

PLANNING COMMISSION MINUTES OF FEBRUARY 23, 2009

2008-1067 – Aixtron Inc. [Applicant] **John Sobrato Trustee & Et Al** [Owner]: Application for a Variance from Sunnyvale Municipal Code section 19.42.030 to allow existing roof mounted equipment to exceed noise standards. The property is located at **1139 Karlstad Drive** (near Toyama Dr.) in an R-4/PD (High Density Residential/Planned Development) Zoning District. (Mitigated Negative Declaration) (APN: 110-14-197) NC

Noren Caliva, Assistant Planner, presented the staff report. She said additional letters of opposition received after the report was completed and have been provided to the Commission this evening. She said staff recommends that the Commission adopt the Mitigated Negative Declaration and approve the Variance with the attached conditions.

Comm. Klein discussed with staff the noise measurements taken at the time that Danbury Place, the neighboring housing development, was built with staff advising the primary source of noise was from traffic. **Trudi Ryan**, Planning Officer, explained that the measurements were taken closer to the ground and did not pick up roof noises which nearby residents in the three-story buildings are now hearing. Comm. Klein discussed current noise measurement methods.

Vice Chair Chang discussed with staff the recommended dates for requirements in mitigation number 3 on page 10 of the report.

Comm. Sulser discussed the ITR (Industrial to Residential) zoning designation with staff explaining that the subject property is zoned R-4 and is envisioned that a larger development would eventually occur on the site. Ms. Ryan said that the current use of the property is a legal non-conforming use and can continue to operate as an Industrial site. Comm. Sulser discussed with **Kathryn Berry**, Assistant Senior City Attorney, equity courts, with Ms. Berry saying there are two things operating here, the City ordinance, and it is complicated by the overlay of the nuisance.

Chair Rowe opened the public hearing.

Douglas Aikins, attorney with Rutan and Tucker, representing the applicant, said that Aixtron is leasing this site from Sobrato and when the lease expires the site will probably convert from industrial to residential although the lease could be extended. He said they agree with the staff analysis and mitigation. He encouraged the Commission to stick to the findings discussing Variances and equitable fairness factors. He said this legal non-conforming use is now annoying to the neighbors. He said the neighbors knew this noise source existed. He said Aixtron empathizes with the neighbors, and is asking for the right to continue this legal non-conforming use, voluntarily mitigating the

noise with an acoustical blanket for the chiller. He said Option 2 on page 9 of the report is the option Aixtron supports for the interim. He said he thinks the findings shown in Attachment A are justified.

Comm. Sulser asked the applicant what Aixtron does and why the machinery has to run 24 hours. **Steve Stevens**, with Aixtron, described the operations and said they need to maintain their clean room environment 24 hours a day.

Kevin Ngo, a Sunnyvale resident, expressed neighbors' concerns regarding the Aixtron noise levels and said that they disagree with staff's recommendation and would like to see the Commission approve Option 4. A large group of neighbors stood representing their agreement with Mr. Ngo's comments.

Comm. Sulser discussed with Mr. Ngo that he and his neighbor's did not realize what the intensity of the noise nuisance would be when they bought their homes.

Comm. McKenna discussed with Mr. Ngo the evaluation and mitigation of the noise with Mr. Ngo reiterating the neighbors recommend mitigation Option 4.

Comm. Hungerford discussed with Mr. Ngo that shutting windows reduces the noise, however it is nice to be able to open the windows. Mr. Ngo said noise from the freeway is not a concern.

David Ziegler, a Sunnyvale resident, discussed that the noise nuisance from Aixtron is worse at night and when he leased his apartment he was not shown the one he would rent so the problem came up after he moved in.

Bin Shan, a Sunnyvale resident, said the noise from Aixtron disturbs his sleep. He discussed decibels (dBA) and noise measurement said Option 4 would still result in violations to the night noise standard. He asked that the City work more proactively towards the noise reduction.

Luis Larzabal, a resident who lives near Aixtron, said the industrial businesses do not care about the residential neighborhoods and whatever it costs to mitigate the noise pales in the negative affect of the industries on property values. He said he is disappointed with the City's long-range planning and asked the Commission to keep the noise below 45 dBA.

Adam Berkon, a Sunnyvale resident, said Aixtron is in the middle of his neighborhood and is a noise nuisance. He said he understands these neighborhoods are part of the long-range housing plans and asked the Commission for their help to improve the conditions in their residential neighborhood.

Richard Sabin, a Sunnyvale resident, said his home looks at Aixtron and from the 30 foot level that Aixtron is loud and annoying. He said he feels like he did due diligence when he bought his home and did not know until his first night and he was on the third floor what the noise was going to be. He said this is a great place to live except for the noise at night and he wants to keep his windows open in the summer.

Lorraine Larzabal, a resident, commented about the large number of complaints and said Aixtron needs to get the dBAs down to 45.

Sue Jin, a Sunnyvale resident, said her bedroom faces the roof of Aixtron, and asked for the Commission to help reduce the noise as there are people suffering from the noise.

Wenyi Jin, a Sunnyvale resident, said the noise levels coming from Aixtron are too loud and are stronger than what is shown on page 8 of the report. He said when he bought his house he did not know what the sound would be on the third story.

Arthur Schwartz, a Sunnyvale resident, discussed different aspects of noise saying that dBAs do not measure certain frequencies. He suggested that Sunnyvale take a leadership roll and study noise measurement methods, suggesting dBC, that would better meet the needs of people.

Comm. McKenna discussed with Mr. Schwartz how airports measure noise.

Comm. Sulser discussed with Ms. Ryan that the Sunnyvale Noise Sub-element is anticipated for update in 2010 and the Council has directed that staff include in the update related noise and could include something like how we measure noise.

Chair Rowe further discussed dBA and dBC with Mr. Schwartz.

Jim Griffith, a Sunnyvale resident, said when most people bought the units at Danbury there was no practical way to know how the noise would be as the homes were not built yet. He said that something needs to be done to make this a livable situation for people who spent a lot of money on the property and cannot enjoy it.

Mr. Aikins acknowledged that the problems are unarguable. He discussed the differences in dBAs between Option 2 and Option 4 for noise reduction on page 9 of the report. He discussed the Variance Findings and the legal ramifications. He said the Commission is to weigh the facts, make the findings if they can be made, and issue the Variance on terms that are appropriate for the circumstances. He said the points of the speakers are very persuasive. He said they agree measuring the dollars per dBA is not a very effective way to measure mitigation. He said Aixtron thinks Option 4 is expensive and that Option 2 is consistent with the legal obligations and is supported by the facts.

He discussed the long-range Planning view and said this is part of the transition phase. He said Aixtron is making more noise than is allowed, but blamelessly.

Comm. Klein discussed with the applicant's consultant **Randy Waldeck**, of Charles M. Salter Associates, the probable reason for differences in the measurements.

Ms. Berry discussed the concept of "coming to the nuisance". She said even though Aixtron has been on this site for a long time that if it is presenting a nuisance that they have to take reasonable remedy for reasonable cost to mitigate the nuisance.

Greg Storey, a Sunnyvale resident, discussed the principle of equity, coming to a nuisance, and principles of fairness. He said when this issue first arose and was discussed with Aixtron, that Aixtron said the neighbors had not established where noise coming from which was an absurd comment.

Mr. Aikins reviewed the Findings and said that Aixtron has been doing what it was supposed to do under the existing ordinance when it moved on to the site years ago. He said Aixtron has a lease, and this is a legal non-conforming use, which is a matter of fairness and equity. He said the Variance would produce a 10 dBA reduction of the existing noise and this would be a material benefit.

Chair Rowe closed the public hearing.

Comm. Hungerford asked staff for clarification of the result of Option 2 concluding that the tone would be reduced by 10 dBA and the overall sound would be reduced by 5.3 dBA. Ms. Ryan said by reducing the tone, the standard required is changed from a 45 dBA to a 50 dBA for nighttime noise.

Comm. McKenna further discussed with staff the dBA, the noise, and the audible "tone". Ms. Ryan said staff's opinion is that the blanket reduces the audible tone which increases the standard to 50 dBA, and commented that if the applicant met the standard they would not be asking for a Variance.

Comm. Travis confirmed with staff that if the blanket is used that the standard becomes 50 dBA.

Chair Rowe discussed with staff that this property is not meeting and operational noise standard and has applied for a Variance. Chair Rowe asked staff if the blanket gets rid of the more uncomfortable noise. Ms. Berry said if the Commission finds that the letter from the acoustical expert convincing that the blanket would reduce the noise, then yes.

Comm. Hungerford confirmed that the Commission can approve the Variance, approve the Variance with modified conditions, or deny the Variance. He discussed the

options with staff with Ms. Berry discussing possible options for the Commission's decision.

Comm. McKenna discussed with staff the structuring of the motion if she would like is to approve noise Option 4.

Vice Chair Chang discussed with staff the result of Option 2 versus Option 4.

Comm. Travis moved for **Alternative 2, to adopt the Mitigated Negative Declaration and approve the Variance with modified conditions.** He said the modified condition is that **the option for noise reduction would be number 4 shown on page 9 of the report which is for the applicant to install a chiller sound blanket, scrubber barriers, and scrubber silencers.** **Comm. Klein** seconded the motion.

Comm. Travis said that there is a give and take in this situation as the public has moved into an area that once was industrial. He discussed the reasoning for his motion. He said he was able to make the findings using Option 4 on page 9.

Comm. Klein said he is able to make the findings. He said this Commission has seen similar applications with longtime industrial companies near residential and said it is difficult to deal with the issues with a community in transition. He said he is able to grant the Variance as the applicant's business has been in this location for a long time. He said granting the Variance helps the applicant get close to the regulations without shutting down the business and at the same time helps the residents.

Ms. Ryan noted that the draft conditions require the chiller blanket would be required to be installed within 30 days of the hearing date. She asked the Commission what their requirement for the installation of the scrubber barriers and scrubber silencers is. **Comm. Travis** said that **the motion would include with modifications to the conditions that the scrubber barriers and silencers be installed within 90 days of the hearing date,** concurring with staff **that extensions would be available through the Director of Community Development if needed. This was acceptable to the maker seconder.**

Comm. Sulser said he is sympathetic to what the motion tries to do unfortunately he would not be supporting the motion as he cannot make finding number 2 based on the public testimony this evening.

Vice Chair Chang said he would be supporting the motion as he was able to make the findings and the business owner has the right to apply for the Variance. He said he thinks the motion provides the best mitigation of the noise for the neighbors.

Comm. Hungerford said he would be supporting the motion as he can make finding 2 with this motion. He said by taking the extra step the mitigation will bring the noise level

down and he thinks the cost is reasonable compared to the value of the homes and the quality of people's lives.

Comm. McKenna said she would be supporting the motion. She said the history of the country is people moving in and creating change because of the nature of development increasing the demand for housing. She said she thinks noise is a significant environmental issue to be faced. She said she is skeptical about solutions as we do not really understand noise well, that waiting two years would not help this problem, and that she feels this is the appropriate motion.

Chair Rowe said when Danbury Place was approved no one thought these three-story buildings would have this problem with noise. She said on her site visit she could finally hear the humming noise on the west end. She said she agrees with the fellow Commissioners.

ACTION: Comm. Travis made a motion on 2008-1067 to adopt the Mitigated Negative Declaration and approve the Variance with modified conditions: that the applicant be required to install a chiller sound blanket, scrubber barriers, and scrubber silencers; and that the conditions of approval include that the scrubber barriers and silencers be installed within 90 days of the hearing date and that extensions for those installations be available through the Director of Community Development if needed. Comm. Klein seconded. Motion carried 6-1, with Comm. Sulser dissenting.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than March 10, 2009.