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In the Matter of)	
)	Docket Nos. 2001-114 and 2001-115
Maria Kitras, Trustee)	DEP File No. SE 27-237
Gorda Realty Trust)	Aquinnah
)	
)	

Now comes Maria Kitras, Trustee of Gorda Realty Trust (the Applicant), and files this Response to the Show Cause Order issued on September 13, 2002 by Administrative Law Judge Francis X. Nee.

The Applicant has never received a denial under the Local Bylaw. See February 1, 2002 Decoulos Aff. ¶ 5. What is the Applicant to appeal? It was only after Judge Nee raised the issue of a possible denial under the Local Bylaw at the prehearing conference on January 9, 2002 did a “decision” magically appear.

First, ACC member Steven Yaffe has violated the conflict of interest law, G.L. c. 268A, § 19, by not receiving a written determination prior to his alleged vote on July 25, 2000 that his interest in

an ACC decision would not be “so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect.” Yaffe is a direct abutter to the Applicant’s property.

Secondly, the ACC improperly invoked the Rule of Necessity at the July 25, 2000 meeting. See Graham v. McGrail, 370 Mass. 133, 138 (1976); Georgetown v. Essex County Retirement Board, 29 Mass. App. Ct. 272 (1990); Moran v. School Committee of Littleton, 317 Mass. 591, 594 (1945).

As a result of these findings, together with previously described flaws in the “decision”, the Applicant has filed a complaint in the Essex Superior Court today seeking declaratory relief pursuant to G.L. c. 231A for the alleged denial of the Applicant’s wetlands application. See Exhibit I. Additionally, a Motion for a Short Order of Notice was filed in Essex Superior Court and a hearing is scheduled for October 8, 2002 in Salem to address the injustice of a potential stay of this matter.

The related complaint in Middlesex Superior Court challenging the validity of the Local Bylaw is also proceeding forward. See Exhibit II.

The Applicant has therefore taken appropriate measures to deal with a stay, but believes it is an unjust remedy for the facts established.

Respectfully submitted by
Maria Kitras, Trustee, Gorda Realty Trust
By her Engineer,
James J. Decoulos, PE, LSP
Decoulos & Company

A handwritten signature in black ink, appearing to read "James J. Decoulos", written in a cursive style.

248 Andover Street
Peabody, MA 01960
978-532-8154

September 27, 2002

STATEMENT OF SERVICE

Matter of Maria Kitras, Trustee
Gorda Realty Trust
Docket Nos. 2001-114 and 2001-115

DEP File No. 27-237

I, James J. Decoulos, do hereby certify that I caused a copy of the APPLICANT'S RESPONSE TO ORDER TO SHOW CAUSE regarding the above referenced matter to be served on the following parties by first class mail:

Deneen Simpson, Docket Clerk
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JACK FRUCHTMAN, JR.
JOANN FRUCHTMAN

Signed under the penalties of perjury this 27th day of September, 2002.

James J. Decoulos, PE, LSP
Decoulos & Company



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James J. Decoulos