

TREES & THE LAW

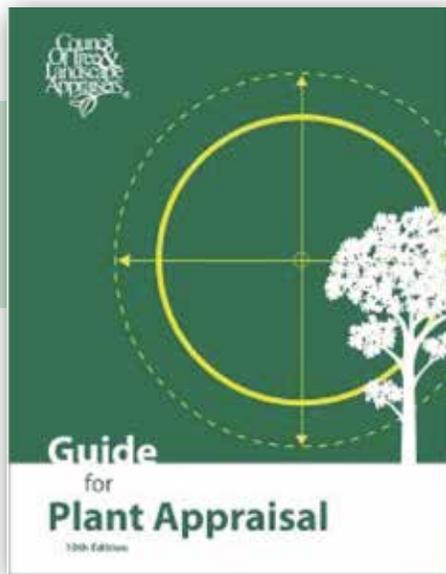
BY JULIAN DUNSTER



BOOK REVIEW

Guide for Plant Appraisal, 10th Edition

CTLA, 2018. *Guide for Plant Appraisal, 10th Edition*. Champaign Il.: International Society of Arboriculture. ISBN 978-1-943378-02-9.



The *Guide for Plant Appraisal* has been around since 1957. The 8th edition (still used in Quebec) was published in 1992 followed by the 9th edition published in 2000. In 2018 the Council of Tree and Landscape Appraisers (CTLA) approved the 10th edition, published by the International Society of Arboriculture (ISA).

The new edition is a mixed bag of good and bad components. It provides some welcome changes, clarifications and updates, but also introduces puzzling major changes without an obvious rationale for doing so.

There is not enough space here to provide a comprehensive review of them all, but a few of them are highlighted as examples. At the time of this review the first printing of the tenth edition had been withdrawn for sale by the ISA as a result of many obvious typographical errors and mistakes. A corrected second printing is expected by May or June. The extent of corrections is not yet known.

FORMAT AND STYLE

In a departure from previous editions the 10th has a letter sized format (like the TRAQ manual and other ISA publications) and colour illustrations. There are nine chapters, seven appendices, a glossary and an index, as well as appraisal examples, figures, tables and breakout sections to elaborate on the body of text. The book provides more extensive coverage of appraisal concepts and approaches than previous editions, and at times it reads more like a textbook than a guide.

OVERALL STRUCTURE

Chapter 1 provides an overview including the history of the *Guide*, the context of the 10th, and using it in practice. Right away confusion and potential bias are evident. On page 4 we see "...the contribution of trees and landscape to real estate market value...is a foundational aspect of establishing plant value." It neglects to mention that the possible contribution to market value made by plants is just one variable in the appraisal process, but it is not automatically the only primary variable to be considered.

Chapter 2 deals with Core Concepts. In principle the distinctions between price, cost, value and utility ought to be straightforward, and at times they are written that way. But it soon becomes apparent that these key terms and concepts are used incorrectly, despite being well defined in

the text. For example, the terms cost and utility are merged or muddled, and costs are variously described as data and opinion. No. They are supposed to be actual data. Cost is what it is regardless of the utility derived, or whether those costs have utility related to the appraisal problem.

Chapter 3, the Appraisal Process, is a welcome and essential addition from the 9th Edition. It provides a clear outline of how the appraisal process might proceed depending on the intended use of the appraisal, and how the assignment is to be conducted. The six steps described provide a much better description than earlier editions of how to identify, define and solve the appraisal problem, and then report the result. Not mentioned at all, is that in litigation the assignment is often determined by the legal measure of damages. This should have been clarified as many plant appraisals are destined for resolution in a court setting.

The issue of reconciliation is discussed here and in Chapter 8. Emphasis is placed on the real estate concept that every appraisal must be reconciled, giving the impression that it is also required in every plant appraisal. That assumes the appraiser would automatically use more than one valuation approach and then attempt to reconcile any differences between the appraisal outcomes derived. At page 106 we see "The context of the appraisal assignment will determine whether the appraiser should reconcile different results, or simply report them as estimated and discuss their relevance, strengths and weaknesses," which doesn't resolve the issue at all. If you only have one valuation approach to use the result is the appraisal. Very few experts seem likely to openly discuss the strengths and weaknesses of their approach(es) in their reports, although it might occur under cross examination. Had the *Guide* been more carefully written, it could have usefully noted that reconciliation, when needed, is simply a careful review of the appraisal before reaching and reporting a conclusion. Chapter 4, Data Collection, is another

area where improvements are seen. Issues of data accuracy, significant numbers and plant condition ratings are discussed in detail. The plant condition rating discussion is a welcome improvement in that it explicitly recognizes the validity of different fact patterns and problems rather than the more prescriptive scheme in the 9th edition.

And then we get to Chapters 5, 6, and 7 covering The Cost Approach, The Income Approach, and The Sales Comparison Approach. Here we see major changes in methods, and terminology. All of these are largely untested in plant appraisal practice. They have no acceptance in policy, law, or statute and will remain that way for many years. In effect all plant appraisers, no matter how experienced, are now being asked to start again with a completely new set of untested parameters. Parts of the text in these chapters are poorly written, sometimes verging on ridiculous. For example, the suggested cost compounding technique shown on page 60 makes no sense at all and is completely detached from reality. The example of 600 trees planted relates (poorly) to an industrial forestry setting. Skilled foresters would know that many of the trees planted will not all survive to maturity, there will be management costs during the time to harvest, and the expected volume is not factored in. A real approach would expect to calculate all of the costs to time of harvest and reflect the many uncertainties in factors such as interest rates over time. As an example purporting to enhance the text under discussion, it has no relevance to one or a few amenity trees, and that problem pervades other parts of the text as well.

Chapter 8 deals with Reconciliation, Reasonableness and Reporting, and covers these in varying levels of detail. However, the resulting brief introduction to these issues lacks enough technical bite to be useful in all situations.

Chapter 9 deals with Additional Applications: Wooded and Forested Areas, Tree near Utilities, Historic Trees and Casualty Loss. This chapter is another mixed bag of information. For some reason, timber valuation approaches are explained in detail, as if most arborists easily can take them on. Almost in passing, it is then noted that this might need to be undertaken by professional foresters trained in these techniques. As a registered professional forester, I know that timber and wood product valuation is almost exclusively the purview of foresters with specialised training. Most arborists and foresters would not be able to undertake it. Table 9.2 is truly an oddity. Why include one example of such site-specific data that has virtually no relevance anywhere else?

The issue of competency is discussed later in this review. Again, there seems to be inherent bias in the text without recognition that there are a wide range of possible appraisal solutions. Rather, the message seems to be that if there is a forested setting then amenity valuation should not apply. Clearly, at least in Canadian court precedents, this is not always the case. It depends on the land use, what has been lost, what measure of damages is being sought and what appraisal options are available.

Some of the Appendices are useful, but one wonders how they were selected. There

are two pages about how to write plant nomenclature, and three pages about how to calculate area and volume, all of which ought to be known and readily available to a competent appraiser without taking up space here. Appendix 3 deals with missing plants which could have been a useful section. Instead the focus is on timber issues and the reader is lead off into the world of ratio and regression analysis. Completely ignored is the more commonly used amenity approach involving sample plots of similar tree cover to better estimate what has been lost.

Appendix 4 deals with the largest available nursery grown plants. Great emphasis is placed on the use of Regional Plant Appraisal Committees (RPACs) to derive acceptable cost numbers. Erroneously, it is assumed that they exist and can undertake compilation of data to help appraisers. The result is set of prescriptions and concepts about a perfect world that does not exist in practice. Moreover, the guidance is dubious. For example, it is stated "It is not the largest available nursery-grown tree but the largest *commonly* available nursery-grown tree that is important (emphasis added). Often the greatest diversity of species is available as seedlings or whips. These trees should not be used for residential or commercial landscapes." How can such a statement have any traction? The plants to be used for costing depend entirely on the appraisal problem. If relatively small plants have been damaged, they can be replaced with relatively small plants. If larger plants have been damaged large or small plants can be put back and a cost compounding exercise undertaken to get a sense of years to parity. If that requires searching for larger material that is less common, then that is what it takes to derive a reasonable appraisal, not simply what is common. And in some settings, smaller plants may have a far better chance of establishment than larger plants. The quote is typical of these ill-informed blanket sentences that permeate the text and misrepresent credible guidance.

Appendix 5, compound interest calculations provides four pages of esoteric algebra about present value and discounted cash flow analysis. After thirty years of working with plant appraisals and reviewing hundreds of court cases dealing with plant appraisal, I cannot recall a single instance where this level of analysis was applied. It is well beyond the skill set of most arborists. It implies a level of computational accuracy that is at odds with typical inputs, many of which are often subjective with variable margins of accuracy. Similar comments apply to Appendix 6. It is far too esoteric for most appraisal situations and is more related to real estate appraisal in general. Appendix 7 is a set of forms suggested for use in the field. The Glossary is a useful addition although it omits some of the technical terms used in the text and includes some esoterica that is largely irrelevant.

SIGNIFICANT CONCERNS AND ISSUES

While the coverage of appraisal concepts and methods is comprehensive, and in some parts an improvement from the 9th edition, there are several large and critical problems to address.

TREES & THE LAW

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IS IT A GUIDE OR A STANDARD?

Let's start with the title. Is the 10th guidance or is it a book of edicts issued by CTLA to form a standard of practice? It reads like a set of edicts. The Disclaimer (p.vi) states "This book... should not be considered a standard. This book is not intended to discourage appraiser choice. ... the *Guide for Plant Appraisal* is a resource for the plant appraiser. It is, however, neither an absolute nor a complete treatment of ... plant appraisal." But then Chapter 1 states "In many ways, the *Guide* functions as a summary of best practices in plant appraisal ... It is a consensus document prepared and approved by the CTLA's member organizations;" and suggests that the *Guide* meets the definition of a *de facto* standard, that is, acceptance by the marketplace.

By contrast, Chapter 1 also states that the *Guide* is "... neither an absolute nor complete treatment of the subject of plant appraisal ... [and] is far less prescriptive and gives the plant appraiser greater flexibility than do ANSI standards." These statements are contradictory, and the authors do not clearly state whether they intend the 10th to be a guide or a standard. Perhaps most tellingly, later chapters are peppered with statements such as "CTLA advises against ..." or "the CTLA generally recommends" Thus, notwithstanding the Disclaimer, the 10th explicitly discourages choice. This is no longer guidance, but bias towards normative choices and outcomes.

Calling the 10th a consensus document or generally accepted in the marketplace does not reflect reality. ISA's Plant Appraisal and Valuation Committee (PAVC)¹ reviewed 10th Ed. drafts in 2012 and 2017 and stated clearly that those drafts were not ready for publication. Other industry committees reportedly had reservations as well. Claiming that the 10th is a consensus document reflecting generally accepted methods and terminology in plant appraisal is at best, disingenuous. So much of the content in the 10th is new that few of us have had time or training to know how well the new changes will work or will be accepted. The 10th edition can only become "generally accepted" or "best practice" following several years of trial in actual practice whereupon we can see which of the many changes serve plant appraisal well.

BIAS TO REAL ESTATE MARKET VALUE

Throughout the 10th there are constant suggestions that real estate market value is really the only acceptable "type of value" and that this should form the normative test for any other opinion. Economic principles that "have a direct bearing on the appraiser's analysis" are presented in Chapter 2. But these are market value principles that may have no relevance to many plant appraisal problems, and this is not made clear.

This bias stands in opposition to the identification of the appropriate and relevant type of value set forth in Chapter 3. The recognition that in some cases, depending upon the assignment, market value may be less than the appraised plant value is weakly stated.

Consider the statement on page 12: "... where the appraiser is asked to estimate the cost to replace a tree or to restore a site to some previous condition or utility, it may be appropriate to use cost methods without particular regard for market value or transaction behavior. But where an assignment calls for estimating market value of plants and other landscape items, the appraiser estimates their value in the context of overall property value, or what they contribute to the value of the whole." This is an entirely reasonable statement consistent with Chapter 3. It ought to be emphasized in Chapter 1 as a foundational principle of plant appraisal, rather than being buried in the text, almost as an afterthought.

REASONABLENESS

The text recognizes that the appraisal report might be used in court cases, and states "The CTLA strongly discourages advocacy and other practices that are not rooted in economic reality and empirical data." A wise sentiment. The text on pages 110 and 111 delves deeper into reasonableness and court cases but oddly, it is stated that "The CTLA cautions against relying too heavily on case results." Phrasing such as "Data are facts that provide the basis for reasoning, discussion or calculations," (page 31) fails to recognize that data may be biased, incomplete, irrelevant or wrong. It is the court of law that decides what is or is not going to be accepted as 'fact' and it is the court of law that decides what is or is not reasonable. For sure, a competent and well written appraisal assists the court. But even though not all cases produce results that seem reasonable to a reviewer, these decisions cannot be simply ignored. It is briefly mentioned, but not emphasised, that many court results include punitive damages that are quite separate from the appraised damages. Simply reading the end number as the appraised sum is likely to be misleading.

¹ I was a member of PAVC during these reviews.

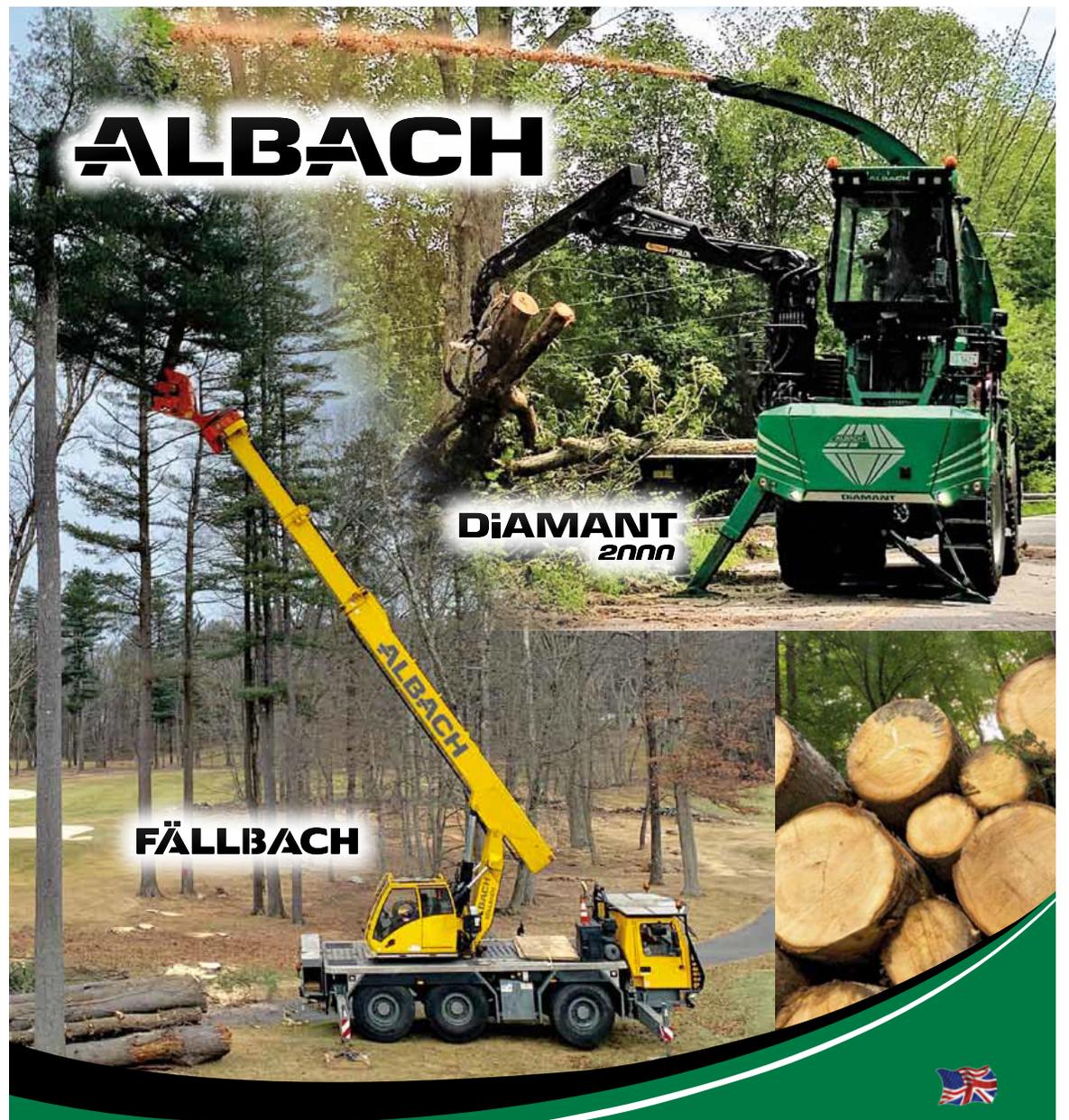
² I have recently reviewed over a thousand cases for Trees and the Law in Canada (Dunster 2018).

COMPETENCE

Justifiably, there is useful discussion about ethics and advocacy versus impartiality in the appraisal process. But then complex economic concepts, such as highest and best use of land, hedonic regression analysis, willingness to pay and capitalization rates are described in detail. In more complicated cases such factors may be required, but how many arborists have the requisite skill set to investigate and pronounce on such topics, let alone real estate market value and the possible contribution that plants make to that? The answer is very few. These are complex subjects that cannot be taught in one or two days. If anything, the

text in the 10th edition promotes the idea that any arborist can add these concepts to the calculation without too much concern. This is better discussed in chapter 9 when dealing with timber valuation, where it is recognized, albeit as an aside to the main text, that the appraiser might want to seek the help of other experts who do have the skill sets needed. That should apply to the entire process not just timber valuation.

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NEW METHODS AND TERMINOLOGY.

One of the major changes in the 10th edition is that not only have the names of several appraisal methods changed, but also the way in which they are formulated has changed. Page 54 suggests that the cost of cure method is now functional replacement cost; replacement cost is now reproduction cost, and the trunk formula method is now the trunk formula technique. Similarly, depreciation categories are not only named differently but are also based on different concepts and inputs. The explicit justification is that CTLA wanted to align plant appraisal terminology and approaches with appraisal approaches and terminology used in appraisal generally, and real estate appraisal in particular.

Quite why tree and plant appraisers need to conform to the valuation terminology of real estate is not clear and not explained or justified. It was not a major point of concern for plant appraisers in the past, nor did it seem to be a contentious issue in court cases². The two areas of practice are very different. Trying to fit the unique attributes of plant appraisals into a real estate appraisal framework, that is clearly not designed for such a purpose, adds confusion not clarity. It results in a bias throughout the entire text toward market values, and only market values. That confounds decades of established practice, precedent, and in some cases statute law, where it is quite clear that plant values do not necessarily have to reflect real estate market values.

One of the more troubling changes is that the familiar species, condition and location factors have been replaced with physical, functional and external depreciation factors. These real estate terms are an awkward, ill-conceived fit with plant appraisal. Species, condition, and location have been “factors in plant appraisal” since the 5th edition and remain so (as in Appendix 7). Forcing new terms on our industry merely to appease the real estate industry, does not seem to be a logical step forward. The 10th should have addressed practical concerns with the existing plant appraisal factors, rather than introducing new factors with unknown problems in application.

LACK OF QUALITY CONTROL

Quite apart from these technical and conceptual flaws, the entire *Guide* is riddled with mistakes. Some of these are editorial or typographical and relatively simple to correct (which is now underway), but many more are substantive errors and misstatements, that create a confusing if not misleading text. For example, in Table 5.1 nursery price is a cost input to be used to derive the basic costs in the *Cost Approach*, while Chapter 2 is at great pains to distinguish cost and price. Several of the sample worksheets have errors in the calculations and terminology, and there are words or cross references missing.

ISA has already issued one Corrigendum listing the first tranche of identified mistakes. The member discussion forum on the ASCA web site is rife with comments about the many typographical and technical errors, the obvious disconnects between text, tables, and examples and the concerns about the lack of clarity that has emerged. It remains unclear why the CTLA allowed such a flawed document to be published in the first place.

The many mistakes already identified were enough for ISA to suspend sales pending revision. Whether the second printing will address additional concerns identified noted by members of the profession, remains to be seen.

WHAT NEXT?

How then should tree and plant appraisers proceed? Should they try to use the new and unfamiliar 10th edition or stay with the tried and trusted 9th edition? The American Society of Consulting Arborists (ASCA) which is one of the CTLA organizations, has been promoting their new Tree and Plant Appraisal Qualification (TPAQ) as a must have credential that would

be based on the 10th edition. As of March 2019, very few TPAQ classes have been delivered by ASCA. And, it remains unclear how TPAQ can proceed if the 10th edition is effectively still under revision, and even with a second printing it is not clear how the materials can be well taught if the biases and technical flaws remain.

At the moment it seems likely that very few plant appraisers will be TPAQ trained in 2019, and it is unclear how much practical experience plant appraisers will need beyond classroom training to become competent. Considering all these problems, staying with all or parts of the 9th edition of the *Guide* does appear to be a wise decision. Whether or not the new tenth edition will gain industry acceptance is unknown since so much of the ‘guidance’ is new and / or controversial.

SUMMARY

The 10th edition of the *Guide* introduces many changes. A few of them are welcome improvements from the 9th edition. Others are untested, controversial, unnecessary and as presented, unwise. The 10th edition is being promoted by the CTLA as best practice. It has been published despite PAVC’s clear recommendation against doing that until major concerns, also noted by other industry groups, had been addressed. Many of the problems foreseen prior to publication have come to pass. And that is a shame. Had a more reasoned and balanced process been adopted by CTLA several years ago, much of the current debate could have been avoided, and the 10th would have been far better received by the industry. Had the CTLA taken more time to thoroughly re-read, edit and align the many parts of the text, a costly second printing would have been unnecessary.

Apart from the technical flaws, one of the biggest problems in the 10th edition is that it contains useful materials, but they are presented with very variable emphasis, some strong, some weak and they are scattered among parts which are poorly written. Some important points are noted only in passing, almost as asides, while other less important parts are given more prominence. And in some cases, important practice points are omitted altogether. Similarly, there is in depth discussion about very esoteric aspects of appraisal, giving the reader an impression that if these are adopted the appraisal result will be more credible. But then there is insufficient reflection on the subjectivity and variability of some inputs. Appraisal results are only as credible as the weakest data used no matter which approach is utilised.

Because there are so many changes in the way in which plants are to be appraised it is very hard to track the new techniques. Much of the text is confusing. This is compounded by the use of the words cost, value and utility in contradiction to the way they are defined. Equally confusing is the introduction of economic concepts such as willingness to pay and variable emphasis on timber valuation concepts, such as cost compounding techniques, that seem to have crept into amenity plant valuations.

For now, many of my colleagues are openly noting that, considering the many problems identified—editorial, technical and substantive—they intend to wait and see what the second printing and TPAQ training comes up with. The absence of industry acceptance of the extensive changes, lack of available training and a lack of time to try the new methods and see if they do in fact work, are all seen as reasons to stay with the 9th. This points to an extended transition period. Only time will tell how much of the 10th gains broad industry acceptance and how much of the 9th remains useful in practice.

Having spent time with the 2012 and 2017 drafts, and the 2018 first printing, it is very clear to me that no one can expect to pick up the 10th edition and immediately use it competently. The current version is flawed, and there is too much in doubt among industry commentators to consider it as a finished work. It remains as a work in progress that requires considerable caution in use.



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