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

'I want us to remain spectators, not actors in this'

Most city officials were reluctant to join the fight between Sunroad and the FAA

By David Hasemyer
UNION-TRIBUNE STAFF WRITER

May 14, 2007

When San Diego city planner Tait Galloway settled behind his desk on June 19, 2006, he was surprised to find a message saying the Federal Aviation Administration wanted to talk about an office tower going up near Montgomery Field.

What interest, he wondered, could the FAA have in a project that was nothing more than a concrete foundation?

A few minutes later, Karen McDonald, an FAA compliance officer based in Los Angeles, gave Galloway the bad news: The 180-foot office tower being built by Sunroad Enterprises would be declared a hazard if it went past 160 feet.

The FAA lays out



HOWARD LIPIN / Union-Tribune

The FAA warned in June 2006 that Sunroad Enterprises' planned 180-foot office tower would be declared a hazard if it exceeded a height of 160 feet.

SECOND OF TWO PARTS

Today: Construction of a contested office building near Montgomery Field continued despite warnings by the FAA that it was 20 feet too tall, a lawsuit by the city attorney and a countersuit by the developer. The next move is up to the courts.

Yesterday: Planning for the former General Dynamics site where the office tower is being built began 10 years ago with a master plan to redevelop the Kearny Mesa property 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.

MORE

Online: To read the first part of this series and to view documents related to the Sunroad project go to uniontrib.com/more/sunroad

- [Sunroad tower timeline](#)

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clear guidelines for developers who are preparing to erect tall buildings. If a building meets any of four criteria, the developer is required to notify the agency for a safety review at least 30 days before moving the first spade of dirt.

The FAA learned of the Sunroad project only after someone wrote an anonymous letter – and by that time, construction had begun.

According to documents obtained by *The San Diego Union-Tribune*, Sunroad's architect, Dan Munch, had decided the filing requirement didn't apply to the building.

In a memo to Sunroad's vice president of development, Tom Story, Munch said the 180-foot building was exempt because it fell into the first category on the list, which exempts buildings less than 200 feet tall.

But one category also applied to Sunroad: It requires that the FAA be notified if any building of any height is planned within 3½ miles of an airport.

The FAA immediately told Sunroad to file a notice of construction. Sunroad complied, and the FAA shot back its reply: The building would be designated a hazard if construction proceeded to the 180-foot level. The agency gave Sunroad 60 days to respond.

While Sunroad officials pondered the warning, cranes hoisted the first

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 has asked 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.

BEHIND THE STORY

How The San Diego Union-Tribune reported the story of a 180-foot office building near Montgomery Field:

To answer the question of how the building was approved by the city but declared a hazard to pilots flying into the airport in bad weather, the newspaper relied on records from the San Diego City Clerk's Office, documents from Superior Court, Federal Aviation Administration records and e-mails sent by and to the city's Development Services Department.

When printed, the e-mails – obtained through the California Public Records Act – amounted to about 5,000 pages and filled eight three-ring binders. The e-mails provided a picture of how Sunroad was allowed to construct the building and how the city reacted to the news that the FAA had labeled the building a hazard.

City records included the 1997 master plan files of the New Century Center project and video recordings of City Council meetings where the plan was discussed and approved.

The FAA records obtained under the federal Freedom of Information Act documented the process that led to the agency declaring the building a danger to pilots flying into Montgomery Field in bad weather.

The newspaper conducted more than two dozen interviews with pilots, land-use experts, city staff members, past and present City Council members, FAA sources, California Department of Transportation officials, Sunroad Enterprises representatives and aviation consultants.

A Union-Tribune photojournalist and reporter documented work on the building over seven months.

The reporting, writing, photographing, editing and production of the two-part series spanned about three months.

beams into place, and city officials tried to figure out what to do.

As soon as Galloway got the FAA's warning, he e-mailed Kelly Broughton, deputy director of the city's Development Services Department, which had issued the permit for the structure. The building would affect flight operations at Montgomery Field, Galloway told Broughton, and possibly hurt the city's ability to obtain future FAA grants for airport improvements. In the past five years, the FAA has contributed \$5.3 million for runway lights, helicopter landing pads and security access gates at Montgomery Field.

"The FAA wants the building height reduced to 160 feet," Galloway told Broughton. "Since this is a significant issue for the FAA, I told Karen McDonald that I or another staff person at the City would follow up concerning what steps if any the city would take regarding this project."

On June 22, Sunroad filed an electronic request with the FAA for a new safety review. The form asked for the building's height, and in that box Sunroad's director of construction operations, Craig Bachmann, typed 160 feet.

About the same time, the FAA received a letter from Bachmann saying the company was doing its own safety study.

"In the meantime, we agree to the 160 foot height specified," Bachmann wrote.

On June 23, Sunroad's attorney, Barbara Lichman, gave city officials what appeared to be good news.

"She commented that the applicant will hold the structure to 160 ft pending the outcome of a new aeronautical study," Galloway said in a memo to various Development Services officials and to David Miller, a deputy city attorney.

Everyone assumed the crisis had been averted.

"Sunroad's voluntary cessation of activities appeared to suggest that they were going to try to resolve the issue with the FAA before continuing construction," Miller said in an e-mail.

Defying the FAA

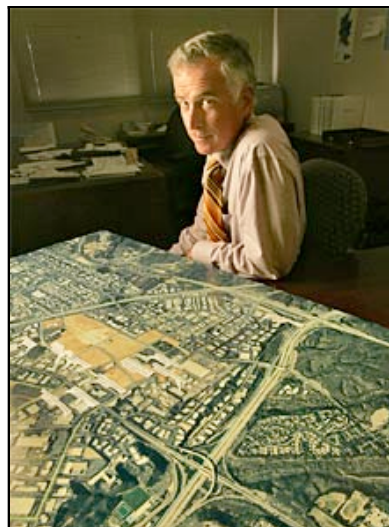
On July 27, however, Sunroad notified the FAA and the city that it was going ahead with its original plans.

That same day, a giant crane raised the first girder to extend the building's height to 180 feet.

Story, the company's vice president of development, told the Airports Advisory Committee that company officials didn't ask for the FAA's permission again because they knew the agency wouldn't approve.

In an interview with the *Union-Tribune*, Story said Sunroad only had agreed to stop at 160 feet until it completed its own safety review, which had shown the building would not be a hazard.

"There were never any assurances



that this building would be anything but the height approved by the city,” Story said.

The FAA disputed Story's interpretation.

The form Sunroad submitted saying the building would be 160 feet superseded any qualifying statements Sunroad may have made, said FAA spokesman Ian Gregor, who pointed out that FAA safety evaluations take precedence over evaluations by private consultants.

The FAA was powerless to force Sunroad to lower the building.

Although the agency controls the nation's airspace, it has no authority over land use. Instead, it relies on state and local governments to support its decisions.

Developers rarely defy the FAA.

Last year, the agency issued hazard designations in 6,000 projects nationwide. All but 30 either were abandoned or modified to conform to FAA standards.

Of the 30 that were appealed, the hazard designation was removed for just three. The other 27 are either pursuing further appeals or modifying their structures to comply with the agency. Sunroad was the only developer that began construction before settling its dispute with the FAA.

As more girders were being set in place, Miller, the deputy city attorney, e-mailed city planner Galloway with a solution: The city could legally order a halt to the work under a municipal code that defines a public nuisance.

Development Services officials apparently never received the e-mail.

On Aug. 7, Miller e-mailed Galloway again, asking why nobody had responded to his message. By then, the last of the girders had been set in place and the shell of the building was finished.

Not giving an inch

When Oct. 25 rolled around and Development Services still hadn't acted, Deputy City Attorney Carmen Brock sent a memo to Jim Waring, the city's chief of land use and economic development, and Marcela Escobar-Eck, who heads the Development Services Department.

“Why is this still being debated?” Brock wanted to know.

Six days later, Development Services issued a stop-work order for the top 20 feet of the building.

By then Caltrans, which has called the building's construction “illegal,” was threatening to go to court to get the building declared a violation of a state law that prohibits hazards near airports. Waring still hesitated to commit the city to the fight.

“My approach for some time now has been to say to the FAA and Caltrans that if they believe this building violates their rules and there is a remedy they can enforce, they should commence and prosecute the action,” Waring said in an e-mail to Escobar-Eck and the City Attorney's Office in December.

“I want us to remain spectators, not actors in this.”

Waring and Sunroad began working on the wording of a settlement they hoped would persuade the FAA to remove the hazard designation. It

included an offer by Sunroad to install a sophisticated electronic navigation system that would allow pilots to fly straight to the runway instead of circling the building. The FAA balked, saying the idea would take years to implement.

City Attorney Michael Aguirre filed a lawsuit asking the court to force Sunroad to remove the top two floors to “safeguard and protect the citizens of the city.” A plane crash into the building would not only cost lives, but could cost the city millions of dollars in damages, Aguirre said. The city would be liable, he said, because it knew the building had been declared a hazard yet allowed it to remain.

Sunroad countered with a \$40 million lawsuit against the city, contending that the city was illegally holding up construction. It sent Waring a warning: “The city's failure to lift the stop work order may constitute a breach of the development agreement, thereby exposing the city to significant damages claims by Sunroad.”

At the very least, Sunroad said, it should be allowed to weatherproof the top of the building.

On Dec. 21, Escobar-Eck signed an agreement allowing Sunroad to roof the building and finish work on the elevator service room.

In March, however, Sunroad began putting up the exterior walls.

Aguirre immediately sent a letter to Sunroad revoking permission to weatherproof or do any other work on the top of the building.

Escobar-Eck said that even though walls weren't mentioned in the agreement, it was logical to include them. Aguirre and his staff didn't understand the intricacies of the construction, she said. If the top floors weren't enclosed, rain and wind would damage the lower floors, she said.

“I know people are saying you are letting them do more and more, but it's not as simple as saying stop all of the work,” she told the *Union-Tribune*.

In January, Development Services issued new internal guidelines: Before any building permit would be issued near an airport, city staff would have to make sure the developer had cleared the project with the FAA.

It's up to the courts

Today, the outside of the Sunroad building is almost complete, and the company is trying to figure out how to get its next two office towers approved.

Waring promises that the city won't issue permits for the buildings until the current dispute is resolved.

“There will not be a son of Centrum,” he said, referring to the project's name.

Aguirre, meanwhile, has vowed to continue his crusade to get the top two floors of the building removed.

“I want the people of San Diego to know what is going on here is wrong,” he said after one of the recent court hearings.

But Waring and Mayor Jerry Sanders still haven't taken a position on whether the top floors should come down, saying it's up to the courts.

“From where I sit it is very difficult, as a nonexpert, to know whether the building is a real risk or whether this is much ado about nothing,” Waring said.

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

Reader comments

By 911 Guy on 05/14/2007

The City of San Diego screwed this up (like most every thing else).

Mike Aguirre is effective as a deterrent but, is nothing more than a barking dog behind a chain link fence that loves to bark at people when the walk by.

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By avg.joe on 05/14/2007

"From where I sit it is very difficult, as a nonexpert, to know whether the building is a real risk or whether this is much ado about nothing," Waring said.

Exactly - that's why you defer to the expert opinion (FAA). Why is Waring siding w/ the developer and not concerned with public safety??

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By Brawler73 on 05/14/2007

I don't know who's right or wrong but the building sure looks nice.

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By ghbadashel on 05/14/2007

Sunroad and their architect are to blame. The City should not have assumed an FAA approval was already granted but Sunroad is a professional developer with lots of experience and millions of \$\$ on the line. It was their responsibility to check with FAA prior to beginning work. The project is budgeted already and they understandably don't want to budge. They see the mixup between city and FAA as an opportunity to grease some palms and get away with what amounts to murder for profit.

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By SDFLYER on 05/14/2007

911 Guys is right.
The city screwed this whole thing up by not referring to the proper authorities to determine if it should be built in the first place.

How can Sunroad be an authoritative evaluator of the safety of their building when it comes to aviation? The FAA is the ONLY authority in that matter.

Safety is the priority. The building needs to be corrected to comply with FAA requirements, but I think it's the city that should pay for it. They are the ones who screwed up the process.

Why should Sunroad have to pay for the failure of the City to properly evaluate the building in the first place?

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By CorpExec on 05/14/2007

Clearly Sunroad lied to the FAA. Several local agencies govern the land around Montgomery Field. Sunroad was deviously careful to deal with them individually, allowing each one to think that "someone else" would exert control. This is the classic blindsiding of the basically incompetent SD City government that goes on continuously. Look for Montgomery Field to become the next Liberty Station, making the developers rich at the City's expense. That's the real objective here!

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By ducraker on 05/14/2007

So Sunroad conducted their own safety study, so what. The only question I have is how much did it cost? Only Sunroad knows for sure as we come to find out, "Jim Waring, the city's chief of land use and economic development, and Sunroad worked on the wording of a settlement they hoped would persuade the FAA to remove the hazard designation from Sunroad's office building." So much for Mr. Waring's "I want us to remain spectators, not actors in this." proclamation!

It then appears Mr. Waring has a change of heart, "From where I sit it is very difficult, as a nonexpert, to know whether the building is a real risk or whether this is much ado about nothing," Waring said. The expert opinion which seems to be eluding Mr. Waring is the FAA, which they have already offered but Mr Waring's department seems to continually ignore, favoring his and Sunroad's own homegrown concoction, evidenced in the settlement they jointly crafted, hoping the FAA would rescind the height limitation.

Sunroad has shown itself to be deceptive and unethical with no regard to public safety by its own actions, starting with the FAA Safety Review form filled out by their Director of Construction stating the building height to be 160 feet, to the misleading statement by Sunroad's attorney, "the applicant will hold the structure to 160 ft pending the outcome of a new aeronautical study," and then defer to the in house study paid for by Sunroad stating, "Sunroad only had agreed to stop at 160 feet until it completed its own safety review, which had shown the building would not be a hazard". Are these folks(Sunroad's paid Tools) serious? I'd be laughing if this wasn't a public safety issue.

As for Mr. Storey and his PALS in Developmental Services, I trust the next investigator that picks up your collective scent's has as good a nose for rooting out rotten apples as Mr Aguirre does.

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By timincv on 05/14/2007

The city is in such sad state because of the people that run it. This is just another example of what a joke the City of San Diego is. The good old boys always come out on top and the people will pay millions for this again.

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By seriously on 05/14/2007

"The FAA was powerless to force Sunroad to lower the building.

Although the agency controls the nation's airspace, it has no authority over land use. Instead, it relies on state and local governments to support its decisions."

U-T: How about more complete and thorough reporting? WHY is the FAA powerless? WHY do you say they have "no authority over land use"? Based on what? If there's no authority, why do they even look at anything? WHERE are the regulations giving local authority power to enforce Federal decisions? In this litigious society, I find it hard to believe there's not a framework for regulations and enforceability of Federal laws. Once again, it sounds like incomplete reporting, failure to connect the dots, and scapegoating for your own purposes...sensationalism.

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By tangodancer on 05/14/2007

This weekend *my* aviation safety expert certified that building a 400 foot flag pole in my back yard underneath the approach to Lindbergh Field posed no hazard to safety. And if it did then the planes could easily land take a different route.

Now... which city official do I bribe for them to look the other way whilst I build it?

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By The Great Sage on 05/14/2007

My understanding is that the FAA has land use authority for a designated footprint around all airports. However, the building in question is outside of that designated footprint for Montgomery Field.

My question is that if it IS so dangerous, why hasn't the FAA simply closed Montgomery Field until a resolution to the situation has been achieved. If this building is such a hazard, especially in the Gray May and June Gloom months,

it would make sense for the FAA to not operate the facility? Surely the FAA would be held liable for operating an Airport in a Dangerous manner if the unthinkable actually happened.

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By claycup on 05/14/2007

GET RID OF THAT DAMM MINI AIRPORT!!!

Talk about catering to rich. Who can afford to have their own private plane - he rich. What a waste of land to the community of San Diego. If the retired rich want to fly around in their planes, let them do it somewhere else outside of the city.

They talk about accidents waiting to happen. There's a much higher risk of a small plane crashing than that building falling over and killing someone.

Those building will create more jobs and tax revenue than that antiquated mini airport ever will.

Build the new Charger stadium on that land! Let the public enjoy it rather than the elite minority.

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By realist on 05/14/2007

Easy solution.....Mandate in a stipulated agreement that "Sunroad" must maintain their executive offices on the top floor so long as the top two floors remain. On the second from the top, agree to put all the "officials" who ok'd this project. That way if an accident occurs, "Sunroad" can be liable for the pilot and for their own executives!!!!!! Added bonus - white collar criminals would be immediately "out of our governmental system".....

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By wearytaxpayer on 05/14/2007

"I want us to remain spectators, not actors in this."

We should adopt this as the new city motto.

It's in keeping with the city's past policies of, "Let's just hope nothing happens until we are out of office".

The politicians and managements come and go...and the taxpayers remain to pick up the tab.

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By timincv on 05/14/2007

I like "Let's just hope nothing happens until we are out of office". as the new city moto better. Gotta catcher ring then "America's finest city".

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By tangodancer on 05/14/2007

Regarding the filthy rich owning planes at Montgomery Field. While there are indeed many people with plenty of money flying around there, the majority of planes flown by a private pilot cost less than an RV, or even a luxury SUV.

Plane crashes are thankfully rare, however rich (by clay's deftn) people kill others in their SUVs every day. If we outlawed RVs and two car owners we'd save far more lives than any plane crash will cause, and we can reclaim lots of land to build the stadium on. Better still, by building the stadium on the no longer used freeways we already have superb access!

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By talkingsparrow on 05/14/2007

REAL MEN don't flagrantly compromise public safety.

Raze the building-and show some decency and integrity-for a change!

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By blue36 on 05/14/2007

âI know people are saying you are letting them do more and more, but it's not as simple as saying stop all of the work,â Marcela Escobar-Eck told the Union-Tribune.

I beg to differ. The city orders construction stop. The city can also order demolition. Then the courts can spend years figuring out who was right. This is a "no brainer" unless, of course, you have some contact with Sunroad.

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By BrickTransparency on 05/14/2007

duckraker you said it well, the only thing I would add is "Where is Mr. Sanders?" Why hasn't he sided with the FAA and what's right for public safety. Could it be Sunroads contributions to his mayoral campaign? For him to sit back and not side with public safety is a tragedy in itself. He was obviously the wrong choice for the coward that quit the job before him!

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They can't go to Gillespie, more residential areas. I guess we'll have to make Lindbergh even more crowded.

But that's ok because with no one training to be a pilot there won't be any airline pilots coming along so commercial services will be stopping anyway.

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By timincv on 05/14/2007

Most commercial pilots are ex-military, not yahoos that fly little planes in their spare time.

The city is at fault but it is San Diego who won't do anything. Money talks and Sunroad has the money.

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By tangodancer on 05/14/2007

some yahoos do go on to become regional airline pilots but I was referring to the large flight schools that do nothing but churn out airline pilots, and they are at Montgomery and Gillispie and other airports in residential areas across the country.

anyway, thats off the topic, and I totally agree with you about who is at fault and why nothing is being done.

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By SteelPeg on 05/14/2007

"GET RID OF THAT DAMM MINI AIRPORT!!! ...Build the new Charger stadium on that land! Let the public enjoy it rather than the elite minority."

How left out I feel...I can't afford a private plane, nor Charger tickets!!

Now what?

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By claycup on 05/14/2007

I don't work for Sunroad, nor any of its subcontractors, or will I benefit from the project.

I find the pilots pleading NIMBY, having a hypocritical stance on the project.

Go around the structure, if you don't have the skills to do it, land elsewhere. If you can't, you shouldn't be up there in the first place. Look at how many high-rises are downtown, it just doesn't make sense to me. Someone educate us here if you can.

And Yes, I want the stadium in SAN DIEGO, not O-side or Chula Vista. There's enough room to have a Stadium, Heliport, and public parks on that land for us all to enjoy. Not just the elite 1% that are hoarding a precious resource.

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By moondog on 05/14/2007

This city has had no more than its share of self-serving crooks in and influencing government since I can remember, from C. Arnolt Smith and Wenke in the 70s, then Hedgecock, Golding and now this bungling pack of criminal idiots. Is it possible to bring in some illegal politicians over the border? They could be no worse than this bunch.

And it's not just a couple of these politicians that are bad, it seems that the whole county is run by thugs.

I hope the UT would do a feature on why the people of San Diego are picking up the tab on water for business and step up the pressure on exposing what goes on in the City Councils famous "closed door sessions"

Strong Mayor? We need a judicial system that's willing to prosecute these brazen fools and give us our city before they break its back..

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By disgustedinsd on 05/14/2007

At this point the city of San Diego cannot afford a pot to piss in, let alone allow another wealthy enterprise dictate to them how to spend your tax payer dollars. A lot of you are forgetting that the airport caters to businesses other than Sunroad. If other businesses were not allowed to whisk in and out of San Diego County via Montgomery Field, economic development would show some retardation. It is not just about these rich people with fancy toys. Small airports are often the gateway to economic development. If certain businesses have no place to land their planes they would land somewhere else and spend their business dollars developing the area around the airport they use. These businesses pay taxes, lowering your tax base in the long run. So imagine if all the businesses felt it was too dangerous to fly into Montgomery Field on bad weather days, there would be less tax income for the city of San Diego. It is obvious there is only personal interest in this situation. I agree with the people who say palms are being greased. The Feds should really take a look at this one. Oh! Wait! The ones who gave a darn were fired for conducting corruption prosecutions! For Sanders being a former Police Chief he sure seems to be looking the other way when it comes to people working for city hall. Regardless of his differences with the city attorney, corruption is corruption and no one is above the law.

[Report abusive or offensive comment](#)

By claycup on 05/14/2007

I always find it amusing when people claim that the ultra rich do so much the common citizen. Lower our tax rate, trickle down economics - then of course paralyze our thoughts that they may leave and go elsewhere because we inconvenience them. Oh the horror, some other town will receive their sustenance.

Is this why our city government wants to "remain spectators?"

In the next election, screw trying to elect powerless shiny pawns, let's put the corporations on the ballet. They already say they do more for us than government. One caveat - under no means can we inconvenience those that make over \$25m a year.

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By los on 05/14/2007

Claycup, please stop posting; your comments make no sense and don't have any reasoning behind them.

As to this issue, we need to awaken the citizenry out of their complacency. The apathy towards our city government only leads to us distancing from it further thus encouraging the cycle of destruction by those that have been either elected or hired to run it.

The fact is that this project should never have advanced to this since the original master plan was for a 3-storey maximum height, period. This shows the ineptitude running the city government. But it seems that no one gets fired in city government; they get to resign and collect retirement benefits without any accountability.

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By nfallawyer on 05/15/2007

I've always wondered what a ballet performed by corporations would look like. Obviously not "Swan Lake." : -)

[Report abusive or offensive comment](#)

By claycup on 05/15/2007

"Claycup, please stop posting; your comments make no sense and don't have any reasoning behind them"

Ah yes, censorship, what a strong rebuttal.

I did like the ballet comment though.

[Report abusive or offensive comment](#)

By any_user on 05/16/2007

Who needs rules?

Lets save city hall some time & eliminate planning, zoning, building permits & safety compliance alltogether.

That way we can all add on to our buildings & houses in any way we see fit.

Next we can order new maps and signs calling the city Sunroadiego in honor of the company who set the precedent.

Sorry Sunroad, contrary to Storys you have heard, City Hall is no longer for sale. Lower the height & follow the rules. Taxpayers do not want to pay for a legal battle caused by your greedy defiance of the FAA nor do we want to see anyone killed or injured by hitting your building or pay for the lawsuits if they do.

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