

1 [Adopting findings related to the conditional use appeal on property located at 2444-2454
2 Noriega Street.]

3 **Motion adopting findings related to the appeal of the approval of the Director of**
4 **Planning, serving as the Planning Commission during last year’s Planning emergency,**
5 **of Conditional Use Application No. 2002.0736C (which authorized, subject to**
6 **conditions, the installation of three antennas within a rooftop mounted cylinder**
7 **radome, one GPS antenna mounted to the roof, and four associated equipment**
8 **cabinets within the ground floor storage room of the one-story commercial building as**
9 **part of the wireless telecommunications network operated by MetroPCS) within an**
10 **NC-2 (Small-Scale Neighborhood Commercial) Zoning District and a 40-X Height and**
11 **Bulk District, pursuant to Section 711.83 of the Planning Code, on property located at**
12 **2444-2454 Noriega Street, north side between 31st and 32nd Streets (Lot 004F in**
13 **Assessor’s Block 2018).**

14 The appellant, Ruby Chung, filed a timely appeal on November 15, 2002, pursuant to
15 Section 711.83 of the Planning Code, protesting the approval by the Director of Planning,
16 serving as the Planning Commission during last year’s Planning emergency, of an application
17 for a conditional use authorization (Conditional Use Application No. 2002.0736C, approved by
18 Director of Planning Motion No. 16471 on October 17, 2002), to install, subject to certain
19 conditions imposed by the Director of Planning, three antennas within a rooftop mounted
20 cylinder radome, one GPS antenna mounted to the roof, and four associated equipment
21 cabinets within the ground floor storage room of the one-story commercial building within an
22 NC-2 (Small-Scale Neighborhood Commercial) Zoning District and a 40-X Height and Bulk
23 District, on property located at 2444-2454 Noriega Street, north side between 31st and 32nd
24 Streets (Lot 004F in Assessor’s Block 2018).
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1 The San Francisco Planning Commission adopted Wireless Telecommunications
2 Services (“WTS”) Facilities Siting Guidelines in August of 1996 (“Guidelines”) to assist the
3 Planning Department in its consideration of applications for conditional use authorization to
4 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The
5 Guidelines establish location preferences for installation of WTS facilities throughout the City.
6 The location preferences set forth seven categories, with location preference 1 being the most
7 preferred sites and location preference 7 being the most disfavored sites. The property
8 located at 2444-2454 Noriega Street falls within location preference 4, as it is a commercial
9 structure within a NC-3 Zoning District.

10 On December 9, 2002, the Board of Supervisors conducted a duly noticed public
11 hearing on the appeal from the Director of Planning’s approval of a conditional use application
12 referred to in the first paragraph of this motion. Following the conclusion of the public hearing
13 on December 9, 2002, the Board continued the item until the next scheduled meeting of the
14 Board in which all Members were present. During the meeting on January 13, 2003, with all
15 Members present, the Board voted to disapprove the decision of the Director of Planning
16 (Director of Planning Motion No. 16471) and denied the issuance of the requested Conditional
17 Use Application No. 2002.0736C by a vote of ten to one.

18 In considering the appeal of the approval of the requested conditional use
19 authorization, the Board reviewed and considered the written record before the Board and all
20 of the public comments made in support of and in opposition to the appeal. Those Members
21 of the Board who were present on January 13, 2003, but were not present during the
22 December 9, 2002 public hearing, affirmatively stated that they had reviewed the written
23 record and the videotape of the public hearing before voting on the appeal.

24 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and
25 County of San Francisco hereby adopts as its own and incorporates by reference herein, as

1 though fully set forth, the findings made by the Director of Planning in his Motion No. 16471,
2 dated October 17, 2002, except as indicated below; and be it

3 FURTHER MOVED, That the Board of Supervisors further took notice that the project
4 was categorically exempt from environmental review as a Class I exemption under Title 14 of
5 the California Administrative Code. The Board finds that there have been no substantial
6 changes in project circumstances and no new information of substantial importance that
7 would change the determination of categorical exemption issued by the Director of Planning;
8 and, be it

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

10 1. At the public hearing, the applicant asserted that the installation of the proposed
11 WTS facility is necessary to meet the applicant's service demands within the geographic
12 service area defined by the applicant. However, the applicant was unable to demonstrate
13 credibly that the proposed WTS facility is necessary.

14 2. Notwithstanding the information submitted by the applicant to the Director of
15 Planning, at the December 9, 2002 public hearing the appellant submitted to the Board a
16 coverage map distributed by the applicant to market its services. The coverage map showed
17 that the applicant had full mobile coverage in the geographic area of the proposed site. In
18 addition, the applicant admitted during the December 9, 2002 public hearing that its existing
19 WTS facilities provide adequate coverage for mobile users in the geographic area of the
20 proposed site and that applicant needs the proposed WTS facility only to provide reliable in-
21 building coverage in the geographic area of the proposed site.

22 3. Members of the public testified that at least six other wireless carriers provide
23 service in the geographic area of the proposed WTS facility and that these carriers offer rates
24 for wireless service that are competitive with applicant's rates. Accordingly, members of the
25 public testified, overwhelmingly, that there was not a need for an additional WTS facility in this

1 neighborhood. As a result, the Board determined that the written and oral information
2 provided by the applicant was not persuasive or objectively verified, and did not establish that
3 the proposed WTS facility is necessary to meet the community needs as required by Section
4 303(c)(1) of the Planning Code.

5 4. The public testimony at the public hearing, and the public documentation submitted
6 in support of the appellant's objections to the decision of the Director of Planning,
7 overwhelmingly supported the appellant's position that there is no necessity for the proposed
8 WTS facility to be approved and installed for residential or business purposes in the
9 neighborhood, because the proposed WTS facility will only be used to provide an
10 unnecessary and redundant service in the geographic area of the proposed site.

11 5. The public testimony at the public hearing, and the public documentation submitted
12 in support of the appellant's objections to the decision of the Director of Planning,
13 overwhelmingly supported the appellant's position that the location of the proposed WTS
14 facility is incompatible with the existing character of the neighborhood, contrary to the
15 requirements of Section 303(c)(1) of the Planning Code. Applicant did not design the
16 proposed facility to minimize visual and industrial blight in the neighborhood, which is primarily
17 a residential neighborhood with many single-family houses. In addition, applicant already has
18 three existing WTS facilities in the vicinity of the proposed site and Sprint has a wireless
19 facility one block from the proposed site.

20 6. The public testimony at the public hearing, and the public documentation submitted
21 in support of the appellant's objections to the decision of the Director of Planning,
22 overwhelmingly supported the appellant's position that the location of the proposed WTS
23 facility is undesirable, contrary to the requirements of Section 303(c)(1) of the Planning Code.
24 Forty percent of persons owning property within 300 feet of the proposed site have subscribed
25 to the appeal. During the December 9, 2002 hearing before the Board, there was substantial

1 opposition to the proposed site from members of the public.

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

5 8. The applicant has failed to show that the proposed WTS facility will fill an existing
6 need for wireless telecommunications services in the geographic area of the proposed site.

7 9. There is nothing in the record to suggest that the Board's decision to disapprove the
8 decision of the Director of Planning in this case will limit or prohibit access to wireless
9 telecommunications service in the geographic area of the proposed site.

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

15 11. There is nothing in the record to suggest that the proposed WTS facility would be
16 the least intrusive way to provide necessary wireless telecommunications services in the
17 geographic area of the proposed site. While applicant previously considered a firehouse
18 located at 1935 32nd Avenue, there is no evidence in the record that applicant exhausted its
19 search for alternative sites for the proposed WTS facility.

20 12. During the public hearing on December 9, 2002, members of the public expressed
21 concern that the radio frequency emissions from the proposed WTS facility would have
22 adverse health effects on persons residing in the vicinity of the proposed site. In making
23 these statements, members of the public exercised their constitutional right to petition the
24 government. However, there is evidence in the record that the radio frequency emissions
25 from the proposed WTS facility would comply with regulations promulgated by the Federal

1 Communications Commission. Thus, in disapproving the decision of the Director of Planning
2 and denying the issuance of the requested conditional use application, the Board has not
3 relied on the public testimony concerning this issue and the Board has not based its
4 determination on such a ground.

5 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
6 the Board of Supervisors finds that Finding 9 made by the Director of Planning was incorrect
7 and without substantiation, and the Board finds that the installation of the proposed WTS
8 facility is not necessary because it will only provide an unnecessary and redundant service in
9 the neighborhood.

10 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
11 the Board of Supervisors finds that Finding 10 made by the Director of Planning was incorrect
12 and without substantiation, and the Board finds that the installation of the proposed WTS
13 facility is not desirable for and compatible with the neighborhood or the community, because
14 the proposed facility will result in an additional intrusion of unnecessary, noticeable equipment
15 into a neighborhood that contains a high proportion of residential property and small
16 businesses and which already has a number of WTS facilities in the vicinity of the proposed
17 site; and because the placement of the proposed WTS facility is not so located, designed and
18 treated architecturally as to minimize visibility from public places; and because the proposed
19 facility intrudes into public vistas and disrupts the architectural design integrity of buildings in
20 the neighborhood; and because the proposed facility is not in harmony with neighborhood
21 character.

22 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
23 the Board of Supervisors finds that Finding 12 made by the Director of Planning was incorrect
24 and without substantiation, and finds that the installation of the proposed WTS facility is not in
25 conformity with, and would not implement the policies of the City's General Plan, in that the

1 installation of the proposed WTS facility will not further any of the objectives referred to by the
2 Director of Planning.

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

20 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
21 the Board of Supervisors finds that Finding 14 made by the Director of Planning was incorrect
22 and without substantiation, and the Board finds that the conditional use authorization would
23 not promote the health, safety and welfare of the City, and will only add an unnecessary and
24 redundant service and will result in an additional intrusion of unnecessary, noticeable
25 equipment into a neighborhood that contains a high proportion of residential property.

1 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
2 competing public and private interests, disapproved the decision of the Director of Planning by
3 his Motion No. 16471, dated October 17, 2002, and denied the issuance of Conditional Use
4 Application No. 2002.00736C.

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