



CAPE COD COMMISSION

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DATE: February 18, 1999 #TR-98006

TO: Attorney Myer R. Singer
26 Upper County Road
P.O. Box 67
Dennisport, MA 02639

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Regulations of General Application
Chapter A, Section 3(g)

APPLICANT: Atria Communities, Inc.
501 South Fourth Avenue
Suite 140
Louisville, KY 40202

PROJECT: Eagle Pond Assisted Living Facility
Five Love Lane, Dennis, MA

BOOK/PAGE: Book: 10353 Page: 38
Book: 6398 Page: 85

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby denies the application of Atria Communities, Inc. for a Development of Regional Impact pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(g) governing Developments of Regional Impact (DRIs) for construction of 47-unit assisted living facility comprised of a single two-story building of several interconnected wings totalling 34,651 square feet on two parcels of land located at 5 Love Lane in Dennis, MA.

Denial Decision

Eagle Pond Assisted Living Facility

February 18, 1999



PROJECT DESCRIPTION

The proposed project consists of the construction of a 47-unit assisted living facility. The proposed facility would have been a single building of several inter-connected wings totalling 34,651 square feet, with approximately 23,718 square feet on the first level and 10,933 square feet on the second level. The project site consists of two parcels of land, both of which are undeveloped, located at the end of Love Lane in Dennis. The two lots are adjacent to Eagle Pond. According to the DRI application, the site is within the Industrial Zoning District and assisted living facilities are authorized by Special Permit. The project would have also required Site Plan Approval by the Dennis Planning Board.

PROCEDURAL HISTORY

This project was referred by the Dennis Town Planner, acting on behalf of the Dennis Planning Board, as a mandatory DRI to the Cape Cod Commission on April 2, 1998. The referral was received by the Commission on the same day. A duly noticed public hearing was held on May 28, 1998 at the Dennis Senior Center for the purpose of taking testimony on the proposed project. The hearing was continued to June 15, 1998 at which time a hearing officer continued the hearing and the record to July 16, 1998. At that hearing, the Subcommittee voted to continue the hearing and the record to August 17, 1998. At the August 17, 1998 hearing, the Subcommittee directed staff to continue to work with the applicant to resolve project issues. The Subcommittee also voted to direct staff to act as a hearing officer to close the public hearing and the record on August 26, 1998 and to hold a Subcommittee meeting at the Cape Cod Commission offices on September 15, 1998. On August 26, 1998, staff acted as a hearing officer and closed the public hearing and left the record open. The Subcommittee meeting scheduled for September 15, 1998 was canceled at the recommendation of the Subcommittee chair. A new meeting was scheduled for October 7, 1998 to allow the applicant and staff more time to attempt to address remaining issues. On September 16, 1998, at the request of the Harwich Board of Selectmen, Town Manager and the Harwich Town Planner, Commission staff met with members of Harwich Town staff to discuss the project. On September 16, 1998 Commission staff attended a public hearing set up by the Harwich Selectmen to provide Harwich residents with information about the proposed project. At the request of Harwich officials and members of the public who attended the Harwich Selectmen's September 16, 1998 public hearing, and at the recommendation of the Subcommittee, the Commission changed the October 7, 1998 public meeting to a public hearing to allow interested members of the public to provide input to the Subcommittee. At that public hearing, the Subcommittee voted to continue the hearing and the record to the regularly-scheduled Commission meeting on October 22, 1998. At that meeting, the public hearing and record was continued to December 3, 1998 at 7:00 PM at the Dennis Senior Center. At the December 3, 1998 hearing, the Subcommittee voted to continue the hearing and the record to a date when all the

Subcommittee members could attend. The Subcommittee also voted to support an extension of the Decision time to February 26, 1999. Upon consultation with Town officials and Subcommittee members, a subsequent public hearing was scheduled and noticed for January 4, 1999. At that hearing, the Subcommittee voted to approve Minutes from August 17, 1998, October 7, 1998 and December 3, 1998 and to deny the project. At the January 14, 1999 Subcommittee meeting, the Subcommittee discussed a draft denial Decision and voted to transmit it with minor corrections for consideration by the full Commission at the Commission's February 18, 1999 regular meeting. At the February 18, 1999 meeting the full Commission, with one abstention, voted to deny the proposed project.

MATERIALS SUBMITTED FOR THE RECORD

A. Materials submitted by the Applicant:

DRI application materials and attachments	5/8/98
abutters list	
Appendix I - drainage information	
Appendix II - facility brochure	
Appendix III - emergency plan	
Project plans (large size)	
filing fee check	
Letter, from Attorney Singer, additional application materials	6/8/98
memo responding to 5/21/98 Staff Report and Town of Dennis' letter	5/26/98
copy of Massachusetts Historical Commission form	
fire safety code analysis sheets	
part of 310 CMR 15.00	
booklet on exterior lighting (specification sheets)	
Letter, AM Wilson Associates, Inc.	6/30/98
landscaping, Memo from Rizzo Associates, open space calculations (2 sheets)	
Letter (fax), from Attorney Singer, about project issues	7/2/98
Letter, from Attorney Singer, about project issues	7/3/98
Revised grading plan (C-3), large size	7/6/98
Revised drainage calculations	7/6/98
Plans, C-2 and C-3, large size	7/6/98
Memo, on lighting (fixture specifications for wallpacks)	7/16/98
Fax, from Rizzo Associates, about traffic issues	8/6/98
Fax, from Attorney Singer, about hearing date	8/6/98
Plans, large size, C-2 and C-3 (multiple copies)	8/10/98
Letter, from Coler & Colantonio, about septic system	8/10/98
several attachments	
Fax, from Attorney Singer, on affordable housing	8/10/98
Draft Covenant and Agreement and Restriction	8/31/98
Letter, from Attorney Andrew Singer, to Harwich Selectmen concerning newspaper articles	9/25/98

Letter, from Attorney Myer Singer, to Subcommittee chair writing of several concerns	9/25/98
Letter, from Attorney Myer Singer, to Commission Counsel concerning the open space issues	9/30/98
Fax, from Rizzo Associates, on transportation issues	11/20/98
Fax, AM Wilson Associates, Inc., on nitrogen loading	11/20/98
Letter, Rizzo Associates, on transportation issues	11/23/98
Fax, from Attorney Singer, project issues and hearings	11/23/98
Letter, AM Wilson Associates, Inc., on nitrogen loading	11/24/98
Letter, Attorney Singer, project issues and hearings	11/25/98
Fax, Attorney Singer, request to postpone 12/3/98 hearing	12/2/98
Letter, Attorney Singer, request to postpone 12/3/98 hearing	12/3/98
Letter, Attorney Singer, request to postpone 12/3/98 hearing	12/3/98
Fax, Rizzo Associates, transportation	12/17/98
Letter, Rizzo Associates, transportation	12/21/98
Fax, Attorney Singer, transportation and water resources	12/22/98
Fax, Attorney Singer, cover for added copies of 12/17 info.	12/22/98
Letter, Attorney Singer, transportation and water resources	12/22/98
Letter, Attorney Singer, cover for added copies of 12/17 info.	12/22/98
Fax, Attorney Singer, Extension Agreement	12/28/98
Letter, Rizzo Associates, transportation	1/4/99
Fax, Rizzo Associates, transportation	1/4/99
Letter, Rizzo Associates, transportation	1/5/99
Fax, Attorney Singer, transportation	1/11/99
Letter, Attorney Singer, transportation	1/12/99
8 1/2 by 14 inch plans, C-2 and C-3	Undated

B. Materials submitted by the Cape Cod Commission:

Notes from preapplication meeting with applicant	3/25/98
Letter, to Attorney Singer, DRI referral	4/8/98
Memo, to Subcommittee, about project	4/9/98
Staff Form Q about project	5/8/98
Fax, to Attorney Singer	5/8/98
Letter, to Attorney Singer, about affordable housing issues	5/9/98
Memo, to Subcommittee, change in membership	5/11/98
Memo, to Subcommittee, about site visit	5/14/98
Fax, to Attorney Singer, Massachusetts Historical Commission, Dennis Town Planner, copy of Staff Report	5/21/98
Staff Report	5/21/98
Hearing Notice	5/28/98
Sign in sheet for hearing	5/28/98
Minutes from hearing	5/28/98
Fax, to <i>Register</i> , copy of Staff Report	6/2/98
Letter, to Harwich Town Planner, copy of Staff Report and other information about the project	6/3/98
Memo, to Subcommittee, change in membership	6/9/98
Fax, from Commission member Riley's office about a conflict	6/10/98
Memo, to Subcommittee, change in hearing date	6/10/98
Minutes from hearing officer	6/15/98

Memo, to Subcommittee, additional info. from applicant	6/15/98
Letter, to Attorney Singer, additional discussion of issues	6/15/98
Memo, to staff, information on project	7/3/98
Memo, to Subcommittee, information and hearing date	7/10/98
Staff Report	7/10/98
Sign in sheet for hearing	7/16/98
Minutes from hearing	7/16/98
8 1/2 by 14 inch set of plans (C-2, C-3, C-4, C-5, C-6 and C-7)	8/10/98
8 1/2 by 11 inch set of plans (C-2, C-3, C-4, C-5, C-6 and C-7)	8/10/98
Memo, from Transportation staff on project issues	8/11/98
Fax, to Chair of Harwich Planning Board, Attorney Singer, Dennis Town Planner and Harwich Town Planner, copy of Staff Report	8/11/98
Memo, to Subcommittee, Staff Report	8/11/98
Staff Report	8/11/98
Sign in sheet for hearing	8/17/98
Minutes from hearing	8/17/98
Minutes from hearing officer	8/26/98
Memo to Subcommittee, info. received for record	8/28/98
Memo to Subcommittee, info. received for record	9/14/98
Fax, to Robin Lord, <i>Cape Cod Times</i> , Staff Reports	9/14/98
Fax, to Choate, Hall & Stewart, from Patty Daley, concerning open space issues	9/16/98
Memo, to Subcommittee, change in hearing location	9/18/98
Memo, to Subcommittee, submissions to date	9/18/98
Hearing Notice	10/7/98
Memo, to Subcommittee and Town officials	10/7/98
Letter, to Attorney Singer, Extension Agreement	10/8/98
Memo, to Subcommittee, submissions to date	10/8/98
Memo, to Subcommittee and Town officials, new hearing date	10/22/98
Letter, William Riley, to Subcommittee, traffic issues	10/29/98
Letter, to Attorney Singer, from Patty Daley, concerning open space issues	11/3/98
Letter, to Attorney Singer (and fax), Extension Agreement	11/23/98
Staff Report	11/25/98
Fax cover sheets, distribution of Staff Report	11/25/98
Fax, to Merrily Lundsford, newspapers, copy of Staff Report	11/30/98
Fax, to Erica Mathews, newspaper, copy of Staff Report	12/1/98
Letter, to Attorney Singer (and fax), about 12/3/98 hearing	12/2/98
Letter of Transmittal, to Attorney Butler, concerning project	12/3/98
Minutes, Public hearing	12/3/98
Memo, to Subcommittee member Riley, submission to date	12/4/98
Letter (and fax), to Attorney Singer, Extension Agreement	12/7/98
Memo, to Subcommittee, draft Minutes and hearing date	12/8/98
Letter, to Sandra B. Daniels, Chair, Harwich Selectmen, from Robert Munford, concerning transportation issues	12/18/98
Staff Report	12/28/98
Fax cover sheets, distribution of Staff Report	12/29/98
Hearing Notice	1/4/99
Fax, Merrily Lundsford, newspapers, copy of Staff Report	1/4/99

Minutes, Public hearing	1/4/99
Letter, Robert Mumford to Attorney Singer, transportation	1/13/99
Courtesy notice concerning September 15, 1998 meeting	Undated
Notice of Subcommittee meeting on October 7, 1998	Undated
Notice of Public Hearing on October 7, 1998	Undated
DRI Checklist	Undated

C. Materials submitted by the State:

Massachusetts Historical Commission form	6/1/98
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D. Materials submitted by Towns:

DRI referral form	4/2/98
Dennis Special Permit application form	4/2/98
Fax, Dennis Town Planner, comments on the project	5/26/98
Letter, Dennis Town Planner, comments on the project	5/26/98
Letter, Dennis Town Planner	5/27/98
Letter, Dennis Town Planner, comments on project	6/29/98
Fax, Dennis Town Planner, comments on project	7/16/98
Letter, Chair of Harwich Planning Board, comments	7/27/98
Fax, Dennis Town Planner, copy of ZBA decision on abutting property	8/17/98
Letter, Dennis Town Planner, comments on project	8/17/98
Letter, Office of Harwich Selectmen to Dennis Planning Board	9/16/98
Fax, Dennis Town Planner to Harwich Selectmen	9/16/98
Sign-in sheet, public hearing held on the project by the Harwich Selectmen	9/16/98
Letter (hard copy), Dennis Town Planner to Harwich Selectmen	9/17/98
Memo, Harwich Town Planner to Harwich Selectmen & others	10/1/98
Fax, Memo from Harwich Town Planner	10/2/98
Memo, from Harwich Fire Chief to Town Administrator, calls to the present facility	10/6/98
Memo, from Harwich Police Chief to Town Administrator, accident data and copies of accident reports	10/6/98
Fax, Office of Harwich Selectmen, comments about project	10/7/98
Letter, from Alice Norgeot, Director, Harwich Division of Highways and Maintenance, concerns about project	10/7/98
Letter, from William Greenwood, Harwich Chief of Police, concerns about project	10/7/98
Letter, from Office of Harwich Selectmen	10/8/98
Letter, from Office of Harwich Selectmen, about Main Street Extension	12/17/98
Letter, from William Greenwood, Harwich Chief of Police, concerns about project	1/4/99

E. Materials submitted by the Public:

<i>Register</i> , article on project	6/11/98
<i>Register</i> , article on project	8/13/98
<i>Cape Cod Chronicle</i> , article on project	9/3/98
<i>Cape Cod Times</i> , article on project	9/15/98

<i>Cape Cod Times</i> , article on project	9/15/98
Letter, Patrick Powers, concerns about project	9/21/98
Letter, Howard and Karin Bearse, concerns about project	10/3/98
Letter, from Robert E. Wilson, traffic concerns	10/5/98
Letter, Regina T. Henderson, traffic concerns	10/7/98
Letter, Annie Gonzales, concerns about project	10/7/98
Letter, Annie Gonzales, concerns about project	10/7/98
Letter, Kim Gonzales, concerns about project	10/7/98
Letter, Steven Gonzales, concerns about project	10/7/98
Letter, Ken and Michele Gigante, concerns about project	10/9/98
<i>Cape Cod Chronicle</i> , article on project	10/15/98
Fax/letter, Paula McDonough Myles, about project (partially unreadable)	11/30/98
<i>Cape Codder</i> , article about project	12/1/98
<i>Register</i> , article about project	12/3/98
Letter, Kim Gonzales, concerns about project	1/4/99

The DRI application, plans, photos and notice of public hearings relative thereto, the Commission's Staff Reports, exhibits, minutes of all hearings, and all submissions received in the course of the proceedings, including all materials submitted on file #TR-98006 are incorporated into the record by reference.

TESTIMONY

•May 28, 1998 Hearing

Attorney Myer Singer, attorney for Atria Associates, the applicant, explained that the project consists of a 47 unit assisted living facility. He explained that the project is residential in nature, but provides additional services to assist the residents in daily living. He noted that there is no formal connection between the proposed project and the neighboring nursing home.

Mr. Albert Crepeau, architect for the project, stated that the project has been designed in the local Cape context. They are attempting to give the place the feeling of a home, not a large facility through small scale and landscaping. The Subcommittee and applicant's representatives discussed the characteristics of the proposed facility including the scale of the buildings, the exterior treatments and that each unit did not have full kitchens. Mr. John Jernejcic explained that the common kitchen offers three meals each day.

Ms. Arlene Wilson explained that the site is characterized by second growth pitch pine and oak forest. There is also a wetland adjacent to the pond. She noted that there is a one hundred foot buffer from all the wetlands. She also indicated the area which will be designated as open space on the site. She explained that 65 percent of the site would be retained as open space.

Mr. John Chessia explained the waste water treatment for the facility. He stated that

there will be a tight tank for the beauty parlor since the beauticians use chemicals for tinting and other activities. Mr. Chessia stated that it is in compliance, however there are still nitrogen loading issues to be worked out with the Commission staff.

Mr. Singer handed out an update to the traffic study, reflecting 47 units for the project. He stated that the roadway will operate at LOS B. He stated that the facility will have a community van operated by a driver hired by the facility. They will also institute a car pooling program. The facility will employ the equivalent of 28 employees. Mr. Singer noted that while the residents would be allowed to own cars, few would. Mr. Jernejcic noted that the average age of a resident would be 85, would be in the category of the frail elderly and would need a lot of assistance.

Mr. Singer reviewed the Town Planner's report. He stated that most of the issues brought up, including the number of units and the number and size of parking spaces, could be resolved. However, he stated that they do not wish to have special parking for ambulances since this might scare potential residents and would not be used often.

Mr. Tamsky inquired about the distance between the parking lot and the property line. Ms. Wilson stated that it is proposed to be eight and one half feet. Charleen Greenhalgh, Dennis Town Planner, stated that the zoning bylaw requires ten feet. Mr. Singer stated that the trees in this area would not buffer the view of the facility from the highway. Mr. Tamsky stated that the plans should be modified to allow for the planting of trees.

Ms. Gabrielle Belfit presented the water resources section of the Staff Report. She noted that the site is not within a wellhead protection district. She noted that the Bioclear system proposed for the project will not meet the Commission's 5 ppm standard. She stated that she will work with the applicant's engineer to work out problems. She noted that since the flow exceeds 7,000 gallons per day, a 300 foot setback from the pond should be considered. She also noted that the applicant is required to make a \$1,050 contribution to a flushing study.

•July 16, 1998 Hearing

Attorney Myer Singer noted that the old, deteriorated dock would be removed. Addressing Commission/Regional Policy Plan (RPP) issues, Attorney Singer said the septic system design would meet the 5 ppm nitrogen loading standard. He also said the project would meet the Commission's lighting standards, open space requirements, and the 20% trip reduction standard. He noted the project included a beauty salon and van services for residents which would reduce trip generation.

Mr. Edward Allard, the Commission's Affordable Housing Specialist, said additional

discussions were needed with the applicant. He noted that Adult Group Foster Care subsidies are provided by the government and can be used to defray the cost/expense of living in an assisted living facility for the purposes of the RPP's affordable housing requirements. Mr. John Jernejcic of Atria Associates said that use of government subsidies was a new concept to the project proponents. Mr. Allard noted that the subsidies are typically administered by a third party which reimburses an assisted living facility at a fixed rate. He noted that the services portion of an assisted living facility typically runs \$1,500 to \$3,000 per month. Mr. Allard said he felt that the government subsidies were secure. He suggested that if they did disappear, the applicant would need to seek a modification of the DRI decision. Mr. Allard suggested that without making both the room rental and services components of living at the facility meet the RPP's affordable housing requirements, that those persons meeting the income requirements for affordability could not live at the proposed assisted living facility. He suggested that the applicant could discuss with staff other ways of meeting the RPP's affordable housing requirements.

Ms. Gabrielle Belfit with the Commission's water resources office said staff was concerned about the proposed septic system. She said staff had doubts as to whether the system would work to reduce nitrogen loading to 5 ppm. She noted that the site was within the recharge area to Eagle Pond. Ms. Belfit said the Department of Environmental Protection (DEP) was the permitting authority for alternative septic systems. She said that based on the DEP's permitting, which the Commission accepts, it was unlikely that the proposed system would be able to achieve 5 ppm. She also said that the success and cost of mitigation if 5 ppm was not achieved (which was likely) was not known. She noted the staff had communicated these concerns to the applicant's representative. Ms. Belfit expressed a serious concern with the staff's ability to provide a lengthy on-going review of monitoring results in terms of a staff commitment. She also noted that it was unclear how the project could or would comply if a monitoring report indicated that 5 ppm was being exceeded.

Mr. Dorr Fox, the Commission's Chief Regulatory Officer noted that experience on previous DRIs has shown that issues are best resolved prior to the Certificate of Compliance and/or the local Occupancy Permit.

Ms. Adams noted the project had addressed the staff's concerns related to the on-site lighting. She noted that no lights were proposed specifically for the fire lane. She noted the emergency response plan was adequate for the DRI review but suggested that the final version be worked out in consultation with local emergency management personnel. Ms. Adams said that a confirmation had been received from the Massachusetts Historical Commission stating the project was unlikely to

affect significant historic or archeological resources.

Ms. Greenhalgh said the Town of Dennis shared the staff's concerns, particularly those related to open space and water resources. She said it was unlikely that the Town would have the staff or time to monitor compliance with the nitrogen loading requirements. Ms. Greenhalgh noted that the Chair of the Harwich Planning Board asked her to convey his concerns related to traffic impact to Love Lane and the Main Street Extension, particularly during the construction phase.

• August 17, 1998 Hearing

Attorney Myer Singer reviewed the applicant's position on project issues. In terms of water resources, he said the proposed septic system and monitoring plan would work. He said the applicant had considered steps to address non-compliance with 5 ppm including sending laundry off-site or reducing occupancy in the building.

Mr. Allard responded that the RPP expresses preferences as to how applicants are to provide affordable housing and that on-site units or lots is the first preference. He did note that the applicant in this case was offering a cash contribution which was also allowed under the RPP. Mr. Allard noted that for off site units, the staff should consider provision of conventional housing units. Mr. Allard noted the RPP recognizes all kinds of affordable housing including single detached homes, affordable assisted living units, family housing, single room occupancy units or congregate care housing.

Mr. Glenn Cannon, a Commission transportation engineer working on the project, said the staff had a concern that the ITE number on traffic generation would already reflect on-site trip reduction measures such as the on-site nurse and facility van service. Mr. Bryant, the applicant's traffic consultant, noted the applicant had looked at what would be the trip generation of the facility without an on-site nurse and van.

Ms. Gab Belfit noted that wetlands cannot be used in the nitrogen loading calculations. Ms. Belfit noted she had contacted the County Health department and DEP concerning typical flows from such facilities. She noted that in both cases, she was advised to use higher water flows since these facilities typically underestimate flows. Based on this, Ms. Belfit questioned what could be recommended and came up with applying for a groundwater discharge permit as a solution. Ms. Belfit suggested the DEP had advised that the facility should apply for a groundwater discharge permit. This would allow the applicant to possibly get a septic system permitted for 10 mg/l which would bring the facility to 5 ppm. She said the other option was to reduce the number of bedrooms. Ms. Belfit also said that groundwater flow was toward the pond and based on this, a phosphorus loading study was

needed. She noted this had been discussed at the first public hearing in May, 1998.

Mr. Widgren, Chair of the Harwich Planning Board noted he was concerned about traffic on the street and supported the provision of a sidewalk.

Ms. Greenhalgh, Dennis Town Planner, noted she had provided a memo on the project expressing Town officials' concerns. She also requested the latest set of plans be provided to the Town.

Attorney Singer said Mr. Chessia from Coler & Colantonio had used the technical bulletin to figure out the nitrogen loading. Ms. Belfit stressed that allowing post-construction monitoring of the system, particularly because the DEP-permitted value for the system is 19 mg/l, and as such would not meet 5 ppm, would set a precedent. She strongly recommended the Subcommittee not allow this.

Mr. Allard commented that the applicant's proposed cash contribution for affordable housing was acceptable, but that it be required to be provided prior to the Certificate of Compliance.

As regards the sidewalk and trip reduction measures, Mr. Ernst and Mr. Broidrick were sympathetic to the Town of Harwich's concerns. Mr. Riley questioned what the appropriate contribution would be. Mr. Travelo said he had a problem with the sidewalk in that the road already had traffic. Mr. Ernst asked for the Subcommittee's consensus on water resources. Mr. Broidrick said the applicant and staff should discuss the subject and try to come to an agreement.

Ms. Belfit said the system couldn't achieve 5 ppm even with the wetlands included in the land area since the DEP's permitted value for the septic system was 19 mg/l. Mr. Broidrick noted that a phosphorus study was also needed.

Attorney Singer suggested that to allow dialog between the staff and the Town, a short extension period of the decision period might be needed. The Subcommittee said the staff should discuss the water resources issues with the Town of Dennis staff and was not opposed to an extension if one was needed.

•October 7, 1998 Hearing

Attorney Myer Singer provided a brief overview of the project.

Ms. Adams noted that she was the Commission's project manager on the project. She briefly described the sequence of events which lead to this hearing.

Mr. Glenn Cannon said a number of transportation issues were raised in the last

Subcommittee meeting and at the public informational meeting with Harwich officials and at their public hearing. He said the trip reduction issue is still outstanding. He noted the staff had had numerous discussions and correspondence with the applicant's consultants on this issue. He said it was staff's recommendation that the project still needed to reduce 20% of their daily trips for their land use. He said there was an issue of access to the site from the Town of Dennis. Mr. Cannon said he thought it was appropriate to request the applicant to explore this option and provide an access report. He said another issue was public safety.

Ms. McElroy, a planner with the Commission, used a site plan to describe the project issues. She noted the applicant had submitted a deed restriction for the open space, and noted staff had concerns that this did not afford permanent protection for the open space. Ms. McElroy noted that consultation with the Commission's Boston legal counsel indicated that deed restriction as proposed would not permanently protect the open space. She also noted there was a discrepancy in the numbers presented on the plans and in the text with regard to upland acreage on the bog lot. Ms. McElroy said the discrepancy should be corrected.

Ms. Belfit said the issues included water quality impacts to the nitrogen-sensitive marine embayment, Swan Pond, as well as to Eagle Pond. She noted the staff was concerned that the project had to meet the 5 ppm nitrogen loading standard in the RPP and an evaluation of Eagle Pond's sensitivity to septic system effluent, particularly phosphorus loading. She said the project as currently designed did not meet the RPP's standards for nitrogen loading. She said the applicant's calculations include the use of alternative water use figures which are unsubstantiated. She noted the applicant's calculations also use a wastewater nitrogen concentration which is lower than the permitted value for the alternative wastewater system by DEP. She noted the calculations also include an area of dilution which includes wetlands which is inappropriate. Ms. Belfit said in light of numerous discussions with the applicant, she had asked Mr. Tom Cambareri, program manager of the Commission's water resources office to address the issues.

Mr. Tom Cambareri, program manager of the Commission's water resources office, used large display charts to discuss his points. He discussed the nitrogen loading aspects. The project site is five acres. The standard is 5 ppm. He noted the project as proposed was 47 units or beds. The applicant had proposed using an Amphidrome alternative nitrogen removal system. He noted the DEP's permit for the Amphidrome system was a pilot approval for a maximum of 19 ppm treatment efficiency for residential uses. He noted the maximum treatment efficiency permitted by DEP for an Amphidrome system for non-residential was 25 ppm. He suggested use of the 19 ppm value would be appropriate for the Eagle Pond project. Mr. Cambareri said the chart showed that at 47 bedrooms at the Title 5 rate of 150

gallons per bedroom using the DEP permitted value of 19 ppm exceeded the RPP's 5 ppm standard. He noted the chart showed a variety of other iterations. He noted the applicant had claimed that the Amphidrome system was capable of achieving lower treatment efficiency values than 19 ppm. Mr. Cambareri noted the permitting authority for the Amphidrome system rested with the DEP. He said the Amphidrome system was piloted by the DEP. He noted the DEP's pilot permits for Amphidrome expire in the year 2000.

Mr. Riley asked for an explanation of the relationship between the treatment efficiency value of an Amphidrome system (19 ppm) and the RPP's 5 ppm nitrogen standard. Mr. Cambareri responded that the 19 ppm value is used in the Commission's nitrogen loading methodology.

Mr. Cambareri said the Eagle Pond facility was 47 units with 47 bedrooms. He said the 150 gallons per day comes from Title 5, the Massachusetts Sanitary Code. He noted there is a conversion for assisted living facilities and nursing homes was 150 gallons per day per bedroom. He said the state standard was 150 gallons per day. He noted the Commission's technical bulletin does allow for use of actual flows. Title 5 flows have some variability because the flow is a design flow. Actual water use in a home may be less. He noted the applicant had provided a list of several facilities and flows. Mr. Cambareri noted, however, the data only included one month of water use. He noted the Commission has used several years of water use data on past DRIs to incorporate the variability in water use. He noted the staff had asked for more information to substantiate actual flows. He noted that despite this, the staff had analyzed a flow at 75 gallons per day (a low water use condition). He noted the analysis still showed nitrogen loading in excess of 5 ppm. Mr. Cambareri said the staff had analyzed what parameters would meet 5 ppm as a comparison. He said the chart showed reducing the number of units to 26 would achieve 5 ppm allowing for a treatment efficiency of the Amphidrome system at 19 ppm. Mr. Cambareri said the staff's calculations were done using upland area only.

Ms. Belfit addressed the use of land area in the nitrogen loading calculations. She noted the use of wetlands in the calculations was inappropriate since most wetlands on Cape Cod act as groundwater discharge points and do not help to recharge the aquifer as compared to upland areas. Ms. Belfit noted the test wells on the site indicate localized flow is toward Eagle Pond. Regional flow tends toward Swan Pond. Ms. Belfit said the issues relating to nitrogen loading were significant. She recommended that if the applicant was unable to redesign the project to address conformance with the RPP's 5 ppm nitrogen loading standard, the project should be denied. Ms. Belfit said staff had noted at the May, 1998 Commission hearing that a phosphorus loading analysis would be required per Minimum Performance Standard 2.1.1.B.2. She noted the staff had provided the applicant with a sample

scope of work. She noted a phosphorus analysis requires an 8-month period (sampling in all seasons) to characterize metabolic pond functions.

Ms. Sandra Daniels, Chair of the Harwich Board of Selectmen, said she and the Board were concerned about the increase in traffic as a result of the project. She said the Dennis project impacts negatively on Harwich. She said the project should be seriously required to find an alternative access to the site. She said it would not be possible to address the traffic concerns without an alternative access given the existing dangerous conditions on the road. She said the street was already overloaded. She said no more traffic is acceptable on the road. Ms. Daniels said that if the project was only accessed through Harwich, it should be denied.

Ms. Adams noted that several letters had been received from the Harwich office of the Selectmen, Police Department, Town Planner, Fire Department and Division of Highways and Maintenance.

Mr. William Greenwald, Chief of Police, submitted a letter for the record. He noted he had served as Police Chief for over thirty years. He noted he was familiar with the traffic conditions in Harwich and the immediate project area. He noted Main Street Extension accommodated existing commercial business. He noted it was a narrow road and not designed for heavy commercial traffic it is now experiencing. He noted the passenger and commercial traffic converges at Depot Road and Main Street. He said the proposed project would overtax the road.

Mr. Sid Ziegler, Board of Selectmen and resident of North Harwich supported the Police Chief's comments. He noted the surrounding roads are narrow. He felt it would be a huge mistake to increase traffic and he urged denial of the project based on traffic impacts.

Ms. Alice Norgeot, Director of Division of Highways and Maintenance said she was concerned about pedestrian safety and wear/tear on Main Street Extension. She noted the project was located in Dennis but the access was through Harwich. She said Harwich would bear the burden of maintaining and repairing the road without tax benefits. She urged the Subcommittee to consider requiring a sidewalk and funding for road maintenance.

Mr. Mike Pessolano, Harwich Town Planner, submitted a letter for the record. He noted he had reviewed the proposal and was concerned about degradation of safety along Main Street Extension. He felt the applicant's proposed mitigation measures were inadequate. He noted Section 4.1.1.7 of the RPP stated there should be no degradation of public safety regardless of a project's traffic impacts.

Ms. Charleen Greenhalgh said she concurred with Mr. Pessolano's comments. She said she was also concerned about traffic impacts and pedestrian conflicts. Ms. Greenhalgh said the issue of the affordable housing contribution should be discussed with Harwich. She also expressed concern over the water resources issues.

Mr. Scott Christophers said he lived near the project site. He said the residents of Harwich know the applicants want to develop a quality project. Nevertheless, he was concerned about traffic impacts and pedestrian conflicts, especially from large trucks.

Mr. Howard Witcombe, resident of Depot Street, said he was concerned about access to the site during an emergency. He noted that anything that closed Main Street Extension (wires down, etc) would make it very hard to evacuate the site.

Mr. Randy Gonzales said he agreed with the previous comments and was concerned about traffic impacts.

Ms. Kim Gonzales said she was concerned because kids have to walk to the Depot Street intersection. She noted the road was narrow. She also expressed concern about the health of Eagle Pond. She noted the water in the Pond can become very low during dry conditions and suggested the wastewater flows from the project would have an especially adverse impact under these conditions. She said alternative access should be looked at.

Ms. Karen Bearse said she was concerned about traffic. She noted she had a number of large animals and was concerned about possible accidents. Mr. Howard Bearse expressed concern over traffic impacts.

Ms. Sylvia Laffin, Harwich Commission representative, said she had some questions for the applicant. She asked if there were plans for access through another area.

Ms. Greenhalgh noted about half the parcels in the area around Eagle Pond were owner unknown. She said the Town doesn't know who owns it. She said the property was land-locked. She said the Town of Dennis may be looking at property in the area for recreation or open space uses.

Mr. Mumford explained the methodology for looking at trip generation. He noted the Commission's basic threshold to study an intersection is if a DRI will put 25 or more trips through that intersection in the project's peak hour. He said each project is required to develop its own specific mitigation measures.

Ms. Barbara Yamamoto of the Harwich Traffic Study Committee expressed concern about traffic impacts resulting from the proposed project.

Ms. Mary Pina said she was concerned about traffic impacts.

Mr. Gary Sinclair said he was concerned about traffic impacts on the intersection of Main Street Extension and Depot Street. Ms. Annie Gonzales noted that there had been several accidents on Main Street Extension.

Mr. Riley asked if the Amphidrome system, using the DEP's permitted treatment efficiency value of 19 ppm, could meet the RPP's standard of 5 ppm nitrogen loading.

Mr. Chessia responded that using 19 ppm, the system does show in excess of 5 ppm.

Ms. Adams noted staff had articulated concerns over issues including open space and water resources issues. She noted that it was staff's position that unless the project could come into conformance with the RPP, it should be denied.

Mr. Mumford said that with regards to transportation issues, the staff and Subcommittee had heard some substantial and credible testimony from a number of town officials and residents of the area. He said that from a transportation point of view, the Commission needs to look into this very, very carefully because of Minimum Performance Standard 4.1.1.7 that regardless of the traffic generation from a project, there cannot be any safety impact as a result of the project. Mr. Mumford said that based on the comments tonight, the project may very well not meet the requirements of that Minimum Performance Standard.

•December 3, 1998 Hearing

Attorney Myer Singer requested that the hearing be continued to another date and time due to the potential loss of one of the Subcommittee members (Mr. Riley). He submitted two letters to that effect for the record.

Mr. Ernst noted the November 25, 1998 Staff Report recommended that the project as currently proposed was not in conformance with the Regional Policy Plan. He noted the Staff Report also noted the project would have to be significantly redesigned to bring it into conformance.

Attorney Singer noted the applicant was aware of the Staff Report's recommendations but he expected the Subcommittee would come to a different conclusion when additional evidence was presented.

Ms. Adams said it was the staff's recommendation that the project as proposed was not in conformance with the Regional Policy Plan (RPP). She noted that without significant new information, it was difficult to see how the project could achieve conformance with the RPP. She noted that the staff's recommendations had not changed since at least the October 7, 1998 public hearing on some issues and previous hearings on others.

Mr. Fox said that the Subcommittee was under no obligation to grant the applicant's request to continue the hearing. He said it was also an equity issue to the applicant to have all four Subcommittee members present balanced against equity to the people who had come out to attend tonight's hearing.

•January 4, 1999 Hearing

Mr. Riley disclosed that he had spoken to the applicant's representative, Attorney Singer, and asked him to bring an assessor's map showing the site and surrounding parcels to tonight's hearing.

Mr. Ernst noted that it had been brought to the Subcommittee's attention that the Harwich Selectmen were present and had a time constraint. As such, Mr. Ernst asked them for their comments on the project.

Ms. Sandra B. Daniels recommended denial of the project based on traffic impacts, roadway impacts and community character concerns. She said the project had regional impacts. She said there was no mitigation on the road which could address the concerns. She said there were important safety problems. She said the only mitigation which was acceptable was provision of alternative access.

Harwich Police Chief Greenwald presented written comments on the project. He explained that the project would have a detrimental impact on Main Street/Depot Street and other roads in the area. He urged the Subcommittee to deny the proposed project.

Ms. Barbara Yamamoto stated concerns regarding traffic impacts from the project. She reiterated the comments of the Selectmen and Chief of Police. She supported the concept of alternative access.

Mr. Riley said the amount of traffic anticipated by the proposed project would not change the Level of Service (LOS) at the Main Street Extension/Depot Street intersection.

Mr. Sid Zeigler of the Harwich Selectmen said the letter was written based on the fact that the Town of Harwich will deal with the existing safety deficiencies but that

the Town has no plans to alter the road to service the proposed project.

Mr. Peter Luddy, Selectmen of Harwich, noted the Town had a priority list of projects for road work. He said that the Town did not have plans to change its priorities to accommodate this particular project.

Ms. Daniels said questions about what is there now were not relevant because the businesses are already there. She noted the Town would take steps to address concerns relating to the existing development. She was concerned about additional impacts by the proposed new development. Ms. Daniels urged the Subcommittee to consider the valid concerns of the residents and the Town officials. She said the development will have detrimental effects.

Ms. Sylvia Laffin noted that the beauty of the DRI review process and the hearing process is that it provides additional testimony. She noted this allowed staff to take the information into consideration and suggested that the lateness of the comments was not relevant.

Mr. Howard Verse inquired about construction activity. He noted the proposed construction period could be long. He noted that the Town of Dennis was proposing an alternative access into the back side of the Dennis landfill parcel (Chamberlain property). Mr. Ernst thanked the Harwich Selectmen for their comments. He asked the applicant to make comments.

Attorney Singer introduced himself and the applicant's project team. He noted the applicant has several issues to deal with relative to compliance with the RPP. He said the applicant is willing to confirm that the project complies with the RPP. He noted studies can be done for up to \$100,000 to show compliance with the RPP. He said Atria, the applicant, will only do these studies if the Commission is not concerned about traffic. He said the Police Chief even stated that the road is not unsafe, that it is speeding drivers. He said Atria will provide for police details on the streets. He said snow removal would need to be done regardless whether the project was built. He noted Atria would also pay for new road signage. Attorney Singer noted the Harwich Selectmen have problems with Dennis' zoning, but that part of the road was in Harwich's own industrial zone. Attorney Singer objected to the Commission staff statements that one more trip would degrade the traffic. He said many other projects would be denied if this was the standard. Attorney Singer provided a copy of a letter from Rizzo Associates noting accident data showing six accidents over the past ten years. He said he did not believe that there was a relationship to the existing nursing home. He said that the applicant needed to hear that the Subcommittee did not think there was a traffic problem with the proposed project. He noted the assessors' maps showed there was no possible alternative

access to the project.

Mr. Rick Bryant of Rizzo Associates addressed the traffic issues.

Ms. Andrea Adams, a Planner with the Commission, presented the Staff Report. She noted information which had been received for the record since the December 3, 1998 public hearing. Ms. Adams noted that the applicant was seeking a vote from the Subcommittee to indicate that the project could be approved if the traffic issues and water resources issues were resolved. She noted staff counsel had strongly recommended against a vote by the Subcommittee providing "potential approval" of any part of the project if issues remained unresolved. She noted that in terms of Natural Resources/Open Space issues, the applicant's proposed Covenant and Agreement and grant documents did not create a permanent restriction as required by Minimum Performance Standard (MPS) 2.5.1.3.

Mr. Glenn Cannon addressed transportation concerns. He noted the applicant had a stated preference for using the existing access through Harwich. He noted the staff had received a proposed mitigation package this morning from the applicant. He said this information should be thoroughly reviewed by the staff and the Town officials and a report then should be given back to the Subcommittee.

Mr. John English noted he owned the cranberry bog just to the rear of the proposed project. He said his main concern was effluent from the septic system.

Ms. Gabrielle Belfit with the Commission staff addressed the water resources concerns. She noted there were significant issues related to impacts from Eagle and Swan Ponds. She noted the project as proposed resulted in nitrogen loading above the 5 ppm standard of the RPP. Ms. Belfit noted as a comparison that without any septic treatment, the project as currently designed would need approximately 33 acres of upland to meet the RPP. She said with treatment, the project as designed would need 16 acres of upland to meet the RPP. She noted the wastewater discharge was approximately 300 feet directly upgradient of Eagle Pond. Ms. Belfit noted the impacts to the Pond of the effluent have not been defined. Ms. Belfit noted that the Department of Environmental Protection may not recognize that the Ponds are significant and sensitive resources. She said these are important issues for the Commission. She said these issues need to be addressed prior to any approval of the project. She said a community tertiary treatment plant for the existing nursing home and the proposed project together would greatly improve the overall water quality in the area. Ms. Belfit noted that the project as proposed did not meet the RPP and suggested real changes were needed.

Ms. Adams said that a recommendation in terms of process is that if the applicant

wants to pursue other steps, they can do that through withdrawing the project and refilling when the additional tests were completed or through a longer extension. She said it was staff's recommendation that it was premature to issue an opinion about the outcome of those steps.

Mr. Widegren of the Harwich Planning Board noted the Board and the Town had concerns about the project.

Mr. Michael Pessolano, the Harwich Town Planner, noted the purpose of the public hearing was to gather testimony. He said he was concerned about the traffic patterns from the existing nursing home. He said there was a qualitative issue about the roadway. He said it was important to give credence to the neighbors and the Town officials. Mr. Travelo questioned whether all further development on the roadway should be denied. Mr. Pessolano responded that appropriate development should be allowed. He said an assisted living facility was not appropriate for the site. He said he also intended to testify before the Dennis Planning Board regarding their Special Permit.

Ms. Kim Gonzales submitted a letter with concerns on the project to the Subcommittee.

Mr. Dan Woolf expressed concerns about traffic. He used a map of the area to illustrate where he lived in relation to the project. He said the project traffic would exacerbate a safety problem. He noted the accident statistics were just for Main Street Extension. He said the parcel should be considered for purchase with Land Bank funds. He said the residents had valid concerns. He noted he was not anti-development by stating he was on the Transportation Committee of the Cape Cod Chamber. He said the development proposed was not appropriate for the site. He said the concerns of the residents were credible.

Mr. Howard Verse said there was an existing safety concern. He said the Subcommittee needed to take all the issues into consideration. He was concerned that the Subcommittee take into account the input of the staff and the public.

Ms. Adams noted that additional information had been received this morning from the applicant. She said that if the Subcommittee felt it needed more time to consider this information, and to get feedback from the Town and the recommendations of the staff, it could entertain another extension of the Decision period.

Mr. Ernst asked if the Subcommittee wanted to extend the Decision time so the further information can be studied.

Mr. Riley said the Subcommittee should not entertain an extension of the Decision period unless it was willing to review the traffic issues alone. He said that the Subcommittee should decide whether it wants to deal with the issues one at a time.

Mr. Broidrick made a motion to deny the present application. He suggested the applicant could develop a new proposal which meets the all the issues and meets the Regional Policy Plan.

Mr. Ernst seconded the motion and asked for discussion.

Mr. Riley said the traffic issues can be addressed through mitigation. He said the issues also have to be addressed by the Town of Harwich which is not receptive to the mitigation methods. He said if the project as proposed is not appropriate, it's time to end the DRI review and to deny the project.

Mr. Ernst said the applicant could still consult with the staff and the Town to help deal with the issues.

Ms. Laffin, the Commission representative from Harwich but speaking not as a member of the Eagle Pond Subcommittee, said it might perhaps be more appropriate to deny the project to give them time to re-group without having a time clock ticking away.

Mr. Broidrick said that the full Commission still makes a determination on the project.

Mr. Ernst asked for a vote on the motion.

Mr. Broidrick and Mr. Ernst voted in favor of the motion. Mr. Riley voted against the motion. Mr. Travelo abstained.

Attorney Singer asked for the Subcommittee members to reconsider their votes.

Mr. Ernst said it was a two to one vote to deny the project.

Mr. Broidrick said he thought the outcome of the vote was clear.

Mr. Fox said that it was the position of the Subcommittee that the project should be denied and that the staff should draft a denial decision. He noted that the full Commission would then consider the project. Mr. Fox said a two to one vote with an abstaining member is a denial, but he noted staff would consult with counsel. He said that any of the Subcommittee members voting in favor of the motion could

reconsider their position.

Mr. Travelo moved that the public hearing and the record be continued to the February 18, 1999 Commission meeting. Mr. Broidrick seconded the motion. The Subcommittee voted all in favor of the motion.

At the February 18, 1999 Commission meeting, the Subcommittee members voted to approve the January 14, 1999 Minutes. Mr. Brodrick moved to deny the application of Atria Communities, Inc. for a Development of Regional Impact permit pursuant to the Cape Cod Commission's Regulations of General Application, Chapter A, Section 3(g) governing Developments of Regional Impact for construction of a 47-unit assisted living facility comprised of a two-story building of several interconnected wings totalling 34,651 square feet on two parcels of land located at 5 Love Lane in Dennis. Ms. Taylor seconded the motion. Mr. Olsen asked a vote on the motion. The full Commission voted, with one abstension, to approve Mr. Broidrick's motion for denial.

JURISDICTION

The proposed project is a DRI under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(g): "any proposed development, including the expansion of existing developments, that is planned to create or add thirty or more residential dwelling units." The definition of "residential dwelling unit" in the Commission's Enabling Regulations includes but is not limited to bedrooms in nursing homes and congregate care facilities.

FINDINGS

The Commission has considered the DRI application of Atria Communities, Inc. for construction of a 47-unit assisted living facility comprised of a single two-story building of several interconnected wings totalling 34,651 square feet on two parcels of land located at 5 Love Lane in Dennis, MA. Based on consideration of such application, the information presented at the public hearings and submitted for the record, the Commission makes the following Findings:

GENERAL

G1. The proposed project is a DRI pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(g): "any proposed development, including the expansion of existing developments, that is planned to create or add thirty or more residential dwelling units." The definition of "residential dwelling unit" in the Commission's Enabling Regulations includes but is not limited to bedrooms in nursing homes and congregate care facilities. This project was reviewed for conformance with the 1996 Regional Policy Plan (RPP).

G2. The project site, according to assessors maps, is a 5.1-acre lot on which a building is proposed to be constructed. It is located in Dennis on land zoned Industrial according to the Dennis Zoning map and bylaw with access provided by Love Lane which connects to Main Street Extension in the Town of Harwich. Assisted living facilities are authorized within Dennis' Industrial Zoning District by a Special Permit. The project will also require Site Plan Approval by the Dennis Planning Board.

G3. The project fails to satisfy two of the requirements for DRI approval set out by the Cape Cod Commission Act, Section 13(d), as follows: 1) the probable benefit of the project does not outweigh the probable detriment, and 2) the project is not consistent with the Regional Policy Plan.

AFFORDABLE HOUSING

AH1. Section 5.1. of the Regional Policy Plan, specifically Minimum Performance Standard (MPS) 5.1.2 requires any residential Development of Regional Impact to set aside at least 10% of the lots for affordable housing. In this instance, the Eagle Pond project would be obligated to set aside five housing units.

AH2. The RPP allows applicants to satisfy the affordable housing requirement through on-site units, off-site units or with a cash contribution. In a fax received on August 10, 1998, the applicant proposed to satisfy the affordable housing requirement through a cash contribution of \$200,000. This figure is equivalent to providing 5 affordable housing units in Dennis which the Commission finds as satisfying the requirements of MPS 5.1.2.

ECONOMIC DEVELOPMENT

ED1. The DRI application materials indicated that the proposed project would have created a total of 28 full-time equivalent employees, of which four would have been management positions. It noted the Executive Director would have been hired through a national search, but the other positions would have been hired locally to the greatest extent possible. The DRI application also stated the project would have cost \$3.2 million to build and that the applicant would have tried to use local contractors and workers. Development Review Policy 3.3.1 (DRP) states in part that Developments of Regional Impact should be evaluated for net new jobs created, salary and benefit levels. It also states that it should be considered a benefit if a development provides year-round employment, provides basic health and retirement benefits, employs local workers, and pays higher than minimum levels.

ED2. The proposed facility would have filled a particular niche in the Cape Cod market by providing 47 assisted living units. DRP 3.1.3. states in part the Commission should identify and encourage enterprises with the greatest economic

potential for Cape Cod. These include but are not limited to marine science, "clean" manufacturing, business services, environmentally-oriented business, computer software, telecommunications, shellfishing, fin-fishing, agriculture and health and elder care among others.

COMMUNITY CHARACTER

CC1. MPS 6.2.1 of the RPP requires that the height and scale of a new building be compatible and harmonious with its site and existing surrounding buildings. The proposed assisted living facility includes two-story and one-story building wings with a gable roof. The height and scale of the facility is similar to the existing Eagle Pond nursing home immediately adjacent to the project site. Exterior materials are proposed to be clapboard siding and wood trim with an asphalt shingle roof, which are consistent with Cape Cod architectural materials.

CC2. MPS 6.2.5 requires landscaping that integrates buildings with their environment, enhances architectural features and provides amenities for pedestrians. The facility is surrounded by landscaped courtyards for use by the residents and meets the requirements of this performance standard.

CC3. MPS 6.2.3 requires the applicant to provide adequate landscaped buffers in order to screen the development from adjacent roadways. Route 6, a regional roadway, lies immediately north of the project site. The project also proposed to provide a 100 foot buffer to Eagle Pond and an existing cranberry bog. Given these site constraints, the applicant needed to provide, to the extent possible, additional plantings along the northern property line to help buffer the development from Route 6. The applicant's proposal as outlined in a June 29, 1998 letter from AM Wilson Associates would satisfy this standard given the site constraints. However, the existing landscaping plan provided with the DRI application was not revised to reflect the plantings proposed for this area.

CC4. MPS 6.2.10 requires that parking be located to the rear or side of a building unless such location would have an adverse impact on environmental features on the site. As noted above, the provision of wetland buffers is a constraint to meeting this standard.

CC5. MPS 6.2.7 requires that exterior lighting complies with the Commission's Exterior Lighting Design Standards, Technical Bulletin 95-001. The project, based on the most recent lighting designs and other technical information submitted and refined over the course of the review process, would comply with Section 2.0 of the Technical Bulletin.

CC6. MPS 6.2.8 states the installation of billboards, offsite advertising (except

approved directional signs) and internally lit or flashing signs shall not be permitted. According to DRI application materials, internally illuminated or flashing signs are not proposed.

CC7. MPS 6.1.3 sets out requirements for dealing with projects which affect historic or archeological sites. A June 8, 1998 Memorandum from the applicant included a response from the Massachusetts Historical Commission stating that the project is unlikely to affect significant historic or archeological resources.

NATURAL RESOURCES/OPEN SPACE

NR/OS1. According to 1996 RPP maps, the site is located entirely within a Significant Natural Resource Area (SNRA) due to the presence of unfragmented forested habitat on the site. The site is not located within rare or endangered species habitat as mapped by the Massachusetts Natural Heritage and Endangered Species program, or on the Association for the Preservation of Cape Cod Critical Habitat Atlas.

NR/OS2. Due to its location in a SNRA, the applicant is required to provide 65% of the upland area of the project lot as permanently restricted open space as required by MPS 2.5.1.3. The applicant has proposed to provide the open space through a combination of upland on the site lot and an adjacent bog lot.

NR/OS3. MPS 2.5.1.2 states preserved open space within proposed developments shall be designed to be contiguous and interconnecting with adjacent open space, and shall be subject to permanent conservation restrictions in a form consistent with MGL Chapter 184. The applicant has proposed a Covenant and Agreement and grant documents in lieu of a Conservation Restriction which do not comply with MPS 2.5.1.2 and MPS 2.5.1.3.

WATER RESOURCES

WR1. The Eagle Pond Assisted Living Facility proposes to discharge approximately 7,000 gpd of wastewater via an alternative wastewater treatment system (Amphidrome) on approximately 5 acres of upland. The project is not in compliance with RPP MPS 2.1.1.1 of 5 ppm nitrate nitrogen loading. The project as designed results in a nitrogen loading concentration in excess of 9 ppm. A project site of 16 acres would be needed to meet MPS 2.1.1.1 as this project is currently designed.

WR2. The Commission does not accept the applicant's claim that the proposed Amphidrome wastewater treatment system can meet the 5 ppm nitrogen loading standard. The standard could be met if wastewater effluent from the system is treated to produce an effluent nitrogen concentration of approximately 8 mg/l. The

DEP is currently permitting this Amphidrome system on the basis that it can reliably achieve an effluent concentration of 19 mg/l. Commission analysis of nitrogen loading for this project is based on the DEP's currently permitted effluent concentration of 19 mg/l for the Amphidrome system which results in nitrogen loading in excess of 9 ppm.

WR3. Although the proposed Amphidrome system for this project is smaller than the state's 10,000 gallon-per-day threshold which automatically requires groundwater discharge permits, the applicant proposed to obtain a Department of Environmental Protection (DEP) groundwater discharge permit to show compliance with the RPP MPS for nitrogen loading. The applicant has not pursued this permit.

WR4. The Commission does not accept the applicant's claim that the area of an adjacent cranberry bog should be used to provide dilution for the wastewater in calculating the project's nitrogen loading. It is inappropriate to include wetlands in the nitrogen loading calculations based on the hydrologic characteristic of the bog wetland. Several factors present in a bog system limit recharge of water to the underlying aquifer as compared with upland areas. In particular, bogs are underlain by a dense silty clay layer, which limits recharge by precipitation and isolates water held in the bog from the aquifer below.

WR5. The Commission does not accept the applicant's claim that the bog will act as a filter and partially treat the wastewater. While nitrogen uptake by growing vegetation is well documented, it is primarily limited to the summer months and the "treatment" is based on the assumption that wastewater will flow into the bog. Water table contours provided by the applicant indicate that groundwater on the site, including what would be coming from the wastewater leaching area, flows predominantly towards Eagle Pond and not the bog.

WR6. Water table contours prepared by the applicant indicated that wastewater flow would discharge into Eagle Pond located approximately 300 feet downgradient. In accordance with MPS 2.1.1.B.2, a phosphorous loading assessment must be completed in order to identify and mitigate potential adverse impacts. In order to adequately evaluate the Pond's metabolism the study must include sampling over a 12-month period. No phosphorous loading assessment was presented by the applicant.

WR7. The project design wastewater flow of 7,050 gallons per day is based on the Title 5 wastewater design flows. Commission Technical Bulletin 91-001 allows actual water usage figures from a similar, documented use/facility to be utilized in the estimation of nitrogen loading. Such documentation should be based on several years of actual water use data and the facilities must also be directly comparable.

The applicant provided water usage figures from a number of other facilities which were derived from monthly water bills. Also, water use from these facilities varied widely and it was not clear if these facilities were similar in terms of the level of care and other water usage considerations. Therefore, the Title 5 flow of 150 gallons per day per person was utilized in estimating design flows.

WR8. The proposed project is located within the Marine Recharge Area to Swan Pond, which is a nitrogen sensitive marine embayment. MPS 2.1.1.2.C.1 states that for projects within nitrogen sensitive marine embayments where a critical nitrogen load has not been determined, Developments of Regional Impact shall be required to make a monetary contribution towards the flushing rate study. The expected one-time contribution for this project would be \$1,050.

WR9. Based on the information submitted, including written and oral testimony, the project as designed is not in conformance with Regional Policy Plan Minimum Performance Standards 2.1.1.1 and 2.1.1.B.2. Also, insufficient information was presented to determine any project benefits in terms of water resources.

HAZARDOUS MATERIALS/WASTES

HAZ1. According to the Commission's Water Resources office maps, the site is not located within a Wellhead Protection Area. As such, RPP MPS 4.2.2.3 would not apply to this project.

HAZ2. MPS 4.2.2.1 states development and redevelopment shall make reasonable efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution employee education and recycling. During the course of the DRI review, the applicant committed to heating the building with natural gas piped in from Love Lane, committed to having no floor drains in the facility and provided a draft Fire, Disaster and Emergency Plan as part of the DRI application.

HAZ3. MPS 4.2.2.2 states that development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.00. The DRI application information stated that precautions would be made for storage of equipment and/or hazardous materials used in construction. Also, the applicant stated an intent to remove the old wharf on the site.

TRANSPORTATION

T1. The potential traffic from this project is based on a proposed 47-bed assisted living facility on Love Lane in Dennis, MA.

T2. Although the project is located in Dennis, Love Lane is a continuation of Main Street Extension in Harwich, MA. All site generated traffic must access the site via

Main Street Extension in Harwich, MA.

T3. Love Lane in Dennis and Main Street, west of Depot Street in Harwich are both listed as local roads on the Metropolitan Planning Organization Functional Classification Map. Depot Street is classified as a Rural Major Collector. Main Street, West of Depot Street in Harwich is also known as the Main Street Extension.

T4. Based on Institute of Transportation Engineers (ITE) "Trip Generation Manual" the project is expected to generate 6 morning peak hour, 17 evening peak hour and 138 daily vehicle trips.

T5. The estimated traffic impacts for the Eagle Pond Assisted Living Facility will not exceed the minimum traffic thresholds as described in the Cape Cod Commission Regional Policy Plan (RPP) Minimum Performance Standards (MPS) 4.1.1.1 that require analysis of off-site level-of-service impacts.

T6. Regardless of the project size or traffic generation, the project is required to reduce by 20% the expected average daily automobile trips based on the Institute of Traffic Engineers average traffic generation for an assisted living complex. Based on ITE trip generation rates, the project must reduce 28 daily trips (.2 X 138) as described in MPS 4.1.2.1. Along with in-kind trip reduction strategies, the proponent has proposed a monetary commitment of \$47,800 to fund alternatives to automobile travel to fulfill the requirements of the 20% trip reduction, as allowed under MPS 4.1.2.2.

T7. It was determined that sight distance for the proposed facility driveway was adequate based on American Association of State Highway and Transportation Officials (AASHTO) standards, satisfying MPS 4.1.1.5.

T8. It is expected that the facility driveway will operate at an acceptable Level of Service satisfying MPS 4.1.1.6.

T9. At the hearing held on October 7, 1998 at the Harwich Town Hall, testimony was offered by the following residents and town officials describing safety concerns on Main Street, west of Depot Street (also known as the Main Street Extension), which serves as the only vehicular access to the project:

Sandra Daniels, Chairman of the Board of Selectmen
 William Greenwood, Chief of Police
 Sid Ziegler, Board of Selectmen
 Alice Norgeot, Director of Public Works
 Michael Pessolano, Town Planner

Barbara Yamamoto, Harwich Traffic Safety Committee
Charleen Greenhalgh, Dennis Town Planner
Scott Christophers, Harwich resident
Paul Gonzales, Harwich resident
Howard Bearse, Harwich resident
Dan Wolf, Harwich resident
Gary Sinclair, Harwich resident
Annie Gonzales, Harwich resident

Written testimony regarding roadway safety has also been received from the Harwich Selectmen, the Harwich Town Planner, the Harwich Police Chief, the Harwich Director of Highways and Maintenance, and eight local residents. Numerous residents spoke out publicly relative to existing safety issues on Main Street, west of Depot Street and at the intersection of Main Street and Depot Street in Harwich.

T10. An analysis of the accident records from the Town of Harwich Police Department and the Massachusetts Highway Department for Main Street, west of Depot Street and the intersection of Main Street/Depot Street reveals the following:

- Main Street, west of Depot Street has an accident rate of 700 accidents per 100 Million Vehicle Miles Traveled (MVMT). Based on accident data reported in the National Transportation Statistics, 1996 by the United States Department of Transportation Bureau of Transportation Statistics, the national average accident rate is 275 accidents per 100 MVMT. Main Street, west of Depot Street in Harwich is experiencing an accident rate that is more than twice the national average.

- The intersection of Main Street and Depot Street has an accident rate of 65.4 accidents per Million Entering Vehicles (MEV). For comparison, the intersection of Route 137 and Route 39 has an accident rate of 65.5 accidents per Million Entering Vehicles. The Harwich Traffic Safety Committee ranks the intersection of Route 137 and Route 39 as one of the most dangerous intersections in Harwich. The intersection of Main Street and Depot Street has effectively the same accident rate as this intersection.

T11. MPS 4.1.1.7 states that regardless of project size or traffic generation, there shall be no degradation in public safety as a result of a Development of Regional Impact. Public safety issues relating to pedestrians, mostly children, bicycle and equestrian riders on Main Street, west of Depot Street have also been raised. These are supported by the accident records from the Harwich Police Department. The pedestrian safety issue could be resolved by providing sidewalks on Main Street from the intersection of Main Street and Depot Street to at least the Harwich/Dennis

Town Line. The safety concern for the bicycle and equestrian riders as well as the concerns of excessive vehicle speed on Main Street would need to be addressed through a form of traffic calming, such as a physical device to slow down traffic on Main Street.

T12. The proponent has proposed the following Transportation System Management items: Conduct employee training programs to heighten awareness of local roadway conditions, coordinate construction vehicle traffic with school bus schedules, install speed limit signs along Main Street Extension, and install warning signs in advance of horizontal curves along Main Street Extension (listed in Table 1 of the November 20, 1998 letter from Rizzo Associates). In a letter dated January 4, 1999 from Rizzo Associates to Commission staff, the proponent has proposed additional roadway mitigation, at their own expense, to bring the project into compliance with the RPP. The roadway mitigation includes providing police enforcement of local speed limits on Main Street, reconstructing a portion of Main Street to flatten the curve in front of 54 Main Street, installing a leaching catch basin in front of 144 Main Street, improving sight distance by removing vegetation, relocating sections of the cemetery fence, and relocating an existing hedge. The physical changes to the Main Street Extension require Town of Harwich approval. In addition, right of way and natural resource issues may prevent implementation of some of these physical changes to the Main Street Extension.

T13. Some of the safety mitigation proposed by the project proponent in a letter dated January 4, 1999 from Rizzo Associates would require approval of the town of Harwich to reconstruct sections of the Main Street Extension. The Harwich Board of Selectmen and other town officials have stated, however, that alterations to the Main Street Extension to mitigate impacts of this project are unacceptable based on community character and MPS 4.1.1.8. Therefore, elements of the safety mitigation proposed by the applicant can not be implemented.

T14. A sidewalk along the Main Street Extension has been proposed by the proponent as a safety improvement and a trip reduction strategy. There are several issues that need to be resolved to determine if a sidewalk is viable. These include adequacy of right of way, natural resource and wetlands issues, cost, the need for utility relocation and whether the town of Harwich would allow sidewalk construction. In addition, no party has accepted responsibility for the sidewalk construction, as required under MPS 4.1.1.12.

T15. Alternative access was recommended by the Cape Cod Commission staff and the Harwich Board of Selectmen as a solution to the traffic safety issues on Main Street Extension in Harwich. The applicant has stated that alternative access is not possible because they do not own adjoining land that would be necessary to create

such access and there are natural resource issues that would prevent such an access from being constructed. The applicant also did not provide a formal access report.

T16. The project does not comply with one Minimum Performance Standard and two Other Development Review Policies (ODRP) related to the site access for this project:

- MPS 4.1.1.17 states "Internal site circulation and access/egress shall be designed to minimize impacts on the adjacent road system." An alternative access other than Love Lane/Main Street Extension may reduce the project's impacts on the Main Street Extension. However, the applicant has not proposed to pursue an alternative access.

- ODRP 4.1.1.18 states "New development and redevelopment should minimize adverse traffic impacts on residential neighborhoods." As proposed, the project will increase traffic on Main Street Extension and parts of Depot Street, which include residential neighborhoods. Based on the existing accident rate on Main Street extension, this increase in traffic from this project is expected to have adverse impacts on these residential neighborhoods.

- ODRP 4.1.1.19 states "New development and redevelopment should not increase traffic on roads links or through intersections with existing safety deficiencies such as inadequate sight distance or adverse grades." Main Street Extension is a road link with inadequate sight distance at certain locations and a documented existing safety deficiency. As proposed, this project would increase traffic on the Main Street Extension.

T17. Section 4.3.1.1 of the Regional Policy Plans states "Approval of development and redevelopment which increases the intensity of use shall be based on existing infrastructure and system capability or on a development's ability to provide for or contribute to the infrastructure and services necessary to support it." The Eagle Pond Assisted Living Facility will cause an increase in traffic on Main Street and the intersection of Main Street and Depot Street in Harwich. The project does not provide for or contribute to infrastructure and services necessary to support it. Therefore, the project is not in compliance with this MPS.

T18. Based on the accident data analysis, Main Street west of Depot Street in Harwich as it currently exists has a safety deficiency that will continue to degrade with additional traffic. Therefore, the project is not in compliance with MPS 4.1.1.7 and ODRP 4.1.1.19.

T19. Based on the information submitted, including written and oral testimony, the

project as proposed is not in compliance with Regional Policy Plan Minimum Performance Standards 4.1.1.7, 4.1.1.8, 4.1.1.12, 4.1.1.17 and 4.3.1.1. In addition, the project as proposed is not consistent with Other Development Review Policies 4.1.1.18 and 4.1.1.19.

CONCLUSION

Based on the public hearings, public meetings, the materials submitted for the record and the above Findings, the Commission hereby concludes:

1. The project as proposed is not in conformance with the Regional Policy Plan. This is supported by Findings G3, NR/OS-1, NR/OS-2, NR/OS-3, WR1, WR2, WR3, WR6, WR9, T9, T10, T11, T12, T14, T16 (related to MPS 4.1.1.17), T17, T18 (related to MPS 4.1.1.7) and T19 (related to the Minimum Performance Standards cited).
2. As currently proposed, the benefits of the project do not outweigh the detriments resulting from the project. Specifically, the benefits of this project such as development of an additional assisted living facility and the associated jobs which would have been created do not outweigh the project's detriments of not being in conformance with the Regional Policy Plan. This is supported by the above Findings including but not limited to ED1, ED2, G3, WR9, T16 (related to the ODRPs), T18 (related to the ODRP) and T19 (related to the ODRPs).
3. Should the project issues be resolved, and compliance with the Regional Policy Plan be achieved, the Commission would re-evaluate the project. It would also re-evaluate the probable benefits and detriments of the project. Resolution of the water resources, traffic and natural resources/open space issues may require alterations to the septic system plans, and/or the size and layout of and access to the project.

SUMMARY

The Commission hereby denies the Development of Regional Impact application of Atria Communities, Inc. for the above-referenced project located in Dennis, Massachusetts, pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(g) and Sections 12 and 13 of the Cape Cod Commission Act, as amended.

Herbert Olsen

Herbert Olsen, Chairman

3/4/99

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 4th day of March, 1999.

Katharine L. Peters

NAME, Notary

My Commission expires:

