



Memorandum

June 19, 2008

TO: City Attorney Mike Aguirre
FROM: Mayor Jerry Sanders
SUBJECT: Stop Work Order on Centrum 12 Office Building

I have strongly maintained that the Centrum 12 Office Building must be reduced in height to 160 feet. I don't believe that any person or company should be able to violate the law and get away with it. As such, I strongly support the City's case against Sunroad Enterprises and have acted proactively to bolster our case in court. I have made clear that the Centrum 12 Office Building will not receive a Certificate of Occupancy until this issue is resolved. I support the concept of a full stop work order. Given my responsibility to limit the taxpayers' liability, I first need to understand the implications of this action.

We are a society of laws and when matters are brought before a court there is an obligation to respect the importance of that process. While I clearly support reducing the height of the building, I think that it's irresponsible of you, as our City Attorney, to recommend action to me that may very well put our taxpayers in jeopardy without first analyzing the various and very relevant legal and financial issues. You have not requested a meeting on this subject nor have you sent any memoranda regarding this issue to me. The fact that you would communicate this recommendation at a news conference is very telling and speaks to your motivation on this subject. It is ironic that a non-lawyer such as myself has to write a memo to our City Attorney, as opposed to the other way around, asking questions about the legal and financial liability of such action.

I am writing to better understand what authority the City would have to stop work on portions of the building that are not at issue with any agency of government and given the existing development agreement on this property. Given that your success in court is by no means a certainty, I would like you to analyze for me the financial liability the City may incur if I do as you propose and issue a Stop Work Order for the entire building.

As I understand it, the new order that you are proposing would cover all construction activities on the entire work site. As drafted and reviewed for final issuance by your office, the Stop Work Order currently in place applies to the portion of the building that is in conflict with the Part 77 height limits, namely the top 20 feet. Given the fact that the building is no higher today than it

was when the original stop work order was issued – and your office drafted the Stop Work Order -- what new developments warrant stopping work on the entire building?

Further, the new Stop Work Order that you are proposing would suggest that there is an eminent nuisance and health and safety hazard which must be abated immediately. However, my staff has received direction from your office, as detailed below, not to pursue any remedies for the top 20 feet of the building.

Email from Carmen Brock, Deputy City Attorney
To Marcela Escobar-Eck, Director, Development Services Department
June 15, 2007:

“Deconstruction of the Building

At present, the issue of the deconstruction of the building is being evaluated by our expert architect, structural engineer, deconstruction specialist, and surveyor. If the building is ordered deconstructed, the court will rely upon what the experts tell the court regarding the actual height of the building, what needs to be done, and how it should be done. Of course, DSD will need to process the permits etc. However, any work regarding possible deconstruction should not occur in a vacuum. Chris Garrett and I really need to know what is going on at DSD in this regard to make sure we are all working together. No permits or authorizations should occur for deconstruction without our knowledge. Please... check with us first before any further authorizations of any kind occur. I cannot emphasize how important it is that the lawsuit not be jeopardized by trying to create a "fix" and acting without consulting the attorneys. We all need to stay aligned to protect our governmental immunities and to make sure the City's position remains as strong as possible.”

Please reconcile these seemingly contradictory suggestions for me.

By way of this memo, I am requesting a memorandum from Chris Garrett at Latham and Watkins, who has been hired as outside counsel to defend the City, on the possible effects that issuing this new stop work would have in the City's defense of this lawsuit.

Thank you.

cc: Honorable Members of the City Council