

Pensacola lawsuit over heritage tree could be test case for new Florida property rights law

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A Pensacola lawsuit could be the first test case for a new Florida law that prevents local governments from regulating tree trimming or removal trees — even "heritage" trees — on residential property.

The city of Pensacola is suing the owners of a vacant lot to stop the removal of a heritage tree.

Property owners Larry and Ellen Vickery started the process to build a home on a vacant lot at 605 N. Spring St. in the North Hill neighborhood and wanted to remove a live oak tree at the back of the lot to build their planned house.

The tree in question has a diameter of more than 60 inches. Trees larger than 34 inches are considered "heritage" trees under the city's ordinance and have additional protections even on residential property.

Some of the Vickerys' future neighbors wanted the city to protect the tree.

"Our concern is that this is a healthy 200-plus-year-old tree that's been part of our neighborhood longer than our houses have been here," Sarah O'Niell, a North Hill resident said.

After going back and forth, the city ultimately denied the Vickerys' request to remove the tree under the protections for heritage trees, saying there was enough room on the lot to build the house and preserve the tree.

Tree protections: [Escambia County planning board wants public input on rewriting tree protections](#)

Push for more protection: [Escambia County woman seeks to change county tree ordinance](#)

A final denial was dated June 21, according to court documents, but five days later Gov. Ron DeSantis signed House Bill 1159. The new law says local governments cannot make a residential property owner follow any requirements to remove or trim a tree if they have documentation from a certified arborist or licensed landscape architect that the tree "presents a danger to persons or property."

The law went into effect July 1.

On July 8, the Vickerys' home builder sent an email to the city citing the new law and that the owners would be removing the tree. Attached in the email was a letter from an arborist with Tri-

State Tree Service LLC saying the main trunk of the tree is suffering from severe decay and "will fail" and that the surrounding homes were at risk of severe damage when the tree "fails."

The assessment directly contradicts an arborist brought in by the city that said the tree is in overall good health, according to court documents.

The city took the issue to Escambia County Circuit Court on Monday filing a lawsuit against the Vickery family to prevent the removal of the tree, arguing that the original denial was still valid because it was issued before the new law went into effect.

"My clients feel that the city has been unfair in its treatment of them and that they have been deprived of a proper permit because of political considerations," wrote Kim Skievaski, the Vickerys' attorney, in a letter to the city on Monday.

Skievaski told the News Journal the lawsuit could be the first test case of the new Florida law.

"From my point of view, this is fairly egregious on the part of the city in terms of trying to now interfere with what my clients wish to do based upon (the Vickery family's) receipt of an opinion from a certified arborist that the tree presents a danger," Skievaski said. "At the end of the day, it's my clients who own the tree, and my clients who will be responsible if, having knowledge of this diseased tree, it were to fall and injury a person or property."

Skievaski said the new law doesn't leave the opinion issued the expert, hired by the property owners, open to debate. A judge has issued a temporary injunction to prevent the tree's removal while the case moves through the legal system.

The new law has left local governments wondering how it should be interpreted and comes as both the Pensacola and Escambia County are taking [another look at their tree protection ordinances](#).

Escambia County's isn't as strict as Pensacola's and defines a heritage tree as a tree greater than 60 inches in diameter compared to the city's 34 inches.

Brent Wipf, with Escambia County Natural Resources Management Department, said from the county's point of view the effect of the law is still not fully known and there's a lot of uncertainty statewide about the new law.

"Much of the uncertainty is tied to how the rule will be interpreted," Wipf said. "Words like 'dangerous' or 'residential' and how those are defined and applied are going to be important."

Escambia County will be holding [a planning board workshop later this year](#) to look at the state of its current tree ordinance.

Pensacola Mayor Grover Robinson said since the case has gone to court he was limited about what he could say. But, he said, the city brought the case to get a clear interpretation from the court on the law.

"We are asking the court to provide a clear interpretation of the law," Robinson said. "The League of Cities, it's my understanding, tried to communicate this to the Legislature that there were going to be a lot of points of confusion. There's a lot of interpretation in here, and that's why we're asking the court."

O'Niell, one of the North Hill residents who have asked the city to protect the tree, said she is glad the city is enforcing its own ordinance.

"I know that the HB 1159 is for the rights of the property owners, but when you buy into especially a preservation neighborhood, you understand that there's some codes you have to follow to preserve the character of it," O'Niell said.