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Title: Action on the Appeal of the Development Review Hearing Adoption of a Mitigated Negative Declaration and Architectural Approval of a Data Center Project Located at 1111 Comstock Street

Sponsors:

Indexes:

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Attachments: 1. Mitigated Negative Declaration (MND), Mitigation Monitoring and Reporting Program (MMRP), and Response to Comments (RTC) Received on the MND, 2. Development Review Hearing Staff Report of November 4, 2020, 3. Development Review Hearing Meeting Minutes of November 4, 2020, 4. Planning Commission Staff Report of January 27, 2021, 5. Excerpt of Planning Commission Meeting Minutes of January 27, 2021, 6. Appeal of the Planning Commission Hearing Action of January 27, 2021, 7. Resolution to Deny the Appeal and Uphold the Development Review Hearing Adoption of the MND and MMRP, 8. Resolution to Deny the Appeal and Uphold the Development Review Hearing Approval of the Data Center Project, 9. Development Plans, 10. Conditions of Approval, 11. POST MEETING MATERIAL

Date	Ver.	Action By	Action	Result
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REPORT TO COUNCIL

SUBJECT

Action on the Appeal of the Development Review Hearing Adoption of a Mitigated Negative Declaration and Architectural Approval of a Data Center Project Located at 1111 Comstock Street

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

At a publicly noticed Development Review Hearing (DRH) on November 4, 2020, following public testimony and deliberation, the Development Review Officer adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) and approved the 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 DRH 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 for design revisions to enhance the architecture of the building.

On February 2, 2021, SCSSI filed an appeal of the Planning Commission's January 27, 2021 action. The referral to the Planning Commission for the appeal of the Development Review Hearing was an error as in early 2020, the City Council adopted an ordinance revising Chapter 18.76, Architectural Review, which now specifies that DRH decisions are appealable directly to the City Council.

The intent of the ordinance update was to expedite the appeal process by eliminating double appeals to the Planning Commission and then to the City Council. 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 November 2020 appeal gives SCSSI a right to a *de novo* hearing before the City Council.

DISCUSSION

During the November 4, 2020 Development Review Hearing, Kendra Hartmann of Adams Broadwell Joseph & Cardozo reiterated the comments previously submitted regarding the MND. In her verbal comments, Ms. Hartmann requested the preparation of an Environmental Impact Report (EIR) and that the Development Review Hearing Officer disapprove the MND and deny the Architectural Review application. The comments included claims that the MND failed to disclose, analyze, and mitigate potential impacts to air quality and greenhouse gas emissions, and public health. The letter also included claims that the City did not provide all of the documents referenced in the MND for the entire comment period and that the document's project description was incomplete. The letter's conclusion requested that the Development Review Hearing Officer disapprove the project, asserting that the Development Review Hearing Officer could not make the necessary findings for architectural approval, and that an EIR should be required.

In response, City staff and the CEQA consultant, Michael Lisenbee with David J. Powers and Associates, advised the hearing officer that Ms. Hartmann had not raised any new issues than those in the previously submitted comment letter, and that these comments were thoroughly addressed by the City in the Response to Comments (RTC) document (*Attachment 1*). As provided in more detail in the RTC, the air quality emissions from backup generators were determined to be less-than-significant based on regulations of the Bay Area Air Quality Management District (BAAQMD), which direct the City to measure anticipated emissions from the number of hours of generator testing each year, but not based on occasional power outages. Greenhouse gas emissions were determined to be less-than-significant based on the fact that the project would result in 43.5% lower emissions than the statewide average for an equivalent facility due to Silicon Valley's Power mix and given the project's energy efficiency measures to reduce emissions. Potential health impacts were appropriately modeled and determined to be less-than-significant using the 2015 Office of Environmental Health and Hazard Assessment (OEHHA) risk assessment guidelines and California Air Resources Board (CARB) guidance.

In addition, the MND and all of its appendices were available for the entire comment period. Ms. Hartmann's suggestion that the City also had a duty to provide every document "referenced" in the MND for the entire comment period was based on a pre-2018 CEQA regulation that is no longer in effect. The City did, however, provide Ms. Hartmann with all of the referenced documents, as she requested, in response to a public records request.

Following the public comment, the hearing officer reviewed and deliberated and then adopted the MND and MMRP and approved the Architectural Review of the project subject to conditions of approval established by the City's Project Clearance Committee.

On November 12, 2020, Adams Broadwell Joseph & Cardozo, on behalf of SCSSI, filed an appeal within the seven-day appeal period of the Development Review Hearing action on the project. The Appeal challenges both the approval of the MND and MMRP and the architectural review.

For the MND and MMRP, the Appeal includes largely the same comments that were expressed in the comment letter submitted on October 13, 2020 during the MND 20-day comment period and verbally during the public hearing. The appeal repeats the claim that there is insufficient evidence to approve the project and asserts the need for further environmental analysis and the preparation of an EIR. As discussed above, the City's position is that the MND and MMRP conform to the requirements of CEQA and that no further environmental analysis is required.

For the architectural review, the Appeal alleges that the project would not meet the required finding that a project cannot "materially affect adversely the health, comfort or general welfare." As discussed above, the MND's analysis included a Health Risk Assessment that determined the health impacts of the project would be less than significant. Moreover, approval of the architectural application for the project would implement the purpose and intent of the City's General Plan and conform to the Zoning Ordinance. The proposed data center project is a permitted use under the Low-Intensity Office/Research and Development (R&D) land use designation and Light Industrial (ML) zoning designation for the project site. The project involves investment in the development of a Class A building structure and site improvements that would enhance the streetscape and increase property values by replacing derelict buildings, asphalt surface parking areas, and minimal landscaping on the site. The project provides adequate on-site parking and would not increase traffic congestion or hazards as a data center use is a low employee density project and low vehicle trip generating use. The project furthermore is in keeping with the scale and character of new development of data centers in the industrial sector.

The appeal was referred to the Planning Commission, which conducted a public hearing on January 27, 2021. On the afternoon of the hearing, the appellant submitted another letter, raising similar issues to those they raised previously; the Assistant City Attorney verbally responded to each allegation in the letter at the public hearing. At the conclusion of the hearing, the Commission 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. The appeal to City Council does not provide any new information or arguments that were not already addressed in the RTC, previous staff reports, and at the Planning Commission meeting. The MND, MMRP, and Architectural Review permit findings are sufficient to approve the subject project.

ENVIRONMENTAL REVIEW

A 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 Planning Department received one comment letter on the MND from Adams Broadwell Joseph & Cardozo. Responses to comments received on the MND during the 20-day review period were prepared and are provided as *Attachment 1*.

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 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>>.

March 5, 2021, the notice of the public hearing for this item was posted in three conspicuous locations within 300 feet of the project site. On March 5, 2021, the notice was also mailed to property owners within 500 feet of the project site. At the time of this staff report, the Planning Division has not received any public comments for this appeal.

ALTERNATIVES

1. Adopt a resolution to deny the appeal and uphold the Development Review Hearing adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Adopt a resolution to deny the appeal and uphold the Development Review Hearing architectural approval of the data center project located at 1111 Comstock Street, subject to conditions.
3. Approve the appeal and overturn the Development Review Hearing adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
4. Approve the appeal and overturn the Development Review Hearing architectural approval of the data center project located at 1111 Comstock Street.

RECOMMENDATION

Alternatives 1 and 2:

1. Adopt a resolution to deny the appeal and uphold the Development Review Hearing adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and
2. Adopt a resolution to deny the appeal and uphold the Development Review Hearing architectural approval of the data center project located at 1111 Comstock Street, subject to conditions.

Reviewed by: Andrew Crabtree, Director, Community Development Department

Approved by: Deanna J. Santa, City Manager

ATTACHMENTS

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2. Development Review Hearing Staff Report of November 4, 2020
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