

RECUSED:

- 5 **Unfinished Business/Public Hearings - (Items scheduled to be heard at a specific time will be heard no earlier than the stated time, but may be heard later) Any person who has chosen to provide his or her public comment when a Public Hearing is heard will need to so indicate on the Request to Speak form provided to the Secretary. Alternatively, you may provide your comment when Item 3, Public Comment, is heard at the beginning of this meeting.**

- 5.1 Staff Report (For Possible Action): Case No. **LDC25-00014 (Webb Data Center)** - A request has been made for a conditional use permit to allow: 1) development of a data center, and 2) business operations between 11:00 p.m. and 6:00 a.m. The ±6.02 acre site is comprised of three parcels located on the north side of North Virginia Street ±1,170 feet east of its intersection with Stead Boulevard. The site is zoned Mixed-Use Suburban (MS) and has a Master Plan land use designation of Industrial (I). **[Ward 4]**

This item was continued from the December 5, 2024 Planning Commission meeting.

Jeff Foster, Associate Planner, gave the staff presentation that was given at the Planning Commission meeting two weeks ago since Commissioner Villanueva was absent and did not have a chance to view that hearing. Key issues that were addressed by the Planning Commission during the previous meeting were energy availability and service commitment from NV Energy, sustainable design and operations elements, and Ward 4 equity. After the hearing at the last meeting the applicant proposed additional conditions of approval to address their commitment to sustainable development. A memo from staff listing the proposed additional conditions was distributed and is included in the record.

Dave Harty, Ellis Partners, presented an overview of the project, including information on above code sustainability features that were discussed at the last Planning Commission meeting.

Dean Rubinson, Ellis Partners, presented information on NV Energy commitments and the energization schedule, as well as economic benefits of the data center.

Public Comment:

Taylor Adams

Doug Browne

Len Savage

Written correspondence received was forwarded to the Planning Commission

and entered into the record.

Disclosures: received and read written correspondence, spoke with the applicant and/or applicant's representative, familiar with and/or visited the site, engaged with residents, provided a public comment letter to City Council, engaged with former City Council members that are familiar with the Reno Sustainability Action Plan, spoke with NV Energy

Questions:

Commissioner Del Villar expressed concern and asked for information regarding the city's ability to provide fire response to this facility, and to contain chemicals that may be used to put out electrical fires.

Mr. Foster explained that as part of the standard review process for LDC cases, the Fire Department has the opportunity to review and provide comments. The Fire Department did provide comments for this application that centered around access and site design, and they did not provide any comments or concerns regarding their ability to respond to fires.

Mike Railey, Planning Manager, explained that Reno Municipal Code (RMC) sets thresholds for hazardous materials and chemicals and stated this project does not meet those thresholds. The building will be compliant with International Fire Code.

Commissioner Velto asked the applicant to explain how they know that Peavine Substation Bank 2 will be constructed and will be able to support Phase 2 of the facility.

Mr. Rubinson explained some details of the apparatus procurement agreement they have been negotiating with NV Energy. He also confirmed that Bank 2 will not be used exclusively by the data center. Roughly half of Bank 2 will be available for other users that come along and will be a benefit to the greater community.

Commissioner Velto expressed appreciation for that information and stated it gives the Planning Commission another avenue to make conditional use permit finding 4.

Commissioner Villanueva asked if it is correct that there is nothing in the current development code for data centers.

Mr. Foster explained that the definition of data centers as well as two use specific standards were added to RMC through an administrative interpretation

in January of this year. The administrative interpretation effectively adds them to Title 18 and they will formally be adopted through the current zoning code cleanup process.

Commissioner Villanueva asked how an administrative interpretation can do that without a legislative process.

Mr. Railey stated the administrator has the ability to make an interpretation of a use that is not in code. He explained that staff was getting multiple calls regarding data centers. It was not a defined use and they were being categorized as warehousing prior to the administrative interpretation. Staff researched how other jurisdictions defined data centers and based the interpretation on that.

Commissioner Villanueva asked if that method is in statute or case law.

Karl Hall, City Attorney, stated Development Services has the ability to define different uses. They did that in this case and it will be incorporated in Title 18.

Commissioner Villanueva stated her first concern is that she does not understand how an administrative interpretation is effectively adopted in the development code without City Council getting public comment through a public process. She also expressed concern about setting precedent before they have anything really formal. She is concerned about what might happen to this site moving forward and stated the ordinance process can be lengthy with opportunity for public input and there could be changes to the administrative interpretation. She asked staff about non-conforming residential use that was mentioned in the presentation.

Mr. Foster stated that mobile home parks in the area are non-conforming because they are now in a zone that does not allow this residential use. He explained they pre-dated the current zoning and would not be allowed if they were proposed now.

Commissioner Villanueva asked if approval of this application based on the administrative interpretation would set precedent and obligate them to approve data centers in other areas with MS zoning.

Mr. Foster stated no and explained that the administrative interpretation requires a conditional use permit for data centers and every one of them would have to be evaluated on their own merits.

Commissioner Becerra asked the applicant to explain why solar is feasible now and wasn't when this was heard two weeks ago.

Mr. Harty explained that he stated at the last meeting they did not have a viable plan to provide solar. It had never been requested and was not part of the requirements so it had not been studied. Providing solar on a facility like this is quite complex. They did spend the last two weeks working with engineers and equipment suppliers to understand the opportunity and if it was viable. They are making some changes to the specifications of the equipment so they can accommodate a solar system.

Commissioner Becerra asked staff to highlight how feedback on this use made its way into the ordinance being presented to City Council.

Mr. Foster stated the zoning code cleanup has gone through a substantial public review process but he is not involved with the Title 18 zoning code cleanup and is not aware of particular discussions on data centers.

Mr. Railey stated the administrative interpretation was made in January and was added in as part of the code cleanup. He can't speak to whether the public input included anything specific to data centers but Angela Fuss specifically referenced the data center addition in her presentation to City Council. There was no significant discussion on that and Council approved the first reading of the zoning code cleanup. The ordinance will be presented to Council for adoption on January 8, 2025.

Commissioner Becerra asked if since it was the first reading and there was not significant discussion from Council, would it not be customary for there to be amendatory language upon the final reading to accommodate feedback whether from Council or constituents.

Mr. Hall stated no. Typically after the first reading, it is not amended. Per code, Development Services has the ability to make administrative interpretations of the Title.

Vice Chair Rohrmeier stated that when the code cleanup was presented to the Planning Commission and data centers were included, she specifically gave public comment that they need to address things like the infrastructure, what is going to happen with overhead lines, and substations when we review those projects. She asked what was taken from those public comments around data centers because none of her feedback made it into the code cleanup.

Mr. Railey stated that he was not on the team that did the code cleanup but he knows they had about 20 stakeholder meetings after the addition of data centers. They collected comments and input but he would have to talk to Angela Fuss and her team to see how that feedback was sorted through and

incorporated.

Commissioner Velto asked if an administrative interpretation needs to be incorporated into code in order to carry the force of law.

Mr. Foster stated the answer is no. There is a code section in Title 18 that does allow the administrator to issue administrative interpretations for uses that are not currently defined in code.

Commissioner Velto stated he is hearing from his fellow commissioners that they are concerned that the administrative interpretation is not yet in code. His understanding is that is not relevant in order to put an applicant on notice that this is what the rules are for developing in the City of Reno. He asked if that is consistent with staff's understanding.

Mr. Foster confirmed that is consistent with his understanding. The administrative interpretation effectively added the use and the use specific standards to code without officially being in Title 18. It is effectively an accompanying document that is eventually added when zoning code cleanups are done.

Mr. Railey stated if this application had come through before the administrative interpretation was made, it would have been reviewed as a warehouse.

Commissioner Velto stated there has been a line of questioning that gets to the issue of precedence and he is more concerned about the precedential effect of possibly limiting their ability to comply with code that says administrative interpretations can be made.

Commissioner Rohrmeier stated the issue outside of this application is that we are asking the city to make use specific recommendations through the code cleanup process that have not been entertained or considered.

Commissioner Villanueva stated if the board disagrees with the administrator, the board from a regulatory perspective is typically the deciding factor, not the administrator. She asked if that is typically how things are handled.

Mr. Hall stated they are not debating whether or not the administrator has the ability to define what a data center is. They have the ability to do that and they have done that. The question is whether this is an appropriate place for this use to go. I am directing you to please look at the findings that you are required to look at under the conditional use permit and make a decision based on those findings.

Commissioner Becerra stated that under Reno Charter there is ample room to amend these ordinances between now and the final reading. He stated that he is focused on findings 2, 4, and 5. It seems like they have made good headway on finding 4 so he will put less focus on that right now.

Mr. Foster answered questions from Commissioner Becerra related to how staff evaluated whether a data center aligns with community priorities and goals.

Commissioner Becerra asked if there are tools like a rubric or scorecard staff would be willing to adopt for evaluating applications so there is some level of predictability moving forward.

Mr. Foster stated there is no scorecard for any land use in the City of Reno. It is up to staff to look at the application and evaluate if the findings are met on balance or not. He would be open to a rubric if that was a process that was established.

Mr. Harty answered questions from Commissioner Del Villar regarding how this facility compares to one in Santa Clara that was mentioned in the presentation.

Mr. Harty explained for Commissioner Villanueva that this site would not have significant sewage capacity needs.

Mr. Rubinson answered questions from Commissioner Villanueva regarding expected water consumption at the facility.

Commissioner Becerra asked if the Office of Sustainability for the City of Reno has chimed in on this project.

Mr. Foster stated the principal planner reached out to that office and they were interested in engaging on the topic at a broader level, not specific to this project.

Mr. Harty answered questions from Vice Chair Rohrmeier regarding how much energy would be generated from solar. He also confirmed that local rules and regulations regarding e-waste and recycling will be followed.

Discussion:

Commissioner Velto stated that at the last meeting it seemed that the main issues discussed focused on energy availability under conditional use permit finding 4. The applicant has largely substantiated their ability to comply with

that finding and we can overwhelmingly say there is energy for this project and finding 4 is satisfied. Tonight issues have been discussed that are distinct from last time and I am concerned that we are moving the goalposts. The finding regarding compatibility with the surrounding area is fairly easy to make. I would hope that we don't create such high hurdles for future projects by trying to say we don't have enough policy or guidance when this is an allowed use that is legally implemented by an administrative interpretation. I struggle to see how the applicant hasn't met the very high metric we already set forth at the last meeting. I understand we want to vet projects and this is a new concept to our city. They have done the work and the evidence is there for us to make all the findings.

Chair Armstrong stated he is very concerned about the direction the Commission is taking this project. I find it problematic that we are potentially overreaching. The condition related to the solar being added is an overreach by us, especially when you consider the fact that NV Energy and the applicant were able to definitively demonstrate that there is sufficient power to make the finding. I find it problematic that we would potentially set precedent for this kind of ask. This kind of ask could change depending on who is on the Planning Commission at any particular time. I don't think we need additional caveats or information to make the findings as that has been very clearly demonstrated.

Commissioner Drakulich agreed with the points made by Commissioner Velto and Chair Armstrong and stated I left the last meeting thinking finding 4 was one of the main issues. I was ready to support it with what they had but in talking with the applicant and knowing they met with fellow commissioners at length to get us that solar array and get an understanding of the power situation, I can definitely make finding 4. I don't have any concerns with findings 2 or 5. Staff has done a good job with the recommended conditions of approval. He thanked Commissioner Becerra for his letter and stated he thought Ms. Fuss answered some of the questions. Maybe we could get more from her on that but I do feel that the public has had some level of input and this conversation tonight could carry forward to the Council and more public input, but for this conditional use permit, I support it because they have done what they've been asked to do. He also discussed his support for the positive financial impacts this project would have.

Commissioner Del Villar stated that her concerns have not changed and the issues being discussed are concerns she had at the last meeting. We are trying to mitigate the concern mentioned regarding conditions changing based on who is on the Planning Commission at any particular time by having clear policies and criteria in place. My big concern is we are setting the bar low by not having some requirements in place. The applicant has done an amazing job but

my concerns are still for the safety of the residents in the area, the compatibility with the surrounding area, and the fact that there is still nothing signed for the second substation bank until June.

Commissioner Villanueva stated her primary concerns have nothing to do with the application itself, it is with the land use issues. I don't feel I can make any of the findings because I don't feel like I have the appropriate process, I think this is premature. How can I look at this application and determine whether or not this is the appropriate place for it if nothing is actually in the development code. We are looking at an administrative interpretation that may or may not change before it is adopted. I am concerned about what this can mean moving forward for other data center applications. It has nothing to do with the fact that this is a data center or the applicant, this is strictly a land use concern that I have. This is premature and we don't have the information available in the development code to be able to make the findings.

There was discussion between Commissioner Velto and Commissioner Villanueva regarding what finding she can't make. She expressed concern regarding the finding related to compatibility with the surrounding area because MS is not permitted in Industrial.

Mr. Railey asked staff to address that concern.

Mr. Foster explained that just because an existing zoning district does not conform with the master plan, that does not mean we cannot evaluate uses proposed in that district. Even though MS is not conforming with the Industrial master plan designation, that does not mean that an applicant can't come forward with an application that is allowed in that zone as long as it meets the development standards and is reviewed by the Planning Commission.

Mr. Foster answered questions from Commissioner Villanueva regarding where data centers would be allowed. He explained that data centers are recognized as being very similar to a warehouse or distribution center and would be allowed within the same zones as a warehouse or distribution center, with the caveat that they go through a conditional use permit process.

Commissioner Villanueva stated all she is asking for is some firmer policies so she can analyze this and make a decision. This is premature and I can't make the findings because the information isn't here. She suggested continuing the item.

Chair Armstrong noted that this was discussed at the last meeting and again tonight and he does not understand the pushback.

Mr. Foster confirmed again for Chair Armstrong that a data center application prior to January of this year would have been analyzed as a warehouse or distribution center.

Commissioner Villanueva stated she understands that but the circumstances have changed.

Commissioner Velto stated the concern he is hearing is that there are not additional development standards or policies in place that would allow Commissioner Villanueva to evaluate whether or not she can make the findings. The difficulty with that position is that even if tomorrow City Council adopted development standards for data centers, they could not legally apply to this application because it was submitted beforehand.

Mr. Foster expressed some concern that the information requested at the last meeting was provided and now different issues are being brought up.

Mr. Foster answered questions from Commissioner Villanueva regarding the request for 24-hour operation.

Commissioner Becerra reminded everyone that if they did take a vote on this at the last meeting, they would be on an appeal trajectory based on a technical denial. We are here in good faith to try to strengthen this project and all projects moving forward. Because we did not take a vote at the last meeting, it is all fair game. We get new information and we get to evaluate that information. I was at the December 11 City Council meeting and I heard Mayor Schieve explicitly state that we need to keep in mind the residents of Reno when making these critical decisions. I agree with the Mayor on that, especially in the absence of a scorecard or rubric or policies that we can go off of to offer people predictability. I think that we need more ownership from our City Council as far as direction goes, and that is what an appeal pathway offers to both the applicant and the body that evaluates projects. This is a new land use and it is important to evaluate it to try to get it as best as possible, not perfect but towards excellence. While I appreciate what the applicant has done, I think that we on the city side need to get our ducks lined up in a row. We could be nimble and get something before City Council if this body decides to continue with the trajectory of a technical denial and get further direction that is sound and offers people in the future some predictability.

Vice Chair Rohrmeier stated we have made a lot of progress in two weeks. We have now identified a process by which information can come from NV Energy and produce timelines that correspond to building permits and construction schedules. That is the kind of information I asked for at the last meeting. Other commissioners asked for more broad sweeping sustainability

issues to be addressed. She expressed appreciation that the applicant did come to the table in the last 48 hours with solar opportunities and some other sustainability measures. I am disappointed that the city did not create use specific standards. That is a failure to recognize that data centers are a distinct use from other uses. They are intense energy users. While we have come a long way, I would love to see City Council weigh in on this but I don't want to do it at the expense of the project. That is the challenge. I want City Council to act and give direction. I want them to step up to the plate that sustainability is important to the City of Reno. Commissioner Velto made a strong case that we do have to consider what is in front of us today under the standards that are here.

Mr. Hall instructed the commissioners that if there are findings they can't make, the reasons need to be articulated on the record to be defensible.

Commissioner Becerra stated we don't have any guidelines or standards by which to begin at a baseline. For the record, I can't make findings 2 and 5, compatibility with surrounding development, reasonable compatibility with surrounding uses, and I'll submit this for the record in writing so it is there. He noted conversations between Mr. Hall and Doug Thornley and asked for the record for transparency what the conversations were.

Doug Thornley, representing the applicant, stated you do have standards. They were adopted in the administrative interpretation. Whether or not the commission is satisfied with those standards isn't really the question in front of you tonight. The application is made and needs to be evaluated under those standards and you have heard that several times from several people this evening. And so my conversation with Mr. Hall was that suggesting there are not standards and inventing reasons on the fly that the project can't be supported is the very definition of arbitrary and capricious.

Commissioner Becerra stated he will respectfully disagree. We have taken an oath that comes with a certain level of responsibility and there is a sign that reads pressure is a privilege and I embrace that. It is not an easy one but we'll get there.

Discussion during the roll call vote on the motion:

Commissioner Rohrmeier stated these are very hard decisions. I feel very split on character, which is finding 5. This is not like other uses, however I recognize that what we are deciding on is what's in front of us today.

Commissioner Del Villar stated she cannot make findings 2, 4, and 5.

Commissioner Villanueva asked legal counsel if she can abstain since she was not here at the last meeting and she feels like she does not have enough information to make a competent decision today.

Mr. Hall stated no. Typically if you have a conflict then you could abstain but I have not heard anything regarding a conflict. We also gave the presentation again for your benefit.

Commissioner Villanueva stated it would have been helpful to be here for the other discussion.

Commissioner Becerra stated he cannot make findings 2 and 5 and he will provide written correspondence for the record to supplement his no vote.

Commissioner Villanueva stated she thinks she can abstain if she wasn't here for the discussion the last time. It would have been helpful to hear more of the energy discussions that happened last time. I don't know that I'm ready to vote no or yes. I believe an abstention is appropriate. I'll disagree with counsel and abstain. I feel like I need more information. I can't make a thoughtful decision today.

It was moved by Alex Velto, seconded by J.D. Drakulich, to approve the conditional use permit, subject to the conditions listed in the staff report, with the addition of the proposed six conditions referenced in the memo presented by staff. Motion Pass.

RESULT:	Approve [4 TO 2]
MOVER:	Alex Velto, Commissioner
SECONDER:	J.D. Drakulich, Commissioner
AYES:	Armstrong, Drakulich, Rohrmeier, Velto
NAYS:	Manny Becerra, Christina Del Villar
ABSENT:	
ABSTAIN:	Silvia Villanueva
RECUSED:	

6 Public Hearings – Any person who has chosen to provide his or her public comment when a Public Hearing is heard will need to so indicate on the Request to Speak form provided to the Secretary. Alternatively, you may provide your comment when Item 3, Public Comment, is heard at the beginning of this meeting.

- 6.1 Staff Report (For Possible Action): Case No. **LDC25-00021 (Royse Casita)** - A request has been made for a major deviation to allow a ±1,150 square foot accessory structure. The ±1.12 acre site is located on the north side of Sharpe Hill Circle at the intersection of Sharpe Hill Circle and Circle Stone Court. The site is zoned Somerset Planned Unit