

Community Gardens Rhubarb Brouhaha

By Reed Hardesty

A City offers a small section of city parkland for community gardeners to grow vegetables or flowers. The City offers 14 garden sites and for a \$20 yearly rental the City provides spring and fall roto-tilling and initial weed control within the community garden. A water hose is available in the area but the City does not irrigate the gardens. The City requires the gardener to sign a contract that describes responsibilities and contains a liability waiver, release and hold harmless.

Mr. Thomas filed a claim against the City for loss of his strawberry rhubarb crop due to City springtime roto-tilling. He had requested the City not roto-till his plot and the plot number was recorded with the City. After the claim was received, WCIA's investigation determined that someone had changed the stakes identifying the garden plot numbers. So while the City did roto-till plot number three it was misidentified due to the tampered garden plot numbers. WCIA denied the claim based on the reasonable actions of the City in tilling the plot labelled as plot three and also the waiver language required by the City in the initial contract.

This is a unique claim but interesting risk management principles are at play. In any organization, risk should be managed. It's daydreaming to think all risk can be avoided but as long as the risks are identified, transferred or managed, your organization is engaging in activities it chooses and is addressing possible risks.

In this analysis the City chose to operate community gardens for a fee. The charge of a "fee of any kind" eliminated the opportunity for the City landowner to use the Recreational Immunity statute [RCW 4.24.210](#) as a liability defense. The City created risk management within the garden plot contract. It designated the use allowed and restricted the use of herbicides and pesticides. It also required a waiver, indemnification and hold harmless agreement for the gardener to use the site. While the City could be dragged into future litigation if a child using a portion of the park wandered into the garden area and was exposed to pesticides, the City has elected to operate community gardens and has performed some risk transfer. The garden tenant's assets would be first in line to satisfy liability to the child but those could be exhausted, and as the property owner, the City and WCIA could be exposed to liability from a serious injury. If the City eliminated the \$20 fee, the potential claim would have an additional defense however, herbicide exposure in a city park could be considered a latent, known, artificial and dangerous condition that may be an exception to immunity under [RCW 4.24.210](#). The elimination of the fee could also create increased demand and angry Dahlia and Daisy farmers may complain to the City Council if they were not provided a plot.

When you share your land, you are a potential partner in liability with that permissive user/tenant, especially if the injury is severe. So be knowledgeable, deliberately choose your activities, know the risks involved, manage those risks and use WCIA resources to consider additional exposures and for additional help in managing your risk.