

**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

RESPONSE TO MOTION TO
EXTEND TIME

Complainant

v.

Outer Banks/Kinnakeet
Associates, LLC.

Respondent

NOW COMES Complainant, Greater Kinnakeet Shores Home Owners, Inc., and responds to the July 6, 2022 motion of Respondent, Outer Banks/Kinnakeet Associates LLC, ("OBKA") to extend time.

By letter dated August 25, 2021 the Division of Water Resources Water Quality Regional Operations Section placed OBKA on moratorium effective October 13, 2021. The imposition of this moratorium has resulted in a crippling effect on the Kinnakeet Shores current economy and future economic prospects, and frustrates the predetermined plans of property owners and builders. On December 13, 2021 Complainant, Kinnakeet Shores Home Owners Inc., filed a complaint against OBKA. In its complaint, the HOA requested that the Commission require a comprehensive due diligence investigation into OBKA's suitability to own and operate the

WWTP and collection system; require OBKA to take immediate steps to rectify deficiencies; appoint an emergency operator if it determines such action is necessary; revoke OBKA's bond if it determines that OBKA is unwilling or unable to operate the system in accordance with the public convenience and necessity; investigate the possibility of identifying a potential new owner of the WWTP; and if the Commission determines that OBKA should continue to own and operate the system, require a substantial increase in OBKA's bond. Complainant requested expedited relief.

By order issued December 14, 2021 the Commission served the complaint upon OBKA and required an answer. On December 20, 2021 OBKA filed a motion to extend time to file answer. Without waiting to receive a response from Complainant, the Commission issued an order extending time on December 22, 2021. On January 25, 2022 OBKA submitted a second motion to extend time. On January 26, 2022 Complainant filed its response requesting that the Commission deny the second motion to extend time. By order issued January 27, 2022 the Commission denied the second request to extend time. Rather than file a complete answer to the complaint, on January 27, 2022 OBKA filed a motion to strike many of the pleadings. On January 27, 2022 OBKA filed a bare bones answer. On February 3, 2022 Complainant responded to the motion to strike. On February 4, 2022 OBKA filed a motion to dismiss. OBKA asserted that the Complainant lacked standing and the Commission was without jurisdiction to address the complaint. In due course Complainant was required to file responses to OBKA's various motions. On April 28, 2022 counsel for OBKA filed a motion to withdraw.

Substantial time elapsed between the filing of OBKA's various motions and Complainant's responses without any Commission action. Between May 12, 2022 and June 14, 2022, dismayed by OBKA's dilatory tactics, its delay in taking steps to lift the moratorium and the Commission's inaction on the complaint for expedited relief, petitions to intervene were filed by many consumers and property owners within Kinnakeet Shores requesting that the Commission act upon the request for expedited relief. Complainant on its own initiative has been in regular communication with DEQ, the Public Staff and potential acquirers of the

Kinnakeet Shores wastewater system in an effort to rectify the conditions within the serviced area. On June 14, 2022 Mr. Hollowell of OBKA filed supplemental information informing the Commission that he had taken steps that he maintained would help rectify the deficiencies in the sewage treatment plant. The moratorium remains in place.

On June 28, 2022 the Commission issued orders denying motion to dismiss, granting in part in denying in part motion to strike certain pleadings, and an order to show cause, consolidate dockets, schedule expert witness hearing, grant withdrawal of counsel, and require Public Staff participation. On July 6, 2022 new counsel for OBKA filed its notice of appearance and filed a motion for extension of time.

OBKA now requests an extension of time to and including July 14, 2022 in which to file responsive pleadings to the allegations in the Complaint and a 49 day extension of time through September 9, 2022 in which to appear and present testimony at the show cause and expert witness hearing currently set for July 22, 2022. OBKA maintains that there is an abundance of records and filings that need inspection and consideration at the NCUC and DWR's regional offices in Washington NC. OBKA maintains that evaluating the case, and preparing evidence and expert testimony that will be of use to the Commission on the status quo as well as realistic prospects, will require a thorough evaluation of these records and perhaps more significantly, a thorough understanding of the intricate interrelated rules and regulations implicated in the matter. OBKA maintains that it will take a substantial effort and a significant amount of time to become familiar with the history of the issues, the governing rules and regulations, precedent and all related matters to prepare and present evidence that will allow the Commission to make a thorough and informed decision.

In addition, new counsel for OBKA lists other dockets and proceedings in which he is involved that impose upon him constraints in representing OBKA in this docket within the time set by the Commission in its June 28, 2022 order.

OBKA notes that a large number of parties have intervened in the matter and each has individual assertions or claims not specified in the complaint. OBKA maintains that it will be necessary to evaluate each assertion and any particularly unique allegations. OBKA maintains that this will require time-consuming evaluation of these claims and the facts and assertions of law they implicate.

Complainant respectfully requests that the Commission deny OBKA's recent motions to further delay proceedings in the docket. The moratorium imposed by DEQ has been in effect since October 13, 2021. The complaint by Complainant was filed on December 13, 2021. The complaint requested expedited relief from the Commission. Every day that passes extends the hardships imposed on Complainant, Intervenor, and those within Kinnakeet Shores. While Complainant is sympathetic to the dilemma in which OBKA has placed its new counsel and under normal circumstances would seek to be cooperative, the dilemma in which counsel is placed must be laid at the feet of OBKA, not Complainant. OBKA's initial counsel moved to withdraw on April 28, 2022. OBKA has had ample time to find replacement counsel before now. OBKA's failure to do so is just additional evidence of its dilatory responses in this docket and the manner in which it is operating the Kinnakeet Shores wastewater system.

OBKA cites need to familiarize itself with rules and regulations of DEQ and the NCUC. OBKA has held a CPCN and regulatory permits for many years. If OBKA at this stage is lacking in understanding or appreciation of the requirements under which it has been operating, all the more reason expeditiously to grant the relief Complainant seeks. From Complainant's perspective, there is no need for OBKA to delve into the situation of the various intervening parties, especially at this late stage of this dispute. OBKA's effort to challenge standing of Complainant has already been addressed and denied. As stated above, the primary purpose of the added interventions is to impress upon the Commission the gravity of the situation that exists without regulatory action against OBKA, the harm such an action is causing and the need for expedited relief. The onus at this stage rests upon OBKA and not intervening parties.

WHEREFORE, Complainant requests that the Commission adhere to the schedule set forth in its June 28 order.

Respectfully submitted this 7th day of July 2022

/s/ Edward S. Finley, Jr

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Certificate of Service

I hereby certify that persons on the docket service list have been served true and accurate copies of the foregoing first class mail deposited in the US mail, postage prepaid or by e-mail transmission with the parties consent.

Respectfully submitted this 7th day of July 2022.

Edward S. Finley, Jr.
/s/ Edward S. Finley Jr.
Edward S. Finley, Jr. PLLC
Attorney for Complainant

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