

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. W-1125, Sub 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Complaint of Greater Kinnakeet)	Complaint of Greater
Shores Home Owners, Inc. Against Outer Banks/)	Kinnakeet Shores Home
Kinnakeet Associates, LLC)	Owners, Inc. Against
		Outer Banks/Kinnakeet
		Associates, LLC

NOW COMES Greater Kinnakeet Shores Home Owners Inc. ("Complainant" or "HOA") pursuant to N.C. Gen. Stat. § 62-73 and NCUC Rule R1-19 and submits this Complaint against Outer Banks/Kinnakeet Associates, LLC (OBKA).

The correct name, address and electronic mailing address of Complainant is:

Greater Kinnakeet Shores Home Owners Inc.
P. O. Box 853
Avon, N.C. 27915
c/o Pat Weston, President
obxblondie@aol.com

The name, address and electronic mailing address of counsel representing Complainant is:

Edward S. Finley, Jr.
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1. HOA is the official agency that acts for and on behalf of property owners and utility consumers within the Kinnakeet Shores subdivision in Dare County, North Carolina. Presently, Kinnakeet Shores consists of 379 homesites; 177 homes and 202 vacant lots. Of the 202 vacant lots, more than a dozen owners and contractors have engaged in the process of obtaining building permits for construction immediately or by the first of 2022.

2. The period ending in 2021 has been one of exceptional growth in the real estate market within the Outer Banks in general and Kinnakeet Shores in particular. Continuation of this growth is important to the HOA and its constituents. During an 11-month period in 2021, Kinnakeet Shores recorded 48 property sales in the phases served by the OBKA, or more than double the sales and transfers of property in any previous year. Prior to October 2021 lot owners within Kinnakeet Shores were on the verge of submitting plans to obtain building permits to build new residences. Some of these lot owners had already sold their former residences in anticipation that no obstacles existed preventing construction of their new homes. Taking advantage of potential growth in Kinnakeet Shores is an important objective of Complainant. This growth also provides income for related providers of water and electric services, county taxes, and occupancy tax for rental properties.

3. OBKA provides wastewater collection and treatment services to the Kinnakeet Shores service area pursuant to a certificate of public convenience and necessity issued by the Commission and a permit issued by the North Carolina Department of Environmental Quality, permit number WQ002393484. 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 results in a crippling effect on the Kinnakeet Shores current economy and future economic prospects, and severely frustrates the predetermined plans of property owners and builders. See the letter filed in this docket by George E. Goodrich of Otter Point Joint Venture where he states, "Several other builders find themselves in the same position as my company, we cannot move forward with our development plans for our properties until the moratorium is lifted[.] Dare County will experience a loss of tax revenue and income from tourists (the primary "business "of Dare County) until this situation is rectified."

4. In its letter to OBKA, DEQ states that the WWTP major treatment units are no longer functional. Both clarifiers, the tertiary filter, spray irrigation system, and backup

generator are not functional. Biosolids have not been removed from the plant for at least seven years. DEQ has placed the WWTP on sewer moratorium with no new sewer taps, sewer extensions or additional flow effective as of the date of the moratorium.

5. The conditions of the WWTP resulting in the imposition of the moratorium arise from years of neglect and failures of OBKA to undertake appropriate maintenance and to adequately fund operations of the system. OBKA contracts with an operations service that makes do as best it is able with the limited funds available to it provided by OBKA. While OBKA's acts and omissions to date have not resulted in appreciable disruptions of wastewater collection services to existing connections, on information and belief, unless major and immediate steps are taken to address the deficiencies noted by DEQ, service disruptions can be expected at any time. DEQ's letter imposing the moratorium required notice to be sent to OBKA's Kinnakeet Shores consumers. This notification and the perceived threat have caused and continue to cause substantial distrust and anxiety among users of OBKA's services within Kinnakeet Shores.

6. OBKA's general rates have not been adjusted since initially approved in 1999-2000. The principal owner of OBKA is Ray Hollowell, Jr., a former real estate developer of Kinnakeet Shores. Mr. Hollowell has informed members of Complainant that he lacks appropriate financial resources to make the needed repairs and improvements. Complainant is not opposed to paying a reasonable rate for wastewater utility services, but in exchange for the payment of reasonable rates, Complainant should be entitled to adequate service and assurances of appropriate improvements and maintenance to the wastewater collection and treatment system.

7. Complainant has been in communications with the Public Staff and the Division of Water Quality in an effort to obtain assistance and support in addressing its concerns with OBKA.

8. 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.

9. 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.

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

11. 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.

12. 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 incumbering 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."

13. The Public Staff conducted its investigation and filed its report with the Commission on May 6, 2013. Although the Public Staff concluded that the wastewater utility system was in good condition and that OBKA was providing adequate wastewater utility service, the Public Staff noted that financial condition of the area was in distress with limited demand on the system, unlike the situation in the area today, so that the capacity needs on the

system were not great. Furthermore, the Public Staff noted a number of deficiencies with respect to OBKA ownership and operation of the system. The required bond for the system was \$110,000, and while OBKA was attempting to replace it, \$75,000 of the bond had been withdrawn. The Public Staff noted that the Commission approval had not been obtained as required by N. C. Gen. Stat. § 62-160 to pledge wastewater utility assets.

14. 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.

15. The Public Staff noted that the general level of OBKA's rates had been in effect since the franchise was granted to OBKA in 2000. The Public Staff reported that due to personnel moves, and at least one hurricane, the financial records had been moved a couple of times over the years and were not easily located. From its reviews of the tax returns, the Public Staff noted reported losses in 2008 of \$631,920, for 2009 of \$414,388, for 2010 of \$450,369 and for 2011 of \$513,064. The bulk of these losses related to utility operations. Without requested copies of invoices, the Public Staff was unable to determine the rate base for OBKA.

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

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

18. 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.

19. Complainant's communications with and interactions with OBKA have been unsatisfactory.

WHEREFORE, Greater Kinnakeet Shores Home Owners Inc. respectfully requests that the Commission grant 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.

Respectfully submitted this 10 day of December 2021

Edward S. Finley, Jr., PLLC

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.