

File No. 101045

Committee Item No. _____

Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 09/14/10

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

(Use back side if additional space is needed)

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|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <u>Conditional Use Appeal for 10 Bernal Heights Boulevard</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Department's Appeal Response Attachments</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Joy Lamug

Date 09/09/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

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Statement of Appeal:

a) Set forth the part(s) of the decision the appeal is taken from:

the entire decision

b) Set forth the reasons in support of your appeal:

The project is unnecessary, undesirable, and incompatible with surrounding residential community.

Person to Whom
Notices Shall Be Mailed

Name and Address of Person Filing Appeal:

Robin Mackey
Name

Erick Arguello
Name

249 Bocana st.
Address *SF 94110*

1065A Hampshire Street
Address *SF 94110*

415-699-7107
Telephone Number

415-902-5893
Telephone Number


Signature of Appellant or
Authorized Agent

Pursuant to Planning Code Section 308.1(b), the undersigned members of the Board of Supervisors believe that there is sufficient public interest and concern to warrant an appeal of the Planning Commission on Case No. 2010-0306G, a conditional use authorization regarding (address) 10 Bernal Heights Blvd., District 9. The undersigned members respectfully request the Clerk of the Board to calendar this item at the soonest possible date.

SIGNATURE

DATE

David C. Cant

8-2-10

David Chin

8-2-10

[Signature]

8/2/10

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 BOARD OF SUPERVISORS
 SAN FRANCISCO
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 BY [Signature]

(Attach copy of Planning Commission's Decision)



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18131

HEARING DATE: JULY 1, 2010

Date: June 24, 2010
Case No.: 2010.0306C
Project Address: 10 Bernal Heights Boulevard
Current Zoning: RH-1(D) (Residential, House, Single-Family, Detached) District
 40-X Height and Bulk District
Block/Lot: 5548 / 003
Project Sponsor: Joyce Chu
 Modus Consulting
 833 Market Street, Suite 805
 San Francisco, CA 94103
jchu@moduscon.com
 (909) 992-2212
 for Clearwire
Staff Contact: Erika S. Jackson - (415) 558-6363
erika.jackson@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 209.6(b) AND 303 TO INSTALL A WIRELESS TELECOMMUNICATIONS FACILITY CONSISTING OF FIVE INTERNET EXCHANGE SWITCH ANTENNAS ON AN EXISTING 50 FOOT TALL COMMUNICATIONS TOWER AND TO MODIFY THE CONDITIONAL USE APPROVAL UNDER CASE NO. 2008.1157C TO CHANGE THE NUMBER OF ALLOWED ANTENNAS ON THE SITE WITHIN A RH-1(D) (RESIDENTIAL, HOUSE, SINGLE-FAMILY, DETACHED) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 29, 2010, Joyce Chu (hereinafter "Project Sponsor"), made an application (hereinafter "application"), for Conditional Use (CU) authorization on the property at 10 Bernal Heights Boulevard, Lot 003 in Assessor's Block 5548; (hereinafter "Project Site") to install a wireless telecommunications facility consisting of 5 internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park. The CU will modify the Conditional Use approval under Case No. 2008.1157C to modify the number of allowed antennas on the site. The Project Site is within the RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, and a 40-X Height and Bulk District.

The San Francisco Planning Department (hereinafter "Department") determined the application to be categorically exempt from the environmental review process (CEQA) pursuant to exemption Classes 1, 3 and 11 of Title 14 of the California Administrative Code.

The Proposed Project as approved herein is consistent with the Project description contained in the categorical exemption and would not result in significant impacts not identified in the categorical exemption or cause significant effects already identified in the categorical exemption to be substantially more severe.

On July 1, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the application for a Conditional Use.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use in Application No. 2010.0306C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site is located at the top of the hill in Bernal Heights Park. The Project Site is owned and operated by American Tower Corporation and contains one equipment building and one approximately 50 foot tall telecommunications tower with 62 antennas. The antennas are operated by various tenants including Covad, WiLine, T-Mobile, and the City and County of San Francisco.
3. **Surrounding Properties and Neighborhood.** The Project Site is located within the Bernal Heights neighborhood. The Project Site is located on a parcel of land within the RH-1(D) Zoning District surrounded by the Bernal Heights Park, which is within the P Zoning District. Land uses surrounding the park are primarily residential.
4. **Proposal.** The proposal is to install a wireless telecommunications facility consisting of 5 internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and an associated equipment cabinet as part of a wireless transmission network operated by Clearwire. The CU will modify the Conditional Use approval under Case No. 2008.1157C to modify the amount of allowed antennas on the site. Each internet exchange switch antenna ranges from 1 foot to 2.5 feet in diameter. The equipment cabinet would be placed within the existing equipment structure on the hill.

5. **Past History and Actions.** On October 6, 1960, the Planning Commission, by Resolution No. 5313, authorized the construction of two approximately 50 foot tall telecommunications towers and an equipment building in Bernal Heights Park with a maximum of eight horn type antennas on each tower for use as a microwave radio relay station for telephone service. Research regarding the Project has found that there was only one tower constructed and that there are currently approximately 62 antennas on the tower.

On October 15, 2009, the Planning Commission authorized the installation a wireless telecommunications facility consisting of eight panel antennas and one dish antenna and related equipment as part of T-Mobile's wireless telecommunications network on the communications tower at the top of the hill in Bernal Heights Park and to modify the original Conditional Use approval under Case No. CU60.13 (Resolution 5313) to establish the existing tower configuration and number antennas on the site.

6. **Location Preference.** The WTS Facilities Siting Guidelines identify different types of buildings for the siting of wireless telecommunications facilities, with Location Preference 1 being the most desirable location and Location Preference 7 being the least desirable location. Under the Guidelines, the Project is a Location Preference Number 1, as it is a preferred location for a publicly used structure.
7. **Radio Waves Range.** The Project Sponsor has stated that the proposed wireless network will transmit calls by radio waves operating in the 2496-2690 Megahertz (MHZ) bands, which are regulated by the Federal Communications Commission (FCC) and which must comply with the FCC-adopted health and safety standards for electromagnetic radiation and radio frequency radiation.
8. **Radiofrequency (RF) Emissions:** The Project Sponsor retained Hammett & Edison, Inc., a radio engineering consulting firm, to prepare a report describing the expected RF emissions from the proposed facility. The Department of Public Health reviewed the report and determined that the proposed facility complies with the standards set forth in the Guidelines.
9. **Department of Public Health Review and Approval.** There are currently a large number of existing antennas located on a tower in the Bernal Hill Park. Existing RF levels at the ground level were less than 1% of the FCC public exposure limit. There were observed no other antennas within 100 feet of this site. Clearwire proposes to install five dish antennas. The antennas would be mounted at effective height of about 58 feet above the ground. The estimated ambient RF field from the proposed Clearwire transmitters at ground level is calculated to be 0.000012 mW/cm² which is 0.0012% of the FCC public exposure limit. The three dimensional perimeter of RF levels equal to the public exposure limit is calculated to extend 10 feet from the antennas. Due to the mounting locations the Clearwire antennas would not be accessible to the general public. Warning signs must be posted at the access points and the antennas in English, Spanish and Chinese.

10. **Maintenance Schedule.** The proposed facility would operate without on-site staff but with a one- or two-person maintenance crew visiting the property approximately once or twice a month and on an as-needed basis to service and monitor the facility.
11. **Community Outreach.** A Community Outreach Meeting was conducted for the Proposed Project. The meeting was held at 7:00 P.M. on Wednesday, June 16, at the Bernal Heights Recreation Center located at 500 Moultrie Street, San Francisco, CA. No members of the public attended the meeting.
12. **Five-year plan:** Clearwire submitted its latest five-year plan, as required, in April 2010.
13. **Public Comment.** The Department has received no public comments regarding the Proposed Project.
14. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the amendments to Planning Code in the following manner:
 - A. **Use.** Per Planning Code Section 209.6(b), a Conditional Use authorization is required for communications utilities in the RH-1(D) Zoning District.
15. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project does comply with said criteria in that:
 - A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Proposed Project will be generally desirable and compatible with the surrounding neighborhood because the Project will not conflict with the existing uses of the property. The Proposed Project will be comparable in size to the existing conditions. The approval of this authorization has been found, first and foremost, to insure public safety. The Proposed Project will also provide necessary facilities for emergency transmission and improved communication for the neighborhood, community and the region.
 - B. The Proposed Project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the Project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
 - i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Proposed Project must comply with all applicable Federal and State regulations to safeguard the health, safety and to ensure that persons residing or working in the vicinity will not be affected, and prevent harm to other personal property.

An evaluation of potential health effects from RF radiation, conducted by the Department of Public Health, has concluded that the proposed wireless transmission facilities will have no adverse health effects if operated in compliance with the FCC-adopted health and safety standards. The Department has received information that the proposed wireless system must be operated so as not to interfere with radio or television reception in order to comply with the provisions of its license under the FCC.

The Department is developing a database of all such wireless communications facilities operating or proposed for operation in the City and County of San Francisco. All applicants are now required to submit information on the location and nature of all existing and approved wireless transmission facilities operated by the Project Sponsor. The goal of this effort is to foster public information as to the location of these facilities.

- ii The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

No increase in traffic volume is anticipated with the facilities operating unmanned, with a single maintenance crew visiting the site once a month or on an as-needed basis.

- iii The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

While some noise and dust may result from the erection of the antennas and transceiver equipment, noise or noxious emissions from continued use are not likely to be significantly greater than ambient conditions due to the operation of the wireless communication network.

- iv Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas; service areas, lighting and signs;

The subject site has ample landscaping and open space. There is a proposed condition requiring the Project Sponsor to submit and install landscaping per an approved landscaping plan. The installation of antennas on the existing tower will not affect the existing landscaping.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The Proposed Project is consistent with the stated purposes of RH-1(D) Districts in that the intended use is located at an existing tower approximately 50 feet tall.

16. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1:

Encourage development, which provides substantial net benefits and minimizes undesirable consequences. Discourage development, which has substantial undesirable consequences that cannot be mitigated.

Policy 2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The Project would enhance the total city living and working environment by providing communication services for residents and workers within the City. Additionally, the Project would comply with Federal, State and Local performance standards.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 3:

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The site is an integral part of a new wireless communications network that will enhance the City's diverse economic base.

OBJECTIVE 4:

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 1:

Maintain and enhance a favorable business climate in the City.

Policy 2:

Promote and attract those economic activities with potential benefit to the City.

The Project would benefit the City by enhancing the business climate through improved communication services for residents and workers.

COMMUNITY SAFETY ELEMENT

Objectives and Policies

OBJECTIVE 3:

ENSURE THE PROTECTION OF LIFE AND PROPERTY FROM THE EFFECTS OF FIRE OR NATURAL DISASTER THROUGH ADEQUATE EMERGENCY OPERATIONS PREPARATION.

Policy 1:

Maintain a local agency for the provision of emergency services to meet the needs of San Francisco.

Policy 2:

Develop and maintain viable, up-to-date in-house emergency operations plans, with necessary equipment, for operational capability of all emergency service agencies and departments.

Policy 3:

Maintain and expand agreements for emergency assistance from other jurisdictions to ensure adequate aid in time of need.

Policy 4:

Establish and maintain an adequate Emergency Operations Center.

Policy 5:

Maintain and expand the city's fire prevention and fire-fighting capability.

Policy 6:

Establish a system of emergency access routes for both emergency operations and evacuation.

The Project would enhance the ability of the City to protect both life and property from the effects of a fire or natural disaster by providing communication services.

17. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

No neighborhood-serving retail use would be displaced and the wireless communications network will enhance personal communication services.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

No residential uses would be displaced or altered in any way by the granting of this authorization.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project would have no adverse impact on housing in the vicinity.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

Due to the nature of the Project and minimal maintenance or repair, municipal transit service would not be impeded and neighborhood parking would not be overburdened.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project would cause no displacement of industrial and service sector activity.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Compliance with applicable structural safety and seismic safety requirements would be considered during the building permit application review process.

- G. That landmarks and historic buildings be preserved.

No landmarks or historic buildings would be affected by the Project.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will have no adverse impact on parks or open space, or their access to sunlight or vistas.

18. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
19. The Commission hereby finds that approval of the Determination of Compliance authorization would promote the health, safety and welfare of the City.

DECISION

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby approves the Conditional Use authorization under Planning Code Sections 209.6(b) and 303 to install a wireless telecommunications facility consisting of five internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and to modify the Conditional Use approval under Case No. 2008.1157C to change the number of allowed antennas on the site within a RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, a 40-X Height and Bulk District and subject to the conditions of approval attached hereto as Exhibit A.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this conditional use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18131. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on July 1, 2010.

Linda Avery
Commission Secretary

AYES: Commissioners, Miguel, Olague, Borden, Moore, Sugaya, Antonini

NAYS: None

ABSENT: Lee

ADOPTED: July 1, 2010

Exhibit A

Conditions of Approval

Whenever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

General Conditions

1. This approval is for Conditional Use authorization under Planning Code Sections 209.6(b) and 303 to install a wireless telecommunications facility consisting of 5 internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and to modify the Conditional Use approval under Case No. 2008.1157C to change the number of allowed antennas on the site within a RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, a 40-X Height and Bulk District.
2. The Project approved by this Motion is in general conformity with the plans dated April 6, 2010, on file with the Department in the docket for Case No. 2010.0306C (labeled EXHIBIT B), reviewed and approved by the Commission on July 1, 2010.
3. This Conditional Use authorization restricts the number of towers in Bernal Heights Park to one and limits the number of antennas to 71. The antennas shall be limited further to no more than 19 dish antennas with a diameter of 4 feet or less, and 52 other types of antennas (including cable, panel, access, omni, radiowave, amplifier, bogner, whip, dipole, and yagi) at any time.
4. The Property Owner is responsible for the removal of the 9 inactive antennas on the Project Site.
5. The Property Owner is responsible for filing Building Permit Applications or for requiring tenants to file Building Permit Applications to legalize all existing antennas and for all future antennas on the site.
6. Installation of additional antennas beyond the 71 authorized by this Conditional Use Application requires the approval of a new Conditional Use Application.

Design

7. The final plans shall meet the standards of the Planning Code and be in general conformity with the plans approved by the Commission on July 1, 2010 as Exhibit B found in the Case docket.
8. Prior to the issuance of any building or electrical permits for the installation of the facilities, the Project Sponsor shall submit final scaled drawings for review and approval by the Planning Department ("Plan Drawings"). The Plan Drawings shall:
 - a. Structure and Siting. Identify all facility related support and protection measures to be installed. This includes, but is not limited to, the location(s) and method(s) of placement,

support; protection, screening, paint and/or other treatments of the antennas and other appurtenances to insure public safety, insure compatibility with urban design, architectural and historic preservation principles, and harmony with neighborhood character.

- b. For the Project Site, regardless of the ownership of the existing facilities: Identify the location of all existing antennas and facilities; and identify the location of all approved (but not installed) antennas and facilities.
- c. Emissions. Provide a report, subject to approval of the Zoning Administrator, that operation of the facilities in addition to ambient RF emission levels will not exceed adopted FCC standards with regard to human exposure in uncontrolled areas.

Performance

9. Project Implementation Report. The Project Sponsor shall prepare and submit to the Zoning Administrator a Project Implementation Report. The Project Implementation Report shall:
 - a. Identify the three-dimensional perimeter closest to the facility at which adopted FCC standards for human exposure to RF emissions in uncontrolled areas are satisfied;
 - b. Document testing that demonstrates that the facility will not cause any potential exposure to RF emissions that exceed adopted FCC emission standards for human exposure in uncontrolled areas.
 - c. Compare test results for each test point with applicable FCC standards. Testing shall be conducted in compliance with FCC regulations governing the measurement of RF emissions and shall be conducted during normal business hours on a non-holiday week day with the subject equipment measured while operating at maximum power.
 - d. The Project Implementation Report shall be prepared by a certified professional engineer or other technical expert approved by the Department. At the sole option of the Department, the Department (or its agents) may monitor the performance of testing required for preparation of the Project Implementation Report. The cost of such monitoring shall be borne by the Project Sponsor pursuant to the condition related to the payment of the City's reasonable costs.
10. Notification and Testing. The Project Implementation Report shall set forth the testing and measurements undertaken pursuant to Conditions 4 and 13.
11. Approval. The Zoning Administrator shall request that the Certification of Final Completion for operation of the facility not be issued by the Department of Building Inspection until such time that the Project Implementation Report is approved by the Department for compliance with these conditions.

12. Notification prior to Project Implementation Report. The Project Sponsor shall undertake to inform and perform appropriate tests for residents of any dwelling units located within 25 feet of the transmitting antennae at the time of testing for the Project Implementation Report.
- a. At least twenty calendar days prior to conducting the testing required for preparation of the Project Implementation Report, the Project Sponsor shall mail notice to the Department, as well as to the resident of any legal dwelling unit within 25 feet of a transmitting antenna, of the date on which testing will be conducted. The Applicant will submit a written affidavit attesting to this mail notice along with the mailing list.
 - b. When requested in advance by a resident notified of testing pursuant to subsection (a), the Project Sponsor shall conduct testing of total power density of RF emissions within the residence of that resident on the date on which the testing is conducted for the Project Implementation Report.
13. Community Liaison. Within 10 days of the effective date of this authorization, the Project Sponsor shall appoint a community liaison officer to resolve issues of concern to neighbors and residents relating to the construction and operation of the facilities. Upon appointment, the Project Sponsor shall report in writing the name, address and telephone number of this officer to the Zoning Administrator. The Community Liaison Officer shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
14. Installation. Within 10 days of the installation and operation of the facilities, the Project Sponsor shall confirm in writing to the Zoning Administrator that the facilities are being maintained and operated in compliance with applicable Building, Electrical and other Code requirements, as well as applicable FCC emissions standards.
15. Screening.
- a. To the extent necessary to ensure compliance with adopted FCC regulations regarding human exposure to RF emissions, and upon the recommendation of the Zoning Administrator, the Project Sponsor shall:
 - i. Modify the placement of the facilities;
 - ii. Install fencing, barriers or other appropriate structures or devices to restrict access to the facilities;
 - iii. Install multi-lingual signage, including the RF radiation hazard warning symbol identified in ANSI C95.2-1982, to notify persons that the facility could cause exposure to RF emissions; or
 - iv. Implement any other practice reasonably necessary to ensure that the facility is operated in compliance with adopted FCC RF emission standards.

- b. To the extent necessary to minimize visual obstruction and clutter, installations shall conform to the following standards:
 - i. Antennas and back-up equipment shall be painted, fenced, landscaped or otherwise treated architecturally so as to minimize visual impacts;
 - ii. Rooftop installations shall be setback such that back-up facilities are not viewed from the street;
 - iii. Antennae attached to building facades shall be so placed, screened or otherwise treated to minimize any negative visual impact; and
 - iv. Although co-location of various companies' facilities may be desirable, a maximum number of antennas and back-up facilities on the Project Site shall be established, on a case-by-case basis, such that "antennae farms" or similar visual intrusions for the site and area is not created.
16. The Project Sponsor or Property Owner shall remove antennae and equipment that has been out of service for a continuous period of six months.
17. Periodic Safety Monitoring. The Project Sponsor shall submit to the Zoning Administrator 10 days after installation of the facilities, and every two years thereafter, a certification attested to by a licensed engineer expert in the field of EMR/RF emissions, that the facilities are and have been operated within the then current applicable FCC standards for RF/EMF emissions.
18. Emissions Conditions. It is a continuing condition of this authorization that the facilities be operated in such a manner so as not to contribute to ambient RF/EMF emissions in excess of then current FCC adopted RF/EMF emission standards; violation of this condition shall be grounds for revocation.
19. Noise and Heat. The WTS facility, including power source and cooling facility, shall be operated at all times within the limits of the San Francisco Noise Ordinance. The WTS facility, including power source and cooling facility, shall not be operated so as to cause the generation of heat that adversely affects a building occupant.
20. Implementation and Monitoring Costs.
 - a. The Project Sponsor, on an equitable basis with other WTS providers, shall pay the cost of preparing and adopting appropriate General Plan policies related to the placement of WTS facilities. Should future legislation be enacted to provide for cost recovery for planning, the Project Sponsor shall be bound by such legislation.
 - b. The Project Sponsor or its successors shall be responsible for the payment of all reasonable costs associated with the monitoring of the conditions of approval contained in this authorization, including costs incurred by this Department, the Department of Public Health, the Department of Electricity and Telecommunications, Office of the City Attorney, or any other appropriate City Department or agency pursuant to Planning Code Section 351(f)(2). The Planning Department shall collect such costs on behalf of the City.

- c. The Project Sponsor shall be responsible for the payment of all fees associated with the installation of the subject facility, which are assessed by the City pursuant to all applicable law.

21. All Conditions Basis for Revocation. The Project Sponsor or its successors shall comply fully with all conditions specified in this authorization. Failure to comply with any condition shall constitute grounds for revocation under the provisions of Planning Code Sections 174, 176 and 303(d). The Zoning Administrator shall schedule a public hearing before the Planning Commission to receive testimony and other evidence to demonstrate a finding of a violation of a condition of the authorization of the use of the facility and, finding that violation, the Commission shall revoke the Conditional Use authorization. Such revocation by the Planning Commission is appealable to the Board of Supervisors.

In the event that the project implementation report includes a finding that RF emissions for the site exceed FCC Standards in any uncontrolled location, the Zoning Administrator may require the Applicant to immediately cease and desist operation of the facility until such time that the violation is corrected to the satisfaction of the Zoning Administrator.

22. Complaints and Proceedings. Should any party complain to the Project Sponsor about the installation or operation of the facilities, which complaints are not resolved by the Project Sponsor, the Project Sponsor (or its appointed agent) shall advise the Zoning Administrator of the complaint and the failure to satisfactorily resolve such complaint. If the Zoning Administrator thereafter finds a violation of any provision of the Planning Code and/or any condition of approval herein, the Zoning Administrator shall attempt to resolve such violation on an expedited basis with the Project Sponsor. If such efforts fail, the Zoning Administrator shall refer such complaints to the Commission for consideration at the next regularly scheduled public meeting.

23. Severability. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Commission that these conditions of approval would have been adopted had such invalid sentence, clause, or section or part thereof not been included herein.

24. Transfer of Operation. Any carrier/provider authorized by the Zoning Administrator or by the Planning Commission to operate a specific WTS installation may assign the operation of the facility to another carrier licensed by the FCC for that radio frequency provided that such transfer is made known to the Zoning Administrator in advance of such operation, and all conditions of approval for the subject installation are carried out by the new carrier/provider, and the authorizing Motion is recorded on the deed of the property stating the new carrier/provider and authorizing conditions of approval.

25. Compatibility with City Emergency Services. The facility shall not be operated, nor caused to transmit on or adjacent to any radio frequencies licensed to the City for emergency telecommunication services such that the City's emergency telecommunications system experiences interference, unless prior approval for such has been granted in writing by the City.

Motion No. 18131
Hearing Date: July 1, 2010

CASE NO. 2010.0306C
10 Bernal Heights Boulevard

ES:\G\DOCUMENTS\Projects\CU\Bernal Heights 10\Clearwire\Motion (Conditional Use Authorization - Wireless).DOC

Fw: Clearwire acceptance of continuance; Planning Project 2010.0306C;
File 101045
Angela Calvillo
to:
Rick Caldeira
09/03/2010 10:30 AM
Cc:
"Joy Lamug"
Show Details

For the file

From: "William Stephens (Contractor)" [william.stephens@clearwire.com]
Sent: 09/03/2010 02:43 PM GMT
To: Judson True
Cc: 'Susan Horsfall' <susan@lewisloeven.com>; 'Paul Albritton' <pa@mallp.com>;
'lewis@lewisloeven.com' <lewis@lewisloeven.com>; "Joy.Lemug@sfgov.org"
<Joy.Lemug@sfgov.org>; Angela Calvillo
Subject: Clearwire acceptance of continuance; Planning Project 2010.0306C; File
101045

Dear Mr. True,

Pursuant to conversation with Susam Horsfall, Clearwire is appreciative of a continuance for the 2 appeals of the Planning Commission approvals at 10 Bernal Hts. Blvd, and the attendant CEQA categorical exemption, in order to work with the appellant during this interim to address their concerns.

Please advise if any additional action is required on our part.

Yours truly, Bill Stephens

William Stephens, Network Dev PM, San Francisco
cell 510-612-2511

Fw: Clearwire acceptance of continuance DATE; Planning Project
2010.0306C; File 101045

Angela Calvillo

to:

Rick Caldeira

09/03/2010 10:30 AM

Cc:

"Joy Lamug"

Show Details

For the file

From: "William Stephens (Contractor)" [william.stephens@clearwire.com]
Sent: 09/03/2010 02:58 PM GMT
To: Judson True
Cc: 'Susan Horsfall' <susan@lewisloeven.com>; 'Paul Albritton' <pa@mallp.com>;
'lewis@lewisloeven.com' <lewis@lewisloeven.com>; Angela Calvillo
Subject: RE: Clearwire acceptance of continuance DATE; Planning Project
2010.0306C; File 101045

Mr. True;

Please accept this acceptance below for the proposed continuance to September 28, 2010.

I apologize for this prior omission.

Thanks for your consideration,

Bill Stephens.

William Stephens, Network Dev PM, San Francisco
cell 510-612-2511

From: William Stephens (Contractor)
Sent: Friday, September 03, 2010 7:43 AM
To: 'Judson.True@sfgov.org'
Cc: 'Susan Horsfall'; 'Paul Albritton'; 'lewis@lewisloeven.com'; 'Joy.Lemug@sfgov.org'; 'Angela.Calvillo@sfgov.org'
Subject: Clearwire acceptance of continuance; Planning Project 2010.0306C; File 101045

Dear Mr. True,

Pursuant to conversation with Susam Horsfall, Clearwire is appreciative of a continuance for the 2 appeals of the Planning Commission approvals at 10 Bernal Hts. Blvd, and the attendant CEQA categorical exemption, in order to work with the appellant during this interim to address their concerns.

Please advise if any additional action is required on our part.

Yours truly, Bill Stephens

William Stephens, Network Dev PM, San Francisco
cell 510-612-2511

Fw: Clearwire acceptance of continuance DATE; Planning Project 2010.0306C; File 101045

Angela Calvillo to: Rick Caldeira
Cc: "Joy Lamug"

09/03/2010 10:30 AM

File

----- Original Message -----

From: Susan Horsfall [susan@lewisloeven.com]
Sent: 09/03/2010 09:21 AM MST
To: "William Stephens (Contractor)" <william.stephens@clearwire.com>
Cc: Paul Albritton <pa@mallp.com>; lewis@lewisloeven.com; Angela Calvillo; Judson True
Subject: Re: Clearwire acceptance of continuance DATE; Planning Project 2010.0306C; File 101045

campos staff just called to say they are calling Judson to confirm OK for continuance. so I think we're all good.

----- Original Message -----

From: "William Stephens (Contractor)" <william.stephens@clearwire.com>
To: "Judson True" <Judson.True@sfgov.org>
Cc: "Susan Horsfall" <susan@lewisloeven.com>, "Paul Albritton" <pa@mallp.com>, lewis@lewisloeven.com, "Angela Calvillo" <Angela.Calvillo@sfgov.org>
Sent: Friday, September 3, 2010 10:58:59 AM GMT -05:00 US/Canada Eastern
Subject: RE: Clearwire acceptance of continuance DATE; Planning Project 2010.0306C; File 101045

Mr. True;

Please accept this acceptance below for the proposed continuance to September 28, 2010 .

I apologize for this prior omission.

Thanks for your consideration,

Bill Stephens.

William Stephens, Network Dev PM, San Francisco

cell 510-612-2511

From: William Stephens (Contractor)
Sent: Friday, September 03, 2010 7:43 AM
To: 'Judson.True@sfgov.org'
Cc: 'Susan Horsfall'; 'Paul Albritton'; 'lewis@lewisloeven.com';
'Joy.Lemug@sfgov.org'; 'Angela.Calvillo@sfgov.org'
Subject: Clearwire acceptance of continuance; Planning Project 2010.0306 C;
File 101045

Dear Mr. True,

Pursuant to conversation with Susam Horsfall, Clearwire is appreciative of a continuance for the 2 appeals of the Planning Commission approvals at 10

Bernal Hts. Blvd , and the attendant CEQA categorical exemption, in order to work with the appellant during this interim to address their concerns.

Please advise if any additional action is required on our part.

Yours truly, Bill Stephens

William Stephens, Network Dev PM, San Francisco

cell 510-612-2511



Fw: Clearwire acceptance of continuance DATE; Planning Project
2010.0306C; File 101045 [project sponsor continuance agreement - JT]

Rick Caldeira to: Joy Lamug

09/03/2010 01:19 PM

----- Forwarded by Rick Caldeira/BOS/SFGOV on 09/03/2010 01:24 PM -----

From: Judson True/BOS/SFGOV
To: Angela Calvillo/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV, Tara
Sullivan/CTYPLN/SFGOV@SFGOV, Bill Wycko/CTYPLN/SFGOV@SFGOV
Cc: Cheryl Adams/CTYATT@CTYATT
Date: 09/03/2010 10:53 AM
Subject: Fw: Clearwire acceptance of continuance DATE; Planning Project 2010.0306C; File 101045
[project sponsor continuance agreement - JT]

Please see below for the file.

Judson True
Office of Supervisor David Chiu
City Hall, Room 264
San Francisco, CA 94102
415.554.7451 desk
415.554.7454 fax

----- Forwarded by Judson True/BOS/SFGOV on 09/03/2010 10:58 AM -----

From: "William Stephens (Contractor)" <william.stephens@clearwire.com>
To: "Judson.True@sfgov.org" <Judson.True@sfgov.org>
Cc: 'Susan Horsfall' <susan@lewisloeven.com>, 'Paul Albritton' <pa@mallp.com>,
'lewis@lewisloeven.com' <lewis@lewisloeven.com>, "Angela.Calvillo@sfgov.org"
<Angela.Calvillo@sfgov.org>
Date: 09/03/2010 08:13 AM
Subject: RE: Clearwire acceptance of continuance DATE; Planning Project 2010.0306C; File 101045

Mr. True;

Please accept this acceptance below for the proposed continuance to **September 28, 2010**.

I apologize for this prior omission.

Thanks for your consideration,

Bill Stephens.

William Stephens, Network Dev PM, San Francisco
cell 510-612-2511

From: William Stephens (Contractor)
Sent: Friday, September 03, 2010 7:43 AM
To: 'Judson.True@sfgov.org'
Cc: 'Susan Horsfall'; 'Paul Albritton'; 'lewis@lewisloeven.com'; 'Joy.Lemug@sfgov.org';
'Angela.Calvillo@sfgov.org'
Subject: Clearwire acceptance of continuance; Planning Project 2010.0306C; File 101045

Dear Mr. True,

Pursuant to conversation with Susam Horsfall, Clearwire is appreciative of a continuance for the 2 appeals of the Planning Commission approvals at 10 Bernal Hts. Blvd, and the attendant CEQA categorical exemption, in order to work with the appellant during this interim to address their concerns.

Please advise if any additional action is required on our part.

Yours truly, Bill Stephens

William Stephens, Network Dev PM, San Francisco
cell 510-612-2511

BOS-11

C-page

✓ File # (D104)

249 Bocana Street
San Francisco, Ca 94110

September 3, 2010

Angela Calvillo
Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 SEP -3 PM 4:47

BY

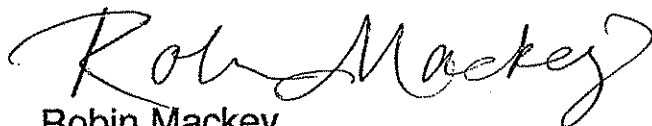
OC

RE: Appeal of Categorical Exemption from CEQA and Appeal of CUP,
Planning Case 2010.0306C, 10 Bernal Heights Blvd.

Dear Ms. Calvillo,

I am writing to inform the Board of Supervisors that I agree to Clearwire's request for a continuance of the hearings for the appeals from CEQA and of CUP originally calendared for Tuesday, September 7 at 2:30pm and request that they be scheduled at the latest possible date.

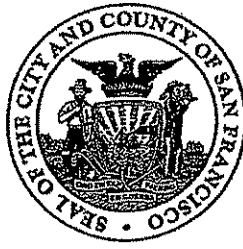
Thank you for your consideration,



Robin Mackey,
Bernal Heights Community Action

cc: Supervisor David Chiu, President of the Board
Supervisor David Campos
Supervisor Eric Mar
Supervisor Michela Alioto-Pier
Supervisor Carmen Chu
Supervisor Ross Mirkarimi
Supervisor Chris Daly
Supervisor Sean Elsbernd
Supervisor Bevan Dufty
Supervisor Sophie Maxwell
Supervisor John Avalos
Erika Jackson, Planning Department
Joyce Chu, Project Sponsor for Clearwire

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

August 4, 2010

John Rahaim, Director
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

File No. 101045, Planning Case No. 2010.0306C
10 Bernal Heights Boulevard Conditional Use Appeal

Dear Mr. Rahaim:

This office is in receipt of an appeal from the decision of the Planning Commission by its Motion No. 18131 dated July 1, 2010, approving a Conditional Use Authorization pursuant to Application No. 2010.0306C, subject to certain conditions, to install a wireless telecommunications facility consisting of five internet exchange switch antennas on an existing 50 foot tall communications tower and to modify the conditional use approval under Case No. 2008.1157C to change the number of allowed antennas on the site within a RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, and a 40-X Height and Bulk District, located at:

10 Bernal Heights Boulevard, Lot No. 003, in Assessor's Block No. 5548.

Pursuant to Ordinance No. 121-01, Supervisors David Campos, Eric Mar, David Chiu, Carmen Chu, Ross Mirkarimi, and John Avalos subscribed to this conditional use appeal as an alternative to obtaining the signatures of 20% of the property owners within 300 feet of the subject property. The hearing on the appeal is scheduled to be heard by the Board of Supervisors on Tuesday, September 7, 2010, at a time to be determined.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

c:
Appellant Contact, Robin Mackey, 249 Bocana Street, San Francisco, CA 94110
Property Owner, American Tower Company, 116 Huntington Avenue, Boston, MA 02116, w/copy of appeal
Project Sponsor, Joyce Chu, Modus Consulting, LLC, 833 Market Street, Suite 805, San Francisco, CA 94103, w/copy of appeal
Project Contact, Rick Hirsch, 2001 McAllister Street, #238, San Francisco, CA 94118, w/copy of appeal
Scott Sanchez, Acting Zoning Administrator, Planning Department, w/copy of appeal
Bill Wycko, Environmental Review Officer, Planning Department, w/copy of appeal
AnMarie Rodgers, Planning Department, w/copy of appeal
Tara Sullivan, Planning Department, w/copy of appeal
Cheryl Adams, Deputy City Attorney, w/copy of appeal
Kate Stacy, Deputy City Attorney, w/copy of appeal
Marlena Byrne, Deputy City Attorney, w/copy of appeal



Fw: Appeal of Determination of Exemption from Environmental Review for a Project Located at 10 Bernal Heights Blvd. [appellant continuance agreement - JT]

Rick Caldeira to: Joy Lamug

09/03/2010 01:19 PM

----- Forwarded by Rick Caldeira/BOS/SFGOV on 09/03/2010 01:24 PM -----

From: Judson True/BOS/SFGOV
To: Angela Calvillo/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV, Tara Sullivan/CTYPLN/SFGOV@SFGOV, Bill Wycko/CTYPLN/SFGOV@SFGOV
Cc: Cheryl Adams/CTYATT@CTYATT
Date: 09/03/2010 10:56 AM
Subject: Fw: Appeal of Determination of Exemption from Environmental Review for a Project Located at 10 Bernal Heights Blvd. [appellant continuance agreement - JT]

See below for the file.

Judson True
Office of Supervisor David Chiu
City Hall, Room 264
San Francisco, CA 94102
415.554.7451 desk
415.554.7454 fax

----- Forwarded by Judson True/BOS/SFGOV on 09/03/2010 11:01 AM -----

From: Erick Arguello <erick@lower24thstreet.org>
To: Judson.True@sfgov.org
Date: 09/02/2010 07:07 PM
Subject: Appeal of Determination of Exemption from Environmental Review for a Project Located at 10 Bernal Heights Blvd.

Dear Judson,

Thank you for your call. After speaking with Robin Mackey we both agree that a continuance to Sept 28, 2010 is acceptable.

Erick Arguello
Lower 24th St. Merchants and Neighbors Association/Baja 24

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

NOTICE OF CANCELLED MEETING

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN that the meeting of the San Francisco Board of Supervisors scheduled for Tuesday, September 7, 2010, at 2:00 p.m. at 1 Dr. Carlton B. Goodlett Place, Room 250, San Francisco, California, has been **CANCELLED**. Agenda items are being moved to the Regular Meeting of Tuesday, September 14, 2010, at 2:00 p.m., unless otherwise indicated.

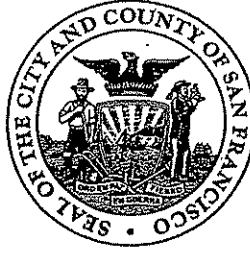
Please note, Special Order agenda items, scheduled for 2:30 p.m. will be heard at the Regular Meeting of the Board of Supervisors next Tuesday, September 14, 2010, at 2:30 p.m.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo, Clerk of the Board

POSTED: September 7, 2010

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, September ¹⁴7, 2010

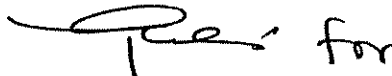
Time: 2:30 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Subject: Hearing of persons interested in or objecting to the decision of the Planning Commission's July 1, 2010, Conditional Use Permit identified as Planning Case No. 2010.0306C by its Motion No. 18131 under Planning Code Sections 209.6(b) and 303, to install a wireless telecommunications facility consisting of five internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and to modify the Conditional Use approval under Case No. 2008.1157C to change the number of allowed antennas on the site within the RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, and a 40-X Height and Bulk District, on property located at 10 Bernal Heights Boulevard, Lot No. 003, in Assessor's Block No. 5548. (District 9) (Filed by Erick Arguello on behalf of the Lower 24th Street Merchant Association and subscribed by Supervisors Campos, Mar, Chiu, Chu, Mirkarimi, and Avalos)

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, September 2, 2010.

A handwritten signature in black ink, appearing to read "Angela Calvillo for".

Angela Calvillo
Clerk of the Board

DATED: August 27, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Conditional Use Authorization Appeal 10 Bernal Heights Boulevard

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

DATE: August 31, 2010
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: John Rahaim, Planning Director – Planning Department (415) 558-6411
 Erika S. Jackson, Case Planner – Planning Department (415) 558-6363
RE: BOS File No. 10-1045, Planning Case No. 2010.0306C:
 Appeal of Conditional Use Authorization for 10 Bernal Heights Boulevard
HEARING DATE: September 7, 2010
ATTACHMENTS:

BY *[Signature]*
 2010 SEP - 1 PM 12:05
 Reception: 415.558.6378
 Fax: 415.558.6409
 Planning Information: 415.558.6377
 RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO

- A. Planning Commission Motion 18131, dated July 1, 2010
- B. Site maps
- C. Department of Public Health Referral Reports (March 30, 2008 and April 16, 2010)
- D. Planning Commission Motion 17964, dated October 15, 2009
- E. Clearwire 5-year Plan
- F. Site photographs
- G. Plans

PROJECT SPONSOR: William Stephens, 204 Bay Vista Circle, Sausalito, CA 94965-1081, (510) 612-2511

APPELLANT: Erick Arguello, Lower 24th Merchant Association, 1065A Hampshire Street, San Francisco, CA 94110, (415) 902-5893

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the "Board") regarding the Planning Commission's ("Commission") approval of a Conditional Use Authorization under Planning Code Sections 303 (Conditional Use Authorization), and 209.6(b) (Public Facilities and Utilities), which modified a previous Conditional Use Authorization approved October 8, 2009 (Motion 17964), authorizing the installation of telecommunications equipment on the existing cellular tower at 10 Bernal Heights Boulevard (aka Bernal Heights Hill) ("the Project").

This response addresses the appeal ("Appeal Letter") to the Board filed on August 2, 2010 by Erick Arguello. The Appeal Letter referenced the proposed project in Case No. 2010.0306C.

The decision before the Board is whether to uphold or overturn the Commission's approval of Conditional Use Authorization to allow the modification of a wireless telecommunications facility on an existing 50 foot tall communications tower and to modify the Conditional Use approval (Planning Commission Motion 17964) at 10 Bernal Heights Boulevard.

PLEASE NOTE that regardless of the outcome of this appeal, telecommunication carriers will be able to install new antennas on the existing tower, as set forth in Conditional Use Authorization Motion 17964 approved on October 15, 2009 as detailed below.

SITE DESCRIPTION & PRESENT USE

The Project Site is located at the top of the hill in Bernal Heights Park. The site is owned and operated by American Tower Corporation and contains one equipment building and an approximately 50 foot tall telecommunications tower with 62 antennas installed. The antennas are operated by various tenants including Covad, WiLine, T-Mobile, and the City and County of San Francisco.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is located within the Bernal Heights neighborhood and is zoned RH-1(D) (Residential, House, Single-Family, Detached). The parcel is surrounded by the Bernal Heights Park which is within a P (Public) Zoning District. Land uses surrounding the park are primarily residential.

PROJECT DESCRIPTION

The project is to modify the previously-approved telecommunications installation on the existing tower in Bernal Heights Park. Specifically, the project will modify the type of antennas authorized on the site. The current authorization is for 14 dish antennas and 57 panel antennas on the tower (with a total of 71 permitted on the site). Clearwire (the project sponsor) requested to modify the type of antennas to 19 dish and 52 panel antennas (Clearwire would install 5 dish antennas in total). Each dish ranges from 1 to 2.5 feet in diameter, and the associated equipment cabinet would be placed within the existing equipment structure on the hill.

BACKGROUND

Original Telecommunication Towers Approved

On October 6, 1960, the Planning Commission, by Resolution No. 5313, authorized the construction of two approximately 50 foot tall telecommunications towers and an equipment building in Bernal Heights Park with a maximum of eight horn type antennas on each tower for use as a microwave radio relay station for telephone service. Research regarding that project has found that there was only one tower constructed and that there are currently approximately 62 antennas on the tower.

Modification to the 1960 Conditional Use Authorization

On October 2, 2008, T-Mobile filed a Conditional Use Authorization application (Planning Case No. 2008.1157C) to install eight panel antennas and one dish antenna and related equipment as part of its wireless telecommunications network on the existing 50 foot tall tower in Bernal Heights Park.

The Department requested that a survey be completed on the number and type of antennas that are on the Bernal Heights tower. The results showed that the number of existing antennas on the communication tower exceeded what was permitted in the 1960 Conditional Use Authorization. As a result, the Department asked T-Mobile to work with the towers owner, American Tower Corporation ("ATC"), to bring the existing facilities into compliance with that Conditional Use Authorization. ATC submitted a Business Plan and Equipment Inventory to the Department. This plan outlined the tenant(s), service type, and equipment type for each of the 62 existing active antennas, the 9 antennas proposed to

be installed by T-Mobile, and 9 existing dead antennas. The plan also outlined the projected additional facilities over the next 3-5 years as 27 new antennas (15 panel antennas, 4 omni antennas, and 8 microwave dishes ranging in size from 2 to 4 feet in diameter).

As a result of this plan, T-Mobile's Conditional Use Authorization application was to do the following:

1. Legalize the antennas constructed in the past 50 years;
2. Set a maximum number of antennas on the site that is compatible with current technology demands;
3. Remove the existing 9 'dead' antennas; and
4. Streamline the process for future antenna tenants.

On October 15, 2009, the Commission granted a Conditional Use Authorization to install 8 panel antennas, 1 dish antenna, and related equipment on the Bernal Heights tower. The Commission also modified the 1960 Conditional Use approval under Case No. CU60.13 (Resolution 5313) to establish the existing tower configuration and number of antennas on the site.

The 1960 approval was for two cellular towers with eight antennas each. The Commission recognized that technology demands have changed over the past 50 years and set the maximum number of antennas permitted on the tower. The Commission came up with the final number by adding the existing antennas on the tower (including the dead antennas) plus the 9 proposed T-Mobile antennas for a total of 71 antennas. The Commission authorized the October 2008 Conditional Use Authorization with the following conditions:

1. The Conditional Use Authorization restricts the number of towers in Bernal Heights Park to one and limits the number of antennas to 71. The antennas will consist of 14 dish antennas (with a diameter of 4 feet or less) and 57 other types of antennas (including cable, panel, access, omni, radiowave, amplifier, bogner, whip, dipole, and yagi) at any time.
2. The Property Owner is responsible for the removal of the 9 inactive antennas on the tower.
3. The Property Owner is responsible for requiring tenants to file Building Permit Applications to legalize all existing antennas.
4. Installation of additional antennas beyond the 71 authorized requires the approval of a new Conditional Use Authorization. Carriers may upgrade or install new panel antennas with a building permit and Department review as long as the proposal conforms to the Conditional Use Authorization (i.e., number and type).
5. Prior to Department approval of T-Mobile's Building Permit Application, a new landscaping plan must be submitted for the Project Site and approved by the Zoning Administrator. Prior to permit issuance, the Project Sponsor shall install landscaping per the approved plan.

As of October 2009, as long as a carrier matched the type of antennas approved by the Commission, they could install them with a building permit.

Clearwire Conditional Use Authorization Application Filed

On April 29, 2010, Clearwire submitted a Conditional Use Authorization application to install 5 dish antennas on the Bernal Heights tower. Because the number of dish antennas exceed what the Commission approved in October 2009 (by 5 dish antennas), Clearwire had to request a modification of the Conditional Use Authorization. The total number of antennas remained 71, but the number of dish would increase from 14 to 19.

The Department determined the application to be categorically exempt from the environmental review process (CEQA) pursuant to exemption Classes 1, 3 and 11 of Title 14 of the California Administrative Code.

The Department of Public Health ("DPH") reviewed the Project and found that it would comply with the current Federal Communication Commission safety standards for radiofrequency radiation exposure and with the Planning Department's Wireless Guidelines, as outlined in a report to the Department dated April 27, 2010.

The WTS Facilities Siting Guidelines identify different types of buildings for the siting of wireless telecommunications facilities, with Location Preference 1 being the most desirable location and Location Preference 7 being the least desirable location. Under the Guidelines, 10 Bernal Heights is a Location Preference Number 1, as it is a preferred location on a publicly used structure.

2010 Conditional Use Authorization Hearing

On June 24, 2010, the Commission granted a Conditional Use Authorization for the modification of the types of antennas permitted on the tower, allowing Clearwire to install five internet services exchange round dish antennas. In doing so, the Commission modified the Conditional Use Authorization under Case No. 2008.1157C to change the number of allowed antennas on the site from 14 round dish antennas and 57 panel antennas to 19 round dish antennas and 52 panel antennas.

The Commission allowed the modification of the types of antennas because they found the impact of the two types of antennas to be comparable to what was approved in 2009. The round dish antennas proposed by Clearwire range from 1 foot to 2 feet in diameter and have a substantially lower surface area than panel antennas. Additionally, the round dish antennas are much smaller and have a substantially lower visual impact than the inactive ("dead") antennas that are currently on the tower that would be replaced by the Clearwire antennas. Lastly, there is a substantially lower RF emissions level at ground level due to the point-to-point feature of the round dish antenna that concentrates the signal in a linear beam and does not allow the signal to reach ground level as it does with panel antennas.

Please note that regardless of the outcome of this appeal, Clearwire and other carriers will be able to install new antennas within the maximum number of 71 antennas on the tower that was set by the Conditional Use Authorization Motion 17964, approved on October 15, 2009. Clearwire filed a

Conditional Use Authorization application was to modify the type of antennas allowed at the site to fit their technology and business model.

CONDITIONAL USE AUTHORIZATION REQUIREMENTS

The Planning Commission established guidelines for the installation of wireless telecommunications facilities in 1996 ("Guidelines").¹ These Guidelines set forth the land use policies and practices that guide the installation and approval of wireless facilities throughout San Francisco. A large portion of the Guidelines was dedicated to establishing location preferences for these installations. The Board of Supervisors, in Resolution No. 635-96, provided input as to where wireless facilities should be located within San Francisco.² The Guidelines were updated by the Commission in 2003, requiring community outreach, notification, and detailed information about the facilities to be installed.

Section 8.1 of the Guidelines outlines Location Preferences for wireless facilities. There are five primary areas where the installation of wireless facilities should be located:

1. Publicly-used Structures: such facilities as fire stations, utility structures, community facilities, and other public structures;
2. Co-Location Site: encourages installation of facilities on buildings that already have these installations;
3. Industrial or Commercial Structures: warehouses, factories, garages, service stations;
4. Industrial or Commercial Structures: supermarkets, retail stores, banks; and
5. Mixed Use Buildings in High Density Districts: housing above commercial or other non-residential space.

Before the Planning Commission can review an application to install a wireless facility, the project sponsor must submit a five-year facilities plan, which must be updated biannually, an emissions report and approval by the Department of Public Health, Section 106 review, and details about the facilities to be installed.

Clearwire submitted these materials in October 2009 with updates in April 2010.

In addition to the criteria outlined for the installation of a wireless facility, the Commission must also refer to the criteria outlined in Section 303 (Conditional Uses) of the Planning Code. Section 303 states that the following must be met in order for the Commission to grant approval of an application:

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and

¹ Wireless Telecommunications Services (WTS) Facilities Siting Guidelines, August 15, 1996.

² BOS File No. 189-92-2, Resolution 635-96, dated July 12, 1996.

2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
 - a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
 - b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading and of proposed alternatives to off-street parking, including provisions of car-share parking spaces, as defined in Section 166 of this Code.
 - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
 - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
 - e. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the Master Plan.

If a proposed wireless telecommunications facility meets the criteria outlined in the Guidelines and the criteria outlined in Section 303 of the Code, then the Commission may grant Conditional Use Authorization.

Lastly, it should be noted that under the 1996 Federal Telecommunications Act, local jurisdictions cannot deny wireless facilities based on Radio Frequency (RF) radiation emissions so long as such facilities comply with the FCC's regulations concerning such emissions.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the Appeal Letter are cited in a summary below and are followed by the Department's response:

Issue 1: The Appellant contends that the proposed wireless facility is neither necessary nor desirable as required by Section 303 of the Code.

Response 1:

The Planning Commission found the Project to meet the criteria of Section 303, specifically that it was necessary and desirable. The Commission found the following findings that the Project is necessary and desirable:

1. The project complies with the applicable requirements of the Planning Code.
2. The project is consistent with the objectives and policies of the General Plan.
3. The Project is consistent with the 1996 WTS Facilities Siting Guidelines, as outlined in Planning Commission Resolution No. 14182.

4. The project site is a Location Preference 1, a preferred location, according to the Wireless Telecommunications Services (WTS) Siting Guidelines because the project is located on a publicly used structure.
5. The internet services exchange round dish antennas have a substantially lower RF emissions level at ground level due to the point-to-point feature of the antenna that is concentrated in a linear beam and does not reach ground level as traditional panel antennas do.

Clearwire submitted a report evaluating the RF emissions that would be generated by the antennas.³ The report concludes that the wireless telecommunications facilities, as proposed, comply with the prevailing FCC-adopted health and safety standards limiting human exposure to RF energy, and would not cause a significant effect on the environment. Pursuant to DPW Order No. 177,163, prior to approval of a Personal Wireless Service Facilities Permit, the Department of Public Health (DPH) ensures that proposed project's RF emissions comply with FCC-adopted public exposure limits.

The proposed project involves the installation of 5 dish antennas that are within the maximum number of permitted antennas authorized at the site by Conditional Use Authorization Motion No. 17964. The cumulative impact of the 71 antennas was considered with the 2009 application and included a report evaluating the cumulative RF emissions that would be generated by all 71 antennas on the tower.⁴ The report concludes that the proposed and existing wireless telecommunications facilities comply with the prevailing FCC-adopted health and safety standards limiting human exposure to RF energy, and would not cause a significant effect on the environment. Therefore, the impacts of the Clearwire installation would not by itself, have cumulative impacts.

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6. The Project will provide necessary facilities for emergency transmission throughout the neighborhood, community and the region. The City and County of San Francisco currently has 18 antennas on the tower used for such communications.
 7. The Clearwire installation will provide a reasonable and competitive data option outside of traditional cable internet service providers, thus improving prices and services, especially to lower income households that may not be connected to or cannot afford to connect to cable internet service providers.
 8. The Property Owner of the tower has worked with the Department and the Bernal Heights Tree Committee to redesign a landscaping plan that will provide better screening of the base of the tower and the equipment building from distant views.

³ Hammett & Edison, Inc., April 16, 2010.

⁴ Hammett & Edison, Inc., March 30, 2008.

9. The installation provides necessary connections to provide new data service, coverage, and capacity to five neighborhoods within San Francisco that are currently receiving no coverage.

a. Data Service

Clearwire will not provide voice transmissions and will only provide data transmissions (similar to Sprint's 4G and broadband wireless internet) that allows for the transfer of data. Clearwire will use a technology that is different from traditional wireless telecommunications facilities in that they will not use fiberoptic cables connected to panel antenna sites that is used by traditional wireless telecommunications facilities. Instead, to meet the data demands and for the service to be as quick and efficient as possible, they will use internet services exchange round dish antennas in addition to data panel antennas.

While the functions of each type of dish and panel antenna are different, the two systems must work together in order for the network to function. The panel antennas directly reach the consumer products (laptops, phones, etc.), and will allow a mobile device to communicate with the network in order for data to be transferred to the device. The internet services exchange antennas (dish) connect the individual sites together and allow the panel antennas to function. These antennas connect from site to site and eventually all come together at the central hub where the data is transferred through the fiberoptic cable into Clearwire's main system.

The internet services exchange antennas have taken the place of fiberoptic cables that typically allow the data to transfer from the consumer product directly to the panel antenna and then to the internet services exchange round dish antennas which transmit wirelessly through the air to the central hub. In order for the internet services exchange antennas to function, they must have a direct line of sight to other antenna sites without obstructions. The site at the top of the hill on Bernal Heights Park was chosen because it has direct line of sight to many of Clearwire's existing sites that are currently disconnected from the rest of the network.

b. Coverage

The 10 Bernal Heights Boulevard site is necessary to provide connections to new locations, thus creating new coverage areas located within five neighborhoods within San Francisco that are currently receiving no coverage. These sites are located at 375 Alabama Street, 70 Charter Oak, 528 Valencia, 1485 Bay Shore Boulevard, and 5226 Mission Street. These five sites contain panel antennas that directly reach the consumer products (laptops, phones, etc.) and allow the mobile device to communicate with the network in order for data to be transferred to the device.

c. Capacity

This site is necessary to establish Clearwire's capacity for customers in the neighborhood.

For the above reasons, the Commission found that the installation of the proposed wireless telecommunications facility to be necessary and desirable and met the Section 303 Conditional Use Authorization criteria.

Issue 2: The Appellant contends that the proposed wireless facility is incompatible with the existing residential community.

Response 2: The subject property is located at the top of the hill in Bernal Heights Park. The telecommunications tower and building with related equipment is located on a 34,120 square foot residentially zoned lot completely surrounded by Bernal Heights Park. The park is located on a 878,000 square foot lot that is zoned as public open space. The subject property is located in the middle of the southern half of this lot. Although the subject property is zoned residential, it contains no residential land uses. Uses surrounding the park are primarily residential with the nearest residences located a couple hundred feet from the subject property. As such, the Commission found the Project to be compatible with the existing residential community in that:

1. The wireless facility is neighborhood-serving, as it will provide coverage and capacity to the surrounding residential and commercial tenants who will use Clearwire's service.
2. The subject property is the most preferred location (Location 1) under the WTS Guidelines for siting a wireless telecommunications facility.
3. The Project will utilize an existing telecommunications tower approved in 1960 and related equipment building that was constructed for the purpose of housing communications antennas.
4. The Project will remove 5 out of the 9 dead antennas not in use on the existing telecommunications tower, lessening the visual impact of antennas on the tower.
5. The Project will allow the installation of antennas that do not require the installation of fiberoptic cable that is often hung from visible locations along public rights of way, thus lessening the visual impact of public utilities in San Francisco.
6. There have been numerous Commission approvals within the past year that have authorized macro wireless installations on mixed-use buildings in more restrictive districts.

The Commission also modified the Conditional Use approval under Case No. 2008.1157C to change the number of allowed antennas on the site from 14 round dish antennas and 57 panel antennas to 19 round dish antennas and 52 panel antennas. The Commission found that changing the number of permitted round dish antennas at the site did not create an additional visual impact in that Clearwire's five proposed internet services exchange round dish antennas range from 1 foot to 2 feet in diameter and have a substantially lower surface area than panel antennas. The antennas are much smaller and have a minimal visual impact than the inactive antennas that are currently on the tower that would be replaced

by the Clearwire antennas. The Project therefore, was found to be compatible with the existing context character and would not have any impact on the adjacent residential district.

CONCLUSION

For the reasons stated above, the Planning Department recommends that the Board uphold the Planning Commission's decision in approving the Conditional Use authorization for the Clearwire Wireless Telecommunication Facility at 10 Bernal Heights Boulevard and deny the appeal.

ATTACHMENTS

Document is available
at the Clerk's Office
Room 244, City Hall

clearwire

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Walnut Creek, CA
94596

p: 510-612-2511
www.clear.com

BOS-1
CA
COB

File 101045

August 31, 2010

Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall room 244
San Francisco, CA 94102-4689

Attn: Angela Calvillo

Re: file No 101045, Planning Case 2010.0306C, 10 Bernal Hts Blvd. Appeal of CUP

Dear Ms. Calvillo;

The project sponsor, Clearwire, requests a continuance for the scheduled hearing of the subject appeal, currently scheduled for Sept 7, 2010.

Notice of the scheduled hearing has not yet been received and Clearwire was only made aware of the hearing date through calling the Planning Department for the status on 8/26.

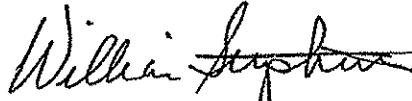
We are advised that notices were sent last Friday, 8/27.

We request this continuance in order to have enough time to submit all 40 informational packages to the Planning Dept, which became known to us on Monday, 8/30.

After an 8 month process through the Planning Department to a unanimous approval by the Planning Commission, Clearwire deserves an opportunity to present a full description of services and network requirements to the Board for their review in this matter.

Your immediate attention and consideration are greatly appreciated.

Very respectfully,



William Stephens, Project Mgr, Clearwire
Cell: 510-612-2511

RECEIVED
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