

1 [Adopting Findings Disapproving Conditional Use for Property Located at 725 Taraval Street]

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3 **Motion adopting findings disapproving the Planning Commission’s approval of**
4 **Conditional Use Authorization No. 2009.0531C which approved the installation of a**
5 **wireless telecommunications facility consisting of eight new panel antennas located on**
6 **the existing four-story mixed-use building’s elevator penthouse structures, with related**
7 **equipment cabinets located within the structure’s subterranean garage, as part of**
8 **T-Mobile’s wireless telecommunications network within an NC-2 Zoning District and a**
9 **40-X Height and Bulk District, located at 725 Taraval Street (Lot Nos. 052-058 in**
10 **Assessor’s Block 2408).**

11 The appellant, Robert Carson, filed a timely appeal on March 25, 2010 protesting the
12 approval by the Planning Commission of an application for a conditional use authorization
13 (Conditional Use Application No. 2009.0531C, approved by Planning Commission Motion No.
14 18037 dated February 25, 2010), pursuant to Planning Code Sections 303, 711.83, and
15 790.80, to authorize the installation of a wireless telecommunications facility consisting of
16 eight new panel antennas located on the existing four-story mixed-use building’s elevator
17 penthouse structures, with related equipment cabinets located within the structure’s
18 subterranean garage, as part of T-Mobile’s wireless telecommunications network within an
19 NC-2 (Neighborhood Commercial, Small-Scale) Zoning District and a 40-X Height and Bulk
20 District, located at 725 Taraval Street, (Lot Nos. 052-058 in Assessor’s Block 2408).

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

1 The location preferences set forth seven categories, with location preference one being the
2 most preferred sites, and location preference seven being the most disfavored sites. The
3 property located at 725 Taraval Street falls within a location preference five, a mixed use
4 building in a high density district.

5 On May 18, 2010, 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 18, 2010, the Board voted to disapprove the decision of the Planning Commission
9 (Planning Commission Motion No. 18037 dated February 25, 2010) and denied the issuance
10 of the requested Conditional Use Application No. 2009.0531C by a vote of 11-0.

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 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. 18037
17 dated February 25, 2010, 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 pursuant to exception Class 3 of Title 14
20 of the California Administrative Code. The Board finds that there have been no substantial
21 changes in project circumstances and no new information of substantial importance that
22 would change the determination of categorical exemption issued by the Planning
23 Commission.

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

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

11 3. The written and oral information provided by the applicant at the May 18, 2010
12 public hearing alleged that the proposed WTS facility would: (a) extend and enhance
13 coverage and capacity; (b) support new data services that are available only for applicant’s
14 customers that use “smart phones;” and (c) support first responders in case of an emergency.
15 No members of the public appeared in support of the applicant’s proposal. The Board also
16 takes notice that, according to the Planning Department, no members of the public appeared
17 in support of applicant’s proposal when the matter was considered by the Planning
18 Commission.

19 4. Notwithstanding this information submitted by the applicant, the written and oral
20 information provide by the appellant and his supporters at the May 18, 2010 public hearing
21 showed that the applicant presently had acceptable service in the geographic area of the
22 proposed WTS facility from the applicant’s existing WTS facilities in the vicinity. In particular,
23 the appellant: (a) submitted a study conducted in the neighborhood showing good coverage;
24 (b) introduced advertising materials from applicant's website showing the applicant has good
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1 coverage for voice and data service in the area of the proposed project; and (c) showed that
2 applicant has eight existing wireless facilities within a one-mile radius.

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

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

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

14 8. In the written and oral information provided at the May 18, 2010 public hearing,
15 members of the public expressed concern that radio frequency emissions from the proposed
16 WTS facility would have adverse health effects on persons residing in the vicinity. In making
17 these statements, members of the public exercised their constitutional right to petition the
18 government. However, there is evidence in the record that the proposed WTS facility would
19 comply with Federal Communications Commission safety standards for radio frequency
20 radiation exposure. Thus, in disapproving the decision of the Planning Commission and
21 denying the issuance of the requested conditional use authorization, the Board has not relied
22 on the public testimony or public documentation concerning this issue and the Board has not
23 based its determination on such a ground.

24 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
25 the Board of Supervisors finds that Finding 14A made by the Planning Commission, that the

1 project is necessary for the neighborhood or the community because it will provide necessary
2 facilities for improved communications and emergency transmission, was incorrect and
3 without substantiation. The Board finds that the applicant has sufficient coverage in the
4 vicinity of the proposed WTS facility and that applicant's customers are able rely on those
5 facilities to successfully complete emergency-911 calls.

6 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
7 the Board of Supervisors finds that Finding 15 made by the Planning is incorrect and without
8 substantiation. The Board finds that the installation of the proposed WTS facility is not in
9 conformity with the following priority planning policies cited by the Planning Commission:

10 (i) Objective 2; Policy 3: Maintain a favorable social and cultural climate by
11 enhancing the City's diverse economic base;

12 (ii) Objective 4, Policy 2: Promote and attract economic activities with potential
13 benefits to the City by enhancing the business climate; and

14 (iii) Objective 3, Policy 6: Establish a system of emergency access routes by
15 providing communications services.

16 The Board finds that the installation of the proposed WTS facility is not necessary to
17 increase or improve wireless coverage of the applicant in the vicinity and thus will not further
18 the objectives and policies referred to by the Planning Commission.

19 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
20 competing public and private interests, disapproved the decision of the Planning Commission
21 by its Motion No. 18037 dated February 25, 2010, and denied the issuance of Conditional Use
22 Authorization No. 2009.0531C.