

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, CA 95014

CITY OF CUPERTINO
PLANNING COMMISSION MEETING
DRAFT MINUTES

6:45 P.M.	JUNE 14, 2016	TUESDAY
CITY COUNCIL CHAMBERS		

The regular Planning Commission meeting of June 14, 2016, was called to order at 6:45 p.m. in the Cupertino Council Chambers, 10350 Torre Avenue, Cupertino, CA. by Chair Takahashi.

SALUTE TO THE FLAG
ROLL CALL

Commissioners Present:	Chairperson:	Alan Takahashi
	Vice Chairperson:	Margaret Gong
	Commissioner:	Winnie Lee
	Commissioner:	Geoff Paulsen

Commissioners Absent:	Commissioner:	Don Sun
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Staff Present:	Assistant Community Development Director:	Benjamin Fu
	Asst. City Attorney:	Colleen Winchester
	Associate Planner:	Erick Serrano
	Director of Public Works:	Timm Borden

APPROVAL OF MINUTES:

1. *Minutes of the April 26, 2016 Planning Commission meeting:*

The following changes were made to the April 26, 2016 Planning Commission minutes:

Page 9: 4th Paragraph – Vice Chair Gong: **Delete first line “Is it true that thein the covenant”**

Page 9: 2nd Paragraph – Com. Lee: **Delete: “the street tree” and insert “the front yard tree”**

Page 9: 7th Paragraph – Gian Paolo Martire: Line 2, **Delete “are in” and insert “are not in”**

Page 10, near bottom of page: Mayor’s Meeting: **Delete: “Mayor Barry Chang plans to buildperformance center” and insert “Mayor Chang voiced he would like to see something like that”**

MOTION: Motion by Chair Takahashi, second by Vice Chair Gong, and carried 4-0-0, Com. Sun absent, to approve the April 26, 2016 Planning Commission minutes as amended.

2. *Minutes of the May 10, 2016 Planning Commission meeting:*

MOTION: Motion by Vice Chair Gong, second by Chair Takahashi, and carried 4-0-0, Com. Sun absent, to approve the May 10, 2016 minutes as presented.

WRITTEN COMMUNICATIONS: None other than related to agenda item.

POSTPONEMENTS/REMOVAL FROM CALENDAR: None

ORAL COMMUNICATIONS:

Lisa Warren, Cupertino resident:

- Addressed the Commission relative to the term “mixed use”. Said she felt it was an over-used abused term. Said they continue to look at projects that call themselves mixed use but they all but obliterate retail and get rid of a use that we really need; the balance is not very good; it is like going out and ordering mixed fruit for breakfast; and your bowl of mixed fruit arrives and you are not a big fan of melon but you tolerate it; you love strawberries, blueberries are awesome; you get two blueberries, one strawberry cut in quarters and a bunch of melon. It is not really mixed; it is very weakly mixed and it feels like that is what is happening all over, not just Cupertino.

Chair Takahashi closed Oral Communications.

CONSENT CALENDAR: None

PUBLIC HEARING

3. **ASA-2015-22, DP-2015-05, U-2015-06, TR-2016-04, EXC-2016-03, EXC-2016-05, (EA-2015-05) Amy Chan (DeAnza Venture LLC) 10122 Bandle Dr. & 10145 DeAnza Blvd. (Marina Plaza)**
Architectural and Site Approval to allow construction of a 122 room hotel, 2 mixed use buildings with 188 apartment units, and approx. 22,600 sq. ft. of commercial space and associated site and off-site improvements. Development Permit to allow the demolition of approx. 44,000 sq. ft. of commercial space and construct a 122-room hotel, 2 mixed use buildings with approx. 22,600 sq. ft. of commercial space and 188 apartments with associated underground and surface parking. The project Proposes 16 units as very low income, Below Market Rate units making the project eligible for density bonus; Use Permit to allow 24 hour operations for a 122-room hotel including a restaurant with separate bar; Tree Removal Permit to allow the removal and replacement of 90 trees, Heart of the City Exception for Building A to allow rear and side setbacks of 10 ft. where 22.5 feet are required; and to allow a 16-ft. setback for an architectural feature where 31 feet is allowed; Fence Exception to allow electronic vehicle gates.

It was noted that Com. Sun has a conflict of interest relative to the application, therefore he will not participate in the meeting.

Erick Serrano, Associate Planner, presented the staff report:

- Reviewed the application for redevelopment of Marina Foods with associated site and off-site improvements as outlined in the staff report. He reviewed the project description, project site, setbacks, architecture, landscaping and tree removal, transportation/parking, participation in the Transportation Demand Management Association when formed; and environmental review, which are outlined in detail in the attached staff report.
- Staff recommends that the Planning Commission recommend that the City Council approve the associated applications.

Com. Paulsen:

- Caltrans is introducing themselves as committed to reducing traffic volume; yet they are requesting additional lanes be put in on-ramps; it is indicative of the inconsistency seen at Caltrans. Said he applauded the answers, and commented that on one side they say they want to reduce traffic yet on the other hand want to build more lanes.

Com. Lee:

- Asked staff to go into detail on the site plan and about the closure of easements and relocation of easements; there appears to be an unhappy neighbor.

Erick Serrano:

- Said the easements in question are the easements running from Bank of America and another one would be another easement along this property that has reciprocal access, the two properties have reciprocal access between the site; there is still access throughout the site for the two properties. The city reviewed the proposal along with the city engineer and determined that it was still adequate to meet the conditions and to allow for reciprocal access. Conditions of approval allows the flexibility so that the applicant can continue to have the dialogue discussion with the other property owners; we will allow them the opportunity to work that out; it is a private agreement. The hotel room allocation draws from the Heart of the City (HOC), 122 rooms is what is currently available in the HOC.

Vice Chair Gong:

- Asked staff to provide information on the Transportation Improvement Plan.

Timm Borden, Director of Public Works:

- Said they were beginning the nexus study for the traffic impact fee; in lieu of that they have surveyed a lot of the other local jurisdictions in the region to determine approximately what traffic impact fees are and will take a deposit or bond to secure an amount at this time. At the time that the building permit is issued they will determine if they already adopted the traffic impact fee, they will pay what that is; if they have not, they will pay the deposit in-lieu fee and then adopt the fee. If it is lower they would get a refund down to that amount; if it is greater they are basically capped with this amount so the city would pick that up and it would be rolled into the rest of the fee. It is anticipated that there will be some amount refunded when the fee is actually developed, but to give them some assurance since we have not done the study yet, that is why it is proposed to be capped.

Amy Chan, Applicant representing property owner:

- Marina Foods has been doing business in Cupertino for over 30 years, and appreciates the community's support of the supermarket. About 4 years ago they started to plan for the renovation of the supermarket; as they began to do the financial analysis, they realized that with all the federal, state and city regulations, the renovations would not pencil out. While they were contemplating what to do, the city was considering the GPA and updating the housing element sites. The owners are very appreciative of the city's support to allocate 200 housing units to the Marina Plaza site. Shortly after they began to plan a mixed use project with 200 housing units, 60,000 sq. ft. of retail, 122 room hotel, with building heights of 60 feet. They also wanted to provide 17 Below Market Rate housing. As they got closer they heard feedback from the community that the preference was to have a lower profile project. The owners decided to redesign the project to meet the existing zoning and to reduce the height to 45 feet, and also to provide ample open spaces, but they also had to make the difficult decision to relocate the supermarket of the location. Nonetheless they still want to provide some BMR units even though it would add significant cost to the project. She illustrated the annual revenue loss. Marina Plaza's commitment for BMR is to provide a 99 year term of BMR housing. The project is well designed for the site and will be high quality. The owners want to have a development that they are proud of and pass it on to the next generation. They will not sell the development and will continue to be involved

in the community. She highlighted revenues the city would receive from the project as well as a list of community benefits that they are suggesting. The city will get approximately \$9.9 million one-time revenue and the bulk of it is the park dedication fees and the housing mitigation fees, in addition to the 16 BMR units that the project is proposing. In the 20 year term the project will bring revenue to the city approximately \$23 million. She thanked staff for their assistance with the project and commended their professionalism and exceptional customer service.

John Thatch (Architect):

- Relative to earlier comment about mixed use, said he agreed sometimes mixed use gets diluted; but this is not such an example. This project is a true mixed use project of taking a sea of parking and start developing with offices, the banks and everything else around it and bringing residential, restaurants, vibrancy, bringing connections into it. Said there is Target, Whole Foods, 4 bus stops, all types of different neighboring retail and services for this community within a quarter mile; it is providing connectivity in there plan, there are walkways to Stevens Creek, creating a promenade connecting toward Apple. Said he was excited about the possibilities for the community. Said the brand of the hotel has not yet been decided; there has been interest shown by some companies including Hilton and IHD.
- He reviewed the measurements for each retail spot.
- He reviewed a slide presentation of the project.

Amy Chan:

- Said they have attempted to reach out to the neighbors, the bank properties, the offices and small office on site of adjacent neighbors; they have been successful until recently with a couple of the neighbor property owners; said the city's condition of approval gives them time to work with them to make sure they have a win-win; they are aware of concerns and are willing to work with them.
- Said she received the letter that the Commission received, and have had conversations with them.
- In terms of why they have not been making the connection before, two notices for the project were sent out, they visited all of the tenants of the buildings and let them know about the project and asked them to help make connection to the property owners. They started that process in March, not until last week have they been able to make the connection.
- The property owner started looking at the renovation of the market 4 years ago; renovation did not include redeveloping the site, it was only updating the current market. As they looked at that project it was not successful financially and didn't pencil out. The Council took action to approve the housing site less than 2 years ago and that is when they started to conceptualize the project.

Vice Chair Gong:

- Disclosed that on August 20, 2015 at 11:00 a.m. she met with the development group to listen to their initial thoughts.

Colleen Winchester, Asst. City Attorney:

- Said she had a copy of the letter they were served shortly before the meeting; would provide a copy to the applicant. Suggested that the applicant respond to the concerns raised in the letter.

Amy Chan:

- Said they worked with Mr. Burke, one of the neighbors (small office on Bandley on the west side) and felt the conversation was positive.

Chair Takahashi:

- Asked the architect for more clarity on the live/live units; is it the same term as live/work?

John Thatch (Architect):

- The live/live concept was the idea that you could have a home office or a guest room downstairs, to have some flexibility. There aren't that many in the community and they discussed with Planning having something different as far as variety and the residential types that they have. In the study sessions and workshops with the neighbors, one of the things done was to reduce the two bedroom counts; there are more one bedroom units in the last rendition of the plans.

Com. Paulsen:

- Said to the architect a few months ago an applicant wanted to open a beer garden and the problem was that he couldn't have much of a beer garden because of an antiquated Cupertino law restricting outdoor seating to 20% of a restaurant's seating. Com. Paulsen proposed as part of the Planning Commission work plan that they remove that and be more flexible with outdoor seating, especially in light of our climate and the trend toward more outdoor activities that this development reflects. That has not yet gone to City Council, so it has not been rescinded yet. He questioned once that does get rescinded, are the restaurants going to be able to have flexibility based on the current design to expand their outdoor seating?

John Thatch (Architect):

- Said he felt they will; it is question of how they do parking and perhaps in that case when it does expand more and gets livelier, they may have to look at a valet parking system or something similar.

Com. Paulsen:

- Said he liked the design; however he had a preference on rooflines. He referred to the Monte Verde Sr. Apartment project in Orinda and asked it was possible to revisit some of the rooflines; was that a design requested by the applicant or was that more his idea for design?

John Thatch (Architect):

- Said it was a little of both and also related to the area; he said it fit in the hills and it was a terraced building, a different type of building than the project site.

Com. Paulsen:

- He said his staff held a tour last year and their arborist was very enthusiastic about large trees in new developments. He suggested that as part of the Planning Commission work plan they require that every developer plant the largest tree possible, the species to be determined in consultation with Public Works staff. He asked what interaction his staff had with landscape architect for this project.

John Thatch (Architect):

- Said he was not certain if they did, other than the street trees, and he didn't know if they consulted on the onsite trees, which is usually between Community Development and the developer's arborist.

Jessie Markman, Jetlands Architecture:

- Addressing the comment about large trees, said they had gone to great measures to try to create a healthy root environment and are using a below grade system that will allow loose soils so that the tree roots can be healthy and grow vigorously to get large canopies. It has been something they have discussed from day one and are working with the stormwater consultant and civil engineer to create this great environment for trees to grow healthy.

Vice Chair Gong:

- Noted that they received communication from Caroline Johnson stating that three trees on her property are to be removed.

Benjamin Fu:

- Said that was not possible; staff has addressed a communique with Ms. Johnson and addressed her issues. There are no tree removal plans for her property and another issue was she said her building would be rendered useless during construction and also may be damaged during construction. Staff spoke with the building official to ensure that the building would be constructed to code and up to the safety requirements and that will be evaluated during the building permit process.

John Thatch (Architect):

- The only trees being removed are on this property and there may have been some confusion; there were several trees shown on the tree removal plan that were close to the property line; what usually happens is a tree protection plan is done for trees in the vicinity; and we want to make it very clear that those trees will be protected and retained during all the site work. He also answered questions about the capacity of meeting rooms (max 120) and the restaurants, number of electric charging stations (minimum of 21), and parking spaces. He reviewed the access points from the retail garage to the retail locations, showed levels of parking in different buildings, and location of electric gates.

Com. Paulsen:

- Disclosed that he met with the developer last Fall and heard their presentation; not certain of the exact date.

Vice Chair Gong:

- Questioned if any studies have been done on bike storage as to the effectiveness and use of all the increase biking, how much use it gets, how effective it is on traffic, etc.

Benjamin Fu:

- Said there were no official studies conducted; referred to Timm Borden.

Timm Borden:

- Said they have not conducted studies; it depends on land use, street frontage, the walkability of the site, the bikeability; proximity to other services. There are many factors that can vary from location to location. It is a good start to get people if they are out there and available and they are working to make the city a better place to bike; and it will have an effect and reduce traffic.

Com. Paulsen:

- Said they are in the process of writing a new Bicycle Transportation Plan; having that infrastructure in place will work together with any bicycle facility.

Chair Takahashi opened the public hearing.

Ling Ling Kulla Kulla:

- Said she felt the Marina project was a good plan for the site; the four corners have updated architecture and the addition of the Marina project will add to the updated appearance. It would be good to see Cupertino transcend itself to the 21st century with thoughtfully designed architecture that is enjoyable, open to the community and safe for our children with places where people like to go to. It is commendable that Marina plans to allocate 16 units of housing at 30% of market rate. Said she was a teacher and is affected by the housing problem. In the last 10 years many people have been priced outside of the city and it is time they are brought back. Pricing people out of the community is not a sustainable solution. A sustainable community not only needs a diverse population and culture; it needs to have diverse income levels living together, sharing community resources and benefits; then the community will have true equality, fairness and justice and we will be free of violence and hate crimes.

Chris Zhang:

- Said his family has been shopping at Marina Foods for 13 years, and as a responsible citizen over the past years has carefully studied the new projects in the city and the impact to their schools, traffic and the quality of life. Said he believed the project is a good step for the city, the current site is outdated and not in line with the beautiful look of Cupertino. It creates traffic issues because the current site is a maze to navigate through. The proposed project will beautify this part of the city, but most importantly as traffic continues to worsen everywhere in the Bay Area, the mixed use nature of the project will reduce some traffic. Allowing people to live close to where they work, eat and shop, the overall traffic situation will improve. As a cyclist said he would like to see the project address bike safety; and he thanked the city for its current bicycle plan in place. He said he anticipates there will be a lot of bike traffic due to the proximity between the site and DeAnza College and other retail centers.
- He would also like to see a lot of electric car charging stations which would be good for Cupertino.

Gale Connor, representing John and Nicole Saich:

- Said he submitted a letter at the meeting and apologized for lateness in submitting it for the packet last week. The Saich's just learned of the project only 6 weeks ago; apparently the notices were sent to an out-of-state address and they did not receive them. They had their first meeting with the applicant and project team the prior Wednesday. Over the last 40 to 50 years that this project in the existing center has been developed, there have been a number of private agreements for ingress and egress to allow it to function as a unified whole. The primary concern at this point is that there are two easements of record that are pertinent to and benefit the Saich parcel that would disappear in the proposed project. Submitted Exhibit B, a depiction of the various parcels. In 1972 the green easement (Parcel 2) was created by means of a parcel map and it provides for ingress and egress off Stevens Creek and across the property. In the late 1970s another easement was created further to the north; this included a longer throat for an existing drive aisle that exists on the Saich property and continues on across the adjacent property. When they saw the plans they noticed that Building C completely engulfs Parcel 3 and engulfs much of Parcel 2, but the curb cut which would allow cars to circulate is gone. There is a new curb, new landscaping there; and the historic use is gone. The meeting with the applicant was cordial and they were shown a potential replacement easement; it is attached to the letter, and they do not feel that the easement will replace what the developer is proposing to take.
- Said they believe that the project can and must be redesigned to accommodate the existing property rights of the Saich's; Condition 11 calls for an agreement to dedicate new easements but for that to happen there has to be an agreement not only to dedicate new easement, there has to be an agreement to abandon what is out there, and so on those grounds they oppose the project as currently planned and believe with time perhaps something can be worked out.

Steven Gettel, real estate advisor for John and Nicole Saich:

- Said they oppose the proposed project as designed, for the reasons formally stated by Gale Connor; however the project attempts to put the cart before the horse. These are property rights that existed from 1978 and even before, but this property is enjoyed, depended upon and is relying to continue to enjoy. The Saichs do not wish to relinquish these rights; the project is proposed as a taking by building on these rights despite the short notice and that leaves the recommendation that this project be remanded back to the applicant for redesign to take those rights into consideration. Said they would work with the applicant in that regard.

John Saich, La Selva Beach:

- Said his family has been in Cupertino over 100 years; his father built the Bank of America building in 1963 and he is now the primary owner of 20563 Stevens Creek Blvd; the proposed project is designed to be built on his property's deeded and mapped easements blocking his property's direct access from Bandle Drive and built on adjoining parking rights which are pertinent to an integral part of his property. His property rights have existed for 40 to 50 years; his property has high identity, is

conveniently accessed and enjoys excellent parking. Said the project's proposed design substantially impairs his property's access, circulation, parking and exposure. Said he strongly objects to the proposed project and will not relinquish his property rights.

Nichole Saich, La Selva beach:

- Said she was now a partial owner of 20563 Stevens Creek Boulevard, Cupertino, and their property rights have existed for many years. The proposed project is designed to be built on part of their property; the proposed project will adversely affect their property's access, circulation, parking and exposure. Said she strongly objected to the proposed project and will not relinquish any of their property rights.

Ben Shyy, Cupertino:

- Current tenant of Marina Plaza, said he was in favor of the project; the building is too old with a lot of problems and he was pleased to learn that there is a new project proposed. The new building will encourage the current tenant to return. The building will look nice and match the surrounding other buildings, such as Apple, hotel, and newly remodeled shopping and eating center across the street. The current owner is a local person doing a local project and will benefit Cupertino. Marina Plaza is a good project for the community.

Kevin McClelland, Cupertino Chamber of Commerce:

- Said a letter was sent that will be summarized in his statements. Said he mourned the death of retail; he received pet food that he would normally have purchased from his local chain National Pet Retailer for \$1.00 pound cheaper online, it was delivered to my home Sunday; so unfortunately I am one of those many people contributing to the shrinking amount of retail space.
- Said he also met with man who used to have several hat stores in the area and 30 years ago he had 5 hat stores and he just closed his last shop about 2 years ago as brick and mortar doesn't make sense anymore. Looking at the Marina Foods project, 30 years ago if this was being built that would have been an ideal location, a nice small community area for a hat store, but paying the per square foot retail charge as opposed to the storage space that he currently has as he sells online, it is sad because I would want to try on a hat before I ordered one online, but those are going away as well.
- The good news is that restaurants are the new retail and in Cupertino there is an expansion of those restaurants. I also applaud the efforts to get more outdoor seating because the environment does provide a great space for that, so I hope that we can do that as we do welcome new restaurants as our new retail here in Cupertino. I wanted to thank Com. Lee for bringing up the allocations which we can add to and need to add to desperately. We have been behind in running out of the allocations for a long time now so if you wanted to put forward for the City Council to adopt some more allocations for all of the areas that would be great and especially for hotels because I think there are going to be more people wanting to build those as well and it is a good thing we can add those quickly. I would like to ask that you accept and approve the city staff recommendations to send this matter to City Council to approve the mitigated negative declaration and approve the applications per the draft resolutions

Chris Grisanti:

- Said he supported the Marina Plaza proposed project; came to an agreement with a height restriction that the city likes; setbacks it seems most in the city like; the fact that it is blocked from the street or there is already high rise buildings there; helps to block the overall density that the city feels the trees etc; seems like we have good community support and it is not really causing any of these voting issues that we are having with the other planned projects. Said he was in favor of it, it is the only big project that is going through a normal process.

Lisa Warren, Cupertino resident:

- Said it was a perfect example of questionable mix; said she disagreed with the architect; it is taking a single story project with strictly retail, much used and 100 employees at Marina Foods and yet taking away, and adding people that are going to need groceries. Said it was a great loss for the community; it may be a local family but they have ads in Chinese newspapers for EB5 investors; half million dollars will get you into the country and support at least 25% of this project they are trying to fund it that way. That makes it no longer local; it tends to be the trend lately with many of the developers, so I hope people are looking into that, because our area should not really qualify for EB5 and I believe that is being looked at higher up in government. Shrinking retail? It is a grocery, there are other businesses as well; there has been discussion about them trying to relocate the market; the meeting I was at was hosted by the applicant they haven't found a place for that to happen which is concerning. Going from one story to a 4 story plus underground parking, you ought to be able to save the mix you have; the mix shouldn't get rid of what is currently existing and that is what is happening over and over again with the proposals. There are already issues at Main Street with one particular restaurant that has no area for the employees break area; tenant improvements do not include a place for their employees to have a break room, they only have an area in the back with two patio tables; it is not HOC; with smaller spots where will they take their breaks. Have delivery areas been figured out? The live/live thing screams Air B&B. Said she disagreed that restaurants are the new retail. She commended them for staying within the General Plan guidelines, their exceptions are minimal.

John Thatch, Architect: Did not speak

Chair Takahashi closed the public hearing.

Vice Chair Gong:

- Asked staff to address the Saich's concern about the current design absorbing the easements.

Benjamin Fu:

- There are 3 conditions of approval; Condition 11 on Page 4 of the DP document; it requires the applicant to record reciprocal egress and ingress and Condition 65 and 66 addresses developer shall update any existing easements as well; there is also a requirement for the applicant to come back to the Planning Commission in case they cannot obtain an agreement with the property owners to re-evaluate any sort of modification whether it is site design or building modifications. If an agreement cannot be met the project has to come back to the Planning Commission for evaluation after Council approval, but before any construction can begin, before they can proceed with building permits. At that point in time if this condition is not met, building permits would not be issued and the project would need to come back and go through the hearing process again for reevaluation. Said he had not spoken with the Saich's about it. In terms of easement and reciprocal access we leave it up to the property owners as a private agreement. Alternatively it could be conditioned as such that a project would need to come back or it wouldn't be able to proceed without such agreement; some of the agreements could take longer between two private property owners.

Com. Paulsen:

- A Yes vote tonight on what you are recommending as staff would include a condition that would preserve that easement or a negotiated solution?

Benjamin Fu:

- Correct; the three conditions.

Chair Takahashi:

- Asked if it made sense to move forward if there is such a large potential conflict; it doesn't seem there is an immediate obvious solution; if it were approved tonight and then the City Council takes it up with this particular condition; same thing, they would approve with this condition. If they approve with this condition, the only recourse is that the applicant could not start building until this was cleared up. At that point in time if an agreement cannot be reached, then the project is on hold until an agreement can be reached. That vs. the converse of trying to reach an agreement before going to us or the Planning Commission; what is the advantage?

Benjamin Fu:

- It allows the applicant the opportunity to come up with a plan, a proposal. Because from their point of view I don't want to speak for the applicant, but from City's point of view that is a private agreement between two parties and we reevaluate the project on the project itself, compliance with the code, requirement, design etc. and you do see some standard languages and conditions that put on projects pending further evaluation. They see it as a protection for the property owner as well, for the existing property owner the adjacent property owner as well so then nothing can move forward until a resolution has been met; full agreement between both parties.

Com. Paulsen:

- Said he understood they could not tell a developer what they would like to see him do; they must operate within the zoning and the constraints; but looking at this development it looks like a flag lot with the access off Stevens Creek is something that would be ideally meshed with all the property owners in that big square. Said he was not telling them what to do but it would be great if they could all group together and do a joint development; but again they are presented with this; he felt satisfied with this condition if staff is satisfied and the attorney is satisfied that this would meet the legal concerns of the current property owner.
- Said he expressed to staff about the market and knows that the applicant is looking at spaces but when he sees shopping carts at bus stops that say Marina Foods what that says to him is that that market is serving a population that is not contributing to traffic, maybe unable to drive and be transit dependent and so it would be depriving a needy segment of population of access to food. While growing up in Palo Alto, he saw it happen there; for a long time there was no market in the downtown and a whole generation missed out on the grocery store in downtown Palo Alto and he said he would hate to see that happen there. He is aware they cannot, within the constraints of the zoning, tell a developer what to do. He went on record as expressing his deep concern about the loss of this community resource, because once it is gone, it will be very difficult for it to be regained.

Com. Lee:

- Said she agreed; with this design she felt it would be within the Commission to say that.
- Said in her opinion when there is a big space on a lot of this size and they are able to put in an anchor store, it is beneficial to the community and this site; the site is known as the Marina Site because the biggest anchor tenant is Marina; this proposal will be to cut all the retail in half and have little shops; there is no real identity. She shared the concern with what is being said: (1) there is no identity; (2) there is lack of the shopping center and concerned that there is no anchor tenant;

Com. Paulsen:

- Can we require this of the developer? Can we recommend that the Council consider this a requirement of the project? What is the process for this concern to move forward?

Com. Lee:

- Said they can state their concerns and what they would like to see as a development project of this size.

Asst. City Attorney:

- This is a different project because it is both a housing element site as well as a housing project; if what you are talking about is a condition that there be more of an anchor tenant or something along those lines that is a different criteria. What we need to be looking at is what are the criteria for not approving a housing site and a housing element site? As far as making a recommendation you can make a recommendation that a site include a larger retail space; but for purposes of the findings and recommending a denial of a housing element site, there is specific conditions and factual findings that need to be made.

Com. Paulsen:

- There is retail and there is a grocery store, which are two different things; if it is an anchor that sells like Target, it is different from a supermarket that serves the needs of poor people who can't afford to drive to a store. Said at one time he managed a federal grant that encouraged cities to require zoning that would include healthy food access, not just classification of retail. He asked how the other commissioners felt about that?

Chair Takahashi:

- A question is how you structure something where you don't really know who the tenant is; you don't know if Marina will move into that new location. Even if you allocate for an anchor there is no guarantee that it is going to be grocery or market. It is a slippery slope.

Asst. City Attorney:

- The difference is from a land use perspective when you are looking at a use of retail vs. something other than that, it is what the underlying use allows and what is permissible in that use category. You could make a suggestion that there be larger spaces but this is the project that you been presented with so this is the one you are making the decision on. It is a very slippery slope to say we don't want that type of business in this particular location if those are permitted uses in the zone. It becomes a difficult analysis.

Com. Paulsen:

- Is this a General Plan issue for the Council to say we would like to have access to low cost healthy food in our downtown and here is how we put it into the plan. The process for that is beyond the scope of tonight's meeting. Said he was concerned.

Asst. City Attorney:

- Perhaps zoning as well. There can be specific incentives provided to certain establishments that provide certain benefits; something along those concepts.

Vice Chair Gong:

- Said that her issue is that it is a housing element site. She asked if Mr. Albert Wong was still associated with this project? On October 14, 2014, he came before this commission asking (that's when we were considering the parcels for the housing element) and stated very accurately that he has been a long time resident here, that he has been a long time local businessman 30 years; he has had the Marina Market 30 years; it is time for it to be refreshed and redeveloped and he thought it would be very nice to redevelop it. He knew, he stated that he knows that Marina Market is core to the Cupertino community, the environment, and that he had planned to completely maintain Marina Market, and also build housing and focus the housing on seniors. Even someone as senior as a former commissioner Paul Brophy, accepted his sincerity that this truly was his intent. She said she understood what is said here you are not obligated by law, but it was said and they supported it based on what was said to be a housing element and that is where the hook is now for her; and that is where the issue is for her; said she was

massively disappointed to see the plan without Marina, without senior housing and the minimum number of BMR units.

Com. Lee:

- Referring to A8, said one of her concerns is there are two parcels; said she felt the hotel should not be located there; they envisioned Stevens Creek to have more of a retail and that is in the HOC specific plan; for DeAnza to have more frontage and retail; instead the retail is in the inner spots where signage is not going to be able to do too much. It is hard for retailers to go in the internal spots where it used to be parking. We know the hotel will do well; we are looking at a project as a housing element site, but it is disappointing to see the retail tucked and hidden. Everyone has the best intentions to keep the parcels together, but it is actually two parcels; later on it could be sold off. If planned as a planned development, she would recommend that the parcels be united.

Com. Paulsen:

- Said speaking from experience as a ranch owner in Mendocino County, it is easier to maintain your parcels than it is to try to carve them out later. As a developer it gives you more flexibility in the future to keep your parcels.

Benjamin Fu:

- Relative to the issue of retail frontages the site has challenge in that it doesn't have a lot of street frontage as it is now. The majority of the frontage faces onto DeAnza which is where the most of the outdoor amenities are, so shifting the hotel location is not going to replace any more street frontage. The lot is the way it is.

Com Lee:

- Said there are a lot more cars on Bandlely and Alves and DeAnza like the interior on the retail. The projected sales tax revenues that says they are thinking \$50K is quite low if that is true; considering the site. It could potentially generate more.

Vice Chair Gong:

- Said she understood where the BMR number comes from; she felt that 11% on the total units being proposed is more reasonable especially for the need for BMR units here. Because of the density, they have received an additional 49 units; requesting 3 or 4 more isn't out of line.

Com. Paulsen:

- Said he was a big supporter of BMR housing also, but asked if they could require this or recommend it to meet the requirements.

Com. Lee:

- Said they could recommend it to City Council.

Asst. City Attorney:

- Said it would be something that the developer would have to offer voluntarily in connection with the development of this particular parcel; because the density bonus law is in both the muni code and state law in how the density bonus is calculated. There is no development agreement here so there is less flexibility; it is something that would need to be offered by the developer and voluntarily provided.

Chair Takahashi:

- Said denying this project on the grounds there is not enough BMR is not an option; it meets the requirements.

Asst. City Attorney:

- Correct; in this particular project the General Plan has 200 units as a housing element site; the number of parcels in the General Plan were less than what is being proposed in this project; in this project taking the acreage and multiplying it by the permissible number of units, results in 139 and they have offered 16 affordable housing units, that is 11% very low income housing. Under the formulas established by the state they are entitled to the density bonus; they are entitled to that bonus which allows them more housing on a particular site. It would be difficult to deny a project based on that particular criteria. It is within the Commission's purview to say there are some elements of the project that are less than satisfactory; there are things the Commission could do; they could pass it on to Council; they could continue this hearing and give them time to address the concerns; there are other options.

Com. Paulsen:

- Said he liked the development and was pleased to finally see the HOC developing for Cupertino. When he moved from Palo Alto 30 years ago he felt like the city was a tractless suburb, and it is now finally a place for fostering social contact, walkability. As a founding member of the Cupertino Bicycle Pedestrian Commission he felt the project will work synergistically with the Bicycle Plan and with other developers that are looking at bicycle facilities to really help foster bicycling as a serious alternative, not just 1% of trips alternative.
- He reported that he spent Saturday morning with Apple's chief arborist looking at trees he has planted and commented that it was fantastic what Apple is doing with their Oak trees and breeding their trees. He commended the landscape architect and urged staff to visit the area, noting that thousands of Oak trees were being delivered to Cupertino this week.

Com. Lee:

- Said the Asst. City Attorney said they could offer some suggestions and perhaps give the applicant some time to make changes. She said there were three commissioners in favor of keeping the supermarket.

Com. Paulsen:

- Said he felt they could not force them to do this but if they could continue the hearing and hold their feet to the fire a little bit, rather than have them say they are looking for space and could not find any, it allow them to return with a more concrete proposal. He said he was not at the meeting where they mentioned that, and it was disheartening to hear that.

Asst. City Attorney:

- If the Commission would like to continue the hearing, they should look at the agreement with the property owners as well, so they have time to resolve the outstanding issue.

Vice Chair Gong:

- Said the strong opposition to the easement was the main basis for wanting to continue the item.

Com. Paulsen:

- Commented that he would rather receive a tidy package than a package with loose ends.

Asst. City Attorney:

- That is where the focus of the Commission needs to be is on the acquiring or giving the applicant and adjacent property owners the time to sort through the easement and that would be based upon grounds that while there is conditions of approval, there hasn't been sufficient time to iron that issue out. That could be basis for continuing the hearing.

Vice Chair Gong:

- Said her concern was the strong opposition by the neighbors.

Chair Takahashi:

- Said he was still not clear on how a Planning Commission would mandate a market in this project; it is not something that should be or could be even remotely proposed. He said he was trying to look forward given there is significant concern with regard to that element. What are the options in terms of continuing based on the easement issue; possibly three commissioners expressed concern over loss or lack of an anchor tenant.

Asst. City Attorney:

- That would be extremely difficult, because as we were discussing before, it is the underlying use and what is a permitted use in this particular zone and requiring an anchor tenant, or a certain size of a space; it gets very difficult.

Com. Lee:

- Referring to A0, the live/live units are facing Alves; there are more cars on Alves, the fuchsia ones would be very good spots or better spots for retail than the internal corner ones. Some people may drive on Alves. For some reason they want to sell the live/live units; she said she was not proposing they have anchor tenants, it would be better but it's like a redistribution or just reorganizing or moving.

Erick Serrao:

- Said Fire looked at emergency access to the site, along Alves Drive it will be completely red-curbed so there will be no parking along that side; it is strictly for emergency access because of the height of the buildings and the proximity the fire trucks need to get to the building.

Com. Lee:

- Said she did not think it is a good idea to put retail on internal aspects; also did not feel the hotel should be facing DeAnza Blvd., she would move the retail facing DeAnza to not have any sort of liability.

Chair Takahashi:

- Said he did not agree; the hotel location is fine where it is; DeAnza is not really not a retail street, up to Stevens Creek; beyond Stevens Creek, South of Stevens Creek it is retail. Said he agreed with Com. Lee that having retail on Alves would be fine as well and potentially add more elements to potentially attract retail shoppers.

Com. Paulson:

- Said he liked the project and would support it. He addressed the developer, stating that he was sitting on a gold mine and that he would become wealthy with the project. He pleaded with the developer to consider the needs of those less fortunate in the community, the elderly and please try to find a place for them to shop in their community nearby for low cost healthy food. Asked them to consider helping those find a place to live because everyone is made richer and actually healthier in the community in long term through this income diversity. Relative to the easement issue, he said he was comfortable working it out as long as construction doesn't start without the Saich family successfully reaching agreement with the developer.

Vice Chair Gong:

- Said she was uncomfortable with the strong opposition by their neighbors, that the designs were completed without talking to them. It concerns her as a good neighbor. Said she felt the application should be continued based on that.

Com. Lee:

- Agreed that the application could be continued.

Chair Takahashi:

- Said his thought on continuation was at least a significant revision would be needed to accommodate access satisfactory to the adjacent property owner. That being said, he felt the change would affect that corner to a point where it is going to have to come back to the Planning Commission. From that perspective he agreed that that element should be rectified giving the adjacent property owner more time to resolve exactly how those property rights and access will be restored. Said he felt the site layout was suitable from the standpoint of providing a hotel, the much needed housing for the city. The EV chargers, said he was trying to look forward from the standpoint of more proliferation of electric vehicles and one limiting factor, apartment complexes, apartment complexes that don't accommodate EVs limit the market. As many EV charging stations as possible is a good thing from the standpoint of allowing a tenant to own an electric vehicle. If there is none there they cannot run an extension cord from their third story apartment down to the garage and charge their car. He shared the sentiments of Com. Lee and Lisa Warren as far as diminishing retail. Any elements or efforts to increase the retail will be beneficial to the project, but understand the constraints that the property owner is trying to work with.

Items to be addressed include an agreement for easement and feelings about BMR.

There was a discussion to determine the appropriate meeting date to continue the public hearing to. It was determined that Tuesday, July 25, 2016 at 6:45 p.m.

MOTION: Motion by Vice Chair Gong, second by Chair Takahashi, and unanimously carried 4-0-0, Com. Sun absent, to continue the public hearing on ASA-2015-22, DP-2015-05, EA-2015-05, U-2015-06, TR-2016-14, EXC-2016-03, and EXC-2016-05 to July 25, 2016 at 6:45 p.m.

OLD BUSINESS: None

NEW BUSINESS: None

REPORT OF THE PLANNING COMMISSION**Environmental Review Committee:**

- The committee met and reviewed the project discussed this evening; application passed with a Negative Declaration.

Housing Commission: No meeting.

Economic Development Committee Meeting:

- The draft Economic Strategic Plan was presented; began in early 2015 to focus on Cupertino businesses to study regional and local trends in employment industry businesses retail with implications for Cupertino businesses, and the impact of businesses on Cupertino's fiscal health and the opportunity to maximize what us already here. The final report will be presented to City Council at the end of the summer.

Mayor's Monthly Meeting With Commissioners: Attended by Com. Sun; will report at next meeting.

Report of the Assistant Director of Community Development: None

ADJOURNMENT:

- The meeting was adjourned to next Planning Commission meeting on July 25, 2016, at 6:45 p.m.

Respectfully Submitted: /s/Elizabeth Ellis
Elizabeth Ellis, Recording Secretary