

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

**MEETING MINUTES
June 30, 1998**

ROLL CALL:

COMMISSIONER	PRESENT (P)/ ABSENT (A)
JULIUS FRAGER	A
AGNES GARINO	P
GWENDOLYN GERHARDT	P
DENISE HADDOCK	P
PAT MERRITT	A
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 6:00 p.m. on June 30, 1998. The meeting was held at the Office of the Boundary Commission, 1516 S. Brentwood Blvd., Brentwood, Missouri 63144.

ROLL IS CALLED - QUORUM DECLARED

Carl Ramey called the roll and a quorum was declared.

APPROVAL OF AGENDA

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

NEW BUSINESS

A. Discussion of Revised Rules

Mr. Ramey introduced the revision of the rules by indicating it is a compilation over time of information reflecting the work of the Rules Committee and Commission, and those sections that were generally affected by the passage of SB 809. He indicated the law was signed that day and its provisions will go into effect on August 28. The goal has been to work through the revisions during the upcoming month, publishing the new rules by the end of July so that they will be effective when the new law becomes effective. Mr. Ramey reviewed the schedule of the Commission.

Mr. Ramey distributed to each member a copy of a document, identifying where changes were made in the rules which were the result of SB 809. Mr. Ramey pointed out that SB 809 made several changes. The only change found in SB809 which was outside Chapter 72.400 that affected the Boundary Commission was chapter 71.011. Prior to SB809, the provision of 71.011, when property was owned by one municipality and was situated in another city, superceded the Boundary Commission. To adjust the boundary under that section did not require Commission action. SB809 changed that section and the exemption from Commission review no longer appears to be present in that section.

Mr. Ramey queried the Commission on the approach they wanted to take in reviewing the draft rule changes. Mr. Ramey pointed out that the document they were considering included a new format based upon the types of proposals, was the work of the rules committee, language clean-up found in the current rules, such as incomplete sentences, and changes because of SB809. What was not included in the draft was any reference to the unincorporated zones. Mr. Ramey distributed a supplemental document which highlighted the changes found in the rules relating to SB809. Mr. Martin pointed out that because neither he nor Mr. Ramey had been given any direction on what to include regarding unincorporated zones, the document they are reviewing is awaiting that direction.

Mr. Frager requested that Mr. Martin review the changes found in SB809. Mr. Martin reviewed the changes, indicating some of the changes did not apply to the Commission. Mr. Youngblood asked about changes to simplified boundary changes. Mr. Martin pointed out that the definition did not change. A section was added which dealt with residential property owners and petitions. Although, there was a change in another section dealing, wherein residential property owners were removed and replaced with registered voters. Mr. Martin also pointed out that a transfer of jurisdiction now can occur between the county and a municipality and not just between municipalities. Mr. Ramey pointed out that it appears that the change in the law also may have opened the door to a proposal being submitted to the Commission, directly by petition and not through a municipality. If this is the case, it is a significant change for the Commission to consider.

Mr. Wojtkowski questioned the chart of who could be a proposing agent, specifically concerning simplified boundary changes. He pointed out that the chart suggests that a simplified boundary change can be initiated by either 75% of the registered voters or of the residential fee owners. He felt this is inconsistent with the body of the law, which specifies that simplified boundary changes

is initiated by 75% of the registered voters. This was the intent of the legislature. Mr. Martin responded that not only did the legislature not change the definition, but that 72.410 was added, bringing back in the concept of owners of fee interest.

Mr. Martin pointed out there was a change in the size of an unincorporated pocket, reducing the size from a population of 5,000 to 2,500. A new concept which was included in this legislation, provides that where the voters have defeated a proposal for a boundary change, for a period of two years thereafter the area can not be subject to a boundary change proposal, unless the area of the new proposal contains less than sixty percent (60%) of the original territory found in the defeated proposal. Mr. Martin indicated the rules dealt with this new concept by requiring the proposing agent to certify that their proposal is not subject to this limitation.

Also, there is a new provision for what is called in the draft rules an unincorporated zone. This is a new concept that was introduced by this legislation. The use of the term unincorporated zone was used in the rules to more adequately define a concept, which the legislature did not name. Mr. Martin indicated, if there is a more descriptive or appropriate term, to let him know so it can be revised. Mr. Martin reviewed the new statutory provisions relating to an unincorporated zone. He pointed out in preparing the draft rules he and Mr. Ramey were unsure of what, if anything the Commission would want in terms of information. Therefore, the draft rules did not incorporate the same type of information required of proposing agents. Mr. Martin indicated they would await Commission direction on what to include. Ms. Garino asked whether this was a ministerial duty. Mr. Martin stated that he found the reference to ministerial to be conflicting, because by legal definition you would have no discretion. The section which directs the Commission to determine whether the area can be reasonably served is not a ministerial function.

Mr. Wojtkowski asked whether there was a process by which the Commission could seek an interpretation of the law from the Attorney General. He indicated he was concerned about the interpretation concerning simplified boundary changes. Mr. Martin indicated that the Commission does not have the ability to seek such an interpretation. However, a state legislator could seek such an interpretation. However, it is only an opinion and does not carry the weight of law. It is not binding. Mr. Martin indicated that, although they took out fee owners from one section, they left the reference to it in the definitions and added in section 72.410. The end result is there are now two ways in which to process a simplified boundary change; one by fee owner, the other by registered voter. Mr. Wojtkowski asked whether that was the intent of the legislature. Mr. Martin responded that a court will look to the language and its most logical interpretation and not on what a legislator intended. Ultimately, the court will decide the interpretation.

Mr. Frager asked whether it was the interpretation of the new statute that the Commission does not have anything further to do with a disincorporation, such as Peerless Park. Mr. Martin indicated that disincorporation was stricken from the section which defines the Commission's authority.

Mr. Saulsberry questioned whether the Commission could seek a declaratory judgment action, seeking the court's interpretation of the provisions relating to simplified boundary changes. Mr. Martin indicated that in order to bring such an action, it is necessary to have an issue in controversy.

The court does not take on matters that without there being an issue in controversy.

Ms. Garino asked the Commission whether there was anything in the draft rules which has not been brought up in the discussion or have questions and comments about. Mr. Martin pointed out that the framework for the document is a merging of the work of the Rules Committee and the changes to the statute. The actual wording was done by Mr. Ramey and himself. The draft prescribes a format for all proposals, identifying for the proposing agent specific information that is necessary for each proposal.

Mr. Saulsberry asked whether the boundary change definition in the draft is a stylistic or substantive change. Mr. Martin indicated it was the same language as found in the statute, reconfiguring the structure based upon how the Commission has considered the language. Mr. Youngblood asked where else disincorporation was referenced in the statute. Mr. Ramey responded that it now is only found in 72.403(3). Mr. Ramey indicated that disincorporation was stricken from the definition of boundary change, but the legislature did not eliminate it from that section in SB809. The rules do not address disincorporation, because the Commission no longer has jurisdiction over such matters.

Mr. Frager questioned the unincorporated pockets on page 4 and whether with the issue of access could someone create such a pocket. Mr. Martin stated that the definition does not draw the line geographically, but rather it sets forth criteria that needs to be met in order to be considered a pocket. Mr. Wojtkowski stated that it was remotely possible, but the area would still have to meet the criteria.

Mr. Middelkamp questioned on page 5, the pre-submittal conference, whether the reference to fire districts meant only when there was a change proposed. Mr. Ramey indicated that was correct.

Mr. Saulsberry asked whether the Commission should consider placing in the rules a requirement of a proposing agent to notify the Commission if they became aware of activity to create an unincorporated zone in an area which would affect them. Mr. Youngblood indicated he did not believe it was their responsibility. Mr. Wojtkowski indicated that in all likelihood you probably won't see it happening until after the public hearing.

Mr. Frager raised a question on pages 56 and 57 regarding modification of proposals and the requirement for a new public hearing under certain circumstances. Mr. Ramey pointed out that SB809 made generic who can modify a proposal. No longer is it just a municipality. It is any proposing agent. The review period runs from the date of official submittal to ninety (90) days after the public hearing. Ramey noted the ninety day (90) period is a recommended change from the current rules which call for the period to be sixty (60) days. This is based upon the Commission prior experience and will give the Commission greater flexibility in making changes. As to what triggers an additional public hearing, Mr. Ramey reminded the Commission that an additional public hearing was required in the Ferguson proposal. The Commission sought to adjust the boundary of the proposal by adding additional territory. That process required a second public hearing. Mr. Martin noted that the requirement for an additional public hearing for a boundary change was not intended for the modification of the legal description to correct an error or discrepancy, but rather

when there was territory added. Mr. Ramey asked the question of the Commission whether based upon their experience do they still want to continue the requirement for additional public hearings being triggered automatically. Is section (c) too expansive? Mr. Frager indicated he favored deletion of the word automatically. Mr. Wojtkowski stated he believed the word automatically protects the people in the area, forcing the Commission to apply its rules consistently. To leave it too open may result in an inconsistent behavior by the Commission.

Mr. Saulsberry asked what was the statutory requirement on this matter. Mr. Martin pointed out there is no statutory requirement for additional hearings. This matter was debated when the rules were first adopted. Those rules included this very principal. Mr. Saulsberry suggested the Commission might want to keep the word automatic, but make it only when there is a substantive change taking place. The Commission would then have to address the issue of what is substantive. If there is an additional hearing, Mr. Frager asked would the time frame for the second hearing affect the decision making by the Commission. Mr. Wojtkowski asked whether there was any problem in having the additional hearing for Ferguson. Mr. Ramey indicated that there was not a problem, because it was done during the review period. Mr. Frager expressed concern that after a second hearing there would be the same twenty-one day period for comments. He expressed concern that this could again press the Commission on the decision-making end. Mr. Ramey asked whether the Commission was still comfortable with the twenty-one day period. Mr. Ramey noted in the beginning, the Commission waited until after the period was over to begin its review, now it starts its preliminary review before the twenty-one day period ended. This allows the Commission more time to consider a proposal.

Mr. Wojtkowski asked where in the rules it addressed the Commission's decision making is based upon the best interest test. Mr. Ramey agreed that the draft does not clearly state the best interest test. Ramey suggested that it may be best considered in the decision making section.

Mr. Frager questioned whether the proposing agent should be required to list all the subdivision affected by the proposal. If the subdivision is split, then that should be listed. He questioned the need for this information. Mr. Martin noted that this was in the original rules. He noted that in past reviews people often refer to areas based upon subdivisions. Mr. Frager asked whether in the official re-submittal section, you should also include language regarding proposals defeated by voters. Mr. Martin indicated that issue was addressed in the certification section. However, for clarity it could also be included in the re-submittal section.

Ms. Garino addressed the issue of unincorporated zones, noting that Mr. Martin and Mr. Ramey needed direction from the Commission on how to address this matter in the rules. Mr. Ramey noted that the law does not give a name to what the rules have come to call unincorporated zones. Is that a term the Commission wishes to continue to use?

The Commission discussed the format for unincorporated zones. Mr. Wojtkowski indicated that items one, two and three are straight forward. However, what is included in the plan of intent section should be what is required of the statute. As to the issue of whether the area can be served, Mr. Wojtkowski suggested that it could merely be an affidavit or notification from St. Louis County that

it can continue to serve the area. Ms. Wingron stated that she wanted all the items addressed. She stated that she did not want anyone to feel they are making a decision without information. Mr. Saulsberry stated he believed the information should be minimal. Mr. Rehagen stated that he felt the information should be sufficient to give him the feeling that it should be done. The Commission discussed the feasibility of holding a public hearing.

Mr. Saulsberry restated what he believed what should be required of a proposing agent, definitely including a title page, table of contents and executive summary. As to what should be included in the plan of intent, the geographic information should be what is required by the statute. He questioned whether there was a need to include financial information. Mr. Wojtkowski stated that the financial information is not needed because it is the same before or after the creation of the unincorporated zone. Mr. Saulsberry questioned how financial information would lead the Commission to favor or not favor a proposal when considering whether the area can be reasonably served. Mr. Middelkamp indicated he believed such information could be valuable to determine whether the cost to serve the area is equivalent to the revenue derived from it.

Mr. Wojtkowski stated that the areas which could be subject to an unincorporated zone are going to be significant. He noted the population base is 2,500. The county currently serves those areas. Mr. Ramey questioned whether it was legally possible to ask the county to bind itself to serve an area beyond one fiscal year. Or, following up on Mr. Wojtkowski's earlier comment, merely seek a sense of the County Council. This is something the Commission should consider coordinating with the county, because you may be asking for something the county legally can not do.

Mr. Frager questioned the impact on petition for an incorporation, if a proposal for an unincorporated zone is forthcoming and those signatures now exceed 280 days. Mr. Ramey indicated the petition would be invalid. Mr. Frager asked whether the proposal could be frozen in time. Mr. Martin indicated the decision on the original petition must be addressed in nine months. Mr. Frager asked whether the commission could approve, but place on hold, the original petition pending the outcome of an election on an unincorporated zone. Mr. Martin indicated he was uncomfortable with the use of conditional approvals. Mr. Wojtkowski stated that approving such matters conditionally will create confusion. This would not promote orderly incorporation in the county. Mr. Martin restated his concern about the use of a conditional approval.

Mr. Martin suggested that the Commission might want to think about those issues which would make their jobs easier, for example the certification of signatures by the Board of Election Commissioners. Mr. Ramey pointed out that in an incorporation such a certification is required before the proposal is submitted to the Commission. There was general agreement that the rules should address this issue.

Ms. Garino asked whether the Commission felt the need to address public comment as addressed earlier by Mr. Frager. Mr. Frager restated his suggestion that to gain public comment within the thirty day time period, the Commission would place the matter on their next agenda. It would not be a public hearing, because of the limited time to publish notice. Mr. Ramey pointed out the size of the office facility renders such a concept impractical. His purpose for a hearing was to give the public the opportunity to say whether they are or are not being reasonably served. Ms. Garino

pointed out that people should have an opportunity to express their opinion and become knowledgeable. A public hearing would serve that purpose.

Mr. Rehagen asked whether the Commission can stipulate what is placed on the petition. Mr. Martin indicated that they could, the Commission is doing so on other petitions. Mr. Frager asked whether the Commission could obtain certification from the County that they agree to maintain the level of service. The Commission discussed the difficulties of defining what is the level of service for the area.

Mr. Wojtkowski suggested that the Commission seek from the county information on how they log and respond to citizen complaints for service. This would help us make a determination that this area is reasonably served.

Ms. Garino referred to the statutory provision and asked what was meant by reasonably served. Is it by the county? Mr. Martin stated by inference it is whomever is currently providing the service. Ms. Garino asked what happens if the Commission does not vote within the thirty days. Mr. Martin stated under the statute the court would require you to vote. Mr. Ramey asked whether the six vote requirement also applied in this case. The commission agreed that it would apply. Mr. Saulsberry asked whether a finding was required. Mr. Ramey indicated that it would not be required, because of the limited time to render a decision. The best case scenario is the Commission will have two regular meetings to deliberate and decide. It is possible the Commission may only have one meeting, if you do not call a special meeting.

Mr. Wojtkowski suggested that pre-submittal conferencing should be encouraged.

Mr. Saulsberry encouraged the Commission to keep the requirements simple and uncomplicated. Mr. Ramey spoke to the form of petition saying that it should be simple and in a format similar to what other petitions being submitted to the Board of Election Commissioners would include. Mr. Ramey stated he did not feel the petition should take the form of a proposal, as was discussed in earlier meetings with a prospective proposing agent for an incorporation in south county. Ms. Garino suggested that if anyone wanted to send comments to either Mr. Martin or Mr. Ramey to do so promptly.

ADJOURNMENT

Mr. Youngblood made a motion to adjourn. Ms. Gerhardt 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
December 29, 1998