

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, CA 95014

CITY OF CUPERTINO  
PLANNING COMMISSION MEETING  
AMENDED/APPROVED MINUTES

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6:45 P.M. JUNE 13, 2017 TUESDAY  
CITY COUNCIL CHAMBERS

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The regular Planning Commission meeting of June 13, 2017 was called to order at 6:45 p.m. in the Cupertino Council Chambers, 10350 Torre Avenue, Cupertino, CA. by Chairperson Don Sun.

**SALUTE TO THE FLAG**

**ROLL CALL**

Commissioners Present:	Chairperson:	Don Sun
	Vice Chairperson:	Geoff Paulsen
	Commissioner:	Alan Takahashi
	Commissioner:	David Fung
	Commissioner:	Jerry Liu

Staff Present:	Asst. Director of Community Development:	Benjamin Fu
	Assistant Planner:	Ellen Yau
	Associate Planner:	Gian Paolo Martire
	Deputy City Attorney:	Angela Munuhe

**APPROVAL OF MINUTES**

**1. *Minutes of the May 23, 2017 Planning Commission meeting.***

The following change to be made:

**Page 11, bottom of page, 3<sup>rd</sup> bullet (Com. Fung) “What kind of city does Cupertino .... has tossed around those thoughts?) should read as spoken by Vice Chair Paulsen, not Com. Fung) Delete from Com. Fung’s statement and amend to read as Vice Chair Paulsen’s statement.**

**MOTION:** Motion by Com. Liu, second by Com. Takahashi, and unanimously carried 5-0-0 to approve the May 23, 2017 minutes as amended.

**POSTPONEMENTS/REMOVAL FROM CALENDAR:** None

**ORAL COMMUNICATIONS:** None

**WRITTEN COMMUNICATIONS:** None

**CONSENT CALENDAR:** None

**PUBLIC HEARINGS:**

- 2. U-2017-02** Use Permit to consider allowing a separate bar facility within a newly proposed restaurant (Stout Burgers and Burgers and Beers) at the Nineteen800development  
**Philip Camino (Stout Burgers and Beers)**  
**10088 No. Wolfe Rd. Ste 100**

**Ellen Yau, Assistant Planner, presented the staff report:**

- Reviewed the application for a Use Permit to operate a separate bar within the restaurant, occupying the southwest last vacant tenant space along the major Wolfe Road frontage as shown on the site context map, located within the Heart of the City south of 280 and north of Stevens Creek Blvd. It is a sit-down restaurant designed around a central bar area, with 14 bar seats and 54 interior dining seats; operating hours are 11 a.m. until 11 p.m. daily. Parking has been evaluated by staff to ensure that the use will be compatible within the ~~1900 development~~; *Nineteen800 development* restaurants with a bar facility proposed are parked at a higher ratio, one staff for every 3 seats rather than 4 seat requirement. There are excess of more than 100 stalls; it is not anticipated that the minor use change within the existing tenant space will affect parking. The Sheriff's Department has reviewed the proposal and they did not identify any current public safety concerns; they have a substation adjacent to the Main Street development that operates 24 hours a day. The project is categorically exempt from CEQA. Noticing was done to the Metropolitan residential and surrounding development; no comments were received.
- Staff recommends that the Planning Commission finds the project exempt from CEQA and approve the Use Permit to allow the bar facility in a proposed restaurant in accordance with the draft resolution.

Staff answered questions regarding the proposed project.

**James Dang, Partner, Stout Burgers and Beers:**

- Described the proposed bar/restaurant which will serve micro-brewed beers, wine and burgers in a pub-like atmosphere. There is no current plan to have outdoor seating.

**Ellen Yau:**

- Said that if the applicant chose to include outdoor seating at a later date, they would submit an ASA application.

Chair Sun opened the public hearing.

**Kevin McClelland, Cupertino Chamber of Commerce and Small Business Development Center, Silicon Valley:**

- Said one of the objectives of the Chamber is helping restaurants to survive and thrive in the difficult economy and it helps if they don't lower their standards but do everything possible to help them open quickly, which would minimize their debt occurred. He said he was hopeful they would move forward; they have been through the process and staff recommends moving forward.

**Jennifer Griffin, Rancho Rinconada resident:**

- Said she was pleased to see another restaurant on Wolfe Road; good to have the area active with many restaurants/bars; it is a nice complement to Main Street, activating the entire area. Said she felt the hours were appropriate because of the residentials adjacent; it will be an active area with many people walking. Questioned the 11 p.m. closing time relative to last drinks served, how long staff remains on premises, etc. Asked for clarification on customers' ages, etc.

Chair Sun closed the public hearing.

**Chair Sun:**

- Addressed the concerns raised by Jennifer Griffin relative to the bar/restaurant operation. Regarding the presence of children, he said he felt the parents and most of the people who are going there will take care of their children and they also have the Sheriff Dept. to take care of that part also. The issue of ID

cards, there are so many bars there, it is not a question that needs to be considered. The next thing is about the timing; in the MainStreet1800 the residents know their environment, they chose to live there and most of the bar and restaurants are open until 11 or 12 and some go to 1:00 a.m.; as long as they don't complain to the Main Street Management there should be no problem. We encourage all the restaurants and help them to survive and prosper; it is quite an easy case for most of the commissioners here since they don't raise any questions.

**Com. Liu:**

- Said he supported the application; it will be an asset to the community.

**MOTION: Motion by Com. Liu, second by Com. Takahashi, and unanimously carried 5-0-0, to approve Use Permit U-2017-02, and find the project exempt from CEQA**

3. **U-2017-04** Use Permit to consider allowing a separate bar and hours of operation past 11 p.m. at a hotel restaurant (Marriott) located within the Main Street Cupertino mixed use development
- Marc Dimalanta**  
**Marriott Hotel**  
**19429 Stevens Creek Blvd.**

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

- Reviewed the application for a Use Permit to consider allowing a separate bar and hours of operation past 11 p.m. at a hotel restaurant located within the Main Street Cupertino mixed use development as outlined in the staff report. He reviewed the project site located at the northeast corner of Stevens Creek Blvd. and Tantau intersection. The project includes office buildings, parking garage, rental loft apartments, hotel and retail development. The office and commercial components of the project have been constructed; the Loft apartments and Marriott hotel are currently under construction.
- The current application is for the restaurant portion of the hotel for the separate bar and hours of operation past 11 p.m. He reviewed the operational details including the size, seating and proposed hours of operation as noted in the overhead presentation; the prior approvals; and the late night and separate bar operations in the vicinity. Relative to noise mitigation Cupertino Municipal Code Chapter 10.48 Community Noise Control is the governing ordinance chapter; also the Sheriff's Department has an onsite station, Main Street security is in operation 24 hours per day and City of Cupertino Code Enforcement is also involved with enforcement of the Municipal Code chapters.
- The Director of Community Development reserves the right to commence proceedings to revoke the use permit. The project is categorically exempt from CEQA under existing facilities. The recommendation is that the Planning Commission find the project to be exempt from CEQA and approve the Use Permit in accordance with the draft resolution.

Staff answered questions relative to the proposed project.

**Vice Chair Paulsen:**

- Referred to the issue of outdoor seating and questioned if there had been any movement on the Council's part to change the ordinance relative to not having more than 20% seating outdoors, and which was discussed at last year's goal setting that it was an outdated ordinance. In terms of enforcement; if this facility were to expand its outdoor use, could they not do so beyond 20% of their outdoor seating?

**Gian Paolo Martire:**

- Said they could; it needs a Use Permit approval to expand it past 20%; said he was not aware of Council

making any direction or giving discretion to commence revision of the ordinance to revise the Municipal Code to allow for more outdoor seating. The appropriate stage would be during the discussion of the work program.

**Vice Chair Paulsen:**

- Relative to the comment about helping restaurants to survive in this competitive environment could there not be a general closing hour for the entire property and then restaurants could stay open until that time or close earlier if their business model so suggests. That way they don't have to come to the Commission each time they want to change their hours. Has staff given that any thought?

**Gian Paolo Martire:**

- Said it would require modification to the overall use permit; and the question is do we want to bring that modification to the whole Main Street easement back up to the Council and it is really up to the property owners if they want to take that route also?

**Vice Chair Paulsen:**

- Said he was not sure they should recommend it at this time as he did not want to cause any trouble in terms of the public getting excited about late night hours. It seems difficult for a business to have to come to the Commission each time they want to stay open an extra hour.

**Gian Paolo Martire:**

- Said no complaints have been received.
- Said the Marriott operates as an extended stay type hotel focusing on business users coming, and many times those users come in late at night and when they arrive they may want a late-night snack. The way staff has seen this is if it is open at least the option to 2:00 a.m. they have the option to go downstairs and get something to eat. At the same time this is what the applicant is asking for; it is always within the Planning Commission's discretion to make the recommendation for them to be allowed to be open until 2:00 a.m.

**Marc Dimalanta, Architect:**

- Said they worked with the property owners the past 6-9 months on the concept and also on how it would work, intertwining with the property as well as the hotel. In terms of the hours, the idea was that the hotel will be used by business travelers who may arrive late; it would be ideal to have the restaurant stay open as the last restaurant available; and an option to pull it back within the operations if they see it's not necessary. Today they are returning to complete the original application for the bar use and for the hours; the General Manager will discuss security in his presentation.

**Mike Rohde, Sandhill Properties, Main Street, Cupertino:**

- Said they have a Sheriff's substation with the sheriff onsite all the time; very little issues at Main Street. They have 24 hour security patrolled by multiple officers on foot, golf cart, Segway, vehicle, bike; they are in good shape from a security standpoint and security staff will be onsite during those late night operational hours, 24/7.

**Vice Chair Paulsen:**

- Relative to the hours mentioned earlier, would it be easier to have the option for any tenant to stay open until 2:00 a.m. if they wanted to, or is it better to have them come to the Commission on a case-by-case restaurant-by-restaurant basis?

**Mike Rohde:**

- Said it would be easier and save the Commission time, save the applicant time and money and be a more streamlined process; and they would support that.

**Gian Paolo Martire:**

- Said the process to accomplish that would be to have the original Use Permit modified to add that condition of approval.

**Mike Rohde:**

- Said it was a great gathering place and when the hotel opens in Sept/Oct time period and the Lofts opens in Oct/Nov it will have the urban glue that will connect everyone.

**Chair Sun:**

- Said his concern was all the bars and restaurants close at 1:00 a.m. and if they grant the hotel bar still open to 2:00 a.m., they are going to treat people different from the business; he said he wants people to have enough business to make Cupertino a good place and Main Street also; if they grant one particular business open especially for the bar business open till 2:00 a.m. if other applicants come to the Commission to ask for another opening, gradually it is going to approach the residential areas, and that is going to make a decision harder. For the hotel guests, let them stay or purchase a bottle of beer to go back to their room. That makes the management much easier.

**Mike Rohde:**

- Said it was a unique case with the hotel; the hotel will be its own entity. As stated earlier, many travelers travel near and far to come to Cupertino and having late night hours for the bar/restaurant would provide a needed service. He clarified that it was not just a bar, but a full-blown restaurant, they will serve patrons at a bar setting and some tables.
- They would like the opportunity to have it open to 2:00 a.m. and if they deem that there is an issue, they can always scale back. The difference between Main Street and other properties is that they have a full time, fully staffed security department along with a Sheriff substation; if things got out of hand they would be able to respond quickly. Said they are enjoying a good relationship with the neighbors, there have been no issues with any of the neighbors and they are willing to work with anybody. They would like the Commission to consider the 2:00 a.m. option.
- Said they would likely not be doing any more restaurants as they are close to their number but the remaining tenants will mostly be retail and the other areas that are being filled are below the lofts and they are not going to be putting any restaurants in there now and will have another spot that will be close to Lazy Dog that they will lease and that will likely not be a restaurant. Main Street was thriving; all tenants doing well. He reviewed the current status of retail stores and scheduled openings. Presented an update on businesses; said people are walking to Main Street.

Chair Sun opened the public hearing.

**Jennifer Griffin, Rancho Rinconada resident:**

- Said she has followed the Main Street property since it belonged to Toll Brothers; it has been a 14 year evolution of the property from an old orchard farm to what it is today. When discussing making changes to Main Street they need to remember the history of the property and why there are certain conditional use permits, etc. Said she felt it was important to remember that the hotel was originally supposed to be on Stevens Creek Blvd. and supposed to have a ballroom and banquets rooms, which they are probably achieving.
- She said she felt a closing time of 2:00 a.m. was rather late for the property; 1:00 a.m. would be more

appropriate since it is not a nightclub area; it is in a suburban area, people are living on site. Said as a resident of the area since 1985 she did not want people wandering around that area at 2:00 a.m.; there was a recent murder on Tantau Avenue; there needs to be a police presence and she did not feel comfortable having people wandering around at 2:00 a.m. It is acceptable to have a 1:00 a.m. closing time and perhaps there should be a private restaurant area for late travelers. It should not become a destination for drinking when other places close in other cities; 1:00 a.m. is appropriate. Said they were doing a good job and they were looking forward to its completion.

**Kevin McClelland, Cupertino resident:**

- Said he managed the TGI Fridays in town in 1977 and was open until 2:00 a.m. every day for decades, it was not a problem to have the restaurant open until 2:00 a.m.; it was more of a service to the community than a nightclub of any category. Said the other issue of where you need to focus whenever you are worried about nightclub or not, is with the product mix; The San Mateo TGI Fridays during the same period in time ran a product mix of 60% food, 40% alcohol; 40% doesn't sound like a lot, it is really a bar; the Cupertino location did 22% alcohol and 78% food. The reality of it is that 2:00 a.m. doesn't equal nightclub, and he understood the concerns.
- Said it was appropriate to have conversations and to express concerns; and be focused on alcohol consumption; said they don't have to risk turning Cupertino into a party town, the flip side is that if they are all very aware of it, if there are problems they can deal with it. Opening themselves up to opportunities, staying open to ideas and being able to service the public might be something they want to do.

Chair Sun closed the public hearing.

**Com. Takahashi:**

- Relative to Vice Chair Paulsen's thought of going back to the overall closing hours, he said he felt the present process made the most sense from the standpoint that you could look at different locations and their proximity to residents. This one is rather isolated from residents except for potential future residents who haven't moved in who will be established by the time they move. From a noise perspective this application is not an issue for a 2:00 a.m. close. However, there was an application months ago where there were some residents but its location was on the fringe and therefore us being able to hear that and take that into account with regard to establishing hours is positive. If there were no residential anywhere near it, then potentially I could see maybe a blanket but my recommendation would be to continue looking at each application individually.
- As for the specifics of 2:00 a.m., there is some concern from the Commission about setting a precedent for 2:00 a.m. but again each application has its unique elements to it that I think we try to understand and take into account. Therefore from my perspective having a little diversity in the closing hours actually might be a good thing from the standpoint of everything not closing at once and having everybody coming out at one time, as well as the hotel where I would assume and I am betting Marriott has numbers with regard to what percentage clientele of the hotel are guests. That is a factor; while we have been reluctant to approve something as late as 2:00 a.m., I think in this particular case, it seems most if not all the risks have been adequately mitigated with regard to security concerns and from a staff perspective if there were noise issues and/or any other elements between 1:00 a.m. and 2:00 a.m. it would come up and would be brought to the applicant's attention, and if there were continuing issues, the permit could be jeopardized.

**Benjamin Fu, Asst. Director of Community Development:**

- Said there was a condition that allows the Director of Community Development to revoke the permit if issues reported were not resolved.

**Com. Fung:**

- Having later hours is whatever makes sense to the hotel management in terms of where there is a return. Said he would consider having later hours on the other nights to keep people from walking out to go to the other places which are open later on Main Street. Said his only concern in reviewing the proposal was whether there would be an issue with noise in the outdoor area late at night.
- Said that location is relatively isolated; in particular he was concerned if it was going to be close to the Lofts, but doesn't appear to be; not a major issue; it would be the first thing watching for in terms of things to be concerned about; otherwise no issues. If they chose to set a time which is not that late, he said he didn't have an issue with that either; if it is 2:00 a.m. he said he would support it.

**Vice Chair Paulsen:**

- Said he was not wedded to the uniform closing time for the development; that is up to the applicant to decide. He said he supported the 2:00 a.m. closing. As a member of the Economic Development Committee he tries to help businesses be successful in Cupertino. The restaurant business is very competitive, and everything they can do to help a business stay profitable is a good thing. More than that, Cupertino is changing; young people are here, they like to work late and like to stay up late; this will provide an option to have some place to eat. Having the flexibility especially for banquets and events, some cultures like to stay out later. It is important to give the flexibility, but also Cupertino is changing and becoming a high class city. It is not the kind of place that will foster the dive bar, fights, afterwards kind of place, especially with the Sheriff there and security. Said he was not concerned about that in terms of noise. The city is changing and the Planning Commission recognizes that and tries to help businesses make it in a tough environment.

**Com. Liu:**

- In terms of the uniform hours, agreed that having the flexibility to set the different hours for the different businesses makes sense; in terms of issues of security and noise, he said it is a credit to the property management to provide the 24/7 security and he felt it is a very safe place. Said he felt that noise is a separate issue from security because often there is a level of annoyance where it is not bad enough to call the police because they haven't done anything illegal, but at the same time could be troublesome.
- In terms of the issue that we are all talking about, the late hours 2:00 a.m. from 5:00 to 6:00; why do we even regulate hours to begin with because if there weren't limits on it, that would be maximum economic encouraging of development, and cities do that because their externalities are generated when you run a business in terms of some of the noise pollution and that is why there are ordinances for this, and so the question is where do you draw that line?
- Said he was comfortable with 1:00 a.m., that is where the businesses are today; so I would be comfortable with midnight for Thursdays and 1:00 a.m. I am having some doubts about 2:00 a.m. is the point that Chair Sun brought up which is if this moves to 2:00 a.m. then I can see the other businesses wanting to do that, and where do we stop? It is the same argument that we used to encourage economic development; you can move it to 3:00 a.m., you can move it to 4:00 a.m.; soon it will be like Shanghai where everything is open all the time. It comes down to how we see our city, I understand that and I would be comfortable with it later if it were the venue for late travelers, but the fact that we are talking about having events in there, and I worry about it being a hot spot for all the people everywhere else on Main Street when things close at 1:00 a.m. going there. I would like to have more community conversation about that because I feel like once we move that, everyone is going to want to do 2:00 a.m. Summarized that he was comfortable with 1:00 a.m., not really sure about 2:00 a.m. at this point.

**Chair Sun:**

- For the Cupertino businesses, most time I vote to support businesses making their own decision as much as possible; for this one, the rite of the hotel, whatever operation you want to do is no problem;

the Commission will generate, we don't want to touch too much about the operation part of your business. For this particular one, I am not concerned either the hotel or any other restaurant or the bar, it is more in general for the Cupertino city if we have operation, some kind of audience to regulate or make a decision or give us some general guideline for particular case, like a hotel, this one especially in the center of Main Street, all the restaurant and bars close at 1:00, open at 2:00 so all the other businesses are closed and all the people who didn't finish their drinks all drive to the hotel. I don't insist very strongly but if we vote I still prefer if we close at 1:00 a.m. only for the bar part and you can make some open at 7 in the morning to provide special food for the people or just close at 1:00 a.m.

**Com. Takahashi:**

- In response to Com. Liu's concerns, 2:00 a.m. is the state law for when the latest bar can be open; that mitigates at least further hours. Probably the point of discussion is whether or not do we really feel we are setting some level of precedence where, say Lazy Dog, what is their options from the standpoint of do they have to reapply for a new Use Permit to come back to ask for the extra hour?

**Gian Paolo Martire:**

- Said they have to modify the original Use Permit; they have to return to the approval body which approved the original Use Permit.

**Com. Takahashi:**

- Said it is in their control from the standpoint do they believe granting a 2:00 a.m. closing to the Marriott Hotel opens the door; and is it a justifiable case for any other applicant that already has their use permit that is less than 2:00 a.m. to come back and ask for a modification; what is our position on that? Said he would like to think that what they discussed with regard to looking at each case individually and having it weigh on its merits is the controlling mechanism to not have that precedence just apply to all the businesses. Based on your location and other elements they feel the current 1:00 a.m. granted is sufficient and would deny that; or perhaps it is being successful at 2:00 a.m. and the particular location is on the far corner and therefore has absolutely no impact to noise and residents; then maybe they grant that. Said he went back and forth with this point from the standpoint of are they setting precedents or are they still assessing each applicant case-by-case and granting those hours based on the merits and location of that, and as long as that is the case, he felt he could still support the 2:00 a.m. for Marriott.

**Chair Sun:**

- Said he felt it is the 1:00 a.m. or 2:00 a.m., it is not considered the particular hotel or particular business; it is possible for the hotel to be granted 1:00 a.m. and then see in 6 months if the business really needs to be open until 2:00 a.m., then some strong evidence is necessary to go to the p.m. that maybe much easier to do the case.

**Vice Chair Paulsen:**

- Said he respected each commissioner; they have good discussions, and he felt consensus is a powerful thing; in terms of seeing how it goes, they could look at the data very closely and perhaps could allow them to stay open to 2:00 a.m. on the condition that the hotel gather certain data, the number of people in the bar between 1:00 a.m. and 2:00 a.m.; if they can do interviews to see if those people are people fighting over from other restaurants that close at 1:00 a.m., or if they are business travelers coming in or if they are events-related; it would be helpful; and also any record they could keep of trouble, if they could report that to staff and staff could provide a report after a year's time and let us know if there are, as concerns were expressed, people wandering around; if there are fights, belligerents, arrests, but any other kind of human interaction related data that would cause us to indicate that we should pull it back to 1:00 a.m. Said he felt it would be a good way to see if this kind of thing would work.

**Com. Fung:**

- In a previous discussion about Fresh, the costs involved in having the restaurant open, cost of having the kitchen open, having servers, cleaning up; the extended hours, if this is something that works for the hotel and can provide that service, said he did not have a problem with that. In very much the same way it provides a benefit of sorts to the Main Street community; if the way they have sufficient critical mass to operate, because the other places have closed; he said he did not think it would actually trigger everybody wanting to stay open. If you had a lot of people leaving that is possible, but he did not feel it is going to trigger a chain reaction because everybody has this cost of operating.

**Chair Sun:**

- He said they would not worry about the operation cost; that is not part of their consideration; the only thing to consider is what particular hour is necessary to make the city make the decision for the rest of the businesses.

**Com. Fung:**

- Said he agreed it was not their job to make them profitable; the difference between a hotel and a restaurant is that people don't live at the restaurant. Cost has to have some potential captive audience, and look at it in terms of if there are people who are interested in using the service, it is a reason to consider doing.

**Chair Sun:**

- So far the question or issue is not regarding the particular 2:00 a.m. closing for this particular business, it is good or not; it is our decision for the future and also for city staff working in the future. He asked staff for input.

**Benjamin Fu:**

- Said the Commission discussed a bit about a previous case where they asked for an extended hour and there was discussion about business operations and market demand, that is going to determine what hours these operations will open to and close at; so far for all the other independent restaurants/bars not associated with the hotels; independent restaurant bars would not receive such interest to extend hours; that is what they have now. He said he could not dictate whether this approval will increase that demand or not but they haven't seen anything and also haven't received any reports from the Sheriff's office regarding any incidents for any other restaurants or bars in town thus far.
- Another point being that the Commission's discussion about bringing a project back after six months or how many months you wish to determine; in terms of implementation and documentation staff will need more direction on exactly what the Commission is looking for; how could the applicant document what kind of data is needed; what is it that you need so we can provide an adequate evaluation; and also that will set some level of precedent for future projects. Said he wanted to make sure that the standard was set for that. Said they had not received any requests for extended hours.

**Mike Rohde:**

- Said they need to keep in mind that they are asking for a 2:00 a.m. closure for only two days. He said they would like to self-control; if they do have an issue, he would be the first one to raise his hand and say they are going to have to close early from now on. They would like to have that flexibility. He said he would compromise on the outdoor seating closure at midnight. They can track some numbers and there will be reports from the Sheriff's department and can also track from incident reports from their internal security department, and they are willing to do that. He added that they have their own police force at Main Street with a Director and Assistant Director and multiple officers.

**Vice Chair Paulsen:**

- Said the data that people are concerned with is the incident reports; if they could get a report after a year on those 2 hours of those 2 days, he was curious to see the results on what is happening in Cupertino during that time slot; it would provide some wisdom and guidance for how to proceed in future situations as well; the closing at midnight for outside is a good idea.

**Mike Rohde:**

- Said he could work with staff to come up with an incident report document.

Chair Sun closed the public hearing.

**Com. Liu:**

- Referring to the comments about letting the market forces sort that out, said he felt it was a philosophical one but he felt that it should not be the boundary that if the market will bear it; no doubt if you are open until 4:00 a.m. there will be people in there too. I think it is really what I am concerned about externalities. Said he felt it would set a precedent because if they say it is okay for a restaurant to be open until 2:00 a.m., what do they say to the next applicant next door? He said he was concerned because he did not hear the community asking for this; one speaker was in favor of it and the other was opposed. The property owners want it because there is economic benefit, but he would feel more comfortable if there were some people who want to see this open. He did not see evidence of community pulling for something like this and given that there is a precedent set, he would be open to some of the data collection, but without anything like that he was not there yet.

**Vice Chair Paulsen:**

- Said he agreed that many people were present for the day care center issue; it was a local issue, family issue, and emotional issue; said he did not think business travelers care that much about an hour, it is not that big of deal for them. Said he was interested because he felt there is concern on the part of long term residents, about noise and how the city is changing; so this could be a two hour testing of the waters and see how things go. If it looks like there is no problems with this kind of operation, perhaps there will be other applicants, depending on the business model. This has become a city of later night people, younger people, travelers, I think that is a cultural shift that we would want to accommodate and gathering some data to see how that works would be helpful.

**Com. Fung:**

- In terms of community input, this is a hotel type bar, if this were Eureka or one of the other restaurants looking to have that additional time, there is more of an issue of does the community want this because it is people from our community that would be the primary users. I suspect that is not the case in a hotel; from my point of view I would say if we don't believe that there is a danger of this being very negative; if there are problems we have the ability to shut it down very quickly. This is a good opportunity to collect data and make a decision based on did it really work; if the answer is there were problems, I would say with regard to the information collected, I think it is interesting to know how many people are there because if there are 3 incident reports it matters whether there were 80 people there or 3 people there. I would agree with Vice Chair Paulsen, there is a good opportunity to collect some data and see whether it really works; if it doesn't we will know it quickly.

**Chair Sun:**

- Said where they are is not considered particular Main Street or hotel; he likes the businesses and tries to support it as much as possible; there is no particulars whether they operate to 2:00 a.m.; the thing is if the hotel, you said it is just for the late guests or the travelers; actually it is not; it is open to the public

so it is all the restaurants around it when they close or we force them to close at 1:00 a.m. they are coming here all the time to apply for extended hour, to add bars and to add this; we have a debate and argue about it; and then if all the other businesses go to yours and that is open to public not travelers. This hotel is in the middle of all businesses; there is so much competition; and when you open this one it is going to go all the way to the other end at residential areas and also Main Street next to the hotel is going to have new apartments that will get into the use too. Changing it to close at 2:00 a.m. is very hard to reverse which makes him cautious; if we give them to 1:00 a.m. and just go there and if applicant has some problems, we definitely need 2:00 a.m.

**Com. Takahashi:**

- Said he felt they may not reach a consensus on the issue and they should attempt to get closer to a vote and there won't be a unanimous decision. He summarized that two persons were leaning toward 1:00 a.m. closure and checking it out; and three persons were supporting going with 2:00 a.m. closure and collect data, and if that data says that there are issues associated with the hours from 1:00 a.m. to 2:00 a.m. then request that the city amend the Use Permit. Said that was his recommendation because they will not get a unanimous vote; three persons for 2:00 a.m. and two for 1:00 a.m.

**Chair Sun:**

- Said he appreciated Mike Rohde's suggestion, vote for the 2:00 a.m. closing time and include a condition to close the outdoor seating area at midnight.

**Com. Liu:**

- Said he appreciated the offer to close the outdoor seating area, but it doesn't address the issue of the cascade effect; if you have so many restaurants together and one is open until 2:00 a.m. there is a competitive advantage type of issue which he was concerned about. It reverts back to Vice Chair Paulsen's earlier discussion about having more consistent hours for something; otherwise it seems you are giving one business an advantage over the others, and everyone is going to want that and how do they handle that?

**Vice Chair Paulsen:**

- Said he would be interested if the applicant was willing to provide some data on how many people are at the bar at 12:30 a.m. and how many are at the bar at 1:30 a.m., which would be an indication of how many people came over from the other restaurants that closed. In terms of the floodgates, is it going to be the hole in the dike that opens up the flood that everyone is going to stay open all night? Said he did not feel they would become another Shanghai; however, Cupertino is becoming a different city. To accommodate the weary traveler, perhaps the person wants to stay a little longer after a wedding and talk, is not unreasonable; he said he didn't feel the city would change overnight but this is going to be something a two-hour test can do. Said he would like to see the data on the 12:30 a.m. and the 1:30 a.m. as well as the incident reports and the Sheriff's reports after a year.

**Com. Liu:**

- Said he appreciated data but preferred to grant on a needed basis. Chair Sun said that if there was data saying that there were events that could have benefited from going longer, and he was open to thinking about data and how to collect that.

**MOTION: Motion by Com. Fung, second by Vice Chair Paulsen (??) and carried 3-2-0 (Chair Sun and Com. Liu voted No) to find the project exempt from CEQA and approve the Use Permit U-2017-04 with the modification that the outside seating area close at 12 midnight.**

**OLD BUSINESS:** None

**NEW BUSINESS:** None

**REPORT OF THE PLANNING COMMISSION**

**REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:** None

**COMMITTEE REPORTS:** No Committee reports given.

**ADJOURNMENT:**

- The meeting was adjourned to the next Planning Commission meeting on July 11, 2017, at 6:45 p.m. There will be no meeting held on June 27, 2017.

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

*Approved as amended: August 8, 2017*