



CASE REPORT

MUNICIPAL TORT LIABILITY — PUBLIC DUTY DOCTRINE — “FAILURE TO ENFORCE” EXCEPTION — CODIFIED DUTY TO REGULATE CONDUCT AS PREREQUISITE. A municipal corporation incurs no liability for negligent plat or building permit approval where the applicable regulations do not actually regulate public conduct. Smith v. City of Kelso, 112 Wn. App. 277 (June 21, 2002) .

I. Facts. The City of Kelso approved several plats and building permits during the 1970’s. In 1998, a rain-induced landslide severely damaged numerous homes located in these subdivisions. The landowners subsequently sued the City, claiming that City officials had negligently approved the plats and building permits for their homes despite actual knowledge of slope instability. Both sides appealed from the superior court’s summary judgment ruling which had dismissed some of the landowners’ claims but preserved others.

II. Applicable Law and Analysis. On appeal, the Division II of the Washington Court of Appeals held that *all* of the landowners’ claims against the City should have been dismissed under the public duty doctrine, which precludes municipal tort liability under most circumstances. The landowners had argued that the “failure to enforce” exception to the public duty doctrine allowed liability under the circumstances of their case. Under that exception, local governments may incur liability for failing to enforce a regulation that creates a mandatory duty of specific action to correct violations. Rejecting the landowners’ contention, the Court of Appeals noted that although the applicable Kelso Municipal Code plat regulations obligated the City Engineer to prepare design and construction standards, they did not require any specific action by developers or homeowners. The ordinance thus did not regulate public conduct as required by the “failure to enforce” exception to the public doctrine.

The *Smith* court similarly rejected the landowners’ attempt to bring their claims for negligent building permit issuance within the ambit of the “failure to enforce” exception. The applicable building code provisions did not require the City to take specific action to correct a violation, and the landowners had presented insufficient evidence regarding the City actual knowledge of the violations.

III. Conclusion. *Smith* formally establishes that municipal tort liability under the “failure to enforce” exception to the public duty doctrine will not lie where the applicable code provisions do not actually regulate public conduct. The decision also reaffirms the need for a specific codified duty to correct known violations as a prerequisite to successfully invoking the “failure to enforce” exception.