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Family of Man Crushed by Tree During Sandy Plans to Sue City

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The family of a Queens man crushed to death when a tree fell on his Flushing home during Hurricane Sandy is preparing to take legal action against New York City, claiming that the tree never should have been planted outside the house in the first place and had been carelessly maintained over the years.

Manhattan solo Rosemarie Arnold, representing the parents and brother of Anthony Laino, filed a notice of claim against the city and its parks department on Jan. 2.

Since Sandy, the city has received around 268 notices of claim related to property damage sustained during the storm, according to the Comptroller's Office. No money has been paid out to date.

Laino, a 30-year-old graduate student in risk management at St. John's University, was lying on the bed of his second-floor bedroom around 7 p.m. on Oct. 29 when the more-than-100-foot-tall Eastern cottonwood crashed through the roof, killing him instantly.

"The tree was overgrown, it was way too tall, and it shouldn't have been planted where it was," Arnold said in an interview. "This was 100 percent preventable and tragic."

According to the notice of claim, "Respondents were negligent, grossly negligent, wanton, reckless, purposeful and/or breached their duties, inter alia, as follows...failing to remove the diseased, weakened and/or damaged and/or oversized and/or overgrown and/or improperly planted tree, which caused an unsafe, dangerous, and/or hazardous condition to exist at said location for a long period of time."

The tree was planted on city property on the patch of grass between the sidewalk and the street in front of the Laino residence. It was there when the family moved in more than 30 years ago.

The tree's roots abutted the curb, Arnold said, preventing its stable growth and causing it to sway furiously in high winds. Sections of the roots were decayed, and heavy branches sometimes fell during storms.

Winds were estimated at 80 mph as Sandy hit land.

At least nine people living on the Laino's block called the city's complaint hotline over the past few years to request the tree's removal, Arnold said. In some of those instances, the city responded by pruning the branches but did not address the unstable roots.

Arnold said the tree does not appear on the city's list of approved species for sidewalks and lawns. Cottonwood trees can grow to more than 130 feet in their most mature stage, according to the U.S. Department of Agriculture.

A spokeswoman for New York City's Law Department said the city is evaluating the family's claim.

"We recognize that this incident involves a loss of life, which is tragic," she said.

"It's not surprising that a major weather event like Hurricane Sandy, which damaged so many parts of the City, would generate the claims we have seen thus far. We cannot speculate at this early stage about whether any of these claims may have merit," the spokesperson said.

To escape liability, Arnold said, the city must prove that loss of life and property occurred due to an "Act of God" so severe and unusual as to be unforeseeable.

"Although the storm was intense, it was in no way unforeseeable because we all knew it was coming," Arnold said. "They would have to show that they were not negligent and free from fault, which they cannot prove."

In this case, she said, the city was aware of the danger the tree posed to the neighborhood and could have removed it. Parks workers cut down the tree the day after the storm.

Laino was one of 64 New York state residents who died during Sandy. A handful of others were killed by trees, including two people who died when a tree fell on them as they walked a dog in Ditmas Park, Brooklyn, during the storm.

In the New York suburbs, a Rockland County man and two young boys in Westchester County were killed when uprooted trees crashed through the roofs of their homes. At least five others were killed by downed tree limbs.

New York City receives many notices of claim related to trees each year, according to the Comptroller's Office. In one particularly high-profile case, it was ordered to pay \$1.6 million after a jury found it responsible for the death of a Brooklyn woman killed by a falling tree branch in 2003.

The attorney for the plaintiff in that case, Alan Greenberg, said even though there were documented instances in the Laino case where the family or neighbors alerted the city of the tree's dangers, it will be difficult for them to hold the city responsible.

"They could see a real impediment with the 'Act of God' defense and the general reluctance of courts to hold a municipality responsible in the event of a severe storm," he said.

Last year, the City Council more than doubled its budget for tree pruning, adding \$2 million to the existing \$1.45 million after several years of tree-care budget declines.

The Laino family's home is uninhabitable after being destroyed by the falling tree. The city has 180 days to investigate the claim, at which point the family may file a formal complaint.

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