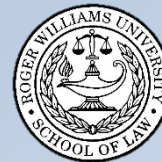




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Beach SAMP / STORMTOOLS Changes to the Landscape of Municipal Liability



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Liability exposure for:

- Public information
 - Accuracy and reliance (negligence)
- Planning and Policymaking
 - Failure to plan (negligence)
- Infrastructure maintenance
 - Failure to adapt (temp. takings, negligence, nuisance)
 - Abandonment (takings, statutory injunction)
- Permitting
 - Wrongful permitting (negligence)





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Wrongful permitting:

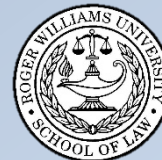
- Duty
 - Public Duty Doctrine
- Negligence
 - How does the permit address unique site hazards?
- Cause in Fact / Proximate Cause
 - More specific information means more foreseeability
- Damages
 - State Tort Claims Act damage cap: \$100,000





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- State Tort Claims Act:
 - Sovereign Immunity waived
 - Non-proprietary functions - damages capped at \$100,000
- Public Duty Doctrine protects *non-proprietary* functions
 - Exceptions: Special Duty and Egregious Conduct
- “A municipality should not be the general insurer of every construction project within its limits.”
 - Quality Court Condo. Ass'n v. Quality Hill Dev. Corp., 641 A.2d 746 (R.I. 1994)



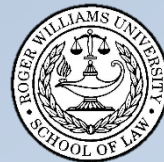


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Special Duty

- Plaintiffs “specifically come within the knowledge of the [town] so that the injury to that particularly identified plaintiff can be or should have been foreseen.”

– *Knudsen v. Hall*, 490 A.2d 976, 978 (R.I.1985)





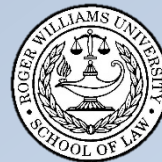
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In a storm-damaged house:

– Special Duty

- Did the permitting process involve continued contact beyond the norm?
- “[T]he building inspector ... had specific knowledge of certain irregularities and violations of the condominiums, had attended meetings with the architect, had received written notice of specific building-code violations, and had returned to the condominiums on a number of occasions to view the repair work”

» *Quality Court Condo. Ass'n v. Quality Hill Dev. Corp.*, 641 A.2d 746 (R.I. 1994)



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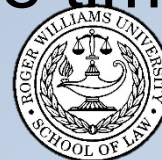
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Egregious Conduct

- “The [town] has knowledge that it has created a circumstance that forces an individual into a position of peril and subsequently chooses not to remedy the situation.”

– *Verity v. Danti* 585 A.2d 65, 67 (R.I. 1991)

- 1) Created a situation of “extreme peril”
- 2) Actual/constructive knowledge of peril
- 3) Inaction within reasonable time



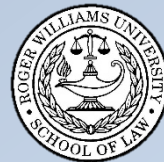


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In a storm-damaged house:

– Egregious Conduct

- Hazard creation - A matter of degree?
- Actual or constructive knowledge
 - *Haworth*: “nothing in the record indicates that the town was aware that the houses were subject to flooding when it issued the certificate of occupancy or that the flooding posed a position of extreme peril.”
 - *Haworth v. Lannon*, 813 A.2d 62, 65 (R.I. 2003)
- Inaction - How do permit conditions deal with the hazard?





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In a storm-damaged house:

– Causation: Foreseeability

- Foreseeability increases with better science
- *Pickle v. Bd. of Cnty. Comm'rs of Cnty. of Platte*, 764 P.2d 262 (Wyo. 1988)
 - Subdivision review re: septic systems
 - Reasonable care in gathering information extends to analyzing flood risk.
- *Illinois Farmers Insurance Company et al. v. County of Lake, et al.*, 2014 WL 2488893 (Ill.Cir.Ct.)
 - Filings claim that regulatory findings of fact about climate change created a duty to maintain stormwater systems





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Wrongful permitting:

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Proactive steps:

- Rigorous permit/variance grants
 - Explicitly discusses flooding risks; conditional on adaptations
 - Conforms to an explicit zoning/planning climate change policy/standard
 - Ensure disclaimers cover storm and flooding damage
- Policies
 - Ensure binding portions of comprehensive plans address climate change
 - Add to permit/variance review process, e.g. checkbox in application forms
 - Incentives: e.g. define municipal zoning height limit from base flood
- Public education
- Specific notice to property owners

