

1 [Adopting findings related to the conditional use appeal on property located at 100 Felton]
2 **Motion adopting findings related to the appeal of the Planning Commission's approval**
3 **of Conditional Use Authorization No. 16877 (which approved the installation of a**
4 **wireless telecommunications system facility consisting of six panel antennas on an**
5 **existing church and related equipment directly below in the attic as part of Cingular's**
6 **wireless telecommunications network within a RH-2 (Residential-Two Family) Zoning**
7 **District and a 40-X Height and Bulk District, located at 100 Felton Street, northwest**
8 **corner of Girard Avenue and Felton Street (Lot 013 in Assessor's Block 5926).**
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11 The appellant, Dwayne Jusino, filed a timely appeal on November 29, 2004, protesting
12 the approval by the Planning Commission of an application for a conditional use authorization
13 (Conditional Use Application No. 2004.0141C, approved by Planning Commission Motion No.
14 16877 dated October 28, 2004), pursuant to Planning Code Section 209.6, to authorize the
15 installation of a wireless telecommunications system facility consisting of six panel antennas
16 on an existing church and related equipment directly below in the attic as part of Cingular's
17 wireless telecommunications network within a RH-2 (Residential-Two Family) Zoning District
18 and a 40-X Height and Bulk District, located at 100 Felton Street, northwest corner of Girard
19 Avenue and Felton Street (Lot 013 in Assessor's Block 5926).

20 The San Francisco Planning Commission adopted the Wireless Telecommunications
21 Services ("WTS") Facilities Siting Guidelines in August of 1996 ("Guidelines") to assist the
22 Planning Department in its consideration of applications for conditional use authorization to
23 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The
24 Guidelines establish location preferences for installation of WTS facilities throughout the City.
25 The location preferences set forth seven categories, with location preference one being the

1 most preferred sites, and location preference seven being the most disfavored sites. The
2 property located at 100 Felton falls within a location preference 1 – a preferred location with a
3 publicly used structure.

4 On January 4, 2005, the Board of Supervisors conducted a duly noticed public hearing
5 on the appeal from the Planning Commission’s approval of the conditional use authorization
6 referred to in the first paragraph of this motion. Following the conclusion of the public hearing
7 on January 4, 2005, the Board voted to disapprove the decision of the Planning Commission
8 (Planning Commission Motion No. 16877 dated October 28, 2004) and denied the issuance of
9 the requested Conditional Use Application No. 2004.0141C by a vote of ten to zero.

10 In considering the appeal of the approval of the requested conditional use
11 authorization, the Board reviewed and considered the written record before the Board and all
12 of the public comments made in support of and in opposition to the appeal.

13 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and
14 County of San Francisco hereby adopts as its own and incorporates by reference herein, as
15 though fully set forth, the findings made by the Planning Commission in its Motion No. 16877
16 dated October 28, 2004, except as indicated below.

17 FURTHER MOVED, That the Board of Supervisors further took notice that the project
18 was categorically exempt from environmental review pursuant to exemption Classes 1, 3 and
19 11 of Title 14 of the California Administrative Code. The Board finds that there have been no
20 substantial changes in project circumstances and no new information of substantial
21 importance that would change the determination of categorical exemption issued by the
22 Planning Commission.

23 FURTHER MOVED, That the Board of Supervisors finds that:

24 1. The written and oral information provided by the applicant to the Board was not
25 persuasive or objectively verified, and the applicant was unable to demonstrate credibly that

1 the proposed WTS facility is necessary for the neighborhood or the community, contrary to the
2 requirements of Section 303(c)(1) of the Planning Code.

3 2. The public testimony at the public hearing and the public documentation
4 submitted in support of the appellant's objections to the decision of the Planning Commission
5 supported the appellant's position that there is no necessity for the proposed WTS facility to
6 be approved and installed for residential or business purposes in the neighborhood or the
7 community because the proposed WTS facility is not necessary to meet the applicant's
8 present service demands within the geographic service area defined by the applicant.

9 3. The written and oral information provided by the applicant at the January 4, 2005,
10 public hearing showed that, according to the applicant, the proposed WTS facility would
11 improve the quality of the service offered by applicant, will expand the array of
12 communications services the applicant can offer, will improve the convenience of service and
13 will reduce the cost of wireless communication to the consumer. The applicant also asserted
14 that the WTS facility would provide better coverage and increase the capacity for coverage for
15 its customers.

16 4. Notwithstanding this information submitted by the applicant, the written and oral
17 information provided by the appellant and his supporters at the January 4, 2005, public
18 hearing showed that the applicant presently had acceptable service in the geographic area of
19 the proposed WTS facility from the applicant's existing WTS facilities in the vicinity of the
20 proposed site.

21 5. The public testimony at the public hearing and the public documentation
22 submitted in support of the appellant's objections to the decision of the Planning Commission
23 supported the appellant's position that the location of the proposed WTS facility is
24 incompatible with the existing character of the neighborhood, contrary to the requirements of
25 Section 303(c)(1) of the Planning Code.

1 6. The written and oral information provided by the appellant and her supporters at
2 the January 4, 2005, public hearing showed that: (i) the area surrounding the proposed site is
3 residential; (ii) the proposed WTS facility consists of six panel antennas; and (iii) the proposed
4 WTS facility would be mounted within a new 4'-2" high cupola on top of an existing church.

5 7. The public testimony at the public hearing and the public documentation
6 submitted in support of the appellant's objections to the decision of the Planning Commission
7 supported the appellant's position that the location of the proposed WTS facility is undesirable
8 for the neighborhood or the community, contrary to the requirements of Section 303(c)(1) of
9 the Planning Code. Members of the public expressed overwhelming opposition to the
10 proposed WTS facility during the January 4, 2005, hearing before the Board.

11 8. Testimony at the public hearing on January 4, 2005, also demonstrated that sales
12 representatives from Cingular Wireless (the applicant) represented to members of the public
13 that their coverage in the subject neighborhood was as good as that of the applicant's
14 competitors.

15 9. There is nothing in the record to suggest that the Board's decision to disapprove
16 the decision of the Planning Commission in this case will unreasonably discriminate against
17 the applicant in favor of providers of functionally equivalent services.

18 10. There is nothing in the record to suggest that the Board's decision to disapprove
19 the decision of the Planning Commission in this case will limit or prohibit access to wireless
20 telecommunications services in the geographic area of the proposed site.

21 11. There is nothing in the record to suggest that the Board's decision to disapprove
22 the decision of the Planning Commission in this case will prevent the filling of a significant gap
23 in wireless telecommunications services provided to remote users of those services in the
24 geographic area of the proposed site, whether those remote users obtain service from the
25 applicant or from other wireless service providers serving the City.

1 12. There is nothing in the record to suggest that the applicant exhausted its search
2 for alternative sites for the proposed WTS facility or that the proposed WTS facility would be
3 the least intrusive means for the applicant to improve its service quality in the geographic area
4 of the proposed site.

5 13. In the written and oral information provided at the January 4, 2005, public hearing,
6 members of the public expressed concern that radio frequency emissions from the proposed
7 WTS facility would have adverse health effects on persons residing in the vicinity. In making
8 these statements, members of the public exercised their constitutional right to petition the
9 government. However, there is evidence in the record that the proposed WTS facility would
10 comply with Federal Communications Commission safety standards for radio frequency
11 radiation exposure. Thus, in disapproving the decision of the Planning Commission and
12 denying the issuance of the requested conditional use authorization, the Board has not relied
13 on the public testimony or public documentation concerning this issue and the Board has not
14 based its determination on such a ground.

15 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
16 the Board of Supervisors finds that Finding 9 made by the Planning Commission was incorrect
17 and without substantiation. The Board finds that the installation of the proposed WTS facility
18 is not desirable for and compatible with the neighborhood or the community. The construction
19 of the proposed WTS facility would result in an additional intrusion of unnecessary, noticeable
20 equipment into a neighborhood that contains a high proportion of residential property and that
21 is adjacent to parks, scenic shorelines and historically significant buildings. The proposed
22 WTS facility is not so located, designed, and treated architecturally as to minimize visibility
23 from public places. The proposed WTS facility is not generally in harmony with neighborhood
24 character.

25 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,

1 the Board of Supervisors finds that Finding 10 made by the Planning Commission was
2 incorrect and without substantiation. The Board finds that the installation of the proposed
3 WTS facility is not in conformity with, and would not implement the policies of, the City's
4 General Plan, in that the installation of the proposed WTS facility will not further any of the
5 objectives referred to by the Planning Commission.

6 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
7 the Board of Supervisors finds that Finding 11 made by the Planning was incorrect and
8 without substantiation. The Board finds that the installation of the proposed WTS facility does
9 not conform with the priority planning policies established by Section 101.1(b) of the Planning
10 Code because the proposed WTS facility: (i) is not necessary to preserve and enhance
11 existing neighborhood-serving retail uses and to preserve and enhance future opportunities
12 for resident employment in and ownership of such businesses (see Section 101.1(b)(1)); (ii) is
13 not necessary to conserve and protect existing housing and neighborhood character (see
14 Section 101.1(b)(2)); (iii) is not necessary to preserve and enhance the City's supply of
15 affordable housing (see Section 101.1(b)(3)); (iv) may increase commuter traffic and impede
16 and overburden the streets (see Section 101.1(b)(4)); (v) is not necessary to maintain a
17 diverse economic base by protecting the City's industrial and service sectors from
18 displacement due to commercial office development or to enhance future opportunities for
19 resident employment and ownership in these sectors (see Section 101.1(b)(5)); (vi) is not
20 necessary to add to the City's preparedness to protect against injury and loss of life in an
21 earthquake (see Section 101.1(b)(6)); (vii) is not necessary to preserve any landmarks and
22 historic buildings (see Section 101.1(b)(7)); and (viii) is not necessary to protect City parks and
23 open space and their access to sunlight and vistas from development (see Section
24 101.1(b)(8)).

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1 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
2 the Board of Supervisors finds that Finding 12 made by the Planning Commission was
3 incorrect and without substantiation, and the Board finds that the conditional use authorization
4 would not promote the health, safety and welfare of the City, and will only add an unnecessary
5 and redundant service and will result in an additional intrusion of unnecessary, noticeable
6 equipment into a neighborhood that contains a high proportion of residential property and that
7 is adjacent to parks, scenic shorelines and historically significant buildings.

8 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
9 competing public and private interests, disapproved the decision of the Planning Commission
10 by its Motion No. 16877 dated October 28, 2004, and denied the issuance of Conditional Use
11 Authorization No. 2003.1047C.