



## Agenda Report

21-250

Agenda Date: 2/9/2021

### REPORT TO COUNCIL

#### SUBJECT

Action on Request to Set March 9, 2021 for a Public Hearing to Consider the Appeal Submitted by Santa Clara Citizens for Sensible Industry c/o Legal Counsel for 1111 Comstock Street (PLN2019-13941; CEQ2020-01079)

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

At a publicly noticed meeting on November 4, 2020, following public testimony and deliberation, the Development Review Hearing officer adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) and approved architectural review of a data center at 1111 Comstock Street (CEQ2020-01079 and PLN2019-13941). The approved project is for a new four-story, approximately 121,170 square-foot data center building, with surface parking, landscaping and site improvements on a 1.38-acre project site. The project includes the demolition of the existing 23,765 square foot one-story industrial building and the removal of surface paving and existing landscaping prior to project construction.

On November 12, 2020, Adams Broadwell Joseph & Cardozo, legal counsel for Santa Clara Citizens for Sensible Industry (SCSSI), filed an appeal of the Development Review Hearing approval of the data center. The appeal was referred to the Planning Commission, which conducted a public hearing on January 27, 2021, and at the conclusion of which, voted unanimously to deny the appeal and uphold the MND and architectural approval, with an added condition to make design revisions.

On February 2, 2021, SCSSI filed an appeal of the Planning Commission's January 27, 2021 action.

#### DISCUSSION

Pursuant to recent revisions to Chapter 18.76 of the City Code, all architectural decisions are appealable directly to the City Council, except those involving construction or alterations of single-family residences.

Prior to the March 2020 Code amendment, architectural review was the responsibility of the City's Architectural Committee, and Architectural Committee decisions were appealable to the Planning Commission. Planning Commission decisions, in turn, were appealable to the City Council. In many instances, this resulted in projects going through three different public hearings before reaching final approval. As a result, in early 2020, the City Council adopted an ordinance revising Chapter 18.76, Architectural Review. Initial architectural decisions for projects like the data center now take place at a Development Review Hearing (DRH) conducted by planning division staff, and DRH decisions are appealable directly to the City Council. The intent of the ordinance update was to expedite the appeal

process by limiting the types of development applications that involve the Planning Commission.

On November 12, 2020, SCSSI appealed the November 4, 2020 DRH decisions using the City's standard appeal form, and paid the applicable appeal fee. However, the appeal form had not been updated to align with the 2020 amendments to the Architectural Review chapter. As a result it still reflected the previous appeal process which included the interim appeal to the Planning Commission. Following the process reflected in the appeal form, City staff referred the appeal to the Planning Commission rather than directly to the City Council. On January 27, 2021, the Planning Commission conducted a public hearing and voted to uphold the DRH decision, with an added condition that the developer make additional revisions to the design. On February 2, 2021, SCSSI filed an appeal to the City Council of the Planning Commission action.

SCSSI's November 2020 appeal gives them a right to a *de novo* hearing before the City Council, which they still have not received. Because the Planning Commission appeal was not proper under the amended code, SCSSI was not charged a second appeal fee when they filed the February 2 appeal.

The action before the Council tonight is to set a hearing date to consider SCSSI's appeal of the November 4, 2020 DRH.

### **ENVIRONMENTAL REVIEW**

An MND was prepared for the project by the environmental consultant firm David J. Powers & Associates, in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at <https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/390/3649>, on September 18, 2020 and circulated for 20-day review from September 21, 2020 to October 13, 2020, in accordance with CEQA requirements.

The MND examined environmental impacts associated with project development and identified potentially significant cultural resources, biological resources, geology and soils, and noise impacts that with incorporation of mitigation measures identified in the MND and MMRP would reduce the potentially significant impacts to less than significant. A detailed discussion of the potential impacts and mitigation measures to be applied to the project are specified in the MND and would be implemented through project conditions of approval and the MMRP for the project.

### **FISCAL IMPACT**

There is no impact to the City for processing the appeal application other than administrative staff time and expense typically covered by processing fees paid by the applicant.

### **COORDINATION**

This report has been coordinated with the Community Development Department and City Attorney's Office.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's

Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> .

Prior to holding the March 9, 2021 appeal hearing, notices of the public hearing will be posted in the vicinity of the project site and mailed to neighboring properties, in accordance with City Code requirements.

### **RECOMMENDATION**

Set March 9, 2021 for a Public Hearing to consider the Appeal submitted by Santa Clara Citizens for Sensible Industry c/o Legal Counsel of the Development Review Officer's November 4, 2020 adoption of the Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program and approval of the Architectural Review and Minor Modifications to increase the building height to 87 feet and reduce parking space requirements for the Comstock Data Center Project at 1111 Comstock Street.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Appeal Received on February 2, 2021