

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. W-1125, Sub 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of)	
Greater Kinnakeet Shores Home)	
Owners Inc. c/o Pat Weston,)	
P. O. Box 853, Avon, N.C. 27915)	
)	
)	
)	
Complainant)	
v.)	
)	
)	
Outer Banks/Kinnakeet)	
Associates, LLC.)	
)	
Respondent)	

Response of Complainant
to Respondent's Motion
to Strike

NOW COMES Kinnakeet Shores Home Owners Inc. ("Complainant" or "HOA"), pursuant to NCUC Rule R1-19, and responds to the Motion to Strike submitted January 27, 2022 on behalf of Respondent, Outer Banks/Kinnakeet Associates LLC.

Complainant respectfully requests that the Commission deny the Respondent's Motion to Strike. Complainant reasserts that it is in immediate need of the Commission's assistance in addressing the deficiencies outlined in its Complaint. Complainant repeats its understanding that it is the Public Staff's policy to refrain from active participation and dockets such as this unless at the Commission's request.

On December 13, 2021 Complainant filed this action seeking the following relief:

1. That the Commission as expeditiously as possible require a comprehensive due diligence investigation into OBKA's suitability to own and operate the wastewater treatment and collection system in compliance with the public interest.
2. That the Commission, in coordination with the Public Staff and the Department of Environmental Quality, require OBKA to take immediate steps to rectify the deficiencies causing the imposition of the moratorium.
3. That the Commission, if after investigation and due diligence, should determine that OBKA is incapable financially or operationally or otherwise to continue to operate the system, appoint an emergency operator.
4. That the Commission, to the extent that OBKA is unwilling or unable to operate the system in accordance with the public convenience and necessity, revoke OBKA's bond.
5. That the Commission investigate the possibility of identifying a potential new owner of the Kinnakeet Shores wastewater treatment system that is willing to acquire and operate the system on terms that would not result in unreasonable rates to ratepayers.
6. That to the extent the Commission determines that OBKA should continue to own and operate the system, that the Commission require a substantial increase in OBKA's bond to be forfeited and revoked in the event OBKA's pattern of inadequate service is repeated in the future.
7. For such other relief as the Commission deems appropriate.

Complainant listed 19 paragraphs reciting the history of Respondent's actions in which it failed to comply with its public utility responsibilities under Chapter 62 of the General Statutes,

its Certificate of Public Convenience and Necessity and its permits issued by the Division of Water Quality.

Respondent sought to delay responding to the allegations in the Complaint two times, listing insufficient time to investigate the allegations in the Complaint. Most of the allegations, particularly those Respondent now moves to strike, are part of the public record and were easily ascertained. Upon receiving the order from the Commission denying the second motion for extension of time to file answer, Respondent filed a bare bones answer, basically admitting very little and denying most of the allegations on the basis of lack of information to admit or deny.

Attached to Respondent's answer is a Verification of Answer setting forth a notary certificate by Vaughn Gaskins, a Notary Public in the State of Florida, ostensibly verifying the signature of Ray E. Hollowell, asserting that Mr. Hollowell "verifies and attests to the allegations set forth in the answer." Astonishingly, there is no signature of Mr. Hollowell on the verification.

Respondent goes so far as to allege that Respondent has no obligation to interact with the Complainant Homeowners Association, as Respondent's obligations are to the consumers, not with the entity charged with managing the common areas and enforcing the applicable restrictive covenants. Respondent alleges that Complainant, whose constituents are Respondent's consumers, lacks standing and that the Commission lacks subject matter jurisdiction to adjudicate Complainant's claims.

At the same time Respondent filed its answer it also filed a motion to strike 9 of the 19 paragraphs in the complaint. Respondent's bare bones motion states the following boiler plate recitations without specific support as justification for its motion: "The pleadings are not relevant to and immaterial to the determination of the issue raised in this action, and that said pleadings are improperly interposed solely for the purpose of disparaging and prejudicing the Respondent in its ability to have a fair hearing before the Commission."

Following are the allegations in their entirety Respondent seeks to strike:

Unfortunately, the latest events leading to the imposition of the moratorium are not isolated instances of difficulties OBKA has experienced. Kinnakeet Shores was initially developed by Kinnakeet Shores General Partnership, which, upon information and belief, was owned primarily by Ray Hollowell, Jr. Kinnakeet Shores General Partnership began charging usage rates and connection fees on or before 1999 without first obtaining a certificate of public convenience and necessity from the Commission, without posting a bond and without Commission approval of the rates charged. OBKA only obtained a CPCN after the Public Staff filed a petition against Kinnakeet Shores General Partnership for an order to show cause why it should not be declared a public utility.

In the Commission's order granting the CPCN to OBKA the Company was required to file documentation for support of a contiguous extension for Phase 6. Only after a letter from the Commission dated May 9, 2001 stating that the required filings had not been made, did OBKA comply.

OBKA has been subject to complaints from property owners raising disputes over promises by OBKA to install or finance alternative wastewater treatment equipment.

In Docket No. W-1125, Sub 4 Complaints, Stefan Plewinski and Layne Russell, filed a complaint against OBKA seeking a refund in the amount of \$11,900 incurred as result of OBKA's failure to install pump and septic tanks at lot 15, phase 22 in Kinnakeet Shores. In the Commission's order of July 7, 2021 in Docket No. W-1125, Sub 4, the Commission found that OBKA had received proceeds to recover the costs of extending the sewage collection system to serve lot 15 phase 22 but OBKA failed to install the pump and septic tanks on lot 15 necessary to connect lot 15 to OBKA's sewer collection system. The Commission found that due to OBKA's continued failure to install pump and septic tanks on the lot, complainants hired their own builder to install the pump and collection tanks. In Docket No. W-1125, Sub 4 OBKA acknowledged its obligation to refund to complainants their expenses to install the pump and septic tank facilities but asserted financial distress as an explanation for failure to refund monies to complainants. The Commission ordered OBKA to no later than 60 days from the date of

its July 7, 2021 order refund complainants' expenses incurred to install the pump and septic tanks.

On July 19, 2012 complainants in Docket No. W-1125, Sub 4 filed a request with the Commission seeking assistance to collect the funds owed by OBKA to complainants. In its September 4, 2012 response OBKA asserted that due to "the bursting of the housing bubble and the economic crisis of the past few years[,] ... Respondent has seen the value of its assets decrease significantly and to the point that the Respondent is virtually with no income..." In its response OBKA stated that "there are significant encumbrances and or liens against the assets of the Respondent and that the Respondent is not willfully refusing to satisfy the Commission's award to the Complainants." In its November 2, 2012 order in Docket No. W-1125, Sub 4 the Commission stated, "The Commission is troubled by Respondent's assertions that there are significant encumbrances and/or liens against the assets of the Respondent, since Respondent has neither sought nor received Commission approval prior to encumbering utility assets. Moreover, Respondent's filing asserts that Complainants have attempted twice to have Respondent's assets sold via an execution sale." The Commission further stated, "Given this information, the Commission is concerned about Respondent's ability to provide continuing service to its customers of the Kinnakeet Shores subdivision. The Commission therefore finds that good cause exists to request the Public Staff-North Carolina Utilities Commission (Public Staff) to investigate the status of the wastewater treatment facility serving the Kinnakeet Shores Subdivision so that the Commission might obtain a clearer understanding of the financial and legal status of the utility and the assets owned by the utility."

From its review of DWQ records the Public Staff reported that OBKA was cited for a violation in 2007 for a spill that reached the water retention ditch. OBKA was also cited for violations in 2007 and 2008 and reached a settlement agreement with DWQ in both cases. Two notices of violations were issued in 2011 and one in 2012. A notice of violation was issued December 7, 2011 regarding a fats, oils and grease program. A notice of violation dated May 17, 2012 regarding a sewer blockage with periodic

sanitary sewer overflows was noted. The Public Staff reported that all DWQ notices of violations had been resolved except the notice of violation dated June 27, 2011 for failure to comply with the permit requirement of an operable standby generator.

In 2008 and 2009, based on advice from the accountant at the time, mowing for the entire development was charged to utility operations.

The Public Staff concluded that OBKA was not in the position to pay the \$11,900 to complainants and the docket.

Public Staff determined that OBKA had executed a deed of trust with First South Bank that had imposed a lien and the maximum amount of \$3,025,500. These loans and liens had been obtained without Commission approval.

These allegations provide facts describing the extent to which Respondent has failed to comply with its public service responsibilities. Contrary to Respondent's conclusory allegations, the pleadings are relevant and material to the determinations of the issues raised in the docket. Without any substantive argumentation as to why the allegations are immaterial or irrelevant, Complainant is at a loss to guess the support for such arguments and is without any justification against which to respond. The allegations in the Complaint are factual, recitations from the public record, and to the extent that these facts tend to disparage or prejudice Respondent, it is not the allegations that do so but the facts set forth therein that describe Respondent's actions or omissions.

All of the allegations subject to the motion to strike address Respondent's actions or omissions existing over the history of Respondent's ownership and operation of the sewage collection and treatment facilities providing service in its service territory in Currituck County. Respondent's motion to strike should be summarily denied. The fact that Respondent again displays a cavalier attitude toward the Commission's jurisdiction and the wellbeing of the consumers in its service territory underscores the need requested by Complainant for the Commission to take expeditious action in addressing Complaint's requests.

Respectfully submitted this 3 day of February 2022

Edward S. Finley, Jr. PLLC

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.

Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response to Motion to Strike was duly served upon parties of record either by depositing same in a depository of the United States Postal Service, first class postage prepaid, or by electronic delivery.

This the 3rd day of February 2022

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