

Faux Cactus Cell Tower Update

February 2011

Community Involvement

Scottsdale, Paradise Valley, and Carefree all negotiated with NewPath. All received compensation as part of their agreement. Scottsdale will receive \$600,000 annually.

The HOA's for The Boulders, Grayhawk, Scottsdale Ranch, DC Ranch and Happy Valley Ranch and perhaps others negotiated with NewPath. Negotiations included where the faux cactuses would be located. The Boulders HOA and perhaps others will receive compensation.

The Arizona Corporation Commission (ACC) granted NewPath a Certificate of Compliance and Necessity (CC&N) in January 2010. In the decision the ACC said, "NewPath has stated it will continue to work cooperatively with all Arizona communities regarding the design and placement of its equipment."

NewPath did not consult with the THIA Board of Directors. They did not notify the adjacent property owners. Their property values could be affected.

NewPath has refused to talk to our President or our attorneys. We do not know how many more cell towers, if any, NewPath plans. Nor do we know their locations.

Legal Points

The Arizona Legislature, under ARS 11-251 (4), authorized the County Board of Supervisors to maintain, control and manage public roads.

Various zoning laws do not apply to County rights-of-way. Section 402.4 says use of public street rights-of-way for other than public street purposes requires approval of the appropriate agency.

In Resolution 2001-01 the Board of Supervisors delegated authority to the Department of Transportation to issue permits for work in the rights-of-way. The work listed included utility lines such as electric, television, telephones, communication and other franchised facilities. We believe this was intended to be applied to buried facilities as opposed to above ground, permanent, commercial facilities.

In January 2010 NewPath received a Certificate of Convenience and Necessity (CC&N) from the Arizona Corporation Commission (ACC). Our attorneys say that NewPath is now in a position to demand that even gated communities that own their own streets allow them to install cell towers in the public easements along private streets. It is unclear whether the Board of Supervisors' authority trumps the CC&N authority.

Action Steps

On 11/22 THIA representative met with Don Stapley, County Commissioner. We expressed our concerns regarding the lack of community involvement. Mr. Stapley asked us to document those concerns in a letter. He will forward it to the County Attorney for analysis.

He will consider, in consultation with the other Supervisors, whether to clarify with the Department of Transportation that above ground facilities require a special use permit along with the attendant hearing and notifications.

The THIA BOD will consider whether to contact the ACC regarding NewPath’s failure to abide by their agreement to “work cooperatively with all Arizona communities....”.