File No. 111366 Board Item No. 12

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting **Date: January 10, 2012**

Cmte	Board	
☐	☑	**Motion**
☐	☐	**Resolution**
☐	☐	**Ordinance**
☐	☐	**Legislative Digest**
☐	☐	**Budget Analyst Report**
☐	☐	**Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form (for hearings)**
☐	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☐	☐	**Award Letter**
☐	☐	**Application**
☐	☐	**Public Correspondence**

OTHER:

Completed by: Annette Lonich **Date: January 4, 2012**

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

[Adopting Findings Related to the Conditional Use Authorization - 2041 Larkin Street]

Motion adopting findings supporting the Board's decision to 1) disapprove the decision of the Planning Commission by its Motion No. 18448 , approving Conditional Use Authorization identified as Planning Case No. 2010.1083C on property located at 2041 Larkin Street; and 2) to approve Conditional Use Authorization on property located at 2041 Larkin Street subject to all of the conditions imposed by the Planning Commission by its Motion No. 18448, regarding Application 2010.1083C, and further subject to additional conditions imposed by the Board of Supervisors on December 6, 2011.

The appellant, Laura Albert, on behalf of the Russian Hill Community Association, filed a timely appeal on October 24, 2011, protesting the approval by the Planning Commission of an application for a conditional use authorization (Conditional Use Application No. 2010.1083C), approved by Planning Commission Motion No. 18448 dated September 15, 2011, pursuant to Planning Code Section 209.6(b), to authorize the installation of wireless telecommunications facility consisting of up to six panel antennas and related equipment on an existing church as part of the AT&T wireless telecommunications network within the RH-3 (Residential, House, three-Family) District and a 40-X Height and Bulk District, on property located at 2041 Larkin Street, Assessor's Block No. 0572, Lot No. 0572.

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

The location preferences set forth seven categories, with location preference one being the most preferred sites, and location preference seven being the most disfavored sites. The property located at 2041 Larkin Street falls within a location preference one, a preferred location for publicly used structures.

On December 6, 2011, the Board of Supervisors conducted a duly noticed public hearing on the appeal from the Planning Commission's approval of the conditional use authorization referred to in the first paragraph of this motion. Following the conclusion of the public hearing on December 6, 2011, the Board voted to disapprove the decision of the Planning Commission (Planning Commission Motion No. 18448 dated September 15, 2011) and denied the issuance of the requested Conditional Use Application No. 2010.1083C, by a vote of 8-3. The Board then moved to authorize conditional use referred to in the first paragraph of this motion, subject to all of the conditions imposed by the Planning Commission in its Motion No. 18448 dated September 15, 2011, and further subject to the additional condition that:

1. Use is authorized as long as an independent evaluator, selected by the Planning Department with input from the parties, determines that the information and conclusions submitted by applicant in support of its request for conditional use are accurate. Applicant shall fully cooperate with the valuator and shall provide any and all data requested by the evaluator to allow the evaluator to verify that the maps, data, and conclusions about service coverage submitted by applicant are accurate. Applicant shall bear all costs of said evaluation. The independent evaluation, upon request by applicant, shall keep the submitted data confidential and shall sign a confidentiality agreement acceptable to applicant. The independent evaluator shall be a professional engineer licensed by the State of California.

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

NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and County of San Francisco hereby adopts as its own and incorporates by reference herein, as though fully set forth, the findings made by the Planning Commission in its Motion No. 18448 dated September 15, 2011.

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

FURTHER MOVED, That the Board of Supervisors finds that:

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

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

3. Contrary to the information submitted by the applicant prior to and during the December 6, 2011, public hearing, the evidence, including testimony of residents in the geographic area, marketing and advertising data of the applicant, information contained on the applicant's web-site and the study of an engineer, showed that the applicant presently had acceptable service in the geographic area of the proposed WTS facility.

4. In the event the applicant is able to demonstrate to an independent evaluator that applicant's own data supports the accuracy of the maps, data, and conclusions about service coverage and capacity submitted by applicant during this appeal, then Conditional Use is supported as set forth in the Planning Commission Motion No. 18422 dated September 15, 2011. The independent evaluator should be selected by the Planning Department, with input from both parties, the evaluator should be an engineer licensed in the State of California. The applicant should submit any data requested by the evaluator and should cooperate fully with the evaluator. The evaluator should maintain in confidence any data submitted to the evaluator by the applicant.

5. There is nothing in the record to suggest that the Board's decision in this case will unreasonably discriminate against the applicant in favor of providers of functionally equivalent services.

6. There is nothing in the record to suggest that the Board's decision in this case will limit or prohibit access to the applicant's WTS in the geographic area of the proposed site.

7. There is nothing in the record to suggest that the decision in this case will prevent the applicant from filling a significant gap in WTS provided to remote users of those services in the geographic area of the proposed site.

FURTHER MOVED, That the Board of Supervisors, after carefully balancing the competing public and private interests, disapproved the decision of the Planning Commission by its Motion No. 18422 dated September 15, 2011, and denied the issuance of Conditional

Use Authorization No. 2011.0664C, and approved the issuance of requested Conditional Use Application No. 2011.0664C, subject to the conditions imposed by the Planning Commission in its Motion No. 18422, and further subject to the additional conditions imposed by the Board of Supervisors on December 6, 2011.