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using PWC outside the County, nor does it regulate activities beyond geographical limits," the court found the ordinance within county police powers.

An "unduly oppressive" test determined violations of substantive due process, and the court balanced the "public's interest against those . . . regulated." The court held that "[i]t defies logic to suggest an ordinance is unduly oppressive when it only regulates the activity which is directly responsible for the harm." Since PWCs directly caused the harm to the public and environmental problems cited in the evidence presented at trial, and their owners" are not being forced to bear a financial burden or solve a societal problem not created by PWC," the ordinance cannot be found unduly oppressive.

Jennifer Lee

DiBlasi v. City of Seattle, 969 P.2d 10 (Wash. 1998) (holding a municipality liable for damages to adjacent landowner's property caused by surface water that collected, channeled, and thrust onto the property from a public street).

In 1924, a real estate developer dedicated certain roadways to the City of Seattle ("City") for public use. The dedication also granted the City the right to slope the original grading of the streets for cut or fills. In 1975, Patricia DiBlasi, the plaintiff, built her house on the downhill slope of 38th Street near the edge of a ravine. The developer allegedly filled the ravine to extend 38th Street. Consequently, the City installed a berm to stop surface water from running onto 38th Street. However, in the spring of 1991, the City removed the berm when it resurfaced at nearby Barton Street. Local residents and hydrology experts stated that the removal doubled the amount of water flowing over 38th Street. This tore the street apart. After several complaints, the City reinstalled the berm, but this failed to control water runoff during heavy rains. The removal of the berm created a tension crack that extended 40 feet east, across the south end of 38th Street and onto the plaintiff's property. The City did not act to remedy the situation. In early April 1991, water pressure in the tension crack caused a landslide, which destroyed a portion of the plaintiff's property. A landslide and hydrology expert opined that the City could have prevented the severe damage if it acted sooner and that the impermeable nature of the street caused the collection of the surface waters.

The plaintiff asserted three theories for the City's liability. First, Plaintiff claimed that the City failed to maintain its prescriptive easement. Second, Plaintiff asserted the street collected and channeled surface waters in a manner different than the natural flow of the water thrust onto the property of the plaintiff causing damage to her property. Third, Plaintiff averred that she was entitled to inverse

condemnation because the City failed to use reasonable care to keep its streets safe for adjacent landowners and that failure created a nuisance, a taking, and a trespass. The City denied liability and alleged that the developer who filled the ravine should be apportioned liability. Both parties moved for summary judgment.

The trial court granted the plaintiff's motion for summary judgment on all of her claims except inverse condemnation. The court of appeals reversed and dismissed Plaintiff's suit. It held that a municipality could not be liable for damages caused by surface waters that could not percolate into the ground due to the impermeable surface of the street. It also held that the City did not thrust the surface waters onto the plaintiff's property; therefore, the City maintained its prescriptive easement. Finally, the court of appeals held that a municipality's duty to use reasonable care only extended to the travelling public, not to adjacent landowners.

The Washington Supreme Court reversed and remanded. The court addressed three points. First, the court reversed the court of appeals holding of municipal liability in general. The supreme court held that a municipality may be liable for damages caused by a street that collected, channeled, and thrust surface waters onto the property of an adjoining landowner, in a manner different from the natural course.

Next, the supreme court addressed the specific issue of the City's liability for 38th Street. The court held that, generally, a municipality may be liable for damages, but it remanded on the question of whether 38th Street specifically collected, channeled, and thrust surface waters onto the plaintiff's property.

Finally, the supreme court addressed the issue of the municipality's duty to use reasonable care in maintaining the streets for adjacent landowners as well as for travelers on the street. The court hesitated to create a new duty to adjacent landowners. The court feared the risk of unlimited liability and innumerable lawsuits against municipalities if it extended the municipality's duty to adjacent landowners. The court held that a duty of care to adjacent landowners and travelers created too broad a category of liability for municipalities.

The concurring opinion agreed that the City was not liable to the plaintiff for negligence. The opinion also stated that the majority's opinion had not changed the surface water law in Washington. Generally, municipalities are not liable to adjacent landowners for runoff on roads caused by grading or pavement of the roads. Liability arises only if the manner or amount of flow changes and causes damage.

Sheela S. Parameswar