

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

**MEETING MINUTES
January 14, 1997**

ROLL CALL

COMMISSIONER	PRESENT (P)/ ABSENT(A)
ED BRUER	P
JULIUS FRAGER	P
AGNES GARINO	P
SCOTT MIDDELKAMP	P
JACK REHAGEN	A
CHARLES SAULSBERRY	P
JACK WIESEHAN	P
ANNA MARIE WINGRON	A
DON WOJTKOWSKI	P
VACANCY	
VACANCY	

OTHERS PRESENT:

Carl Ramey - Executive Director

Steve Martin - Attorney

Libby Rohlfing - Administrative Assistant

CALL TO ORDER

The meeting was called to order by First Vice-Chairperson Garino at 6:10 pm on January 14, 1997. The meeting was held at the office of the Boundary Commission, 1516 S. Brentwood Blvd., Brentwood, MO 63144. Commission member Bruer arrived at 6:40.

ROLL IS CALLED-QUORUM DECLARED

Carl Ramey called the roll and a quorum was declared.

APPROVAL OF AGENDA

A motion was made by Commissioner Garino to accept the agenda as submitted. The motion was seconded by Commissioner Wiesehan. Voice Vote: Ayes - All Nays - None
The motion passed.

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENTS/COMMUNICATIONS

Mr. Ramey discussed the drafts of the summaries submitted for approval and the changes subsequently made to them. To speed the process and avoid the amendment of each original draft, it was agreed to approve the proposals with an understanding of the universal application of certain changes. The most important of these changes is to the ballot language. After discussion with the City of Manchester and legal counsel for the Board of Election Commissioners, it was decided to exclude the parenthetical reference to "map displayed in the polling place in the language on the ballot." It was feared a voter might actually leave the polling place with their ballot, rendering it invalid. The language is not necessary, and this deletion is preferable to the municipality. Mr. Ramey indicated he needed to confirm the change with the City attorneys for Sunset Hills and Florissant, but felt it should not affect the decision of the Commission in approving the documents.

Other minor changes included updating the date on each document to read January 14, 1997, and adding a page header to clarify the name of the proposals for the record. Also the table detailing factors six and seven was split into two separate tables in order to indicate more clearly the change in the tax percentages.

Mr. Frager requested that 'Assessed Valuation' in the first table regarding these factors be spelled out and not abbreviated. Mr. Ramey agreed to make this change to each.

Specifically regarding BC9603, Mr. Ramey noted a change made in the reasons for disapproval. If the City of Florissant lowers their utility tax as proposed, the taxes will not increase as specified in the reasons listed. Therefore, the wording was modified to explain that another proposal, BC9605, offered a more advantageous tax structure.

Mr. Frager asked what happens to these summaries once approved. The decisions will be forwarded to the municipalities for their files, and will be placed on file in our records. The Board of Election Commissioners indicated they do not need a copy. The cities will prepare their own press materials. They are public documents available for anyone to review.

Mr. Ramey explained that for approved proposals, fulfillment of the best interest test was used to support the final decision. The decisions for the disapprovals indicated more specific reasons. These decisions may require further consideration: changes, additions, deletions or general word smithing in order to meet the approval of the Commission.

Mr. Ramey requested that a motion be made at the end of the meeting to direct him to execute the necessary papers to complete the process, placing the approved proposals on the ballot with the Board of Election Commissioners.

Mr. Martin reiterated that the Commission should approve the decisions with the understanding that the final ballot language still required agreement from the two City attorneys, and agree to leave that open-ended, to be arranged between Mr. Ramey and the cities. Mr. Ramey stated the attorneys for Sunset Hills and Florissant approved the original on the drafts and will probably not object to the change as the language to be deleted is unnecessary information. But he did not want to force the Cities to accept language that does not adequately reflect their proposal.

OLD BUSINESS

A. Approval of Summary and Decision and Setting Election Date for BC9601 - Area West - City of Florissant

Mr. Wiesehan made a motion to approve the Summary and Decision for BC9601. Mr. Middelkamp seconded the motion.

Mr. Wojtkowski expressed concern over the reasons listed in the Decision that did not reflect the opinions of all voting members. He argued this could be more accurately worded to indicate that a majority approved it and not the entire Commission.

Ms. Garino suggested the current language seemed adequate because it listed only the reasons "for" approval.

Mr. Wojtkowski asked why the record of how each Commissioner voted was not included. Mr. Martin responded that the record is included in the meeting minutes which is a standard procedure, though it can be added if the Commission so chooses.

Mr. Wojtkowski expressed a final concern regarding the inclusion of the "best interest" language regarding the County and the adjoining areas. The County indicated the proposal would have minimal impact and that is significantly different from stating it is in their best interest. He asked if the language could read no unfavorable impact on the County and adjoining areas instead of "best interest" in all of the approval decisions. Mr. Ramey stated that the language used was taken directly from the law.

Mr. Frager questioned whether the suggested language would stand up in court if it were challenged. Ms. Garino stated she preferred to follow the language in the statute because it reflects the main criteria considered. Mr. Wojtkowski argued the Commission opens itself to criticism especially when facts presented earlier in the document indicate higher property or utility taxes arguably contradict such a conclusion. He asked alternatively if other reasons could be added to the original statutory language. If by virtue of assessment, the proposal demonstrated no impact on the County than it ceased to remain a factor. He indicated his opinion applied to all five approvals.

Mr. Frager questioned the inclusion of an individual's opinion if the decision should reflect the reasoning of the majority. The more information included, the more opportunity such a document presents for legal challenge.

Mr. Ramey suggested the data included in this summary is very similar to that offered in the Wedgwood report which was approved unanimously. Therefore, the decisions reflect a difference in interpretation of the data, which is why they chose to use the statutory language.

Mr. Middelkamp stated he thinks the approvals offer less chance of provoking conflict, and they should not add language that risks this possibility. Mr. Wojtkowski responded that in his opinion, St. Louis County residents could easily challenge the decision as it reads now. His concern is how to neutralize that element.

Mr. Martin explained the decisions resemble the disapprovals, but because the two decisions are treated separately in the statute, they considered separately what reasons to include.

Mr. Saulsberry stressed the need for consistency, with similar language used for both approvals and disapprovals. He thought the decision captures what the statute is about.

Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

B. Approval of Summary and Decision and Setting Election Date for BC9602 - Wedgwood - City of Florissant

Mr. Wojtkowski made a motion to approve the Summary and Decision for BC9602. Mr. Saulsberry seconded the motion. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

C. Approval of Summary and Decision for BC9603 - Crest Aire - City of Florissant

Mr. Frager motioned to approve the summary and decision for BC9603. Mr. Wiesehan seconded the motion. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

D. *Approval of Summary and Decision and for BC9604 - Charbonier - City of Hazelwood*

Mr. Middelkamp motioned to approve the summary and decision for BC9604. Mr. Wojtkowski seconded the motion. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

E. *Approval of Summary and Decision for BC9605 - Crest Aire - City of Hazelwood*

Mr. Middelkamp motioned to approve the summary and decision for BC9603. Mr. Wiesehan seconded the motion.

Mr. Ramey restated the change to the Decision in section B. part *ii.* that deleted "instead of just one."

Mr. Frager asked if by enumerating specific reasons, they reversed the use of the statute in the approvals. Ms. Garino asked for clarification of the statutory requirements. Why now does the Commission need to articulate why it is *not* in the best interest, when they do not enumerate reasons why it *is* in the best interest in the approvals?

Mr. Ramey explained that the statute addresses disapprovals in a separate section which requires the document to indicate the reasons against the boundary change. He interpreted this to mean the reasons in the disapprovals should be more definitive. Mr. Bruer asked why it was not sufficient to reverse the language used in the approvals because stating that they failed the best interest test would follow the guidelines of the law. Mr. Wojtkowski questioned why the Commission should be reluctant to explain the summary of their decisions. Mr. Bruer questioned the use of specific reasons that might not address all the issues involved in the Commission's rejection of a proposal. Mr. Frager recommended the addition of the language "included, but not limited to" before the list of reasons.

Mr. Middelkamp amended his motion to add the language "included, but not limited to." Mr. Wiesehan, the second to the motion agreed. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

F. *Approval of Summary and Decision for BC9606 - South Industrial - City of Hazelwood*

Mr. Wojtkowski made a motion to approve the summary and decision for BC9606 with the addition of the language "included, but not limited to." Mr. Wiesehan seconded the motion.

Mr. Frager stated that he thought the reasons Hazelwood's proposal was rejected differ from the reasons they disapproved the overlapping proposal from Berkeley. He stated that although the increase in revenue to Hazelwood would not benefit the surrounding area, the increase to Berkeley would arguably help stabilize the area.

Mr. Middelkamp stated that the decision should reflect the reasons for disapproval of the proposal, not for a comparison between two proposals. Mr. Frager clarified that he was speaking to the difference between the two proposals that is not reflected in the reasons listed.

Mr. Bruer stated that the document covers the reasons Hazelwood was rejected, and if a change was to be made it should apply to Berkeley's summary and decision.

Mr. Wojtkowski agreed the disapproval of the proposal was for the reasons stated. He considers the proposals to be similar because of the tax issues: the revenue would go to either city without them doing anything to earn it.

Mr. Frager found the language in section B, part *i* of the decision to be problematic. Ms. Garino agreed with him. Mr. Wojtkowski explained that the revenue loss to the County is problematic because it is not balanced by a proportionate decrease in expenditures. But, this issue is covered in section B, part *ii*, rendering part *i* redundant. Mr. Frager requested this section be used to differentiate the two proposals. Mr. Wojtkowski replied it would be outside the best interest test. Mr. Frager stated that consideration of the long run deterioration of the area was within the application of this test. Ms. Garino agreed the revenue to Hazelwood would only benefit this municipality without making a positive impact of North County.

Mr. Bruer asked for a consensus to strike section B, part *i* from both BC9606 and BC9612, and suggested the Commission concentrate any change in language to a discussion on Berkeley's summary.

Mr. Wojtkowski amended his motion to delete section B, part *i* and move part *ii* to part *i*. Mr. Wiesehan, the second the motion, agreed. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

G. *Approval of Summary and Decision and Setting Election Date for BC9607 - Area IV - City of Sunset Hills*

Mr. Wojtkowski motioned to approve the Summary and Decision for BC9607. Mr. Middelkamp seconded the motion. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

I. *Approval of Summary and Decision and Setting Election Date for BC9613 - Kensington - City of Florissant*

Mr. Wojtkowski made a motion to skip to item I, and approve the Summary and Decision for BC9613. Mr. Middelkamp seconded the motion. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

J. *Approval of Summary and Decision and Setting Election Date for BC9615 - Hanna-Sulphur Spring - City of Manchester*

Mr. Wojtkowski made a motion to approve the Summary and decision for BC9615. Mr. Middelkamp seconded the motion. Mr. Ramey restated the change to the ballot language that was discussed and approved by the City. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: none. *The motion passed.*

H. *Approval of Summary and Decision for BC9612 - McDonnell Douglas - City of Berkeley*

Mr. Middelkamp made a motion to approve the summary and decision for BC9612 with the addition of the words "including, but not limited to," and the deletion of part *i* from section B, and the change of part *ii* to part *i*. Mr. Saulsberry seconded the motion.

Mr. Middelkamp stated the reasons listed were acceptable to him. Mr. Wojtkowski agreed that the reasons accurately reflect the decision and objected to further changes.

Mr. Frager suggested the addition of a statement to reflect the City's financial situation. Mr. Bruer responded that it is not a factor. Mr. Wojtkowski stated any such consideration would not diminish the reason listed in section B part *i* which is why the

proposal was rejected.

Mr. Wojtkowski called for the previous question. Roll call vote: Ayes: Middelkamp, Saulsberry, Wiesehan, Wojtkowski. Nays: Bruer. Abstentions: Frager, Garino. *The motion failed.*

Mr. Wojtkowski reminded the Commission that they agreed in the beginning of the discussion to list the reasons of the majority, and in this case it is the majority who disapproved, and the reasons why are stated in the document.

Mr. Frager repeated the need to differentiate the two proposals and expressed his opinion that something in the decision should acknowledge that Berkeley tried to phase in the tax increase to McDonnell Douglas.

Mr. Wiesehan disagreed; in his opinion, as a member of the majority in the vote to disapprove, the two proposals were similar: they both constituted tax grabs. Mr. Middelkamp agreed the issue is essentially the same, both cities wanted the additional revenue. The only difference was the addition of a phase-in period by the City of Berkeley, but the motive remained the same. Ms. Garino stated the difference lies in what the money would be used for, and this proposal stood to contribute to the stabilization of North County.

Mr. Middelkamp stated the Commission could not make a decision based on an assumption of how a City will possibly use or manage the funds an annexation provides.

Mr. Frager asked that section A part *i* acknowledge that it was not a tax grab. Mr. Ramey asked him if the language he recommended adding would discuss the presentation by the City of an alternative tax structure to be phased in. Mr. Saulsberry suggested the addition of "over a period of time" to this section.

Mr. Middelkamp amended his motion to add the stated language to section A, part *i*. Roll call vote: Ayes: Bruer, Frager, Garino, Middelkamp, Saulsberry, Wiesehan. Nays: None. *The motion Passed.*

Mr. Frager made a motion to authorize the Executive Director, Carl Ramey, to be the official signatory of the documents for election purposes. Mr. Bruer seconded the motion. Voice Vote: Ayes - All Nays - None *The motion passed.*

K. Report of Legislative Committee

Mr. Middelkamp referred to §72.401(5) and suggested if they want to change the qualifications they need to recommend specific language to the legislature. Mr. Ramey agreed, but explained that is the next step in the process. He stressed the need to meet with the other two stake holders, St. Louis County and the Municipal League, and talk through these issues before determining the exact language.

Ms. Garino stated the intention of the report was to identify areas recognized as problematic, and determine which issues the Commission has a consensus to pursue specific changes to.

Mr. Frager questioned the conclusions reached on the factors; he felt they already attempted to agree upon basic philosophical issues and made no progress. Mr. Ramey explained that after the experience gained from deciding upon the first twelve proposals, it is an opportune time to clarify what is required by the factors. Mr. Frager stated each person will interpret them differently. Ms. Garino clarified that the intention was to discuss what type of information is required, and how the Commission wants those facts to be presented in response to those factors. This would aid the municipalities in preparing their proposals and lend to consistency in the reports. Mr. Frager suggested the issue of uniformity in the proposals be discussed elsewhere because it does not relate to the language of the law. He recommended they strike the italicized print in §72.403(3) from "anything regards to".

Mr. Bruer mentioned the tremendous change the Commission has experienced since

their beginning, and agreed a document that defines these factors in stronger, more specific language would also prevent them from covering the same ground with each new member in working through all the political and theoretical differences. They will inevitably revisit these definitions such as best interest and impact.

Ms. Garino agreed with Mr. Frager that their recommendation considers a separate issue to be addressed internally. Mr. Ramey agreed to strike the italics from the final document starting at "in the meantime."

Mr. Frager inquired about the conclusions reached on §72.405. Ms. Garino replied that they have not received any petitions yet, but this issue has been raised and will probably be revisited. Mr. Ramey stated that the problem currently is no one has the authority to modify a petition, though municipalities as proposing agents have the unrestricted right to modify their proposals. Mr. Bruer stressed the need to address this issue. He suggested they make a recommendation to change the language because it will inevitably prove problematic in incorporation attempts which will arise in the future. Mr. Frager recommended the Commission add, "A proposing agent via petition has the authority to make diminimous changes subject to the approval of the Boundary Commission."

Mr. Bruer asked for an explanation on §72.405(4). Mr. Steve Abels from the Municipal League replied that the rationale behind this section of the statute was to allow a proposal for consolidation by multiple municipalities to proceed if all criteria and factors are still met and boundaries remain contiguous even if one municipality votes against it. Mr. Frager questioned the changes that would result from a particular municipality being excluded if all the information was gathered and revenues determined with the intention that they would be part of the consolidation. Mr. Martin agreed that the net result would change depending on what district voted out, and the Commission could face numerous possible combinations or outcomes. Mr. Bruer suggested they use stronger language in their report to request clarification of this section. Mr. Frager recommended they add a statement stating "How the Boundary Commission would implement this section is unclear."

Mr. Frager asked about the recommendation for a change to the Commission's Rules regarding §72.407(3). This clearly grants preference to municipalities over incorporations and the Commission should suggest a change in the law rather than in their rules. Mr. Bruer agreed because any small change could hold up the entire process, and mandate that the proposing agent of an incorporation change their petition, which is also problematic as previously discussed. Mr. Frager suggested the Commission recommend in their report to delete the entire last sentence in §72.407(3), "When boundary change proposals for annexation and for incorporation cover the same area, the proposal for annexation shall be put to the voters first."

Ms. Garino asked if a Rule change is a feasible interim option while waiting for a statutory change. Mr. Bruer stated that such a Rule would conflict directly with the law. Mr. Ramey responded that the Commission is allowed to make rules that facilitate, within reason, implementation of the law. Mr. Frager thought in this instance, the rule would go directly against the statute. Mr. Martin agreed in this case the statute would win legally; the Commission can be more restrictive, but they can not oppose or contradict the law.

Mr. Saulsberry questioned the validity of the Commission's recommendations and whether they should challenge parts of the statute clear as to the legislative intentions. It is one thing to clear up ambiguities and another to ask for a change that is clear on its face. Mr. Bruer agreed it is not their job to fight the state, but these are problems raised by citizens after the legislation passed. Now that they have experience attempting to implement this law, they should speak to the issues that raise serious challenge or conflict. Mr. Abels mentioned that the law gives the Commission the authority to change the proposal. Mr. Frager replied that the petitioners do not have that authority and it is not clear what kind of changes the Commission has the authority to make in this regard. Mr. Martin stated that the

problem is in forcing the incorporation to wait for an approval and possibly the results of an upcoming election. They can not satisfy the criteria of orderly incorporation within the County if they can not exercise any discretion in this matter.

Mr. Frager asked about an improvement in the system for eliminating the small areas of unincorporated County that are stranded. Cities will not address these areas because the process is too expensive and elaborate. This opened a discussion of transfer of jurisdiction between municipalities and the County which is not clearly allowed for in the statute. The language is present in the definition but not used later in that section §72.405(6)(1) which is why they made a recommendation to include the County.

Mr. Bruer asked why there was not a recommendation on the pocket issue. Ms. Garino explained she did not feel there was a consensus on this issue. Mr. Bruer stated that it directly impacted the way Commissioners voted. Mr. Abels mentioned that the language is not unprecedented in the state. Mr. Bruer replied that he understood the spirit of the law is to eliminate pockets whenever possible, but as long as it takes away the constitutional rights of individuals to vote in a meaningful way, there will be disagreement on the Commission. Mr. Middelkamp stated that common sense and practicality must at times be considered and weighed against the issue of rights. Ms. Garino stated that without a consensus, they could not move forward to make a change on this issue. There were no further modifications or revisions to the report of the Legislative Committee.

Mr. Abels announced to the Commission that the Municipal League appointed a Committee to Review the Boundary Commission and discuss the legislative issues. The meeting will be held at 4 p.m. on Thursday January 30, 1997 at the Clayton Community Center. Ms. Garino asked if there was consensus to go forward with the discussion. There was consensus to do so.

ADJOURNMENT

Mr. Saulsberry made a motion to adjourn. Mr. Middelkamp seconded the motion.
Voice vote: Ayes: all. Nays: none. *The motion passed.*

This being a memorandum of the activities at this meeting.

Respectfully submitted,
Carl E. Ramey
Executive Director

Approved February 4, 1997