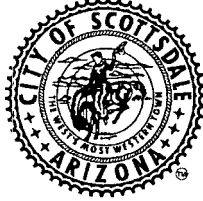


**SUMMARIZED MINUTES
SCOTTSDALE CITY COUNCIL
REGULAR MEETING
TUESDAY, APRIL 7, 2009**



**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

CALL TO ORDER

Mayor W.J. "Jim" Lane called to order a Regular Meeting of the Scottsdale City Council at 5:09 P.M. on Tuesday, April 7, 2009 in the City Hall Kiva.

ROLL CALL

Present: Mayor W.J. "Jim" Lane
Vice Mayor Ron McCullagh
Councilmembers Lisa Borowsky, Wayne Ecton, Suzanne Klapp,
Robert Littlefield, and Tony Nelssen

Also Present: City Manager John C. Little
City Attorney Deborah Robberson
City Clerk Carolyn Jagger

PLEDGE OF ALLEGIANCE – Councilwoman Klapp

INVOCATION – Pastor Derek Van Dalen, Palm Lane Christian Reformed Church

PRESENTATIONS/INFORMATION UPDATES – None

CITY MANAGER'S REPORT

City Manager John C. Little made the following announcements:

- The City received Tree City USA recertification from the National Arbor Day Foundation for the 27th consecutive year. The award requires that qualifying communities have a viable tree management program that recognizes environmental improvement and encourages high levels of tree care throughout the community.

NOTE: IN ACCORDANCE WITH PROVISIONS OF THE ARIZONA REVISED STATUTES THE SUMMARIZED MINUTES OF CITY COUNCIL MEETINGS ARE NOT VERBATIM TRANSCRIPTS. THESE MINUTES ARE INTENDED TO BE AN ACCURATE REFLECTION OF ACTION TAKEN BY THE CITY COUNCIL. DIGITAL RECORDINGS OF CITY COUNCIL MEETINGS ARE ON FILE IN THE CITY CLERK'S OFFICE.

- The City sponsors a “Beat the Heat” program that provides more than 200 home-bound senior citizens with care packages, including groceries, discount store and gift cards, and postage stamps during the hot summer months. Interested residents are encouraged to call the Via Linda Senior Center at (480)312-8456.
- Youth Corps Program applications are available to teenagers through April 30th. The program provides youth with the opportunity to volunteer in various City offices, recreation centers, citizen service centers, pools, and senior centers during the months of June and July.
- The Vista del Camino Social Services Center will be screening residents for utility payment assistance from 1 to 7 P.M. on April 23rd. Information on eligibility requirements can be obtained by contacting the Vista del Camino Social Services Center.
- National Library Week is April 12-18. Citizens are invited to visit the City’s libraries to help celebrate Library week.
- The City’s Economic Vitality Office is sponsoring a four-part series entitled “Starting and Staying in Business” to assist small businesses. The series is held on Tuesday evenings and will address the topics of planning and business, management, marketing, and finance.

PUBLIC COMMENT

Francien Randall, Scottsdale resident, expressed frustration that the City has failed to provide permanent traffic barriers along Hayden Road and speed bumps on Fairmont Avenue.

Jacqueline Myers, part-time Scottsdale resident, said the Eldorado Pool is a wonderful fitness facility and encouraged the Council to keep the pool open during the winter months.

Barbara Gormley, Scottsdale resident, echoed Jacqueline Myer’s sentiments, and added that the programs available at the Eldorado Pool are affordable for senior citizens.

Debbie Andrade, Scottsdale resident, said the City made a promise to residents who live along Hayden Road to install a fence, guard rails, and aesthetic enhancements.

Judy Stein, Scottsdale resident, expressed concern with increased traffic-related incidents on Fairmont Avenue and said installation of speed bumps would help alleviate her concerns.

CONSENT AGENDA

ITEM 6 WAS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION.

1. Tiara Estates Final Plat (9-PP-2007)

Request: Adopt **Resolution No. 7917** conditionally approving a Final Plat on 40 acres for a 13-lot, single-family residential subdivision with amended development standards.

Location: 24004 N. 128th Street

Staff Contact(s): David E. Richert, Planning and Development Services General Manager, 480-312-2890, dichert@scottsdaleaz.gov; Connie Padian, Planning and Development Services Administrator, 480-312-2664, cpadian@scottsdaleaz.gov

Discussion:

- Associate Planner Jesus Murillo clarified that the 15-foot trail will be located in the best possible place, whether it be left of the right-of-way, within the 15-foot public trail easement, or in the 100-foot scenic corridor. He said placement of the trail would be based on the terrain and native vegetation; however, it would be placed as far away from vehicular traffic as possible.
2. **Settlement of Kadzielawski v. City of Scottsdale, et al.**
Request: Adopt **Resolution No. 7901** authorizing the Mayor to execute Contract No. 2009-025-COS to settle *Robert J. Kadzielawski v. City of Scottsdale, et al.*, Maricopa County Superior Court Cause No. CV2007-023079, for a total sum not to exceed \$90,000, and authorizing a \$90,000 contingency transfer from the Loss Trust Fund Reserve to the Risk Management Operating Budget (710-03740-52481).
Staff Contact(s): Deborah Robberson, City Attorney, 480-312-2405, drobberson@scottsdaleaz.gov
 3. **Intergovernmental Agreement for Participation in the East Valley Gang and Criminal Information Fusion Center**
Request: Adopt **Resolution No. 7897** authorizing Intergovernmental Agreement No. 2009-021-COS with the City of Mesa, and various public agencies, including other cities, the U.S. Bureau of Alcohol, Tobacco and Firearms, and the Salt River Indian Community for the continued participation in the East Valley Gang and Criminal Information Fusion Center.
Related Policies, Procedures:
 - Prior Fusion Center Intergovernmental Agreement No. 2007-157-COS
 - The City is authorized to enter into this agreement pursuant to A.R.S. §11-952 and the Scottsdale City Charter, Article 1, §3-1
 - The operation of criminal information systems is governed by 28 C.F.R. §23 et. seq.**Staff Contact(s):** Alan Rodbell, Chief of Police, 480-312-1900, arodbell@scottsdaleaz.gov
 4. **Notice of Intention to Increase Water and Wastewater Rates and Establish the Date for a Public Hearing**
Request: Adopt the Notice of Intention to Increase Water and Wastewater Rates for FY 2009/10 and establish May 19, 2009 as the date for a public hearing.
Staff Contact(s): Marshall Brown, Water Resources General Manager, 480-312-5681, mbrown@scottsdaleaz.gov
 5. **Scottsdale Housing Annual Agency Plan for FY 2009/10**
Request: Adopt **Resolution No. 7888** approving the Annual Agency Plan for FY 2009/10 for the Section 8 Rental Assistance Program (Housing Choice Voucher) with funding from the United States Department of Housing and Urban Development (HUD); and authorizing submittal of the Plan to HUD. This resolution also authorizes the acceptance of Housing Choice Vouchers offered to assist current tenants of HUD assisted properties opting out of federal assistance and the acceptance of additional Housing Choice Vouchers if offered by HUD in FY 2009/10.
Related Policies, Procedures: On March 22, 2005, Council adopted Resolution No. 6627 approving the Five-Year and Annual Agency Plan and approved submittal of the Plan to HUD

Staff Contact(s): Debra Baird, Community Services General Manager, 480-312-2480, dbaird@scottsdaleaz.gov; Craig Clifford, Financial Services General Manager/Chief Financial Officer, 480-312-2364, cclifford@scottsdaleaz.gov

- 6. Authorization to Intervene in NewPath Networks' Application for a Certificate of Convenience and Necessity**
ITEM 6 WAS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE ACTION (SEE BELOW).

MOTION AND VOTE – CONSENT AGENDA

COUNCILMAN LITTLEFIELD MOVED TO APPROVE CONSENT AGENDA ITEMS 1 THROUGH 5, INCLUDING A REVISED PLAT WITH THE ADDITION OF PARAGRAPH 11 FOR ITEM 1. COUNCILMAN ECTON SECONDED THE MOTION, WHICH CARRIED 7/0.

- 6. Authorization to Intervene in NewPath Networks' Application for a Certificate of Convenience and Necessity**
Request: Adopt **Resolution No. 7935** authorizing intervention by the City of Scottsdale in the matter of NewPath Networks, LLC application for a Certificate of Convenience and Necessity, Arizona Corporation Commission Docket No. T-20567A-07-0662.
Staff Contact(s): Deborah Robberson, City Attorney, 480-312-2405, drobberson@scottsdaleaz.gov

City Attorney Deborah Robberson gave a PowerPoint presentation (attached).

MOTION NO. 1 – ITEM 6

COUNCILMAN LITTLEFIELD MOVED TO GIVE STAFF THE AUTHORITY TO INTERVENE. COUNCILWOMAN BOROWSKY SECONDED THE MOTION.

Attorney Lynn Lagarde, representing NewPath Networks, asked the Council not to authorize an intervention of NewPath Networks' application for a Certificate of Convenience and Necessity (CC&N), and said such an intervention would not be in the best interest of the public. She disagreed that the reason for pursuing the CC&N at the Arizona Corporation Commission related to fee negotiations. She explained that all of the distributive antenna system (DAS) providers use fiber optic backbone systems. NewPath Networks' system has excess fiber optic capacity that can be used by cities, businesses, and carriers. State statutes require CC&Ns for fiber optic services, and the Arizona Corporation Commission has granted CC&Ns to other DAS providers. Thus, NewPath Networks believes a CC&N is needed to be competitive with other DAS providers.

Ms. Lagarde asked that the Council direct staff to begin fee negotiations with NewPath Networks, with a 30-day target completion date.

Discussion:

- Ms. Lagarde acknowledged that NewPath Networks would be regulated by the City's wireless ordinance, as are all wireless carriers. However, NewPath Networks could not operate like other DAS providers because of the lack of a CC&N. She maintained that staff previously informed NewPath Networks that their application for a telecommunications license must be accompanied by a valid CC&N.

- Telecom Policy Coordinator Kevin Sonoda clarified that NewPath Networks can operate a wireless network without a CC&N. He said the issue at hand is whether the fiber optics system would be allowed in the right-of-way with a fee structure attached to the system.
- Council noted that wireless providers do not need either Council or public approval to install wireless facilities on existing verticality in public rights-of-ways when the proximity of the wireless facility is more than 150 feet away from residential neighborhoods.
- Some Councilmembers stated that they would not support the motion to intervene and cited the following:
 - The Arizona Corporation Commission has granted CC&Ns to competitors of NewPath Networks, and it is believed that the Arizona Corporation Commission will not deny a CC&N to NewPath and/or rescind previously approved CC&Ns to other DAS providers.
 - NewPath requires a CC&N to deliver services throughout the State; thus, the issue is a State-wide issue, not just a City issue.
- Some Councilmembers expressed support for entering into discussions with NewPath Networks to negotiate a mutually acceptable fee structure.
- Council asked Ms. Lagarde if NewPath Networks needed the CC&N for installation of underground fiber optic cable. Ms. Lagarde explained that NewPath Networks cannot use fiber optic cable to deliver services to individual users without a CC&N. City Attorney Robberson said the issues are not as clear as Ms. Lagarde has presented. When considering the proper scope and issuance of the CC&N, the Arizona Corporation Commission determines what physical facilities are intended to be installed and/or what services are intended to be provided. Ms. Robberson added that there are other providers who have underground fiber optic cables installed in public rights-of-ways without CC&Ns.
- Council asked for clarification regarding the impact of a CC&N on the City's ability to regulate fees. Ms. Robberson explained that competitors of NewPath Networks have made the legal argument that a CC&N limits the City's power to regulate, including the ability to assess fees; however, she acknowledged that NewPath Networks has not made that argument.

ALTERNATIVE MOTION NO. 1 – ITEM 6

COUNCILWOMAN KLAPP MOVED TO DIRECT STAFF TO ESTABLISH A MUTUALLY AGREEABLE FEE STRUCTURE WITH NEWPATH NETWORKS. COUNCILMAN ECTON SECONDED THE MOTION.

Discussion:

- City Attorney Robberson noted that negotiating a fee structure with NewPath Networks is outside the scope of the agenda item. She suggested the topic be agendized for a future meeting.
- Councilwoman Klapp withdrew Alternative Motion No. 1.

ALTERNATIVE MOTION NO. 2 – ITEM 6

COUNCILWOMAN KLAPP MOVED TO SEEK A NEGOTIATED AGREEMENT WITH NEWPATH NETWORKS REGARDING THE EFFECT OF A CC&N. COUNCILMAN ECTON SECONDED THE MOTION.

Discussion:

- Some Council stated that filing a motion to intervene would not affect the City's ability or willingness to negotiate fees with NewPath Networks.
- Council expressing support for the motion to intervene cited the following:
 - Intervention at the Arizona Corporation Commission helps the City retain regulatory power of fees, and control over the location and the appearance of telecommunication facilities.
 - Failure to file an intervention at the Arizona Corporation Commission proceedings may result in the City being estopped from taking future regulatory action that would be adverse to the legal position of NewPath Networks.
 - It has not been demonstrated that NewPath Networks needs a CC&N to install fiber optics in public rights-of-way.

VOTE ON ALTERNATIVE MOTION NO. 2 – ITEM 6

THE COUNCIL VOTE ON THE MOTION TO SEEK A NEGOTIATED AGREEMENT WITH NEWPATH NETWORKS REGARDING THE EFFECT OF A CC&N FAILED 3/4, WITH VICE MAYOR MCCULLAGH AND COUNCILMEMBERS BOROWSKY, LITTLEFIELD, AND NELSEN DISSENTING.

VOTE ON MOTION NO. 1 – ITEM 6

THE COUNCIL VOTE ON THE MOTION TO GIVE STAFF THE AUTHORITY TO INTERVENE CARRIED 4/3, WITH MAYOR LANE AND COUNCILMEMBERS ECTON AND KLAPP DISSENTING.

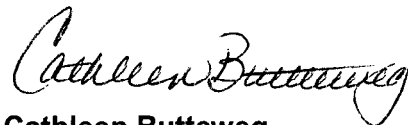
Mayor and Council Items

- Councilman Littlefield asked to have the creation of a Council Subcommittee on Water Issues agendized for discussion and possible action at the earliest possible date.

Adjournment

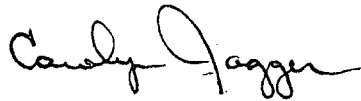
With no further business to discuss, the meeting adjourned at 6:56 p.m.

SUBMITTED BY:



**Cathleen Butteweg
Recording Secretary**

REVIEWED BY:



**Carolyn Jagger
City Clerk**


Officially approved by the City Council on May 5, 2009

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 7th day of April 2009.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 5th day of May 2009.



CAROLYN JAGGER
City Clerk

CITY COUNCIL MEETING 4/7/09

NEWPATH NETWORKS

What is a CC&N?

- Certificate of Convenience and Necessity issued by the Arizona Corporation Commission stating that a business is a public service company subject to the jurisdiction and regulation of the Commission.

- Public Service Company: “its business and activity must be such as to make its rates, charges, and methods of operations a matter of public concern. . . .”

Why Should the City be Involved?

- If the City intervenes at the Corporation Commission, it is not for the purpose of preventing NewPath from conducting business in the City. Purpose of intervention is to protect the City's right to control and regulate its rights-of-way.

Effect of CC&N

- State has special law regarding public service companies who provide telecommunications services in the state
- This law may impact the City's ability to control and regulate its rights-of-way

Recap/Summary

- City is not trying to prevent NewPath from establishing a network in the City of Scottsdale
- City participation in CCN proceedings would be to preserve its authority and control over its rights-of-way

Alternatives

- City could intervene and become a party to Arizona Corporation Commission proceedings
- City could decide not to intervene
- Seek negotiated agreement with NewPath regarding effect of any CCN

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QUESTIONS?