

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

**MEETING MINUTES  
July 7, 1998**

**ROLL CALL:**

COMMISSIONER	PRESENT (P)/ ABSENT (A)
JULIUS FRAGER	A
AGNES GARINO	P
GWENDOLYN GERHARDT	P
DENISE HADDOCK	A
PAT MERRITT	P
SCOTT MIDDELKAMP	P
JACK REHAGEN	P
CHARLES SAULSBERRY	A
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 6:00 p.m. on July 7, 1998. The meeting was held at the offices of the Boundary Commission, 1516 S. Brentwood Blvd., Ste. 101, Brentwood, Missouri.

**ROLL IS CALLED - QUORUM DECLARED**

Carl Ramey called the roll and a quorum was declared.

**APPROVAL OF AGENDA**

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

## **PUBLIC COMMENT**

There was no public comment.

## **ANNOUNCEMENTS AND COMMUNICATIONS**

Mr. Ramey advised the Commission that there are potential proposals which may be coming forward in the upcoming weeks. The City of Town and Country is working on a transfer of jurisdiction and the City of Wildwood has a potential annexation. The issues relating to the Rules and their impact is of priority at this point. Mr. Rehagen asked whether there was anything further regarding the renewal of the lease on the facility. Mr. Ramey indicated he was in contact with the County Counselor's office and Mr. Rothman. At this point, he is awaiting word back from both parties. Ms. Garino reported that Ms. Gerhardt, Mr. Saulsberry and Mr. Rehagen have agreed to serve as a budget committee. Their task will be to bring to the Commission a recommendation on a budget to submit to the county. Mr. Ramey reported that a budget calendar had not been distributed. With the Commission not meeting during the first week of August, it would be valuable to get started. It is quite possible that the Commission will have to act to approve the budget by the second meeting in August.

## **OLD BUSINESS**

### ***A. Discussion and Decision re: BC9804 - 2887 Kiefer Creek Road Annexation - City of Ellisville***

Mr. Ramey pointed out that this proposal and the one to follow are tied to the Kiefer Creek Farms Subdivision transfer of jurisdiction which took place July 1 between the Cities of Wildwood and Ellisville. This transfer now makes this area contiguous to the City of Ellisville. It is the roadway easement which leads from Kiefer Creek Road to the subdivision. The second proposal is a wooded lot which is vacant and landlocked. It is owned by a resident of the Kiefer Creek Farms Subdivision. Both proposals have been submitted as a simplified boundary change. The City of Ellisville requested the Commission's approval without the requirement for a vote. Mr. Rehagen asked whether there had been any serious objections. Mr. Ramey indicated that it was straightforward and there have been no objections filed with the Commission.

A motion was made by Mr. Middelkamp to approve BC9804 as submitted. The motion was seconded by Ms. Wingron. Roll Call: Ayes: Garino, Gerhardt, Merritt, Middelkamp, Rehagen, Wingron, Youngblood  
Nays: None *The motion is passed.*

A motion was made by Mr. Middelkamp that the approval of BC9804 be done without the requirement for a vote. The motion was seconded by Ms. Wingron. Ayes: Garino, Gerhardt, Merritt, Middelkamp, Rehagen, Wingron, Youngblood  
Nays: None *The motion is passed.*

### ***B. Discussion and Decision re: BC9805 - 1193 Briar Patch Road Annexation - City of Ellisville***

A motion was made by Mr. Middelkamp to approve BC9805 as submitted, without a requirement for a vote. The motion was seconded by Mr. Rehagen. Mr. Youngblood asked whether this property was also vacant.

Mr. Ramey stated that it was vacant. Roll Call: Ayes: Garino, Gerhardt, Merritt, Middelkamp, Rehagen, Wingron, Youngblood Nays: None *The motion is passed.*

**C. Discussion of Revised Rules**

Ms. Garino indicated it had been less than one week since the Commission's last meeting. During that time, Mr. Ramey and Mr. Martin were asked to draft proposed rules for unincorporated zones and to do additional housekeeping on the other sections of the rules. Mr. Martin reviewed the sections which were included regarding the unincorporated zones. Also, included was the request regarding the logs of the county regarding complements and complaints. The Commission asked Mr. Martin to highlight the changes.

Mr. Martin pointed out that at the last meeting, Mr. Frager had made a suggestion. Because of the election schedule, unincorporated zone proposals had to be given to the Commission at least 140 days in advance of the election. Martin stated the Commission did not discuss this concept and they did not include it in their draft. Mr. Martin pointed out that they addressed additional language clarifying when an additional public hearing would be required. Mr. Martin noted the draft includes a number of technical revisions and grammatical changes. It more clearly incorporates issues relating to unincorporated zones, so that it is treated where necessary in the body of the document. He pointed out the highlighted (grey) sections are additions with the strikeouts being removals. Mr. Martin highlighted the general changes.

Mr. Martin reviewed the substantive changes which were included in this most recent draft. The Table of Contents was revised to make it clearer where the various items in the rules could be found. Article I, Definitions, incorporates language which recognizes the submittal of petitions for unincorporated zones. He noted there were changes to the unincorporated pocket, because of changes to the law. On page 9, Requirements for Proposals, the concept of unincorporated zones was incorporated into this section. Under certifications for incorporations and other boundary changes there is now a certification which acknowledges that the area proposed for a boundary change does not include an unincorporated zone. For all applicable proposals, a copy of the petitions must accompany the proposal, along with the requisite certifications.

Mr. Youngblood questioned the certification requirement by the Board of Election Commissioners. Mr. Martin noted the Board of Election Commissioners will certify who is and who is not a registered voter. Mr. Ramey stated the proposing agent will certify that the proposal meets the requirement. With this information as supporting documentation, the Commission can check the work. Mr. Youngblood stated that the Board of Election Commissioners can not certify whether the petitions meet the requirements of the statute, only that the names are of registered voters. Mr. Martin suggested the language for this section be checked to avoid any confusion which might arise, which suggests the Board of Election Commissioners certifies the statutory requirements. Mr. Martin indicated changes would be made to avoid that confusion or ambiguity. It will be applicable to various other sections.

Mr. Martin noted that in the Completeness Review section, a separate section regarding completeness review has been added to address unincorporated zone proposals. This separation occurred because an unincorporated zone proposal is not the same as a boundary change proposal.

Mr. Martin noted that the draft also clarified that a public hearing would only occur with a boundary change

proposal and not an unincorporated zone. The prior draft may have left the impression that a public hearing would be required for an unincorporated zone. This draft inserts the word boundary change proposal, so that it would not apply to an unincorporated zone.

Mr. Martin reviewed the changes concerning modification of proposals and an automatic new hearing. This draft reflects revisions made in response to comments from the prior Commission meeting. Mr. Martin reviewed the changes which provided further clarification of when a boundary changes, zoning, municipal services and financial impact a new hearing.

Mr. Martin reviewed changes to the section dealing with Decisions. He noted that for purposes of clarification, there is a section which outlines the Commission's decision on boundary change proposal. He stated by identifying the best interest test, as was suggested at a prior meeting, it applies only to boundary change proposals and not unincorporated zones. As to the process for approving and disapproving proposals, the various types of proposals were outlined. The only addition is inclusion of the unincorporated zone.

Mr. Martin reviewed the section concerning Official Re-submittal. This section now includes the limitation which was included in SB809. Mr. Ramey pointed out that this limitation appears to apply only to boundary change proposals and not unincorporated zones.

Mr. Rehagen asked for clarification on the process for decision making by the Commission on unincorporated zones and the statute's provision for a court to issue a mandamus order. Mr. Rehagen spoke of a situation where the Commission rejects a proposal. What authority does the court have in a mandamus action. Mr. Martin responded that the mandamus action applies when the Commission fails to take action on a proposal. It does not apply to the decision of the Commission; however, there is the right to go to court to challenge the decision. It is just not under that provision.

Mr. Middelkamp asked whether there is a need to change any of the provisions concerning the elections section to account for unincorporated zones. Mr. Martin indicated that there could be a separation or identification of pertinent information relating to unincorporated zones and he would take a look at the issue.

Mr. Martin referred back to the earlier discussion of comments made by Mr. Frager regarding a time frame for submittal of unincorporated zone proposals. He indicated that such a suggestion has not been included in the draft. He reviewed the concept discussed earlier in the meeting. Mr. Youngblood felt it would be difficult to control proposals based upon when an election may be occurring. There was no consensus to include anything of this nature in the draft rules.

Mr. Ramey began the review of the draft requirements for an unincorporated zone proposal. He noted the information was in response to the Commission's comments at the last meeting. It follows the same format as other proposals. He reviewed the items included in the geographic information section. The Commission discussed the issue of unincorporated pockets and their relationship to unincorporated zones. Mr. Youngblood stated that he felt there was no way an unincorporated zone could create an unincorporated pocket, because the territory would remain unincorporated. Mr. Ramey referred to an earlier proposal by the City of Ferguson and the discussions of the Commission regarding whether the proposal left an

unincorporated pocket. Ramey stated that the Commission may want to revisit the unincorporated pocket information in the other types of proposals. Martin pointed out the information requested was not a criteria to approve or disapprove, but is information for the Commission.

Ramey stated that what was presented is for the Commission's consideration based upon the comments and expectations of the Commission. If there is anything which the Commission feels should be removed or amplified, revised language will be prepared for the Commission. Now is the time to deal with it.

Ramey reviewed the section dealing with Certifications. Mr. Ramey questioned the section dealing with costs being borne by the proposing agent. He stated that because there is no public hearing the costs normally associated with a proposal do not exist. He asked whether the Commission still wanted this section included in the draft. Ramey reviewed the draft section dealing with Supporting Documents. Mr. Middelkamp questioned whether the section dealing with the county's ordinance, that the area can be reasonably served, should refer to services or municipal type services as drafted. Mr. Martin pointed out the county provides a variety of non-municipal services. In other boundary change proposals, the question deals with municipal services and not all services provided by the county. The presumption of the draft was municipal type services.

Ms. Wingron stated she was concerned about the information the Commission was receiving as the submittal for a proposed unincorporated zone. She stated that the Commission should treat an unincorporated zone as it would any other submittal. The Commission is being asked to make a determination of whether any area can be reasonably served for a period of time. She also expressed concern that based upon a 1983 Supreme Court decision, wherein it was determined St. Louis County is neither a municipality or provider of service, that the Commission would seek in the supporting documents an ordinance from the County. She stated in her opinion that the county could change their current position. She stated that what was presented in the draft is good, but it did not go far enough. She expressed concern that the census data, which is used to base the population base for an unincorporated zone, is old data. It will not reflect what exists today. Ms. Wingron felt that in order for her to make a determination she would need additional information, such as financial and services. Mr. Martin indicated what is included reflects the issues of the Commission to date. If there is additional information to add, modify or remove, that is a decision for the Commission.

Mr. Rehagen asked whether the county has the information, she hoped for, available. Mr. Rehagen stated it was his understanding that the county does not break out the cost based upon incorporated and unincorporated area. What value does the information have to the Commission? Ms. Wingron indicated that the information would give her an understanding that the area is being serviced. Otherwise, her decision would be based upon a lack of understanding and; therefore, she would be remiss in her duties. She also stated that she has asked the chair for a legal opinion as to whether the proposal which is on the table, Manchester, can be overridden with the new law allowing for unincorporated zones. Mr. Youngblood stated that in his opinion anything that comes in before August 28 is not covered by the new law. Ms. Garino indicated that Mr. Martin will provide an opinion.

Ms. Wingron asked the Commission to add sections similar to the other types of proposals, asking for information on unincorporated zones. It was the consensus of the Commission to have Mr. Ramey and Mr.

Martin draft language which addresses the sections including financial, services, zoning, etc. Mr. Rehagen asked whether including financial information could be included in the section dealing with logs and documents in Supporting Documents. Ms. Wingron stated she felt it should be a stand alone section. This would give her a clearer understanding of the cost for services and revenues from that area. Ms. Garino asked whether there is further discussion on the issue of the proposing agent bearing costs. Mr. Martin stated that under the present draft, he could not foresee where the proposing agent would have any costs. The primary cost in other proposals relates to public hearings and there is no requirement for a hearing for an unincorporated zone. It was included as an issue. If during the Commission's deliberations you were to add an item where there is a cost, this section would be necessary. Otherwise, it can be removed. Mr. Youngblood asked whether a registered land surveyor was required in other proposals. Mr. Ramey indicated that same language exists in other proposals. A registered surveyor is only necessary if the Commission requires one.

Mr. Tim Fischesser of the St. Louis County Municipal League asked to speak to a concern about a public hearing for an unincorporated zone. He felt the hearing should exist to inform people, to allow people to hear from others in the area and to inform the Commission. He encouraged the Commission to include such a requirement. He also questioned whether the Commission had a rule regarding an annexation proposal taking precedent over an incorporation. If the Commission did, he encouraged the application of the same provision to an unincorporated zone taking precedent over a boundary change proposal. Mr. Ramey indicated the Commission does not have a rule or policy regarding timing of an application for an annexation taking precedence over an incorporation. The statute talks about the same territory being the basis for such a preemption. It has been the Commission's interpretation that the annexation would have to be identical in territory to the incorporation in order for the preemption to take place. It could not be just one lot. The difference with an unincorporated zone is the statute deals with any territory. There appears to be a different standard for preemption. Mr. Fischesser also asked the Commission to give strong consideration to requiring a full plan of intent.

Ms. Garino asked whether the issue of the public hearing should not be addressed at this time. Mr. Ramey noted that the issue was discussed at the last meeting. The issue then was one of timing, adequate notice, securing a site, etc. All of this would have to be done within a thirty day time frame. It becomes a very practical issue, administratively. As to the legal question of whether the absence of a statutory requirement is a prohibition is a question for legal counsel. Mr. Fischesser encouraged the Commission to consider alternative hearing options, such as one conducted by the staff. If the public doesn't have the opportunity to express their opinion, the Commission is doing a disservice to the people living in the area and the Commission. Ms. Wingron indicated that she agreed in principal, but questioned the logistics. Mr. Middelkamp asked whether it was practical for the proposing agent to secure the location, publish the notice and notify the Commission of the hearing, in order to meet any requirement for a public hearing. Mr. Ramey reviewed for the Commission the process for setting public hearings for other proposals. As to the idea of an administrative hearing, Ramey indicated from experience it does not have the same impact with the citizens as having it before the body. Mr. Rehagen asked whether the proposing agent could be required to address the issues relating to logistics before submittal. Mr. Martin responded the Commission could require certain things before submittal, just as they do in other proposals. The question is whether the Commission feels the request is reasonable in helping to make a decision. The Commission discussed the practical, logistical problems with a hearing. Mr. Martin asked whether there is a consensus for them to look

at considering how to include a public hearing within the thirty day time frame. There was a consensus for Martin and Ramey to prepare language to include a public hearing for unincorporated zones.

Mr. Ramey reviewed the schedule of upcoming meetings for the Commission. He pointed out only two meetings remained between now and the 28<sup>th</sup>, which would be the latest in order to have new rules adopted to meet the effective date of the new law.

## ADJOURNMENT

Mr. Rehagen 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  
December 29, 1998