

**WASHINGTON STATE BOUNDARY REVIEW BOARD
FOR COWLITZ COUNTY**

RULES OF PRACTICE AND PROCEDURE

Pursuant to RCW 36.93.200, the Washington State Boundary Review Board for Cowlitz County adopted Rules of Practice and Procedure and amended them on October 8, 1981, November 12, 1987, July 11, 1991, March 10, 1994, and June 9, 2016; and now, therefore

BE IT HEREBY RESOLVED by the Washington State Boundary Review Board for Cowlitz County that the **Rules of Practice and Procedure** are hereby revised and adopted on **June 9, 2016** as follows:

I. ORGANIZATION

A. OFFICERS AND TERMS

The Board shall elect from among its members a Chair and Vice Chair, each of whom shall serve for a period of one year and thereafter until their respective successors have been elected. The Chair or Vice Chair may be replaced at any time by a majority vote. The Vice Chair shall serve in the absence of the Chair. The election shall occur at the end of the first regular meeting of each calendar year.

B. COMPENSATION

Upon attendance at regular or special Board meetings, Board hearings or other Board work as determined by the Chair or a majority of the Board, each member of the Board shall be entitled to compensation from the Cowlitz County Current Expense Fund at the rate of \$50.00 per day.

C. CORRESPONDENCE

All correspondence to the Board shall be received at the Boundary Review Board Office, County Administration Building, 207 4th Avenue North, Suite **119**, Kelso, WA 98626.

D. EXECUTIVE OFFICER

The Chief Clerk selected by the Board in accordance with RCW 36.93.070 shall be accountable to the Board through the Chair and shall be entitled Executive Officer.

E. LEGAL COUNSEL

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

II. APPEARANCE OF FAIRNESS

A. EX PARTE COMMUNICATIONS

In accordance with RCW 42.36.060, proceedings before the Board are subject to the appearance of fairness doctrine. Board members must therefore keep in mind that their actions must not only be fair in fact, but must also appear to be fair. Board members should familiarize themselves with the requirements of the appearance of fairness doctrine. Any concerns or questions that a member has should be discussed with the Board's legal counsel at the earliest opportunity.

Members shall abstain from any and all communications with persons or governmental or private entities which are, or expected to be, parties to an action 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 related to a matter before the Board from a source other than the Boundary Review Board Office, that member shall transmit the material to the Executive Officer for inclusion in 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 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.

B. DISCLOSURE

It shall be the duty and responsibility of each member to disclose at the earliest opportunity any possible ex parte communications thereof to the Chair and Legal Counsel. Upon such disclosure, the member may withdraw from the Board proceedings and shall leave the room in which such proceedings ensue. If a member chooses not to withdraw, the Chair shall, at the earliest opportunity upon the opening of a public hearing, disclose to the parties present the occurrence and nature of the communication.

C. PROCEDURES TO BE FOLLOWED BY BOARD/CHAIR WITH REFERENCE TO APPEARANCE OF FAIRNESS: EX PARTE COMMUNICATIONS AND DISCLOSURE

Upon discovery of the existence of ex-parte communications, the Chair shall, at each and every subsequent hearing on the proposal request that the member:

1. Place on the record the substance of any written or oral ex parte communication concerning the action; and
2. Provide a public announcement of the content of the communication. The parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related.

III. NOTICES OF INTENTION

A. ACTIONS TO BE FILED

A Notice of Intention shall be filed with the Board whenever required by RCW 36.93.090, as now enacted or hereafter amended.

B. FORMAT

1. Notice of Intention Forms

All Notices of Intention shall be submitted following the appropriate format, which shall be furnished by the Executive Officer upon request. The applicant shall supply all supporting documentation deemed necessary by the Board to describe a pending action including but not limited to: a certified legal description and assessor's map; vicinity map; proof of assessed valuation; affidavit of publication of legal notice advertising public hearing; minutes of public hearing; resolution; and SEPA-required documents, The Notice of Intention form currently in use is attached and incorporated herein by reference (See Exhibit B).

2. Legal Description

The legal description and assessor's map(s) of each Notice of Intention shall have the signed approval of an engineer licensed in the State of Washington or a land surveyor 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. Single Parcels Only
A Notice of Intention can describe more than one parcel of land, as long as the boundary of the parcels is defined by a single continuous line.
4. 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 except as amended in III.C.5. of this document.
5. Manner of Filing
The Notice of Intention form and required exhibits shall be submitted in person or by mail to the Boundary Review Board Executive Officer for determination of sufficiency. When deemed sufficient, the original and sixteen copies of the Notice of Intention and all supporting documents together with the filing fee shall be submitted in person, or by mail, to the Boundary Review Board Office.

C. OFFICE PROCEDURES

1. Effective Date of Filing
Upon determination that according to RCW 36.93 and the Board's Rules of Practice and Procedure, the Notice of Intention is sufficient and the filing fee is paid, the Executive Officer shall file the Notice of Intention and assign a file date and number.
2. Refusal of Notice of Intention
Failure to provide the items required by these Rules or RCW 36.93 shall constitute sufficient cause for the Executive Officer to refuse to accept a Notice of Intention for filing.
3. Routing
Upon assigning a file date and number to a Notice of Intention, the Executive Officer shall route the Notice of Intention and attached documents to the appropriate agencies for review and comment as per RCW 36.93 and other applicable statutes.
4. Notice to the Board
The Executive Officer shall forward a copy of the

Notice of Intention documents to each Board member, along with a copy of the next meeting agenda, no later than five days prior to the next meeting of the Board.

5. Public Notice
No later than five days prior to the next meeting of the Board, the Executive Officer shall post the area affected in ten public places when the area affected is ten acres or more and in five public places when the area is less than ten acres.
6. Declaration as Void
Notices of Intention received by the Boundary Review Board Office and not officially filed within six months due to noncompliance with law or the Board's **Rules of Practice and Procedure** are declared void and the Executive Officer shall return the filing fee and all documents submitted to the initiator.
7. Withdrawal
Any Notice of Intention filed with the Boundary Review Board Office 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 waiver form. Notices of Intention thereafter may only be withdrawn with the consent of the Board and all persons or entities having paid the required fee and requested review. In no case shall a filing fee be refunded in the event of withdrawal of a Notice of Intention.

D. BOARD APPROVAL

1. Review Waiver
The initiator of a proposed annexation that is subject to RCW 36.93.110 may petition the Chair to exercise his/her authority under that section. If such a petition is made, the Executive Officer will notify affected government agencies by mail, and will post notices in the area of the proposal. The notices will include a deadline for responding to the petition. Nothing in this section prevents the Chair from exercising his/her authority under RCW 36.93.110 even though no petition is made.
2. Approval After 45 Days
If forty-five (45) days have elapsed without the Board's invoking its jurisdiction or having had it

invoked, the proposed action shall be deemed approved as prescribed in RCW 36.93.100.

3. Written Notification
The Executive Officer shall notify the initiator in writing when the proposed action is deemed to be approved.

IV. MEETINGS AND HEARINGS

A. MEETINGS

1. Regular Meeting Dates
Regular meetings of the Washington State Boundary Review Board for Cowlitz County shall be held semi-monthly in February, April, June, August, October and December on the second Thursday of each month, commencing at 1:00 p.m. at the Cowlitz County Administration Building, Kelso, Washington, General Meeting Room unless otherwise specified, except if the regular meeting date is a legal holiday, such meeting shall be held on the next business day.

The Board shall meet at such other times and/or places as the Chair, Vice Chair, or any three members may determine from time to time and shall provide public notice as required in RCW 42.30. The Chair, or in his/her absence, the Vice Chair, may cancel any regular or special meeting if it appears that there is no business which reasonably requires the attention of the Board.

All meetings of the Board shall be open to the public. All persons wishing to be heard shall be given an opportunity to speak at all Board meetings.

2. Agenda
The Executive Officer shall prepare the agenda one week preceding a Board meeting containing a summary of all matters then known to require Board action.
3. Rules of Order
Except as modified by these Rules, all meetings of the Board shall be conducted in accordance with "Robert's Rules of Order."

4. Resolutions and Motions
All official actions of the Board shall be resolutions or motions and shall be reduced to writing and incorporated in the official minutes and signed by the Chair. Upon request, such minutes shall be communicated to any interested party.

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

6. Voting
In the absence of objections, the Chair may order a motion unanimously approved. Any member not voting on roll call in an audible voice shall be recorded as voting in favor of a motion. Unless requested by a member, the Chair need not take a roll call vote.

Any member voting on a hearing decision shall have been present during all sessions of the hearing or have listened to all recordings or read the transcripts of the proceedings and state so on the record.

A majority vote (either affirmative or negative) of the members comprising a quorum shall be required for any action of the Board.

Any Notice of Intention in which the Board's jurisdiction has been invoked will be deemed approved unless denied by a vote of a majority of the Board.

7. Quorum
A quorum for the transaction of any business by the Board shall be a majority. In the absence of the Chair and Vice Chair, a Chair Pro tem shall be selected by the members present to serve as Chair.

8. Attendance
Members unable to attend any meeting shall so notify the Executive Officer prior to the meeting.

9. Postponements or adjournments
The Chair may postpone or continue any matter at any time, or the Board may adjourn to any particular time and place subject to notice as provided by law.

B. INVOKING JURISDICTION

1. Review Fee

If the jurisdiction of the Board is invoked pursuant to RCW 36.93.100, the person(s) or entity requesting review shall attach a fee of two hundred dollars (\$200.00) to the Request for Review. The Boundary Review Board itself and the Cowlitz County Commissioners are exempt from this fee.

2. Review Procedure

In accordance with RCW 36.93.100, the Board shall review and approve, modify and approve or disapprove any of the actions set forth in 36.93.090 when any of the following shall occur within 45 days of the filing of a Notice of Intention:

- a. Three members of the Board file a request for review except in the case of:
 - 1) An incorporation or change in the boundary of any city, town, or special purpose district,
 - 2) the extension of permanent water service outside of its existing corporate boundaries by a city, town, or special purpose district with water mains six inches or less in diameter, or
 - 3) the extension of permanent sewer service outside of its existing corporate boundaries by a city, town, or special purpose district with sewer mains eight inches or less in diameter.
- b. Any governmental unit affected, or the county files a request for review.
- c. A petition requesting review is filed and is signed by
 - 1) Five Percent of the registered voters residing within the area which is being considered for the proposed action (as determined by the Board in its discretion

subject to immediate review by writ of certiorari to the Superior Court), or

- 2) An owner or owners of property consisting of five percent of the assessed valuation within such area.
 - d. Three members of the Board concur with a request for review when a petition requesting review is filed by five percent of the registered voters who deem themselves affected by the action and reside within one-quarter mile of the proposed action but not within the jurisdiction proposing the action.
3. Withdrawal of 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 and after that time with the consent of the Board and all affected parties.
 4. Additional Information for Review
After jurisdiction has been invoked; the Board may seek additional information from the initiator(s) of the action. In the case of the incorporation of a city or an annexation to a city involving ten million dollars (\$10,000,000) or more in assessed value or twelve hundred (1200) acres or more in area, the Board may request an impact study from the proponent(s) and/or commission its own independent impact study at the cost of the proponent. The study may include the debt structure, finances and contractual obligations of the proposed action; the rights of all affected governmental units on the adjacent areas; the impact of the proposal on mutual economic and social interests; an analysis of the effect of the proposal on the local governmental structure of the County; and address considerations to all alternatives to the action.
 5. Hearing Set
When there has been a request for review and the jurisdiction of the Board has therefore been invoked,

the Board shall by Resolution set the date, time and place for a public hearing on the proposal.

C. PUBLIC HEARINGS

1. Notification

At least thirty (30) days advance notice must be given to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of the entity proposing the action and to the proponent of such change.

2. Notice and Posting

Notice shall be published in a newspaper of general circulation in the area of the proposed action at least three times, the last publication of which shall be not less than five days prior to the date set for the public hearing. Notice shall also be posted in the area affected for five days in ten public places when the area is ten acres or more and in five public places when the area is less than ten acres.

Notice to adjacent property owners: Written notice of public hearings conducted by the Boundary Review Board shall be sent via United States Postal Service to all property owners abutting the exterior boundaries of the subject property where the proposed action is located. Said notice shall set forth the purpose of the hearing and the date, time and place of the hearing. The written notice shall be mailed no less than ten days prior to the hearing.

3. Transcripts

All public hearings before the Board shall be recorded verbatim. Transcripts of the public hearing, or portions thereof, shall be made available upon the request of any person or governmental unit to the Executive Officer and payment of the reasonable costs thereof.

4. Oath
The Executive Officer shall administer the oath according to RCW 5.28.020 or RCW 5.28.050, if so requested by the Board.

D. HEARING TESTIMONY

1. Responsibilities of Chair
The Chair shall preside at all hearings of the Board and shall determine the order of the witnesses to appear before the Board. The Chair may also, with the approval of the Board direct the Executive Officer to issue subpoenas to any public officer to testify, and to compel the production of any records, books, documents, public records or public papers.
2. Witness Guidelines
 - a. Any initiator of a proposed action, agent or employee of a governmental unit, or other interested person may appear before the Board in person or be represented by any duly authorized person or persons.
 - b. Any person desiring to address the Board must be recognized first by the Chair, than shall step to the rostrum and give his/her name and address to the Executive Officer, and the name(s) of the person(s) or governmental unit on whose behalf he/she appears.
 - c. The Chair may, in the interest of facilitating the business of the Board, limit the amount of time to be allowed to any person, group or governmental unit.
3. Exhibits
 - a. Any document or exhibit must be submitted to the Executive Officer before testimony for labeling. A speaker must identify any document or exhibit by its assigned number and title.
 - b. Any written position statement regarding a proposed action by a governmental unit received

by the Executive Officer shall automatically be made an exhibit at the hearing.

4. Insufficient Information

When upon the completion of testimony by parties in an action, the Board is of the opinion that the information on the record is insufficient to permit an informed decision, the Board shall either:

a. Continue the hearing to a set date and time

and instruct the parties as to the type and extent of the information required; or

b. Deny the proposal. 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 as 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.

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 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-twenty day period.

The decision shall be filed with the Board of County Commissioners 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(4).

3. Validity
Approvals given to annexations shall authorize the city, town or special purpose district to proceed with the annexation as approved by the Board. The approval shall not authorize any other annexation action.

V. AMENDMENTS

Any Rule of Practice and Procedure of the Board may be adopted, amended, or repealed at any time by three members present at any regular or special meeting providing that no such action shall be taken without thirty (30) days prior notice of such a meeting in a newspaper of general circulation in the area affected, where required by RCW 36.93.200.

VI. EFFECT OF RULES

These rules shall supersede any prior conflicting rules heretofore adopted by the Washington State Boundary Review Board for Cowlitz County and shall be supplementary to those requirements and provisions of Chapter 36.93 of the Revised Code of Washington and other applicable laws. If any provision of these rules is held invalid, the remainder of these rules, or the application of the provision to other persons or circumstances, shall not be affected.

VII. PUBLIC RECORDS

The Executive Officer of the Board shall prominently display and make available for inspection and copying at the County Administration Building, 207 4th Avenue North, Suite 119, Kelso, Washington for guidance of the public:

- a. Descriptions of its organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittal or requests, or obtain copies of agency decisions;
- b. Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- c. Rules of practice and procedure;

- d. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and,
- e. Each amendment or revision to, or repeal of any of the foregoing.

Except to the extent that he/she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. (RCW 42.17.250)

VIII. PENDING ACTIONS NOT AFFECTED

Actions pending before the Board on the date of the adoption of these **Rules or Practice and Procedure** shall not be affected by the adoption of any new Rules of Practice and Procedure. The Executive Officer shall establish the filing date for each such action pending before the Board.

ADOPTED THIS 9th day of June, 2016.

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| Executive Officer | Board Chair |
| | Board Member |

Boundary Review Board Meeting

June 9, 2016

Meeting Summary

Members Present: Chair Jim Bain, Vice Chair Jim Holter, Marcel Goulet, Chuck Davis, Gerry Sorrell

Staff Present: Greta Holmstrom

Guests: Mark Beales

Chair Bain called the meeting to order at 1:00 p.m. Introductions were provided.

Approval of April 14th Minutes: The minutes of the past meeting were read and approved.

Legislative Update: Marcel Goulet reported that the session was over.

Rules of Practice and Procedure: Greta presented draft updates to the Rules of Practice and Procedure, last updated in 1994. Following discussion, Marcel Goulet moved to approve the updates. All members voted in favor.

Upcoming BRB Actions: etc.

Good of the Order: The fall conference has been scheduled for October 5-7th in Olympia. It was decided that all members will carpool to attend on the 6th and Greta will attend all days.

Boundary Review Board Roles and Responsibilities Training: Mark Beales, President of the Washington State Association of Boundary Review Boards presented information to the Board on the role of the Boundary Review Board and responsibilities of members. It was decided staff will develop a draft bill for the legislature to consider an increase in fees when filing notices of intention to more adequately cover cost of review.

There being no further business, the meeting adjourned at 2:21 p.m.

Greta Holmstrom, Executive Officer

Jim Bain, Chairman