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<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	_____
MEETING DATE:	_____
FINAL ACTION:	_____

**CITY COUNCIL STAFF REPORT**

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**TO:** *City Council*

**FROM:** *Jesse VanderZanden, City Manager*

**PROJECT TEAM:** *Bryan Pohl, Community Development Director  
Dan Riordan, Senior Planner*

**MEETING DATE:** *October 28, 2024*

**SUBJECT TITLE:** *Order 2024-04 Denying the Second Appeal of the Staff and Planning Commission Decisions Approving with Conditions the Proposed Crane Data Center Campus Site Development Review Application; File No. 311-24-000038-PLNG*

**ACTION REQUESTED:**

*X all that apply*

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>						
	Ordinance	X	Order		Resolution		Motion	Informational

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**ADDENDUM FOR OCTOBER 28, 2024, COUNCIL MEETING**

On October 14, 2024, the Council held and closed a public hearing to consider a second appeal to the Type II administrative and Planning Commission decisions approving, with conditions, the site development review application for the proposed Crane data center campus. If approved, the attached Order will affirm the administrative and Planning Commission decisions and deny the second appeal. The findings supporting the Council’s decision are attached to the Order (Attachment A).

On October 14, 2024, City Council also voted 6-0 to direct staff to return with an order affirming the Planning Commission’s decision to uphold the staff decision. The attached Order 2024-04 and findings reflects the Council’s decision.

For additional background information from the City Council public hearing held on October 14<sup>th</sup> including the staff report and exhibits, please visit the following link:

<https://forestgroveor.portal.civicclerk.com/event/1751/files/agenda/3559>

**ATTACHMENT**

A. Order 2024-04 & Exhibit A: Findings

**ORDER NO. 2024-04**

**ORDER AFFIRMING THE TYPE II ADMINISTRATIVE AND PLANNING COMMISSION DECISIONS APPROVING, WITH CONDITIONS, THE SITE DEVELOPMENT REVIEW APPLICATION FOR THE PROPOSED CRANE DATA CENTER CAMPUS AND DENYING THE SECOND APPEAL OF THE DECISION; FILE NUMBERS 311-24-000006-PLNG, 311-24-000033-PLNG; 311-24-000038-PLNG**

**WHEREAS**, on January 29, 2024, Navix Engineering, on behalf of Crane Data Centers LLC, submitted an application for site development review of the Crane data center campus at 3975 and 3993 Mountain View Lane (File No. 311-23-000006-PLNG); and

**WHEREAS**, the application was deemed complete on March 29, 2024; and

**WHEREAS**, on April 8, 2024, notice of the application and opportunity for public comment was mailed to property owners and residents within 300 feet of the subject site as required by Development Code §17.1.515; and

**WHEREAS**, comments were received from four persons during the 14-day public comment period; and

**WHEREAS**, the notice of the administrative decision approving site development review application with conditions was issued by the Forest Grove Planning Division on July 31, 2024; and

**WHEREAS**, an appeal of the administrative decision was timely filed by a person with standing to appeal on August 12, 2024 (City File No. 311-24-000033-PNG); and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on considered the appeal as required by the Forest Grove Development Code §17.1.540 on September 3, 2024; and

**WHEREAS**, on September 3, 2024, the Planning Commission approved a motion to affirm the administrative decision and deny the appeal; and

**WHEREAS**, the notice of the Planning Commission's decision was provided to persons participating in the Planning Commission public hearing consistent with Development Code §17.1.545(C); and

**WHEREAS**, a second appeal to City Council was timely filed by a person with standing to appeal on September 20, 2024 (City File No. 311-24-000038-PLNG); and

**WHEREAS**, City Council held a public hearing on October 14, 2024, to consider the second appeal; and

**WHEREAS**, on October 14, 2024, City Council approved a motion to affirm the administrative and Planning Commission decisions and directed staff to return with an Order on October 28, 2024, to memorialize the City Council's decision.

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDERS AS FOLLOWS:**

**Section 1.** Based on the evidence in the record, and the findings included in Exhibit A, the City Council hereby denies the second appeal and affirms the administrative and Planning Commission decision approving the Crane data center campus site development review application with the conditionsl.

**Section 2.** This order is effective immediately upon adoption by the City Council.

**PRESENTED AND PASSED**, this 28<sup>th</sup> day of October, 2024.

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Mariah S. Woods, City Recorder

**APPROVED** by the Mayor this 28<sup>th</sup> day of October, 2024.

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Malynda Wenzl, Mayor

**ORDER 2024-04  
EXHIBIT A**

**City Council Findings to Affirm the Type II Administrative (Limited Land Use) and  
Planning Commission Decisions Approving, with Conditions, the Site  
Development Review Application for the Proposed Crane Data Center Campus  
and Denying the Second Appeal of the Decision**

**File Number (Project): 311-24-000006-PLNG  
File Number (Planning Commission Appeal): 311-24-000033-PLNG  
File Number (City Council Appeal): 311-24-000038-PLNG**

Background: On January 29, 2024, Navix Engineering on behalf of Crane Data Centers, LLC, submitted a Type II, Site Development Review application to the Forest Grove Planning Division for a proposed data center campus at 3975 and 3993 Mountain View Lane. The site development review application includes two industrial buildings and associated site improvements including off-street parking, landscaping, equipment yard and stormwater quality facilities.

The subject property is zoned Light Industrial (LI) consistent with the Forest Grove Comprehensive Plan and Zoning maps. The subject property has been zoned LI since the property was annexed into the Forest Grove city limits in 1980.

As stated in the FGDC §17.3.540(A), Type II site development review is required for a new development in the LI zone.

The Site Development Review Criteria are listed in FGDC §17.2.450. Development Code §17.2.450 states “The Director shall review and approve, conditionally approve or deny the site development plan based on the following criteria:

- A. The applicant demonstrates the site development plan complies with standards of the base zoning district (Article 3), any overlay district and the general development standards of Article 8.
  
- B. The site development plan addresses the development standards in Article 5 (Natural Resource Areas, Tree Protection and Historic Resources) when such resources are present on or directly adjacent to the development site.

The record contains substantial evidence demonstrating that the Applicant has met the burden of proof showing that the applicable review criteria, listed above, are met or can be met with conditions of approval. The evidence in the record includes the following documents which are incorporated as findings herein by reference:

- a. Applicant's written narrative and site plans dated 1/29/24, 3/30/24, 6/7/24 and 6/24/24
- b. Clean Water Services Service Provider Letter 23-003061 dated 1/25/24
- c. City of Forest Grove Administrative decision and findings dated July 31, 2024
- d. Staff memo to the Planning Commission dated September 3, 2024
- e. Staff memo City Council dated October 14, 2024
- f. Staff presentation to City Council dated October 14, 2024
- g. Applicant's response to the second appeal from Allison J. Reynolds, dated October 14
- h. Acoustical study prepared by dated October 11, 2024, and included with the Applicant's response to the second appeal dated October 14, 2024
- i. Oral testimony provided by the Applicant to City Council on October 14, 2024.
- j. FGDC including sections 17.1.500 et. seq., 17.2.410 to 17.2.450, 17.3.520 to 17.3.540, 17.12.150
- k. Forest Grove Code of Ordinances including §91.034 (Noise)
- l. North American Industrial Classification System (NAICS) 1997.

Other information in the record considered by City Council includes the appellant's written appeal with exhibits dated September 20, 2024, written appeal to the Planning Commission dated August 12, 2024, letter from Kenneth P. Dobson, Attorney at Law, dated September 3, 2024, attached to the written appeal, written public testimony provided to City Council prior to the City Council's public hearing on October 14, 2024, and oral testimony provided to City Council on October 14, 2024.

### **General Findings**

Finding: FGDC §17.1.545 describes the process for a second appeal of an administrative decision. The second appeal is limited to the issue on the record raised to before the Planning Commission and only to those issues raised in the second appeal petition. The text of FGDC §17.1.545 is provided below:

"A second appeal of an administrative decision can be heard by the City Council, under the following conditions.

- A. Any party with standing may file a second appeal. The city must receive an appeal petition in writing and the required fee within 14 calendar days of the written notice of the decision. The written petition shall specifically state the issues being appealed and the City Council shall be limited to the consideration of those issues.
- B. Only issues on the record at the Planning Commission hearing submitted in writing or orally can be appealed to the City Council.

- C. Notice of the appeal hearing shall be provided to parties who participated in the first appeal hearing or requested notice.
- D. The City Council hearing shall be limited only to those issues raised in the appeal petition.
- E. The City Council decision on an appeal is the city 's final decision.  
(Ord. 2009-01, passed 3-9-2009)"

Finding: The second appeal filed by the appellant includes references that and are not appeal issues and are not relevant to the second appeal. This includes annotated comments and questions from the appellant pertaining to the administrative decision and refences such as items "being studied in more detail and further comment will be provided" and "we are obtaining maps and other information" and "this will be researched".

Administrative Decision

Finding: City Council incorporates the findings from the administrative decision dated July 31, 2024, as the City Council's findings and City Council adopts any conflicting findings as findings in the alternative.

Other Issues

Finding: Both the written appeal and comments raised during the appeal process identify concerns not relevant the site development review criteria listed in FGDC §17.2.450. This includes concerns about electromagnetic fields, timelines for securing power, if needed, from the Bonneville Power Administrative for data center operations, building permit requirements such as submittal of a geo-technical report after site development review approval and before building permits are issued, neighborhood design concerns, solar access impacts, and number of jobs created.

**Appeal Issues Findings**

Appeal Issue: Data Center Campus Land Use Classification

The appeal questions if the "Information" land use category defined in Development Code Article 12 is the correct land use category for a data center campus (written appeal to the Planning Commission, August 12, 2024, page 1).

Finding: City Council finds that the "Information" land use category shown on FGDC Table 3-12 and defined in Development Code Article 12, most closely describes the nature of the proposed data center campus and that "Information" is a permitted use in the Light Industrial (LI) zone. Information is defined in Development Code Article 12 to mean "*Information*. Uses that are engaged in the following processes: producing and

distributing information and cultural products; providing the means to transmit or distribute these products as well as data or communications; and processing data. Included in this definition are those establishment types within Sector 51 – Information as provided by the North American Industry Classification System, United States, 1997 Edition with the exception of § 51213, Motion Picture and Video Display.” City Council finds that the data center campus will be engaged in distributing information and will provide the means to transmit and distribute data communications and processing data.

Appeal Issue: Was the Correct Review Process Followed by City Staff

The appeal questions if the Type II (Limited Land Use Decision) is the correct process for reviewing the proposed data center campus site development review application (written appeal to Planning Commission, page 23).

Finding: City Council finds that FGDC §17.3.540 states that site development review is required for development in the LI zone and is subject to a Type II site development review process.

Finding: City Council finds that the Type II review process was followed and that the notice of application required by FGDC §17.1.515 and 14-day comment period required by FGDC §17.1.525 were provided and the notice and comments received are in the record.

Appeal Issue: Project Phasing

The appeal questions phasing the development and takes issue with the site development review application not addressing development standards associated with the proposed electrical substation and related infrastructure for phase 2 of the project in the Applicant’s current land use application. The appeal states that “Because critical issues concerning power and water supply remain unresolved, the application is incomplete and cannot be properly reviewed (Letter from Kenneth P. Dobson, page 1, written appeal dated September 20, 2024, page 1).

Finding: The Second Appeal raises concerns about the phased nature of the Project and argues that a future substation that may be constructed on the site (which is not part of this Site Development Review application) renders the layout of the site is too uncertain to be approved.

Both phases of the Project that are proposed in the current application are being fully evaluated through this Site Development Review process. The application is clear that a power substation *may in the future be proposed* on the west corner of the Project site, but that a substation *is not proposed for approval under this current Site Development Review proposal*. The current application, as approved, authorizes the

Applicant to seek construction permits for the site design that is contained approved by this decision. Future changes to that design, including any changes to existing facilities, would require a subsequent review as provided in the FDGC. If a substation is proposed in the future, that development will require both Site Development Review and a Conditional Use Permit, which provide opportunities for public participation.

Finding: City Council finds that the FGDC does not prohibit development phasing and that the Site development review decision only applies to Buildings 1 & 2 and associated site improvements including off-street parking, landscaping, stormwater quality facilities and equipment yard.

Finding: City Council finds that if an electrical substation is needed in the future to serve the proposed data center campus the Applicant is required to apply for a conditional use permit as required by the FGDC.

Finding: City Council is not relying on approval of an electrical substation in making a decision to affirm the administrative decision approving the site development plan for Buildings 1 and 2 and associated site improvements.

#### Appeal Issue: Noise Concerns

The appeal raises concerns about potential noise generated by the data center campus during operations (written appeal dated September 20, 2024, page 4).

Finding: City Council finds that noise is an operational consideration, and the Applicant will be required to comply with the City's noise ordinance and applicable Oregon Department of Environmental Quality Administrative Rules pertaining to noise. City Council further finds that compliance with adopted noise standards applicable to the project is a code enforcement matter and concerns about noise do not provide a basis for denying the site development review application.

Finding: Project neighbors have raised significant concerns about the Project's ability to meet the relevant noise standards during operations. The City's approval decision includes Condition of Approval 12 which requires the Project to meet these standards during operations, consistent with FDGC §17.3.540. The Second Appeal alleges that it may not be feasible for the Project to meet noise standards during operations.

Finding: The Acoustical Report explains that the full-Project build-out was modeled and in some areas noise from the air-cooled chiller cooling systems (which are the highest noise-generating type of cooling system) exceeded noise standards before mitigation was applied. There are multiple noise mitigation technologies that can reduce noise from data center cooling systems and this technology is evolving rapidly. An available and widely used mitigation option is an acoustical screen. As explained in the Acoustical Report, when these screens were installed at the mitigation

areas in the model, the Project's noise was reduced below the noise standards for all noise receptors. Other noise reducing technologies that do not require screening may also be available when the Project is constructed. The Acoustical Report demonstrates that it is feasible for the Project to meet the noise standards at the time of operations as required by Condition of Approval 12.

Finding: City Council finds that FGDC §17.3.540(C), Performance Standards applies to this site development review application and that this standard pertains to continuing compliance with noise standards set forth by the Oregon Department of Environmental Quality and the Acoustic Study prepared by Vibro-Acoustic Consultants dated October 11, 2024, provides evidence that compliance with applicable noise standards is feasible.

Appeal Issue: Power Consumption for Operating the Proposed Data Center Campus

The appeal raises concerns about possible power consumption required for operating the proposed data center campus (Letter from Kenneth P. Dobson, page 4)

Finding: City Council finds that demonstrating that adequate amounts of power for operating a data center campus is not related to a site development review criterion described in FGDC §17.2.450 and cannot be used as a basis for reversing the Type II administrative site development review decision issued on July 31, 2024.

Finding: City Council finds that demonstrating that adequate amounts of power for operating a data center campus is not related to an Industrial zone development standard listed in FGDC §17.3.530 or §17.3.540 and cannot be used as a basis for reversing the Type II administrative development review decision issued on July 31, 2024.

Appeal Issue: Water Consumption for Operating the Proposed Data Center Campus

The appeal raises concerns about the possible water consumption needed for cooling mechanical equipment during data center operations (written appeal dated September 20, 2024, page 4).

Finding: The Appeal asserts that the Project must meet the standards under FGDC 17.8.630 Water Facilities, to obtain Site Development Review approval. FGDC 17.8.630 requires that adequate water facilities are available to serve new development prior to issuance of "development permits". City Council finds these permits are reviewed and issued by the City's Engineering Division and are not land use reviews.

Finding: The Second Appeal wrongly concludes that the Project must meet the standards under FGDC 17.8.630 Water Facilities, to obtain Site Development Review approval. FGDC 17.8.630 requires that adequate water facilities are available to serve

new development prior to issuance of “development permits” which are permits reviewed and issued by the Engineering Department and are not land use reviews. The Applicant is not required to demonstrate that adequate water exists to serve the Project for approval of Site Development Review. The Project will require a development permit, at which point the Project’s water needs will be assessed. The FGDC allows the Planning Commission or Hearings Officer to restrict the ability for a development permit to later be issued only “where a deficiency exists in the existing water system or portion thereof which cannot be rectified within the development and which, if not rectified, will result in a threat to public health or safety or violations of local, state or federal standards pertaining to the operation of the water system.” City Engineering Staff reviewed the application and have not identified a deficiency in the water system that would result in health, safety or legal violations that could not be rectified with the development of the Project. The record does not contain any evidence that the City’s water system is deficient.

Finding: The Second Appeal’s concerns regarding water availability are based on an assumption that the Project will be required to utilize large amounts of potable water taken from the City’s water systems for cooling. The record does not support either of these assumptions. The Project is able to utilize air-cooled chiller cooling which does not require water from the City’s water system.

Appeal Issue: Sanitary Sewer Impact from Water Consumption for Operating the Proposed Data Center Campus

The appeal questions the potential impact to the public sanitary sewer system from water consumption needed for operating the proposed data center campus.

Finding: FGDC 17.8.625 requires the City Engineer to approve sewer system use for the Project prior to issuance of a development permit. Sewer analysis and approval is not required at the time of Site Development Review. Similar to the FGDC water regulations, FGDC 17.8.625 allows the Planning Commission or Hearings Officer to restrict future issuance of a development permit for a project only “where a deficiency exists in the existing sewer system or portion thereof which cannot be rectified within the development and which, if not rectified, will result in a threat to public health or safety, surcharging of existing mains, or violations of state or federal standards pertaining to operation of the sewage treatment system.” City Engineering Staff reviewed the application and have not identified a deficiency in the sewer system that would result in health, safety or legal violations that could not be rectified with the development of the Project. The record does not contain any evidence that the City’s sewer system is deficient.

### Appeal Issue: Discharge of Heated Cooling Water to Regulated Waterways

The appeal states the Applicant has failed to demonstrate how heat standards will be met (written appeal dated September 20, 2024, page 4).

Finding: The Appeal raises concerns about heated water (produced during the cooling process) that the appellant appears to believe will be discharged by the Project and in a manner subject to federal NPDES regulations or similar state regulations. The Project will not discharge heated process water or wastewater into waters of the U.S. and is not otherwise considered a point source. The NPDES regulations cited by the Appeal, which govern these types of discharge activities, do not apply to the Project. The City is unaware of any state laws related to discharge of heated water that would apply to the Project and the Second Appeal did not identify any “state environmental laws” referenced by Condition of Approval 12 that are applicable to the Project and could not be met. Furthermore, as explained from materials in the record, the Project does not need to rely on water for cooling and can instead utilize an air-cooled chiller cooling system.

### Appeal Issue Conditions of Approval #24 and #70.

The appeal states the Applicant has failed to show that compliance with conditions of approval #24 and #70 is feasible (Letter from Kenneth P. Dobson, page 2, written appeal dated September 20, 2024, page 2).

Finding: Condition of Approval 24 does not require the Project to utilize the City’s potable water system for operational cooling and the evidence in the record demonstrates that the Project can be cooled in an alternative way (utilizing air-cooled chillers) while meeting all applicable standards. Condition of Approval 24 simply provides the Project with an option to study the City’s water system and, if sufficient water is available, utilize the City’s water system for emergency backup if the Applicant so-chooses. It is feasible for the Project to meet Condition of Approval 24.

Finding: City Council finds that Condition #70 pertains to water use for construction and is not related to facility operations.

Finding: City Council finds that water and sewer connectivity are determined during Engineering review and the Applicant is not required to demonstrate that adequate water exists to serve the project for site development review approval under §17.2.400 through §17.2.450.

Finding: Condition 70 is advisory and governs water use “in conjunction with construction of the Project.” The Applicant, like all parties seeking to connect to the City’s water system for construction purposes, will be required to obtain a construction

water permit before connecting to the City's system during construction. Condition 70 is not related to Project operations and does not require the Applicant to demonstrate adequate water supply for cooling operations in order to obtain a construction water permit. The Second Appeal does not identify any reasons that it would not be feasible for the Applicant to obtain a construction water permit. Furthermore, if for some reason the City's system could not accommodate the Project's construction water needs, construction water trucks are an available option for the Project and the Project would not require a water connection permit for this option.

Appeal Issue: Exception to CWS Stormwater Standards; The Decisions Provide Options for the Project to Meet Stormwater Standards for the Heather Street Extension.

The appeal states the project approval grants an exception to Clean Water Services (CWS) stormwater standards (written appeal to the Planning Commission, dated August 14, 2024, page 37).

Finding: Condition of Approval 13.i is advisory and explains that the Applicant can comply with the CWS Section 4.03.7 standards to manage stormwater runoff from the Heather Street in one of two ways if, in a potential future scenario encountered at the time of engineering development review it is determined there is not sufficient right-of-way area to manage this street-runoff within the existing public right-of-way. The design of the new Heather Street segment will be finalized through an engineering development review and stormwater runoff treatment needs will be fully determined at that time. It is possible, given the size of the existing public right-of-way and the transportation facilities planned for the extension of Heather Street, that the City's Engineering Staff will determine during engineering development review that there is not sufficient space to treat the stormwater runoff in the existing public right-of-way. If that scenario occurs, Condition 13.i provides two options for the Project: 1) seek an exception from CWS to provide stormwater treatment off-site via a fee-in-lieu, or, 2) provide additional public right-of-way or an easement on the Applicant's private property for stormwater facilities. It is feasible for the Applicant to comply with Condition 13.i by either filing for an exception in order to pay for off-site stormwater management or providing its adjacent private property, which it controls, for stormwater management.

Appeal Issue: Buffer Yard Requirements

The appeal states that the Applicant incorrectly states that buffering and screening requirements of FGDC §17.8.425 do not apply (written appeal dated September 20, 2024, page 5).

Finding: City Council finds that the standards in Development Code §17.8. 425 applies to this site development review application and the site plan prepared by the Applicant dated January 23, 2024, and thereafter on subsequent plan sheet iterations in the

record, shows a 10-foot to 20-foot landscaped buffer between the project site and adjacent residential uses zoned Industrial between the project site and Mountain View Lane and the landscape buffer meets the requirements of FGDC §17.8.425.

Appeal Issue: Building Canopies/Recessed Entries

The second appeal raises concerns about compliance with certain Development Code requirements related to building design including requirements for building canopies and recessed entries.

Finding: FGDC §17.3.540(F) states that “Recessed entries or canopies shall be used at the entrances of buildings in order to reinforce a pedestrian-scale and to break-up large blank walls.” The applicant states that “primary” entrances will have canopies as required under this section. The appellant argues that the approval criteria is not limited to “primary” entrances and all entrances including secondary ones need canopies or recessed entries under the plan language of the code. The applicant must meet all applicable code requirements including those not specifically identified in the conditions of approval. Compliance with code requirements is reviewed at time of building permit application.

Appeal Issue: Rowan Data Center

The second appeal includes information about the proposed Rowan Green Data project including information about potential energy needs for the project and agreements pertaining to the Bonneville Power Administration (BPA).

Finding: The Rowan data center project team is not affiliated with Crane Data Center LLC. The Rowan project had different energy needs due to the scale of the project. The Rowan team decided to work with Forest Grove Light and Power to address energy needs prior to submitting a site development review application. The Crane team decided to take an alternative approach and apply for site development review approval prior to finalizing operational needs. Both approaches are permissible. The fact that the Rowan team decided not to submit a site development review application is irrelevant to the Crane site development review application. Conclusions reached from the outcomes of the Rowan project cannot be used as a basis for approving or denying the Crane site development review application.

Appeal Issue: Perceived Environmental Impacts & Wildlife Concerns

The written appeal to the Planning Commission states “The City should demand that an environmental impact statement be provided (written appeal to the Planning Commission page 5). During the public hearing process concerns were also raised in

the record about potential negative wildlife impacts resulting from operating the data center campus.

Finding: City Council finds that an environmental impact study is not a submittal requirement or approval standard required for a site development review application as stated in Development Code §17.2.440, and the lack of an environmental impact study cannot be used as a basis for a decision to approve or deny a site development review application.

Finding: City Council finds that impacts to wildlife are not site development review criterion.

Appeal Issue: Impact to Property Values

The written appeal to the Planning Commission raises concerns about perceived negative impacts to property values near the proposed data center campus site (written appeal to the Planning Commission, dated August 14, 2024, page 27).

Finding: City Council finds that perceived impacts to property values is not a site development review criterion as listed in Development Code §17.2.450.

**Conclusion:**

City Council finds that the Type II site development review decision is supported by substantial evidence in the record demonstrating that all applicable site development review criteria are met or can be met with the conditions of project approval. City Council further finds the appellant did not demonstrate that applicable review criteria were not met. Therefore, City Council affirms the Type II administrative decision and the Planning Commission's decision to deny the appeal.