

Adopted 5-22-17

WASHINGTON STATE BOUNDARY REVIEW BOARD FOR YAKIMA COUNTY

RULES OF PRACTICE AND PROCEDURE

WHEREAS, pursuant to RCW 36.93.200, the Washington State Boundary Review Board for Yakima County adopted Rules of Practice and Procedure on December 14, 1975, and amended same on November 14, 1978, December 13, 1983, March 13, 1990; February 24, 1998; August 9, 2011; and May 22, 2017; now therefore,

BE IT HEREBY Resolved by the Yakima County Boundary Review Board that the revised Rules of Practice and Procedure be, and hereby are, adopted as follows:

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 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, 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 Yakima County current expense fund at the rate of \$50.00 per day, and round-trip mileage, at the going rate determined by the BOCC.
- C. Correspondence: All correspondence to the Board shall be received at the Boundary Review Board Office in Room 417 (Planning) of the Yakima County Courthouse, Yakima, WA 98901.
- D. Chief Clerk: The Boundary Review Board Clerk 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.

Deputy Clerk: The Board may appoint a Deputy Clerk to act as the Chief Clerk in the Chief Clerk's absence.
- E. Legal Counsel: All questions of law shall be referred by the Board to its designated Legal Counsel.

QUALIFICATIONS

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

- BRB manual as a source of reference, keeping it up to date with new materials as provided.
- Adopted Rules of Practice and Procedure.
- SEPA, RCW 43.21C, 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)
- Washington State Appellate and Supreme Court cases with reference to any of the above.

Whenever possible, each member shall attend Boundary Review Board training.

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 received 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 Clerk 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.

4. Members shall not be prohibited from making inquiries of BRB Staff regarding matters before the Board

NOTICE OF INTENTION

FORMAT

1. **Notice of Intention Forms:** All Notices of Intention shall be submitted following the appropriate format, which shall be furnished by the Clerk of the Board 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 of the boundaries of the area involved; Assessor's map on which the boundary of the area involved and the size in acres must be clearly indicated; 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 36.93.013(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 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 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 Fee:** 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, the required exhibits and fee shall be submitted in person or by mail to the Boundary Review Board Clerk for determination of sufficiency. When deemed sufficient, the original and a number of copies of the Notice and exhibits specified by the Clerk as well as the filing fee shall be submitted.

OFFICE PROCEDURES

1. **Effective Date of Filing:** Upon determination by the Clerk of the Boundary Review Board that according to RCW 36.93 and the Rules of Practice and Procedure, the Notice of Intention is sufficient and the filing fee is paid, the Clerk 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 Clerk shall route the Notice and required exhibits to all Board Members and to the appropriate agencies for review and comment as per RCW 36.93 and other applicable statutes.
3. **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.

BOARD APPROVAL

1. **Review Waiver:** If a proposed annexation is less than ten acres and less than two million dollars in assessed valuation, the initiator may petition the Chair to waive the 45-day review period. In most instances, the Chair requires the 45-day review period to assure there are no mistakes or issues with the annexation. Affected government agencies will be notified of the filing.
2. **Written Notification:** The Clerk shall notify the initiator in writing when the proposed action is deemed to be approved.

MEETINGS AND HEARINGS

MEETINGS

1. **Regular Meeting Dates:** Regular meetings of the Boundary Review Board for Yakima County shall be held on the second Wednesday of each month (if necessary), commencing on or about the hour of 11:00 a.m. in the City of Yakima Council Chambers at 129 N. 2nd Street. If the regular meeting day is a legal holiday or there are conflicts with that date, such meeting shall be held as soon thereafter as practicable. 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 Clerk shall prepare & post 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 Clerk of the Board. 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 Clerk 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.

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 Clerk of the Boundary Review Board at 128 N. 2nd Street, 4th floor of the Yakima County Courthouse. The money will be deposited in the Yakima County current expense fund.
2. **Review Procedure Except for Incorporations:** In accordance with RCW 36.93.100, the Board shall review and approve, disapprove, or modify 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: PROVIDED, That the members of the Boundary Review Board shall not be authorized to file a request for review of the following actions:
 - i. The incorporation of any special purpose district or change in the boundary of any city, town or special purpose district;
 - ii. The extension of permanent water service outside of its existing corporate boundaries by a city, town or special purpose district if the extension is through the installation of water mains of six inches or less in diameter or the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under RCW 36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions; or
 - iii. The extension of permanent sewer service outside of its existing corporate boundaries by a city, town or special purpose district if the extension is through the installation of sewer mains of eight inches or less in diameter or the county legislative authority for the county in which the proposed extension is to be built is required or chooses to plan under

RCW 36.70A.040 and has by a majority vote waived the authority of the board to initiate review of all other extensions;

- b. Any governmental unit affected, including the governmental unit for which the boundary change or extension of permanent water or sewer service is proposed, or the county within which the area of the proposed action is located, files a request for review of specific action;
- c. A petition requesting review is filed and is signed by;
 - i. Five percent of the registered voters residing within the area which is being considered for the proposed action (as determined by the Boundary Review Board in its discretion subject to immediate review by writ of certiorari to the Superior Court); or
 - ii. 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 Boundary Review 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.

If a period of forty-five days shall elapse without the Board's jurisdiction having been invoked as set forth in this section, the proposed action shall be deemed approved.

If a review of a proposal is requested, the Board shall make a finding as prescribed in RCW 36.93.150 within one-hundred twenty days after the filing of such a request for review. If this period of one-hundred twenty days shall elapse without the Board making a finding as prescribed in RCW 36.93.150, the proposal shall be deemed approved unless the Board and the person who submitted the proposal agree to an extension of the one hundred twenty day period.

3. 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.
4. Additional Information for Review: After jurisdiction has been invoked, the Board through its Chair 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.

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 motion set the date, time and place for a public hearing on the proposal.

PUBLIC HEARINGS

1. **Notification:** At least thirty 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 Yakima 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 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 Clerk of the Board.
4. **Oath:** The Chair shall administer the oath if so requested by the Board.

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 Clerk 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 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: Any document or exhibit must be submitted to the Clerk for labeling prior to giving testimony. A speaker must identify any document or exhibit by its assigned number and title. 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.

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 43.21C).
2. Hearing Decision: The Board shall file its written decision within forty days after the conclusion of the final hearing on a proposal, but in no event shall it be more than one hundred 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 Clerk of the Boundary Review Board and distributed to all governmental entities 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 Yakima 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.

FINAL ORDINANCE/RESOLUTION

1. Final Ordinance/Resolution needs a signed and dated final approval of the legal description by the County Engineer or his/her designee from the Public Services Department.
2. The final Ordinance/Resolution should give the date of publication of the final ordinance.
3. The final Ordinance/Resolution should give the effective date of annexation.
4. The final Ordinance/Resolution shall have the initiator's seal or be notarized.
5. The final Ordinance/Resolution shall contain a clear and concise map of the annexation area.
6. Submit the final Ordinance/Resolution with the Clerk of the Board at 128 N. 2nd Street, 4th Floor of the County Courthouse. The Clerk will assure completeness and then file for record with the Auditor's Office. The appropriate filing fee shall accompany the final Ordinance/Resolution for filing. The proper cover sheet is required by the Auditor's Office for filing purposes.

The Clerk will distribute the final Ordinance/Resolution to the appropriate county governmental departments and interested persons. A recorded "copy" of the Ordinance/Resolution shall be returned to the initiator at the time of filing for distribution to all other entities. The original recorded Ordinance/Resolution will be returned to the City or appropriate submittal agency.

AMENDMENTS

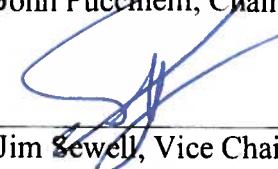
Any Rule of Practice and Procedure of the Board may be adopted, amended or repealed at any time by a majority of members present at any regular or special meeting providing that no such action shall be taken without twenty days prior notice of such a meeting.

EFFECT OF RULES

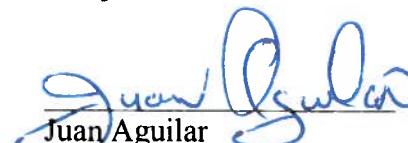
These rules shall supersede any prior rules heretofore adopted by the Washington State Boundary Review Board for Yakima County and shall be in addition to those requirements and provisions of Chapter 36.93 of the Revised Code of Washington and other applicable laws. If any provision of these rules is 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.

Dated this 22nd day of May, 2017

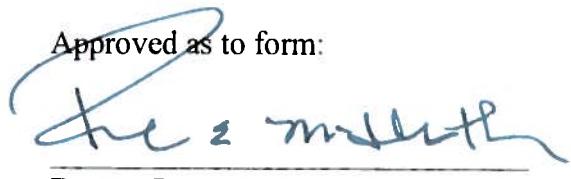

John Puccinelli, Chairman

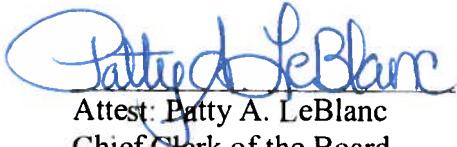

Jim Sewell, Vice Chairman


Joseph Buchanan


Juan Aguilar
Constituting the WA State Boundary Review Board
for Yakima County, Washington

Approved as to form:


Debra M. Smith
Deputy Prosecuting Attorney


Attest: Patty A. LeBlanc
Chief Clerk of the Board