

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,)	REPLY TO RESPONSE
North Carolina 27915,)	OF COMPLAINANT
Complainant,)	TO RESPONDENT'S MOTION
v.)	TO STRIKE
)	
Outer Banks/Kinnakeet Associates, LLC,)	
Respondent.)	

NOW COMES the Respondent, Outer Banks/Kinnakeet Associates, LLC in reply to the Response of Complainant to Respondent's Motion to Strike (Response) as follows:

1. Complainant erroneously cites Rule R1-19 of the Rules of the North Carolina Utilities Commission as the statutory authority for its Response when in fact, Rule R1-19 provides the statutory authority for a motion to intervene and Complainant's Response is no such motion.
2. Complainant repeats in its Response the Prayer for Relief previously recited in its Complaint which is unnecessarily redundant but does demonstrate that the relief prayed for by the Complainant relates to prospective investigations and the current condition of the waste water plant and the Respondent.

3. Complainant also unnecessarily repeats the material Respondent deems objectionable and has moved to strike, by again putting it before the Commission in a series of unnumbered paragraphs, despite the fact that Respondent clearly identified for the Commission the specific paragraphs or parts thereof in the Complaint it is moving to strike by paragraph number.

4. Pursuant to Rule 401 of the North Carolina Rules of Evidence, "[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

5. Pursuant to Rule 402 of the North Carolina Rules of Evidence, "[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of North Carolina, by Act of Congress, by Act of the General Assembly or by these rules. Evidence which is not relevant is not admissible."

6. The allegations Respondent has moved to strike from Complainant's Complaint concern events alleged to have occurred prior to 2013 despite the fact that Complainant has alleged that Respondent was found to be providing adequate waste water treatment in 2013 and therefore, allegations regarding the Respondent prior to 2013 do not tend to make more or less likely any issue of consequence to the issues raised and relief sought by Complainant's in 2021.

7. Whereas said historical allegations are not relevant, they are inadmissible at a hearing in this matter.

8. Pursuant to Rule 12 of the North Carolina Rules of Civil Procedure, “[u]pon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon him or upon the judge's own initiative at any time, the judge may order stricken from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter.

9. Rule R1-7 (a)(2) of the Rules of the North Carolina Utilities Commission specifically provides, in relevant part, that “[m]otions may be addressed to the Commission: . . . (2) To strike irrelevant or immaterial allegations in pleadings.

10. Whereas Complainant’s Complaint includes irrelevant and immaterial allegations and the North Carolina Rules of Civil Procedure and the Rules of the North Carolina Utilities Commission provide for the filing of a motion to strike irrelevant and immaterial matters, it is not “cavalier” of the Respondent to make a motion to strike such matters from the complaint herein.

11. Complainant in its Response continues to allege irrelevant matters by:

A. referring to Respondent motions to extend the time to answer which are absolutely immaterial to the merits of the Motion to Strike;

B. alleging that “[a]stonishly” the verification attached to Respondent’s Answer is unsigned which has no relevance to Respondent’s motion to strike, and where said verification bears a notary’s seal obviously showing that the signatures and other handwritings on the verification were not electronically reproduced; a color-corrected copy is attached hereto as **Exhibit A**; and

C. by referring to Respondent's contention that Complainant lacks the standing to assert the claims in its complaint which again, is immaterial to the merits of Respondent's motion to strike.

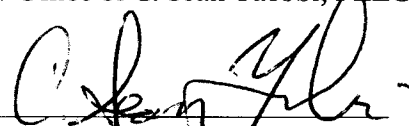
12. While Respondent did not cite the specific rules of evidence and civil procedure applicable to its motion to strike, Respondent clearly pleaded that the irrelevance and immateriality of the historical allegations in the Complaint it is moving to strike based on the contemporary issues raised by the Complaint and did not merely recite boilerplate justifications for granting its motion.

WHEREFORE, Respondent respectfully prays the Commission to grant its motion to strike from the Complaint the paragraphs and portion thereof identified therein as irrelevant and immaterial to the determinations of the issues raised and relief sought by Complainant herein.

This the 4th day of February, 2022

Law Office of C. Sean Yacobi, PLLC

By



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document entitled REPLY TO RESPONSE OF COMPLAINANT TO RESPONDENT'S MOTION TO STRIKE has been served on the parties to this action by:

- () Depositing a copy hereof, postage prepaid, in the United States Mail, properly addressed to each said party or his/her/their/its attorney.
- (X) Electronic transmission to every party or his/her/their/its attorney, with delivery via facsimile, e-mail or other electronic address made to the facsimile, e-mail or electronic addresses shown herein below.

PARTY SERVED:

Edward S. Finley, Jr.
2024 White oak Road
Raleigh, NC 27608
edfinley98@aol.com

This the 4th day of February, 2022

Law Office of C. Sean Yacobi, PLLC

By: 

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Complainant,)
v.)
Outer Banks/Kinnakeet Associates, LLC,)
Respondent.)

VERIFICATION OF
ANSWER



NOW COMES Ray R. Hollowell, managing member of Outer Banks/Kinnakeet Associates, LLC, upon his oath and does hereby verify and attest to the allegations set forth in the Answer filed herein.

This the 27th day of January, 2022

Outer Banks/Kinnakeet Associates, LLC

by _____
Ray E. Hollowell, Managing Member

State of Florida
County of _____

I hereby certify that _____ personally appeared before me and upon oath and affirmation subscribed to and executed the foregoing affidavit.

This the 27th day of January 2022

Notary Public

My Commission Expires _____

SEAL

