



September 19, 2019

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Mayor

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President Rick Swig  
Vice President Ann Lazarus  
Commissioner Darryl Honda  
Commissioner Rachael Tanner  
Commissioner Eduardo Santacana  
City and County of San Francisco  
Board of Appeals  
1650 Mission Street, Suite 304  
San Francisco, CA 94103

Re: Appeal Nos. 19-070  
Public Works Permit No. 17WR-0252

Dear President Swig, and Vice President Lazarus, and Commissioners Honda, Tanner and Santacana:

Public Works submits this opposition to the rehearing request filed by appellant Ronald D. Rattner in Appeal No. 19-070, which concerns Personal Wireless Service Facility Site Permit No. 17WR- 0252 ("Permit") issued to Verizon Wireless under Article 25 of the Public Works Code. The Permit authorized Verizon Wireless to install a Personal Wireless Service Facility ("Wireless Facility") in the vicinity of 2620 Laguna Street.

In his rehearing request, appellant argues that rehearing is required for the following reasons: (1), on August 29, 2019, appellant discovered what he refers to as "previously unknown documentary evidence that Verizon (and AT&T) are *knowingly* selling products and installing antennas that pollute." Appellant's so-called evidence consists of disclaimers contained in equipment insurance policies that Verizon Wireless and AT&T offer to their customers. As Public Works will show, these insurance policies

are neither new evidence under the Rule of Board of Appeals ("Board"), nor a sufficient grounds to grant rehearing.

(2), The Precautionary Principle requires the Board to grant rehearing due to the existence of "[h]ighly credible worldwide independent studies [that] now raise **indisputable** doubts" about the health and safety of "wireless network technologies." Appellant raised the Precautionary Principle on his appeal. In denying his appeal, this Board already found that it cannot rely on the Precautionary Principle to grant the appeal and deny the Permit. Nothing in his rehearing request should cause the Board to reverse that decision.

#### **THE BOARD OF APPEALS SHOULD DENY APPELLANT'S REHEARING REQUEST**

##### **A. The Board's Rules Limit the Grounds for Granting Rehearing**

In denying his appeal, the Board has already found that Verizon Wireless fully complied with Article 25 and that Public Works properly issued the appeal. Under Rule 9(b) of the Board's Rules, the Board may grant rehearing only in "extraordinary cases, and to prevent manifest injustice." In addition, Rule 9(b) requires an appellant seeking rehearing to show that "new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing." In this regard, Rule 9(b) is inflexible. It does not allow the Board to grant rehearing simply because the appellant failed to raise an issue during the appeal that could have been raised: "Failure to exercise due diligence to produce the new facts and circumstances at the previous hearing shall be deemed grounds for denial of the request."

**B. Appellant Has Not Presented the Board with any New Evidence that Warrants a Rehearing**

Appellant's "new" evidence consists of disclaimers in equipment insurance policies that Verizon Wireless and other wireless carriers offer to their customers for their cellular phones. These policies contain a disclaimer for "Pollutants" that include "magnetic and electromagnetic" fields, "microwaves" and "artificially produced ionizing or non-ionizing radiation."

This so-called new evidence is not a lawful basis for the Board to grant rehearing. It does not meet the standard of "new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing" for two reasons.

(1), these policies have been around for years. Though the appellant may have only discovered the existence of these policies after the hearing on this matter does not meet the Board's standard for new evidence. (2), nothing in these policies would provide the Board with grounds to grant his appeal. They do not prove, or even suggest, that the proposed Wireless Facility here does not comply with the standards for human exposure to radio frequency ("RF") emissions established by the Federal Communications Commission ("FCC"). Under federal law, those standards preempt any local requirements. (See 47 U.S.C. § 332(c)(7)(B)(iv).) In remaining consistent with federal law, under Article 25, Public Works cannot deny an application for a Personal Wireless Service Facility Site Permit if the applicant establishes that its proposed Personal Wireless Service Facility meets FCC standards. (See Public Works Code §§ 1511(b)(1).) In its de novo review of the application, this Board must apply the same standard. (See Public Works Code § 1515(c).) The record before this Board on the appeal is that the RF emissions from the proposed Wireless Facility will be well below the FCC's standards. Finally, the appellant's claim that these policies are somehow

evidence of fraud is neither substantiated nor relevant to the issues before this Board on his request for rehearing.

The appellant's other issue is neither new nor different, nor a grounds to grant the appeal. Appellant already argued in this appeal that the Board should grant his appeal based on the Precautionary Principle. The Precautionary Principle provides:

All officers, boards, commission, and departments of the City and County shall implement the Precautionary Principle in conducting the City and County's affairs: The Precautionary Principle requires a thorough exploration and a careful analysis of a wide range of alternatives. Based on the best available science, the Precautionary Principle requires the selection of the alternative that presents the least potential treat [sic] to human health and the City's natural systems. . . . Where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for the City to postpone cost effective measures to prevent the degradation of the environment or protect the health of its citizens. Any gaps in scientific data uncovered by the examination of alternatives will provide a guidepost for future research, but will not prevent the City from taking protective action. As new scientific data become available, the City will review its decisions and make adjustments when warranted. Where there are reasonable grounds for concern, the precautionary approach to decision-making is meant to help reduce harm by triggering a process to select the least potential threat. (S.F. Environment Code, § 101.)

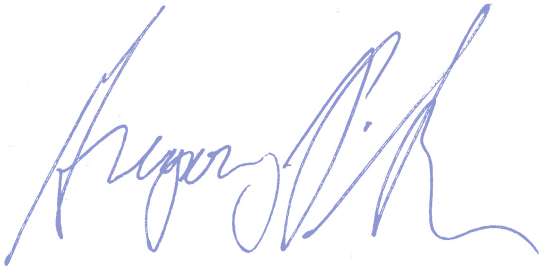
The Board correctly refused to grant his appeal on this ground. When the Board of Supervisors adopted the Precautionary Principle, it included the following language: "This ordinance does not impose specific duties upon any City employee or official to take specific actions." (S.F. Environment Code, § 104.) This would appear to include the duty to deny an application for a Personal Wireless Service Facility Site Permit based solely on the Precautionary Principle when the application meets all of the requirements of Article 25, including complying with the FCC's RF emissions standards.

In addition, as discussed above, federal law preempts the City's authority to impose its own RF safety standards for Personal Wireless Service Facilities. To the extent appellant is asking the Board to grant rehearing and uphold his appeal due to concerns over the health effects from RF emissions, this Board's actions would be

barred by federal law. The Board cannot use the Precautionary Principle to contravene federal preemption.

Based on the foregoing, Public Works requests that the Board deny appellant's rehearing request for Appeal No. 19-070.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory P. Slocum", with a stylized, flowing script.

Gregory P. Slocum

Commercial Permits Manager

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cc: Paul Albritton, Attorney for Verizon Wireless (pa@mallp.com)  
Ron Rattner, Appellant (ronrattner@gmail.com)

