

Heavy winter rains - you must show your work

By Reed Hardesty

Remember the heavy winter rains last year? And the year before? And the year before? Your claims department remembers.

The Hart's home was in a low lying area in the City. Over the last three years heavy storms produced flooding near the Hart's home which sometimes entered the home. The City recently annexed the area and determined the old county designed system was overwhelmed during large storms. The City undertook a ten-year plan to redesign major sections of its storm sewer. The Hart's area was changed in phase 3. The Hart's homeowners insurance would not cover the damage. The Hart's filed two lawsuits against the City for over \$330,000 of flood damage to the interior of their home. The City won its argument in Superior Court that the City had no liability for the inadequate county designed system it took over. The Hart's appealed and the Court of Appeals ruled a question of fact existed on whether during its routine maintenance the City should have discovered a crushed pipe (which had a county designed bypass in place) and whether that amounted to negligence for the City. The Appeals court did not answer the question but remanded the case back for a jury trial. The Hart's had risk of losing a legal argument on proximate cause while the City faced the risk of a jury finding that as the City implemented Phase 1 & 2 of the large storm water system change it channeled more water to the Hart's low lying area. Faced with a jury trial, very technical and expert laded arguments, and increasing legal expenses for both sides, WCIA mediated the case and settled for \$75,000.

Our best chance of building a defense for your storm water claim is documentation of your City's efforts to routinely maintain and repair your system. You need a system to track and document citizen complaints. If you contract for vactoring or other routine maintenance, require the vendor to appropriately document their work and to provide those records to your City. You are not required to "perfectly" maintain your system so no one receives any flooding from large storms. You are required to reasonably maintain your system, and just like in high school math class, you must show your work.