

**Truro Board of Selectmen  
Special Meeting  
Selectmen's Chambers Town Hall  
Tuesday, November 29, 2016**

**Members Present:** Chair Paul Wisotzky; Maureen Burgess, Jay Coburn, Robert Weinstein, Janet Worthington

**Present:** Town Manager Rae Ann Palmer; Town Counsel Jonathan Silverstein; Assistant Town Administrator Maureen Thomas

**SPECIAL MEETING**

Chair Paul Wisotzky called the Special Meeting to order at 5:35 p.m.

**Benjamin Zehnder Trustee v. Town of Truro**

Paul Wisotzky said that the mediation process had been held in Executive Sessions until now, and he asked Town Counsel to review the process. Attorney Jonathan Silverstein explained that when the case came back to Land Court, the new judge recommended equitable remedies and urged both parties to go into mediation. The present open session concluded of a full day mediation session where an agreement was worked out, dependent upon ZBA approval and agreement by the parties involved. The decision was to be made at the present meeting. As an alternative to tear-down, in its place would be a payment to the town of \$468,000 upon issuance of a Certificate of Occupancy. The next part of the settlement is a pledge agreement for an additional 2.5 million dollars. Over the course of ten years, the Town would receive 3 million dollars. Attorney Silverstein reviewed some equitable remedy issues that had been considered needed in reaching an agreement. He said that on the site visit to 27 Stephen's Way, the mediator had noted the larger house being constructed at 33 Cooper Rd.

Paul Wisotzky said that the Zoning Board of Appeals had met with the Board of Selectmen and called upon Buddy Perkel, chair of the ZBA, to come forward and give Board's decision. Mr. Perkel said that the Board of Appeals had wholeheartedly recommended the settlement agreement. ZBA had a caveat that the studio had been described too broadly and recommended that the language be changed. He said the ZBA otherwise endorses the agreement.

Paul Wisotzky expressed his thoughts on following the best interests of the Town in considering the case. He outlined the factors that the Board of Selectmen had considered after hearing the new Land Court judge's recommendation to consider equitable factors. Chair Wisotzky said that Zoning Bylaws could be written to deal with size issues. He concluded with a personal statement about how he dealt with the mediation solutions. Each member of the Board followed in agreement with the Chair, expressing his or her struggle to put personal conviction aside in favor of what was best for the Town. Members thanked the ZBA and Chair Wisotzky for helping to move forward with this difficult case. Janet Worthington said that Town Meeting will determine what will be done with the money that comes from the settlement.

Janet Worthington moved to accept the recommendation of Zoning Board of Appeals to approve the proposed mediation settlement for Ben Zehnder Trustee v the Town of Truro and to authorize Town Counsel to sign and file the proposed agreement for judgment. Robert Weinstein seconded, and the motion carried 5-0.

Chair Paul Wisotzky opened the meeting to Public Comment. Attorney Silverstein answered a question on the binding nature of the mediation settlement and said it would resolve the litigation for the Town, but he could not offer advice to anyone else who might be ready to pursue litigation.

Joan Holt came forward to express her displeasure with the outcome. She said that it sends a message that you can do what you want as long as you have the money. Ms. Holt would have preferred a solution that would have involved a change in the bylaws, she said. Janet Worthington responded to Ms. Holt's statement, and Attorney Silverstein addressed the rationale for a monetary settlement. He reviewed some of the earlier settlement options that had been considered. He said a punitive component was appropriate and that the new owners of the property were anxious to have the litigation resolved.

Paul Kiernan asked that Attorney Silverstein explain what has to happen to make the building legal. Pursuant to an order of the court, as an alternative to the demolition order, fines will be paid, and a Certificate of Occupancy will be issued, Attorney Silverstein said. He explained various methods of grandfathering of buildings and said that the house would be protected by reason of the judgement and deemed a pre-existing, non-conforming structure.

Joan Holt returned to comment that the process had not been public until now after the settlement had been made. She regretted that the community had not had a voice in the process. Board of Selectmen addressed Ms. Holt's comments, noting equitable factors, the rules for Executive Session and the judge's recommendation for the use mediation.

Paul Wisotzky read into record a November 29, 2016 e-mail from Natalie Ferreira, who opposed coming to a settlement based on mediation of the case.

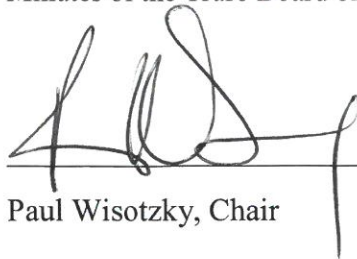
## **ADJOURNMENT**

Jay Coburn moved to adjourn the Special Meeting. Robert Weinstein seconded, and the motion carried 5-0. The Special Meeting was adjourned at 6:28 p.m.

Respectfully submitted,




Mary Rogers, Secretary




Paul Wisotzky, Chair



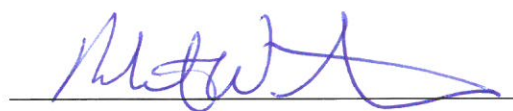
Maureen Burgess



Jay Coburn, Clerk



Janet Worthington, Vice-chair



Robert Weinstein

**Public Records Materials of 11/29/16**

- 1.) e-mail communication from Natalie Ferreira