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**BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE**

In the Matter of an Application for a )  
Conditional Use Permit for )  
**KING COUNTY PUGET SOUND** )  
**EMERGENCY RADIO NETWORK -** )  
**BELLEVUE FIRE STATION #9** )  
For Construction of a 170-foot )  
Communications Pole and Associated )  
Ground Equipment at 12412 Newcastle )  
Way )

**FINDINGS OF FACT,  
CONCLUSION OF LAW  
AND DECISION**

**File No. 16-139244-LB**

**SUMMARY**

1. Decision. The application is approved, subject to conditions.

2. Request. The proposal is to build a 170-foot tall communication pole in the wooded area on the northerly portion of the 70,292 square foot Bellevue Fire Station #9 parcel. The purpose is to provide a critical link in emergency microwave communications coverage in the east Lake Washington area. The site is in a forested area, zoned R-5, with adjacent residential neighborhoods. Seattle City Light towers and transmission lines are located in an easement to the east of the project site on the Fire Stations #9 parcel.

3. Procedure. On September 29, 2016, Notice of Application was mailed to all property owners within 500 feet of the project site. A public information sign for the proposal was installed on adjacent public right-of-way. A public meeting was held on November 10, 2016. Nine members of the public attended. Questions concerned health effects, aesthetics, noise, safety, and property values. In addition, the City received several phone calls, emails and letters raising essentially the same concerns. The Staff report responds to the issues raised.

Environmental review resulted in the issuance of a Determination of Non-Significance by the City on May 4, 2007. No appeals were filed.

Notice of the City's recommendation was made on May 4, 2007. The hearing was conducted upon due notice on May 18, 2017. Carol Hamlin, Senior Planner, made the City's  
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1 presentation. Sara Telschow appeared for the applicant King County Puget Sound Emergency  
2 Radio Network (PSERN). Testimony was given by two members of the public. No new issues  
3 were brought up.

#### 4 **FINDINGS OF FACT**

5 1. The factual matters set forth in the foregoing SUMMARY are adopted hereby as  
6 findings.

7 2. The facility created by the antennas atop the proposed 170-foot tall communication  
8 pole will provide for emergency microwave communications coverage in the east Lake  
9 Washington area. This facility and a similar PSERN facility at the Cougar Mountain site will  
10 serve first responders in the southern Bellevue area.

11 3. The facility at Bellevue Fire Station #9 will provide the backbone of emergency radio  
12 coverage in the area and function as a critical link in the microwave chain to the Northeast King  
13 County Regional Public Safety Communication Agency (NORCOM) dispatch on the top of  
14 Bellevue City Hall and existing Capitol Hill sites.

15 4. The current emergency radio system is more than 20 years old and requires upgrading  
16 to ensure reliability. This updated system was approved by King County voters in a 2015 levy  
17 with over 65% approval. PSERN states that the proposed facility is necessary for high level  
18 emergency radio coverage in an area underserved by the current emergency radio network.

19 5. The applicant states that microwave links are the most reliable means of  
20 communication after a major disaster. Roads can buckle or break during events, causing fiber  
21 and other land-based communications to fail. Such failures do not affect microwaves.

22 6. The proposed monopole will be located in an approximately 1,892 square foot fenced  
23 area, 88 feet ten inches from the north property line, 103 feet seven inches from the west  
24 property line and 108 feet eight inches from the east property line. PSERN is proposing to attach  
25 four omni antennas to the tower. Two microwave dishes will be attached. The pole will be  
26 visible from off site, but the majority of existing trees will be preserved, providing a measure of  
27 screening. The tower and all antennas and attachments will be painted dark green using a non-  
28 reflective finish.

29 7. The ground equipment will include a 50kw generator with a one thousand gallon  
30 diesel tank for emergency back-up power. The generator will be located in an equipment

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1 building which will meet all applicable city building codes including fire standards. The  
2 generator will also meet applicable noise standards. The surrounding fence and the equipment  
3 building will be painted steel grey to match the fire station. Landscaping will be provided  
4 outside of the fence. The facility will be accessed for maintenance by a driveway to the east.  
5 Two parking stalls will be provided.

6 8. The facility overall has been designed to minimize aesthetic impacts to the extent  
7 feasible. Per plan, the plantings in a 20 foot buffer will consist of native trees, shrubs and  
8 groundcover to provide screening and visual interest. Soil preparation will be performed and  
9 new plants will be watered according to a schedule for the establishment period.

10 9. The search for an adequate site began in June of 2014. Multiple alternative sites were  
11 reviewed, including sites in Seattle, on Mercer Island, in the City of Newcastle and additional  
12 possibilities in Bellevue. Ultimately the Fire Station #9 site was selected because the location  
13 and height could provide needed signal coverage, the facility in this location could achieve  
14 necessary microwave links to downtown Bellevue and Capitol Hill, and the site provided the best  
15 overall emergency communications compared to all alternatives reviewed.

16 10. Because of neighbors' concerns, the applicant moved the monopole and fenced area  
17 8 to 10 feet south of the original location adjacent to the parking lot for the fire station. The 170  
18 foot height was shown to be the minimum height necessary for effective functioning of the  
19 system.

20 11. Seattle City Light has an easement over the eastern 75 feet of the site. Seattle City  
21 Light currently maintains towers for transmission lines within this easement to the east of the  
22 subject project area. City Light has no objection to the PSERN project.

23 12. A report calculating RF emissions from the site was prepared by A.H. Hatcher, a  
24 qualified expert. The conclusion was that the maximum contribution from the PSERN site will  
25 be a fraction of the general public exposure limits set by the Federal Communications  
26 Commission. Federal requirements pre-empt local regulation in this area. Nevertheless, the  
27 applicant will be required to perform post-installation radio frequency emission measurements  
28 upon completion and six months thereafter.

29 13. PSERN retained the services of Integra Realty Resources to provide a study of  
30 potential market value impacts of the tower on residential properties and concluded that there is

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1 no discernible negative impact on single-family home values resulting from the presence of the  
2 subject tower. No proof to the contrary was made.

3 14. The applicant submitted a letter by a recognized authority on engineered wireless  
4 communication structures which stated that due to the non-flammability of the steel and zinc  
5 components, the monopole presents no risk of catching fire under normal operation  
6 circumstances. The design and engineering of the proposed structure meet all city, state and  
7 federal requirements for installation and operation. There is nothing in the record to substantiate  
8 a finding of extraordinary risk of tower failure during storms

9 15. The record supports a finding that the emergency radio signals will not impact other  
10 communications or electronic devices, such as telephone, television, cardiac pace makers, radios,  
11 WI-FI. The noise levels from the generator are expected to be well below the maximum levels  
12 allowed by applicable noise regulations.

13 16. Various City departments (Transportation, Utilities, Fire, Clear/Grade) reviewed the  
14 proposal and had no concerns. Numerous detailed conditions of approval were proposed by the  
15 City to insure the compliance of the installation with Code requirements.

16 17. The Examiner finds that the Staff Report adequately answers the concerns raised by  
17 the public and provides a proper basis for approving the project.

18 18. Nearby properties are zoned residential in both Bellevue and the City of Newcastle.  
19 Because of this, the proposed facility requires a Conditional Use Permit under a process that  
20 involves a recommendation by the Director of Development Services and a decision by the  
21 Hearing Examiner after a public hearing.

22 19. The criteria for approval of a Conditional Use Permit are set forth at LUC  
23 20.30B.140. The Staff Report analyzes this proposal against the criteria and finds that, as  
24 conditioned, the project will meet them. The Hearing Examiner concurs with this analysis and  
25 adopts the same.

26 20. This includes finding that the proposal meets the special Code requirements for  
27 wireless communications facilities, set forth at LUC 20.20.195. There is no alternative to the  
28 residential district siting, given the necessity for a targeted microwave path. The site is overall  
29 the best available for the emergency communications need. To the extent possible, adverse  
30 impacts has been addressed by locating the facility in a wooded area, moving the pole to the

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1 south, providing landscaping for screening and painting the facility to blend with the  
2 surroundings. The proposed ground equipment is the minimum necessary and is located within  
3 an equipment building which is sight screened with an eight-foot fence.

4 21. The PSERN proposal will provide an essential public facility. Under all the  
5 circumstances, the Hearing Examiner is persuaded that the applicant has made sufficient efforts  
6 to minimize the impacts on the community.

7 22. The public health and public safety risks were not shown to be significant. The  
8 major impact on the community will be aesthetic. To be sure, the proposed communication pole  
9 will be visible from many residential locations. Whether it represents an aesthetic affront is a  
10 matter of subjective judgment. There are already a number of wires, poles and towers in the  
11 vicinity that are visible to residents of the area. Under all the circumstances, the Hearing  
12 Examiner finds that the visual intrusion will not be incompatible with the existing or intended  
13 character, appearance, quality of development and physical characteristics of the site or the  
14 immediate vicinity.

15 23. Any conclusion herein which may be deemed a finding is hereby adopted as such.

## 16 **CONCLUSIONS OF LAW**

17 1. The Hearing Examiner has jurisdiction over this proceeding.

18 2. The requirements of SEPA have been met.

19 3. As conditioned, the proposal will meet the requirements of LUC 20.20.195 and LUC  
20 20.30B.140.

21 4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## 22 **CONDITIONS**

### 23 **1. Modification to the Conditional Use Plans**

24 Any modification to this approval after construction shall be documented as an Amendment to  
25 this Conditional Use: a new application, an Administrative Amendment or as a Land Use  
26 Exemption. The applicant shall demonstrate compliance with the Land Use Code in effect at the  
27 time of issuance of this report. Any modification of the project design must be reviewed for  
28 consistency with the design intent as stated in Section I.B. of this report. Conditions of Approval  
29 run for the life of the project. Land Use Code 20.30B.175  
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2 **2. Vesting Status of Land Use Approval**

3 Under Land Use Code 20.40.500, the vested status of the Conditional Use approval shall expire  
4 two years from the date of the City's final decision, unless a completed building permit  
5 application is filed before the end of the two year term. Upon issuance of a building permit, the  
6 vested status of a land use permit or approval shall be automatically extended for the life of the  
7 building permit. Land Use Code 20.50.500

8 **3. Construction Noise Hours**

9 Noise related to construction is allowed from 7:00 a.m. to 6:00 p.m. Monday through Friday and  
10 9:00 a.m. to 6:00 p.m. on Saturday, except for Federal holidays and as further defined by the  
11 Bellevue City Code. Exceptions to the construction noise hours limitation contained in the Noise  
12 Control Code MAY be granted pursuant to 9.18.020C.1 when necessary to accommodate  
13 construction which cannot be undertaken during exempt hours. Written requests for exemption  
14 from the Noise Control Code must be submitted two weeks prior to the scheduled onset of  
15 extended hour construction activity. Such request shall include a noise analysis prepared by a  
16 noise consultant, including recommendations for achieving the noise limitations of the Noise  
17 Ordinance for new construction. Bellevue City Code 9.18.020, .040

18 **4. Use of Best Available Noise Abatement Technology**

19 The use of best available noise abatement technology consistent with feasibility is required  
20 during construction to mitigate construction noise impacts to surrounding uses. Bellevue City  
21 Code 9.18.020F

22 **5. Air Pollution from Construction Vehicles and Equipment**

23 Construction vehicles and heavy construction equipment shall emit the least amount of air  
24 pollution possible. While on city streets, construction vehicles shall meet the requirements of the  
25 Revised Code of Washington 46.61.655 for covered loads. State Environmental Policy Act,  
26 Bellevue City Code 23.76, Revised Code of Washington 46.61.65

27 **6. Project Plans**

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29 The project is subject to the plans submitted with the Conditional Use (attached to this staff  
30 report), including landscape plans. LUC 20.30.F

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1 **7. Noise from the Generator**

2 During the day, the maximum permissible noise level is 55 dBA. At night, the maximum  
3 permissible noise level is 45 dBA. During maintenance, the maximum noise level is expected to  
4 be 59 dBA (under the maximum permissible noise level of 65 dBA) for an increase in noise level  
5 for a short duration for five minutes in any one hour period. Bellevue City Code 9.18

6 **8. Removal of Abandoned Sites**

7 The owner of this facility shall provide the Director with copies of any notice of intent to cease  
8 operations that is provided to the FCC. All WCFs and associated equipment shall be removed by  
9 the facility owner within 90 days of the date it ceases to be operational. LUC 20.20.195

10 **PRIOR TO ISSUANCE OF THE CLEARING & GRADING PERMIT**

11 The following conditions must be complied with on plans submitted with the Clearing &  
12 Grading (GD) permit application:

13 **1. Landscape Plan**

- 14
- 15 a) To ensure that interior plants will thrive, provide a water schedule to show how  
16 plants will be cared for during the establishment period and thereafter.
  - 17 b) The applicant shall include a detail for soil preparation on the clearing and grading  
18 permit plans, City of Bellevue, Type 2 Soil Preparation, Attachment D.
  - 19 c) The applicant shall provide tree protection during construction and show such  
20 protection on the clearing and grading plans.

LUC 20.20.520

21 **Prior to issuance of the CD permit and completion of work**

22 The following conditions must be complied with on application submitted for the CD permit  
23 application:

24 **1. Paint Colors**

25 The proposal is subject to the following paint colors:

- 26 a) The tower shall be painted a dark green, to blend in with surrounding vegetation.
  - 27 b) The fence and equipment building shall be painted steel grey to match the fire  
28 station. Land Use Code 20.30B.140
- 29  
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1 **2. Completion of Work/Facility Activation**

2 The facility shall not be activated until all work included in the project scope and shown on the  
3 plans and specifications is completed.

4 **Prior to activation**, the applicant shall call for a Land Use Inspection so that Land Use can  
5 verify that the facility was installed per the approved plans. Land Use Code 20.40.425

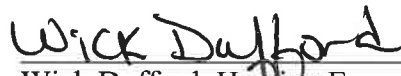

6 **3. Radio Frequency Testing:**

7 The applicant shall perform post-installation radio frequency emission measurements (upon  
8 completion and 6 months thereafter) to document that the project does not exceed FCC  
9 requirements. Such reports shall be submitted to the Land Use Division, Development Services  
10 Department. Land Use Code 20.40.425

11 **DECISION**

12 The Conditional Use Permit for the King County Puget Sound Emergency Radio  
13 Network (PSERN) communications facility at Bellevue Fire Station #9 is **APPROVED**, subject  
14 to the conditions set forth above.

15 **DONE**, this 6<sup>th</sup> day of June, 2017

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19 Wick Dufford, Hearing Examiner 

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22 **NOTICE OF RIGHT TO APPEAL**  
23 (Pursuant to Resolution No. 5097)

24 **RIGHT TO APPEAL-TIME LIMIT**

25 A person who submitted written comments to the Director prior to the hearing, or  
26 submitted written comments or made oral comments during the hearing on this matter, may  
27 appeal the decision of the Hearing Examiner to the Bellevue City Council by filing a written  
28 appeal statement of the Findings of Fact or Conclusion being appealed, and paying any appeal  
29 fee, no later than 14 calendar days following the date that the decision was mailed. The appeal  
30 must be received by the City Clerk by **5:00 p.m. on June 20, 2017**.

**TRANSCRIPT OF HEARING-PAYMENT OF COST**

An appeal of the Hearing Examiner's decision requires the preparation of a transcript of  
the hearing before the Hearing Examiner. Therefore, the request for appeal must be  
accompanied by an initial deposit of \$100. Should the actual cost be less the amount of the

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1 deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript  
2 preparation be more than the deposit, the appellant will be additionally charged.

3 **WAIVER OF TRANSCRIPTION FEE**

4 Upon request, the City Clerk will waive transcription fees upon submission by an  
5 appellant of the following documentation: a) an affidavit stating that the appellant's net financial  
6 worth does not exceed \$20,000; b) an affidavit stating that the appellant's annual income does  
7 not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of  
8 those parts of the record the party thinks are necessary for review; e) a statement that review is  
9 sought in good faith.

10 The transcription fee waiver is available to individuals over eighteen (18) years of age  
11 and is not available to corporations, companies, partnerships, or any business, enterprise,  
12 community club or and social recreational organization.  
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