

1 [Adopting findings related to the conditional use appeal on property located at 1017 Ocean
2 Avenue.]

3 **Motion adopting findings related to the appeal of the approval of the Planning**
4 **Commission of Conditional Use Application No. 2002.1231C (which authorized, subject**
5 **to conditions, the installation of three panel antennas on a stair penthouse located at**
6 **an existing three-story multi-use structure (commercial/residential) as part of the**
7 **wireless telecommunications network operated by Verizon Wireless) within an NC-2**
8 **(Small-Scale Neighborhood Commercial) Zoning District and a 40-X Height and Bulk**
9 **District, pursuant to Section 711.83 of the Planning Code, on property located at 1017**
10 **Ocean Avenue, south side between Lee and Harold Avenues (Lot 041 in Assessor's**
11 **Block 6945).**

12 The appellant, Tsu Lan Lam, filed a timely appeal on May 24, 2003, pursuant to
13 Section 711.83 of the Planning Code, protesting the approval by the Planning Commission of
14 an application for a conditional use authorization (Conditional Use Application No.
15 2003.1231C, approved by Planning Commission Motion No. 16558 on March 27, 2003), to
16 install, subject to certain conditions imposed by the Planning Commission, three panel
17 antennas on a stair penthouse located at an existing three-story multi-use structure
18 (commercial/ residential) as part of the wireless telecommunications network operated by
19 Verizon Wireless within an NC-2 (Small-Scale Neighborhood Commercial) Zoning District and
20 a 40-X Height and Bulk District, pursuant to Section 711.83 of the Planning Code, on property
21 located at 1017 Ocean Avenue, south side between Lee and Harold Avenues (Lot 041 in
22 Assessor's Block 6945).

23 The San Francisco Planning Commission adopted the Wireless Telecommunications
24 Services ("WTS") Facilities Siting Guidelines in August of 1996 ("Guidelines") to assist the
25 Planning Department in its consideration of applications for conditional use authorization to

1 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The
2 Guidelines establish location preferences for installation of WTS facilities throughout the City.
3 The location preferences set forth seven categories, with location preference 1 being the most
4 preferred sites and location preference 7 being the most disfavored sites. The property
5 located at 1017 Ocean Avenue would fall within a location preference 5 because it consists of
6 housing above a commercial space within an NC-2 Zoning District. The property falls within a
7 location preference 2 because there is an existing WTS antenna on the property. The area
8 immediately surrounding the commercial district on Ocean Avenue where the property is
9 located is entirely residential and falls with a location preference 7.

10 On June 17, 2003, the Board of Supervisors conducted a duly noticed public hearing
11 on the appeal from the Planning Commission's approval of the conditional use application
12 referred to in the first paragraph of this motion. Following the conclusion of the public hearing
13 on June 17, 2003, the Board voted to disapprove the decision of the Planning Commission
14 (Planning Commission Motion No. 16558) and denied the issuance of the requested
15 Conditional Use Application No. 2003.1231C by a vote of eight to two.

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

19 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and
20 County of San Francisco hereby adopts as its own and incorporates by reference herein, as
21 though fully set forth, the findings made by the Planning Commission in its Motion No. 16558
22 on March 27, 2003, except as indicated below; and be it

23 FURTHER MOVED, That the Board of Supervisors further took notice that the project
24 was categorically exempt from environmental review as a Class I exemption under Title 14 of
25 the California Administrative Code. The Board finds that there have been no substantial

1 changes in project circumstances and no new information of substantial importance that
2 would change the determination of categorical exemption issued by the Planning
3 Commission; and, be it

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

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

9 2. The public testimony at the public hearing and the public documentation
10 submitted in support of the appellant's objections to the decision of the Planning Commission
11 supported the appellant's position that there is no necessity for the proposed WTS facility to
12 be approved and installed for residential or business purposes in the neighborhood or the
13 community because the proposed WTS facility will only be used to provide an unnecessary
14 and redundant service in the geographic area of the proposed site.

15 3. Members of the public testified that at least three other wireless carriers provide
16 adequate service in the geographic area of the proposed WTS facility. In addition, evidence
17 in the record demonstrated that Sprint PCS has an existing WTS facility at the same location
18 as the applicant's proposed WTS facility and that Cingular Wireless, Sprint PCS and
19 MetroPCS have WTS facilities on the roof of a fire station located nearby at 1000 Ocean
20 Avenue. Accordingly, members of the public testified, overwhelmingly, that there was not a
21 need for an additional WTS facility in this neighborhood.

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

1 because the proposed WTS facility is not necessary to meet the applicant's service demands
2 within the geographic service area defined by the applicant.

3 5. The written and oral information provided by the applicant to the Planning
4 Commission and the Board shows that, according to the applicant, its present service in the
5 area of the proposed WTS facility is "marginal."

6 6. Notwithstanding this information submitted by the applicant, at the June 17, 2003
7 public hearing the appellant submitted information that showed that the applicant had
8 acceptable coverage in the geographic area of the proposed WTS facility. Testimony from
9 members of the public also indicated that the applicant has adequate coverage in the vicinity
10 of the proposed WTS facility.

11 7. The public testimony at the public hearing and the public documentation
12 submitted in support of the appellant's objections to the decision of the Planning Commission
13 supported the appellant's position that the location of the proposed WTS facility is
14 incompatible with the existing character of the neighborhood, contrary to the requirements of
15 Section 303(c)(1) of the Planning Code.

16 8. Appellants showed that the City has gone to great expense to improve Ocean
17 Avenue including the block between Lee and Harold Avenues where the proposed WTS
18 facility would be located. These improvements included new sidewalks and transit platforms.
19 Further, the installation of three additional WTS antennas at this location would give the
20 property and the neighborhood the appearance of an antennae farm. While the Planning
21 Commission in the Guidelines recognized the advantage of co-locating WTS facilities, the
22 Planning Commission also noted the importance of avoiding the antennae farm visual impact
23 of too many antennas on one property.

24 9. The public testimony at the public hearing and the public documentation
25 submitted in support of the appellant's objections to the decision of the Planning Commission

1 supported the appellant's position that the location of the proposed WTS facility is
2 undesirable, contrary to the requirements of Section 303(c)(1) of the Planning Code. Forty-
3 three percent of persons owning property within 300 feet of the proposed site have subscribed
4 to the appeal. During the June 17, 2003 hearing before the Board, there was substantial
5 opposition to the proposed site from members of the public.

6 10. 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 unreasonably discriminate against
8 the applicant in favor of providers of functionally equivalent services.

9 11. 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 limit or prohibit access to wireless
11 telecommunications service in the geographic area of the proposed site.

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

17 13. There is nothing in the record to suggest that the applicant exhausted its search
18 for alternative sites for the proposed WTS facility or that the proposed WTS facility would be
19 the least intrusive means for the applicant to improve its service quality in the geographic area
20 of the proposed site.

21 14. During the public hearing on June 17, 2003 and in the public documentation
22 members of the public expressed concern that the radio frequency emissions from the
23 proposed WTS facility would have adverse health effects on persons residing in the vicinity of
24 the proposed site. In making these statements, members of the public exercised their
25 constitutional right to petition the government. However, there is evidence in the record that

1 the radio frequency emissions from the proposed WTS facility would comply with regulations
2 promulgated by the Federal Communications Commission. Thus, in disapproving the
3 decision of the Planning Commission and denying the issuance of the requested conditional
4 use application, the Board has not relied on the public testimony or public documentation
5 concerning this issue and the Board has not based its determination on such a ground.

6 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
7 the Board of Supervisors finds that Finding 8 made by the Planning Commission was incorrect
8 and without substantiation, and the Board finds that the installation of the proposed WTS
9 facility is not necessary for the neighborhood or the community because the neighborhood
10 and the community are adequately served by existing WTS facilities in the neighborhood and
11 because the proposed WTS facility is not necessary to meet the applicant's service demands
12 within the geographic service area defined by the applicant.

13 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
14 the Board of Supervisors finds that Finding 8 made by the Planning Commission was incorrect
15 and without substantiation, and the Board finds that the installation of the proposed WTS
16 facility is not desirable for and compatible with the neighborhood or the community because
17 the proposed facility will result in an additional intrusion of unnecessary, noticeable equipment
18 into a neighborhood that contains a high proportion of residential property and small
19 businesses and that the City has gone to great expense to improve; and because the
20 neighborhood already has a number of WTS facilities in the vicinity of the proposed site giving
21 the property and the neighborhood the appearance of an antennae farm; and because the
22 placement of the proposed WTS facility is not so located, designed and treated architecturally
23 as to minimize visibility from public places; and because the proposed WTS facility is not
24 generally in harmony with neighborhood character.

25 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,

1 the Board of Supervisors finds that Finding 9 made by the Planning Commission was incorrect
2 and without substantiation, and finds that the installation of the proposed WTS facility is not in
3 conformity with, and would not implement the policies of the City's General Plan, in that the
4 installation of the proposed WTS facility will not further any of the objectives referred to by the
5 Planning Commission.

6 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
7 the Board of Supervisors finds that Finding 10 made by the Planning was incorrect and
8 without substantiation, and the Board finds that the installation of the proposed WTS facility
9 does not conform with the planning priorities established by Section 101.1(b) of the Planning
10 Code because the proposed WTS facility: (i) is not necessary to preserve and enhance
11 existing neighborhood-serving retail uses and to preserve and enhance future opportunities
12 for resident employment in and ownership of such businesses (see Section 101.1(b)(1)); (ii) is
13 not necessary to conserve and protect existing housing and neighborhood character (see
14 Section 101.1(b)(2)); (iii) is not necessary to preserve and enhance the City's supply of
15 affordable housing (see Section 101.1(b)(3)); (iv) is not necessary to maintain a diverse
16 economic base by protecting the City's industrial and service sectors from displacement due
17 to commercial office development or to enhance future opportunities for resident employment
18 and ownership in these sectors (see Section 101.1(b)(5)); (v) is not necessary to add to the
19 City's preparedness to protect against injury and loss of life in an earthquake (see Section
20 101.1(b)(6)); (vi) is not necessary to preserve any landmarks and historic buildings (see
21 Section 101.1(b)(7)); and (vii) is not necessary to protect City parks and open space and their
22 access to sunlight and vistas from development (see Section 101.1(b)(8)).

23 FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
24 the Board of Supervisors finds that Finding 11 made by the Planning Commission was
25 incorrect and without substantiation, and the Board finds that the conditional use authorization

1 would not promote the health, safety and welfare of the City, and will only add an unnecessary
2 and redundant service and will result in an additional intrusion of unnecessary, noticeable
3 equipment into a neighborhood that contains a high proportion of residential property.

4 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
5 competing public and private interests, disapproved the decision of the Planning Commission
6 by its Motion No. 16558, dated March 27, 2003, and denied the issuance of Conditional Use
7 Application No. 2003.1231C.

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