

Judge deliberating case of Stockbridge Funeral Home vs Exeter

Stockbridge blames town culvert

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EXETER — The outcome of the lawsuit filed against the town by the Stockbridge Funeral Home is under consideration by a Rockingham Superior Court judge.

A bench trial was held on Thursday, April 30, during which witnesses testified for both the town and the local funeral home. The case is now being considered by Judge Kenneth McHugh, who will issue a formal ruling in the case.

Dan Stockbridge, owner of the Epping Road facility, filed the June 2007 lawsuit for \$135,000 in property damages after his funeral home flooded multiple times due to what he alleges is an insufficient town-operated culvert located near his property.

Attorney Mark Sullivan, who is representing Stockbridge and the funeral home, said he and his client feel the establishment suffered damages, including loss of profits, due to the inadequate culvert and the town should be held liable. Stockbridge's claims arise from damage that occurred during the Mother's Day floods of 2006, the Patriots Day floods of 2007 and a single event in 2008.

"We presented the claim that Dan's property has been damaged to the tune of \$100,000, including lost profits and damage, and that the town is liable for it," Sullivan said. "Our case is pretty straightforward."

Both Stockbridge and his engineering expert, William Gallot, testified in court on Thursday. They argued development located upland from the funeral home, including the Rinks at Exeter, contributed to flooding on the property.

Catherine Costanzo, of Divine, Millimet and Branch, who is representing the town, said it was information presented by Gallot that the town used to establish its points. Costanzo said the town submitted regulations showing the standard of care in 1975 — when the culvert was installed — and that it was only meant to withstand a 15-year storm. The storms that caused the flooding were approaching or exceeding 100-year storms, she said.

The town presented U.S. geological survey records showing the unusual nature of the flooding events, Costanzo said.

"This went far beyond something that would be generally foreseeable," she said.

The culvert was not built by the town in 1975, but by the Exeter Development Commission, which was not operating as a town entity at the time, the town's attorney said.

In addition, Department of Public Works Director Jennifer Perry testified that town regulations require new developments to include drainage mechanisms to ensure that the rate of flow onto other developments in close proximity does not increase. There is no evidence presented that development around the Stockbridge Funeral Home was not in compliance with those regulations, she said.

The town also presented evidence of steps it has taken to assist Stockbridge, Costanzo said. They include pursuing funding from the Federal Emergency Management Agency (FEMA), which was turned down, and a warrant article on the 2009 ballot, which voters passed in March.

The Department of Public Works is currently soliciting proposals from engineers to complete improvements to the culvert, she said.

"Our defenses are that we didn't build the road, it met the standard of care and there is no evidence that it didn't when it was built, and there is no evidence that upgradient development contributed to flooding," Costanzo said. "Also, it was after the Mother's Day Flood when Mr. Stockbridge began complaining about the culvert, in particular, that the town took appropriate action and is still working diligently to that end."