

(R-97-1223)

RESOLUTION NUMBER R-288635

ADOPTED ON MAY 6, 1997

WHEREAS, David Broide appealed the decision of the Planning Commission in approving Conditional Use Permit ("CUP") No. 95-0365 (amending CUP No. 91-0242) submitted by David Chesashore for Webster Hotel Building, Owner, and AirTouch Cellular, Permittee, to construct and operate a wireless communication system which includes the replacement of an existing 36-foot-high wood antenna structure with a 42-foot-high metal support structure and the addition of two (2) digital dish antennas, two (2) omni directional whip antennas and fifteen (15) directional panel antennas for a total of three (3) dishes, six (6) whip and 30 panel antennas of a maximum overall height of 52-feet to be located at 3358 Governor, and described as Lot 1, Regents Road Commercial Center, Map No. 4973, in the University Community Plan area, in the CN (Commercial Neighborhood) Zone; and

WHEREAS, the matter was set for public hearing on May 6, 1997, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Conditional Use Permit No. 95-0365 (amending CUP No. 91-0242):

1. THE PROPOSED USE WILL FULFILL AN INDIVIDUAL AND COMMUNITY NEED AND WILL NOT ADVERSELY AFFECT THE GENERAL PLAN OR THE COMMUNITY PLAN, AND IF CONDUCTED IN CONFORMITY WITH THE CONDITIONS PROVIDED BY THE PERMIT, WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA.

The proposed wireless communication facility will not adversely impact the General Plan or the University Community Plan which designates the site for commercial use. The proposed project is located at the rear of an existing shopping center. The view of the monopole from the east, south and west is anticipated to be minimal because of the commercial structure blocking the lower portion of the monopole. Additionally, the distance from a major road-way and the existence of mature trees would reduce the potential impact of the upper portion of the monopole from Governor Drive. The addition of trees at the rear (north) property line adjacent to the single family residences would further reduce any potential visual impacts.

Wireless communication facilities are uses which fulfill individual and community needs and are generally permitted in commercial and other zones by Conditional Use Permit. The proposed facility would provide enhanced wireless communication service to this community and to adjacent communities. The proposed project as designed, is not anticipated to be obtrusive or visually significant.

No detrimental effects to the health, safety, and general welfare are anticipated as a result of the proposed project which complies with the accepted safety standard established by the American National Standards Institute and the National Council on Radiation Protection.

2. THE PROPOSED USE WILL COMPLY WITH ALL THE RELEVANT REGULATIONS IN THIS CODE.

A telecommunication facility is permitted in any zone with a Conditional Use Permit. The proposed facility complies with all of the relevant regulations in the Municipal Code.

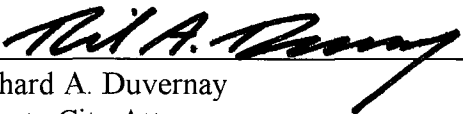
The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of David Broide is denied; the decision of the Planning Commission is sustained, and Conditional Use Permit No. 95-0365 amending CUP No. 91-0242 is hereby granted to Webster Hotel Building, Owner, and AirTouch Cellular,



Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

RAD:lc:cdk
08/14/97
Or.Dept:Clerk
R-97-1223
Form=permitr.frm



**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES**

**AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CONDITIONAL USE PERMIT (CUP) NO. 95-0365
(AMENDMENT TO CUP NO. 91-0242)
AIRTOUCH CELLULAR-REGENTS CELL SITE
CITY COUNCIL**

This Conditional Use Permit is granted by the Council of The City of San Diego to DAVID CHESASHORE for WEBSTER HOTEL BUILDING, Owner; AIRTOUCH CELLULAR, Permittee; pursuant to Section 101.0510 of the Municipal Code of the City of San Diego.

1. Subject to the terms and conditions set forth in this permit, permission is granted to the Owner/Permittee for the installation of a wireless communication facility located at 3358 Governor Drive (Lot 1, Regents Road Commercial Center, Map No. 4973), in the CN Zone of the University Community Plan Area.
2. The facility shall consist of:
 - a. Removal of existing 36-foot-high wood monopole within 30 days of installation of a new 42-foot-high metal support structure with three (3) digital dish antennas, six (6) omni directional whip antennas and 30 directional panel antennas with a maximum overall height of 52 feet, as illustrated on Exhibit "A," dated May 6, 1997, on file in Development Services.
 - b. Landscape to include the addition of trees at the property line, as illustrated on Exhibit "A," dated May 6, 1997, on file in Development Services.
3. All required landscaping shall be maintained by the Permittee. If any proposed or existing landscape indicated on Exhibit "A," dated May 6, 1997, is damaged, diseased, or removed during demolition, or construction during the life of this permit (10 years), it shall be replaced in kind, in a timely manner per the approved plans. The site shall be monitored on a yearly basis, to assure the health of the trees and the adequacy of the screening. If any of the trees at the end of seven (7) years are not adequately screening the monopole, mature trees or trees of an adequate screening height will be planted to replace the existing tree or trees that are not effectively screening the monopole.
4. AirTouch or its successors must maintain an open account with a \$500 minimum balance for a period of seven (7) years from the effective date of this permit (monitoring and maintenance period).
5. All plans shall be in substantial conformance to Exhibit "A," dated May 6, 1997. If any existing hardscape or landscape indicated on the approved plans is damaged or removed during

construction it shall be repaired and or replaced in kind per the approved plans.

6. The monopole and antennas shall be painted a color that minimizes the visibility of the facility. The paint color must be identified on the building permit plans and be approved by Development Services.

7. AirTouch Cellular shall cooperate in a good faith effort to allow other communication providers to locate at this site providing that the additional facility does not give rise to a substantial technical level or quality of service impairment of the existing communication facility.

8. This Conditional Use Permit is granted for a period of ten (10) years from May 6, 1997, at which time it will become null and void unless a new application for a Conditional Use Permit is applied for and approved under the procedures in effect at that time. At such time as the Conditional Use Permit expires or ceases to be utilized, all antennas and equipment shall be removed from the site and restored to its original condition by the last owners/Permittee of the use within sixty (60) days of termination of the Conditional Use Permit or lease, whichever comes first.

9. No permit for construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to Development Services;
- b. The Conditional Use Permit is recorded by Development Services in the office of the County Recorder.

10. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void.

11. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

12. Prior to the issuance of any building permits, the applicant shall:

- a. Ensure that building address numbers are visible and legible from the street (UFC 10.208).
- b. Show the location of all fire hydrants on the plot plan (UFC 10.301).

13. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

14. This Conditional Use Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents. Any change or modification to this wireless communication facility will require an amendment to this permit.

15. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every



condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the owner complies with all the conditions of this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such event, the Owners/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

16. The issuance of this Permit by the City of San Diego does not authorize the applicant for said Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. section 1531 et seq.).

17. The continued use of this Permit shall be subject to the current and future regulations of the Federal Communications Commission and the California Public Utilities Commission. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agency.

Passed and adopted by the Council of The City of San Diego on May 6, 1997, by Resolution No. R-288635.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

WEBSTER HOTEL BUILDING
Owner

By _____


AIRTOUCH CELLULAR
Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

7/21/97

LADUVERNAYPERMITS\95-0365.PER

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