

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON

3  
4 MARTHA JOHNSON,  
5 *Petitioner,*

6  
7 vs.

8  
9 CITY OF EUGENE,  
10 *Respondent,*

11 and

12  
13 MASTER TOWERS, LLC,  
14 *Intervenor-Respondent.*

15  
16 LUBA No. 2002-031

17  
18 FINAL OPINION  
19 AND ORDER

20  
21  
22 Appeal from City of Eugene.

23  
24 Martha Johnson, Eugene, filed the petition for review and argued on her own behalf.

25  
26 No appearance by the City of Eugene.

27  
28 H. Andrew Clark, Eugene, filed the response brief and argued on behalf of  
29 intervenor-respondent. With him on the brief was Gleaves, Swearingen, Potter and Scott,  
30 LLP.

31  
32 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,  
33 participated in the decision.

34  
35 AFFIRMED

07/10/2002

36  
37 You are entitled to judicial review of this Order. Judicial review is governed by the  
38 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner challenges a city hearings officer’s decision that approves the siting of a 100 foot tall telecommunications tower.

**FACTS**

Master Towers, LLC (Master Towers or intervenor) applied for site review to site a 100-foot telecommunications tower with enclosed antennas on a 768 square foot leased area located at the corner of River Road and Oakleigh Lane in northwest Eugene. The leased area is zoned General Commercial (C-2) and is currently improved with a used car lot.

The area surrounding the subject property includes strip commercial uses along River Road, and residential uses east and west of the commercial strip. Property to the north of the site is zoned Neighborhood Commercial with an Urbanizable Land Overlay (C-1/UL), and is developed with a Goodwill store and parking lot. Property to the east is zoned General Office with an Urbanizable Land Overlay (GO/UL), and is developed with the River Road Water District offices and parking lot. East of the subject property area are C-1/UL zoned properties, developed with nonconforming residential uses. Properties to the west of River Road, beyond the River Road commercial strip, include the River Road Elementary School and a residentially designated and developed neighborhood. C-2 zoning and commercial land use designations extend to the north and south of the subject site along River Road.

The tower is proposed to be approximately three and one-half feet in diameter at its base, narrowing to 18 inches at the top. The tower will be surrounded by a slatted chain-link fence with barbed wire on top, and landscaping. The proposed telecommunications facility includes a utility cabinet that contains industrial batteries to operate the tower.

The city planning director approved Master Towers’ application administratively. Petitioner and the River Road Community Organization appealed the planning director’s

1 decision to the city hearings officer, who affirmed the planning director’s decision. This  
2 appeal followed.

3 **FIRST ASSIGNMENT OF ERROR**

4 Eugene City Code (ECC) 9.5750(6)(c)(3) provides in relevant part:

5 “In addition to [other] application requirements specified in [ECC  
6 9.5750(6)(b)], applications for site review \* \* \* shall include the following  
7 information:

8 “\* \* \* \* \*

9 “3. Evidence demonstrating collocation is impractical on existing tall  
10 buildings, light or utility poles, water towers, existing transmission  
11 towers, and existing tower facility sites for reasons of structural  
12 support capabilities, safety, available space, or failing to meet service  
13 coverage area needs.”

14 Petitioner argues that the hearings officer misconstrued ECC 9.5750(6)(c)(3) and that  
15 the findings the hearings officer adopted are not supported by substantial evidence.<sup>1</sup> First,  
16 petitioner argues that the city’s decision focused on whether the proposed *tower* could be

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<sup>1</sup> The hearings officer’s findings state, in relevant part:

“With regard to [ECC] 9.5750(6)(c)(3), the [opponents] challenge the applicant’s evidence demonstrating collocation is impractical on existing tall buildings, light or utility poles, water towers, existing transmission towers, and existing tower facility sites for reasons of structural support capabilities, safety, available space or failing to meet service coverage area needs. The [opponents] argue, essentially, that the height of the tower and the service area has been artificially determined in order to justify locating [the tower and antenna on the subject parcel], and that the applicant could collocate additional facilities on other surrounding buildings with lesser height and achieve the same objectives.

“This application requirement requires the applicant to establish that the tower, as it is proposed, cannot be collocated. It does not require the applicant to adjust its business needs or reconfigure its proposal in order to attempt to demonstrate that a different proposal, which would not serve its business needs, could potentially be collocated on an existing structure.

“The [opponents] also urge that the applicant has failed to demonstrate that it cannot collocate on the existing radio tower north of Goodpasture Island Road. The applicant disputes the distance of that tower from the subject property, but asserts that regardless of the distance, the radio tower is too far from the site to satisfy its service coverage area needs and that, in any event, radio towers are too ‘hot’ to be able to collocate the necessary antennas.

“The applicant has provided the required evidence demonstrating that [collocating] on existing structures is impractical.” Record 29.

1 collocated, when the standard requires consideration of whether the proposed *antenna* could  
2 be collocated. Petitioner notes that a telecommunications carrier has located its antenna on a  
3 50 foot tall office building located approximately one mile north of the subject property.  
4 Petitioner argues that the city and intervenor erred by not considering the possibility of  
5 locating the proposed antenna on existing structures.

6         Second, petitioner argues that the city's decision is not supported by substantial  
7 evidence because intervenor only compared the coverage that could be achieved with an  
8 antenna on a 40-foot tower with the coverage that could be achieved with an antenna on a  
9 100-foot tower. Petitioner contends that there is no evidence in the record to establish that a  
10 tower of 100 feet is necessary, given the fact that heights between 40 and 100 feet were not  
11 considered. According to petitioner, in other local decisions involving telecommunications  
12 towers, the city required applicants to modify their applications and provide an alternatives  
13 analysis that compared the applicant's preferred site to other locations. As a result of those  
14 alternatives analyses, petitioner argues that the applicants in those cases chose to lower the  
15 height of a tower or to locate the proposed antenna on a shorter building. Petitioner relies on  
16 the decisions in the other cases to support her contention that the city should have required a  
17 similar alternatives analysis in this case.

18         Intervenor responds that the hearings officer found that collocation of the *antenna* is  
19 impractical, because it must be located 100 feet high and within the chosen area on River  
20 Road in order to achieve adequate coverage of the preferred service area. According to  
21 intervenor, the hearings officer based her conclusion that ECC 9.5750(6)(c)(3) is met on  
22 evidence demonstrating that the only way to achieve the height at the chosen location is to  
23 build a tower. According to intervenor, there is substantial evidence in the record to  
24 demonstrate that the height of nearby utility poles is no greater than 70 feet, and there is  
25 evidence to show that a 100-foot height is necessary to ensure coverage within the area.  
26 Intervenor contends that its radio frequency engineers concluded that there are several trees

1 within the vicinity that exceed 75 feet in height and that those trees would cast a “shadow”  
2 that would interfere with the coverage by a shorter antenna. Intervenor also contends that  
3 there is no evidence in the record to counter its evidence that an antenna on a slightly shorter  
4 tower would not be adequate. Intervenor argues that petitioner has not identified other  
5 locations within the area that might be of the appropriate height, nor has petitioner shown  
6 that shorter towers on existing structures would provide adequate coverage for the area.  
7 Therefore, intervenor argues, it did not have to consider other locations for the antenna that it  
8 did not identify as feasible.

9 We agree with intervenor that the hearings officer properly applied ECC  
10 9.5750(6)(c)(3). The review criteria set out in the city’s code provide regulatory incentives  
11 for collocating telecommunications antennas on existing towers and buildings.<sup>2</sup> However,  
12 they also allow the establishment of a tower to house the antenna if an applicant  
13 demonstrates that there are coverage needs that cannot be addressed by collocating on an  
14 existing tower or other structure. The code does not require an alternatives analysis to  
15 demonstrate that a tower at a particular height at a particular location is the *only* way the  
16 applicant can achieve its business goals. Nor does the code require an applicant to modify its  
17 business goals by limiting its antenna siting choices to existing buildings or structures. The  
18 fact that an alternatives analysis may have been conducted in other cases does not impose a  
19 requirement that an alternatives analysis be conducted in this case, in the absence of evidence  
20 that feasible alternatives exist.

21 As a review body, we are authorized to reverse or remand the challenged decision if it  
22 is “not supported by substantial evidence in the whole record.” ORS 197.835(9)(a)(C).  
23 Substantial evidence is evidence a reasonable person would rely on in reaching a decision.

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<sup>2</sup> See, e.g., ECC 9.5750(3)(a), which allows outright the siting of a telecommunications antenna on an existing tower, and ECC 9.5750(4), which allows the siting of a telecommunications antenna on an existing utility pole or building, so long as the antenna does not exceed the maximum building height in the zone and the color of the antenna blends in with the existing structure and surroundings.

1 *Carsey v. Deschutes County*, 21 Or LUBA 118, *aff'd* 108 Or App 339, 815 P2d 233 (1991).  
2 In reviewing the evidence, we may not substitute our judgment for that of the local decision  
3 maker. Rather, we must consider and weigh all the evidence in the record to which we are  
4 directed, and determine whether, based on that evidence, the local decision maker's  
5 conclusion is supported by substantial evidence. *Younger v. City of Portland*, 305 Or 346,  
6 358-60, 752 P2d 262 (1988); *1000 Friends of Oregon v. Marion County*, 116 Or App 584,  
7 588, 842 P2d 441 (1992).

8 We agree with intervenor that there is substantial evidence in the record to support a  
9 finding that an antenna that is 100 feet high is necessary in order to provide adequate  
10 coverage to the River Road service area, and that there are no existing towers or structures in  
11 the vicinity that can provide the necessary height. We also agree with intervenor that, in the  
12 absence of evidence that a shorter antenna or alternative location would provide the needed  
13 coverage, it was not necessary for intervenor to conduct transmission tests to see whether an  
14 antenna height between 40 and 100 feet would provide coverage that would satisfy its  
15 business aims. Nor was it necessary for intervenor to investigate a multitude of alternative  
16 sites, in the absence of evidence that alternative sites in the vicinity exist to provide the  
17 needed coverage. Accordingly, the first assignment of error is denied.

18 **SECOND ASSIGNMENT OF ERROR**

19 ECC 9.5750(6)(c)(2) provides, in relevant part:

20 "In addition to [other] application requirements specified in [ECC  
21 9.5750(6)(b)], applications for site review \* \* \* shall include the following  
22 information:

23 " \* \* \* \*

24 "2. Documentation that alternative sites within a radius of at least 2,000  
25 feet have been considered and have been determined to be  
26 technologically infeasible or unavailable. For site reviews, alternative  
27 sites zoned [Commercial Industrial (C-4), Special Light Industrial  
28 (I-1), Light Medium Industrial (I-2) and Heavy Industrial (I-3)] must  
29 be considered. For conditional use permits alternative sites zoned

1 [Public Lane (PL), General Commercial (C-2), Major Commercial (C-  
2 3)], I-1, I-2 and I-3 must be considered.”

3 Petitioner argues that the city’s findings fail to demonstrate that alternative locations  
4 have been considered or that those alternative locations are inadequate to provide the type  
5 and range of coverage intervenor seeks. In particular, petitioner argues that the second  
6 sentence in ECC 9.5750(6)(c)(2) should be read to establish a minimum threshold, *i.e.*, that  
7 *at least* the C-4, I-1, I-2 and I-3 zones must be considered. Petitioner contends that the  
8 standard requires that all available sites within the 2,000-foot radius should be identified to  
9 ensure that all technologically feasible alternatives to the preferred site are considered.

10 Intervenor responds that the hearings officer correctly interpreted the standard to  
11 require consideration of alternative sites only when those sites are within 2,000 feet of the  
12 proposed site and zoned C-4, I-1, I-2 or I-3. According to intervenor, there is uncontroverted  
13 evidence in the record that the nearest property with one of those zoning designations is  
14 approximately 4,000 feet to the southwest. Therefore, intervenor argues, the standard is  
15 either not applicable or has been satisfied.

16 The zones listed in the second sentence of ECC 9.5750(6)(c)(2) permit  
17 telecommunications towers outright. The zones listed in the third sentence of ECC  
18 9.5750(6)(c)(2) permit telecommunications towers only after site review. Read in context, it  
19 appears that the thrust of ECC 9.5750(6)(c)(2) is to require applicants to consider alternative  
20 sites that have less restrictive zoning designations with respect to telecommunications  
21 towers. With that understanding, we believe the hearings officer correctly interpreted ECC  
22 9.5750(6)(c)(2) to require consideration of alternative locations within 2,000 feet of the  
23 preferred site only if alternative locations are zoned C-4, I-1, I-2 or I-3. Petitioner does not  
24 contest the finding that there are no properties with those zoning designations within 2,000  
25 feet of the subject property. Therefore, the second assignment of error provides no basis for  
26 reversal or remand.

27 The second assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 ECC 9.8440(4) requires that proposed development

3 “\* \* \* will not be a significant risk to *public health and safety*, including but  
4 not limited to soil erosion, slope failure, stormwater or flood hazard, or an  
5 impediment to emergency response.” (Emphasis added.)

6 Petitioner argues that the city erred in (1) concluding that ECC 9.8440(4) is  
7 preempted by federal law that limits the types of evidence a local government may consider  
8 when assessing the public safety risk of telecommunications towers; and (2) failing to  
9 respond to testimony presented by opponents regarding the impacts on public health as a  
10 result of the presence of a number of batteries and the increase in fire danger originating  
11 from improperly ventilated battery cabinets.<sup>3</sup>

12 Intervenor responds that there is a letter in the record from the fire marshal, indicating  
13 that he had no concerns about the siting of the telecommunications tower and associated  
14 facilities. According to intervenor, the fire marshal’s letter is substantial evidence to support  
15 the hearings officer’s finding that the proposed tower and battery cabinets will not pose a  
16 public health risk with respect to likely fire hazards.

17 In the planning director’s decision, the planning director addressed the issue  
18 petitioner raised:

19 “The concerns raised in opposing testimony regarding battery hazards and  
20 licensing are \* \* \* addressed through other state and federal regulatory  
21 authority. Local approval for the construction of such a facility would not  
22 exempt the developer or operator from compliance with other applicable state  
23 and federal regulations. To the extent that the proposed facility may create a  
24 fire hazard, it is notable that referral comments from the Eugene Fire  
25 Marshal’s Office indicate no specific concerns or additional requirements at  
26 this time.” Record 834.

27 The hearings officer specifically agreed with this analysis, and noted:

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<sup>3</sup> At oral argument, petitioner also argued that the proposed tower will pose an attractive nuisance to children. However, she did not raise this issue in her brief and, therefore, we do not address that argument here. *See DLCD v. Douglas County*, 28 Or LUBA 242, 252 (1994) (LUBA does not address issues that are raised for the first time at oral argument).



1 “With regard to [petitioner’s] concerns regarding batteries, there is no  
2 evidence in the record to support the assertion that the batteries used at the  
3 facility will create a health risk. As the applicant explains:

4 ““The facility will use 12 volt batteries, similar to car batteries, and  
5 will not pose a more significant risk to the public than other permitted  
6 uses, which include car repair shops and service stations. All of the  
7 proposed equipment will be contained within a secure fenced area  
8 topped by barbed wire. An emergency notification system will alert  
9 on-call engineers of power failures. Electrical plans will be reviewed  
10 in detail as part of the building permit process.’

11 “In addition, as the Planning Director’s decision recites, the applicant is  
12 necessarily required to comply with all state and federal regulatory  
13 requirements, and the Fire Marshal expressed no concern regarding use of  
14 batteries.” Record 27.

15 Petitioner does not explain why she believes that the proposed battery casing will not  
16 be properly ventilated and therefore poses a public safety risk. To the extent petitioner argues  
17 that the fire marshal’s conclusion that the fire department can adequately respond to a fire at  
18 the site is not the same as a finding that there is no risk from fire, we do not believe that ECC  
19 9.8440(4) requires that there be no fire risk. Rather, the standard appears to require that any  
20 risk to public safety as a result of fire not be “significant.” The hearings officer’s  
21 consideration of the fire risk and her explanation of fire reporting and response capability is  
22 sufficient to address that standard. The hearings officer’s findings are adequate to address the  
23 arguments petitioner raised regarding potential public safety risk, and those findings are  
24 supported by substantial evidence. *See Hutmacher v. City of Salem*, 16 Or LUBA 187 (1987)  
25 (where the record contains evidence adequate to support the city’s findings, LUBA will defer  
26 to the city, even if the record contains other evidence that could support a contrary  
27 conclusion).

28 The third assignment of error is denied.

29 **FOURTH ASSIGNMENT OF ERROR**

30 ECC 9.8440(1) provides that a site design may be approved only when:

1           “The site review plan’s general design and character is reasonably compatible  
2           with surrounding properties, as it relates to building locations, bulk and  
3           height, noise, glare, and odors.”

4           According to petitioner, the requirement for site review in this area was imposed to  
5           ensure compatibility with residential uses to the east of the subject property. According to  
6           petitioner, the hearings officer erred in relying on the existence and nature of the narrow  
7           commercial strip on River Road to support the conclusion that the proposed tower is, overall,  
8           compatible with the surrounding neighborhood. In petitioner’s view, the proper focus is  
9           whether the proposed tower is compatible with the residential uses to the east. Petitioner  
10          argues emphatically that it is not.

11           **A.     Tower Height and Bulk**

12          Petitioner argues that the proposed tower will result in significant adverse visual  
13          impacts on residential uses in the vicinity. According to petitioner, the challenged decision  
14          fails to address concerns raised below regarding the tower’s visual incompatibility with  
15          adjacent and nearby residential uses. In particular, petitioner argues that the photo  
16          simulations of the proposed tower provided by intervenor, and relied upon by the hearings  
17          officer, are flawed in several respects. For example, petitioner argues that intervenor’s photo  
18          simulations (1) depict the tower in mid-summer, when the leaves from deciduous trees help  
19          to obscure the pole from adjacent and nearby residences, rather than during the winter, when  
20          the leaves are not present; (2) present views from other commercially zoned property in the  
21          vicinity, rather than from residentially zoned property; (3) depict a relative height of the  
22          tower in relation to other structures in the vicinity that is vastly different than is depicted on  
23          photo simulations presented by petitioner; (4) inappropriately downplay the effect the height  
24          and bulk of the tower will have on adjacent residential properties; (5) do not reflect the  
25          change in tower color from white to flat gray; and (6) inaccurately depict the tower as  
26          translucent. According to petitioner, intervenor’s failure to explain the methods it used to  
27          generate the photo simulations means that those photo simulations do not constitute evidence

1 that a reasonable decision maker would rely on, especially when faced with countervailing  
2 evidence such as that presented by petitioner. In addition, petitioner argues that the hearings  
3 officer's decision fails to explain why intervenor's evidence was more probative or accurate  
4 than the evidence presented by opponents.

5 Intervenor responds that petitioner does not challenge the hearings officer's finding  
6 that "surrounding properties," as that term is used in ECC 9.8840(1), means all of those  
7 properties that will be visually impacted by the tower. According to petitioner, the broader  
8 focus means that the hearings officer could consider the impact of the tower on commercially  
9 zoned properties as well as on residential properties, and that consideration of the impact on  
10 residential properties is not to be narrowly interpreted to mean "impact on adjacent  
11 properties." Intervenor contends that the hearings officer had all of the photo simulations  
12 before her, including those submitted by petitioner. According to intervenor, the hearings  
13 officer's decision did not specifically rely on intervenor's photo simulations; rather, she  
14 reviewed all of the photos and evidence in the record to reach the conclusion that the  
15 proposed tower is compatible with the surrounding neighborhood. Intervenor emphasizes  
16 that in the C-2 zone, the maximum height for buildings is 120 feet, 20 feet higher than the  
17 proposed tower. Given that a building of that height is allowed within the zone, the  
18 determination that a 100-foot tower with an 18-inch diameter at its apex, and a number of  
19 other features designed to mitigate its impact on its surroundings, is compatible with the  
20 surrounding neighborhood is reasonable, and that conclusion is supported by substantial  
21 evidence.

22 The hearings officer's findings state, in relevant part:

23 "[S]ince the visual impact [of the proposed tower] is the sole compatibility  
24 issue, the 'surrounding properties' [as that term is used in ECC 9.8440(1)]  
25 consist of those properties in such proximity to the proposed facility that \* \* \*  
26 will, as a matter of course, be visually impacted by the pole. The record  
27 establishes that some residences near River Road will be able to see the pole  
28 from the windows of their homes. Others will be able to see the pole from  
29 their yards. In addition, the pole will be visible from commercial uses along

1 River Road. It is those properties that constitute the ‘surrounding properties’  
2 for the purposes of the compatibility evaluation.

3 “Within the context of the surrounding properties, the inquiry here is whether  
4 the pole’s general design and character is ‘reasonably compatible.’ The  
5 question is not whether the pole can be seen from the surrounding area, but  
6 whether, from a visual perspective, the ‘general design and character’ [of] an  
7 18-inch pole is compatible with the entire surrounding area as a whole. Under  
8 the wording of this criterion, ‘bulk and height’ are combined in terms of  
9 defining the impact. The mere fact of its height does not unequivocally render  
10 a use incompatible with the surrounding area. Rather, height and bulk are both  
11 relevant, since together they constitute the size of the facility and thus the  
12 visual impact the facility will have on surrounding properties.

13 “In this case, the facility is designed to resemble a 100-foot flag pole,  
14 approximately 3 feet at its base, and 18 inches at the top. It will be located on  
15 a site that is already developed with a car sales lot and on River Road, an area  
16 that already is developed, and therefore impacted, with a wide range of  
17 commercial facilities. Obviously, none of those commercial facilities is 100  
18 feet tall. Correspondingly, the bulk of the facility is minimal compared to  
19 other development in the area. This inquiry relates to the visual impact of a  
20 100-foot pole that is, in its most visible part, less than 2 feet in diameter.

21 “That residences near River Road will be able to see the 18-inch portion of the  
22 pole from their homes or yards does not render the pole incompatible. In this  
23 case, the pole has been designed so as to minimize any visual impact.  
24 Specifically, the minimal bulk of the pole mitigates the impact of its height to  
25 a large extent. It resembles a tall flag pole, is approximately 18 inches in  
26 diameter at the point where it will be most visible, with the antennas enclosed  
27 within the pole. The proposed pole will be along a highly developed  
28 commercial corridor, with numerous existing utility poles already exceeding  
29 the height of the surrounding commercial and residential development. The  
30 nature, intensity, and variety of the diverse commercial development along  
31 River Road will also mitigate the visual impact of the pole. Numerous tall  
32 trees throughout the area will further mitigate the impact of the height on the  
33 view of the skyline. With regard to the most immediate views from adjacent  
34 properties, while the 18-inch pole will exceed the height of the existing poles,  
35 its visual impact from the ground will not be significantly more intrusive than  
36 the existing utility poles. Viewed from River Road and other adjacent  
37 properties, the facility will consist of a landscaped, enclosed shelter on a car  
38 sales lot. While the proposed pole will be taller and less bulky than  
39 surrounding uses and thus will not ‘look like’ surrounding uses, it will,  
40 nonetheless, be reasonably compatible with the surrounding commercial and  
41 residential environment.” Record 24.

1 As the findings make clear, the hearings officer relied on the evidence of existing  
2 mixed commercial and residential uses, as well as the relatively small diameter of the pole, to  
3 conclude that the height and bulk of the proposed tower will be reasonably compatible with  
4 the surrounding properties. Those findings are supported by substantial evidence.

5 **B. Effect on Property Values**

6 Petitioner argues that the city’s decision fails to address testimony by neighbors that  
7 the telecommunications tower’s location will have a substantial negative effect on residential  
8 property values in the immediate vicinity of the tower. Petitioner cites to newspaper articles,  
9 law review articles and real estate newsletters from national and state entities that conclude  
10 that telecommunications towers substantially reduce the property values of residences  
11 located immediately adjacent to them, and argues that there is no evidence in the record that  
12 rebuts opponents’ claims that the proposed tower will have a substantial negative effect on  
13 neighborhood residential property values.

14 Intervenor responds that telecommunications towers are permitted in the C-2 zone,  
15 subject to site review. Intervenor contends that the *only question* in site review is whether the  
16 design as proposed is compatible with the surrounding neighborhood, *not* whether the  
17 telecommunications towers should be permitted in C-2 zones, or whether  
18 telecommunications towers should be located in proximity to residential uses. Intervenor  
19 contends that petitioner’s arguments go to the latter questions.

20 The hearings officer’s findings state, in relevant part:

21 “[Opponents] argue that [a flag-pole type tower] is incompatible ‘in the midst  
22 of a primarily residential neighborhood.’ They further argue, based on  
23 additional photo simulations, that ‘a 100-foot flag pole would be twice as tall  
24 as any structure in the vicinity, and would dominate the viewshed from a  
25 number of neighbors’ homes and yards.’ \* \* \* They argue that the cell tower  
26 could be located further away from this residential neighborhood, in a more  
27 ‘appropriate’ industrial or commercial location[.] \* \* \* [Opponents] urge that  
28 the proposed facility is incompatible because it would devalue their properties  
29 from somewhere between 4 and 40%.

1            “[Opponents’] arguments are based, at least to some extent, on a premise that  
2            the proposed facility should not be permitted in this C-2 zone, either because  
3            the C-2 zone is the exception in this area, or because, notwithstanding the C-2  
4            zone, the proximity to the nearby residences renders such a facility *per se*  
5            incompatible with the neighborhood. However, notwithstanding their  
6            characterizations or disagreement with the zoning, the subject property and  
7            much of the surrounding area along River Road is designated and zoned for  
8            commercial development. Subject to site review, telecommunications  
9            facilities are permitted in the subject C-2 zone. The C-2 zone is not  
10           ‘exceptional’ in this area, nor is the location of a flag pole type facility *per se*  
11           incompatible on this C-2 zoned and developed car sales lot. Subject to  
12           compliance with the site review criteria, the C-2 zone is an appropriate  
13           location for the proposed tower[.] \* \* \* Further, to the extent the argument is  
14           even arguably relevant to this criterion, there is no evidence in the record to  
15           document the assertion that the presence of this flag pole type structure itself  
16           will ‘devalue’ properties from 4 to 40%.” Record 22-23.

17            ECC 9.8440(1) is limited to consideration of “building location, bulk and height,  
18            noise, glare and odors.” The issue of possible impacts of a proposed use on property values is  
19            at best indirectly related to ECC 9.8440(1). In any event, the hearings officer did not ignore  
20            petitioner’s testimony concerning potential impacts on residential property values. Rather,  
21            the hearings officer concluded that, despite the evidence about the impacts of siting  
22            telecommunications towers within residential areas on property values generally, there was  
23            no evidence in the record that the tower that is proposed in this case will devalue surrounding  
24            properties. Although the hearings officer did not agree with petitioner’s concerns about  
25            impacts on property values, she did not fail to address those concerns.

26            The fourth assignment of error is denied.

27            The city’s decision is affirmed.