

**DAVIS CITY COUNCIL MEETING**

COMMUNITY CHAMBERS  
23 RUSSELL BOULEVARD  
DAVIS, CALIFORNIA 95616  
6:30 P.M.

---

January 19, 2010

AGENDA ITEM 3  
PUBLIC MEETING  
7:15 p.m.

Appeal of City Manager Action to Revoke and Rescind  
Encroachment and Building Permits for NewPath Network,  
LLC's Distributed Antenna System

Francine R. Dais, CSR No. 8855



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

1

DAVIS CITY COUNCIL MEETING

COMMUNITY CHAMBERS

23 RUSSELL BOULEVARD

DAVIS, CALIFORNIA 95616

6:30 P.M.

---oOo---

January 19, 2010

AGENDA ITEM 3

PUBLIC MEETING

7:15 p.m.

Appeal of City Manager Action to Revoke and Rescind  
Encroachment and Building Permits for NewPath Network,  
LLC's Distributed Antenna System

Francine R. Dais, CSR No. 8855



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

APPEARANCES OF CITY COUNCIL

RUTH UY ASMUNDSON, Mayor

DON SAYLOR, Mayor Pro Tem

SUE GREENWALD, Council Member

STEPHEN SOUZA, Council Member

LAMAR HEYSTEK, Council Member

Also Present:

ZOE MIRABILE, Clerk

BILL EMLLEN, City Manager

JONATHAN KRAMER (Radiofrequency expert for the City)

TOM CURRY, Special Counsel

STEPHEN GARCIA, NewPath Network, LLC

Attorney for the City of Davis:

McDONOUGH HOLLAND & ALLEN, PC

By: KIMBERLY E. HOOD

555 Capitol Mall, 9th Floor

Sacramento, CA 95814-4692

916-444-3900

khoo@mhalaw.com

Attorney for NewPath Network, LLC:

CHANNEL LAW GROUP, LLP

JAMIE HALL

207 East Broadway, Suite 201

Long Beach, CA 90802-8824

310-982-1760

rjystad@channellawgroup.com

---oOo---



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
www.esquireolutions.com

INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PAGE

Introduction by Mayor Asmundson	4
Report by Ms. Hood	5
Questions by Council	12
Presentation by NewPath	43
Discussion	50
Public Comments	53
Questions by Council Member Greenwald	75
Presentation by NewPath	77
Discussion and Motions	86

---oOo---



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

1 what latitude you have to enforce your ordinance. But  
2 we certainly have an opportunity to achieve the same  
3 thing that you could in a use permit process. We can  
4 do the same thing here with a modified discretionary  
5 -- excuse me, a modified encroachment permit. Excuse  
6 me.

7 COUNCIL MEMBER SOUZA: I ask that, sir, with  
8 all due respect that if somebody was going to put a  
9 35-foot pole in front of your house, I think you would  
10 at least want to know that, at least so that you can  
11 ask the party before any activities were to occur why  
12 here, why now, why this. And you didn't afford in my  
13 mind the public that opportunity, and I would hope  
14 that your company will do that now.

15 MR. GARCIA: We certainly will. I --

16 COUNCIL MEMBER GREENWALD: Point -- point of  
17 order. I think it's better that -- this is a formal  
18 hearing, that we hear from everybody, and then come to  
19 our conclusions. Okay?

20 MAYOR ASMUNDSON: Thank you, Sue.

21 COUNCIL MEMBER SOUZA: Thank you very much for  
22 your candor in your answers.

23 MR. HALL: We look forward to public comment.

24 MAYOR ASMUNDSON: Okay. We will have public  
25 comment.



53

1           How many of you would like to address the  
2 Council?

3           Okay. Please come forward. You will have  
4 three minutes each. You are first.

5           MEMBER OF THE PUBLIC: Good evening. Michelle  
6 Swanson, West Davis.

7           MAYOR ASMUNDSON: Say your name again?

8           MEMBER OF THE PUBLIC: Michelle Swanson. I  
9 live in West Davis. I find myself in a very unique  
10 position. I have been here 17 years, 10 years in  
11 (inaudible), and I have worked on both sides of the  
12 counter. I also have a legal background. So I find  
13 being compelled to come up and speak because this  
14 isn't an industry practice. I don't want an industry  
15 that I work on to take a black eye from this. It's  
16 been three years getting a tower here. That's how it  
17 works. Ordinances are online. That's how it's done.  
18 I think it's unfortunate they didn't work with the  
19 City. That's how it's done. I also really feel for  
20 the people who are in Village Homes throughout Davis.  
21 Because they just wanted to be part of the process.

22           I know that people are concerned about RF  
23 exposure, and I hope that didn't derail that. Even  
24 though it's not a lot, I know it can be discussed.  
25 And it is a safety issue here where it's not a



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

1 concern. So I just wanted to preface that some people  
2 have strong feelings, and I don't want this to be  
3 something that comes at staff. When having worked  
4 with the staff here all throughout California and  
5 Nevada and nationwide that your relationship with your  
6 staff is real important. And I want the City to  
7 remember that and the citizens to remember that. And  
8 I would hope that if the City does move forward in the  
9 future with NewPath, that they too understand how  
10 important it is to respect the jurisdiction, whether  
11 it's a generalized city, a charter City, a county, any  
12 municipality.

13 And so I thank you for your time.

14 MAYOR ASMUNDSON: Thank you, Michelle. Next,  
15 please.

16 MEMBER OF THE PUBLIC: Hi, my name is Samantha  
17 McCarthy, and we are from the local citizens group  
18 Bugs, Better Urban Green Strategies, and I think very  
19 fairly obvious why we're interested in this. This is  
20 isn't just about controversial locations. It's about  
21 a controversial process. And it's a business  
22 opportunity for NewPath. But not -- but they're  
23 trying to do an end run basically around what is  
24 required. The FCC -- they're not an FCC licensed  
25 carrier. And it's been mentioned that the FCC



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

1 licensed carriers have a lot more to show. And  
2 NewPath is just their agent. For each one of those  
3 FCC licensed carriers, they must show that there is a  
4 significant gap in the service area, and that the  
5 proposed antenna is the least intrusive means. To  
6 talk about aggregating these things and multiple  
7 carriers can use them and things, it's a business  
8 opportunity to get around what the FCC's requiring.  
9 And there is no reason to be doing that. There -- it  
10 is excluding the public comment. And what the FCC  
11 requires is not seamless coverage. It's a significant  
12 gap in coverage. And this is just pure garbage, what  
13 they're proposing and to have done it in an end round  
14 and to have excluded the public process. And because  
15 of this and with things coming up such as questions  
16 whether this is a nondiscretionary view, things like  
17 this, what we're also proposing is that the City take  
18 a step back, and they have a great ordinance now.  
19 It's strong. But there are recent 9th Circuit Court  
20 of Appeals decisions that have come along since this  
21 ordinance. There is room for improvement in this  
22 ordinance. You're fine as you stand with NewPath.  
23 But in the future there are going to be other things  
24 coming up. And we would like to see you go back and  
25 revisit that and write a new case law and what's



1 happening around the country and other model  
2 ordinances, things like that. Make ours stronger.  
3 Don't make any question about what the process is.  
4 Make it very, very clear in the future. We know what  
5 the process is now, but it can be better. As well as  
6 there are some things that can be done for rulemaking  
7 petition to the FCC to challenge the fact that you  
8 can't raise health concerns and other things now and  
9 how that is done. And that's going to be strongest  
10 when it comes to the localities. And those localities  
11 can get together and present a rulemaking petition to  
12 the FCC. And we're not going to have any of this  
13 anymore. The powers can come back to local control,  
14 and it's going to be back in your hands. And it's a  
15 matter of doing rulemaking petitions and following  
16 this, Sue, and getting with other City's that are  
17 considering this, other localities and other citizen  
18 groups and presenting that. Then you will have the  
19 control in your hands, and this will not be an issue.  
20 You will be able to then look at some of what the FCC  
21 is preventing you from regulating now. Since the FCC  
22 made those determinations, a lot of scientific  
23 evidence has come out. Other countries do it  
24 differently. Other localities do it differently. And  
25 it's time that this country started doing it



1 differently. But what we need is a rulemaking  
2 petition from cities like us asking the FCC to make  
3 those changes.

4 Thank you.

5 MAYOR ASMUNDSON: Thank you.

6 MEMBER OF THE PUBLIC: Hi, my name is Allan  
7 Hastings. And thank you for the opportunity to  
8 address you. And I would like to thank the Council  
9 and Bill Emlen for stopping this in time before things  
10 were actually constructed. And I would like to point  
11 -- also thank Stephen Souza for raising the CEQA issue  
12 because it's -- suggests to me especially since we  
13 heard a mention of aesthetics in Scottsdale that there  
14 is no way that putting 42-foot poles -- and it's sort  
15 of interesting that the City is still hosting  
16 something on their website which has something about  
17 24-foot poles. Putting 42-foot poles in areas that  
18 have no above ground utilities, there is no way that  
19 that should pass a CEQA aesthetics test. So it  
20 strikes me that not only does the City ordinance  
21 apply, but that applies.

22 And then in terms of what we have just heard  
23 from NewPath, NewPath is asking us as a City to trust  
24 them, to throw out what's been brought before, which  
25 is to rescind permits that are not appropriate and to



58

1 trust them. And if a company has ever demonstrated  
2 that they shouldn't be trusted, it is NewPath.  
3 NewPath is going to go in and do things in front of  
4 people's houses without even letting them know,  
5 without even the courtesy of any mention whatsoever.  
6 This is a company that should never be trusted, and I  
7 sure hope that tonight that you don't get swayed by  
8 some sweet talk that presents alternatives, and you  
9 have no way of even enforcing that they actually do  
10 that. And that instead you should go and rule on the  
11 narrow issue, back up the rescission of the permits,  
12 and use this as an opportunity to force NewPath to  
13 obey the City ordinance, which was carefully crafted.

14 Thank you.

15 MAYOR ASMUNDSON: Thank you, Allan. Next,  
16 please?

17 MEMBER OF THE PUBLIC: Hello. My name is  
18 Elaine Fingerette. And actually I have the great --  
19 the good fortune of living at the -- at the house  
20 where very nearly I enjoyed a new sculpture which  
21 would have been a 42-foot cell tower right on my front  
22 yard. I want to say that there is no excuse for a  
23 company to come in and brazenly do this to anyone in  
24 any community.

25 As we have learned from the attorney tonight,



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
www.esquiresolutions.com

1 NewPath knew about the telecommunications ordinance.  
2 They knew that they could get it online. I certainly  
3 imagine that these people are capable of reading. So  
4 all I can imagine is that either they didn't read it  
5 and ignored it or chose brazenly to ignore it and to  
6 decide to put their appliances wherever they wanted  
7 to. This is completely not acceptable. I agree. I  
8 hope you will decide tonight in the narrow sense. But  
9 I would like to encourage you -- and I'm just  
10 repeating what I said actually this was the Tuesday  
11 right after Thanksgiving, and that is I would really  
12 seriously think twice about getting into business with  
13 this company. I want to say that this company is a  
14 startup. They continue to say that they're a public  
15 utility. I don't know that we -- that we have any  
16 evidence to the fact that they are a public utility.

17 I believe that as our mayor has said, you  
18 know, in Davis we believe in process, and because they  
19 have been so brazenly -- they have brazenly shown us  
20 that they have ignored our process, that we should  
21 really, really -- we should say no now. And if we  
22 decide -- if we decide that we do need further  
23 coverage, we should seek another company, a company of  
24 integrity to work with if we want to do that in our  
25 community.



1 Thank you.

2 MAYOR ASMUNDSON: Thank you. Next, please?

3 MEMBER OF THE PUBLIC: Good evening. My name  
4 is Al Colembano, and I am currently --

5 COUNCIL MEMBER SOUZA: Hold the microphone.

6 MEMBER OF THE PUBLIC: I'm currently the  
7 president of the board of Village Homes, the location  
8 of where this very first -- well, the cell tower that  
9 sparked this whole controversy was proposed to be  
10 constructed. And on behalf of the residents of  
11 Village Homes and the citizens of Davis, I would like  
12 to thank this Council and City staff for several  
13 things.

14 Firstly, for promptly rescinding the permits  
15 and issuing the stop work order when alerted to the  
16 situation.

17 Secondly, for letting NewPath know at the  
18 earlier Council meeting that they cannot install cell  
19 towers in residential neighborhoods without first  
20 involving the residents as to the location and  
21 aesthetic impact.

22 Three, for conducting countless hours of  
23 research to find that the City of Davis  
24 telecommunications ordinance does indeed trump  
25 NewPath's claim that they are not subject to the



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquireolutions.com](http://www.esquireolutions.com)

1 ordinance.

2 Number 4, for standing up to NewPath Networks,  
3 a company that seems to have little or no regard for  
4 the normal ways of dealing with the residents of the  
5 City if they think they can get away with it.

6 And, finally, thank you in advance for  
7 continuing to require that NewPath reapply for permits  
8 based on the City telecommunications ordinance and for  
9 standing firm in the face of sure legal action from  
10 NewPath.

11 Thank you.

12 MAYOR ASMUNDSON: Thank you, Al. Next,  
13 please?

14 MEMBER OF THE PUBLIC: Good evening. My name  
15 is Liz Mary. I live a block away from the  
16 alternative. And I'm here to thank you very much for  
17 the opportunity and everything Al said.

18 I want to -- I think what I've learned thus  
19 far tonight from your counsel is that you have the  
20 ability to regulate time, place and manner. So I  
21 would like to strongly encourage you to please  
22 regulate time, place, and manner.

23 MAYOR ASMUNDSON: Thank you, Liz. Next,  
24 please?

25 MEMBER OF THE PUBLIC: Good evening, Madam



62

1 Mayor, Council. My name is Tim Hogan. I'm a  
2 long-term resident of Davis. I would like to speak  
3 essentially about my approval of the rescinding the  
4 current permits at the 37 sites. I also have large  
5 concerns about the planning process within our City  
6 that led to the approval of those permits. And I  
7 found out about this whole situation so late that --  
8 and I think I'm not alone as a typical citizen in town  
9 with something of this level of impact on citizens.  
10 Just in my East Davis neighborhood less than a block  
11 away from my house is a proposed cellular tower there,  
12 and I want to assure both NewPath and the City that  
13 those will have impacts both in terms of property  
14 value, in terms of eye sores and visual blight, in  
15 terms of a looming presence in the neighborhoods. And  
16 I think citizens really wish for a greater voice in  
17 decisions like this.

18 Thank you.

19 MAYOR ASMUNDSON: Thank you, Tim. Next,  
20 please?

21 MEMBER OF THE PUBLIC: Good evening, Christie  
22 Skibbins, private citizen tonight, please. One of  
23 these towers is less than ten feet from the corner of  
24 my home, proposed for that. And the way I found out  
25 about it was the weekend before Thanksgiving I went



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquireolutions.com](http://www.esquireolutions.com)

63

1 outside to do some yard work, and there were spray  
2 painted indicators of every color all over my  
3 pyracantha and my fence and my vinca in the ground,  
4 and that was the first I heard about it. And then I  
5 saw everything in the paper, and things went on from  
6 there.

7 I just want to tell the Council first of all  
8 thank you very much for bringing this up and talking  
9 about this. And also thanks to Bill Emlen for the  
10 quick work.

11 And also in my career of business owning a  
12 business and running businesses that I have always  
13 followed the prescribed processes for expanding my  
14 businesses or for doing whatever it is that I'm doing  
15 at my business, and I would expect other businesses to  
16 do the same and have the same courtesy for those of us  
17 who live in this town and are being expected to  
18 support their business.

19 So thank you very much.

20 MAYOR ASMUNDSON: Thank you, Christie. Next,  
21 please.

22 MEMBER OF THE PUBLIC: I'm David McGlocklin.  
23 I wish to congratulate you on bringing forth this  
24 whole issue and giving us the opportunity to discuss  
25 it, and I hope that you stay strong in your commitment



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquireolutions.com](http://www.esquireolutions.com)

1 to rescind this. When I first heard about this, I  
2 called up TURN, which is a consumer advocate group.  
3 And they said that something like this was tried in  
4 the City of Santa Cruz, and it was rejected. It seems  
5 to me that you do have that power as the City Council  
6 to make a determination of what you want in your City  
7 and what you don't want.

8 I just find it interesting that this company  
9 would come in, and without going forth through you to  
10 show all of the benefits that it has to offer the  
11 citizens and all of the community. So anyway please  
12 stay strong with your commitment to rescind this. I  
13 appreciate it very much.

14 MAYOR ASMUNDSON: Thank you Dave. Next,  
15 please?

16 MEMBER OF THE PUBLIC: Hi, it's Jim Watson,  
17 private citizen. I have to tell you right now I'm not  
18 even close to a cell tower. So I come at this from a  
19 very different point of view.

20 First of all, I want to say thank you to the  
21 Council for obviously considering the citizen's needs.  
22 Mayor Ruth, you're saying something about citizen  
23 input. Steve, your concern about public input. We  
24 really do appreciate that.

25 So far what I've heard at this dais, I've



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquireolutions.com](http://www.esquireolutions.com)

65

1 heard NewPath, and I've heard City Council. But an  
2 important detail that has been left out of that is  
3 called community planning, and a community planning  
4 director and her making a unilateral decision to issue  
5 the permits without any citizen input is inexcusable.  
6 We sat here for an hour and 15 minutes, and we never  
7 heard the citizens, and we never heard the public. We  
8 are finally getting down to it. We live here. You  
9 represent us. She works for us. That's important.

10 MAYOR ASMUNDSON: Stop that, Jim.

11 MEMBER OF THE PUBLIC: Okay. Well, that's the  
12 basis of my conversation here. The no notification.  
13 The improperly issued permits. We've already  
14 established that it's a mistake. How did this happen?  
15 Please let's not let it happen again.

16 Thank you for your concern.

17 MAYOR ASMUNDSON: Thank you, Jim.

18 MEMBER OF THE PUBLIC: Hi. My name is  
19 Jennifer Douglas. I live at one of the proposed cell  
20 tower sites. I would also like to add my voice to the  
21 public comment, and I think having lived in Davis my  
22 entire life, that is one thing that we really enjoy  
23 our government is that we do have the chance to come  
24 and voice our opinion and be part of the process. So  
25 it was really surprising to me when one day I saw



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

66

1 construction outside of my house. I live on a fairly  
2 busy street corner. I thought maybe they were working  
3 on the light. About a week later I realized there is  
4 something more than just working on the light going  
5 on. I actually went out and asked one of the people  
6 working on the tower, what is going on, what are you  
7 putting in. That's how I found out about it.

8 And then to my surprise the next thing I knew  
9 I saw my address was listed in the newspaper as a  
10 proposed site for a new cell tower. And that was a  
11 little unsettling to me to see my address kind of  
12 really publicly put out there. More than just the  
13 public comments and the notice, though, it's also the  
14 other issues of say safety and aesthetics. I live on  
15 a -- not only on a busy corner, but I'm also part of a  
16 very small street. And having a cell tower there  
17 would really change the aesthetic of our small little  
18 community and our street there. But at the same time,  
19 I wonder if NewPath ever took into consideration the  
20 safety implications of where they were putting these  
21 cell towers. It's -- it's a very busy intersection at  
22 the corner of Loyola and Pole Line. I'm not sure what  
23 kind of consideration was given to impediment of  
24 vision or -- we have school children. They are on  
25 their way to Birch Lane, or they're on their way to



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

67

1 Holmes Junior High, or possibly Harper, the high  
2 school. They're coming through that intersection all  
3 of the time, all day long, and I just don't know what  
4 sort of consideration was given to the implications of  
5 what putting this tower there would have.

6 And so I would really like to thank you for  
7 allowing our public comment and for us to come up and  
8 sort of be part of the process.

9 Thank you.

10 MAYOR ASMUNDSON: Thank you, Jennifer. Next,  
11 please?

12 MEMBER OF THE PUBLIC: Hi. My name is Lucy  
13 Asai. And I live on 803 Linden Lane, and all I want  
14 to say was the question was asked why didn't -- why  
15 didn't NewPath take the public process. And I think  
16 they didn't because they tried to be sneaky about it.  
17 Because I want the public to know that they actually  
18 put the pole on our property after we spent money to  
19 relandscape our whole yard, and now we see this pole  
20 right in the middle of our landscape. And the only --  
21 the only indication that they gave to us was that the  
22 City was putting in a telephone pole to help connect  
23 the 2 telephone poles that were across the street.  
24 But they never did say anything about who they  
25 represented and why they were here and why our



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

68

1 particular spot. So I think the public should know  
2 that they were very deceitful in the way they did it  
3 to us. So that's my only comment at this point.

4 MAYOR ASMUNDSON: Thank you, Lucy.

5 MEMBER OF THE PUBLIC: Hi. And I am Vince  
6 Asai, 803 Linden Lane. And that's my wife. And I  
7 just want to add that the fact that the pole is there  
8 already, I hope that the City of Davis and NewPath can  
9 start from scratch and reconsider the placement of  
10 this pole and go through proper process. I just hope  
11 because -- just because the pole is there it doesn't  
12 mean it has to stay there, and I hope the City will  
13 come to bat for the citizens in that regard.

14 Thank you very much.

15 MAYOR ASMUNDSON: Thank you, Vince. Next?

16 MEMBER OF THE PUBLIC: Hello, my name is Don  
17 Mooney. I'm a resident of South Davis. I also tend  
18 to dabble in land use lawn and a few other things like  
19 that. I wanted to comment on the alternatives that  
20 they suggested, and I'm actually glad that you had --  
21 allowed them to have that discussion before the public  
22 comment.

23 I encourage you not do take the bait. You  
24 know, the issue that is before you is whether or not  
25 the rescission was valid. That's the issue that's



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquireolutions.com](http://www.esquireolutions.com)

1 before you. Not whether or not there are  
2 alternatives. There may be alternatives, but that's  
3 the next step. That's after you grant or deny the  
4 appeal and upheld the City manager's rescission if  
5 that's your decision. Then you can go to NewPath and  
6 say if you're going to come back to the City, let's  
7 see your alternatives. I would -- so I would  
8 encourage you to stay focused on what's -- what's the  
9 issue before you and not -- and it's also important  
10 because I think you're going to set a precedent here  
11 too. That if you -- if you either grant this appeal  
12 or say we will grant the -- we will deny the -- or  
13 grant the appeal, and then we will work with them in  
14 the future, then you've basically told other companies  
15 that your wireless ordinance has no teeth, that you  
16 have no discretion. You have set the precedent for  
17 them to come in and do exactly what NewPath has done.

18 The other thing I would like to comment on is  
19 that kind of the process that everybody has commented  
20 on. And some of people things that I have heard in  
21 terms of what happened in Village Homes and in some of  
22 the comments here, not only did you have the -- the  
23 company not pursue a public process, but then when  
24 they were confronted by people in the -- in the  
25 construction, either they or their contractors, there



70

1 was this -- they were being deceptive. They were  
2 lying to the public. They were lying to the property  
3 owners. And it appears to be more of a systematic or  
4 systemwide approach in terms of don't tell the --  
5 don't tell the property owners what we're doing. Just  
6 go in and build it. Don't answer their questions.  
7 And I've heard that repeated from a number of  
8 homeowners. And so I think you need to take that into  
9 consideration too, that there was apparently some  
10 deception by the company and the contractors in  
11 pursuing this, not just avoiding the public process,  
12 but attempting to deceive the landowners, and I think  
13 you need to take that into consideration. And again I  
14 would reiterate that you need to -- you need to deny  
15 this appeal, not just for the purposes of this  
16 application or these permits, but for future actions  
17 that will come before the Council.

18 Thank you.

19 MAYOR ASMUNDSON: Thank you, Don. Next,  
20 please?

21 MEMBER OF THE PUBLIC: Eileen Samitz. Like  
22 many of the people here tonight, I come to please ask  
23 that you deny the appeal for these towers, cell  
24 towers, and I guess like many people tonight have  
25 spoken as well, I have great concern about how this



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquireolutions.com](http://www.esquireolutions.com)

71

1 whole thing happened, you know, where the process, or  
2 the lack of process, and how we wound up in the  
3 situation.

4 This concept of cell towers around housing has  
5 been an issue of great concern in the past. This is  
6 not a new subject. The Council has dealt with it  
7 before. So how is it that we're here again? And I  
8 agree as we said earlier that it's inexcusable that  
9 the public wasn't notified, that the City Manager  
10 didn't know about it, and that somehow these permits  
11 got issued. Fortunately, it appears that we have  
12 legal grounds in this case. Fortunately. And for  
13 future precedent, for all listening, including other  
14 companies that might have the same idea of what has  
15 been attempted here. But, again, the issue about the  
16 one tower that's been already constructed on the  
17 private property, I mean that needs to be addressed,  
18 and that needs to be made right.

19 So again the fundamental question is how did  
20 this happen, and why is it that the citizens have to  
21 police their own ordinances? That is inexcusable  
22 also. So this needs to be addressed. And we need to  
23 somehow ensure that this is not going to happen again,  
24 because these types of situations can be costly to  
25 everyone. And it shows an obvious lack of capability



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

1 and leadership and management ability. And Davis  
2 deserves better.

3 MAYOR ASMUNDSON: Thank you, Eileen. Next,  
4 please?

5 MEMBER OF THE PUBLIC: Hi, I'm Rebecca Wu.  
6 Just short and simple and sweet I guess. Just  
7 basically again how did it happen and basically how --  
8 what are we going to do to prevent the non-process  
9 from happening again. So just another voice in that,  
10 so just to add more voices to that same kind of  
11 statement.

12 And just on a personal note just I have  
13 personal concern about the health and safety of the  
14 towers and just what they do to people and how I've  
15 heard some people talk about studies that have been  
16 done about the effects on bees, and so that's just a  
17 personal concern that I heard that I don't know too  
18 much about.

19 MAYOR ASMUNDSON: Thanks, Rebecca. Last one?  
20 Yes.

21 MEMBER OF THE PUBLIC: Good evening, Council.  
22 My name is David Greenwald. I wasn't planning to  
23 speak at least on this issue tonight. But I think,  
24 Stephen, you asked the right question. And if I may,  
25 I think there is something that is really profoundly



73

1     bothering me. And -- and it begins at your question.  
2     And what's bothering me is that these people do not  
3     respect this town. They do not respect our process.  
4     They do not respect you. They have thrown 900 pages  
5     of documents at you. And they have sent their filing  
6     clerks to make a case for alternatives that didn't  
7     sound much like alternatives. This whole thing is an  
8     insult. I don't trust this company. I don't trust  
9     what they're trying to do. I don't trust anything  
10    that they have to say, any promises that they make,  
11    anything about this process.

12           Reject this. Uphold the City Manager's  
13    decision and move on. The only other thing I would  
14    like to say is that I do think at a future Council  
15    that you do need to agendize and figure out what went  
16    wrong that made it that Elaine Fingerette had to be  
17    the whistleblower here. Because that was really  
18    close, and something went wrong, and there needs to be  
19    a public accounting for that. But that can be a  
20    question for another night. The question for tonight  
21    I think you know the answer to.

22           Thanks.

23           MAYOR ASMUNDSON: Thank you, David.

24           MEMBER OF THE PUBLIC: My name is Richard  
25    Hastings, 890 West 8th Street, right across the street



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

74

1 from Vince's property. I think what I would like to  
2 speak to is just the process. When I -- I'm a retired  
3 principle planner from the City of Sacramento. And we  
4 always required applicants to have a public meeting to  
5 present the material so that it could be discussed  
6 before it ever came in for any kind of event. That  
7 eased it through. And one of the items that was  
8 usually a really contentious problem would be the --  
9 was the placement of these kind of towers. Usually an  
10 alternate was found that would meet everybody's  
11 concerns, and the whole construction process can move  
12 ahead. And I think that it would be very helpful if  
13 something similar to that could happen here.

14 The -- the interesting thing after looking at  
15 some of the material that was presented tonight where  
16 the telephone pole was put in the side yard setback  
17 across the street, that within about 200 feet there is  
18 a City streetlight right at the intersection. And  
19 looking at what they had there, you know, a simple  
20 transmitter could be placed on a streetlight. It  
21 wouldn't have intruded itself onto their side yard.  
22 It wouldn't have been an eyesore.

23 And I guess on my third thing is that the  
24 company does not have a good PR system for their field  
25 people who come out. I walked -- when I saw a pole



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

75

1 going in, I walked across there and talked to the man  
2 who was -- seemed to be in charge of it. And he said,  
3 oh, we don't need any permit. We can do what we want.  
4 We can put it anyplace. And one of the other workers  
5 there said, yeah, we can come on your property and  
6 move anything around that we want to because we got  
7 the right of way.

8 So then I called down to Public Works, and  
9 Public Works told me, no, we don't have any authority  
10 to review that. We don't need to make any public  
11 information available to the property owners. And I  
12 thought, well, that's it. That's the end of it there.  
13 So we're just going to look at that. I think when you  
14 look at the way you want to handle these in the  
15 future, if you have a public process that takes place  
16 prior to the committee permitting process and let  
17 everybody get their 2 cents in, perhaps a solution can  
18 come up that can meet everyone's needs and cause an  
19 elimination of the problems that you see here this  
20 evening.

21 Thank you.

22 MAYOR ASMUNDSON: Thank you, Richard. Okay.

23 I will close public comment.

24 COUNCIL MEMBER GREENWALD: Ruth, I have a  
25 question I wanted to ask? A followup question?



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
www.esquireolutions.com

1 COUNCIL MEMBER HEYSTEK: Thank you very much.  
2 Thank you, Madam Mayor.

3 MAYOR ASMUNDSON: Another question?

4 I would like to follow up on that. You know  
5 once all of those antennas are erected, what -- what's  
6 the total RF emission? Jonathan?

7 MR. KRAMER: Madam Mayor, that's one of the  
8 questions that we would discover through the ordinance  
9 process. By way of a short background, NewPath  
10 Networks is the installer of the transmitters, but  
11 they don't control the transmitters. As you've heard  
12 this evening, NewPath Networks has contracts with  
13 various wireless companies who are not here tonight.  
14 And they're not so far within our process, so that  
15 since those carriers control the transmissions from  
16 the NewPath sites, as you've heard NewPath doesn't  
17 have the licenses to do that, we need to talk to those  
18 carriers to find out what that information is. With  
19 that information, then we can make an independent  
20 determination as we're allowed to under the state and  
21 federal law as to what the compliance issues are. But  
22 we're not at that point.

23 Similarly, the issue of significant gap is a  
24 fact specific question. We don't have the people who  
25 appear to be claiming this significant gap here at our



100

1 table to ask them the questions.

2 Similarly, the least intrusive means to close  
3 a significant gap if shown, NewPath networks has a  
4 particular technology. Other technologies exist. And  
5 you have to look at who has the significant gap to  
6 determine how the -- how to close that gap if proven,  
7 and what the least -- the least significant or the  
8 least intrusive means are. Again the ordinance  
9 process provides for that process.

10 And as your legal counsel has told you, it may  
11 be that there is a way to fully comply with the  
12 ordinance and also to fully comply with the -- the  
13 federal requirements, which we would discover going  
14 through the ordinance process.

15 MAYOR ASMUNDSON: Well, that's what I thought.  
16 But I thought that I heard NewPath saying that they  
17 gave us those numbers or they have those numbers.

18 MR. KRAMER: They have provided us with  
19 information, but again it's -- it's secondhand  
20 information since we're not talking to the people who  
21 NewPath claims are providing definitions of  
22 significant gap. It's one removed from our review  
23 process at this point.

24 MAYOR ASMUNDSON: Then they don't have those  
25 entire yet; right? They're just going to get them



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
[www.esquiresolutions.com](http://www.esquiresolutions.com)

REPORTER'S CERTIFICATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, FRANCINE DAIS, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing proceeding was taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 29th day of January, 2010.

*15/ Francine Dais*

FRANCINE DAIS, CSR No. 8855



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.755.1880  
Facsimile: 714.708.0402

Suite 400  
535 Anton Boulevard  
Costa Mesa, CA 92626  
www.esquiresolutions.com