

BOUNDARY COMMISSION
ST. LOUIS COUNTY, MISSOURI
MEETING MINUTES

August 26, 2003

ROLL CALL

Commissioners Present: Ted Armstrong, Bob Ford, Tom Hayek, Ilene Ordower, Mary Schuman, Carol Stroker, Don Wojtkowski

Commissioners Absent: Matt Armstrong, Jane Arnold, Greg Kloeppe, Johnnie Spears

Commission Staff Present:

David Hamilton, Boundary Commission Legal Counsel

Others Present:

Lori Fiegel, St. Louis County Planning Department

CALL TO ORDER

Mr. Hayek called the meeting to order at 6:30 p.m., August 26, 2003. The meeting was held at the Boundary Commission office, 1516 S. Brentwood Blvd., Brentwood, Missouri.

ROLL IS CALLED – QUORUM DECLARED

Roll was called and a quorum declared by Mr. Hamilton.

APPROVE AGENDA

Mr. T. Armstrong made a motion to approve the agenda. Ms. Ordower seconded the motion.

Voice vote: Ayes, All. Nays, None. *The motion passed.*

APPROVE MINUTES

Ms. Schuman said Ms. Ordower was incorrectly recorded as present on the attendance record of the July 22, 2003 meeting minutes. Mr. Wojtkowski motioned to approve the corrected minutes.

Mr. Ford seconded the motion. Voice vote: Ayes, All. Nays, None. *The motion passed.*

Ms. Stroker asked that her comment in the first paragraph on page four of the July 15, 2003 minutes be amended to reflect that the area to be annexed if already a pool city will remain a part of the pool regardless of the status of the city doing the annexation. Mr. T. Armstrong moved that the July 15, 2003 minutes be so amended. Mr. Ford seconded the motion. Voice vote: Ayes, All. Nays, None. *The motion passed.*

Mr. Wojtkowski made a motion to table the minutes of the July 22, 2003 public hearing due to typographical errors and an unclear portion of the minutes at the bottom of page nine referring to a conversation heard in a hall so further clarification could be made. Mr. Ford seconded the motion. Voice vote: Ayes, All. Nays, None. *The motion passed.*

FINANCIAL REPORT

Ms. Miller submitted a 2003 Second Quarter Expenditures report showing category appropriations, first and second quarter expenditures, cumulative expenditures, and the available balance, and a proposed budget for 2004-2006. Budget Committee members Ms. Schuman and

Mr. Ford helped prepare the budget. Mr. Ford wished to clear up confusion about encumbrances and said they are funds set aside to pay bills incurred the previous year. He said Ms. Miller was paying certain bills out of monies from last year and was told to end all encumbrances. Ms. Miller received clarification that for the rest of the year there would not be any encumbrances used to pay bills. Mr. Ford noted that the Budget was listed on the agenda under Old Business and Mr. Hayek said it would be discussed in detail later in the meeting. Mr. Wojtkowski requested projections of total expenditures for the fiscal period. Mr. Hayek said that was provided at a previous meeting. Mr. Ford said it was discussed at the budget meeting and there are no expected upcoming expenditures that are out of the ordinary except for the Directors and Officers Insurance, due in September. Mr. Wojtkowski said he would like to see what the projected year end number would be compared to our budget.

PUBLIC COMMENT

Craig Sabo, City Administrator, City of Eureka

Mr. Sabo said Eureka, with regard to remarks made at the public hearing about a lack of notification of proposed action, sent a letter two or three weeks ago to property owners in the area. He said he heard from one property owner who requested more details of the prospective development. Information was sent and he has not heard more from him or from anyone else. He said the City has committed to submit an annexation proposal for the area to the east concurrent with, or in connection with, or prior to any other proposals they would submit.

Mr. T. Armstrong asked if the commitment is for the next proposal, if any, or a commitment to actually make an annexation proposal for the area. Mr. Sabo said he previously said he anticipated submitting an annexation proposal for that area within two years. Mr. T. Armstrong asked if he was making a commitment as of some certain date. Mr. Sabo said the term of two years he shared at the public hearing represented the balance of time left in the five year map plan cycle and said he is open to committing to solicit interest of the citizens for an annexation within a period of time agreeable to the Commission. Mr. T. Armstrong asked what factors bear on the timing of his making a commitment to make a proposal to annex, and asked why he is reluctant to commit to a time. Mr. Sabo said he is not reluctant. Mr. T. Armstrong said it sounds like he is trying to put it off as long as he can and asked what problems are associated with it. Mr. Sabo said he anticipates no problems in connection with initiating an application, but he could not speak to the likelihood of success due to the topography of the area which largely has resulted in it being sparsely populated. He said it is possible the property owners within that area would not feel the City could offer enough in terms of municipal services to agree to be annexed; however, he is willing to submit a proposal to solicit their level of interest.

Mr. T. Armstrong said the letter to the citizens was dated August 10, 2003, which is not a lot of time to receive a response and asked Mr. Sabo if he had only received one response. Mr. Sabo said yes. Mr. T. Armstrong asked what the person said specifically. Mr. Sabo said he received a telephone call and the resident's initial question was to learn the details of the proposal. Mr. Sabo offered to send the concept plan, which is in the BC0303 Proposal, and said the resident also inquired as to the long term possibility of utility availability in the area and stated he was contemplating marketing his property for sale. Mr. T. Armstrong asked what kind of utilities. Mr. Sabo said City provided sanitary sewer and water.

Mr. Wojtkowski asked if other public comment related directly to BC0303 could be deferred to the actual discussion of the proposal later in the meeting. Mr. Hayek said that made better sense.

ANNOUNCEMENTS AND COMMUNICATIONS

Mr. Hayek directed Commission members to the recent media articles in their packets.

STAFF REPORT

Mr. Hayek said he is waiting for a renewal quote on the Directors and Officers Insurance which expires September 21, 2003, and there is still no replacement for Ms. Arnold on the Commission.

NEW BUSINESS

A. 2004 Budget

Mr. Ford said he and Ms. Schuman met with Ms. Miller to discuss the 2004 Budget, and they reviewed each category item to see what could be reduced and what needed to be increased. Ms. Schuman said the 2004 Budget gives the Commission room to make a salary increase if after evaluation they decide to do so, however, it is not a commitment to give that amount of increase. Mr. Ford said past increases have been between three and seven percent, and there is room for up to a seven percent increase in this budget. He said for the 2005 Budget, items were looked at regarding the specific phase of the map plan cycle the Boundary Commission would be in. Ms. Schuman said some categories were decreased because of low usage in the past while others were increased in anticipation of increased activity as the current map plan cycle nears its end. She said a budget was added for possible clerical help if there is an increase of activity. Mr. Hayek asked why the "Personal Services" category level was decreased in 2005 and 2006. Mr. Ford said because of lower anticipated activity. Ms. Schuman said the largest increase is in the facility rental category. Mr. Ford said they wanted enough in the category to cover any contingencies. He said because of their deadline the budget was submitted to St. Louis County as a proposed budget not yet approved by the Commission. Mr. T. Armstrong asked if the County requested a three year running budget. Mr. Ford said yes. He also said the County asked for three different levels of budget but instructed Ms. Miller to submit one, which, Ms. Schuman indicated, is a slight decrease over previous years. Mr. Ford mentioned Agnes Garino was previously on the Budget Committee and asked if a third member was needed. Mr. Hayek said no. Mr. Wojtkowski made a motion to approve the 2004 Budget. Mr. T. Armstrong seconded the motion. Voice vote: Ayes, All. Nays, None. *The motion passed.*

B. Boundary Commission Web Site

Mr. Hayek said he looked at the web site and it looked good. Mr. Ford said there might be some information that should be updated. Mr. Hayek said it looked current.

OLD BUSINESS

A. BC0301 Florissant Area 10, Signed Summary of Decision

B. BC0302 Maryland Heights, Signed Summary of Decision

Mr. Hayek said copies of the two signed Summaries of Decision are in the mailing packet for the Commissioners. He said according to the Staff Report submitted, Ms. Miller has taken care of the necessary paperwork needed by the Elections Commission regarding BC0302.

C. BC0303 Review of Eureka Proposal

Mr. Hayek called for the people who filled out public speaker forms to address the Commission.

Glenn Powers, St. Louis County Planning Director

Mr. Powers said he wished to clarify the County's support for the proposal and to speak to the aspects of the pocket and of the development. He said he wished to clear up whether or not St.

Louis County considers itself a co-proponent of this proposal. He said he does in the sense that the County Council passed a resolution authorizing him to assist in the application and he said he would be happy to state that in writing or to follow up in any way if necessary. Mr. Hayek commented about the way the letter was worded, "St. Louis County comments regarding proposed transfer of jurisdiction," and refers to the proposal as "by the City of Eureka" and never says "by us too." Mr. Hayek said he felt the Statute was clear on what the requirements are and he is concerned the Commission does not have anything in writing saying the County is a joint-proposer. He said he now understands that Mr. Powers is stating that the County considers itself a proposer of this transfer of jurisdiction.

Mr. Hayek said, in the letter, the County comments about there being a pocket and a concern over the fact that it results in 207 acres being closed off but for a road. Mr. Hayek asked if the County is ok with providing services to this area and its residents. Mr. Powers said if the annexation goes through, it may not look good on a map but the "on the ground reality" is that the situation will remain about the same as it is now. He said the area is currently cut off and accessed by going through incorporated area. He said the area being annexed is currently largely uninhabited and does not represent a service burden for the County, as does the other area with the hill and the flood plain. From a service provision standpoint, it is not being made more difficult by this, but less. Mr. T. Armstrong asked if the situation would be made significantly less difficult if the entire area were included in the proposal. Mr. Powers said yes, the area has been cut off for years. Mr. T. Armstrong asked if this was an opportunity to correct that. Mr. Powers said yes, if the residents desire to correct it in that way. Mr. Powers and Mr. T. Armstrong both indicated a wish to better know the desire of the residents. Mr. Powers said he was trying to remember how the law reads regarding pockets. Mr. Ford said Eureka's attorney at the public hearing stated clearly that the area did not meet the requirement of a pocket. Mr. T. Armstrong indicated they should all be interested in services to that area and in the desires of the people who live there regardless of whether it meets the definition of a pocket. Mr. Powers said if the people desire to be in Eureka, it should happen.

Mr. Sean Flower, American Heritage Homes

Mr. Flower said the reason why the potential development should be done as "one" and under one jurisdiction is because of the infrastructure improvements, the overall site layout and quality it will have and the complicated nature of the site needing a lot of fill from other areas to make it work. He said the best development overall will occur if done at one time because you can get the quantity of people and the quantity of lots needed in order to do improvements both on site and in the City of Eureka, which will also benefit other areas. He said this works best with a single jurisdiction, and said as an example, the exact same zoning regulation could exist in both the City and the County, but two different sets of people would decide whether or not they want you to do what you want to do, each looking separately at factors that affect them in different ways, and you could be running simultaneously with these different people who have to exercise their discretion, so the certainty needed to develop the area needs to be with one jurisdiction in order for it to be a comprehensive development, which they think is the best thing for that area. Mr. Flower said he thinks the development benefits the County, the City, and the people who live in the area. He said much of the area is not "buildable" and will be a wetland preservation area. Mr. T. Armstrong asked about the specific topography of the area and where the residents are located. Mr. Flower gave a general indication on a map and said there would be better access to the subdivision if built. He also said it might be cost prohibitive to run certain services there.

Mike Doster, Attorney for JBA Eureka

Mr. Doster said based on past actions, he thinks the City intends to go forward to address the pocket issue within the next two years. Mr. Wojtkowski asked if this is so, why did Eureka not meet with the County Planning Department and determine what transfer of jurisdiction would make the most sense from a municipal planning standpoint rather than focusing only on that which satisfied the development. He said this will obviously be a very nice development, will be beneficial to the City, and is being done by credible people, but it is the job of the Commission to execute a reasonable, logical process of incorporation in the County. He said it would make the Commission's job a lot easier if only they had looked at the map and said here is what the logical boundaries would be rather than having to deal with the "non-pocket-pocket" type of issues now before them. He said it is a matter of dealing with the issues, the whole revisions in the Statute requiring the map plan, to sit down and look ahead and do appropriate planning.

Mr. T. Armstrong said perhaps the City is afraid the twenty-two people in that area could stop the development and asked why the County Council passed the buck to the Boundary Commission rather than treat it as a boundary adjustment. He said maybe it is because they were worried about those people being heard and thought if they gave it to the Boundary Commission, at least a public hearing would be held and the thoughts of those people would be known. He said he would have suggested a different notice to those people than what actually happened and feels it is the Commission's responsibility to find out what those people think. He said the Commission may need to make a tough decision telling Eureka to go back and include them in the area and let Eureka run the risk. He said he would not like to do that because he agrees this project is important to Eureka, and now the County is jumping on the bandwagon realizing it is important to them because of the sales tax revenue involved. He said he does not want to kill the proposal, but he feels it is the Commission's responsibility to be cognizant of what these twenty-two people think. He said he does not know whether they know anything about this project. He said he appreciated Mr. Sabo's attempt to send a letter to the residents to advise them that something is going on, but said the letter does not provide enough information and does not advise them of much.

Mr. Wojtkowski said it gets back to the simple issue of the wording of the County ordinance which says the County Council acted on this by authorizing the Director of Planning to issue a plan of intent. He said he would feel significantly more comfortable if the ordinance read that the County Council approved the transfer of jurisdiction and authorized the Director of Planning. He said previously, at the Maryland Heights public hearing, the Commission witnessed the County state they did not care if the annexation went through and then a month later newspaper articles said the County opposes the annexation. Mr. Wojtkowski said it makes the Commission look bad for making a decision based on a presentation of one thing which later on changes. He said the County is now saying "I know how the ordinance reads, but that's not what we meant" and who is to say two months down the road it may mean something different. He said he feels the Commission should take a very strong stand on what we expect the St. Louis County Council to act upon relative to this transfer of jurisdiction.

Mr. Ford said he believes this is a good proposal. He said he had reservations regarding the conservation area, but the developer, in his letter, included conservation groups, etc, explaining that it is a good proposal provided it goes through as planned. He said he is concerned it is not a logical boundary adjustment, but the City said they will propose annexing the "pocket" but the developer said the cost of sewer and water to the area is almost prohibitive, so he has doubts that

Eureka would do that, and is concerned this area may not be annexed and would remain a service difficulty for the County. He said he would like to see that area as part of this proposal and if that requires Eureka meet with the County to adjust it, he would like to see that happen.

Ms. Schuman said at first she thought Eureka was just disorganized on their petition but is now convinced this was well thought out and they did not want to include the pocket area, especially given the rather arrogant “offensive defense” taken immediately by their attorney in talking about how this was legally not a pocket, etc. She said the bottom line is this is a win situation for the County in terms of property taxes and assessments, and it is certainly good for Eureka. The pocket area is very irritating that it was not taken in, but she thinks we have succeeded in getting a commitment from Eureka to pursue annexation of that area, as it is now on public record and because it was part of their original map plan. She said she sees a bad situation made better at this time and with hopes for the future, and now it is up to those twenty-two people. Ms. Schuman said she disagrees with people who are concerned about how much the twenty-two residents knew about this and said a public hearing is a public hearing, and all of St. Louis County technically should have been aware of this and she said she thinks they have had opportunity to voice any concerns or comments about it.

Ms. Ordower said with regard to the notification of the twenty-two residents, it is so few people, it might have been more productive to have notified them individually to get a feel for what they wanted. She asked when a decision needs to be made. Mr. Hamilton said Ms. Miller calculated the four month deadline at September 12, 2003. Ms. Ordower asked if the Commission has the ability to make sure Eureka is going to look at that annexation and talk to those people to see if it is something they want to do; if there is any legal way to make sure that is done before voting on it. Mr. Hamilton said the Statute permits deferral if there is a pending conflicting proposal for annexation, but there is no other Statutory right to defer consideration of this proposal pending and there is no legally enforceable obligation. Mr. Wojtkowski said the Boundary Commission has the authority to change the boundary of the proposed annexation.

Mr. T. Armstrong asked if Mr. Hamilton was suggesting the Commission could not hold the City of Eureka to a commitment that they would make a proposal to annex the pocket area within some certain time frame. Mr. Hamilton said unless Eureka passes an ordinance by its duly elected governing body committing to do that, it is his opinion that it would not be an enforceable agreement by Eureka that you could compel them to comply with because cities only act through their governing bodies. Mr. T. Armstrong said he sees two issues, one being the inclusion of the pocket people, had they been included in the project initially, they would have some view, and their view would be important as to the impact of this development on their property. He said to simply get a commitment from Eureka to annex them at some future date is only part of the issue. He said the other part is we still have not heard from them to see if they like this project or not and if we approve this and get a commitment from Eureka to annex them later, they may say they should have been involved from the beginning. Ms. Ordower said the Commission does not even know if they would want to be a part of Eureka.

Mr. Hamilton said with regard to the point about amending a proposal, he is not familiar with that in this context that the Commission could enforce that, but said the section we are dealing with in the simplified boundary change does provide that the proposing agent may modify its proposal and submit it to the Commission during the review period. He said the proposing agent appears clearly to have the authority to modify the proposal during the review period.

Ms. Stroker said she concurs with Mr. T. Armstrong on the issue of the pocket and the inability of the City to bring the residents in that area forward because of fear that the annexation would not go through, and she questioned the commitment of a future annexation. She said she believes the development would be good, but that should not be an issue. She said when she thinks about this annexation and the topography of where these residents live with regard to bringing in services, cities are not really expected to bring in public lines and people living in these areas are happy with septic systems and wells, but when thinking in terms of services Eureka would provide such as administration buildings, sports complexes, police, fire, etc., she would like a commitment to initiate an annexation in the next two years.

Mr. Hayek said regarding the environmental aspects of the proposal, whoever is governing that is going to govern it whether it is in the County or the City, making concerns about it irrelevant. He said this is a tremendous, wonderful project which to him begs the question of what has gone on here. He said there have obviously been intelligent people in the areas of finances, subdivisions and development who have prepared this. He said we had an attorney who is licensed before the highest court of this land talk to us, and yet, if you look at the Statute, it is extraordinarily clear: a simplified boundary change may be proposed by a municipality and the County. He said he is baffled that such intelligent, hard working people with so much money on the line just did not want to do this part of the paperwork. He said this has been somewhat dropped in our laps and we were told there was a way to handle this without involving the Commission which is maybe the best option. Mr. Hayek said he is not concerned with the legal definition of a pocket, but does not wish to create a pocket. He said proposals should not be granted or submitted because you are afraid a certain area is not going to go along with it. He said that just creates a larger mess in the County that he thinks the Commission is cast to try to avoid and cure. He said he is uncomfortable at best with being part of a plan that is going to create a little "hole" on a map because maybe the people did not want to go along with the subdivision development. He said he is troubled by the fact that such hard working and bright people came up with a wonderful plan that the very basic of transferring the property which is a very large concern to all of them, did not follow the clear and easy to read language of the Statute. He said there is something wrong about that and it is curable. Mr. Hayek said this has been planned for a long time and it cannot be that hard for a new ordinance to be passed that says "we propose this" and he is troubled by the fact that it was told to them at the day of the meeting; discussions about this proposal have been going on for a long time. He said the Commission is given a Statute that is going to govern it and that is what he will rely on for guidance.

Mr. Wojtkowski asked if there is a time restriction as to when Eureka could resubmit if their proposal is disapproved. Mr. Hamilton said if a proposal is denied by the voters they cannot resubmit for a year. Mr. Hayek said he does not know if that is addressed under a simplified boundary change transfer of jurisdiction because there is no vote. Mr. Wojtkowski said he would like to say for the record he feels this development has tremendous merit and he would just like to see things done right; sitting down and determining what an appropriate boundary change would involve and having the County Council do their part. He said he cannot say he would support this without a vote, but he would support letting it go forward in some fashion.

Mr. T. Armstrong said what he hears Mr. Hayek saying is that he is opposed to this because the Statute has not been followed properly and it suggests that if the County Council took appropriate action they could cure the fault, but that does not address the issue of the pocket. He said he does not think it appropriate for himself to disapprove this project solely on the basis of

not complying with the Statute. Mr. Hayek said he agrees the pocket has to be addressed and also thinks the ordinance has to be done correctly. Mr. T. Armstrong said he was looking for ways to save the proposal and save the development and satisfy himself that the pocket people know what is going on. He said if September 12, 2003, is the deadline there is not enough time to know what the people think. To satisfy this problem he said he thinks the proposal has to be denied and sent back to the drawing board to address both of those issues.

Mr. Hayek said Mr. Hamilton pointed out under Article XIII of the Rules, a boundary change proposal which has been disapproved by the Commission and which is resubmitted with changes shall be treated as a new official submittal, however the Commission may waive the public hearing requirements if it determines a public hearing on the proposal is not necessary to achieve. He said the Commission has talked about getting the residents' input, therefore, he does not know if that would work. Mr. Wojtkowski said the fact of the matter is if we disapprove it, they could have another proposal on the table as quickly as they could deal with the County Council and everyone following the statutes. Mr. Hayek agreed.

Mr. Ford asked what the provision is requiring a vote. Mr. Hamilton said the Commission has discretion at this point to deny it, approve it without a vote or approve it with a vote. He said the voting issue that comes up under section 407 is where you get into the unincorporated pocket issues and certain requirements with regard to the majority if there is an unincorporated pocket, but we are not dealing with that here because the area subject to this proposal is clearly not an unincorporated pocket. Mr. Ford asked if a proposal was brought back before the Commission with the pocket included, if the Commission could still approve it without requiring a vote. Mr. Hamilton said yes. Mr. T. Armstrong asked if the Commission could require a vote. Mr. Hamilton said yes. Mr. Wojtkowski wished to address one of the remarks made by an attorney at the public hearing. He said the attorney made the statement that the previous annexation was unanimously approved by the Commission, and it was, the objection was at that point in time that the Commission chose to vote on the approval of the proposal, and then to vote again on whether a vote should or should not be taken. At that point in time, he felt that he was forced because he supported the proposal, but supported it based on a vote, that he did vote to approve the proposal under the objection and the point of order, which was ignored by the Commission, that the State Statute clearly stipulates there are three actions we can take: we can disapprove, we can approve with a vote, we can approve without a vote. There is no such thing as approving it without an action. When the attorney got up and represented that there was no controversy over that annexation, he was inaccurate.

Mr. Ford asked for clarification of Mr. T. Armstrong's comment regarding the September 12th deadline and getting residents' opinions. Mr. T. Armstrong said he did not believe that would be a sufficient amount of time to adequately advise the people living in the "pocket" and to solicit their input.

Mr. T. Armstrong made a motion to disapprove the BC0303 Proposal. Mr. Wojtkowski seconded the motion. A roll call vote was held with the following results: Commissioner T. Armstrong, yea; Commissioner Ford, yea; Commissioner Hayek, yea; Commissioner Ordower, yea; Commissioner Schuman, nay; Commissioner Stroker, nay; Commissioner Wojtkowski, yea. *There were five affirmative votes and two negative votes. Four Commissioners were absent. The motion to disapprove failed because in order to be approved or disapproved, a motion must, according to the Boundary Commission Rules, be passed by a vote of six.*

Mr. Hayek asked what happens if there are insufficient votes for approval or disapproval. Mr. Hamilton said the Statute does not speak to that specific issue. The developer's Counsel suggested that if the Commission's pleasure was to have a special meeting between now and the deadline, he believes Eureka could generate a resolution of intent to proceed with the annexation of the pocket area under discussion, and perhaps get something more definite from the County. Mr. Hayek asked for a motion to approve the BC0303 Proposal in light of the fact that the motion to disapprove failed. (There was no motion.)

Mr. Wojtkowski made a motion to disapprove BC0303. Mr. Hayek asked if it is allowed to vote on something twice. Mr. Hamilton said yes because it is a separate motion and the previous motion failed. Mr. T. Armstrong seconded the motion. Mr. Hayek called for discussion. Mr. Wojtkowski said he made the motion because he believes there are many good reasons to disapprove. He said everyone understands the Commission is supportive of the development and hopes the developer, Eureka, and the County could get together and submit a plan of intent that conforms to the Statute, eliminating controversy so it could move forward. He said he would plead with the Commission members that oppose the motion to support a plan of action that is logical, objective, and does not stand in the way of Eureka accomplishing their goal except for a possible four month delay.

Mr. Ford asked if the motion fails again and they decide to take it up at their next regularly scheduled meeting, if the proposal would die because of the four month deadline. Mr. Hamilton said it requires action within four months and he could not point to a statutory section right now that says failing to take action on it means it dies.

Ms. Ordower asked if the motion fails, could the Commission hold a special meeting to vote on it again as proposed and asked for clarification of what Eureka proposed; if it was to go to the residents to see how they feel about annexation, or to say they will do an annexation later of the pocket area. Mr. Hamilton said his understanding of what Mr. Doster said is that Eureka would favorably consider a resolution of intent to annex the area. He said an ordinance is legally binding, a resolution is not.

Mr. T. Armstrong said there are two issues involved: one, will you annex this area, and two, how do the pocket people relate or react to the development. Ms. Ordower said she would like to know what the people in the area think. Mr. T. Armstrong said that is how he reached the decision that the right thing to do is to disapprove because there simply is not enough time to get the answer to that question. Ms. Ordower said she wonders if the Commission held a special meeting before the deadline, if that would be enough time because of the relatively small number of people living in the pocket area.

Ms. Schuman said she did not feel the Commission is charged with approving or seeking approval or disapproval of developments, even if the proposal is development initiated. Whether or not the twenty-two people approve or disapprove of the proposed development is not our charge. She also said that Mr. Hayek said this has been proposed and discussed for a long period of time, and it seems to her that if you live in the area you would be aware of it.

Mr. T. Armstrong said the basic issue is why the area was not included in their proposal, and had they included it, the Commission could have required a majority vote of those people, and thus discovered how they felt about the development. He said the fact that they were excluded

suggests they were afraid of that happening. He said for Eureka to make a commitment to annex that area would take care of part of the problem, but it does not take care of all of it. He said it is not a question of our judging whether the development should be done, but it is the impact on the people who would be affected by it, which is a proper issue for us to decide.

Mr. Hayek said he does not like the idea of rushing a proposal through and said this is the second time recently that this has happened. He said it is hard to believe it would make such a difference in the big picture that the Commission should have to jump through these hoops to hold a special meeting and to run around to all these people within the next three weeks and get it done before the deadline, when, if on the other hand, the Commission disapproves the proposal, Eureka will have time to get it done right if they want to. He said he is not judging whether or not we should be guessing what those people have to say, and it sounds like a great development, but the Commission has a set of rules of how to do these things, and four months is a very short time frame when considering a project of this magnitude, to say if you are not happy with it, in the next three weeks we will do all these things and we will get it all done and get it all done right. Mr. Hayek said this project has been considered for so long, he cannot believe a four month delay which is not the fault of the Commission, would make a big difference. Mr. Hayek said he shares Mr. Wojtkowski's thoughts that it is a wonderful proposal and said he hopes it goes through, he thinks it would be a great development, all the people are happy with the environmental aspects of it, etc., but the Commission's charge is to look at the map and make sure things are done right.

Ms. Stroker asked if Eureka submitted a revised proposal including the "pocket" area and its residents voted on the annexation, if they would be the deciding factor to annex this entire area. Mr. Ford said no, there are residents in that proposed development area that would also be included. Ms. Stroker asked if the people would be the deciding factor. Mr. Wojtkowski said only if the Commission required a vote. He said there would be a public hearing with all the stakeholders appropriately notified and the Commission would get some sort of feedback from the hearing, whether positive, negative, or otherwise, and based on that feedback would make a decision to approve it with a vote, approve it without a vote, or disapprove it.

Mr. Wojtkowski said in his final comment, his plea would be that what this is all about is precedent. He said in addition to the boundary issue and the concern about the residents, there is the fact that we have significant concerns of whether this proposal even complies with the Statute to begin with. He said there is concern and there is doubt, and some feel strongly that this proposal does not comply. He said the Commission should not establish a precedent of approving something when we are not sure whether it complies with the law, and that doubt alone should be the reason we disapprove this proposal. He said the Commission requested the County provide the verbiage that they are joint proposers of this proposal at the public hearing. He said if we vote in something that creates a pocket, that is not a logical boundary. He said he would like to see this proposal before this Commission presented jointly by Eureka and the County, and covering the whole area.

Mr. Hayek said a motion was made and seconded to disapprove BC0303 and called for a vote. A roll call vote was held with the following results: Commissioner T. Armstrong, yea; Commissioner Ford, yea; Commissioner Hayek, yea; Commissioner Ordower, yea; Commissioner Schuman, nay; Commissioner Stroker, nay; Commissioner Wojtkowski, yea. *There were five affirmative votes and two negative votes. Four Commissioners were absent.*

The motion to disapprove failed because in order to be approved or disapproved a motion must, according to the Boundary Commission Rules, be passed by a vote of six.

Mr. T. Armstrong said there are two alternatives. He said one is to let the proposal die, but he is uncomfortable that the Commission has no legal basis for knowing what happens to the proposal if no action is taken. The other is to hold a special meeting with the full Commission attending.

Ms. Ordower asked if the special meeting would be to vote on what is currently before the Commission or if it would allow Eureka and the County to bring further information. Mr. Hayek said it would be for a larger number of Commissioners to be present to vote on what is already before the Commission. Mr. T. Armstrong said the proposers can amend the proposal at any time until it is passed or disapproved. Mr. Wojtkowski asked Mr. Hamilton to research previous Commissions to see what the basic interpretation was if a proposal died because it was not acted upon within its time frame. Ms. Ordower said this is one reason to hold a special meeting.

Mr. Ford made a motion to hold a special meeting to act on the BC0303 Proposal. Ms. Ordower seconded the motion. A roll call vote was held with the following results: Commissioner T. Armstrong, yea; Commissioner Ford, yea; Commissioner Hayek, nay; Commissioner Ordower, yea; Commissioner Schuman, nay; Commissioner Stroker, yea; Commissioner Wojtkowski, nay. *There were four affirmative votes and three negative votes. The motion passed by a 4 to 3 majority vote of the members present.*

Mr. T. Armstrong suggested Ms. Miller contact the Commissioners to schedule the special meeting before the deadline. Mr. Hamilton said the Rules require three days notice.

D. BC0304, Florissant Area 13 Simplified Boundary Change Proposal

Mr. Hayek said Florissant was notified that their proposal was incomplete lacking an ordinance from St. Louis County, and we have not received such an ordinance. Mr. Hamilton said there was a request to the County from Mr. Jearls of Florissant asking the County to pass an ordinance. Mr. Powers said the status of the County action was that the letter was referred to the Planning Department and they are currently gathering comments to report back to the County Council.

E. Boundary Commission Office Space

Mr. Hayek said he and Mr. M. Armstrong toured two facilities in the County Government building for possible monthly meeting use. He said the room would be available on Tuesday nights and the building would be open with a guard to direct people. He said both he and Mr. M. Armstrong feel the space is sufficient. He said it would solve the problem of the Commission having a lot of space used only once a month. He said the plus side is we would save money by not having to rent as much space and we would still be able to get an office with a work area in downtown Clayton for daily business for maybe less than what we are currently budgeted. He said the down side is that it is a separate location and we would have to plan a little bit for our monthly meeting and carry recording equipment and other items needed for the meeting over, but it is only once a month and not that inconvenient. He said the square footage of the meeting space is larger than the current space, though configured more narrowly, but it could be set up easily. He said the building is easy for people to find and the Commission could save a little money and get a better day-to-day operations office.

There was general discussion on the size and location of the conference room, convenient public and after hours access to the building, and description of the day-to-day office space which would probably include a small reception area, executive office and a file and work area. Ms. Schuman asked if there would be enough space for a potential clerical support person. Mr. Hayek said yes. Ms. Schuman said while she supports the idea of saving money, she is concerned with holding meetings in the County Building because the Commission is independent of the County and would not like to lose the feeling of independence by being in that building.

Mr. Wojtkowski asked what the opinion of Ms. Miller is. Mr. Hayek said she had the same level of discomfort of getting a big space that would not be used much and she does not have a problem with carrying things over to the County Building once a month. Mr. Wojtkowski suggested the County might allow us to store our recording equipment in the County Building.

Mr. Hayek proposed contacting the Public Works department about reserving the room, and to direct Mr. M. Armstrong to talk to the broker to find smaller office space in the buildings under consideration that would include an appropriate area for an executive office, file room, and reception area and proceed with negotiating a lease. Mr. Wojtkowski suggested the executive office be large enough to accommodate a desk as well as a table with seating for four to hold committee meetings and other discussions.

F. Directors and Officers Insurance Renewal

Mr. Hayek said he is expecting a renewal quote soon.

G. Review Boundary Commission Rules

Mr. Hamilton said under the Boundary Commission Rules, in Article V, which deals with the official submittal and what needs to be included, there are three different kinds of simplified boundary changes (SBC). The first is an annexation, the second is a transfer of jurisdiction between two municipalities, and the third is a transfer of jurisdiction between a municipality and the County, which is what BC0303 is.

Mr. Hamilton said both Eureka and Florissant, in the process of submitting their proposals, called and said there is a section of the rules that requires a certification from the County Election Authority. Mr. Hamilton said he gave the Commissioners a memo that outlines why his conclusion is that a transfer of jurisdiction between municipalities or a transfer of jurisdiction between the County and a municipality should not require the same certification required for a transfer of jurisdiction consisting of an annexation.

Mr. Hamilton said the first type of SBC requires certification that 75% of the registered voters within the area proposed for annexation which is predominantly residential in character has been provided to the Boundary Commission office. Under a subsequent provision of that same section, it says the proposing authority has to provide a copy of all documents from the St. Louis Board of Election Commissioners which was the basis for the certification that they provided that at least 75% of the registered voters have signed that proposal. He said for some reason the rules carry forward in the section of the rules outlined in the memo. He said that certification in the section dealing with the second and third types of SBC, is that the area contains no more than 60% of the area subject to a previous boundary change. The Election Authority has nothing to do with that. Mr. Hamilton said he thinks that the requirement for the documents to support that certification was carried through in the subsequent two sections dealing with different kinds of

transfers of jurisdictions without realizing that no such documentation from the Election Authority was generated for the certification that is referenced. He said he thinks the rules need to be amended for purposes of clarification for future entities submitting proposals, because right now they are all calling and asking if they have to do that and the Election Commission is saying they do not have that document, so the Commission has been informally accepting these proposals without requiring that certification because they simply cannot get it. He said we need to notify all the Cities in the County and St. Louis County that we are going to amend our Rules and then twenty-seven days after that notice goes out we can adopt the amendment. He said a motion tonight directing him to work with Ms. Miller to generate that notice, after 27 days, the Commission could pass the amended Rule. He said that raises the question, too, whether or not the pleasure of this Commission is to consider other possible changes.

Mr. Hayek suggested this change be done right away and thinks it is time to review the Rules to see if there are other changes to propose. Ms. Ordower said the Legislature meets in January and suggested it might be wise to look at the Statute for things that may need to be addressed by the Commission, and perhaps do some simple adjustments. Mr. Hayek suggested the Commissioners bring any proposed changes to the October meeting for discussion. Mr. Hayek asked Mr. Hamilton to research what changes can be made to a proposal during the time it is under consideration, and if that starts a new clock on the four month time frame.

Mr. T. Armstrong made a motion to provide the notice of a change to the Boundary Commission Rules as described in Mr. Hamilton's memorandum. Ms. Schuman seconded the motion. A roll call vote was held with the following results: Commissioner T. Armstrong, yea; Commissioner Ford, yea; Commissioner Hayek, yea; Commissioner Ordower, yea; Commissioner Schuman, yea; Commissioner Stroker, yea; Commissioner Wojtkowski, yea. *The motion passed by unanimous vote of the members present.*

ADJOURNMENTS

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

The meeting was adjourned.

Respectfully submitted,
Kim Miller, Executive Director

Approved: 11/18/03