

## What's a tree worth?

by G.P. David, RCA/BCMA

With all the drilling rigs and pipelines being slapped-in around the state these days, trees are coming down right and left. Add to that the tree losses caused by fires, car crashes, herbicides, and wrongful removals, and landowners quite often need to determine the value of a tree.

Tree appraisers often utilize all or part of a complex set of guidelines provided by the Council of Tree and Landscape Appraisers to calculate the value of a tree. Factors like a tree's age, type, condition, and size all play important roles in determining its appraised value.

When it comes to placing a value on a tree in Texas, however, the circumstances behind a tree's removal can be just as important as the tree's vital statistics. Trees are valued differently depending upon the nature of the claim. The appraised value of a tree destroyed during an automobile accident may be many times more than the value of the same tree taken during an eminent domain proceeding.

"How can a tree be worth \$30,000 when the land it sits on can be purchased for \$10,000 an acre?" This is a question that tree appraisers face every day. The answer lies in the complexities of the law in Texas.

A tree appraiser's first task is to determine the "valuation approach" appropriate for the situation. Landowner's typically need a tree appraisal for one of five reasons: lawsuits, insurance claims, land negotiations, eminent domain proceedings, or IRS casualty losses.

As an example of a lawsuit scenario, let's say that a bulldozer operator is clearing property for a new gas pipeline and accidentally (or deliberately) pushes down a bunch of trees outside the pipeline easement. This is known as "wrongful removal" of trees. The landowner typically files a claim or lawsuit and demands to be compensated for the damaged trees.

In Texas, legal precedent states that the first test of tree value in cases like this is the difference between the real estate market value of the land before and after the tree damage. If that reduction in market value is very low - *de minimis* - as a lawyer would say, then the courts have held that the landowner may be compensated for the "intrinsic" value of the trees. Unfortunately, the courts haven't defined "intrinsic value" very well.

Many plaintiff's attorneys hold that "intrinsic value" is the same as "restoration cost". Tree values based on restoration costs can often greatly exceed the real estate market value of the property. Restoration costs for heavily-treed land can easily exceed \$500,000 per acre.

Defense attorneys usually argue that "intrinsic value" is more closely related to tangible benefits that the landowner derives from the trees, which is almost always a vastly lower number than the restoration-based appraisal amount. Both sides typically have tree appraisals prepared based upon their respective interpretations of the law and then fight it out in court.

Tree values for simple insurance claims can often be more easily calculated. Let's assume that a car veers off the road and destroys a Red Oak with a four inch diameter trunk. For small trees, most insurance adjusters accept appraisals based upon the actual replacement cost of the tree minus a deduction if the original tree had any health or structural defects. For larger trees, tree values are often determined by a formula. For multiple tree losses or when appraised values become very high, insurance companies tend to litigate - so simple replacement cost valuation approaches become difficult to defend.

There are many other types of tree value. Many homeowner's insurance policies have an artificial \$500 cap on the amount paid if a tree is struck by lightning. This is an example of a "contractual" tree value. Both the landowner and the insurance company have contractually agreed (through the insurance policy) that the compensation for the tree in the event of a lightning strike will not exceed \$500.

If that same tree is demolished by an automobile, however, the driver's insurance company may have to pay many thousands of dollars to compensate the landowner for the tree. The damage to the tree now becomes a legal tort situation, so the tree's valuation-basis usually reverts back to the higher restoration-based approach.

IRS casualty losses for tax purposes are a completely different ballgame. In fact, the IRS has stated that arborist's tree appraisals are specifically not acceptable for claiming casualty losses for trees.

Tree values for eminent domain proceedings are usually tied to the tree's "contributory value" to the real estate market value. In most cases, especially for native trees on rural land, these contributory values are quite low. If individual trees provide specific benefits to the property, such as screening undesirable views or shading the house, then courts may allow landowners to be compensated to recover some or all of that functionality.

A good tree appraiser combines a broad knowledge of trees with a thorough understanding of appraisal theory. Unfortunately, the 9<sup>th</sup> Edition of the Guide for Plant Appraisal doesn't offer enough insight into the underlying theory of appraisal to be of much help. CTLA has promised to more thoroughly explain the underlying theory of the various valuation components and approaches in the upcoming 10<sup>th</sup> Edition of the Guide.

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**Update on the 10<sup>th</sup> Edition of the Guide:** CTLA Chairman, J. David Hucker, announced at the ASCA conference last month that work on the 10<sup>th</sup> Edition of the Guide is proceeding at a deliberate pace. Although no estimated publication date was given, the writing / reviewing / and revision process should take another twenty four months, at least. Most observers anticipate a 2011 release date for the 10<sup>th</sup> Edition.