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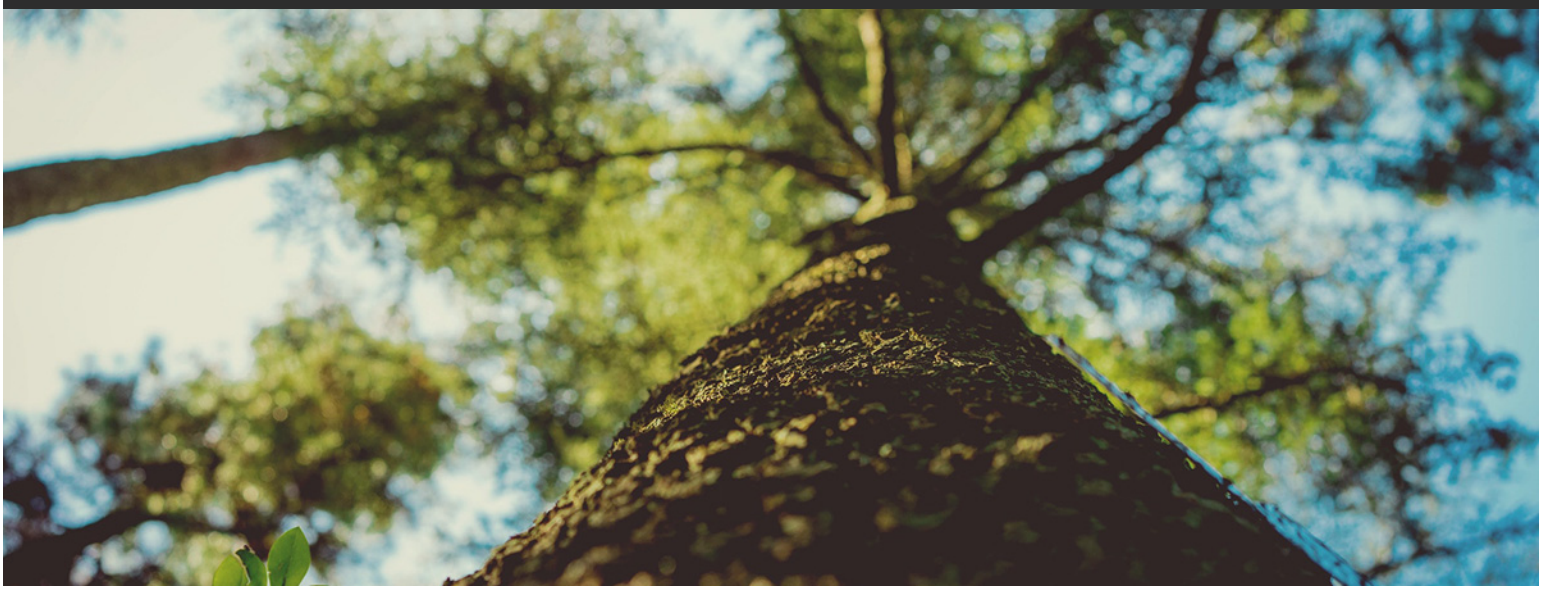
Thinking About Tree Equity and Its Benefit to Clients, Community



In brief summary, tree cover varies significantly among neighborhoods (more precisely, census blocks) in urban areas. A higher proportion of tree cover correlates with higher property values, higher median incomes of the residents, and with a whiter racial makeup.

By David G. Mandelbaum | July 15, 2021 | The Legal Intelligencer

"Tree Equity," a notion promoted by advocacy group American Forests, has received attention recently, including an article in the July 4 New York Times featuring Philadelphia. In brief summary, tree cover varies significantly among neighborhoods (more precisely, census blocks) in urban areas. A higher proportion of tree cover correlates with higher property values, higher median incomes of the residents, and with a whiter racial makeup. Therefore, one might say that the uneven distribution of urban trees is a feature of environmental inequity. American Forests proposes a program to plant 31.4 million trees annually in urban areas at a cost American Forests estimates at $8.9 billion. It asserts that that program would confer a number of benefits that would make it a good investment.

This is an environmental practice column, and not the place to evaluate the technical merits of any of these claims. Instead, assuming that the separate assertions that urban trees confer benefits and those benefits are distributed unevenly or inequitably, consider how environmental practitioners might use those facts to benefit our clients or communities.

The suggestion that trees sequester carbon, and therefore provide climate change mitigation is not new. American Forests also points out that trees also help with climate change adaptation. Apparently, in a city like Philadelphia on a sunny summer day, areas with the most trees will be 10 degrees Fahrenheit cooler than areas with the least trees. Trees also assist with stormwater control and apparently with nonenvironmental social benefits like crime reduction. In general, they are correlated with higher property values and may be said to improve quality of life, although back when cities favored female gingko trees for streets perhaps not.

The government might therefore consider implementing a direct program of tree planting as tree advocates suggest. And, indeed, in Pennsylvania there are such programs.

The Department of Conservation and Natural Resources sponsors community resource development to promote inventorying, maintaining and planting trees throughout the commonwealth. It also provides on its "TreeVitalize" website a version of a tree map similar to the one made available by American Forests. Even a casual glance at any of the urban areas in Pennsylvania will show a marked difference in tree cover among neighborhoods and often an even more stark difference between municipalities. But DCNR does not have a direct urban tree-planting grant program, only a program to help communities develop their own capabilities.

In Philadelphia, street trees are provided free by the Parks and Recreation Department. However, an arborist must verify the location, select a compatible species and install the tree. The wait for the city to do so can be fairly long. Alternatively, a property owner requesting a tree may retain his own arborist at his or her own cost. The Pennsylvania Horticultural Society's TreePhilly program sometimes can assist. But plainly the cost stands in the way of putting trees in the least-covered neighborhoods in the city.

The commonwealth faces significant calls for publicly funded environmental investment including wastewater systems, abandoned mine drainage treatment, abandoned gas well plugging and even testing for perfluorinated compounds in drinking water. Trees are individually small. And they are perceived as intensely local, like a small stream cleanup. But, if urban tree proponents are correct, that misses the important aggregate energy and health benefits from broad improvements in urban tree cover.

So perhaps this would provide an opportunity for private clients to fund urban trees as a way to offset or to mitigate environmental impacts of other projects or as an aid to resolution of enforcement matters. Environmental improvement projects in those kinds of circumstances are conventional, if not exactly common.

Mitigation in permits, if permitted at all, generally has to be similar in kind to the impact and similar in location. One cannot easily mitigate wetlands or habitat impacts by planting trees in a far-away urban area. Just paying into a tree fund would look a lot like paying for a permit, which would generally be unattractive.

However, in an enforcement context, Pennsylvania has considered community environmental projects as a potential offset against civil penalties under a 2014 policy. The U.S. Department of Justice has a similar program for supplemental environmental projects. One may recall that in the last administration, DOJ prohibited SEPs as contrary to the Miscellaneous Receipts Act. But, the current DOJ withdrew that memorandum so arguably DOJ's 2015 SEP policy is back in force.

CEPs and SEPs are a means by which an enforcement target can do work rather than pay penalties. The work can generate public relations benefit, but not a direct improvement to the enforcement target's property, for example. The costs may not be deducted for tax purposes. And, under both policies, the CEP or SEP must mitigate a harm similar to the harm caused by the violation in a nearby place.

Additionally, the Biden administration has declared a renewed focus on environmental justice. The DEP in public statements seems to see urban environmental issues *primarily* as driven by environmental justice concerns. Of course, to the extent that environmental impacts matter because they affect people, urban areas are where the people are; at the 2010 census, 10 million of 12.7 million Pennsylvanians, or 79%, lived in urban areas. The notion that environmental programs ought to be mostly about other parts of the state seems odd.

Proponents of tree equity observe that poor and nonwhite people bear a disproportionate burden of the absence of urban tree cover. That is true currently, as shown by American Forests on its mapping tool. The New York Times suggests that tree cover is also correlated with neighborhoods rated more highly on desirability maps developed for the purpose of making and guaranteeing home mortgages in the 1930s and 1940s. "Redlined" neighborhoods that were "undesirable" because they had a high proportion of immigrants or people of color living in them are now less treed.

It is, of course, possible that disproportionately disadvantaged people live in less expensive housing, and the absence of trees makes the rents or the purchase prices lower. Therefore, the absence of trees caused and continues to cause neighborhoods to be poorer or more minority, rather than the other way around. But it does not really matter. There is no real policy reason why poor people or nonwhite people should live on unshaded, treeless streets.

An opportunity may therefore exist for clients that wish to do well by doing good to develop tree-related programs in order to mitigate other effects or to offset sanctions. Trees seem to have more duration than stream cleanups and more tangible benefit to people than chasing parts per trillion of groundwater contamination. But, to do a tree project as mitigation, a CEP, or a SEP, clients may have to broaden the conventional limitation of environmental improvement projects to similar environmental media and location. Environmental justice benefits may offer an opportunity to do that.

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