

1 [Adopting findings related to the conditional use appeal on property located at 2599 Lombard
2 Street.]

3 **Motion adopting findings related to the appeal of the Planning Commission's approval**
4 **of a conditional use authorization, Case No. 2003.0080C, to install four (4) cellular**
5 **antennas and related equipment on the roof of the Pacific Motor Inn, as part of Verizon**
6 **Wireless telecommunications network within an NC-3 (Moderate-scale Neighborhood**
7 **Commercial) District and a 40-X Height and Bulk District, on property located at 2599**
8 **Lombard Street; Lot 016 in the Assessor's Block 0938.**

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10 The appellant, Mary Irene Zamanek, filed a timely appeal on April 12, 2004, protesting
11 the approval by the Planning Commission of an application for a conditional use authorization
12 (Conditional Use Application No. 2003.0080C, approved by Planning Commission Motion No.
13 16742 dated March 18, 2004), pursuant to Planning Code Sections 712.83 and 790.80, to
14 authorize the installation of four (4) cellular antennas and related equipment on the roof of the
15 Pacific Motor Inn, as part of Verizon Wireless telecommunications network within an NC-3
16 (Moderate-scale Neighborhood Commercial) District and a 40-X Height and Bulk District, on
17 property located at 2599 Lombard Street; Lot 016 in the Assessor's Block 0938.

18 The San Francisco Planning Commission adopted the Wireless Telecommunications
19 Services ("WTS") Facilities Siting Guidelines in August of 1996 ("Guidelines") to assist the
20 Planning Department in its consideration of applications for conditional use authorization to
21 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The
22 Guidelines establish location preferences for installation of WTS facilities throughout the City.
23 The location preferences set forth seven categories, with location preference one being the
24 most preferred sites, and location preference seven being the most disfavored sites. The
25 property located at 2599 Lombard Street falls within a location preference four because it is

1 wholly commercial structure within an NC-3 Zoning District and the applicant will not remove
2 any visual obstructions as part of the installation. The area immediately surrounding the
3 commercial district on Lombard Street where the property is located is predominately
4 residential and falls with a location preference seven.

5 On May 11, 2004, the Board of Supervisors conducted a duly noticed public hearing on
6 the appeal from the Planning Commission's approval of the conditional use authorization
7 referred to in the first paragraph of this motion. Following the conclusion of the public hearing
8 on May 11, 2004, the Board voted to disapprove the decision of the Planning Commission
9 (Planning Commission Motion No. 16742 dated March 18, 2004) and denied the issuance of
10 the requested Conditional Use Application No. 2003.0080C by a vote of ten to zero.

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

14 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and
15 County of San Francisco hereby adopts as its own and incorporates by reference herein, as
16 though fully set forth, the findings made by the Planning Commission in its Motion No. 16742
17 dated March 18, 2004, except as indicated below.

18 FURTHER MOVED, That the Board of Supervisors further took notice that the project
19 was categorically exempt from environmental review. The Board finds that there have been
20 no 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 May 11, 2004,
10 public hearing showed that, according to the applicant, the proposed WTS facility would
11 provide additional capacity to meet the present demand for its services in the geographic
12 service area defined by the applicant, or the growth in demand for its services, which
13 applicant claims has doubled in the last two years and is significantly faster than other parts of
14 the City. According to the applicant, the proposed WTS facility would also improve the
15 performance of the next generation of wireless voice and data network services offered by the
16 applicant in the geographic service area defined by the applicant.

17 4. Notwithstanding this information submitted by the applicant, the written and oral
18 information provided by the appellant and her supporters at the May 11, 2004, public hearing
19 showed that the applicant presently provides acceptable service in the geographic service
20 area defined by the applicant from the applicant's existing WTS facilities in the vicinity of the
21 proposed WTS facility.

22 5. The public testimony at the public hearing and the public documentation
23 submitted in support of the appellant's objections to the decision of the Planning Commission
24 also supported the appellant's position that there is no necessity for the proposed WTS facility
25 to be approved and installed for residential or business purposes in the neighborhood or the

1 community because other wireless carriers that are competitors of the applicant also provide
2 adequate service in the vicinity of the proposed WTS facility.

3 6. 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 the location of the proposed WTS facility is
6 incompatible with the existing character of the neighborhood, contrary to the requirements of
7 Section 303(c)(1) of the Planning Code.

8 7. The written and oral information provided by the appellant and her supporters at
9 the May 11, 2004, public hearing showed that: (i) the area surrounding the proposed WTS
10 facility is predominately residential; (ii) the equipment that would be installed on the roof as
11 part of the proposed WTS facility is unsightly; and (iii) noise from the equipment would likely
12 disturb people living in the adjacent building.

13 8. The public testimony at the public hearing and the public documentation
14 submitted in support of the appellant's objections to the decision of the Planning Commission
15 supported the appellant's position that the location of the proposed WTS facility is undesirable
16 for the neighborhood or the community, contrary to the requirements of Section 303(c)(1) of
17 the Planning Code. Many people living in the vicinity attended the Board hearing and
18 expressed their overwhelming opposition to the proposed WTS facility. Many others sent
19 letters and emails to the Board, and hundreds of others signed petitions, opposing the
20 proposed WTS facility. Despite the applicant's extensive efforts to garner support, the
21 applicant was unable to sufficiently demonstrate that people living in the vicinity of the
22 proposed WTS facility supported the application.

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

1 10. 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 limit or prohibit access to wireless
3 telecommunications services in the geographic service area of the proposed WTS facility.

4 11. 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 prevent the filling of a significant gap
6 in wireless telecommunications services provided to remote users of those services in the
7 geographic service area of the proposed WTS facility, whether those remote users obtain
8 service from the applicant or from other wireless telecommunications carriers serving the City.

9 12. There is nothing in the record to suggest that the applicant exhausted its efforts to
10 locate an alternative site for the proposed WTS facility or that the proposed WTS facility is the
11 least intrusive means for the applicant to improve its service quality and/or to meet future
12 demand for its services in the geographic service area identified by the applicant.

13 13. In the written and oral information provided at the May 11, 2004, public hearing,
14 members of the public expressed concern that radio frequency emissions from the proposed
15 WTS facility would have adverse health effects on persons residing in the vicinity. In making
16 these statements, members of the public exercised their constitutional right to petition the
17 government. However, there is evidence in the record that the proposed WTS facility would
18 comply with Federal Communications Commission ("FCC") safety standards for exposure to
19 radio frequency emissions. There is also evidence that as a condition of approval of the
20 conditional use the applicant would have been required to verify that radio frequency
21 emissions were within FCC standards after the proposed WTS facility was installed and
22 operational. Thus, in disapproving the decision of the Planning Commission and denying the
23 issuance of the requested conditional use authorization, the Board has not relied on the public
24 testimony or public documentation concerning this issue and the Board has not based its
25 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 geographic service area of the proposed WTS facility. In addition, other wireless
7 telecommunications carriers that are competitors of the applicant are able to provide adequate
8 service in the neighborhood and the community from their existing WTS facilities in the
9 geographic service area of the proposed WTS facility

10 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
11 the Board of Supervisors finds that Finding 9 made by the Planning Commission was incorrect
12 and without substantiation. The Board finds that the installation of the proposed WTS facility
13 is not desirable for and compatible with the neighborhood or the community. The construction
14 of the proposed WTS facility will result in an additional intrusion of unnecessary, noticeable
15 equipment into a neighborhood that contains a high proportion of residential property. The
16 proposed WTS facility is not generally in 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 10 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 will not implement the policies of, the City's General
21 Plan, in that the installation of the proposed WTS facility will not further any of the objectives
22 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 11 made by the Planning was incorrect and
25 without substantiation. The Board finds that the installation of the proposed WTS facility is not

1 in conformity 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
15 and 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 12 made by the Planning Commission was
19 incorrect and without substantiation, and the Board finds that the conditional use authorization
20 will 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.

23 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
24 competing public and private interests, disapproved the decision of the Planning Commission
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1 by its Motion No. 16742 dated March 18, 2004, and denied the issuance of Conditional Use
2 Authorization No. 2003.0080C.

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