

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

**MEETING MINUTES
November 3, 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	P
CHARLES SAULSBERRY	P
ANNA MARIE WINGRON	P
DON WOJTKOWSKI	P
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 6:30 p.m. on November 3, 1998. The meeting was held at the office of the Boundary Commission, 1516 S. Brentwood Blvd., Brentwood, Missouri.

ROLL IS CALLED - QUORUM DECLARED

Carl Ramey called the roll and a quorum was declared.

APPROVAL OF AGENDA

Ms. Garino asked the Commission to rearrange the agenda, to move forward Old Business before the rest of the agenda items, because there are others in the audience who need to leave to attend other

meetings. Mr. Rehagen made a motion to approve the agenda as recommended by Chairperson Garino. The motion was seconded by Ms. Haddock. Voice Vote: Ayes: All Nays: None *The motion passed.*

OLD BUSINESS

A. Discussion re: BC9806 - Carman-Dougherty Ferry Annexation - City of Manchester

Mr. Ramey identified the one remaining issue from the last discussion the Commission had on this proposal. The issue was the status of the legal description. At that time, there seemed to be some confusion as to the relationship of the legal description submitted with the proposal, the records of the county and those of other municipalities as to how the new boundary would fit. Since that meeting representatives of the city and the county have been discussing this issue. He stated that as of today, he was advised by Mr. Len Groshak of the St. Louis County Planning Department, that he believed the matter has been satisfactorily resolved.

Mr. Groshak presented a revised map of the area. He stated they had been working with the City of Manchester and the Village of Twin Oaks to rectify some of the boundary discrepancies which were found. The map reflected the changes. Mr. Middelkamp asked about the area south along Meramac Station Road and whether it remains in unincorporated St. Louis County. Mr. Groshak stated it was an issue to be worked out later between the Village of Twin Oaks and the City of Valley Park. Ms. Garino asked whether all the questionable areas had been corrected. Mr. Groshak stated that everything has been corrected.

Mr. Ramey indicated that with the resolution of the boundary issue, the question before the Commission tonight was whether they had anything further to ask of the city or issues which needed to be addressed. Ms. Garino asked the commission members whether there was any information they needed before the vote on the proposal. She asked when that vote was scheduled. Mr. Ramey indicated November 17 was tentatively set as the date for a vote. However, that was dependent upon whether there were additional questions or information sought from the city and the resolution of the legal description/boundary issue. There being no further questions, Ms. Garino indicated the vote on the proposal would be set for November 17.

B. Discussion re: BC9811 - Westridge Parc Annexation - City of Ellisville

Mr. Ramey indicated that a series of communications regarding the Westridge Parc Subdivision were forwarded to the commission in their packet. Included were the report from St. Louis County, a letter from two residents and one signed by a number of residents of the subdivision. He stated Mr. Rippe's letter appears to challenge the validity of the petitions submitted as a part of the proposal and the absence of information which would be helpful to residents to make a decision. Mr. Ramey characterized the letter from the Ead's as being similar to Mr. Rippe's. The letter signed by a number of residents in the subdivision, including some who originally signed petitions, also questions the amount of information provided to make a decision. In addition, the signatories to the letter have indicated they no longer support the proposal. Mr. Ramey indicated the City was present to respond to the letters and any questions the Commission may have on the matter.

Mr. Jeff LaGarce, City Manager of Ellisville, presented a written statement to the Commission. He indicated the City had obtained copies of the written communications to the Commission and felt it was important to the City to respond, particularly to any allegation of impropriety on the part of the City in the petitioning process. Mr. LaGarce reviewed at length the content of the letter for the Commission, which he stated refuted the claims in Mr. Rippe's letter and supports the validity of the petitions and the effort to provide information to the residents at the time of their signing their petitions. As to the issue of not disclosing the half-cent sales tax, Mr. LaGarce distributed a copy of an letter which was individualized for each resident, outlining in general the financial implications of annexation. He indicated the city had not addressed the half-cent sales tax on automobiles and boats, because it was an oversight on their part. He also pointed out the cost sheet is outdated, as the city reduced its real estate property tax by 40%. The average savings to the residents in the area now ranges from \$71 to \$86.

Mr. Wojtkowski stated he did not feel the issue related to the validity of the petition process, that those issues have been dealt with appropriately in the city's response, but rather the letter which asks to have their names removed from the petition. He said it appeared that may invalidate the petition initiative. The question for the Boundary Commission is how to handle that group of people who sign a petition, but through the discovery process they no longer want to be apart of it. Should the Commission still consider the petition valid or not?

Ms. Garino asked Mr. Martin for his comment. Mr. Martin stated that from his view the petitions were properly submitted and made apart of the proposal. The comments which were made are in the form of public comment, which the Commission is to consider in determining the best interest of the area. It is something which the Commission would take under consideration in making a decision. Mr. Wojtkowski asked whether someone who signs a petition has the ability to remove their support from that petition? Mr. Martin stated the signatures in letter received by the Commission were not notarized. Also, the letter indicated their lack of support for the plan and did not request a removal of their signature from a petition. The petitions were submitted to the city . Based upon some preliminary research on the issue, Mr. Martin stated it appears that once you reach a certain point in the process there is no backing out of a signed petition. It appears that the point in time for removal is before the petition is submitted. This, however, does not negate the impact of the comment regarding their support for the proposal.

Mr. Rehagen asked whether those signatures in the letter would reduce the level of support below the 75% required for a simplified boundary change? Mr. Rehagen asked if it would reduce the percentage to above 60%. Mr. Ramey indicated it would. Mr. Rehagen asked whether he had met with any of the residents regarding this letter. Mr. LaGarce indicated he had been out of town and had not done so.

Mr. Saulsberry asked whether from those people not signing the letter, is there any indication as to whether they have a clear idea of the information regarding the sales tax. Mr. LaGarce stated he was not in a position to comment. All the residents were given the same information, except of course the half-cent sales tax. The city has not sent out anything additional.

Mr. Frager ask for clarification on the rate of the sales tax involved, is it one and one-half percent or one-half percent. Mr. LaGarce stated it was one-half.

Mr. Wojtkowski wanted clarification as to whether common ground, should or should not be included in a petition. Mr. Martin stated the Commission's Rules define residential property, which would include vacant ground such as common ground. Mr. Wojtkowski indicated his question went more to the issue of who should have authority to sign. Is it the trustees or each property owner in the subdivision where the common ground existed that has the authority to sign? Mr. Frager indicated, in his opinion, the trustees were the appropriate party to sign the petition. Mr. Martin commented that there may be circumstances where a trustee(s) does not have the authority to so act under their declarations. Mr. Ramey indicated that maybe a more fundamental question is whether common ground should be included as a parcel to be counted in the total. From a policy stand point, Mr. Ramey indicated it would be helpful to know whether it should or should not be included. However, one of the dilemmas is the interpretation of the statute where it talks about every parcel or tract of land being included in a simplified boundary change. He state it is this language which has caused the inclusion of these parcels.

Mr. Wotjkowski raised the question as to whether you would have to get the signature of each property owner in a subdivision, because the common ground is dedicated on behalf of the property owners in the subdivision. Mr. Frager stated that although there may be a number of fee owners, the fee owners of other property do not have an undividable interest in the common ground. It is the trustees who have the authority to sign, based upon the declarations. Mr. Don Anderson, City Attorney for Ellisville, indicated they chose a very conservative approach in considering the petitions.

Mr. Youngblood asked for a written opinion from Mr. Martin regarding when a person can revoke their signature on a petition. Mr. Martin indicated he would do so. Mr. Youngblood felt the absence of information regarding the half-cent sales tax was a significant omission, which appears to have resulted in people have serious doubts about the proposal. Mr. Wojtkowski concurred in that assessment. He indicated, The question is whether the people have a right to ask for their signatures to be removed when it was not based upon all the information which could have been available at the time of signing.

Mr. Frager asked whether the Commission has the authority to approve this as a simplified boundary change with a vote. Ms. Garino indicated that they could do so.

Ms. Wingron questioned whether the validity of the signatures in the letter shouldn't be given the same level of scrutiny as the signatures in the original petition.

Mr. Saulsberry pointed out that if from a legal standpoint a person can not withdraw their name on a petition, it appears the Commission still has the discretion to use this information in reaching a conclusion on whether this should or should not be put to a vote.

Mr. Wojtkowski also questioned if the Commission finds a person can withdraw their petition, does

the Commission have an obligation to go back to those individuals signing the letter and ask them to submit a valid, notarized petition seeking removal of their signature. He indicated he did not support acceptance of the letter without even a statement as to why they signed the paper.

Ms. Wingron asked of the Commission, where should this area be situated, if it is to be incorporated? What will be the impact of the decision, knowing the Ballwin proposal is on the table?

Ms. Garino allowed Mr. Bob Fanning, 826 Surrey Meadows Ct. to speak to this matter. He indicated that he is an original owner in the subdivision. He indicated the issue historically has been which community they would be in, Ellisville or Ballwin. Over time, it has become clear that Ellisville is interested in the area and Ballwin is not. He also stated that the half-cent sales tax would apply to Ballwin as it does in Ellisville.

Ms. Garino asked whether the city had received the packet of letters directly from the Mr. Rippe and others. Mr. LaGarce indicated he did not, but they were provided to the city by the Boundary Commission.

The matter was placed on the agenda for the November 17 meeting.

APPROVAL OF MINUTES

B. *Approval of minutes of Public Hearing BC9811 - Westridge Parc Subdivision - City of Ellisville - October 6, 1998.*

A motion was made by Ms. Wingron to approve the minutes of the Public Hearing held October 6, 1998 regarding BC9811 - Westridge Parc Subdivision. The motion was seconded by Ms. Gerhardt. Voice Vote: Ayes - All Nays - None *The motion passed.*

B. *Approval of minutes of meeting of October 20, 1998*

A motion was made by Mr. Rehagen to approve the minutes of the meeting held October 20, 1998. The motion was seconded by Mr. Saulsberry. Voice Vote: Ayes - All Nays - None *The motion passed.*

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENTS/COMMUNICATIONS

Mr. Ramey reported that he has been in conversation with two proposing agents and anticipates proposals will be forthcoming in the next month or so. The first is with the City of Normandy. They

are seeking to annex an area which is completely surrounded by the City. The area contains a nursing home. Ramey indicated this is the same area discussed by the Commission many months ago. Also, the City of Creve Couer is in the midst of a simplified boundary change for an apartment building. Ramey indicated he had been in contact with the attorney for the owner of the building who is seeking to have it annexed to the City.

Mr. Ramey distributed a copy of the budget for fiscal year 1999 as recommended by the County Executive's office to the County Council. He stated that in a conversation with the Director of Administration, Jim Baker, he was told the Commission would receive a memorandum outlining the rationale for the recommendation. Once he receives that letter, Ramey indicated he would forward it on to the Commission. As for the date for the review with the County Council, Mr. Ramey stated it was to be set by the County Council. As yet, it has not been set.

Mr. Middelkamp asked whether this was the first year the County has adjusted the Commission's budget request. Mr. Ramey responded that it was the first year. Mr. Middelkamp asked the percentage difference between what is being recommended and the current year budget. Mr. Ramey indicated it was approximately a 4% reduction. Mr. Middelkamp asked what guidelines were given by the County regarding possible increases to the budget. Mr. Ramey indicated there was a request to keep increases to within 4% of the current year's budget.

Mr. Frager stated that he felt any time the Commission is sued, it should be the Commission's automatic policy to seek attorney's fees if we prevail. Mr. Martin indicated that of the three cases so far, he has sought attorney's fees in the matter involving the private party, but not the county. Mr. Middelkamp stated he felt it should also apply to the county.

Mr. Ramey indicated that the next meeting would be on November 17 at 6:00 p.m. at the Boundary Commission office. On December 1 the Commission will meet in Ballwin for the public hearing on the two new proposals. He stated in the past the Commission has not always held a second meeting in December. This is something the Commission may want to consider at the next meeting, if there are no new proposals requiring a public hearing.

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: November 17, 1998