

BOUNDARY COMMISSION
ST. LOUIS COUNTY, MISSOURI
MEETING MINUTES

September 9, 2003

ROLL CALL

Commissioners Present: Matt Armstrong, Ted Armstrong, Jane Arnold, Bob Ford, Tom Hayek, Greg Kloeppe, Mary Schuman, Johnnie Spears, Carol Stroker, Don Wojtkowski
Commissioners Absent: Ilene Ordower

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., September 9, 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. Hayek moved to remove Item 8C, BC0303 Review of Eureka Proposal, from the agenda because the City of Eureka passed an ordinance withdrawing its proposal and St. Louis County submitted a letter stating their intention to do the same. In light of this, Mr. Hayek said he did not believe the Commission had a valid proposal in front of them to vote on. He said BC0303 was presented as a Transfer of Jurisdiction, but due to the City's withdrawal, the Commission no longer had two proposing entities; the municipality and the County. He said the Commission could leave the item on the agenda and vote on it, but they would be voting on a proposal no longer valid without two proposing entities. He said the proposal would have been completely and officially withdrawn if time had permitted the County to come in with a passed ordinance. He said in discussing the matter with Mr. Hamilton, they were of the opinion that BC0303 should be removed from the agenda even in light of the approaching four month deadline to act on it, because they do not have a proposal to act on. He opened the floor for discussion.

Mr. T. Armstrong asked what would happen if the Commission failed to act on a valid proposal by the deadline. Mr. Hamilton said he researched that issue and the Boundary Commission Statute is a bit of an anomaly in terms of not providing specific guidance. He said the Statute says the Boundary Commission in the case of this type of Transfer of Jurisdiction must either approve or disapprove within four months, and essentially, if the Commission did not take action in the allotted time, it would lose jurisdiction over the proposal and would have no authority to take any action and the proposal would die. Mr. M.

Armstrong asked if it would automatically pass or if it would die. Mr. Hamilton said it would die and the Commission would not have any jurisdiction to do anything to it if they did not act within four months. Mr. Hamilton said he was arguing by analogy from a securities case because there was no closer authority that his office could find that gave any more guidance on that issue. He said the Statute is an anomaly in terms of not providing what happens if you do not act in the four month period. Mr. Kloeppel said he did not see a problem with the Commission voting on the proposal, even if they simply vote it down because it is moot, to have carried out their duty under the Statute. He said voting might be wise to protect the Commission from possible ramifications from not voting on it.

Mr. T. Armstrong asked what the argument is against keeping BC0303 on the agenda and voting on it, assuming the Commission votes to disapprove it. Chairman Hayek said he has trouble voting to disapprove a proposal when he does not think he has proposal in front of him. He said his concern is that having a proposal requires a proposal from a municipality and from the County, both saying they want to do this, even for him to disapprove it, and right now, he has a municipality saying they are withdrawing their proposal and he does not see two entities and you have to have both of them together. He said in his opinion, for this proposal to be before the Commission, you must have two, the County and the municipality saying they want this to happen, and if one of them says, "No, I'm withdrawing my proposal." to him, the proposal ceases to exist. Mr. T. Armstrong asked if there was anything in the Rules indicating that. Mr. Hayek said the Statute says the proposal must be by a municipality and the County and although at one point it was, as of right now, it is not. There is an ordinance from Eureka telling him they are withdrawing their proposal. When one of the two draws out of a Simplified Boundary Change which requires both of them to make the proposal, his understanding is that it is now gone. He said you cannot have half of a proposal and when one of the two parties is gone, the proposal is gone, so he has a tough time saying no to something that no longer exists.

Mr. Wojtkowski asked if the Commission received a formal, signed copy of the ordinance from Eureka. Mr. Hayek said yes.

Ms. Arnold asked if they could "split the difference" by disapproving the application due to a failure of form because they did not have two proposing entities at the time of the vote, and to disapprove it as moot, but to keep it on the agenda and in this way the Commission does not ignore the four month deadline yet can acknowledge that it is not an actual proposal.

Mr. Hamilton said that unless they have an ordinance from St. Louis County the argument is that we still have a valid proposal in front of us. He said with regard to legal action against the Commission, somebody could file a suit based on the Commission's failure to act. He said in practical terms, he does not know who would do that because there is an ordinance from the City and a letter from the County Department of Planning saying they want to withdraw, and there is no other party interested that would be motivated to file suit. Mr. T. Armstrong said at present this may be true, but conditions could change. Mr. Hamilton said Eureka is going ahead with a boundary change under 401.8 which permits a Transfer of Jurisdiction on the affirmative act of the County and the governing body of the City of Eureka with the concurrence of all the residential property owners in the affected area. He

said if that falls through, there might be some repercussions if there is no action taken by the Commission and it might be safest to pursue the denial. Mr. Hayek withdrew his motion to remove BC0303 from the agenda.

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

APPROVE MINUTES

Mr. Hayek said there were no minutes for the Commission to approve.

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENTS AND COMMUNICATIONS

Mr. Hayek said Kim Miller talked to several people at the County and there is still no replacement for Jane Arnold's seat on the Commission.

STAFF REPORT

Mr. Hayek said he hoped to have a quote for the Directors and Officers insurance in time for the meeting, but it did not come through. He said the Commission may need to conduct a teleconference type meeting to approve the quote for the new insurance before the next meeting. Mr. Hamilton said the expiration date is September 21, 2003.

NEW BUSINESS

There was no new business except for some information in the meeting packets about boundary transfers involving Ellisville, Des Peres and Frontenac, but not requiring action on the part of the Boundary Commission.

OLD BUSINESS

A Directors and Officers Insurance

Mr. Hayek said a quote should be available in the next few days.

B. Office Lease

Mr. Hayek spoke with Mr. M. Armstrong and the realtor about securing 800-1,000 square feet of office space in Clayton to conduct the day-to-day activities of the Commission. He said a meeting time would be set up with the County to look at their conference room space for the Commission's monthly meetings. Mr. Ford asked when we need to be out of the current space. Mr. Hamilton said the end of this month. Mr. Hayek said it would not be a problem if we needed to stay for another month. Mr. M. Armstrong asked if the Commission needs to make arrangements with a mover. Mr. Hayek said Ms. Miller talked to the County and was informed the County would move the Boundary Commission office.

C. BC0303 Review of Eureka Proposal

Mr. Hayek said they received a copy of an ordinance from Eureka withdrawing their proposal and a letter from the County indicating they would pass their own ordinance to withdraw their proposal. Mr. Wojtkowski made a motion to disapprove BC0303. Mr. T. Armstrong seconded the motion. Mr. Hayek asked for discussion. Mr. Wojtkowski said this

was perplexing to him from the standpoint that he believes what the Commission was asking Eureka and the County to do was not unreasonable in approaching this annexation in some form in accordance with their map plan to not create additional problems with access and pockets. He said he thinks it is in the Commission's purview to do that, and if Eureka had come forward with a plan that addressed the annexation in a logical and orderly fashion, there would have been no objection from the Commission. He said it was not unreasonable for the Commission to have taken the position they took and it is discouraging to him that St. Louis County would accommodate Eureka by taking a different course of action, and work around the Boundary Commission. He said he did not understand why the County would not support the Boundary Commission to do its duties. He said he thinks it is appropriate for the Commission to state their position by the disapproval of the proposal. He said he is extremely discouraged that the County would promote going around the Boundary Commission rather than working through it.

Mr. T. Armstrong said it seems to him the reason the County is doing this is because the commercial development, more than the residential development, is of such major import to both Eureka and the County that the County is willing to go around the Boundary Commission and do whatever it takes to help get this project going, which is disturbing to him. He said one of the issues discussed at the last meeting was the creation of a virtual pocket and the fact that the County did not seem to care what would happen to the people in that area, deciding to promote the commercial development and to get the benefit of that. He said the disregard of the people in the virtual pocket is disturbing. He said the new proposal is with respect to the northern area only, and the County is now going to keep the area along the flood plain which is the area indicated during Eureka's presentation that had to be included to keep everything in a single jurisdiction, it is where the dirt would come from to build up the area where the homes would be built, so this change indicates the County is willing to do anything and it is a play for a commercial development that the County is interested in. He said in the last meeting the two arguments that were important in determining whether to approve the project as originally proposed were: one, the proposal would leave a virtual pocket of property completely cut off from everything else and two, there are residents, some twenty people, inside that pocket, who have not had their say. He said this group is supposed to make sure that the public and people affected by incorporations, mergers, etc., are heard and even though there was the argument that a public hearing was held and those twenty people decided not to show up and not to express their interest, he did not believe that those people read the Daily Record or that they knew what was going on or that they know currently what is going on and what was proposed to happen down the hill from their properties.

Mr. Wojtkowski said the Commission can never lose sight of the fact that the whole Boundary Change legislation, with specific regard to the revised legislation, is designed to create the platform of reasonable and effective municipal planning in approaching the expansion of municipalities and annexation. He said that is why so much time is spent dealing with map plans, dealing with every municipality, going over things section by section, with logical courses for growth established. He said it is not a healthy situation when growth of this nature is being done in the absence of any future vision on their own in municipal planning and is being done simply by the next developer that comes in and wants

something. He said it is not a healthy thing, and this can be expressed by the Commission's disapproval.

Mr. Hayek said his position is the same as it was the last time they voted, and the reason he suggested amending the agenda is because he does not think there is a proposal before the Commission anymore. He said St. Louis County will now pass an ordinance withdrawing a proposal, and that frankly, he is not sure he ever saw an ordinance presenting a proposal. He said he thinks the planning aspects discussed are clearly important and the creation of a pocket goes against the reason why the Boundary Commission was put together. He said it is important to follow the Statute so things are done right, and are done right every time, and if a proposal does not follow the Statute, it should be turned down.

Mr. Wojtkowski made a motion to disapprove the BC0303 Proposal. Mr. T. Armstrong seconded the motion. A voice vote was held with the following results: Commissioner M. Armstrong, yea; Commissioner T. Armstrong, yea; Commissioner Arnold yea; Commissioner Ford, yea; Commissioner Hayek, yea; Commissioner Kloeppel, yea; Commissioner Schuman, nay; Commissioner Spears, yea; Commissioner Stroker, yea, Commissioner Wojtkowski, yea. One member was absent. *The motion carried by affirmative vote of a majority of the members. On September 9, 2003, at 6:58 p.m., the proposal was denied.*

Mr. Hamilton said according to the Statute, a document must be generated explaining the reasons for the denial. He said he would incorporate the comments of the Commission members in that document.

ADJOURNMENTS

Mr. Ford made a motion to adjourn. Mr. Hayek 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