



Idaho's Citizen Commission for Reapportionment

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Public Meeting
Wednesday, September 28, 2011
Capitol Building, Room EW40
9:00a.m.

Mr. Jeff Youtz, Director of the Legislative Services Office welcomed the commissioners and thanked them for taking the time to participate in this very important historic undertaking that happened only once every ten years. He advised the commission that the proceedings were not being filmed, however they were being audio streamed on the internet so that the public could tune in and listen. **Mr. Youtz** then introduced the Secretary of State, **Ben Ysursa**, to swear in the commission.

Mr. Ysursa welcomed the commissioners and stated that they had a very serious, daunting task in front of them. He indicated that it may be unfair to them; however, time was of the essence. As the Chief Election Official of the State of Idaho, he explained that he, as well as the candidates, the political parties, and the citizens of the state, needed to have a legally defensible plan in place as quickly as possible. He said that the primary election was in May, there were filing times in March, and there were one year residency times in November of 2011, so there were some daunting time frames. He commended the commissioners for their willingness to serve, and acknowledged that some of them had to withdraw from other commissions to serve on this commission, and he applauded them for their service. He indicated that the obvious question was that a voluminous record was developed by the prior commission, and it would be up to them, as the new commission, to decide what the utility of that record was. He said that there had been a lot of good work done, some even after the existence of the commission, and in knowing the people that the commissioners were, he knew that they would take advantage of it. **Mr. Ysursa** wished the group Godspeed, read the order to convene the commission, and administered the oath of office to the members, **Ron Beitelspacher**, **Elmer Martinez**, **Shauneen Grange**, **Dolores Crow**, **Randy Hansen**, and **Sheila Olsen**.

Mr. Youtz suggested that it would be appropriate, at that time, to appoint a chairman, or co- chairs, to facilitate running the meeting from that point forward. He asked if they were in the position to make a motion and a decision. **Commissioner Hansen** made a motion that **Commissioner Crow** be one of the co-chairmen. **Commissioner Olsen** seconded the motion. **Mr. Youtz** suggested that they could include both nominations in one motion, if they were amenable to that. **Commissioner Martinez** made a motion that **Commissioner Beitelspacher** be a co-chairman, and **Commissioner Grange** seconded the motion. **Commissioner Hansen** amended his motion to include **Commissioner Beitelspacher** as the other co-chairman, and **Commissioner Grange** seconded the amended motion. As all were in favor the motion passed, and **Commissioner Crow** deferred to **Commissioner Beitelspacher** to chair for the remainder of the meeting.

Mr. Youtz then introduced the non –partisan staff who would be assisting the commission. First was **Kristin Ford**, who is the Manager of the Legislative Research Library. **Ms. Ford** holds a degree in English, a Master's Degree in Library Science, and a Law Degree, and was involved in the redistricting effort ten years before. **Mr. Youtz** explained that she and **Mr. Bybee** had been planning the redistricting effort for the last three to four years in conjunction with the Legislative Council and JFAC. **Keith Bybee** has a Master's Degree in Public Administration, and works for Legislative Services as a Budget and Policy Analyst for JFAC and the appropriations process. **Cyd Gaudet**, a retired insurance executive, was hired to be the commission's administrative assistant. He explained that she would be taking the minutes, and coordinating the logistics of the public hearings and their travel. **Todd Cutler** is the technical expert, with over 18 years experience in GIS mapping. He was hired from Resource Data Incorporated and **Mr. Youtz** said that he had been a tremendous asset to the entire effort and could answer just about any question regarding technical information, or how Maptitude worked. **Mr. Youtz** advised the commission

that **Ms. Ford, Mr. Bybee, and Mr. Cutler** would be introducing them to Maptitude that afternoon, and would be offering further training the following day.

Mr. Youtz then explained that the agenda belonged to the commission, and with their permission he would turn the presentation over to **Mr. Bybee** to discuss finances. He said that in general terms, the legislature had provided approximately \$424,000 for the effort. Of that approximately \$175,000 had been spent on hardware and software and the preliminary costs. The cost for the first 90 day effort was about \$149,000, so he indicated that there was about \$100,000 left, which he thought was adequate for the commission to get the job done. He said that they would cover the commission regardless, and they would go to the Board of Examiners if it was necessary, as they had the responsibility for this effort.

Mr. Bybee indicated, as **Mr. Youtz** had stated, that the commission had about \$100,000 left of their budget. He noted that what he had up on the screen was there to show the amount that was spent the last time, to give them an idea of how those 90 days worked. He indicated that the commissioner compensation was almost \$20,000, for 38 meetings. He stated that the previous commission had 14 public hearings and 24 business meetings, and that they had really put their time in and worked very hard. **Mr. Bybee** indicated that for the partisan mapping assistants, each team had a staff of three. He said that he would make a recommendation a little further on, as they had learned some things from the last time, however they did have money set aside for staff. He explained that the fourth line was for travel, hotels, and per diem, which was approximately \$27,000. The technical and administrative support was a large expense, and he explained that those were fixed costs. He indicated that if they went the full 90 days, they could expect a similar cost of about \$60,000 for technical and administrative assistance, which would eat up a tremendous part of their budget. He stated that they wanted to make sure that the commissioners had the resources to do their job, and they were not going to put those type of ties and constraints on them; however, he would like to echo the Secretary of State and **Mr. Youtz's** words about moving forward in an expedient manner, and hopefully they could get through with their business. He advised that if the time frame was compressed then they could expect that the technical and administrative assistance expenses would go down as well, which would free up some additional budget for them to bring on staff and do some other things if they would like.

Mr. Bybee explained that the miscellaneous expenses were for hearing rooms around the state, and for refreshments and those types of things. He indicated that there was a little over \$100,000 available moving forward. He said that the other pieces of information that he wanted to share with them before they moved on to the administrative details was to talk to them about the good work that the previous commissioners did. He indicated that the staff had provided the large notebook, in front of each of them, in which they had all of the minutes, a summary sheet for the broad themes of testimony that they heard throughout the public hearings, and then they also had the statutes and the court rulings based around redistricting. He said that one of the things that they learned from the prior time was that **Mr. Cutler** was a little bit underutilized at the beginning. He said that went right to the heart of what he wanted to recommend to them in regard to staff, in that **Mr. Cutler** had all the technical expertise that he could provide to both of the teams. He indicated that he thought they had a process that had been worked out that would help **Mr. Cutler** help the commissioners do their work. He said that maybe the issue of bringing on staff would be to bring on sort of an analyst type position that could do some administrative type work, and be a jack of all trades for them, but to let **Mr. Cutler** handle the technical work load. He indicated that the way they would save there would be if they were to bring on one person for each side, that would allow them to fully incorporate a lot of the ideas that they were after, and let **Mr. Cutler** worry about the technical details. That way they wouldn't get so bogged down on how to export a plan, whether or not the reports were run correctly, and whether the right information was showing. He indicated that later on that day they would talk further on what they had in mind to help save some time.

Mr. Bybee indicated that the second bit of information that he wanted to share with them was regarding the road show. He said that he was sure that they were all aware that as required by statute, the commission was required to hold meetings around the state. He advised that they had great testimony over the past few months from cities, counties, interest groups, and interested parties about what they thought the ideal communities of interest were, and that the staff had provided all of that for the commissioners. His recommendation was that they hold two to four meetings around the state to meet their statutory requirement, and also incorporate some of the work that was previously done. He said that the only reason for doing that would be for expedience, and that they would hear that a lot from him, so that they didn't have to recreate the wheel and could continue moving forward. He indicated that with the road show they had the technology and capability to incorporate a large meeting around the state from the state Capitol using the Idaho Education Network for a minimal cost. He indicated that would be more of a time savings than a cost factor. He said that they would be able to connect into about five different places throughout the state from the Capitol, in addition to holding a meeting in Coeur d'Alene, or Idaho Falls, Twin Falls, or some other location in the Magic Valley. He indicated that he thought that it would be a great showcase to look at the Idaho Education Network, and utilize that technology, to help the commission move forward with their business. Those were his recommendations coming out of the road show from what he had seen and learned, and he said that they could move forward in that direction.

For their staff, the last time they had budgeted for positions to be paid in the range of \$14 to \$18 per hour, for full time, and he suggested that they keep those guidelines in mind for the salary. He indicated that the last time they had brought in the staff on contract, so the people that they hired would be responsible for their own taxes, and 1099 tax forms. They would be paid their rate as a contractor, and he indicated that he could go through those forms as they got closer to that. He said that it was a little confusing as Legislative Services paid the bills for their staff; however, they ultimately worked for the commission, and so they asked that the commissioners sign off on their hours to make sure that there was a good check and balance, and they would know that the work was actually done. **Mr. Bybee** stated

that it was certainly the commission's prerogative to hold more meetings if they needed further information; however, the staff's thought was to hold two to four meetings.

Chairman Beitelspacher said that in the interest of moving forward, with a minimal amount of effort, he suggested that perhaps **Commissioner Hansen** and **Commissioner Martinez** could take a look at a travel schedule for them, and report back. He indicated that maybe they could get in the habit of working together and moving forward on some things, and asked if that would be agreeable. **Commissioner Crow** asked if it would be reasonable, before they did that, to decide if they were going to do the meetings through the internet, or if they were going to do it on site. **Chairman Beitelspacher** indicated that was a good question and perhaps it was a bit premature, and as they were going to hear from **Attorney General Kane** later in the agenda, he may address the need to have them in various locations. He pointed out that the statute called to have them in various locations, and how they did that he was not sure of, however he would want to follow **Mr. Kane's** recommendations. He said that his concern was that whether they were done on the internet or otherwise, was that they came together, they went to work, and they tried to start achieving relationships among themselves, as well as move forward, before they got into the really sticky thicket. **Commissioner Hansen** said that as he looked at the statutory requirement, he thought that they had to recognize that the preceding commissioners did a wonderful job that way. He indicated that he thought that it was important for them to really understand if they did need to have those meetings. He understood that there were perceptions regarding what had previously been done, however it was more important to him, and to them as commissioners, to really understand where they stood right then, and how many meetings they did need to hold, and if there needed to be a balance across the state, and he asked **Mr. Bybee** to help them understand that. **Mr. Bybee** said the word *meetings* was in the plural so he thought they needed at least two around the state, and to answer **Commissioner Crow's** question, it could probably be a combination of the two. He suggested that they have a meeting in Boise, a meeting in Coeur d'Alene, and then do an Idaho Education Network meeting for a third meeting. That way they could hit those areas so that they were getting a full sense of the testimony that was out there around the state, without taking up too much additional time. Or they could have a meeting in Coeur d'Alene, a meeting in Idaho Falls, and then that meeting in Boise that would incorporate the Idaho Education Network on the internet. He thought there were a number of options; however he did agree that they probably needed to hold at least two hearings around the state.

Commissioner Crow asked that **Mr. Bybee** get a ruling on that so they would know what they were dealing with. She said that going around the state took time and took money, and that doing it through the internet was certainly something that was done all of the time now and was recognized, and she would like to hear a real definition so they knew where they were going. **Chairman Beitelspacher** said if they did them around the state they still had to decide where they were going to do them. So his point would be if they could make a decision among themselves about that, and then as **Mr. Kane** would be on the agenda shortly, they could address that at that time, and he asked if that would be agreeable. **Commissioner Crow** said that she didn't think they needed to decide that right then. **Chairman Beitelspacher** agreed that she was correct.

Mr. Bybee indicated that he would then talk about the administrative items, as there were a few things to go through. He asked the commissioners to refer to the tab marked Appropriation in their binders, and indicated that he would walk them through the packet and the paperwork that they needed to fill out to make sure that they were compensated for their time on the commission. He stated that the second page was travel guidelines, which was their cheat sheet to help them understand what an acceptable expense was, and what their per diem and partial rate was for meals. He indicated that he had talked to a few of them about hotel accommodations, and that they wouldn't necessarily have to worry about that, as he would make sure that they went on his Purchasing Card so they were expensed that way. **Mr. Bybee** then walked the commissioners through filling out and submitting their expense sheets, employment and tax forms, identification badges and parking tags.

Commissioner Hansen asked if they could take five minutes to fill out the forms and get them done, and **Chairman Beitelspacher** agreed.

Chairman Beitelspacher next called on **Ms. Ford**. **Ms. Ford** indicated that it was a pleasure to see the commissioners that morning, and that she was going to go over the Policies and Procedures which the last commission held, unless they did not want her to. She said that they did not have to adopt Policies and Procedures as it was completely up to them; however, the Policies and Procedures which they had in their binders were based partly on law, as part of it was restating the law, part of it was tradition, and part of it was making things practical. She said that she would quickly go through the paragraphs, and at the end, if they decided they wanted to adopt them, or add different ones, or take things out, they could just let her know. The first one was one of the traditional policies, and that was the legislative district numbering which started in the north, and the congressional numbering, starting in the north, was number one. She indicated that they could shake everyone up and change all of the numbering; however that was one of the tradition ones. The second one was basically stating how they were complying with the statutory requirement that they provide the public with a means of submitting plans, so that explained how they set up Maptitude online, which had worked well over the summer. The third one was basically saying that they were going to comply with the law, the State and Federal Constitutions, the statutes, and the case law. She indicated that the last commissioners chose to list a few specific cases, and those Idaho cases were also in the commissioner's binders, which she would be going over in a little more detail later. The fourth policy was a practice that they felt was useful as they didn't want to restrict someone from submitting a partial plan, since it was a huge time commitment to draw a plan of the entire state, and some people felt that they only had expertise in their own area. The previous commission had felt that it was useful to accept partial plans as well, even though they still had to fit them into a full statewide plan.

Policy #5 was basically following up on what the law required, and that was when they received redistricting plans from individual citizens that the information submitted with the plan included the name and address of the submitter, which was also statutory. The statistical information that they asked to have was automatically generated from the maps submitted through Maptitude online, so they had made it fairly easy for the citizens to do that. Ms. Ford indicated that they did not have any issues with that over the summer. The sixth policy was also up to the commission, as there was some question about whether they wanted to verify the authenticity of individually submitted maps, and the previous commissioners had decided that it wouldn't be necessary to contact each and every person. However, she said that if ever any question came up, they would call and verify. **Ms. Ford** indicated that there were a few phone calls made, and in all cases those calls were authenticated, and there were no fraudulent issues. Policy #7 stated the non-partisan staff's duties as far as meeting the public records and open meetings laws. Policy #8 was part of the new technological abilities as far as recording of the meetings, as well as keeping minutes, which they had been able to provide on the website, and she thought people did appreciate that. Policy #9 reflected the last commission's desire to have the attorney general play a close role with them, in terms of advising them, which was always a good idea to have their counsel close by.

Ms. Ford explained that by statute anyone could submit their opinion to the commission; however Policy #10 was also an effort to explain to people the sorts of information that the commission would be seeking, and would be especially interested in. This was, of course, the information that the public would have, which the commissioners might not have, which would be firsthand knowledge of what their communities of interest were in certain areas. She indicated that they had encouraged people to supply written copies of their testimony in case a question ever came about what someone said, which was useful, and people found it useful to be able to see other people's comments. **Ms. Ford** pointed out that the commissioners also had those comments in their binders. Policy #11 reiterates the statute that all of the plans were part of the public record, and that they followed the public records law as far as providing access to the public. Policy #12 had to do with boundaries, as far as keeping non-partisan staff non-partisan, and that they tried to avoid floating into their secure rooms unless they were specifically asked to come in. Without that request, the non-partisan staff would not come into their rooms without their invitation, and the non-partisan staff would not do any actual drawing of the plans. She indicated that **Mr. Cutler**, the GIS specialist, would help to do any type of technical exporting or finalizing of their plans, but would not actually do any drawing of their plans. She said that the commissioners and their staff, if they chose to hire staff, would be in charge of that, however they could give them technical guidance regarding any questions that they had about drawing their plans. During the prior commission, Policy #13 had come up, and they just wanted to make clear, that as far as the staff budget, each side had control over how to spend those funds.

Policy #14, **Ms. Ford** felt was a good idea to include as it was deciding when they wanted a second, as generally the commissioners had wanted to require a second, at least when a plan was being put forth for a vote. She said that they may or may not want to require a second on their other motions, as a lot of small bodies had decided not to require a second. She indicated that it was the same thing with the chair, as they may or may not decide to not allow their chair to make a motion, however they wanted to handle that, and they would change that if the commissioners did not care for how it was currently written. Policy #15 did come up in both of the last commissions, that if they were going to work in regional parts of the state and they wanted to approve part of it, and move on to another part. This policy was regarding the binding effect, and she thought that everyone felt a little better about holding off their final approval until the entire map was put into place, and to not be bound by a vote on a partial portion of the state. Policy #16 had to do with payment of per diems and honorariums when on the road, and if they wanted to meet with folks a day or two before or after. **Ms. Ford** indicated that those were the policies that the commission had gone by the last time, and she asked the commission if they would want to discuss them at that time, or think about them and bring them up again at another time.

Commissioner Crow said that she thought the policies and procedures were very well thought out and covered a broad area, and she moved that the commission accept them. **Commissioner Martinez** seconded the motion. As all agreed, **Chairman Beitelspacher** indicated that the Policies and Procedures were adopted.

Commissioner Hansen asked where the court cases were located in their binders, and **Ms. Ford** indicated that each case had its own tab, and they would notice the names of the cases approximately in the middle of the binder. She then explained, that as a librarian, she naturally was going to try to give them all of the information that she thought might be helpful to them, however she had to be restrained so that she did not overwhelm them with too much information. She indicated that they did want the commissioners to have anything that they thought may help them in their job, so that did include the more recent Idaho cases, the minutes from the public hearings, as well as the minutes from the meetings that the commissioners held over the summer. In addition, they had a copy of the presentation that **Mr. Kane**, from the Attorney General's Office would be making after the break, and a copy of the Maptitude training materials. **Ms. Ford** also indicated that under the Policies and Procedures tab she had placed some findings and conclusions, which she had hoped to be able to use the prior month, so they had all of the wrong commissioner's names on them. However she thought that it might be helpful for them to see an idea of how the outcome might be when they were starting at the beginning of the process. She indicated that it did give them an approach, which they would hear more about from the Attorney General, which they knew had been accepted and approved by the Idaho Supreme Court. She advised that the findings were based on the final findings from the 2001 Commission, and the court had approved those findings. This provided an approach in terms of making findings as to each district and each county, looking at the counties most importantly, because of the Constitutional prohibition against dividing counties unless it was necessary. She indicated that she thought that it might be helpful to have a look at those and that might help them think about out how they wanted to frame their approach because at the end, when they had a plan, they would be doing findings and conclusions to support their plan. She said that although they didn't have to look like that, but since the court had approved that approach in the past, it might be a safe way to go. As the commission was running a

little ahead of schedule, **Chairman Beitelspacher** suggested that they take a break, and then have **Mr. Kane** come in, because he was sure there were going to be many questions about the findings. As that was agreeable, he stated that they would recess for 15 minutes and return when **Mr. Kane** was available.

Chairman Beitelspacher called the commission back to order. He indicated that they had a request from the commissioners to change the location to a setting which was more conducive to agreements, and where they could look at each other. He said that they had looked at Room 422, and that the next day they would be meeting in Room 422, which was a more intimate setting. He stated that there would be accommodations for the public and the press. He then indicated that next on the agenda they had the Honorable Attorney General.

Attorney General **Lawrence Wasden**, said that he simply wanted to give them greetings, and welcome them to their new responsibilities. He indicated that this was a challenging opportunity for them, and that those were not contradictory terms. He recognized that it was a heavy burden that they bore, however he welcomed them to their responsibilities. He indicated that he had known most of them for a long time, and he respected the work which they had done in their past service, and he wanted to let them know that this would be a service to their fellow citizens which would last for at least a decade, and most likely for decades to come. He said that he appreciated their willingness to serve in that capacity. He explained that **Brian Kane** was the Assistant Chief Deputy, and he was sure he would have advice for them as they were statutorily the attorney for the commission, and what they tried to do was to call balls and strikes as fairly as they could. He then welcomed the commissioners to their responsibilities and to the Capitol. **Chairman Beitelspacher** thanked him for being there and assured him that they were there to go to work. He said that already that morning they had some personal conversations that gave confidence to all of them. He indicated that he appreciated what the Attorney General was doing, as their office at times had difficult tasks. He then thanked **Mr. Wasden**, and indicated that they would probably be getting back to him.

Chairman Beitelspacher then called on **Mr. Kane** who stated that he would briefly take the commission through the legal requirements of redistricting in Idaho. He indicated that it was actually fairly straightforward; however, it could get a bit tricky at times, so he hoped to help them through that. He said that he had provided them with a series of materials, the first being a card that had his cell phone number on it, and he told them to feel free to use it and to ask questions as it was better to ask a question early, than late, particularly within this process. He indicated that unfortunately they were given a job that often the result of was litigation, no matter how good of a job that they did, and so the early question could sometimes save them quite a bit of cure, in the end. He also had provided them with the Idaho Open Meeting Manual, and a letter that **Representative Bedke** had asked for in October of the prior year related to some of the statutory changes, and it included some analysis, as well as some of the hierarchy, as they went through analyzing legislative plans. The final piece was a summary of district court cases, or lower court cases, and U. S. Supreme Court cases as they related to congressional redistricting. He explained that was compiled by **Megan Mooney**, who was also a deputy within their office, and would also be assisting him, and the commission, throughout the process. He said that in simplest terms, the congressional redistricting he thought was about as straightforward as it could get in that they had to be about at zero, and if they were anywhere above zero they had to give a really good reason for why they were above zero. He indicated that within the summary there were some examples of how they attempted to justify the deviation within the plan, and what their range was within that, so he offered that to them as an assistive piece.

Mr. Kane indicated that there were a few limitations for the commissioners: they could not become a candidate while serving on the commission, they could not be a candidate for the legislature within five years of service, and they could not serve on a future reapportionment commission, which they had just learned very clearly from the Idaho Supreme Court. He said that the goal was that they wanted to keep it as a citizen-driven process so there were really strong limitations as to who could be a member, and on their future service, so they would keep getting new folks involved. He thought that one of the reasons for that may have been that previously there was the ability for certain folks to dominate the proceedings of the commission, so they were very careful on how they drafted that. He indicated that the commission was subject to the open meetings law, and that they must provide notice of meetings to any citizen or organization requesting that. He said that he thought that the staff had that really well wrapped up, and had done a nice job of providing notice. Also copies of whatever databases they were using had to be made publicly available to the citizens. **Mr. Kane** indicated that all of those things were already taken care of for them, so they did not have to worry about them. However it was important to know what they had, and other folks had as well, so when people called them and had a very detailed informed question, it was because the process directed that.

He said that he knew that the requirement regarding meetings to be held around the state was an area where there were some questions. He indicated that one of the interesting things about the position of Deputy Attorney General was that he spent a lot of time telling people how to attack their cases, where their weak spots were in a case, and it was all public, and this was one of those examples. He said that he was going to give them essentially a hierarchy, and he was going to start with the most defensible, to the one that he would term the most vulnerable. The statute says *shall hold meetings around the state*, it does not say how those are to be conducted, how many they had to have, or how long they had to be. In his estimation they had to make the effort, and so what he would consider to be the most defensible thing for the commission would be to adopt the proceedings of the prior commission as if they were their own, as they had extensive hearings. Then he suggested that they take the added step of saying that they were going to have a meeting in the eastern part of the state, they were going to have a meeting in the southwestern portion of the state, and they were going to have a meeting in the northern part of the state. He thought at that point they would have covered all of their bases because they had adopted the prior proceedings which had become their own, and then they had also, as this commission, gone out and held a certain series of hearings. That way it demonstrated to the court, and to everyone else, that they had complied 100% with the statute, and there was no way to attack the conduct of the commission at that point.

He indicated that the commissioners were in a job that was a lot like being a college football coach, as everyone had an idea on how they could do it better, how they could fix it, what they had done wrong, and why the defense was not set up right. He had already heard a lot of folks that asked why they didn't just have an internet meeting where everyone could get on the internet and participate that way. He said that they could certainly do that as it was within their discretion; however there were a couple of items to consider if they wanted to take that approach. One was that not everyone had the internet, and it wasn't available everywhere. The internet was not reliable, as sometimes it just didn't work for whatever reason, so it was one of those things that was a tool, but it should not be the only tool to rely on to justify their record, to comply with the statute. He said that was within the discretion of the commission and he was going to defend whatever action they took, as that was his duty; however, he also thought it was important for them to know where their vulnerabilities were. He indicated that people had also asked about teleconferencing and opening up periods for comments, and he thought those were great ideas, but his recommendation would be that they have some minimum number of out of town meetings. He said that it didn't have to be extensive, and they didn't have to go on the road for a month. One great thing about this commission was that they had the benefit of the prior commission's work, so if they adopted their proceedings, they adopted everything that had been submitted as part of their record. They then had the benefit of going out onto the road with plans that were already being considered so people could step up to the microphone and instead of giving them a blanket *we don't want to be put with Owyhee County, or we don't want to go with Cassia County*, and they were sitting there saying *wait a minute we've got half of the people that don't want to go that way and half of the people that don't want to go that way, they have to go some way, what do we do?* They now had the benefit of having those plans where the public could say *when I look at plan L75 I don't like the way that northern Idaho is configured because ...and the commission now had reasons that became part of their record and could then be translated into findings.* He indicated that if they took that testimony into consideration, and then adopted that plan, that became very effective as a tool to defend their decision. He said that was actually one of the great benefits they had, as a second commission, as they had a body of work that they could actually take on the road with them, and that was significant.

Chairman Beitelspacher brought up the *Smith case*, which came before them, where Kidwell wrote specifically that the commission had complied with the literal language of the statute, but did not fulfill the spirit of the statute that dealt with hearings. He indicated that the commission wanted to get it done, however they certainly wanted to make sure that when they were done, it withstood the scrutiny of the courts. Given that Kidwell had addressed that, **Chairman Beitelspacher** indicated if that came up again they would need **Mr. Kane** to step forward and explain that a little more for them, and **Mr. Kane** agreed.

In continuing his presentation, **Mr. Kane** indicated that citizens had the ability to present plans to the commission, and in looking at the website, there were a number of citizen-presented plans, and he anticipated that they would get even more. He said that as he had mentioned before, the open meetings law applied to the commission, and he pointed out the specific code sections. He advised that a quorum of the commission was four, so that was important to note, that it only took four of them to make any decision. Fewer of them could meet and take testimony, but that was all they could do. He indicated that for those of them that had legislative experience it was similar in that if they had less than a quorum, they would just adjourn from day to day, so they could take testimony, however they could not do anything else. He also indicated that there could be no proxy voting, so every vote must be made by the member themselves, and if a member was absent, then they were absent, assuming that they had the quorum. He said that this was very important once they got down to the point where they needed folks in the chairs.

Commissioner Hansen asked how far in advance the commission needed to make their meeting schedule public knowledge. **Mr. Kane** answered that generally the time frame would be five days, however if they created a schedule of regularly scheduled meetings then they would just need to publish the schedule of meetings, and then they would only have to post an agenda within 48 hours of each meeting. He indicated that there was a definite benefit of scheduling their meetings out and then creating the agenda notice. Another thing that he wanted to add was that there was probably no reason for the commission to ever go into executive session, and his recommendation was that if at all possible they should avoid executive session, as it just created far more questions than it ever answered. Public Records Law provided the commission with an exemption for draft plans and research by the commission members, part of this was contained within their secure rooms; however one of the things to be wary of was discussing a plan that had not been submitted to the commission on the commission record. He said that if they were to refer to a plan that had not been introduced, for a comparative reason, they may have inadvertently introduced that plan to the commission before they were ready to. He said that was one of the things to be aware of if they said *we're looking at plan L85, but up in the secure room we have L86 that splits Ada County ten ways*, they may have just put that plan in front of the commission, so they needed to be careful about that. He suggested that a better way to phrase that would be *we're working on a different alternative for Ada County*. In that way everyone would know that they had a different plan in the works, they just wouldn't know what it was, or what it did. He said that was one of those examples where they wanted to be careful. **Commissioner Beitelspacher** asked if **Mr. Kane** was suggesting that they not identify the plan by number. **Mr. Kane** said that they could actually introduce a plan to the commission by not identifying it by number since it only received a number once it was submitted. He indicated that what would happen was that they may say *that they were going to introduce a plan that afternoon to compare to L85 that would change the way that Ada County was split*, and by doing that they may have essentially just put that out there sooner than they had anticipated.

Mr. Kane then moved on to the legal requirements of the plan, and said that they were getting into what he liked to call *the big two*, which were one person=one vote, a U.S. Federal Constitutional requirement. He explained that they could set between 30 to 35 Senators divided into the districts, and they had to be within 10% deviation. He said that the ideal district size was in the 44,000 range. He explained that if they had a district that was 43,000, and they had another district that was 46,000, the percentage difference between the ideal district would set up their deviation. So if they had an under district that would have a -1%, and then they would have an over district which would

be a +2%, the total deviation on that would be 3%. He said that they had to keep that number within 10%, and that was the first and foremost charge to the commission, that one person=one vote. He indicated that they could exceed the 10%, but they would have to advance a rational basis for the state, and he would tell them that historically those rational basis had not been well received from the Idaho Supreme Court. His recommendation was, in terms of how to make this the most defensible plan, was to keep it under 10%. He said that the other great thing about keeping it under 10% was that if they exceeded the 10%, they were essentially allowing the court the opportunity to substitute their discretion for the commission's. He indicated that was always a difficult area because the commission looked at districts one way, and the court looked at districts a different way, and if the court got to substitute their discretion they may not reach the same conclusion that the commission did. He said that was actually one of the problems that they had anytime they exceeded 10%. He indicated that if they stayed under 10%, the doubts all got determined in the commission's favor. So by keeping it under 10% the burden shifted; instead of the commission having to show why they were above 10% , anyone challenging the plan had to show that the way they got under 10%, and the way that they divided the state, was somehow unconstitutional or irrational, and those were very high hurdles. **Commissioner Olsen** asked if **Mr. Kane** was addressing statutory or constitutional requirements, and **Mr. Kane** advised it was Federal Constitutional as it was the one person=one vote, equal protection requirement. **Commissioner Olsen** then asked if the constitutional requirements trumped the statutory requirements. **Mr. Kane** answered yes; it would be the Federal Constitutional, then the State Constitutional, and then the State Statutes.

Mr. Kane stated that the 10% deviation was significant, and then from there it was minimal county splits, which were an Idaho Constitutional requirement as stated in Article III, Section 5. From there they would get into their additional legal requirements, two of which were communities of interest and avoiding oddly shaped districts. He said that oddly shaped districts were one of the areas where they would want to have their discretion, as opposed to the court's discretion. One of the interesting things that occurred in the last go around, when they looked at plan L97, in northern Idaho, there was a district there that he referred to as the reverse "c". He said that one of the theories was that it was an oddly shaped district, but because they were under 10%, and it met the county requirement, the doubt went to the commission. So the court said they were not going to infringe upon the discretion of the commission, because they had met the other two standards. Due to that someone would have to prove that it was somehow oddly shaped in an irrational or unconstitutional way, meaning that because of the odd shape it impacted the voters in a way that couldn't be justified. He said that was a very high hurdle, which was why those two primary concerns were so significant. The next additional legal requirement was that counties had to be contiguous, and there could be no floterial districts. Additionally there were not splitting precincts, as much as practical, and districts with more than one county had to have a road or highway connecting the district. Both of the last two, he advised, could be overcome with a vote of five commissioners.

Mr. Kane said that this was where he would tell them his hierarchy of defensible plans. He indicated that the most defensible plan was a 6-0 vote to approve the plan. The next best would be a 5-1 plan that took into account the two statutory provisions by saying that they had tried, but they couldn't comply, so they had their vote that the statutory requirements did not apply with that plan. He indicated that their *we are still going to defend it scenario* was a four vote approval because the Constitution required four votes to approve a plan. So if, for whatever reason, they could not comply with those statutory requirements, and get the five votes to waive that requirement, but they still got four votes to approve a plan, then their duty to defend would be triggered. That would be with the understanding that they had then approved a plan that would probably have some vulnerability, although he thought that it was still defensible, so that was important for them to know that hierarchy as they went forth. Another requirement was that there be no incumbent or party protection, which was outlined in I.C. 72-1506(8). The final report was due within 90 days, and **Mr. Kane** said, that in referring to his presentation, that it was funny, since it was an old presentation, he had a question mark about stalemate, and that question had been answered. He said that in all honesty they did not anticipate the court reaching the conclusion that it did. However now having the opportunity to reflect upon it, it was actually a very logical conclusion, and made a lot of sense, as they had 90 days and they failed to complete the plan. He said that the condition still existed, within Idaho, for adoption of a plan, yet they had expired by rule of law, and therefore it required the appointment of a new commission, which was where they came in, so it made perfect sense. He indicated that they now knew what happened if they did not reach a plan within 90 days.

He said that legally speaking, one of the interesting things that he had pondered was whether or not at essentially the last hour, at 4:58 p.m., if the commission had moved to continue plan L97 in effect, as adopted by the commission, whether or not (as that would have become an adopted plan, as bad as it was) it would have triggered the provision that said if the court found a flaw in the plan, it could order them back to work. He asked the commission to please not test that theory. He then explained that the plan would be filed with the Secretary of State, and then it would be spread upon the journals of the House and Senate. He said that it was important to note that there was no approval required by the legislature and it just went into the journals. If there was a legal challenge, although he held out eternal hope that they would be the first commission to adopt a plan that was not challenged, but understanding the reality of that hope, it started in the Supreme Court, as the Constitution assigned original jurisdiction there. **Mr. Kane** then reminded the commission of the old math adage to *show your work*, and said that was the commission's charge. That was because in the event of a challenge, they wanted to be able to explain to the court why, for example, that Twin Falls County was split, such as *we went eastward to Cassia County or we went westward to Owyhee County or we went north to Gooding County*, and they would want to be able to demonstrate why that was. He said that a lot of times the explanation would be very easy, Twin Falls County, for example, *has enough population for 1+ districts, therefore you can get one full district out of it, but then you had to combine it with some other county to get the necessary population*. That, he said would be a very straightforward explanation, but it was an important one that they needed. To help them with that he indicated that there was a quick checklist, that was more like a worksheet, that they could work through and say *we have divided this county to meet one person =one vote*,

we've minimized the county divisions, and these are the steps that we took and the reasons why, and that was to create that good record, in case the plan was challenged. **Mr. Kane** said that this had been a very quick overview of the legal requirements of the commission, and he invited them to feel free to contact him as they had questions.

Commissioner Martinez referred to Kidwell's concurrence where the plan met all of the legal requirements but didn't meet the spirit, and asked how a plan could get that far through the process and then have the court say that they had not brought it up to the public. He also asked if they were protected from that by Maptitude which was now available to the public. **Mr. Kane** said that he thought that was the great benefit of this commission, because when the first commission went out they had very few plans, and now this commission had a whole gamut of plans that were under consideration. He suggested that one approach was to say that they had four or five plans that they would consider preferred plans, meaning that they may end up in that ballpark at some point. So when they went out for public comments, they would like to hear the public's thoughts on those five or six plans, or people could submit their own. He said that he thought that they would be covered, and there were ways to make sure that they were covered, so that they met both the letter and the spirit of that requirement. **Commissioner Hansen** said that he liked the checklist, and part of the reason that he liked it was that he understood that **Mr. Kane** had prioritized to the commission the steps which they should take, and he asked if he was reading that correctly. **Mr. Kane** said that there was kind of a priority there, and obviously if they were going to split a county, they had to know why that county was split, and generally those questions would kind of answer themselves. He indicated that the number one reason for splitting a county was going to be to comply with one person=one vote, so that was very easy, and they would use the Federal Constitution to say that was why they could not 100% comply with the Idaho Constitution, and so that had become a necessary county split. So yes, he said that there was kind of a hierarchy within there.

Chairman Beitelspacher brought up the 90 day requirement and said that it was a wonderful time line; however, the reality was that they would be looking towards Thanksgiving, Christmas, and roads that were going to be difficult to drive on before long, so he was sure that they all were going to try to expedite the process as much as possible. **Commissioner Grange** asked **Mr. Kane** about the two things he had mentioned when going through the priorities of how to defend a map. The first was that they should apply the Federal Constitution, the State Constitution, and the statutes, and if they met those that would be the best defensible map. However he had also said that if 6 commissioners agreed on a map that didn't meet all of those criteria, he could defend that, and she asked him which he thought held the most weight. **Mr. Kane** that it was pretty clear that the most weight was one person=one vote, so staying under 10% got you in the door. Then the next requirement was the Idaho Constitutional requirement of no more county splits than necessary. **Commissioner Grange** said that the question was regarding the *no more than necessary*, if they had six votes. **Mr. Kane** said that the real issue was that when he discussed the 6-0 plan he was assuming that it had met the 10% requirement, the county split requirement, and then addressed the statutory requirements because they had unanimity. It would be difficult for him to understand how they could vote for approval of a plan that didn't comply with the road requirement, but then not vote for waiving the road requirement. That being said, he said that he knew that they could do that, but to keep it simple and logical, he was not saying that wouldn't occur, but that was his assumption when he gave them the 6-0 plan.

With regard to the 90 days, he said that the commission could get this done as quickly as it wanted to, as there was no requirement to take the full time, and that anything under 90 days was good. **Chairman Beitelspacher** said that he could tell him that already from visiting with the Republican and Democratic members of the commission that they were going to work, and were trying to get there. He indicated that they had just come together for the first time, and they had not had much opportunity to visit with each other. He said that as he understood it, that two Republicans could go with one Democrat to lunch without breaking any rules, and have a nice visit about what a wonderful day it was, and they hoped to be able to do that to get to know each other.

Commissioner Hansen asked about the process once the commission came together and put forward a plan. **Mr. Kane** explained that when the commission adopted a plan it did not automatically go to court, as someone would have to show up and challenge it to get it into court. So when he said that this commission could be the first to have a plan that went unchallenged, it was entirely possible that this commission could adopt a plan, file it with the Secretary of State, it would be spread on the journals, and that would be it, it would then be the new apportionment of the State of Idaho. However if someone showed up and challenged it, that review would begin in the Idaho Supreme Court. Part of the reason that it started in the Supreme Court was because if it had to wind its way through the entire judicial process they could run into some real risks as far as candidate filing deadlines, and primary election dates. Now they also had the overlay within election law that they had to ensure that, for example, soldiers had to get their ballots in time to receive them and get them back for voting purposes, so that expanded those deadlines. He said that he thought that was the thinking for why it started in the Supreme Court. He indicated that there were a series of cases, the *Hellar* cases, that really pushed the deadlines out, and there were a lot of sweaty palms by the time those all got decided and a plan got adopted.

Commissioner Hansen asked if the plan was challenged in the court, and the court deemed that they did not do something in the process, then what would occur. **Mr. Kane** said that generally what would happen if the court struck down the plan, and determined that it was unconstitutional, they would give them the reasoning as to why it was unconstitutional. Then they would order the commission back to work to approve a plan, and they would generally give a deadline as well. One of the other things that he suggested that they keep in mind as a commission, which occurred in the *Bingham County* case last time, was that when the plan was challenged, because the plan exceeded the 10% deviation, the court asked the commission to provide them with all of the plans which they had considered which were under the 10% deviation. The court used that to say that the commission had given them twenty plans that were under 10%, so it was clear that they could do that. So if they did not understand the first time that they had said *under 10%*, they wanted to make sure that they understood

that they meant under 10%. **Chairman Beitelspacher** thanked **Mr. Kane** and said that he had helped them a lot. He also said that he was assuming that **Mr. Kane** would be available on a daily basis. **Mr. Kane** said that he would be available, and at any time that he was not available **Ms. Mooney** would be available, so they would have as much exposure to legal advice as they wanted.

Chairman Beitelspacher then recessed the commission for lunch until 1:00 p.m.

Chairman Beitelspacher called the commission back to order at 1:00 p.m. He advised that next on their agenda was a presentation by the previous commission members, and that speaking for all of the commissioners he wanted to thank the previous commission for all of the work which they put in, and the efforts which they had made. He said that he had been through several reapportionments as a legislator and he had some idea how difficult it was, and he really wanted to thank them for their efforts. First to address the commission was former **Commissioner Lorna Finman** from Rathdrum, Idaho. She said that she was standing before them that day with some of her fellow commissioners from the first round, former **Commissioner Lou Esposito** from the Republican side, former **Commissioner Allen Andersen** and former **Commissioner Julie Kane** from the Democratic side, to show bi-partisan support for what they were going to present. She explained that former **Commissioner Evan Frasure** and former **Commissioner George Moses** were not able to attend. She said that she just wanted to review that they had gone through a month of public hearings, and travelling around the state to thirteen different locations: Moscow, Lewiston, Sandpoint, Coeur d'Alene, Rexburg, Twin Falls, Soda Springs, Meridian, Caldwell, Boise, Burley, Hailey, Idaho Falls, and Pocatello. She indicated that they had extensive public hearings, and they did hundreds of hours of negotiations and reviewing of the public input online. However they got down to a point where they needed some legal clarity from the court on the Constitution and statutes in Idaho. She said that they expected clarity from the court to close the negotiations that they were working on, but due to the procedural technicality that they did not have an agreed upon map, they were unable to finish the job. She stated that they needed five more minutes to come in and finish the job.

Ms. Finman said that when that happened it was unexpected to all of them, and they felt an obligation still, even though they were not officially able to convene, to have not wasted the taxpayer's money. She said that \$400,000 was spent, and a lot of work was done, and they decided, on their own nickel, that they would spend the time and get the job done. She was happy to say that they had reached a bi-partisan agreement on maps L83 and C38, which the commissioners had a copy of in front of them. She said that it was not an easy task to get to that point as they started with very definite ideas in mind of what they wanted. They also wanted to try to accommodate all of the public, and they had partisan sides, and to make all of those things come together was a lot of hard work and a very difficult challenge. They ended up with a map that she would say was much better than the map that we currently have. There were still spots in the map that they could not perfect and keep everyone happy, but it was a compromise, which was no easy task. She explained that they had in front of them a breakout of each district and the rationale and description of each district. For the Congressional map they all agreed unanimously on C38, which simply moved the line to the left to accommodate the shift in population, and it had a zero deviation. She said that it was based on historical precedent that had been used since 1971 by just shifting the line to the west in Ada County. She indicated that it was also backed up by legal precedence in Atlanta, Georgia that the Attorney General's office had presented to them, and it followed clear bright lines of the Interstate and Cloverdale. The census basically showed that they had to build in another 60,000 people, and that map was drawn to include that number of people and not try to go more than that. It did not try to shift 300,000 people, and that was what they did to achieve the zero deviation.

She indicated that the map had unanimous signed agreement by all six commissioners, and although she had not had a chance to make a copy of the letters, she would like to submit the six letters that all of the first round of commissioners had signed approving both L83 and C38. She advised that in full disclosure, that after they had agreement on all of the letters, that **Mr. Frasure** had some reluctance to go forward with his signed letter. She added that they just needed five more minutes to be done, and because of a technicality they could not finish it. She indicated that possibly this was like a relay race in that they started, they ran hard and fast, and they were now passing them the baton to get to the finish line. She said that she was asking them to consider the two maps and all of the work and effort that had gone into them, and to save the taxpayer's money. She indicated that this was a bi-partisan map, and they had done their best to accommodate all aspects and criteria that they were faced with, and it was a better map than what was out there today. She said that they were able to eliminate some of the districts that were of concern. Another thing that she suggested they consider was that the Supreme Court was held up from clarifying the legal ruling because they did not have an agreed upon map on which to give them input. She said that getting an agreed upon map to the court, to get that clarity of the legal hierarchy that they needed, was something that she would recommend that they do quickly. She indicated that they could not please everyone on the map, including incumbents, but they had done the best that they believed they could under the conditions that they had. They had very solid bi-partisan agreement on the maps, and she asked that they consider them, and to expedite the process, to build on what they had done and get it to the court for a legal ruling, and save the taxpayers a considerable amount of money. **Ms. Finman** thanked the commission and advised that she was going to pass the presentation over to **Ms Kane**.

Ms. Kane, an attorney for the Nez Perce Tribe, from Lapwai, Idaho was next to address the commission. She said that sometimes people wanted her to apologize for being a Democrat and being an attorney and that she wouldn't, and that was what made the world great, was that everyone was different. She had a written statement from **George Moses** that he had asked be read into the record. She said that he was out of town; however he was in agreement with them on the map and he wanted her to read his statement:

Commissioners - I apologize for not being able to address you directly but I wanted to add my voice to those you have already heard. First I want to offer you my congratulations on your appointments and my best wishes for your success. Having so recently sat where you are

seated now we are uniquely positioned to appreciate the task you face. By now the effort we went to and the difficulties we faced are known to all of you. It is my hope that you will be spared some of what we went through and it is my expectation that at least to some extent you won't be. Much of what we learned can only be learned by firsthand experience and I have no doubt that you are about to get yours.

That said we are here because we think that our experience can provide lessons that you might profit from, and it is in that spirit that we brought you what we have to offer. We finally arrived at an agreement on a redistricting map and we present it to you for your consideration. It is the product of a great deal of sweat and a few tears, fortunately there was no bloodshed although there were times when I suspected that our friends in the press were looking for that. Our differences were, and yours will be grounded in differing views of what is best for Idaho's future. These were, as I hope yours will be, honest differences of opinion, but the point of commissions such as this, and representative government in general, is to find a common ground among those differences and to produce a result designed to account for as many views of the common good as is possible to do.

The map we produced is I feel confident in saying not the first choice of any of us. The map I would have drawn would have been to me far preferable, and I am certain that each of us would have said the same thing. That said, it is my second choice. The reason for that is that it is a map that all of us could agree on, which is a particularly important quality, and I believe that each of us would share that judgment. Like any compromise there will be parts that purists will immediately find objectionable, I certainly hope so, otherwise it probably would be one sided. But each of you has enough experience in public life to know what happens when you start picking at the edges of a delicate compromise; it starts to come apart in a hurry. So expect those complaints and deal with them as you must, only keep in mind that we did the best job that we could in producing a fair result, and that the range of fair results in this exercise is pretty narrow.

Whatever happens in the future, the six of us can say with some pride that we never gave up, and by that I mean that we never gave up our principles and we never gave up trying to resolve our differences. Commissioners Finman and Kane deserve special credit for this, but we were all in on it or we wouldn't be here. And so we put our work product in your hands, we hope that you will give it careful consideration. We have confidence in what we produced, but at the end of all of this it will be your names on the result. It is our hope that you too will find your way to an agreement which all of Idaho can be a little bit mad at, but will serve us all well.

Ms. Kane said that she just wanted to simply say that she hoped that they did not feel they were intruding on their work, and she hoped that they would take this as their collective effort and sincere attempt at providing an option for them. She knew from experience that they may have the most beautiful map in world, as she had one once, and she thought it was the most beautiful map in the world but through this process she learned a little too late that beautiful maps were everywhere. She said that it was the maps that had character that were important, and it was kind of like a tribal elder. She indicated that she looks at them in awe that they had lived their lives, and had those wrinkles, and they had survived all of those challenges, so this map was more like an elderly person who had a lot of character. The world may have chipped away at it a little bit but it was still surviving, and that was what they were offering them, something with character, that she hoped they would consider carefully. She indicated that they regretted that they didn't complete their task within the allowable time, but hopefully they, as the new commissioners, with the authority to do that would consider that as their offer to them, and as an option.

Mr. Andersen, from Bannock County, just outside of Pocatello, was next to speak to the commission. He said that he wanted to congratulate the commission for taking on this difficult task. Having gone through it for a number of days, he could appreciate what they were facing, and he just wanted to add his congratulations and his sympathies. He indicated that he had been asked why they didn't finish, and he went back to how he thought Coach Vince Lombardi said it best. When asked what his win/loss record was, he said *I've never lost a game, I just ran out of time.* **Mr. Andersen** said that when he accepted the position to serve on the commission he did it with the understanding that he would complete the task, and when they were unable to do that in the time allotted they were led to believe there would be additional time provided, however that did not happen. He indicated that he thought that the rest of the commissioners felt the same way that he did, that they had a task to do, they were committed to doing that task, and so on their own time and effort they completed that task, and they wanted to pass that along to them. He said that he certainly wanted to urge them to review the discussions, and he thought that **Ms. Finman** gave a very good presentation as far as what they went through, the rationale for the various districts, and he would hope that they would seriously consider ... he said that they could even adopt it that day, and vote on it, and have the whole session over within a short period of time. He indicated that he knew that they were conscientious, as the previous commission was, and that they would need to take some time to really study and to try to come to an agreement. He said that he wanted to thank the commissioners that he worked with, as they were very dedicated and they represented their views very well. It was a hard fought battle to try to reach agreement and consensus, which they were able to do, and he hoped that they had that same opportunity to reach an agreement and to feel good about what they had done. He then thanked the commission and commended them for accepting their positions.

Next to address the commission was **Mr. Esposito** from Boise, in Ada County. He extended his congratulations to all of them for their appointments and the courage to step into a very difficult challenge. He said that having sat in the same seats, and having gone through the last 100 days, he did not envy the task ahead of them; however, he was hopeful that they would carefully consider the lessons learned. He thought that they had heard from the previous commissioners that day, as they touched on the various parts and pieces of those lessons, and for him the main thing that he wanted to share with them was that the task ahead of them was enormously difficult. He said that he didn't think until they had been through it -- though he knew that a number of them as former legislators had the experience of going through it -- but even having said that, it was a much different dynamic, as this was a dynamic of a citizen's commission and there was lot at stake. He hoped that they carefully considered all of the public hearings that they went through, and that they look at the minutes of the

meetings that were quite detailed. He said that would give them a pretty good explanation of the whys and wherefores of how they ended up with a map that **Mr. Moses** had recapped best by saying that it wasn't a map that anybody could really like all of it, and if there was, then it probably was the wrong map. He said that there were things that he hated about the map that they presented, but that was the nature of compromise. He said that the other thing that **Mr. Moses** did touch on was that in looking at a map, and even taking L83 as an example, and thinking *well I can do a little better job here, or I might be able to change a couple of things here*, that as you started nibbling around the edges on any map, that you found pretty quickly that things would unravel much quicker than you might think or believe. He indicated that they did spend a tremendous amount of time and effort, and they did spend a fair amount of the taxpayer's money, and to echo his fellow commissioners, that they honestly believed that they would have more time to complete the task. Because of the Supreme Court ruling, they were unable to complete the job, but they would hope that they would seriously consider the baton that they were passing off to them. In looking at the maps, they were based on the public input, and the public information that they received. They were based on the law, and they were also based on the hard political compromises and realities that they had to deal with. So it was a combination of all of that, it was a compromise, it was not pretty, but he believed that it best served the interests of the citizens of the state. He said that he would hope that they would give careful consideration to look not only at the legislative map, but also the congressional map, and consider taking a vote and moving forward with that, and sparing themselves, and everyone, a lot of time, trouble, and taxpayer dollars.

Chairman Beitelspacher said that he wanted to express his appreciation for the efforts that they had put in after the time was up, and that there were men and women of less character who would not have continued to traverse the difficult trail that they had been on. He indicated that said a lot about their strengths, courage, and their character, and he wanted to thank them for that. He then addressed **Ms. Finman** and said that it appeared to him in reviewing the minutes that she had engaged in the compromise, and he asked her if she had it to do over, what she would do differently. **Ms. Finman** said that if she had to do it over again, and she didn't know if it would be a serious recommendation, however being a technology person she would recommend that someone write a computer program and take the politics out of it. She said that she would put all of the criteria into it as it was a number-crunching exercise, and she would recommend an open source code so anyone could check it, and then have a commission of six people that could overrule it if something funny crunched out of the program. She thought that would save a lot of money and a lot of grief. She said that the way the commission was set up it was difficult to reach a compromise.

For her short term proposal she said that it was very difficult to come to a compromise when sitting formally in the way they were sitting that day. She indicated that they were on television, and they were representing their parties, and once they started working one on one, or in smaller groups, that things progressed more rapidly. She said that she thought that the commission could be done in 30 to 45 days once they got out of the formal setting, and broke into smaller groups. She indicated that they had started to do that towards the end, and it would have been nice to have done that sooner. She said that she and **Ms. Kane** worked the north, **Mr. Andersen** and **Mr. Frasure** worked the southeast, and **Mr. Esposito** and **Mr. Moses** worked the Ada County area, and then they were coming into a convergence. She indicated that was the most successful, most productive time, and it was the most real thing to do. They also had heard that from the previous commission from ten years before, that once they broke it down into subgroups they didn't have the television on them, and there was no posturing, so they could get down to reality, and that would be her recommendation.

Chairman Beitelspacher thanked **Ms. Finman** and indicated that the commission was moving onto a kitchen table on the fourth floor the next day so they would be closer, so they were moving in that direction. He again said that he wanted to thank all of them for what they had put forth, as it was very difficult to draw legislative maps. He said that he had done it in several special sessions and it was extremely difficult, and he wanted to thank them again for the effort that they had put into it. He said that some of them had just received their map for the first time, and they needed some time to look at it and study it, and they would do that. The law required them to have some public hearings, so they needed to do that, and let the public comment on their product. He thanked them for their time in coming down, and for the time that they spent on their own dime.

Commissioner Hansen said that in having the opportunity to go through and read some of the comments, it did sound like there was a good portion of the state where they did not have conflict, and he thought it would be of help to them to know if there were areas where all six of them agreed they had no issues. He thought that may help them in their focus as time was of the essence. **Mr. Esposito** said that went to the heart of the matter, however he did want to back up a little as he was remiss in not thanking **Ms. Kane** and **Ms. Finman** for the incredible work which they did in terms of getting them to compromise, and without their efforts, their persistence, and their faith in the rest of them it would never have come together.

Mr. Esposito then began a review of the map in the north. He said that basically the Bonner, Boundary issue with geography and numbers was fairly straight forward, as there were some fairly limited options. He noted that there was quite a bit of debate, in going through the minutes, and discussions in terms of how a portion of Bonner County, through a lot of the maps, was included in with Shoshone all of the way on down through Idaho County and Clearwater, and they would see a lot of discussion of the infamous Clark Fork to Riggins district. He said that there was quite a lot of controversy over that and **Ms. Finman** and **Ms. Kane** did a great job of bringing resolution to that, and that once they started dealing with Kootenai County it fell into place. He indicated that the area that was the most work was finding an agreement in terms of how Latah County was configured with Benewah, and then the impacts on the district that included Shoshone, Clearwater, Idaho, and parts of Benewah and Latah Counties. Once that was worked through, the north was the first area that was fully settled, and they would see that Lewis County and Nez Perce County were together. He said that there was concern over the road rule and road violations. The map had one road violation in the north, which, with a five person vote, could be dealt with.

He indicated that one of the issues that they would hear about was the minimum county split debate, that they spent an incredible amount of time on, such as how many counties could be split, what did that look like, and how many trans- county splits there were. He explained that trans-county splits meant how many times a county, which did not have a population that comprised a full number of districts, was shared with other districts. In various maps they ended up with districts that stretched all way from Butte County to New Meadows, and from Salmon all the way down to Washington County. He said that they had worked through all of that and they were able to come to an agreement that the Valley, Boise, Gem County configuration, as well as the Adams, Washington, and Payette configuration, was something that was fairly consistent throughout the maps and the negotiations. The problem with those sets of counties was that they did not have enough population to put a full district together so they did not meet the deviation. In some maps they dipped into Ada County, through the Valley, Boise, Gem map early on, and then for the Adams, Washington, Payette map they dipped into Canyon County. On the current map they ended up going into Canyon County twice from the north. From Gem County they picked up parts of Middleton in order to make the Gem, Boise, Valley County a complete district. Then they also took part of Canyon County to make the Payette, Washington, and Adams County a complete district. As there was not a state or federal highway which connected Gem County with Canyon County, the last part of Canyon County was connected with Idaho County, so they had, what they would call, three trans- county splits in order to make up full districts because they were including Canyon County with part of Owyhee, part of Payette, and part of Gem County.

He said that all of that was borne out of Ada County where there was quite a bit of robust debate, and they had districts early on that reached from downtown Boise out to downtown Eagle. He said that district now actually stopped on the east side of the new Highway 55 where it picked up Highway 44. He said that there was quite a bit of debate and work done in Ada County, and there was a concern in terms of how the Ada County districts worked. He indicated that they would see that the districts that ended up being produced in the final map were a major compromise on both sides. He stated that it was the best way to maintain the status quo in Ada County. He said that he lived in District 14 and there were 76,000 people in that district, and there were also close to 70,000 people in the existing District 21, as most of the heavy population growth in Ada County was in western Ada County, and most of the population growth in the state was in Ada County. There was reasonable growth in Kootenai County which actually stabilized the north, and without that it would have been a much more difficult job to get the balance up there.

Mr. Esposito indicated that as they started moving east that was where the problems really began, because not only did they not have population growth, but they lost population in a number of the areas. So as they moved east they were looking at Elmore County, and in order to get the right balance to make that work they ended up putting that with a considerable portion of Twin Falls County. That, by the letter of the law was actually another road violation, because there was not a state or federal highway that fully connected the two districts, so that was the third violation. However they were following as much of the public testimony as they could, as they got a lot of testimony in the Magic Valley area about the various combinations there, and one of the things that the commissioners would see in the hearing notes was that they had a fair amount of conflicting testimony. He said that he would use the Twin Falls area as an example, although it was not the only area, but they ended up with people coming in saying, *no doubt about it, Twin Falls and Jerome should be separated, no way should you put those two counties together*, and then they had other people come in that said *put Jerome County and Twin Falls Counties together because there is a lot of community of interest, the College of Southern Idaho, the taxing district, etc.* So they had to make some value judgments as they went through that in terms of the larger context of the map, and as they looked at it they considered that they had the conflicting testimony, and because of the way that the numbers came together and the way that the geography worked, that was how they ended up with Jerome and parts of Twin Falls County. He said that they would see the Gooding, Lincoln, Blaine County configuration, and that Camas County was still intact, as it pretty much followed the current District 25. Moving further east, they had Minidoka, Cassia, and part of Power County that had come together to form a new district.

Then he said that they got to the heart of the difficulty in terms of the maps, as in the southwest corner, the infamous current District 31. He indicated that they had received a lot of testimony from Rexburg, Idaho Falls, Pocatello, and Soda Springs to not give them another District 31, and that was actually the basis of the legislature passing, by bi-partisan measure, the road rule. He said that if they looked at the boundary between Caribou and Bonneville Counties that was the fourth, and last, road violation on their map. The reality was that once they got into the tight corners, and they were looking at population and trying to make all of it work, they had some fairly limited options. Plus the fact that they lost a considerable amount of population in those areas, and also north of there in the Butte, Clark, and Jefferson County areas. He said that when they started looking at that, the population declines had a significant impact. So in terms of putting a map together that really worked well for all of the parties, they ended up with an additional road violation. He said that all of the commissioners, as they were negotiating that, fully understood what they were doing. He said that as they reached a compromise they fully understood that in order to follow the legislative guidelines, and the other guidelines that they needed to follow, that was a consideration. He indicated that their votes, if they had been given the opportunity to vote, they fully intended to do the formal votes to allow the waivers of the road violations. He said that the legislature, in their wisdom, realized that there were probably going to be times when those violations would occur, and it would be in the best interest to produce a map, to get them done. He indicated that the majority of the time and effort throughout the process revolved around southeast Idaho and how that was going to shape up. He thought that what they came up with, after a lot of time and effort, was their best solution and best compromise. He indicated that he didn't like seeing that district again, but with the realities of what they had to deal with, that was what they did, and he thought that all of them would stand firmly behind it and say it was the best that could be done in terms of bringing the compromise together and making it work.

He said that when they started looking at Lemhi, Custer, Butte, Clark, Jefferson, and Fremont there was a lot of geography, and dwindling population. So when they started looking at different configurations they thought to maybe put Blaine with Custer and Lemhi, or maybe what they needed to do was to put Fremont with Clark, or part of Jefferson. He indicated that the best analogy was that once you started pushing on the balloon, because of the numbers and because of the way the geography worked, you ended up with some major traps up in the corner. He said that they had lots of people that did a regional map and said that was the solution for that area, and that was all well and good, except that in the context of the larger map your starting point was a very key part of it, and if you were not careful with where you started and how you actually did this, you ended up in some pretty good boxes. He indicated that what they were seeing was the benefit of presented maps, between the two sides of the commission, which was over 30 maps, and that was not counting the other 40 plus maps that they had seriously worked on and looked at. He said that **Mr. Frasure** was a map-making machine, and probably had a hundred on his own. However the reality was that there were very few options, and they were fairly well limited to make it all work and to keep as many communities of interest together, keep the deviation together, keep all of the other considerations that they were bound by in terms of Constitutional requirements, the legislative guidelines and also the court rulings. That was part of the reason why he and **Ms. Finman** had petitioned the court to try to get some clarification on those issues, and they had actually done another filing on the last go-around with the court again to see if they could get some clarification for whomever the new commission was going to be, so that they would have a little better clarity and guidance. He said that they believed that their map, with the guidelines that they had now, would meet the legal challenge, and that given the vote from this commission that it would withstand a court test, and they had some outside counsel advising them on that.

Commissioner Martinez said that given the possibility that the map would go forward and would be challenged and go to the court, he understood that legal counsel had said that they thought it would be accepted, however he asked what **Mr. Esposito's** primary concern would be, and what was the most vulnerable part of the map: county splits? Highways? **Mr. Esposito** said that he thought that the court had been clear about the deviation issue so they had met that challenge; he said that he thought it had been proven pretty clearly that a filing before the Supreme Court was not a slam dunk, even though some people in the past had believed that. He hesitated to predict what the court would ultimately end up doing. He said that they knew what they did in the past when they received a plan submitted by a majority of the commissioners, as long as it met the deviation, they were good with that. He thought that in terms of recognizing where some of the violations were under the current legislative guidelines, and addressing those in terms of what they put forward to the Secretary of State, he thought they would probably be on pretty solid ground. He said he couldn't predict what the court would do, as that had been proved to be a fool's game, and whatever the court was going to do, the court was going to do.

Chairman Beitelspacher said that he wanted to thank the former commissioners again for what they had done as it was a difficult task, and they had outlined it well, and he asked for them to be prepared for them to perhaps call on them again in the future. He indicated that he had visited many times with **Ms. Kane** and **Mr. Andersen**, and received recommendations from them about process and procedures. He said that they had spoken highly of the other commissioners' integrity in their endeavor, and he asked them not to hesitate to contact him personally, and he would probably be calling them for a little more advice.

Chairman Beitelspacher suggested that they move on to the calendar to get the rest of the schedule laid out, and he requested that **Mr. Kane** be called back up for some clarification. He indicated that they had talked a little bit, and many of them had only expected to be meeting on the 28th and 29th, so on the 30th they would not be meeting. He said that they wanted to get the schedule out for the public hearings, and he asked **Ms. Ford** for some guidelines as to scheduling. **Ms. Ford** advised they only had to be five days out for a schedule, so if they wanted to go further out than that it was great, however if they were not prepared to address their long term calendars, just covering the next week would be fine. **Chairman Beitelspacher** asked if that meant they could start having hearings on October 5th or 6th, and **Ms. Ford** indicated that they could start on the 3rd or the 4th. **Commissioner Martinez** asked if the weekends counted as part of the five days, and if Sunday was counted as one of the days. **Ms. Ford** said that she believed that it was. **Chairman Beitelspacher** said that they would like to start the hearings on the 5th, and that they would have a little more discussion about where they would be.

Commissioner Olsen asked him if he was referring to hearings in other places, and **Chairman Beitelspacher** said yes, outside of the Boise area. He did not know where they would start, or where they would be, as that was an internal discussion they needed to have, but this was just so they could lay out a calendar. **Ms. Ford** asked what the starting time would be, and **Chairman Beitelspacher** suggested that they get the days set first, as he intended to consult in great depth with his comrades on both sides, so that they were all happy with what they did. **Commissioner Hansen** said that he thought that they needed to have the hearings as quickly as they could, and he asked if they were thinking evenings or day meetings, and he would like to know what the commission felt about that, whether they travelled during the day and went to an evening meeting, and what the focus was.

Chairman Beitelspacher said that he had taken the liberty of visiting with **Mr. Youtz** in the past about how that might work, and he asked if **Mr. Bybee** or **Ms. Ford** would like to address plane schedules, and if they were utilizing the state plane what the format was and how that might work, so they all had some understanding that if they utilized the state plane what they would do and when they would leave. **Mr. Bybee** said that if they were able to utilize the state plane, he thought that the best way to travel by state plane would be to start in Boise and fly east, or fly north together, and it would be a round trip ticket on the same day. He indicated that if they wanted to knock out two public hearings on the same day then they could conceivably fly to east Idaho, and hold a hearing in Idaho Falls around 4:00 p.m. He said that they had noticed that they got a better turnout in evening meetings in the past, so they could have a 4:00 meeting for a couple of hours, catch the plane, then they would gain an hour going up north, so that would get them into a meeting by 7:30 p.m. up north, and then they could come back to Boise. He indicated that would be a long day so he was not sure that he was recommending that to

them, but it was an option to do it that way. **Chairman Beitelspacher** said that helped to clarify so that they would all understand the mechanics of how the operation would take place. He said that would be a long day and he wanted everyone to be heard, and he asked how they would get from the airport to the hearings. **Mr. Bybee** said that if it was the will of the commission they would be able to figure out a way to arrange transportation, and he thought that it was doable if the state plane was available for whatever day they chose. **Chairman Beitelspacher** asked how soon they could find out if the state plane was available, and **Mr. Bybee** advised he could check the schedule as soon as they were finished. **Chairman Beitelspacher** suggested that while he checked the schedule it might be best if they engaged in some public discussion amongst themselves as to what worked best for when they had the hearings, and how much time they would take between them.

Commissioner Hansen said that he liked the idea of having two on the same day, but in the same regard he didn't want to schedule them so tight that they were limited to the amount of testimony that they could take. It would be his recommendation that it be a noon until 2:00 or 3:00 hearing. Then if it went a little bit longer they were not rushing up to Coeur d'Alene and cutting off the discussion, and people felt like the commission really didn't care. So it would be his recommendation that they doubled up and make the times further apart so it was not a rushed situation. Plus, he agreed that they did have issues with transportation and they did need to put that on the agenda.

Commissioner Grange said that she concurred. **Commissioner Beitelspacher** said that he thought they were in concurrence with **Commissioner Hansen's** comments, and if they were hearing from people, they couldn't get up and just leave, as they would be offended by that, and that would get them off on the wrong foot, and someone would be upset and would be looking at them in court.

Commissioner Hansen said that in order to get the discussion started, the first question he would ask would be if they wanted to have the hearings back to back, and have a day in between, or something like that. He indicated that he would yield to the commission, and maybe as a thought, if the plane was available on the 5th, to do eastern and northern Idaho, and then come back to Boise and maybe have a hearing on the following day, the 6th in Boise. He said that he didn't know if they wanted three or four meetings, and he was just trying to get the discussion going, so maybe that would be a good way to do that.

Commissioner Crow said that she could not see anything wrong in saying to the people in Pocatello that they would be there from noon until 2:00, but at that point their plane left to go Coeur d'Alene, so that they would know that there was a time schedule. She indicated that they may run over a little bit, but they were not going to run over by an hour, and that was the way that they had handled that in the past. She said that was perfectly all right because they would know up front that 2:00 was the time to quit. **Commissioner Beitelspacher** asked **Ms. Ford** if she had attended the out of town public hearings in the past, and inquired how long they generally lasted. **Ms. Ford** advised that she had attended half of the hearings and that **Mr. Bybee** had attended the other half. She indicated that they generally lasted two hours, however some of them did not go the full time, and some of them went slightly over. **Chairman Beitelspacher** said that he certainly appreciated what she was saying, and he was wondering, out loud, that as this time they were going to have a plan to look at, that might bring more people out, and they would have more comments on a plan that was there in front of them, and if they may need a little more time. **Commissioner Hansen** suggested that this be their first compromise, and that maybe they should put a three hour window in there, and if they used it fine, and if they didn't that was all right. He said that he did think that the reality with transporting them, and everything else, was that it would do the people in northern Idaho a disservice because they would need a breather there to eat and clean up. So even if they put a three hour window in and they did not use it, he thought that would solve the issue. He also said that he liked the idea of a close on it, so they were saying that they were going to be leaving. **Chairman Beitelspacher** said that sounded fine to him.

Ms. Ford said that she wanted to make sure that the commissioners did not feel pressured to hold their hearings first because the last commission had, and she indicated that there was no reason that they could not spend the first couple of weeks drawing maps, and then travel and have the public comment on those maps as well. **Commissioner Crow** said that at this time of year she thought they would be smart to get it done quickly. **Chairman Beitelspacher** said that he was also of that opinion. **Mr. Youtz** commented that one other situation that the last commission had run into in conducting their public hearings was the need to manage the time of those giving testimony. He said that if they had two hours, and they had a sign-up sheet with twenty people on it, then they could let everyone know that they each had three minutes. He indicated that the previous commission had a couple of times when they had presenters go on for thirty minutes, and they had some aggravated people who never got a chance to speak. He suggested that they get a sign-up sheet first and then if everyone knew they had the same amount of time they would keep everyone happy. **Chairman Beitelspacher** said that he was assuming that the mechanics of the hearings would be taken care of by the staff. **Mr. Youtz** advised them that **Ms. Gaudet** would be on-site with the sign-in sheets and to help the chairman, so it should go very smoothly. **Chairman Beitelspacher** said she was doing a hell of a job so far.

Commissioner Martinez asked about the possibility of using the Idaho Education Network based out of Boise. He said that he did not have a good feel for how that would work and he asked if it would outreach to anyone in the rest of the state, and who could interact and get their opinions across using that avenue, instead of going to a public hearing in their area. **Mr. Youtz** said that through the Idaho Education Network they could have an on-site meeting throughout the state, but actually conduct the meeting from Boise. He indicated that it would be a teleconference so the public could see them and they could see the public. He said that it may be that once they conducted two or three public hearings, they would get back and feel a need for a little more public input, before they actually got down to drawing maps, then they could schedule a statewide public hearing and invite people from different regions to participate. He said that they were usually in auditoriums or larger classrooms, and they had a list of facilities that could accommodate that. He indicated that they could give them directions on parking, and how to get there, and actually have someone on-site to facilitate it from their end as well. He stated that it was a nice tool that was available to them. **Commissioner Grange** asked how far in advance they would they would need to plan that.

She asked that if they had the Boise hearing the next week, later in the evening, would they be able to invite other people to be part of that? **Mr. Youtz** said that he thought that was possible and they would check into it that afternoon.

Commissioner Olsen said that she would like to speak favorably to the idea of using the network, but perhaps to use it later in the process. She said that she thought that the next week was rushing it, and that maybe they could get the travel out of the way. She indicated that she really liked the idea; however she liked it later in the process because it gave more people the opportunity to get the best of both. **Commissioner Grange** said that she agreed, and she was just wondering if it was expedient to just get it done the next week, but she also thought there was a lot to be said about having it a little bit later as well. **Commissioner Hansen** said that he wanted to make sure that as he understood the comment from the Attorney General's office, was that for them to really comply they should at least have two or three public hearings, so maybe the possibility was just to hit two ends of that state and then focus on one statewide, or something like that. He indicated that he wanted to make sure that they fulfilled the letter of the law also. **Mr. Youtz** said that he believed that **Mr. Kane** had said two public hearings, and that he was now present for their other questions as well. He indicated that they could then use the teleconferencing if they wanted to enhance their efforts.

Commissioner Beitelspacher said that he wanted to finish the calendar before they heard again from **Mr. Kane**. He indicated that he would try to sum up the advice that he had received from both sides of the table, and that was they were going to start off with their public hearings, one in the north, one in the east, one in Boise, and then at a later date they would utilize the Idaho Education Network to have another statewide hearing from Boise where they would take input. **Mr. Youtz** said that they would get back to the commission on the logistics of utilizing the IEN. **Mr. Bybee** advised the commission that the state plane was listed as not available, as they were having repairs done, but they were going to get back to him at the end of the day. He indicated that there were other means of travel around the state, and if they wanted to do a Coeur d'Alene trip, and then over to Idaho Falls, or something like that, that would work as well, and did give them some further options as far as travel was concerned. **Chairman Beitelspacher** suggested that they have a hearing on the 5th, the 6th, and the 7th, and instead of trying to squeeze it all into one day that they leave themselves some slack. **Commissioner Hansen** asked if he was talking about an evening meeting on the 5th and the 6th, and possibly a day meeting in Boise on the 7th. He also suggested that they could broadcast the meeting on the 7th and get statewide input on that if they chose to on that day. **Commissioner Olsen** asked about the time commitment they were looking at on the 7th. **Chairman Beitelspacher** said they were looking at late afternoon or evening on the 5th, late afternoon or early evening on the 6th and a day meeting on the 7th in Boise.

Commissioner Crow asked that he go over the schedule again so everyone was clear on what day and where they would be meeting. **Chairman Beitelspacher** said that the late afternoon or evening of the 5th they would be in Idaho Falls, then late afternoon or evening on the 6th they would be in Coeur d'Alene, and on the 7th they would be at the Capitol. He asked the staff for any recommendations on times for the meeting on the 7th, and asked if they had the meeting at 1:00 or 3:00 if they would have demeaned the intent. **Mr. Youtz** said that he didn't believe so; however, the one thing that they would have to check on would be if it was an issue for the IEN during the day. **Chairman Beitelspacher** said that those three meetings would not include the IEN, as they were going to set that off for a later date. **Commissioner Olsen** asked about the schedule, and said that she had a previous commitment in Provo on the 8th, and she was trying to figure out the logistics of her travel. **Chairman Beitelspacher** said that he knew that they all wanted to attend the hearings, however if one person wasn't able to attend, did that cause anyone heartburn, or if they were able to deal with that. **Commissioner Olsen** said that she was all right with that, but she wanted to make sure that she did her job. **Chairman Beitelspacher** said that he didn't want to offend anyone by suggesting that their failure to be there... **Commissioner Olsen** ran through the travel scenarios and pointed out that the direct flights did not take electric carts, so she suggested that she could miss the Coeur d'Alene hearing. **Chairman Beitelspacher** said that they wanted to do whatever worked best for her. **Commissioner Olsen** said that she was fine with that, if the commission was fine with that. She would then miss the Coeur d'Alene and the Boise hearings, as it would really be complicated with logistics just for her to get up to Coeur d'Alene for that, and expensive to fly through Salt Lake, so it did not make sense to her. **Mr. Youtz** pointed out that if the commissioners could not physically make the public hearings, and there would not be any votes taken, they could listen to the hearings live on the internet, and of course they were recording all of them. **Chairman Beitelspacher** said they would make certain that her absence was explained.

Chairman Beitelspacher then suggested that after they had their public hearings that their next meeting be on the 10th of October at 9:00 a.m. **Commissioner Crow** asked that they start at 9:30 because she was commuting, and **Chairman Beitelspacher** agreed that 9:30 was fine. **Ms. Ford** pointed out that the 10th was a state holiday; however, they could make arrangements to have the rooms unlocked. Due to that it was agreed that they would meet on Tuesday, October 11th at 9:30 a.m. **Chairman Beitelspacher** indicated that they wanted to get the dates set, and they would fill in the agendas later on. He then suggested meetings on the 12th, 13th, and 14th, all starting at 9:30 a.m. As that was agreed upon, he suggested that they book the next four days and then take the 21st off. **Commissioner Martinez** asked when they were thinking about doing the IEN teleconference, that week or the week after that. He suggested that they would have had one full week of meetings, and it would be over a week after the last public hearing. So he was wondering if that was enough time for people to become aware of anything that they may want to add to it, that they did not have a chance to add the first time they were in their area of the state. He stated that he was open to that week or the one after that, and he suggested Wednesday the 19th. **Chairman Beitelspacher** confirmed that they would begin work on the 17th, and the 18th, and then on the 19th they would be using the IEN for an open hearing that would go statewide, and asked if that was agreeable. He said that he was assuming that would be a two hour hearing process. He then asked for any suggestions for the week of the 24th, and it was agreed that they would meet on the 24th, 25th, 26th, 27th, and 28th, all at 9:30 am. He indicated that they might as well schedule the 31st to take care of the month of October. In discussing any further scheduling,

Commissioner Hansen suggested that they would have a better feel of where they needed to go after the first couple of weeks, and it was agreed that they would not schedule any further meetings until later on.

Chairman Beitelspacher then called on **Mr. Kane**, and said that he had read the minutes of the previous commission, and he thought that somewhere in there **Mr. Kane** had said that if three committee members were by themselves, and were visiting about the business, it did not violate the open meeting law, and he asked if that was only three members in a caucus. **Mr. Kane** explained that to have a meeting it required a quorum, which would require at least four of them, so three was fine. He said that the dilemma came when they had three discussing it and they pulled one more in, or something to that effect, and it created what he called a serial meeting, so they had to be very careful. He indicated that he thought it was also worth pointing out that the open meeting law did not prohibit the six of them from going to lunch, provided they did not talk about commission business. He said that he always thought of that as *who among them could resist temptation*. As an attorney he said that he goes out and he was drawn to other attorneys, they talk about their kids and vacations for five minutes, and then, boom, the conversation went to the law. The thing that they all had in common was the commission, and so the temptation would be that they went out and talked about their kids, and then, boom, they were on to *what did you think about that testimony last night*, or *what do you think of that plan*. He said that it was just so easy to put themselves in that position that it may be better to just not put themselves in that position. **Chairman Beitelspacher** asked if he was referring to six of them, and **Mr. Kane** answered as four, five, or six of them, whatever their divisible was.

Mr. Kane indicated that the key was that they could do it, but to remember that it would raise questions. **Chairman Beitelspacher** said that they were all cognizant of that, and as a matter of fact, they had interrupted several discussions amongst themselves during lunch just to prevent that. He said that they wanted to make sure that they were doing it right. On the other hand, they were trying to discuss a potential for an agenda, not to move counties, but just to facilitate the process. **Mr. Kane** said that he raised an excellent point and he would refer to it as the chicken or the egg problem with the Idaho open meeting law. He said that theoretically the decision to have a meeting was a decision that was reached by the entity, so in theory they could never schedule a meeting without complying with the open meeting law, which got them into a weird spot. So he firmly believed that there was a pragmatic element to it, so if they needed to schedule a meeting, they needed to schedule a meeting just to get the ball rolling. **Commissioner Beitelspacher** said that they were not trying to schedule the meetings; they were just trying to get an idea of each other's schedules, and communicate those to the other commissioners. He indicated that they wanted to know what was going on so they didn't appear to embarrass anyone because they were trying to move forward, and someone couldn't be there, and they wouldn't want people to think that they were shirking their duties.

Mr. Bybee suggested adding a working lunch to the agenda as there had been some consideration by the commissioners to have lunch together. He asked if they added *working lunch*, if that would allow them to talk business without violating the open meeting law. **Mr. Kane** said that they absolutely could have a working lunch provided that it was on the agenda and folks had the ability to attend. The only practical caveat that he would give was that sometimes it was difficult to actually eat and do business, especially if they were going to be talking quite a bit, and he suggested that they keep that in mind. However, legally, as long as it was on the agenda, there was no problem with that. **Chairman Beitelspacher** said that frankly he thought that for most lunches they would be tired of talking about it, and it would be nice to not have to visit, so he would leave that to the commission as to how many working lunches they wanted to have. But for him it would be kind of nice to take a break.

Commissioner Martinez asked **Mr. Kane** if he was going to be reviewing what was public record as far as emails, notes, and other forms of communication, so they could be as careful as they could, and be responsible. **Mr. Kane** explained that there was a specific records exemption within 9-340 F, that he had spoken about earlier; however as far as emails, they would probably be subject to the public records act. So one of the things to always consider was whether or not they wanted to send an email, or if they wanted to have a conversation. He said that was within their discretion; however, the presumption was that they were public records. He advised that if they received a public records request, and they had documents that they believed were exempt, to please contact him as early as possible so they could review it and make sure that if they were exempt they had the appropriate exemption under which they would fall, and if they needed to disclose them, they would get them disclosed for them. **Commissioner Grange** asked if there was a difference between their personal computers and their work computer, and their personal email, and the redistricting emails. **Mr. Kane** said that was a fairly sophisticated legal question, so he would start with the easiest part first. He indicated that if it was a state provided resource, and they were working on it, the presumption was that all of the work was public within that resource because it was paid for by the state and the tax payer dollars. If it was a personal computer, but they were transacting business through an official account, for example if they went home and wrote an email to their fellow commissioners from their home personal computer, using the state portal, and it related to commission business, that was probably a public record. So, he said that the best advice that he could give them was that as much as possible, he would encourage them to separate their public business from their private business. **Commissioner Olsen** asked if a friendly email to any other commissioner, on their own time, was all right. **Mr. Kane** said that was also a sophisticated analysis, he indicated that if she sent that from her private computer, and for example sent it to **Commissioner Crow** and **Commissioner Grange** on their personal email accounts, and it did not relate at all to commission business, then it was probably not a public record. However if she sent an email to **Commissioner Crow** and **Commissioner Grange** from her private email address to their commission addresses, and it said *do you have time to get on the phone, I want to talk about plan L88*, that may be a public record at that point. He said that they were getting into really fine distinctions, which was why he was giving them the recommendation that if they got a public records request that addressed those issues, to please call them as soon as possible so they could look at it, and work their way through those sorts of things. **Chairman Beitelspacher**

thanked **Mr. Kane** and asked him to not hesitate to offer any advice that he had. He then suggested that they take a recess for 15 minutes, and then continue on with the Maptitude training.

Commissioner Hansen said that he wanted to get something procedural out of the way. He thought that anything they did in their discussions, if they were going to communicate and talk about anything that the previous commission had done, that they really should do that by adopting the proceedings from the previous commission. He indicated that his understanding was that they really should not refer to that until it was part of their proceedings, and he would like to make a motion that they adopt the proceedings from the previous commission as part of their commission, and he would like to place that before the committee. **Commissioner Martinez** seconded the motion. As all were in favor the motion passed. **Chairman Beitelspacher** thanked **Commissioner Hansen** for calling that to their attention, and without objection called for a 15 minute recess.

Commissioner Beitelspacher called the commission back to order and advised that **Mr. Cutler** was going to give them a quick look at the GIS portion, and then they would start the next morning at 9:30 a.m. in Room 422, and go into the in-depth process with Maptitude. **Mr. Cutler** said that he would start off showing them the website, and he explained that under Proposed Maps there were the Congressional maps and the Legislative maps. He said that every map that was submitted by the commission, and by the public, was put into a library. All of the details were then put into the database, and they were put up onto the website so the public could view who had submitted a plan. He showed the commission the links to the pictures of the plans and to the statistics. He explained that the plans were labeled "C" for Congressional and "L" for Legislative, and that the Legislative plans also came with a report link. He indicated that if it was a partial plan it did not have a report; however he could run those if needed. He said that when they were in Maptitude he would show them how to run the reports, get their statistics, and get the deviation. He indicated that the reports would have a population summary report which showed the deviation, the largest to smallest deviation, and the deviation by district. Also with the report would be the plan components report, which was a breakdown of the plan by counties, and they could also run reports on precinct splits to go with that. He advised them that the plans would have several pictures, and most of them would have pictures zoomed in to the major population centers so people could see those. He indicated that each plan came with deviation statistics by population and race, and the reports.

He then moved to the Maptitude software and explained that every plan that got submitted went into the Maptitude library and that they would have full access to all shared and submitted plans straight from the Maptitude software. He explained that when Maptitude was first brought up there was a blank screen and that the first thing they would want to do was go to the Redistricting Plan Manager, and that most of the times they would be going into the library and selecting plans. He indicated that from there they could access any plan, open it up, and view all of the details of the plans. He explained that as the library was the public record of everything that had been submitted, they could not edit anything directly in the library. So if they wanted to edit a plan that had been submitted they had to go to the Plan Manager and make a copy of that plan to their own personal machine, into their own library, and then they could edit it and change the plan, and resubmit it under a different number.

Chairman Beitelspacher asked if **Mr. Cutler** was going to go through this in great depth the following day. **Mr. Cutler** indicated that the following day everyone would have their own computer, and that they would open up the software and make sure that everyone's machines were linked to the public libraries, and they would go through how everything was set up in great detail. **Chairman Beitelspacher** indicated that they still wanted to tour the rooms, and that the staff had some other things that they needed to do. As they were going to go through Maptitude in complete depth the following day, he thanked **Mr. Cutler** and said that they would start with him in the morning. He then indicated that they were going to go with **Mr. Bybee** upstairs to get checked in and get their keys. He also indicated that the following day the gavel would go to **Commissioner Crow**.

Commissioner Crow moved to adjourn the meeting, and **Commissioner Martinez** seconded the motion. As all agreed, **Chairman Beitelspacher** adjourned the meeting at 3:15p.m., until 9:30 a.m. the following day.