

TREES SHOULD HAVE STANDING¹

by Frederick R. Micha

All trees should have standing, or in the layman's expression, legal rights. This may seem to you a strange statement. For years people have not really respected trees to their fullest extent, nor were some willing to admit that trees had monetary value. The general public has been naive and disillusioned. Our legal and governmental bodies have been disrespectful of tree values, especially during casualty loss involving real property.

The time for change is here! Today our country's people are awake and demanding positive ecological answers. Our insurance claims agents, our internal revenue agents, and our municipal officials, are all more aware of trees than ever before. It is this awareness that creates a positive climate for the true arborist and his valuations.

If you believe that trees have a standing, then you must believe every tree has a value no matter where it is. A strong professional stand on this point is imperative.

Following recent publication of a book by Christopher Stone, a lawyer, *Should Trees Have Standing*, one begins to realize that even the legal sections of the world are beginning to address themselves to the fact that trees may have more value than they ever realized.

To professionally interpret our shade tree evaluation guide and to correctly present your appraisal is of the utmost importance in today's educated world. I have seen many ill-prepared reports from members of this association. It makes me wonder—are we really a professional organization? Many reports show no meaning. Not enough thought was put into why you place a positive value on a plant. We must use more creative presentations, give serious thought to possible ramifications, and give downright strong opinions as to value.

Many think that by showing their calculations they are astounding the public with their pencil

'footwork'. Far from the truth. The professional arborist does not show calculations; he determines the tree's value and states it succinctly and positively in monetary terms. It's what precedes these figures and the final statements that complete the professional report. It does not have to be verbose—just say the things that have meaning. The meaning as only you can know!

Following is a list of the tree appraisal situations I have been involved with in the Rochester, New York area over the last two years that required a report. The list is in order of severity and/or number of requests beginning with the most frequent.

1. Tree damage or loss due to vehicular accident.
2. Sudden tree loss due to high wind.
3. Presurvey of trees prior to gas-line installation.
4. Presurvey of trees prior to underground electric installations.
5. Presurvey of trees prior to sewer- and water-line construction.
6. Over-encroachment during construction.
7. Presurvey of trees prior to sidewalk construction.
8. Trespass.
9. Presurvey of trees prior to road widening.
10. Trees damaged or destroyed by lightning.
11. Presurvey and post-survey for underground telephone installations.
12. Stealing timber and shade trees.
13. Poor pruning practices.
14. High water tree loss.
15. Chemical injury to trees and plants.
16. Property survey to determine tree values prior to home construction.
17. Tree damage and loss due to fire.

Herewith are two case study tree evaluation situations worth reviewing.

Forest Tree Trespass

A logger trespassed upon a wooded lot in a rural area for the purpose of obtaining hardwood saw log timber. Trees were felled and marketable logs removed. The resulting stumps and tops remained, many small existing trees

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were damaged or destroyed, roadways were cut into the wood to winch out the logs and just plain outright destruction took place.

What do we do as arboricultural professionals? Will we let the local extension forester submit a timber value loss and let it go at that or do we attack the issue from a professional standpoint, putting all things into proper place and into focus? I took the tree evaluation approach and used it to the most extreme extent.

Certainly the forest trees in this situation in competition with one another did not rank monetarily with single shade trees which many people see and enjoy. Nevertheless, I determined each tree's value (which was quite low). Furthermore, I separated the values into residential and woodland. This presented two separate sets of figures. If this site were developed into a residential setting the trees would have more value. Why not be fair in your reasoning and evaluate both circumstances.

The final statements of my evaluation appraisal report were as follows:

"The above values represent trees in place, in their natural habitat prior to any recent cutting. Total woodland tree value, \$8,509."

"If the land were to be developed for home sites, the existing values of these trees would be \$16,990."

Further, I considered cost of cleaning up the resulting wood and brush, removing stumps and hauling away all debris, regrading the damaged land to eliminate ruts and other equipment tracks, and to bring the forest floor back into as near as possible a condition that existed prior to the trespass.

Finally, small indigenous trees were damaged (tops broken, trunks wounded, and roots severed). These trees ranged in size from 1 to 5 inches in diameter. Others were completely destroyed. I placed a value on damage and repair costs.

Thus, I feel that I covered every facet of consideration to trees and the ecological setting. It would be interesting to me to know how this case comes out but not imperative, for I know the courts of the land. They can be most difficult and strange. What I professionally presented was fair and reasonable and the courts understand this.

Construction Encroachment

A builder of fine homes was confronted with a situation that required, by law, low class housing nearby. To the west of some of his better home sites was a tree line of poplar, willow, and related species. The depth of this hedgerow tree line was about 60 feet. The town requested that a sewer line be constructed to supply the new housing development to the west. The builder relented but with the stipulation that only a 20-foot width of tree line be opened up for this construction.

Because of the contractor's anxiety to push the project and his lack of communication with the town's engineering consulting firm, the project resulted in disaster. The construction zone turned out to be 56 feet in width. Needless to say, this encroachment caused the builder many sleepless nights because of the new view his home site had of the potential low class houses.

Knowing this would go into litigation, I submitted two reports to the builder, one using our shade tree evaluation guideline and one using replacement costs. Most of the trees averaged 10 inches in diameter. The original trees were 6 to 10 feet apart, having grown in a tight society by natural means. Certainly one can see that we could never replant the scene the same way. Again I submitted two sets of figures. One was approximately \$1,500 in evaluation and the other was approximately \$31,500 for replacement. I do not regret doing this for it gives our courts something to ponder.

In summary, I realize that our shade tree evaluation formula was designed for shade and ornamental trees, but we need a base from which to work. In today's detail-demanding society, I found it useful and will continue to use it in many situations.

We must stand our ground when people call the Guide hypothetical. We are the professionals. We have the qualified background to properly use its contents, but only if we know that 'trees have standing'.

Your professionalism stands out if you defend the tools that you have created. In this case the

tool is our shade tree evaluation guideline. But it is just a guideline. You must be the one to interpret, evaluate, consider all aspects, create a sound, well developed presentation, and prove to the people that you know what you are

talking about. This is the professional arborist!

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ABSTRACTS

Van Alfen, N. K., and G. S. Walton, 1974. **An evaluation of the Lowden formulation containing nystatin for Dutch elm disease control.** *Plant Disease Reporter* 58: 924-926.

A new treatment for the cure of Dutch elm disease is being widely advertised throughout New England. The treatment, containing the antibiotic nystatin, is sold by Lowden, Inc., of Needham, Mass. The nystatin, after being dissolved in a special formulation developed by Lowden, Inc., is injected into trunks of elm trees by use of a gravity flow apparatus. In cooperation with Lowden, Inc., we have evaluated the ability of their fungicide formulation to control Dutch elm disease in experimental plantings of elms.

Our data show that when treatment and inoculation occurred on the same day, significant control of Dutch elm disease occurred as compared with the trees that had not received nystatin. When treatment was delayed for 7 days after inoculation with the fungus, however, there was no control of the disease. Evidently, once the fungus becomes established, the treatment is unable to prevent its spread throughout the tree.

Even more interesting are the data which show that treatment with nystatin 7 days prior to inoculation with the fungus was not effective in protecting the trees against Dutch elm disease. The lack of protection provided by the treatment is not surprising considering the reported instability of nystatin.

The ability of the Lowden formulation to cure established infections could not be demonstrated in our experiments.

Butler, J.D. and B.T. Swanson. 1974. **How snow, ice injury affects different trees.** *Grounds Maintenance* 9 (10): 29-30, 40.

Injury to trees from ice, snow, low temperature, wind, or a combination of these is often devastating. Ice injury is often severe regardless of whether or not a tree is in leaf. Serious tree injury from heavy snow is normally restricted to deciduous trees in full foliage. Low temperature injury may result only in the death of buds and small branches, or it may be severe enough to cause the death of large branches or an entire tree.

In October, 1969 and September, 1971 severe early winter storms struck along the Front Range in Colorado. During the storm of 1971 from 15 to 24 inches of wet snow fell on trees in full foliage, and the temperature dropped to 18-24°F. Although the storm was devastating to the landscape, it did present an opportunity to study the performance of urban trees under adverse weather conditions.

Many different kinds of trees were surveyed following the storm. Eleven representative kinds of trees are discussed here. The trees assayed in this study were located in home lawns, along city streets, on a golf course, in a cemetery, and in a small nursery.

Most of the physical injury to trees and shrubs was apparent immediately following the storm. Physical breakage and injury were species, size, and shape dependent, and often reflected past maintenance practices. The data cited here are averages and some trees suffered little or no damage while others were almost totally obliterated. Even so the accumulated information should help in making decisions on what to grow, how much canopy loss to expect under similar situations, and even serve as a basis for clean-up estimates.