

**TONTO HILLS IMPROVEMENT ASSOCIATION
42033 N. OLD MINE ROAD
CAVE CREEK, AZ 85331**

November 2010

Supervisor Don Stapley;
Maricopa County District 2
301 W. Jefferson, 10th Floor
Phoenix, Arizona 85003

Dear Mr. Stapley;

Thank you from meeting with Ralph Spurgin and Charlie Civer, representing the Tonto Hills Improvement Association on November 22. At your request, we are writing to recap our concerns regarding NewPath Networks', (a subsidiary of Crown Castle), installation of faux cactus cell towers in our community, without community involvement.

Mr. Spurgin and Mr. Civer left you a booklet with all the details, including news articles, statute recaps and our attorney's comments. Consequently, I'll recap just the highlights as follows:

- In late September, NewPath installed two faux cactus cell towers in the right of way within Tonto Hills and connected them with optical cable.
- NewPath did not consult with our Board of Directors nor did they notify the adjacent property owners—as attested by their signatures below.
- NewPath has refused to discuss our concerns with us or our attorneys.
- NewPath did this work on the authority of county work permits.
- These permits, as opposed to requiring special permits and the attendant notification, were apparently issued under the delegated authority in Resolution 2001-01.
- NewPath was granted a Certificate of Convenience and Necessity (CC&N) by the Arizona Corporation Commission (ACC). See docket # 20567A-07-0662, Decision # 71467 on 1/26/10.

Our belief is that we should have been consulted. The Resolution cited above lists types of work that the MCDOT can permit. These include utility lines such as electric, television, communications and other franchised facilities. We think this Resolution was intended to apply to buried facilities. We do not believe the Supervisors' intent was to permit above ground, permanent, commercial facilities in the Public Rights of Way (PROW's), especially within communities, without community involvement.

On page 21, in point number 64 of The ACC's CC&N decision, the following is written: "NewPath has stated it will continue to work cooperatively with all Arizona communities regarding the design and placement of its equipment in the PROW's." We believe NewPath Network's complete failure in this regard in Tonto Hills represents a violation of this agreement.

Furthermore, under the authority of the CC&N, our attorney said that NewPath could demand access to even gated communities that own their own streets. We're not sure whether a CC&N trumps the authority granted to the Board of Supervisors under ARS 11-251(4) to maintain, control and manage public roads.

Mr. Spurgin and Mr. Civer have advised that you would take the following actions:

- Refer this letter and other information provided to the Maricopa County Attorney for analysis and action.
- Consider, in consultation with the other Supervisors, providing guidance to the Maricopa County Department of Transportation and the Maricopa Planning and Development Department, indicating that special use permits are required for above ground communication facilities in the PROW.
- Discuss with the ACC the power conferred by the CC&N issuance. Find a way to ensure that NewPath Networks negotiates with each entity as they did with Scottsdale, Carefree and Paradise Valley.

If our information or understanding is incorrect in any way, please let us know. You may contact me directly at 480-575-5315 or Ralph Spurgin at 480-595-8685.

Thank you in advance for your further help in this matter. We hope to hear from you soon.

Very respectfully,

A handwritten signature in cursive script that reads "Cindy Lessow". Below the name, there are some initials or a flourish that appears to be "RZ".

Rick Nelson
THIA President

Mr. & Ms. Lessow
Property Owner

Ms M. Gazdik
Property Owner