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City sues to raze top of tower

Building presents hazard, FAA says

 By David Hasemyer
 STAFF WRITER

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The City Attorney's Office yesterday asked a judge to force the developer of a 12-story office tower near Montgomery Field to tear down the top two floors of the building to comply with federal safety standards.

The lawsuit, filed in Superior Court, says the 180-foot-tall structure is a public nuisance and must be lowered by 20 feet so it no longer poses a hazard to airplanes landing in bad weather.

"Due to the imminent danger to the public at large and all those who utilize Montgomery Field, the City Attorney has determined the action is . . . necessary to safeguard and protect the citizens of the city," said the lawsuit filed by City Attorney Michael Aguirre.

The Mayor's Office condemned the lawsuit, saying a solution could have been worked out without legal action.

"We don't think it sends a positive message to the development community," said Fred Sainz, spokesman for Mayor Jerry Sanders.

In October, the city ordered that work on the top two floors of the \$45 million building be stopped until the Federal Aviation Administration's concerns are resolved. The lawsuit goes a step further and asks that work on the entire building be stopped until the dispute is settled.

The FAA declared last spring that the building is a hazard to airplanes approaching the Kearny Mesa airport in bad weather. Those bad-weather landings account for about 10 percent of the landings each year.

In September, the state Department of Transportation warned the developer, Sunroad Enterprises, that "if an aircraft accident occurs at the site of the (building) because of this violation, you are assuming all liability for the accident."

Sunroad repeatedly has said it will not reduce the building's height. Company executives and lawyers have said the top two floors can't be removed without tearing down the whole tower.



HOWARD LIPIN / Union-Tribune

The city's lawsuit asks that construction work on the office tower near Montgomery Field be stopped until the legal dispute is settled.

Developments

Background: The Federal Aviation Administration has declared a 180-foot-tall building under construction near Montgomery Field a hazard to planes landing in bad weather. The developer, Sunroad Enterprises, has refused to reduce the height of the building to 160 feet to comply with FAA safety standards.

What's happening: The City Attorney's Office yesterday filed a request in Superior Court for an order forcing Sunroad to tear down the top two stories of the building to comply with the FAA's height limit.

What's next: A judge could schedule a hearing as early as next week to hear arguments from the city attorney and the developer over the request.

Online: To see the court documents, go to www.uniontrib.com/more/sunroad

The company also is continuing with its plans to build two taller buildings at the site – one 200 feet, the other 220 feet – although those plans are temporarily on hold while issues unrelated to the FAA's fears are worked out.

Sunroad has offered to pay for and install a sophisticated electronic navigation system that would allow pilots to fly straight onto the runway in bad weather instead of circling the building, as is now required. But the FAA has been cool to the offer, saying it could take months or maybe years of study to determine whether that's an acceptable solution.

Sunroad continues to maintain that the building isn't a hazard.

"The company is deeply disappointed that the city attorney chose on his own initiative to file suit without City Council approval when we have all been working productively with the FAA toward a complete resolution of this issue," company spokeswoman Karen Hutchens said.

Hutchens said legal action wasn't necessary because the FAA has warned pilots about the building and revised the landing pattern.

Aguirre said it's astonishing that Sunroad has ignored the FAA and is refusing to alter the height of the building. It's equally astonishing that the city allowed construction in the first place, he said.

"The FAA says this building is a hazard and is asking how the city can be so callous in its disregard for the safety issues," Aguirre said.

He said his goal is to protect the city from liability.

"What if there is an accident? Who will be to blame?" Aguirre said. "You are talking about risk of life and horrible liability for the city."

Aguirre also said he is afraid the FAA may withdraw federal funding for projects at Montgomery Field because of the hazard the Sunroad building presents.

"The city has a lot at stake here and a lot to lose if this isn't resolved," he said.

Sainz, the mayor's spokesman, pointed out that plans for the Sunroad project were reviewed and approved under former City Attorney Casey Gwinn. But he acknowledged that Sunroad knew of the FAA's concerns and ignored them.

The developer's "hands are dirty on this" because it constructed the building without FAA approval, he said. "But the building is up now, so now we all need to find our way out of this mess."

Sainz said Aguirre's lawsuit ignores Sunroad's offer to alleviate the FAA's concerns by installing new navigational equipment.

The lawsuit also asks the court to force the state Transportation Department to compel Sunroad to remove the top two floors of the building.

Caltrans has told the developer it must meet FAA standards and obtain a state permit for the building, a requirement Sunroad officials say is unnecessary because the state lacks jurisdiction and is simply an onerous condition being slapped on them.

In a Nov. 27 letter to Sunroad, a Caltrans lawyer called the developer's arguments a weak attempt to "deflect its own willful misconduct as it failed to comply with both state statutes and federal regulations."

"The subject project was 'piecemealed' for many years, intentionally staying under the radar of both state and federal jurisdiction," according to the letter. Sunroad hasn't responded to that letter.

When building permits were issued for the tower in February, the city's Development Services Department didn't have to consider the height of the building because the land is one block outside the Montgomery Field area of influence.

But the company was supposed to notify the FAA of the project. The FAA contends that Sunroad broke ground before it filed the required notification. Sunroad says the FAA knew about the project for more than a year.

An FAA document shows that the agency told Sunroad in April that the building would be classified as a hazard if it was built to its proposed height of 180 feet. In response, the developer said it would reduce the height to 160 feet, the maximum height the FAA would allow. But in July, the company told the FAA it had returned to the original plan and framed the building at

180 feet.

Sunroad has been doing business in San Diego County since 1997. Its three office towers are part of a \$1 billion project on the site of the former General Dynamics rocket-building facility at state Route 163 and Clairemont Mesa Boulevard in Kearny Mesa.

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