

Roger Hedgecock AM600 radio talk show - Friday, February 2, 2007.

(RH: Roger Hedgecock)
(MA: Michael Aguirre)
(BL: Barbara Lichman)

RH: Good afternoon and welcome back to our community forum. Ah ladies and gentlemen, if you drive at all on ah I-15 ah, 163, rather through ah Kearney Mesa, you in the old Astronautics site you've seen redevelopment of that site into industrial uses and most recently an office tower, representing a change in land use there from the preceding plan but nonetheless a huge controversy now. How high should that tower be and still be a safe neighbor to the ah airplane operations going on next door at Montgomery Field. Is it 160? Is it 186 feet basically. The developer says the city approved it. The city says yeah but the Federal Aviation and the State Department of Transportation think it's a hazard and all the pilots have joined now a lawsuit filed by the city attorney. This is his 1,682,423th lawsuit in the last fourteen days. Anyway, ah, and ah, this lawsuit is now going forward to challenge the whole idea of this tower being anything higher than 160 feet. Well I'm not sure I have even that summary correct so let's get the people who know more about it than I do. Mike Aguirre, big Mike Aguirre as we call him on this program, is the City Attorney of San Diego. Mike, welcome to the program.

MA: Hello, how are you doing Roger?

RH: I'm doing well, how about you?

MA: Roger, I hear that the ah, the Super Bowl ads, those guys are getting just about as much money for a second as you do, it's amazing.

RH: Well it's starting to irritate me, too.

MA: (Laughter)

RH: That's another story. Alright, Barbara Lichman is here, legal counsel for Sunroad ah, the developer of this project ah, Ms. Lichman welcome to the program.

BL: Thank you for having me.

RH: Is it Lichman? I'm sorry.

BL: Lichman.

RH: Lichman ...

BL: (Inaudible)

RH: Ms. Lichman, thank you. Welcome to the program. Ah, let me ask you ahm, Mike, what is the kernel of this ah, this lawsuit, what is it that the City is objecting to?

MA: Well ah, the FAA ah, after receiving the initial application from Sunroad, ah indicated that they had to reduce the height of the building to 160 feet ah, and that was on April the 24th of 2006, and then on June the 20th Sunroad wrote into the, wrote into the FAA and said that they "we agree to the 160 foot

height specified in your letter of April 24th 2006,” and then they went ahead and just built to 180 feet and the FAA has issued ah a hazard warning they ah, FAA hazard ah specialist called the City Attorney’s Office and said they couldn’t believe that the Sunroad people had proceeded ahead and that they expected the City to take legal action ah, we received similar requests from the California Department of ah Transportation.

RH: Didn’t the City approve this building?

MA: Well they didn’t approve the hundred, they didn’t approve the hundred and eighty. They approved, in other words the City officials made it clear ah, to Sunroad that this ah FAA approval had to be secured and this was something that ah, the FAA ah made clear to Sunroad and that’s why Sunroad on June the 20th . . .

BL: Mr. Aguirre, you are completely, Mr. Aguirre you are completely off base.

RH: Ah Barbara, Barbara, Barbara! Barbara! Barbara! Barbara! Barbara! I’ll give you a chance Barbara, I want to get each side out here. This is radio, we can’t do the law thing ah, you are out of order Barbara, . . .

BL: I’m out of order?

RH: Now, let me get Mike Aguirre to give the . . .

BL: Okay, it’s almost time for me to correct the mis-impressions.

RH: Well, let me ah, I’ll tell you when it’s time. Okay? So, just a sec. Mike Aguirre....

MA: I’ll wrap up, let me wrap up, I’ll wrap up but just ah, I’m looking at the June 20th 2006 letter, and it says “we agree to the 160 foot height specified in your letter of April 24th 2006. Should we find any variances in the data previously submitted, we will notify the FAA and request a re-evaluation.” That wasn’t done. They went ahead and just built to 180. Then, after they had already built, that’s when they got back in touch with the FAA and the FAA has made it clear to us as has the California Department of Transportation so we have no choice in the matter but to proceed as we are.

RH: Alright let me get the other side. Again, Barbara Lichman is the legal counsel for the developer of this ah building, Sunroad ah, Ms. Lichman your, your side of this.

BL: Well I hate to say this but from what ah City Attorney Aguirre said, he sounds delusional because the facts he is giving are entirely false. To begin with, Sunroad complied with every single requirement that the City imposed, including the 180 feet. We received a building permit from the City on July 7th after the (blank) because Sunroad sent a letter to the FAA saying that it was going to study the FAA’s determination of presumed hazard and if the city attorney had correctly stated, said “in the meantime” and those were the words, we will keep the building at 160 feet, which we did. When the study was done, we went ahead after we received the building permit from the city at 180 feet and built the building as we were entitled to do. This entire mythology about Sunroad taking action that is unsafe is, is totally off base from a factual and legal perspective.

RH: Alright, now so ah, Mike, they’re saying that they have a permit from the City for the 180 feet. Do you agree or disagree?

MA: I disagree. They, they were told, they were told, and we relied on the fact that they were only going to build to 160 feet and I think the proof of that is that they did not go back to the FAA and seek the redetermination that they said that they would until they had already built to 180 feet, to the 180 feet level. And . . .

BL: That's a false statement. That's a totally false . . .

RH: Well Barbara let me ask you this question, do you have documentation that the City gave Sunroad a permit for 180 feet?

BL: It is public record. July 7th, 2006 we received the building permit at the requested height of 180 feet and the City other than City Attorney Aguirre, who is apparently on mescaline or something, has never ever alleged that we've done anything to violate any city entitlement, including the building permit at 180 feet.

RH: Now you're at 186 feet, so are you 6 feet over the permit?

BL: That, first of all we're at 180, and actually we're not even at 180, we're at 179.6 feet and the number you have is from a pilot who, we don't know what his qualifications are to make these determinations, but I can tell ya that that building if you take a tape measure is 179.6 feet tall period. So forget the 186 that's total misinformation from someone who has no knowledge whatsoever.

RH: Alright.

MA: Roger, could I just say one thing? I'm sorry, is it my turn?

RH: Yes.

MA: Okay. Ah, did Sunroad apply to the FAA before they went to 180 feet to get approval from the FAA or did they build to 180 feet and then notify the FAA?

BL: We applied. We applied three times. And if you had your facts straight, you'd know it.

MA: Excuse me, the FAA has, you are representing as an attorney that you applied before you went to 180 feet and got the FAA's permission before you went to 180 feet?

BL: Oh no, we told them, we did everything we had to do. We filed three form 7460's. You don't have to get, and if you, if you looked at the law more carefully, you would know that nobody was required to get the FAA's permission to do anything. So the FAA gives an advisory opinion to the developer and the local jurisdiction. If the local jurisdiction chooses to give a building permit despite the FAA's opinion, the FAA has only one option, one option, to change the procedures to accommodate the approved structure which the FAA did by issuing a NOTAM for the construction crane at 330 feet which is 150 feet higher than the building is. And right now that NOTAM is still in effect so every aircraft coming on a circling approach to that airport sees the building at 1 mile out and 500 feet above the building . . .

MA:

BL: The height of a 50-story building above our building's roof.

MA: So one thing we agree upon, is that after you, after Sunroad represented to the FAA that they would only go to 160 feet, they built to 180 feet and then informed the FAA and applied for approval of the 180 and that was denied.

BL: That is a false statement.

MA: What part of that is false?

BL: That is a false statement. We submitted a 7460 on April 5th telling the FAA that we would go to 180 feet. The FAA submitted a presumed hazard to us later in the month, we then submitted a letter to the FAA accompanied by another 7460 telling the FAA that we would stay at 160 feet

MA: . . right....

BL: . . . until we had further study. We then sent, after we finished the study at the end of July, we then sent another 7460 telling the FAA that we would go to 180 . . .

MA: . . .that's . . . did they approve that?

BL: . . . the FAA subsequently sent another presumed hazard. We sent them three notices. We told them every single time . . .

MA: . . . so, . . .

BL: we're going to start construction.

MA: But the point is that you did not get the FAA's permission to go to 180 feet . . .

BL: . . . we do not need the FAA's permission

MA: . . . hold on, hold on, hold . . .

BL: . . . in the law to require the FAA's permission and I resent your mis-characterization of the law as an attorney and an elected official, you should be more careful about how you deal with the law and the facts. And you are mis-characterizing them as you have done in your complaint.

MA: Well, hold on. You, didn't get the FAA's permission . . .

BL: You don't need the FAA's permission. You don't need the FAA's permission, they are not the relevant land use jurisdiction, and you never need it to make a land use change. If you will get that through your head this suit would go away.

MA: Okay, well the FAA has told us that you did need their permission . . .

BL: That is a false statement and if you read the law you would know it is a false statement.

RH: Okay Barbara let him speak.

MA: Okay, Barbara, all I'm saying to you is this: the FAA has told us that you didn't get their permission,

you had represented to them 160 feet, when you finally told them it was 180 feet, they told you that you couldn't go to 180 feet, and that's what they told me. So I've got your, what you've said on the one side, and I have the FAA and the Department of Transportation on the other side, the California Department of Transportation has told us the same thing

BL: Make a Freedom of Information Act request for the documents. You will get exactly the documentation of what I told you.

MA: Okay.

BL: If you took the trouble to find out the facts, we wouldn't be having this discussion.

MA: Barbara let me just say this, and then, and then, after they told me those things, and I did investigate the facts, and I am convinced that you have to take the thing down to 160 feet because there is a hazard that has been issued and the department, the California Department of Transportation has said the same thing, and the City of San Diego, we actually could lose our funding or at least it could be a threat of that for non-compliance because of our ah, the relationship that we have with the FAA. So as the City Attorney I have what you've said on the one side, which you advised your client to go ahead and build to 180 and not notify the FAA . . .

BL: You have no idea what I advised my client.

MA: Well no, yes I have.

BL: You have no idea, do not represent to the public what I advised my client.

MA: No, I did now what you advised because you were at meetings in which our city attorney was present . . .

BL: You have no idea what I advised my client, so . . .

RH: Can I, Barbara, Barbara Lichman is with us, legal counsel for Sunroad, the developer of this project next, near Montgomery, and Mike Aguirre, City Attorney of San Diego and obviously there is a conflict. Now, but let me get back to this issue. Mike, did the City of San Diego issue permission to Sunroad to build 180 feet?

MA: No.

BL: That's false . . .

RH: Barbara, Barbara, Barbara, Barbara!!! Let him. . . Barbara! Barbara! Barbara! Please! Let him get his sentence out and you will have time, please!

MA: Roger, what I , this is what, I did not sit in on any of the meetings but this is what I've been told by David Miller in our office who did. David Miller raised this issue, said they had to get the FAA permission, relied upon the representation that they were to go to 160 and then they allowed the ah, Sunroad, believing it was going to go to 160, to proceed ahead. No one knew that they were going to go to 180

RH: But that's not my question. Here's my question.

MA: The answer is no. The answer to your question is no.

RH: The City of San Diego never allowed, never gave a permit that indicated 180 feet?

MA: Well I won't say, I won't say never, because there was an initial application for the 180 and then the issue arose with the FAA before the building was built, and then that's how they got into the . . .

RH: But when they started building they had to have a building permit, Mike.

MA: When they, when they started, what I'm talking about is when they went through the approval process, it may be that the approval process initially had the 180, but in the middle of it there was meetings and discussions amongst and between the legal staff and . . .

RH: Here's my . . . it's a pretty simple question Mike, and I think it's a yes or no.

MA: The answer is no Roger.

RH: Let me try the question first before you give me the answer.

MA: Alright.

RH: Here's the question. Prior to building, when Sunroad was granted the permission to build, an indication of that permission . . .

MA: Right.

RH: Did the indication of that permission, which allowed them to begin the building, indicate the height at 180?

MA: Before they began actually building the answer is, I don't know the exact answer to that question Roger. But I will tell you that in the discussions that took place before they built the building, that they were expressly told they had to comply with the FAA rules and then it was only after they got the 160 representation that they were permitted to proceed. That . . .

RH: Barbara Lichman let me ask you the same question now and hear me out. Hear the question first before I get an answer. Did Sunroad in writing get permission to build prior to the construction commencing, that indicated in writing, a permission at 180 feet?

BL: Sunroad got a building permit, structure permit, framing permit, and building permit, which said that they would be allowed to build the building in accordance with the plans which were attached to the building permit which said 180 feet.

RH: And were those . .

BL: Standard procedure.

RH: I understand. And was that permission, and the attached plans and the 180 feet shown on the attached

plans, conditioned on FAA approval?

BL: No.

RH: Alright, let me take a break and we'll come back. Mike Aguirre, Barbara Lichman, we're talking about that building, that's a, subject of controversy near Montgomery Field.

(Break)

RH: Alright we're back and ah Mike Aguirre City Attorney of San Diego ah, suing along with some other folks the Sunroad folks who are building a building near Montgomery Field which the FAA says at 180 feet plus is a, not ah, is a hazard, and the city attorney wants it at 160. It's already built to nearly 180. Barbara Lichman is the legal counsel for Sunroad. Ms. Lichman, what happens, you win, ah hypothetically here, you win the argument, you've got a permit, you build to 180, you've got another building I take it on the drawing board which is going to be equally high right?

BL: Yes.

RH: So these two buildings are sitting up there north of the runway and within 400 feet as I understand it of the planes flying by, and, and ah, a plane flies into one of those buildings above the 160 foot level and people are dead. Then what happens?

BL: Well, if a plane flies into that building, above 160 foot level it would be a tragedy it's true. But that pilot has the obligation to see and avoid as he does at every airport in the United States. If a pilot, who is supposed to be 500 feet above the building, hits the top story of that building, he will be the one to blame because the FAA has protected the building by putting that buffer in, that's the way the FAA's regulations work, and if the airport weren't safe, at this moment in time, it would be shut down because the FAA has only two choices: to keep an airport safe or to shut it. The fact that it's operating is a live testament to the fact that it is perfectly safe.

RH: Mike Aguirre.

MA: Well, you know that's the whole point Roger. First of all the FAA is telling me that they want it brought down. The California Department of Corporations, or of Transportation is saying that they want it brought down, the ah, all the pilots associations have joined the lawsuit, they say they are insisting that it be brought down and I'm worried that if this were to happen the City would be facing an unlimited amount of liability for what's happened. So we've actually done two things Roger, we have sent them notice that it is a, under California law there is a specific statute that says that because it's a hazard that it is a public nuisance, it's a misdemeanor to maintain a public nuisance, and we've given them the appropriate notice in order to invoke the ah, public nuisance misdemeanor provisions which will be proceeding on I think in 25 days . . .

RH: Alright I've run out of time but we'll continue to follow this. I appreciate both of you being on, Mike Aguirre, Barbara Lichman, thank you very much. We're going to take a break for news and be back.