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WATCHDOG REPORT | HOW SUNROAD'S BUILDING WAS CLEARED FOR TAKEOFF

A tale of two stories

FAA insists the 180-foot office tower is a hazard, but developer won't budge

By David Hasemyer
UNION-TRIBUNE STAFF WRITER

May 13, 2007

How did a 180-foot office tower end up being built in the bad-weather flight path of one of the region's busiest municipal airports?

- [Development Services handles plans, permits](#)
- [Behind the story](#)
- [Timeline](#)

The city officials who authorized the project say planning and zoning regulations prevented them from stopping construction on the \$45 million building, which the Federal Aviation Administration has declared a hazard because it is 20 feet too tall.

But a review of thousands of pages of internal city memos and FAA documents reveals that San Diego's Development Services Department had at least two opportunities to limit the building's height before construction began.

The records obtained by The San Diego Union-Tribune also document political infighting between city departments, the involvement of a former high-ranking city building official and the intransigence of Sunroad Enterprises, a wealthy and politically connected development company. Last week, the building was thrust into the spotlight again in a heated court battle over whether City Attorney Michael Aguirre can prosecute a Sunroad executive on charges of city ethics violations.



HOWARD LIPIN / Union-Tribune
With Montgomery Field in the foreground and the Sunroad building behind, a plane climbs after taking off. The runway is three-fourths of a mile from the building, a perspective somewhat compressed by the photographer's use of a telephoto lens.

At one point in the increasingly ugly public dispute, Jim Waring, the city's chief of land use and economic development, traded e-mails with Rick Beach, vice chairman of the city's Airports Advisory Committee and a

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If you've moved out of San Diego County in the last few years because of the high cost of living or unaffordable housing, we'd like to hear from you. E-mail Staff Writer Lori Weisberg at lori.weisberg@uniontrib.com or call her at 619-293-2251.

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vehement opponent of the Sunroad project.

“Do you really think that it is necessary to tear down a \$45,000,000 building because of the 17 feet? Maybe you do. I'm not sure,” Waring wrote to Beach on Dec. 12, 2006.

Waring added that the more he considered the possibility of an accident, the more he thought it was unlikely.

“As I've repeatedly said, I believe aviation function and safety can be preserved without the straight jacket the FAA imposes on local use of land and money,” said Waring, who oversees Development Services and reports directly to Mayor Jerry Sanders.

A few days later, when Aguirre filed a lawsuit to force Sunroad to remove the top two floors of the partially completed building, the Mayor's Office condemned his action, saying another solution could have been found.

FIRST OF TWO PARTS

Today: Planning for the Kearny Mesa property where a contested office tower is being built began 10 years ago with a master plan to redevelop the General Dynamics site with two-and three-story buildings. When the city approved a 12-story building, no one consulted the FAA, which has declared it a hazard.

Tomorrow: Construction on the building continued despite warnings by the FAA, a lawsuit by the city attorney and a countersuit by the developer.

Online: To view documents related to the Sunroad project, go to uniontrib.com/more/sunroad

“We don't think it sends a positive message to the development community,” Fred Sainz, the mayor's spokesman, told the Union-Tribune.

Beach summarized the escalating conflict in another e-mail to Waring.

“You see \$45,000,000 and low risk,” Beach said. “The FAA, Caltrans, and a bunch of airport users see yet another example of bend the rules to suit developers and city planners.”

Sunroad's local inroads

Sunroad Enterprises and its owner, La Jolla resident Aaron Feldman, keep a low profile yet brandish a hefty portfolio that hasn't gone unnoticed at City Hall.

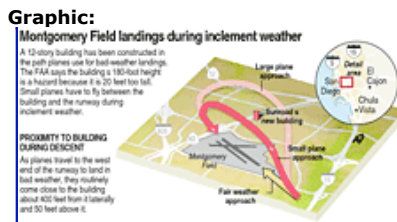
In addition to extensive real estate holdings, including a golf course in Poway and the second-largest marina on San Diego Bay, the company owns six car dealerships and an industrial park along the U.S.-Mexico border.

Over the years, Feldman, who declined to be interviewed for this story, has made generous gifts to the city and its politicians.

The company donated \$1 million toward the purchase of a fire helicopter after the 2003 wildfires. Feldman and various Sunroad executives donated \$3,600 to Sanders' mayoral

campaign. They also contributed to former Mayors Susan Golding and Dick Murphy as well as current City Council members Toni Atkins, Brian Maienschein, Kevin Faulconer and council President Scott Peters.

Feldman hired Murphy's chief of staff, Tom Story, in 2005 as vice



Montgomery Field landings during inclement weather

president of development. Story had worked in Development Services for 14 years, at one point as a deputy director.

In a recent interview, Sanders said Story's City Hall background and contacts didn't give Sunroad an advantage. The mayor said he didn't even know Feldman had contributed to his campaign.

But the City Attorney's Office believes Story's "extraordinary" access to city officials helped Sunroad avoid any snags with its plans for the office tower and the 600 condominiums it was building nearby. In April, Aguirre charged Story with 14 misdemeanor criminal counts for allegedly violating a city ethics code that prohibits lobbying by former city employees for one year.

As the legal maneuvering continues, the FAA has warned pilots to steer clear of the building when using the bad-weather flight path at Montgomery Field. That approach is used in about 10 percent of the airport's landings and takes planes within 400 feet of the office tower.

Although the agency controls the nation's airspace, it has no control over land use, so it relies on state and local governments to take action when the FAA sees a hazard.

Bob Agresto, who flies into Montgomery Field several times a week, said maneuvering that close to a building is dangerous. He said it's like driving a car 90 mph around a curve with a canyon just a few feet away.

"It's dangerous, and somebody is going to get killed," said Agresto, one of more than a dozen angry pilots who addressed the Airports Advisory Committee in February.

Other pilots say the hazard is minuscule.

Dick Jones, a former commercial airline pilot whom Sunroad hired to fly around the building for a video the company produced, contends that the problem was eliminated when the FAA warned pilots about the building. Such warnings are common across the country, he said.

"If the airport was so unsafe, the FAA would go to (the city) and ask them to close the airport," Jones said. "That hasn't happened."

FAA spokesman Ian Gregor said closing Montgomery Field will never be

OVERVIEW

Background: The FAA declared a 180-foot office building under construction near Montgomery Field in Kearny Mesa a hazard because it exceeds the 160-foot limit for structures near the airport's bad-weather approach.

What's happening: The developer, Sunroad Enterprises, continues to work on the building. It says the tower is not a danger and has been legally permitted by the city.

What's next: The City Attorney's Office is asking a judge to order the removal of the top two floors of the building. A countersuit by Sunroad seeks \$40 million in damages from the city related to delays in finishing the building.



HOWARD LIPIN / Union-Tribune
Cars on Kearny Villa Road streaked past Sunroad Enterprises' 12-story tower near Montgomery Field in this timed exposure. Although in 2000 the city set a 45-foot height limit for all buildings in the area, city planners approved the 180-foot building.

an option.

Of the nation's 497 municipal airports, Montgomery Field is the 56th busiest, logging 233,000 flights last year. The FAA expects traffic to increase 30 percent by 2025.

“The FAA's goal is to maintain the viability of the nation's airports, not to close them,” Gregor said. “In the case of Montgomery Field, where would those 233,000 flights go?”

New Century beginnings

The seeds of the Sunroad controversy can be traced to 1997, when the city was working with General Dynamics to redevelop its missile-manufacturing complex, which occupied the site where the Sunroad building now stands.

Called the New Century Center, the 232-acre project would be one of the largest commercial redevelopments in central San Diego in decades, and city officials were excited about the prospect of \$4 million a year in taxes, 12,000 new jobs and a fresh look for Kearny Mesa.

Graphic:



HOWARD LIPIN / Union-Tribune

The FAA has warned pilots to steer clear of the Sunroad building when using the airport's bad-weather flight path, which takes planes within 400 feet of the tower. But pilots differ on the danger level.

[Click for larger image](#)

The \$1 billion plan sketched out for then-Mayor Susan

Golding and the City Council was big in scope but short on details.

General Dynamics offered watercolor renderings of movie theaters, stores and an office complex. A skating rink, gourmet food store and art galleries were among dozens of suggestions for what would become Sunroad's property.

The plan was clear about one thing, however: Neither General Dynamics nor city planners envisioned any high-rise buildings.

All the land in the project was technically zoned as commercial, which meant there were no height restrictions. Even so, the plan the council approved established limits of “three stories for retail stores and two stories for entertainment venues,” so the new development would complement the rest of Kearny Mesa.

KEY PLAYERS

Developers and city officials with a role in the Sunroad development saga:

Marcela Escobar-Eck, who worked on the project for the city in 1997 and now heads Development Services, said height wasn't considered in relationship to the nearby airport because a map drawn in 1984 by the San Diego Association of Governments put the General Dynamics property outside the zone where height might affect airport operations.

A Union-Tribune review of that map and the accompanying SANDAG report shows

Montgomery Field was studied primarily in connection with airport noise, not building height.

On Nov. 18, 1997, the City Council took its first vote on the New Century development.

Escobar-Eck gave a long, detailed analysis favorable to the project. Among the other city planners who made presentations was Tom Story, who had helped put together the deal with General Dynamics.

Before Councilwoman Valerie Stallings cast her vote, she warned General Dynamics not to come back later with excuses to alter the plan.

“This is the plan we have agreed to, and this is what I want to see going forward,” said Stallings, whose council district included the project.

After an hourlong hearing, council members approved New Century 9-0 and adjourned for lunch.

As part of the plan, however, they also relinquished their power – and the power of future councils – to continue monitoring the massive project.

Instead, they gave Development Services authority over everything but residential plans.

The council routinely transfers approval authority to Development Services in an effort to streamline the permit process for developers. Since 2003, however, three county grand jury reports have criticized decisions Development Services made while exercising those powers.

Measuring a problem

Less than a year after the council approved the New Century Center, General Dynamics sold the property to Irvine-based Lennar Partners, which had a new vision for the land. More space was set aside for offices and less for entertainment and retail. Lennar also began selling parcels to other developers, including Sunroad, which bought into the project in 2001.

The original plan “just fell apart,” said Glen Best, who chaired the Kearny Mesa Planning Committee that worked on the project.

In February 2005, Sunroad submitted plans for its first building, a 12-story office tower, to Development Services. Two



Michael Aguirre is San Diego's city attorney, elected in 2005 on a platform of City Hall reform.



Rick Beach is vice chairman of the Airports Advisory Committee, which is made up of volunteers who make recommendations on issues involving the two city-owned airports, Montgomery Field in Kearny Mesa and Brown Field in Otay Mesa.



Marcela Escobar-Eck is director of the city's Development Services Department.

more office towers were penciled in at 14 and 16 stories.

By then, New Century was already bustling.

Guests were checking into the Marriott Suites hotel, and Sharp HealthCare had moved into its administrative offices. The office tower seemed likely to gain approval without a hitch.

In March, however, Sunroad's architect, Dan Munch, spotted what looked like a problem.

As he double-checked city codes, he saw that in 2000 the city had revised its master plan for the area and established a 45-foot height limit for all buildings – including commercial structures – for aesthetic reasons.

Worried that he would have to scale back the building, Munch e-mailed a city planner, saying he had a question of “significant importance.”

“We are looking for official confirmation that the currently proposed height will in fact be allowed,” he wrote.

The city was faced with a choice: impose the 45-foot limit or allow Sunroad to continue as planned.

The city decided in Sunroad's favor. A few days later, Munch sent a memo to his bosses saying city planners had approved the 180-foot height.

Development Services exempted the building from the 45-foot limit, Escobar-Eck explained recently, because the staff decided it was covered by the 1997 plan – and back then, there were no height restrictions on commercially zoned property in that area.

And what about the three-story limit the council had imposed on the property in 1997?

Development Services decided the three-story limit didn't apply, Escobar-Eck said, because Sunroad was building an office tower, not the entertainment complex the council approved.

'We all just missed it'

Plans for the building were funneled to various city departments for comment on everything from environmental matters to traffic issues.



Aaron Feldman is owner of Sunroad Enterprises, developer of the debated office tower.

Tait Galloway is the city planner who first received word from the Federal Aviation Administration that the Sunroad building is a hazard to pilots landing in bad weather.



Susan Golding was San Diego's mayor from 1993 to 2000.

Notices about its pending approval went to nearby businesses, the San Diego County Regional Airport Authority, Caltrans, other developers and real estate companies, and the Union-Tribune.

City staff members diligently examined the company's blueprints.

They asked Sunroad to plant an extra tree near the building's driveway. They made sure the outside eating area was properly shaded. They wanted a bike path designed so people could easily ride around the building.

Someone in Development Services even took time to correct Sunroad's spelling of "eucalyptus."

At no point did anyone question the height in relation to the airport.

And nobody consulted the FAA.

As Escobar-Eck explained, Development Services guidelines didn't require staff to make that check.

Even members of the Airports Advisory Committee didn't blink when member Buzz Gibbs rolled out drawings with the building's height clearly marked at 180 feet.

"We all just missed it," said Gibbs, who owns Gibbs Flying Service at Montgomery Field and is among the few committee members who aren't demanding that the building's height be reduced.

The City Council was never consulted because the 1997 master plan had given Development Services full authority over the project.

'No longer vested'

Development Services had another opportunity to stop the building, also in March 2005.

The San Diego County Regional Airport Authority had adopted in 2004 an FAA-designated "overlay zone" for Montgomery Field that defined height restrictions within 3 1/2 miles of the airport. All buildings in the project, now named Centrum, were inside that zone – and city regulations required Development Services to make sure builders complied.

A notice about the expanded overlay zone was sent to various city agencies, including Development Services.



Ian Gregor is the FAA spokesman.

David Miller was the deputy city attorney advising Development Services on the Sunroad case. He was fired earlier this year over matters unrelated to the building.



Dick Murphy was San Diego's mayor from 2000 until he resigned in July 2005.

Dan Munch is Sunroad's architect for the office building.



Jerry Sanders was elected mayor in November 2005. He is the first "strong mayor" of San Diego under a charter change that separated

But Escobar-Eck and her staff weren't aware of the change. No new maps had been drawn up to show the revised overlay zone, she said, so they used the 1984 SANDAG map that showed the project one block outside the overlay zone.

In a recent interview, Escobar-Eck said that even if new maps had been available, her department would have been obligated to allow the building to go up. The property had been zoned before the overlay was expanded, she said, so it was grandfathered in.

The city's former architect and assistant planning director, Michael Stepner, said Development Services could have stopped Sunroad at this point – just as it could have stopped Sunroad from exceeding the 45-foot height limit established in 2000.

Because Sunroad's building deviated so dramatically from the 1997 plan, the project should have gone back to the City Council and the Planning Commission for a new review, Stepner said.

“The right to build is no longer vested when you are changing the project so substantially,” said Stepner, who spent much of his 27 years with the city weighing in on such projects.

The City Attorney's Office reached the same conclusion when Development Services asked for a legal opinion in the midst of the brewing controversy.

“My review of the Development Agreement does not indicate that the developer has any vested rights to build to a specific height,” Deputy City Attorney David Miller explained in an e-mail to Development Services.

A former boss connects

In July 2005 as the review of the building continued, Mayor Dick Murphy resigned, leaving his chief of staff, Story, without a job. Three months later, Story became Sunroad's vice president of development and began supervising the office and condominium projects.

In February 2006, Story began e-mailing his former colleagues at the city planning department, where he had worked for 14 years. He asked for meetings with department leaders, negotiated changes in the condominium project and reminded the staff of the importance of “timely decisions on issues and timely processing of applications.”

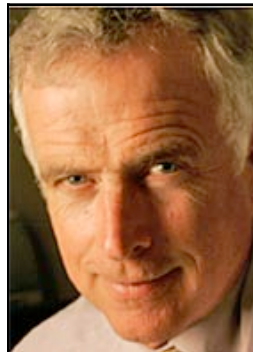
By October 2006, Development Services had received almost a dozen e-mails from Story, according to documents obtained by the Union-Tribune under the California Public Records Act.

At one point, a city planner told her boss, John Cruz, that she was going to make time to expedite some of Sunroad's condominium plans.

executive and legislative bodies and gave the mayor hiring, firing and budgetary powers.



Tom Story was chief of staff for Dick Murphy when he was mayor. Before that, Story was a deputy director in the city's Development Services Department. After Murphy resigned in 2005, Story was hired by Sunroad as its vice president of development.



Jim Waring was hired by Sanders in 2005 as chief of land use and economic development. He leads the Development Services Department.

Cruz, who was the city's primary supervisor on the Sunroad projects at the time, sent back a one-sentence reply: "That will make Tom Story happy."

On March 27, 2006, Development Services signed the permit for Sunroad's first office tower. Bulldozers soon began leveling the land, and trucks arrived to pour concrete for the foundation.

■ David Hasemyer: (619) 542-4583; david.hasemyer@uniontrib.com

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