



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Bellevue Place Helistop

Proposal Address: 10500 NE 8th Street

Proposal Description: On December 16, 2016, King County Superior Court Judge Judith Ramseyer ordered the City of Bellevue to reinstate and fully process the applicant's request that the City revoke the Conditional Use Permit approval of Kemper Development Company's helistop authorized under Ordinance 6000.

File Number: 17-104804-LB

Applicant: Joshua A. Whited on behalf of Ina Tateuchi

Recommendations Included: Conditional Use Permit
(Process I, LUC 20.30B)

Planner: Reilly Pittman, Land Use Planner

**State Environmental Policy Act
Threshold Determination:** Exempt

Director's Recommendation: **Denial**
Michael A. Brennan, Director
Development Services Department

Elizabeth Stead, Land Use Director
Development Services Department

Application Date: January 25, 2017
Notice of Application Publication: March 2, 2017 (Re-noticed March 9, 2017 and June 8, 2017)
Public Meeting Date: June 27, 2017
Director's Recommendation Date: March 1, 2018
Public Hearing Date: March 22, 2018

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ATTACHMENTS

1. Stipulation and Order of Dismissal – In File
2. December 16, 2016 King County Superior Court Order – In File
3. All information, Comments, Communications, and Documents – In File 16-124851-LB
4. All information, Comments, Communications, and Documents – In File 17-104804-LB
5. February 4, 2016 Letter from Applicant to Revoke KDC’s Helistop CUP – In File
6. Helistop Flight Operations Reports submitted by KDC to the City – In File
7. September 5, 2017 Letter and Attachments sent to the City from KDC – In File
8. October 2, 2017 Response Letter and Attachments from the Applicant – In File
9. City Responses to Public Comments – Attached

I. REQUEST and REVIEW PROCESS

A. Request

The applicant requests the City revoke Conditional Use Permit approval 08-135262-LB, approved under Ordinance 6000, for the Kemper Development Company (KDC) to operate a helistop from the roof of the Bellevue Place Bank of America Building.

B. Review Process

A Conditional Use Permit (CUP) is a Process I decision which requires a public hearing before the City's Hearing Examiner. Per the Stipulation and Order of Dismissal issued by the City of Bellevue Hearing Examiner on January 22, 2016 (Attachment 1), the City agreed to process a request to revoke the CUP approval of the helistop operated by KDC as a new CUP application¹. Thereafter, on December 16, 2016, King County Superior Court Judge Judith Ramseyer ordered the following (Attachment 2):

The City is required to specifically perform its obligations under the Stipulation and Order of Dismissal by reinstating and fully processing the application for revocation of [KDC's CUP]².

The City may revoke a CUP per the following criteria found in Land Use Code 20.30B.170. An approved permit may be revoked only upon finding that:

1. *The use for which the approval was granted has been abandoned for a period of at least one year; or*
2. *Approval of the permit was obtained by misrepresentation of material fact; or*
3. *The permit is being exercised contrary to the terms of approval.*

The review of this request includes all information, comments, communications, and documents included in 16-124851-LB (Attachment 3) and 17-104804-LB (Attachment 4). File Numbers 16-124851-LB and 17-104804-LB include, but are not limited to, the applicant's February 4, 2016 Application for Revocation of KDC's Helistop CUP (Attachment 5); the Helistop Flight Operations Reports submitted by KDC to the City (Attachment 6); KDC's September 5, 2017 Letter to the City, along with the Attachments submitted by KDC with this letter (Attachment 7); and the applicant's October 2, 2017 Response to KDC's September 5, 2017 Letter to the City, along with the Attachments submitted by the applicant with the response (Attachment 8).

¹ Stipulation and Order of Dismissal, AAD-15-67 (January 22, 2016), attached to Application for Revocation of KDC's Helistop CUP (Ordinance 6000) (February 4, 2016).

² Order dated December 16, 2016, Case No. 16-2-13322-3 SEA.

II. PROJECT BACKGROUND

In 2008, KDC applied for a CUP to establish a private helistop on the roof of the Bellevue Place Bank of America Building, located at 10500 NE 8th Street³. A helistop is *“the same as a heliport, except that no refueling, maintenance, repairs or storage of helicopters is permitted”* LUC 20.50.024 (H definitions). A heliport is *“an area of land or water or a structural surface which is used as a permanent facility for the landing and takeoff of helicopters, and any appurtenant areas which are used for heliport buildings and other facilities...”* LUC 20.50.024 (H definitions).

The City approved the CUP for a helistop, which encompasses a broad range of uses and activities beyond landing and takeoff of helicopters. In approving the CUP, Ordinance 6000 expressly identified the infrastructure, maintenance, processes, procedures, reporting requirements, and conditions imposed by the City and the Federal Aviation Administration (FAA).⁴ Numerous conditions of approval were placed on KDC to operate its private helistop, including requirements on the number of engines required and for KDC to submit reports on the operation of the helistop.⁵ After the City approved the CUP, Ina Tateuchi (and other parties) appealed the City’s approval of the helistop to the King County Superior Court, and the Court upheld the City’s decision approving the helistop.⁶

On August 8, 2012, KDC applied for the necessary building permit to upgrade the facility to current Federal Aviation Administration (FAA) design standards and city building code regulations consistent with the CUP approval.⁷ KDC applied to amend its approved CUP on February 22, 2013, to modify condition 3, which only allows twin-engine helicopters to use the helistop, to also allow single-engine helicopters. This CUP amendment was cancelled at request of the applicant on October 28th, 2015. As required under the CUP, KDC filed monthly operation reports for the first year, then after one year, KDC has filed its operation reports every six months which has continued to date.⁸

This subject application stems from a 2014 formal code interpretation which the applicant submitted requesting the City to revoke the original CUP approval for the helistop (See Attachment 3 for Interpretation). The applicant appealed the City’s interpretation, File No. AAD 15-67, which resulted in a Stipulation and Order of Dismissal. In this Stipulation and Order, the City and Ms. Tateuchi, through her attorneys, agreed to dismiss Ms. Tateuchi’s

³ City of Bellevue, Development Services Department, Land Use Division Staff Report: Kemper Development Helistop, Recommendation to the Hearing Examiner, File No. 08-135262-LB, (May 21, 2009) [hereinafter “Staff Report”], included as Attachment 1 to KDC Letter to the City (September 5, 2017).

⁴ Ordinance 6000 at 3-7, included as Attachment 11 to KDC Letter to the City (September 5, 2017).

⁵ Ordinance 6000 at 4 at Condition Nos. 3 & 4, included as Attachment 11 to KDC Letter to the City (September 5, 2017).

⁶ Tateuchi, et. al. v. City of Bellevue, et. al., Case No. 11-2-20007-8 SEA, Order and Judgment Denying Land Use Petition Relief (November 30, 2011).

⁷ Permit Application No. 12-114026-BZ, included as Attachment 14 to KDC Letter to the City (September 5, 2017).

⁸ The Helistop Flight Operations Reports submitted by KDC to the City are contained in File Nos. 16-124851-LB and 17-104804-LB.

appeal of the June 25, 2015 Code Interpretation Decision. In addition, the City agreed to rescind the Code Interpretation Decision, and the parties agreed to process Ms. Tateuchi's revocation request through an application for revocation of KDC's underlying CUP.⁹

The applicant then submitted a CUP application (16-124851-LB) to revoke the original CUP approval for the helistop, which raised arguments regarding abandonment and misrepresentation that were identical to the arguments the applicant had previously raised in her October 17, 2014 Request for Formal Land Use Code Interpretation. After the City cancelled the application for revocation, the applicant then sued the City in King County Superior Court, Tateuchi, et. al. v. City of Bellevue, et. al., No. 16-2-13322-3 SEA.

On December 16, 2016, Judge Ramseyer ordered the City to reinstate and fully process the applicant's request that the City revoke the helistop CUP. Consistent with Judge Ramseyer's Order, the applicant submitted, and the City accepted, the revocation application on January 25, 2017 (17-104804-LB). Similar to her 2016 revocation application and her 2014 Request for Formal Land Use Code Interpretation, the applicant's 2017 revocation application again raised identical abandonment and misrepresentation arguments as the basis for revocation of the CUP approval for the helistop.

III. SITE DESCRIPTION

The helistop is in Downtown Bellevue on the rooftop of the Bellevue Place Bank of America Building at 10500 NE 8th St, just east of Bellevue Way. The parcel includes the Bank of America Building, Wintergarden and the corner building. The site is located within the city's downtown, the financial and business hub of Bellevue and the greater Eastside. The downtown is an area of intense use, with regional shopping facilities, high rise office buildings, hotels and high density residential buildings. This area is meant to be the most intensely developed and new development continues to take place here. See figure 1 below for existing site and helistop location.

⁹ The City's June 25, 2015 Code Interpretation Decision, 14-142898-DA, is included in File No. 16-124851-LB and as Attachment 19 to KDC Letter to the City (September 5, 2017). The Stipulation and Order of Dismissal, AAD-15-67 (January 22, 2016), is attached to the Application for Revocation of KDC's Helistop CUP (Ordinance 6000) (February 4, 2016) and to the applicant's October 2, 2017 Response to KDC's September 5, 2017 Letter to the City.



Figure 1

IV. PUBLIC NOTICE AND COMMENTS

Application Date:	January 25, 2017
Notice of Application:	March 2, 2017 (Re-noticed March 9, 2017 and June 8, 2017)
Minimum Comment Period:	March 23, 2017

The project was publicly noticed in the City's Weekly Permit Bulletin, in the Seattle Times, and by signage posted on the project site on March 2, 2017 and renoticed on March 9, 2017 and June 8, 2017 to ensure adequate notice of the public meeting was provided. The public meeting was held on June 27, 2017 and was attended primarily by legal representatives of the applicant and KDC with a few members of the public present. Comments were received from numerous parties which can be found as attachment 4. Responses to summarized comments can be found as attachment 9.

On September 5, 2017, attorneys representing KDC submitted information to add to the record that is considered as part of this review. At both the June 27, 2017 public meeting and in its September 5, 2017 submittal, KDC argued this revocation application should be cancelled due to the applicant's lack of standing.

On October 2, 2017, the applicant submitted a Response to KDC's September 5, 2017 written submittal. Subsequent to October 2, 2017, the City has not received any further submittals from the applicant (Ms. Tateuchi), the permit holder (KDC), or the public concerning this application.

Development Services staff reviewed all submitted information whether submitted by the applicant, the permit holder, or as public comment. Staff also reviewed the materials contained in File Nos. 16-124851-LB and 17-104804-LB.

V. TECHNICAL REVIEW

Development Services staff reinstated, reviewed and processed the revocation application as required by Judge Ramseyer's December 16, 2016 Order.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The proposal is exempt from SEPA per WAC 197-11-800.

VII. DECISION CRITERIA

The Hearing Body may revoke an approved permit through Process I, LUC 20.35.100 et seq. An approved permit may be revoked only upon finding that:

- 1. The use for which the approval was granted has been abandoned for a period of at least one year.**

Applicant: The applicant contends that the helistop is a nonconforming use and that KDC has abandoned the helistop use approved by the CUP because there have been no

helicopter operations for over a year at the helistop per the letter dated February 4, 2016 from the applicant's attorneys, which is found as attachment 5.

Owner: KDC contends that the historical project records submitted with their September 5, 2017 letter, which is attachment 7, show a history of intent to maintain the helistop despite actual landings of helicopters being few to none.

Director's Recommendation: KDC applied for a CUP to operate a private helistop¹⁰. The City approved the use with conditions, including a requirement that helicopters using the helistop be twin-engine, and that operations logs (Attachment 6) be submitted to the City. The completion of helicopter flights is not necessary to establish a helistop or demonstrate that the use is operational. Any use may receive final approval from the City to operate but if they choose to never open or do not get any customers it does not mean that the use is abandoned. If a use meets all requirements to open and operate, and receives approval from the City to operate, they have established and can continue to maintain the use even if it is never used.

As discussed in the prior code interpretation on this same subject, "the law regarding abandonment in Washington is well-established. The question of whether abandonment has occurred is one of fact that the person alleging abandonment has the burden of proof." *Van Sant v. City of Everett*, 69 Wn. App. 641, 649, 849 P.2d 1276 (1993) (citations and quotations omitted). And this burden is not an easy one. *Id.* Abandonment or discontinuance is a question of fact, and ordinarily depends upon a concurrence of two factors: "(a) an intention to abandon; and (b) an overt act, or failure to act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use." (Emphasis added).

Despite not having ongoing helicopter activity at its helistop, KDC has maintained its private helistop and filed required operational reports. In addition, KDC, who is the permit holder and operator of the helistop, has consistently opposed revocation of this helistop under the 2014 code interpretation and initial CUP application for revocation in 2016. KDC has defended its permit, and its actions demonstrate it has no intent to abandon the helistop. Under both the LUC and the common law of abandonment, the Director does not conclude that KDC has abandoned its use or demonstrated an intent to abandon its use. The helistop has been maintained.

2. Approval of the permit was obtained by misrepresentation of material fact.

Applicant: The applicant contends that KDC obtained its helistop by misrepresenting and hiding a material fact – specifically that twin-engine helicopters would use the helistop.¹¹

¹⁰ Ordinance 6000, included as Attachment 11 to KDC Letter to the City (September 5, 2017); Staff Report at 3, included as Attachment 1 to KDC Letter to the City (September 5, 2017).

¹¹ Application for Revocation of KDC's Helistop CUP (Ordinance 6000) (February 4, 2016) at 4-7; Applicant's October 2, 2017 Response to KDC's September 5, 2017 Letter to the City at 4-7.

Owner: KDC contends that its application anticipated both dual and single-engine helicopters and its design helicopter for the helistop was a twin-engine model.¹²

Director's Recommendation: The Hearing Examiner may revoke an approved permit upon a finding that "[a]pproval of the permit was obtained by misrepresentation of a material fact." LUC 20.30B.170.B.2. Here, KDC's application underwent a lengthy and robust review, including the Council directing two remands to the Hearing Examiner for additional fact-finding and recommendations to the Council before the Council finally approved KDC's application. The Hearing Examiner's Final Recommendation contains over 80 findings and 22 conditions of approval. The topics included evaluation of the helistop by the Federal Aviation Administration, consideration of prevailing winds and obstructions (such as buildings) in relation to the flight path, selection of the approach and departure path, and the flight path.¹³ The type of helicopter allowed to use the facility is but one fact relevant to that decision.

The evidence in the record does not support the applicant's argument that the City Council's approval of KDC's CUP was obtained through misrepresentation of a material fact. KDC's intent was to establish a helistop regardless of the engines used by the helicopter landing on it.

To the extent that KDC decided that the CUP condition limiting the type of helicopter to twin engine helicopters was not feasible, KDC submitted application File No. 13-107448-LI to modify this condition. This application was cancelled by KDC on October 28, 2015. However, KDC's actions by applying to modify an approved CUP is permitted by the Land Use Code and does not show an intent to deceive or otherwise establish that KDC obtained the CUP by misrepresentation. This is the process required by the Land Use Code to modify or amend an approved CUP.

The Director has reviewed the information submitted by the applicant and KDC, along with all information, comments, communications, and documents included in File Nos. 16-124851-LB and 17-104804-LB, and does not conclude that KDC obtained approval of its permit through misrepresentation of a material fact or tried to mislead the City.

3. The permit is being exercised contrary to the terms of approval.

Applicant: The applicant has not provided any information that addresses this criteria for revocation.

Owner: KDC did not provide any information that addresses this criteria for revocation.

¹² KDC Letter to the City (September 5, 2017).

¹³ See e.g., *Kemper Development Company v. Tateuchi, et al.*, Second Revised and Final Report of Findings Conclusions, and Recommendation to the Bellevue City Council (Dec. 16, 2010) included as Attachment 8 to KDC Letter to the City (September 5, 2017).

Director's Recommendation: KDC has not landed single engine helicopters or done anything that is contrary to the terms of approval. In fact, KDC formally submitted a request to amend the condition on engine requirement, which was the procedure required to change a condition. The City approved a helistop at the site and a helistop was established by KDC that has been maintained to date in conformance with the conditions of the CUP.

VIII. RECOMMENDATION

After reviewing this request for revocation and the complete record, the Director of the Development Services Department does hereby **RECOMMEND DENIAL** of the request to revoke the CUP issued to the Kemper Development Corporation for a helistop located on the subject site.

PUBLIC COMMENT SUMMARY	COMMENTS	DATE	LAND USE RESPONSE
Request to terminate application as applicant does not have standing to apply for this application. Only the property owner, authorized agent, or Regional Transit Authority are authorized to apply.	Alison Moss	4/6/2016	Per Stipulation and Order of Dismissal the City agreed to process a revocation request under a new Conditional Use Permit which is application 17-104804-LB that is submitted by the applicant, Joshua Whited on behalf of Ina Tateuchi.
A permit should not be extended for a helicopter pad without requiring improvements to meet updated codes to ensure community safety and noise control.	Lisa Ross	4/12/2016	The application proposes to revoke the approval so that the helistop would be removed.
I hope the City will revoke/cancel the application. I do not want the added noise and safety hazard associated with an additional helicopter pad.	Darcie Durr	4/7/2016	The proposal is to revoke the existing approval and does not propose to add another helistop.
Su Development did not want a helistop in downtown Bellevue as our projects are predominantly residential high-rise and we care about the safety of our tenants. If taller buildings are approved as part of Downtown Livability changes it will be more difficult to maneuver through the downtown street grid and endanger downtown residents and workers. Private helistops are now prohibited by City code and this should not be allowed as the helistop has not been used within	Linda Abe	4/7/2016	The application proposes to revoke the approval so that the helistop would be removed. The existing helistop is a legally permitted nonconforming use which can remain regardless of usage.

the 3 year time so it is null and void.			
I do not like the noise caused by helicopters flying above Bellevue. The company flying them does not have a valid permit. I would like the City to do something so that we have a peaceful place to live.	Ye Wang	4/5/2016	This application does not pertain to all helicopters flying within Bellevue airspace and cannot stop all air traffic. This helistop has City approval to operate.
I do not like the noise caused by helicopters flying above Bellevue. The KDC does not have a valid permit to operate the helistop. The permit has expired as it has not been used in three years. The helistop fails to meet current ordinances.	Wushifish Wu	4/5/2016	This application does not pertain to all helicopters flying within Bellevue airspace and cannot stop all air traffic. This helistop has City approval to operate and can continue to do so without meeting current codes.
I am still concerned about noise and safety associated with low flying helicopters over our neighborhood. The approach creates an adverse impact to those near the flight path and effect my property value.	Mike Edde	4/3/2016	This application does not pertain to all helicopters flying within Bellevue airspace and cannot stop all air traffic. This application does not propose to change the flight path and impacts from noise or to property value are not criteria stated in the Land Use Code to revoke the approval. Noise and other impacts were considered under the original approval.
Is the helistop designed in accordance with FAA standards? Engine redundancy will enable helicopters to locate and reach a suitable alternative landing zone in case of emergency. The permit should be revoked as KDC has shown they will not proceed with the twin engine requirement. The	Mike Edde	4/4/2016	KDC applied to change a condition of approval to allow single engine craft. The application was cancelled and not approved. Submitting an application to change a condition of approval does not violate the original requirement for twin engines helicopters.

permit should be revoked so that it is subject to current codes.			
The original conditional use permit required a designated helicopter approach route over NE 8 th between the Bellevue Hyatt and I-405. This route offers limited safe landing alternatives. Requiring engine redundancy is a sensible precaution for such a route.	Mike Edde	4/5/2016	Nothing in this application process will change the condition for twin engine helicopters to be used.
We are in Bridle Trails and the helicopters get very noisy in our neighborhood. KDC needs to be held to a high standard and the path, if allowed, needs to seriously consider the peacefulness of our neighborhoods.	Marlene Meyer	4/4/2016	There is no request to change the flight path as part of this application.
I feel the permit should be retired based on failure to exercise the permit in a timely manner. The KDC should be held to the current standards for heliports in Bellevue.	Julie Thomer	4/4/2016	The existing helistop is a legally permitted nonconforming use which can remain regardless of usage.
I live in Bellevue Tower and downtown has gotten really crowded in the last few years in terms of buildings and people. Any accident caused by the helicopter will be catastrophic. I ask you to revoke the helistop permit.	Thomas Chan	3/31/2016	Revocation of the CUP is based on the criteria in the Land Use Code. Risk of accidents was a consideration in the original review of the CUP that was approved by the City. This concern led to the requirement for twin engine helicopters.
Any accident caused by a helicopter in Downtown Bellevue, no matter, the long odds, will be catastrophic. I live in downtown	Clifford Chirls	4/1/2016	This application proposes to revoke the prior approval for the helistop. Risk of a potential issue or danger is not contained in

and would consider moving should this be allowed. I cannot imagine how the City could give approval to a “Damocles Sword” of this magnitude which would hang over the lives of so many residents.			the Land Use Code as criteria to revoke an approval.
I support the proposal to revoke the KDC helistop. The loud noise made by them is uncomfortable whether outside or inside.	Madhavi Kandibanda	4/3/2016	Noise impacts were considered and evaluated under the approval of the helistop.
We do not need a helistop downtown. The crashes in Seattle and at the former JC Penney’s site cause fatalities that could also easily happen if one crashed downtown.	Jan Stout	4/3/2016	Risk of a potential issue or danger is not contained in the Land Use Code as criteria to revoke an approval.
I am a resident of the Wilburton neighborhood and have noticed the increased helicopter traffic over our quiet neighborhood. I oppose granting an exception from the twin engine requirement. I am opposed to helicopters flying over suburban areas or downtown. If they must I would prefer to have the approaches over noisy roadways at high altitude. These helicopters have flown at low altitudes over my house and Wilburton greenbelt on a regular basis and I wonder what the impact is on wildlife.	Linda Rasp	4/12/2016	The proposed revocation application does not alter the requirement for a twin engine helicopter. There was an application that proposed to change that requirement but it was cancelled and not approved. This proposal does not impact all helicopters flying over Bellevue and those that use this helistop do have a defined flight path over NE 8 th . Impacts from noise were considered under the original approval for this helistop.