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## As fight over tower's height ends, battle over bill begins

By Matthew T. Hall and David Hasemyer  
UNION-TRIBUNE STAFF WRITERS

June 28, 2007

Now that everyone agrees the height of Sunroad Enterprises' controversial building in Kearny Mesa must be lowered, the question becomes who pays for it.

The answer, of course, is let the lawyers work it out.

A Sunroad attorney says the city or other "responsible parties" are on the hook. Not surprisingly, City Attorney Michael Aguirre says the height reduction is Sunroad's responsibility and beyond that the company may have to pay substantial fines for erecting a building he has branded a "nuisance."

Aguirre based a lawsuit against the company on that technical term, and Sunroad responded with its own lawsuit, demanding \$40 million in damages from the city for project delays. A trial date is set for October.

There's a chance this will become legal brinksmanship, but if this case is anything like the last big legal battle between a developer and the city of San Diego, a court fight could continue for years at great cost to everyone.

Yesterday, Aguirre said Sunroad attorneys are already talking to a land-use lawyer retained by the city about using a mediator to resolve the dispute.

The city has spent at least \$235,000 on outside attorneys to defend itself against Sunroad's lawsuit, filed four months ago. The issue has eaten up an inordinate amount of staff time and become a focal point for Aguirre and Mayor Jerry Sanders just as San Diego is beginning to emerge from a credibility crisis over lousy accounting, securities fraud and a cycle of mismanagement.

Only last month the city was taken off the hook for a potential \$150 million payment to developer Roque De La Fuente II over a dispute involving a 312-acre plot in Otay Mesa. A sliver of the case remains, but the U.S. Supreme Court decided not to review a 2006 state appellate court decision that overturned the judgment against San Diego. The lawsuit was filed in 1995.



HOWARD LIPIN / Union-Tribune  
At odds in recent weeks, Mayor Jerry Sanders (left) and City Attorney Michael Aguirre said yesterday that the city is on firm legal ground regarding the Sunroad project.

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“We are in a much stronger position here than in the Roque De La Fuente case,” Aguirre said.

At a joint news conference as City Hall closed yesterday, Sanders and Aguirre said the city stands on firm legal ground in demanding Sunroad reduce the office building by 20 feet on its own dime for safety reasons.

It was built to 180 feet after being fully permitted by the city despite reservations from state and federal officials that it was a hazard for pilots.

Still unclear is how and when Sunroad will comply with a requirement from federal regulators that the building not exceed 160 feet because it's so close to Montgomery Field, one of the nation's busiest general-aviation airports.

Yesterday, Sanders and Aguirre sent Sunroad's attorneys a formal response to a letter the city and its outside counsel received from them late Tuesday announcing the company's decision to lower the building.

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Sanders and Aguirre want Sunroad to say exactly when and how it will do so instead of generally agreeing to comply with Federal Aviation Administration regulations.

Sunroad spokeswoman Karen Hutchens said the company expects to prepare a timeline and work plan in coming days, though she wasn't more specific. Three lawyers representing Sunroad did not return telephone calls yesterday seeking comment.

“It's not as clear-cut as just 'OK we're going to cut it down to 160 feet,'” Hutchens said. “The building has many planes. It has many height levels at the top, so there will be a redesign, and it will be deconstructed to a level that will be approved by the FAA.”

She said the company and its lawyers are “assessing their legal alternatives,” but the “focus right now is getting the (alteration) job done.”

Aguirre said the municipal code allows the city to impose fines on those responsible for creating public nuisances and he intends to press for a maximum fine against Sunroad even though the city issued a building permit.

His office has yet to begin to calculate the total, but a number of things could affect the amount of the fine, he said. Some of the factors are the length of time the nuisance existed, the severity of the nuisance and the good-faith effort made to remedy the problem.

None of those factors are in Sunroad's favor, Aguirre said.

“Think about Sunroad's good-faith effort to mitigate the nuisance,” he said. “For 11 months, they did nothing.”

Aguirre also said the city will be entitled to recover the administrative costs associated with its quest to compel Sunroad to comply with the FAA regulations and state law. That includes things such as attorney fees and reimbursement for Development Services Department staff time.

He scoffed at the notion the city would be liable for the cost of tearing down any part of the building.

But Tuesday night, Sunroad attorney Dennis Crovella made it clear the company thinks it can hold the city – and other unnamed “responsible parties” – accountable for the cost associated with taking down segments of the building.

“The time, expense, and effort to reduce the height will be considerable,” Crovella said at a news conference.

He said that cost will be factored into the countersuit the developer filed against San Diego in response to the city's lawsuit last year.

“Sunroad will continue to pursue that litigation and recover the cost associated with the deconstruction of the building,” he said.

Vincent Bartolotta, a lawyer who represented De La Fuente in his lengthy court battle, said it's hard to say who would foot the bill until a trial.

“I think that's a matter of legal research,” he said. “At this point, it's pure speculation.”

But California Western School of Law professor Scott B. Ehrlich, who has been following the Sunroad saga, said he thinks it will be difficult for Sunroad to win its case because the developer should have known of the height restrictions.

Along with employing professional architects and builders with experience in such matters, common sense dictated asking the question about whether a tall building will cause a problem near an airport, he said.

It is Sunroad's responsibility as much as the city's to know the regulations, but a jury might not be so sympathetic to Sunroad, he said.

“It will be difficult for them to claim they were a poor, clueless developer who was at the mercy of the city and suffered damages,” Ehrlich said. “That is a ridiculous argument.”

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**By La Playa Heritage on 06/28/2007**

We are holding off on our Sunroad boycott until Mayor Sander and Mr. Aguirre unleash the cracken. When they say the word, our boycott campaign will begin.

It is nice to see Mayor Sanders and the City Attorney shake hands. We are all on the same team.

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**By groundloop on 06/28/2007**

Down with Sunroad. Obviously not operating in the interests of our city. They are a blight.

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**By Brawler73 on 06/28/2007**

I was wondering when Sunroad would cave. So a redesign it is. That only means more profit for those on the design team.

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**By DudeRancher on 06/28/2007**

It's a bitter handshake at that!

But it's still good to see the both of them on the same side... For Now! Time will only tell... May peace be between them in their future.

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**By Scott on 06/28/2007**

I think Jerry should pay. He waited until now to do something about it. Thanks so much.

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**By RonFro on 06/28/2007**

Sanders is going down that crooked path and good ol' Mike Aguirre called him out. Come on! Tom Story, former chief of staff for the mayor who quit amid a sinking ship that was America's Finest City, wrote a bazillion (that's a legal term) emails to the city IN VIOLATION OF the city's ethics policy of NO CONTACT with the city after separation for a period of one year.

Come on! And Aguirre is rightfully charging him. But Dumanis won't touch it & it's not because there was no crime ... it's becaust Story is also a republican.

Sanders get with the program. You think no one likes Mike but you're wrong - - - everyone outside your echo chamber LOVES Mike & you'll be lucky if he doesn't decides to run for mayor 'cause he'd boot your out.

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**By Undecider on 06/28/2007**

Only two responsible parties:

1. Mayor Sanders
2. Sunroad

No one else (we taxpayers included) need get the bill. But of course we know how the lawyers will work it out. We'll end up getting the bill somehow.

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**By sfwmergers on 06/28/2007**

So the rule now is that a developer is no longer entitled to rely on a permit granted to it by the City of San Diego? Is that Mike's world? Might as well just do away with the permitting process.

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**By NorthsideHarry on 06/28/2007**

Not only will San Diego not get the bill, but also Sunroad businesses in San Diego will be run into the ground if they insist on getting cute about this matter.

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**By Christopher Hall on 06/28/2007**

Don't start getting wishy-washy with Sunroad or any of the other corrupt practices going on -- this is a small and insignificant win for the people, and it may not yet even be a win. They caved in more due to peer pressure than due to the law: other developers and private interests have been screaming "Don't ruin it for us -- we still have our deals going!"

So today I quote Dread Scott:

"Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress."

We have them on the run, now is the time to turn up the heat and smoke them out of their caves, or in this case, out of the furthest reaches of Sanders' back closet, which is where they have all gone to hide for cover. Now they will go deeper under cover and the "black market" government deals with get even darker.

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**By DudeRancher on 06/28/2007**

FIRST: I can't help but wonder if Sunroad purposely and intentionally took advantage of San Diego's naivety, incompetence or what ever you want to call it, during the permitting process. From what I've read, Sunroad knew in advance that the FAA disapproving of the structure's height, but proceeded with the permits anyways.

SECOND: Who is responsible for knowing (a checklist of sorts) every little permit, license, study and so on... before a project is started? The city, or the builder? Someone has to be the responsible party here.

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**By B7 on 06/28/2007**

Thank heavens Aguirre has "won" his case! Instead of levying fines against Sunroad, maybe he should demand that Sunroad give him the top 20 feet to be removed from their building so he can use it to build up that ethical wall in his office that the court told him he needs to build back up and no longer step over.

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