

Tree fall

By Jessica Dedman

On April 4, 2022, a large tree located in a member's right-of-way (ROW) and adjacent to a church property fell, causing extensive damage to a nearby home and surrounding property. The resulting damages claim against our member exceeded \$400,000, turning an unfortunate incident into a significant legal dispute.

The history of the tree played a key role in the case. Four years prior to the incident, the church requested that the City review the health of the tree. In 2018, an independent arborist was hired by the City to evaluate the tree. After inspection, the arborist concluded that the tree was healthy and did not need to be removed. Although the church continued to request removal, no formal permit application, required for removing a healthy tree, was ever submitted. In WCIA's view, the City had no obligation to remove a healthy tree on the church's property.

Under the municipal code, maintenance of the ROW rests with the adjacent property owner, not the member. Despite this, the claimant only filed suit against the City, not the arborist or the adjacent property owner. These provisions became central to the legal outcome.

WCIA's defense counsel filed a motion for summary judgment, arguing that the opposing party failed to state a valid legal claim as no duty existed to remove a healthy tree. We argued that any legal duty owed would have been by the adjacent property owner under the municipal code and that the City had relied on an independent expert in determining the tree was healthy. During arguments, it was suggested that the arborist may have missed a defect in the tree. Defense counsel responded that even if that were true, the member could not be held liable for the actions or conclusions of an independent contractor. The court agreed, granted the motion, and dismissed the case.

The lesson is clear: receiving concerns is only the beginning. Ensuring that issues are evaluated under the applicable municipal code, responsibilities are clearly identified, and required processes are followed—particularly for trees located in the ROW—is essential. Trees may appear healthy for years, but unclear expectations or missed follow-up can allow small issues to turn into larger disputes.

This raises important questions for members: Do you know what your municipal code requires for tree and ROW maintenance? Are concerns being routed correctly? Are the appropriate parties being placed on notice when action is required?

Remember, when it comes to tree-related concerns, it is always better to *go out on a limb early*—by confirming roles and procedures—than to be left sorting through the debris later.