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Bylaw sinks pirate ship playhouse

After architect Andrew Dewberry and author Jayne Seagrave bought their house in Vancouver three years ago, they decided to build a tree fort for their two young sons.

In September 2006, the fort was constructed in a tree located a few feet inside the property line of their front yard. It was built in the shape of a large pirate ship, complete with plastic tubes resembling cannons for launching chestnut "cannonballs" and a fire pole for a quick exit in the event of a hostile attack.

The "ship" measures about three metres by two metres, and one end is curved like a prow of a boat. Total cost was about \$2,500.

Shortly after construction began, the next-door neighbour asked Dewberry whether he had obtained a permit for the project. Not long afterward, the city received a complaint about the tree fort.

After meeting with city officials, Dewberry was told that he would have to apply for a development permit for the structure. Under the city bylaw, the fort was classified as an "accessory building," and as a result it would need a permit.

In early January 2007, the owners' application for a development permit was refused, and their appeal was denied the following month. The city then issued an order requiring removal of the structure, and when the couple refused to comply, charges were laid for breach of the order.

The trial of the charges took place before provincial court judge Conni Bagnall over the course of five days in April, May and June of this year. It was probably the longest trial over a pirate ship or tree house in Canadian history.

Dewberry and Seagrave anchored their argument by saying that the pirate ship was neither a building nor a development within the meaning of the relevant legislation, but that position was shot down in the judge's ruling when it was released in July.

They were also unsuccessful in arguing that the city had engaged in "selective prosecution" and that it had never before required permits for "play equipment."

The couple also claimed that the bylaw discriminated against children and encouraged adult-only pursuits, such as gardening, in violation of the Canadian Charter of Rights and Freedoms. Bagnall tossed out this argument, as well.

Finally, Dewberry and Seagrave came up with the creative argument that the attack against the pirate ship was a breach of their freedom of expression guaranteed by the Charter of Rights and Freedoms. Bagnall sank this argument, writing: "The defendants argue that the meaning conveyed by the tree fort is, in essence, an invitation to play. I do not agree with this proposition. The fort has, in itself, no meaning, no content of expression. It is not play in itself, it is a plaything."

In the end, Bagnall found the couple guilty as charged and fined them \$500 each. The family is removing and donating the pirate ship this month, to an auction to benefit the Boys and Girls Clubs of Greater Vancouver.

The court ruling in Vancouver v. Dewberry and Seagrave contains some valuable lessons for anyone planning to build a gazebo or garden shed and more:

- Check with the local municipality for size and height restrictions.
- Permits may be required if the structure exceeds a maximum size.
- Verify setback requirements from property lines.
- Don't build it in the front yard.
- Be sensitive to the neighbours' privacy if the structure overlooks their yard.

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