

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1125, SUB 9
DOCKET NO. W-1125, SUB 10

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, North)	ORDER TO SHOW CAUSE,
Carolina 27915,)	CONSOLIDATE DOCKETS,
Complainant)	SCHEDULE EXPERT WITNESS
)	HEARING, GRANT
v.)	WITHDRAWAL OF COUNSEL,
)	AND REQUIRE PUBLIC STAFF
Outer Banks/Kinnakeet Associates, LLC.,)	PARTICIPATION
Defendant)	

BY THE CHAIR: The Chair finds good cause, for the reasons discussed herein, to issue this Order requiring Outer Banks/Kinnakeet Associates, LLC (OBKA), to appear and show cause why the Commission should not exercise its authority under N.C. Gen. Stat. § 62-116(b) to appoint an emergency operator, to allow counsel for OBKA to withdraw, to consolidate dockets, to schedule a hearing for the purpose of receiving expert witness testimony on the allegations set forth in the pending complaints against OBKA, and to direct the participation of the Public Staff.

Information contained in the Commission's files for Docket No. W-1125, Sub 9 indicates the following:

1. On December 13, 2021, Greater Kinnakeet Shores Home Owners, Inc. (HOA), made a formal complaint with the Commission in Docket No. W-1125, Sub 9, against OBKA alleging operational deficiencies with the Kinnakeet Shores Wastewater Treatment Plant (WWTP) (Complaint). The HOA requests that the Commission: (1) require a comprehensive due diligence investigation into OBKA's suitability to own and operate the WWTP and collection system; (2) require OBKA to take immediate steps to rectify the deficiencies; (3) appoint an emergency operator if it determines such action is necessary; (4) revoke OBKA's bond if it is determined that OBKA is unwilling or unable to operate the system in accordance with the public convenience and necessity; (5) investigate the possibility of identifying a potential new owner of the WWTP; and (6) if the Commission determines that OBKA should continue to own and operate the system, require a substantial increase in OBKA's bond.

2. On January 27, 2022, OBKA filed an Answer and a Motion to Strike Certain Pleadings (Motion to Strike). On February 3, 2022, the HOA filed a Response to the Motion

to Strike. On February 4, 2022, OBKA filed a Reply to Complainant HOA's Response to the Motion to Strike. The Commission issued an order on June 28, 2022, granting in part and denying in part the Motion to Strike and allowing OBKA until July 8, 2022, to respond to the remaining allegations in the Complaint.

3. On February 4, 2022, OBKA filed a Motion to Dismiss Complaint for Lack of Standing and Jurisdiction (Motion to Dismiss).

4. On February 7, 2022, the HOA filed a Reply to OBKA's Answer wherein it requested a public hearing.

5. On February 11, 2022, the HOA filed a Response to OBKA's Motion to Dismiss.

6. On March 11, 2022, property owners of 59 lots within the Kinnakeet Shores subdivision (Property Owners) filed a Joint Petition to Intervene. On May 23, 2022, the Commission issued an order granting the petition filed by the Property Owners.

7. On April 28, 2022, Counsel for OBKA, C. Sean Yacobi, filed a Motion to Withdraw from representation of OBKA in Docket No. W-1125, Sub 9, citing irreconcilable differences concerning the litigation in this matter, a lack of communication with OBKA concerning the investigation into this matter touching and concerning the litigation, and a fundamental lack of trust between Counsel and OBKA, making it impossible to maintain this litigation with the cohesive effort needed to zealously and ethically prosecute this litigation.

8. On May 12, 2022, seven members of the Board of Directors of the Kinnakeet Shores Home Owners Association (Board Members) filed a Joint Petition to Intervene as representatives of all members of the HOA. Six of the Board Members also requested to intervene as current customers of OBKA. On May 23, 2022, the Commission issued an order granting the petition filed by the Board Members.

9. On May 12, 2022, Deborah Ashe and Jonathan Farrell (Ashe and Farrell), owners of Lots 16, 19, 26, and 20 of Phase 16 of the Kinnakeet Shores subdivision filed a Petition to Intervene. The Commission issued an order granting the petition of Ashe and Farrell on May 23, 2022.

10. On May 12, 2022, Wiltton and Manette Britt (the Britts), owners of a home at 41196 Windlass Court and a vacant lot at 41148 Portside Drive, Lot 1704, located within the Kinnakeet Shores subdivision, filed a Petition to Intervene. On May 23, 2022, the Commission issued an order granting the Britts' petition.

11. On June 12, 2022, Marie and Stephen Minton (the Mintons), owners of a home at 41198 Spritsail Court within the Kinnakeet Shores subdivision, filed a Petition to Intervene. On June 15, 2022, the Commission issued an order granting the Mintons' petition.

12. On June 14, 2022, OBKA filed supplemental information in the docket.

Information contained in the Commission's files for Docket No. W-1125, Sub 10 indicates the following:

13. On January 18, 2022, Kashf Ain (Complainant Ain) made a formal complaint with the Commission in Docket No. W-1125, Sub 10, against OBKA alleging that OBKA's failure to operate and maintain the WWTP in proper working order resulting in the above-referenced moratorium prevented his wife and him from obtaining a building permit. (Ain Complaint). Complainant Ain notes that he and his wife also have not been able to clear their lot or have the piling foundation installed, placing them at risk of suffering significant financial losses due to forfeiting part or the entire amount of their deposit to purchase modular units for home construction. Complainant Ain also alleges that because Ray Hollowell, Manager of OBKA, did not make the moratorium notice he received on August 25, 2021, public as he was instructed to do, he and his wife were not aware of the pending moratorium when they purchased the lot on October 1, 2021, despite performing due diligence into the purchase. Complainant Ain seeks permission to apply for the building permit immediately to be able to proceed with preparation for delivery of the modular units he and his wife have already ordered.

14. On February 3, 2022, OBKA filed an Answer to the Ain's Complaint acknowledging, among other things, that a "sewer tap" is required to obtain a building permit in Dare County.

15. On February 14, 2022, Complainant Ain filed a Reply to OBKA's Answer wherein he requested a public hearing.

16. On April 28, 2022, Counsel for OBKA, C. Sean Yacobi, filed a motion to withdraw from representation of OBKA in Docket No. W-1125, Sub 10, citing irreconcilable differences concerning the litigation in this matter, a lack of communication with OBKA concerning the investigation into this matter touching and concerning the litigation, and a fundamental lack of trust between counsel and OBKA making it impossible to maintain this litigation with the cohesive effort needed to zealously and ethically prosecute this litigation.

After careful consideration and based on the above information, the Chair finds good cause to consolidate Docket No. W-1125, Sub 9 with Docket No. W-1125, Sub 10 based on the same root cause and similarity of issues contained in each complaint against OBKA; require OBKA to appear and show cause why the Commission should not exercise its authority under N.C.G.S. § 62-116(b) to appoint an emergency operator to furnish sewer utility service to the Kinnakeet Shores subdivision; schedule one hearing, to be held in conjunction with the show cause hearing, for the purpose of receiving expert testimony in support of the allegations listed in each complaint; grant C. Sean Yacobi's motions to withdraw, relieving him of any further duty or obligation to represent OBKA in these dockets; and require the Public Staff's participation in the show cause and expert witness hearing.

IT IS, THEREFORE, ORDERED as follows:

1. That the motions to withdraw filed by counsel C. Sean Yacobi in Docket Nos. W-1125, Sub 9 and W-1125, Sub 10 are granted;
2. That Docket No. W-1125, Sub 9 and Docket No. W-1125, Sub 10 are hereby consolidated;
3. That OBKA shall appear before the Commission on Friday, July 22, 2022, at 10:00 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and show cause why the Commission should not exercise its authority under N.C.G.S. § 62-116(b) to appoint an emergency operator to furnish sewer utility service to the Kinnakeet Shores subdivision;
4. That OBKA shall retain legal counsel, as required by Commission Rule R1-22, for representation before the Commission in this proceeding;
5. That an expert witness hearing on these consolidated dockets is scheduled to begin on Friday, July 22, 2022, at 10:00 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, to be held in conjunction with the show cause hearing scheduled in this matter by this Order with the parties' dispensing with the requirement to prefile testimony in this matter;
6. That the Public Staff is required to participate in these proceedings and to provide expert witness testimony related to the allegations of the complaint and the Commission's investigation into whether to appoint an emergency operator;
7. That the Chief Clerk shall serve a copy of this Order on OBKA and Complainant Ain by United States Mail, certified receipt requested and by first class mail, and all other parties by electronic means; and
8. That the Chief Clerk shall also serve a copy of this Order on the registered agent for OBKA, Ray Hollowell, by means of United States Mail, certified receipt requested and by first class mail.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of June, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Erica N. Green".

Erica N. Green, Deputy Clerk