

The Capital

Severna Park

Judge: Engineering firm may be liable for customer's wetlands violations

By Earl Kelly, Staff Writer

A Severna Park engineering firm may be required to remove the stone-and-soil embankment a customer built on Whitehall Creek after relying upon the firm to design the project and prepare the permit application.

The Permit Coordinators Inc. and one of its engineers, Scott C. Mielke, argued largely technical grounds in asking the court to release them from the possibility of having to remove the fill material that was installed in late 2003 and early 2004 for a St. Margaret's couple, William and Janice Costello.

Permit Coordinators and Mr. Mielke are defendants in the civil case that was filed in February 2006 by the U.S. Attorney General's Office against the Costellos.

Federal Judge Richard D. Bennett ruled late last month that Permit Coordinators and Mr. Mielke must remain as defendants and ultimately may be found liable, along with the Costellos. They are accused not only of filling in a larger area of state-protected wetlands than was approved, but also of violating the federal Clean Water Act and the Rivers and Harbors Act of 1899.

A Department of Justice spokesman said she didn't know how many such cases include engineering firms as defendants.

"We will bring claims against individuals or companies, based on the facts of the case," said Cynthia Magnuson, who declined to discuss the Costello case specifically.

Federal and state attorneys who are working on the case declined to discuss the matter except to say that it is still in the discovery phase, and no trial date has been set.

Permit Coordinators and Mr. Mielke, as well as their attorneys, could not be reached for comment. Mr. Costello declined to comment and referred all questions to his attorney, who did not return calls.

According to pleadings, this case began when Anne Arundel County issued a permit in September 2003 under a state-sanctioned expedited process aimed at allowing property owners to restore waterfronts that had been battered by Tropical Storm Isabel.

Photos taken at the time show the Costello property was severely damaged, and waves cut away the soil to within a short distance from the house. Neighboring properties, which had revetments located farther out into the water, were not significantly damaged.

The permit, issued on Sept. 26, 2003, stated the Costellos were to replace the bulkhead

that had been washed away by the storm. There was not a full-blown hearing, such as would be required to expand the area to be filled in, according to court documents.

"From December 2003 through March of 2004, the defendants built a revetment that extends approximately 53 feet channelward of the mean high tide line, well beyond the 10 feet authorized by the permits and covering state wetlands," Judge Bennett wrote in the opinion he issued on Dec. 20.

According to court documents, the area in question stretches 200 feet across the Costello property and covers about a quarter-acre.

The contractors who hauled the materials received more than \$100,000 for their services, but are not named as defendants in the case, according to court documents.

As part of the case, the Costellos have sued Permit Coordinators and Mr. Mielke, saying they paid the firm \$1,500 to design the project at 1423 Sharps Point Road and to apply for necessary permits.

In April 2004, the county Circuit Court fined Mr. Costello \$10,000 for the wetlands violation. He also was sentenced to 30 days in jail, which was suspended, and to a year's supervised probation.

State officials looked at the possibility of requiring Mr. Costello to remove the fill, but were concerned the disturbance would harm area waterways.

The Costellos' attorney, Joseph F. Devlin, said last January that he and his clients were "engaged in discussions with the various agencies," and there was "no timeline" for resolving the case."

The U.S. Department of Justice filed the civil case the following month on behalf of the Environmental Protection Agency, the Army Corps of Engineers and the state.

The Costellos have had run-ins with environmental regulators before.

In 1991, Mr. Costello, who retired from the Merchant Marines, and his wife, a real estate broker, built a full-size replica of the Thomas Point Lighthouse on their Sharps Point property.

They said they intended to use the structure as a garage, but later turned it into a bed-and-breakfast with five guest rooms.

Even though a trial court and an appeals court held against them, the Costellos continue to advertise the bed-and-breakfast in phone books and on the Internet.

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