



## Agenda Report

18-907

Agenda Date: 7/17/2018

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on Appeal of Planning Commission Approval of a Mitigated Negative Declaration and Architectural Review for a Data Center Project Located at 2305 Mission College Boulevard

#### **BACKGROUND**

On April 18, 2018 the Architectural Committee adopted a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MND/MMRP) and granted Site and Architectural Review approvals for a two-story 495,610 square foot data center on the 15.7 acre project site at 2305 Mission College Boulevard. The project includes the demolition of an existing office/R&D building. As part of the project 120 generators would be installed within a generator yard west of the data center building and a new substation would be constructed on the northwest corner of the site.

Lozeau Drury LLP, the firm representing Laborers International Union of North America, Local 270, and Adams Broadwell Joseph & Cardozo (Adams Broadwell), representing the California Unions for Reliable Energy, filed an appeal of the Architectural Committee's actions. Lozeau Drury LLP appealed the adoption of the MND/MMRP, and Adams Broadwell appealed both the adoption of the MND/MMRP and the Architectural Review. On June 13, 2018 the Planning Commission considered the two appeals and after some clarifying questions regarding the energy usage and emission, the Planning Commission overruled the appeals and upheld the Architectural Committee's actions.

On June 20, 2018, the two law firms filed separate appeals of the Planning Commission's action. Both appeals were properly filed and paid for within seven calendar days of ARC's decision. The two appeals are attached to this report, along with related documents.

#### **DISCUSSION**

In the materials submitted with the appeals, the appellants raised concerns related to the project MND, including concerns about the air quality analysis, greenhouse gas analysis, noise impacts during emergency operation, battery impacts, cancer risk, and other health risks. The environmental consultant that prepared the MND addressed these concerns in the MND response to comments and further in a supplemental memo, both of which are attached to this report.

In addition to the aforementioned concerns, Adams Broadwell also appealed on the basis that the City could not make two of the findings required for Architectural Review required by City Code Section 18.76.020 (c)(2) and (4):

“(2) That the design and location of the proposed development and its relation to neighboring developments and traffic is such that it will not impair the desirability of investment or occupation in the neighborhood, will not unreasonably interfere with the use and enjoyment of

neighboring developments, and will not create traffic congestion or hazard.”

For this finding, the design is a modern architectural style that has been vetted by the Architectural Committee and subject to a public review process, and is consistent with the City’s adopted Design Guidelines. The proposed structure is comparable to the prior use on the site, which was a two-story, 358,000 sf office/R&D building and parking lot. In addition, the Project would not result in increased traffic congestion or hazards; in fact, the proposed project will result in a significant reduction of vehicle trips compared to the prior development on the site.

“(4) That the granting of such approval will not, under the circumstances of the particular case, materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development, and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.”

For this finding, the proposed project is similar in scale to the surrounding Office/R&D and industrial developments, and the MND determined that with mitigation, the project would not result in any significant environmental impacts.

Finally, Adams Broadwell made the allegation that the City lacks permitting authority and that California Energy Commission (CEC) would need to review the project prior to the City. While the project may require subsequent approvals from other government agencies, the City’s land use action is not dependent upon these approvals and the normal process is for the City to take the first action. The CEC was included in the noticing for the review of the MND, but did not submit a comment letter. Additionally, the permitting authority of the California Energy Commission is not a CEQA issue.

#### *Conclusion:*

Approval of the proposed data center would secure the purpose and intent of the City’s Zoning Ordinance and the General Plan, in that the proposed data center project is a permitted use in the Light Industrial Zoning District, provides adequate onsite parking, would not increase congestion or hazards, and is in keeping with the scale and character of the industrial area.

### **ENVIRONMENTAL REVIEW**

A Mitigated Negative Declaration (MND) was prepared and a Notice of Availability was circulated for a 30-day period from March 5, 2018 to April 5, 2018 in accordance with California Environmental Quality Act (CEQA) requirements. At the request of Adams Broadwell, the City granted an extension of the review period to April 12, 2018. On the basis of the Initial Study/MND, it has been determined that the proposed action, with the incorporation of the mitigation measures described below, will not have a significant effect on the environment. Four organizations responded to the IS/MND: Adam Broadwell Joseph & Cardozo, Lozeau Drury LLP, Santa Clara Valley Transportation Authority, and Santa Clara Water District. Responses to comments were prepared by David J. Powers and are attached to this report and were reviewed and approved by the City Attorney’s Office.

A response to the environmental concerns raised by both appellants has been prepared in coordination with the environmental consultants for the project, and the City Attorney’s Office and is attached to this report. The summary of this response finds that there are no changes to the conclusions of the MND. As stated in the MND, all impacts associated with the proposed project are less than significant after mitigation; therefore, no additional mitigation measures are required.

Consequently, the assertion by the appellants that the project requires the preparation of an Environmental Impact Report is unfounded.

### **FISCAL IMPACT**

There is no impact to the City for processing the requested 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**

On July 6, 2018, a notice of public hearing of this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 300 feet of the project site. Planning Staff has not received public comments for this appeal.

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 report to council 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>> or at the public information desk at any City of Santa Clara public library.

### **ALTERNATIVES**

1. Overrule the appeal and uphold the Planning Commission's adoption of the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
2. Overrule the appeal and uphold the Planning Commission's approval of the architectural review for the data center project located at 2305 Mission College Boulevard, subject to conditions.
3. Sustain the appeal and overturn the Planning Commission's adoption of the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
4. Sustain the appeal and overturn the Planning Commission's approval of the architectural review for the data center project located at 2305 Mission College Boulevard, subject to conditions.

### **RECOMMENDATION**

Alternatives 1 & 2:

1. Overrule the appeal and uphold the Planning Commission's adoption of the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
2. Overrule the appeal and uphold the Planning Commission's approval of the architectural review for the data center project located at 2305 Mission College Boulevard, subject to conditions.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
2. Planning Commission Staff Report of 6/13/2018
3. Excerpt of Planning Commission Meeting Minutes of 6/13/2018
4. Architectural Review Committee Staff Report

5. Excerpt of Architectural Review Committee Meeting Minutes of 4/18/2018
6. Response to Comments on MND
7. Appeal of ARC from Lozeau Drury LLP
8. Appeal of ARC from Adams Broadwell Joseph & Cardozo
9. Appeal of PC from Lozeau Drury LLP
10. Appeal of PC from Adams Broadwell Joseph & Cardozo
11. Supplemental Memo
12. Development Plans
13. Resolution to Overrule the Appeal and Uphold the Adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
14. Resolution to Overrule the Appeal and Uphold the Architectural Review
15. Conditions of Approval