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Minutes of the Commission Meeting Held on September 14, 2006 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)

P James Athearn (E – Edgartown)	- Ned Orleans (A – Tisbury)
P John Best (E – Tisbury)	P Megan Ottens-Sargent (E –Aquinnah)
P John Breckenridge (A – Oak Bluffs)	P Deborah Pigeon (E – Oak Bluffs)
P Christina Brown (E - Edgartown)	- Jim Powell (A – West Tisbury)
- Carlene Condon (A – Edgartown)	P Doug Sederholm (E – Chilmark)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
P Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
P Chris Murphy (A – Chilmark)	P Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A –Aquinnah)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator), Christine Flynn (Affordable Housing & Economic Planner)

1. RATTNER/WHITE HOUSES:DRI 326-M – DISCRETIONARY CONCURRENCE REVIEW

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Condon, M. Davisson, C. Murphy, K. Newman, M. Ottens-Sargent, D. Pigeon, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

For the owner: Maureen White, owner; Diane Tillotson, attorney, Glenn Provost, engineer; Andrew Flake, construction; Chris Horiuchi, landscape architect

1.1 Staff Report

Paul Foley gave the staff report. Information includes that:

- Patricia M. White is the applicant.
- The projects involve two lots of 9.01 acres and 21.63 acres on Obed Daggett Road; the subdivision into two lots was approved with conditions by the Commission in 1990.
- The owners propose to move an existing house to the second lot and build a new house at the present house site.
- Zoning regulations include rural residential, Coastal District DCPC, Wild and Scenic North Shore DCPC, and the Floodplain DCPC.
- In 1999-2000 the Conservation Commission approved the road, bridge and utilities to the 21-acre lot.

- In 2004, the West Tisbury Conservation Commission issued an Order of Conditions allowing the removal of the existing dwelling and the construction of a new dwelling and a carriage house.
- In 2006 the West Tisbury Conservation Commission issued an amended Order of Conditions approving the project with a reduced footprint, less excavation, and a shorter retaining wall.
- Existing conditions include: a 100-foot buffer zone around the Indian Burial Ground, the requirement that a study be done to determine whether any endangered species are within 100 feet of any proposed area of construction or disturbance; the requirement that West Tisbury Conservation Commission Order of Conditions #79-49 be incorporated into the plan; and the requirement that a form "C" subdivision plan be filed in the case of further subdivision.
- The current proposal has been working its way through various boards for a number of years.
- On July 28, 2006, two separate building permit applications were submitted to the West Tisbury Building Inspector who referred them to the West Tisbury Planning Board for Site Plan Review because they both exceed 3,000 square feet.
- The Planning Board referred the projects to the Commission and intended it to be a discretionary referral.
- LUPC voted to recommend that the Commission accept the referral and review it as a DRI. Since that date, a lot more information on the project has been submitted.
- There is no DRI trigger for large houses.
- Issues related to the projects are:
 - The properties' location in a Natural Heritage priority habitat area.
 - The impact on the Island's character and view.
 - How well the road to Cedar Tree Neck will handle the excavation and construction vehicles.
 - The effect on the wetlands on the property during the house move.
 - The number of truck trips required to move an estimated 3500 cubic yards of excavation material to the gravel pit.
 - Why several large houses and compounds in the immediate vicinity haven't been reviewed by the Commission.
 - The fact that the Conservation Commission's Order of Conditions pre-dates the Natural Heritage regulations that require that the project should be sent to NHESP.
- In 1990, through the endangered species inventory, three endangered species were found in the vicinity.
- The ancient Native American burial ground has a conservation restriction on it in perpetuity.
- The new building will exceed building code requirements for energy conservation and will include a geothermal heat pump system with energy recovery ventilation.
- Water will be from an onsite well; the septic will be two conventional Title 5 systems.
- Groundwater from some portions of the property recharges Lily Pond.
- The wastewater recommendation from Bill Wilcox is that the leaching systems be kept as far from Lily Pond as possible.

- The road agreement between Mr. Rattner and the Obed Daggett Road Association outlines procedures to minimize disruptions during the excavation and construction phases of the project.
- Affordable housing is addressed through staff housing in the basement.
- The economic impact is that construction and maintenance workers will be local.
- Scenic values are an issue because both houses will be visible from the water. The new house will be somewhat more visible than the existing house, but the setback will be about 25 feet behind the 100-foot tide line.
- Neighbors have expressed concern with potential disruption of the neighborhood during excavation and construction.
- Correspondence includes letters from:
 - West Tisbury Planning Board
 - Patrick Phear, Road Commissioner of Obed Daggett Association
 - Bonnie Brooks, abutter
 - Lionel Spiro, Island property owner
 - John Brooks, abutter
 - Diane Tillotson, applicant's lawyer

Linda Sibley reminded people that this is not a public hearing so the review of the project does not need to be detailed. The question to be addressed is whether there is significant enough regional impact for the Commission to designate it a DRI.

1.2 Public Officials.

Murray Frank, chairman of the West Tisbury Planning Board, summarized the history of the project and the Planning Board's referral to the Commission.

- There have been no approvals by the Planning Board.
- The first time the Planning Board saw a plan was on July 31st when the Building Inspector submitted the plans to the Planning Board because both projects were over 3,000 square feet triggering site plan reviews.
- When they saw the plans, they recognized that site plan reviews were required. They thought that the site was previously a DRI and, thus, were obligated to refer the project to the Commission. They also believed that some of the conditions in the plan met the triggers for the DRI checklist and, therefore, they should refer it as a discretionary referral.
- The Conservation Commission has reviewed various stages of the plan.
- The Planning Board determined twice that the site met the wooded definition, which affects the height limitation. Sometime later, after learning there had been significant clearing, they reviewed the site again and again voted that it was a wooded area.
- The size of the houses is not an issue; the issue is what the movement of the house will do to the area and what the impact on the road and the neighborhood will be.
- As far as the Planning Board is concerned, their job is to conduct the site plan review and to ensure that the height and distance from the bounds meet requirements.
- They believe the project meets the checklist for DRI review.
- The Planning Board originally referred the project because of the DRI designation; additionally, the Planning Board examined the plan and feels the DRI checklist is triggered.

- A big building has an effect on various aspects of the Island and on the psyche and souls of people on the island for whom there isn't a dream to live anywhere else and who hate seeing what happens on the Island. They need the Commission to help protect the Island.

Linda Sibley said the issue is what the regional impacts are that the Planning Board cannot control and the Planning Board is asking the Commission to deal with. **Murray Frank** said they have no jurisdiction over the excavation, trucks and machines and the impact on Obed Daggett Road and the people who want to get to Cedar Tree Neck and other parts of the neighborhood. The Planning Board's only jurisdiction is over whether the house meets height and boundary requirements.

Linda Sibley asked whether, once a property has been determined to be wooded, are the owners obligated to keep it wooded. **Murray Frank** said not that he was aware of; some of the Planning Board members have been concerned about the height requirement and the excavation that's gone on; he understands Mr. Provost's explanation of how the height requirement is met, but he finds it difficult to accept.

Andrew Woodruff asked how a site is determined to be wooded and whether the Board knows where the median grade is now. **Murray Frank** said they looked and determined the height of the canopy, about 20 feet. It's not scientific and there were a lot more trees the first time they were there. The Planning Board believed the grade would be changed 7 feet but it was actually 3 feet then changed to 2 feet. There's reason to be concerned about an excavation of that size for a second home that is 15,000 square feet.

John Breckenridge asked what steps the town might be looking at to review future projects of this scale and scope. **Murray Frank** said if the Planning Board would want to act on this kind of project then it would have to consider each development as an individual case. Several impacts have to be considered together in respect to any one project. Wise men can come up with a general guideline with a list of variables and if the sum total of those variables adds up to x , then the Commission should act.

Jim Athearn asked whether the site where the house will be moved is wooded. **Murray Frank** said he doesn't know yet because they haven't reviewed the site yet.

Jim Athearn asked whether height is "existing mean grade" or "finished grade". **Murray Frank** said the point from which the measure is taken is the argument.

Megan Ottens-Sargent asked about the Wild and Scenic North Shore DCPC; the property abuts the Wild and Scenic DCPC. She asked if the White/Rattners wanted to subdivide, could they?

Virginia Jones, West Tisbury Planning Board, clarified several issues.

- The building height is vertical distance from mean natural grade. Elevation is considered the natural state prior to construction.
- Any further subdivision of the properties would have to be a form 'C' subdivision and would have to be considered on the merits of the road.
- She referenced the fact that two other large compounds were not referred to the Commission. One was built before the regulations changed giving the Planning Board the ability to review houses over 3000 square feet, it had no massive excavation that would

have to be trucked offsite, and had an access different from Obed Daggett Road. The second house was smaller than 3000 square feet.

- She said the Planning Board has learned about incremental construction.

Christina Brown said she appreciates Murray Frank's statement that it would be helpful to have a set of guidelines and asked what the Planning Board was thinking about in terms of their own regulations. **Murray Frank** said when they amend by-laws it requires a 2/3 vote from the town; but the Board does amend them a little at a time. This kind of experience pushes the Board. He asked that somehow the Commission would memorialize the road use so it would be enforceable.

1.3 Conservation Commission

Prudy Burt explained that the Conservation Commission had a series of meetings between March and May of 2004.

- They had many concerns about the project, but many were outside of the Conservation Commission's jurisdiction.
- The letter from Hemenway and Barnes states that the Conservation Commission didn't raise concerns; however, the Conservation Commission did raise concerns including the scale and scope of the projects.
- It was difficult to nail down the plans, numbers and impact.
- There is a list of conditions from the Conservation Commission.
- Since it was such a huge project they had a series of site visits. The Conservation Commission tried to cover as much as they could with conditions. They went back to the Planning Board on the question of wooded versus open site.
- They had four or five meetings. They wondered about who had the authority to enforce the road-related conditions. The impact on the neighborhood for this project can go on for four years. The excavated material could require 500 trucks.
- The Conservation Commission did its job in regards to this application. The Conservation Commission has been reviewing it for a number of years, but the Planning Board only recently got it.

Andrew Woodruff asked about the proposed relocation site and how much authority the Conservation Commission would have in location and clearing.

Prudy Burt said the Conservation Commission reviewed the project and approved the road and bridge, the building envelope is not in their purview. Now they have ability to review projects in the 100-foot buffer zone and put conditions on the work. In the past, people have been able to cut down the buffer zone.

Andrew Woodruff mentioned that it appears that the site has been brush-cut pretty close to water's edge.

Prudy Burt said the Conservation Commission was notified about brush-cutting in what they thought was a river front area. They issued an enforcement order; the decision was appealed to the DEP, which issued a superseding order of conditions allowing the brush-cutting down to the edge of the resource area. With the new town by-law, the Conservation Commission has more jurisdiction over the buffer zone.

Mimi Davisson asked what jurisdiction the Conservation Commission and Planning Board have over the building to be moved. **Prudy Burt** said the Conservation Commission approved the roads and bridge, which are now in place; the trees flagged for cutting would come under Conservation Commission review. **Murray Frank** said the Planning Board would do a site visit and look at height and location restrictions.

Megan Ottens-Sargent asked whether the Conservation Commission would refer the project to Natural Heritage, as triggered by the permit. She asked, referencing Conservation Commission conditions number 18 and 19, whether the Conservation Commission would have the authority to enter the property and review it. **Prudy Burt** said the Natural Heritage review is new and postdates the application; she will have to find out if they have the authority.

Patrick Phear, Road Commissioner of Obed Daggett Road, asked to make three factual corrections:

- The easement is 10 feet wide, with one section of 8 feet at his property
- Cedar Tree Neck has a fluctuating number of residents
- The escrow account has not yet been established.

1.4 Owners' Presentation

Diane Tillotson, attorney for the owners, said moving the existing house and construction of a new house requires two building permit applications. She suggested that neither has regional impact and she will have some suggestions about how the road agreement could be enforced.

Glen Provost, engineer for the project, said the existing house lot size is 10.88 acres, the second lot is 21.63 acres.

- One of the conditions of the subdivision requires a Form C for further subdivision.
- The existing house is on the westerly lot and will be moved to the second lot. It will be sited on the only building envelope on the entire 21.6 acres. Subdivision into many lots is not feasible based on frontage and location of septic and well.
- He pointed out the proposed footprint of the new house with setbacks from wetlands, coastal zone and brook vegetation.
- The new house will be moved back about 25 feet because the existing house is in the shore zone.
- He showed the new septic plan with 500 feet between the leeching area and Vineyard Sound and 300 feet from Lily Pond.
- The current vacant lot septic plan shows the leeching field 300 feet from Lily Pond and 600 feet from Vineyard Sound.
- Total excavation on the 10.88-acre lot is 3500 cubic yards; approximately 2200 yards are to create the cellar space. The rest of the excavation has to with contouring the land and creating a parking area.
- The building will meet height restrictions based on existing grade.

Andrew Flake said the excavation will need about 230 trips. The fill is to be taken 1/2 mile down the road to the Dixon Rogers stump pit. Excavation may take two weeks to two months.

Kathy Newman asked how large the building envelope is on the 20-acre lot. **Glenn Provost** said he didn't know.

Mimi Davisson asked if there is any excavation associated with the moved house. **Chris Horiuchi** said it's a 3,000 square foot footprint with a full cellar; the excavated fill would be removed from the site.

Diane Tillotson, attorney for the owners, outlined the issue of whether the project has regional impact.

- The Commission's enabling legislation essentially defines a development of regional impact as impacting more than one community on the Vineyard. The question is whether any of the impacts will affect more than the local neighbors and the immediate neighborhood. The construction period will have an impact but would the construction period impact trigger jurisdiction under the statute or under the Commission's own criteria. The factors have to affect more than one community on the Vineyard.
- Consideration of regional impact may include:
 - environmental problems
 - the size of the site to be developed
 - the number of persons who will be residents or employees
 - the extent to which the development serves a regional market
 - the location of a development near a waterway, publicly-owned land or a municipal resource; there is land that is open to the public near this but not necessarily anything that will impact on a regional basis.
- She suggested that impacts created by the project can be and should be addressed by the local boards.
- Construction area impact will always be an issue on the Vineyard, particularly because there are so many dirt lanes.
- Under the issue of subdivision, very little area on the properties can serve as future building envelopes. Any further subdivision would have to come before the Commission and before the local planning board. There would have to be a determination that Obed Daggett Road would have to be made a public way and she believes that there has been a determination that Obed Daggett can't support further subdivision. Further subdivision is highly unlikely and there is no intent to subdivide this property.
- The road association agreement is a good faith attempt to work with the road association. All material will be removed off-season. Excavation would be completed within the next several months.
- The agreement is enforceable; to the extent that the Commission or Planning Board wants more teeth into the road agreement, it could be the Planning Board's action to condition site plan approval on compliance with the conditions set forth in the road agreement. The local building inspector becomes the enforcer. It would require communication and coordination.

Patrick Phear said when he formally addressed the road association at the annual meeting, there was a pretty uniform sentiment that, if the construction met the town's legal requirements, the owners had the right to construct their house and they have the right to use the road for construction.

- Residents all mourned any construction because it is difficult.
- The road agreement is the best compromise; the working relationship with the person in charge of the construction is the best enforcement.

- The road association is not opposing the construction and he has had no one object to the agreement.

Diane Tillotson concurred with Mr. Phear's sentiment that the best enforcement is communication with the person who is overseeing the construction traffic. The owners intend that the neighborhood be inconvenienced as minimally as possible.

- There is no trigger for Commission review based on the size of the house.
- The depictions of the illustration show that there will be minimal change to what people will see from Vineyard Sound. Vegetation will soften any impact.

Maureen White, owner, said the house will be shingle-style house. They are trying to keep as many trees as possible. The ones coming down were flagged for the site plan review. The trees in front and the vegetation will remain.

Doug Sederholm said the question of whether this is a DRI has to turn on the visual impact of the proposed house from the water; he asked whether the owner is suggesting that the visual impact from the water is not an issue in determining whether a project is of regional impact.

Diane Tillotson said it's a very close question; the lynchpin of DRI jurisdiction is whether the impact is on more than one community and the question is whether the view from the water impacts more than one community and can be fairly debated both ways.

Virginia Jones said as a sailor she would love to participate in that discussion of visual impact. She said there are numerous accessory buildings that can be built even if the property is not further subdivided. **Diane Tillotson** said there will be no pool or squash court. There is a tennis court. There are accessory buildings on the site now, but there isn't anything of a major impact that will be added.

1.5 Public Comment

Dick Johnson, Executive Director of Sheriff's Meadow Foundation, stated that he lived in the house in the sanctuary for 16 years.

- He said it's not unusual to have 20 – 25 cars twice a day at the sanctuary on a busy day. September and October can be the busiest time.
- He wondered whether the fact that people come from other towns and off-Island to Cedar Tree Neck would be considered a regional impact.
- He believes that people who don't know the road will have a hard time dealing with the construction traffic and the single lane road.

Mark Yale, West Tisbury Planning Board, said the Conservation Commission Order of Conditions describes the demolition of an existing house; there are no agreements on moving an existing house.

Evan Hurd, West Tisbury, said that she uses Cedar Tree Neck off-season and has never had the only car in the lot.

- She referenced the section that states that no portion of the project will be considered in a wetland or buffer zone. A stream runs off the property to the west. The landscape plan will show work in a number of buffer zone areas.

- She encouraged the Commission to adopt the project as a DRI. The owners don't intend to cut down trees, etc., but the Commission can codify the promises of intention that the West Tisbury boards cannot.

Chris Horiuchi, landscaper, said that a landscape plan has been prepared for new house site and was approved as part of 20 special conditions. In addition to issues of grading, run-off, stormwater, it also addresses issues of native planting areas, grass areas, native areas, etc.

Jim Athearn asked to know what Commission counsel said. **Linda Sibley** said the Commission wasn't given a clear direction from counsel to inform the decision.

Doug Kent, Indian Hill, said a lot of heavy trucks and material have come through over the last couple of years. There is already a difference on Indian Hill. He said the extracted fill would have to travel a 1.5 to 1.75 miles to get to the stump pit.

Megan Ottens-Sargent asked whether the entire 30 acres has been looked at by Mass Historic. She wondered if the boards in West Tisbury have the ability to require more archeological surveying.

There was a discussion of the need for review by Natural Heritage.

- **John Breckenridge** raised the question to the Conservation Commission that, since the project is somewhat different from what was approved by them, should it be subject to review by Natural Heritage?
- **Prudy Burt** said without input from the Conservation Commission administrator, she could not answer the question.
- **Meghan Ottens-Sargent** said, because the project is in priority habitat, Natural Heritage would look at whether there are surveys showing particular species near or in the area.
- **Ernie Mendenhall**, West Tisbury Building Inspector, said it's incumbent on the building inspector to refer the project to Natural Heritage.

Paul Strauss asked whether it makes any difference in the Commission's jurisdiction or consideration that the road is a private road.

Christina Brown asked for clarification on oversight of construction traffic. **Andrew Flake** said construction hours are 7 a.m. to 7 p.m. Only one truck will be on the road at a time. Trucks will have radios to keep trucks from crossing paths in the middle of the road. They are proposing a traffic facilitator during the peak time of the excavation. The number of construction vehicles on the site is limited during the normal construction period.

Mark London said, should the Commission not concur, there could be an itemized description of the aspects of the project that was the basis for that decision. One issue is the road agreement. Another that isn't quite so clear is the issue of cutting trees.

Diane Tillotson said on the second hillside lot, it's not the intent to remove any trees in the buffer zone; some trees will be removed for construction and landscaping. **Chris Horiuchi** said the landscape plan will delineate which trees would be removed; the house will not be freestanding without a background of trees; the computer-generated image represents what the

trees and house will be like. **Maureen White** said that there is no intent to do anything but support a healthy and beautiful piece of land.

Kirk Briggs asked the Commission to consider the regional impact of money generated by the project and impact on local craftsmen.

There was a discussion of the visual impact of the moved house.

- **Doug Sederholm** said there has been a lot of discussion about the visual impact of the new house. He asked about the visual impact of the moved house, particularly in terms of the distance from the water and trees removed.
- **Glen Provost** said that there are trees that will need to come down for the house move, but no trees can come out of buffer zone in front of the house without approval from the town. The land slopes down but the trees in the conservation buffer zone are as high as the trees behind the house. In his opinion, the taking down of the trees in the building envelope won't change the view from Vineyard Sound because there are a slew of trees in that buffer zone.
- **Diane Tillotson** said the moved house might be more visible during the winter months but the house is a good distance from the water and there are a lot of trees.
- **Chris Horiuchi** said the moved house site is different from the existing house site; it's set back further and separated from the water by beach, pond, and trees.
- **Andrew Woodruff** said there is a huge unprotected area in front of the house.
- **Jim Athearn** said he understands that the buffer zone trees are protected. He wondered about the slew of trees between the house and buffer zone.

Kirk Briggs identified himself as the White/Rattner's caretaker.

1.6 DELIBERATION

Megan Ottens-Sargent outlined the issues that could be considered as having regional impact:

- The view of both houses from the public waterway.
- The proximity of the development to Cedar Tree Neck, which is a publicly accessed place.
- Impact on wildlife habitats, especially in light of the fact that the most recent survey was done in 1990.
- Possible archaeological concerns.
- The Commission's checklist for standards and criteria doesn't indicate a concrete trigger, but the project raises the question of whether the project interferes with public access to the shoreline.
- So much of the impact of and concerns about the project is the construction, which is short term but not so short term that it shouldn't be addressed as having regional impact.

Paul Strauss said Megan's comments are all valid but it's easy to come down on the other side.

- Several Commissioners have commented that most of the issues have to do with construction on the road.
- He hasn't heard anyone comment from the public or the town that they are opposed to the project itself.

- He wondered if there's a way to not concur but institutionalize the terms of the road agreement and codify general comments like the owners don't intend to cut down any trees.

Paul Strauss moved and it was duly seconded that, with the specific provisions of the road agreement and owner's statements about tree-cutting, the Commission does not concur with referral.

Megan Ottens-Sargent asked whether the Commission could receive offers from the applicant.

Christina Brown said counsel has said that the Commission can "not concur" that the referral of the proposal as presented, including the landscape plan, should be subject to DRI review. She likes the idea that the road agreement could be made part of the site plan review conditions and therefore becomes enforceable.

Linda Sibley said counsel said a decision not to concur with the referral with provisos can be recorded with the deed.

Megan Ottens-Sargent asked whether the owner could 'offer' to contact Mass Historic about whether further archaeological review should be done. It's an important issue that only the Commission can address.

John Best said there isn't a landscape plan for the movement of the house from the existing site.

- Because the house and the area around it are outside the Conservation Commission purview, there is no requirement for a landscape plan for the second house.
- He's concerned about how exposed the house at the new site will be.
- If the trees going down to the water remain in place, the house will be close to invisible.
- The Conservation Commission can't deny the removal of trees in the buffer zone because there is not a by-law related to erosion.

Christina Brown said the statement the owners made in the presentation that they won't remove trees in the buffer zone can be included in the motion for non-concurrence.

Jim Athearn asked whether the Commission needs offers to make conditions. **Linda Sibley** clarified that statements were not conditions; they would be findings of fact that the non-concurrence would be based on. If the Commission wants to add things the applicant hasn't offered, the Commission has to vote to have a public hearing.

Jim Athearn asked whether the non-concurrence could be about the old site/new house. There are more unknowns about the second house site.

Andrew Woodruff said he can hear Paul Strauss's intent and he would be inclined to support it if there were more information and clarity on the second site, particularly in the buffer zone. His main concern about the project is what he sees as the deterioration of the north shore. If the Commission were to make the project a DRI, the review could move quickly, and would include a landscape plan.

Chris Murphy said that part of the argument for making the project a DRI is the visual impact from the water and asked whether a visual impact from the water could become a regional impact and trigger a DRI.

Doug Sederholm said he wondered whether this project has a regional view impact.

- He doesn't know what the visual impact of the second house will be.
- He has evidence of the visual impact of the new construction.
- This project will affect people regionally, but will the effect be to an extent that it qualifies as a DRI? And what would the Commission do?

Megan Ottens-Sargent said at the on-site it was said no trees would be cut in the buffer zone.

There was a discussion about making a single-family house a DRI.

- **Christina Brown** said she would like to have Commissioners consider that, if the project were accepted as a DRI, the Commission would be saying that houses of a certain size have a regional impact. She asked what the Commission's guidelines are for looking at a single-family house. The new house and relocated old house trigger concerns, but this particular application doesn't pose any more long-term regional impact than the Commission has seen or will see. She suggested that the Commission might be jumping the gun taking this house.
- **Linda Sibley** said the Commission has reviewed one single-family house. There was one prominent court case on the basis that the house was going to block a public view of the water.

Mimi Davisson said the Commission would have to deal with the issues raised by Mr. Frank's letter, even if Commissioners voted to not concur.

Chris Murphy said it comes down to two arguments: Paul Strauss's motion limiting impact and addressing the view from the water and Mr. Frank's issue that the public is the most immediate neighbor. He believes that most of the Commission's goals can be accomplished by accepting Paul Strauss's motion.

John Breckenridge said, based on the owners' stewardship of the property and their testimony, he's comfortable moving ahead. He's concerned about accepting a single-family home as a DRI. He was hoping to hear from the town how they would begin to accept the challenges of reviewing single-family homes.

John Best cautioned that it's obvious that the present owner has shown a great respect for the land, but he has to consider what could happen to the land under any foreseeable ownership.

Megan Ottens-Sargent said she did hear that there was some brushcutting near the water's edge. She added that if the DRI review could be fleet in its process, it might be useful to review the projects; most projects become better when they come before the Commission

Doug Sederholm said he would be willing to accept not concurring if he had a greater level of comfort from the applicant that the second house will be sited so cutting and landscaping and contouring won't take place and the view of the house from the water will be protected. He does not want a significant visual impact from the water. He added that he is not afraid to review individual houses; he is willing to review anything that will have a regional impact.

Diane Tillotson said that they would agree to the same orders and conditions on the moved house as on the newly built house.

- There will be no use of herbicides and pesticides.
- There will be no grading that would increase runoff into Lily Pond.

- The relocated house site is approximately 100 feet from the edge of the buffer zone.
- They will need about 25 feet to do some cutting for construction. They are willing to say that there wouldn't be significant cutting beyond the 25 feet.

There was a discussion of tree cutting in front of the moved house.

- **Maureen White** said they would like to see the water from the second house and asked that the Commission develop wording for a reasonable expectation from them. The greater good versus the view from an ancillary house is what's important.
- **Linda Sibley** asked if they would be willing to have the Conservation Commission review the landscape plan for the second site.
- **Prudy Burt** said the Conservation Commission doesn't have jurisdiction over land not in the buffer zone according to their by-law and the Wetlands Protection Act.
- **Diane Tillotson** said that during the site plan review the Planning Board is limited to what it can say no to. It is not limited to reviewing certain elements of the design and imposing conditions. The owners would be willing to have the landscape plan reviewed with the understanding that there would be little if any disturbance beyond the area necessary to construct.
- **Linda Sibley** said the Commission doesn't want the applicant to limit their viewshed.

Linda Sibley responded to John Breckenridge saying he seems to be asking the town to develop regulations that they can't develop. That's one of the reasons that the Commission exists. Towns can be very adventurous and turn the town into a DCPC so they can develop regulations for the DCPC.

John Breckenridge said they've seen some examples, which show there are alternatives outside of the town regulations.

Jim Athearn, referencing regional impact, said there are plenty of projects that the Commission has reviewed that are more vague in their regional impact. Public traveling to Cedar Tree Neck, the view, and planning board referral might qualify it for review. The first house isn't the issue. Adding the second house with potential traffic is perhaps enough reason to call it a DRI.

Paul Strauss asked whether the wooded area in front of the moved house could be separated into the 25-foot construction zone and what can or can't be done in the 75 feet up to the buffer zone. He asked the Conservation Commission to help develop language.

Megan Ottens-Sargent said the language in the site plan review by-law says the Planning Board has jurisdiction over existing vegetation. Perhaps the idea of referring the landscape plan to site plan review is appropriate.

Doug Sederholm asked whether the motion included an offer by the White/Rattners to submit a landscape plan for both houses and surrounding areas for a binding site review by the Planning Board to minimize the visual impact of both the houses from the water. The Commission and the Planning Board do not want the land in front of the house clear cut.

Diane Tillotson said, as long as there is a standard for review of the landscape plan, which is the view from the water, the owners will submit landscape plans and abide by the Planning Board's review. The site plan review has to do with construction by the Planning Board, which could include the view from the water.

Linda Sibley said if the motion is approved, there seems to be consensus on what's been agreed to with the owner and her counsel. Staff can write out what's been agreed to and Commissioners and the owner can review the written statement prior to the meeting of September 21.

Kathy Newman reviewed her understanding of Commissioners' concerns:

- the impact on Cedar Tree Neck in a regional way
- the view from the water as possible regional issues
- archaeological and environmental reviews.
- cutting and pruning in both envelopes.
- road enforcement and staging as outlined in the contract with neighbors.

Linda Sibley reiterated that, if the motion were approved, Commissioners would be agreeing that the owners' statements during the presentation addressed those concerns.

There was a discussion of the burial grounds.

- **Megan Ottens-Sargent** pointed out the path by which the existing house would be moved is a concern and the burial ground is a concern.
- **Diane Tillotson** said the burial ground has already been preserved and is about 680' from the existing house.
- **Mimi Davisson** stated that the Planning Board's letter states that they are concerned about the path of the move and any possible impact on the burial ground.
- **Murray Frank** said there are many unknowns from the Planning Board's point of view because they haven't seen the plan.
- **Andrew Flake** said the house would be moved on one side of the tennis court; the burial ground is on the other side of the tennis court.

Diane Tillotson said the question is always whether an applicant will accept the conditions of a site plan review. If the conditions of a site plan review are accepted by the applicant, they are enforceable by the building inspector.

Andrew Woodruff said he thinks the visual impact of this house is significant.

- This project may not be the right one by which to address visual impact; however, he hears time and time again people talking about this issue on the Island and he hears from contractors that they are disgusted by the work they have to do to make a living on the Island.
- He's saddened by changes along the waterways.
- He wants to state for the record that the scale of this project is not consistent with the Vineyard and it's time for the Commission to look closely at similar building proposals.

There was a discussion of archeological review.

- **Jim Athearn** said there should be archaeological review for any other areas that are going to be dug up.
- **Christina Brown** and **Mark London** suggested language that the Tribe be notified and invited to monitor excavation.
- **Diane Tillotson** said she was involved tangentially in the archaeological review of the Big Dig; one factor in the delay of the project was that no one could quite figure out how to do an archaeological review. The White/Rattners could agree to an archaeological

review if limited parameters are set. Presumably if there's anything at the house site it's already been disturbed.

- Commissioners expressed general concern about the archaeology of the site.
- **Linda Sibley** said that if there's a burial ground, there was probably activity in the area.
- **Mark London** suggested the requirement that a member of the Tribe be notified prior to excavation so that the Tribe may have a representative on site during excavation.
- **Andrew Flake** said they did a project in Aquinnah and found artifacts and did stop the project.
- **Maureen White** said she's comfortable with notification to the Tribe prior to excavation and a representative on site during excavation.

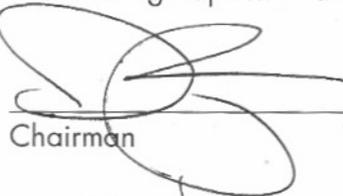
Murray Frank and **Kathy Newman** asked what the Planning Board should do if they found during the site plan review that the list of agreements was not being adhered to. **Mark London** said if an agreement is not being adhered to, the building inspector is the enforcing authority.

John Best moved, and it was duly seconded, to extend the rules by ten minutes. Commissioners agreed, with two members opposed.

Megan Ottens-Sargent asked whether the owner's statement that there would not be a pool or squash court should be listed. **Christina Brown** said the statements were part of the presentation.

A roll call vote was taken on the motion. In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, C. Murphy, K. Newman, M. Ottens-Sargent, D. Sederholm, P. Strauss, L. Sibley. Opposed: M. Davisson, D. Pigeon, A. Woodruff. Abstentions: None. The motion passed.

The meeting adjourned at 11:00 p.m.



Chairman

4-26-07
Date



Clerk-Treasurer

4-26-07
Date