

Truro Selectmen allow Kline house for \$3 million payour

Thursday

Posted Dec 1, 2016 at 7:00 AM

By Edward Miller

TRURO — The bitter nine-year battle over the Kline house, the unoccupied 8,333-square-foot trophy home overlooking Cape Cod Bay in the middle of the “Hopper landscape” on Stephen’s Way, came to an end on Tuesday when the selectmen voted unanimously to accept a settlement agreement rescinding the town’s tear-down order and issuing an occupancy permit in exchange for \$3 million to be paid by the property’s current owners, Tom and Kit Dennis of Springfield.

The payment to the town represents a fine of \$468,000, the maximum daily fine for violations of the town’s zoning law over the period of the dispute, plus an additional penalty of \$2,532,000, to be paid in annual installments of \$253,200 over 10 years. Selectman Jan Worthington said “the money will go into an account and Town Meeting will decide what to do with it.”

The agreement emerged from four months of negotiations in closed meetings between Truro’s town counsel, Jonathan Silverstein, and the Dennises’ lawyer, Ben Zehnder of Orleans. The talks were mediated by Leon J. Lombardi, a retired associate justice of the Mass. Land Court. The proposal was presented to the Truro Zoning Board of Appeals, the defendant in the ongoing litigation over the

house, in an executive session on Tuesday afternoon. Before the selectmen's vote that evening, ZBA Chair Buddy Perkel announced that his board had approved the agreement "wholeheartedly" as "a good result in a difficult case."

Most of the selectmen appeared to have agonized over the decision.

"This has been one of the most difficult things I have had to do as an elected official," said board chair Paul Wisotzky. The outcome, he said, "conflicts with my personal beliefs. But there comes a time to put aside what we personally think would be the best outcome and to make decisions in the best interests of the town. This is one of those times."

Wisotzky said the town had spent close to \$250,000 in legal fees litigating the case. "This settlement will allow the town to recover its legal expenses and move forward," he said.

Appearing somewhat shaken, Wisotzky added, "I know this will strain my relationships with people I admire and respect."

"This has been the toughest thing we've dealt with in my 10 years as selectman," said Worthington. "When somebody with a lot of money comes into town and does something like this, with the attitude that they can win because they are rich — I hate it. But we have to look beyond our personal feelings. In this case, fighting this would ultimately hurt the town."

She added that "the only way we can stop this kind of thing from happening is to look at our bylaws."

Selectman Maureen Burgess said she had started out firm in her conviction about the case, but that her perspective slowly evolved. She noted that "if I had remained steadfast in my opinion, it might have blocked what the other board members felt was in the best interests of the town."

Burgess was swayed, she said, by the realization that a new Land Court judge, Howard Speicher, was handling the case, and that "he has the discretion to render a different decision."

She told of making a site visit to the Kline house and looking around at the vista.

“On an adjacent lot there is a behemoth of a house being constructed, with the approval of the town,” she said. “This new judge is looking at equitable factors. When you see what is being built, you’re going to knock this down while you’re allowing this?”

Burgess was referring to a new home being constructed at 32 Cooper Road.

Selectman Robert Weinstein said he was also influenced by the uncertainty created by the entrance of a new judge. “In a community, the equity notion means that rules and regulations have to be applied uniformly,” he said. “One cannot single out one property owner.”

Selectman Jay Coburn said, “I, too, went through and continue to go through the very challenging process of trying to separate my deeply held beliefs and deep concerns and temper them with what is in the best interests of our community. I have come to the painful decision to support this settlement. It is my hope that in time we can come together and move forward in protecting the beauty and specialness of this community.”

Addressing Wisotzky directly, his voice catching in his throat, Coburn said, “Thank you for your extraordinary leadership in getting us through this.”

When Wisotzky opened the meeting to public comment, Joan Holt, who lives near the Kline house and was a steadfast opponent of its construction, addressed the board.

“During the effort to stop this house from being built, Mr. [Donald] Kline at a party predicted he would win because he had more money than the town,” she said. “The part that bothers me most is that the town will be receiving their money. I would have preferred that you had taken a position on principle — that the proper outcome would have been to change the bylaw. The town has bought into this business of rich people being able to do what they want. So this is dirty money. The message is you can do what you want if you have the money. You’ll have the house that you want, the monument to yourself.”

Holt added, “I can’t do that. I have to go to the ZBA for anything I want to do on my property. So we have a double standard. I think you made a mistake. We may see some other houses built.”

Silverstein, the town counsel, responded by pointing out that Donald Kline was dead. "I don't think anyone can say that at the end of the day Mr. Kline got his way." He commented, "I've never seen a seven-figure settlement for a zoning violation," and argued that "there is a deterrent component to the settlement. To have years of delay, huge legal fees, and a \$3 million penalty is not a victory."

Wisotzky read the text of an e-mail he had received from Nathalie Ferrier, another critic of the Kline house. "I want to remind the board of selectmen that the residence is still illegal," she wrote. "The town made a mistake. That mistake should not be resolved by a vote that would violate the town's bylaws again."