IN THE MISSOURI SUPREME COURT

MC DEVELOPMENT COMPANY, LLC,

Plaintiff/Appellant,

v.

CENTRAL R-3 SCHOOL DISTRICT OF ST. FRANCOIS COUNTY,

Defendant/Respondent,

FARMINGTON R-7 SCHOOL DISTRICT OF ST. FRANCOIS COUNTY,

Defendant-Cross-Claimant/Appellant,

DAMON BLACK, ASSESSOR OF ST. FRANCOIS COUNTY,

Defendant/Respondent.

Supreme Court Appeal Number: SC90022

APPEAL FROM THE CIRCUIT COURT OF ST. FRANCOIS COUNTY STATE OF MISSOURI

Honorable Scott E. Thomsen

SUBSTITUTE BRIEF

RESPONDENT

CENTRAL R-3 SCHOOL DISTRICT OF ST. FRANCOIS COUNTY

MICKES GOLDMAN O'TOOLE, LLC

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School of St. Francois County

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JURISDICTIONAL STATEMENT

Central submits that this matter is properly before the Missouri Supreme Court pursuant to Missouri Court Rule 83.04 on transfer after opinion by the Missouri Court of Appeals, Eastern District.

STATEMENT OF FACTS

Appellant MC Development Company, L.L.C's (MC Development) and Appellant Farmington R-VII School District of St. Francois County's ("Farmington") Statement of Facts omits evidence that supports the judgment and therefore does not constitute substantial compliance with Rule 84.04(c). The statement of facts was also not drafted in the light of the applicable standard of review of a judge tried case – Murphy v. Carron. Therefore, pursuant to Rule 84.04(f), Respondent Central provides herein its own Statement of the Facts as follows:

On April 7, 2005, MC Development filed a petition for declaratory judgment against Farmington and Central School District of St. Francois County ("Central") and the Assessor of St. Francois County asking the trial court to determine that certain property owned by MC Development was located within the territory of Farmington and not the territory of Central. L.F. 1-4. MC Development filed an amended petition on April 6, 2007, and Farmington filed a cross-claim on April 27, 2007. L.F. 60-64; 90-93. A two-day bench trial was held on September 20-21, 2007. L.F. 138. The trial court issued an eight (8) page Findings of Fact, Conclusions of Law, Judgment on November 6, 2007, finding that the property in dispute lies wholly within the territorial boundaries of Central. L.F. 138-148.

Background

In 2004, MC Development purchased a tract of property located in St. Francois County, Missouri from Donald and Mary Kocher[1] (hereinafter the "Property"). Trial Trans. Vol. 1 62: 9-10; L.F. 139. The legal description of the Property is contained in MC Development's Exhibit 10. L.F. 139. The boundary of the Property is depicted as an area within a bold black line in the lower left hand side on Central's Exhibit E.[2] L.F. 139. Prior to purchasing the Property, MC Development concluded, based solely upon the owner's knowledge of the area and the community, the Property was located within the boundaries of Farmington. Trial Trans. Vol. 1, 232: 24-25; 233: 1-12. Prior to closing, MC Development did nothing to verify the school district in which the Property was located. Trial Trans. Vol. 1, 233: 5-12.

At the closing of the purchase of the Property, the Kochers delivered an Assessor's map to MC Development which depicted school district boundary lines in relation to the Property. Trial Trans. Vol. 1, 233: 13-18. The information on the Assessor's map indicated that a portion of the Property was located within Central's boundaries. Trial Trans. Vol. 1, 233: 19-25; 234: 1-25; 235: 1-2. In December 2004, MC Development wrote to then St. Francois County Assessor, Damon Black (the "Assessor") inquiring

[1] The Kocher's name is improperly spelled in the Trial Transcript as Coker.

[2] To avoid confusion, the Legal File – Volume I, Pg. 146 contains a reduced version of Central's Exhibit E, which is attached to the Court's Judgment and is in black and white. The descriptions used in this Brief will refer to the original Exhibit E, which is in color. Exhibit E was submitted to this Court and made part of the Appendix, A-12.

about the assessment of the Property. Trial Trans. Vol. 1, 235: 3-7. The Assessor informed MC Development that a portion of the Property, Parcel No. 9-6-13-13-00 ("Parcel 13"), has been continuously assessed as a part of Central as far back as 1950.[3] Trial Trans. Vol. 1, 184: 9-16. Parcel 13 is depicted as the area shaded in grey on Exhibit E.

Afterwards, MC Development filed a lawsuit against Central, Farmington, and the Assessor asking the trial court to enter declaratory judgment determining the Property owned by MC Development to lie wholly within the boundaries of Farmington and directing the Assessor to change the assessment records accordingly. L.F. 16-38. Subsequently, Farmington filed a cross-claim against Central seeking a declaratory judgment as to the location of the boundary line between Farmington and Central and further seeking a declaration that all taxes arising from the Property are due to Farmington, and that all students residing on the Property are entitled to attend school in Farmington. L.F. 90-94.

Process for Changing the Boundaries for Public School Districts

A Missouri public school district's boundary can be changed in six different ways: through a boundary change election, an annexation election, a consolidation election, a reorganization plan submitted to the state board of education, the lapse of a school district due to bankruptcy, or the district's loss of accreditation. Trial Trans. Vol. 1, 144: 10-25; 145: 1-7.

[3] The subpoena issued to the Assessor's Office only requested records as far back as 1950.

The reorganization statute, section 162.171 RSMo (1963), was created in 1949 to reduce the number of school districts in the state. Trial Trans. Vol. 1, 113: 4-15. The statute called for elected county boards of education to draw plans for reorganizing the county's districts. Trial Trans. Vol. 1, 113: 4-15. These county-specific plans were then presented to the Department of Elementary and Secondary Education ("DESE") for final approval. Trial Trans. Vol. 1, 113: 4-15. In 1949, there were over 8,500 school districts in the state; but, through the reorganization process this number was reduced to 2,700 within six years. Trial Trans. Vol. 1, 113: 16-22. This process of reducing the number of districts continued through 1969. Trial Trans. Vol. 1, 113: 21-22. As the records of the reorganizations were originally created at the county level, DESE does not maintain comprehensive records on all the boundaries changed during that time period. Trial Trans. Vol. 1, 114: 23-25; 115: 1-5.

A boundary change occurs among established school districts pursuant to section 162.431 RSMo (1963). The process begins with a petition for a boundary change by the required number of qualified voters to the district board of directors in the districts affected, regardless of county lines. See Section 162.431 RSMo (1963); Exhibit 8. Thereafter the secretaries of the district school boards shall give notice of an election on the desired change and at the election the voters shall decide whether a boundary line change will occur by majority vote. Id. When a boundary change vote passes in one affected district, but not another, a Board of Arbitration may be appointed to resolve the dispute. Section 162.431 RSMo (1963); Trial Trans. Vol. 1, 54: 2-14; 107: 4-8; 130-132.

The Board of Arbitration has the power to grant and declare a boundary change even if it would create a non-contiguous school district. Trial Trans. Vol. 1, 131: 5-8; 132: 5-10.

The 1967 Boundary Change

Central was established through the reorganization of several school districts, including the Esther School District, Elvin School District, and Flat River School District in 1966. Trial Trans. Vol. 1, 200: 2-27. Then, a year later, at the annual school election held in April of 1967, a proposal to change the boundary line pursuant to section 162.431 between Farmington and Central (which at the time was known as the St. Francois County [Central] School District) appeared on the ballot of both school districts. L.F. 200. Specifically, the Farmington School District's Notice of Annual School Election stated under subset 4: "In compliance with Section 162.431 R.S.M.o upon proper petition by the required number of qualified voters the following boundary change proposal: To change the boundary line between the St. Francois County School District R-III and the Farmington School District R-VII so that the following described territory now in the St. Francois County School District R-III will be detached therefrom and made a part of the Farmington School District R-VII." Exhibit 8; L.F. 200. Next, the Notice spelled out the actual legal description of the proposed boundary change. Exhibit 8; L.F. 200. The proposal was passed in Farmington, but failed in Central, resulting in the creation of a Board of Arbitration to resolve the dispute. L.F. 242-48. The Board of Arbitration decided the boundary change was necessary and ruled in favor of Farmington. L.F. 249.

Following the Board of Arbitration's ruling, a formal "Notification of Boundary Change Between Farmington R-VII and St. Francois County (Central) R-III" (hereinafter

the "Boundary Change Notification") was filed in the Office of the St. Francois County Clerk on June 6, 1967. L.F. 196, 242-49. The Boundary Change Notification contained the metes and bounds legal description of a tract of land detached from the St. Francois County (Central) R-III School District and made a part of Farmington (hereinafter the "Annexation Parcel"). L.F. 196, 200, 242-249; Exhibit H. The Annexation Parcel is depicted as a yellow shaded area bounded by a red line on Exhibit E.

As shown on Central's Exhibit E, a portion of the boundary line of the Annexation Parcel (from corner 2 to corner 6) created by the Boundary Change Notification bisects MC Development's Property. Exhibit E & F. The boundary between Farmington and Central has not been changed since June of 1967. L.F. 141. Finally, Parcel 13, the property in dispute, has been continually assessed to Central or its predecessors as far back as at least 1950. Trial Trans. Vol. 1, 184: 9-16. Parcel 13 continued to be assessed to Central through its inception and continues to be assessed to Central to date. Trial Trans. Vol. 1, 183: 12-15.

Central's Expert Plated the Boundary Lines and Established Parcel 13 is Within Central's Territory

Various maps and a plat exist which purport to depict school district boundary lines and/or the location of properties assessed to either Farmington or Central; including, maps prepared by the Assessor, maps prepared by Farmington, maps prepared by the DESE, maps or diagrams prepared by MC Development, and a plat prepared by Central. L.F. 184-195, 199, 203; Exhibit E. The Assessor's maps, including Exhibit B and MC Development's Exhibits 1, 2 and 28, depict the location of properties assessed to either

Farmington or Central, based upon the Assessor's records in relation to an aerial photograph created in 1983 during a reassessment process. L.F. 184-187, 277; Exhibit B. On each of these maps, Parcel 13 is depicted as being assessed to Central. L.F. 184-187, 277; Exhibit B.

Mr. Steven Hutchison, Central's designated expert has thirty-one years of land surveying experience, and has performed work in thirteen (13) different states. Central's Exhibit D; Trial Trans. Vol 2, 294: 9-12. In those thirty-one years of experience, he has performed between 15,000-20,000 land surveys. Trial Trans. Vol. 2, 296: 10-13. Notably, Mr. Hutchison has not only performed work for Central, but also for Farmington, as well as Farmington's counsel. Trial Trans. Vol. 2, 294: 13-24. Mr. Hutchison has created a plat to accompany his surveys on approximately 90% of his 15,000-20,000 land surveys. Trial Trans. Vol. 2, 302: 21-23. All parties stipulated to Mr. Hutchison's recognition as a land surveying expert. Trial Trans. Vol. 2, 296: 14-24.

Mr. Hutchison testified that a legal description is considered more authoritative for surveying work than a map. Trial Trans. Vol. 2, 302: 1-11; 350: 17-20 ("[t]he map is supposed to be a shorthand of what the surveyor did, so the surveyor's—the description of record is supposed to stand over a map if there's a disagreement."). The legal description is more authoritative because maps are created from legal descriptions; legal descriptions are not generally created from maps. Trial Trans. Vol. 2, 302: 1-11; 350: 17-20.

Mr. Hutchison was provided a copy of the legal description of the Boundary Change Notification of 1967. Trial Trans. Vol. 2, 305: 20-22. Unlike MC

Development's expert, Mr. Hutchison prepared an actual plat of the Annexation Parcel, utilizing the legal description incorporated into the Boundary Change Notification. Central's Exhibit E; Trial Trans. Vol. 2, 304: 19-25. This plat[4] included the Property purchased by MC Development, the Annexation Parcel, and Parcel 13, which had been assessed as part of Central since at least 1950. Central's Exhibit E; Trial Trans. Vol. 2, 305: 10-25; 306: 1-14. Mr. Hutchinson's plat broke down the metes and bounds legal description call-by-call, with corresponding numbers providing guidance to the same.[5] Exhibit F; Trial Trans. Vol. 2, 309: 15-25; 310: 13-24; 311: 1-25; 12: 1-25. The description of the Boundary Change Notification (points 2-6 on Exhibit E) followed existing boundary lines, including those of the Kocher property. Trial Trans. Vol. 2, 316: 24-25; 317: 1-7. All parties stipulated Mr. Hutchison's plat of the legal description, Central's Exhibit E, accurately represents the call-by-call recitation of the legal description created by the 1967 boundary change. Trial Trans. Vol. 2, 312: 1-25; 313: 1-4.

Not only was Mr. Hutchison capable of creating a plat of the 1967 Boundary Change Notification, but he also platted MC Development's Property.[6] Central's Exhibit E (see black line); Trial Trans. Vol. 2, 315: 9-25; 316: 1-2. Mr. Hutchison platted MC

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[4] The Plat is Exhibit E

[5] The metes and bounds legal description of the Annexation Parcel is demarcated by the thick red line on the plat, with the numbers corresponding to the directional changes listed in the legal description attached to the 1967 Boundary Change Notification.

[6] MC Development's Property is outlined in black in the lower left corner of Exhibit E.

Development's Property by utilizing a survey prepared by MC Development's own expert, Mr. Truska. Trial Trans. Vol. 2, 316: 15-23. Mr. Hutchinson also platted the legal description of Parcel 13 contained in the Assessor's records from 1966. Exhibit E (see gray region); Trial Trans. Vol. 2, 314:12-25; 315: 1-8; 329: 13-25; 330: 1; 353: 15-20. The gray region of Central's Exhibit E, Parcel 13, represents the area assessed to Central as far back as 1950, which remained in Central after the 1967 boundary change, because Parcel 13 fell outside the plat of the boundary change. Trial Trans. Vol. 2, 314: 12-25; 315: 1-8. Thus, the entirety of Mr. Hutchison's work consisted of plats created from legal descriptions, which is the authority for his profession. Central's Exhibit E; Plaintiff's Exhibit 7; Trial Trans. Vol. 2 302: 1-11; 314:12-25; 315: 1-8; 350: 17-20; 353: 15-20.

MC Development and Farmington relied upon the map attached to MC Development's Exhibit 7 to depict a portion of the boundary line resulting from the 1967 election. Trial Trans. Vol. 1, 52: 16-25; 53: 1-13; 70: 6-25; 71: 1-8. Significantly, Mr. Hutchison disputed that the map attached to MC Development's Exhibit 7 was a "plat" and recognized it as an old Missouri Highway map. Trial Trans. Vol. 2, 323: 1-22. Highway maps are used simply to get from one location to another. Trial Trans. Vol. 2, 323: 16-18. A land surveyor would not be permitted to use or rely upon highway maps as to the performance of survey work. Trial Trans. Vol. 2, 323: 19-22. Mr. Hutchison converted the map to scale and discovered it was one inch to more than three miles. Trial Trans. Vol. 2, 324: 1-2. In order to use the map attached to Plaintiff's Exhibit 7, one would have to enlarge it approximately forty (40) times its original scale. Trial Trans.

Vol. 2, 324: 1-25; 325: 1-25; 326: 1-6. Enlarging the map to forty (40) times its original scale would render it completely useless for surveying purposes, as it would translate to a resolution of only one dot per inch. Trial Trans. Vol. 2, 324: 1-25; 325: 1-25. For any professional land surveyor desiring to create plats, the map contained in Plaintiff's Exhibit 7 is useless, and if used, would result in an unreliable conclusion. Trial Trans. Vol. 2, 324: 1-25; 325: 1-25; 326: 1-6.

Most significantly, unlike MC Development's expert, Mr. Hutchison rendered all of his opinions based upon a reasonable degree of certainty for a member of his profession as to the location of the boundary line between Farmington and Central, as it relates to MC Development's Property. Trial Trans. Vol. 2, 330: 16-20.

Appellants' Expert is Unable to

Testify as to the Location of the Boundary Lines

MC Development's expert, Mr. Donald Truska, explained to the Court the difference between a map and a plat by stating a map can be created by any individual. Trial Trans. Vol. 1, 34: 14-17; 71: 18-21. To produce a plat, however, one must have a surveying license. Trial Trans. Vol. 1, 34: 16-17. Mr. Truska holds a surveyor's license. Trial Trans. Vol. 1, 32: 17. Mr. Truska's work presented for trial, however, consisted of maps, and not of plats.[7] Pl. Exhibits 1-A; 2A; 3A; 5A; 6A; 7A; Trial Trans. Vol. 1, 72: 19-21.

[7] Mr. Truska admitted to being paid over Thirty-Thousand Dollars ($30,000.00) by MC Development prior to this case, in addition to work for this lawsuit. Trial Trans. Vol. 1, 73: 22-25; 74: 1-9.

Mr. Truska created for trial what he purported to be an "overlay" for certain maps provided by MC Development. Exhibit 7-A. Trial Trans. Vol. 1, 53: 4-6. Certain of these "overlays" allegedly depict differences between maps prepared by DESE, the Assessor, and Farmington; however, no explanation was provided as to why or how these differences might appear, so as to suggest that any of the maps were any more authoritative or accurate than another. Trial Trans. Vol. 1, 94: 5-9. Moreover, Mr. Truska's "overlays" were created by simply changing the map's scale. Trial Trans. Vol. 1, 70: 24-25; 71: 1-3. Mr. Truska stated he merely used the corners from the maps he was provided, rather than use any mathematical equations, to enlarge the maps and create his "overlay" maps. Trial Trans. Vol. 1, 45: 11-13; 49: 13-14. All of Mr. Truska's "overlays" were maps and not plats. Trial Trans. Vol. 1, 72: 16-21; 91 13-23. Significantly, Mr. Truska was wholly unaware of who created the plats from which he generated his map "overlays," which he asserted represented the boundary lines between the two districts. Trial Trans. Vol. 1, 93: 3-5. Furthermore, Mr. Truska admitted he knew nothing about the plat that he was provided and enlarged. Trial Trans. Vol. 1, 93: 6-9.

In addition to failing to present any surveyor plats, Mr. Truska's testimony listed at least six differing conclusions to the trial court as to where the boundary lines may, or may not be, located. Trial Trans. Vol. 1, 95: 4-17. Unlike Mr. Hutchison, Mr. Truska testified he was unable to attest with, a reasonable degree of certainty as a professional land surveyor, as to which of the six maps he prepared was the ultimate and correct

version of the boundary lines between the two school districts - the precise issue in this case. Trial Trans. Vol. 1, 96: 20-25; 97: 1. Specifically, this expert testified as follows:

> Q: Ultimately, Mr. Truska, isn't true that you are unable to say with a reasonable degree of certainty from a member of your profession which, if any, of the six maps you prepared is the ultimate and correct version of the boundary lines between the two school districts?
>
> A: You are correct.

(Tran. Vol. I 96:20-25; 97:1-5)

In fact, Mr. Truska did not even attempt to identify the definitive boundary line between the two school districts. Trial Trans. Vol. 1, 97: 2-5.

Custom and Practice of Deferring to Assessor

Neither DESE nor the Assessor has the authority to establish or determine the location of school district boundaries. Trial Trans. Vol. 2, 275: 22-25; 276: 1-4. However, it is the custom and practice of Farmington, Central, and DESE to defer to the Assessor when presented with an issue of determining in which school district a parcel of property is located. Trial Trans. Vol. 1, 118: 1-2; Trial Trans. Vol. 2, 277: 8-25; 278: 1-2, 6-18; Central Supp. L. F. pp.8-9. Howard Hoehn, Associate Superintendent of Farmington and Desmond Mayberry, Assistant Superintendent of Central, testified that they refer calls from property owners regarding these issues to the local Assessor's office. Central Supp. L. F. pp.8-9; Trial Trans. Vol. 2, 277: 8-25; 278: 1-2, 6-18.

Mr. Tom Quinn, the Director of School Governance for the Missouri Department of Elementary and Secondary Education's ("DESE"), is responsible for addressing issues

concerning school district boundary issues. Trial Trans. Vol. 1, 106: 16-20. In this capacity, over the last six (6) years, Mr. Quinn receives a conservative average of one-to-two calls per week concerning boundary issues. Trial Trans. Vol. 1, 115: 15-19. When Mr. Quinn receives calls from individuals, who dispute the location of their real property within a certain school district, they are informed by Mr. Quinn, "that what is on the assessor's books, that's the authoritative document." Trial Trans. Vol. 1, 118: 1-2.

When MC Development's counsel questioned Mr. Quinn as to what he would do if a school district has records purporting to show a different boundary location than is currently in practice, Mr. Quinn stated he would direct any DESE map to reflect what is shown on the county assessor's books. Trial Trans. Vol. 1, 134: 19-24. According to Mr. Quinn, an assessor's books trump any historical data from a school district, with respect to the identification of school district boundaries. Trial Trans. Vol. 1, 134: 25; 135: 1-2.

The Assessor's custodian of records, Ms. Theresa Aubuchon, appeared for live testimony and record production. Trial Trans. Vol. 1, 163: 22-25. The Assessor's books contain legal descriptions of land parcels. Exhibit A; Trial Trans. Vol. 1, 167: 8-10. They also indicate which school district will receive the taxes from each parcel. Trial Trans. Vol. 1, 168: 2.

The Assessor's records were introduced into evidence. Exhibit A. The Assessor's records revealed Parcel 13 had been assessed to Central, or its predecessors, as far back as the Assessor's office searched, 1950. Trial Trans. Vol. 1, 181: 16-21; 182: 9-25; 183: 1-2. Similarly, the Assessor's letter dated December 15, 2004, informed MC Development that based upon research conducted by the Assessor in December of 2004,

a portion of MC Development's Property, Parcel 13, had been continuously assessed as a part of Central since 1950. L.F. 241.

Prior to the 1967 election, the area comprising the Annexation Parcel and Parcel 13 were assessed to Central. Trial Trans. Vol. 1, 181: 16-21. The 1967 Boundary Change Notification resulted in the creation of the Annexation Parcel, and the establishment of a partial boundary line[8] between Farmington and Central in relation to MC Development's Property. L.F. 196, 242-249; Exhibit E. The evidence adduced at trial established that Parcel 13, depicted in the grey shaded area on Exhibit E, was part of Central prior to the 1967 election and Parcel 13 continued to be within the boundaries of Central following the election. Trial Trans. Vol. 1, 183: 12-15; L.F. 184-187, 277; Exhibit B.

Trial Court's Findings of Fact, Conclusions of Law, and Judgment

This case was called for trial in St. Genevieve County, by agreement of all parties on September 20, and 21, 2007. L.F. 138. MC Development filed a request for a written opinion prior to trial. L.F. 99; S.L.F. 1-3. Central did as well. (L.F. 101-103) (Central Supp. L.F. 1-4)[9]. Farmington did not file a request for a written opinion by the trial court. After all the evidence was adduced from all parties, the trial court issued its Judgment on November 6, 2007. L.F. 139. The trial court found MC Development took no action to

[8] This partial boundary line, as it relates to the Property, is depicted on Exhibit E from corner 2 to corner 6 of the plat of the Annexation Parcel.

[9] Appellants' Legal File excludes page 3 of Central's Requests for Findings of Fact and Conclusions of Law. Page 3 is therefore included in Central's Supplemental Legal File.

verify which school district the Property was located in, prior to its purchase of the Property from the Kochers. L.F. 139-40. The trial court also found a boundary change occurred between Farmington and Central in 1967, after a school election and referral to a Board of Arbitration. L.F. 141. The Boundary Change Notification issued after the Board of Arbitration's decision identifies the Annexation Parcel, which includes a portion of MC Development's Property. L.F. 141. The trial court found no other boundary changes had occurred between the two districts after 1967. L.F. 141.

The trial court also found maps maintained by school districts are not determinative of the district's boundaries. L.F. 142. Instead, the general practice of Missouri school districts and DESE is to refer to the county assessor's office when questions arise as to which school district certain property resides. L.F. 142. The trial court found the Assessor's records to be the best and most persuasive evidence available to the court to determine where the districts' boundaries are located. L.F. 143.

Prior to the 1967 boundary change, the trial court found the Annexation Parcel and Parcel 13 were both assessed to Central, and no evidence was entered to controvert the conclusion that both parcels were in Central prior to the 1967 boundary change. L.F. 143. Additionally, the trial court found that the 1967 Boundary Change Notification acted only to detach the Annexation Parcel from Central and give it to Farmington. L.F. 144. Any property located within Central prior to the 1967 boundary change, which was not a part of the Annexation Parcel, remained part of Central after the boundary change. L.F. 144. The legal description of the boundary change was found by the court to be a reliable source to establish a partial boundary line between the two districts. L.F. 144;

Exhibit E. As Parcel 13 was not a part of the Annexation Parcel, it was part of Central before the 1967 boundary change, and remained so afterward. L.F. 144.

Consequently, the trial court entered judgment in favor of Central and the Assessor on November 6, 2007, finding Parcel 13 to be within the boundaries of Central. L.F. 148. Neither MC Development nor Farmington filed post-trial motions. Thereafter, MC Development filed its Notice of Appeal on December 13, 2007, and Farmington filed its Notice of Appeal on December 17, 2007. L.F. 149-182. The appeals were consolidated.

The Missouri Court of Appeals, Eastern District, after submission of briefs and oral arguments, reversed the decision of the trial court. Thereafter, the Missouri Supreme Court granted Central's application for transfer of this matter. This appeal now ensues.

STANDARD OF REVIEW

When reviewing a court-tried case, the Court of Appeals views all evidence and inferences in the light most favorable to the judgment and disregards all contrary evidence and inferences. Ortmann v. Dace Homes, Inc., 86 S.W. 3d 86 (Mo. App. E.D. 2002). The Court must defer to the trial court's determinations as to the credibility of witnesses. Id. The trial court may believe all, part, or none of any witness's testimony. Id. This Court must affirm a trial court's judgment unless it is not supported by evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976); Ortmann v. Dace Homes, Inc., 86 S.W. 3d 86 (Mo. App. E.D. 2002). "Appellate courts should exercise the power to set aside a decree or judgment on the ground that it is 'against the weight of the evidence' with caution and with a firm belief that the decree or judgment is wrong." Murphy v. Carron, at 36.

"A bench-tried judgment which reaches the correct result will not be set aside even if the trial court gives a wrong or insufficient reason for its judgment." Gibson v. Adams, 946 S.W.2d 796, 800 (Mo. App. E.D. 1997). The Court of Appeals should "accept all inferences and evidence favorable to the judgment and disregard all contrary inferences." Id. Furthermore, this Court is bound by the trial court's factual findings if such findings are supported by substantial evidence. Id. Deference must be given to the trial court in judging the credibility of witnesses, and all factual issues upon which no specific findings have been made should be interpreted as having been found in accordance with the result reached. Id.

RESPONSE TO MC DEVELOPMENT'S FIRST POINT ON APPEAL & FARMINGTON'S FIRST AND SECOND POINTS ON APPEAL

I.

THE TRIAL COURT DID NOT ERR AND CORRECTLY STATED AND APPLIED THE LAW IN DECLARING THAT PARCEL 13, THE PROPERTY IN DISPUTE, LAYS WHOLLY WITHIN THE TERRITORIAL BOUNDARIES OF CENTRAL, AND NOT WITHIN THE TERRITORIAL BOUNDARIES OF FARMINGTON BECAUSE THERE IS NO MANDATORY LEGAL REQUIREMENT THAT ALL SCHOOL DISTRICTS BE COMPOSED OF CONTIGUOUS TERRITORY, CURRENTLY THERE ARE SCHOOL DISTRICTS WITHIN MISSOURI THAT ARE NON-CONTIGUOUS, APPELLANTS FAILED TO PRESERVE THIS CLAIM ON APPEAL, THIS ACTION IS AN IMPERMISSIBLE COLLATERAL ATTACK ON THE FINAL JUDGMENT OF THE BOARD OF ARBITRATION, IS BARRED BY LACHES AND EQUITABLE ESTOPPEL AND THE LEGAL BOUNDARIES OF CENTERAL WERE DETERMINED BY THE VOTERS.

MC Development and Farmington's points of error misstate and distort Missouri law. Missouri statute section 162.431 RSMo (1963), which governs school district boundary changes, allows for the existence of non-contiguous school districts. Section 162.431, by allowing boundary changes that may create non-contiguous school districts, does not violate the Missouri Constitution. Further, the present reality in Missouri is that the Missouri Department of Elementary and Secondary Education sanctions non-

contiguous school districts - the existence of which are not unusual. Trial Trans. Vol. 1, 154 1.5-8; 127 1.1-25, 128 l. 1-6; Exhibit 19 at L.F. 256. Additionally, Central's current legal boundaries were determined by the vote of the people pursuant to section 162.431 RSMo.

Failure to Preserve Error and Abandonment of Error

The specific language in MC Development's first point contends that the trial court "misapplied the law because school districts are statutorily and constitutionally required to be composed of contiguous territory and the authority to determine school district boundaries lays with the school districts and voters." (MC Development's S. Brief p. 17). Similarly, Farmington states in its first point that the trial court erred because the judgment created a non-contiguous territory in violation of the Missouri Constitution, statutes, and case law. (Farmington's S. Brief p. 19). For multiple reasons, these claims of error were not preserved for appeal.

First, Appellants failed to assert in the Petition, Amended Petition, or Cross-Claim this new legal theory: school districts are constitutionally and statutorily mandated to be contiguous. (L.F. 16-38; 60-82; 90-94). The pleadings are devoid of any allegation that Farmington's boundaries must include Parcel 13, irrespective of the actual established school district boundaries, because the Missouri Constitution and Missouri statutes somehow require school districts to be contiguous. (L.F. 16-38; 60-82; 90-94). Appellants cannot articulate on appeal a new legal theory that was not presented before the trial court. Sheedy v. Missouri Highways and Transp. Com'n, 180 S.W.3d 66, 70-71 (Mo App. S.D. 2005) (holding a party is bound by the position he or she took in the trial

court, and the appellate court can review the case only upon those theories). Contrary to the requirement that Missouri is a fact pleading state, Appellants failed to allege that it would be illegal and unconstitutional to declare Parcel 13 within Central's boundaries because it is non-contiguous. Appellants only pled as a physical *description* that Parcel 13 is non-contiguous. (L.F. 16-38; 60-82; 90-94). This falls short of the requirement set forth in Rule 55.05 that the plaintiff must plead a short and plain statement of facts showing that it is entitled to relief. Therefore, this point of error is waived.

In its Reply brief before the Missouri Court of Appeals, MC Development argued that even if its petition was void of any specific allegation that Missouri law forbids non-contiguous school districts, this legal theory was tried by implied consent. This argument is without merit. While the record reflects testimony of different witnesses describing Central as non-contiguous, there was testimony from only one witness, Dr. Henry, Farmington's Superintendent in 1967, who stated it would have violated statutory law for Central to be non-contiguous. This legal opinion was, however, objected to by Central's counsel, and asked to be stricken. Trans. Vol. 1, 201. While the trial court overruled the objection, it cannot be claimed that this theory, not pled, was tried by implied consent of Central.

Argument

Assuming, *arguendo*, that this Court will review Appellants' points on appeal, Appellants erroneously declare Missouri law mandates that Missouri school districts must be contiguous in nature. This claim has no basis in law and contradicts the present reality that other Missouri school districts are non-contiguous. Trans. Vol 1, 154 l. 5-8.

I. Central's Last Boundary Change was Made Pursuant to Missouri Boundary Change Statute Section 162.431 RSMo (1963) Which Permits Non-Contiguous School Districts

In 1966, Central was created and established through the reorganization of several school districts, including the Esther School District, Elvin School District, and Flat River School District. Trial Trans. Vol. 1, 200: 2-27. Then, a year later, at the annual school election held in April of 1967, a proposal to change the boundary line through an annexation process between Farmington and Central appeared on the ballot of both school districts. L.F. 200. The proposal was passed in Farmington, but failed in Central, resulting in the creation of a Board of Arbitration to resolve the dispute. L.F. 242-48. The Board of Arbitration decided the boundary change was necessary and ruled in favor of Farmington. L.F. 249.

Following the Board of Arbitration's ruling, a formal "Notification of Boundary Change Between Farmington R-VII and St. Francois County (Central) R-III" (hereinafter the "Boundary Change Notification") was filed in the Office of the St. Francois County Clerk on June 6, 1967. L.F. 196, 242-49. The Boundary Change Notification contained the legal description of a tract of land detached from the St. Francois County (Central) R-III School District and made a part of Farmington (hereinafter the "Annexation Parcel"). L.F. 196, 200, 242-249; Exhibit H. The Boundary Change Notification also stated that this boundary change was made pursuant to Missouri law section 162.431 (1963) and was signed by Presiding Judge W.L. Shoemake. Exhibit H. The parties agree that this was

the last boundary change between Farmington and Central. (MC Development's S. Brief p.19)

Section 162.431 RSMo, entitled "Boundary change - procedure - arbitration – compensation of arbitrators" governs the statutory procedures for boundary changes for Missouri public schools, and governed the last boundary change between Central and Farmington. Section 162.431; Exhibit H. In effect in 1967, section 162.431 (1963), in addition to delineating the voting procedure for the boundary changes, provides the statutory appeal process to the board of arbitration if the school districts affected do not all agree to the boundary change. Section 162.431. Notably, section 162.431 does not provide for the establishment of new school districts, but only for changes in boundary lines for already established or created school districts. Id.

Section 162.431, the controlling Missouri law governing the boundary changes for school districts, has *no* requirement that school district boundaries must be contiguous. Both Appellants concede this argument, which is fatal to their position. (MC Development S. Brief p. 19; Farmington's S. Brief p. 20). This concession was mandated by the clear and unambiguous language of section 162.431. Section 162.431 (1963) provides "[w]hen it is necessary to change the boundary lines between two six-director school districts…ten percent of the voters in any district affected…may petition the district boards of directors in the districts affected, regardless of county lines, for a change in boundaries." Id. Further, the statute provides that if one or more of the districts votes against the boundary change, "the board of arbitration shall meet and consider the necessity for the proposed changes and shall decide whether the boundaries

shall be changed as requested in the petition or be left unchanged, which decision is final." Id.

This section has been amended since 1963, but it has not been altered by the Missouri General Assembly to include a requirement that the boundary change can only occur if the affected school districts remain contiguous. Even the current language of section 162.431 (2000) reveals the continued legislative intent to allow voters to adjust boundaries without regard to contiguity. The current version of section 162.431 (2000) lists three factors upon which the Board of Arbitration must base its decision regarding a boundary change appeal after the vote: (1) the presence of school-aged children in the affected areas; (2) the presence of actual educational harm to school-aged children, and (3) the presence of an educational necessity, not of a commercial benefit to landowners or of the district benefitting for the proposed boundary adjustment. As an example of great forethought, the Missouri legislature drafted the current language of section 162.431 to prescribe the shifting of boundary lines for the "commercial benefit of landowners or of the district benefitting for the proposed boundary adjustment." This is precisely the present situation. After almost forty years, a "landowner," MC Development, and "the district benefitting for the proposed boundary adjustment," Farmington, are now, contrary to section 162.431, seeking to violate the intent of the legislature and land-grab property for commercial benefit. If the Missouri legislature intended to mandate that Missouri school districts be contiguous, then such language would have been a part of the public school district boundary statute, section 162.431 RSMo. Appellants are impermissibly attempting to read into the statute limiting language that is simply not there.

While the instant case is one of first impression in Missouri, Nebraska has definitively ruled on the issue of statutory interpretation coupled with the legality of non-contiguous school districts. The Supreme Court of Nebraska in In re Heartwell School Dist. R-4, 319 N.W.2d 68 (NE 1982), rejected the argument that a school district must consist of one compact contiguous area of land within one set of boundaries lines. Id. at 70. The Nebraska boundary changing statute does not require contiguity, although certain related statutes did limit the transfer of land be between adjoining school districts. Id. at 71. The Supreme Court refused to read the word adjoining to mean contiguous. The Supreme Court, after examining the statutes dealing with boundaries of school districts, found that "there can be no serious question that the Legislature has clearly indicated that the boundaries of school districts are not restricted to compact contiguous areas of land but may include separated and noncontiguous areas as well." Id. at 71. This Court's reasoned opinion stands in direct contrast to MC Development and Farmington's urge to distort the rules of statutory construction. The Court expressly rejected the temptation to "usurp the function of the legislative body and give a statute a meaning not intended or expressed by the Legislature." Id. The Court would not "under the guise of its powers of construction, rewrite a statute, supply omissions, or make other changes." Id. It would be difficult to speak to the point more directly.

Neither Appellant has cited any case law that holds section 162.431 requires school districts to remain contiguous. Both rely, however, on State ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County, 257 S.W.2d 262, 268 (Mo. App. 1953), for the stray remark, without citation to any Missouri authority, that in annexation

proceedings, the law does not contemplate that two portions of a district should be segregated from each other. Id. The facts of Schwerdt are dissimilar to the case herein. In Schwerdt, the issue on appeal concerned the legality of the annexation proceedings and specifically whether the "form of the ballot was improper, for the reason that it united two separate and distinct propositions in one submission to the voters so as to permit and require the acceptance or rejection of both propositions." Id. at 266. Here, there is no assertion in the pleadings, at trial, or on appeal alleging the improper form of ballot of the boundary change proceedings, not annexation proceedings, of 1967. In fact, Appellants have never asserted that the legal description of the Annexation Parcel was incorrect or in error. Accordingly, the Schwerdt remark is inapplicable and stated as dicta.

Not only are the Appellants' position unsubstantiated in statute and unsupported by case law, but it also does not reflect the current reality of Missouri school districts that are presently non-contiguous. (Trial Trans. Vol. 1, 106:16-20; 154: l. 5-8). In fact, Central is not the only non-contiguous school district in Missouri. Mr. Quinn, the Director of School Governance for DESE, who is responsible for addressing issues concerning school district boundaries on behalf of the State of Missouri testified that there are currently other school districts in Missouri that are non-contiguous (Trial Trans. Vol. 1, 106:16-20; 154: l. 5-8) and that the state of a non-contiguous school district is "not unusual." (Trial Trans. Vol. 1, 127-128; Exhibit H; L.F. 256). As articulated by Mr. Quinn, the position of the Missouri state agency responsible for overseeing all of the state's public schools, DESE, is to acknowledge the existence of non-contiguous territory in numerous districts throughout the state. Id. Were MC Development's mere assertions

legally mandated, then DESE would not permit such non-contiguous territories to exist, as it does, according to Mr. Quinn, the agency's expert on such issues. Notably, even MC Development and Farmington's "key" witness, former Superintendent Henry, testifies that having a non-contiguous school district (an elementary school attached to a non-contiguous secondary school) today does not violate the law. Trans. Vol. 1 p. 202.

II. Statutory Interpretation Forbids Rewriting Section 162.431 and Injecting Language in the Plain and Unambiguous Statutory Text

Appellants assert that even though section 162.431 RSMo does not state that school district boundaries must be contiguous, the Court should look outside of the statute to attach a meaning to it which is not inherent in a plain face reading of its text.

However, looking beyond the plain and ordinary meaning of the language in section 162.431, was not proper in this instance under the primary rules of statutory interpretation. Only when the language of a statute is ambiguous or if its plain meaning would lead to an illogical result, should the court look past the plain and ordinary meaning of a statute. Wheeler v. Bd. Of Police Comm'rs of Kansas City, 918 S.W. 2d 800, 803 (Mo. App. 1996). Giving section 162.431, its plain meaning would not lead to an illogical result. No ambiguity is created in the language of the statute itself. Accordingly, it is improper to look beyond section 162.431 to *find* ambiguity, and thereby, impose on it a meaning created from the combination of other statutes when the language of section 162.431, is unambiguous and clear on its face. There is absolutely no language in section 162.431 which mandates that school district boundaries can only be changed if they remain contiguous.

Appellants are asking this Court to insert the word "contiguous" into the statute despite the fact that there is no evidence that this was the intent of the Legislature or that there is ambiguity in the text of the statute which would require such an interpretation. The Court "must be guided by what the Legislature said, not by what the Court thinks it meant to say." Missouri Public Service Co. v. Platte-Clay Electric Cooperative, 407 S.W.2d 883, 891 (Mo. 1966). Accordingly, this Court should refrain from injecting a word - a requirement - into the language of section 162.431 RSMo. The Court "may not engraft upon the statute provisions which do not appear in explicit words or by implication from other words in the statute." Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 402 (Mo. 1986) (citing Wilson v. McNeal, 575 S.W.2d 802 (Mo. App. 1978)).

If the Missouri legislature intended to require school district boundary changes to result in contiguous boundaries, the legislature would have included the word "contiguous" in the language of section 162.431 RSMo. The legislature has demonstrated its purposeful inclusion of the word "contiguous" in section 162.171 - the reorganization statute. As the legislature clearly has exercised use of the word "contiguous" in only one school district boundary statute, its failure to include the word "contiguous" in section 162.431 RSMo should be viewed as a purposeful omission rather than a negligent oversight which this Court must correct.

III. School District Statutes Providing for the Creation, Consolidation, Annexation, and District Boundary Changes Do Not Have A Requirement of Contiguousness

Both Appellants claim this Court should reject the plain wording of section 162.431 and interpret it in context with the other statutes that are *pari materia* to section 162.431. Even if this Court were to look beyond the unambiguous text of section 162.431, all Missouri statutes providing for the creation, consolidation, annexation, and shifting of boundary lines do not have a contiguousness requirement. The *only* school district statute that contains the word "contiguous" is the reorganization statute, section 161.171, RSMo, which does not apply in the instant case.

A Missouri public school district's boundary can be changed in approximately six different ways: through a boundary change election, an annexation election, a consolidation election, a reorganization plan submitted to the state board of education, the lapse of a school district due to bankruptcy, or the district's loss of accreditation. Trial Trans. Vol. 1, 144: 10-25; 145: 1-7. Appellant Farmington, however, makes the sweeping statements that "all other statutes dealing with creation, organization and consolidation of school districts require contiguous districts" (Farmington's Suggestions in Opposition to Central's Application to Transfer p. 3) and "[n]o statute exists allowing for a school district to have non-contiguous territory." (Farmington's S. Brief p. 20). These statements are sharply inaccurate as, in fact, only one statute relating to the specific reorganization plans requires contiguous districts.

Section 162.081 RSMo (2000), relating to the lapse of a school district is one example of a statute that, contrary to Farmington's far-reaching assertion, does not require contiguous districts. Section 162.081 RSMo, provides procedures for school districts following the lapse of their district after failing to meet accreditation status for

two school years or by failing to provide the minimum hours and days of instruction required by state law. The statute provides that upon lapse, "[t]he territory…may be attached to *any* district for school purposes." Section 162.081.1 RSMo (emphasis added). The statute purposefully refrains from proscribing that the lapsed district must be attached to a contiguous district. To the contrary, the statute provides that the lapsed portion may be attached to "any" district. Id. In fact, the contiguous status, or even the adjoining status, of the land to which a lapsed district can attach was irrelevant to the Legislature as evidenced by the fact that in 1993, the word "adjoining" was removed from the original version of the statute.[10] Therefore, contrary to Appellant's assertion that all statutes dealing with creation, organization and consolidation of school district require contiguous districts, section 162.081 RSMo, does not contain a contiguous requirement, nor does it even require that the lapsed district attach to adjoining land, as this constraint was purposefully removed from the text of the statute in 1993.

Section 162.451 RSMo (2000), which governs the dissolution of a district upon petition of the district's voters is another example of a statute which defies Appellant's assertion that all statutes dealing with creation, organization and consolidation of school districts require contiguous districts. Section 162.451 RSMo, does not require that upon a vote for dissolution of a district, the district must be annexed or incorporated into a

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[10] When originally enacted in 1963, section 162.081.1 RSMo, provided that when a school district lapsed, the "the territory theretofore embraced within the lapsed district or any portion thereof, shall be attached to any adjoining district for school purposes…." The 1993 amendment removed the word "adjoining" from the phrase.

contiguous district. Contrarily, the statute provides that, "the district shall be dissolved and the same territory included in the district may be annexed as provided by section 162.081." Id. Section 162.081 RSMo (2000), is the lapse statute as discussed above which provides that upon lapse of a district, the district may be attached to "any" district. Neither section 162.081 nor section 162.451 RSMo mention the word "contiguous," or even the requirement of "adjoining."

Section 162.223 RSMo (1969), which provides for consolidation of two or more school districts also does not provide that school districts must be contiguous. In its brief before the Missouri Court of Appeals, MC Development claimed that section 162.223, "demonstrates the intent of the legislature that a school district be composed of contiguous territory." (MC Development S. Brief p. 19). Section 162.223, however, was not in effect in 1967 as it was enacted in 1969. Irrespective of this oversight, the term "contiguous" is completely absent from the language of the statute. Section 162.223 RSMo does provide that voters in two or more "adjacent" districts may petition for consolidation. "Adjacent" land is the only spacial requirement for consolidation pursuant to section 162.223 RSMo. Again, despite Appellant's assertions, this statute does not require contiguous school districts.

Similar to section 162.223 RSMo, section 162.211 RSMo (2000), relating to the establishment of seven director school districts only requires that voters wishing to establish a school district be from two or more "adjacent" districts. While section 162.211 solely pertains to establishment or creation of a new school district, it is void of the requirement of contiguousness.

As demonstrated above, Appellants', by their sweeping statements that all statutes require districts to be contiguous, are ignoring the plain language of the statutes and are interpreting "adjacent" as meaning "contiguous." This is in violation of rules of statutory construction by requiring this Court to read unlike terms to have like meaning. "The rule of construction is to the contrary: 'When different terms are used in different subsections of a statute, it is presumed that the legislature intended the terms to have different meaning and effect.'" BHA Group Holding Inc. v. Pendergast, 173 S.W.3d 373, 378 (Mo. App. 2005). Further, this Court has defined *adjacent*, *adjoining*, and *contiguous* to have different meanings and that specifically adjacent does not equate to contiguous."[11] Hauber v.Gentry, 215 S.W. 2d 754 (Mo. 1948).

The remainder of Appellants' argument that Missouri law does not allow non-contiguous school districts rests precariously on the shoulders of Missouri's school district reorganization statute section 162.171 RSMo (1963) and the Missouri Constitution. This reliance is misplaced.

Section 162.171 is specific to the Missouri public school **reorganization process**, and is **not** applicable to all boundary changes. Section 162.171, entitled "Reorganization plans may be proposed," provides that a "county commission may…submit to the state

[11] This Court, referencing Webster's New International Dictionary, 1935, explained the different meaning of these three terms in that "objects are *adjacent* when they lie close to each other, but not necessarily in actual contact…[t]hey are *adjoining* when they meet at some line or point of junction…*[c]ontiguous* properly applies to objects which touch along a considerable part of the whole of one side." (emphasis in original).

board of education, specific plans for reorganization of school districts of the state." The statute further states that the county commission's plans for reorganization for a "proposed district shall be composed of contiguous territory." Id. Section 162.171 is not applicable to the instant case. It only governs the process in which school districts become reorganized. There is no evidence, and MC Development has produced none, that the county commission's plans for reorganization of what ultimately would be Central would be composed of non-contiguous territory, in purported violation of the statute. Significantly, MC Development admits Central was contiguous after the reorganization process in 1966. (See MC Development's S. Brief p. 18 "At the time of the reorganization of Central R-3 and Farmington R-7 in 1966, it was not disputed that both districts were composed of contiguous land.") The reorganization of multiple school districts to establish the Central School District in 1966 did not violate section 162.171 RSMo by MC Development's own admission. Id.

Further, section 162.171 is the *only* statute that requires contiguousness out of the numerous statutes that relate to school district territorial boundaries. Appellants ask this Court to look at other statutes which are *pari materia* to section 162.431. Although that would be improper, as detailed in the argument above, such an interpretation will result in affirming the trial court judgment in that not one statute, except section 162.171, even has the term contiguous within its text.

IV. Section 162.431 does not violate the Missouri Constitution

Without articulating this theory to the trial court, Appellants now claim that school districts are constitutionally required to be composed of contiguous territory because

Article IX, § 1 (b) of the Missouri Constitution states, "Specific schools for any contiguous territory may be established by law." Farmington provides the Missouri Supreme Court with only two options: "declare section 162.431 in violation of the Missouri Constitution and thus nullify the statute" or interpret it to say what it does not say and rewrite section 162.431. (Farmington S. Brief p. 21). Not only is this argument without merit; it has not been preserved for appeal.

A. Appellants Have Not Preserved their Constitutional Attack

Constitutional issues must be raised at the first available opportunity and preserved at each step of the judicial process or else they are waived. Strong v. State, 263 S.W.3d 636, 646 (Mo. 2008). To properly raise a constitutional issue, a party must: 1) raise the question at the first available opportunity; 2) specifically designate the constitutional provision alleged to have been violated, such as by explicit reference to the article and section, or by quotation from the particular provision; 3) state the facts showing the violation; and 4) preserving the constitutional questions throughout for appellate review. S.A. v. Miller, 248 S.W. 3d 96, 100 (Mo. App. 2008). "Additionally, a constitutional challenge to a statute must not only have been presented to the trial court, but the trial court must have ruled thereon." Id. "The purpose for this requirement is to give the trial court an opportunity to fairly identify and rule on the issues and to prevent surprise to the opposing party." Id.

Here, the pleadings are not only void of any reference to the Missouri Constitution, but they are void of any averment of a particular constitutional provision alleged to have been violated or reference to an explicit article and section. The word

"constitution" was never even uttered during the trial in this matter. See full Trial Transcript. The very first moment Appellants allege that section 162.431 violates the Missouri Constitution and thus is a nullity because it would allow the mere existence of a non-contiguous school district is on appeal. A party may not raise such issues as an afterthought in a post-trial motion or on appeal. Because these arguments were not presented below and only presented on appeal as an afterthought, they are waived. BHA Group Holding Inc. v. Pendergast, 173 S.W.3d 373, 382 (Mo. App. 2005).

B. There is No Private Right of Action and Art. IX, § 1(b) is not Self-Executing

The Missouri Constitution, Art. IX, § 1(b) states: "Specific schools for any contiguous territory may be established by law." This Article is not self-executing, therefore, no private cause of action exists. Appellants have a cognizable private cause of action for alleged violations of Art. IX, § 1(b) only if the Missouri General Assembly enacted legislation authorizing suits for such constitutional violations. See State ex rel. Rolla School Dist. No. 31 v. Northern, 549 S.W.2d 596 -597 (Mo. App. 1977). The Court held that although Missouri Constitution Article VI, § 26(g), states that "All elections under this article may be contested as provided by law" the General Assembly has not enacted a law providing for the contesting of school bond elections and Article VI, § 26(g) is not self-executing. Consequently, the courts of this state have no jurisdiction to entertain actions to contest the results of school and elections because there is no common law right to do so and no statutory authority therefore exists. Id. In the instant case, the Missouri General Assembly has not enacted legislation to create a

private cause of action for alleged violations of Art. IX, § 1(b). Therefore, in addition to Appellants' failure to preserve this issue for appeal, the Missouri General Assembly has not provided a right to contest non-contiguous school district's territorial boundaries.

C. Section 162.431 Does Not Violate the Missouri Constitution

Even if Appellants' claim of error was properly preserved, this argument still fails. Section 162.431 RSMo, is not prohibited by, or in contradiction to, the Missouri Constitution as Article IX, specifically contemplates "establishment" of new or newly created school districts, as opposed to mere boundary changes. Section 162.431 does not pertain to the *establishment* or creation of a new school district. Section 162.431 governs boundary changes of already established school districts, and not the establishment of a new school district. Unlike section 162.431, the purpose of the reorganization statute is to create or establish a whole new school district out of many school districts.

Further, as noted by Appellants, in contrast to the United States Constitution which provides specific grants of limited power, the Missouri Constitution establishes specific limitations on the state legislature's powers. Accordingly, except for the limitations imposed by the Missouri Constitution, the power of the legislature is "unlimited and practically absolute." State v. Day-Brite Lighting, Inc., 240 S.W. 2d 886, 892 (Mo. banc 1951). The power of the state legislature includes the power to enact any law not prohibited by the Missouri Constitution. State, Inf. of Danforth v. Merrell, 530 S.W.2d 209, 213 (Mo. banc 1975). Here, the legislature, with the power to enact any law not prohibited by the Missouri Constitution, enacted section 162.431 without the contiguousness requirement for boundary changes within school districts. As further

noted by Appellants, a statute is presumed to be valid and will not be declared unconstitutional unless it clearly contravenes a constitutional provision. Therefore, section 162.431 must be presumed valid as written.

D. Appellants' Argument are Barred by Laches and Equitable Estoppel

Appellants' declaratory judgment action is barred by the doctrine of laches and/or equitable estoppel. The boundary change between Farmington and Central occurred in 1967. Nearly *forty* years later, MC Development and Farmington, through its cross-claim, filed an action for declaratory judgment asking the trial court to resolve a boundary dispute without regard to the passage of time. The purpose of the doctrine of laches is to avoid unfairness which can result from the prosecution of stale claims. Midwest Petroleum Co. v. American Petrofina, Inc., 603 F. Supp. 1099, 1113 (E.D. Mo. 1985) (citing Goodman v. McDonnell Douglas Corp., 606 F.2d 800, 805 (8th Cir.1979). The unfairness and disadvantage to Central, as well as any other defendant, resulting from a four decade delay in prosecution of this matter is readily apparent.

Parcel 13 has been assessed to Central for over forty years. Despite Appellant Farmington's knowledge of the assessment, Dr. Henry, Superintendent of Farmington, testified that it would be illegal for Central to be non-contiguous in 1967, yet Farmington neglected to raise this issue for decades. Trial Trans. Vol. 1 p.201. Accordingly, Appellants' belated challenge to the assessment should be barred by the doctrine of laches and estoppel.

VI. The Trial Court Did Not Err in Finding the Evidence of the Assessor as More Persuasive than the School District's Maps in Determining the Legal Boundary of the Districts

MC Development contends as a second argument under its first point on appeal, that the trial court erred "by declaring the records of the Assessor are more authoritative than the records of the school district." (MC Development's Substitute Brief p. 21). MC Development, contrary to the standard of review, states that the records of the school district must trump the records of the assessor when determining what the actual boundaries are for the school districts. When reviewing a court-tried case, the Court of Appeals views all evidence and inferences in the light most favorable to the judgment and disregard all contrary evidence and inferences. Ortmann v. Dace Homes, Inc., 86 S.W. 3d 86 (Mo. App. E.D. 2002). The Court must defer to the trial court's determinations as to the credibility of witnesses. Id. The trial court may believe all, part, or none of any witness's testimony. Id. The Court of Appeals should "accept all inferences and evidence favorable to the judgment and disregard all contrary inferences." Id. Furthermore, this Court is bound by the trial court's factual findings if such findings are supported by substantial evidence. Id. Deference must be given to the trial court in judging the credibility of witnesses, and all factual issues upon which no specific findings have been made should be interpreted as having been found in accordance with the result reached. Id.

Here, the trial court found in its judgment that "although the assessor does not make school boundary decisions, the assessor's maps and records are the best and most

persuasive evidence, *in this case,* with which this court has been presented in order to determine what the school boundaries are." L.F. 143 (emphasis added). Therefore, pursuant to the standard of review, this Court must accept as true this finding of fact.

Farmington specifically asserts that the trial court misapplied the law as set forth in section 162.841 in determining what the actual school boundaries were. Section 162.841 RSMo (1963) states in full as follows:

> **162.841 Records to be kept – changes to be reported**
>
> The district secretary shall record a copy of all reports made by him to the state department of elementary and secondary education. He shall also record in the record book of the district a correct plat of the district, changing the same as often as alternation is made in the boundary lines by the proper authority, and shall furnish the county clerk and state department of elementary and secondary education with copies of the same and shall officially notify them of any changes whenever made.

Even though section 162.841 (1963) requires school district's to record a correct plat of its territory; there was no legal description of the entire boundaries of either school district entered into evidence. Therefore, the court was required to look at all the evidence and determine, based on the credibility of the witnesses and the weight appropriated to each witnesses' testimony, what the actual school district boundaries were, and therefore, where Parcel 13 lays in respect to those boundaries. Accordingly, the actual legal boundaries of the school district's territory is not whatever the school district secretary says it is – but the law requires an examination of all the evidence.

There is absolutely no law that mandates that school districts are the sole authority or provide the best evidence in determining their own legal territory boundaries. Appellants distort section 162.841 in their attempt to land-grab Parcel 13, by arguing that this Court should reject all the credible evidence of the legal boundaries of the school district in respect to Parcel 13, and base its ruling on what type of documents the school district has in its possession, even if it is a old highway map, and not the legally required plat.

Mr. Steven Hutchison, Central's designated expert has created a plat to accompany his surveys on approximately 90% of his 15,000-20,000 land surveys. Trial Trans. Vol. 2, 302: 21-23. All parties stipulated to Mr. Hutchison's recognition as a land surveying expert. Trial Trans. Vol. 2, 296: 14-24. Mr. Hutchison testified that *a legal description is considered more authoritative for surveying work than a map*. Trial Trans. Vol. 2, 302: 1-11; 350: 17-20 ("[t]he map is supposed to be a shorthand of what the surveyor did, so the surveyor's—the description of record is supposed to stand over a map if there's a disagreement (emphasis added). The legal description is more authoritative because maps are created from legal descriptions; legal descriptions are not generally created from maps. Trial Trans. Vol. 2, 302: 1-11; 350: 17-20.

Mr. Hutchison was provided a copy of the legal description of the Boundary Change Notification of 1967. Trial Trans. Vol. 2, 305: 20-22; Exhibit H. Unlike MC Development's expert, Mr. Hutchison prepared an actual plat of the Annexation Parcel, utilizing the legal description incorporated into the Boundary Change Notification. Central's Exhibit E; Trial Trans. Vol. 2, 304: 19-25. This plat[12] included the Property

[12] The Plat is Exhibit E

purchased by MC Development, the Annexation Parcel, and Parcel 13, which had been assessed as part of Central since at least 1950. Central's Exhibit E; Trial Trans. Vol. 2, 305: 10-25; 306: 1-14. His plat broke down the metes and bounds legal description call-by-call, with corresponding numbers providing guidance to the same.[13] Exhibit F; Trial Trans. Vol. 2, 309: 15-25; 310: 13-24; 311: 1-25; 12: 1-25. The description of the Boundary Change Notification (points 2-6 on Exhibit E) followed existing boundary lines, including those of the Kocher property. Trial Trans. Vol. 2, 316: 24-25; 317: 1-7. *All parties stipulated Mr. Hutchison's plat of the legal description, Central's Exhibit E, accurately represents the call-by-call recitation of the legal description created by the 1967 boundary change*. Trial Trans. Vol. 2, 312: 1-25; 313: 1-4.

Not only was Mr. Hutchison capable of creating a plat of the 1967 Boundary Change Notification, but he also platted MC Development's Property.[14] Central's Exhibit E (see black line); Trial Trans. Vol. 2, 315: 9-25; 316: 1-2. Mr. Hutchison platted MC Development's Property by utilizing a survey prepared by MC Development's own expert, Mr. Truska. Trial Trans. Vol. 2, 316: 15-23. Mr. Hutchinson also platted the legal description of Parcel 13 contained in the Assessor's records from 1966. Exhibit E (see gray region); Trial Trans. Vol. 2, 314:12-25; 315: 1-8; 329: 13-25; 330: 1; 353: 15-20. The gray region of Central's Exhibit E, Parcel 13, represents the area assessed to

[13] The metes and bounds legal description of the Annexation Parcel is demarcated by the thick red line on the plat, with the numbers corresponding to the directional changes listed in the legal description attached to the 1967 Boundary Change Notification.

[14] MC Development's Property is outlined in black in the lower left corner of Exhibit E.

Central as far back as 1950, which remained in Central after the 1967 boundary change, because Parcel 13 fell outside the plat of the boundary change. Trial Trans. Vol. 2, 314: 12-25; 315: 1-8. Thus, the entirety of Mr. Hutchison's work consisted of plats created from legal descriptions, which is the authority for his profession. Central's Exhibit E; Plaintiff's Exhibit 7; Trial Trans. Vol. 2 302: 1-11; 314:12-25; 315: 1-8; 350: 17-20; 353: 15-20.

MC Development next directs this Court to State ex rel King City, Missouri R-1 School District v. Ueligger, 430 S.W. 2d 433, 435 (Mo. App. 1968). This case is not helpful to Appellant because no party disputes that the Assessor cannot on its own change school district boundaries. However, the Assessor's lack of power to change boundaries does not mean that its records of school districts' territorial boundaries are not authoritative.

Significantly, however, the Ueligger opinion cited by MC Development supports the trial court's judgment. The Ueligger's opinion holds that the Board of Arbitration's decision is final and cannot be collaterally attacked by another separate proceeding. State ex rel King Cit, Missouri R-1 School District v. Ueligger, 430 S.W. 2d 433, 435 (Mo. App. 1968). Here, as in Ueligger, MC Development is collaterally attacking the Board of Arbitration's decision which affirmed the vote of the residents of Farmington to accept the Annexation Parcel (colored yellow in Exhibit E) into its boundaries leaving Parcel 13 still within Central's territorial boundaries. This collateral attack cannot be circumvented by claiming the Board of Arbitration's decision addressed only whether the Annexation Parcel became part of Farmington and did not address the designation of Parcel 13. The

Board of Arbitration's decision created new boundary lines between Farmington and Central. It is precisely the determination of these boundary lines that is at issue in this matter. If Appellants believe that it is erroneous for a non-contiguous school district to exist and thus the judgment of the Board of Arbitration was erroneous, then Appellants' remedy was by appeal of the Board's judgment, not by attacking the judgment in a preceding four decades later. As held by the Missouri Supreme Court in Metcalf v. American Surety Co. of New York, 232 S.W.2d 526, 529-30 (Mo. 1950), "nothing is better settled than the principle that an erroneous judgment has the same effect as to res judicata as a correct one" in that it "when a court has jurisdiction, it has jurisdiction to commit error" and if it was to be asserted that the judgment rendered in the former action was erroneous, the plaintiffs' remedy was by appeal and not by attacking the judgment as void in another proceeding." The Board of Arbitration decision is final, and appellants cannot now dispute it.

Also, MC Development attempts to refute the accuracy of the Assessor's records through its "expert" Mr. Truska based on his interpretation of the Assessor's records by his "overlay maps" splashed with green and red blotches. Mr. Truska created for trial what he purported to be an "overlay" for certain maps provided by MC Development. Exhibit 7-A. Trial Trans. Vol. 1, 53: 4-6. Certain of these "overlays" allegedly depict differences between maps prepared by DESE, the Assessor, and Farmington; however, no explanation was provided as to why or how these differences might appear, so as to suggest that any of the maps were any more authoritative or accurate than another. Trial Trans. Vol. 1, 94: 5-9. Moreover, Mr. Truska's "overlays" were created by simply

changing the map's scale. Trial Trans. Vol. 1, 70: 24-25; 71: 1-3. Mr. Truska stated he merely used the corners from the maps he was provided, rather than using any mathematical equations, to enlarge the maps and create his "overlay" maps. Trial Trans. Vol. 1, 45: 11-13; 49: 13-14. All of Mr. Truska's "overlays" are maps and not plats. Trial Trans. Vol. 1, 72: 16-21; 91 13-23. Significantly, Mr. Truska is wholly unaware of who created the plats from which he generated his map "overlays," which he asserts represents the boundary lines between the two districts. Trial Trans. Vol. 1, 93: 3-5. Furthermore, Mr. Truska admitted he knew nothing about the plat that he was provided and enlarged. Trial Trans. Vol. 1, 93: 6-9.

In addition to failing to present any surveyor plats, Mr. Truska's testimony listed at least six differing conclusions to the trial court as to where the boundary lines may, or may not be, located. Trial Trans. Vol. 1, 95: 4-17. Most significantly, Mr. Truska testified he was unable to attest with, a reasonable degree of certainty as a professional land surveyor, as to which of the six maps he prepared was the ultimate and correct version of the boundary lines between the two school districts, the precise issue in this case. Trial Trans. Vol. 1, 96: 20-25; 97: 1. In fact, Mr. Truska did not even attempt to identify the definitive boundary line between the two school districts. Trial Trans. Vol. 1, 97: 2-5. Accordingly, Mr. Truska's testimony and his "overlay maps" should have been given no weight by the trial court.

Moreover, Farmington's own documents belie its assertion regarding the applicability of section 162.841. While Farmington asserts the 1967 document attached to the Notification of Boundary Change was an accurate depiction of the district's

boundaries, this allegation is controverted by Farmington's numerous other documents submitted. The numerous differing maps submitted by both Appellants suggest none of their maps are authoritative, meaning Farmington does not have any determinative plat, as required under the statute that Farmington cites as authority, section 162.841. Additionally, Farmington suggests the 1967 document is a plat, when in fact the document is actually an old and unreliable highway map. As Mr. Hutchinson established at trial, the highway map attached to Exhibit 7 is of no value to a professional surveyor in terms of determining a legally accurate boundary. Consequently, Farmington's reliance on section 162.841 is misplaced, and in fact, vitiates its claims regarding the statute's applicability.

MC Development also cites Reorganized School District R-I of Crawford County v. Reorganized School District R-III of Washington County, 360 S.W.2d 376 (Mo. App. E.D. 1962). Even though this case deals with two districts attempting to fix the borders between them, the key facts in Crawford are distinctly different to the case at hand. In Crawford, unlike in the instant case, when both districts submitted their plan for the boundary change vote, they failed to submit a metes and bounds legal description of property that each district was to embrace. Id. at 378. Instead, all that was presented was a map with the proposed reorganization. Here, in the instant case, an agreed upon metes and bounds legal description of the Annexation Parcel was created. Specifically, the trial court found that last boundary change occurred between Farmington and Central in 1967, after a school election and referral to a Board of Arbitration. L.F. 141. The Boundary Change Notification issued after the Board of Arbitration's decision identifies the

Annexation Parcel, in metes and bounds, which includes a portion of MC Development's Property. L.F. 141.

The 1967 Boundary Change Notification acted only to detach the Annexation Parcel from Central and give it to Farmington. L.F. 144. Any property located within Central prior to the 1967 boundary change, which was not a part of the Annexation Parcel, remained part of Central after the boundary change. L.F. 144. Moreover, MC Development presented no evidence as to when Parcel 13 would have become part of Central. It was incumbent upon MC Development to assert facts substantiating their assertion; however, their appeal is devoid of any substantiating facts on the issue. The legal metes and bounds description of the boundary change establish a partial boundary line between the two districts, and therefore, because Parcel 13 was not a part of the Annexation Parcel, it was part of Central before the 1967 boundary change, and remained so afterward. L.F. 144; Exhibit E.

Accordingly, the trial court did not err in finding that the maps maintained by school districts herein are not determinative of the districts' boundaries. L.F. 142. Farmington has not cited a single case to support its proposition that the ultimate authority in determining boundaries is the school districts. Instead, the general practice of Missouri school districts and DESE is to refer to the county assessor's office when questions arise as which school district certain property resides. L.F. 142. The trial court found the assessor's records to be the best and most persuasive evidence available to the court to determine where the districts' boundaries are located. L.F. 143. Accordingly,

MC Development first point and Farmington's first and second points on appeal should be denied.

RESPONSE TO MC DEVELOPMENT'S SECOND POINT ON APPEAL AND FARMINGTON'S THIRD POINT ON APPEAL

II.

THE TRIAL COURT DID NOT ERR IN DECLARING THAT PARCEL 13, THE PROPERTY IN DISPUTE, LIES WHOLLY WITHIN THE TERRITORIAL BOUNDARIES OF CENTRAL, AND NOT WITHIN THE TERRITORIAL BOUNDARIES OF FARMINGTON BECAUSE THE TRIAL COURT JUDGMENT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE IN THAT THE COMPETENT AND SUBSTANTIAL EVIDENCE ADDUCED AT TRIAL ESTABLISHED THAT PARCEL 13 HAS CONTINUOUSLY BEEN LOCATED WITHIN THE BOUNDARIES OF CENTRAL SINCE THE 1950s.

MC Development's second point on appeal contends the judgment was against the weight of the evidence because the trial court "ignored" the records of Farmington as to its boundary at the time of reorganization and the testimony of Dr. B. Ray Henry, the former Superintendent of Farmington. (MC Development's S. Brief p. 25). Similarly, Farmington contends in its third point on appeal that the judgment was against the weight of the evidence because the trial court relied on the assessor's records as opposing to the District's records. In support of these contentions, MC Development asserts Dr. Henry stated at trial that in 1966, when Farmington became a reorganized district, a map was prepared for the newspapers. Exhibit 7. MC Development claims that Exhibit 7 reflects Farmington's reorganization boundary with the proposed change shaded in. As explained in detail below, the trial court should not have given the former superintendent's

testimony any weight in light of substantial evidence to the contrary provided by Central. The former superintendent's lay and colloquial testimony is in clear contrast to the concrete and fully substantiated testimony provided by the District's expert along with the plat he created establishing the proper disposition of Parcel 13. Further, as also articulated in the response to MC Development's Point I, the vague highway maps of Farmington are not authoritative in the instant case as to the legal boundaries of Central.

MC Development, in 2004, purchased the Property located in St. Francois County, Missouri, from Donald and Mary Kocher. Trial Trans. Vol. 1 62: 9-10; L.F. 139. The legal description of the Property is contained in MC Development's Exhibit 10 and the boundary of the Property is depicted as an area within a bold black line in the lower left hand side on Exhibit E. L.F. 139. Prior to purchasing the Property, MC Development erroneously concluded, based solely upon the owner's knowledge of the area and the community, the Property was located within the boundaries of Farmington. Trial Trans. Vol. 1, 232: 24-25; 233: 1-12. Further, prior to closing MC Development did nothing to verify the school district in which the Property was located. Trial Trans. Vol. 1, 233: 5-12. At the closing of the purchase of the Property, the Kochers delivered an Assessor's map to MC Development which depicted school district boundary lines in relation to the Property which showed Parcel 13 to be within Central's boundaries. Trial Trans. Vol. 1, 233: 13-18; 1, 233: 19-25; 234: 1-25; 235: 1-2. Thereafter, the Assessor informed MC Development that Parcel 13 has been continuously assessed as a part of Central as far

back as 1950.[15] Trial Trans. Vol. 1, 184: 9-16. Parcel 13 is depicted as the area shaded in grey on Exhibit E. Now, because of MC Development's failure to do due diligence with respect to the Property's location within the school districts' boundary lines, it is now, through this litigation, attempting to recreate and reinvent the school district boundary lines.

Central was created through the reorganization of several school districts, including the Esther School District, Elvin School District, and Flat River School District in 1966. Trial Trans. Vol. 1, 200: 2-27. Then, a year later, at the annual school election held in April of 1967, a proposal to change the boundary line through an annexation process between Farmington and Central (which at the time was known as the St. Francois County [Central] School District) appeared on the ballot of both school districts. L.F. 200. The proposal was passed in Farmington, but failed in Central, resulting in the creation of a Board of Arbitration to resolve the dispute. L.F. 242-48. The Board of Arbitration decided the boundary change was necessary and ruled in favor of Farmington R-VII. L.F. 249.

Following the ruling by the Board of Arbitration, a formal "Notification of Boundary Change Between Farmington R-VII and St. Francois County (Central) R-III" (hereinafter the "Boundary Change Notification") was filed in the Office of the St. Francois County Clerk on June 6, 1967. L.F. 196, 242-49. The Boundary Change Notification contained the legal description of a tract of land detached from the St.

[15] The subpoena issued to the Assessor's Office only requested records as far back as 1950.

Francois County (Central) R-III School District and made a part of Farmington (hereinafter the "Annexation Parcel"). L.F. 196, 200, 242-249. The Annexation Parcel is depicted as a yellow shaded area bounded by a red line on Exhibit E. As shown on Exhibit E a portion of the boundary line of the Annexation Parcel (from corner 2 to corner 6) created by the Boundary Change Notification bisects MC Development's Property. The boundary between Farmington and Central has not been changed since June of 1967. L.F. 141. Finally, Parcel 13, the property in dispute, has been continually assessed to Central or its predecessors as far back as 1950. Trial Trans. Vol. 1, 184: 9-16. Parcel 13 continued to be assessed to Central through its inception and the 1967 boundary change up to the current date. Trial Trans. Vol. 1, 183: 12-15.

Mr. Steven Hutchison, Central's designated expert has thirty-one years of land surveying experience, and has performed work in thirteen (13) different states. Exhibit D; Trial Trans. Vol 2, 294: 9-12. In those thirty-one years of experience, he has performed between 15,000-20,000 land surveys. Trial Trans. Vol. 2, 296: 10-13. Notably, Mr. Hutchison has not only performed work for Central, but also for Farmington as well as Farmington's counsel. Trial Trans. Vol. 2, 294: 13-24. Mr. Hutchison has created a plat to accompany his surveys on approximately 90% of his 15,000-20,000 land surveys. Trial Trans. Vol. 2, 302: 21-23. All parties stipulated to Mr. Hutchison's recognition as a land surveying expert. Trial Trans. Vol. 2, 296: 14-24.

Mr. Hutchison testified that a legal description is considered more authoritative for surveying work than a map. Trial Trans. Vol. 2, 302: 1-11; 350: 17-20 ("[t]he map is supposed to be a shorthand of what the surveyor did, so the surveyor's—the description

of record is supposed to stand over a map if there's a disagreement."). The legal description is more authoritative because maps are created from legal descriptions, legal descriptions are not generally created from maps. Trial Trans. Vol. 2, 302: 1-11; 350: 17-20.

Mr. Hutchison was provided a copy of the legal description of the Boundary Change Notification of 1967. Trial Trans. Vol. 2, 305: 20-22. Unlike MC Development's expert, Mr. Hutchison prepared an actual plat of the Annexation Parcel, utilizing the legal description incorporated into the Boundary Change Notification. Exhibit E; Trial Trans. Vol. 2, 304: 19-25. This plat, Central R-III Exhibit E, included the Property purchased by MC Development, the Annexation Parcel, and Parcel 13, which had been assessed as part of Central since at least 1950. Exhibit E; Trial Trans. Vol. 2, 305: 10-25; 306: 1-14. His plat broke down the metes and bounds legal description call-by-call, with corresponding numbers providing guidance to the same.[16] Exhibit F; Trial Trans. Vol. 2, 309: 15-25; 310: 13-24; 311: 1-25; 12: 1-25. The description of the Boundary Change Notification (points 2-6 on Central R-III's Exhibit E) followed existing boundary lines, including those of the Kocher property. Trial Trans. Vol. 2, 316: 24-25; 317: 1-7. All parties stipulated Mr. Hutchison's plat of the legal description, Central R-III's Exhibit E, accurately represents the call-by-call recitation of

[16] The metes and bounds legal description of the Annexation Parcel is demarcated by the thick red line on the plat, with the numbers corresponding to the directional changes listed in the legal description attached to the 1967 Boundary Change Notification.

the legal description created by the 1967 boundary change. Trial Trans. Vol. 2, 312: 1-25; 313: 1-4.

Not only was Mr. Hutchison capable of creating a plat of the 1967 Boundary Change Notification, but he also platted MC Development's Property.[17] Exhibit E (see black line); Trial Trans. Vol. 2, 315: 9-25; 316: 1-2. Mr. Hutchison platted MC Development's Property by utilizing a survey prepared by MC Development's own expert, Mr. Truska. Trial Trans. Vol. 2, 316: 15-23. Mr. Hutchinson also platted out the legal description of Parcel 13 contained in the Assessor's records from 1966. Exhibit E (see gray region); Trial Trans. Vol. 2, 314:12-25; 315: 1-8; 329: 13-25; 330: 1; 353: 15-20. The gray region of Exhibit E, Parcel 13, represents the area assessed to Central as far back as 1950, which remained in Central after the 1967 boundary change, because Parcel 13 fell outside the plat of the boundary change. Trial Trans. Vol. 2, 314: 12-25; 315: 1-8. Thus, the entirety of Mr. Hutchison's work consisted of plats created from legal descriptions, which is the authority for his profession. Central's Exhibit E; Plaintiff's Exhibit 7; Trial Trans. Vol. 2 302: 1-11; 314:12-25; 315: 1-8; 350: 17-20; 353: 15-20.

MC Development contends in its second point on appeal that the judgment of the trial court ignored the testimony of Dr. Henry, the former Superintendent of Farmington. Dr. Henry, however, testified and relied on Exhibit 7 to depict a portion of the boundary line resulting from the 1967 election. Significantly, Mr. Hutchison disputed that the map attached to MC Development's Exhibit 7 was a "plat" and recognized it as an old

[17] MC Development's Property is outlined in black in the lower left corner of Central R-III's Exhibit E.

Missouri Highway map. Trial Trans. Vol. 2, 323: 1-22. Highway maps are used simply to get from one location to another. Trial Trans. Vol. 2, 323: 16-18. A land surveyor would not be permitted to use or rely upon highway maps as to the performance of survey work. Trial Trans. Vol. 2, 323: 19-22. Mr. Hutchison converted the map to scale and discovered it was one inch to more than three miles. Trial Trans. Vol. 2, 324: 1-2. In order to use the map attached to Plaintiff's Exhibit 7, one would have to enlarge it approximately forty (40) times its original scale. Trial Trans. Vol. 2, 324: 1-25; 325: 1-25; 326: 1-6. Enlarging the map to forty (40) times its original scale would render it completely useless for surveying purposes, as it would translate to a resolution of only one dot per inch. Trial Trans. Vol. 2, 324: 1-25; 325: 1-25. For any professional land surveyor desiring to create plats, the map contained in Plaintiff's Exhibit 7 is useless, and if used, would result in an unreliable conclusion. Trial Trans. Vol. 2, 324: 1-25; 325: 1-25; 326: 1-6.

Most significantly, unlike MC Development's expert, Mr. Hutchison rendered all of his opinions based upon a reasonable degree of certainty for a member of his profession as to the location of the boundary line between Farmington and Central, as it relates to MC Development's Property. Trial Trans. Vol. 2, 330: 16-20.

MC Development's expert, Mr. Donald Truska, explained to the Court the difference between a map and a plat by stating a map can be created by any individual. Trial Trans. Vol. 1, 34: 14-17; 71: 18-21. To produce a plat, however, one must have a surveying license. Trial Trans. Vol. 1, 34: 16-17. Mr. Truska holds a surveyor's license. Trial Trans. Vol. 1, 32: 17. Mr. Truska's work presented for trial, however, consisted of

maps, and not of plats.[18] Pl. Exhibits 1-A; 2A; 3A; 5A; 6A; 7A; Trial Trans. Vol. 1, 72: 19-21.

Mr. Truska created for trial what he purported to be an "overlay" for certain maps provided by MC Development. Exhibit 7-A. Trial Trans. Vol. 1, 53: 4-6. Certain of these "overlays" allegedly depict differences between maps prepared by DESE, the Assessor, and Farmington; however, no explanation was provided as to why or how these differences might appear, so as to suggest that any of the maps were any more authoritative or accurate than another. Trial Trans. Vol. 1, 94: 5-9. Moreover, Mr. Truska's "overlays" were created by simply changing the map's scale. Trial Trans. Vol. 1, 70: 24-25; 71: 1-3. Mr. Truska stated he merely used the corners from the maps he was provided, rather than use any mathematical equations, to enlarge the maps and create his "overlay" maps. Trial Trans. Vol. 1, 45: 11-13; 49: 13-14. All of Mr. Truska's "overlays" are maps and not plats. Trial Trans. Vol. 1, 72: 16-21; 91 13-23. Significantly, Mr. Truska was wholly unaware of who created the plats from which he generated his map "overlays," which he asserted represents the boundary lines between the two districts. Trial Trans. Vol. 1, 93: 3-5. Furthermore, Mr. Truska admitted he knew nothing about the plat that he was provided and enlarged. Trial Trans. Vol. 1, 93: 6-9.

[18] Mr. Truska admitted to being paid over Thirty-Thousand Dollars ($30,000.00) by MC Development prior to this case, in addition to work for this lawsuit. Trial Trans. Vol. 1, 73: 22-25; 74: 1-9.

In addition to failing to present any surveyor plats, Mr. Truska's testimony listed at least six differing conclusions to the trial court as to where the boundary lines may, or may not be, located. Trial Trans. Vol. 1, 95: 4-17. Most significantly, Mr. Truska testified he was unable to attest with a reasonable degree of certainty as a professional land surveyor as to which of the six maps he prepared was the ultimate and correct version of the boundary lines between the two school districts, the precise issue in this case. Trial Trans. Vol. 1, 96: 20-25; 97: 1. In fact, Mr. Truska did not even attempt to identify the definitive boundary line between the two school districts. Trial Trans. Vol. 1, 97: 2-5.

It is the custom and practice of Farmington, Central, and DESE to defer to the Assessor when presented with an issue of determining in what school district a parcel of property is located. Trial Trans. Vol. 1, 118: 1-2; Trial Trans. Vol. 2, 277: 8-25; 278: 1-2, 6-18; Central Supp. L.F. 5-9. Howard Hoehn, Associate Superintendent of Farmington and Desmond Mayberry, Assistant Superintendent of Central, testified that they refer calls from property owners regarding these issues to the local Assessor's office. Central Supp. L.F. 5-9;Trial Trans. Vol. 2, 277: 8-25; 278: 1-2, 6-18.

Mr. Tom Quinn, the Director of School Governance for the Missouri Department of Elementary and Secondary Education's ("DESE"), is responsible for addressing issues concerning school district boundary issues. Trial Trans. Vol. 1, 106: 16-20. In this capacity, over the last six (6) years, Mr. Quinn receives a conservative average of one-to-two calls per week concerning boundary issues. Trial Trans. Vol. 1, 115: 15-19. When Mr. Quinn receives calls from individuals, who dispute the location of their real property

within a certain school district, they are informed by Mr. Quinn, "that what is on the assessor's books, that's the authoritative document." Trial Trans. Vol. 1, 118: 1-2.

When MC Development's counsel questioned Mr. Quinn as to what he would do if a school district has records purporting to show a different boundary location than is currently in practice, Mr. Quinn stated he would direct any DESE map to reflect what is shown on the county assessor's books. Trial Trans. Vol. 1, 134: 19-24. According to Mr. Quinn, an assessor's books trump any historical data from a school district, with respect to the identification of school district boundaries. Trial Trans. Vol. 1, 134: 25; 135: 1-2.

The Assessor's records were introduced into evidence. Exhibit A. The Assessor's records revealed Parcel 13 had been assessed to Central or its predecessors, as far back as the Assessor's office searched, 1950. Trial Trans. Vol. 1, 181: 16-21; 182: 9-25; 183: 1-2. Similarly, the Assessor's letter dated December 15, 2004, informed MC Development that based upon research conducted by the Assessor in December of 2004, a portion of MC Development's Property, Parcel 13, had been continuously assessed as a part of the Central since 1950. L.F. 241.

Prior to the 1967 election the area comprising the Annexation Parcel and Parcel 13 were assessed to Central. Trial Trans. Vol. 1, 181: 16-21. The 1967 Boundary Change Notification resulted in the creation of the Annexation Parcel, and the establishment of a partial boundary line[19] between Farmington and Central in relation to MC Development's Property. L.F. 196, 242-249; Exhibit E. The evidence adduced at trial established that

[19] This partial boundary line, as it relates to the Property, is depicted on Central's Exhibit E from corner 2 to corner 6 of the plat of the Annexation Parcel.

Parcel 13, depicted in the grey shaded area on Exhibit E, was part of Central prior to the 1967 election and Parcel 13 continued to be within the boundaries of Central following the election. Trial Trans. Vol. 1, 183: 12-15; L.F. 184-187, 277.

The trial court also found a boundary change occurred between Farmington and Central in 1967, after a school election and referral to a Board of Arbitration. L.F. 141. The Boundary Change Notification issued after the Board of Arbitration's decision identifies the Annexation Parcel, which includes a portion of MC Development's Property. L.F. 141. The trial court found no other boundary changes had occurred between the two districts after 1967. L.F. 141.

The trial court also found maps maintained by school districts are not determinative of the district's boundaries. L.F. 142. Instead, the general practice of Missouri school districts and DESE is to refer to the county assessor's office when questions arise as to which school district a certain property resides. L.F. 142. The trial court found the assessor's records to be the best and most persuasive evidence available to the court to determine where the districts' boundaries are located. L.F. 143.

Prior to the 1967 boundary change, the trial court found the Annexation Parcel and Parcel 13 were both assessed to Central, and no evidence was entered to controvert the conclusion both parcels were in Central prior to the 1967 boundary change. L.F. 143. Additionally, the trial court found that 1967 Boundary Change Notification acted only to detach the Annexation Parcel from Central and give it to Farmington. L.F. 144. Any property located within Central prior to the 1967 boundary change, which was not a part of the Annexation Parcel, remained part of Central after the boundary change. L.F. 144.

The legal description of the boundary change was found by the court to be a reliable source to establish a partial boundary line between the two districts. L.F. 144; Exhibit E. As Parcel 13 was not a part of the Annexation Parcel, it was part of Central before the 1967 boundary change, and remained so afterward. L.F. 144.

The uncontroverted evidence presented at trial was overwhelmingly in favor of the trial court's Judgment. In contrast to MC Development's unsupported assertions, the District has provided evidence from an admitted expert and provided other documents showing Parcel 13 was, is, and always has been in Central. None of the evidence provided by MC Development demonstrates how Parcel 13 became a part of Farmington. Therefore, MC Development's point two and Farmington's point three should be denied.

CONCLUSION

MC Development purchased the Property but took no action to verify which school district the Property was located in prior to the closing. Had MC Development performed any due diligence before purchasing the property, it would have found that for at least the last 50 years, the portion of the Property in dispute, Parcel 13, has been located in the Central school district. Yet, Appellants have impermissibly attempted to change the boundary lines four decades later by a collateral attack. The trial court, however, based on the evidence and the law, found that Parcel 13 is legally within the boundaries of Central. Notably, if MC Development wishes to change the accepted and established location of its Property by boundary adjustment, it may seek to petition Farmington and Central to change the boundary through the myriad of statutory measures by which a school district boundary may be changed, i.e. annexation, consolidation, reorganization, and dissolution.

Accordingly, based on the foregoing, Central asks this Court to affirm the judgment of the trial court in full.

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By: _____

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CERTIFICATE OF SERVICE OF

RESPONDENT'S BRIEF

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

Natalie A. Hoernschemeyer, being duly sworn, does state that on the 11th day of June, 2009, two (2) copies (with one CD-ROM) of the foregoing Respondent's Substitute Brief were sent by U.S. Mail, postage pre-paid to:

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Attorneys for Respondent Central R-3 School District of St. Francois County

Subscribed and sworn to before me this 11th day of June, 2009.

_____
Notary Public

My commission expires:

AFFIDAVIT OF COMPLIANCE

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

Natalie Hoernschemeyer, being first duly sworn, does state as follows:

That the Respondent Central R-3's Substitute Brief complies with Missouri Supreme Court Rule 55.03 and the limitations set forth in Missouri Supreme Court Rule 84.06(b).

That the number of words in the Brief is 16,219.

That the CD-ROM of the Brief has been scanned for virus and is virus-free. Rule 84.06(g).

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By: _____

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Subscribed and sworn to before me this 11th day of June, 2009.

_____
Notary Public

My commission expires:

APPENDIX INDEX

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