City of Bellevue
Development Services Department
Land Use Staff Report

Proposal Name:	**Cabot, Cabot & Forbes Formal Code Interpretation**
Proposal Address:	3005 160th Ave SE
Proposal Description:	The applicant requests a Formal Code Interpretation of the terms of Concomitant Zoning Agreement No. 6015, Recording No. 8003120648, as amended, Recording No. 20030221002030, as it relates to a requirement to monitor traffic flows.
File Number:	**11-103089-DA**
Applicant:	**City of Bellevue, Transportation Department**
Decisions Included:	Interpretation of the Land Use Code (Process II. LUC 20.30K)
Legal Planner:	**Catherine Drews**
State Environmental Policy Act Threshold Determination:	**EXEMPT**
Director's Decision:	**Interpretation of the Land Use Code** Michael A. Brennan, Director Development Services Department

Carol V Helland

Carol V. Helland, Land Use Director
Development Services Department

Application Date:	January 14, 2011
Notice of Application Publication Date:	March 3, 2011
Decision Publication Date:	May 5, 2011
Project Appeal Deadline:	May 19, 2011

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

Interpretation of the Director
Bellevue File No. 11-103089-DA

Code Interpretation Issue Presented:

Is the City of Bellevue required to monitor traffic flows entering and leaving the Cabot, Cabot, & Forbes I-90/Bellevue Business Park ("CC&F Business Park") as required under a 1980 concomitant zoning agreement, when the remedy for traffic counts approaching the established threshold is unavailable because the CC&F Business Park is built out?

Summary of the Interpretation:

Traffic counts are not required to be taken under the specific terms of the concomitant zoning agreement when the subject property of the agreement is fully developed, thereby eliminating the remedy available under the CZA. This interpretation does not impact the requirement for traffic counts to be taken if redevelopment can occur on the subject property, which must be consistent with the terms of the concomitant zoning agreement.

I. INTRODUCTION

This report is a written interpretation of Concomitant Zoning Agreement No. 6015 ("CZA"), which was filed with the City on March 10, 1980. Concomitant zoning agreements are restrictive covenants between two parties and are interpreted under the law as contracts. Interpretation of concomitant zoning agreements is allowed under the Bellevue Land Use Code ("LUC"), LUC 20.30K.110.

This interpretation pertains to the terms of Ordinance No. 2818 and the CZA requiring the City of Bellevue to monitor traffic flows entering and leaving the CC&F Business Park in the Eastgate Area. The City of Bellevue Transportation Department requested the interpretation of the CZA to determine if its terms require the traffic counts to continue, when the remedy identified to address traffic flows approaching the threshold established in the CZA is no longer available. The CZA requires monitoring of traffic flows six months after the property was rezoned, then every six months following issuance of any building permits for the site. If the result of the monitoring indicates the traffic flows are approaching 29,800 Average Weekly Daily Trips ("AWDT"), then subsequently issued building permits for "buildings to be constructed" are to be conditioned to ensure that traffic related to the new building would not result in AWDTs exceeding 29,800. The site is now fully built out, with the exception of land for a public park, which the City Council exempted from the traffic flow counts.[1]

The following documents were reviewed in preparation of this code interpretation and are available in File No. 1103089-DA:

- Ordinance No. 2818, dated February 14, 1980.
- Concomitant Zoning Agreement No. 6015, dated March 10, 1980.

[1] Ordinance No. 5418 (Dec. 2002).

- Trip Generation Comparison (undated).
- Master Plan of CC&F I-90/Bellevue Business Park Areas A, B, and C (March 20, 1980).
- Vicinity map: Cabot, Cabot, and Forbes Site (1980), prepared July 2, 2010.
- Cabot, Cabot & Forbes June 2010 Traffic Counts.
- Ordinance No. 5418, dated December 26, 2002.
- Amendment to Concomitant Zoning Agreement No. 33,217 (Dec. 9, 2002).
- Transportation Plan: Cabot, Cabot & Forbes I-90/Bellevue Business Park (July 20, 1983).
- Transportation Management Program, Boeing Company, Bellevue I-90 Eastgate Site, Bellevue, Washington (Oct. 7, 2002).
- Transportation Management Program, Advanta I, LLC, Advanta Office Commons @ I-90, Bellevue, Washington (Jan. 22, 2008).
- Email communication from Mike Ingram, Senior Planner, City of Bellevue Transportation Department to Catherine Drews, City of Bellevue Legal Planner (April 5, 2011).

II. INTERPRETATION

A. Facts.

In the late 1970's, Cabot, Cabot and Forbes Inc. ("CC&F"), requested approval of a reclassification (or rezone) of a 164-acre parcel located north of I-90, between 153rd Avenue S.E. and 161st Avenue S.E. to construct a business park. The matter was heard before the Hearing Examiner during October and November of 1979. The Hearing Examiner issued a Recommendation for Conditional Approval in December 1979. During January and February of 1980, the City Council heard a limited public appeal on the proposal, and subsequently concurred in part and modified in part the Hearing Examiner's Recommendation. The Bellevue City Council adopted Ordinance No. 2818, rezoning the property with conditions. Ordinance No. 2818 and the associated CZA required the City to count traffic entering and leaving the site:

> The City shall monitor traffic flows entering and leaving the site at least every six months. If the results of any such analysis indicate that traffic levels will reach levels projected in the "Trip Generations Comparisons [sic] Table ," (City Staff Recommended Zoning, reduced by the amounts attributable to R-20), Hearing Examiner, Packet 4, Page 37, for the reclassification proposal within the six month period next following, then any building permits issued for the construction of buildings within the site thereafter will be issued only upon the condition that the owner take such action as determined by the City to be necessary to assure that such additional building or buildings will not result in traffic flows above the levels designated in such table. Such conditions could include, but need not be limited to carpooling, or vanpooling requirements, additional transit, parking restrictions or such other methods that the City deems appropriate.[2]

[2] Ordinance No. 2818, section 9, at 6.

Council included the condition to "set a clear upper limit on traffic flows that will be permitted to and from the reclassification site.[3]" In December 2002, the City Council amended the CZA. The amendment included exempting trips "generated by the use of or development of a public park located in or accessed through the Reserved Area[4] from the trip cap established by the 1980 CZA.[5]"

In 1983, CC&F submitted a Transportation Plan for the business park to the City of Bellevue Public Works Department, which approved the plan. The purpose of the plan is to provide a program to reduce traffic flows from the CC&F Business Park, by imposing binding private Conditions, Covenants and Restrictions (CC&Rs), on property owners and tenants within the business park.[6] The plan requires each building to designate a Transportation Coordinator, whose responsibility is to mitigate traffic impacts through education and other measures, such as vanpools, imposing fees for employee parking, participating in ride share programs, and other trip reduction strategies.[7] Additionally, the plan requires each new building design to include incentives to encourage ride-sharing, such as designated stalls for car and van pools with priority locations near the building's entrance.[8]

In 2002 and 2008, the Boeing Company and Advanta I, LLC, respectively entered into Traffic Management Plans for their respective sites within the CC&F Business Park, again with the intention of reducing the number of single-occupancy vehicles entering and leaving the site. Also, worksites within the business park with 100 or more employees are required to comply with Commute Trip Reductions regulations, which require employers to implement a trip reduction program and undertake measures to reduce trips taken by single-occupant vehicles. *See* Chapter 14.40 BCC.[9]

Finally, the City of Bellevue Transportation Department has counted traffic at the CC&F Business Park since the mid 1980s. These counts confirm that the AWDT have not approached the limit of 28,900 AWDT limit in the Trip Generation Comparison Table. The most recent counts were taken in June 2010, and the AWDT was 19,515.

B. Analysis.

The LUC authorizes the City to require an applicant enter into a concomitant zoning agreement with the City as a condition of a rezone. Through the agreement, the City may impose development conditions designed to mitigate potential impacts of the rezone and the development undertaken pursuant to the rezone. LUC 20.30A.155.

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[3] *Id.*
[4] The Reserved Area is limited to open space and park uses. Amendment to Concomitant Zoning Agreement No. 33,217 (Dec. 10, 2002).
[5] Ordinance No. 5418, section 2, paragraph h, at 5.
[6] Transportation Plan, Cabot, Cabot & Forbes I-90/Bellevue Business Park at 4, (1983) (hereinafter "Trans. Plan").
[7] Trans. Plan at 8-10 and 18-19.
[8] Trans. Plan at 10.
[9] Email communication from Mike Ingram, Senior Planner, City of Bellevue Transportation Department to Catherine Drews, City of Bellevue Legal Planner (April 5, 2011).

Interpretation of concomitant zoning agreements is allowed pursuant to LUC 20.30K.110. The purpose of the interpretation is to "clarif[y] conflicting or ambiguous wording, or the scope or intent of the provision of the Code," or in this instance, the CZA. LUC 20.30K.120. It is the scope of the condition that requires the City to count traffic flow into and out of the CC&F Business Park that is the subject of this interpretation.

The Council's stated purpose for the condition was to "set a clear upper limit on traffic flows that will be permitted to and from the reclassification site.[10]" The condition, however, provides a remedy, which by its terms is applicable only to the build-out phase of the CC&F Building Park. The remedy for traffic flows approaching 29,800 AWDT is to condition building permits for the *construction of buildings within the site*, to require the owner to comply with any traffic reduction strategies the City deems necessary to reduce traffic flows.[11] (Emphasis added). Thus, the condition addresses increases in traffic flows by shaping future permitting activity, but only activity related to the construction of new buildings. Furthermore, the condition is silent regarding permits for tenant improvements and does not provide any tools to address increased traffic flows once the site was fully built-out. Because the site is fully built-out, it is impossible to address traffic flows by conditioning building permits for the construction of buildings. Consequently, the condition's language leads to the conclusion that the parties intended that traffic flows resulting from site development should not exceed the threshold staff established in the Trip Generation Comparison Chart.

Under these specific circumstances, traffic counts are not required to continue to be taken because the CC&F Business Park is built out. If any future redevelopment of the site requires issuance of building permits for construction of buildings on the site, then the City would once again be required to count traffic during the build-out phase to assure compliance with the CZA. If the counts demonstrate the threshold is reached, then Development Services would be required to condition the building permits in conformance with the CZA. Once the build-out phase was complete, traffic counts are required for at least a six month period to assure compliance with the terms of the CZA.

Recent traffic counts demonstrate that traffic entering and leaving the CC&F Building Park site is below the established threshold of 29,800 AWDT. Furthermore, in the over 30 years since adoption of Ordinance No. 2818 and the CZA, additional transportation plans and programs have been approved, which based on recent traffic counts, satisfy the Council's intent to maintain traffic flows related to the CC&F Building Park below the 29,800 AWDT threshold.

III. FACTORS FOR CONSIDERATION

A. Applicable Provisions of the Land Use Code.

Part 20.30K, Interpretation of the Land Use Code, was considered in conducting this interpretation of the CZA.

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[10] Ordinance No. 2818, sec. 9 at 6.
[11] Ordinance No. 2818, sec. 9 at 6; Concomitant Zoning Agreement, No. 6015 (Mar. 10, 1980).

B. The Impact of the Interpretation on other Provisions of the Land Use Code or Concomitant Zoning Agreements.

The interpretation does not impact provisions of the LUC because it involves only the interpretation of the CZA, which is site specific. It is unlikely to impact other concomitant zoning agreements because the interpretation is narrowly tailored to the specific facts of the CC&F Business Park, Ordinance No. 2818, and the CZA.

C. The Implications of the Interpretation for Development within the City as a whole.

The interpretation will not affect development within the City as a whole because the interpretation involves interpretation of a unique condition of a concomitant zoning agreement that applies only to a specific site and not city wide. The interpretation may benefit future concomitant zoning agreements with similar requirements by demonstrating the need to specify the temporal scope of the provision, providing a sunset clause if appropriate, and demonstrating the need for precise drafting to ensure thoughtful and efficient use of city resources to implement and realize the City Council's intent.

D. Applicable Provisions of the Comprehensive Plan and other Relevant Codes and Policies.

The following polices from the Comprehensive Plan were deemed relevant to the issue presented and reviewed in relation to the interpretation:

Transportation Demand Management

- **POLICY TR-9.** Coordinate with other Eastside jurisdictions, the private sector, and the transit providers to develop and implement uniform or compatible transportation demand management regulations and strategies that are consistent with and implement the state Commute Trip Reduction Act and address the following factors:
    1. Parking;
    2. Services to increase high-occupancy vehicle use;
    3. Demand management program elements, including incentives; and
    4. Reporting, monitoring, and performance evaluation standards.
- **POLICY TR-10.** Require large employers to implement a commute trip reduction program for employees, as mandated by the Commute Trip Reduction Act. Evaluate program effectiveness every two years and, in coordination with other Eastside jurisdictions, lower the employer threshold if needed to achieve the city's goals for reducing use of single-occupant vehicles.
- **POLICY TR-12.** Encourage employers to help reduce peak hour commute trips by facilitating employee's use of telecommuting, flexible work hours, compressed work week schedules, and other scheduling options.
- **POLICY TR-14.** Require new development to incorporate physical features designed to promote use of alternatives to single-occupant vehicles, such as:

1. Preferential parking for carpools and vanpools;
2. Special loading and unloading facilities for carpools and vanpools;
3. Transit facilities, including comfortable bus stops and waiting areas, adequate turning room, and where appropriate, signal preemption and queue-jump lanes; and
4. Bicycle parking, showers, secure storage facilities, lockers, and related facilities.

- **POLICY TR-17.** Promote increased citizen awareness of travel alternatives available for midday as well as commute trips.

Transportation, Environment, and Quality of Life

- **POLICY TR-115.** Preserve the safety of residential streets and the liveability of residential neighborhoods by discouraging non-local traffic on streets classified as local. Emphasize the following:
  1. Continue a strong neighborhood traffic control program to discourage cut-through traffic on non-arterial streets; and
  2. Design new residential streets to discourage cut-through traffic, while providing for connectivity.
- **POLICY TR-119**. Minimize spillover parking from commercial areas, parks, and other facilities encroaching on residential neighborhoods, through residential parking zones and other measures.
- **POLICY TR-121**. Monitor traffic growth on collector arterials and take measures to keep volumes within reasonable limits.

Environmental

- **POLICY EN-3.** Minimize, and where practicable, eliminate the release of substances into the air, water, and soil that may degrade the quality of these resources or contribute to global atmospheric changes.
- **POLICY EN-78.** Work with the private sector to reduce growth in vehicle trips as a key strategy for reducing automobile-related air pollution.
- **POLICY EN-94.** Consider noise impacts when evaluating measures designed to keep traffic volumes and speeds within reasonable limits on collector arterials.

The interpretation is consistent with and does not hinder the Comprehensive Plan policies. The code interpretation requires traffic monitoring to resume if future development on the site entails demolition and reconstruction of the buildings within the CC&F business park. Furthermore, the code interpretation does not prevent traffic monitoring if Transportation staff elects to monitor the site.