

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

**RULES OF PRACTICE AND PROCEDURE**

WHEREAS RCW [36.93.200](#) authorizes each Board to adopt rules governing the formal and informal procedures for the actions authorized by chapter [36.93](#) RCW; and

WHEREAS such rules are subject to review and amendment provided that, prior to the amendment thereof, the Board shall file notice thereof with the Clerk of the Skagit County Superior Court and also publish or otherwise circulate notice of its intended action and afford interested persons an opportunity to submit data or views either orally or in writing; and

WHEREAS the Board has found it necessary to update its Rules of Practice and Procedure and has complied with the statutory requirements for such amendment;

NOW THEREFORE, BE IT HEREBY RESOLVED that the following Rules of Practice and Procedure are hereby adopted.

**I. ORGANIZATION**

**A. OFFICERS AND TERMS**

The Board shall, at the end of its regular meeting each March, 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, but the Chair or Vice Chair may be replaced at any time by a vote of the majority. The Vice Chair shall serve in the absence of the Chair. In the absence of the Chair and the Vice Chair, a Chair Pro Tem shall be selected by the members present to serve as Chair.

**B. CORRESPONDENCE**

All correspondence to the Board shall be received at the Boundary Review Board Office, 1800 Continental Place, Mount Vernon, WA, 98273. When e-mail is allowed, the appropriate address shall be obtained from the Chief Clerk.

**C. CHIEF CLERK**

A Chief Clerk shall be employed by the Board in accordance with RCW [36.93.070](#). The Chief Clerk shall be accountable directly to the Board through the Chair. In addition to the duties outlined in RCW [36.93.070](#), the Chief Clerk shall be responsible for review, filing and notification to interested parties of Notices of Intention; conducting office business and provision of assistance to interested parties as directed by the Board's Chair; and other

duties as directed by the Board. The Chief Clerk shall prepare the agenda for public meetings and hearings, containing a summary of all matters then known to require Board action, the week preceding the meeting or hearing.

**D. RECOMMENDED REFERENCES AND TRAINING**

New members are expected to attend the annual new member workshop held by the State Association of Boundary Review Boards. It shall be the responsibility of each member to obtain required training and be familiar with the following:

1. Boundary Review Board Manual;
2. These Rules of Practice and Procedure;
3. Boundary Review Board Act (chapter [36.93](#) RCW);
4. Adopted Internal Office Policies (Optional);
5. SEPA (RCW [43.21 C](#)) and SEPA Guidelines (chapter [197-11](#) WAC);
6. Appearance of Fairness Doctrine (chapter [42.36](#) RCW);
7. Open Public Meetings Act (chapter [42.30](#) RCW);
8. The Growth Management Act (chapter [36.70A](#) RCW);
9. Controlling decisions of the Washington State Appellate and Supreme Court applicable to the above laws.

**II. PUBLIC MEETINGS**

**A. MEETING SCHEDULE**

1. Regular meetings shall be held on the second Wednesday of each month commencing at or about 3:00 p.m. If the regular meeting day is a legal holiday, then such meeting shall be held on the next business day. The place shall be designated by the Board and printed in the meeting's agenda and posted on the Board's web page.
2. The Chair or, in his/her absence, the Vice Chair, may cancel any public meeting if it appears that there is no business which reasonably requires the attention of the Board. When appropriate, the Board may cancel or may adjourn a meeting to any particular time and place subject to notice as provided by law. Information regarding date changes to meetings may be received by calling the Board's office. See (<http://www.skagitcounty.net/Departments/BoundaryReviewBoard/main.htm>.)
3. When appropriate, the Chair may postpone or continue consideration of an agenda item.
4. The Board shall meet at such other times and places as the Chair, Vice Chair, or any three members may determine and shall provide public notice as required under chapters [42.30](#) and [36.93](#) RCW, as appropriate. Notice of special meetings will be posted in accordance with RCW [42.30.080](#) and posted at least five days in advance on the Board's web page.
5. All meetings of the Board shall be open to the public except as provided by law.

**B. 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.

**C. QUORUM**

A quorum for the transaction of any business shall be three members. However, members may appear telephonically. Members unable to attend any meeting shall so notify the Chief Clerk prior to the meeting. A Board member may be asked to resign by the Board after three consecutive unexcused absences.

**C. 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.

**D. PARTICIPATION BY THE CHAIR**

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

**E. VOTING**

The affirmative vote of the majority of the Board members in attendance shall be required to pass a motion. In the absence of an objection, 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.

**III. APPEARANCE OF FAIRNESS DOCTRINE**

**A. EX PARTE COMMUNICATIONS**

1. Any communication between a Board member and any party or representative of a party about a matter that is pending before the Board that occurs outside of a hearing, whether direct or indirect, is an ex parte communication.
2. Board members shall abstain from any and all communications regarding an action with persons or governmental or private entities that are, or are expected to be, parties to an action before the Board. Further, from the opening to the closing of a public hearing, including continuances, Board members shall avoid conversations with any party to the action except when such conversation is on the record.
3. If a member receives a letter or other written communication relating to an action 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 in the record.

4. Board members shall disclose any ex parte communication at the earliest opportunity during any public meeting or hearing where the matter will be addressed as follows:
  - (a) The member shall state the substance of any written or oral ex-parte communication concerning the decision or action;
  - (b) The Board shall allow a party to rebut the substance of the communication;
  - (c) Allow a party to request disqualification of the Board member; and
  - (d) Explain why recusal is not required.
5. Should the member decide that recusal is required to provide a fair hearing, the member may withdraw from the proceeding and shall leave the room in which such proceedings ensue.
6. This rule does not prohibit communications about procedural topics made to the Chief Clerk, nor does it apply to written submissions made for the record and provided to all participants.

**B. DISQUALIFICATION OF A BOARD MEMBER**

1. Board members are subject to disqualification for bias, prejudice, conflict of interest, or any other cause for which a judge can be disqualified. Whenever a Board member believes that his/her relationship to participants or financial interest in the subject of a hearing create the appearance that the proceedings will not be fair, the Board member shall:
  - (a) voluntarily step down from the case, or
  - (b) disclose the relationship or interest on the record at the beginning of the public hearing, stating a bona fide conviction that the interest or relationship will not interfere with the rendering of an impartial decision.
2. Any party or interested person may request the disqualification of a Board member promptly after receipt of notice that the individual will preside. The Board member for whom the disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.
3. A Board member will not be disqualified if as a result the remaining number of Board members will not constitute a quorum.

## IV. NOTICES OF INTENTION

### A. CONTENTS

1. At a minimum, a Notice of Intention for a matter subject to Board review shall contain the information required under RCW [36.93.130](#):
  - (a) A statement of the nature of the action sought;
  - (b) A brief statement of the reasons for the proposed action;
  - (c) The legal description of the boundaries proposed to be created, abolished or changed by such action; and
  - (d) A county assessor's map on which the boundaries proposed to be created, abolished or changed by such action are designated.
  
2. Additional documentation for a Notice of Intention may include, but is not limited to:
  - (a) A vicinity map;
  - (b) Evidence of notification to residents and property owners within the annexation area;
  - (c) A certified copy of the final petition required for annexation;
  - (d) Evidence of assessed valuation;
  - (e) Affidavit of publication of legal notice advertising public hearing;
  - (f) Minutes of required public hearing(s);
  - (g) Resolutions; and
  - (h) SEPA environmental checklist, threshold determination, and environmental impact statement, as applicable.
  
3. All maps must be complete, neat, and legible. The area proposed for annexation shall be designated with a single continuous boundary line on all applicable maps. At the discretion of the Board a map other than the county assessor's map may be accepted.
  
4. The legal description in the Notice of Intention may be altered, with concurrence of the initiators of the proposed action, if a person designated by the county legislative authority as one who has expertise in legal descriptions makes a determination that the legal description is erroneous.

### B. FILING

1. One original and ten copies of the Notice of Intention, including documentation, accompanied by a non-refundable filing fee in the amount set forth under RCW [36.93.120](#), shall be filed with the Chief Clerk at the Boundary Review Board Office, 1800 Continental Place, Mount Vernon, WA, 98273.
  
2. Upon receipt of the Notice of Intention and non-refundable fee, the Chief Clerk shall review the Notice of Intention for legal sufficiency. Should the Chief Clerk determine that an application is legally insufficient or is not accompanied by the required filing fee, the Chief Clerk shall advise the proponent and hold the Notice of Intention for 30 days,

following which the Chief Clerk may return the Notice of Intention to the proponent if the inadequacy is not cured.

3. Upon determination that a Notice of Intention is legally sufficient, the Chief Clerk shall
  - (a) Assign it a file date and number, and
  - (b) Provide copies of the Notice of Intention to:
    - (1) Agencies deemed appropriate under chapter [36.93](#) RCW and other applicable statutes;
    - (2) Board members, and
    - (3) As appropriate, to legal counsel for the Board and newspapers of general circulation in the area of the proposed action.
4. The effective date of filing shall be the date a legally sufficient Notice of Intention and filing fee are received at the office of the Boundary Review Board. This date will begin the 45 days for submission of requests that the Board review the Notice of Intention.
5. If Notices of Intention for actions listed under RCW [36.93.090](#) are not filed within 180 days of the action's proposal, they will be deemed void and shall be returned to the proponent without action.

### **C. WITHDRAWAL BY PROPONENT**

A proponent may withdraw a Notice of Intention at any time before the Board assumes jurisdiction over the matter or has waived review or, with the consent of the Board and all persons or entities, before a hearing on the proposed action.

## **V. REQUESTS FOR REVIEW/WAIVER**

### **A. REQUESTS FOR REVIEW**

1. The Board shall hold a public hearing in all matters subject to the Board's review following a timely request for review as defined in RCW [36.93.100](#). Unless the request for review is made by the Board, it must be accompanied by the non-refundable filing fee set by RCW [36.93.120](#) or by proof of timely payment – within the time allowed to invoke the Board's jurisdiction – of the fee to the Skagit County Treasurer, which filing fee shall be deposited in the Skagit County current expense fund.
2. A Board member desiring review of a Notice of Intention shall make a timely request that the Clerk schedule a public meeting, within the 45 days allowed for the filing of a request for review, at which the Board may consider whether to invoke its jurisdiction. A vote for review by three Board members shall be required to invoke the Board's jurisdiction.
3. If review is not requested within 45 days from the effective day of filing, the proposed action shall be deemed approved as prescribed in RCW [36.93.100](#), in which case the Chief Clerk shall notify the proponent in writing that the proposed action is approved.

**B. REQUESTS FOR WAIVER OF REVIEW**

1. If a proposed annexation is less than ten acres and less than \$2,000,000.00 in assessed valuation, the initiator may petition the Chair to waive the 45-day review period. The Chief Clerk shall notify affected governmental agencies of the request for a waiver of review by mail and owners of property adjacent to the proposed annexation by posting consistent with RCW [36.93.160](#) within five days of receiving the request for waiver.
2. After allowing time for responses to the request for waiver of Board review, the Chair, at a public meeting, shall consider the Notice of Intention, written comments received from potentially affected jurisdictions or residents, comments of Board members, the adequacy of the environmental review (when applicable), and the purpose, factors and objectives stated in RCW [36.93.100](#), [.170](#) and [.180](#) as they affect the proposed action before issuing a written decision on the request.

**C. WITHDRAWAL OF REQUEST FOR REVIEW**

A request for review filed by the county or an affected governmental agency may be withdrawn, without action by the Board, upon written request from the initiator of the request for review at any time prior to the Board setting the time, place and date for a hearing on the proposal. Thereafter, a request for withdrawal shall be presented to the Board for consideration a public meeting or hearing. The Hearing Fee will not be refunded.

**VI. PUBLIC HEARINGS ON PROPOSED ACTION**

**A. HEARING DATE AND CONTINUANCES**

1. Upon receipt of a request for review, the Chief Clerk shall set the date, time and place for a public hearing on the action described in the Notice of Intention and provide notice of the hearing as required under RCW [36.93.160](#). Requests for a continuance shall be submitted to the Chief Clerk for consideration by the Chair who may grant the request upon a finding of good cause.
2. Every effort shall be made to complete the hearing on the scheduled date(s). However, in response to information presented at the hearing, at the request of a party or a participant, or on the Board's own motion, the Board may continue the hearing to a later date in order to allow for additional information to be submitted by a party. If the meeting is continued during the course of a public hearing no further public notice is required. Alternatively, the Board may order that the record be kept open for submission of additional specific materials or information, for legal briefing, or in order to allow participants to respond to matters raised for the first time at the public hearing. If this option is adopted by the Board, the hearing, for purposes of Chapter [36.63.93.160\(4\)](#) RCW shall be deemed concluded on the date that the written record is closed. After closing the record, the Board may reopen the record for good cause at any time prior to the issuance of a decision.

## **B. OFFICIAL FILE**

1. All written submissions regarding a Notice of Intention shall be maintained in the Board's official file. The official file shall be available for public inspection and copying during the hours that the Board's office is open. Due to limited office hours an appointment must be set in advance to arrange for access to information.
2. The record of a public hearing shall include at least the following:
  - (a) The Notice of Intention;
  - (b) All documentary and physical evidence received and admitted for the hearing;
  - (c) All pleadings, briefs, or memoranda submitted by the proponent, the party requesting review, and other participants;
  - (d) A recording of the proceedings; and
  - (e) The Board's written decision.
3. Prehearing memoranda, motions, and exhibits:
  - (a) At least 14 days before the scheduled hearing, the person or entity that invoked the Board's jurisdiction should file a hearing memorandum including a statement of issues and positions on the issues to be considered by the Board. The hearing memorandum may be supported by copies of relevant judicial decisions, statutes, decisions of the Growth Management Hearings Board, etc., along with copies of any exhibits that the party would like the Board to consider. A copy of the hearing memorandum, supporting documents, and exhibits shall be provided to the proponent of the action under review at the time of submission to the Board.
  - (b) The proponent may submit a written response no later than five days before the scheduled public hearing.
  - (c) Parties intending to present a motion regarding evidence, testimony, or procedure shall endeavor to file such motions 10 days before the scheduled hearing. Responses to such motions shall be submitted five days before the scheduled hearing. Copies of prehearing motions shall be served on known parties, i.e., the proponent and persons requesting review.
  - (d) Motions, legal briefs and other documents including correspondence, written statements, etc. submitted before the hearing shall be filed at the Board's office. Filing by e-mail is acceptable, but shall be followed by submission of a hard copy to the Board.

## **C. PROCEDURE FOR REVIEW HEARINGS**

1. The hearing shall be formal in nature, and organized so that testimony and evidence can be presented efficiently. The Chair may establish an order of presentation and schedule for the public hearing which allows reasonable time for the initiator to present the proposed action and provides for rebuttal of comments made by any participant or party opposing the proposed action. As appropriate, the hearing shall contain the following:
  - (a) An introductory outline of the procedure by the Chair;
  - (b) Presentation by the proponent summarizing the proposal and providing any exhibits



- or testimony supporting the action;
  - (c) Presentation by the group or jurisdiction requesting review;
  - (d) Presentation by affected jurisdictions;
  - (e) Statements by members of the public; and
  - (f) Rebuttal testimony by the proponent, limited to responding to opposing testimony.
2. Fact witnesses may be required to testify under oath or affirmation. The Chief Clerk shall have the powers set forth under RCW [36.93.070](#) to administer oaths and affirmations.
  3. The Chair may impose reasonable limitations on the nature and length of testimony. In so doing the Board shall give consideration to: (a) the expeditious completion of the hearing, (b) the need to provide parties the opportunity to present their cases, and (c) the desires of members of the public to be heard when public testimony is taken.
  4. As directed by the Board, the Chief Clerk may be available to assist participants in signing up for presentation, admitting additional documents and other materials, and complying with procedural matters. A witness shall present any document or exhibit, including written statements, to be entered to the Chief Clerk for labeling prior to testifying. During his or her presentation, the witness should identify any document or exhibit by its assigned number and title. Written statements should be summarized by the witness during oral testimony rather than read verbatim.
  5. Any person desiring to address the Board shall sign in prior to the hearing and must be recognized first by the Chair, then shall step to the rostrum and give and spell his/her name and address and, if appropriate, the name(s) of the person(s) or governmental unit on whose behalf he/she appears.
  6. Whenever the views of any formal or informal organization are to be presented, the organization shall designate a representative with authority to coordinate the presentation and to speak for the group. The designated representative need not be an attorney.
  7. Board members may question witnesses throughout the process of testimony until the hearing is formally closed. Participants are not allowed to question the Board or cross-examine witnesses unless the Chair sees some benefit to the Board and specifically approves such questioning.
  8. Parties shall present copies of judicial decisions, decisions of the Growth Management Hearings Board, statutes, and relevant agreements that the parties cite as applicable or controlling to the Chief Clerk at the time of their testimony.
  9. All public hearings shall be recorded verbatim and the recordings shall be made a part of the record.

#### **D. EVIDENCE**

1. To be most effective in presenting testimony, comments should be directed to the factors and objectives the Board is required to consider in making its decision.
2. Evidence, including hearsay evidence, is admissible if in the judgment of the Chair it is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The Chair may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitious, or lacking in foundation. The Chair shall exclude evidence that is privileged or excludable on constitutional or statutory grounds.
3. The Board shall accept exhibits offered for the first time at a public hearing, and may continue the hearing or allow time for a response to a material exhibit that by due diligence could not have been anticipated.
4. The Board may request additional information from the proponent or a party opposing the action and the Chair may also, with the approval of the Board, direct the Chief Clerk to issue subpoenas to any public officer to testify and compel the production of any records, books, documents, public records or public papers. For example, in the case of the incorporation of a city or an annexation to a city, the Board may request an impact study to include but not be limited to the economic impact of the action and an analysis of the factors and objectives the Board is required to consider in making its decision. The Chief Clerk may invoke the aid of any court of competent jurisdiction to carry out such powers.

#### **E STATE ENVIRONMENTAL POLICY ACT (SEPA)**

1. Unless the action is exempt from environmental review, the initiator of a proposed action who qualifies as a lead agency under SEPA shall comply with the State Environmental Policy Act (chapter [43.21C](#) RCW) and WAC [197-11](#) and submit documentation of its completed environmental review and threshold determination with each Notice of Intention.
2. If the initiator of a proposed action does not qualify as a lead agency, the initiator must identify the lead agency and cause such agency to perform the duties required under chapter [43.21C](#) RCW and chapter [197-11](#) WAC prior to filing the Notice of Intention.

#### **F. SITE VISITS**

A Board member may visit the site before or after a hearing to assist the Board member in understanding the evidence presented at the hearing. If the Board or an individual member conducts a post-hearing site inspection, the hearing record will not close until the inspection is completed. Observations made during a site visit are not evidence that the Board or member shall consider during deliberations.

## **G. BOARD DECISION**

1. Any Notice of Intention in which the Board's jurisdiction has been invoked will be deemed approved unless denied by a majority of the Board in attendance at the hearing.
2. Any member voting on a hearing decision shall have been present during all sessions of a hearing or have listened to all recordings or read the transcripts of the proceedings and examined all exhibits, and state so on the record. Members appointed after the start of a public hearing shall not participate in the matter.
3. The Board's decision shall be founded on the criteria set forth in RCW [36.93.010](#) (purpose of the Boundary Review Board), RCW [36.93.170](#) (factors to be considered by the Board), RCW [36.93.180](#) (objectives to be met by the Board), and RCW [36.93.157](#) (decisions to be consistent with the Growth Management Act). When applicable, the State Environmental Policy Act shall be considered in Board decisions.
4. The Board's decision shall be in writing and shall contain findings of fact and conclusions of law supporting the result reached. The Board's written decision shall be approved by a majority of the Board members who have heard and read all testimony. The decision shall be filed with the County's legislative authority within 40 days of the date the hearing is closed, but in no event shall it be filed more than 120 days after the filing of a request for review unless the proponent agrees to an extension. A copy of the final decision shall be provided to the proponent and to the party requesting review. Others may receive a copy upon request to the Chief Clerk.
5. In the computation of any period of time prescribed or allowed in any matter before the Board, the day from which the time period begins to run shall not be included. When the last day of the period falls on a weekend or legal holiday, the period shall run until the next working day.
6. Requests for copies of the recordings shall be made in writing to the Chief Clerk and shall be provided upon payment, in advance, of the reasonable costs of reproduction. Costs of transcription shall be the responsibility of the person desiring the transcript.
7. When required, the proponent shall cause the appropriate government entity to pass a final resolution, order, or ordinance containing the legal description of the boundary change as approved by the Board. A copy of the resolution, order, or ordinance should be sent to the Board for distribution to the following county departments: Commissioners' Office, Assessor, Auditor, and Geographic Information Services (GIS).
8. Decisions shall be final and conclusive unless within thirty days from the date of the action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal. The filing of the notice of appeal within the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. See RCW [36.93.160](#)(5), (6).

**VII. AMENDMENTS**

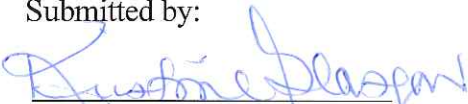
These rules may be adopted, amended, or repealed at any regular or special meeting providing that no such action shall be taken without 30 days' prior notice of such a meeting, as required by RCW 36.93.200.

**VIII. EFFECT OF RULES**

These Rules shall supersede any prior Rules heretofore adopted by the Washington State Boundary Review Board for Skagit County and shall be in addition to those requirements and provisions of chapter 36.93 RCW 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. Any change in the law shall immediately supersede any applicable provision herein. Nothing contained herein shall be in conflict with chapter 36.93 RCW. In the event of a conflict, chapter 36.93 RCW shall prevail.

THESE AMENDMENTS ADOPTED THIS 8<sup>th</sup> DAY OF July, 2015.

Submitted by:

  
Kristine Glasgow, Chief Clerk

Approved by:

  
Art Shotwell, Chair

  
Sharon Stewart, Vice Chair

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Tim Rosenhan, Member

  
John Patton, Member

  
Tim Knue, Member