

**PUBLIC MEETING**

June 1, 2004

Others attending all or part of the meeting: Cheryl Vick, Mark Adams, Valerie Wilson, Larry Marshall, Kathy Moore, Mark Dowdy and Pat McKelvey

**Pledge of Allegiance.** (everyone recited the pledge)

**Contract with Dunne Communication (Radio Project).** (Marc Adams/Jaci Grenfell)

The Commissioners will consider the contract in the amount of \$506,008.

Marc Adams: Mr. Chairman, with your permission, the Sheriff is coming back from vacation and was unaware that we were on the agenda this morning. She'll be here shortly and she'd like to have this discussed when she arrives.

Chair Murray: Does she have knowledge of the contract or are you prepared to

Marc Adams: I'm prepared to talk about the contract.

Chair Murray: Let's talk and for the record can we get your name please.

Marc Adams: My name is Marc Adams, I'm \_\_\_ Grumlin(?) the \_\_\_\_\_ for the Lewis & Clark County Radio Project. This contract is for the microwave components with Dunne Communications. The microwave piece forms the backbone \_\_\_\_\_ the radio project. There were three ways that the County could purchase the microwave system. One was to issue an RFP, one was to purchase off the existing \_\_\_\_\_ contracts which is the Western State Contract and Alliance and the third was to contract off of the existing agreement with the State of Montana. Dunne Communications is being purchased off of the last \_\_\_\_\_ vehicles. The RFP, \_\_\_\_\_ time frames of the project and in fact the \_\_\_\_\_ microwave in there is \_\_\_\_\_ contract and we're on the state contract. A request for quotes was sent out, Dunne Communications responded, Harris Microwave responded, \_\_\_\_\_ chose not to. This contract represents the quote provided by Dunne Communications in the amount of \$506,008.

Chair Murray: Questions of Mr. Adams?

Commissioner Tinsley: Yes, Mr. Adams. In item number 2 the cover page of the contract it outlines the time of performance and what in general is going to be performed, what task which is the working microwave system installed, tested and carrying traffic by mid August and no later than late August and it has some fairly strict penalties, my question is this all hinges on the legal process, correct? I mean the legal process extends farther than we think it's going to extend

Marc Adams: That is correct, the Federal funding becomes available once \_\_\_ approval has been secured.

Commissioner Tinsley: Okay

Marc Adams: An update on the \_\_\_ process, the draft was prepared last week and ready for review by us this week and we'll be sending that to FEMA by mid week for their review.

Commissioner Tinsley: Mr. Chairman, Mr. Adams, but the actual requirements that we're requiring of Dunne to perform by mid August if the \_\_\_\_\_ process is there's a bump in the road or it goes longer than expected than we have to come back and modify the contract correct, they're not going to be penalized, is that correct?

Marc Adams: If I'm following your question

Commissioner Tinsley: I mean the microwave systems can't be installed until we go through the \_\_\_\_\_ process

Marc Adams: There is two ways we can go ahead with construction. One is to wait for the \_\_\_\_\_ process to create the Federal funding. The other is to use matching dollars \_\_\_\_\_ to apply to that. The risk is that if the County uses those dollars for the project and the \_\_\_\_\_ process were to come back and be denied than the County would be at risk for that money.

Commissioner Tinsley: That's kind of where I'm pointing to.

Marc Adams: The risk to the County is not \$253,000 however it would be the cost of actual time in the field up to that point plus any restocking fees so this is for the 50% match payment is for the purchase of equipment which can \_\_\_\_\_ stock

Commissioner Tinsley: Okay

Chair Murray: Mr. Adams you're satisfied with the contract we've been provided, or you know this contractor or their work

Marc Adams: I know this contractor through my discussions with Montana Highway Patrol and their satisfied with the equipment and contractor however this amount also includes a \$30,000 contingency that in the event that they are not able to perform, stratus themselves will send up qualified personnel to put in the installation. It's a \$30,000 contingency that's included in the price but may not be used if they're able to perform at the local contractors.

Chair Murray: Thank you.

Paul Stahl: Mr. Chairman, if I might also tell you since I worked, we spent about a week on this, Motorola has to have this in place or else it's kind of a house of cards or else they won't be ready to, I mean that's why there's such stringent penalties here is because if it isn't in place, Motorola has a contract with us that has to be done by a certain time, they have to begin and if we don't get it in within the right time than everything will be out of sync and then they'll be, we'll be, so that is why we put it in and try to force this through here.

Chair Murray: Thank you Mr. Stahl. Commissioner Tinsley, I refer you to page 4 of the document with the arrows, the yellow arrow at the top of the page going to Sunset Mountain, which is just west of Sunrise Mountain from last weeks discussion.

Commissioner Tinsley: I didn't argue the fact with you I don't believe, somebody else may have.

Chair Murray: Are there further questions of Mr. Adams? What I would like to suggest Commissioner is that we move this to the end of the agenda for the Sheriff's convenience and give her the opportunity to confirm that she has the money in the budget.

Commissioner Tinsley: That's fine with me

Chair Murray: Thank you Sir

Marc Adams: Thank you

(More text under Public Comments)

**Applications for Federal Assistance-BLM.** (Pat McKelvey)

The Commissioners will consider two grant applications for hazardous fuel reduction in the amounts of (1) \$55,000 and (2) \$5,500.

Pat McKelvey: Good Morning, Chairman and Commission. This is if you'll recall last year through their community assistance agreement had given us funding for what could have been up to five years for our fuel hazard reduction projects. What you have before you is a re-funding of one of those community assistant

agreements. We had ran out of money actually, we spent what we had on the \_\_\_\_\_ agreement specific and this is a re-funding more money to continue with those projects. The second is for \$5,000 and that's to be used for community education, awareness, those kinds of programs. Remember, if you recall we put on \_\_\_\_\_ we're doing those for funding those kinds of projects. I believe that if, that's an awful lot for education and awareness, but we do have a pretty active program if we don't need that much I've asked BLM if we can use it on projects and they said certainly.

Chair Murray: Questions of Mr. McKelvey?

Commissioner Tinsley: None

Chair Murray: Is there a motion?

Commissioner Tinsley: Mr. Chairman would you like them both in one motion or separately?

Chair Murray: I would think we do them separately, it eliminates confusion.

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the resolution, the application for Federal assistance from the BLM for re-funding of community assistance agreement in the amount of \$50,000 and authorize the chair to sign.

Chair Murray: Second. Discussion. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the resolution, the application for Federal assistance for the BLM for community education and awareness in the amount of \$5,000 and authorize the chair to sign.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries. Thank you Mr. McKelvey.

Commissioner Tinsley: Thank you Pat.

Chair Murray: In my efficiency to get the meeting going this morning I forgot to introduce you Commissioner and I apologize. For the record, my name is Mike Murray to my right is Commissioner Tinsley. Commissioner Varone is off and recovering from surgery. To Commissioner Tinsley's right is Ron Alles our Chief Administrative Officer, to his right is Sharon Haugen our Director of Planning, to her right is Paul Stahl our Deputy County Attorney and to his right is Carole Byrnes our executive secretary.

**Resolution Increasing Private Pay Daily Room Rates at the Cooney Home.** (Mark Dowdy)

The Commissioners will consider the new rate structure.

Mark Dowdy: Good Morning Chairman Murray, Commissioner Tinsley. Today I'm here to seek approval of the Commission to increase private pay room rates in the Cooney Home by \$2.50 or approximately 2% and the reason for these increases is the budgeted and projected increases in expenses in personnel and operation for the FY05 upcoming year.

Chair Murray: Questions of Mr. Dowdy? Mark, is this the amount we agreed to at the County Board meeting?

Mark Dowdy: Yes it is

Chair Murray: What is the Medicare rate, or Medicaid rate?

Mark Dowdy: The Medicaid rate for FY05 will be \$121.23, that's the proposed rate.

Chair Murray: Why are we sliding the private pay rates so far above the

Mark Dowdy: In addition to the rate we also involved with Medicaid and IGT program where we receive matched funds, some \_\_\_\_\_ effective rate quite a bit higher than the \$121.23.

Chair Murray :Is the only requirement we have to meet is the \$121 is it not?

Mark Dowdy: That's correct

Chair Murray: I have a personal problem with our private pay rate being much higher than the required Government rate that we're required to set. As we're spending these peoples life savings our rate\_\_\_\_\_ what will the annual fee be at \$1.25

Mark Dowdy: You know I don't have that number calculated right now, it's approximately \$40 - \$45,000 a year.

Chair Murray: Up from \$33,000, \$36,000

Mark Dowdy: No, it's just up a couple percent, it's a 2% increase. Well, the main reason we need these increases is our personnel expenses for next year are projected to be about 4% and our operation expenses are projected to be 3.9% and Medicaid rate increase that they gave us is 4.62% and we also receive intergovernmental transfer of funds of approximately, we're projected to get approximately \$13 per Medicaid day in FY05 and we have one of the lowest rates, if not the lowest rate in Lewis & Clark County for private pay rates and we also include other \_\_\_\_ within our \_\_\_\_\_ that other nursing homes charge separately for and we basically looked at this and tried to come up with the least amount of increase we could in order to cover our upcoming expenses in the next fiscal year.

Chair Murray: We're not putting our private pay customers in a situation where they're supporting the government paid residents of Cooney are we?

Mark Dowdy: Not in my opinion, not at all. Especially with us having other programs that we work with with Medicaid, like the IGT program, not at all.

Chair Murray: Okay, Thank you. Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman, Mr. Dowdy. Do you know what the rate for your competitor in town is for private pay?

Mark Dowdy: I believe it's \$128 a day or \$130 and than they also charge in addition to that extra ancillary costs, incontinence products and miscellaneous items, toothbrushes, toothpaste and things like that. Our new rate proposed, \_\_\_\_ a private room is \$125 and we don't charge an extra to the families for that amount and it includes the ancillary costs.

Commissioner Tinsley: Thank you.

Chair Murray: Commissioner I believe it's part of the cost of doing business as much as we all dislike raising nursing home rates, I think our economy forces us to do just that and I think this is a fair rate that we're charging our private pay customers at Cooney. If there's a motion, I'll vote in favor of the new rate as proposed by staff.

Commissioner Tinsley: Mr. Chairman, I make a motion that we approve the resolution increasing the private pay daily room rates at the Cooney home as indicated on the resolution and as requested by staff and authorize the chair to sign.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries. Thanks Mark. Sorry to put you through that.

**Water Quality Protection District Contract/DNRC Grant Agreement RRG-04-1202.** (Libbi Lovshin)

The Commissioners will consider the contract for Groundwater Sustainability in North Hills Area.

Kathy Moore: Thank you Mr. Chairman, Commissioner Tinsley. I am not as stated on the agenda Libbi Lovshin, although we've been accused of being twins.

Chair Murray: For the record if we could get your name please.

Kathy Moore: My name is Kathy Moore, I'm with Lewis & Clark County Water Quality Protection District. The Groundwater Sustainability in the North Hills is a Department of Natural Resources and Conservation grant, a research grant which was awarded in 2003. We did have some problems \_\_\_ funding for that grant; it was delayed for one year. Those funds are going to be made available on July 1<sup>st</sup>. This grant is specifically geared toward looking at groundwater in the North Hills area as identified by the Department of Natural Resources and Conservation controlled groundwater area. We're looking primarily to identify faults and fractures which will allow the travel of groundwater in the area, identify sources of recharge and discharge where possible, we're going to be analyzing water samples to determine if possible the extent of contamination in particular areas and mapping that data in useful form for local decision makers, residents, developers and so forth in order to make that all of that information online either through the Montana Bureau of Land and Geology website or perhaps even the local county website. We have a steering group that's been put together and has been meeting on this every three months, members of DEQ, Bureau of mines and geology, USGS and the \_\_\_ county engineering who are working on the North Hills infrastructure have been helping us and we will be focusing our attention not so much on the entire area as on the particular areas that seem to be under increasing pressure of development. Are there any questions?

Chair Murray: Questions of Ms. Moore.

Commissioner Tinsley: Mr. Chairman, Ms. Moore, would you go into a little bit more detail if you would on the citizen volunteer portion of the match. It's indicated that, it says that the volunteers will give approximately \$7,700 in matching time I guess.

Kathy Moore: We have a number of citizens in the North Hills very actively interested and concerned about what's going on with groundwater in the North Hills and they have volunteered to go out and measure groundwater levels in wells, we estimated that their involvement in measuring water levels in their own wells and in neighbor wells would amount to approximately \$7,000 in match over the course of the grant.

Commissioner Tinsley: Thank you.

Chair Murray: The term on this is July 1<sup>st</sup>, 2006

Kathy Moore: Right, it's a two-year grant. We believe that we will be done with our work however within a year. Our original grant request was for \$100,000 and the legislature cut that grant back to \$50,000. We may, our intent is to wrap up work within a year.

Chair Murray: Any further questions of Ms. Moore?

Commissioner Tinsley: None

Chair Murray: Is there a motion?

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the Water Quality Protection District contract/DNRC grant agreement RRG-04-1202 and authorize the chair to sign.

Chair Murray: Second. All in favor of the motion signify by saying Aye.

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries. Thank you Ms. Moore.

Commissioner Tinsley: Thank you Kathy.

**Amendment to Condition of Approval #16 for Northwest Minor Subdivision** (Applicant, M & W Investments/Larry Marshall) (Planner, Michael McHugh) (hearing cont. from 5/25/04)

The Commissioners will consider amending Condition 16 requiring the developer to "...establish locations and easements for additional wells, waterlines and a 100,000 gallon water reservoir on the subject property as identified in the agreement filed with the County Clerk & Recorder. The easement for the subject wells water lines and reservoir shall be indicated on the final plat. The Townview Estates Users Association and the Applicant shall mutually agree on the location of wells, easements and the reservoir."

Chair Murray: Larry you received copies of the staff report and are prepared to go forward this morning with the hearing?

Michael McHugh: There was no staff issued, this is a request for amendment that was originally scheduled on May 27<sup>th</sup>, neither applicant or the objectors were present at that time.

Chair Murray: I realize that Mr. McHugh, I have a packet of information before me including a memo from yourself.

Michael McHugh: The attachments as prepared were attached by the applicants attorney, I'm assuming the applicant had copies of all those.

Chair Murray: Mr. Marshall now has a copy, Commissioner Tinsley with your permission let's give Mr. Marshall and his attorney an opportunity to review the information that we have and we'll just catch it later in the agenda. Is that agreeable?

Commissioner Tinsley: That's fine with me

Female: Actually, we've seen all this Mr. Chairman so we're ready to go.

Chair Murray: Fine. If you're ready to go forward, so are we. Mr. McHugh.

Michael McHugh: The Northwest Minor Subdivision was originally a four lot minor subdivision that was approved in April of 2002, there were sixteen conditions attached with the approval. The original condition #16 read that the applicant shall establish locations and easements for additional wells, waterlines and a 100,000 gallon water reservoir on the subject property as identified in the agreement filed with the Clerk & Recorder's Office. In \_\_\_ 4, page \_\_\_ easements for subject wells, waterlines and reservoirs shall be indicated on the final plat. Townview water users association and the applicant shall mutually agree on the locations of the wells, easements and reservoir. The applicant submitted a request that read the applicant shall show existing easements on final plat the Townview Estates water users association and the applicant shall mutually agree on the locations of the reservoir and the additional wells for tract 2a lot 4 shall be

developed. This condition was placed on there, it was supposed to be done in agreement mutually between the applicant and the holder of the easements and water rights on the adjacent property and they have not completed that, but the applicant is here and the attorney for the Townview water users association. Attached in your packet is numerous communications that have been held over the past two years and I \_\_\_\_ applicant and the attorney for the Townview Water Association to address this issue.

Chair Murray: Mr. McHugh so I'm perfectly clear, is today the day to provide new evidence, schedule a hearing on changing the condition #16

Michael McHugh: The Commission has already held a public hearing on that

Chair Murray: So today is the actual hearing

Michael McHugh: yes

Chair Murray: Thank you. Are there questions of Mr. McHugh?

Commissioner Tinsley: Not at this time

Chair Murray: Thank you Michael. Ms. Wilson, I'm assume as Larry Marshall's counselor you're going to

Valerie Wilson: Yes, Thank you. Mr. Chairman, Commissioner Tinsley. Thank you for this opportunity to discuss this

Chair Murray: For the record, I need to get your name and business address

Valerie Wilson: Okay, my name is Valerie Wilson, I'm with the law firm of Briski Wilson at 1085 Helena Avenue, Helena Montana and I represent the applicant Mr. Marshall.

Chair Murray: Thank you

Valerie Wilson: As Mr. McHugh pointed out we did miss the last meeting, there was a miscommunication in our letters with the commission and we apologize for that, however we are here today and as Mr. McHugh pointed out condition #16 is a very unusual condition for any sort of subdivision approval and the premise of that condition was a perfectly legitimate and valid premise. What happened is was the prior owner of the Northwest quarter and the Northeast corner had entered into an agreement with Townview that they could not only get easements to existing wells but they would have the opportunity to select additional wells and a reservoir site and have easements to those sites that in 1984 had not yet selected and they did not exist. So in 1984 an agreement, an easement was filed at Lewis & Clark County and it was understood that Townview would select those sites. In 2002, when the applicant came to you, 18 years later, Townview still had not done that. They had not selected those sites and this three-lot subdivision if I could just draw your attention to the very last page in your packet, I think it's exhibit 'C', you should have, you have something that looks like this Sir? Okay, Thank you. As you can see that they've got 40 acres in which to establish a reservoir site and to establish whatever well sites they want and the part that we're talking about up here is probably three acres of that 40 that they are holding up because they can't make a decision on their well sites. Again, the Commission, the planning board when I put together this condition of approval #16 was acting in good faith and they were acting on the basis that Townview would act in good faith and they would select the sites and we would move on and beginning even before approval, Mr. Marshall by and through well individually and than through counsel sent letters to Townview asking them come on let's get this ball rolling, let's select a site and for 18 months the only thing they got back from Townview was you can't move forward unless we agree and what happens than is instead of taking condition #16 and moving forward, Townview took it as some sort of cloak of authority to I guess hold a hammer over the applicants head and say look you're not going anywhere unless we agree and that certainly wasn't the intent of the Commission, I'm sure that was not the intent of the developer at the time or he would have vehemently objected to condition #16. You've got chronicled for you over two years worth of correspondence, finally Townview agreed to meet with us in January of this year,

agreed that we would try to get some sort of accelerated time period where by the 1<sup>st</sup> of April they would have selected those sites, they hired a hydrologist, they went through a lot of information and they missed the April 1<sup>st</sup> deadline that we had discussed and then they after we submitted this request they did contact us and say oh you know what, we've got some sites we're going to agree on these sites but we're not going to write it down and basically that's attached to your packet, I believe it's exhibit 'B' and it's the second letter. It's a letter from Mr. Wilson, dated April 19<sup>th</sup> and basically what they said in that letter is that the reservoir site would be down here not in this two acre part but it would, they believe they wanted to put it in this lower section, they also selected preliminarily three well sites, one, only one having the potential of affecting the Northwest Minor. But again, they've refused to put it to writing. I understand that we need to follow through with this agreement and Mr. Marshall has acted in good faith and has attempted to move through with this, but at this point, Townview just will not let us complete this process. The commission is not in the business of enforcing agreements between individuals and we would ask that if Townview refuses to make this selection than the remedy is it's going to be selected for them, meaning that their going to have to put it where DEQ says they are based upon the configuration of the minor subdivision. You can see the problem. Until they selected a site, we can't assure infrastructure and water quality conditions to protect that site and at this time we would ask that those conditions be taken out of this condition of approval and we'd be available for any questions.

Chair Murray: Questions of Ms. Wilson?

Commissioner Tinsley: Not at this time.

Chair Murray: Ms. Wilson, we will reserve the right to close for you after the public hearing.

Valerie Wilson: Thank you.

Chair Murray: This is a public hearing, anyone wishing to speak in favor of the amendment, proposed amendment and opposition to or in general, now is your opportunity.

Kim Wilson: Commissioners my name is Kim Wilson, I'm here today representing the Townview water users association as the I think the plat you've got would indicate Townview is the subdivision immediately east of this area that Mr. Marshall proposes to develop. As Ms. Wilson outlined, Townview does have an easement for both of the existing wells and it has three wells within what was originally I believe subdivided as Northwest Minor Subdivision, Townview 1, 2 and 3. In addition Skyview has two wells in that area but in addition to the existing wells, the easement that they entered into in 1984 does give them the right for future well sites, one future reservoir site and water right or access to lines connecting the wells and the water facilities. Between this proposal of Mr. Marshall's which is only three or four lots and what's been called the Northwest Major subdivision which is the large chunk of land south of these three lots, Mr. Marshall's proposing a fairly sizeable subdivision within that area basically overlaying the existing Townview wells and lines and as originally figured \_\_\_\_ Northwest Major subdivision there was no acknowledgement in terms of the planning for those existing wells much less for future wells. We have, because of the size of the subdivision and because of the proximity to Townview's wells, Townview has concerns about water quantity and water quality related to Mr. Marshall's proposed developments and I think my April 19<sup>th</sup> letter which Valerie mentioned explains in some detail what those concerns are. We did in fact hire a hydrologist, Bill Thompson, from Hydrometrics. He pointed out that Montana Department of Environmental Quality had not yet given permission for either the drainfields for the proposed Northwest Minor Subdivision which is the one we're talking about today or the larger Northwest Major Subdivision and so my client's position overall and this is more in terms of the larger proposed subdivision is that we think Mr. Marshall needs to have a little more information on the water quality, on the groundwater configuration in that area and that any proposal the size of his \_\_\_\_ Northwest Major to some extent threatens or potentially threatens Townview's water supply. Now having said that, let me address specifically the issue before you. Let me first say, the way I read those easements is that Northwest, excuse me Townview has an existing easement in that area in the Northwest Minor \_\_\_\_ and Mr. Marshall's actions are subject to that easement. It's an easement that runs with the land, Mr. Marshall knew it was there when he bought it, I don't think there was any understanding in 1984 that Townview would immediately identify future well or reservoir sites, nor do I think the easements themselves place that obligation on them nor do

the commissions actions in the making of Mr. Marshalls subdivision contingent on that, place an obligation on Townview which wasn't a party to that subdivision. So in any event, we think the easement runs with the land and it's there regardless of what Townview does or doesn't do in terms of selecting future sites, having said that I think what the letters that Ms. Wilson has attached will show you letters from me is that we have been working diligently the last couple of years to try and reach an agreement, try to get enough information so that both parties reach a comfort level on the additional well sites and reservoir sites in that area and I think that those letters show contrary to what Ms. Wilson was arguing, that we have been quite responsive and brief in requesting additional information which we don't believe that we've received and I understand to some extent it's kind of a chicken versus the egg type of situation, but having the \_\_\_ services of the hydrologist has raised some serious concerns about water quantity and quality issues in this area. Townview wants to proceed cautiously. Now I believe we are close to reaching an agreement with easements in the Northwest Minor. My clients have tentatively identified well site in either the southern southeast corner of Northwest Minor or immediately south of Northwest Major \_\_\_ determined and we've conveyed to Ms. Wilson that we're not interested in a reservoir in Northwest Minor and so what I had proposed to the commission as alternative language, let me back up, our concern with the language that Mr. Marshall had put in there and suggested is it appears to say as to Northwest Minor as to those three lots that those easements will be shown on the final plat and as Ms. Wilson has said that they will put their lots in where they want and we'll have to I guess find the well sites depending on where they put their home sites. What we propose is that the language be tailored specifically to Northwest Minor and it says that the Townview Estates Water Users Association and the applicant shall mutually agree on the location of the reservoir and additional well sites as lots 1 through 3 of Northwest Minor Subdivision are developed and that I think is improvement of the existing language because it de-couples Northwest Minor from the large subdivision that he's proposing in Northwest Major. In other words Mr. Marshall is not going to have to reach an agreement with us on the more troubling troublesome and probably problematic issue of agreement of the Northwest Major Subdivision before he can move forward with the Northwest Minor subdivision. In that language that I just, that I quoted, \_\_\_ I suggested alternative language I would further suggest that you agree to taking out the word reservoir because it's clearly not a reservoir in the Northwest Minor subdivision and what I proposed to Ms. Wilson before the meeting or before the hearing this morning is that we would be willing to meet with them and try to reach an agreement within the next few weeks on Northwest Minor as a stand alone deal. So, the letter that I sent you on May 17<sup>th</sup> \_\_\_ alternative language I would say that you could strike the reservoir from that because we're not going to be seeking a reservoir we'll just be seeking an agreement on future well sites and future water lines sites in lots 1, 2 and 3 of Northwest Minor Subdivision. In closing, I would just say that the water quality and quantity is of the North Hills in Helena is obviously as you folks are very familiar with and there's lots of problems associated with development that's occurring out there and my clients do have concerns with the high density and large amount of development proposed out there and that's why they have wanted to proceed cautiously on this, I don't think that they have been doing so in bad faith so with that I'll close.

Chair Murray: Thank you. Questions of Mr. Wilson?

Commissioner Tinsley: Mr. Wilson, if you have just a second here. Mr. Chairman, Mr. Wilson, the language that you're proposing it appears to me that you're asking to be added to the proposed language of the applicant as a second sentence?

Kim Wilson: Well, or perhaps, yes. That would make sense.

Commissioner Tinsley: You're also proposing that in Mr. Marshall's proposed language the words the reservoir and in your proposed language the words the reservoir be removed.

Kim Wilson: In my language reservoir be removed. In his language as I understand it that reference to tract 2A refers to Northwest Major and Northwest Major is where we want to put the reservoir and I think we've reached a tentative agreement on where that would be as well but we're not, I would also point out Commissioner Tinsley in my suggested language I think the easement talks about wells and water lines and I think both Larry and I, actually if you look at the original language up above there it was wells, water lines and reservoir and so my proposed language should say wells and water lines, well sites and water lines for lots 1,2, and 3 as Northwest Minor is developed.

Commissioner Tinsley: Thank you Mr. Wilson.

Chair Murray: Is there anyone else that wishes to testify in favor of and opposition to or speak in general?  
This closes the public hearing. Mr. McHugh.

Michael McHugh: Staff has several concerns about the proposed language. As it reads, or as presented by Mr. Wilson it says as developed which would allow the final plat of the subdivision to be done and this could be two or three years later and once the final plat is filed the county loses all control or oversight of these locations and it's important that the commission and the applicant and the other parties realize that this forty acre parcel located to the south of these three lots is part of the subdivision for the Northwest Minor so if there is going to be a reservoir located within these forty acres it needs to be addressed as part of the Northwest Minor because it was originally part of the original tract record that was subdivided at that time.

Chair Murray: Questions of Mr. McHugh?

Commissioner Tinsley: None

Chair Murray: Thank you Michael. Ms. Wilson this is your opportunity to close or Mr. Marshall's opportunity to close.

Larry Marshall: Mr. Chairman Mike Murray and Commissioner Tinsley, Larry Marshall 6324 Highway 12 W. The plat you have before you kind of gives you an overall picture of Townview, Skyview and Northwest Minor Subdivisions and I agree with Mike McHugh

Chair Murray: Excuse me Mr. Marshall do you have a copy for Mr. Wilson?

Larry Marshall: Sure, I'll have Valerie make him one.

Commissioner Tinsley: Here I'll just take this and I'll look at his.

Larry Marshall: and as Mike pointed out the Northwest Minor is the three lots but it's also \_\_\_ with the large \_\_\_ that is within the Minor subdivision. The Northwest Minor, the three lots that have been approved by the commission include the Townview well #1 in addition to the Northwest Minor well and I have received the permit from that well from DNRC last week. In the agreement, excuse me in the easement that Townview has with this property to me there's an important sentence that is in that agreement and the agreement basically says that the easement and wells will be with as little interference as possible for the users of the land. Then \_\_\_\_\_ as Ms. Wilson said Townview has had twenty years to select sites and uses of the other easements and now they are interfering with other possible uses of the property. I've tried unsuccessfully for two years to satisfy the easement that they have but I believe that little interference as possible holds at this time because they are interfering. The language that they have suggested as Mike McHugh pointed out will not suffice. I don't know the solution that's why I requested the hearing so it can come to a conclusion \_\_\_\_\_.  
Thank you.

Chair Murray: Mr. Marshall do you believe you are within a couple of weeks on reaching an agreement with Townview Water Users Association.

Larry Marshall: I personally do not.

Chair Murray: Questions of Mr. Marshall?

Commissioner Tinsley: No, thank you.

Chair Murray: Ms. Wilson.

Valerie Wilson: Mr. Wilson's proposed language is certainly reasonable, it's a situation where accelerated perhaps last year perhaps six months ago but unfortunately with Mr. Marshall I have some real reservations whether or not we're moving forward on this without any time constraints being in that condition they continue to move as they say cautiously which leaves us in a place where we cannot fill condition #16. As I pointed out in my letter that unless Townview designates those well sites, Mr. Marshall is unable to design a wastewater system that will protect the integrity of those wells. The reason from my understanding that DEQ is not giving us approval is because they don't know where the wells going to be and so at this point we are again asking the commission that with regard to the Northwest Minor that this condition be lifted, again the commission is not in the business of enforcing agreements between parties and if Townview has an issue with how we are proceeding, their remedy would be (tape ended) (tape begins) and allow us to proceed. Thank you.

Chair Murray: Thank you. Questions of Ms. Wilson?

Commissioner Tinsley: No, thank you Ms. Wilson

Chair Murray: Commissioner \_\_\_\_\_ will you be prepared to move on?

Commissioner Tinsley: Where is the calendar? I was thinking somewhere along the lines of the 10<sup>th</sup>. Is that fine with you?

Chair Murray: You bet

Commissioner Tinsley: Mr. Chairman, I make a motion that we render a final decision on the request on the proposed amendment to condition of approval #16 for the Northwest Minor subdivision as requested by the applicant Mr. Larry Marshall on Thursday June 10<sup>th</sup> at our regularly scheduled subdivision meeting at 9:00 am in this room.

Michael McHugh: Mr. Chairman

Chair Murray: Second. Mr. McHugh.

Michael McHugh: Ms. Wilson's last statement was that she wished to remove the condition totally. The Public hearing we're having today is to amend it to the proposed language so if it's the applicants desire to totally delete that than there'll have to be new notices and things because that was not what was scheduled on the agenda.

Commissioner Tinsley: Mr. Chairman, Mr. McHugh I did write down what she said but I was understanding her as meaning as they requested in the original request, that's how I took it.

Valerie Wilson: Yes

Chair Murray: Second. Mr. Stahl

Paul Stahl: I can't answer that because I don't have the stuff in front of me that's good enough. I mean it's good enough, \_\_\_ to work it out. I mean, Commissioner's I only have one more day here and I won't be here on the 10<sup>th</sup> so I will give you some kind of a reading here today or tomorrow. I don't have an opinion at this time because I don't

Chair Murray: You might explain the ominous statement you only have one more day here. I happen to know where you're going but

Paul Stahl: I'll be back on the 15<sup>th</sup>.

Chair Murray: Mr. Stahl \_\_\_\_\_ will be leaving to take over that responsibility.

Chair Murray: Commissioner we have a motion before us to render a final decision on the 10<sup>th</sup> of June at our

regularly scheduled subdivision meeting, all in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries.

**Request for a Public Hearing to Modify Conditions of Approval #6 and #14, Amended Plat, Lot 2, Gilleran Minor Subdivision.** (Applicant, Steve & Cheryl Vick) (Planner, Lindsay Morgan)

The Commissioners will consider if there is new evidence to schedule a public hearing to modify Condition 6 "that the internal access road be built to county standards, which includes a 60 foot public access and utility easement"; and Condition 14 "that the Vicks provide proof that they have access across Government Lot 18, a parcel currently owned by the National Forest Service, in order to complete the 60 foot public access and utility easement at the location near the entrance of the proposed development."

Chair Murray: Ms. Vick is present, are you prepared to go forward this morning? Thank you.

Lindsay Morgan: Good morning Commissioners. Steve and Cheryl Vick requested that a hearing be scheduled to discuss modifying two conditions of approval to the amended plat of lot 2, Gilleran Minor Subdivision. This is a proposed development that was granted preliminary plat approval on March 16, 2004. The Vicks are also requesting that the \$150 modification fee be waived. Condition #6 requires that the internal access road be developed to County standards, which includes a 60-foot public access and utility easement. Condition #14 requires that the Vicks provide proof that they have access across Government lot 18. This is a parcel that is currently owned by the National Forest Service. In order to complete the 60-foot public access and utility easement at a location near the end of this proposed development, that's the area that I've marked in yellow on your handout. After discussing the easement issue with the Forest Service it was determined that the Vicks did not have an existing easement across Forest Service property nor will they ever be granted one at this location. The Vicks have considered moving the easement onto their property entirely however their existing well will interfere with this location. An encroachment for the well and to the right of way was considered as a possibility however an encroachment is not granted on a permanent basis and therefore may cause problems for future property owners at this spot. If the Vicks are granted a variance from the required 60-foot public access and utility easement at this location the remainder of the easement for the internal access road will remain at the required 60-feet. In addition, the Vicks plan to construct the internal access road to meet all other county standards. One thing to note was that prior subdivision, MS407 was granted final plat approval with the notion that the internal access road with a 60-foot public access and utility easement. This easement appeared to cross over Government Lot #18 however no easement was ever granted by the Forest Service at this location and this is according to a conversation that I had with Charlene LaRantz with the National Forest Service on May 19<sup>th</sup> 2004. When the Vicks submitted their preliminary plat application both the county planning office and Mr. & Mrs. Vick were under the notion that the easement had been granted by the Forest Service on Government Lot 18 in order to complete the required 60-foot public access utility easement for the existing internal access road. Had we realized that there was an issue with the required easement a variance request would have been submitted during the preliminary plat stage. The Vicks in their initial preliminary plat application request, they did request a variance to allow for one of the lots to bisected by the road so they paid the \$75.00 fee at that time. That fee would cover up to four variance requests so had we realized this, they would have paid that fee, that \$75.00 fee at that time and requested to be granted a variance for the public access and utility easement at that location. Do you have any questions?

Chair Murray: Questions of Ms. Morgan?

Commissioner Tinsley: Yes, Mr. Chairman, Ms. Morgan. Looking at the plat where you marked in yellow we're talking about a corner of the Forest Service Property coming into \_\_\_\_\_ the road, is that correct?

Lindsay Morgan: That's correct

Commissioner Tinsley: Okay, and it was previously, you indicated that it was previously passed by a prior commission the final plat was approved by a prior commission under the \_\_\_\_ where in, assumption that there was an easement across that portion, correct?

Lindsay Morgan: That's correct.

Commissioner Tinsley: Okay.

Chair Murray: Ms. Morgan is that where we were under the notion that there was an existing easement

Lindsay Morgan: That's correct.

Chair Murray: Have we, what I see here are two requests, one is a modification of condition of approval, one is a request for a waiver of the, the fee was not paid for the requested variances, is that correct?

Lindsay Morgan: No, when it went to preliminary plat stage they paid \$75.00 for a variance. That cost would cover up to four variances so had they requested it at that time the fee still would have been a total of \$75.00.

Chair Murray: Thank you. Has the county's expenses exceeded the \$75.00 for the variance request.

Lindsay Morgan: No.

Chair Murray: Thank you. Further questions?

Commissioner Tinsley: Mr. Chairman I have a question for Ms. Haugen or Mr. Stahl if possible. The request this morning is to request a hearing, however since we've already gone through this process, it appears at least to me that at some point in the past a final plat was issued by the County or approved by the County inadvertently because of an easement that didn't exist. Is it necessary to hold a hearing or can we take action this morning?

Paul Stahl: Well

Commissioner Tinsley: Or should we hold a hearing, is the question.

Paul Stahl: Yes you should, you should hold a hearing because it's just, to stay in the process and the problem with going outside the process is what are the reasons and you say well we've already approved it but and it was a staff mistake and we have those a lot so I don't know of any reason

Commissioner Tinsley: I don't think we have those a lot

Paul Stahl: Well, we have more than this one, let me put it that way, how's that. A lot is probably the wrong word, choice of words, I just think you ought to stay within the process is what I would recommend, it's just easier.

Commissioner Tinsley: Okay. Mr. Chairman I have one more question to schedule a hearing for this matter, how much lead time do we need?

Sharon Haugen: About three weeks

Commissioner Tinsley: So if we just pass the motion to schedule a hearing the date will be chosen by staff or do you want us to actually pick a date?

Sharon Haugen: The date, it depends on publication so if you'll just schedule a public hearing we'll do it as soon as possible.

Commissioner Tinsley: That's what I was looking for.

Chair Murray: Thank you.

Commissioner Tinsley: Thank you Ms. Haugen.

Chair Murray: Mrs. Vick this is your opportunity to

Cheryl Vick: (too faint, can't hear her)

Chair Murray: Thank you.

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the request to hold a public hearing to consider modifying conditions of approval #6 and #14 in the amended plat lot 2 Gilleran Minor Subdivision as requested by Mr. And Mrs. Vick and authorize the chair to set the date as scheduled \_\_\_\_ as soon as possible.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries. Mr. Stahl

Paul Stahl: Mr. Chairman, just for the record as we, this is what we would call a reconsideration so even though your motion is perfectly within the bounds, we are reconsidering so you have approved the reconsiderations is what you have done. You have approved the conditions to set up to reconsider what you have done before.

Commissioner Tinsley: Right.

Chair Murray: Thank you. Any questions? Ms. Morgan.

Lindsay Morgan: The fee

Chair Murray: We didn't deal with that

Lindsay Morgan: the motion on waiving the fee.

Commissioner Tinsley: I said conditions of approval #6 and #14, one of those is the fee isn't it? I guess it wouldn't be, no, I was just assuming that. That was the intent of my motion was to include that.

Chair Murray: Well rather than deal with intent, let's just deal with the motion.

Commissioner Tinsley: You want another motion?

Chair Murray: Please.

Commissioner Tinsley: Thank you for saying please, I appreciate that. Mr. Chairman I make a motion that we also consider as soon as possible the request by the applicant to waive a variance

Paul Stahl: Mr. Commissioner, you can just waive it, motion to waive it.

Commissioner Tinsley: Oh, just do it now. We can do that now

Sharon Haugen: If that's what you want

Commissioner Tinsley: Mr. Chairman I make a motion that we waive the fee as requested by the applicant to apply for the variance.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries.

**Insurance Agency Services.** (Ron Alles)

The Commissioners will consider proposals to provide insurance agent services to Lewis and Clark County.

Ron Alles: Mr. Chairman, Commissioner Tinsley. What you have is the letter recommending Western States Insurance to act as our agent for casualty coverage within Lewis & Clark County. As you recall we did place requests for proposals in the Independent Record. Two applicants applied, our existing carrier, Payne Financial Group and as well Western States. Both presented very good proposals, I would point out that Payne Financial Group or Montana International has been the counties agent since the inception of MACO and all things considered I think as we did with our auditor it might serve the county well to have some fresh eyes looking at our program. Both are looking or both proposals considered expanding the services that are provided to the county and we're pretty excited about that, but staff does recommend Western States Insurance.

Chair Murray: Questions of staff? Western States is a subsidiary of Blue Cross/Blue Shield are they not?

Ron Alles: I don't know their parent, if that's true or not, I can't say that.

Chair Murray: What, Mr. Alles, what compelling information did you receive that would lead you to go to a new carrier versus the carrier we've used for years?

Ron Alles: Actually there's a few things commissioner, as I stated in the memo I think both companies presented similar proposals and both companies propose that the level of service that the county receives today expands, but as with our experience as an example with our auditors having a new set of eyes looking at the program might offer some new insight to what it is what we actually do within the county I think casualty insurance has been kind of a after thought for us in terms of how proactive we are in addressing some of those risks out there within the various departments. I think Western States provided a methodology to actually get out and review those risks and recommend proposals for change and to minimize those risks and both Nancy Everson our Chief Finance Officer and myself felt very comfortable that Western States would get the job done. As well I think with other professional services contracts that the county signs, we do try to use all of the professional service agencies in the County. Whether it be architects or engineers, are all qualified and all are professional and I think our insurance carrier can be looked upon similarly.

Chair Murray: Questions of Mr. Alles?

Commissioner Tinsley: None

Chair Murray: Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman I make a motion that we accept the staff recommendation for insurance agent services and their recommendation to go with Western States Insurance and authorize chair to sign any documents.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries

**Resolution Declaring County Property Surplus Property.** (Ron Alles)

The Commissioners will consider the resolution.

Ron Alles: Mr. Chairman, Commissioner Tinsley. This resolution declares surplus the landfill compactor that

we've had in service for the last, I believe, four years, four or five years. As you recall we accepted bids on a new landfill compactor a couple of weeks ago. In order for us to dispose this piece of property we need to declare it surplus.

Chair Murray: Questions of staff?

Commissioner Tinsley: No

Chair Murray: Is there a motion?

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the resolution declaring County property surplus property\_\_\_ the landfill compactor and authorize the chair to sign.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries

**Resolution Ordering a Refund of Taxes/Fees/Assessments Paid.** (Ron Alles)

The Commissioners will consider the refund to Applegate RID property owners in the total amount of \$891.59.

Ron Alles: Mr. Chairman this resolution ordering refund taxes fees and assessments paid is similar to one you have received in the past or actually several, it relates to the Applegate RID. This is the continuing process of County staff reviewing that RID and putting forth resolutions to refund those owners that have overpaid. Staff does recommend approval of this resolution.

Chair Murray: Questions of Staff?

Commissioner Tinsley: None

Chair Murray: Mr. Alles, are we getting to the end of the agreement

Ron Alles: We are, we're not done, we're getting close.

Chair Murray: Thank you.

Ron Alles: There's eighty more properties to deal with. That's considerably less than we had before so we're closer.

Chair Murray: Four or Five less obviously if this resolution passes. Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the resolution ordering a refund of taxes fees and assessments paid to those property owners that have been erroneously assessed and listed in exhibit 'A' for the Applegate Rural Improvement District \_\_\_\_\_ in the amount of \$891.59 and authorize the chair to sign.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries

## Public Comments.

Chair Murray: This is the point in our agenda where any member of the public that has

Commissioner Tinsley: \_\_\_\_\_ radio

Chair Murray: Oops, Thank you.

Commissioner Tinsley: You're welcome

Chair Murray: Mr. Alles will you call the Sheriff and see if she

Ron Alles: Sure and actually Mr. Chairman I can speak to it.

Chair Murray: Well, I'd like you to contact the Sheriff if you will

Paul Stahl: She was supposed to be here at 10:00, I had a conversation with her when I left the room right afterwards and she said she would be here at 10:00, no later than 10:00.

Chair Murray: Mr. Alles if you could speak to the availability of funding.

Ron Alles: Mr. Chairman, this is part of that grant that we received for our radio project and as you recall Lewis & Clark County was the lead, the City of Helena, other agencies are putting forth some match money. I don't have the exact dollars but our agencies were to come up with approximately a million dollars in match. This facilitates moving forward, we're going to need to come up with that money any way so this just puts forth our money first so to speak as Mr. Adams pointed out the risk of not receiving the reimbursement or federal share of this part of the project is very minimal and staff does recommend approval, it is in the budget, we do have the funding mechanism to pay for this and it is a part of our match requirement.

Paul Stahl: Mr. Chair if I might add one other thing, my conversation with the Sheriff outside after you had this agenda item we had a conversation Mark Adams, I and Nancy Everson had a conversation with her, she was okay with it, do you want me to just represent you, she said it is \$500,000 maybe I ought to come. We explained to her that even if, she was concerned about the 50% up front, we explained to her that this is having to do with microwave towers and the buying of equipment and trying to get them put together that the risk here is that we, if everything fell apart on us we would only be out of time and materials because the company would be able to than use these for other people so we wouldn't have to pay that full cost and we can return for that \$50,000 up front so they could begin the construction and pay for the materials because some time you get with these smaller companies they don't have all that necessary cash which will only by the way be available after they invoice it and take 20 days which probably all the \_\_\_ will be in by then. What we put in the \$10,000 penalty per day and that is one way that we were able to get that in because that is particularly important to us given the fact that Motorola will be here on the 18<sup>th</sup> of August and if they can't begin working than we have to pay penalties there and they may not be able to get this in at all. The Sheriff seemed to be fine with this other than she just came back from two weeks vacation and it kind of took her breath away and everyone in staff has reviewed this all of last week, probably spent about 40 hours on it getting it worked out and every one on staff is comfortable.

Chair Murray: Thank you Mr. Stahl. Questions of staff?

Commissioner Tinsley: No

Chair Murray: Is there a motion?

Commissioner Tinsley: Mr. Chairman I make a motion that we approve the Independent Contractor Agreement with Dunne Communications for the radio project. Total contract price not to exceed \$506,008 and authorize the chair to sign.

Chair Murray: Second. All in favor of the motion signify by saying Aye

Commissioner Tinsley: Aye

Chair Murray: Aye. Motion carries

Chair Murray: Mr. McHugh?

Michael McHugh: Commissioners it appears that this was omitted from the agenda but it's a request for a signature of the final plat for the \_\_\_\_ or as now it is Marysville Cemetary Minor Subdivision. This is a subdivision that was approved in December of last year that created two lots, one a 10.6 acres and another one of .82 acres, the .82 aces is the Marysville Cemetary site \_\_\_\_ the current property owner is going to transfer the ownership to the Pioneer Club under Marysville and they will do the exchange of ownership \_\_\_\_ it's coming up and you're all invited to come to. They are also seeking to get this designated as a historical site, all conditions have been met, all taxes have been paid, staff does recommend signature of the final plat.

Chair Murray: By consensus? By motion?

Commissioner Tinsley: It's fine with me as long as it's okay with the Deputy County Attorney since it wasn't on our agenda.

Paul Stahl: This doesn't have to be on the agenda

Commissioner Tinsley: Good.

Chair Murray: Thank you, we will sign it at the conclusion of the meeting. Ms. Gamble, Ms. Moore do you have any business with the commission?

Kathy Moore: I don't

Chair Murray: Sheriff since you weren't here at 10:00 as indicated we passed the Dunne agreement but if you have comments now is your opportunity.

Cheryl Liedle: No, I just contradicted myself didn't I. No, I approve this. After looking at this, and I do apologize just coming back from vacation I'm catching up with things a little bit, I did have a concern about the 50% upon contract execution but I was able to discuss with K. Paul and Mark Adams and that's been satisfied in my mind. This contract, we're really on the fast tract on this whole project so

Chair Murray: Mr. Stahl represented your concern on the 50% upon contract and explained why it's necessary.

Cheryl Liedle: Okay. Do you have any questions of me?

Chair Murray: \_\_\_\_ decided this morning.

Cheryl Liedle: Okay.

Chair Murray: Is there anyone else that has comments on any business that comes before the commission? We are adjourned.

**Adjourn.**

*NOTE: Due to a remodeling project in the Commission Chambers and until further notice, all regular County Commission meetings will be held in Room 326 of the City-County Building. Thank you for your patience during this time.*

*Public Meetings, Planning Board Meetings, and TCC meetings are now being videotaped and will air on HCTV Ch.*

*11 later in the day.*