

WASHINGTON STATE BOUNDARY REVIEW BOARD
FOR SPOKANE COUNTY

RULES OF PRACTICE AND PROCEDURE

April 14, 2003

Pursuant to RCW 36.93.200, the Washington State Boundary Review Board for Spokane County adopted **Rules of Practice and Procedure** on September 12, 1968 and last amended them on December 10, 2002 and now, therefore

BE IT HEREBY RESOLVED by the Washington State Boundary Review Board for Spokane County that the **Rules of Practice and Procedure** are hereby revised and adopted on April 14, 2003 as follows:

I. ORGANIZATION

A. OFFICERS AND TERMS

The Board shall, at the end of its regular meeting each January 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 of the Board members present. The Vice Chair shall serve in the absence of the Chair.

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 Spokane 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, 1026 West Broadway Avenue, Spokane, Washington 99260-0040.

D. CHIEF CLERK

The Boundary Review Board Director shall serve as Chief Clerk and be selected by the Board in accordance with RCW 36.93.070 and shall be accountable to the Board through the Chair. Reference herein to "Director" shall be synonymous with Chief Clerk as specified in RCW 36.93. The Boundary Review Board has adopted internal staff policies and procedures to more fully describe the responsibilities of the Boundary Review Board staff.

E. LEGAL COUNSEL

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

II. BOARD MEMBERS

A. QUALIFICATIONS

It shall be the duty and responsibility of each member to study and be familiar with the following:

- Boundary Review Board Manual as a source of reference, keeping it up to date with new materials as provided;
- Boundary Review Board Act (RCW 36.93);
- Adopted Rules of Practice and Procedure;
- Adopted Internal Office Policies;
- SEPA (RCW 43.21 C) and SEPA Guidelines (WAC 197-11);
- Growth Management Act (RCW 36.70A);
- Appearance of Fairness Doctrine (RCW 42.36);
- Open Public Meetings Act (RCW 42.30); and
- Washington State Appellate and Supreme Court Cases with reference to any of the above.

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 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 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 Director 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.

2. 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 possible violation.

3. 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:

- a) Place on the record the substance of any written or oral ex-parte communication concerning the decision of action; and
- b) Provide-a public announcement of the content of the communication and of 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. NOTICE OF INTENTION

A. FORMAT

1. Notice of Intention Forms

All Notices of Intention shall be submitted following the appropriate format, which shall be furnished by the Director upon request. The applicant shall supply all support documentation deemed necessary by the Board to describe a pending action which will include but not be limited to: a certified legal description and map; assessor's map; vicinity map; proof of certified petitions; proof of assessed valuation; affidavit of publication of legal notice advertising public hearing; minutes of public hearing; resolution; and completed documents required under SEPA or pertinent environmental information. The Notice of Intention form currently in use is incorporated herein by reference.

2. Legal Description

The legal description and maps of each Notice of Intention shall have the signed approval of an engineer licensed in the State of Washington, 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. Contiguous Geographic Area Only

A Notice of Intention shall describe one geographic area 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 43.21 C) 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 43.21.C 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.

6. Manner of Filing

The Notice of Intention form and the required exhibits shall be submitted in person or by mail to the Boundary Review Board Director for determination of sufficiency. When deemed sufficient, the original and a number of copies of the Notice of Intention and exhibits specified by the Director as well as the filing fee of \$50.00 shall be submitted.

B. OFFICE PROCEDURES

1. Effective Date of Filing

Upon determination by the Boundary Review Board Director 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 Director shall file the Notice of Intention and assign a file date and number.

2. Routing

Upon assigning a file date and number to a Notice of Intention, the Director shall route the Notice of Intention and required exhibits to the appropriate agencies for review and comment as per RCW 36.93 and other applicable statutes.

3. Posting

After reviewing the proposal's consistency with the County Comprehensive Plan, size in acres, and population, the Director shall determine if a notice of filing shall be posted. If determined necessary, filing of the Notice of Intention shall be posted at least five days before the meeting at which the Board first considers the Notice of Intention. Locations to be posted shall be consistent with RCW 36.93.160.

4. Notice to the Board

The Director shall forward a copy of the Notice of Intention and required exhibits to each Board member and Legal Counsel, along with a copy of the next meeting agenda, no later than five days prior to the next meeting of the Board.

5. 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 waiver form. Notices of Intention may be withdrawn thereafter with the consent of the Board. In no case, shall a filing fee be refunded in the event of withdrawal of a Notice of Intention.

C. BOARD APPROVAL

1. Preliminary Consideration by Board

After time to notify and allow response from property owners and affected agencies, a Notice of Intention will be placed on the Board's agenda for preliminary consideration. At this meeting, the Board shall consider filed Notices of Intention and comments received in writing.

2. Review Waiver

If a proposed annexation is less than ten (10) acres and less than two million dollars (\$2,000,000) in assessed valuation, the initiator may petition the Chair to waive the 45-day review period. Affected government agencies will be notified of the filing of the Notice of Intention and the request for the Chair's waiver by mail and owners of property adjacent to the proposed annexation will be notified by posting of the area within five days of receiving the request for waiver. Locations of posted notices shall be consistent with RCW 36.93.160.

After allowing time for response from property owners and affected agencies but not more than three weeks, the Chair, after the recommendation of the majority of the Board present, shall base his/her decision to waive the review period upon the following: the Notice of Intention; written comments received from potentially affected jurisdictions or residents; the adequacy of the environmental review; and the factors and objectives stated in RCW 36.93.170 and .180 as they affect the proposed action.

The Chair may then by written statement declare that the 45-day review period is not necessary, in which case the annexation is approved immediately.

3. Approval After 45 Days

If forty-five 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.

4. Written Notification

The Director 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 Spokane County shall be held on the second Monday of each month, commencing on or about the hour of 3:00 PM at 1026 West Broadway Avenue, Public Hearing Room, Spokane, Washington, except if the regular meeting day is a legal holiday, such meeting shall be held on the following Monday.

The Board shall meet at such other times and/or places as the Chair, Vice Chair, or the majority of the Board 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 except as provided by law.

2. Agenda

The Director 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 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 modification hearing, or listened to all recordings or read the transcripts of the proceedings and state so on the record.

The affirmative vote of the majority of the Board present, or a negative vote of the majority of the Board present shall be required for any action of the Board.

7. Quorum

A quorum for the transaction of any business by the Board shall be the majority of the Board. 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

Attendance at all meetings and all public hearings is a statutory requirement for Board members. Members unable to attend any meeting shall so notify the Director 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 or entity requesting review, except the Boundary Review Board itself, shall attach a fee of two hundred dollars (\$200.00) which shall be paid to the County Treasurer and deposited in the Spokane County current expense fund.

2. Review Procedure except for Incorporations

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

- a) The majority of the Board file a request for review except in the case of:
 - 1) an incorporation of any special purpose district 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 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) The majority of the members of the Board present 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. Review Procedure for Incorporations

The Board shall hold a public meeting within 30 days after notification by the County Commissioners of an incorporation. The meeting shall be held in or near the area proposed for incorporation and advertised at least once in a newspaper of general circulation ten days prior to the meeting.

The purpose of the meeting shall be to allow persons interested in the proposed incorporation an opportunity to state their views on the proposed boundaries, type of city, form of government, name of the proposed city, and population of the proposed city. The Board Chair shall call the meeting to order and shall moderate the discussions.

The proponents have 180 days from the close of the meeting to collect sufficient signatures on a petition as certified by the County Auditor and to file a Notice of Intention with the Boundary Review Board. The Board shall review and approve, modify, or deny (in incorporations under 7,500 population) or recommend against (in incorporations over 7,500 population) a proposed incorporation and file its written decision.

4. Withdrawal of Request

A request for review filed pursuant to RCW 36.93.100 (2) by the county or governmental unit may not be withdrawn without the consent of the Board. The request for review fee will not be refunded.

5. Additional Information for Review

After jurisdiction has been invoked, the Board through its Director 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, the Board may commission an impact study. 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.

6. Hearing Set

When there has been a request for review and the jurisdiction of the Board has therefore been invoked, the Board shall by motion 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. Notification requirement does not apply to governmental bodies outside of Spokane County.

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.

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 Director and payment of the reasonable costs thereof.

4. Oath

The Director 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 Director 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, then shall step to the rostrum and give his/her name and address to the Director, 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 Director for labeling prior to giving testimony. 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 before the hearing by the Director shall automatically be made an exhibit at the hearing.

E. BOARD DECISION

1. Basis for Decision

The basis for the Board's decision shall be as set forth in RCW 36.93.170 (factors to be considered by the Board), and RCW 36.93.180 (objectives to be met by the Board). The decisions of the Board must be consistent with the Growth Management Act (RCW 36.70A.020: Planning goals; 36A.110: Comprehensive plans, urban growth areas; and 36.70A.210: County-wide planning policies) and the State Environmental Policy Act (RCW 43.21 C).

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).

An appeal period of thirty days follows the filing of the Board's written decision with the County Commissioners during which time, an appeal may be filed with the Spokane County Superior Court.

3. Validity

Approvals given to annexations will be valid for three years from the date of said approval. After expiration of the three-year time period, an uncompleted annexation must be re-filed with the Board for approval, in light of changed conditions or circumstances.

Approvals or modifications and approvals given to annexations shall authorize the city, town or special purpose district to proceed to annex only the territory as legally described in the Board's written approval or decision. 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 a majority of members present at any regular or special meeting providing that no such action shall be taken without twenty (20) days prior notice of such a meeting, where required by RCW 36.93.200.

VI. EFFECT OF RULES

These Rules shall supersede any prior Rules heretofore adopted by the Washington State Boundary Review Board for Spokane County and shall be in addition 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. Any change in the law shall immediately supersede any applicable provision herein.