



**SCOTTSDALE DEVELOPMENT REVIEW BOARD  
KIVA-CITY HALL  
3939 DRINKWATER BOULEVARD  
SCOTTSDALE, ARIZONA**

**THURSDAY, NOVEMBER 19, 2009**

**MEETING MINUTES**

**PRESENT:** Suzanne Klapp, Council Member  
Michael Edwards, Vice Chairman  
Steven Steinke, Planning Commission Member  
Chris Jones, Design Member  
David Ortega, Design Member  
Eric Gerster, Development Member

**ABSENT:** David Brantner, Development Member

**STAFF:** Steve Venker  
Joe Padilla  
Keith Niederer  
Meredith Tessier  
Bryan Cluff  
Brad Carr  
Greg Bloemberg  
Adam Yaron

**CALL TO ORDER**

Councilwoman Klapp called the meeting of the Scottsdale Development Review Board to order at 1:10 p.m.

**ROLL CALL**

A formal roll call was conducted confirming members present as stated above.

## **OPENING STATEMENT**

Councilwoman Klapp read the opening statement that describes the role of the Development Review Board and the procedures used in conducting this meeting. She made special note of the focus on quality building and design.

## **MINUTES**

1. Approval of November 5, 2009 Development Review Board Study Session Minutes
2. Approval of November 5, 2009 Development Review Board Meeting Minutes
3. Approval of November 9, 2009 Development Review Board Special Meeting Minutes

**VICE-CHAIRMAN EDWARDS MOVED TO APPROVE THE NOVEMBER 5, 2009 DEVELOPMENT REVIEW BOARD MINUTES INCLUDING THE STUDY SESSION AND THE NOVEMBER 9, 2009 SPECIAL MEETING MINUTES. SECONDED BY BOARD MEMBER ORTEGA, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0). BOARD MEMBER BRANTNER WAS ABSENT.**

## **CONSENT AGENDA**

Councilwoman Klapp noted that cases 44-DR-2009, 135-DR-2009, and 149-DR-2009 were moved to the regular agenda.

4. 88-DR-2005#5 SkySong Monument Lighting
5. 114-DR-2009 Miracle League of Arizona

**VICE-CHAIRMAN EDWARDS MOVED TO APPROVE 88-DR-2009, SKYSONG MONUMENT LIGHTING, AND 114-DR-2009, MIRACLE LEAGUE OF ARIZONA. SECONDED BY COMMISSIONER STEINKE, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0). BOARD MEMBER BRANTNER WAS ABSENT.**

6. 44-DR-2009 NewPath Networks (H082-03)
7. 58-DR-2009 NewPath Networks (H317-01)

In response to a question by Board Member Jones during the study session, Ms. Lagarde indicated that NewPath was willing to stipulate to moving back eight feet or as far as possible.

8. 60-DR-2009 NewPath Networks (K504-01)
9. 124-DR-2009 NewPath Networks (H072-02)

Ms. Lagarde indicated that NewPath would be willing in the future to alter the graphics themselves to accurately depict any last-minute changes and will forward those to staff for distribution during the regular meeting.

In response to an earlier question by Board Member Gerster, Ms. Lagarde noted that graphic 2A accurately depicts the site location.

10. 133-DR-2009 NewPath Networks (H066-01)

In response to an earlier question by Board Member Jones regarding clustering of facilities, Ms. Lagarde explained that the spacing of nodes is based on service gaps in transmission as well as topography. Ms. Waechter outlined elevation changes on a graphic. There have been no neighborhood objections.

11. 134-DR-2009 NewPath Networks (H269-02)

Ms. Lagarde explained that the original site was moved in response to a neighbor's complaint. The site is now closer to another neighbor's house but is outside of both neighbors' line of sight.

Board Member Jones noted a preference for placing the faux cactus further from the curb and more integrated into the existing landscaping closer to the houses. Ms. Waechter indicated that the HOA was not interested in entering into an agreement with NewPath. She confirmed that the site was moved 50 feet to the north of the original proposal and that notice was not given to the neighbors about the move because it was within a 100-foot radius.

Board Member Gerster commented that the site would be more appropriately placed in the original location because it would be out of the sight of both neighbors' back yards. Mr. Garcia agreed, noting that landscaping would mitigate most of the visual impact.

Vice-Chairman Edwards felt that leaving the saguaro at the original proposed location would be the most reasonable choice because it would be less impactful overall and because notification was not provided to any of the other neighbors besides the complainant.

Board Member Ortega agreed that the original location was more appropriate. He suggested that the stipulations associated with the case be read into the motion.

12. 135-DR-2009 NewPath Networks (H268-01)

The item was pulled to the regular agenda.

13. 136-DR-2009 NewPath Networks (H070-03)

In response to a study session question by Board Member Jones, Ms. Waechter explained that the site is near a 100-year flood plain, which limits the ability to move further into the right-of-way because the ground dips into the drainage

area. There were no discussions with Desert Highlands about locating on HOA property.

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| 14. | 138-DR-2009 | <u>NewPath Networks (H108-02)</u>      |
| 15. | 139-DR-2009 | <u>NewPath Networks (H113-02)</u>      |
| 16. | 140-DR-2009 | <u>NewPath Networks (H116-02)</u>      |
| 17. | 141-DR-2009 | <u>NewPath Networks (H118-02)</u>      |
| 18. | 142-DR-2009 | <u>NewPath Networks (H102-03)</u>      |
| 19. | 143-DR-2009 | <u>NewPath Networks (H120-02)</u>      |
| 20. | 144-DR-2009 | <u>NewPath Networks (H103-02)</u>      |
| 21. | 145-DR-2009 | <u>NewPath Networks, LLC (H081-02)</u> |

Ms. Lagarde suggested that to alleviate Board concern in the future, NewPath could provide an updated memo outlining the most recent communications with neighbors. Ms. Waechter noted that she has had contact with the HOA presidents for both Quail Ridge and Whispering Ridge and they have come to an agreement that alleviated their concerns about the site location near the entrances to their communities.

Board Member Gerster explained that his concern was with the amount of time between the community meetings and the final site approval. There should be a written trail of correspondence between NewPath representatives and community members provided to the DRB for all cases.

**BOARD MEMBER GERSTER MOVED TO MOVE 145-DR-2009, NEWPATH NETWORKS, LLC (H081-02) TO THE REGULAR AGENDA SO THAT IT CAN BE CONTINUED.**

Board Member Jones asked why the faux saguaro was only ten feet back from the curb, only utilizing half of the 22-foot right-of-way to the property line. If it were moved closer to the property line, additional landscaping could be added for screening. Ms. Waechter noted that the new proposed location is closer to an existing tree and could be screened with additional landscaping. It would be difficult to move closer to the property line because of a slope into the retention area.

**BOARD MEMBER JONES SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0). BOARD MEMBER BRANTNER WAS ABSENT.**

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| 22. | 146-DR-2009 | <u>NewPath Networks, LLC (H046-01)</u> |
| 23. | 147-DR-2009 | <u>NewPath Networks, LLC (H337-01)</u> |

24. 149-DR-2009 NewPath Networks (H042-04)

The item was pulled to the regular agenda.

25. 150-DR-2009 NewPath Networks (H043-02)

26. 151-DR-2009 NewPath Networks (H036-02)

In response to an earlier comment by Board Member Jones, Board Member Gerster noted that the verticality in the photograph is part of the telemetry system on the pump station on the golf course. Similarly to the antenna on the City water system found near one of the other locations, the telemetry antenna is slim and might not provide adequate height.

Board Member Ortega preferred moving forward with the faux cactus installation because it was posted. Colocating on any telemetry system could be precedent setting.

27. 152-DR-2009 NewPath Networks (H044-03)

28. 153-DR-2009 NewPath Networks (H039-03)

29. 155-DR-2009 NewPath Networks (H038-02)

30. 156-DR-2009 NewPath Networks (H041-03)

31. 157-DR-2009 NewPath Networks (K710-02)

32. 161-DR-2009 NewPath Networks (H293-03)

**VICE-CHAIRMAN EDWARDS MOVED TO APPROVE 58-DR-2009, NEWPATH NETWORKS (H317-01), WITH THE AMENDMENT TO STIPULATION 10 SO THAT IT READS: "WITH THE FINAL PLAN SUBMITTAL THE DEVELOPER SHALL REVISE THE PLANS TO MOVE THE PROPOSED LANDSCAPING FURTHER TO THE EAST TO ENSURE A MINIMUM 8-FEET OF CLEAR SPACE AS PROVIDED BETWEEN THE CURB AND THE SITE LANDSCAPING FOR THE UNPAVED TRAIL, OR A GREATER DISTANCE IF NECESSARY TO AVOID ANY EXISTING DRAINAGEWAY, ALONG THE EAST SIDE OF NORTH 116<sup>TH</sup> STREET;" 60-DR-2009, NEWPATH NETWORKS (K504-01); 124-DR-2009, NEWPATH NETWORKS (H072-02); 133-DR-2009, NEWPATH NETWORKS (H066-01); 134-DR-2009, NEWPATH NETWORKS (H269-02), WITH THE REMOVAL OF STIPULATION 5, WHICH TALKS ABOUT MOVING THE LOCATION 90 FEET TO THE NORTHWEST --**

Mr. Niederer interrupted the motion to mention that a citizen wished to speak regarding consent items 6 through 13.

Mr. James Bisby (ph), 11512 East Desert Holly, spoke regarding the Troon locations. He recalled various past cellular site approvals that were moved forward without consideration for the community. He felt that the City should review its wireless communications facility regulations for flaws because they

provide wireless companies the ability to locate within the right-of-way without consideration for residential locations.

Mr. Padilla explained that the Federal Telecommunications Act provides protection to the wireless providers, allowing providers to place wireless communication systems in any municipality in the country. Providers have a right to locate in any public right-of-way, as well as to negotiate for locations on private property. The City is limited to review of aesthetics, but cannot restrict locations that have been determined to have a gap in coverage. The City's regulations allow the City of Scottsdale to require NewPath to bring each site forward individually; however the City cannot limit the number of sites within a grid plan.

**THE MOTION CONTINUED: -- 136-DR-2009, NEWPATH NETWORKS (H070-03); 138-DR-2009, NEWPATH NETWORKS (H108-02); 139-DR-2009, NEWPATH NETWORKS (H113-02); 140-DR-2009, NEWPATH NETWORKS (H116-02); 141-DR-2009, NEWPATH NETWORKS (H118-02); 142-DR-2009, NEWPATH NETWORKS (H102-03); 143-DR-2009, NEWPATH NETWORKS (H120-02); 144-DR-2009, NEWPATH NETWORKS (H103-02); 146-DR-2009, NEWPATH NETWORKS, LLC (H046-01); 147-DR-2009, NEWPATH NETWORKS, LLC (H337-01); 150-DR-2009, NEWPATH NETWORKS (H043-02); 151-DR-2009, NEWPATH NETWORKS (H036-02); 152-DR-2009, NEWPATH NETWORKS (H044-03); 153-DR-2009, NEWPATH NETWORKS (H039-03); 155-DR-2009, NEWPATH NETWORKS (H038-02); 156-DR-2009, NEWPATH NETWORKS (H041-03); 157-DR-2009, NEWPATH NETWORKS (K710-02); AND 161-DR-2009, NEWPATH NETWORKS (H293-03). SECONDED BY BOARD MEMBER ORTEGA, THE MOTION CARRIED WITH A VOTE OF FIVE (5) TO ONE (1). BOARD MEMBER JONES DISSENTED. BOARD MEMBER BRANTNER WAS ABSENT.**

## **REGULAR AGENDA**

6. 44-DR-2009 NewPath Networks (H082-03)

Mr. Niederer reviewed the case, noting that the initial proposed location has been moved in response to community comments. The current proposal is for the east side of the intersection of 115<sup>th</sup> Street and Happy Valley Road.

**BOARD MEMBER GERSTER MOVED TO APPROVE 44-DR-2009, NEWPATH NETWORKS (H082-03). SECONDED BY COMMISSIONER STEINKE, THE MOTION CARRIED WITH A VOTE OF FIVE (5) TO ZERO (0). BOARD MEMBER JONES DISSENTED. BOARD MEMBER BRANTNER WAS ABSENT.**

12. 135-DR-2009 NewPath Networks (H268-01)

Mr. Niederer noted that after meeting with the Troon Ridge Estates I and II HOA presidents on November 4<sup>th</sup>, the site was relocated to the northwest corner of 124<sup>th</sup> Street and Happy Valley Road. Because of time constraints, the change was made via stipulation.

Ms. Diana Tonks (ph), 11351 East Desert Vista, spoke in opposition to the change in the proposed location. She felt that the neighbor that would be affected should be notified ahead of time and not by the homeowner management company as has been indicated. She suggested that the faux saguaro be colocated near the Qwest and APS boxes on Happy Valley Road for aesthetic reasons.

Mr. Bill Pepinski (ph) was opposed to the last-minute change in location. He preferred the new proposed location to the originally proposed location but felt that the neighbors should be informed and given time to rebut the decision. Ms. Carolyn Nelsen (ph) spoke in opposition to the proposed location because it would be visible from her living room. She suggested moving the faux cactus west near the existing boulders.

Ms. Lagarde requested that the case be continued to allow time to further communicate with neighbors and to research the possibility of using the water facility antenna.

Board Member Jones felt that colocating on the antenna would be preferred if possible.

**VICE-CHAIRMAN EDWARDS MOVED TO CONTINUE 135-DR-2009, NEWPATH NETWORKS (H268-01). SECONDED BY BOARD MEMBER ORTEGA, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0). BOARD MEMBER BRANTNER WAS ABSENT.**

21. 145-DR-2009 NewPath Networks, LLC (H081-02)

Mr. Niederer reviewed the location noting that NewPath recently met with the HOA presidents for the communities involved. Initially, the neighbors requested that the site be moved near the tennis court facility, but a 2,000-foot change would not feasibly fit within the grid pattern. An agreement was reached to locate at the currently proposed location. One resident has expressed concern that the faux saguaro would be visible from his home.

Ms. Lagarde clarified that the original opposition was due to the large ground equipment enclosures. In recent months technology has been developed that eliminates the need for the large ground equipment.

Board Member Ortega commented that the reason for the City postings is to ignite community discussion regarding development. He felt that the faux saguaro was the most appropriate solution for the area.

**BOARD MEMBER ORTEGA MOVED TO APPROVE 145-DR-2009, NEWPATH NETWORKS, LLC (H081-02). COMMISSIONER STEINKE SECONDED THE MOTION.**

Board Member Gerster was against approving a location that has not been vetted with the Community. He would prefer to have the case continued so that residents can be provided with the most current information and further discuss

the two location choices. Mr. Niederer clarified that an email was received by staff from the HOA representatives confirming that a meeting had taken place and that an agreement was reached.

**THE MOTION CARRIED WITH A VOTE OF FIVE (5) TO ONE (1). BOARD MEMBER GERSTER DISSENTED. BOARD MEMBER BRANTNER WAS ABSENT.**

24. 149-DR-2009 NewPath Networks (H042-04)

Mr. Niederer reviewed the history behind the case. The site was initially proposed for the southeast corner of Legendary Lane and Legendary Parkway, but shifted to the northeast corner because of utility conflicts, which created some confusion within the community.

Mr. Ken Boolerdick (ph), president of the Legend Trails HOA, requested a continuance so that the community could be provided with additional information and to provide residents with the opportunity to express their views.

**VICE-CHAIRMAN EDWARDS MOVED TO CONTINUE 149-DR-2009, NEWPATH NETWORKS (H042-04) TO THE DECEMBER 17<sup>TH</sup> HEARING. SECONDED BY BOARD MEMBER JONES, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0). BOARD MEMBER BRANTNER WAS ABSENT.**

33. 80-DR-2009 NewPath Networks, LLC (H137-01)

Mr. Niederer recalled that the case was previously continued with instructions to locate the facility on the existing streetlight at the southwest corner of Texas Sage Lane and 105<sup>th</sup>. There has been no neighborhood opposition.

**BOARD MEMBER ORTEGA MOVED TO APPROVE 80-DR-2009, NEWPATH NETWORKS, LLC (H137-01). SECONDED BY BOARD MEMBER JONES, THE MOTION CARRIED WITH A VOTE OF FIVE (5) TO ONE (1). BOARD MEMBER GERSTER DISSENTED. BOARD MEMBER BRANTNER WAS ABSENT.**

Councilwoman Klapp noted that this would be her final meeting, and thanked staff for all of their efforts.

Commissioner Steinke thanked staff for their hard work and asked that they continue their efforts to provide current and accurate information to aid Development Review Board Members in making appropriate decisions. He stressed the importance of updating the incoming Councilperson and Planning Commission Member on any ongoing cases and providing them a history on the NewPath cases.



**ADJOURNMENT**

With no further business to discuss, the regular session of the Development Review Board adjourned at 2:44 p.m.

Respectfully submitted,  
A/V Tronics, Inc. DBA AVTranz.