

Sugarhill Property Owners Association

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Falling tree potential and board liability if owner wants to remove covenant protected trees.

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Stuart, FL 34994

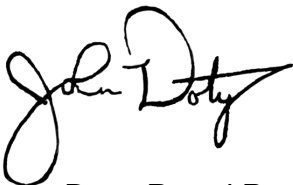
Hi Jacob,

We have encountered a situation that I feel may be opposed to our fiduciary responsibility to protect the community from lawsuit. Sugarhill covenants protect native trees from removal without approval. We have stands of very large pine trees with 18-20" diameter trunks that tower from 80 to 100 feet and often within half or less that distance from homes. Many of the area pines have succumbed to pine bark beetle disease in the last 10 years.

There are a few people in our community who ardently oppose the removal of any healthy pines no matter how unsafe they may be for the owner. We are not advocating any blanket removal of trees through out Sugarhill, only if a homeowner requests permission for removing the trees from their property.

My question is, if the board blocks a request from a homeowner to remove these or other covenant protected trees that the homeowner feels could pose a danger to their home and potentially cause bodily harm, and such an event occurs, can the association be held liable for having blocked or not approved the removal request?

Thank You,



John Doty, Board President
Sugarhill Property Owners Association
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Reply from Jacob Ensor, Sugarhill POA retained Attorney 8-25-20:

With regard to the tree issue, the Association could be sued and held liable for damage if it refuses to allow an owner to remove a tree that it knows to be **unsafe** or dead. Has an arborist or other landscaping professional recommended removal? To me, that seems the best way for someone to determine whether a tree should be removed.

Commentary from John Doty, POA Board President 9-17-20:

Three attempts to garner an up or down report from arborists has ended in no report either way because they say it's not definitive that the trees are safe or unsafe. I personally will not put myself and the association at risk of lawsuit without a written arborists opinion. At this point with arborists agreeing that the trees are dangerous and potentially damaging and with other arborist saying they are healthy and they don't ever become "much of a problem in a hurricane" and since none of the arborist will commit either way in writing, it is my opinion that the board is very liable when blocking a request with this much ambiguity. The homeowners wishes should be regarded with something like this.

A third arborist was contacted on 9-1 who did not have time to come to the property but he did give lots of information including the belief that "all large pine trees that get enough ground saturation followed by high wind will likely fall". He pointed out Florida statute **163.045:**

163.045 Tree pruning, trimming, or removal on residential property. —

(1) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.

(2) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

(3) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. [403.9321-403.9333](#).

Without an arborist to commit in writing, we can only do the duty bestowed upon all HOA board members to protect the association from potential lawsuit and personally I would not want to subject myself to the strength of the board's liability insurance should an owner or their family become victims of our "esthetics" decision. The bottom line is that the trees in a hurricane are potentially capable of coming down regardless how healthy they are. They have in the past, they have in other areas, and depending on the magnitude of the hurricane they will in the future.

While I am an advocate for the beautiful trees in Sugarhill, I will not approve any action that blocks a homeowners right to make their property safe for themselves in lieu of esthetics.

Removal of large trees that can fall on a property owners assets and do damage or bodily harm should be at the discretion of the owner, not the esthetics of the Association board of directors.



These photos are of a large pine tree of the same specie that exists throughout Sugarhill. They were taken Oct. 11, 2020 after landfall of category 2 hurricane "Delta" in Lake Charles, Louisiana.