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Sunroad review clears city officials

Investigation finds errors, miscommunication, but no crime

By Jeff McDonald
UNION-TRIBUNE STAFF WRITER

July 20, 2007

SAN DIEGO – Even though some city employees knew a Kearny Mesa office tower being built by Sunroad Enterprises violated federal height limits as early as April 2006, no one in senior leadership at City Hall was told for six months, a two-month investigation released yesterday concluded.



HOWARD LIPIN / Union-Tribune
Jo Anne SawyerKnoll, head of the city's ethics and integrity unit, answered questions yesterday about the results of a review of the Sunroad controversy.

The 40-page report, conducted and paid for by the mayor's office, found no proof of criminal wrongdoing by city employees or elected officials.

But investigators did find plenty of mistakes.

They chastised employees in the Development Services Department for failing to understand Federal Aviation Administration rules and for failing to fully stop construction of the 180-foot building until last month.

The investigators also blamed the City Attorney's Office for providing untimely legal advice, and pointed to poor communication between various departments at City Hall and outside agencies.

The \$25,000 report assigned no responsibility to top city employees or to Mayor Jerry Sanders, other than some misstatements the mayor made in June that were prepared in error by his staff.

"No evidence was found whatsoever of conspiracy, fraud, corruption, illegal conduct, violation of any federal or state law or regulation or improper influence by or of any city staff," the report stated.

The investigation was headed by Jo Anne SawyerKnoll, who runs the mayor's ethics and

Overview

Background: City officials permitted Sunroad Enterprises to continue building a 180-foot high-rise near Montgomery Field airport even though they knew more than a year ago that the plans violated federal height limits.

What's Happening: A report released yesterday found no evidence of criminal wrongdoing by city employees or elected officials. The report included six recommendations to prevent similar problems.

The Future: Mayor Jerry Sanders said he will evaluate the full report before disciplining any employees or adopting its suggestions.

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integrity unit. Former FBI agent Vincent DelaMontaigne and planning consultant Robert Copper assisted.

The investigators found no evidence that Sunroad owner Aaron Feldman, who hosted a fundraiser for Sanders during his 2005 mayoral campaign, received special treatment from City Hall.

Sanders halted construction of the 12-story office tower last month, eight months after he said he first learned of the problem. He said his not knowing beforehand was “unexplainable and inexcusable.”

Earlier this month, Sunroad agreed to lower the office tower to 160 feet, the highest elevation allowed by the FAA. The agency considers the building a hazard to planes landing in bad weather at Montgomery Field.

The company will pay to lower the building by mid-October but will proceed with its lawsuit against the city seeking \$40 million in damages.

Sanders ordered the investigation in May, immediately after *The San Diego Union-Tribune* published a two-day series detailing the process that allowed the building to rise 20 feet higher than the FAA limit.

Online: To view the city's report and attachments, go to www.uniontrib.com/more/sunroadprobe

At a news conference yesterday, the mayor accepted responsibility for the mistakes across City Hall and said he would work to see that they do not happen again.

But he refused to identify any employees who may be fired or disciplined as a result of the numerous errors, saying he would make those decisions after fully evaluating the report.

“Over the next couple of weeks, I’ll be deciding who we hold accountable and how we hold them accountable,” he said at a meeting later in the day with the *Union-Tribune* editorial board, attended by editors and reporters. The board regularly invites newsmakers to discuss current events.

Sanders did not immediately embrace a series of recommendations in the report. Instead, he said he would consider them carefully and act later.

“This report makes it painfully obvious that various processes failed us,” he said. “This is not a happy day for me or my administration.”

He sharply criticized Sunroad for pushing ahead with construction after telling the FAA it would limit the building to 160 feet. He also complained that the company exceeded its authority after the city amended its stop-work order in December to allow Sunroad to weatherproof the building.

“Sunroad had a separate and independent responsibility to comply with federal regulations,” Sanders said. “For reasons that remain unclear, they declined to do so.”

Sunroad lawyer Patrick Gunn disputed those contentions. But he said he was reluctant to address them in more detail because of the company’s lawsuit against the city.

“Many of the things at issue in the report or the subject of statements the mayor made today are at the heart of the litigation,” Gunn said. “We don’t think it’s appropriate to comment on them, however strongly we disagree.”

City Attorney Michael Aguirre, criticized by Sanders after suing Sunroad in December to try to force the company to lower the building, took a conciliatory position yesterday.

“What we want to do with this whole episode is to learn from it as a community,” said Aguirre, who appeared alongside the mayor at the news conference.

Federal regulators told Sunroad the building would be a hazard as early as April 2006, but construction proceeded.

In his only interview, Feldman told the *Union-Tribune* that he continued building because officials at City Hall told him they would deal with the FAA. But he refused to identify who made that suggestion.

Investigators said they could not substantiate Feldman's claim. However, no one from the La Jolla development company was interviewed as part of the investigation. Mayoral spokesman Fred Sainz said Sunroad officials were excluded because of the lawsuit.

City officials issued a permit allowing construction to begin and continue on the project – the first of three buildings planned within a mile of the busy airport – despite the FAA finding.

Although the report said no top officials knew about the controversy until after the structure topped out at 180 feet, investigators referenced an e-mail copied to city land-use chief James Waring dated June 29, 2006, that discussed the issue.

“It should be noted, however, that Waring stated, during his interview, he had no recollection of being advised of this situation until October 2006,” the report said.

At that time, city officials were relying on Sunroad's promise to the FAA that it would limit the height to 160 feet, investigators said.

The city staff “had no reason to believe that Sunroad would move forward with construction to above 160 feet prior to the resolution of the issue with the FAA,” the report said.

The report contained 56 attachments and ran 200-plus pages. It concluded with six recommendations designed to make sure such an issue never arises again.

Among other things, the report suggested combining the Planning and Development Services departments; merging the airports into the Public Works office; and directing city officials to alert more government agencies to projects planned near city airports.

Investigators also said the mayor should name a team to examine the airport land-use plan more closely; improve the relationship between Development Services and the City Attorney's Office; and boost training for development and planning staff.

Sanders defended the report as full and impartial, even though it was conducted by his own office.

“If we were going to cover this up, we certainly would have done a better job.”

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By Charles1966 on 07/20/2007

I wonder how much the Mayor paid for this report to come out in his favor?

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By The Big Churro on 07/20/2007

Gee, what a surprise. Lots of "mistakes", but no wrongdoing. Gloss over Waring's inability to remember that he discussed Sunroad back in October. No mention of the infamous December meeting. Oh, and let's merge planning and development to make it even easier for developers to get their way as quickly as possible.

I guess this is what you get when the head of your ethics department comes from the city schools.

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