



Above: Removal of the tree left the property exposed. Inset: Hardscape upheaval. All images courtesy of the author.

Taking the 10th: The Guide Is Just a Guide, I Guess

BY HOWARD GAFFIN, BCMA

The opposing attorney walked toward me jauntily. “So, have you heard the one about how many opinions one would receive when employing 10 arborists to appraise a tree?”

“Yes. Do you know what one would call 100 lawyers in a basement?” I replied. To myself. Hours after the trial was over. “Ha, ha” was my actual response.

He had a point. There I sat on the stand, subject to one of my pet peeves.

It was another case of brotherly love, neighbor helping neighbor. By

voluntarily cutting down the tree that was obstructing his view to the water, my client graciously spared his neighbor, the tree owner, the expense.

Continuing his empathetic ways, he made sure to have the deed done when the home was vacated, freeing the owners from any noise or inconvenience.

Alas, the poor tree owner was not pleased with the generous act. Hostilities ensued; bring on the lawyers.

Ok, so my client is a total d**k. He intentionally had the neighbor’s tree removed, clandestinely, to improve a view to the sea, and would simply pay his way

clear. How much could it be for a tree? I was unaware of all the circumstances when I first took the job, and might have backed out had I known them. I was simply asked to appraise the value of a tree that was no longer there.

I observed (what did I see?)

The site was on the coast. The tree, a large Norway maple, was in a difficult spot on the property, under conservation restrictions, and was not to be removed or pruned without pre-approval from the powers that be.

One side of the root crown butted up to my client’s retaining wall, which was beginning to bulge from the roots’ impact. On the tree owner’s side, the roots were buckling another retaining wall, a flagstone patio and support for a nearby structure. The root zone was inadequate for a tree of that size, the site well used and compacted. Almost half of the crown was over my client’s property, and yes, it slightly blocked the precious view. Much of the crown had already been raised on both properties before the tree was cut.

Obviously, rating the condition of the tree was going to be speculative, but the root crown and root zone were clearly in fair condition at best. Another Norway maple of approximate age and size was growing on the property line, about 25 feet from the subject tree. I took note of this tree’s condition, along with other Norway maples on the property. Most internet imagery I was able to view was inconclusive, but one image obtained through a real-estate site showed some clear discrepancies between the subject tree and its neighbors.

I discussed (what does it mean?)

The tree is in a difficult location. Much of it is impacting the neighboring property.

From the “Guide for Plant Appraisal, 10th Edition,” authored by the Council of Tree and Landscape Appraisers (CTLA) and published by the International Society of Arboriculture (ISA), Table 3:

A large, maturing tree near a property line may have a rating of 10-90% “based on the proportion of the canopy growing into neighboring property and disrupting use.”



Remaining Norway maple on site.

An invasive species may have a rating of 0-20% “based on state or regional listing and potential for disrupting native vegetation.”

The existing Norway maples show fair form, but most have been altered to accommodate nearby structures. One image shows the subject tree to have poor color and less density than its neighbors.

OK, so I have a mature tree abutting a property line impacting both properties. It has inadequate root space and is disturbing the surrounding hardscape. It is considered an invasive species, but I see little reason to believe it would have an ill effect to the surrounding suburban ecosystem.

Given that only a stump was left, I applied the same DBH (diameter at breast height) number as my associate (we’ll call him Kyle) working for the opposing counsel provided in his appraisal report as a starting point. Kyle and I both clearly stated that the “Guide for Plant Appraisal” would be the basis for our reports, and that the tree was a Norway maple. From there, it all went awry.

So, Kyle’s estimate is four times what mine is. (Figure 1) That’s quite a discrepancy! Hence, we all get to put on our big-boy clothes, dust off the wingtips and go to court. My legs were still healing from a greenbriar-infested-drainage-ditch data-gathering tour along a state highway, but I would still rather be there than in a courthouse, where nothing good ever happens.

Court

So the big day came, and off to court I went. Kyle was unable to attend, so the judge decided that the defense would go first, rather than the prosecution per usual. I met my lawyer and client for the first time. Mr. Treecutter was nice enough in his golf-themed leisure-wear, but I must admit I had an instant aversion.

	Tree-meister	Kyle
Replacement species used	Red maple	Sugar maple
Basic unit tree cost	\$61	\$95
Condition factor	0.72	0.95
Functional-limitations factor	0.33	0.95
External-limitations factor	0.100	0100
Depreciated value for a 29-inch tree	\$9,566	\$56,530
Additional costs	\$9,500	\$18,317
Total value	\$19,066	\$74,847

Figure 1: The author’s record of the varying valuations. Figure courtesy of the author.



The clients house looms over his neighbor.

Mr. Treecutter's philosophy was, "Do as I please and pay the price, I can afford it." Though I considered it a somewhat distasteful notion, I kept my bias at bay and followed the guidelines I professed to. My assignment was not to punish Mr. Treecutter, but to opine on the value of the tree.

I was sworn in and scanned the jury. Uh-oh, not a polo shirt or pair of pastel khakis in the bunch. My lawyer guided me through the testimony, and I explained the appraisal process. Why I chose the replacement species. How I arrived at the condition rating. How I arrived at the functional limitation rating. Blah, yada, yada, blah, blah.

We talked

Time for the cross exam.

Attorney: "Tree-meister, are you being paid for your testimony?"

Me: "Yes, handsomely." (Why do they even ask this?)

Attorney: "Were you paid for the report you provided?"

Me: "Of course." (Again, why do they even ask this?)

Attorney: "So, your compensation is related to your opinion of the appraisal value."

Me: (Sigh.) "No. That would be unethical. I get compensated regardless of the appraisal value."

I defended the replacement tree of choice based on getting a tree of the genus and species (red maple, *acer rubrum*) that would be in line with the value of a tree considered to be undesirable. We bantered about the tree's condition and then moved on to functional limitations.

Attorney: "Tree-meister, did this tree provide shade to the site?"

Me: "Absolutely."

Attorney: "Did it provide screening?"

Me: "Positively."

Attorney: "Then, why such a low rating?"

I went on to explain that functional limitations were things out of the owner's control that could impact the tree's ability to reach its full potential. The restrictive root area and rights of the neighboring property owner, in my opinion, certainly limit its potential. I also pointed out that had this tree been growing further from the property line, we probably wouldn't be here.

Perhaps the pre-nap snorting and slouching presented by the jury persuaded the attorney to end my riveting testimony, and I was mercifully dismissed.

Feeling confident, I looked forward to my colleague's appearance, a month away.

Back to court

I arrived in court adorned with the same pants, socks and shoes worn at my previous appearance, but in solidarity with my client, I did mix it up with a white polo shirt.

I exchanged pleasantries with my colleague and wished him well, but could not wait for the defense attorney to squash him with common sense. Kyle used a high-value replacement species (sugar maple, *acer saccharum*) and appropriated ratings of 95% for both condition and functional limitation factors in the appraisal process. I could barely contain my incredulousness.

Pipedreams

Allow me to give you my vision of an almost perfect tree in a perfect location, one that I might use as a benchmark of excellence.

Imagine a large, native white oak in early maturity (cue birds singing, maybe some flutes). It grows in an undisturbed mulch bed to the southwest of the home and living spaces. The tree exhibits excellent health, structure and form, and has been professionally maintained as needed.

Along with the welcome summer shade, the tree blocks the view of the old-timers nudist colony to the south. All its parts are on the property. There are no utilities, structures or other physical impediments. There are no right-of-way clauses or other restrictions.

Now awaken from that fantasy and compare it to the reality of this case. How is it possible for my fellow arborist to justify his excellent ratings if using the same guidelines as I?!

I will tell you how. Six words often heard: "The Guide is just a guide."

Unreality check

I am not sure what Kyle's reasoning was. He is educated, experienced and possesses the same creds as I. I'm pretty sure his vision of the almost perfect tree

in an almost perfect location looks a lot like mine.

I speculated that perhaps Kyle, spending years using the 9th edition as a guide, was a bit troubled by the difference in values when switching to the 10th. Unlike the 9th, the 10th does not include the cost of installation when determining a unit tree cost using the Trunk Formula Technique. That cost is added later in the process and not compounded. This results in a rather large difference in value between the two versions. Perhaps Kyle felt it was too much and used his professional judgement to arrive at what he considered a more appropriate number.

Back on the stand

I returned to the stand once more, outlining the same oak tree scenario described above to contrast the actual conditions observed and reported in this case. This was in the bag. How could the jury possibly ignore the facts and my most excellent testimony? They had been instructed that the defendant had already admitted to wrongfully removing the tree and would pay for damages – times three. This was strictly about the value of the tree.

My attorney gave me an “atta boy,” and I shook the hand of a man who would surely be headed out to the links, followed by drinks on the veranda overlooking the soon-proven-to-be-costly ocean view.

The jury did not take long to reach a verdict: Almost the full amount asked by the prosecution times three was awarded, plus considerations for emotional trauma totaling a cool quarter-million for a Norway maple on a border line.

Ooooooooooh. That’s got to tarnish the view a bit.

I cannot say I was upset with the jury. In my opinion, justice actually prevailed. I was, however, disappointed in my colleague who provided the mis-“Guided” justification. How can our profession be taken seriously when the prosecuting attorney’s opening line is, “So, have you heard the one about how many opinions one would receive when employing 10 arborists to appraise a tree?”



The site has limited root area.

Interpretive justice

This case just re-reinforced the stereotype, and stereotypes evolve for a reason. I understand that “The Guide is just a guide,” but should we each have our own truths as to how to interpret it? I find the Guide to be effective in presenting appraisal options, along with case studies and useful worksheets. Tables with examples and parameters for depreciating factors also are provided.

If the Guide is the resource for the appraisal, shouldn’t one stay within the

realms of reasonableness and not exaggerate or ignore facts to arrive at a number they are comfortable with? “The Guide is just a guide” rings hollow as a response for discrepancies that just two-step around the issue.

If you find the Guide to be overly flawed, use another technique that can support your results. You might even create your own methodology. I have had many potential clients do just that when unhappy with my initial assessment.

Many plant assessors have issues with the 10th, but what kind of credibility do we inspire as a profession when we pick and choose which parts we will adhere to or ignore? Differences in value of one or two times seem high; those of four times or more are simply embarrassing.

There will always be some subjectivity when conducting a plant appraisal, but if we can’t agree on a standard and follow it within reason, we may always be vulnerable to a punch line and drum roll in the courtroom.

Oh yeah, what *do* you call 100 lawyers in a basement? The wine cellar.

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Stepping Out of Your Comfort Zone

BY PATRICK NELSON



Overcoming a fixed mindset is not always a walk in the park. All photos courtesy of the author.

I spent nearly seven years in the Army as a paratrooper, with three combat deployments. I was wounded in action on one of those tours. As I transitioned from soldier to civilian, I was met with many of the challenges veterans face. I found it difficult to relate to others, because they hadn't been through the same situations as me. **That isn't to take anything away from them,** it just made it hard for me.

At the same time, I was popping pain pills to numb myself from my experiences over those seven years. I started to isolate myself and was headed down a very dangerous path. I was locked into a fixed mindset where I was letting my past failures define who I was in a very negative way – to the point where I was thinking about taking my own life.

A phone call that changed my life

One day in early February 2013, my

phone rang. It was my friend, J.B. Ball. I met J.B. through a nonprofit organization he founded called Tee It Up for the Troops. J.B.'s son was deployed to Iraq, and J.B. had asked him what he could do to support him – such as writing letters, sending care packages, etc. His son told him to do something for those who were coming home wounded. So J.B. created a golf event that raised money for wounded veterans.

The event was such a huge success that he created the organization, which now holds golf events across the country every year and has raised more than \$15 million dollars. One of the programs of this organization is putting golf clubs into the hands of wounded veterans as a means of rehabilitation – both physically and mentally. I had never swung a golf club in my life until Tee It Up for the Troops put a set in my hands and turned me loose. I immediately fell in love with the game. I was and still am a terrible golfer. But I can separate the frustration of chasing a little white ball around from things that truly matter.

Bataan Memorial Death March

J.B. was calling because he wanted me to go with him to New Mexico to do the Bataan Memorial Death March. This event is held every year in honor of the Bataan Death March in World War II in which thousands of American and allied prisoners of war died while being forced to walk more than 60 miles by their captors. This event honors their legacy. The march is held at White Sands Missile



Our challenge was a 26.2 miles trek with a weighted pack on terrain that varied from tarred roads to dirt paths to sand to concrete.