



Agenda Report

19-1136

Agenda Date: 11/13/2019

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 2175 Martin Avenue

BACKGROUND

At a publicly noticed meeting on September 18, 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 2175 Martin Avenue (CEQ2019-01071 and PLN2019-13745) following public testimony and deliberation. The proposed project is for a new three-story, approximately 80,000 square foot data center building, with 6 back-up diesel generators, surface parking, landscaping and site improvements on a 1.68-acre project site. The project includes the demolition of the existing 31,500 square foot one-story industrial building and the removal of surface paving and existing landscaping prior to project construction.

Prior to the Architectural Committee hearing, the City distributed the MND for a twenty-day review period, as required by the California Environmental Quality Act (CEQA). During that review period, the City received four comment letters, two of which provided substantive comments. One of the two letters was from Andrew J. Graf, Esq., of the law firm Adams Broadwell Joseph & Cardozo, which represents an association of labor unions and individuals called "Santa Clara Citizens for Sensible Industry." The other letter was from Sudhanshu Jain. A response to comments was prepared and included in the Architectural review packet to the Architectural Committee. A response to all the comments received on the MND was provided and is included as *Attachment 1* for the Project's CEQA link to Responses to Comments (RTC) Received on the MND.

On September 25, 2019, Adams Broadwell Joseph & Cardozo filed an appeal of the Architectural Committee's approval of the data center (PLN2019-14132). The appeal form is provided as *Attachment 5*.

The Staff Report for the Architectural Committee meeting of September 18, 2019 is provided as *Attachment 2* and the Development Plan is included as *Attachment 10*.

DISCUSSION

During the September 18, 2019 Architectural Committee meeting, Aaron Messing of Adams Broadwell Joseph & Cardozo reiterated the comments previously submitted regarding the MND. In his comments, Mr. Messing 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 that the proposed project could result in potentially significant impacts to air quality, land use, energy and biological resources. Some of the major comments claimed there was insufficient analysis of special-status species in the vicinity, deficiencies in the cumulative

analysis of energy impacts, underestimation of the project's diesel particulate matter (DPM) emissions and potential health risks, and inadequate mitigations for impacts to biological resources, and inconsistency with the City's General Plan. The letter also asked the Architectural Committee to disapprove the project, asserting that the Committee could not make the necessary findings for architectural approval of the project based on the alleged General Plan inconsistency.

In response, City staff and the applicant, represented by Alexander Merritt from the law firm Sheppard Mullin, advised the Committee that Mr. Messing 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 (*Attachment 1* for the Project's CEQA link to Responses to Comments (RTC) Received on the MND).

The discussion and rebuttal of the comments are provided in the Excerpt Architectural Committee Meeting Minutes in *Attachment 3*. Following receipt of the testimony, the Committee deliberated and adopted the MND and MMRP and approved the Architectural review of the project with the added condition that the Applicant would work with the staff to further enhance the architecture of the proposed building and subject to conditions of approval established by the City's Project Clearance Committee (*Attachment 9*).

On September 25, 2019, Adams Broadwell Joseph & Cardozo, on behalf of SCCSI, 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 August 26, 2019 during the MND 20-day comment period and comments made to the Architectural Committee on September 18, 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*). 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 as part of Appeal has been prepared and is provided as *Attachment 6*.

The City's position is that the MND and MMRP conform to the requirements of CEQA and that 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 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 appreciably 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 ICF, in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on

the City's website at

<http://santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/339/3649>, on August 5, 2019 and circulated for 20-day review from August 5, 2019 to August 26, 2019, in accordance with CEQA requirements. The Planning Department received agency comments in response to the MND from the Santa Clara Valley Water District, VTA, Adams Broadwell Joseph & Cardozo and Mr. Sudhanshu Jain. 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 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/339/3649>

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 November 1, 2019, the notice of the public hearing for this item was posted in three conspicuous locations within 300 feet of the project site. On November 5, 2019, the notice was 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 Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Adopt a resolution to deny the appeal and uphold the Architectural Committee's approval of the data center project located at 2175 Martin 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 2175 Martin Avenue, subject to conditions.

RECOMMENDATION

Alternatives 1 and 2:

1. Adopt a resolution to deny the appeal and uphold the Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Adopt a resolution to deny the appeal and uphold the Architectural Committee's approval of the data center project located at 2175 Martin 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), and Response to Comments (RTC) Received on the MND
2. Architectural Committee Staff Report of September 18, 2019
3. Excerpt Architectural Committee Meeting Minutes of September 18, 2019
4. Adams Broadwell Joseph & Cardozo Comment Letter of August 26, 2019
5. Appeal of the Architectural Committee's Action of September 18, 2019
6. Response to Comments on the Appeal
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