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## Documents Show Sanders Pursued Other Angles on Sunroad

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**Friday, June 15, 2007** | Before Mayor Jerry Sanders announced this week that he enthusiastically endorsed City Attorney Mike Aguirre's lawsuit against Sunroad Enterprises, the mayor had other plans for confronting the controversy at the Montgomery Field airport.

As recently as three weeks ago, Sanders' aides quietly lobbied federal officials to change flight paths at Montgomery Field airport to accommodate the developer's nearby office building, and Sunroad's experts played a role in crafting the city's presentation to the FAA, documents show.



**Mayor Jerry Sanders announced his endorsement this week of City Attorney Mike Aguirre's lawsuit against Sunroad Enterprises.** Photo: [Evan McLaughlin](#)

Additionally, Sanders' office didn't rely on Aguirre's legal strategy in recent months. Instead, documents show mayoral aides entertained several offers from Sunroad to settle Aguirre's lawsuit without the city attorney's knowledge.

Sanders also borrowed a San Diego County Regional Airport Authority executive to navigate the Sunroad issue because he claimed he was not receiving clear advice, despite directions from the city attorney, the FAA and the California Department of Transportation that the building's 180-foot height was a safety hazard to pilots under certain circumstances.

"For a number of reasons, my office has unfortunately been unable to get a clear analysis of whether or not the building is a safety risk to aviation, and, if so, whether there may be changes to operations or notices that would eliminate that risk," Sanders wrote in a March 2 letter to airport authority Chairman Alan Bersin.

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The bundle of documents, released by the City Attorney's Office, provides a window into the behind-the-scenes activities of the mayor and his staff as what could be the first political disaster of the Sanders administration unfolded. It illustrates a nuanced approach to resolving the controversy, if not a clear resistance to the city attorney's legal strategy.

### Related Links

- [In March, Sexton's Role Was Sunroad \(June 14, 2007\)](#)
- [Sunroad Tears at Aguirre-Sanders Partnership \(April 5, 2007\)<http://www.voiceofsandiego.org/articles/2007/04/28/government/760sunroad040507.txt>](#)

Now, Sanders has switched course, throwing his chips in with Aguirre and saying that the airport

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authority executive handling Sunroad issues was brought in to help the city run its municipal airports more generally. Aguirre's lawsuit seeks the unequivocal removal of the building's top two floors, which the FAA deems hazardous to nearby aircraft.

But before digging his toes into the firm stance he holds today, Sanders tried to resolve the situation through compromises with the company, beginning right as the dispute reached court in December.

### **Lending a Hand**

On March 2, Sanders acknowledged in a letter to Bersin that the city needed help in the matter. The mayor told Bersin, who he appointed to the authority's board, that the city government was not equipped to handle the Sunroad dilemma, and that he didn't want to bank on the outcome of the lawsuit Sanders now says is the city's only option.

The mayor claims the executive's loan was a move that was premeditated more than a year ago when the city began contemplating whether to transfer the operation of its two airports to the authority. But the first mention of borrowing an airport authority official came in the context of Bersin's response on March 15.

"Thank you for your letter dated March 2, 2007 in which you request assistance from the San Diego County Regional Airport Authority to help resolve issues surrounding the Sunroad Enterprises building near Montgomery Field," Bersin wrote.

"The President/CEO of the Airport Authority, Thella Bowens, will assign our highest level executive with the necessary expertise on these issues to work with the City."

Within a month, airport authority Vice President Ted Sexton would be loaned to the city. Sexton drew up a proposal to reconfigure departure and arrival routes at the airport if the 180-foot building stayed intact. He and Jim Barwick, director of the city of San Diego's Real Estate Assets Department, delivered the pitch to FAA officials at a May 22 meeting in Fort Worth, Texas.

Preparing the presentation took work -- some of it Sunroad's. The city's delegation collaborated with the developers' aviation consultants to work on proposed route changes if the building were to remain a hazard under the FAA's guidelines.

Before flying to Texas, Sexton had compiled a presentation proposing two alternative approaches to solving the Sunroad problem that did not involve altering or lowering Sunroad's building. The same two solutions had been proposed several months earlier in a report by a consulting company hired by Sunroad.

A copy of that report, compiled by Williams Aviation Consultants Inc. for Sunroad, was handed over to Aguirre as part of a public records request his office made, he said.

Rick Beach, a San Diego aviation activist who has been vocal in his opposition to Sunroad's plans for Montgomery Field, called Sexton's presentation: "a very nice presentation of the ideas in Sunroad's report."

In addition to putting together a presentation containing the nuclei of Sunroad's own advocated solutions, Sexton went one step further before meeting with the FAA.

Prior to the meeting in Texas, Sexton provided Tom Kamman, a Williams Aviation consultant currently employed by Sunroad, with a copy of the PowerPoint presentation he would be showing the FAA. Kamman replied to Sexton in an e-mail on May 19. In it, he wrote: "I changed the height shown in Slide 9 to reflect the data shown on the Sunroad building drawings."

An airport authority spokesman said Sexton was on vacation and couldn't comment on his presentation or his e-mails to and from Kamman.

In his May 19 e-mail, Kamman suggested another change to Sexton's presentation.

Sexton had included in his PowerPoint an inconspicuous statement: "City will not approve building

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permits on the existing Sunroad property above 160 feet, or as determined by FAA."

Kamman wasn't sure about that. "I think the statement about the City not approving other buildings on the property above 160 feet is premature and should be changed to something more generic such as 'won't approve a building height above that approved by the FAA,'" he wrote.

Sunroad has plans in place to build two more buildings on the land it owns adjacent to Montgomery Field. The company contends they are designed to be constructed at 200 feet and 220 feet, respectively -- both higher than the FAA's height threshold.

Sanders says none of the other Sunroad buildings in the area will exceed the FAA's 160-foot height limit.

The day before he flew to Texas, Sexton also e-mailed Sunroad Vice President Tom Story a copy of his presentation. In that e-mail, Sexton wrote: "Attached, please find the Draft presentation reflecting the company's/City latest discussions."

Story wouldn't comment for this story because the issue is a matter of litigation. Calls placed to Sunroad attorney Steve Strauss were not returned.

Ian Gregor, an FAA spokesman, said the FAA has never received a "formal presentation" from city of San Diego officials regarding mitigation of the Sunroad project. Gregor said he was not aware of the meeting between Sexton and Haggerty in Fort Worth. Besides, Gregor said, any changes to flight paths or air traffic patterns would involve a complex series of FAA meetings, public discussion and other bureaucratic and legal hurdles.

That doesn't preclude city and other officials from trying, he said.

"Anybody can test the waters," Gregor said. "Anybody can come to us and say 'How about this?' Or: 'How about that.'"

Sanders, who said he knew very little about the presentation's actual specifics, said he rejected what he considered to be the only outcome of the meeting: The building could still rise above 160 feet, but only if all flights during Santa Ana winds and low-hanging clouds were redirected over the Serra Mesa neighborhood. That scenario was unacceptable, Sanders said.

### **Compromises Mulled Along the Way**

Today, Sanders contends Aguirre's lawsuit is the only way to make the situation safe again. Sunroad could not be accommodated without some sort of concession from either the city, pilots or nearby residents, he said.

"You know what? Sunroad can't just dictate the rules on this," Sanders said. "They just violated everything in my estimation."

But Sanders' office was at least willing to listen to suggestions from the developers, as the collaboration with Williams Aviation showed.

The mayor's land-use aides also received multiple offers from Sunroad to settle the dispute outside Aguirre's lawsuit since December. Offers were made as recently as May 21, the day before Sexton and Barwick's presentation in Texas.

Aguirre wasn't included in the discussions, but he said he should have been because city law requires that he provide advice on legal matters.

The company, which is seeking \$40 million in damages if the office building is razed, offered several concessions to the Mayor's Office, but not to lower the building to the FAA's 160-foot height limit.

After meeting with Sunroad President Aaron Feldman on Dec. 19, Sanders said he immediately decided to allow the developer to "winterize" the building in December in order to stave off damages to the structure that he thought the city could ultimately become liable for.

The company proceeded with architectural work on the building after the stop-work order was tweaked to accommodate the company's needs, but Sanders said the work was more intricate than he wanted to allow.

"His idea of 'winterizing' and my idea were completely different," Sanders said.

Sanders considered other settlement offers as well. In one proposal, Sunroad would reduce the height of some parts of the building to 163 feet while leaving 15 percent at the current 180-foot level. In another, the overall altitude would be capped at about 166 feet.

In all of the proposals, the company suggests that Montgomery Field be fitted with a high-tech guiding device that would allow pilots to land straight into the Kearny Mesa-area airport without having to circle north, where the Sunroad building serves as a hazard.

City officials have estimated that the system would cost about \$2 million to implement and that additional expenses would be required to operate and to study the environmental impacts for the new route.

In an offer made to the city in December, a week before Aguirre filed the lawsuit, Sunroad said it would pick up the entire tab for the system and the study. Later, in April, the company said it would "partner" with the city and the FAA to fund the new procedure.

In a May 18 letter sent to federal and state officials, Sanders said the city would "coordinate with the FAA and the developer to fund and install" the system.

Sanders contends he never intended for city money to be spent on the project, and now said he has ruled out even the possibility to considering the system as an alternative. The only option for the city, Sanders said, is to make the developer take down parts of the building that exceed the height limit.

Aguirre appeared with Sanders at the press conference in which the mayor made his support for the high-tech system public, but the city attorney said Thursday that he never agreed with anything that fell short of tearing the building down to the allowed height.

Sanders said he never shared the settlement offers with Aguirre because he believes the City Attorney's Office was at fault for not raising concerns in 2006, when the mayor believes the Sunroad situation could have been avoided.

"What it amounts to is we asked for advice for this last year before the building was its full height, and we never got an answer," Sanders said.

University of San Diego law professor Shaun Martin said it is typical for a client, and not his or her lawyer, to be offered a settlement talk when the other party believes the attorney has become an obstacle. But for the Mayor's Office to not seek advice from the city attorney upon receiving the settlement shows the client "either didn't trust or respect your lawyer's counsel," Martin said.

"Whenever a client is keeping things from their lawyer, it means there must be a pretty big problem in the attorney-client relationship," Martin said.

Aguirre remains steadfast that Sanders took the matter into his own hands in order to help a campaign contributor. The city attorney has called Sanders "corrupt" in his handling of the matter.

"I think the mayor decided to go down a very dangerous path," Aguirre said. "I think that he was hoping to get away with something he shouldn't have, and it was wishful thinking."

The allegations are perhaps the final fissure of what remains in the two officials' partnership, which survived several smaller squabbles as both sides cooperated to work on the city's financial problems. Now, the two remain joined only by their position on a building they claim to be too tall.

Please contact [Evan McLaughlin](#) and [Will Carless](#) directly with your thoughts, ideas, personal

stories or tips. Or [send a letter to the editor.](#)