

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
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MARYNELL REGAN
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DAWN M. BOLAND

Assistant City Attorneys

October 10, 2003

Pedro Orozco
2534 South 19th Street
Milwaukee, WI 53215

RE: C.I. File No: 03-S-338

Dear Mr. Orozco:

This office is in receipt of your claim in the amount of \$2,371.00, relating to costs you incurred for sidewalk replacement due to root encroachment by a tree located in the City right of way in front of your residence at 2534 South 19th Street.

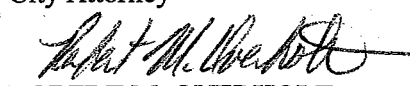
Our investigation reveals that occasionally tree roots may cause certain sidewalk slabs to become uneven over extended periods of time. Sidewalks can also become uneven due to freeze/thaw cycles, underground utility leaks, erosion, settlement of underlying soil, and simple aging processes. None of these factors are due to any negligence of the City.

When sidewalk slabs become uneven they will be ramped at no charge to the homeowner upon receipt of a complaint. The City has an ongoing sidewalk replacement program that calls for replacement of defective sidewalks every 25-30 years. When sidewalks are replaced during this program any encroaching tree roots are cut at no charge to the property owner. The property owner is then charged for the portions of sidewalk in need of replacement.

The Forestry Section records note the tree in front of your residence was last pruned in March 2001 and is scheduled for pruning in 2004 in accordance with established pruning and inspection cycles. The tree is normal and healthy. The City followed normal and customary procedures in this matter, and as such, the City cannot accept liability for these costs. Accordingly, we are denying your claim.

Very truly yours,


GRANT F. LANGLEY
City Attorney


ROBERT M. OVERHOLT
Investigator Adjuster
RMO:beg
1068-2003-2747:73467

CITY ATTORNEY

November 15, 2003

City of Milwaukee
Office of City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53215

NOV. 18 REC'D

RE: C.I. File No: 03-S-338 Request for Clarification

I am writing this letter in order to request clarification on your decision concerning my complaint for damages to my property due to negligence in the care and maintenance of the tree located in front of the property at 2534 South 19th Street in the city of Milwaukee.

Specifically, your letter dated October 10, 2003, made no mention of my property damages, other than a reference to expenses incurred, and only made specific reference to the public sidewalk. Does this mean that your letter is only intended to deny the public sidewalk portion of my claim without a hearing on the matter, while my claim of property damage is still being investigated?

I would also appreciate some clarification concerning the status of the tree. Your letter does not explain how the "normal healthy tree" can have major branches fall without probable cause; i.e.: severe weather, or many, many dead branches with no leaf growth.

I thank you in advance for your prompt attention to this request.

Sincerely,



Pedro Orozco
2534 South 19th Street
Milwaukee, WI 53215
(414) 645-0545

CLAIM FOR DAMAGE

August 15, 2003

City Clerk
ATTN: CLAIMS
200 E. Wells Street, Room 205
Milwaukee, WI 53202-3567

CITY OF MILWAUKEE
2003 AUG 25 AM 11:57
RONALD D. LEONHARDT
CITY CLERK

Claimant
Pedro Orozco
2534 S. 19th Street
Milwaukee, WI 53215

CITY OF MILWAUKEE
RECEIVED
03 AUG 25 PM 3:19
OFFICE OF
CITY ATTORNEY

My legal position is that the city was negligent in failing to properly maintain the city owned tree located at 2534 S. 19th Street in the city of Milwaukee. The city was aware of the damage to the sidewalk caused by the city tree and the city was negligent in failing to maintain the tree although they had received numerous requests for service on the tree. The city was negligent in claiming the tree was healthy and safe, because a healthy tree does not have limbs break off for no apparent reason. The city was negligent in allowing an unwritten practice from the Department of Forestry to exist without Common Council approval or review, effectively denying property owners their legal right of appeal.

I specifically described the damage the city tree had caused not only to the public right of way, the sidewalk, but also the cement stairs on my private property, and showed the damage to each city representative that came to my home. None of them could deny the damage to the sidewalk was caused by the city owned tree. I made this claim to each representative that I communicated with by phone, letters, and e-mail. I showed the city representatives the numerous leaves, twigs, and branches that continue to fall from, according to the city, the healthy tree. My position is that the forestry department was negligent in assessing the health of the tree, effectively denying my right of appeal based solely upon an unwritten practice.

I requested help of my elected representative, Mr. Robert Donovan, in providing me with my basic legal rights in the matter. Mr. Donovan initially did not have an opinion in this matter and then decided that he had a position that the tree remain only after I insisted upon evidence of a written policy. He made his decision about this matter without ever meeting with me personally. Therefore, I accepted his position that the tree remain, and request that the city accept my estimates for repair in the sum of Two Thousand Three Hundred Seventy One Dollars and no cents \$2,371.00 to cover the cost of replacing the cement stairs leading to my private walkway, and the public walkway that the city tree damaged. I do not request the city to compensate me for the additional walkway that I requested placed between the sidewalk and the curb.

CHRONOLOGY OF MAIN EVENTS

On April 2, 2003 I notified Mr. Donovan concerning the notice of an assessment from the City of Milwaukee for sidewalk replacement being conducted by the city. I wrote the letter because my sidewalk was raised due to the city owned tree located at 2534 S. 19th Street. I requested the city assume the financial responsibility for the cost of repairs and remove the tree due to the damage to the sidewalk and the problem of branches breaking off.

On April 16, 2003, I met with Mr. Brady from the Department of Public Works. After explaining the numerous problems with the tree, he informed me that he was only responsible for the sidewalk, and he referred me to Mr. Krueger from the Forestry Department. Mr. Krueger came that afternoon and observed the raised sidewalk. I pointed out to him the damage to my private property that I believed was caused by the tree. I offered to contact the UWM system in order to get thermal images in order to prove my case. He stated he did not have the authority to remove the tree. He stated the Forestry policy about tree removal. He assured me that regular maintenance was performed on all city trees. At this time, I showed him the broken branch that was hanging for eight months from my neighbor's tree across the street. Mr. Krueger stated that he would have the tree in front of my house tested for safety because of all the branches that had fallen off. He also stated he would forward a request for a test on the health of the tree. As of this date, I have not received any information or any results of any tests. I showed him the raised walkway and the horizontal crack on my main walkway. He asked how I knew it was the tree that caused the problem. I informed him that twice the walkway had been patched and it had cracked again because they were still being pushed up. He insisted that he could not determine if the tree roots had caused the damage to my walkway but he did state that this problem would be taken care of once the cement slab was removed. He said at that time, someone with the authority to make a decision on the tree would contact me. One day later, the branch of the tree across the street was trimmed.

On April 24, 2003, I received Mr. Donovan's letter dated April 22, 2003 in response to a letter I had sent on the 16th, along with a copy of his letter to Preston Cole and Paul Brady indicating my dissatisfaction with the prior meetings. Mr. Brady had already explained his lack of jurisdiction on the matter of the tree. Mr. Preston Cole never contacted me.

On April 24, 2003 I spoke with Mr. Kevin Genich from the Forestry Department by phone. He stated the city policy about removal of healthy tree except in special circumstances. I asked for the policy and was informed that the city had a policy but he did not know the specific policy number. In our phone conversation he stated that the city does remove healthy trees under two exceptions: One, a property owner's request that the city remove a healthy tree in order to conduct some new construction such as a driveway. He did state that a property owner would have to assume the cost. Two: if the tree posed a special hazard to property or homeowners. I stated the sidewalk was raised and my

private property was damaged, but was informed that that was not enough to satisfy the exception to the policy. He also stated that I could not appeal until after I received the bill from the City.

During this period, my wife Kristine received a call from Mr. Don McFadden with the Forestry Department. Since I was at work, she asked him to call back on my day off. He stated that he would call back after 2:00 p.m. on Tuesday. I waited all that day but he never called.

On April 24, 2003 I spoke with Jill Mr. Donovan's secretary, requesting copies of the City policy regarding the sidewalk and the tree removal.

On April 25, 2003 I received a copy of Chapter 11 of the City ordinance section 11-02 highlighted. In a separate letter, I received a copy of administrative review form. I requested of Jill from Mr. Donovan's office that they provide me with seven other forms. My verbal request was never granted.

On May 12, 2003, I received letter from Mr. Donovan dated May 8, 2003, about the sidewalk root system being cut away. Mr. Donovan also revealed that no policy exists about removing a health tree; that it was just a "practice" that the Department of Forestry follows.

In my letter dated May 13, 2003, I requested Mr. Donovan's office to contact the appropriate department to have the city tree removed since no policy existed, as every city representative had alleged. I articulated the legal basis for my request and asked that his office stop allowing this illegal practice; stating my analysis of this practice being illegal because the Forestry Department is allowed to effectively create law without representation. I also reported a visit from a woman from the Forestry Department that flatly refused to remove the tree even though she observed the damage to the sidewalk and my personal stairs. She became rude seemingly because I asked her to do her job and remove the tree. She suggested that I was requesting preferential treatment concerning the policy. A full account of my altercation with her has been recorded in the letter sent to Mr. Donovan and a copy of that letter is attached.

On May 27, 2003, I received a letter from Mr. Donovan dated May 23, 2003, that issued his decision in this matter; having never met with me personally or sending any representative of his office to investigate this claim.

On June 25, 2003, a branch, at least 8 feet in length, broke and was hanging over the middle of the street; although we had not had any severe weather. My next-door neighbor called for service. Enclosed is a photo taken by me from my front porch facing eastwardly and slightly south upwardly. The photo shows the size of the branch broken.

On July 2, 2003, the hired contractors removed the cement slabs, exposing the numerous roots that had grown. Some of the roots from the tree were still connected, because the contractors were only concerned with removing that amount of debris sufficient to place the forms necessary to put down more cement. Mr. Kruger from the Forestry Department was present and made no acknowledgement to my wife or son who took pictures during the extraction three of which I have enclosed. The photos depict the numerous roots that had to have caused the damage to my private stairs and the city sidewalk. I had been told that the city would accept responsibility for the damage to the walkways by the tree once the slabs had been removed and the problem could be assessed. But no one ever contacted me to discuss the problem.

On July 3, 2003, I took pictures of the roots and the areas where the slabs were removed.

On July 4, 2003, a branch broke from the severe weather we experienced early that morning.

On July 7, 2003, I sent an e-mail request directly to the Forestry Department because of the exposed roots clearly visible growing underneath my main steps. I stated in detail that time was of the essence in order to prevent even further damage to my property. I was very specific in my e-mail request for service that this was an active root growing underneath my private walkway. I wanted to have this resolved before they came to pour the new concrete. My confirmation number is 443587. The city web site does not allow the user to get a printout of the requested service.

On July 7, 2003, I also notified Mr. Donovan about the extensive damage uncovered after the sidewalk slab was removed. I requested immediate service on the roots encroaching underneath my cement steps.

On July 8, 2003, I received an e-mail acknowledging receipt of my request for service; enclosed is a copy.

On or about July 8, 2003, instead of an e-mail response that I requested, I received a call from Gail with the Forestry Department that informed me that the "contractors had excavated adequately for the sidewalk replacement, and that the Forestry Department does not cut surface roots".

On July 17, 2003, I received a letter from Mr. Donovan dated July 16, 2003, that he had put in a request for service; unfortunately, the cement had already been laid, essentially burying the problem of the tree and the root system. He also finally supplied the claim information that I requested on numerous occasions and never received. His letter indicated that he was under the same impression that the Forestry Department had given me in our prior discussions; that the roots would be cut away.

On August 11, 2003, I sent Mr. Donovan a copy of a "request for documents" that I had sent to the Department of Forestry, along with a request for immediate service on another at least 8 foot branch that broke and was hanging over the street.

On August 15, 2003, I received notice by certified mail of receipt of my "Request For Production of Documents" from the Department of Public Works. At 2:14 p.m. on the same day, the Forestry Department came to cut the branch from the tree.

Enclosure:

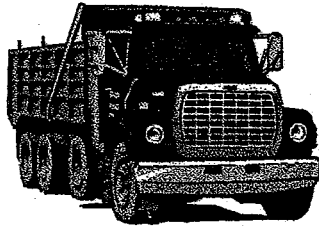
Estimate for repair of stairways provided by Concrete By Mario
Estimate for repair of stairways provided by Richard Copus Concrete Contractors
Estimate for repair of sidewalk provided by the City of Milwaukee
Copy of e-mail request for service Dated 7/7/2003
Copy of e-mail acceptance from DPW dated 7/8/2003
2 photographs of broken branches from the tree located at 2534 S. 19th Street
6 photographs of the numerous roots that were exposed after the cement slabs were removed.
Copy of letter dated May 13, 2003

Submitted by:



Pedro Orozco
2534 S. 19th Street
Milwaukee, WI 53215
(414) 645-0545

Dated August 21, 2003



Phone: 702-1063 or 259-9017

FRANCOMILI@AOL.COM
CONTRACTOR PROPOSAL

CONCRETE BY MARIO

7/8/2003

--414-234-6463

MARIO MILITELLO
419 S 70 TH ST
MILWAUKEE WI 53214

~~1036 377 ST~~ PIETRO
2534 S 19TH ST

- GARAGE _____
- SIDEWALK _____ ~~2000~~
- DRIVEWAYS _____
- APPROACH _____
- PARK _____
- PATIO _____
- BASEMENT _____
- WALL _____
- STONE _____
- REMOVE _____

Subtotal 10' x 3'

steps 4' x 4'

steps 4' x 3'

Remove stone and existing - CEMENT replace with compacted stone, six bag mix 4000PSI low chert. Cement will be 4" - thick, CEMENT broom finish. Joint control cut will be made to prevent cracking and movement. Concrete work will be edged and have expansion joint where required.

NOTES _____ CHECK _____ CASH _____ MONEY ORDETR (RECEIPT DOWN PAIMENT)

NOTE: The buyer should not put salt on the cement work for the frist two years, this will cause peeling and popping damage to the surface. In addition the buyer can not park or drive on the contrete for twelve days to ensure the curing of the contrete has had a chance to harden. The job has a two year warrinty, excluding cracking due to the weather. i.e. movement in ground caused by ice and freezing.

REFERENCES: Darryl D. 11239 Wren Ave.
Joe M. 3285 N. Dartmouth, Brookfield
Alfredo C. 5654 S. 20th, Milwaukee

PAYMENT TERMS
1/3 DOWN; REST UPON COMPLETION

TOTAL COST OF PROJECTS ~~1480.00~~ *1480.00*

BUYER SIGNATURE;

CONCRETE BY MARIO
MARIO MILITELLO
PRESIDENT
[Signature]

Richard Copus
Concrete Contractor
 4916 W Norwich Ct.
 Milwaukee, WI 53220
 414-403-9567

PROPOSAL AND ACCEPTANCE

| | | | |
|---|---------------|-----------------------------|---------------------|
| PROPOSAL SUBMITTED TO Pedro Orozco | | PHONE 645-0545 | DATE 7/21/03 |
| STREET 2534 So. 19th St. | | JOB NAME Front steps | |
| CITY, STATE AND ZIP CODE Milw., Wis. | | JOB LOCATION Same | |
| ARCHITECT | DATE OF PLANS | | JOB PHONE |

We hereby submit specifications and estimates for:

BREAK, Remove and haul north set of steps to eliminate the bottom 5 1/2" step riser and to make it match the other 7" High Risers on the steps per the Building codes -> Even Risers.

Remove South set of steps which have been heaved up by tree roots in front of the steps. Existing steps have 1/8" Pitch toward street on the treads. New steps will have 1/4" Pitch - Normal. Remove tree roots as needed.

Starting Date: _____ Weather Permitting _____

Completion Date: _____ Weather Permitting _____

We Propose Hereby to furnish material and labor - Complete in accordance with above specifications, for the sum of:

One Thousand Five Hundred Eighty Six dollars (\$ **1,586.00**)

Payment to be made as follows: **\$530.00** upon acceptance; **\$530.00** after old removed and formed to pour; **\$526.00** on completion

All material guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimates. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Richard Copus
Concrete Contr.

Acceptance of Proposal - The above prices, specifications and conditions on the backside are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance _____

Signature _____



DEPARTMENT OF PUBLIC WORKS
INFRASTRUCTURE SERVICES DIVISION
CONSTRUCTION SECTION

March 17, 2003

PEDRO OROZCO
KRISTINE J OROZCO
2534 S 19TH ST
MILWAUKEE WI 53215--301

TO: Owner of property at 2534 S 19TH ST

496-0219-4

A portion of the sidewalk abutting the above property has been determined to be defective by the Infrastructure Services Division and must be replaced. This replacement is necessary to prevent pedestrian injury and/or potential lawsuits.

You have the option of either hiring a private licensed and bonded concrete contractor with all financial arrangements between you and the contractor or waiting until the city arranges for the replacement of the defective walk. Should you elect to engage your own contractor, permits for the sidewalk replacement must be taken out prior to April 11, 2003. After that date, the City of Milwaukee will automatically arrange to replace the sidewalk.

If you choose to have the city replace the walk, the following rate(s) apply:

| <u>Estimated Work</u> | <u>Maximum City Rate</u> |
|-------------------------|--------------------------|
| 198 Square Feet of Walk | \$4.50 Per Square Foot |

A bill for the exact amount will be sent to you approximately one year after the work has been completed.

Other questions concerning the sidewalk replacement program should be answered in the enclosed brochure. Please take the time to read it. If you desire further information or have additional questions, please contact the Sidewalk Repair Coordinators, Room 715, 841 North Broadway, Milwaukee, WI 53202 or call (414) 286-2444 (voice), (414) 286-2025 (TDD) or (414) 286-0537 (fax) between the hours of 8:30 A.M. and 4:00 P.M. Monday through Friday.

Very truly yours,

Jeffrey S. Polenske, P.E.
City Engineer

Your record was saved! Your record number is 443587.. You may go to <http://dpwworks.mpw.net> and check the progress of your request.. Some action should occur within 1 to 10 business days.. Thank you!

REQUEST

Subject: REQUEST

Date: Tue, 8 Jul 2003 08:39:14 -0500

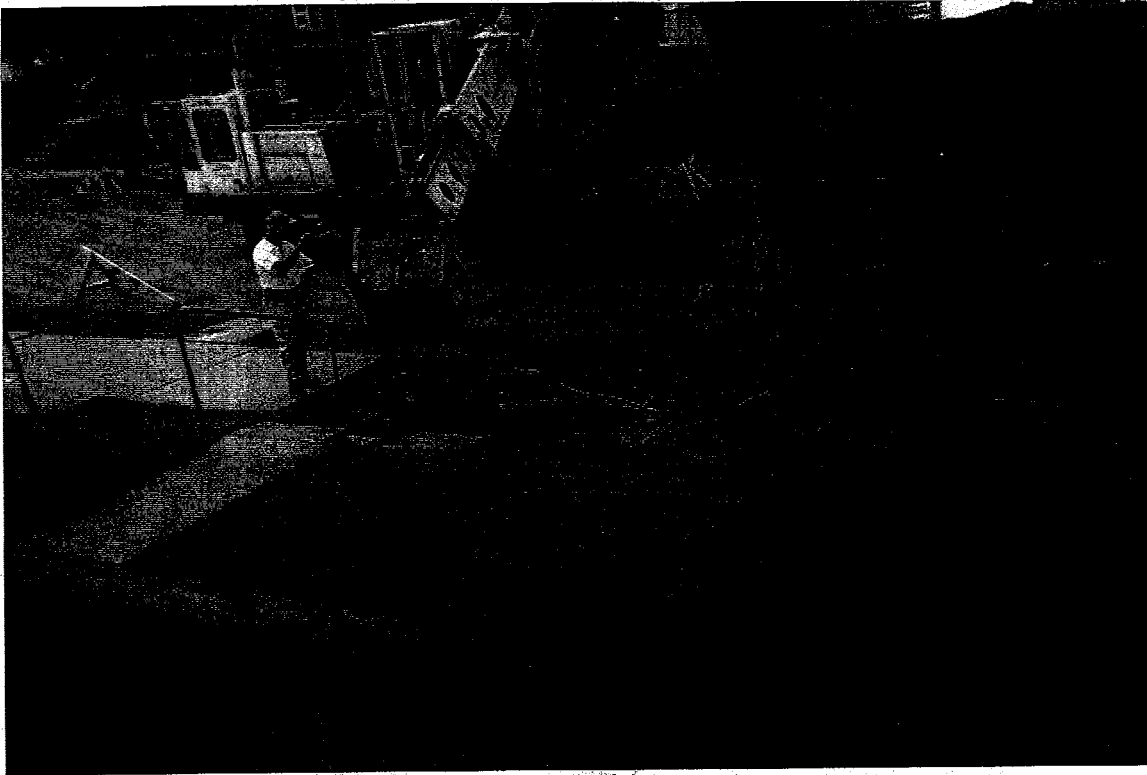
From: "Gary H." <ghalvo@mpw.net>

To: TRAX2@MERR.COM

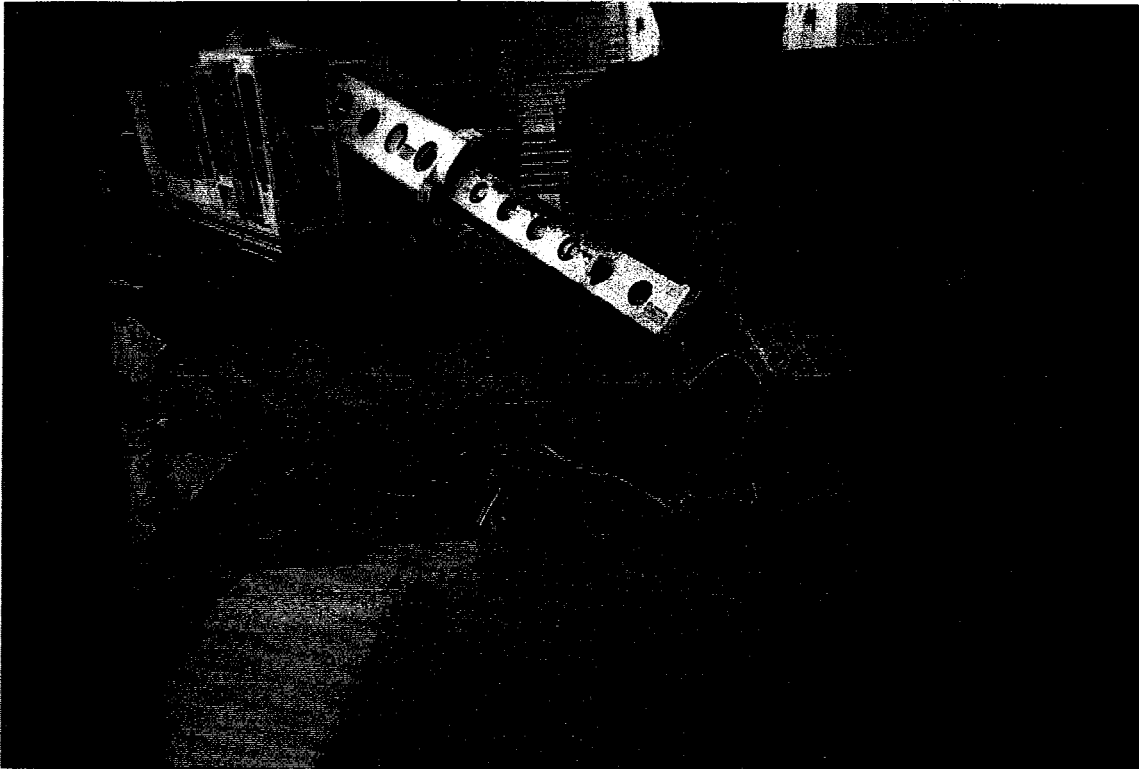
YOUR REQUEST FOR SERVICE HAS BEEN FORWARDED TO YOUR FORESTRY DISTRICT OFFICE.
THANKS,

DPW CUSTOMER SERVICE CENTER 286-8282

July 2, 2003 #1



July 2, 2003 #2



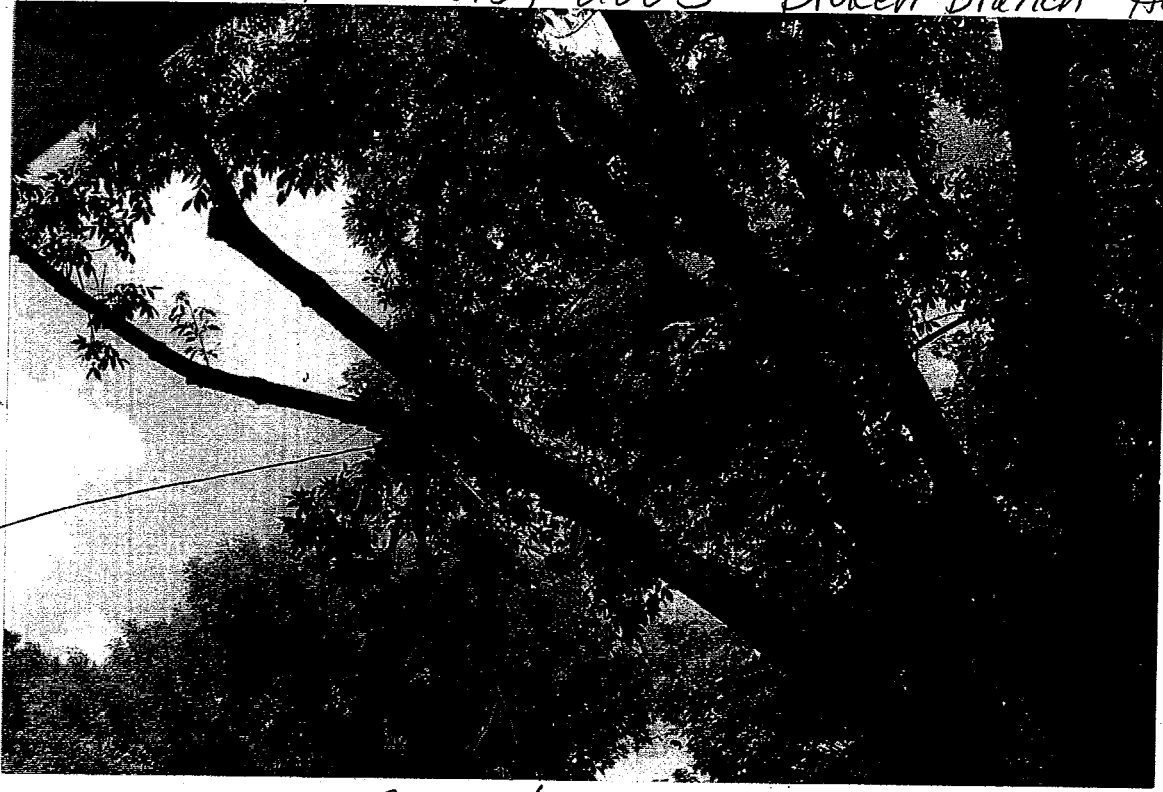
July 7, 2003 #1



JULY 7, 2003 #2



June 25, 2003 Broken Branch Hanging



August 11, 2003

