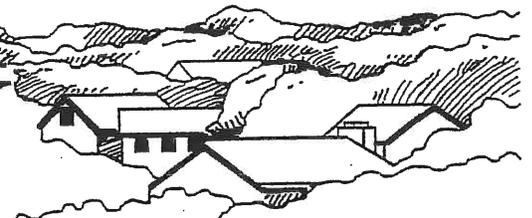


# OVERSTORY



Minnesota Department of Agriculture / Community Forestry Newsletter

Gene Hugoson, Commissioner

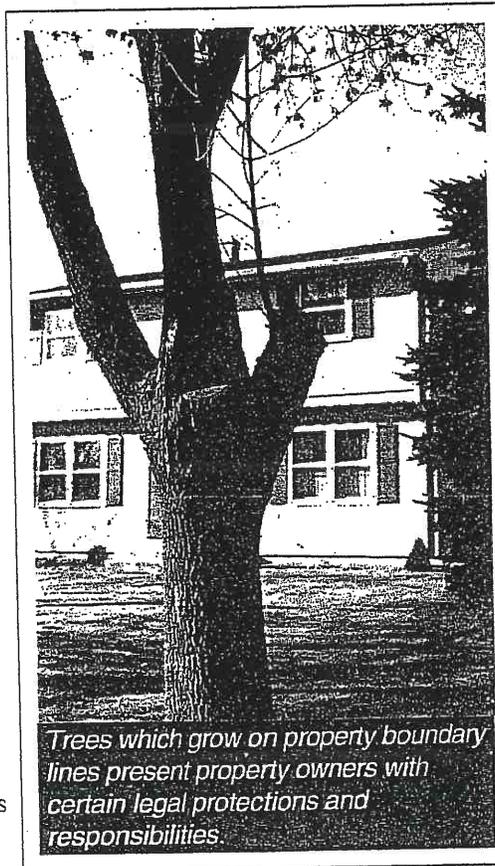
## Trees, the Law, & You - Part I

by Lorrie Stromme, Tree Care Advisor  
University of Minnesota Extension Service  
Department of Forest Resources

The roots of your neighbor's fifty-year old elm tree have caused the sidewalk to buckle by the side door of your home. What can you do? And what does the law allow you to do? Yes, the law. There are legal ramifications when it comes to how you treat your neighbors' trees, and vice versa.

So, before you start chopping away at those invading roots, ask yourself: Whose tree is it? What happens if I cut the roots without telling my neighbor? What will it do to the tree? Will I be liable for damaging the tree? Who pays for the removal?

These are all good questions. The law in Minnesota can answer some of your questions, but the law is a bit murky, too. And don't ask your father-in-law in Montana how he'd handle the situation with your neighbor's elm tree. The law varies from state to state.



Trees which grow on property boundary lines present property owners with certain legal protections and responsibilities.

There are two basic types of laws: statutes and common law created by court decisions. Each year the U.S. Congress, state legislatures, and city councils pass new laws. Each day the courts hand down decisions that interpret those laws. And to further the confusion, the statutes and court decisions are different in each state. We'll deal with tree law in Minnesota.

### Whose Tree Is It?

Follow the trunk. If the tree trunk stands completely in your neighbor's yard, it's your neighbor's tree: branches, flowers, fruit, and all. The tree is your neighbor's property – and her responsibility if a weak limb blows down in a windstorm, crushing your garage. Likewise, your neighbor can decide to cut down the tree that partially shaded your yard, and you have no recourse against her for suddenly exposing your prize Hosta bed to all-day sun.

Trees that grow on the boundary line between two properties have special rules. There are diverging opinions on boundary trees. In some states, trees standing along a boundary line are the common

property of the neighbors on either side of the boundary, and neither neighbor can remove the tree without the consent of the other. This includes the tree that starts out in one yard and grows into the boundary with the neighbor's yard.

In Minnesota, it takes something more than the mere presence of a tree trunk on the boundary line to determine who is responsible for it. Instead, trees are boundary trees if they were planted jointly or treated as common property, either by an agreement or by actions to care for the tree. For example, adjoining owners who split the costs of pruning and maintaining a boundary tree – or even a hedge – would probably be considered co-owners of the tree or hedge.

Most people don't ever give it any thought. The boundary tree was there when they moved in. They maintain the grass growing at the base of the tree in their yard, pick up the leaves that fall on their side of the boundary,

and trim branches that swat them in the face as they mow. Their neighbor does the same thing in her yard. Courts would probably interpret this pattern of conduct as demonstrating co-ownership of a boundary tree. So, when a broken limb or a tree disease becomes a problem, the co-owners share responsibility for the cost of fixing the problem.

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Number 4

Winter  
2000

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### Encroaching Branches or Roots.

Property owners in every state have the right to prune branches or roots of a neighbor's tree that encroach onto their property. This is known as "self-help."

But there are limitations:

- 1. You can prune only up to the boundary line – at your own expense.
- 2. You need permission to enter onto the neighbor's property to do the pruning, unless the encroaching branches or roots threaten to cause imminent harm to your property. Without permission, you are trespassing.
- 3. You cannot cut down a tree whose trunk is located on your neighbor's property, even if the branches stray onto your property.
- 4. Most Important: You cannot jeopardize the health of the tree – especially the roots – by your actions. For example, pruning an oak tree from April through September could make the tree vulnerable to oak wilt. Or pruning a tree's roots could destabilize the tree and cause it to topple over.

Photo by Jana Albers, Minnesota Department of Natural Resources



Root damage to pavement.

If you cause serious injury to the tree while doing the pruning, you can be held liable to the tree owner for any harm done.

A leading Minnesota court case involved tree roots that pushed up a neighbor's sidewalk, causing water leakage in the neighbor's basement. The court declared the tree a nuisance and ordered the tree cut down, because the alternative – severe root pruning – would have weakened the tree or caused the tree to die and endangered the neighbor's home if the tree blew over in a windstorm.

Preventing a problem before it gets to the point of pushing up pavement is almost always a preferable – and less expensive – option. Talk to your neighbor about the problem before it escalates. Seek the opinion of an arborist, a specialist in the care of individual trees, about the tree's condition. Ask someone you trust for a referral or look in the Yellow Pages under "tree service." Look for the arborist's membership in professional organizations, such as the Minnesota Society of Arboriculture (MSA), the International Society of Arboriculture (ISA), or the National Arborist Association (NAA).

Even if the limbs you want to prune pose a danger to

simple neighborliness suggest that you tell your neighbor before you do any major pruning to her tree. Your neighbor may well want to chip in for the pruning cost, to preserve the tree's symmetry, for example.

### Who Owns the Fruit?

Technically, the tree owner owns the fruit of the tree, as well. If the tree stands next door, then the next door owner owns the fruit, even if it hangs over into your yard. The adage is that you can trim pesky branches from your neighbor's apple tree, but your neighbor gets to make the pie. This result is logical: if the owner of the overhanging branches is responsible for damage to your property caused by invading branches, then it's only right that the owner is entitled to any fruit on those same branches.

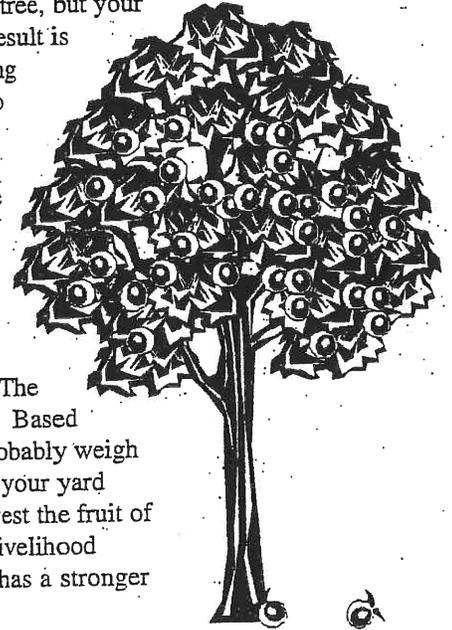
The tree owner may have a problem, however, if you forbid her from entering your yard to pick the fruit. After all, that would be trespassing. The law is unclear on how to resolve this. Based on similar cases, the courts would probably weigh your right to keep trespassers out of your yard against the tree owner's right to harvest the fruit of her tree. The orchard owner whose livelihood depends upon the harvest probably has a stronger claim than an urban gardener.

### What about Fallen Fruit?

The law is unclear on this issue, as well. As a practical matter, it would not be worthwhile for your neighbor to sue you for keeping fallen fruit, because it would have nominal value. Also, ripening fruit is a predictable event. The courts would probably hold the tree owner responsible for making advance arrangements to harvest the fruit if it had sufficient value to bother with. You are probably safe to keep the fallen fruit if your neighbor says nothing about it.

The other side of the problem is the stuff that falls off the tree that nobody wants: the rotting apples, the dead leaves, and the faded blossoms. The law doesn't give you much guidance here, either. Going to court to have your neighbor ordered to pick up the debris that has fallen in your yard is not practical or economical. That's probably why there haven't been precedent-setting court cases on this issue.

The safest rule to follow: Avoid conflict; talk with your neighbor about your concerns. Ask your neighbor's permission to harvest fruit or to prune overhanging branches. Or talk to your neighbor if cleaning up the fallen debris from her tree becomes a burden for you. The courts encourage property owners to resolve their differences, to avoid clogging an already crowded court docket.



#### Editors note:

This is part 1 of a 2 part series by Lorrie Stromme who is a Minneapolis lawyer and a volunteer Tree Care Advisor. Her friends have asked her all of the questions raised in this article. Part 2 follows in the next issue of Overstory. Reprinted with permission from the Minneapolis StarTribune

# OVERSTORY

Minnesota Department of Agriculture / Community Forestry Newsletter

Gene Hugoson, Commissioner

## Trees, the Law, & You - Part II

by Lorrie Stromme, Tree Care Advisor  
University of Minnesota Extension Service  
Department of Forest Resources

Your neighbor's tree drops a limb onto your house and tears a hole in the roof. Who is responsible for the damage? As explained in part I of *Trees, the Law & You*, the law varies from state to state. Tree law in Minnesota can be quite murky. Each day the courts hand down decisions that modify caselaw and interpret laws passed by federal, state, and local government. Part II addresses tree law in Minnesota as it relates to "Hazard" trees and limbs, wrongful tree removal, determining damages, and utility company pruning.

### "Hazard" Trees and Limbs

If your neighbor's tree is unsound and threatens your property, your neighbor is liable to you for any damage that occurs. The test is whether the tree owner knew or should have known that damage was likely. A tree owner is not expected to be a tree expert, but she is expected to recognize obvious symptoms of a problem, such as the unseasonal lack of leaves, a dead limb, visible decay, or a tree leaning dangerously to one side. Courts consider these trees to be a nuisance. Urban foresters sometimes consider these trees to be a hazard. A "hazard tree" is a tree with a defect plus a target, like the



The crack in the tree and a target make for a hazardous condition.

Photo by Dr. Peter J. Beaker, Treescapes

swingset in your yard, your garage, or your house. If the potential for damage is foreseeable and if the tree owner fails to take corrective action, the courts will likely hold the owner legally responsible for damage caused to others' property.

What should you do if your neighbor fails to address a problem tree?

- Give your neighbor written notice about the danger you foresee and ask them to fix the problem.
- Bolster your claim with an expert opinion about the tree's condition.
- Take photographs of the threatening condition.
- Mediate, using a neutral third party, to resolve the impasse.
- As a last resort, you can sue your neighbor. Small claims court is intended for claims up to \$7,500, and lawyers aren't needed.
- Don't take the law into your own hands. Don't engage in stealth pruning or tree removal while your neighbor is gone. You risk being sued or arrested for trespassing or ordered to pay your neighbor money or "damages" to compensate her for the loss.

### Wrongful Tree Removal

What are the consequences of entering someone else's property and cutting down or injuring a tree without the owner's consent? By Minnesota statute, the money damages owed to the tree owner are tripled ("treble damages"), if the wrongdoer acted intentionally. Even if the injury to the tree was "unintentional," the wrongdoer is nonetheless liable for "single damages."

An example of "unintentional" conduct is illustrated in a Minnesota court case where a driver had a heart attack and drove into a grove of Colorado spruce trees. Although the tree damage or "trespass" was not malicious, it occurred without the permission of the trees' owner  
*Trees & Law, Continued on page 2*

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Number 1

Spring  
2000

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# Certified Tree Inspectors Climb Past 800

by Gene Hugoson, Commissioner  
Minnesota Department of Agriculture

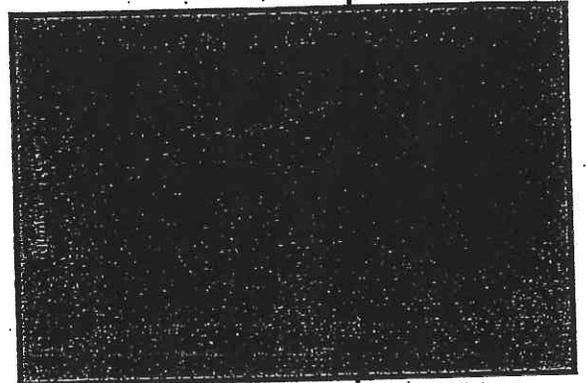
Minnesota presently has 809 tree inspectors, surpassing the previous high of 779 CTIs in 1997. In many communities the tree inspector serves a vital role in the fight against Dutch elm disease and oak wilt. The inspector helps monitor for these problems, and can coordinate sanitation and control programs.

Tree inspectors are a vital link with reforestation and care of new and established trees. The expertise of CTIs is also routinely transferred to community citizens through pest diagnosis and control recommendations, and through information on growing and maintaining healthy trees.

When the Shade Tree Program began 26 years ago, approximately 125 tree inspectors were certified the first year in the seven county metro

area. Within six years the program increased by 600 percent with 754 CTIs statewide. The Shade Tree Program, however, was eliminated in 1982 and along with it many CTIs. When shade tree efforts resumed in the mid 1980s, more than 425 tree inspectors were recertified. The number of CTIs has steadily increased to today's level.

Minnesota is fortunate to have communities taking an active role in their forestry programs and shade trees. More than 60 percent of communities with 1,000 or more citizens have CTIs. The tree inspector program is truly a model for state and local government working together for the good of the community.



*Trees & Law, Continued from page 1*  
and the court awarded him single damages.

There are also misdemeanor penalties for criminal trespass and criminal damage to property.

## Determining Damages

In deciding how to compensate a property owner for damaged trees, Minnesota courts have distinguished between ornamental trees and those that are not particularly desirable as shade trees. If trees that are ill-formed or serve merely to prevent erosion or curtail noise are injured, the courts have based damages on the difference in the land value before the injury and afterward. If trees are primarily ornamental or shade trees, the court has said that the jury can consider the cost to replace the injured trees as an alternative measure of damages.

## Utility Company Pruning

A common urban sight is the row of trees under a power line cut to resemble an arboreal valley. Well, it's not the trees' fault for growing as tall as they were intended to grow. And it's not the utility company's fault for wanting to meet public demand to prevent power failures caused by fallen tree limbs during storms.

Utility companies have easements across property in order to provide electricity. An easement gives one person the right to use the land of another. Courts

have recognized the right of utility companies to trim or remove trees within their easement, as long as the work is reasonable and necessary to construct, use, operate, or maintain power lines in the easement area. However, the utility company has a duty to remove power line obstructions in a way that causes the least damage to the property the power lines cross.

*Courts have recognized the right of utility companies to trim or remove trees within their easement, as long as the work is reasonable and necessary.*

In a recent Minnesota case, the Supreme Court confirmed that a property owner has an interest in the trees on city land in front of her property. However, the court also found that this right is subordinate to a utility's right to trim or remove the trees to keep power lines clear. One answer to this dilemma is to plant trees whose mature height will not conflict with power lines. You will probably notice more flowering crabapples, Japanese tree lilacs, Amur maples, and

other shorter-stature trees on boulevards in the future.

You and your trees probably won't run afoul of the law if you keep the trees in your yard healthy and stay on good terms with your neighbors. Communication and an ounce of prevention: isn't that the formula for success in most endeavors?

**Editors note:**  
This is part 2 of a 2 part series by Lorrie Stromme, a Minneapolis lawyer and a volunteer Tree Care Advisor. Her friends have asked her all of the questions raised in this article. Part 1 was featured in issue 13(4) of Overstory. Reprinted with permission from the Minneapolis Star Tribune.



## New Tree Inspector Workshops Offered

Certified tree inspectors (CTI) throughout Minnesota have been vital stewards of community tree resources since 1974. Prompt identification, treatment, and eradication of significant tree problems such as Dutch elm disease and oak wilt by CTI's save communities money by preventing tree loss and tree replacement costs. Certified tree inspectors also help their communities by keeping the shade in shade tree. Five regional workshops are scheduled during late March and Early April and listed below:

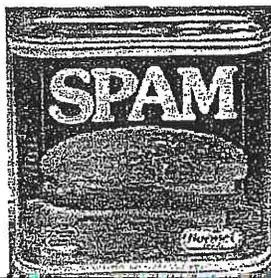
Saint Paul March 29th (Wednesday)  
Rochester April 4th (Tuesday)  
Lamberton April 5th (Wednesday)  
Saint Paul April 8th (Saturday)  
Alexandria April 11th (Tuesday)



Tree inspector training workshops offered since 1976 by the Minnesota Department of Agriculture in cooperation with the University of Minnesota Extension Service have helped train tree inspectors to become CTI's. The workshop provides an overview of Dutch elm disease, oak wilt, introduction to inspecting trees, tree and wood identification, and rules and regulations. Attendees get the basic knowledge required to successfully complete the certified tree inspector test. The CTI test is offered in the afternoon of the workshop at each location. After completing the test, CTI's are required to attend an annual continuing education workshop approved by the Minnesota Department of Agriculture to retain their certification. Contact Richard Hauer (651-296-0592) for registration information.

## First Tree of Millennium Planted in Austin!

By Monica Boyken  
Austin Chamber of Commerce



At precisely 12:01 a.m. (CST) on January 1, 2000 the first tree of the new century was planted in the winter wonderland of Austin, Minnesota. A Sugar Maple was planted in Horace Austin Park, not far from where the first can of SPAM® Luncheon Meat was manufactured in 1937. The Austin community participated in the planting

foot tall tree with a 4" diameter trunk is expected to live in to the 22<sup>nd</sup> century.

The "Millennium Maple" symbolizes a renewed spirit to embrace and carry on the values of a generation that started their lives at the beginning of this century. This generation lived through world wars and the Great Depression. Their contributions have helped strengthen and nurture our nation and bring it to a new level of greatness.



The "Millennium Maple" represents a community commitment to improve the communities landscape as it will be the first of 400 trees to be planted in Austin during the year 2000. Several thousand trees were lost due to strong winds in June of 1998.

The Austin community event was sponsored by Spruce Up Austin, Inc., the Austin Park, Recreation & Forestry Department, and the Austin Rotary Club. Spruce Up Austin President Mike Ruzek made a short speech following the tree planting and Mayor Bonnie Besse Rietz followed with an official proclamation.

## OVERSTORY

Published quarterly by the  
Minnesota Department of Agriculture  
Agronomy & Plant Protection Division,  
with support from other agencies and individuals.

Gene Hugoson, Commissioner  
Greg Buzicky, Division Director  
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