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## **The Role of Boundary Review Boards**

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The purpose of this paper is to provide an overview of the role of boundary review boards in the state of Washington, in light of (1) the creation of the Growth Management Act (GMA) in 1990 and (2) the authority of legislative authorities in counties that have achieved GMA compliance to disband their boards.

In 1967, the state legislature enacted chapter 36.93 RCW, which established boundary review boards in counties with a certain population and authorized the creation of boundary review boards in other counties by vote of the electorate or by action of the county legislative authority. As of the date of this paper, 19 counties have boundary review boards. Three counties (Chelan, Franklin, and Clark) had boundary review boards but disbanded them pursuant to RCW 36.93.157, and one county (Clallam) disbanded its board but then reestablished it.

### **Legislative Intent – Purpose of Boundary Review Boards**

The intent of the legislature in creating boundary review boards is rather expansively stated in RCW 36.93.010:

The legislature finds that in metropolitan areas of this state, experiencing heavy population growth, increased problems arise from rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries. These problems affect adversely the quality and quantity and cost of municipal services furnished, the financial integrity of certain municipalities, the consistency of local regulations, and many other incidents of local government. Further, the competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan areas so that such problems may be avoided and that residents and businesses in those areas may rely on the logical growth of local government affecting them.

The Washington State Supreme Court has described the purpose of boundary review boards as being to review local government actions regarding boundaries (*Nisqually Delta Ass'n v. DuPont*, 95 Wn.2d 563, 565 (1981)) and to resolve disputes among municipalities regarding unincorporated territory (*Richland v. Franklin County Boundary Review Bd.*, 100 Wn.2d 864, 869 (1984)).

### **Boundary Review Board Authority**

Boundary review boards are vested with the authority to review and to approve, disapprove, or modify (add or delete territory) and approve any changes in the boundaries of cities or special purpose districts (annexations, deannexations, and consolidations), the incorporation of a city or special purpose district,

and the extension of water or sewer service outside the boundaries of cities or special purpose districts in certain circumstances. RCW 36.93.100(1); RCW 36.93.150. Though, with respect to incorporations of cities with over 7500 population, a board cannot approve or disapprove the proposed incorporation; it can only make a recommendation to the voters who have the ultimate decision. RCW 36.93.150(5)(c). Review of such actions by a boundary review board is not automatic; the jurisdiction of the board must be invoked by the board itself with respect to some actions, by a request for review filed by a governmental entity affected by the proposed action, or by registered voters or property owners in the area of the proposed action. RCW 36.93.100(2).

A boundary review board is a local, not a state, agency, and it acts in a quasi-judicial capacity. *Kitsap County Fire Prot. Dist. No. 7 v. Kitsap County Boundary Review Bd.*, 87 Wn. App. 753, 757-61 (1997). However, the attorney general's office provides legal counsel to the boards, unless a board asks the county prosecutor to do so. RCW 36.93.070. A boundary review board represents the public interest and has no legal interest in its ultimate decision. *Kitsap County Fire Prot. Dist.*, at 760-61.

### **The GMA and Boundary Review Boards**

Although the Growth Management Act (GMA), adopted in 1990, did not amend any of the boundary review board statutes in chapter 36.93 RCW, it imposed limitations on and established a territorial framework for the annexation authority of cities subject to GMA requirements. The GMA did not directly affect the annexation authority of special purpose districts.

**Urban Growth Areas.** A major goal of the GMA is to reduce urban sprawl by encouraging development in urban areas where adequate public facilities already exist or where such facilities can be more efficiently provided. RCW 36.70A.020(1), (2). To help implement this goal, the GMA requires that counties designate urban growth areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. RCW 36.70A.110(1). Urban growth areas are to include territory sufficient to accommodate the twenty-year population growth projected for the county. RCW 36.70A.110(2). Every city must be included within an urban growth area. Urban growth areas may include territory outside of cities if that territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth. RCW 36.70A.110(1). Significantly, the GMA further states that it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas. RCW 36.70A.110(3).

Consistent with this goal of controlling the spread of urban growth, the GMA limits the territory that a city may annex to that which lies within its urban growth area. RCW 35.13.005, RCW 35A.14.005. And, as a result of a 1994 amendment to RCW 36.93.150, the incorporation of new cities in counties subject to the GMA is also limited to urban growth areas. Nevertheless, while limiting the territorial extent of annexations, the GMA facilitates the process of annexation through the comprehensive planning process it mandates. County-wide planning policies that are mandated by the GMA must address policies for joint county and city planning within urban growth areas. RCW 36.70A.210(3)(f). As such, a city subject to the GMA should form its annexation policy and planning in the context of complying with the GMA.

**Consistency with GMA.** In 1992, the legislature enacted RCW 36.70.157, which requires that decisions of boundary review boards in counties subject to the GMA must be consistent with the GMA, specifically RCW 36.70A.020 (GMA planning goals), RCW 36.70A.110 (urban growth areas), and RCW 36.70A.210 (county-wide planning policies). With respect to consistency with RCW 36.70A.210, the state court of appeals has stated:

While RCW 36.70A.210 chiefly describes a planning process, the underlying legislative goal is to ensure that comprehensive plans adopted by the county and by cities within the county are coordinated and consistent. The requirement of RCW 36.93.157 that a boundary review board's decision be consistent with RCW 36.70A.210 is thus an expression of legislative intent that a boundary review board ensure annexations are consistent with the substantive provisions of the [county-wide] planning policies.

(Footnotes omitted.) *Stewart v. King County Boundary Review Bd.*, 100 Wn. App. 165, 173 (2000). This responsibility of boundary review boards to review annexations for consistency with GMA goals and county-wide planning policies suggests the potential need of a continuing role for boundary review boards even after GMA compliance by a county and the cities and towns within it.

### **Boundary Review Board Decision-Making**

In addition to the requirement that decisions of boundary review boards in counties subject to the GMA must be consistent with the GMA, a boundary review board is required by RCW 36.93.170 to consider a number of "factors" and by RCW 36.93.180 to attempt to achieve certain "objectives" when making decisions regarding proposed actions. These factors identified in RCW 36.93.170 include, for example, "land area and land uses"; "comprehensive plans and zoning"; "comprehensive plans and development regulations adopted under chapter 36.70A RCW"; "topography, natural boundaries and drainage basins, proximity to other populated areas"; "the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years"; "[m]unicipal services"; "need for municipal services"; "prospects of governmental services from other sources"; "probable future needs for such services and controls"; and "the effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county."

The courts have not imposed strict requirements upon board decision-making based on these factors. The state supreme court has held that, as long as a board states it has considered these "factors" and singled several of them out for "particular attention," RCW 36.93.170 is satisfied. *King County Water Dist. 54 v. King County Boundary Review Bd.*, 87 Wn.2d 536, 543 (1976).

Among the "objectives" identified in RCW 36.93.180 that a board is required to "attempt to achieve" are: "[p]reservation of natural neighborhoods and communities"; "[c]reation and preservation of logical service areas"; "annexation to cities or towns of unincorporated areas which are urban in character"; and "[p]rotection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority." A board may not modify or deny a proposed action unless there is evidence in the record showing that the action is inconsistent with one or more of these objectives. RCW 36.93.150(5).

The objectives identified in RCW 36.93.180 have more significance for a reviewing court than the factors identified in RCW 36.93.170. According to the state supreme court in *King County v. King County Boundary Review Bd.*, 122 Wn.2d 648, 673 (1993):

Unlike the "factors" listed in RCW 36.93.170, these "objectives" are more than simply aspirational. *Spokane Cy. Fire Protec. Dist. 9 v. Spokane Cy. Boundary Review Bd.*, 97 Wn.2d 922, 926, 652 P.2d 1356 (1982). A decision which fails to achieve the objectives of RCW 36.93.180 is reversible. *Spokane Cy.*, 97 Wn.2d at 926; *Richland v. Franklin Cy. Boundary Review Bd.*, 100 Wn.2d 864, 870, 676 P.2d 425 (1984). On at least one previous occasion, a reviewing court has overturned boundary review board decisions based on such a failure. See *Snohomish Cy. v. Hinds*, 61 Wn. App. 371, 379, 810 P.2d 84 (1991) (trial court overturning boundary review board).

In *King County v. King County Boundary Review Bd.*, the court looked at these objectives with respect to a specific annexation and concluded:

two of the applicable statutory objectives would be significantly furthered, three would neither be furthered nor hindered, and one would be somewhat set back by the proposed annexations. While substantial evidence review of boundary review board decisions is not merely an exercise in counting objectives, our review of the record and the statutory objectives convinces us there is sufficient evidence to convince a fair-minded person that overall the objectives of RCW 36.93.180 would be furthered rather than hindered by approval of the proposed annexations. The decision of the Board was therefore supported by substantial evidence.

122 Wn.2d at 680.

*Snohomish Cy. v. Hinds*, 61 Wn. App. 371 (1991), provides an example of a board decision denying an annexation that was upheld by an appellate court. In that case, the board determined that: "natural neighborhoods and communities" would not be preserved by the annexation; the proposed annexation failed to use physical boundaries because, in a significant area, it followed lot lines rather than roads or physical features; and the flagpole shape of the annexation was abnormally irregular. 61 Wn. App. at 381.

Unfortunately, the objectives that a boundary review board is required to address in its decision-making do not mesh well with the GMA goals with which its decision must be consistent. The results of a Department of Community, Trade and Economic Development (DCTED) survey of six counties in western Washington (Clark, King, Kitsap, Pierce, Snohomish, and Thurston) and the cities within those counties emphasized this inconsistency between GMA goals and the statutory objectives that boards must consider. See [\*Annexations Under the Growth Management Act: Barriers and Potential Solutions\*](#) (DCTED study), DCTED (December 2004), at 56. The DCTED Study recommends that the boundary review board statutes be revised to be more consistent with GMA goals. It also makes recommendations regarding the annexation process.

### **Disbanding of Boundary Review Boards**

In 1991, the legislature made a number of amendments to the GMA, including the addition of a new section to chapter 36.93 RCW that authorizes the disbanding of boundary review boards in certain circumstances. That section, codified as RCW 36.93.230, states as follows:

When a county and the cities and towns within the county have adopted a comprehensive plan and consistent development regulations pursuant to the provisions of chapter 36.70A RCW, the county may, at the discretion of the county legislative authority, disband the boundary review board in that county.

The state supreme court in *King County v. King County Boundary Review Bd.*, 122 Wn.2d 648, 681 (1993) discusses this statute:

This provision allows counties to disband their boundary review boards after the completion of the plans required by the GMA, including the designation of urban growth areas. Thus, the GMA explicitly contemplated the continued activity of the boards prior to the designation of the urban growth areas. This explicit provision indicates that the GMA was not intended to replace the BRB Act [chapter 36.93 RCW] pending the designation of the urban growth areas.

The court's discussion of this statute suggests that, in the view of the state supreme court, the GMA was intended to "replace" boundary review boards. Assuming that is the case, however, counties have the option of retaining their boundary review boards after full GMA compliance by the counties and the cities within them. The decision whether to disband a boundary review board lies solely within the discretion of the county legislative body.

### **Possible Role of Annexation Review Boards after Disbanding of Boundary Review Board**

In counties without a boundary review board, the annexation statutes provide that either an "ad hoc" annexation review board (for first and second class cities and towns) or a county annexation review board (for code cities) must be constituted and convened to review certain types of annexations. RCW 35.13.171-.174; RCW 35A.14.160-.220. The annexation statutes require that these review boards consider in their review of annexations a number of designated factors that are similar to those that would be used by a boundary review board, although consistency with the GMA is not one of those factors. RCW 35.13.173, RCW 35A.14.220.

However, neither the boundary review board statutes nor the annexations statutes address whether these annexation review boards must be convened to review annexations in a county that has established but then has disbanded its boundary review board. To add further confusion to this issue, the annexation statutes governing first and second class cities and towns differ in language from the annexation statutes governing code cities with respect to these annexation review boards. RCW 35.13.171 provides, with respect to first and second class cities and towns, that, after annexation proceedings have commenced, "the mayor of the city or town concerned *that is not subject to the jurisdiction of a boundary review board* under chapter 36.93 RCW, shall convene a review board . . . ." (Emphasis added.) A city or town in a county that has disbanded its boundary review board is, technically speaking, "not subject to the jurisdiction of a boundary review board." So, it would appear that certain annexations by first and second class cities and towns in such counties should be reviewed by an "ad hoc" annexation review board after the disbanding of a boundary review board, although an argument along the lines of that below could be made to support a contrary conclusion.

In contrast, the code city annexation statutes state:

In all counties in which a boundary review board is established pursuant to chapter 189, Laws of 1967 [chapter 36.93 RCW] review of proposals for annexation of unincorporated territory to charter code cities and noncharter code cities within such counties shall be subject to chapter 189, Laws of 1967 [chapter 36.93 RCW]. Whenever any county establishes a boundary review board pursuant to chapter 189, Laws of 1967 [chapter 36.93 RCW] the provisions of this act relating to annexation review boards shall not be applicable.

RCW 35A.14.160. Of course, a county that disbands its boundary review board had its board first "established" by law or by the county legislative authority, a fact that supports the interpretation that these other review boards play no role after the disbanding of the boundary review board. On the other hand, a board that is disbanded is no longer "established." Also, this statute was enacted and last amended long before the GMA and the statutory authorization to disband boundary review boards. This all leads to the conclusion that this statute is ambiguous on this issue and is thus subject to interpretation by the courts.

In my opinion, the most reasonable interpretation of RCW 35A.14.160 with respect to code city annexations is that disbanding a boundary review board does *not* mean that a county annexation review board must be convened to review annexations. It makes little sense to give counties the authority to disband their boundary review boards based on GMA compliance, and then require that annexations be reviewed by another type of review board that would consider annexations based on factors similar to

those that a boundary review board would consider. Under rules of statutory construction, a literal reading of a statute is to be avoided if it would result in "unlikely, absurd, or strained consequences." *State v. Elgin*, 118 Wn.2d 551, 555 (1992). In addition, an interpretation should be adopted that will, if reasonably possible, harmonize all statutes upon the same subject. *Ropo, Inc. v. Seattle*, 67 Wn.2d 574, 578 (1965). Consequently, it is my view that the legislature intended that compliance with the GMA would, at least in theory, eliminate the need for review of code city annexations by the boundary review board or any other type of review board. There is, of course, a contrary view, and definitive resolution of this issue requires either judicial interpretation or legislative clarification.

### **Role of Boundary Review Boards after GMA Compliance**

GMA compliance by a county and the cities within that county does not necessarily eliminate disputes among them regarding unincorporated territory. The fact that an urban growth boundary has been set beyond which a city may not annex does not necessarily mean . . . that annexation within an urban growth area must always be permitted. *Stewart v. King County Boundary Review Bd.*, 100 Wn. App. 165, 177 (2000). The *Stewart* court recognized that a GMA-compliant city may attempt to achieve a result not permitted under the [county-wide] policies or the [comprehensive] plan. 100 Wn. App. at 175. As such, a boundary review board can have a continuing role in resolving such disputes.

With respect to this issue of a boundary review board's role after GMA compliance, it should be noted that boundary review boards also have authority over matters other than city annexations that involve special purpose districts, which the GMA does not address. Although I am not aware of how often boundary review boards typically have their jurisdiction invoked with respect to boundary changes or extra-territorial service extensions by special purpose districts, the relevance of board review of such actions would not appear to be diminished after GMA compliance by a county and the cities within it.

### **Conclusion**

Boundary review boards can play a continuing role in resolving disputes concerning municipal boundary changes, even after a county and the cities within the county have complied with the GMA. Whether there is a need for that role or whether a boundary review board should play that role in a particular county that has achieved GMA compliance is an issue for the county legislative authority to address. It is a policy decision of a board of county commissioners or county council whether to disband its boundary review board; there is no legal restraint on that decision.