

Q&A



I've been hearing recently that it can be important to consider, or perhaps incorporate, the real estate value of a whole property in an appraisal of the value of a large tree on the property. How can I do this without being a real estate appraiser? As an arborist, would it be better if I avoid the market approach altogether and only employ the cost or income approaches that don't deal with real estate values?

Trees are only part of the value of the real estate, and performing a valuation on the entire property would exceed the scope of most tree appraisal assignments; therefore, I would only incorporate real estate value if it is required to complete the assignment. If you must include the real estate value, you could hire any number of real estate appraisers to do the job. You should use the approach that best fulfills the need of your client and is reasonable. Then, state that in your assignment. If the use of the trees is income, then use income approach. If the use is landscaping, then use market value. If you are going to make reparations for things like fences and shrubs, then use cost. The reason for the valuation should provide some direction for the valuation method used.

—Marty Shaw

Even though plants are actually a part of the real estate, I can't think of any reason to "incorporate" the real estate value in a plant appraisal. Other than as reasonableness testing, I also see no reason to "consider" the real estate value. However, if one wants the real estate value of a property, this information can be

ISSUE FOUR TOPIC:

APPRAISAL

found from other sources rather than needing to hire a real estate appraiser. Depending on the assignment, most plant appraisal situations call upon using the cost approach rather than the market approach.

—Lew Bloch, RCA # 297

There are several issues involved in that question that must be separated. First, if the relationship of any plant to the market value of the real estate or real property is important, then it is important—whether it is a large tree, a small tree or any number of plants of various sizes.

Second, the appraiser should always consider whether it is important. The question is whether the appraisal problem is a real estate appraisal problem (you are appraising the tree as part of the real estate). That will be determined by the purpose and use of the appraisal (see 9th Ed., Table 10.1), which are identified during the "systematic look" at the assignment (9th Ed., p.11). One example would be if a tort damage statute in the State of Shock required tree value to be the tree's contribution to the market value of the real estate. A tort damage case (same purpose) in the State of Bliss (different use) might have no such constraint. Of course, there are many other uses for appraisals that may or may not make the problem a real estate appraisal problem. There is no invariable rule and the appraiser must look at the facts of every case.

Third, if you do need to consider the tree's contribution to the market value of the real estate, you must consider your Competence to do so (ASCA SPP §3.1). In some cases you may be able to apply a reasonableness test as outlined in the 9th Ed. (Chapter 8). In other cases the law or other constraint may require the opinion of a qualified real estate appraiser and you cannot undertake this assignment.

Fourth, the question confuses the type of value required by the problem with the approaches

to value used to solve the problem. As an arborist, you are probably not competent to use a market approach to value of the real estate in any case. Your reasonableness test - if allowable - will typically be applied to your cost approach estimate of value. It might be applied to an income approach opinion of value but we seldom have the data to apply that approach. If, on the other hand, you are not competent to opine on the market value of the real estate, then you are not competent, period. Using or attempting to use a non-market approach to value does not change that. What you must understand here is the difference between a type or definition of value and approaches to value. If the purpose and use of the problem are to estimate the tree's contribution to the market value of the real estate, then that is the type of value that must be estimated. Whatever approach(es) to value you use will be estimating that type of value.

—Scott Cullen, RCA #348

If your assignment really does involve determining the tree's "contribution to real estate market value," then you very well may want to defer to a real estate appraiser. In these cases, your role as a tree appraiser may be to help validate the real estate appraiser's findings by offering opinions on the tree's condition and other pertinent facts. If "contribution to real estate market value" is the established approach-to-tree-value for this assignment, then arbitrarily providing cost or income-based appraisals that ignore real estate constraints may not be at all useful to your client.

—GP David, RCA #304

My understanding is that a tree usually has greater monetary value when located on more expensive property unless the owner ceases to value it. For instance, in Beverly Hills compared to Watts (even though the Watts owner may have a greater emotional attachment to it).



The approximate market value of a property can be found by checking the property tax appraisal, then factoring in the ratio of property appraisals to general market values for that area. Of course, the arborist should state that this was done, not as an official appraisal of the property.

—Herlwyn Lutz

In my opinion, trees have value separate and apart from the land. If you don't feel qualified, don't accept the assignment.

—Gene Eyerly, RCA #193

A prospective client just called and asked if I would be willing to give him, "Just a quick cost to replace a few trees on his property that were recently damaged by a fire." He clearly stated that he did not need an appraisal and just a letter with costs would be fine. Can I accept this assignment? Isn't my "letter of cost" really an appraisal in disguise?

Cost does not equal value!!! If the assignment (there's that word again) is to provide costs to replace damaged or destroyed plants, there is nothing wrong with doing this if the report states just what it is—and maybe what it is not. It is an estimate to replace plants and not an appraisal of value of the plants.

—Lew Bloch, RCA #297

Although your client probably really needs an appraisal, we don't know why he feels that he just needs a "letter-of-cost." If you can't sell your client an appraisal, then give him what he wants. Some sort of clearly-stated disclaimer on the "letter-of-cost" would be appropriate—stating simply that this is not an appraisal.

—GP David, RCA #304

Again, two separate issues. Certainly, you can accept an assignment to provide a brief estimate of cost to replace the damaged trees. The prospective client might just want an initial idea of what's involved. You have no duty to only take time-consuming, "complete" assignments. In fact, you have a duty (SPP §4.3(F)(i-ii))

to avoid making more of an assignment than is necessary. On the other hand, you do have a duty to identify the necessary scope of work (SPP §4.1(A & C)) and disclose in your "cost letter" or other report any limitations on your opinion (SPP §4.1(D)(i) and §4.2(E & F)).

Both you and the prospective client need to understand what you each mean by "an appraisal." If you have concerns about the "cost letter" being misused as if it is a complete appraisal, they should be addressed in a statement of intended use (ASCA 2004 Reports Guide, p.4-4). Your report is an appraisal report, to be used as an appraisal report, if you say it is and if you comply with the duties of the Appraisal Role (SPP §2.1(B)). It would, of course, be unethical to prepare a limited "cost letter," with a wink and a nod, that your client can use in lieu of a properly prepared appraisal report. But, I'm not sure it shows much faith in people to assume that every prospective client would expect you to do that. Proper practice does not require you to take such a cynical view of the world!

—Scott Cullen, RCA #348

Not necessarily. Many times a client will want to know what ballpark they are in money-wise before they commit to spending the money for a formal report or appraisal. It is OK to do an assignment that has a preliminary finding. I state clearly in the document that the report is not for use as a valuation, only a tool to help guide my client as to what step to take next. In the letter, you might make recommendations as to what type of approach should be used if they decide to do the final valuation, and why that approach is best. I always use rough approximations in such letters so that I can't be tied down to it later.

—Marty Shaw

I don't see that this would be a problem, as long as it is clearly stated what it is and what it is not, and that the consultant would not back it up in a legal venue. I would not consider this an official appraisal, but an informal estimate of costs.

—Herlwyn Lutz

Sounds like he's asking for a "freebe"; don't accept such an assignment.

—Gene Eyerly, RCA #193

I'm an arboricultural consultant in the little town of Muddy Creek, and in my state past legal rulings indicate that all trees should be valued as either firewood (cordage) or timber (stumpage). I would like to accept an appraisal assignment in the neighboring town of Swamp Bend where a client recently had a mature and beautiful paperbark maple, *Acer griseum*, destroyed by vandalism. I would like to accept the assignment but I am not comfortable appraising this great little tree as firewood. Must I decline the assignment? May I accept the assignment and appraise the tree as the amenity I believe it to be?

I would need legal council on this. If I did not want to run the chance of having to pay for it without entering a paid assignment, I would have the potential client do it for me. However, it might be worth the costs to me for future reference.

—Herlwyn Lutz

Rulings "indicate" (don't state or specify). There's a difference. If you don't feel qualified, don't accept the assignment.

—Gene Eyerly, RCA #193

Why does that word assignment keep coming up? Could it be an important aspect in appraisals or what? It is your duty to explain the legal rulings as you, a non-lawyer, understand them; but, it is not your job or duty to play lawyer. You must explain to the client that they need definitive answers from an attorney. The client/lawyer will decide if they wish to approach the situation appraising the tree as an amenity tree and possibly alter existing case law in their state, or to abandon the entire effort because firewood or stumpage value for one tree would be so low as to not be worth the effort to either party. Case law does change all the time.

—Lew Bloch, RCA #297

Once again, separate the issues. Let's assume you have the legal constraint on good and reliable authority, and that you have not engaged



in improper practice of law! What you probably mean is that trees in tort damage cases must be valued as cordage or stumpage. The same constraint might not apply to another purpose and use, say an asset valuation for municipal budgeting.

If it is state law that governs, the cute name of the little town is mental clutter. Set it aside.

Next, you should decline any assignment in which you feel unable to provide an Independent and Objective opinion (SPP §3.4 & 3.6). Objective means based on facts and reasonable assumptions. Independent means free of any and all influences on your Objectivity, including "...the personal or philosophical bias(es) or emotion(s) of the consultant..." (SPP §3.4(A)(i)). If your discomfort gets in the way, decline the assignment.

Furthermore, your belief has nothing to do with the proper conduct of this assignment. It is not up to you to tell the legislature or the courts in your state what the tort damage remedy for trees should be. It is what it is...remember we assumed at the start that you understand the current legal situation from good and reliable authority. If you appraise based on your belief

of what should be, you A) are acting improperly as an advocate which is inconsistent with the Appraisal Role (SPP §2.1(B)) and B) may do a disservice to your client by creating false expectations. You are also at risk of giving, in effect, improper legal advice.

As an aside, whether the tree is or is not an "amenity tree" is separate from the measure of damages for that amenity under the current law.

Finally, some arborists will argue that laws only change if challenged, and that is true. It is up to the client and their lawyer to decide to challenge a law and to incur all the expenses and risks of that effort. That is not an arborist's proper role. If you want to be an advocate or activist or lobbyist for change in the law, fine... just take off your appraiser's hat. And some arborists will argue "in my little town people cannot afford to use a lawyer, and this was wrong." As noted in the preceding paragraph, even if the client wants to take your advice instead of a lawyer's, you would now be an advocate and cannot be the appraiser! If, however, client and lawyer do decide to challenge the law, and you receive and disclose an instruction from the lawyer or client to appraise the value of the amenity tree using some measure of damages (other than cordage or stumpage), then you may properly accept the assignment (see Appraisal Foundation. 2005. USPAP Q&A. 7(3)-March).

—Scott Cullen, RCA #348

*Past legal rulings may have been brought about by many factors, not the least of which is poor legal council and poor valuations by incompetent people. Cordage and timber values are a frequent tactic used by attorneys to get their clients off cheap. They are certainly not the only values considered by courts—even in states where such laws exist. Sometimes, when reasonable facts are presented, these outdated laws are overturned by the courts. The use of the trees is not determined by the people who caused the damage to them, nor is their use necessarily what some law on the books says the use is. The tree's use can and should be determined by how the trees were actually used, or how they were going to be used on the property. That is the basis of value. Besides that, I don't know of any firewood producers that regularly use *Acer griseum* as a firewood source, or lumber producers that use it as cordage. You can find experts to state that in court. I can go down to a nursery and find*

this tree, pay for it and plant it in the ground, and I know how much that will cost me. If your client was damaged, what will it take to make him/her whole again? These are all arguments that can and should be made by an attorney in a courtroom in front of a jury. Take the assignment and make your case.

—Marty Shaw

This might be a good opportunity to appraise the tree using both approaches-to-value. Although case law often offers a precedent on how the appraisal should be based, the judge and jury ultimately decide that question, so providing both appraised values may be useful.

—GP David, RCA #304

A homeowner owns a five-acre residential property that is mostly wooded. Within this property the local utility has a right-of-way for an underground gas line. The right-of-way agreement states that the utility has the right to cut and remove trees or other vegetation as necessary to survey their utilities from the air. Last month the utility sent out a crew and several trees were cut and removed. They now want me to appraise the value of these trees. Since the utility had the right to cut and remove them, do they really have any value? The trees did have real value to the owner who did own them. However, if they were valued and then replaced, the utility would have the right (if not duty) to cut them down again. How do I best serve the client in this case?

Who was there first? Homeowner or underground utilities? First party owned and/or had the right to the trees. Better investigate before accepting. If you like court experience, here's a good chance. Personally, I wouldn't waste the time and money for such a client.

—Gene Eyerly, RCA #193

If the utility had the right to cut them, there is little that can be done. It may be wise to check if there was actually an easement established,

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and see if the utility had ever given up its easement rights at anytime in the past. If so, there may be cause for action. If there was damage to trees outside the easement, there may be loss that can be compensated.

—Marty Shaw

Once again, separate the issues. You best serve your client by being a well informed and well-prepared professional plant appraiser. Start by being familiar with all of the generally accepted guidance—the “Guide for Plant Appraisal, 9th Ed.”

Next, understand that the “right-of-way” is probably an easement, an encumbrance on the legal rights of ownership. Even if it is not an easement (running with the land) and it is an agreement with the current owner, it encumbers or restricts that person’s legal rights of ownership.

It seems undisputed that “several trees were cut and removed.” Can we assume that “they” means the homeowner? So, the next question is where were the trees located—specifically and precisely? Were they actually on the homeowner’s property? If they were, were they within the right-of-way? The next step may or may not be a property survey.

Next, you ask if the trees can have value given the utility’s rights, and immediately state that they “...did have real value to the [home]owner...” Let’s assume that the trees were of benefit to the homeowner. That is a separate fact from whether they had recoverable “value” to the homeowner. And value is the question.

So, let’s go back to the beginning. How do you best serve the client? The best first step might be to make an initial site visit and see if the trees might or might not have “value” in the abstract. What if they were American elms just ahead of the DED front? Or, so decayed they might have fallen over in the next storm. They would not even be worth the expense of a survey and appraisal. Let’s say they might have had value, but even a cursory observation shows they were clearly in the middle of the right-of-way. Bill for the field visit and the assignment is over. But, maybe the location relative to the right-of-way is not so clear. You might want to give the client an approximate idea of the potential value so they can decide if the expense of (or the effort of asking the

utility to conduct) a survey is worthwhile. And, finally, if the trees have potential value, and they were on the homeowner’s property, and outside the right-of-way, your client might want an appraisal. Might? Go back to question 2, above. What if the tort damage remedy (the utility exceeded its rights) is cordwood or stumpage only? An appraisal might cost more than the value! Take the assignment step by step. Help your client solve a problem and avoid doing more than is necessary.

—Scott Cullen, #348

Again, what is the assignment?!! The homeowner owns the property, but it seems as if the utility owns the easement trees according to the agreement. The question as to whether the trees have any value—yes, they do. However, the value is different to the homeowner than to the easement owner, and why would anyone need to know the value? Explaining that the trees probably have little or no value because it is woodland, and that the utility owns them, and there is no need to retain you for an appraisal is the best way to serve your client.

—Lew Bloch, RCA #297

If the client understands that the utility had a legal right to remove the trees, but still wants you to provide an appraised value for some reason, then there should be no problem doing so as long as you disclose the easement issue. There may be other reasons to appraise the value of trees sitting on easements. For example, if trees are wrongfully removed by someone other than the easement holder, you might be called to provide an appraisal for insurance purposes or civil damages.

—GP David, RCA #304

It is a citizen’s right to receive compensation for any property that is taken or damaged, except when that citizen is breaking a law, as in drug cases. This stands whether it is done by private, corporate or government parties.

If the client replaces the trees, then he should understand that a second compensation would not be reasonable and should not be expected. Perhaps the appraisal of the originals trees should reflect their future value.

—Herlwyn Lutz

I am relatively new to tree appraisal, having spent most of my professional life as a practicing arborist. I was recently asked to assist a past client with an issue—my client needed to have an appraisal created that estimated the monetary loss of a group of trees on her property that were destroyed due to an oil spill. I purchased the book *Guide for Plant Appraisal* and followed the instructions for a Trunk Formula appraisal. The resulting amount of my calculations was remarkably high. Should I go back and adjust my depreciation factors? Should I use a different approach altogether? Do I just submit my results?

Your “remarkably high” results may be just fine, depending on your state’s approach-to-tree-value. In order to know if your numbers make sense, however, you must try to understand the reasons underlying the application of the different depreciation factors in the TFM. Much of this theoretical information is not yet available in the Guide, so you will have to do some analytical thinking and ask a lot of questions.

—G.P. David, RCA #304

You are asking the right sort of questions. First, review the answers to questions 1-4, above. Look at p. 11 in the Guide: “systematically look at the appraisal situation and the assignment.” Look at Table 10.1: identify the purpose and use of the appraisal and the definition of value. As in question 2, this might be a tort damage case. What is the measure of damages in your state? Ask the client’s lawyer to find out. Or ask your more experienced colleagues or your Regional Plant Appraisal Committee (RPAC, Guide p. 58). If the measure is cordage or stumpage, the Trunk Formula Method (TFM) is not really appropriate. If an allowable measure is depreciated replacement cost (DRC), and that is constrained to contribution to the market value of the real estate, and

a real estate appraiser is not required: yes, go back and adjust the depreciation ratings, probably using the reasonable test in Chapter 8. If DRC is not constrained to contribution to the market value of the real estate, then maybe the result—even if “high”—is what it is. The question is “high” relative to what?

Now, maybe this is not a tort damage case. Maybe the contract with the oil company explicitly or implicitly puts them on the hook for DRC.

Maybe the tort damage remedy will be the ultimate test (if the case goes to court), but the oil company’s insurance company wants to make a prompt and reasonable settlement. The “high” TFM figure and some lower tort damage remedy may frame the possibilities and guide the client in settlement negotiations.

The approaches to value, and the methods within those approaches, are selected based on the definition of the appraisal problem including the purpose and use of the appraisal. Purpose and use lead you to the definition of value. If you use TFM or another DRC approach, you

depreciate to the defined type of value, not just because the result seems “high.” If you select another approach, you still are “approaching,” so to speak, the defined type of value.

—Scott Cullen, RCA #348

High compared to what? The Guide does not allow the value of the trees to exceed the real estate value since the trees are part of the real estate. If it does exceed the value of the real estate the trees are on, you may want to go back and check it using another method. You may also want to get a real estate appraiser’s opinion of the real estate value with and without trees. That is the approach I would use if I were on the opposing council’s side.

—Marty Shaw

The calculation was remarkably high????!!! In whose opinion??? This is not the appraiser’s job to decide. The appraiser does not create value. Adjust depreciating factors????!!! Never! They are what they are, in your opinion. Even though you could elect to use a different

method, I doubt whether you would elect a different approach. Read the Guide; these are very different terms.

—Lew Bloch, RCA #297

You might check on factors that are more subjective, such as location. These can be adjusted if the appraisal seems “unreasonably” high. However, if you have already submitted it, you can back up your conclusions and, if the offender is objecting, it would not look good for your professionalism to back down. If the method you used fits the situation best, then you should stick with that.

—Herlwyn Lutz

In my opinion, there’s a distinct difference in appraising and estimating. Again, if you don’t feel qualified (comfortable with your answer), don’t submit. Be careful, you might have to testify in court.

—Gene Eyerly, RCA #193

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