

1 [Adopting findings related to the conditional use appeal on property located at 3372-3378
2 Mission Street (aka 3350 Mission Street)]

3 **Motion adopting findings related to the appeal of the Planning Commission's approval**
4 **of Conditional Use Authorization No. 16782 (which approved the installation of a**
5 **wireless telecommunications system facility consisting of six (6) pole mounted panel**
6 **antennas on the roof of the Safeway grocery store structure, and related backup**
7 **equipment, pursuant to Planning Code Sections 712.83 and 790.80, within an NC-3**
8 **(Moderate-Scale Neighborhood Commercial) District and a 40-X Height and Bulk**
9 **District on property located at 3372-3378 Mission Street (aka 3350 Mission Street) dba**
10 **"Safeway"; West side between 29th and 30th Streets; (Lot 055 in Assessor's Block**
11 **6635)..**

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13 The appellant, Debra Green, representing Noe/Bernal Neighborhood Alliance, filed a
14 timely appeal on June 7, 2004, protesting the approval by the Planning Commission of an
15 application for a conditional use authorization (Conditional Use Application No. 2003.1047C,
16 approved by Planning Commission Motion No. 16782 dated May 6, 2004), pursuant to
17 Planning Code Sections 711.83 and 790.80, to authorize the installation of a wireless
18 telecommunications system facility consisting of six (6) pole mounted panel antennas on the
19 roof of the Safeway grocery store structure, and related backup equipment, pursuant to
20 Planning Code Sections 712.83 and 790.80, within an NC-3 (Moderate-Scale Neighborhood
21 Commercial) District and a 40-X Height and Bulk District on property located at 3372-3378
22 Mission Street (aka 3350 Mission Street) dba "Safeway"; West side between 29th and 30th
23 Streets; (Lot 055 in Assessor's Block 6635).

24 The San Francisco Planning Commission adopted the Wireless Telecommunications
25 Services ("WTS") Facilities Siting Guidelines in August of 1996 ("Guidelines") to assist the

1 Planning Department in its consideration of applications for conditional use authorization to
2 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The
3 Guidelines establish location preferences for installation of WTS facilities throughout the City.
4 The location preferences set forth seven categories, with location preference one being the
5 most preferred sites, and location preference seven being the most disfavored sites. The
6 property located at 3372-3378 Mission Street (aka 3350 Mission Street) falls within a location
7 preference 4 because it is wholly commercial structure within an NC-3 Zoning District

8 On June 29, 2004, the Board of Supervisors conducted a duly noticed public hearing
9 on the appeal from the Planning Commission's approval of the conditional use authorization
10 referred to in the first paragraph of this motion. Following the conclusion of the public hearing
11 on June 29, 2004, the Board voted to disapprove the decision of the Planning Commission
12 (Planning Commission Motion No. 16782 dated May 6, 2004) and denied the issuance of the
13 requested Conditional Use Application No. 2003.1047C by a vote of ten to zero.

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

17 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and
18 County of San Francisco hereby adopts as its own and incorporates by reference herein, as
19 though fully set forth, the findings made by the Planning Commission in its Motion No. 16782
20 dated May 6, 2004, except as indicated below.

21 FURTHER MOVED, That the Board of Supervisors further took notice that the project
22 was categorically exempt from environmental review pursuant to exemption Classes 1, 3 and
23 11 of Title 14 of the California Administrative Code. The Board finds that there have been no
24 substantial changes in project circumstances and no new information of substantial
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1 importance that would change the determination of categorical exemption issued by the
2 Planning Commission.

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

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

8 2. 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 Commission
10 supported the appellant's position that there is no necessity for the proposed WTS facility to
11 be approved and installed for residential or business purposes in the neighborhood or the
12 community because the proposed WTS facility is not necessary to meet the applicant's
13 present service demands within the geographic service area defined by the applicant.

14 3. The written and oral information provided by the applicant at the June 29, 2004,
15 public hearing showed that, according to the applicant, the proposed WTS facility would
16 improve the quality of the service offered by applicant, will expand the array of
17 communications services the applicant can offer, will improve the convenience of service and
18 will reduce the cost of wireless communication to the consumer. The applicant also asserted
19 that the WTS facility would provide better coverage and increase the capacity for coverage for
20 its customers.

21 4. Notwithstanding this information submitted by the applicant, the written and oral
22 information provided by the appellant and her supporters at the June 29, 2004, public hearing
23 showed that the applicant presently had acceptable service in the geographic area of the
24 proposed WTS facility from the applicant's existing WTS facilities in the vicinity of the
25 proposed site.

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

6 6. The written and oral information provided by the appellant and her supporters at
7 the June 29, 2004, public hearing showed that: (i) the area surrounding the proposed site is
8 residential; (ii) the proposed WTS facility consists of six pole-mounted antennas; (iii) the
9 proposed WTS facility would add ten feet to the roof and extend thirty five feet above grade;
10 and (iv) equipment that would be installed on the roof as part of the proposed WTS facility is
11 likely to be noisy.

12 7. The public testimony at the public hearing and the public documentation
13 submitted in support of the appellant's objections to the decision of the Planning Commission
14 supported the appellant's position that the location of the proposed WTS facility is undesirable
15 for the neighborhood or the community, contrary to the requirements of Section 303(c)(1) of
16 the Planning Code. Members of the public expressed overwhelming opposition to the
17 proposed WTS facility during the June 29, 2004, hearing before the Board.

18 8. The public testimony at the public hearing and the public documentation
19 submitted in support of the appeal demonstrated that the applicant has obtained the use of
20 other antennas within the City and County of San Francisco, owned by AT&T wireless, thus
21 expanding the applicant's capacity without the need for the subject facility. Testimony at the
22 public hearing on June 29, 2004, also demonstrated that sales representatives from Cingular
23 Wireless (the applicant) represented to members of the public, on more than one occasion,
24 that their coverage in the subject neighborhood was as good as that of the applicant's
25 competitors.

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

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

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

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

16 13. In the written and oral information provided at the June 29, 2004, public hearing,
17 members of the public expressed concern that radio frequency emissions from the proposed
18 WTS facility would have adverse health effects on persons residing in the vicinity. In making
19 these statements, members of the public exercised their constitutional right to petition the
20 government. However, there is evidence in the record that the proposed WTS facility would
21 comply with Federal Communications Commission safety standards for radio frequency
22 radiation exposure. Thus, in disapproving the decision of the Planning Commission and
23 denying the issuance of the requested conditional use authorization, the Board has not relied
24 on the public testimony or public documentation concerning this issue and the Board has not
25 based its determination on such a ground.

1 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
2 the Board of Supervisors finds that Finding 9 made by the Planning Commission was incorrect
3 and without substantiation. The Board finds that the installation of the proposed WTS facility
4 is not necessary for the neighborhood or the community. The applicant is able to adequately
5 provide service to the neighborhood and the community from its existing WTS facilities in the
6 area of the proposed site.

7 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
8 the Board of Supervisors finds that Finding 10 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 desirable for and compatible with the neighborhood or the community. The
11 construction of the proposed WTS facility would result in an additional intrusion of
12 unnecessary, noticeable equipment into a neighborhood that contains a high proportion of
13 residential property and that is adjacent to parks, scenic shorelines and historically significant
14 buildings. The proposed WTS facility is not so located, designed, and treated architecturally
15 as to minimize visibility from public places. The proposed WTS facility is not generally in
16 harmony with neighborhood character.

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

23 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
24 the Board of Supervisors finds that Finding 12 made by the Planning was incorrect and
25 without substantiation. The Board finds that the installation of the proposed WTS facility does

1 not conform with the priority planning policies established by Section 101.1(b) of the Planning
2 Code because the proposed WTS facility: (i) is not necessary to preserve and enhance
3 existing neighborhood-serving retail uses and to preserve and enhance future opportunities
4 for resident employment in and ownership of such businesses (see Section 101.1(b)(1)); (ii) is
5 not necessary to conserve and protect existing housing and neighborhood character (see
6 Section 101.1(b)(2)); (iii) is not necessary to preserve and enhance the City's supply of
7 affordable housing (see Section 101.1(b)(3)); (iv) may increase commuter traffic and impede
8 and overburden the streets (see Section 101.1(b)(4)); (v) is not necessary to maintain a
9 diverse economic base by protecting the City's industrial and service sectors from
10 displacement due to commercial office development or to enhance future opportunities for
11 resident employment and ownership in these sectors (see Section 101.1(b)(5)); (vi) is not
12 necessary to add to the City's preparedness to protect against injury and loss of life in an
13 earthquake (see Section 101.1(b)(6)); (vii) is not necessary to preserve any landmarks and
14 historic buildings (see Section 101.1(b)(7)); and (viii) is not necessary to protect City parks and
15 open space and their access to sunlight and vistas from development (see Section
16 101.1(b)(8)).

17 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
18 the Board of Supervisors finds that Finding 13 made by the Planning Commission was
19 incorrect and without substantiation, and the Board finds that the conditional use authorization
20 would not promote the health, safety and welfare of the City, and will only add an unnecessary
21 and redundant service and will result in an additional intrusion of unnecessary, noticeable
22 equipment into a neighborhood that contains a high proportion of residential property and that
23 is adjacent to parks, scenic shorelines and historically significant buildings.

24 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
25 competing public and private interests, disapproved the decision of the Planning Commission

1 by its Motion No. 16782 dated May 6, 2004, and denied the issuance of Conditional Use
2 Authorization No. 2003.1047C.

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