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Builder sues city over height delays

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Sunroad disputes request from FAA

By David Hasemyer

UNION-TRIBUNE STAFF WRITER

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SAN DIEGO – The company that is building a 12-story office tower near Montgomery Field has sued the city, demanding that it be allowed to complete construction despite an FAA warning that it posed a hazard to airplanes landing in bad weather.

Sunroad Enterprises also wants the city to pay at least \$40 million in damages for economic losses caused by delays to the project.

The lawsuit was filed in Superior Court late Friday in response to an earlier complaint filed by the City Attorney, asking that Sunroad be forced to tear down the top two floors of the building to meet Federal Aviation Administration safety standards. That lawsuit is pending.

The crux of Sunroad's argument is that the city gave it permission to build a 12-story building and cannot now ask that two of the floors be torn down.

"Sunroad relied in good faith on the city-issued permits and has framed and substantially constructed the building to its full 180 feet," the lawsuit said.

City Attorney Michael Aguirre called Sunroad's argument that the city issued permits for a 180-foot building "nothing but a diversion."

Once the FAA notified Sunroad that a building that tall would be a hazard, Aguirre said the company was obligated to comply with the federal agency's safety requirements and not build beyond 160 feet.

"This is all about the relationship between Sunroad and the FAA," Aguirre said. "That's all that matters."

Sunroad's lawsuit asserts that the city never expressed any concern about the building's height during its lengthy review of Sunroad's plans.

"In fact, throughout this period the city, (which is) the owner and operator of Montgomery Field, indicated to Sunroad that there were no height restrictions affecting the building," the lawsuit said.

In late October the city ordered Sunroad to stop working on the top two floors until the FAA's concerns were satisfied. It later agreed to let Sunroad put a roof on the building, to protect the lower floors.

Karen Hutchins, a spokeswoman for Sunroad, said the company reluctantly filed the lawsuit. She said Sunroad has always been concerned

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with safety and does not believe the building poses a hazard.

Hutchins referred to a letter written to the City Attorney's office by David Strauss, one of the developer's attorneys.

“Rather than ignoring the authorities and proceeding with the building, as the city attorney contends, Sunroad has been working tirelessly with the city and FAA to demonstrate the correctness of its position and to answer all questions,” Strauss wrote Feb 7.

When the city attorney persisted in seeking a court order to reduce the building's height, Hutchins said the company had no choice but to fight back.

“Sunroad has already incurred damages and faces substantial ongoing and future economic losses should the construction suffer additional delays . . . or be abated,” the lawsuit said.

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The FAA told Sunroad in April that the 180-foot building violated the 160-foot limit for buildings in that area.

In late June, the company notified the FAA that it would reduce the height to 160 feet.

But Sunroad officials say they qualified that promise in a letter saying they would abide by that agreement only until they completed their own safety study. When their private consultants said the building didn't pose a hazard, they went ahead and built it to 180 feet.

Yesterday, Aguirre said he was going to file a motion to disqualify Strauss, Sunroad's attorney, from the case, because Strauss represented the city in the 2004 Chargers negotiations.

Aguirre said that as a matter of legal ethics, Strauss should be barred from taking a position opposing his former client, the city.

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