

**BOUNDARY COMMISSION  
ST. LOUIS COUNTY, MISSOURI**

**MINUTES OF PUBLIC HEARING-BC0303  
July 22, 2003**

**COMMISSION ATTENDANCE:**

<b>Commissioners</b>	<b>Present (P)/Absent (A)</b>
<b>MATT ARMSTRONG</b>	<b>P</b>
<b>TED ARMSTRONG</b>	<b>P</b>
<b>JANE ARNOLD</b>	<b>A</b>
<b>BOB FORD</b>	<b>P</b>
<b>TOM HAYEK</b>	<b>P</b>
<b>GREG KLOEPEL</b>	<b>A</b>
<b>ILENE ORDOWER</b>	<b>A</b>
<b>MARY SCHUMAN</b>	<b>P</b>
<b>JOHNNIE SPEARS</b>	<b>P</b>
<b>CAROL STROKER</b>	<b>P</b>
<b>DON WOJTKOWSKI</b>	<b>P</b>

**OTHERS PRESENT:**

David Hamilton – Legal Counsel

**CALL TO ORDER**

Chairman Hayek called to order the meeting of the Boundary Commission at 7:00 p.m. on July 22, 2003. The meeting was held at the City of Eureka Municipal Court Room, 120 City Hall Drive, Eureka, Missouri. The purpose of the meeting was to conduct a public hearing on the proposal submitted by the City of Eureka for a Boundary Change of Approximately 441 Acres adjacent to the southwestern City limits (BC0303).

**PUBLIC HEARING-BC0303-Eureka Simplified Boundary Change, Transfer of Jurisdiction**

*A. Introductory remarks by Chairman*

Mr. Hayek said a proposal for a Simplified Boundary Change, Transfer of Jurisdiction of property currently under the jurisdiction of St. Louis County was submitted by the City of Eureka. He said this is a public hearing in which Eureka and the County will each have fifteen minutes to give their presentations. The Commission may ask questions after each presentation. The public comment section will follow the conclusion of questions for the County. He instructed members of the public to fill out and turn in speaker cards if they wished to address the Commission. Individuals are allowed three minutes to speak; those representing groups are allowed five. Written comments will be accepted for twenty-one days following the public

hearing. Mr. Hayek said the purpose of the public hearing is to explore the pros and cons of the proposal. He introduced the Boundary Commission members, explained the Commission's role, how its members are appointed and the review process.

Mr. Hayek said in essence, according to the statute, both the City of Eureka and St. Louis County have submitted a proposal for the transfer of the jurisdiction of property from the County to the City of Eureka. The Commission is charged with reviewing the proposal and will vote on accepting it. The Commission may approve the proposal, approve the proposal subject to voter approval, or disapprove the proposal.

*B. Presentation by Proposing Agent - City of Eureka*

Attorney Don Anderson began his presentation for the City of Eureka by identifying the proposal area on a map. The area is approximately 441 acres adjacent to the southwestern Eureka City limits. He said the record should reflect that the St. Louis County Council ordinance 21,367 2003 authorized the Director of Planning to join in this proposal. Mr. Anderson said the proposed area is surrounded by the City except for one area. He said the proposed area was identified as "Phase II" from an annexation in 1998, and has been under consideration for a number of years for the City's overall annexation plan. He said it was called out in 2000 as a part of the City's map proposal for future growth of the City, and that particular hearing was without comment and there was no opposition.

He said we are here under 72.405 (2) and that those of us who have been involved in the drafting of the Boundary Commission legislation since its inception in 1992 were aware of the problems of service deliveries and infrastructure interfaces occasioned by the County with municipalities when they are trying to service areas entirely surrounded by incorporated areas. This particular area must be serviced through the County. He said the area immediately to the right appears to be a pocket, may be a pocket for purposes of service delivery, but under the Boundary Commission's charge and under 72.405 (2), under your rules, due to the lack of density, there being only sixteen homes in this particular area, does not meet your density requirements per acre. There are 207 acres with sixteen dwellings. It does not meet the "floor and threshold" requirement to be considered a pocket. The County currently has to serve both areas by traversing Eureka prior to entering the service delivery area.

Mr. Anderson said all interested parties are present. The property is under contract and the owners under contract are here. He said at the conclusion of the process, should this area become part of Eureka, there will be no owners, and as indicated previously, this is Phase II and has been contemplated since 1998. He said all statutory requirements have been completed, the completeness review has been accomplished and all requirements of the Commission have been met, satisfied or exceeded.

He said this annexation is necessary to provide a unified jurisdiction for the eventual development of the area, and that jurisdiction should be the City of Eureka. He said the contiguous boundary area is in excess of the required 15% and said this technically could be accomplished as a boundary adjustment and there is actually no reason to come before the Boundary Commission. He said it was chosen to do it as it is a residential parcel which is in part

in the County and in part in Eureka, and the decision was made by the County Council to come before this Commission and submit it as a simplified boundary change rather than as a boundary adjustment, but there are no legal impediments to this being done as a boundary adjustment, which would be outside the purview of the Commission.

Mr. Anderson said the property is under contract and the owners under contract, as well as surrounding property owners, are here and are prepared to answer questions he may not be able to. He said Craig Sabo, City Administrator for Eureka, is present to answer questions from the City's perspective. Also present is Sean Flower who can speak on behalf of the developer. Mr. Anderson characterized the proposal as large but still simple.

#### *Questions from the Boundary Commission*

Mr. Wojtkowski said the proposal lists six primary reasons why the Boundary Commission should approve it. The first reads: Combined Property area will not be developed under the terms of the Development Agreement unless both phases are under City jurisdiction. Mr. Wojtkowski commented that this would appear to be a case where a developer seems to be dictating the policy of the municipality relative to their expansion. Mr. Sabo said the property was called out in 1998 before the current developer had anything to do with it. Mr. Wojtkowski commented that the original map plan from Eureka showed a logical annexation progression, but now there appears to be one little parcel that happens to be a developer's desire. He also said although Mr. Sabo is not calling it a "pocket" one of their other "six primary reasons" for the annexation was relative to the County's difficulty maintaining it.

Mr. Wojtkowski asked for an explanation of their second reason: "future development of the Phase II Property under St. Louis County jurisdiction would likely conflict with Boundary Commission policies." Mr. Wojtkowski wished to know what policies of the Boundary Commission would stand in the way of future development of Phase II. Mr. Sabo said the policies relate more to satisfying the criteria that the Boundary Commission uses in giving consideration to a proposal, mostly relating to service delivery. Mr. Wojtkowski reiterated his wish to know what specific policies were being referred to that would hinder anyone developing that property. Mr. Sabo said the intent of that statement was to address the criteria under which the Boundary Commission would consider proposals.

Mr. Wojtkowski asked what the unique benefits would be to the potential residents in the development area. Mr. Sabo said the enjoyment of normal municipal services such as police protection, local representation, and availability of amenities normally afforded by residents. Mr. Wojtkowski asked which amenities. Mr. Sabo said recreational opportunities and preferred rates on solid waste collection are examples. Mr. Wojtkowski asked what a Transportation Development District (TDD) is. Mr. Sabo said it is a means by which roadway infrastructure can be funded utilizing property tax equivalent or sales tax increments. Mr. Wojtkowski asked if it is a district that is established by State Statute. Mr. Sabo said yes. Mr. Wojtkowski commented that it really did not matter whether it was St. Louis County or Eureka jurisdiction; that the TDD was established and they would still have to participate. Mr. Sabo said there would need to be agreement and cooperation with the affected jurisdiction, but that is correct. Mr. Wojtkowski asked if basically then, the statement in the proposal that that is a roadblock is somewhat

erroneous. Mr. Sabo said he would characterize it as erroneous. Mr. Wojtkowski confirmed that the basic fact of the matter is that if you establish in concert with the County a TDD, whether it was in the County or in Eureka, the property owners would have to participate. Mr. Sabo said the City has entered into a development agreement establishing the framework for the establishment of a TDD and other components necessary to cause the development as contemplated to occur. He said he cannot speak as to the level of cooperation of the County or any other jurisdiction. Mr. Wojtkowski said Eureka's Counsel hinted that this proposal should not even be before the Commission, that it should have been a boundary adjustment. Mr. Wojtkowski asked why it was not approached as a boundary adjustment. Mr. Sabo said the County Executive and County Council deemed it more appropriate that the proposal be brought to the Commission for purposes of public input. Mr. Hayek said he did not see in the ordinance where the County said it was more appropriate to do it as a simplified boundary change rather than as a boundary adjustment. He asked if that was part of a debate or discussion within the County Council with minutes the Commission could review, which would reflect why they reached this decision. Mr. Anderson suggested the representative from the County address this. He said he did not like to hear the mischaracterization that this is the City of Eureka's proposal because it has to, by the Statute, be a joint proposal with the County.

Mr. Hayek asked if there is something after the ordinance passed by the County stating they adopt your proposal. Mr. Anderson said the County adopted it by way of the language "in conjunction." He said that if the Commission is questioning the language of the letter, it is his understanding that the County Council will go back and pass another ordinance which conforms to whatever the Commission deems necessary to show they have joined in Eureka's proposal.

Mr. Hayek asked if there would be no vote because there are no citizens in the area. Mr. Anderson said the property has been sold, so there will not be any citizens there, but there are currently two. Mr. Hayek asked if a pocket, though perhaps not by official definition, of unincorporated County would be created if the area goes to Eureka. Mr. Anderson said there are 207 acres and indicated the area on the map. Mr. Hayek said part of their charge is to avoid creating areas like this and asked why that portion was not included in the proposal. Mr. Sabo said the purpose of this proposal was to increase the area to accommodate the development which is contemplated and previously identified in their 1998 proposal as Phase II. This is a completion of that second phase. As is depicted on their annexation map plan, they intend to eventually propose to gain that area by the most appropriate mechanism, as well as the unincorporated area west of the currently proposed area. Mr. Hayek asked for clarification as to why they do not propose to gain that area now and questioned who is really directing Eureka's expansions. Mr. Anderson said the City is taking advantage of those individuals who wish to come in on a simplified basis without going through an election. The two people who live in the area currently have indicated their willingness to come into the City. He said the City should not be penalized because of their coming forth wishing to become part of the municipality when there apparently must be some reticence on the part of the other sixteen dwelling owners to come into the City at this time without going through the more formalized process of involuntary annexation. Mr. Hayek asked if there has been any inquiry from the citizens of the area that is not subject to this proposal as to whether they would like to become part of Eureka. Mr. Sabo said he is not aware of any formal efforts.

Mr. T. Armstrong stated that with regard to what St. Louis County has done, he is not satisfied that the statement that both affected jurisdictions have expressly approved this proposal. He does not think this is correct. He said he does not think they have “expressly approved” this, and is very concerned that the County Council is somehow “passing the buck” to the Boundary Commission to overlook the fact that they have not addressed the Statute. Mr. T. Armstrong also said he is dissatisfied with the answers given so far as to why the 207 acres are not being included with this proposal. He said Mr. Anderson suggested a few moments ago that Eureka should not be penalized by the fact that the two residents in the current proposal area would be in favor of the annexation, which suggests that the residents in the 207 acre area would not. If that is the case, and we are faced with a proposal down the road of the 207 acres as a future phase, it suggests that there will be opposition by the residents in that area to annexation, and therefore suggests that the annexation probably will not go through which will leave an isolated pocket. Mr. T. Armstrong said he did not like the way Mr. Anderson, in his opening remarks, characterized the area as an area which the Boundary Commission has no jurisdiction and should have no interest. In his opening remarks, he suggested that the area is not a “pocket” as defined under the law and therefore suggests that the Commission should not be concerned about the fact that it would sit out there by itself. He said the Commission should be concerned about this parcel of land whether or not it is a “pocket” by legal definition.

Mr. T. Armstrong asked for clarification on the maps at the public hearing, and asked where the prison is located and if there is any relationship between the prison property, the controversy now going on between Eureka and Pacific, and this development. Mr. Sabo said no. Mr. T. Armstrong asked if this development is in any way contingent upon certain actions with respect to the prison property. Mr. Sabo said no. Mr. T. Armstrong asked if there is any relationship between the current controversy between Eureka and Pacific over the prison property and the sewer system and this proposal property and he asked where the sewage system would be for the proposal area. Mr. Sabo said he could not specifically identify the course of the infrastructure. Mr. T. Armstrong asked if anyone present could answer that question, if there is any relationship between the sewer main that runs from Pacific to the prison property and the mains that will serve the proposal area. Mr. Sabo said no.

Mr. M. Armstrong asked who currently provides fire and police protection to the two residents in the proposal area. Mr. Sabo said the Eureka Fire Protection district serves the area and that they are not a department of the City of Eureka but a jurisdiction unto themselves. Mr. M. Armstrong asked if St. Louis County would continue to serve the sixteen residents in the “pocket.” Mr. Sabo said yes, however, as with all areas adjacent to Eureka, in times of need their department provides primary or secondary support. Mr. M. Armstrong said there are three letters in the information provided by Eureka. Since there are only two people living in the proposal area, he asked who these people are and why their letters are in the packet. Mr. Sabo said two letters relate to Breckenridge Leisure, LLC, owner of the vast majority of the southern property. He said a few years ago the Corps of Engineers established a mitigation creek bank and that is a separate entity which owns that strip of ground adjacent to both sides of Fox Creek. The other letter is from a property owner who was interested in being included in the proposal upon hearing of it and the City agreed to extend the proposal to include her property. Mr. M. Armstrong asked why a small notch on the far left corner of the upper boundary line was not included in the proposal. Mr. Sabo said that was a property owner that is not a part of the

proposal. Mr. M. Armstrong asked if the proposal were to annex the road except for that little notch, the little bend in the road would be St. Louis County while everything else would be Eureka. Mr. Sabo said it is possible that it is a public right of way.

Ms. Stroker asked how the County will access the pocket area. Mr. Sabo said through Huntersford or Wengler road. Ms. Stroker asked how much of the area is flood plain. Mr. Sabo said there is flood plain and flood way in close proximity to the creek, and in the southern portion of the area. Ms. Stroker asked if planning for a development would take that into consideration. Mr. Sabo said there is no development proposed to the extreme southern portion of the property and there are protective measures through FEMA, DNR, the Corps of Engineers and the City. Protective measures and regulations would be in place.

Mr. Ford asked what the difference is between the building codes of Eureka and St. Louis County. Mr. Sabo said they are under the 2000 International Code. He believes the BOCA code is being phased out and all entities are moving toward the International Code. He said the County can speak better on their codes.

Ms. Schuman asked about the commercial redevelopment of Allenton and the potential commercial development of Phase II, and where it would be located. Mr. Sabo said the northern portion was contemplated for commercial development which may or may not occur in the future. He said the redevelopment of the Allenton area is part of the development agreement as is noted in the plan, and it is proposed for a level of mixed use. Ms. Schuman asked if commercial development in Phase II is not for certain. Mr. Sabo said there is a possibility that as a result of greater than initially anticipated development of the Allenton area there will not be commercial development of the northern portion of this other property.

Mr. Hayek asked which area is being referred to in the last sentence of the Boundary Change Justification section: Without the proposed boundary change, an illogical jurisdictional split would exist through the residential development, resulting in service delivery and jurisdictional issues and conflicts. (A split parcel was indicated to him on a map.) Mr. Hayek asked if there are any other areas where one goes from the County to the City and back again, and if there is any indication that that can work. Mr. Sabo said it is possible that such conditions exist. Mr. Hayek asked about the proposal area, it will not be developed but for the jurisdiction being transferred to the City of Eureka. Mr. Sabo said that that is the basis for the redevelopment agreement the City has entered into. Mr. Hayek asked if the illogical jurisdiction line is not with new development but across homes that already exist. Mr. Sabo said it would be new development and indicated the line on a map. He said if it is not going to be developed but for a transfer of jurisdiction, then there would not be an illogical jurisdictional split without the development, without the Commission approving it.

Mr. Hayek asked if the City has looked at this map and have looked at where the boundaries will be and have made an evaluation and a decision as part of the proposal, where logical jurisdictional boundaries should be. He then asked if it would not be more logical to include the area which is not being included now, so the County would not have to go through the City to provide service to the pocket. Mr. Sabo said the reference in the document with respect to the logical jurisdictional boundary was intended solely for purposes of this contemplative residential

development on combination of the subject property as well as the previously annexed property. Mr. Hayek asked if Mr. Sabo would agree with him that it would be more logical from a jurisdictional standpoint for the City to include that area which is not currently being included. Mr. Sabo said for purposes of the City's proposal representing a second phase of the proposal authorized in 1998 to accommodate the residential development, as they will be giving consideration to. Mr. Anderson said this is a split parcel in its ownership. It becomes eligible for boundary adjustment. This is not. The devices and mechanisms for bringing this in are entirely different. That is what makes this unique. This is a very large, split parcel with sixteen different owners. Mr. Hayek said it was his understanding that those owners had not been contacted. Mr. Sabo said there has been no formal contact with those citizens.

Mr. T. Armstrong said the boundary then is logical only in the context of the development proposal. Mr. Sabo said that was the intent of the representation made in that plan. Mr. T. Armstrong said this development would not occur if Phase II property is not located within Eureka. It will not be accomplished unless there is a single jurisdiction because the infrastructure and the grading need to be developed as one project. He said he sees no reason why one project could not be included in two jurisdictions. He said the second reason given is the entire combined property must be included in order to be economically feasible. He sees no reason why the economic feasibility could not be accomplished under two jurisdictions. Mr. Anderson said he has been representing municipalities and homebuilders for some time and split jurisdiction does not work. He said this is going to be a Planned Urban Development, PEU or some sort of Planned Overlay District. Straight zoning will not work because of the infrastructure problems and land configuration problems that will dictate that it must be an Overlay District. For a developer to attempt to go to one jurisdiction and to go to the County Council and get a PEU under a certain set of Overlay Districts, and then go to Eureka for the balance and deal with the interface between the lots the platting, is not feasible. It is going to dictate a higher per lot cost, it could cause lot diminution, and that will render it infeasible and the lines will not cross between supply and demand. That is the issue that precludes it from being a two jurisdiction development. Mr. T. Armstrong said Mr. Anderson has described the fact that dealing with multiple jurisdictions would be both inconvenient and time consuming, and has leaped to the conclusion that that means it would make it financially not feasible. He said there is nothing there to support that, it is simply his supposition, and the statement here, "will not occur" if not located in Eureka is simply not the case. Mr. Anderson said that was a decision made by six elected officials on behalf of the citizens of Eureka. It is not his supposition. It is the elected officials of the City of Eureka. It is their legislative finding.

Mr. M. Armstrong said he has no problem with the development of the property, but he is concerned with the pocket. He asked if there is any way a combined service could be provided to eliminate the County's cost to come down to service these sixteen people. He said he would like to get a feeling for when the City would incorporate this area. Mr. Anderson suggested an intergovernmental cooperation agreement be executed if the County so chooses so that Eureka will provide such services as snow removal to exculpate the County from responsibility of snow removal and delivery of services. Mr. M. Armstrong asked if Eureka is going to actually do that, to go to the County and say they would take that over. Mr. Sabo said he is willing to do so, hopefully within the next two years.

*C. Comments from St. Louis County*

Ms. Lori Fiegel, Director of Comprehensive Planning for St. Louis County, said the County was approached in August 2002 by representatives of a property owner who they believed were working in concert with Eureka. She said the County was presented with a similar but not identical proposal for a boundary adjustment and the County felt a boundary adjustment was not appropriate for several reasons. One reason is that when the County does a boundary adjustment they are typically doing a “clean-up;” resolving issues of rights of way, roads segments, and split parcels much smaller, no more than ten acres usually. The original proposal they received had some technical issues that made the County hesitant to proceed. This included the way the legal description was written, the issue of the creek mitigation, and whether or not they had multiple property owners, to name a few. She said the County was primarily concerned from a philosophical perspective because this proposal did not fit anything that looked like a typical boundary adjustment to them. She said they were uncomfortable with using that procedure and starting a precedent mainly because of the size and scale of the area, as well as the fact that it was a development driven proposal with some substantial potential impact on undeveloped land with flood plain and other issues. She said the County submitted a recommendation that they not support introducing legislation to go through a boundary adjustment procedure. They also felt that in a boundary adjustment procedure, the level of public scrutiny is not there, for example there is no public hearing. The County did not feel a boundary adjustment was appropriate. However, they recognized that Eureka was very interested in moving this forward and the property owners wanted to pursue some kind of change in jurisdiction. At the time, there were no registered voters in the area and the most appropriate and logical way to go was through a transfer of jurisdiction. They sent a letter to the County Council outlining some of their concerns stating that they felt a transfer of jurisdiction would be a more appropriate direction because they felt it would be in the best interest of the public due to full disclosure and notification issues. Other issues with the proposal were the creation of a quasi-pocket, a substantial portion of the area is in a flood plain and there is potential environmental impact. They also concurred with Eureka that if this proposal area was going to be developed with the proposal that was before them, it made sense to do it under a single jurisdiction and it would be very difficult to do with multiple jurisdictions due to a number of very difficult obstacles to overcome.

Ms. Fiegel said in choosing to pass their ordinance, the County Council acknowledged several things. They recognized that Eureka wants this and has the support of the property owners and they also acknowledged they received the Planning Director’s report and were aware of issues the staff had raised and that they supported the progression of this proposal to the Boundary Commission as an appropriate public means of review. She said she could not speak to the legal matter of whether or not the ordinance met the requirements of the Statute. She said she does not believe the Statute technically requires the passage of an ordinance approving the transfer of jurisdiction, but in essence, by passing the ordinance, that is in fact what the Council did.

*Questions from the Boundary Commission*

Mr. Ford asked Ms. Fiegel if she knew of any differences in building codes between the County and Eureka. Ms. Fiegel said she did not off the top of her head but could look into it, saying



there probably were differences in building and zoning ordinances. Mr. Ford asked if her department could submit that information to the Commission before the next meeting.

Ms. Schuman asked if, in Ms. Fiegel's opinion, Eureka's ordinances regarding development are up to the task of addressing flood plains development issues. Ms. Fiegel said because of the issue of the Fox Creek mitigation area, it was suggested that a high level of regulation and scrutiny exists which would be implemented.

Mr. Hayek asked who approached the County in August 2002. Ms. Fiegel said representatives of the owner, Legal Counsel (not Mr. Anderson) and several of the people in this room. Mr. Hayek asked if there was any discussion at that time about the developer talking to the County about how they would develop it under a County jurisdiction. Ms. Fiegel said there may have been inquiries, perhaps up to several years prior, about the potential development of this area, but nothing formal or out of the ordinary. She said developers frequently come in to talk through procedures and other matters. Mr. Hayek asked if there were any results of those discussions about problems developing it under a County jurisdiction versus going under the City. Ms. Fiegel said she could not speak to that. She said Gail Ottolino is the director of the current planning division which is the zoning and subdivision area, and very frequently developers come in with concepts, but she does not recall any site specific plan at that time. Mr. Hayek asked if there was any discussion of the flood plain issue. Ms. Fiegel said probably. She said infrastructure, flood plain, and density would all be typical types of issues for discussion.

Mr. Hayek asked if there has been any type of communication from St. Louis County Planning to the Boundary Commission after April 29, 2003, concerning this proposal. Ms. Fiegel said no. Mr. Hayek said that is his question because the ordinance on April 29, 2003, states that the Director of Planning is directed, on behalf of St. Louis County, and in conjunction with the City of Eureka to propose to the St. Louis County Boundary Commission a change in boundaries, etc., which proposal shall be in a form in accordance with the Rules of said Commission. Mr. Hayek said he is trying to figure out if the Planning Commission has made a proposal following April 29<sup>th</sup> in a form in accordance with this Commission's Rules. Ms. Fiegel said she believes that the forwarding of the ordinance in support of the proposal is what is believed to be in accordance with the Boundary Commission. She also said St. Louis County, to her knowledge, has never done a transfer of jurisdiction before, so there may be some procedural issues that were missed. Mr. Hayek asked if Ms. Fiegel was aware of any phone call or letter which says, "We join in this proposal with the City of Eureka." Ms. Fiegel said they felt that is what the ordinance did. Mr. Hayek said that Mr. Anderson stated the County Council is willing to make any ordinance with any language deemed appropriate by the Boundary Commission. He asked Ms. Fiegel if that is the position of the County, if the Boundary Commission said it thought this language insufficient in some way, and came up with a suggestion, is it the position of the County that an ordinance with the suggested language would be forthcoming. Ms. Fiegel said the County Council is on recess right now and she has no knowledge that would say that she has heard from specific Council members or representatives from the Council. Mr. Hayek asked how Mr. Anderson would be told that St. Louis County is willing to do that. Ms. Fiegel said she did not know. Mr. Anderson said he heard it in the hall in a conversation between Counsels for entities other than St. Louis County (the exact identities of the entities could not be deciphered from the audio tape). Mr. Hayek asked if he heard that from St. Louis County. Mr. Anderson

said no. Ms. Fiegel said although she is not Legal Counsel, she would think it would be in the purview of the Commission if they were uncomfortable with the language of the County's ordinance and felt like it needed an amended ordinance, they could certainly suggest that. She said her conjecture that that would not be problematic is based on their passage of the prior ordinance, although she has no specific knowledge from speaking with Council members.

Mr. Hayek asked if Ms. Fiegel thought it was a logical boundary. Ms. Fiegel said the department raised concerns about the pocket from a staff perspective with the County Council, the County Executive and the police department. She said because it is a low density area in terms of being a high service area, that is not a huge issue. She said it is part of an unincorporated area that the County will continue to service anyway. She said the issue was raised because one cannot look at this without raising the obvious issue of the creation of that boundary. Mr. Hayek asked if there was any sort of response. Ms. Fiegel said they passed the ordinance in support of this and thinks they said they acknowledge the issues raised, and were willing to proceed with the transfer of jurisdiction.

Mr. T. Armstrong said the issue of the pocket was raised and the Council elected to ignore it and treat it as if it is not a problem. He said what he is hearing is that the position of the County is that they are not worrying about the fact that there is a pocket that the County will have to continue to service, and he supposes that this suggests the Commission should not worry about it either. Ms. Fiegel said our elected officials have said that they recognize those issues and they were willing to proceed. Mr. T. Armstrong said that issue is not expressly addressed anywhere, but is indirectly addressed by the fact they passed this ordinance despite the staff raising that issue. Ms. Fiegel said the ordinance basically reads that they have taken the Planning Director's report under advisement and are fully aware of the issues that were raised. Mr. T. Armstrong asked who drafted this ordinance. Ms. Fiegel said the County Counselor's office. Mr. T. Armstrong said Ms. Fiegel's testimony is suggesting that there was no attempt on the part of the County to do anything other than what is required under the Boundary Commission's rules; this is not done by indirection or to duck the issue, it was done perhaps inadvertently. Ms. Fiegel asked for clarification. Mr. T. Armstrong said the fact is that it does not have a specific approval. Ms. Fiegel asked if he meant in the language in the ordinance. He said yes. Ms. Fiegel said there was no precedent, there was no other transfer of jurisdiction ordinance that had been drafted and that may have been part of the reason. She said they have a standard ordinance for boundary adjustments that works and is used repeatedly. Mr. T. Armstrong clarified that the ordinance was not drafted this way in order to be devious and it may have been drafted this way because they had never done it before and were not exactly sure of what was required or what the Commission would require. He asked if this is the County's position. Ms. Fiegel said yes.

Mr. M. Armstrong wanted to clarify that the only reason why the proposal went as a transfer of jurisdiction rather than as a boundary adjustment was the sheer size. He said he was surprised they "passed the buck." He pointed out that Mr. Anderson said they could do it as a boundary adjustment, and it seems like they should have. He said just because something is bigger than ten acres does not mean a boundary adjustment could not be done. Ms. Fiegel said the reason was partially the size and partially the nature of the proposed use and under the boundary adjustment procedure, maps would never need to be disclosed, discussions about whether or not they would have a pocket that needs to be addressed would more than likely never happen,

notification to property owners who now know through the plan of intent that there is a flood plain, and a development is going to occur, would not have happened. She said the transfer of jurisdiction took it to a level of scrutiny that they felt was in the best public interest for disclosure for those issues. Mr. M. Armstrong said, with all due respect to the County Council, there are no property owners who are worried about the flood plain except for the two property owners who own the property and want to sell it because none of those lots exist yet. He said it seems on the surface that the Commission's hands are tied with respect to the pocket. He said he is worried about the pocket yet the County Council does not really care, and asked if the County Council does not care, why are they "passing the buck" onto the Boundary Commission. Ms. Fiegel said there was a conscious decision to not use a boundary adjustment procedure because staff made a recommendation that this proposal deserved a higher level of scrutiny that they thought would be best served by going through a Boundary Commission procedure that would require a public hearing and notification and full disclosure of the future use of the site.

#### *D. Public Comment*

Mike Doster, Attorney, 17107 Chesterfield Airport Road

He said he is the attorney that represented the developer and initially submitted a request to the County for the boundary adjustment procedure. He said there were meetings and conversations that took place that may address some concerns. He said Glenn Powers attended one of those meetings, as did Pat Redington, the County Counselor and they discussed the legal issues. He said it is his opinion as a lawyer that Pat Redington issued her legal opinion that the boundary adjustment procedure did not apply. He also said if it is the Commission's feeling that there needed to be some kind of subsequent act following the adoption of the ordinance, if Glenn Powers was directed to do something, it seems the only thing he would have to do is issue a letter saying "we adopt this proposal" rather than try to rework an ordinance. He said there was no debate or discussion regarding the passing of the ordinance, and if you read it in its context, he does not see how you could conclude anything other than the fact that the proposal Eureka submitted to the County was endorsed by the County. He said they had the proposal in front of them, so if something missing, maybe it is the piece of paper that implements the direction that the County Council gave to Glenn Powers. Maybe it is nothing more than a letter saying yes, here it is, we join in this. Mr. Wojtkowski said it would not be Glenn Powers; it is not within the scope of his power to grant a transfer of jurisdiction. He said it would be simple to put words down and say "The St. Louis County Council approves the Transfer of Jurisdiction of this property from St. Louis County to Eureka," and that is all they would ask for.

Mr. Doster asked what he thought this ordinance did, that there is a direction to somebody to do something in there. Mr. Hayek said it is to the Director of St. Louis County to submit a proposal in accordance with the Boundary Commission's guidelines.

Sean Flower, Eureka, MO, speaking on behalf of the developer of the proposed area.

He said he would like to speak to the merits of the development. He sees the development as a good thing, not a bad thing, for all jurisdictions. He said in summary there are about 400 acres that are unusable to a large extent because it is largely in a flood plain. All the houses that would ever go there would not be in the flood plain. There would need to be a great deal of grating to raise everything out. As it stands now, you could not just buy a top half and develop it by itself

because you need to have the whole thing together to have the materials, which would necessitate developing it all at the same time. With the large number of houses planned, you would want to have one coordinated zoning. Before you zone an area, they want to make sure you have services. A lot of thought goes into this. He said he met with Gail Ottolino, and she suggested they go to Eureka because Eureka could support development better in terms of services. He said in terms of development, it needs to go in one jurisdiction more from a technical aspect, because you have to be able to get approvals, and no matter what the code says, different people are able to make decisions about whether something is appropriate or not. He wished to emphasize the benefits to the residents and to Eureka that would come from the nice, beautiful, environmentally responsible development. He said there is feasible commercial development in Eureka that could generate revenue for the tax pool and could potentially benefit the County. He said in order to do this in an organized, fast manner, it has to happen under one jurisdiction. He said you would not want to structure things as hodge-podge houses with different jurisdictions, you would want it all to be one.

Ms. Stroker asked if the developments would be put on 10,000 square foot lots for houses. Mr. Flower said it would be a mix, some would be larger, some smaller. Ms. Stroker asked if there is a rule when they occupy the wetlands that they must give back what ever they take out. Mr. Flower said the creek is federally regulated and it will be a regulated wetland area.

Mr. Wojtkowski said simply put, this whole thing needs to be developed as one project because you need to borrow the dirt from the wetlands to develop the property above flood plains. Mr. Flower said it should go under one jurisdiction because right now the County provides no services here and it is also important to keep the houses consistent with each other.

Mr. M. Armstrong asked if he or his company has talked to the sixteen people in the unincorporated pocket to inform them that they will be left in unincorporated County and that there is going to be a large development next to them. Mr. Flower said no. Mr. M. Armstrong said his concern is that nobody has talked to these people and explained to them that what used to be wilderness next to them is about to turn into thousands of houses.

Mr. T. Armstrong said Mr. Flower raises an interesting issue saying it does not make sense to develop the north piece in Eureka and allow somebody else to come in later and develop the south end with homes that might be degrading to the north end. Mr. T. Armstrong asked if that might also happen to the 207 acre pocket. Mr. Flower said that was unlikely because the extreme terrain there imposes certain limitations, and the terrain is in part why the area is not very dense. He said they are also relatively far away due to the terrain. Another reason he would like to emphasize for developing things all together is that there are certain benefits available because of the large size of the area, for instance, it can fund in large part other improvements in the area. Mr. T. Armstrong asked if there is a reason from a developer's perspective as to why the 207 acres are not included, and if the 207 acres were simply included in the proposal, would that cause a problem or stop the development. Mr. Flower said it would not harm him. Mr. T. Armstrong asked why in his opinion the City did not include that area. He said he does not think they were intentionally left out, but the focus was on how to develop the major piece. He said the only way their inclusion would affect development would be if the 207 acre area could stop the entire proposal because the people there were opposed to it. He said in

terms of the development, it would not be affected. Mr. Ford asked if the 207 acre area is able to be developed. Mr. Flower said no.

*E. Adjournment*

Mr. Ford made a motion to adjourn. Mr. M. Armstrong seconded the motion. Voice vote: Ayes, All. Nays, None. *The motion passed.*

Respectfully submitted,  
Kim Miller  
Executive Director  
Approved: 11/18/03