

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

**MEETING MINUTES
October 6, 1998**

ROLL CALL:

COMMISSIONER	PRESENT (P)/ ABSENT (A)
JULIUS FRAGER	P
AGNES GARINO	P
GWENDOLYN GERHARDT	P
DENISE HADDOCK	P
PAT MERRITT	P
SCOTT MIDDELKAMP	P
JACK REHAGEN	A
CHARLES SAULSBERRY	P
ANNA MARIE WINGRON	P
DON WOJTKOWSKI	A
LARRY YOUNGBLOOD	P

OTHERS PRESENT:

Carl Ramey - Executive Director
Steve Martin - Legal Counsel

CALL TO ORDER

The meeting was called to order by Chairperson Garino at 6:15 p.m. on October 6, 1998. The meeting was held in the City Hall of the City of Ellisville, #1 Weis Road, Ellisville, Missouri.

ROLL IS CALLED - QUORUM DECLARED

Carl Ramey called the roll and a quorum was declared.

APPROVAL OF AGENDA

Mr. Middelkamp made a motion to approve the agenda as submitted. Mr. Youngblood seconded the motion. Voice Vote: Ayes - All Nays - None. *The motion passed.*

YEAR-TO-DATE BUDGET REPORT

- A. Mr. Ramey noted that an error existed in line item 2311 - Advertising. He reported there was a formula error in the spreadsheet. The Commission has only spent year-to-date \$16.91 and not \$483.09 as reported. The larger amount actually represents the unencumbered balance. He also noted that any account or line-item which reflects a deficit, funds have been transferred to cover those cost. Subsequent reports will reflect a revised budget. Mr. Middelkamp made a motion to receive and file the budget report through the third quarter, with the revisions stated by Mr. Ramey. Ms. Wingron seconded the motion. Voice Vote: Ayes - All Nays - None *The motion passed.*

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENTS/COMMUNICATIONS

Mr. Ramey distributed a copy of a letter from Jim Baker, Director of Administration for St. Louis County which was faxed to the Commission earlier that day. Ramey stated this letter was in response to an earlier letter concerning insurance, a copy of which was in the Commission's packet. Mr. Ramey reviewed the response indicating it clarified in writing the County's position on the insurance matter. He indicated that because the Commission is independent, the County would not be able to cover the Commission for Directors and Officers coverage. As to premises/general liability and the equipment, because the lease is in the name of the County and the equipment is owned by the County, it is covered by their self-insurance. With this information now available, Mr. Ramey indicated he would talk to the broker who assisted in placing the Directors and Officers coverage to determine whether there are any further coverages the Commission should be concerned with.

Mr. Ramey also recommended that the Commission direct him to send a letter to the County amending the budget as submitted to reflect the cost of insurance. He pointed out the budget was submitted with an estimate of \$2,000 for insurance. He suggested the amendment not ask for greater funding, but rather merely to transfer funds from other accounts to cover this cost. He suggested the account to transfer from is the mileage reimbursement account.

Mr. Middelkamp questioned whether workers compensation and unemployment applied to the clerical staff. Mr. Ramey responded that those issues were covered by the temporary service agency. Mr. Youngblood asked whether Mr. Ramey was covered by the insurance. Ramey stated neither he nor the secretary were covered. Ramey pointed out he was neither a member nor an employee of the Commission. As to the prior employment situation with the Administrative Assistant, they did not have those coverages in place, believing there was coverage through the County. With these facts in mind, when the Commission hires a new employee it should consider securing those coverages. A motion was made by Ms. Wingron authorizing a letter be sent on behalf of the Commission reallocating funds to cover the insurance cost for 1999 as presented by Mr. Ramey. Ms. Merritt seconded the motion. *Voice Vote: Ayes - All Nays - None The motion passed.*

OLD BUSINESS

A. *Approval of Summary of Decision - BC9808 Dougherty Ridge Subdivision - City of Des Peres.*

Ms. Garino introduced the proposal asking Mr. Ramey the effective date for the annexation. Mr. Ramey stated it was November 1, 1998. A motion was made by Mr. Middelkamp to approve the written Summary of Decision for BC9808 Dougherty Ridge Subdivision. Ms. Wingron seconded the motion. Roll Call Vote: Ayes: Frager, Garino, Gerhardt, Haddock, Merritt, Middelkamp, Saulsberry, Wingron Nays: Youngblood *The motion passed*

B. *Approval of Summary of Decision - BC9809 Barrett Heights Plat II Subdivision - City of Des Peres.*

Ms. Garino introduced the proposal asking Mr. Ramey the effective date for the annexation. Mr. Ramey stated it was November 1, 1998. A motion was made by Mr. Middelkamp to approve the written Summary of Decision for BC9808 Barrett Heights Plat II Subdivision, as submitted. Ms. Merritt seconded the motion. Roll Call Vote: Ayes: Frager, Garino, Gerhardt, Haddock, Merritt, Middelkamp, Saulsberry, Wingron Nays: Youngblood *The motion passed.*

C. *Approval of BC9810 Centre Park Forty - Transfer of Jurisdiction City of Town and Country and City of Creve Couer*

A motion was made by Mr. Middelkamp to approve BC9810 Centre Park Forty Transfer of Jurisdiction, with an effective date of October 23, 1998. Mr. Youngblood seconded the motion. Mr. Ramey indicated, if approved, the written Summary of Decision would be on the Commission's October 20 agenda. Mr. Frager asked whether the Commission was aware of Town and Country's plans for the use of the area. Mr. Youngblood indicated the city had made the Commission aware of the possible uses and developments. Roll Call Vote: Ayes: Frager, Garino, Gerhardt, Haddock, Merritt, Middelkamp, Saulsberry, Wingron, Youngblood *The motion passed.*

D. *Professional Services Agreement with Executive Director*

Mr. Martin distributed to the Commission a memorandum he prepared at the request of Ms. Garino concerning an earlier letter of the County Counselor John Ross regarding the proposed professional services agreement with Mr. Ramey. He summarized the memorandum by indicating it was his opinion the Executive Director functioned as an independent contractor. He further stated based upon Mr. Ross' letter, some changes were made to the proposed agreements. Mr. Martin distributed a newly revised agreement reflecting some additional changes since the one distributed in the packet which was sent to the Commission over the weekend. Mr. Ramey pointed out the concerns raised were first the absence of a clearly stated "funding out" clause and secondly, an issue of indemnification. Mr. Ramey indicated that a more clearly stated "funding out" clause was added to both his agreement and that of Mr. Martin. Also, the indemnification section was removed in both agreements, not because of the issue of sovereign immunity, because it was believed not to be relevant, but rather in the end it was not essential to an agreement.

At the request of Mr. Middelkamp, Mr. Martin went through the agreement noting changes and clarifications. Ms. Haddock indicated that as to the term of the agreement she felt more comfortable with a one year agreement. Ms. Gerhardt stated that she introduced the concept of the multi-year agreement, because it is a sensitive position and it would reduce unnecessary political influence. Mr. Martin noted that the agreement can be terminated with a sixty day notice. Mr. Saulsberry pointed out that at this time the Commission has matured to a point where a three year agreement is appropriate. Ms. Wingron pointed out that with the sunset provision in the statute in 2002, she did not want to be in a position to do this every year. The Commission could be out of the contract with the sixty day notice provision. Ms. Merritt suggested that a three year agreement allows a good planning period and is reasonable. Mr. Youngblood indicated that based upon his experience and his understanding of state law, except for a school superintendent, a board could not enter into a multi-year agreement with an independent contractor. He indicated he did not object to be multi-year agreement, but that it should be written as being with automatically renewal terms. Mr. Martin stated he did not believe there a state law which prohibited the agreement as drafted. He further stated that he had experience in drafting similar types of agreements for public officials. He indicated that with the sixty day termination clause and the funding out clause which are included in the agreement, there really is no issue of committing the Commission financially beyond the current year. Based upon his professional experience Mr. Saulsberry agreed with the conclusion reached by Mr. Martin. He indicated that although the contract as written was acceptable, there were ways to modify the agreement to satisfy Mr. Youngblood. Regarding the independent contractor status of Mr. Ramey, Mr. Youngblood stated that although he did not have problems with him working anywhere outside of St. Louis County, he should not work for any municipalities in St. Louis County. He felt that it causes an appearance of a conflict of interest. He indicated that to his knowledge it has not created a problem, but it could happen.

Ms. Garino advised the Commission that it was time for the public hearing. She asked whether members could return after the hearing to complete the discussion on the agenda items. Mr. Middelkamp made a motion to suspend the meeting until after the completion of the public hearing. Ms. Wingron seconded the motion. Voice Vote: Ayes: All Nays: None *The motion passed.*

The meeting reconvened after completion of the public hearing. A motion was made by Mr. Saulsberry to approve the agreement with the Executive Director with the following changes being made to the final draft.

While the Commission waited for a copies of the proposed language to be made, the Commission conducted a general overview of the attorney's agreement. The financial changes included an increase in fees of approximately 2% and the cost for litigation was increased from \$95 to \$105. In addition, the other changes included the inclusion of a funding out clause and the elimination of the indemnification clause.

Mr. Saulsberry advised the Commission that the copier was taking too long to warm up and that he would read the changes to the Commission. The first change was in Section 4, paragraph 1 and would read as follows: *The term and conditions of this Agreement shall be in effect for an initial term of one year, beginning January 1, 1999 through December 31, 1999. Subject to annual appropriation and paragraph 3 below, this agreement shall be automatically renewed for two additional one year periods.* Mr. Youngblood stated that this change satisfies his concern about the term. He also asked that this language be incorporated into the attorney's agreement.

Mr. Saulsberry indicated his motion also included a change in paragraph 2 of Section 4 and would read as follows: *Subject to annual appropriation and paragraph 3 below, at least thirty days prior to the end of the second year of this Agreement, the Commission shall determine whether the length of this Agreement shall be extended by one additional year.* Mr. Middelkamp asked whether it was the intent of this language to allow for the extension of the agreement to coincide with the sunset provision in the law. Mr. Saulsberry stated that was the intention. Mr. Martin suggested that to make it clear it was the intention to extend it one additional year beyond the three year period to include, such as *beyond December 31, 2001.* Mr. Saulsberry agreed that should be added.

Mr. Saulsberry stated there was one more change to be found in Section 6, paragraph 1, the last sentence would be changed to read as follows: The Director agrees that in connection with St. Louis County and municipalities in St. Louis County, such activity shall not present a direct conflict of interest with the work of the Commission and Director shall submit to the Commission for their determination of any such conflict any services in St. Louis County. It was pointed out that such language extended beyond work with municipalities, which was not the intention of the amendment. Mr. Saulsberry offered a revised reading of the amendment language as follows: The Director agrees that such activity shall not present a direct conflict of interest with the work of the Commission and Director shall submit to the Commission for the determination any such conflict of interest with respect to any such services with St. Louis County and municipalities in St. Louis County. Mr. Youngblood asked whether this means the Director would have to notify the Commission of work he takes with a municipality. Mr. Frager indicated the notification is to the Commission and the Commission could then determine whether it is a conflict. Mr. Frager indicated the Commission would not be telling the Director what to do, only for them to determine if there was a conflict. Mr. Frager asked whether this language satisfied Mr. Youngblood's earlier concerns. Although Mr. Youngblood indicated it did, he also suggested the language should include direct and indirect conflicts. Mr. Frager responded that the Commission's determination satisfies that concern. Mr. Middelkamp sought clarification that the Commission was not determining whether the Director could or could not accept an assignment, but only whether in the Commission's opinion it was a direct conflict of interest. Mr. Martin suggested that the language of that section relating to the submittal should be whether it is in conformity with the contract. To do so would more clearly maintain the independent contractor status sought by the Commission. Mr. Saulsberry suggested that with the language already proposed and the discussion relating to this final section, final drafting should be turned over to the attorney. The Commission should proceed to vote on the motion to approve with those changes, leaving the final drafting of this section to the attorney. The motion was seconded by Commissioner Gerhardt. Roll Call Vote: Ayes: Frager, Garino, Gerhardt, Merritt, Middelkamp, Saulsberry, Wingron Abstain: Haddock and Youngblood *The motion passed.*

E. Professional Services Agreement with Attorney

A motion was made by Mr. Frager to approve the agreement with the attorney, incorporating the same changes which were included in Section 4, Length of Agreement, with the Executive Director. The motion was seconded by Ms. Gerhardt. Roll Call Vote: Ayes: Frager, Garino, Gerhardt, Merritt, Middelkamp, Saulsberry, Wingron Abstain: Haddock and Youngblood *The motion passed.*

Mr. Ramey advised the Commission that he tracks member attendance in relation to the requirements in the By-Laws regarding notification to members who have missed regular meetings. In the past, the Commission has directed him to notify members who have missed the requisite number of meetings, asking their intention to remain an active member of the Commission. Such an examination found Commission members Gerhardt, Saulsberry and Wojtkowski have missed the requisite number of meetings which would generate such a letter. Mr. Ramey asked whether it was the Commission's desire to have him do that at this time. Mr. Middelkamp reviewed the history of Commission, leading up to the adoption of this section in the By-Laws. He pointed out that the Commission does not have control over a members attendance, nor does the appointing authority. The problem the Commission had at the time was members not showing up at all. Mr. Ramey pointed out that the attendance is based upon the regular meetings of the Commission which are held on the first and third Tuesdays. Public hearings and special meetings are not counted. The Commission discussed various problems with and alternatives to the policy. Mr. Ramey pointed out this was not the only By-Laws issue to come before the Board. He suggested the Commission may wish to consider suspending the rule relating to attendance until such time as it has had an opportunity to review the By-Laws. The By-Laws are the Commissions rules for how the Commission functions and were written three years ago, in a totally different environment. Mr. Middelkamp made a motion to suspend the rule relating to attendance until such time as the Commission reviews changes to the By-Laws which includes that section. The motion was seconded by Mr. Youngblood. Voice Vote: Ayes: All Nays: None *The motion passed.*

ADJOURNMENT

Mr. Youngblood made a motion to adjourn. Ms. Haddock 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
October 20, 1998