

REDACTED

INFORMATION SHEET

PRESIDING: Commissioner Brown-Bland, Presiding; and Commissioners Clodfelter, Duffley, Hughes, and McKissick

PLACE: Dobbs Building, Raleigh, NC

DATE: Monday, October 10, 2022

TIME: 2:00 p.m. – 5:26 p.m.

DOCKET NOS.: A-41, Sub 21

COMPANY: Bald Head Island Transportation, Inc.

DESCRIPTION: Complaint Hearing. Village of Bald Head Island, Complainant, versus Bald Head Island Transportation, Inc., and Bald Head Island Limited, LLC, Respondents

VOLUME NUMBER: 1

APPEARANCES

(See attached)

WITNESSES

(See attached)

EXHIBITS

(See attached)

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REPORTED BY: Joann Bunze

DATE FILED: October 19, 2022

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PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Monday, October 10, 2022

TIME: 2:00 p.m. - 5:26 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 1

1 A P P E A R A N C E S:

2 VILLAGE OF BALD HEAD ISLAND:

3 Marcus Trathen, Esq.

4 Craig Schauer, Esq.

5 Amanda Hawkins, Esq.

6 Brooks Pierce McLendon Humphrey & Leonard, LLP

7 Wells Fargo Capitol Center

8 150 Fayetteville Street, Suite 1700

9 Raleigh, North Carolina 27601

10

11 Jo Anne Sanford, Esq.

12 Sanford Law Office, PLLC

13 721 North Bloodworth Street

14 Raleigh, North Carolina 27604

15

16 FOR BALD HEAD ISLAND TRANSPORTATION, INC. and

17 BALD HEAD ISLAND LIMITED, LLC:

18 M. Gray Styers, Jr., Esq.

19 Bradley M. Risinger, Esq.

20 Fox Rothschild LLP

21 434 Fayetteville Street, Suite 2800

22 Raleigh, North Carolina 27601

23

24

1 A P P E A R A N C E S Cont'd.:
2 FOR SHARPVUE CAPITAL, LLC:
3 David Ferrell, Esq.
4 Nexsen Pruet, PLLC
5 4141 Parklake Avenue, Suite 200
6 Raleigh, North Carolina 27612
7

8 FOR BALD HEAD ISLAND CLUB:
9 Daniel C. Higgins, Esq.
10 Burns, Day & Presnell, P.A.
11 Post Office Box 10867
12 Raleigh, North Carolina 27605
13

14 FOR BALD HEAD ISLAND ASSOCIATION:
15 Edward S. Finley, Jr., Esq.
16 Edward S. Finley, Jr., PLLC
17 2024 White Oak Road
18 Raleigh, North Carolina 27608
19
20
21
22
23
24

T A B L E O F C O N T E N T S
E X A M I N A T I O N S

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Oct 25 2022

**NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP**

DATE: 10-10-22 DOCKET NO.: A-41, Sub 21

ATTORNEY NAME and TITLE: Marcus W. Trathen

FIRM NAME: Brooks Pierce McLendon Humphrey & Leonard, LLP

ADDRESS: 1700 Wells Fargo Capitol Center, 150 Fayetteville St.

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Village of Bald Head Island

APPLICANT: ___ COMPLAINANT: X INTERVENOR: ___

PROTESTANT: ___ RESPONDENT: ___ DEFENDANT: ___

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Email: mtrathen@brookspierce.com

SIGNATURE: /s/ Marcus Trathen

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**NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP**

DATE: 10-10-22 DOCKET NO.: A-41, Sub 21

ATTORNEY NAME and TITLE: Craig D. Schauer

FIRM NAME: Brooks Pierce McLendon Humphrey & Leonard, LLP

ADDRESS: 1700 Wells Fargo Capitol Center, 150 Fayetteville St.

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Village of Bald Head Island

APPLICANT: ___ COMPLAINANT: INTERVENOR: ___

PROTESTANT: ___ RESPONDENT: ___ DEFENDANT: ___

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Email: cschauer@brookspierce.com

SIGNATURE: /s/ Craig D. Schauer

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**NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP**

DATE: 10-10-22 DOCKET NO.: A-41, Sub 21

ATTORNEY NAME and TITLE: Amanda Hawkins

FIRM NAME: Brooks Pierce McLendon Humphrey & Leonard, LLP

ADDRESS: 1700 Wells Fargo Capitol Center, 150 Fayetteville St.

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Village of Bald Head Island

APPLICANT: ___ COMPLAINANT: INTERVENOR: ___

PROTESTANT: ___ RESPONDENT: ___ DEFENDANT: ___

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Yes, I have signed the Confidentiality Agreement.

Email: ahawkins@brookspierce.com

SIGNATURE: Amanda S. Hawkins

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NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE: 10/10/22 DOCKET NO.: A-41, sub 21

ATTORNEY NAME and TITLE: Jo Anne Sanford

Sanford Law Office

FIRM NAME: Sanford Law Office

ADDRESS: 721 North Bloodworth Street

CITY: Raleigh STATE: NC ZIP CODE: 27604

APPEARANCE ON BEHALF OF: Village of Bald Head Island

APPLICANT: ___ COMPLAINANT: INTERVENOR: ___

PROTESTANT: ___ RESPONDENT: ___ DEFENDANT: ___

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Email: sanford@santfordlawoffice.com

SIGNATURE: /s/ Jo Anne Sanford

(Signature Required for distribution of **CONFIDENTIAL** information)

NORTH CAROLINA UTILITIES COMMISSION

APPEARANCE SLIP

DATE: 10/10/22 DOCKET NO.: A-41, SUB 21

ATTORNEY NAME and TITLE: JAVIER C. HIGGINS

FIRM NAME: BURNS DAY & PRESNELL, PA

ADDRESS: PO BOX 10867

CITY: RALEIGH STATE: NC ZIP CODE: 27608

APPEARANCE ON BEHALF OF: BARD HEAD ISLAND CLUB, INC.

APPLICANT: ___ COMPLAINANT: ___ INTERVENOR: [checked]

PROTESTANT: ___ RESPONDENT: ___ DEFENDANT: ___

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Email: dhiggins@bdppa.com

SIGNATURE: [Signature]

(Signature Required for distribution of CONFIDENTIAL information)

NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE: 10-10-22 DOCKET NO.: A-41, sub 21

ATTORNEY NAME and TITLE: M. Gray Styers, J.

FIRM NAME: Fox Rothschild

ADDRESS: 434 Fayetteville St., Ste. 2800

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Bald Head Island Limited; and
Bald Head Island Transportation

APPLICANT: ___ COMPLAINANT: ___ INTERVENOR: ___

PROTESTANT: ___ RESPONDENT: DEFENDANT: ___

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Email: gstyers@foxrothschild.com

SIGNATURE: M. Gray Styers, J.

(Signature Required for distribution of **CONFIDENTIAL** information)

NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE: 10/10/12 DOCKET NO.: _____

ATTORNEY NAME and TITLE: BRADLEY M. BRISINGER

FIRM NAME: Fox Rothschild LLP

ADDRESS: 434 Fayetteville St, Suite 2800

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Respondents Bald Head

Island Limited LLC & Bald Head Island Transp, Inc.

APPLICANT: ___ COMPLAINANT: ___ INTERVENOR: ___

PROTESTANT: ___ RESPONDENT: X DEFENDANT: ___

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Yes, I have signed the Confidentiality Agreement.

Email: brisinger@foxrothschild.com

SIGNATURE: [Signature]

(Signature Required for distribution of **CONFIDENTIAL** information)

NORTH CAROLINA UTILITIES COMMISSION
APPEARANCE SLIP

DATE: 10/10/2022 DOCKET NO.: A-41 sub 21

ATTORNEY NAME and TITLE: David Ferrell, Attorney
Attorney for Sharp Vvc Capital, LLC

FIRM NAME: Nexsen Procut PLLC

ADDRESS: 4141 Park Lake Ave, Suite 200

CITY: Raleigh STATE: NC ZIP CODE: 27612

APPEARANCE ON BEHALF OF: Respondent Sharp Vvc Capital, LLC

APPLICANT: ___ COMPLAINANT: ___ INTERVENOR: ___
PROTESTANT: ___ RESPONDENT: DEFENDANT: ___

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ONLY fill out this portion if you have signed an NDA to receive **CONFIDENTIAL** transcripts and/or exhibits:

Yes, I have signed the Confidentiality Agreement.

Email: dferrell@nexsenprocut.com

SIGNATURE: [Signature]

(Signature Required for distribution of **CONFIDENTIAL** information)



The Village of Bald Head Island

December 15, 2020

The Local Government Commission
 North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
 Chairman
 3200 Atlantic Avenue
 Raleigh, North Carolina 27604

Re: Bald Head Island Transportation Authority ("Authority")
 Application for Approval of Bald Head Island Transportation Authority
 Transportation System Revenue Bond Findings ("Application")

Dear Mr. Folwell:

The Village of Bald Head Island ("Village"), acting by and through its undersigned Council Members, requests that The Local Government Commission ("LGC"), for the sufficient and compelling reasons below described, defer its consideration of the Authority's Application from the January 5, 2021 meeting of the LGC until a later date when the Village's concerns have been addressed and the Application is sufficiently sound and ready for hearing.

The public, including the Village, which represents the interests of the public, including the residents of and property owners on Bald Head Island, was just provided information concerning the scope of diligence and proposed purchase terms, including price and revenue bond financing, for the potential acquisition by the Authority of the ferry and barge system and facilities operated by Bald Head Island Limited, LLC and Bald Head Island Transportation, LLC (collectively, "Limited"). The Application seeks approval of a bonds issuance of \$56,144,303.30, including \$47,750,000.00 for purchase of the transportation system. This information was first presented at the Authority's meeting on December 8, 2020, at which meeting the Authority Board of Trustees, without any public input or substantive discussion, passed a resolution approving the Asset Purchase Agreement and Operating and Transition Services Agreement.

The Agreement passed 7-4, over the objection of the four (4) Trustees who are residents and property owners of Bald Head Island. No resident of Bald Head Island voted in favor of the resolution.

***P.O. Box 3009 BALD HEAD ISLAND, NC 28461 (910) 457-9700 FAX (910) 457-6206
 E-MAIL: village@villagebhi.org WEBSITE <http://www.villagebhi.org>***

RESPONDENTS' PRELIMINARY INJUNCTION HEARING - EXHIBIT 1 - A-41, SUB 21

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman

Page 2

December 15, 2020

The Board of Trustees then passed a resolution providing for application to the LGC, over the objection of three (3) of the Trustees who are Bald Head Island residents and homeowners.¹ The undersigned Mayor and Mayor Pro Tempore, both of whom serve as *ex officio* voting members of the Authority Board of Trustees, opposed both votes.

The Village Council shares the concerns of the Bald Head Island residents, property owners and Trustees and asks that the LGC defer action on the Application until the concerns have been addressed and the LGC can be satisfied that the Application and its proposed findings are factually and financially sound. The LGC guidelines, "LGC Consideration of Unit's Debt Management and the Proposed Project" ("LGC Guidelines"), state: "Community support for the project is important, especially for non-voted debt. Lack of community support may be evidenced by comments at meetings of the governing body or public hearings, correspondence, newspaper articles, etc."

In explaining their "No" votes, the Trustees who are Bald Head Island residents and homeowners who use the ferry regularly commented, in substance, at the December 8 meeting:

Mayor Andy Sayre: He does not think that all transportation system costs are included in the debt and are not accounted for in due diligence.

Mayor Pro Tem Mike Brown: He is concerned about the ferry rate increases projected on July 1, 2021, including \$23.00 to \$27.00 for ferry tickets and barge rate of \$55.00 to \$60.00 per six (6) linear feet, plus projected future increases.

Dr. Rex Cowdry: The modeling assumptions were changed in the last week, further increasing fares, and we have not yet seen and evaluated that modeling. Under the earlier modeling, it would be hard to implement needed system improvements in the low growth scenario. The modeling assumes an interest rate, but we will not know whether that assumption is reasonable until we receive the indicative bond ratings, possibly before next week's meeting of the Authority, and can determine whether our debt is likely to be investment grade or non-investment grade. Without that information, he felt he could not yet make a feasibility and affordability determination. Dr. Cowdry also made a motion to postpone the vote on the LGC resolution one week until receipt of indicative bond ratings that was denied 4-7.

As suggested by these public comments, additional diligence is required, among other things, with respect to the following:

- Insufficient cash reserves analysis or schedule for work/replacement, lacking, for example, items like a functional reservation system and a realistic tram modernization;

¹ The fourth resident Trustee, having concluded that the matter was a *fait accompli*, elected not to oppose the resolution, but continues to express concerns to the bonds issuance, as proposed.

RESPONDENTS' PRELIMINARY INJUNCTION HEARING - EXHIBIT 1 - A-41, SUB 21

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman

Page 3

December 15, 2020

- Lack of Authority employee compensation study or projections;
- Projected net cash flow appears insufficient to implement needed operational requirements and improvements, including, without limitation:
 - Land acquisition and construction costs for necessary additional parking, including sufficiency of storm water management infrastructure;
 - Spoil disposal sites capacity, permitting, construction and acquisition costs (e.g., 10+/- additional acres near Deep Point) for disposal of dredged material from Bald Head Island and Deep Point Marina entrance channels and basins;
 - Analysis of baggage handling and cargo conveyor equipment and systems; and
 - Costs of potential increase in Coast Guard vessel and passenger security requirements.
- Indicative bond ratings by financial rating agencies have not yet been received.
- Lack of land planning report concerning passenger and vehicle ingress and egress at projected increased passenger levels.
- It appears that substantive changes are still being made to the financial projections, proposed rates and proposed Agreements without the Trustees having an opportunity to review and consider same.

The LGC Guidelines state: “Financial projections should be presented that demonstrate feasibility and are clearly reasonable in comparison to prior financial performance. Appraisals, feasibility studies and comfort letters (if required) must be prepared by parties that are both independent to the transaction and possessing adequate expertise.” Many of the financial and performance projections are coming from Limited, as Seller, not from an independent study or industry expert. We are concerned that the buyer has relied too much on the seller for information without seeking neutral appraisals and assessments on many items. This could lead to overpayment for a system that needs improvements. The purchase price appears to assume that improvements have been made or are included, which are not.

Further, the Village requests that the public, including residents, non-resident property owners, and other system users at Bald Head Island, which is accessible only by the transportation system, be provided an opportunity for comment and input. The Village notes that no Bald Head Island resident is included on the negotiating subcommittee of the Authority’s Board of Trustees which negotiated the transaction with Limited. The Village further notes that the proposed financing would impose a \$4.00 per ferry ticket increase in six (6) months, effective July 1, 2021, plus future increases. Barge rates

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RESPONDENTS' PRELIMINARY INJUNCTION HEARING - EXHIBIT 1 - A-41, SUB 21

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman

Page 4

December 15, 2020

would increase \$5.00 per six (6) feet from \$50.00 to \$55.00. The LGC is not merely approving a bond issuance in this instance, its actions would immediately affect thousands of individuals and businesses who depend upon the transportation system as their sole means of access to Bald Head Island and who have been provided no insight or input into the transaction.

This transaction has been under consideration since 2017. Additional time to address the diligence issues of the Village and the users of the transportation system and to ensure that the project has public support for the non-voted debt and that the Application is factual and financially sound would not cause undue hardship to the Authority or to Bald Head Island Limited. Rather, the public interest compels that such occur.

Please let us know if any additional information or action is necessary. Thank you for your consideration.

Respectfully,

Village of Bald Head Island Council

/s/ J. Andrew Sayre
Mayor

/s/ Michael Brown
Mayor Pro Tempore

/s/ Scott Gardner
Councilor

/s/ Emily Hill
Councilor

/s/ Peter Quinn
Councilor

pc: K. Christopher McCall, Village Manager
Susan Rabon, Chair, Bald Head Island Transportation Authority
Chad Paul, CEO, Bald Head Island Limited, LLC

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Oct 25 2022



The Village of Bald Head Island

January 13, 2022

VIA Email and U.S. Mail

Bald Head Island Transportation, Inc.
Attention: Mr. Charles A. Paul, III, President
 Post Office Box 3069
 Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Bald Head Island Limited LLC
Attention: Mr. Charles A. Paul, III, Manager
 Post Office Box 3069
 Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Re: North Carolina Utilities Commission Regulation of Parking and Barge and Right of First Refusal Agreement dated August 21, 1999

Dear Chad:

As the Village of Bald Head Island ("Village") has previously made clear, the Bald Head Island Transportation System ("Transportation System") assets owned by Bald Head Island Transportation, Inc. ("Transportation") and Bald Head Island Limited, LLC ("Limited") are of critical importance to the residents, property owners, and businesses of, and visitors to, Bald Head Island. The Transportation System would be best owned and operated by a public entity subject to public oversight. The Village, with a Council elected by the regular users of the Transportation System, a full-time professional staff, and excellent financial standing that would allow it to acquire the System on favorable financing terms and make necessary improvements to the Transportation System operations, is the entity best suited to fill those roles.

However, we are informed that, in addition to your negotiation with the Bald Head Island Transportation Authority, you are exploring sale of the Transportation System, or portions thereof, to a private equity firm or other business or investor. The Mitchell Family, as the Island's developer, has been a good steward of the Island. We are concerned, however, that a private purchaser would not have similar ties to the Island and may seek unreasonable profits from the Transportation System's monopoly or otherwise not operate with due consideration and regard for the needs of the Island's residents, property owners, businesses and visitors. Given our strong interest in the operation of this

RESPONDENTS' PRELIMINARY INJUNCTION HEARING - EXHIBIT 2 - A-41, SUB 21

Bald Head Island Transportation, Inc.
Attention: Mr. Charles A. Paul, III, President
Bald Head Island Limited LLC
Attention: Mr. Charles A. Paul, III, Manager
Page 2
January 13, 2022

utility for the benefit of the public, we believe it is important for us to articulate these concerns and, if necessary, to take action to protect the interests of the Village, including its residents, property owners, businesses and visitors.

Among other things, the Village is preparing to petition the North Carolina Utilities Commission ("Commission") to formally assert regulatory jurisdiction over the parking lots and barge used in connection with the Transportation System. It is our position that the regulatory authority of the Commission extends to all of the facilities of the Transportation System, specifically including the parking facilities and barge. As you are aware, the Village has articulated this view in prior regulatory filings with the Commission. To the extent that there may be disagreement on this point, the Village is prepared to seek the Commission's formal determination.

Relatedly, we remind Limited and Transportation of the requirement to provide notice to the Public Staff and the Commission of any sale or lease of the Deep Point parking facilities or any part of those facilities not less than ninety (90) days prior to the scheduled closing date for the sale or lease. See Order Granting Partial Rate Increase and Requiring Notice, *Application of Bald Head Island Transportation, Inc. for a General Increase in its Rates and Charges Applicable to Ferry Service Between Southport, North Carolina and Bald Head Island, North Carolina*, N.C.U.C. Docket No. A-41, Sub 7 (Dec. 17, 2010), at 6. As a party to that proceeding, the Village requests that a copy of any such notice be provided to it as well.

More generally, the Village also possesses contractual rights with respect to the Transportation System under the Right of First Refusal Agreement ("ROFR") between the Village, Transportation, and Limited dated August 21, 2019 and recorded at Book 1329, Page 932 of the Brunswick County Registry, Exhibit A hereto.

Paragraph 1 of the ROFR provides that the Village shall have a right of first refusal with respect to any proposed sale by Transportation of the Transportation System, as defined in the ROFR. Pursuant to Paragraph 4 of the ROFR, at such time as Transportation receives a formal offer to purchase the Transportation System or any portion thereof that is acceptable to Transportation, Transportation must promptly notify the Village of (i) the identity of the assets proposed to be sold, (ii) the identity of the potential buyer, (iii) the proposed purchase price, and (iv) the proposed closing date.

Paragraph 4 further provides that after receipt of such notice, the Village will have sixty (60) days to determine whether to itself purchase the Transportation System, or whichever portion of the system is proposed to be sold. The same paragraph also provides that the Village may exercise its purchase right subject to its ability to obtain financing for the purchase, and approval of such financing from the Local Government Commission ("LGC"). Pursuant to Paragraph 2 of the ROFR, the terms of such sale will be identical to those in the formal proposed offer received by Transportation.

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Jan 19 2022
Oct 25 2022

RESPONDENTS' PRELIMINARY INJUNCTION HEARING - EXHIBIT 2 - A-41, SUB 21

Bald Head Island Transportation, Inc.
Attention: Mr. Charles A. Paul, III, President
Bald Head Island Limited LLC
Attention: Mr. Charles A. Paul, III, Manager
Page 3
January 13, 2022

To be clear, the Village expressly reserves and does not waive its rights under the ROFR. Accordingly, the Village expects that before Transportation and Limited formally accept any offer to purchase the Transportation System, or any of its constituent components, Transportation and Limited will notify the Village pursuant to the terms of the ROFR and will wait the requisite sixty (60) days for the Village to consider and provide notice of whether it will exercise its right to purchase under the ROFR.

Please do not hesitate to contact me should any questions arise or if you would like to discuss these matters.

Very truly yours,



Peter Quinn
Mayor, Village of Bald Head Island

pc: North Carolina Utilities Commission
Attn: Charlotte A. Mitchell, Chair

Local Government Commission
Attn: Dale R. Folwell, Chair

Bald Head Island Transportation Authority
Attn: Susan Rabon, Chair

Bald Head Island Club
Attn: Slaughter Fitz-Hugh, President

Bald Head Association
Attn: Alan Briggs, President

(all via email)

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Oct 25 2022

Brunswick County--Register of Deeds
Robert J. Robinson
Inst #24941 Book 1329 Page 932
09/10/1999 03:06pm Rec# 24275

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

RIGHT OF FIRST REFUSAL

THIS AGREEMENT, made and entered into this the 21 day of August, 1999, by and between **BALD HEAD ISLAND TRANSPORTATION, INC.**, hereinafter referred to as "TRANSPORTATION"; the **VILLAGE OF BALD HEAD ISLAND**, hereinafter referred to as "VILLAGE", and **BALD HEAD ISLAND LIMITED**, hereinafter referred to as "LIMITED":

WITNESSETH

THAT WHEREAS, the VILLAGE was granted certain rights with regard to the Bald Head Island transportation system, hereinafter defined; and

WHEREAS, substantial questions exist with regard to rights and obligations of the parties hereto with regard to such transportation system, and

WHEREAS, rather than engaging in lengthy and costly litigation regarding those issues, the parties hereto desire to resolve all outstanding questions between them by the execution of this agreement;

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) paid to TRANSPORTATION by the VILLAGE, the receipt and sufficiency of which is hereby acknowledged, and further in consideration of the covenants, stipulations and agreements herein contained, the parties hereto do agree, covenant and stipulate as follows:

1. That VILLAGE be and hereby is granted a Right of First Refusal, pursuant to the terms and conditions of this agreement, to purchase the Bald Head Island Transportation System or any portion thereof.

"The Bald Head Island Transportation System" (hereinafter referred to as "Transportation System") shall be defined as those assets, tangible and intangible, directly and integrally used in the transportation of persons and property to and from Bald Head Island and, further, in the transportation of such goods or persons while on Bald Head Island, and any and all substitutions thereof and any and all reasonably related accessories thereto, including but not limited to ferries, boats, tugboats, barges, trams, motor vehicles to pull trams, and any and all other personal property, titled or untitled motor vehicles and all accessories thereto, and any real property owned or leased comprising docking or parking facilities, administrative facilities, or facilities designed to facilitate the transfer of individuals to and from the ferry and ground transportation, including a means of access from such real estate to and from a public right-of-way, including any and all improvements to such real estate. Specifically, this Right of First Refusal shall include those parcels of real estate described as follows:

REC# Bill Fairley
TOTAL 10.00 REV _____ CH# _____
REC# 02 CK AMT 39.45 CH# 4824
CASH _____ REF _____ BY CS

(a) Tracts 2, 3 and 4 (consisting of 1.03 acres, 0.2 acres, and 1.19 acres, respectively) as shown on a map entitled "Plat of Survey for Bald Head Island Limited" by Brunswick Surveying, Inc., dated 8/25/99, and recorded in Map Cabinet 21, Instrument 500 of the Brunswick County Registry, a copy of which is attached hereto.

(b) That tract or parcel of land lying and being in or near the City of Southport, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows: BEING approximately 76.39 acres, more or less, as described on a plat of survey made by Thomas W. Morgan, R.L.S., of Brunswick Surveying, Inc. and recorded in Map Cabinet 20 at Page 414 of the Brunswick County Registry, to which plat reference is made and which is incorporated herein by reference for greater certainty of description.

This Right of First Refusal shall further include, but not be limited to, the right to assignment by LIMITED of the non-exclusive easement retained by LIMITED for the use of and for ingress, egress and regress over, across and through those properties described by deed recorded in Book 778 at Page 61 of the Brunswick County Registry, and the riparian rights appurtenant thereto, for all purposes deemed appropriate by LIMITED, its successors and assigns, including without limitation the operation of ferries, barges, boats and trains.

This Right of First Refusal shall not apply to sale, conveyance or other transfer of any assets comprising the Transportation System where such assets are sold by TRANSPORTATION in the usual course of business due to obsolescence or other reasons relating to the continued usefulness of such asset to the system. Further, this Right of First Refusal shall not be applicable to a transfer of the system or any assets therein so long as such sale shall be a transfer to any entity owned as a corporation or other entity owned by LIMITED, George Mitchell or any of George Mitchell's children or immediate family so long as such asset remains dedicated to use as an operating portion of the system.

2. The purchase price to be paid by VILLAGE for the Transportation System and the terms of such purchase shall be equal to the price of the assets comprising the Transportation System and the terms of purchase as shall be contained in any *bona fide* offer from a third party dealing at arm's length with TRANSPORTATION or any successor in title to TRANSPORTATION.

3. TRANSPORTATION agrees that it shall notify VILLAGE at such time as TRANSPORTATION begins to contemplate the sale of the Transportation System or any portion thereof, other than such sales as shall be exempt from this Right of First Refusal pursuant to paragraph 1 hereof.

4. Upon receipt by TRANSPORTATION of any acceptable offer to purchase the Transportation System or any portion thereof, TRANSPORTATION shall notify VILLAGE of the existence of an offer acceptable to it for the sale of such asset or assets. Notice shall be delivered in

writing to the Village Manager and shall include notice to the VILLAGE of the existence of an offer to purchase the Transportation System or a portion thereof and shall identify the following.

- (1) The asset or assets which are the subject of such offer;
- (2) The identity of the individual or entity making such offer;
- (3) The proposed purchase price and terms including any conditions on sale; and
- (4) The proposed closing date.

Upon receipt of notice from TRANSPORTATION as to the existence of an offer acceptable to TRANSPORTATION, the VILLAGE shall have a period of sixty (60) days from the date of receipt of such notice to determine whether to match such offer. The VILLAGE shall inform TRANSPORTATION, in writing, of its decision within sixty (60) days of the receipt of notice. In the event that VILLAGE shall fail to respond in writing to TRANSPORTATION within sixty (60) days of the receipt of notice, such failure shall constitute a waiver of the Right of First Refusal herein contained by the VILLAGE. If the VILLAGE elects to exercise its option to match the offer, the VILLAGE shall close upon the purchase of such assets within a period of time equal to one hundred eighty (180) days from the date that VILLAGE exercises its Right of First Refusal or the closing date as set forth in the proposed offer, whichever date shall be later.

The VILLAGE may exercise its Right of First Refusal subject to approval by the Local Government Commission of any financing required to consummate the purchase of the Transportation System and further subject to any other governmental approvals that would be necessary for the VILLAGE to purchase and operate the Transportation System and to finance the purchase price thereof.

5. With regard to the existence of real estate which shall be the subject of this Right of First Refusal, the parties agree to record the original of this Right of First Refusal or a memorandum thereof, together with a description of such real estate, in the office of the Register of Deeds for Brunswick County. In the event that TRANSPORTATION desires to sell any real estate subject hereto, the VILLAGE shall release such real estate from this Right of First Refusal upon (1) designation by TRANSPORTATION of a suitable substitute therefor and (2) upon determination by the VILLAGE that the proposed substitute real estate is substantially equivalent or superior to the released property for the purposes for which the released property has been used in the Transportation System. The parties shall then execute such documents as shall release the original property from this Right of First Refusal and subject the substituted property thereto.

6. The terms and conditions of this agreement supersede any and all other offers, contracts or rights of first refusal of the VILLAGE to purchase any or all of the assets which are the subject of this agreement heretofore existing between the VILLAGE and Bald Head Island Limited. This instrument constitutes the entire agreement between the parties and shall be governed by and interpreted under the laws of the State of North Carolina. The parties stipulate that the venue of any litigation arising herefrom shall be in the Superior Court of Brunswick County.

7. This agreement shall become effective only upon approval by the North Carolina Public Utilities Commission.

8. Any notice required to be given herein shall be sent by certified mail, return receipt requested, to the parties as follows:

TRANSPORTATION: Bald Head Island Transportation, Inc.
P. O. Box 3009
Bald Head Island, NC 28461

ATTENTION: Woody Fulton

VILLAGE: Village of Bald Head Island
P. O. Box 3009
Bald Head Island, NC 28461

ATTENTION: Manager

LIMITED: Bald Head Island Limited
P. O. Box 3009
Bald Head Island, NC 28461

ATTENTION: M. Kent Mitchell

Inst # 21941 Book 1329 Page: 935

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in triplicate originals as of the date first above written.

(CORPORATE SEAL)

BALD HEAD ISLAND TRANSPORTATION, INC

BY: [Signature]
Vice President

ATTEST:

[Signature]
Assistant Secretary



ATTEST: [Signature]
Clerk

VILLAGE OF BALD HEAD ISLAND

BY: [Signature]
Mayor

BALD HEAD ISLAND LIMITED (SEAL)

BY: [Signature] (SEAL)
Attorney-in-Fact

Inst # 24941 Book 1329Page: 937

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Lorraine Thompson, a Notary Public, do hereby certify that Kenneth M. Kirkman, Vice President personally appeared before me this 23rd day of August, 1999 and acknowledged the due execution of the foregoing instrument.



Lorraine Thompson
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Josann A Campanello a Notary Public, do hereby certify that Kenneth M. Kirkman personally appeared before me this 21 day of August, 1999 and acknowledged the due execution of the foregoing instrument.



Josann A Campanello
Notary Public

STATE OF NORTH CAROLINA
County of Brunswick

I, Lorraine Thompson, a Notary Public for said County and State, do hereby certify that Kenneth M. Kirkman attorney in fact for Bald Head Island Limited personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said Bald Head Island Limited, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Brunswick, State of North Carolina, in Deed Book 1143 at Page 916, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said Kenneth M. Kirkman acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Bald Head Island Limited.

WITNESS my hand and official seal, this the 23rd day of August, 1999



Lorraine Thompson
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of LORRAINE THOMPSON JOSANN A CAMPANELLO

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 10th Day of September, 1999
in the Book and Page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON Register of Deeds



The Village of Bald Head Island

March 22, 2021

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman
3200 Atlantic Avenue
Raleigh, North Carolina 27604

Re: Bald Head Island Transportation Authority ("Authority")
Application for Approval of Bald Head Island Transportation Authority
Transportation System Revenue Bond Findings ("Application")

Dear Mr. Folwell:

The Village of Bald Head Island ("Village") appreciates the Authority's work, its conducting a public informational meeting concerning the proposed purchase transaction on February 17, 2021 and its making diligence and transaction documents publicly available. However, after much consideration and public input, the Village Council is unanimously committed to pursuing the Village's acquisition of the Transportation System, as defined in the proposed transaction, to include all ferry, barge and parking operations. The Village will work closely with the Seller, the Authority and The Local Government Commission to close the transaction quickly.

Factors compelling the Village's conclusion include:

- The Transportation System exists to serve the property owners, visitors, non-profits and businesses that compose the unique community of Bald Head Island;
- Village ownership is expected to achieve significant economic advantage for the Transportation System, BHI homeowners, and users of the System;
- Lower debt level provides the Village the flexibility to prioritize and implement rate/fee changes and capital improvements in order to meet public needs;
- Council has fiduciary responsibility to pursue the economic benefits and public oversight with purchasing the System; and
- Council acts as stewards of the Island and is in the best position to develop short-term and long-term initiatives for the successful operation of the Transportation System.

RESPONDENTS' PRELIMINARY INJUNCTION HEARING - EXHIBIT 3 - A-41, SUB 21

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman

Page 2

March 22, 2021

The Village has a history of successfully acquiring and operating assets, including its acquisition of the Island's water and sewer plant from Bald Head Island Limited, LLC and Bald Head Island Utilities, Inc. The Village Council is prepared to negotiate, finance and close the acquisition of the Transportation System in the public interest.

Thank you for your consideration.

Respectfully,

Village of Bald Head Island Council

/s/ J. Andrew Sayre

Mayor

/s/ Michael Brown

Mayor Pro Tempore

/s/ Scott Gardner

Councilor

/s/ Emily Hill

Councilor

/s/ Peter Quinn

Councilor

pc: Sharon Edmundson, Deputy Treasurer
Tim Romocki, Director, Debt Management
Anna Yount, Executive Assistant to the Treasurer
K. Christopher McCall, Village Manager
Susan Rabon, Chair, Bald Head Island Transportation Authority
Chad Paul, CEO, Bald Head Island Limited, LLC

OFFICIAL COPY

Oct 25 2022

EXHIBIT KWO-3 TGDWVCN"
Intentionally Omitted
CONFIDENTIAL MATERIALS

EXHIBIT KWO-2 TGDWVCN"
Intentionally Omitted
CONFIDENTIAL MATERIALS