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City Attorney Buzzes Tower With Lawsuit

San Diego Complains 180-Foot Structure Penetrates Airspace At Montgomery Field

By Claude Walbert
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SAN DIEGO — A high-rise building in a commercial area north of downtown San Diego poses a hazard to planes flying into a nearby airfield, and the top two stories must be removed from the structure, according to a lawsuit filed by City Attorney Mike Aguirre.

But Sunroad Enterprises, which is building the office complex near a civil-aviation airfield, says the building should remain at its 12-story height. In fact, the developer argues in a cross-complaint, city planners authorized the height when they approved permits for the building.

The two sides are set for a courtroom showdown over the multimillion-dollar project, and even Federal Aviation Administration officials could be testifying. *San Diego v. Sunroad Centrum*, GIC877054 (San Diego Super. Ct., filed Dec. 15, 2006).

At issue is whether objections by federal and state transportation agencies trump earlier city authorization for construction of the building. *Aguirre thinks so.*

The building is an "imminent danger to the public at large," he argues in the suit. Going to court "is necessary to safeguard and protect the citizens of the city and the financial interests of the city and its airports," Aguirre said.

Tom Story, Sunroad's vice president for development, contends that the company has not created



TOM KURTZ / for the Daily Journal

Going to court "is necessary to safeguard and protect the citizens of the city and the financial interests of the city and its airports," according to a suit filed by San Diego City Attorney Mike Aguirre, pictured near a 180-foot tower built by Sunroad Enterprises that sits at the center of the controversy.

a safety hazard.

"Safety is our highest concern," he said. "Sunroad has been working tirelessly with the city, pilots and the FAA to develop and implement a comprehensive long-term plan that will not only preserve but also enhance safety at Montgomery Field."

The city's suit seeks a halt to work on the building until Sunroad meets federal and state height restrictions. It also seeks an order requiring the developer to remove any portion found to be a hazard — that is, the top 20 feet.

The suit asks for unspecified monetary penalties.

In its cross-complaint, Sunroad argues that it "relied in good faith" on the authority it received to build the structure when the city

issued permits to the company. The city granted a framing and construction permit in March, and four months later it gave Sunroad a building permit — both for a 180-foot structure, the suit says.

Sunroad also argues that when the city issued the stop-work order, the building already was framed to 180 feet.

Because of delays caused by the city's suit, Sunroad cannot lease the building, portions might have to be torn down, and there are "stigma damages resulting from the city's actions," the company's cross-complaint claims.

Sunroad asks the city to pay \$40 million in damages and asks that the court bar the city from blocking construction in conformance with the building permit.

Aguirre counters that the FAA had determined that the building is a hazard.

"Everything else is a smoke-screen," he said.

In its suit, Sunroad says city officials made no mention of FAA regulations when they approved building permits last year. And they attached no conditions to the permits, the company says.

Aguirre charges, though, that Sunroad was required to obtain FAA approval of its plans in April — before the developer began construction.

Joining Aguirre in the suit is the Aircraft Owners and Pilots Association, representing pilots of private planes. No commercial carriers operate at Montgomery

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Continued from page 1
Field.

Ian Gregor, spokesman for the FAA's Western Pacific Region, said high buildings near an airport become a safety issue when they penetrate airspace used by pilots. At Montgomery Field, he added, pilots must circle the airport under bad weather conditions so they can land in a west-to-east direction, instead of east-to-west.

At 180 feet, the Sunroad building reaches into the airspace used in bad weather, Gregor said. That's what the FAA told Sunroad when the developer submitted its first notice to the agency, according to the city's suit.

Sunroad submitted a second notice in June stating that the building would top out at 160 feet. The FAA

said that height posed no aviation hazard.

In August, though, a new FAA study found that Sunroad had built out its structure at 180 feet. The agency objected, saying that height would require changes to flight-instrument altitudes and other operations at Montgomery Field. The FAA again declared building a hazard.

The FAA notified the state Department of Transportation, and the department told Sunroad it would need a state permit. The developer objected but agreed to seek the permit.

When Sunroad did not apply for the permit, the transportation department asked the city to issue a stop-work order, according to Aguirre's suit.

The city issued the order barring work above 160 feet on Oct. 27, according to its suit.

Steven Strauss, Sunroad's lawyer, said Aguirre's refusal to participate in efforts by the developer and the city to resolve the dispute without going to court could cost the city money.

Strauss, from the San Diego office of Cooley Godward Kronish, added that Aguirre's suit exposes the city to "significant liability."

Aguirre said Friday that he would be happy to join talks between Sunroad and the city, as long as the discussion addresses "how to get the height down to what Sunroad was told by the FAA."

Aguirre added that he believes safety is more important than the potential liability.

John C. Condas of Nossaman Guthner Knox & Elliott's Irvine office finds it difficult to understand how the San Diego dispute arose.

"There are a lot of safeguards," he said.

Condas, who has been representing the developer of 306-foot towers in Costa Mesa, said that city and the Orange County Airport Land Use Commission would not consider development plans before the FAA had approved them.

Condas sees no easy way to solve the San Diego dispute. The top 20 feet of Sunroad's building might have to be removed or the flight path changed, he said.

No hearing has been scheduled for the dueling suits, according to Aguirre and a Sunroad spokeswoman.