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Lake house must come down

Court refuses to hear property owner's appeal

BY JIM MCGUIRE Gazette Reporter

The Court of Appeals will not hear an appeal from Canada Lake property owner Joseph Herms, a decision that will force him to demolish the structure he started building a decade ago and that he still insists is a boathouse.

The state's highest court posted its decision Tuesday on its Web site, a one-sentence finding denying a motion for permission to appeal. After a decade of litigation in both state and federal courts, Herms' latest attorney, Cynthia Feathers of Saratoga Springs, conceded Tuesday that her client is out of options.

Feathers argued in her motion that the Court of Appeals should review the case because the Caroga Town Board never formally voted to authorize the lawsuit that brought the case to court this final time.

The town's attorney, Salvatore D. Ferlazzo of the Albany firm of Girvin & Ferlazzo, said the motion denial "ended the case," removing what he described as Herms' "only gasp of air."

Ferlazzo, who represented the town in a lengthy, non-jury trial in state Supreme Court that began in 2007 and ended early last year, said the clock is now ticking on the demolition deadline imposed in Judge Richard C. Giardino's July 2008 decision.

Giardino, ruling that Herms deliberately proceeded with plans for a lakeside home after repeated denials by town authorities, ordered Herms to begin demolition within 60 days and to complete the project within the following six months. Herms was also ordered to pay a \$50,000 fine to the town.

Ferlazzo said the town will enforce those deadlines and noted that the latest decision comes at a bad time of year for construction work.

"He picked the worst time of year ... he's going to have to hustle," said Ferlazzo, asserting "the clock starts right now."

But, Ferlazzo said, "the town is extraordinarily thrilled this saga is finally over. Justice has prevailed."

Giardino's trial ruling was upheld by the Appellate Division of state Supreme Court.

While Herms was denied a permit by the town to build the lakeside home, he was granted a permit in 1999 to build a boathouse. When the building inspector determined the structure was actually a two-story home overhanging the water, construction was halted and the litigation began.

Under town and Adirondack Park Agency regulations, the structure could be no more than 1,200 square feet, Giardino said, but Herms built a structure nearly twice that size equipped with a deck of more than 400 square feet. There is no navigable access to the space under the structure, a requirement for a boathouse, Giardino said.

While Herms seemed to advance some valid points at trial, Giardino said, "When the entire history of this case is viewed, a pattern of conduct by Herms emerges which bespeaks artifice and guile. His conduct and testimony show that Herms obtained [the permit for a boathouse]

through misrepresentation of his intentions ... any equities to be weighed in Herms' favor have been effectively eliminated by his conduct," Giardino wrote.

John Sheehan, spokesman for the protectionist group the Adirondack Council, praised the town for defending its building codes all the way to the state's highest court.

"We thought it was a gutsy position for a local government to take," said Sheehan, who also questioned why the APA did not do more to assist the town.

"It was a refreshing thing to see in the Adirondacks," Sheehan said.

"It was such a clear and obvious violation. Anyone looking at it would have seen that," Sheehan said of Herms' construction project.

Sheehan said the 10-year court fight was avoidable. "Generally," he said, "there is a way to build a home legally on almost every legal lot in the Adirondacks."

"Unfortunately," Sheehan added, "this is not an isolated situation." He cited another recent case in the Saranac area in which a property owner built an elaborate boathouse in violation of APA regulations. Ultimately, it too was demolished.