

BOUNDARY REVIEW BOARD FOR WHATCOM COUNTY

RULES OF PRACTICE AND PROCEDURE

Pursuant to RCW 36.93.200, the Boundary Review Board for Whatcom County adopted the Rules of Practice and Procedure on July 13, 1978 and amended them on August 11, 1983; and again on June 13, 1996; now, therefore

BE IT HEREBY RESOLVED by the Boundary Review Board for Whatcom County that the Rules of Practice and Procedure are hereby reviewed and revised January 9, 2020 and adopted on July 28, 2021, as follows:

I. ORGANIZATION

A. MEMBERSHIP

The membership consists of five members chosen as follows, in accordance with RCW 36.93.061:

1. Two persons shall be appointed by the governor;
2. One person shall be appointed by the county appointing authority
3. One person shall be appointed by the mayors of the cities and towns located within the county; and
4. One person shall be appointed by the board from nominees of special districts in the county.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof.

B. TERMS

The terms of office shall be in compliance with RCW 36.93.063. The term of office for all appointees other than the appointee from the special districts shall commence on the first day of February in the year in which the term is to commence. The term of office for the appointee from nominees of special districts shall commence on the first day of March in the year in which the term is to commence.

Vacancies (36.93.063) on the board shall be filled by appointment of a person to serve the remainder of the term in the same manner that the person whose position is vacant was filled.

C. OFFICERS, TERMS (36.93.070)

The Board shall elect a Chair and a Vice-chair from its membership at a monthly meeting each year. The Chair and Vice-chair shall serve for a period of one year, and thereafter until their respective successors have been elected. If the Chair leaves the board prior to the expiration of his/her term, the Vice-chair shall reside until a new Chair is elected. The Vice-chair shall not have the power to waive review under RCW 36.93.110. The Chair and Vice-chair may be replaced at any time by a vote of the majority of the Board.

D. COMPENSATION (36.93.070)

Each member of the board shall be entitled to compensation from the county current expense fund for each regular or special board meeting, or hearing, (for time actually devoted to the work of the Boundary Review Board) in accordance with the current compensation rate established in RCW 36.93.070.

E. ATTENDANCE

Any member who misses three (3) consecutive meetings, may at the discretion of the Board, be asked to submit a letter of resignation. Consideration will be given to the reason for missing meetings. Attendance at the annual conference is highly encouraged, but not required.

F. LEGAL COUNSEL

All questions of law shall be referred by the Board to its designated Legal Counsel.

G. CHIEF CLERK

The Chief Clerk is appointed by the organization contracted by Whatcom County to facilitate the work of the Boundary Review Board in accordance with RCW 36.93.070, shall be accountable to the Board through the Chair and shall be entitled Chief Clerk.

II. BOARD MEMBERS

A. CODE OF ETHICS

Boundary Review Boards are state statute mandated. These boards are, therefore, state quasi-judicial bodies operating in the best and fair interest of the public, unencumbered by local, private, or political special interests.

The board shall demonstrate a level of conduct and a code of ethics equivalent to or exceeding those of a court of law. Each staff and board member carries an individual responsibility to act conducive to the public good, maintaining a positive opinion of the Board's fair and dignified service to the public.

B. APPEARANCE OF FAIRNESS

1. Ex-Parte Communications

In accordance with RCW 42.36.060, members shall abstain from any and all communications with persons or governmental or private entities which are or expect to be parties before the Board.

This restriction is limited to matters before the Board, or which may come before the Board. If a member receives a letter or other written communication relating to a matter before the Board from a source other than the Boundary Review Board Office, that member shall transmit the material to the Chief Clerk for inclusion into the record.

Members shall avoid conversations with any party to the action except when such conversation is on the record. It shall be the duty and the responsibility of each member to publicly disclose at the earliest opportunity any communication between said member and a party to a matter before the Board.

2. Disclosure

It shall be the duty and responsibility of each member to publicly disclose at the earliest opportunity any communication between said member and a party to the matter before the Board.

III. OFFICE PROCEDURE

A. Correspondence

All correspondence to the Board shall be received at the office of the Chief Clerk of the Board, 600 Lakeway Drive, Bellingham, WA 98225, or c/o Whatcom County Courthouse, Bellingham, WA. 98225

All inquiries from the public to the Boundary Review Board requiring an official response shall be in writing. Any official reply by the Boundary Review Board for Whatcom County shall be in writing and signed by the Chair or the Board's legal counsel.

General correspondence and correspondence relating to the forty-five day elapse without jurisdiction having been invoked may be signed by the Chief Clerk.

B. NOTICE OF INTENTION

1. Form

All Notices of Intention shall be submitted in the appropriate form, which shall be furnished by the Chief Clerk, upon request. The Notice of Intention Form currently in use is incorporated by reference and made a part herein.

2. Legal Descriptions

The legal description and assessor's map(s) shall have the signed approval of an engineer licensed in the State of Washington or County Engineer. The legal description may be altered according to the process described in RCW 36.93.130(3).

3. Contiguous Geographic Area Only

A Notice of Intention shall describe no more than one (1) parcel of land, that is, a parcel whose boundary is defined by a single continuous line.

4. Environmental Review

The initiator of a proposed action as the lead agency shall perform its duties according to the State Environmental Policy Act (RCW 43.21C) and WAC 197-11 and submit documentation of its completed environmental review with each Notice of Intention. This provision does not apply to actions exempted under RCW 43.21C.

If the initiator is not the lead agency, the initiator of the proposed action must determine the lead agency and cause such agency to complete its duties pursuant to RCW 43.21C and WAC 197-11 prior to filing the Notice of Intention. If the lead agency determines that a proposal is exempt, the reason and citation of the appropriate SEPA guidelines must be submitted with each Notice of Intention.

5. Filing Fees

A fee of fifty dollars (\$50.00) shall be paid by the initiator of a proposed action in accordance with RCW 36.93.120. In no case may a fee be refunded.

6. Date of Filing of Notice of Intention

All Notices of Intentions shall be in accordance with RCW 36.93.090. The Notice of Intention shall be filed with the Boundary Review Board for

Whatcom County by the initiator of the proposed action promptly after being reviewed by a legislative body or bodies when such approval is required by state statutes or when such action is initiated by the legislative body or bodies. In such cases, the legislative body or bodies shall be deemed the initiator.

In cases where the state statutes require the filing of a petition with the County Auditor or County Council prior to approval of or agreement by the legislative body or bodies of the city (or cities), town(s), or special purpose districts(s), the Notice of Intention shall be filed with the Boundary Review Board promptly following such approval. In such cases, the legislative body or bodies shall be deemed the initiator(s). Where such approval or agreement is not required, the Notice of Intention shall be filed with the Boundary Review Board prior to the filing of a petition with the County Auditor or County Council, whichever of the two is to occur first according to state statutes. In such cases the petitioners shall be deemed the initiators.

7. Additional Information

To facilitate consideration of the Notice of Intention, the Board or its Chief Clerk may request the initiator of the action to supply additional specified information regarding the subject of the Notice of Intention prior to officially accepting a Notice of Intention.

8. Complete Information

After receiving a Notice of Intention and upon determination that in accordance with RCW 36.93 and the Boards Rules of Practice and Procedure, that a Notice of Intention is legally sufficient, the Chief Clerk shall add a filing date to the Notice of Intention. A filing date shall be effective only after a Notice of Intention has been filed with the Board and perceived as legally sufficient, including a correct legal description and maps requested in Notice of Intention form. The initiator will be advised by letter of the assigned filing date.

9. Routing

Upon receipt of a Notice of Intention, the Chief Clerk will route the Notice of Intention to appropriate agencies for checking and comment, including the County Executive, Director of Public Works, and the Director of Planning. Others who may receive Notices of Intention include the Board's legal counsel, the Assessor's Office, the Auditor's Office and the Health Department, fire and water districts, and any interested party, upon request to the Board Office.

10. Notice to the Board

Upon assigning a filing date to a Notice of Intention, a copy of the file shall be mailed/delivered, at the discretion of the Chief Clerk, to the Board members.

11. Notice to Entities Having Jurisdiction

Upon assigning a filing date to a Notice of Intention, the Chief Clerk shall forward a copy or substance thereof to the governing body of each government unit having jurisdiction in or near the boundaries of that territory proposed to be affected and to all other entities having requested such information from the clerk.

12. Withdrawal

Any Notice of Intention filed with the Boundary Review Board may be withdrawn by the initiator at any time prior to the Board having taken jurisdiction over the matter, or the Chair having signed a waver form. Notice of Intention may be withdrawn thereafter with the consent of the Board.

13. Fees Not Refundable

In no case shall a filing fee be refunded in the event of withdrawal of the Notices of Intention or waived.

14. Approval After 45 Days

If forty-five days have elapsed without the Board's jurisdiction being invoked, the proposed action shall be deemed approved as in RCW 36.93.100.

15. Certification

In the case of annexations, one certified copy and five (5) additional copies of the final annexation resolution from the legislative body of the city, town, or special purpose district, shall be sent to the Clerk of the Boundary Review Board within ten (10) working days following final approval. After reviewing the final annexation resolution, including the legal description, for accuracy, (see page 11, Section 3, Validity) the BRB Clerk will distribute the copies to appropriate county departments, including the County Council, the County Executive, the Assessor, the Public Works, and Planning. This Certification is in addition to whatever the cities are required to do for the State Office of Financial Management or other state office.

IV. MEETINGS, INVOKING JURISDICTION, HEARINGS, AND DECISION

A. MEETINGS

1. Regular Meeting Date

Regular meetings shall be held during January and July each year. Regular meetings may be cancelled when no item of business is listed for action or there are no Notices of Intention for review.

The Board may hold special meetings at such other times and/or places as determined by Resolution.

2. Agenda

An agenda shall be prepared by the Chief Clerk for each Board meeting. The agenda shall contain a summary of all matters when known to require attention and shall be sent to the Board member at least five (5) days prior to the scheduled meeting.

3. Rules of Order

Except as modified by these Rules of Practice and Procedure, all meetings of the Board shall be conducted in accordance with Robert's Rules of Order, Revised Edition, which is, by this reference, hereby incorporated.

4. Resolution and Minutes

All official actions of the Board shall be adopted by the Board and shall be reduced to writing, incorporated in the official minutes of the Board. The official minutes of the Board shall incorporate the motions and actions of the Board.

When jurisdiction has been invoked, the final action of the Board on the Notice of Intention shall be in the form of a "Finding of Fact and Conclusions of Law". Upon request, such minutes shall be available to any interested party and copies may be obtained.

5. Participation by Chair

The Chair may make or second any motion and present and discuss any matter as a member, and shall be entitled to vote on all matters.

6. Voting

In the absence of objection, the Chairperson may order a motion unanimously approved. Any member not voting on roll call in audible voice shall be recorded as voting in favor of the motion unless the member requests that he or she be recorded as abstaining from voting. Each voting member's written statement or oral opinion may be recorded by the Chief Clerk and incorporated into the minutes or Findings of Fact on a Notice of Intention.

The affirmative vote of a majority of the members present shall be required for any action of the board.

In the case of a tie vote that cannot be broken the proposed action shall be deemed approved, unless a majority is required by state law.

A Board member may participate and vote at a meeting by telephone only for the limited purpose of ratifying a previous decision of the Board, such as, but not limited to, a final vote on Findings of Fact; and as long as all Board members can hear one another; and with prior consent of the Board Chair. A majority of Board Members must be physically present, with a maximum of

two members participating by telephone. All such Board members shall be deemed to be present in person at such a meeting.

7. Postponements/Adjournments

The Chairperson may continue or postpone any pending matter, or the board may adjourn to any particular time and place or to a time and place subject to notice as provided by law. (42.30 RCW)

8. Quorum

A quorum for the transaction of any business for the Board shall be the majority of the members. Whenever appointments under RCW 36.93.051 through 36.93.065 have not been made by the appointing authority, the size of the board shall be considered to be reduced by one member for each position that remains vacant or un-appointed in accordance with RCW 36.93.067

B. INVOKING JURISDICTION

1. Review Fee

All fees for initiators and requests for review shall be in accordance with the current rates established in RCW 36.93.120. The current rate to be paid by all initiators is two hundred (\$200.00) dollars. The person or entity seeking review, shall pay to the county treasurer and place in the county current expense fund the fee of two hundred (\$200.00) dollars.

The County is exempt from attaching the review fee. If the County is the entity seeking review, written notification of the Inter-fund transfer of the two hundred dollar Request for Review fee is sufficient indication of payment of the Request for Review fee to the county current expense fund.

2. Withdrawal of a Request

A Request for Review filed pursuant to RCW 36.93.100 (2) by the county or an affected governmental unit may be withdrawn by the initiator of the request at any time prior to the Board setting the time, place, and date for a hearing on the proposal. The Request for Review fee will not be refunded.

No Request for Review may be withdrawn following the establishment of a time, place, and date for such hearing.

3. Additional Information for Review

After jurisdiction has been invoked as provided in RCW 36.93.100, the Board may seek additional information from the initiator(s) of the action. Such inquiry shall be conducted at the request of any Board member, and such request and response shall be at a regular or special meeting of the Board with five (5) days notice, either by phone or by mail, to the initiator of the action and governmental units having jurisdiction in the area.

C. PUBLIC HEARINGS

1. Notification

When the jurisdiction of the Boundary Review Board has been invoked, hearings shall be established in accordance with RCW 36.93.160.

The Board shall give at least 30 days notice of the date, time and place of the hearing to interested governmental bodies, agencies, special purpose districts, etc.

2. Publication

Notice shall be published in a newspaper of general circulation in the area of the proposed action at least three (3) times, the last publication of which shall be not less than five (5) days prior to the date set for the public hearing.

D. HEARING TESTIMONY

1. Oath

The Chief Clerk of the Board shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him to testify before the Board and produce public records, papers, books or documents. The Chief Clerk may invoke the aid of any court of competent jurisdiction to carry out such powers.

2. Transcripts

A verbatim record (audio recording) shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of such testimony shall be provided to any person or governmental unit.

Verbatim transcripts (of the audio recording) may be accomplished by court reporters at the cost of the person(s) requesting the verbatim transcript. A copy of the verbatim transcript, if accomplished, shall be filed with the Chief Clerk and becomes part of the official record.

3. Witness Guidelines

Any initiator of a proposed action, governmental unit or interested person(s) may appear before the Board represented by a duly authorized person(s). Any person desiring to address the Board must be recognized first by the Chair, then shall give his/her name and address to the Chief Clerk and the name(s) of the person(s) or governmental unit on whose behalf he/she is appearing.

The Chair may, in the interest of facilitating the business of the Board, limit the amount of time allowed to any person, group, or governmental unity. Anyone giving testimony is urged to provide a written statement of their views.

4. Exhibits

Any document or exhibit must be submitted to the Chief Clerk before testimony for labeling. A speaker must identify any document or exhibit by its assigned number and title. **Six (6) copies of each exhibit submitted are required.**

Any written position statement regarding a proposed action by a governmental unit received by the Chief Clerk shall automatically be made an exhibit at the hearing.

5. Insufficient Information

When upon the completion of the testimony by parties in an action, the Board is of the opinion that the information on the record is insufficient to permit and informed decision, the Board can either continue the hearing or deny the proposal.

If the hearing is continued, the Board sets a date and time and instructs the parties as to the type and extent of the information required.

Responsibility to provide information necessary for an approval lies solely with the initiator or governmental unit as the proponent.

E. BOARD DECISION

1. Basis for Decision

The basis for the Board's decision shall be set forth in RCW 36.93.010 (Purpose of the Boundary Review Board), RCW 36.93.170 (Factors to be Considered by the Board), and RCW 36.93.180 (Objectives to be Met by the Board). The goals of RCW 43.21 C. (State Environmental Policy Act) shall also be considered in Board decisions. Board decision must also be consistent with the Growth Management Act (RCW 36.93.157).

2. Hearing Decision

The Board shall file its written decision within forty (40) days after the conclusion of the final hearing on a proposal but in no event, except by the agreement of both parties for an extension of the one hundred and twenty (120) day period, shall it be more than one hundred and twenty (120) days after the filing of a request for review. The proponent and the Board may agree to an extension of the one hundred and twenty (120) day period.

The decision shall be filed with the County Executive, the County Council, and the Clerk of each governmental unit directly affected. The decision shall

indicate whether the proposed change is approved, denied, or modified, and if modified the terms of such modification, in accordance with RCW 36.93.160.

3. **Validity**

Approvals given to annexations shall authorize the city, town, or special purpose district to proceed with the annexation of **the exact same area as legally described in the Board's written decision**. The approval shall not authorize any other legally described annexation.

V. **FINANCIAL IMPACT STATEMENT - INCORPORATION**

When the proposed action is an incorporation, the proponent shall submit to the Board a Financial Impact Statement, containing, but not limited to, the following information:

1. The projected operations expenditures for a typical year for general government services (i.e., legislative, general administrative, support and planning, judicial and legal services); security of persons and property (i.e., police, fire emergency, medical, and corrections); physical environment (i.e., parks and recreation, building administration, transportation, health and cultural); and other services (e.g., community development, social and health services, library).
2. The estimated start-up costs of incorporation including the initial expense of providing equipment, facilities, and training for the offices/services necessary to the city. Consideration should be given to offices/services such as mayor/manager, clerk, city council, police department, building and codes, engineering, road and planning departments, public works (streets, including street lighting, water, sewer, traffic, drainage, etc.), fire department, garbage disposal, education, library service, parks and recreation, tideland protection, health services including drug and alcohol treatment, animal control, and other.
3. The new committees/boards/agencies necessitated by incorporation such as a civil services commission, park and recreation board, library board, substance abuse board, planning commission, etc.
4. The fiscal impact of incorporation on residents and businesses. Consideration should be given to the effect on property, sales, business and utility, and business and occupation taxes; licenses, permits, and fees; fines and forfeitures; state-shared revenue (e.g., motor vehicle excise taxes, liquor profits and taxes); federal revenue sharing; garbage collection fees; water and sewer charges; and bond indebtedness.

VI. AMENDMENTS

Any rule of practice or procedure of the Boundary Review Board may be added amended or repealed at any time by not less than a majority of the members.

No such action shall be taken without thirty (30) days prior notice of such action, which notice shall be given in such form and manner as required by RCW 36.93.200.

VII. FORMS AND INSTRUCTIONS

In accordance with the rules and regulations set forth in RCW 36.93, the Notice of Intention form, and the Review of the Factors and Objectives are hereby incorporated by reference as a section of the Rules of Practice and Procedures of the Boundary Review Board for Whatcom County.

VIII. EFFECT OF RULES

Reviewed and approved by the Boundary Review Board for Whatcom County this 28th day of July, 2021, and hereby considered the official Rules of Practice and Procedure for the Board.

DocuSigned by:
Bill Bliss 8/6/2021
Board Chair – Bill Bliss

DocuSigned by:
Don Oehler 8/12/2021
Board Vice-Chair – Don Oehler

DocuSigned by:
Dennis Hollander 8/8/2021
Board Member – Dennis Hollander

DocuSigned by:
Christopher Moench 8/11/2021
Board Member – Christopher Moench

DocuSigned by:
Brian K. Thompson 8/6/2021
Board Member – Brian Thompson

DocuSigned by:
Kristine Glasgow 8/6/2021
Chief Clerk – Kristine Glasgow