



Agenda Report

19-721

Agenda Date: 8/28/2019

REPORT TO PLANNING COMMISSION

SUBJECT

Public Hearing: Action on Appeal of Architectural Committee Adoption of a Mitigated Negative Declaration and Approval of a Data Center Project Located at 1150 Walsh Avenue

BACKGROUND

At a publicly noticed meeting on June 19, 2019, the Architectural Committee adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) and approved architectural review of a data center at 1150 Walsh Avenue (CEQ2018-01049 and PLN2018-13128) following public testimony and deliberation. The proposed project is for a new four-story, 160,450 square foot data center building, with 11 back-up diesel generators, a 27 mega-watt electrical substation, surface parking, landscaping and site improvements on a 3.32-acre project site. The project includes the demolition of three, one-story industrial buildings totaling 37,443 square feet and the removal of surface paving and existing landscaping prior to project construction.

On June 26, 2019, Adams Broadwell Joseph & Cardozo filed an appeal of the Architectural Committee's approval of the data center (PLN2019-13974). The appeal is provided as Attachment 5.

The Staff Report for the Architectural Committee meeting of June 19, 2019 is provided as Attachment 2 and the Development Plan is included as Attachment 10.

DISCUSSION

Immediately preceding the start of the June 19, 2019 Architectural Committee meeting, Yair Chavez of the law firm Adams Broadwell Joseph & Cardozo submitted comments on behalf of California Unions for Reliable Energy (CURE) regarding the MND. In his comments, Mr. Chavez requested the preparation of an Environmental Impact Report (EIR) and that the Architectural Committee disapprove the MND and deny the Architectural application. The comments included claims of deficiencies in the scope of the analysis, deferment of mitigation measures and inadequacies in the analysis of air quality (including operational nitrous oxide and particulate matter emissions), battery use and greenhouse gas impacts; as well as the assertion that there is not substantial evidence to make the findings for architectural approval of the project.

The Assistant City Attorney, Alexander Abbe and the environmental consultant, Brianna Bohonok from Circlepoint reviewed the correspondence during the meeting and provided verbal responses to all of the MND comments following staff presentation of the development proposal. The discussion and rebuttal of the comments are provided in the Excerpt Architectural Committee Meeting Minutes in Attachment 3. Following the applicant's presentation and comments by Mr. Chavez reiterating the request for the preparation of an EIR, the Committee deliberated and adopted the MND and MMRP and approved the Architectural application of the project as submitted, subject to conditions of approval established by the City's Project Clearance Committee (Attachment 9).

On June 26, 2019, Adams Broadwell Joseph & Cardozo, on behalf of CURE, filed an appeal within the seven-day appeal period of the Architectural Committee's action on the project. The Appeal includes largely the same comments that were expressed in both the comment letter submitted on April 5, 2019 during the MND 30-day comment period and correspondence submitted to the Architectural Committee on June 19, 2019, for which responses have been provided (See *Attachment 1 for the Project's CEQA link to Responses to Comments (RTC) Received on the MND and Attachment 3 for responses provided at the Architectural Committee meeting of June 19, 2019*). 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.

A Response to Comments Received on the MND and RTC (dated August 2019) has been prepared and is provided as Attachment 6 in response to the June 26 comments conveyed along with the Appeal.

The City's position is that the MND and MMRP conform to the requirements of CEQA and no further environmental analysis is required. Denial of the appeal and action to uphold the Architectural Committee actions to adopt the MND and MMRP and approval of the architectural application for the project 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 Heavy Industrial land use designation and Heavy Industrial (MH) 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 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.

ENVIRONMENTAL REVIEW

An MND was prepared for the project by the environmental consultant firm Circlepoint, in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at www.santaclaraca.gov/ceqa on March 6, 2019 and circulated for 30-day review on March 6, 2019 and closed on April 5, 2019, in accordance with CEQA requirements. The Planning Department received agency comments in response to the MND from the Native American Heritage Commission, Valley Water, Better Neighborhoods, Adams Broadwell Joseph & Cardozo, and Robert Sarvey and Rob Simpson. Responses to comments received on the MND during the 30-day review period were prepared and are provided as Attachment 1.

The MND examined environmental impacts associated with project development and identified potentially significant air quality, cultural resources, tribal resources, biological resources, geology and soils, hazardous materials, 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. The MND, responses to comments received on the MND, and the MMRP are posted on the City's website at: <http://santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/295/3649>

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

On August 16, 2019, the notice of the public hearing for this item was posted in at least three conspicuous locations within 300 feet of the project site and mailed to property owners within 500 feet of the project site. At the time of this staff report, the Planning Division has not received public comments for this appeal.

ALTERNATIVES

1. Deny the appeal and uphold the Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Deny the appeal and uphold the Architectural Committee's approval of the data center project located at 1150 Walsh Avenue, subject to conditions.
3. Approve the appeal and overturn the Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
4. Approve the appeal and overturn the Architectural Committee's approval of the data center project located at 1150 Walsh Avenue, subject to conditions.

RECOMMENDATION

Alternatives 1 and 2:

1. Deny the appeal and uphold the Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Deny the appeal and uphold the Architectural Committee's approval of the data center project located at 1150 Walsh Avenue, subject to conditions.

Reviewed by: Alexander Abbe, Assistant City Attorney

Approved by: Reena Brilliot, Planning Manager

ATTACHMENTS

1. Mitigated Negative Declaration (MND), Mitigation Monitoring and Reporting Program (MMRP), Response to Comments (RTC) Received on the MND
2. Architectural Committee Staff Report of June 19, 2019
3. Excerpt Architectural Committee Meeting Minutes of June 19, 2019
4. Adams Broadwell Joseph & Cardozo Comment Letter of June 19, 2019
5. Appeal of the Architectural Committee's Action of June 19, 2019
6. Response to Comments Received on the MND and RTC
7. Resolution to Deny the Appeal and Uphold the Architectural Review Committee's Adoption of the MND and MMRP
8. Resolution to Deny the Appeal and Uphold the Architectural Committee's Approval of the Data Center Project
9. Conditions of Approval

10. Development Plan