

1 [Adopting findings related to the conditional use appeal on property located at 378 10th
2 Avenue (also known as 389 9th Avenue and/or 4500 Geary Boulevard.)

3 **Motion adopting findings related to the appeal of the Planning Commission's approval**
4 **of Conditional Use Authorization No. 2002.0430C (which approved the installation of six**
5 **panel antennas and related equipment on an approximately 53-foot tall commercial**
6 **building as part of the AT&T Wireless Services telecommunications network within an**
7 **NC-3 (Moderate-Scale Neighborhood Commercial Zoning) District and a 40-X Height**
8 **and Bulk District), pursuant to Section 712.83 of the Planning Code, on property**
9 **located at 378 10th Avenue (also known as 389 9th Avenue and/or 4500 Geary**
10 **Boulevard), on the northwest corner of 9th Avenue and Geary Boulevard (Lot 035 in**
11 **Assessor's Block 1441).**

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13 The appellant, Betty Chiao, filed a timely appeal on August 15, 2003, protesting the
14 approval by the Planning Commission of an application for a conditional use authorization
15 (Conditional Use Application No. 2002.0430C), which approved the installation of six panel
16 antennas and related equipment on an approximately 53-foot tall commercial building as part
17 of the AT&T Wireless Services telecommunications network within an NC-3 (Moderate-Scale
18 Neighborhood Commercial Zoning) District and a 40-X Height and Bulk District), pursuant to
19 Section 712.83 of the Planning Code, on property located at 378 10th Avenue (also known as
20 389 9th Avenue and/or 4500 Geary Boulevard), on the northwest corner of 9th Avenue and
21 Geary Boulevard (Lot 035 in Assessor's Block 1441).

22 The San Francisco Planning Commission adopted the Wireless Telecommunications
23 Services ("WTS") Facilities Siting Guidelines in August of 1996 ("Guidelines") to assist the
24 Planning Department in its consideration of applications for conditional use authorization to
25 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The

1 Guidelines establish location preferences for installation of WTS facilities throughout the City.
2 The location preferences set forth seven categories, with location preference one being the
3 most preferred sites, and location preference seven being the most disfavored sites. This
4 proposed site at 378 10th Avenue is within a location preference one because it is a publicly
5 used structure and a collocation opportunity.

6 On September 16, 2003, the Board of Supervisors conducted a duly noticed public
7 hearing on the appeal from the Planning Commission's approval of the conditional use
8 authorization referred to in the first paragraph of this motion. Following the conclusion of the
9 public hearing on September 16, 2003, the Board voted to disapprove the decision of the
10 Planning Commission (Planning Commission Motion No. 16614 dated July 17, 2003) and
11 denied the issuance of the requested Conditional Use Application No. 2002.0430C.

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

15 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and
16 County of San Francisco hereby adopts as its own and incorporates by reference herein, as
17 though fully set forth, the findings made by the Planning Commission in its Motion No. 16614
18 dated July 17, 2003, except as indicated below.

19 FURTHER MOVED, That the Board of Supervisors further took notice that the project
20 was categorically exempt from environmental review as a Class I exemption under Title 14 of
21 the California Administrative Code. The Board finds that there have been no substantial
22 changes in project circumstances and no new information of substantial importance that
23 would change the determination of categorical exemption issued by the Planning
24 Commission.

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

1 1. The written and oral information provided by the applicant to the Board
2 was not persuasive or objectively verified, and the applicant was unable to
3 demonstrate credibly that the proposed WTS facility is necessary for the
4 neighborhood or the community, contrary to the requirements of Section 303(c)(1)
5 of the Planning Code.

6 2. The public testimony at the public hearing and the public documentation
7 submitted in support of the appellant's objections to the decision of the Planning
8 Commission supported the appellant's position that there is no necessity for the
9 proposed WTS facility to be approved and installed for residential or business
10 purposes in the neighborhood or the community because the proposed WTS facility
11 will only be used to provide an unnecessary and redundant service in the
12 geographic area of the proposed site. The written and oral information provided by
13 the appellant and her supporters at the September 16, 2003, public hearing showed
14 that other wireless service providers, and the applicant, have adequate service in
15 the geographic area of the proposed WTS facility.

16 3. The public testimony at the public hearing and the public documentation
17 submitted in support of the appellant's objections to the decision of the Planning
18 Commission also supported the appellant's position that there is no necessity for
19 the proposed WTS facility to be approved and installed for residential or business
20 purposes in the neighborhood or the community because the proposed WTS facility
21 is not necessary to meet the applicant's present service demands within the
22 geographic service area defined by the applicant.

23 4. The written and oral information provided by the applicant at the
24 September 16, 2003, public hearing showed that, according to the applicant, the
25 proposed WTS facility would increase capacity and allow the applicant to offer

1 enhanced services.

2 5. Notwithstanding this information submitted by the applicant, the written
3 and oral information provided by the appellant and her supporters at the September
4 16, 2003, public hearing showed that the applicant had acceptable service in the
5 geographic area of the proposed WTS facility from the applicant's nearby existing
6 facility at 4300 Geary Boulevard (approximately two blocks away from the proposed
7 site), as well as two other facilities in the surrounding area.

8 6. The public testimony at the public hearing and the public documentation
9 submitted in support of the appellant's objections to the decision of the Planning
10 Commission supported the appellant's position that the location of the proposed
11 WTS facility is undesirable for the neighborhood or the community, contrary to the
12 requirements of Section 303(c)(1) of the Planning Code. Persons owning more
13 than 20% of the properties within 300 feet of the proposed site have subscribed to
14 the appeal. Members of the public expressed overwhelming opposition to the
15 proposed WTS facility during the September 16, 2003, hearing before the Board.

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

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

24 9. There is nothing in the record to suggest that the Board's decision to
25 disapprove the decision of the Planning Commission in this case will prevent the

1 filling of a significant gap in wireless telecommunications services provided to
2 remote users of those services in the geographic area of the proposed site, whether
3 those remote users obtain service from the applicant or from other wireless service
4 providers serving the City.

5 10. There is nothing in the record to suggest that the applicant exhausted its
6 search for alternative sites for the proposed WTS facility or that the proposed WTS
7 facility would be the least intrusive means for the applicant to improve its service
8 quality in the geographic area of the proposed site.

9 11. In the written and oral information provided at the September 16, 2003,
10 public hearing, members of the public expressed concern that radio frequency
11 emissions from the proposed WTS facility would have adverse health effects on
12 persons residing in the vicinity. In making these statements, members of the public
13 exercised their constitutional right to petition the government. However, there is
14 evidence in the record that the proposed WTS facility would comply with Federal
15 Communications Commission safety standards for radio frequency radiation
16 exposure. Thus, in disapproving the decision of the Planning Commission and
17 denying the issuance of the requested conditional use authorization, the Board has
18 not relied on the public testimony or public documentation concerning this issue and
19 the Board has not based its determination on such a ground.

20 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
21 the Board of Supervisors finds that Finding 10 made by the Planning Commission was
22 incorrect and without substantiation. The Board finds that the installation of the proposed
23 WTS facility is not necessary for the neighborhood or the community. The neighborhood and
24 the community are adequately served both by the applicant and by other wireless service
25 providers from existing WTS facilities in the area of the proposed site.

1 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
2 the Board of Supervisors finds that Finding 10 made by the Planning Commission were
3 incorrect and without substantiation. The Board finds that the installation of the proposed
4 WTS facility is not desirable for and compatible with the neighborhood or the community. The
5 construction of the proposed WTS facility would result in an additional intrusion of
6 unnecessary, noticeable equipment into a neighborhood that contains residential property.

7 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
8 the Board of Supervisors finds that Finding 11 made by the Planning Commission was
9 incorrect and without substantiation. The Board finds that the installation of the proposed
10 WTS facility is not in conformity with, and would not implement the policies of, the City's
11 General Plan, in that the installation of the proposed WTS facility will not further any of the
12 objectives referred to by the Planning Commission.

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

1 101.1(b)(6)); (vi) preserve any landmarks and historic buildings (see Section 101.1(b)(7)); and
2 (vii) protect City parks and open space and their access to sunlight and vistas from
3 development (see Section 101.1(b)(8)).

4 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
5 the Board of Supervisors finds that Finding 13 made by the Planning Commission was
6 incorrect and without substantiation, and the Board finds that the conditional use authorization
7 would not promote the health, safety and welfare of the City, and will only add an unnecessary
8 and redundant service, and will result in an additional intrusion of unnecessary, noticeable
9 equipment into a neighborhood that contains a high proportion of residential units.

10 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
11 competing public and private interests, disapproved the decision of the Planning Commission
12 by its Motion No. 16614 dated February July 17, 2003, and denied the issuance of Conditional
13 Use Authorization No. 2002.0430C.

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