Is It About the Trees or Is It About the Money?

By Lew Bloch, RCA #297

I have preached for many years that when we get involved with tree-related legal issues, it is usually—but not always—about the money rather than the trees. The following two cases highlight this issue.

The first case involves the very severe pruning of one side of a privacy screen planting along a road in front of a very nice home in an upscale community. A developer was building a new home at the end of the road, and the lower branches of the trees were interfering with his trucks and equipment, so he pruned them all off. (See Figure 1)

There were 71 Canadian hemlock trees (Tsuga canadensis), 30–40 feet tall, within approximately 270 feet. It was my opinion that I could not use the Replacement Cost Method to do an appraisal, as it would be impossible to plant 71 trees of that size in that space. I also ruled out the Trunk Formula Method for the same reasons. To me, it was a classic case for the Cost of Cure Method, so as to “…return the property to a reasonable approximation of its original condition…” (Source: Guide for Plant Appraisal, 9th edition) In other words, it is not the monetary value of the damaged trees, but it is the cost to restore the property.

My plan was as follows, including estimated costs:

- Cut down and haul away 71 hemlock trees. $14,200
- Grind out 71 stumps. $3550
- Furnish and install 26 new hemlocks 18–20’. $46,880

Total opinion of value of damages $64,550

I know some of you readers quite well, and I can hear the screaming about whether the branches over-reached the property lines. Did anyone have the right to prune the trees? Was self-help OK to use, etc.? None of that was part of my assignment; that stuff was for the attorneys to argue. It is my opinion that too often, consultants take on chores that are not actually part of our assignments. Where have we heard “What is the assignment?” Mine was only to determine an opinion of the value of damages.

This case was over 12 years ago and never went to court. I have no idea how much my client received for damages, but the photo in Figure 2 shows what the area looked like a few months ago. It is obvious that they did not spend any of their settlement money to restore the lost benefits of the screen planting. Evidently, the claim was not so much about the trees or landscaping benefits. As stated, many of these cases are about the money rather than the trees.
The second case was against a county government and actually went to trial. I represented the county, with the assignment of critiquing the plaintiff’s value of damages and preparing an opinion of my appraisal of damages. That is all we do: offer opinions.

This case involved a row of 12 white pine trees that were along a well-traveled road. The trees were on private property, just outside of a wooden privacy fence that was close to the property line. While cleaning up some broken limbs that had fallen onto the ground on county property after a snow/ice event, the county employees were asked by a motorist to cut off the lower limbs of the trees to create a better view of traffic from a side street entering the main road. The crew obliged and cut off six to eight small lower limbs on each of the trees. (See Figure 3)

The plaintiff did not present an arborist or landscaper at the trial but had an estimate to remove the 12 trees and plant 12 new trees for $50,000. My assignment from the county was to critique that estimate and provide my opinion on the value of damages to the plaintiff.

It was my opinion that the trees were not actually destroyed, nor was there any loss of screening because all of the cut limbs were below the height of the privacy fence. I prepared a report using two separate appraisal methods, again using the 9th edition of the Guide.

In one report, the Replacement Cost Method was employed and used the plaintiff’s own estimate of replacement of $50,000. After my depreciation factors, that cost became $32,000, and I estimated that the percentage of actual tree loss was 3 percent. Therefore, my opinion of the appraisal of damages using this method was $960. If there had been no depreciation taken, the value would have been $1,500.
The second report used the Cost of Cure Method and suggested that planting a row of viburnum bushes under and in front of the pines where the lower limbs had been severed would restore the loss of lower limbs. I estimated the restoration cost to be $3,000.

I did not do any reconciliation, as it is my opinion that if this process is to be done, it should be done by the trier-of-facts. My report included both of my processes and my calculations.

All of that seemed to pass the reasonableness test (whatever that is), as there was only minor damage to the trees and property; however, the jury ruled for the plaintiff and awarded the full $50,000. In this case, the plaintiff actually spent the money, and possibly more, to re-do the landscaping as shown in Figure 4.

The county attorney explained to me, off the record, that the county employees that did the cleanup work blew the case in their testimonies as they dissed the plaintiff, the trees, and the property, and really turned the jury against the county.

So, in this case, it was about the trees and not the money! And maybe, as is quite common, it was also about the lawyering. 🍃