

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, CA 95014

CITY OF CUPERTINO  
PLANNING COMMISSION MEETING  
DRAFT MINUTES

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6:45 P.M.	FEBRUARY 14, 2017	TUESDAY
CITY COUNCIL CHAMBERS		

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The regular Planning Commission meeting of February 14, 2017, was called to order at 6:45 p.m. in the Cupertino Council Chambers, 10350 Torre Avenue, Cupertino, CA. by Chairperson Alan Takahashi.

**SALUTE TO THE FLAG**

**ROLL CALL**

Commissioners Present:	Chairperson:	Alan Takahashi
	Vice Chairperson:	Margaret Gong (2016)
	Commissioner:	Winnie Lee (2016)
	Commissioner:	Don Sun

Commissioners Absent:	Commissioner:	Geoff Paulsen
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Staff Present:	Assistant City Manager:	Aarti Shrivastava
	Asst. Community Development Director:	Benjamin Fu
	Associate Planner:	Gian Paolo Martire
	Assistant City Attorney:	Colleen Winchester

New incoming commissioners David Fung and Jerry Liu were seated in the audience.

**MOTION: Motion by Com. Lee, second by Vice Chair Gong, and carried 4-0-0, Com. Paulsen absent, to move Item 2 before Item 1.**

**2. APPROVAL OF MINUTES:**

**MOTION: Motion by Vice Chair Gong, second by Com. Lee, and carried 4-0-0, Com. Paulsen absent, to approve the minutes of the January 17, 2017 Planning Commission meeting as presented.**

**Chair Takahashi** thanked the outgoing commissioners Winnie Lee and Margaret Gong for their years of service. **Aarti Shrivastava** thanked outgoing commissioners Lee and Gong for their service and helping guide staff and their recommendations to create recommendations that the Council could review. **Benjamin Fu** presented each with a parting gift, a Cupertino historical blanket. **Com. Sun** thanked the commissioners for their service. **Winnie Lee** thanked staff, and City Council for choosing her and congratulated Chair Takahashi on his reappointment. She said she will continue her work with the community on committees and projects. **Margaret Gong** thanked City Council for choosing her to serve on the commission, and thanked staff and fellow commissioners. The incoming commissioners were seated.

The agenda was moved back to Item 1.

**CEREMONIAL ITEMS****1. Election of Chair, Vice Chair and Committee representatives:**

**MOTION:** Motion by Com. Liu, second by Com. Takahashi, and carried 4-0-0, Com. Paulsen absent, to elect Com. Sun as Chair, and Com. Paulsen as Vice Chair for 2017. Com. Paulsen had communicated that he would accept the nomination.

Chair Don Sun chaired the remainder of the meeting.

**Committee Appointments:**

**Design Review Committee:** 1<sup>st</sup> and 3<sup>rd</sup> Thursdays, 5 p.m. (Vice Chair of Commission serves as Chair of the committee; also a second commissioner is elected to join the Vice Chair as well as an alternate. (Com. Paulsen to serve) Alternate: Com. Takahashi. Com. Paulsen is currently serving as the rep for Housing Commission and has communicated that he would like to represent Planning Commission on the Economic Development Committee

**MOTION:** Motion by Com. Liu, second by Com. Fung, and carried 4-0-0, Com. Paulsen absent, to elect Com. Paulsen as Chair of the DRC, Com. Fung rep, and Com. Takahashi as the alternate.

**Economic Development Committee:** As mentioned previously, Com. Paulsen has indicated an interest to be on the EDC; currently Chair Sun has been the alternate.

**MOTION:** Motion by Com. Fung, second by Com. Liu, and carried 4-0-0, Com. Paulsen absent, that Com. Paulsen serve as rep of the EDC and that Com. Takahashi serve as the alternate.

**Environmental Review Committee:** Chair Sun serves as rep for Environmental Review Committee (ERC) Com. Liu will serve as the alternate.

**MOTION:** Motion by Com. Fung, second by Com. Takahashi, and carried 4-0-0, Com. Paulsen absent, that Chair Sun serve as the rep. and Com. Liu as the alternate.

**Housing Commission:** Com. Liu volunteered to serve as rep on the Housing Commission.

**MOTION:** Motion by Com. Fung, second by Chair Sun, and carried 4-0-0, Com. Paulsen absent, that Com. Liu will serve as rep. and Com. Takahashi serve as alternate on the Housing Commission.

**Mayors Monthly Meeting Schedule - 1<sup>st</sup> Wed of each month - 5:30 p.m.**

Rotation for attendance:	Feb. - Com. Paulsen	July - Com. Paulsen
	March - Chair Sun	August - Chair Sun
	April - Com. Fung	Sept. - Com. Fung
	May - Com. Takahashi	Oct. - Com. Takahashi
	June - Com. Liu	Nov. - Com. Liu
		Dec. - Com. Paulsen

**CONSENT CALENDAR:** None

**WRITTEN COMMUNICATIONS:** None

**POSTPONEMENTS/REMOVAL FROM CALENDAR:** None

**ORAL COMMUNICATIONS:**

**Connie Cunningham, Cupertino resident:**

- Addressed the Planning Commission regarding the homeless in Cupertino, stating with the added economic growth in the area, the homeless problem is worsening. She said the West Community Services is an organization which supports the homeless and provides services. She is an interested citizen and urged the community to continue to support it and not get lost in other many important things that are being considered through their planning. She said she was eager to meet more citizens who were interested in the program and also attend Housing Committee meetings. She recently heard of the homeless situation at DeAnza College, and said she did not realize there was a problem with students not having proper housing.

**Lisa Warren, Cupertino resident:**

- Read statement into the record from person unable to attend meeting. There was a statement made on social media that referred to and touted the practice of using modern urban planning in an attempt to reduce sprawl. *First question:* What is the definition of modern urban planning? *Second question:* What might this statement be referring to with reference to “sprawl”. Please consider this; if someone were to ask the attendees at a Planning Commission meeting where they purchased the car they came in; their wallet or purse; their clothing; any jewelry or home furnishings; refrigerator, dishwasher, range, plants and landscaping items, etc., it is likely that almost everything would have been purchased outside of Cupertino, especially now with a lot of our retail missing. Cupertino encourages us to shop elsewhere by having limited retail options which in turn puts us in a traffic and urban sprawl, misusing a concept of urban sprawl on Cupertino in order to justify high density mixed use developments while at the same time ignoring the lack of basic necessities of an increasing population and is certainly an example of flawed planning. Mixed use projects provide limited retail to support the immediate onsite residence providing little convenient shopping range or depth for the rest of us. Home Depot is brilliant exploiting the lack of the homestore for Cupertino; Cupertino didn’t provide for us; San Jose did and they get our tax revenue. Likewise with Costco and Valley Fair; as long as Cupertino refuses to provide for us in the retail friendly way, our neighboring cities get to have our tax dollars and we get to experience additional gridlock and all the negatives that go along with that.

**Caryl Gorska, Cupertino resident, read statement into the record:**

- What is sensible growth? Sensible growth begins with resident engagement and data collection; it manages change through long term planning with clear objectives supported by a majority of residents. Sensible growth is change management that will benefit Cupertino residents for years to come. What prevents sensible growth today; (1) Spot zoning; insufficient or would say chaos planning. (2) Lack of transparency; (3) Platitudes that replace clear objectives reason decision making and data collection such as “change is inevitable”, you can’t “shut the gate” (4) Insufficient funding for true infrastructure costs; and (5) Magical thinking. Spot zoning: according to the General Plan Scandinavian Design properties is zoned for commercial residential use; this has been established in the General Plan in 2014 and a General Plan Amendment (GPA) in 2015; do we really need another GPA in 2017? What is wrong with the vision planning done 2 to 3 years ago; and is this done to benefit the city or its residents? According to Cupertino Municipal Code, the purpose of general commercial zoning is to assure maximum compatibility with surrounding residential areas as well as minimize adverse traffic impacts

resulting from commercial development. Have we considered the impact of zoning change on this neighborhood? Lack of transparency; the 2 million square feet of office allocation at Vallco was approved despite vocal opposition from the residents as well as opposition from the Planning Commission; also in the video former Planning Commissioner Paul Brophy asks where will they live? In the December 2014 City Council video it is clear that the office allocation will expire after May 31, 2018 if a specific plan is not approved, yet the General Plan says city will consider the removal of the office and residential allocations for Vallco shopping district. This doesn't mean expire; why does the wording not match the video? Lack of transparency Part 2. What happens to the 2 million square feet of office allocation after May 31<sup>st</sup> 2018? Some people claim it can be reallocated to other areas in Cupertino. In December 2014 Rod Sinks said he would like to allocate some but not all to the rest of the city. We believe it was just a personal comment because the City Council cannot vote on some allocation. The Dec. 4, 2014 video of City Council says an expiring office allocation but the General Plan does not; how do we reconcile this difference? How can a personal comment of some office reallocation which is not mentioned in the General Plan become a City Council decision?

**Liana Crabtree, Cupertino resident, read into record:**

- Is this transparent to you? It is not transparent to us residents. Need for clear objectives and reason decision making; mixed use has been sold to residents as the next Santana Row. Do you go to Santana Row for apartments and offices? Probably not; does Main Street look like Santana Row to you; maybe not. How do we make future mixed use less hodgepodge and more Santana Row and is mixed use really the answer for successful retail? We don't think so; successful retail is based on good management and desirable retailers that can attract shoppers. Some folks keep talking about business diversity bringing in more companies that will pay tax; these same folks also say that new companies will not generate more traffic by implementing TDM (transportation demand management). Unless we get big companies such as Apple, Google, Facebook, etc., that can afford to run private buses, small companies simply cannot meet the TDM target, so we need to trade off business diversity against traffic; in the end Apple wins. This is not meant to be a complaint about Apple, it is meant to question if business diversity is a realistic objective; our past record has not been good. Insufficient funding for true infrastructure costs; the strong proponents for hyper growth say growth will generate new tax revenue but they ignore the cost of infrastructure improvements. Mountain View's north Bayshore traffic project costs are \$41 million with continued operating costs. Measure D's 9212 report shows about \$4 million of tax revenue, north Bayshore traffic revenue will likely be less due to lack of resale sales tax. This illustrates that the cost of infrastructure improvements are very high compared to the tax revenue. Worse yet, the money spent on traffic projects don't reduce overall traffic; the traffic project only slows down the traffic growth; residents will end up paying more tax and get higher density and more traffic in return. Magical thinking; let's expand on the previous traffic issue further; a popular myth is that mass transit will remove cars from our road; it is partially true; each transit rider is clearly not driving a car, but growth will add more people and only a small percentage will take mass transit. The net result is that growth will add even more cars to the road and worsen traffic, every major city in the world with mass transit has horrendous traffic. Another myth is that efficient mass transit provides an alternative to driving; when do we envision an efficient alternative to driving and at what cost?

**Luke Lang, Cupertino resident:**

- Discussed what some Cupertino residents have been comparing Cupertino with Mountain View and tallying Mountain View's growth as being a fantastic model that they should follow and said he believed their arguments are biased and one sided and it is important to look at the facts and entire picture. They are two different cities; while similar in area and population, Mountain View is more industrial and Cupertino is more family oriented. Mountain View is projecting a budget deficit in 2019-2020 and Cupertino does not; Mountain View also has 2x population density in the residential area; as with tables with data to back that up, if you look at compared two cities you will see that Cupertino is about 13, Mtn. View 12.2 sq. miles, population of Mountain View a little higher; looking at the

residential land area Cupertino is about 75% and Mountain View is less than half, so the majority of Mountain View area is industrial or non-residential; therefore you get the residential density of 2x and notice that Mountain View has about 3x number of city employees. He continued his comparison of the two cities in the areas of retail and transportation. Mountain View is an example of infrastructure costing more than new tax revenue and therefore they have a budget deficit and they already have much better transportation infrastructure than Cupertino. For Cupertino to grow like Mountain View they would have to spend even more money on transportation than Mountain View. Cupertino enjoys a better quality of life because of lower density; don't spend good money to create more traffic problems.

**Michelle Bazargun, Cupertino resident:**

- Said Cupertino did not need more apartments and housing. Concern is there is too much housing and residential; the retails and small businesses are gone; they need to support small businesses. Said it was not the way for Cupertino to go.

Chair Sun closed the Oral Communications portion of the meeting.

**PUBLIC HEARING**

**3. U-2016-04**

**Ching-yi (Easy Way Group)**

**Meet Fresh/Tea Chansii**

**Owner: Main Street Cupertino**

**19449 Stevens Creek Blvd**

Use Permit to consider allowing an existing business to operate past 11 p.m. in a mixed use development

**Gian Paolo Martire, Associate Planner, presented the staff report:**

- Reviewed the application for a Use Permit to consider allowing an existing business to operate past 11 p.m. in a mixed-use development, as outlined in the staff report. He reviewed the project site and surroundings located at the corner of Stevens Creek Blvd. and Tantau Avenue, and the operational details. The two businesses operate as one unit, and do not serve alcohol. No complaints have been received by the city for other businesses that have been granted permits for extended hours; a condition of approval has been added to allow staff to review the operations of the business and if warranted rescind the expanded hours of operation in the event there are ongoing issues with the extended hours.
- Explained the process for responding to complaints of noise level if any.
- Answered question about the application.

**Ching-yi Fu, Applicant:**

- Said the reason for applying for extended hours is that some customers complained about not having a place to meet friends, especially Friday and Saturday nights. Also heard from residents that we keep our environment calming and quiet as it used to be. There are rules for the staff to make the environment quiet, e.g., turn off the music in the building at 10 p.m.; customers will be notified of closing and will turn out some lights at 12 a.m. They will only take orders until 12 a.m. so they won't stay too long in the building. Also can close the back door near the apartments, so they cannot exit from that door and they won't go in the parking lot and talk and be loud. Alcohol won't be served; people won't stay too long. There is plenty of parking in the plaza and neighbors won't have to worry about parking spaces near the residences. Patrons won't have to worry about safety in the parking lot at night as there is a security guard present 24 hours. She said it was not certain if there would be patio tables in the back of the restaurant. Said in the later hours they will close the back doors so that the noise is at a minimum to the neighbors. She reviewed the cleanup procedures followed.

Chair Sun opened the public hearing.

**Lisa Warren, Cupertino resident:**

- Said she was concerned that the people who had concerns about the business had been asked how they feel about it. Said it was a good opportunity to bring up an issue of Main Street. If there is a popularity of a business like this at Main Street for any hours during the day, even at the current hours they have; it seems a shame that the City Council chose to allow Sandhill Properties to get an entire 4<sup>th</sup> floor on two large office buildings in exchange for 1600 square feet or take of retail that was supposed to be a community benefit which is now Apple Mac Cafes. That took 2 retail sites that could have possibly absorbed some of the patrons from this business taken away. Said she felt cheated as a resident and the community benefit issue has got to stop being handled the way it is. City staff is aware of her concerns about the use of the retail spaces in those office buildings; they may have had conversations with Sandhill etc., but she was not sure where those conversations are. Said she brought it up because it is an example of promises that were supposed to benefit the community and now they have one business trying to extend their hours because they are a community benefit.

**Diane (no last name given), Cupertino resident:**

- Said she was present to voice complaints about the noise in the parking lot, delivery trucks as early as 6:00 a.m., and about the unreasonable business hours. Presently some of the businesses on Main Street open at 6:00 a.m., some close at 11:00 p.m. or 12:00 a.m. The late night customers make noise with loud music, talking, revving their car engines; the parking lot has so much noise that the residents are woken up at night at 12 midnight, 1:00 a.m., 4:30 a.m. from noise of cleaning up outside; early in the morning there are delivery trucks and cleaning people spraying water outside the stores. Said they have called the city and the Sheriff has come out; perhaps the project to extend the hours should not be approved if the Sheriff has to be called continually. Said she did not agree with the presentation shown about businesses open late at night with no complaints. There are complaints and the existing businesses which are allowed to stay open until late at night are one block away from Metropolitan where she resides. They can hear everything; it shortens their down time and affects residents negatively. It is unfair. She said the complaints were made to the city and sheriff; response from the city is they state the laws about delivery. They are also building an apartment building in front of the tea shop 10 feet away. How will future residents put up with the noise?

**Grace Lim, Cupertino resident:**

- Resident at the Metropolitan complex; suggested the operating hours be decreased because the other restaurants are further away from where they live and their business hours do not bother them. The Meet Fresh representative claims they can control their customers but they are not able to. Their customers trespass in the condo area and leave trash, make noise, arguing and also singing. Allowing them to keep their business open later hours is making the atmosphere unsafe and a dangerous environment. Many of their customers are young people, high school students, children who want to hang out very late and create a lot of noise; they don't have a sense of responsibility or abide by regulations and lack morality; they do whatever they want to do. Since they not able to control their customers, their business hours should not be extended.
- The business hours should be shortened; they could open earlier at 10 a.m. instead of extending their business hours. Residents somewhere else can't imagine the misery their family goes through; there is no loading zone to load or deliver goods; Main Street should create or have a designated loading zone; they use parking spaces as their loading zone. Said the nuisances and noise affect her children negatively and she can no longer endure them or be patient anymore. Why should developers' interest supersede the residents' interests; they are entitled to living peacefully but have lost their entitlement at this point. Meet Fresh creates a lot of trash; they don't take care of their responsibility. Their spokesperson emphasized what their clients want and don't want; there is always responsibility that follows but they have not shown that.

Chair Sun closed the public hearing.

**Com. Takahashi:**

- There was a lot of discussion and concern regarding noise; some of the main things were specifically dumpster noise, garbage removal and deliveries. What are the delivery requirements imposed on Main Street with regard to delivery hours? How does the city enforce the delivery requirements, hours, inside vs. outside?

**Gian Paolo Martire:**

- Hours are 8 a.m. to 8 p.m., specific locations with regard to where deliveries should take place; the location between AT&T and Target is prime delivery for onsite businesses.

**Aarti Shrivastava:**

- Said they could send Code Enforcement out to the businesses to review the hours as well as the location of delivery to eliminate the problems. This is done from time to time with all the businesses because they get new managers and personnel; staff is willing to go out and notify them of the rules.

**Mike Rhoebe, Main Street Cupertino:**

- He said they have 24/7 security; also a truck dock which the majority of deliveries go through, but some go into the heart of the property which is closer to their east side near Lazy Dog. Said the security staff is vigilant about maintaining order in that parking lot; loitering is not allowed; residents cannot play loud music; and they don't allow trash. He said the statement of trash being all over the place is a misnomer; there are trash facilities in the back of Meet Fresh and behind shop 7. Meet Fresh has been told not to drop trash after 10 p.m.; they could hold trash inside of their space. They are model tenants and they hardly have any issues with them. The area is also patrolled by cameras, golf carts, other vehicles, Segway and foot patrol. If they are aware of kids racing through the parking lot, they handle it immediately. There is also a sheriff's substation on site. He said generally speaking they have good control over it and if an issue arises, he will talk to the neighbors. He said it is their goal to be a good neighbor; they have provided a park and the majority of the residents using the park are from the Metropolitan.

**Com. Fung:**

- He asked that staff look at the way in which they record and report incidents from the community to make sure they have an accurate picture if there are resident complaints regardless of how they are resolved, so that they are at least able to see them and are aware of the issue. Said the position of the location does have the potential to have more impact on the residents of Metropolitan. In particular he felt it was not necessarily something they need to do formally in the use permit. He encouraged working it out voluntarily with the operator to not extend the hours. Said he felt it would be good to use the back side during the day, which was a point of discussion in Parks and Rec when looking at the plan for the Main Street Park. He discouraged using it at night or making that area open past a certain time, probably relatively early in the evening if possible.
- Said he felt it would help reduce the amount of disturbance by closing down that path which they may be doing already. If people are discouraged from using the back door to get to the parking lot that is adjacent to the Metropolitan, that can also cut down discussions in the parking lot. It is very easy for that to happen in the park area and that was a concern of Parks and Rec. Said he would encourage voluntarily; if there were ways to place some limits there he also would encourage that.

**Com. Liu:**

- Said they have two competing priorities because they want Main Street to be a place where people can hang out and the place seems to be popular; there would be a lot of foot traffic on the weekends. Said he was sympathetic to the residents who may feel intruded upon by the noise. What they are trying to do is to extrapolate what the behavior is going to be, if they make changes or not.

- Said he agreed with Com. Fung; he noted there were tables shown on the plans; with the current weather nobody is ever outside, but when the warmer weather comes customers may use the outdoor tables. What it will then look like is unknown and something they will have to deal with. He said he echoed many comments that Com. Fung had in terms of some of the restraints and limitations.

**Com. Takahashi:**

- Said he felt it is a topic that will come up more as there is more high density housing in close proximity to entertainment and retail. The hours requested extend beyond hours of any current business in Main Street; the weekend hours are being proposed going to 1:00 a.m. He questioned whether or not that should be granted vs. being a worse case the same as the other businesses midnight. In terms of the weekday hours of Sunday through Thursday, is there really more business gained by extending the hours to 12 midnight on the weekdays? Said he was a proponent of a compromise with regard to the actual hours of operation as well as awareness of noise and noise mitigation just because the angry neighbor syndrome gets unfortunate and creates tension. He felt they could work through it because generally speaking the city is enjoying the activity levels that Main Street has brought; where they had nowhere to go for late night places, having that is something that Cupertino needs and balance is the key word to promote and figure out how to achieve that from the standpoint of not deteriorating the quality of the life of the residents, but while giving the broader city access to those entertainment centers.

**Chair Sun:**

- Said they need to draw lines between the voluntary and mandatory; they encourage people to volunteer and they come to them; they need to find a solution.
- He said he was a businessman and cared about how much money can be generated per night. If they could generate \$1,000 a night his suggestion would be to extend the hour to midnight. Many residents have voiced their complaints and concerns, in another two or three months hotel guests will be next to their business and will likely generate more complaints. He suggested finding a middle ground and try to match the other business hours and go to midnight and have both parties benefit.

**Com. Liu:**

- Asked if it was practical to limit the use of outdoor seating especially on the west side of the property after some hour, is it practical or not really enforceable?

**Aarti Shrivastava:**

- Responded there was a noise ordinance and then can go out and measure if there is noise, but it is practical to say that the extended hours don't apply to the back and they should not be using the back patio at least for that time.

**Assistant City Attorney:**

- Clarified for purposes of what is on the agenda, noted what has been noticed and what is on the agenda. The topic is the late night hours of operation for this particular establishment. To the extent that they want to foster additional communication between staff and Main Street, that is an additional issue.

**Chair Sun:**

- Said he wanted to follow the attorney's advice and focus on the operating hours and not other business. He said Com. Takahashi and he had different approaches; Com. Takahashi supported limited operating hours and he wanted to go a little more.

**Com. Liu:**

- Said he supported keeping the closing hour of 11:00 p.m. on week days.



**Com. Fung:**

- Said he felt there was a difference because of the proximity between this site and the other sites, but the other sites have been operating until midnight. Said his personal opinion would be to make it midnight every night with a recommendation that it would have shorter hours on Friday and Saturday because of the proximity to the residential areas

**Chair Sun:**

- Said his personal favorite was the entire street at midnight which makes things much easier for the businesses; they have to remember Monday, Tuesday, Wednesday operation hours; it is very hard for them to manage their staff and the business so just give them midnight for the entire street.

**Com. Takahashi:**

- Relative to comments relating to noise generation, he said he did not think they needed to incorporate any language with regard to making sure deliveries are within the correct hours.

**Attorney:**

- Said they could state no outdoor seating from this particular restaurant from 11:00 p.m. until extended hours of operation.

**MOTION:**      **Motion by Com. Fung, second by Com. Takahashi and carried 4-0-0, Com. Paulsen absent, to approve application U-2016-04 with the modification of the operational hours to be until midnight each night of the week, and with the condition that use of the rear area facing the park is not permitted during the times which are being changed.**

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| <b>4. M-2017-01</b><br><b>Keith Fichtner</b><br><b>(Kingsmill Group)</b><br><b>19900 Stevens Creek Blvd.</b> | Modification to a Use Permit (29-U-84) including consideration of removal of a deed restriction that limits the use of the property to a retail furniture store. |
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**Gian Paolo Martire, Associate Planner, presented the staff report:**

- Reviewed the application for modification to a Use Permit including consideration of removal of a deed restriction that limits the use of the property to a retail furniture store, as outlined in the staff report.
- The building was built in the 1970s as an owner operated furniture store. In 1984 the owner requested to add 1,700 square feet in the rear for storage; further parking supply on site was reduced. The Planning Commission as a condition of approval realized that the parking was not adequate for current retail standards but for furniture retail, which is similar to a warehouse use; they supported it as long as there was a deed restriction on the site that limited the use to a furniture retail store. There are some conditions of approval, specifically Conditions No. 18 and 19. The current tenants Scandinavian Furniture is anticipated to vacate later in the year and the new property owner would like to market his building to other types of retail uses.
- As the use permit stands, as conditioned with the deed restriction that was not possible. It would have to be a retail store; there are some things that the property owner had to do in order to remove that deed restriction and to market as a retail store. First was to get approval to modify the site, parking and landscaping to current standards which means that you have one parking space for every 250 square feet of retail space; it would need to have at least 105 parking spaces on site where currently there are only 78. The property owner did get architectural site approval and tree removal permit in November to increase the parking count to conform to retail and landscaping standards in the zoning ordinance.
- Reviewed the conditions of approval. The next part was to modify the use permit and remove the conditions restricting to a furniture retail site; which would remove Conditions 18 and 19 from the

resolution. The property owner also applied for a General Plan Amendment Authorization to be heard by City Council on February 21, 2017, to allow the possibility of an office use specifically incubator or medical offices uses on that site.

- The project is categorically exempt from CEQA.
- Staff recommends approval of the Modification to a Use Permit to remove a deed restriction that limits the use of the property to a retail furniture store, located at 19900 Stevens Creek Blvd.

Staff answered questions regarding the application,.

**Gian Paolo Martine:**

- Said the parking requirement would be fulfilled by restriping and re-landscaping the existing parking lot; the changes will be made to use the building for general retail. Definition of general retail is anything that is allowed for the CG ordinance such as grocery store, clothing store, any type of retail store because it meets the parking requirement.

**Com. Takahashi:**

- Any service would not necessarily be allowed other than potentially moving to medical.

**Aarti Shrivastava:**

- Those have separate parking requirements and all they are asking now is to be able to just meet the requirements in the Code; the General Plan authorization is a separate project and not part of tonight's decision; and if that goes through they will have to show how they meet the parking; that would be a separate project that would come to the Planning Commission if the Council authorizes it. If the proposed action tonight is approved, it wouldn't authorize them for anything beyond the retail uses in the CG district and they would still be required to meet parking for any of those uses. She said if the deed restriction was not lifted, the property would stay vacant unless a furniture store could move in.

Chair Sun opened the public hearing.

**Keith Fichtner, Kingsmill Group, Applicant:**

- Said in order to take care of a problem from 1984 where the city was required that the buildings stay a furniture store because it was under-parked, he had to do some things: Bring it to code; it is currently not in code and the way to cover yourself as a city is to have the deed restriction; but that is something not heard today. He said he could not get a loan on this property because he was not in compliance with the current zoning on the parking; his bank has said his loan is conditioned on removal of the deed restriction. City has helped in stating that the way to remove the deed restriction was to request a deed restriction removal should you bring it up to the 105 parking spaces. He hired his architect and engineers to redesign the parking lot, rounding it up to 107 spaces; they then presented it in November and received approval for the design and then requested that he appear before the Commission today to request that the deed restriction be removed after the work has been done.

**Com. Fung:**

- Asked the applicant if it was his intent for the property not be retail; and if it was the eventual intent for the property to be incubator or medical offices.

**Keith Fichtner:**

- Said his intention for the property was to refresh it and enhance to a quality that the citizens would be proud of. He is working with the Economic Development Director to try to determine what would be the best tenant for that space. One of the ones that your Economic Development Director sent to your Council is the goal of bringing incubator space; she has helped me with others in trying to introduce this potential site for incubator space, and happy to say that we are now talking to those people. It is

not part of their application, they are just starting to push it forward.

**Ceryl Gorsica, resident, read into the record:**

- The catch phrase about startup incubators is now popular; just saying you want to make an incubator doesn't mean anything. The Cupertino General Plan and Scandinavian Design GPA application referred to startup incubator; however there was no explanation of how it will benefit Cupertino. Startups conjure up fantastic images of initial public offerings and instant billionaires but very few actually succeed. In the early stages startups usually don't have much money and cannot afford to pay the market rent in Cupertino; they also have little or no revenue so they don't pay any sales tax. On the other hand, established companies offer robust employment, tax revenue for both retail and business to business sales.
- *Affordable incubator space:* Cupertino General Plan goal LU9.1.5 incubator workspace encourages development of flexible and affordable incubator workspace for startups and new and emerging technologies; but was it the standard for affordability? Is it some dollar amount per square foot, index for inflation or is it some percentage discount from the market rate; how do we know if the Scandinavian Design property will become an affordable incubator workspace? Even if we establish the affordability standard how do we ensure that the property meets the standard because it basically becomes rent control. Is that even legal in Cupertino? How do we enforce it?
- *Affordable incubator workspace #2.* We don't think Cupertino has ever implemented affordable incubator workspace; former Mayor Richard Lowenthal said it on Next Door that his startup company moved to Campbell because of high rent for Cupertino offices. We are talking about a concept that we have never implemented and don't have any idea how to implement. Is affordable incubator workspace a realistic goal?
- *Office for startups:* Let's put aside affordability and focus on startups; should Cupertino give preferential treatment for startups in terms of office allocation? Do the Planning Commission and City Council have a position on this or is this beyond city government's control? There is so much talk about business diversity, bringing different employers and business taxpayers into Cupertino; do we have a real plan or it just wishful thinking?
- *Conclusion:* Cupertino incubator workspace must have clear objectives; what are we trying to accomplish, how can we accomplish it? Quantifiable benefits: How does it benefit Cupertino, how is it better in established companies; e.g. will Cupertino get equity shares in the startups? Measurable criteria: How do we measure the above accomplishments and benefits; how do we know if it is working and not working.
- *Enforceable rules:* How do we enforce affordable incubator workspace or preferential treatment for startup offices; can we stand on legal ground? We don't think Cupertino Planning Commission and City Council can talk about zoning for incubator workspace until the above issues are clarified. Let's make sure we are not addressing issues that we have no control over; let's make sure we know what we are talking about.

**Alan Roth, resident:**

- Said he has resided over 36 years over Portal Plaza which is next door to the furniture store; and was concerned about the traffic and everything that has been happening to Cupertino. Said he has been there when it was a beautiful bedroom neighborhood and then Silicon Valley came along and things changed; the City Council's priority became putting developers as a priority over the citizens of Cupertino. Traffic is a major concern; on Stevens Creek Blvd by DeAnza College motorists have to wait for the light to change twice before they can move through. It is a major concern about the traffic congestion and the lack of concern for the citizens of Cupertino. Said he was awakened with the Valco debacle and what they were planning on doing; thankfully the citizens of Cupertino voted it down. Said he was concerned about what is going on next door; there is only one entrance into the parking lot; the furniture store did not draw a lot of traffic. Said the idea is if you get something such as a grocery

store or movie theater they will have problems with additional traffic on Stevens Creek especially since there is only one entrance. What is going to happen with Vallco, that is going to make things worse. He asked that they put the Cupertino citizens ahead of the developers and the people that need or want the revenue.

**Luke Lang, Cupertino resident:**

- Referred to a slide presentation and said he prepared his report based on the staff report which he felt contained errors. First slide, it has been clarified today that once the deed restriction is removed, it is going to become a traditional retail operation; it will not become office. The staff report says that the General Plan designation for the parcel is office/commercial/retail and that is incorrect; because in the General Plan Chapter 2, Page PA7 there is an area shown in dark pink which says it is only for commercial and residential. If you compare against City Center where it is shown in lighter pink, that is where you have commercial/office/residential. Please check it out.
- The staff report says that the zoning designation of CG in Cupertino Municipal Code does not include office or medical facility. The other error says that CEQA is not needed because proposed modification occurred within existing facility that is consistent with the General Plan and for now if just talking about the modification to a general retail then that is true that CEQA is not needed, but if it is going to office, then not sure it is not true anymore.
- The conclusion is that the increase in parking stalls can only remove the deed restriction from furniture store retail to traditional retail which was agreed on, but that was not what was said in the staff report. The rezoning to office will require GPA authorization and possibly CEQA; please correct the documentation and remove office destination because we have seen in the past that errors in documentation wind up in the General Plan as being the defacto standard when it is indeed an error. Please remove all reference to office in the staff report and also in the meeting minutes.

**Theo Kubalek, Cupertino resident:**

- Said he lived in Portal Plaza complex; the furniture store has been a good neighbor, primarily because there is not much activity there in terms of traffic. He said his concern is what will happen when they have a retail space that has far more traffic than presently with the furniture store. He said he understood a use restriction to just allow a furniture store is not acceptable in the sense that you cannot make money with that. People go in and out of business with furniture stores. He said it would be ideal if there was a way to put other restrictions on that use permit to control the traffic.

**Michelle Bazargun, Cupertino resident:**

- Said she felt it was important to put the residents first; there is enough residential, office and housing in Cupertino; they need more small business and retail. Please do not remove the retail permit. Apple is building the biggest building in the world and all the world is getting to know Apple as a spaceship. Said they need to be smarter and develop smarter buildings and a smarter structure. Nowadays the architecture is extremely nice; perhaps the developer who would come and rebuild the Scandinavian Design could deliver an architect that has better parking spots, perhaps underground, to be able to design a better space and do a nicer retail for residential. She said that was what she and most of her neighbors were asking for, and that it be considered.

Chair Sun closed the public hearing.

**Com. Liu:**

- Does staff have any comments on Mr. Lang's presentation whether it is office/commercial/retail, commercial/retail?

**Aarti Shrivastava:**

- Said staff would follow up with Mr. Lang; the information in the staff report is correct. There may have been some confusion on the land use map and zoning map.

**Com. Liu:**

- Asked if they lift the deed restriction, in terms of the kind of retail that goes in there, whether it is a small or medium business, are there any restrictions on the kind of retail businesses going in there?

**Aarti Shrivastava:**

- The CG ordinance has a list of uses that are allowed; if the deed restrictions are removed, they will have the same regulations as the rest of Stevens Creek Blvd.

**Com. Fung:**

- Said philosophically the deed restriction exists because of the conflict with the insufficiency of parking with the zoning back in the 80s. Said if that is addressed now he did not see any reason why the restriction should not be lifted and allow that use of that property as you would with anything else in that area to match the CG.

**Com. Takahashi:**

- Said clearly the property now is over-restricted based on the restricted parking; The key element the community is concerned about is whether or not it stays retail and now it is not being addressed; it is staying retail and that is what is proposed. Said he did not think there is a reason not to allow the removal and modification of the deed back to retail.

**Com. Liu:**

- Said in reading of the resolution from 1984 and 1985 it appears that the restriction is in there because of parking and he felt the lifting seemed reasonable. Chair Sun had questioned why they do not do this given there is a GPA Authorization and the Council will decide whether or not to let it through the gateway looking at everything together rather than looking at a small piece now and then seeing what happens with the Council next week. Said it seemed somewhat out of order and asked staff to comment.

**Aarti Shrivastava:**

- Said there is permit streamlining in California that states if a project that complies with the General Plan and zoning ordinance, basically doesn't need any legislative approvals, then you have to meet certain timelines in making decisions. They do not have that leeway as staff to hold applications back; they process them. In the case of a GP authorization those timelines don't exist, that could be a completely different timeline and that is the reason to ensure they are meeting all the legal requirements; therefore they brought the application to the Planning Commission.

**Chair Sun:**

- Said that potentially in the future there is incubator office space, the traffic one entry neighborhood; this is the next step so far but they are limited on tonight's agenda discussing whether or not they can authorize lifting the deed restriction. There appears to be consensus that they can lift the deed restriction.

**MOTION:** Motion by Com. Takahashi, second by Com. Liu, and carried 4-0-0, Com. Paulsen absent; that the Planning Commission agree with the findings in the draft resolution in M-2017-01, as written.

**OLD BUSINESS:** None

**NEW BUSINESS:** None

**REPORT OF THE PLANNING COMMISSION**

**Environmental Review Committee:** No report

**Housing Commission:** New commissioners were introduced and the outgoing commissioners were thanked for their service.

**Mayor's Monthly Meeting With Commissioners:** No report.

**REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:**

**Economic Development Committee Meeting:** Aarti Shrivastava reported on the implementation of the Economic Development strategic plan adopted by City Council on October 2016; the Commission will review some of the ideas that include how to encourage small mid-size businesses, diversity incubator space as well as looking at mobile services.

**ADJOURNMENT:**

- The meeting was adjourned to the next Planning Commission meeting on March 14, 2017, beginning at 6:45 p.m.

Respectfully Submitted:

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Elizabeth Ellis, Recording Secretary