

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6000

AN ORDINANCE granting a Conditional Use Permit with conditions, on the application of Kemper Development Company for a private use helistop on the roof of the Bellevue Place Bank of America Building at 10500 NE 8th Street, Application No. 08-135262-LB; denying the appeal of said Conditional Use Permit filed by Su Development Company; denying the appeal of said Conditional Use Permit filed by Ina Tateuchi, et al.; and establishing an effective date.

WHEREAS, Kemper Development Company submitted an application to establish a private use helistop on the roof of the Bellevue Place Bank of America Building, located at 10500 NE 8th Street, in Bellevue, King County, Washington; and

WHEREAS, a Notice of Application and Public Meeting was published on January 29, 2009 and said public meeting was held on February 18, 2009; and

WHEREAS, a second public meeting was held on May 5, 2009 after notice published on April 16, 2009. This public notice included public notice of a noise test held on May 2, 2009, inviting the public to observe such noise test from downtown locations; and

WHEREAS, the Notice of Recommendation, SEPA Determination and Public Hearing for the proposal was published on May 21, 2009; and

WHEREAS, an appeal of the SEPA determination was filed on June 4, 2009 and subsequently withdrawn by the appellant on July 2, 2009; and

WHEREAS, on June 10, 2009 and June 11, 2009, the Bellevue Hearing Examiner conducted a public hearing on the application, pursuant to notice as required by law; and

WHEREAS, on July 20, 2009 the Hearing Examiner issued his Findings of Fact, Conclusions of Law and Decision ("First Decision") approving the Conditional Use Permit for a private use helistop with conditions; and

WHEREAS, an appeal of the Hearing Examiner's First Decision was filed by Su Development on August 3, 2009; and

WHEREAS, an appeal of the Hearing Examiner's First Decision was filed by Ina Tateuchi, John Walsh, Marcy Walsh, Karen Reagan, Tom Reagan, Lynn Hurdelbrink, Laura Hurdelbrink, and James Hurdelbrink (hereafter referred to as Appellant Tateuchi, et al.) on August 3, 2009; and

WHEREAS, following a limited appeal hearing in front of the City Council on November 2, 2009 with further discussion and deliberation on November 16, 2009, the City Council remanded the matter to the Hearing Examiner to accept additional evidence into the record and to determine whether revisions to the First Decision were necessary and to return the matter to the City Council (the "First Remand"); and

WHEREAS, the Hearing Examiner held hearings on the First Remand on January 21, 2010 and February 4, 2010; and

WHEREAS, the Hearing Examiner issued his Report and Recommendation to the Council following Hearing on Remand on March 15, 2010, which, following various motions for clarification and orders of correction resulted in a final report to the Council on the First Remand entitled "Second Corrected and Clarified Report and Recommendation to the Council Following Hearing on Remand" dated May 4, 2010 (the "Second Decision"); and

WHEREAS, following discussion on July 6, 2010 of the Second Decision and joint request by the parties for a second remand to the Hearing Examiner for consideration of additional issues associated with the proposal, on July 26, 2010 the Council remanded the matter to the Hearing Examiner to accept new evidence and to reconsider certain findings in the Second Decision (the "Second Remand"); and

WHEREAS, the Hearing Examiner held a hearing on the Second Remand on August 25, 2010; and

WHEREAS, on December 16, 2010 the Hearing Examiner issued his Second Revised and Final Report of Findings, Conclusions, and Recommendation to the Bellevue City Council, and subsequently issued his Order Correcting Typographical Errors (collectively the "Final Decision"); and

WHEREAS, on April 25, 2011 following deliberation the City Council determined that modifications to and addition of certain conditions were necessary to clarify certain reporting requirements and to specify the authority under which modifications or revocation of the Conditional Use Permit could be considered; and

WHEREAS, as conditioned herein, the City Council finds that the proposed Helistop is consistent with the criteria for approval of Conditional Use Permits and with the General Requirements for Helicopters; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code, now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the following Findings of Fact and Conclusions of Law of the Hearing Examiner as set forth in the First Decision:

Findings of Fact Nos.: 1-14, 16, 19-26, 30-60
Conclusions of Law Nos.: 1-4

Section 2. The City Council adopts the following Findings of Fact and Conclusions of the Hearing Examiner as set forth in the Final Decision:

Findings of Fact Nos.: 1-86
Conclusion Nos.: 1-4

Section 3. Based on the foregoing Findings of Fact and Conclusions of Law, the City Council enters the following Decision on appeals:

The City Council concludes that Appellant Su Development failed to meet its burden to prove that the Hearing Examiner's Decisions were not supported by material and substantial evidence in the record. The Su Development appeal is hereby denied.

The City Council concludes that Appellant Ina Tateuchi, et al. failed to meet its burden to prove that the Hearing Examiner's Decisions were not supported by material and substantial evidence in the record. The Ina Tateuchi, et al. appeal is hereby denied.

Section 4. Based on the foregoing Findings of Fact and Conclusions of Law, the City Council hereby **approves** the Conditional Use Permit application of Kemper Development Company for a private use helistop, Application No. 08-135262-LB, subject to the following conditions:

A. LAND USE CONDITIONS FOR APPROVAL

1. Frequency and Hours of Operation:

- 5 operations a week maximum
- 4 maximum per weekday Monday through Friday (9:00 am to 6:00 pm)
- 1 on Saturday (10:00 am to 5:00 pm)
- (Note: One operation = landing and takeoff)
- **Prohibited on Sundays or Legal Holidays**
(LUC 20.20.450; Comprehensive Plan Policy EN-89)

- 2. Flight Path:** The flight approach and departure path, for ingress to and egress from the Helistop, shall be restricted to freeways (I-405, I-90 and SR-520) and the NE 8th Street corridor. Moreover, Kemper Development Company shall carefully review the qualifications of pilots who use the facility to assure that they have the certifications, training and experience to utilize information available through electronic monitoring equipment at the weather station, that will allow them to

make decisions about potential obstructions and weather conditions to safely land, lift off and departure from the Helistop pad, without flying over any residentially zoned properties and without deviating from the flight approach and departure path established in the first sentence of this condition 2. **(LUC 20.20.450; Comprehensive Plan Policy EN-89; City of Bellevue CUP approval).**

3. **Type of Helicopter:** Only light turbine, twin engine helicopters (examples include Eurocopter EC-135, Eurocopter AS-355B Ecureuil 2, and Bell 206 models) shall be approved to land at the Helistop. Upon landing, the helicopter shall have a cool-down period of no more than 2 minutes. The warm up period for the departure shall be 2 minutes or less. **(LUC 20.20.450; Comprehensive Plan Policy EN-89; City of Bellevue CUP approval).**
4. **Reporting Requirement:** The applicant shall provide documentation regarding flight frequency, flight times and flight paths; including any deviations from the frequency and hours of operation limitations imposed in Condition 1 and the flight approach and departure path restrictions imposed in Condition 2. The documentation shall be provided on a monthly basis for the first year and on a semi-annual basis thereafter and shall include an explanation of and supporting information for the reason for any deviation, whether it be due to wind, weather, obstructions or other reason. Documentation shall also include complaints from the phone/website and responses to those complaints. **(LUC 20.20.450; City of Bellevue CUP approval)**
5. **Conditional Use Permit Modification/Revocation:** Based on the information reported pursuant to Condition 4, or for any other reason consistent with the authority described in LUC 20.20.450.A.1.b , 20.30B.170 and 20.30B.175 (all now or as hereafter amended), the City may initiate a modification to or revocation of this Conditional Use Permit. In addition to the considerations set forth in the Land Use Code, such modification or revocation may consider the number of deviations reported pursuant to Condition 4, the causes of such deviations and the likelihood of such causes and related deviations to recur. Instituting proceedings to modify or revoke the approved Conditional Use Permit shall not limit the City's ability to initiate a civil enforcement action pursuant to Chapter 1.18 BCC, for violations of the Bellevue City Code. **(LUC 20.20.450, Part 20.30B)**
6. **FAA:** The Applicant has provided a copy of the FAA response to the application, FAA Form 7480-1, dated June 28, 2009, which confirms that the FAA has no objection to the use of airspace for this facility and satisfies the requirements of the Bellevue Land Use Code. The applicant shall promptly notify the City of Bellevue of any changes in the FAA's no objection determination while consideration of the applicants CUP application or any building permit application is

pending, and during the period of Vesting, as it may be extended from time to time, as described in Condition 11, below. **(LUC 20.20.450; City of Bellevue CUP approval)**

7. **Fly Neighborly Guide:** The pilots shall follow the guidelines of the Fly Neighborly Guide as published by The Helicopter Association International. **(LUC 20.20.450)**
8. **Lights:** Helistop lights shall be designed and installed in such a way as to limit intensity and glare to off-site premises to the maximum extent possible, consistent with safe operations. Low-wattage light emitting diode (LED) fixtures shall be used wherever possible. Helistop lights shall be turned on for only the time periods necessary to provide adequate illumination of the Helistop during helicopter approach, cool-down, start-up, warm-up and departure. Prior to construction of the Helistop, the applicant shall provide the city with a detailed Helistop lighting plan showing compliance with the intent of this condition. **(LUC 20.20.450)**
9. **Weather Station:** The applicant shall maintain a weather station and radio communication with all pilots to advise of weather conditions. The weather station shall include, without limitation, electronic weather monitoring equipment and a weather sock. If the weather station indicates unsafe conditions, pilots shall not use the facility. **(LUC 20.20.450, City of Bellevue CUP approval)**
10. **Communications Line/Website:** The applicant shall provide a communication phone line for residents regarding helicopter operations. The applicant shall also create and manage a website (blog) for residents to communicate. The website site shall include approved Temporary Use permits for Bellevue Square HVAC helicopter transfer so residents will be aware of when this activity will occur. The communication line/website must be operational prior to the first helicopter landing approved under this conditional use permit. The applicant may use a sub-section of its currently operating website to fulfill this obligation. **(LUC 20.20.450)**
11. **Vesting:** The vested status of this conditional use permit approval expires two years from the date of the City's final decision unless a complete Building Permit application is filed before the end of the two-year term. In such cases, the vested status of the land use permit or approval shall be automatically extended for the time period during which the Building Permit application is pending prior to issuance; provided, that if the Building Permit application expires or is canceled pursuant to BCC 23.05.160, the vested status of a land use permit or approval shall also expire or be canceled. If a Building Permit is issued and subsequently renewed, the vested status of the land use permit or

approval shall be automatically extended for the period of the renewal.
(LUC 20.40.500)

12. **Existing and Potential Obstructions of the Flight Path and Landing Pad:** The Federal Aviation Administration has identified the Lincoln Tower office building, located on the Southeast corner of Bellevue Way and NE 8th street as an existing potential obstruction to the flight path and landing pad. If other potential obstructions of the flight path and/or the landing pad result from the construction of new high-rise buildings or other obstructions in the future, the applicant shall:

- (a) Rescind operations immediately.

- (b) Prepare a modification plan for an obstruction-free approach which meets the Heliport Primary, Approach and Transitional Surfaces per FAR 77. (LUC 20.20.450.A.11, 12, and 13).

- (c) Submit the proposed modification plan to the Federal Aviation Administration for a "no objection" letter and forward such to the City of Bellevue.

- (d) Submit a plan to the City to modify the current Conditional Use Permit approval. The proposed modification shall be processed per LUC 20.30B.175, with all modifications requiring the public notice process per Process 1 (full Conditional Use Permit application) or Process II (Administrative Amendment to Conditional Use).

- (e) Operations may commence once the modification is approved and any necessary requirements implemented and approved by the City of Bellevue. (City of Bellevue CUP approval)

B. TRANSPORTATION DEPARTMENT CONDITIONS:

1. **Right-of-Way Use Permit:** A Right-of-Way Use Permit may be required for hauling oversized loads or if the project requires 10 or more truckloads. (BCC 14.30.070 and 14.30.080)

C. FIRE DEPARTMENT CONDITIONS:

1. **Fueling:** Fueling is not to occur on site. (National Fire Protection Association (NFPA) Standard 418)
2. **Fire Hose Stations:** Fire hose stations must be accessible. (International Fire Code (IFC) 905, NFPA Standard 14)
3. **Drainage:** Drainage flow shall not penetrate alternate egress points, stairways, ramps, hatches, and other openings not designed for drainage. (NFPA Standard 418)
4. **Operations Manual:** A standard operations procedure (SOP) manual must be provided prior to activation of the use. The portion dealing with

emergencies must be approved by the Bellevue Fire Department. Future updates will also require approval. **(IFC 401, 404; NFPA Standard 418)**

5. **Roof Deck Striping:** The roof deck must be striped such that the window washing machinery is not "parked" along the sides where egress is to occur, or where it obstructs landing. The window washer must be incorporated in the SOP manual. **(IBC Chapter. 10; NFPA Standard 418)**
6. **Smoking Restrictions:** No smoking shall be permitted within 50 ft (15.2 m) of the Helistop landing pad edge. NO SMOKING signs shall be erected/posted at all access/egress points to the Helistop. **(NFPA Standard 418)**
7. **Foam Extinguishers:** Two portable foam extinguishers, each having a rating of 20-A:160-B, and two 80 B:C dry chemical extinguishers shall be provided. Each pair shall be located at approved locations near the access points to the Helistop. **(NFPA Standard 418)**
8. **Egress Requirements:** At least two approved means of egress from the rooftop Helistop landing pad edge to the roof shall be provided and shall be remotely located from each other. A Second exit must be added from the Helistop to the roof below and from the roof below to the floor below. **(IBC Chapter 10; NFPA Standard 418)**
9. **Communications:** A means of communication shall be provided from the roof area to notify the fire department of emergencies. This will include monitoring by security through a video camera and voice capability from the roof to security. A fire manual pull station shall be provided for each designated means of egress from the roof. **(IBC Chapter 10; NFPA Standard 418)**
10. **Exits:** Exit signage, striping and lighting of all exit pathways must be provided. **(IBC Chapter 10; NFPA Standard 418)**

Section 5. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

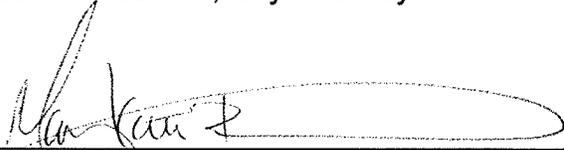
Passed by the City Council this 16th day of May, 2011
and signed in authentication of its passage this 16th day of May,
2011.

(SEAL)

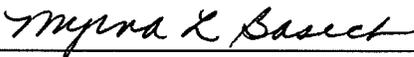

Don Davidson, DDS
Mayor

Approved as to form:

Lori M. Riordan, City Attorney


Mary Kate Berens, Deputy City Attorney

Attest:


Myrna L. Basich, City Clerk

Published May 19, 2011