

ORDINANCE NO. 2041

AN ORDINANCE REGARDING BOUNDARY DETERMINATIONS AT THE COUNCIL GROVE LAKE PARK; SETTING BOUNDARY DISPUTE APPEAL PROCEDURES; CREATING A BOARD OF BOUNDARY APPEALS AND REPEALING ORDINANCE NO. 1903 OF THE ORDINANCES OF THE CITY OF COUNCIL GROVE, KANSAS;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COUNCIL GROVE, KANSAS:

Section 1. Purpose. The City of Council Grove is the owner of the Council Grove Lake Park and leases cabin sites at the lake. The purpose of this ordinance is to provide procedures for establishment of boundaries at all leaseholds at the Council Grove Lake Park and providing for an appeals procedure in the event of a dispute over lake boundaries. Many leasehold boundaries have already been established. All boundaries which have previously been determined and not objected to shall remain as previously determined.

Section 2. City's Designated Agent. The City, by ordinance, shall designate an agent or agents for the purpose of establishing boundary lines of City Lake Park leaseholds. The City Building Inspector is hereby designated and authorized to act as the City's agent for that purpose. This designation is also consistent with the City's previous designation as the City Builder Inspector as that person, consistent with Ordinance No. 1956.

Section 3. Establishment of Boundary at City's Own Initiative. In order to complete boundary determinations on all lake leaseholds at the city lake, the city agent is authorized to establish boundaries at the City's own initiative. The City's designated agent shall follow the procedure as set forth in Section 9 herein.

Section 4. Transfer Requirements. Unless all boundary lines have been previously established, prior to the approval of any lake lease transfer, the holder of the lake lease for which a transfer is sought shall have the leasehold boundary determined by one of the following methods:

- A. a boundary agreement signed by all adjoining lake lot leaseholders and approved by the City's designated agent, or
- B. determination by the City's designated agent from which no appeal is taken, or
- C. through the appeals procedure as set forth in this ordinance.

The Leasehold Boundary Agreement shall be on a form provided by the Council Grove City Clerk.

Section 5. Building Permit Requirements. Unless all boundary lines have been previously established, prior to the approval of any building permit, the holder of a lake lease for which a building permit is sought shall have the leasehold boundary determined by one of the following methods:

- A. a boundary agreement signed by all adjoining lake lot leaseholders and approved by the City's designated agent, or
- B. determination by the City's designated agent from which no appeal is taken, or
- C. through the appeals procedure as set forth in this ordinance.

The Leasehold Boundary Agreement shall be on a form provided by the Council Grove City Clerk.

Section 6. Mutual Agreement. Any lake lot leaseholders who have not previously had a boundary established and wish to establish a boundary, may establish their boundaries by their mutual agreement with the approval of the City's designated agent. The leasehold boundary, by mutual agreement, shall be signed by all interested parties or their duly appointed agents and

approved by the City's designated agent. Any approval or disapproval by the City's designated agent shall be given in writing and mailed by regular mail to the leaseholders at the address shown on the lease, or any updated address in the City's file. Such notice shall be dated and that date shall be the date from which appeal rights shall begin to run.

Section 7. Leaseholder's Agency Designation. The leaseholders of any lake leasehold which is held by more than one party may, in writing, designate one lake leaseholder to act as agent for all leaseholders to execute a Leasehold Boundary Agreement. Such agency designation shall be on a form provided by the Council Grove City Clerk. A designated agent shall have the authority and ability to bind all lake leaseholders for that lease.

Section 8. Boundary Determination Criteria. In making boundary determinations the City's designated agent shall take into consideration the criteria listed in this section. This list is non-exclusive, and other criteria may be considered. The weight to be given to any criteria shall be determined by the City's designated agent. The appeals board shall also consider this list of non-exclusive criteria when hearing appeals, and may weigh the criteria as they deem appropriate. The non-exclusive list of criteria includes:

- (a) prior agreements and understandings of adjoining leaseholders;
- (b) prior usage and expectations of adjoining leaseholders;
- (c) the physical configuration of lots;
- (d) equitable placement of the boundary considering the interest of future as well as present leaseholders;
- (e) equitable division of lake frontage and access;
- (f) ingress and egress to leaseholders;
- (g) any other factors deemed appropriate.

Section 9. Notice; Markings. The City's designated agent shall give notice, by regular mail to the leaseholders at the address as shown on the lease, or any updated address in the City's file, at least 10 days in advance, prior to establishment of the boundary. The notice shall state the date and time at which the City's agent shall be present at the site for purposes of establishing boundaries. At that time, leaseholders shall not interfere with the establishment of the boundaries, but are invited to provide input as to boundaries. The City's agent shall place visible markings on the premises so that his determination can be viewed by the adjoining lake leaseholders. After the visible markers are installed, the City's designated agent shall give written notice, by regular mail, to the leaseholders as shown on the lease, or any updated address as shown on the City's file. Any person objecting to that boundary shall, within 14 days, after the date of the written notice, file with the office of the city clerk an appeal of the boundary determination. Such appeal shall be accompanied by the docketing fee as set forth in this ordinance.

Section 10. Board of Boundary Appeals. There is hereby created a Board of Boundary Appeals. Such board shall consist of 5 persons appointed by the mayor and confirmed by the City Council. The Board shall consist of two persons that are residents of the City and three persons who are City Lake leaseholders. One of such persons shall be initially appointed for a term expiring on the second Monday in April of 2009; two persons shall be initially appointed for a term expiring on the second Monday in April of 2010; and two persons shall be initially appointed for a term expiring on the second Monday in April, 2011. After the initial terms expire all such positions shall be for two-year terms thereafter, all expiring on the second Monday of April in the appropriate year. All members of the Board shall serve at the pleasure of the City Council and may be removed from their office at any time by action of the City Council. Vacancies shall be filled for the unexpired term only. The members of the Board shall elect their own chairperson and vice-chairperson at their first meeting and shall serve until their successors are elected. The quorum for the Board shall be four and decisions by the Board shall be made by the affirmative vote of no less than three members. Members of the Board shall receive a fee of \$50.00 for every appeal in which they participate. The Board shall conduct hearings whenever any leaseholder files an appeal pursuant to Section 11 herein. Such hearings shall be conducted at a time and place designated by the chairperson consistent with Section 11 herein.

Section 11. Appeals to Board. Appeals to the Board of Boundary Appeals must be filed by any lake lot leaseholder not later than 14 days after the date of the written notice of the boundary determination given by the City's designated agent. Appeals from the failure or refusal of the

City's designated agent to approve a mutually agreed boundary shall also be filed not later than 14 days after the date of the written notice. Such appeal shall be in writing and filed with the city clerk and shall be accompanied by an appeal fee of \$300.00. The Appeals Board shall fix a date and time for the hearing of the appeal and shall give notice at least 14 days before the date of the hearing. Notice shall be sent to the appealing party, and any neighboring leaseholder whose boundary is in dispute. All hearings shall be heard within 45 days after such appeal is filed. Any person appealing the determination of the City's designated agent shall submit their proposal with regard to the boundary at least 7 days before the date of the hearing. Failure to timely submit such proposals shall be grounds for dismissing the appeal.

Section 12. Presentation of Evidence. No formal rules of evidence shall apply to the Appeals Board. However, the Appeals Board may confine presentations of evidence to material facts of the boundary in dispute and exclude evidence or questions as irrelevant, unduly repetitious or otherwise inappropriate. All parties shall be afforded an opportunity to present testimony, documentary evidence or both. This shall include the City, the leaseholder and the bordering leaseholder whose boundary is in dispute.

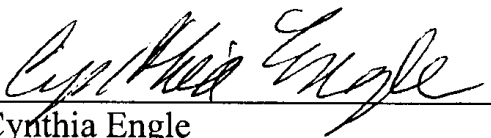
Section 13. Decision by Appeals Board. The decision of the Appeals Board shall be made in writing and shall be mailed by regular mail to the parties whose boundaries are affected. Decisions by the Appeals Board shall be final and binding on the parties.

Section 14. Previous Boundary Determinations for Which Objections Were Filed But No Hearing Held. For any lake lot lease holder who, within the last two years of prior to effective date hereof, has previously objected to a boundary determination which was established under Ordinance No. 1903 may request a hearing before the Board of Boundary Appeals by filing such appeal within 60 days of the effective date of this ordinance and by following the appeals procedure as set forth herein.

Section 15. Repeal. Ordinance No. 1903 of the ordinances of the City of Council Grove, Kansas is hereby repealed.

Section 16. Effective Date. This ordinance shall be effective upon its publication in the official city newspaper.

PASSED AND APPROVED BY GOVERNING BODY OF COUNCIL GROVE, KANSAS ON THIS 24 day of November, 2008.


Cynthia Engle
Mayor

ATTEST:


Danny Matthews
City Clerk

