head our primary residence in 2017.

9 Q. So you -- you caught the ferry at Indigo  
10 Planning --

11 A. Yes, I did.

12 Q. -- for a number of years?

13 A. Yes, I did.

14 Q. Okay. How far is the Indigo Plantation  
15 facility from Deep Point?

16 A. By my estimation, probably three and a half  
17 to four.

18 Q. And would you consider it a viable option to  
19 park at Indigo Plantation and travel by foot or by some  
20 sort of shuttle to Deep Point?

21 A. I would -- I would never do that. And I  
22 suspect most people would never do that, that have a  
23 place on Bald Head Island. I don't know that anybody  
24 would, frankly.

1 Q. All right, sir. In your rebuttal testimony,  
2 you made reference to a statement by the witness,  
3 Mr. Leonard, that the commission should -- and I'm  
4 quoting now -- ensure that parking is available, either  
5 at the terminal or in community locations.

6 Are you aware of any parking for ferry  
7 passengers currently available at convenient community  
8 locations, other than Deep Point?

9 A. I am not.

10 COMMISSIONER BROWN-BLAND: Mr. Higgins,  
11 it's generally not a problem, but I'm going to ask  
12 you make sure you stay in the mic. Thank you.

13 MR. HIGGINS: Yes, ma'am.

14 Q. Are there any independent parking operations,  
15 that you are aware of in the Southport area, that serve  
16 passengers that are going to catch the Bald Head Island  
17 ferry?

18 A. I am not aware of any.

19 Q. Now, changing tacks, did you hear statements,  
20 and perhaps in testimony yesterday, regarding the fact  
21 that the Village involved itself in the process by  
22 which the Bald Head Island Ferry Authority sought to  
23 purchase the ferry assets and these other assets that  
24 are subject to this proceeding?

1           A.        Could you state that question one more time?  
2        I want to make sure I get it right.

3           Q.        I don't know if I can, but I'll try.

4                    Did you -- did you hear comment, and perhaps  
5        testimony yesterday, regarding the Village's  
6        involvement and ultimately -- well, its involvement in  
7        the process relating to the Bald Head Island Ferry  
8        Authority' proposed purchase of the ferry assets and  
9        the parking and the barge?

10          A.        Yes.

11          Q.        Would you -- are you familiar with what the  
12        Village's positions and concerns were that motivated  
13        its actions?

14          A.        Absolutely.

15          Q.        Would you share those with the Commission,  
16        please?

17          A.        Certainly.  When the legislation passed in  
18        2017, the Village Council -- I was not on the council  
19        at the time, but my understanding in speaking to those  
20        that were, is that they were in support of the process  
21        that the legislation laid out.  So you would establish  
22        the certain number of Authority members, you would go  
23        through a process of assess values, and hopefully you  
24        would come up with a -- a valuation and a negotiated

1 sales price that would be reasonable and could get  
2 approval from the state Local Government Commission.

3           And when -- and there was a non-disclosure  
4 agreement, which made it -- it's -- I joined the  
5 council in August of 2020, just before the  
6 December 2020 announcement of the sales price and the  
7 APA between Limited and -- and the Authority. So I  
8 didn't have much knowledge at all going in about how  
9 those discussions and negotiations were going. And the  
10 mayor, and the mayor pro tem, who were on the  
11 Authority, couldn't tell us much at all, because of  
12 non-disclosure agreement issues. So we were quite  
13 surprised when the announcement was made of the  
14 \$47.75 million sales price.

15           And so we began, you know, simply asking  
16 questions. You know, I'm not a financial analyst, I'm  
17 not a real estate attorney, I'm not a commercial  
18 developer, but my -- but I do, kind of, keep track of  
19 general costs for certain things: commercial  
20 properties, homes, and just a basic interest in it.  
21 That just seemed pretty high to me, as it did the other  
22 counsel members. And we learned very quickly, a lot of  
23 the members of the Bald Head Island community thought  
24 that that was a price far above what most people were



1 expecting.

2           So we asked for some background. We asked  
3 for valuations. We said, you know, talk to us. Help  
4 us understand why that you, Limited, and you, the  
5 Transportation Authority, think this is a good deal.  
6 And we got nothing.

7           So when the proposal came before the Local  
8 Government Commission, our mayor at the time,  
9 Andy Sayer, shared with the Commission that -- that, as  
10 he was mayor on the Transportation Authority, but he  
11 was representing what he was hearing since the December  
12 announcement. And there were concerns about the values  
13 and there were concerns about the transparency. So  
14 those became the two big issues for Village Council.  
15 How far do you want me to go with this, counselor?

16           Q.     Just tell me what the conclusion -- tell the  
17 Commission what the conclusion of this.

18           A.     The conclusion was, we didn't have the  
19 information we felt we needed to be able to determine  
20 if this was a fair deal or not. And so we couldn't  
21 really assess whether it was or not. So our -- our --  
22 the mayor's pitch to the Local Government Commission  
23 was, you know, the community is upset about this, we  
24 haven't heard no presentation with -- no community

1 presentation was ever made. So the island community  
2 was just, kind of, hearing this for the first time, and  
3 they're -- they have questions, and they are not  
4 getting answers.

5           So the Local Government Commission, at that  
6 point, forced a public hearing on the matter in  
7 February, and as I recall, the Commission was expecting  
8 answers to be given by the Transportation Authority to  
9 the questions that were asked. There were no answers  
10 given. All that was done was that the evaluations, the  
11 Mercator studied, a lot more information was put on a  
12 public website for people to go digging for their --  
13 for their answers. And -- which simply raised more  
14 questions on the minds of some islanders, and, frankly,  
15 as the Local Government Commission started  
16 investigating and looking into the proposal, raised  
17 questions of their own. And at that point, you know,  
18 it was the Local Government Commission that was, in our  
19 view, asking the most questions.

20           And so when -- in mid-March, when it appeared  
21 that the Transportation Authority proposal may not get  
22 approval at the Local Government Commission level, the  
23 Village announced the thought that it might be wise  
24 that we present a sister proposal. So if the

1 Transportation Authority is not approved, perhaps the  
2 Village proposal could.

3 So we decide to investigate. And we  
4 determined in our investigation that we could -- we  
5 could pay up to the \$47 million, if it got to that  
6 point. We could borrow less money to do that, because  
7 there would be lower bond costs with a general  
8 obligation bond versus a revenue bond. We could save  
9 on the interest on the debt to the tune of about a half  
10 a million dollars a year to put back into the system.  
11 So our proposal to the Local Government Commission was  
12 for \$54 million, instead of the Transportation  
13 Authority's 56. That we would go the GO bond route  
14 versus the revenue bond route, and that we would  
15 seek -- go to reproval on the November Bond Referendum.

16 That proposal was presented to the Auth- --  
17 to the Local Government Commission in July, and we had  
18 the bond referendum vote this past November and it  
19 pass- -- excuse me, November 2021. Almost a year ago  
20 now. And it passed by a 60/40 margin.

21 And at that point, within the month after  
22 that vote, Limited announced that they were not going  
23 to -- to deal -- to deal with the Authority anymore.  
24 They announced multiple times they didn't -- weren't

1 gonna deal with the Village, and indicated that they  
2 were gonna seek a third-party buyer.

3 Well, the Village has sought all along to  
4 have some accountability for our transportation system,  
5 whether it be through the local government and the  
6 elected officials that are voted to local government;  
7 whether it be the Transportation Authority whose  
8 members are appointed by elected officials, degree of  
9 accountability; or, if it goes to the private  
10 third-party route, to be regulated by the  
11 North Carolina Utilities Commission.

12 Thus, we filed our petition in February for  
13 this body to consider regulating the parking and barge  
14 operations as the ferry has been since 1998. Does that  
15 answer your question, sir?

16 Q. Yes, Sir. Thank you.

17 MR. HIGGINS: I don't have any further  
18 questions for Mr. Gardner.

19 COMMISSIONER BROWN-BLAND: All right.

20 BHIT?

21 CROSS EXAMINATION BY MR. RISINGER:

22 Q. Good morning, Mr. Gardner.

23 A. Counselor.

24 Q. I have great news for you. I'm -- I'm going

1 to ask you a fraction of the questions I asked you the  
2 last time we were together at the deposition in your  
3 case.

4 A. That's good to hear.

5 Q. On examination with Mr. Higgins just now, you  
6 used the phrase that "the pricing first provided to the  
7 Authority seemed pretty high to me."

8 Do you recall saying that?

9 A. Uh-huh.

10 Q. Do you have any experience in valuing the  
11 kinds of assets that were included in the proposal of  
12 assets the Authority was gonna buy?

13 A. I'm not a financial analyst. I do not.

14 Q. And you indicated that you -- the Village  
15 felt that there were shortcomings in the information  
16 that's substantiated the Authority's decision to buy  
17 the assets for \$47 million --

18 A. Correct.

19 Q. -- am I getting that correct?

20 A. Correct.

21 Q. And then, at the tail end of your testimony  
22 with Mr. Higgins, you were talking about your proposals  
23 back at the Villages. Sorry, I didn't mean to be you,  
24 Scott.

1           That you, the Village, were making proposals  
2 back, and you concluded that you could pay 47; do you  
3 recall that testimony?

4           A.     We -- we could, if it got to that point.  But  
5 we -- and in -- for the purpose of the Local Government  
6 Commission, we didn't want to complicate matters by --  
7 and we certainly didn't have an agreement with Limited  
8 for anything we -- more or less than that.  We just  
9 knew that, if Limited was willing to sell to the  
10 Authority for 45.75, we thought that Limited would be  
11 willing to sell to the Village for 47.75; up to that.

12          Q.     That's totally fair, and I wasn't meaning to  
13 suggest otherwise.

14                 What I would like to know is that, when the  
15 Village objected to the Authority paying 47, you  
16 indicated that it was an information deficiency.

17          A.     Uh-huh.

18          Q.     And you just testified that the Village came  
19 around to the position that it could pay  
20 \$47 million.  So, by the time the Village had come  
21 around to the position of representing to the LGC that  
22 it could pay 47, I assume The Village's information  
23 deficiencies, or what it thought were the information  
24 deficiencies, had been resolved sufficiently for you to

1 be able to pay -- the Village be able to agree to pay  
2 47, if it came to that.

3 A. I disagree.

4 Q. Tell me how.

5 A. Well, we -- again, when the questions of the  
6 Local Government Commission about valuations continued  
7 to be out there and unanswered, we didn't know what it  
8 was worth. All we knew is, if Limited was willing to  
9 pay -- was willing to accept 47.75 for the Authority,  
10 we felt that they'd be willing to accept up to 47-75  
11 from the Village. Once the valuations came in, then we  
12 would determine what -- what an appropriate price would  
13 be to include in an APA, and we never got to that  
14 point.

15 Q. You mentioned in your testimony from the  
16 Club -- the questions from the Club, that the Village  
17 ultimately put forth and passed a referendum to -- for  
18 authority to issue bonds to purchase the assets, true?

19 A. Correct.

20 Q. And the amount of -- what was the amount of  
21 that -- the ask in the referendum?

22 A. \$54 million.

23 Q. And in asking for \$54 million, the Village  
24 was asking for authority to purchase the same assets

1 that were on the table for the Authority to purchase?

2 A. Yes.

3 Q. And when the Village put forth the referendum  
4 for a vote, was it the feeling of the Village Council  
5 that it had sufficient information available to it to  
6 justify asking for \$54 million authority to purchase  
7 those assets?

8 A. No.

9 Q. And why did -- why did the Village ask for  
10 \$54 million?

11 A. We just knew that, once again, if the  
12 \$47.75 million was the amount that Limited was willing  
13 to accept for the transportation assets in their APA  
14 with the Authority, that they would do the same for us.  
15 All we -- all we did was establish a high-water mark  
16 above which we would not go. So what -- all we were  
17 asking the voters were -- was to give us the authority,  
18 if we get the chance, to borrow money, up to  
19 \$54 million, which 47.75 for the Transportation to  
20 purchase the assets, if we get to that point, and it --  
21 and the values, in effect, proved to be reasonable and  
22 just, then we would proceed with issuing the bonds.  
23 But, once again, we never got to that point.

24 Q. Got one more question for you about the



1 information deficiency box that you testified about.

2 Are -- is the Village contending that the  
3 information that Limited provided to the Authority,  
4 itself, in response to the Authority's questions about  
5 the assets, were insufficient in any way?

6 A. I don't know how to answer that question,  
7 other than to say that, you know, it -- it became the  
8 Local Government Commission's interest in what's a  
9 proper valuation or not. You know, from, like, you  
10 know, March, April, May, on, it was the Local  
11 Government Commission that had serious concerns about  
12 the valuation of these assets, and, in particular, the  
13 State Auditor and the State Treasurer. The two people  
14 most responsible for protecting the financial interest  
15 of this state were the ones that could never be  
16 satisfied, that limited any authority, provided the  
17 just evaluation for the Transportation assets. That's  
18 where it sits. I can't answer anything beyond that.

19 Q. That's fair. Let me ask it in a different  
20 way.

21 Your -- your testimony, if I'm understanding  
22 it correctly, that you offered to the Club's counsel,  
23 was that questions were -- were asked, and insufficient  
24 information was provided.

1           Is your testimony that -- that the Authority  
2 and the Authority members asked for information from  
3 Limited that they didn't get?

4           A.     No. The Local Government Commission asked  
5 questions and they weren't satisfied with the answers  
6 they got. That's what I meant by that.

7           Q.     You mentioned in your direct testimony in  
8 this case, Mr. Gardner, that you're a user of the  
9 parking facilities?

10          A.     Yes.

11          Q.     And I think you have used the phrasing that  
12 your car is parked for many days at Deep Point because  
13 you're a resident of the island, true?

14          A.     Yes. Yes.

15          Q.     And I think in your direct you also mentioned  
16 that you buy a pass for the lot?

17          A.     Premium or annual pass I think you said.

18          Q.     So you buy a premium pass that entitles you  
19 to park every day of the year in the lot.

20          A.     Uh-huh. Yes.

21          Q.     And that allows you to expect that, when you  
22 roll up with a pass for a premium, that there's going  
23 to be a spot for you?

24          A.     Certainly.

1 MR. RISINGER: I'd like to -- Chair, if  
2 we could, I'd like to mark as SG Cross 1 and SG  
3 Cross 2 -- I'm sorry? SG-1 and SG-2.

4 (Pause.)

5 Q. Mr. Gardner, have you had a chance to look at  
6 the two exhibits that have been handed to you?

7 A. I have.

8 Q. Okay. I'd like to identify them for the  
9 record so that it's clear which exhibit we're talking  
10 about in each one. So these are -- these exhibits  
11 represent two copies of the same document that was  
12 produced in discovery.

13 A. Uh-huh.

14 Q. They're each labeled, BHLIT document number  
15 719. The one that's been marked as Exhibit Number 1 to  
16 your cross examination is exactly as it was produced to  
17 the Village in discover. And the document that has the  
18 yellow highlighting across the bottom of it that's  
19 SG-2, is the same document produced in discover, just  
20 with the added color highlighted notations that I added  
21 to the, to the bottom of the document.

22 A. Certainly.

23 Q. We're on the same page?

24 A. Yeah.

1                   COMMISSIONER BROWN-BLAND: All right.  
2           Mr. Risinger, I'm going to identify them as -- the  
3           unedited version as STG Cross Examination Exhibit 1.  
4           And the one with the yellow highlights on it will be  
5           STG Cross Examination Exhibit 2.

6                               (STG Cross Examination Exhibits 1 and  
7                               2 were marked for identification.)

8           Q.       I apologize, Mr. Gardner, I cheated you out  
9           of your "T". I didn't mean to do that in your  
10          initials.

11                    So, Mr. Gardner, taking a moment to look at  
12          Exhibit 1 --

13          A.       Uh-huh.

14          Q.       -- this is a document that I think you've  
15          seen before in the case --

16          A.       I have.

17          Q.       -- With the -- the rates for the parking?

18          A.       Yes.

19          Q.       Okay. And I just want to, sort of, locate  
20          you within the -- within the chart.

21          A.       Uh-huh.

22          Q.       So what you purchase is an annual pass that  
23          falls in the premium category, correct?

24          A.       Yeah. Yes.

1 Q. And the -- as you said, that would entitle  
2 you, in the scheme of those lots, to park in the lot  
3 that's closest to the terminal, correct?

4 A. Correct.

5 Q. And the -- to the best of your recollection,  
6 is the \$1,350, fairly representative of what you paid  
7 for your pass?

8 A. I seem to recall that's what I paid for this  
9 year, yes.

10 Q. Okay. And with regard to looking at Exhibit  
11 2, the one with the yellow highlighting at the  
12 bottom --

13 A. Uh-huh.

14 Q. This -- I've placed some calculations at the  
15 bottom, only to divide those numbers by 365, so that --

16 A. Uh-huh.

17 Q. You'd agree that you're entitled to park your  
18 car there 365 days a year, true?

19 A. I'm trusting your -- yes. And I trust your  
20 math.

21 Q. And the only thing I would say about my math  
22 is that you need to accept only that I typed them into  
23 a calculator in good faith and my wife did not allow me  
24 to balance the checkbook. So --

1           A.       Then do you mind if I check? No, I'm just  
2 teasing.

3           Q.       Get the phone out, right? Go right ahead.

4                    So with regard to the -- my good faith  
5 calculations with regard to that, the -- would you  
6 accept that you're allowed to park in the lot 365 days  
7 a year?

8           A.       Yes.

9           Q.       And a spot is reserved for you because you  
10 pay for and hold a pass, and so a spot's reserved for  
11 you each of those days of the year.

12          A.       Hopefully, yeah.

13          Q.       Okay. And at 365 days a year, the price for  
14 that is \$3.70 a day.

15          A.       It appears, yes.

16          Q.       Okay. And going across the -- the bottom of  
17 STG Cross 2, I've just done the same thing with regard  
18 to dividing those numbers by 365 days, and placing  
19 below that that the general lot, a place that you could  
20 also buy a pass for -- if, a resident out on the island  
21 didn't want to pay to be in the closest lot, you could  
22 buy an annual pass in the general lot --

23          A.       Uh-huh.

24          Q.       -- that's just a little bit further away,

1 true?

2 A. Uh-huh. True.

3 Q. Okay. And the contractor lot where the math  
4 divides out to \$1.92 a day, that's, generally speaking,  
5 used to the testimony of other Village witnesses and  
6 yourself in deposition by folks who are working on the  
7 island, driving the economic engine of the island,  
8 building things on the island?

9 A. Correct.

10 Q. And I think some employees of the island  
11 testified that they parked in that lot as well?

12 A. Correct.

13 Q. And the employee column at the -- at the far  
14 end of STG-2, indicates that employees can buy passes,  
15 and there's 1 \$1.78 per day value to that pass, true?

16 A. It appears, yes.

17 Q. And you, at your deposition, and I think we  
18 had a little dialogue about the fact that, on occasion,  
19 employers buy those passes for their workers who come  
20 out to the island to work, true?

21 A. Yes.

22 Q. Okay. And so, to your understanding, either  
23 the employee, themselves, or the employer could --  
24 could pay for that?

1 A. Correct.

2 Q. Okay. And looking at those with -- I'm going  
3 to ask you a few questions with reference to STG-2, the  
4 document with the highlight.

5 A. Uh-huh.

6 Q. There have -- the Village has filed, you  
7 know, various exhibits and testimony and pleadings in  
8 the case that have suggested that there's evidence of  
9 monopoly pricing abuse on the island.

10 Are you familiar with those allegations?

11 MR. TRATHEN: Objection. That's  
12 mischaracterizing the testimony.

13 Q. Are you familiar with the statement that  
14 there's monopoly pricing abuse that the Village  
15 believes is indicative of over-earning on the parking  
16 assets?

17 A. I don't recall using market pricing abuses --  
18 market price abuse. I think it's market -- I mean,  
19 there's monopoly pricing.

20 Q. Uh-huh.

21 A. And that's the fear and concern we have, is  
22 that, if unregulated, that these prices could go up in  
23 any degree to maximize the profits for private  
24 investment firm, and we're just looking for -- in the



1 public interest, we've, once again, view our job as  
2 Village Council, to look out for the public interest.  
3 That we want to try to ensure that fair rates are  
4 established to allow people to get to and from -- to  
5 park their car to get to and from the ferry.

6 Q. Does the Village have the view -- looking  
7 again at STG Exhibit 2 -- Mr. Gardner, that any of the  
8 daily prices that are reflected there are excessive or  
9 abusive?

10 A. I would say, at this point, not necessarily.  
11 Although, I would add that the annual pass -- I seem to  
12 recall paying \$1,200 for the annual pass just a couple  
13 years ago, and it's already up to \$1,350. And I think  
14 the general daily pass just two or three years ago was  
15 \$10. And now it's \$12. So, you know, where does it go  
16 from here, is the concern.

17 Q. And the increases that you've, kind of, just  
18 testified to are already baked into the pricing that's  
19 in this exhibit, true?

20 A. Yes.

21 Q. Do you have, in your testimony, both in your  
22 direct and rebuttal -- or in you direct and in you  
23 deposition testimony, you were kind enough to testify  
24 to me in the deposition about the villagers express

1 concerns to you about the activities of the parking and  
2 barge and the ferry, true?

3 A. Yes.

4 Q. Are there any -- have you received any  
5 complaints from village citizens who are able to -- to  
6 buy passes to allow them to park for less than \$4 a  
7 day?

8 A. Repeat that question.

9 Q. Sure. You've testified, earlier in the  
10 proceeding, that it's pretty common occurrence that  
11 people express concerns to you, as a Village official,  
12 about issues related to the conduct of the parking --

13 A. Uh-huh.

14 Q. -- and the barge and the ferry, true?

15 A. Uh-huh.

16 Q. All right.

17 A. Yes.

18 Q. And all I'm asking is, has -- have -- have  
19 any Village citizens ever complained to you that paying  
20 \$3.70 a day for parking, or 320 -- \$3.29 a day for  
21 parking is excessive or too much?

22 A. I have not heard them put it in that terms.  
23 Once again, the concern that has been raised is because  
24 of the increases that have happened in the last two or

1 three years, and what happens next. That's the concern  
2 I've heard mostly. And I've heard it many times.

3 Q. In this -- in this proceeding, SharpVue has  
4 made a series of commitments regarding their going  
5 forward ownership; are you familiar with that?

6 A. Yes, I am.

7 Q. And are you familiar that one of them relates  
8 to tying future increases and parking rates to the  
9 consumer price index; have you seen that?

10 A. Yes. For a period of time, and then -- then  
11 what happens next?

12 Q. And with regard to the -- the owner that's  
13 proposed to take care -- go forward with the assets,  
14 they're making commitment in relation to the prices  
15 that are in STG-2 on a going-forward basis, true?

16 A. It's my understanding, yes.

17 Q. Mr. Gardner, in your rebuttal testimony, you  
18 make the statement that it would be unfair to allow  
19 Limited to dismantle the integrated transportation  
20 system.

21 Do you recall making that statement?

22 A. I do.

23 Q. Okay. And, just in fairness, I want to sort  
24 of cabin this in the way that you-all are thinking

1 about it.

2 When you use the term "integrated  
3 transportation system," the Village is thinking about  
4 all these assets together, because you believe they're  
5 an integrative whole, true?

6 A. Yes.

7 Q. And the -- the concern that you have is  
8 keeping them together; you've expressed and other  
9 witnesses have expressed, true?

10 A. Yes.

11 Q. And the buyer that has been proposed in this  
12 docket and is under contract to purchase them is going  
13 to buy them all together as opposed to individual  
14 buyers buying different parts of the assets, true?

15 A. Well, what -- we understand that that's the  
16 intent, but it at issue is with, you know, there's a  
17 transfer proceeding that is gonna deal with the ferry  
18 side of things, and it's undetermined at this point,  
19 which is why we filed for injunctive relief. It's  
20 undetermined at this point whether the parking and  
21 barge will be sold -- whether all assets will transfer  
22 at the same time. I will agree that, at this point,  
23 all assets appear to be heading toward ownership by  
24 SharpVue.

1 Q. Mr. Gardner, does the -- does the Village  
2 believe that a favorable result in this docket will  
3 result in the price -- the purchase price of the assets  
4 being lowered?

5 A. We don't particularly care what the purchase  
6 price is. We're just looking for the rates to be fair,  
7 and we're looking for the utility's regulatory  
8 accounting process to determine what fair rates would  
9 be. That's what we're looking for.

10 (Pause.)

11 Q. Mr. Gardner, making its way around the horn,  
12 so to speak, in the baseball playoff times, will be STG  
13 Cross Examination Exhibit 3.

14 MR. RISINGER: And for the record, I'll  
15 indicate that it is a composite exhibit of two  
16 documents that were produced to us by the Village  
17 in this action.

18 THE WITNESS: Uh-huh.

19 MR. RISINGER: And they bear the Bates  
20 numbers VBHI -3514 and VBHI-3659.

21 Q. Please take a --

22 A. Yup.

23 Q. -- moment to look at both the documents and  
24 let me know when you've had a chance to do that.

1 A. And this is Number 3?

2 Q. It certainly is. STG-3. Yes, Sir.

3 COMMISSIONER BROWN-BLAND: All right.

4 This two-page exhibit will be identified as STG  
5 Cross Examination Exhibit 3.

6 (STG Cross Examination Exhibit 3 was  
7 marked for identification.)

8 THE WITNESS: (Witness peruses  
9 document.)

10 Okay.

11 Q. Have you had a chance to look at both of  
12 them?

13 A. Yes.

14 Q. And I just have a couple questions about  
15 them. You're entitled, certainly, to refer to any part  
16 of those --

17 A. Certainly.

18 Q. -- as you -- as you need to in responding.  
19 All right.

20 I show them to you in relation to your  
21 statement that -- just now, that the Village doesn't  
22 really care what the -- the price is; that you have  
23 other regulatory interests.

24 A. Uh-huh.

1 Q. Am I recalling that testimony correctly?

2 A. Correct. Yeah.

3 Q. And the portions of Exhibit 3 that I'd just  
4 like to ask you about, in the -- in the next-to-last  
5 paragraph of the top e-mail that's addressed from -- to  
6 you from Robert Blau, the person that sent this e-mail  
7 to you on January 31, 2022 --

8 A. Uh-huh.

9 Q. -- do you see that?

10 A. Are you on -- which page?

11 Q. I'm on the front page that bears the 3514  
12 number --

13 A. Got that.

14 Q. -- at the bottom.

15 A. I see. Your question again, please.

16 Q. Yup. I hadn't gotten there yet. I was just  
17 identifying the document. I move slow sometimes.

18 So just to set the document, because I know  
19 you were looking at it, this is the -- the top e-mail  
20 in this thread, is an e-mail sent by Robert Blau to  
21 you --

22 A. Uh-huh.

23 Q. -- and it's dated January 31, '22; do you see  
24 that?

1 A. Yes.

2 Q. Okay. And you -- you did a search of your  
3 personal e-mails in response to discovery requests, and  
4 you provided this information -- this e-mail to  
5 counsel, and it was provided to us, correct?

6 A. As far as I know, yes.

7 Q. The -- in the next-to-last paragraph of  
8 the -- of the e-mail from Mr. Blau to you that's at the  
9 top of the thread, at the bottom of that, there's a  
10 statement that says, "Even so, regulation, or even the  
11 threat of regulation, represents the best/only  
12 available means of keeping the transportation system  
13 sale price at a reasonable level, regardless of who  
14 acquires it."

15 Do you see that?

16 A. I do see that.

17 Q. Okay. And then, just for a second, I'd like  
18 you to also turn to the -- to the second page of that  
19 exhibit, and this is an e-mail that did not go to you,  
20 but that the Village has stipulated the authenticity of  
21 this e-mail --

22 A. Uh-huh.

23 Q. -- as a part of the personal e-mail  
24 productions. This is an e-mail from Mr. Blau to



1 Gerald Maggio.

2 A. Uh-huh.

3 Q. I'm sorry, am I mispronouncing his name?

4 A. No, that's correct.

5 Q. Okay. And what's his position with the  
6 Village?

7 A. Gerry Maggio is a Village Council person.

8 Q. And this is an e-mail that bears the Bates  
9 number of 3659 at the bottom, and it's a 7/28/22 email  
10 from this summer; do you see that?

11 A. Yes. Yes.

12 Q. And the passage that I just want to draw to  
13 your attention in this one is, in the third paragraph,  
14 the second sentence says, "The important thing is to  
15 get the sales price down to a reasonable level,  
16 recognizing that regulating the barrage and parking is  
17 the best and only practical way of doing that."

18 Do you see that?

19 A. I do.

20 Q. Did I read that accurately?

21 A. Yes.

22 Q. Okay. And so, with reference to those  
23 passages, my question is, one, have you discussed with  
24 any other Village officials the statements that

1 Mr. Blau and the sentiments he expressed in these  
2 e-mails concerning regulation being a vehicle to impact  
3 the sales price of the assets?

4 A. I recall having discussions with council  
5 members about the regulatory compact. That for a  
6 certificate to operate a monopolized public utility,  
7 you were guaranteed the establishment of fair rates for  
8 a reasonable amount -- for adequate service. And we  
9 would look to the Utilities Commission regulatory  
10 process to establish fair rates.

11 Q. And I -- and I appreciate that response, and  
12 I think you gave that a little bit early in response to  
13 another of my questions, and my question here is, did  
14 you discuss this issue with any other Village Council  
15 members about the possibility of a regulatory outcome  
16 in this proceeding would impact the sales price of the  
17 assets?

18 A. That it might, yes.

19 Q. All right.

20 A. That it might.

21 Q. Did y'all discuss that in open or closed  
22 session?

23 A. Closed session.

24 Q. Did you discuss it with any of the Village

1 counselors outside of a formal session?

2 A. Not to my recollection.

3 Q. Thank you. That's all the questions I have  
4 about that exhibit.

5 A. Okay.

6 Q. Mr. Gardner, in your -- in your rebuttal  
7 testimony, you make the statement that -- that you  
8 didn't see any serious consideration of the public  
9 interest in the direct testimony that Limited filed in  
10 the case.

11 Do you recall making that statement?

12 A. I do.

13 Q. Okay. And have you read all the direct  
14 testimony that was filed on behalf of Limited in the  
15 case?

16 A. I -- I have. I have.

17 Q. And have you read SharpVue's rebuttal  
18 testimony?

19 A. Yes, I have.

20 Q. Okay. I don't want to revisit the -- the  
21 significant testimony regarding the Authority and the  
22 efforts to establish the Authority. You've spoken to  
23 that and other witnesses have.

24 My question is, would you concede that, when

1 Limited worked for years to sell its assets to a public  
2 authority at less than fair market value, as required  
3 by the statute -- the enabling statute, was -- were  
4 they paying heed to the public interest in attempting  
5 to do that?

6 A. As I recall, the statute -- the legislation  
7 required that the sales of the -- of the Transportation  
8 assets be at assessed value. Now, what was undefined  
9 is how is assessed value defined? And so it could be  
10 income-based approach, it could be market-based  
11 approach, it could be through the regulatory approach.  
12 I mean, there -- that -- that question was left  
13 unanswered. And so -- and I can understand why Limited  
14 would have done this. They're trying to maximize the  
15 amount of money they can get for their assets. They --  
16 they've led the transportation authority to a valuation  
17 process based on cash flows that provides the highest  
18 assessed value that they could probably get. That's --  
19 once again, I'm not a financial analyst, I'm not a real  
20 estate attorney, but that's what it appears to me.

21 And if, in fact, the public interest was  
22 seriously considered, I don't understand why they  
23 wouldn't pursue regulation of the parking and the barge  
24 operation as the ferry is, so that adequate regulation

1 is in place going forward to ensure that fair rates are  
2 charged for a good level of service and with the proper  
3 and adequate rate of return for the investors that  
4 would own the assets going forward.

5 Q. So let's unpack that a little bit. With  
6 regard to what the statute says, we'll leave that for  
7 another day.

8 The statute -- you'd agree the statute says  
9 what it says with regard to what the price needs to be,  
10 fair enough?

11 A. Uh-huh.

12 Q. With regard to your suggestion, or -- I don't  
13 want to put words in your mouth. I believe you said  
14 that you thought that Limited led the Authority  
15 toward -- or led them toward a price.

16 Is that a fair -- is that what you said? Is  
17 that what you meant to say?

18 A. That's what it appeared to me. My personal  
19 opinion, that's what it appeared to me. But I wasn't  
20 part of those deliberations. I wasn't in any of those  
21 meetings. So, I don't know what happened.

22 Q. And it's fair that the Village is aware that  
23 the Authority -- that Limited provided a lot of  
24 financial information to the Authority, fair?

1           A.       My understanding, they did.

2           Q.       And the Authority had its own financial  
3 consultants for the deal; they used Davenport and UBS  
4 as their financial consultants to help them arrive at  
5 what they ought to pay for the deal, true?

6           A.       True.

7           Q.       Okay. On -- down to the issue of -- of  
8 the -- your testimony about whether it was in the  
9 public interest to sell it to an authority.

10                   Are you testifying that -- that it -- that it  
11 would of only been in the public interest had Limited  
12 agreed to sell it to the Authority and also agreed to  
13 the regulation that the Village is asking for in the  
14 case?

15           A.       No. Our -- our view is that the -- that the  
16 Transportation Authority would have provided that  
17 regulatory oversight by virtue of the fact that its  
18 appointed members were appointed by elected officials.  
19 So what -- unfortunately, what happened is that, in --  
20 in doing the Authority's work and presenting it to the  
21 Local Government Commission, the Local Government  
22 Commission raised questions to understand how values in  
23 the valuation were determined, the sales price was  
24 determined, and they sought questions to answers -- or

1 answers to questions, and they weren't -- they  
2 weren't -- my understanding based on hearing,  
3 listening, and tuning in was they weren't satisfied  
4 with the answers they got.

5           And so you need to look to the Local  
6 Government Commission. I think they need to answer the  
7 question about the valuation issue. I've tried to  
8 address my concerns going in and throughout, but at  
9 some point the Local Government Commission kicked in,  
10 and they're the ones that had issues about that same  
11 valuation. And too, and I expect there was concern  
12 about the valuation being in the public interest.

13           Q. As sometimes happens with witnesses, you  
14 answered a better question than I asked. So I'm going  
15 to try to unpack a little bit of your answer.

16           One of the things that you said in your  
17 response to my question, Mr. Gardner, is that the  
18 Authority, itself, as it was enabled under the statute,  
19 it was going to have the regulatory authority over  
20 these assets that the Village is seeking here, true?

21           A. Yes.

22           Q. And Limited was willingly and earnestly  
23 attempting to sell the assets to a regional governance  
24 authority that would have exactly the authority -- the

1 regulatory authority that you're seeking here, true?

2 A. Yes.

3 Q. Okay. And Limited was so enthusiastic about  
4 that -- or let me strike that.

5 Limited was supportive of that in the way  
6 that it gave grants to the Village to help get the  
7 authority going and the process going of trying to sell  
8 its assets to a public authority; is that fair?

9 A. Yes.

10 Q. When --

11 A. Let me -- let me correct that. What I'd like  
12 to say is, whether they were generous in doing so, I  
13 don't know that generous is the right word I would use  
14 there. They did it.

15 Q. That's fair. And if I used generous, I  
16 didn't mean to load it that way. But just for the  
17 record, there were grants made to the Village to help  
18 the Village, you know, in the process of getting the  
19 Authority going, true?

20 A. I don't know that it was the Village's role  
21 to get the Authority going. I think the Village simply  
22 served as a vehicle to handle the money to fund The  
23 Authority, because the Authority didn't have any  
24 organization or structure to handle financial matters



1 at that point. Early on, anyway. That's my  
2 understanding. I don't know that to be absolutely  
3 true.

4 Q. Here, today, and in the deposition testimony  
5 that you gave earlier in the case, you testified about  
6 the points at which the Village got off the train, so  
7 to speak, on the Authority and decided that its own  
8 path might be a better -- might be a better one than  
9 working in the Authority, fair?

10 A. Or it might be a solution if the -- if the  
11 Authority's proposal is not approved. So we -- you  
12 know, we didn't -- we weren't trying to outflank the  
13 Authority. It just appeared to us that the Authority  
14 may not get approval for their proposal. So all we  
15 were simply doing was providing an alternative, if the  
16 opportunity presented itself, and if Limited would be  
17 willing to negotiate and work with us towards a APA,  
18 which it never happened.

19 Q. At the point at which the Village decided to  
20 take those steps and make its own proposal and its  
21 support for the Authority, you know, lessened, did the  
22 Village consider that it was a possibility that Limited  
23 would turn to looking for a private buyer that --  
24 similar to itself, since the Authority solution wasn't

1 going to be available?

2 A. We always knew that that was a possibility.

3 Q. And in knowing that's a possibility, you  
4 knew -- the Village knew and appreciated, I take it,  
5 that the regulatory structure that was going to be in  
6 place with the Authority would not be -- would not be  
7 an option, true?

8 A. If they couldn't get approval for their  
9 proposal, then yeah. The Authority then is not in  
10 consideration, so Limited has to look for other  
11 options.

12 Q. In your rebuttal testimony, Mr. Gardner, you  
13 made the, the statement -- and I want to get it  
14 right -- that Limited seemed, quote, to be focused on  
15 maximizing its financial return rather than ensuring  
16 the long-term success of the Island.

17 Recall making that statement?

18 A. I do.

19 Q. Okay. And in regards to that statement,  
20 you're focusing on Limited's exiting conduct, and  
21 you're believing that -- that the assets are not headed  
22 in a direction that are in the long-term interest of  
23 the island?

24 A. Potentially, yes.

1 Q. And with regard to -- I want to ask you a few  
2 questions about the destination of the assets.

3 I think you were kind enough to tell me  
4 before that you've read the rebuttal testimony that was  
5 filed by SharpVue in this case, by Mr. Roberts?

6 A. Yeah. Yes.

7 Q. Okay. So on the point of long-term -- the  
8 long-term success that the Village is interested in,  
9 Mr. Roberts testified that -- that he -- that SharpVue  
10 believes that a successful island community, the clubs,  
11 and vacationer tourism is essential for the successful  
12 operation of the assets that they're gonna buy.

13 A. Totally agree.

14 Q. Totally agree? You agree with that?

15 A. I do.

16 Q. Okay. And that -- that sentiment or attitude  
17 from the buyer, is that, you know, the type of  
18 long-term success interest that the Village is looking  
19 at, a buyer that's interested in that symbiotic  
20 success --

21 A. Certainly.

22 Q. -- between those assets.

23 A. We look for SharpVue, if they are successful  
24 at closing the deal, and we would look for any

1 subsequent buyer to have that same mindset. But you  
2 never know. And, again, that's why -- and, you know,  
3 we don't know how long SharpVue intends to hold the  
4 assets. We -- we heard what -- we've seen what  
5 Mr. Roberts testified. We've heard what he's --- and  
6 he's confirmed that in -- in this hearing, but we don't  
7 know how long. And our concern is -- it certainly is  
8 for the present. We're pushing this for the present.  
9 But it's for 5 years down the road, 10 years down the  
10 road, 20, 30 years down -- the future of the island,  
11 we're working to ensure, has a transportation system  
12 that is reliable, fairly priced, and that whoever owns  
13 it in the private sector gets a reasonable rate of  
14 return. We're -- all we're asking for is fairness.  
15 Assurance that we're gonna have a quality  
16 transportation system that's reliable, meets the needs  
17 of the island, and it's done so at a fair price.

18 Q. One of the interests that the -- the -- in  
19 terms of the long-term success of the island, one of  
20 the things that the Village has emphasized is that the  
21 assets be kept together as opposed to being parceled  
22 out.

23 A. Correct.

24 Q. The purchase by SharpVue would satisfy that,

1 wouldn't it? That SharpVue is gonna purchase all the  
2 assets?

3 A. If -- if it's done, yes.

4 Q. And one of the other concerns that you have  
5 testified about in your direct and rebuttal and also at  
6 your deposition is about the Village's concern about  
7 the continued availability of parking, true?

8 A. Yes.

9 Q. And SharpVue has committed, in their  
10 testimony before the Commission, not to reduce the  
11 level of parking that's available, unless the  
12 Commission would later give them authority to do that.

13 Do you recall that testimony?

14 A. I do recall.

15 Q. All right. And Mr. Roberts has testified  
16 that SharpVue has -- as an equity fund, has the assets  
17 available to it to meet the needs for expansion or  
18 growth of the system?

19 A. I've heard that statement and trust that to  
20 be true, but don't know for sure.

21 Q. And does the Village have any -- does the  
22 Village believe that those assurances of availability of  
23 parking are insufficient to meet its concerns with  
24 regard to parking availability?

1 A. Could you repeat that question one more time?

2 Q. Sure. I'll try to ask a better one.

3 With regard to the commitments that SharpVue  
4 has made about the continued availability of the  
5 parking --

6 A. Uh-huh.

7 Q. -- does the Village believe that those are  
8 sufficient to ensure that there'll be continued  
9 available parking?

10 A. I don't -- I don't know the answer to that,  
11 and I can't speak for the other council members at that  
12 point, but I would just say I -- you know, I don't know  
13 enough about SharpVue's financial status and  
14 capabilities to know whether they can or can't. We --  
15 we trust that the transfer certificate proceedings will  
16 make a determination about that. We anxiously await to  
17 hear the results.

18 Q. And the Village will have an opportunity to  
19 participate in the transfer proceeding and make its  
20 feelings known about any issues it likes in the  
21 transfer, true?

22 A. Certainly.

23 Q. All right. At your deposition, I asked you a  
24 question, and I'm gonna read you the question and

1 answer in full --

2 A. Okay.

3 Q. -- and then I want to ask you a question  
4 about it in relation to the things that we've been  
5 talking about here.

6 I asked you, why does the Village -- my  
7 question was, "Why does the Village think that  
8 SharpVue, for instance, as the next proposed owner of  
9 those two assets, parking and barge, would have any  
10 interest in pricing the parking such that people  
11 wouldn't want to come take the ferry, that they're  
12 gonna be required to operate pursuant to a certificate  
13 from the commission?"

14 A. Uh-huh.

15 Q. And your, your response was, "Once again, we  
16 don't know what their full intent is, so without that  
17 knowledge and without that assurance, we would seek to  
18 obtain that assurance through regulation through the  
19 Utilities Commission."

20 A. Correct.

21 Q. Do you recall that dialogue?

22 A. I do.

23 Q. Okay. The -- would you agree that SharpVue  
24 has made commitments, in this proceeding, that move

1 considerably down the road with regard to providing the  
2 kinds of assurances that you didn't know about at the  
3 time of your deposition with regard to their plans?

4 A. Well, some of those commitments were made in  
5 the -- in a Bald Head Association public meeting back  
6 in July. So, I am familiar with some of the  
7 commitments, and I have -- and I've heard others, and  
8 most recently with the rebuttal testimony by  
9 Mr. Roberts. And we appreciate that. That is good to  
10 hear. But the question is, for how long. And then  
11 what?

12 Q. The -- one of the other concerns that the  
13 Village has expressed, with regard to the transfer,  
14 relates to the imputations of funds that's been  
15 discussed at length.

16 You -- you were in the audience yesterday,  
17 and you've heard a little bit about that again today?

18 A. I have.

19 Q. And so, in that context, you understand that  
20 there is an imputation of a little over a half a  
21 million dollars, that's made to -- to the ferry, coming  
22 out of the last rate case?

23 A. Yes.

24 Q. Is the -- and I take it you're aware, since



1 you've reviewed the testimony in the case, that  
2 SharpVue has committed that they're -- that it steps  
3 into the shoes of the commitment to make that, you  
4 know, imputation, you know, payment, and they would do  
5 so until the Commission allowed them to do otherwise.

6 Does the Village have any concerns that that  
7 commitment is insufficient, with regard to the  
8 imputation of funds?

9 A. We don't know the answer to the question. We  
10 don't know enough -- we haven't been able to get our  
11 hands on the financials, like -- due to nondisclosure.  
12 So we don't know whether that number's right, whether  
13 it needs to be different. We appreciate the  
14 willingness to impute going down the road, but -- and  
15 we could, perhaps, see a solution that would include  
16 imputation of parking -- of parking revenues into ferry  
17 operations, among other options to be considered. And  
18 we would look for the Commission and its process to  
19 help determine the proper and most fair way to handle  
20 that issue.

21 Q. With regard to whether, in the future,  
22 there's a change in the amount -- whether the  
23 imputation is eliminated, it's lowered, it's raised --  
24 that's a decision that would be made in the context of

1 a -- of the next rate case and not here, true?

2 A. Correct.

3 (Pause.)

4 Q. I really appreciate your time. I've got no  
5 further questions.

6 A. Thank you.

7 COMMISSIONER BROWN-BLAND: Questions  
8 from SharpVue?

9 MR. FERRELL: Might I have a moment?

10 COMMISSIONER BROWN-BLAND: That's fair.

11 (Pause.)

12 MR. FERRELL: No further questions.

13 COMMISSIONER BROWN-BLAND: All right.

14 Redirect?

15 MR. TRATHEN: Thank you.

16 REDIRECT EXAMINATION BY MR. TRATHEN:

17 Q. Mr. Gardner, with respect to the last line of  
18 questioning with regards to the SharpVue commitments  
19 that have been made, got a little confusing as between  
20 the oral representations that have been made in  
21 connection with the preliminary injunction motion,  
22 things that you maybe have heard in public meetings,  
23 and things which were filed in SharpVue's testimony.  
24 Now, let me just ask, sort of, a more general follow-up

1 to that.

2 Is -- is it your understanding that the  
3 commitments that have been made, promises, whatever you  
4 call them at this point in time, are conditional on a  
5 decision by the Commission that it not exercise  
6 regulatory authority with respect to the barge and the  
7 parking?

8 A. That's the -- that's the way I understand it,  
9 yes.

10 Q. Is it your understanding that these promises,  
11 statements, whatever you call them, would be binding  
12 upon some third party?

13 A. I haven't taken them as such.

14 Q. Do you know whether these promises,  
15 statements have been time-limited in nature?

16 A. I seem to recall that -- that some may or may  
17 not. I'm -- I don't know that I can answer your  
18 question, specifically, other than to say that there's  
19 some that don't seem to have. Some have time limits on  
20 them, some do not.

21 Q. Well, would that be an issue, do you think,  
22 for you and/or the Village, to the extent that a  
23 particular commitment had an expiration clause?

24 A. It would bother the Village if it had an

1 expiration clause, yes.

2 Q. Are promises, in your view, a substitute for  
3 the backstop of Commission regulation?

4 A. No.

5 Q. Now, with respect to -- just, sort of,  
6 responding to some of the specific questions that were  
7 asked to you; you were asked about an annual pass, and  
8 you were walking through some calculations for that,  
9 the parking pass for Deep Point.

10 Is -- is the parking pass a guarantee of  
11 availability --

12 A. Yeah.

13 Q. -- a particular spot, or is it, you know, as  
14 available?

15 A. It -- it's -- it's supposed to provide you  
16 parking in a particular area. But there have been  
17 times when that area has been full and -- and the owner  
18 has had to continue to expand the size of it. And I'm  
19 not sure where things stand right now. But there have  
20 been times when people I know -- never happened to me  
21 personally, but people I know tried to get in but  
22 couldn't. And then there's a list of people that have  
23 tried to purchase the premium passes that couldn't get  
24 them. I don't know where that stands either. Maybe

1 that's been settled out and the waiting list is down to  
2 nothing. I don't know.

3 Q. Okay. Now, you were asked by counsel about  
4 funding for the Transportation Authority.

5 Do you recall those questions?

6 A. I do.

7 Q. Do you know whether or not -- as I understand  
8 your testimony, your response to those questions, you  
9 were describing what was happening is the Village being  
10 a conduit of payments from Limited to the Authority.

11 A. Correct.

12 Q. Okay. Do you know whether -- you're familiar  
13 that there is a state law that's set up to  
14 Transportation Authority?

15 A. I am.

16 Q. Do you know that the -- whether or not that  
17 state law prohibited the Authority from taking funds  
18 from a private entity?

19 A. I'm -- I'm not aware of that.

20 Q. Okay.

21 MR. RISINGER: Objection.

22 Q. And --

23 MR. RISINGER: It just calls for a legal  
24 conclusion.

1 Q. Okay. And who -- who is --

2 COMMISSIONER BROWN-BLAND: Hold on. I'm  
3 going to overrule the objection to the extent that  
4 the witness has knowledge, and he can answer the  
5 question.

6 Q. Have you -- I think you answered the  
7 question.

8 A. I'm unaware. I was not aware of that.

9 Q. Okay. And who -- who is, and to your  
10 understanding, is funding the Transportation Authority?

11 A. Well, Limited provides the funds. It is  
12 handled through the Village accounting system and pays  
13 the bills for -- either they submit -- the Village  
14 submits the check to the Authority and the treasurer  
15 pays the bills or -- I'm not quite sure how that  
16 particular part of it. But -- but the -- all the  
17 funding for the Transportation Authority, to my  
18 knowledge, has come from Bald Head Island.

19 Q. Are you aware of --

20 COURT REPORTER: I'm sorry, Bald Head  
21 Island?

22 THE WITNESS: Limited.

23 Q. There's not a state appropriation for the  
24 Transportation Authority?

1 A. Not to my knowledge.

2 Q. Okay. All right. So, if you could direct  
3 your attention to, I believe, what was marked as Cross  
4 Exhibit Number 3. There were a couple of e-mails from  
5 an individual by the name of Robert Blau.

6 A. Uh-huh.

7 Q. Do you have that?

8 A. Yes, I do.

9 Q. And who is Robert Blau?

10 A. Bob Blau is an island resident; has been for  
11 a number of years. He's had a career in the regulatory  
12 world. I have a modest relationship with him. We've  
13 never dined together, we've never spent a lot of time  
14 together, but we have had conversations about any  
15 number of issues. When it comes to Village issues,  
16 since I've been on the council, I've had a lot more  
17 conversations with Mr. Blau about any number of issues,  
18 including transportation.

19 Q. He's a homeowner on the island --

20 A. He is.

21 Q. -- is that correct?

22 A. Yes.

23 Q. And I believe that the first paragraph of  
24 page 1 alludes to the regulatory --

1 A. Yes.

2 Q. -- experience that you --

3 A. Yes.

4 Q. -- that you mention?

5 And I assume that you have a lot of  
6 communications from members of the public, given your  
7 public role on behalf of the Village?

8 A. I do.

9 Q. Okay. If you would turn to page 2 of this  
10 exhibit.

11 And just to be clear, does Mr. Blau speak for  
12 the Village?

13 A. No, he does not.

14 Q. He's not a member of the council?

15 A. He is not.

16 Q. Okay. With respect to the first paragraph  
17 here on page 2, I want to read the portion of this and  
18 see if I've got it right, begin at the second sentence.

19 "Chad suggested, at one point, that rates  
20 could actually go up, since, as he put it, the  
21 Utilities Commission would calculate the system's new  
22 regulated rate base based on how much SharpVue pays for  
23 it, \$56 million versus its current or old rate base net  
24 book value of its existing plant, which is



1 approximately \$20 million."

2 A. Uh-huh.

3 Q. Is that -- is that what it states?

4 A. That's what it states.

5 Q. And then he states, "A difference,  
6 \$36 million, would be booked for ratemaking purposes as  
7 good will. And since state regulators generally do not  
8 allow utilities to earn a rate of return on good will,  
9 user fees for parking, barge, and ferry service would  
10 go down, not up."

11 Is that what it says?

12 A. That's what it says.

13 Q. And then the next sentence says, "That could  
14 be problematic for the island if SharpVue overpays for  
15 the system and is not allowed by regulators to earn a  
16 reasonable return on its actual investment. Much  
17 needed capital spending on system improvements, going  
18 forward, would likely go south along with service  
19 quality."

20 Have I -- did I capture that correctly?

21 A. Yes, you did.

22 Q. So, what -- what would -- what's your  
23 understanding of what he's saying there?

24 A. Well, you know, if -- if SharpVue, which has

1 a commitment to its investors for certain rates of  
2 return, is not allowed to -- through the ratemaking  
3 process, not allowed to have the amount of revenues  
4 coming in to make those payments then they have to cut  
5 costs. And cutting costs affects service.

6 Q. And he is talking in here about valuation for  
7 ratemaking purposes; is that correct?

8 A. Yes.

9 Q. Now, with respect to the questions you were  
10 asked by counsel as to the sales price, if -- the  
11 amount that SharpVue pays for the assets, who -- who,  
12 ultimately, is going to -- who are they going to  
13 recover that from?

14 A. The rate --

15 MR. FERRELL: Objection.

16 THE WITNESS: The ratepayers.

17 COMMISSIONER BROWN-BLAND: Do you want  
18 to be heard?

19 MR. FERRELL: Yeah. I mean, this  
20 witness is speculating about a topic that he has  
21 said he doesn't understand the ins and outs of  
22 SharpVue's investment, but yet he's now attempting  
23 to testify about how they're going to run their  
24 business or handle business decisions. So we would

1 object to him speculating about those issues.

2 MR. RISINGER: And we'd also object to  
3 the -- the term of art of recovery and the witness'  
4 inability to have a foundation to answer that  
5 question.

6 COMMISSIONER BROWN-BLAND: Do you have a  
7 response?

8 MR. TRATHEN: I think he -- he responded  
9 to my question fine. I think it's -- the extent of  
10 his experience is pretty clear from his testimony.  
11 I mean I'm --

12 COMMISSIONER BROWN-BLAND: I'm going to  
13 sustain on the speculation.

14 MR. TRATHEN: Okay.

15 Q. So, with respect to the parking operation,  
16 who -- who are the folks who pay for parking?

17 A. The users.

18 Q. Okay.

19 A. The people that park their cars there.

20 Q. All right. And is there a concern on the  
21 island that the users of the system will end up paying  
22 for whatever -- whatever valuation, whatever purchase  
23 price there is -- if this asset -- if this transaction  
24 is consummated, is there a concern on the island that,

1 ultimately, those folks who are paying for parking will  
2 end up paying for the purchase price?

3 MR. FERRELL: Objection to the question  
4 asking for him to speculate about what people on  
5 the island think.

6 MR. TRATHEN: I think I'm asking what  
7 people are -- what's on their mind and what are  
8 they saying to him.

9 THE WITNESS: There is no speculation,  
10 I'm hearing it --

11 COMMISSIONER BROWN-BLAND: I'll overrule  
12 the objection to the extent of what you know about  
13 it. You may answer the question.

14 THE WITNESS: All I can say is, from  
15 what -- is what I'm hearing from people that use  
16 the system. They are concerned about paying for  
17 an -- the potential over value -- over value of a  
18 set of assets.

19 Q. And the folks who pay for parking, are those  
20 the same people who ride the ferry?

21 A. Yes, they are.

22 (Pause.)

23 Q. Okay. Mr. Risinger asked you some questions  
24 about concerns that have been raised by citizens of the

1 island with respect to this proceeding. Could you turn  
2 to Exhibit STG-1.

3 A. (Witness complies.)

4 Okay.

5 Q. And what -- what is this exhibit?

6 A. If I'm on the page I think you have directed  
7 me to, it's a statement of consumer position.

8 Q. Correct.

9 A. Authored by Bob Blau and Paul Carey.

10 Q. Okay. And direct your attention to the third  
11 paragraph --

12 A. Okay.

13 Q. -- beginning "failing that, we are  
14 concerned."

15 Could you read that sentence?

16 A. Yes. Out loud?

17 Q. Yes.

18 A. "Failing that, we are concerned that the  
19 current system will be broken up with the  
20 less-profitable regulated passenger ferry and the  
21 exceedingly profitable unregulated parking and barge  
22 component sold off to different owners."

23 Q. Okay.

24 MR. RISINGER: Excuse me. I'm sorry.

1 Counsel, could you tell us what document you are  
2 reading from?

3 MR. TRATHEN: Yes. This is exhibit  
4 STG-1, page 2.

5 MR. RISINGER: That document?

6 MR. TRATHEN: No, no, no. The STG --  
7 the prefiled exhibits.

8 MR. STYERS: To direct.

9 MR. RISINGER: Direct testimony. Thank  
10 you.

11 Q. And could you read the next sentence, the  
12 first sentence of the following paragraph?

13 A. "We do not believe that breaking up Bald Head  
14 Island's transportation system is in the island's best  
15 interest, particularly if the regulated passenger ferry  
16 were left to operate on its own, and different owners  
17 of the currently unregulated parking and barge  
18 monopolies were free to set rates at whatever level  
19 they believe the market will bear."

20 Q. And if you would just turn to the -- just,  
21 kind of, flip through the next few pages, I see a lot  
22 of names and addresses here.

23 What do these represent, to your knowledge?

24 A. They represent property owners on Bald Head

1 Island.

2 Q. Okay, the --

3 A. In support of the statement.

4 Q. Okay. And page 1 of this exhibit states that  
5 it's signed by over 400 Bald Head Island property  
6 owners.

7 Do you see that on page 1 of the exhibit?

8 A. Yes.

9 Q. And so are these represented of the sort of  
10 concerns that you are hearing from the folks that you  
11 represent as a council member?

12 A. Yes.

13 Q. Okay. And what would you say is the level of  
14 concern about this issue, with respect to the people on  
15 the island and the stakeholders of the island?

16 A. It's a serious concern. I mean, people are  
17 concerned that their transportation system, going  
18 forward, if in -- if particularly parking and barge are  
19 in an unregulated environment, they're concerned about  
20 pricing, they're concerned about service, and they are  
21 looking for someone to look out for the public  
22 interest.

23 Q. Okay. I want to follow up on some questions  
24 that have been asked by various counsel with respect to

1 the Local Government Commission.

2 Am I correct that -- did you, generally,  
3 either attend or monitor Local Government Commission  
4 meetings when they dealt with Bald Head Island issues?

5 A. I did not attend any in person, but I  
6 listened in on most.

7 Q. Okay. And they're available online; is  
8 that --

9 A. Yes, they are.

10 Q. Okay. So you were asked by counsel about the  
11 Local Government Commission's consideration of the  
12 transportation bond application.

13 Do you recall those questions?

14 A. Yes.

15 Q. Okay. Let me hand out to you, an exhibit  
16 here.

17 (Pause.)

18 MR. TRATHEN: If I could mark this  
19 exhibit as Gardner Redirect Exhibit 1.

20 COMMISSIONER BROWN-BLAND: Let's stay  
21 with our naming conventions, so far anyway. STG  
22 Redirect Exhibit 1.

23 (STG Redirect Exhibit 1 was marked for  
24 identification.)



1                   COMMISSIONER BROWN-BLAND: And before  
2                   you ask any questions about it, we're gonna stop  
3                   for a brief break. Be back at 11:20.

4                   (At this time, a recess was taken from  
5                   time to time.)

6                   COMMISSIONER BROWN-BLAND: All right.  
7                   Let's come back to order. We're still on redirect  
8                   to this witness. Where is the witness?

9                   (Pause.)

10                  MR. TRATHEN: Are we back on?

11                  Q. Mr. Gardner, you've got what has been marked  
12                  as STG Redirect Exhibit Number 1.

13                  Do you recognize this document?

14                  A. I do.

15                  Q. And what is it?

16                  A. It is a letter to the Local Government  
17                  Commission by a number of island residents after the --  
18                  so this letter was presented to the Commission after  
19                  the sales price was announced. Looks like almost about  
20                  a month and a half or more after the sales price was  
21                  announced.

22                  Q. Okay. And do you see, in this letter, that  
23                  there's a number of concerns that are articulated about  
24                  the sale price process?

1           A.     If you'd give me a minute to read back  
2 through it, let me --

3                     (Witness peruses document.)

4           A.     Okay.  What's your question again?

5           Q.     Yeah.  I just -- that was a general question.

6                     Does this letter generally identify various  
7 concerns with the --

8           A.     Yes.

9           Q.     Okay.  And just focusing on the first  
10 paragraph, the beginning and the three years, the  
11 BHITA, could you read that to the end of that  
12 paragraph?

13          A.     "We have great concern about the potential  
14 adverse impact of the sale of the Bald Head Island  
15 ferry to the Bald Head Island Transportation Authority.  
16 In the nearly three years the BITA has existed,  
17 property owners have received little to no information  
18 about the process or deliberations.  This is troubling.  
19 The ferry's affordability and service levels are  
20 critical to the island.

21          Q.     Okay.  And this is not the Village speaking,  
22 correct?

23          A.     No.

24          Q.     This is a letter from citizens?

1 A. Yes.

2 Q. Okay.

3 (Pause.)

4 Q. All right. I'd like to hand you another  
5 exhibit, if I could.

6 (Pause.)

7 MR. TRATHEN: And if we could mark this  
8 as STG Redirect Exhibit Number 2.

9 COMMISSIONER BROWN-BLAND: It'll be so  
10 marked.

11 MR. RISINGER: Chair, please. We'd  
12 object to the admission of this document. It's not  
13 relevant. None of the parties are -- are involved  
14 in any way with this document. It's a document  
15 between two state officials that this witness is  
16 not copied on or has, you know, no foundation to  
17 testify about.

18 MR. TRATHEN: Madam Chair, this is --  
19 this is a public document that's directly  
20 responsive to matters that had been placed and  
21 issues by Limited in this proceeding. Namely, what  
22 happened before the Local Government Commission.

23 COMMISSIONER BROWN-BLAND: I'll  
24 overrule.

1 (STG Redirect Exhibit Number 2 was  
2 marked for identification.)

3 Q. Mr. Gardner, have you seen this letter  
4 before?

5 A. I have.

6 Q. And what is it?

7 A. It's a letter from the State Auditor to the  
8 State Treasurer. It's speaking to issues of what the  
9 Local Government Commission is required to look -- to  
10 review, or should review, when it comes to approving  
11 bond proposals.

12 Q. Okay. And do you understand that this letter  
13 was written in reference to the Bald Head Island  
14 Transportation system application?

15 A. I -- I am aware of that, yes.

16 Q. Okay. And there's, in fact, down in the,  
17 one, two, three -- fifth paragraph, there's a reference  
18 to that application, correct?

19 A. Yes.

20 Q. Okay. And if I could direct your attention  
21 to the fourth paragraph of this letter, could you read  
22 that?

23 A. This is the paragraph that begins "to date,"  
24 right?

1 Q. Yes, Sir.

2 A. Yes. "To date, the Commission has not  
3 received the evidence required by statute that supports  
4 the value of the assets and provides adequate support  
5 for Commission member consideration, verifying that the  
6 amount proposed is adequate and not excessive."

7 Q. And, if you would flip to the second page of  
8 this letter, please, and would you read the first two  
9 sentences of the first paragraph?

10 A. That begins "as a voting member"?

11 Q. Yes.

12 A. "As a voting member of the Commission, North  
13 Carolina General Statute 159 requires reqaires --  
14 requires that I have the information/evidence I need to  
15 approve or reject the application. Thus far, I have  
16 not been provided that information."

17 Q. Okay. And, if you would just flip down a few  
18 paragraphs to "while I have seen first-hand," could you  
19 read that sentence?

20 A. "While I have seen first-hand the extreme  
21 pressure put upon you to get the applications on the  
22 Commissions agenda, that cannot be the reason for  
23 putting them on the December 2021 agenda."

24 Q. And then just the concluding sentence,

1 "again, I insist."

2 A. "Again, I insist the two applications for the  
3 approval of the sale bonds to purchase the Bald Head  
4 Island Transportation system be removed from the  
5 December 2021 agenda."

6 Q. So what do you take away -- and do you -- do  
7 you understand that Ms. -- that Auditor Wood is a  
8 member of the Local Government Commission?

9 A. I am.

10 Q. And what -- what do you take away from what  
11 you just read with respect to this letter; what does  
12 she say?

13 MR. RISINGER: Objection, foundation.  
14 He's asking for an interpretation of a takeaway of  
15 a letter he didn't write or receive.

16 MR. TRATHEN: I'm -- I'm asking the  
17 witness what he's understanding of the words on the  
18 paper are.

19 COMMISSIONER BROWN-BLAND: Overruled.

20 THE WITNESS: My understanding of the  
21 words on the paper is that the Commission has not  
22 received the evidence required by statute that  
23 supports the value of the assets. And  
24 consequently -- and for either proposal. So

1           consequently, the Auditor was requested that the  
2           Treasurer not put this issue before a vote until  
3           those answers were addressed. And also mentioned  
4           extreme pressure being put upon getting these  
5           applications to a vote.

6           Q.     Do you know who is applying the extreme  
7           pressure?

8           A.     I do not.

9           Q.     Okay. Now --

10          A.     I know it wasn't the Village.

11          Q.     Okay. And I believe that you testified  
12          earlier that you personally audit the Local Government  
13          Commission meetings?

14          A.     Yes.

15          Q.     And have you personally heard Auditor Wood  
16          make statements which are similar to what are in this  
17          letter?

18          A.     Yes.

19          Q.     And can you just describe what you've heard  
20          her say?

21          A.     Well, much along the same lines. In her --  
22          you know, it's been a while. I'll try to summarize  
23          this very briefly. But there were questions that the  
24          Auditor had with regard to valuations. I recall issues

1 of the sales price -- or the valuations against the tax  
2 value by -- as determined by the Brunswick County tax  
3 department.

4 I recall issues of the condition of ferries,  
5 trams, luggage handling, et cetera, that, in her view,  
6 were not included, determined, mentioned, or discussed  
7 at all in any of the evaluations. And there -- there  
8 are more, but I can't -- I can't recall right now.

9 Q. And can I assume that, to the extent that the  
10 Auditor believes that information hasn't been provided,  
11 that's not the Village's fault, correct?

12 A. That's correct.

13 MR. RISINGER: Objection.  
14 Mischaracterizes testimony.

15 MR. TRATHEN: Chair, the witness just  
16 said that -- that both of the -- both the proposals  
17 had deficiencies.

18 COMMISSIONER BROWN-BLAND: I'll overrule  
19 the objection.

20 MR. TRATHEN: Yes. I have an additional  
21 exhibit to pass out, if I could.

22 (Pause.)

23 MR. RISINGER: Commissioner Brown-Bland,  
24 we would have the -- for the record, we'd just like



1 to reserve our objection, the same objection that  
2 we had to the prior exhibit, regarding this one not  
3 involving the witness or any of the parties in the  
4 case.

5 COMMISSIONER BROWN-BLAND: So noted for  
6 the record, and I'll overrule the objection.

7 MR. TRATHEN: Madam Chair, I'd like to  
8 mark this exhibit as STG Redirect Exhibit Number 3.

9 COMMISSIONER BROWN-BLAND: It'll be so  
10 identified.

11 (STG Redirect Exhibit Number 3 was  
12 marked for identification.)

13 Q. Mr. -- Mr. Gardner, have you seen this letter  
14 before?

15 A. I have.

16 Q. Letter dated January 12, 2022, again, from  
17 Auditor Wood to Secretary Folwell?

18 A. Yes.

19 Q. Okay. And do you see the second paragraph,  
20 the first sentence states that the applications for the  
21 approval to sell bonds were removed from the  
22 December 2021 agenda?

23 A. Yes.

24 Q. And then she goes on to state that she

1 insists that no application should be included in the  
2 Commission agenda in the future for approval without  
3 the support of evaluation and appraisal that provides a  
4 credible and reliable value of the assets.

5 Is that what it states?

6 A. That's what it states.

7 Q. And I asked you before about your listening  
8 in to these meetings, and whether you had heard  
9 statements similar to this from Auditor Wood, but I  
10 neglected to ask, did you hear other members of the  
11 Local Government Commission express similar concerns  
12 about the type of information that was being provided  
13 in support of the applications?

14 A. Yes.

15 Q. Okay. Direct your attention to the last  
16 paragraph of -- of page 1. If you could just read  
17 beginning "therefore."

18 A. "Therefore, until any/all applicants who wish  
19 to sell bonds for the purpose of purchasing the assets  
20 of the Bald Head Island Transportation system meets the  
21 criteria of NC General Statute 159-52, the application  
22 should not be included in the Commission agenda for  
23 member approval."

24 Q. Okay. And -- and, to your knowledge, have

1 the applications moved forward, subsequent to this  
2 letter of January 12, 2022, at the LGC?

3 A. To my knowledge, they have not.

4 (Pause.)

5 Q. Mr. -- Mr. Gardner, we've -- I've asked you a  
6 few questions on redirect just a bit ago about the  
7 attitude of -- of islanders with respect to this  
8 proceeding.

9 Are you aware of a survey that was conducted  
10 by Bald Head Association with respect to this  
11 proceeding?

12 A. Yes.

13 Q. And tell me what that survey sought to  
14 illicit.

15 A. It, as I recall, is a very simple survey  
16 asking that -- one or two basic questions, and that  
17 being, you know, do -- does the respondent -- are they  
18 for or against regulation of the parking and barge  
19 operation by the North Carolina Utilities Commission.

20 Q. Okay. And are -- what are -- were the  
21 results of that survey?

22 A. As I recall, 71 to 72 percent of the  
23 respondents supported regulation by parking and barge.  
24 I seem to think, in the 15 percent range, thought that

1 it -- that it shouldn't be regulated -- that the  
2 Utilities Commission should not regulate parking and  
3 barge, and then the 13-or-so percent were undecided.

4 Q. Okay. And is that a large percentage, in  
5 terms of usual voting patterns on Bald Head Island?

6 A. Absolutely.

7 Q. We -- we spoke a little bit about the  
8 potential impacts of this proceeding on rates and  
9 ratepayers; do you recall that?

10 A. I do.

11 Q. But there are also other entities on Bald  
12 Head Island that are impacted by ferry rates and  
13 parking rates; are there not?

14 A. Yes.

15 Q. Okay. And could you describe some of those  
16 other entities?

17 A. Certainly. And I know we spent a lot of time  
18 talking about a broad category of users of the system,  
19 and, you know, there's certainly the property owners,  
20 the -- the full-time residents who use the ferry on a  
21 more regular basis. But there -- there, you know,  
22 probably 300, 350 of those folks. There's a 400 -- let  
23 me -- let me just give a broader range -- 350 to 450  
24 homes that are in a rental program. So, in the

1 summertime, and even now in the shoulder seasons, and  
2 on holidays, there's a lot of vacationer activity, so  
3 people that spend a week or two on the island. There  
4 are employees and contractors that represent about 40  
5 to 41 -- 40 to 45 percent of the annual traffic on the  
6 island are employees; people that coming to work,  
7 either for an island organization or -- or as a  
8 contractor. You know, housing construction, home  
9 repair, home maintenance, those types of things.

10           And then there's a group of -- I'll talk a  
11 little bit about the non-profit community. Old Baldy  
12 Foundation; The Conservancy, which is a very well  
13 respected and an environmental organization that has a  
14 very large following and brings a lot of people over to  
15 the island. I think one of the -- it's one of the  
16 draws to Bald Head Island.

17           So their employees use the ferry and parking  
18 operation and the -- there are a lot of, what I call,  
19 day-trippers. I think the common -- the island uses  
20 the term day-trippers, are people that come over just  
21 for the day. Some of them are vacationing somewhere  
22 else in the Southeast but come over to Bald Head for  
23 the day. There are a lot of field trips. Youth that  
24 come over during school trip for field trips to visit

1 the, the Old Baldy Foundation and the lighthouse; that  
2 visit The Conservancy and what The Conservancy has to  
3 offer. So there is a pretty wide range of -- of people  
4 that are using the parking and the ferry operations on  
5 a regular basis.

6 Q. Okay. And this may go without saying, but  
7 the island is open to the public, is it not?

8 A. Yes, it is.

9 Q. Okay.

10 A. I would also -- I might, to that point, add  
11 that we have a maritime forest that is a state  
12 organization that about a third or so of the acreage on  
13 the island is held by the State and will never be  
14 developed that is -- that is a unique environmental  
15 asset for Bald Head, and again, part of the draw, why  
16 people come. To hike the trails and -- and drive  
17 through the maritime forest.

18 Q. Mr. Gardner, circling back to something we  
19 touched on at the beginning of this redirect, with  
20 respect to the SharpVue statements or stipulations;  
21 however you term that, had -- has SharpVue, to your  
22 knowledge, communicated with the Village concerning  
23 what the Village's concerns are and what they might  
24 want, in terms of comfort?

1           A.       Insomuch as the mayor and I had discussions  
2 with the -- with Mr. Roberts and Mr. Paul as we're  
3 trying to look at the -- at potential, you know,  
4 ownership or operational arrangement. That's been the  
5 extent of it. But in terms of meeting in front of the  
6 full council or sharing information, you know, in a  
7 letter to the Village, no, we have not received that --

8           Q.       Did you --

9           A.       -- to my knowledge.

10          Q.       Okay. And with respect to the commitments  
11 that have been discussed in this proceeding, had you  
12 any prior knowledge of those from -- from SharpVue?

13          A.       No.

14          Q.       Okay.

15                   (Pause.)

16                   MR. TRATHEN: That's all I have.

17                   COMMISSIONER BROWN-BLAND: Questions  
18 from the Commission?

19                   Commissioner Clodfelter?

20 EXAMINATION BY COMMISSIONER CLODFELTER:

21          Q.       Mr. Gardner, I've got a couple of really,  
22 really mundane questions, but they actually are  
23 pertinent to the issues before the Commission.

24                   In your experience, as a long-time resident

1 on the island and as a user of the ferry service, are  
2 you aware of folks who will pay to park in the parking  
3 facility and, for purposes other than, taking the ferry  
4 or using the barge? Or maybe they're employees of Bald  
5 Head Transportation and Bald Head Limited. Excluding  
6 employees, do people park there and visit other  
7 locations on the mainland?

8 A. Not to my knowledge.

9 Q. You've never seen that?

10 A. No.

11 Q. Have no knowledge that that occurs?

12 A. No.

13 Q. Okay. You were asked some questions on cross  
14 examination about the annual parking pass, and I  
15 believe that you testified that you're the holder of an  
16 annual parking pass?

17 A. Yes.

18 Q. Do you hold an annual pass for the ferry  
19 service as well?

20 A. No.

21 Q. You do not?

22 A. No.

23 Q. Do you -- there was an annual pass that was  
24 approved in the 2011 rate order.



1 A. Correct.

2 Q. Does that still exist?

3 A. Far as I know, yes.

4 Q. Do you know any of your friends or neighbors  
5 who hold an annual ferry pass?

6 A. Yes.

7 Q. Do you know whether they purchase that on a  
8 combined basis with a parking pass, or do they purchase  
9 them separately?

10 A. I -- I don't know the answer to that.

11 Q. You don't have any knowledge on that subject  
12 at all?

13 A. No.

14 Q. Because you don't hold one yourself?

15 A. Right.

16 Q. Okay. Well, I'll leave that alone.

17 You've used the barge --

18 A. Yes.

19 Q. -- according to your pre-trial testimony?

20 A. Yes.

21 Q. Now, as -- as you say in your prefiled  
22 testimony, you've had appliances, furniture, small  
23 construction materials, an HVAC unit, and a water  
24 heater that have come to your house by way of the

1 barge.

2 A. Yes.

3 Q. How -- how -- tell me a little bit more about  
4 the mechanics, actually how that happened.

5 Did the contractors or the retailers or the  
6 installers' truck arrive at your house and say, "Hey,  
7 we got here. We came across on the barge and we got  
8 here, here's your -- here's your refrigerator"?

9 A. That's correct.

10 Q. That's right. You -- you didn't have to go  
11 down and make arrangements to pick up the appliances or  
12 the furniture at the barge.

13 A. Not in those cases.

14 Q. And not in those cases.

15 A. Uh-huh.

16 Q. And when it was loaded on the barge on the  
17 mainland side to get to you, that wasn't done by the  
18 barge, that was just the truck -- the installers'  
19 truck, or the retailer's truck, or the contractor's  
20 truck was driven onto the barge, and the -- and the  
21 appliances and the furniture were inside it?

22 A. Correct.

23 Q. Okay. That's what I thought, and I wanted to  
24 be sure if I understood how the mechanics worked, then.

1           Now, you also say you have -- you used to  
2 have a small boat and trailer --

3           A.     Yes.

4           Q.     -- that you had to take back and forth for  
5 repairs and maintenance on the mainland.

6           A.     Yes.

7           Q.     How'd you get it to the barge?

8           A.     So I would tow it, with my golf cart, up to  
9 the barge, and when Rusty said go ahead, I'd back it on  
10 there. And then when we get to the other side, drive  
11 it off until the marine service could come pick it up.  
12 And then when the service was done, they delivered it  
13 back to the mainland ferry -- barge terminal, and I  
14 would go over with my golf cart, back it --- or pull it  
15 on to the ferry -- to the barge, excuse me, and back on  
16 the main- -- on the island side, drive it off the barge  
17 back to the house.

18          Q.     And so you'd ride on the barge with it --

19          A.     Yes.

20          Q.     -- in your golf cart when you took it over to  
21 the mainland, and then when you brought it back, you  
22 were riding on the barge in your golf cart?

23          A.     Yes.

24          Q.     Okay. Thank you, sir.

1           A.       Thank you.

2                               COMMISSIONER BROWN-BLAND:   Commissioner  
3       Duffley?

4   EXAMINATION BY COMMISSIONER DUFFLEY:

5       Q.       Good morning.  I had a question about the  
6   employees that come onto the island.

7       A.       Uh-huh.

8       Q.       Could you explain a bit to the Commission  
9   about the ability to hire employees this past summer?

10      A.       It -- it -- much like a lot of places,  
11   it's -- the labor market's tight, and we've always had  
12   to -- to deal with the issue of the inconvenience of  
13   ferrying the employees to and from the island.  Some  
14   employees love it.  It's part of the charm of their  
15   job, is to getting on the ferry and getting to work and  
16   back.  To some, it's a labor, but they do it anyway,  
17   because it's a job and they get paid.  And as long as  
18   the ferries and the contractor ferries are running on  
19   time, it's -- you know, everybody is comfortable.  But  
20   when the ferries begin not running on time, then the  
21   employees have to wait on the island side and on the  
22   mainland side to catch a ferry that they can get over  
23   on.  And then at the end of their workday, when they're  
24   expecting, at the scheduled time, to get on the ferry

1 to head home, they -- if that ferry is running late or  
2 they get bumped, then they're having to wait another 30  
3 minutes to an hour or more beyond the normal ferry time  
4 to get back to the mainland in their car and back home.

5 So it's -- you know, when you -- when we --  
6 when employers on the island hire these folks the --  
7 the ferry is part of the explanation of what the job  
8 entails. It's the experience as they're in the job  
9 and -- and experience the delays that may or may not  
10 allow them to want to keep the job or not.

11 Q. Okay. Thank you. And with respect to the  
12 Indigo Plantation parking, you stated, I believe I  
13 heard testimony, of it's about four to five miles away  
14 from Deep Point Marina?

15 A. I think I -- I think I said -- I think I  
16 recall three-and-a-half to four.

17 Q. Three-and-a-half to four miles away.

18 And if there was a shuttle service to the  
19 Indigo Plantation, about how -- what's the timing that  
20 you think a shuttle would take to get between those two  
21 points?

22 A. Probably in the 10-to-15-minute range.

23 Q. Okay.

24 A. Maybe 20.

1 Q. Okay. Thank you.

2 A. But to paint the picture, I -- when they had  
3 the shuttle at Indigo, you know, years ago, think about  
4 a family coming on vacation. They got to drive into  
5 Deep Point. They offload their luggage. Probably off  
6 load everybody except the driver of the vehicle. That  
7 driver then has to drive 10, 15, 20 minutes to Indigo,  
8 catch a shuttle, ferry back another 10, 15, 20 minutes  
9 to meet up with their family, to hop on a ferry, to get  
10 to Bald Head.

11 Q. Okay. Thank you. I have nothing further.

12 COMMISSIONER BROWN-BLAND: Commissioner  
13 McKissick?

14 EXAMINATION BY COMMISSIONER MCKISSICK:

15 Q. First of all, thank you for your testimony.  
16 Let me follow up, first, on what are some of  
17 Commissioner Duffley's questions.

18 In terms of the time frame to get from Indigo  
19 over to Deep Point, I believe yesterday I heard the  
20 time would -- on the shuttle would be about five  
21 minutes?

22 A. Uh-huh.

23 Q. So is it your belief that five minutes is an  
24 inaccurate representation?

1 A. It is.

2 Q. I would --

3 A. Let me -- let me correct that, Commissioner.  
4 I would say five minutes is the very short end of the  
5 range. I don't think I could drive it in five minutes.  
6 I think, in my case, it would have been more in the 10-  
7 to 12-minute range. To some other people -- because I  
8 know some shortcuts. Other people it may take 15  
9 minutes. But I think most people would make that drive  
10 in 10 to 15 minutes.

11 Q. And are you familiar with the parking  
12 capacity over at Indigo?

13 A. I'm not sure of the con- -- I'm not sure of  
14 that right now. I know there's the -- I -- I don't  
15 know the answer to that question.

16 Q. Don't know. Do -- can you -- in terms of  
17 relative size, is it -- how does it compare to the  
18 parkings available, or near Deep Point?

19 A. Deep Point is much larger.

20 Q. Much larger?

21 A. Yes.

22 Q. Okay. Let me shift gears.

23 I believe you indicated that the Village, in  
24 contemplation of buying the assets of Bald Head, was

1 proposing a bond referendum for \$54 million; is that  
2 correct?

3 A. Correct.

4 Q. And did that bond referendum actually go to  
5 voters?

6 A. It did.

7 Q. And when did that vote occur?

8 A. November of 2021.

9 Q. November of 2021.

10 A. Uh-huh.

11 Q. So, that would have been in the same time  
12 frame that the Authority was seeking approval for the  
13 Local Government Commission.

14 A. The Authority began seeking approval in  
15 December of 2020.

16 Q. Okay.

17 A. So this vote happened 11 months after that.

18 Q. And typically when -- before bond referendum  
19 goes to the public, there's informational sessions  
20 provided --

21 A. Yes.

22 Q. -- to acquaint voters as to what exactly the  
23 funds would be used for.

24 A. Yes.



1 Q. Do you recall exactly what was stated during  
2 those informational sessions about how that \$54 million  
3 would be spent?

4 A. Yes. So there were -- there was one session  
5 in August, and a follow-up session in October, leading  
6 to the November referendum. And included in that, with  
7 regards to the amount being borrowed and what those  
8 proceeds would be used for, it was a \$54 million total  
9 GO bond referendum, of which, \$47.75 million would be  
10 used to -- up to that amount would be used to acquire  
11 the Transportation assets.

12 Then there was some bond issuance costs in  
13 the million dollar range, I think. And then we --  
14 that's 50, 48 -- I -- I would just -- somewhere between  
15 2 to a little over \$2 million was in bond issuance  
16 cost, okay. And then there was \$4 million -- we added  
17 \$4 million to make capital improvements immediately  
18 upon the issuance of the bonds to improve things in the  
19 transportation system that we thought were necessary.

20 Q. And what did those things include, if you  
21 recall?

22 A. So there are serious concerns about luggage  
23 handling on both the Deep Point side, but mostly on the  
24 island side. During peak season, there's not enough

1 covered area for the luggage containers to bring  
2 luggage off the ferry, lay it out, to put the luggage  
3 on the racks for people to -- to get, much like at an  
4 airport when you pick your luggage up at the conveyers.  
5 Then you -- each individual families to move that to  
6 the tram they've been assigned and then off it goes.  
7 So, many times, and particularly in bad weather, heavy  
8 rains and so forth, the luggage is laid out in the rain  
9 and gets wet and --

10 Q. I understand.

11 A. So we -- we would seek -- one of the -- one  
12 of the solutions was to try to work on building some  
13 additional covered luggage areas. Other -- other  
14 included the potential purchase of replacement trams,  
15 the trucks, because they were in serious -- there was a  
16 period of time when they weren't being replaced, we  
17 don't believe, on the schedule that they once were  
18 replaced. They were just looking older, they were more  
19 beat up, and not the -- the quality of the product that  
20 we have been used to on the island. But the -- the  
21 trailer covers, the one -- the trailer that the  
22 passengers sit in, have a fabric or canvas cover,  
23 again, to protect them from the rain. A number of  
24 those were ripped and torn; flapping around in the

1 wind; and then, you know, again, in rainy weather, you  
2 know, the passengers are getting wet. Those are the  
3 types of things we were looking to improve -- make  
4 capital improvements on.

5 Q. So I take it, since the Village was proposing  
6 to acquire these assets for about \$47.5 million, you  
7 felt as if that was a reasonable fair market value?

8 A. No, we did not.

9 Q. Did not?

10 A. Once again, as I stated earlier, all we were  
11 trying to do was have that number in the bond  
12 referendum, because we weren't sure of the valuations.

13 Q. I see.

14 A. We didn't know what the true value was. But  
15 if Limited was willing to sell to the Transportation  
16 Authority for \$47.75 million, surely they'd be willing  
17 to sell to the Village for \$47.74 million, if we could  
18 determine that that was in true -- was, in truth, the  
19 right value. And to this point -- and again, the Local  
20 Government Commission has never been satisfied that  
21 that value was true on the Transportation Authority  
22 proposal, which is why I think the State Auditor  
23 referenced in her letter, neither proposal will come  
24 before them, because we don't have -- the Village

1 doesn't have any better information with regard to  
2 valuation than did the Transportation Authority.

3 Q. Well --

4 A. Actually, we had less because of information  
5 that the Authority had, we didn't.

6 Q. Now, in those informational sessions with  
7 voters, did you have any kind of performer information  
8 that would have been provided about how the -- the  
9 bonds would have been repaid?

10 A. Yes.

11 Q. What did they reveal? Did they reveal any  
12 proposed increase in charges?

13 A. We -- to -- that's a very good question.  
14 Again, to make things easy for the Local Government  
15 Commission, we used the same -- many of the same pro  
16 forma variables, as did the local -- as did the  
17 Transportation Authority. For example, their revenue  
18 projections are the same revenue projections we  
19 included in our proposal. Operating expenses, with the  
20 same operating expenses we included in our proposal.  
21 Capital expenditures over the time, are the same  
22 capital. So it -- there were -- they were exact -- I  
23 say exact. I hope I'm right about that. If not, they  
24 were very close to what the Transportation Authority

1 had in their pro formas presented before the Local  
2 Government Commission. The same ones we used in our  
3 proposal to Local Government Commission, and it's the  
4 same ones we used in our public meetings for the folks  
5 that would be voting on the bond referendum.

6 Q. So, at any point, was it proposed that fees  
7 might be increased upwards to 20 percent?

8 A. Yes.

9 Q. And that was foundational information that  
10 was presented prior to voters voting on the bond issue?

11 A. Yes.

12 Q. Was it suggested that there be additional  
13 ad valorem taxes used to subsidize the repayment of the  
14 bonds?

15 A. It was shared that that is a possibility, but  
16 the -- the Village -- our -- this sitting Village  
17 Council that was making this proposal and seeking bond  
18 referendum reapproval, expressed our strong desire for  
19 that to never happen. That we would look to -- if --  
20 if it made sense, we would look to adjust rates to  
21 accommodate any additional expense or cost that may be  
22 undetermined at that point in time. But if it became  
23 necessary, we were very clear that we -- that the  
24 council did hold that possibility to affect property

1 taxes if the -- if the situation called for it.

2 Q. So, the goal of the Village, at that time,  
3 was to acquire the assets, adjust rates as required and  
4 necessary to repay the --

5 A. Yes.

6 Q. -- debt service on the bonds?

7 A. Correct.

8 Q. And that rates could go up 20 percent, or  
9 perhaps more, depending upon performance, or revenues  
10 that were received?

11 A. That was -- we presented the worst-case  
12 scenario in our proposal. And we felt that that we may  
13 not have to raise rates the 20 percent that was in the  
14 Transportation Authority proposal.

15 Q. Uh-huh.

16 A. Again, we -- I think -- I think I mentioned  
17 this, but I don't -- maybe not. In addition to lower  
18 bond issuance cost than the Transportation Authority,  
19 because we were issuing general obligation bonds versus  
20 revenue bonds, we were having an interest rate about a  
21 half a percent at the time, about a half a percent  
22 lower than the Transportation Authority would have  
23 borrowed their revenue bond at, which was gonna save in  
24 the neighborhood of \$450,00 to \$500,000 a year. We

1 could either put that money into operational  
2 improvements, or we could use that money to keep rates  
3 lower, so.

4 Q. Now, when you were discussing potential  
5 expansion, improvements --

6 A. Uh-huh.

7 Q. -- I observed that you did not identify any  
8 that would increase parking capacity.

9 Was that anticipated or was it not included  
10 as a part of what was thought to be necessary?

11 A. No, it was -- it was discussed, and -- and --  
12 I'm trying to recall if it was specifically stated. I  
13 know it was discussed and mentioned in Q and A's about,  
14 you know, what are you -- what are you guys gonna do  
15 about the parking problem. Well, we would look to  
16 expand, to add parking where we could, and to -- you  
17 know, because we're going to have an issue. I mean,  
18 the island is only two-thirds or thereabouts built out.  
19 And Deep Point continues to reach capacity. And once  
20 again, I credit Limited for making changes and  
21 expanding some capacity and, you know, a couple of  
22 years ago and again this past year, to meet that  
23 expanding capacity. But again, there are going to be  
24 more homes built, and it's gonna have to be expanded

1 yet again. So we would look to do everything we could  
2 within the confines of the Deep Point property, and  
3 then look to expand further down the road, whether it's  
4 acquiring a lot across the street, or whether it's  
5 building a parking deck. Yeah. Scott Gardner's  
6 opinion is, one of those two things is going to have to  
7 happen down the road, and we need to be thinking about  
8 them.

9 Q. And there is a lot across the street, or land  
10 available across the street from the existing --

11 A. There is.

12 Q. -- Deep Point parking?

13 A. Uh-huh.

14 Q. And has that -- I understand that's been on  
15 the market in recent years?

16 A. It has.

17 Q. Do you know what the price was, at that time?

18 A. I do not.

19 Q. And as I recall, right now there's 1,200 --  
20 1,250 to 1,350 homes that have been built?

21 A. Yes.

22 Q. And approximately 1,900 that will,  
23 ultimately, one day be built on the island.

24 A. If not a few more, but in that neighborhood,



1 yes.

2 Q. Okay. Now, when that bond referendum went  
3 up, it was approved by what percentage of the voters?

4 A. 59/41, or 60/40, somewhere in that  
5 neighborhood.

6 Q. Okay. Thank you. I don't have any further  
7 questions.

8 A. Thank you.

9 COMMISSIONER BROWN-BLAND: Commissioner  
10 Duffley?

11 EXAMINATION BY COMMISSIONER DUFFLEY:

12 Q. I had one follow-up with respect to the lot  
13 across from Deep Point.

14 A. Uh-huh.

15 Q. Is that across Ferry Road?

16 A. Yes.

17 Q. Okay. Thank you.

18 EXAMINATION BY COMMISSIONER BROWN-BLAND:

19 Q. All right. Mr. Gardner, just a few  
20 questions.

21 So, to your knowledge, is Indigo still owned  
22 by Limited?

23 A. To my knowledge, yes.

24 Q. And your counsel asked you about a survey --

1 A. Uh-huh.

2 Q. -- that was done, and the survey covered both  
3 the barge and the parking area, correct?

4 A. Correct.

5 Q. You were asked some questions on cross about  
6 parking -- about your knowledge of villagers  
7 complaining or having issues about the parking  
8 situation and what would happen with the parking --

9 A. Uh-huh.

10 Q. -- if this sales transaction goes through.  
11 Did you hear, also, about the barge in that  
12 same context?

13 A. Yes, yes.

14 Q. Did you hear about the barge as often as you  
15 did the parking?

16 A. Probably not.

17 Q. Was the nature of the complaints about the  
18 barge different from the complaints --

19 A. No.

20 Q. -- as it regarded the parking?

21 A. No.

22 Q. Okay. And the -- you're familiar with the  
23 Fort Fisher Ferry?

24 A. Yes.

1 Q. Is there a reasonable possibility, in your  
2 mind, that that -- that the area around Fort Fisher and  
3 the parking area used for Fort Fisher would provide  
4 some suitable substitute for the parking --

5 A. I don't believe so.

6 Q. -- facilities as subject to this action?

7 A. I don't believe so, Commissioner. There's  
8 not much parking there. The parking -- I mean, the  
9 surface lot that is there is used to align cars and  
10 vehicles to get on the Southport Fort Fisher Ferry. So  
11 there's -- there's -- in my experience, it just doesn't  
12 seem to be much parking over there. And then again,  
13 it's the inconvenience of having to park there and to  
14 walk quite a distance to get to the Deep Point  
15 terminal.

16 Q. All right. And what would -- the time from  
17 arriving at the Fort Fisher area to getting on the  
18 island, itself, would be -- how much time would be  
19 added, or would it be time added?

20 A. I -- I take your question to be the  
21 difference between, let's say, the furthest parking  
22 space in the Deep Point parking lot, and then -- what's  
23 that -- what's that time, and then how long would it  
24 take to get from Fort Fisher to the Deep Point

1 terminal? I would -- I think it would probably add,  
2 you know, 7 to 10 to 12 minutes.

3 Q. All right. Thank you.

4 COMMISSIONER BROWN-BLAND: Is there --  
5 are there questions on Commissions questions.

6 MR. TRATHEN: Just a couple, please.

7 COMMISSIONER BROWN-BLAND: How about,  
8 how long will they take?

9 MR. TRATHEN: Three minutes, maybe.

10 COMMISSIONER BROWN-BLAND: Okay.

11 EXAMINATION BY MR. TRATHEN:

12 Q. Mr. Gardner, sitting here today, does the  
13 Village know what the value of the assets is?

14 A. We do not.

15 Q. And it's your testimony that the -- there are  
16 members of the LGC who say they don't as well?

17 A. That's what I understand from reading their  
18 documents.

19 Q. In you experience is a fair definition of the  
20 value of these kinds of assets what someone in the  
21 market is willing to pay for?

22 A. In an unregulated environment, yes.

23 Q. SharpVue has agreed to buy in for 56; do you  
24 have reason to question that's not the value if a

1 willing buyer is willing to buy them in an arm's-length  
2 transaction?

3 A. Once again, what SharpVue is willing to pay  
4 is immaterial to us. All we're concerned about is that  
5 when -- at the end of the day, that the rates are fair  
6 and just, and that the users of the system are getting  
7 adequate service for a reasonable price, and the  
8 investors are getting a reasonable rate of return for  
9 their investment.

10 MR. TRATHEN: Did I beat three minutes?

11 COMMISSIONER BROWN-BLAND: Are you done?

12 MR. TRATHEN: Yes, Ma'am.

13 COMMISSIONER BROWN-BLAND: All right.

14 Questions on the Commission's questions from --  
15 Mr. Higgins?

16 MR. HIGGINS: Yes, ma'am. Thank you.

17 EXAMINATION BY MR. HIGGINS:

18 Q. Mr. Gardner, question on Commissioner  
19 Clodfelter's question about the location of the Deep  
20 Point parking facility or the ferry terminal.

21 Does the location of Deep Point lend itself  
22 to use with -- could folks reasonable be expected to  
23 park there to visit Downtown Southport or some other  
24 point of interest?

1 A. Not to my knowledge.

2 Q. Is -- is the location of Deep Point  
3 relatively outside of Southport proper?

4 A. There's really -- to me, the closest  
5 commercial establishments are probably two miles away.  
6 Coming in on Moore Street, right before you get to Howe  
7 Street, it's probably, you know, close to two miles  
8 from the Deep Point parking lot.

9 Q. All right, sir. Thank you. Nothing further.

10 COMMISSIONER BROWN-BLAND: Mr. Trathen?

11 MR. TRATHEN: Nothing further.

12 COMMISSIONER BROWN-BLAND: All right.

13 I'll take motions.

14 MR. RISINGER: Commissioner, we'd like  
15 to move into -- make motion to move into evidence  
16 SGT-1 and -- Cross Exhibits 1 and 2, and 3.

17 COMMISSIONER BROWN-BLAND: All right.

18 That motion will be allowed without objection.

19 (STG Cross Examination Exhibits 1  
20 through 3 were admitted into evidence.)

21 MR. TRATHEN: Yes. Commissioner, we  
22 would -- to the extent necessary, would move into  
23 the record the exhibits attached to Mr. Gardner's  
24 direct testimony, as well as the -- I believe it

1 was three redirect exhibits for Mr. Gardner.

2 COMMISSIONER BROWN-BLAND: That motion  
3 is allowed, and we will receive STG-1, STG-2, and  
4 it's three subparts, as well as the three redirect  
5 exhibits --

6 MR. TRATHEN: Thank you.

7 COMMISSIONER BROWN-BLAND: -- will be  
8 received into evidence at this time.

9 (Exhibits STG-1, STG-2, STG-2.1,  
10 STG-2.2, and STG-2.3 and STG Redirect  
11 Exhibits 1 through 3 were admitted into  
12 evidence.)

13 COMMISSIONER BROWN-BLAND: Mr. Gardner,  
14 you may be -- you may step down. I take,  
15 Mr. Trathen, is he coming back on rebuttal? That's  
16 my information.

17 MR. TRATHEN: He is, yes.

18 COMMISSIONER BROWN-BLAND: All right.  
19 And, at this time, we're going to break for lunch,  
20 but I want to -- I was advised to let you know  
21 there's, sort of, scaffolding and construction over  
22 at the entrance door, so it may take longer to get  
23 back in, and we will come back on the record at  
24 1:30.

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(The hearing was adjourned at 12:08  
p.m. and set to reconvene at 1:30 p.m.  
on Tuesday, October 11, 2022.)

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**Oct 24 2022**



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C E R T I F I C A T E

I, KIM T. MITCHELL, DO HEREBY CERTIFY that the  
Proceedings in the above-captioned matter were taken before  
me, that I did report in stenographic shorthand the  
Proceedings set forth herein, and the foregoing pages are a  
true and correct transcription to the best of my ability.

Kim T. Mitchell

Kim T. Mitchell