COUNTY COMMISSIONERS

John Hutchings
   District One
Gary Edwards
   District Two
Tye Menser
   District Three

BOUNDARY REVIEW BOARD

Creating Solutions for Our Future

MEETING AGENDA

WHEN:       Tuesday, January 22, 2019 – 7:00 p.m.
WHERE:      Thurston County Courthouse Building #1, Room 280
            2000 Lakeridge Dr. SW
            Olympia, WA 98502

For information contact:  Katrina Van Every, Chief Clerk
                         Thurston County Boundary Review Board
                         360. 971.7575
                         brbchiefclerk@trpc.org

AGENDA

A.  Call to Order
   1.  Attendance
   2.  Review and Approval of Agenda
   3.  Public Comment

B.  Approval of Minutes
   1.  January 23, 2018
   2.  March 21, 2018
   3.  April 12, 2018

C.  2019 Election of Officers

D.  February Special Meeting Schedule to consider appointment of Special Purpose District Nominees to the Board

E.  Preliminary Matters and Public Hearing Schedule for Review Requests
   1.  ANNEX2018-05: Lacey Steilacoom/Marvin Rd Annexation and Expansion of Annexation Area

F.  Adjournment

Users who need accessibility assistance can also contact us by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.
ENCLOSURES
A. Minutes for January 23, 2018; March 21, 2018; and April 12, 2018
B. Staff Memos: Election of Officers; Special Purpose District Nominees; Preliminary Matters on ANNEX2018-05 (Lacey Steilacoom/Marvin Rd Annexation)
C. Petition for Review: Thurston County on Lacey Steilacoom/Marvin Rd Annexation (ANNEX2018-05)

The final agenda and meeting packet will be posted online at: www.trpc.org/925/Meeting-Agendas-Minutes
MINUTES OF MEETING

THURSTON COUNTY BOUNDARY REVIEW BOARD
Wednesday, January 23, 2018
Thurston County Courthouse Building 1, Room 280, 7:00pm
2000 Lakeridge Drive SW
Olympia, WA  98502

Vice-Chair Thomas called the meeting to order at 7:40 p.m.

CALL TO ORDER

Members Present: Chair Michael Marchand, Vice-Chair Patrick Thomas (via conference call), and Mr. Lance Caputo

Members Excused: None

Staff Present: Chief Clerk Jeremy Davis

Guest: Katrina Van Every, Thurston Regional Planning Council (TRPC)
       Michael Burnham, Thurston Regional Planning Council (TRPC)

Mr. Marchand moved to approve the agenda. Mr. Caputo seconded. Motion carried.

Public Comment (none given)

APPROVAL OF MINUTES

Mr. Caputo moved to approve the minutes for October 26, 2017. Mr. Marchand seconded. Motion carried.

Discussion on 2018 Election of Officers

Mr. Marchand reviewed last year’s election of officers and it was recommended that Mr. Thomas become Chair and he will be Vice Chair for 2018.

Decision on 2018 Election of Officers

Mr. Caputo moved to nominate Mr. Thomas as Chair, and Mr. Marchand as Vice Chair. There was no discussion. Mr. Marchand seconded. Motion carried.

Appointment of Chief Clerk

Chief Clerk Davis summarized where we are with TRPC taking over the Boundary Review Board. (He handed out a memo with a motion in it). It was recommended to appoint the staff person Katrina Van Every as Chief Clerk, and Michael Burnham as Acting Chief Clerk and retain Jeremy Davis as Acting Chief Clerk to finish the current Lacey Island Annexation and City of Tenino Annexation.
Mr. Thomas moved to appoint Katrina Van Every as Chief Clerk for the Washington Boundary Review Board for Thurston County, and further move to appoint Michael Burnham as Acting Chief Clerk when Katrina is unable to serve as Chief Clerk, and further move to retain Jeremy Davis as the Acting Chief Clerk for the purpose of completing the Lacey Gateway II Annexation and the annexation of Tenino by Fire District_12. Mr. Marchand seconded. Motion carried.

Discussion on Preliminary Matters and Public Hearing Schedule for Review Requests

Lacey Island Annexation – Gateway II (2017106236): Chief Clerk Davis review requests were received and the 120 day clock has begun with the deadline being April 18, 2018. Dates were discussed for the public hearing and post hearing meetings to include time to allow staff and legal to draft the appropriate draft motion for approval. You can send this to Jeremy by email after the meeting. Suggested dates were March 13th, (but still waiting on Thurston County) or March 23rd but that is a Friday. Mr. Caputo can do March 21st if that works for everyone else. Michael can also make it. All the parties are available on March 21st to attend a public hearing. Jeremy will draft a motion for approval.

Mr. Marchand moved to set a public hearing on Wednesday, March 21, 2018 at 7:00 p.m., or soon thereafter, at the Thurston County Courthouse, Building One in Room 280 to accept public comment and comments from affected jurisdictions on the proposed City of Lacey Gateway II Annexation. Mr. Caputo seconded. Motion carried.

Mr. Marchand moved to request the Acting Chief Clerk to request the City of Lacey, Thurston County and D.R. Horton to present appropriate evidence supporting the annexation and/or their relief sought and include how they believe their specific requests or positions are allowable under and consistent with the decision making authority given to the Boundary Review Board under Chapter 36.93 RCW, and further move that the Acting Chief Clerk may request other such evidence for the record in support of the Boundary Review Board’s decision as deemed reasonably necessary for the performance of its duties. Mr. Caputo seconded. Motion carried.

Mr. Marchand moved to direct the Acting Chief Clerk to work with the City of Lacey, Thurston County and DR Horton to develop a concise statement of issues reviewable by the Boundary Review Board under Chapter 36.93 RCW. Mr. Caputo seconded. Motion carried.

ADJOURNMENT

Chair Thomas moved to adjourn the meeting at 7:54 p.m. Mr. Marchand seconded. Motion carried.

Michael Marchand, Vice-Chair

Prepared by Polly Stoker and Katrina Van Every for Washington State Boundary Review Board for Thurston County
Vice-Chair Thomas called the meeting to order at 7:02 p.m.

CALL TO ORDER

Members Present: Chair Patrick Thomas, Mr. Michael Marchand, Mr. Lance Caputo

Members Excused: None

Staff Present: Acting Chief Clerk Jeremy Davis, Scott Cushing, Thurston County Deputy Prosecuting Attorney, Cami Petersen, Thurston County Administration

Others: David Schneider, City of Lacey Attorney; Rick Walk, Director, Community & Economic Development Department, City of Lacey; Duana Kolouskova, Attorney for Petitioner DR Horton; Travis Burns, Thurston County Deputy Prosecuting Attorney

Citizens: Steve Morris

Public Hearing

Chair Thomas called the public hearing to order at 7:03 p.m. for the Lacey Island Annexation – Gateway II, project number 2017106236 (known as the Gateway II annexation). Chair Thomas explained the purpose of the hearing is to take testimony and gather facts on the annexation proposal before them. No additional exhibits were provided to the Boundary Review Board (Board).

Acting Chair Davis administered an oath to those who wish to testify.

Chair Thomas asked if there is any person in attendance who questions whether any member of the Board has any conflict of interest or bias in the matter before them. No question of conflict of interest or bias was stated.

Staff Presentation:
Acting Chair Davis provided a brief overview of the Annexation proposal before the Board. The City of Lacey submitted a Notice of Intent to the Board to annex approximately 80.43 acres generally located near the intersection of Callison Road N.E. and Gateway Blvd. N.E. The City is using the island form of annexation for a code city allowed under RCW 35A.14.295.

On December 18, 2017, SSHI, dba DR Horton has submitted a petition for review of the Gateway II annexation, and an amended petition for review on December 19, 2017. Thurston
County submitted a petition for review on December 27, 2017. Thurston County has subsequently submitted a voluntary dismissal of the petition for review on March 20, 2018.

Acting Chair Davis briefly discussed the Factors and Objectives considered by the Board and outlined the actions and determinations the Board may make following the public hearing. The Board may choose to continue the public hearing to consider the information and testimony given. A second meeting and hearing date of April 12, 2018 has been set aside, if the Board deems this necessary. A decision shall be issued by April 18, 2018, or 40 calendar days after the final public hearing, whichever occurs first.

Acting Chair Davis stated that the required notice for public hearing was published in The Olympian on February 28, March 7, March 14, and March 15, 2018. Notice was posted in at least ten public places in the area affected by the annexation on March 8, 2018.

**Testimony:**
The following provided public testimony.

- Scott Morris, 120 W. Cotaldo Avenue, Suite 100, Spokane WA 98201. Mr. Morris stated that is there on behalf of the Inland Group, who is the developer of an approximately six acre multi-family property within the annexation area. The developer of this property is intending to build a 170 unit age-restricted apartment building and are awaiting the outcome of this annexation in order to be able to proceed. Mr. Morris explained that they purchased this property in July 2017, shortly after this annexation process began. They were made aware of the annexation proposal from Thurston County staff during a pre-construction meeting and was informed of the annexation project. Mr. Morris stated that he is in support of this annexation and asked the Board to expedite this process as much as possible because this delay is detrimental to them financially.

  The Board asked questions of Mr. Morris, who pointed out the location of the property, and explained that their project is separate from the DR Horton development.

- David Schneider, City of Lacey Attorney; Rick Walk, Director. Mr. Schneider provided testimony to the Board, stating that the City of Lacey and Thurston County have agreed to an Interlocal Agreement and are awaiting signatures to finalize this. Mr. Schneider stated that the City Council is awaiting the signed agreement from the Board of County Commissioners (BOCC), and it is his understanding that they stated they agree, but the signatures are in the process of being obtained. Mr. Schneider also summarized the City’s Prehearing Statement, stating that he does not believe the DR Horton argument regarding impact fees is something that the Board has authority over, and that this is a legal argument that is appropriate for a Superior Court action.

  The Board asked questions of Mr. Schneider and Mr. Walk regarding the City’s noticing of the resolution, Fire District and Police impacts and the Interlocal Agreement that has yet to be signed.

- Travis Burns, Deputy Prosecuting Attorney. Mr. Burns briefly outlined the County’s position regarding the Interlocal Agreement and explained how that agreement was reached. Mr. Burns encouraged the Board to refer to the agreement even though is has not officially been signed and objects to the argument that this is not a final agreement.
Mr. Burns stated that the County encourages the Board approve the annexation with the conditions of the Interlocal Agreement.

The Board asked questions of Mr. Burns.

- Duana Kolouskova, DR Horton Attorney. Ms. Kolouskova provided the Board with a summary of the issues that they have raised with the annexation proposal before them. Ms. Kolouskova stated that her client was not given sufficient notification of this annexation process and was therefore unable to provide comments and concerns to the City prior to the approval of this island annexation due to the lack of public comment. Ms. Kolouskova stated that they are not opposed to paying fees, but are not in agreement with the Interlocal Agreement between the County and the City of Lacey, and as the affected property owner, do not believe this is a legal process. Ms. Kolouskova asks the Board to consider modifying this annexation.

The Board asked questions of Ms. Kolouskova.

- Mr. Schneider provided rebuttal and re-stated that the concerns raised by DR Horton are more appropriate in Superior Court, and the BRB does not have the authority for decided this issue.

The Board asked additional questions of Mr. Schneider. Acting Chair Davis was asked to read RCW 36.93.150 into the record for the Board's information.

- Mr. Burns did not have additional response or comment.

- Ms. Kolouskova provided a response to the questions and concerns raised by the Board and the City.

The Board asked additional questions of Ms. Kolouskova.

Being no further questions of the petitioners or the public, Chair Thomas asked the Board if they had sufficient information to close the public comment portion of the hearing.

**Mr. Caputo moved to close the public comment portion of the hearing. Mr. Marchand seconded. Motion carried.**

Chair Thomas asked the Board to discuss the factors and objectives to be considered for the annexation proposal before them.

During discussion, staff stated that they will research case law regarding the legal questions that were raised during public comment and to provide additional information to the Board at the April meeting. Regarding legal

**Mr. Caputo moved to continue the public hearing to April 12, 2018. Mr. Marchand seconded. Motion carried.**
Acting Chair Davis read the complete information into the record: The hearing is continued to April 12, 2018, 7:00 p.m., Building One, Second Floor, Room 280, 2000 Lakeridge Drive SW, Olympia WA.

**ADJOURNMENT**

*Chair Thomas moved to adjourn the meeting at 9:25 p.m.*

______________________________
Michael Marchand, Vice-Chair

Prepared by Cami Petersen and Katrina Van Every for Washington State Boundary Review Board for Thurston County
SPECIAL MEETING AND PUBLIC HEARING MINUTES
THURSTON COUNTY BOUNDARY REVIEW BOARD
Thursday, April 12, 2018
Thurston County Courthouse Building 1, Room 280, 7:00pm
2000 Lakeridge Drive SW
Olympia, WA  98502

Chair Thomas called the meeting to order at 7:02 p.m.

CALL TO ORDER

Members Present: Chair Patrick Thomas, Mr. Michael Marchand, Mr. Lance Caputo, Mr. William Kilpatrick

Members Excused: None

Staff Present: Acting Chief Clerk Jeremy Davis, Rick Peters, Thurston County Deputy Prosecuting Attorney, Polly Stoker, Thurston County Administration

Public Hearing

Chair Thomas called the public hearing to order at 7:02 p.m. for the continuation of the Lacey Island Annexation – Gateway II, project number 2017106236 (known as the Gateway II annexation). Chair Thomas explained the purpose is to continue the public hearing from March 21st is to take testimony and gather facts on the annexation proposal before them.

Introduced was the new Boundary Review Board member, appointed by the Governor’s Office, William Kilpatrick. Acting Chief Clerk Davis swore in Mr. Kilpatrick. He also confirmed he did not receive any objections from the parties to Mr. Kilpatrick participating in tonight’s proceedings. Chair Thomas confirmed with Mr. Kilpatrick that he had read the exhibits on the matter and listened to the audio from March 21, 2018 and is ready to participate in the deliberations tonight.

Chair Thomas asked if there is any person in attendance who questions whether any member of the Board has any conflict of interest or bias in the matter before them. No question of conflict of interest or bias was stated.

Mr. Caputo moved to approve adding the signed copy of the inter-local agreement between the County and the City and the email from D.R. Horton as Exhibit 5. Mr. Marchand seconded. Motion carried.

Mr. Caputo moved to close the public hearing at 7:07 p.m. and begin deliberations. Mr. Marchand seconded. Motion carried.

The factors under consideration for the Annexation by the Board were reviewed including under the Washington State Growth Management Act, Comprehensive Plans, and county-wide planning policies. The Board unanimously confirmed there were no objections to 13 criteria stated, except for Mr. Caputo in regards to Permitting.
Mr. Marchand moved to approve the City of Lacey Gateway II Annexation Case #2017106236. Mr. Kilpatrick seconded.

Mr. Caputo asked to read his written statement as follows:
“I voted in favor of the annexation for two reasons. First, I find the proposal satisfies the majority of objectives enumerated in RCW 36.93.180. Second, all parties of record are in support of the annexation.

This Boundary Review Board serves in a quasi-judicial capacity acting as an inferior tribunal. Admittedly, we are limited by RCW 36.93.170 in our scope of review. As I understand comments from staff, my fellow board members and those who testified, impact fees and determinations of interlocal agreements are not factors in our actions. However, I have concerns about the shared assessment of reviews and impact fees between the city and county and its effects on the petitioners.

As the petitioner DR Horton states there is a significant difference between the county’s and the city’s determination of traffic impact fees; approximately $750,000. This difference is determined by who will be responsible for plan reviews, the county of the city. I believe the petitioner has a reasonable request to have the City of Lacey conduct final plan reviews, approvals and issuance of permits and not the County now that the annexation is approved.

I might have a liberal interpretation of the phrase stipulated in our enabling legislation: ‘determining assets and liabilities between 2 or more governmental units’”. I find this phrase to allow us to factor in our decisions impact fees and review actions. However, I will defer to the understanding of those more experienced and wiser than myself in these matters.

I believe the Nolte decision referenced by the applicant does set a precedent and can influence boundary review board’s actions.

I believe DR Horton has standing to pursue these issues at the next level if it wishes to do so. By approving this annexation, we are enabling the applicant to seek such resolution.”

Motion carried.

Mr. Peters, County attorney representing the Board in this matter on behalf of Scott Cushing, the regular County attorney explained the decision document before them. Mr. Cushing prepared a findings and final decision document which encapsulates what has been discussed here tonight which includes language that he has advised to be adopted indicating what the Board’s scope is on making decisions under RCW 36.93. The Board then reviewed the document and signed it.

Mr. Marchand moved to accept the draft decision, as prepared by staff for signature to get the clock moving on the process. Mr. Caputo seconded. Motion Carried.
ADJOURNMENT

Chair Thomas moved to adjourn the meeting at 7:45 p.m.

Michael Marchand, Vice-Chair

Prepared by Polly Stoker and Katrina Van Every for
Washington State Boundary Review Board for Thurston County
Memo

To: Washington State Boundary Review Board for Thurston County
From: Katrina Van Every, Chief Clerk
Date: January 17, 2019
Re: 2019 Election of Officers

According to its Rules of Procedure, the Boundary Review Board is required to hold a meeting on the fourth Tuesday of January each year to hold elections and consider other business as deemed necessary. The Boundary Review Board may reelect the Chair and Vice Chair or choose a new Chair and Vice-Chair.

An election of officers took place at the January 2018 meeting. Patrick Thomas was elected Chair of the Board while Michael Marchand was elected Vice-Chair. Mr. Thomas resigned his seat on the Board effective January 2, 2019.
Memo

To: Washington State Boundary Review Board for Thurston County
From: Katrina Van Every, Chief Clerk
Date: January 17, 2019
Re: Board Member Appointment from Special Purpose Districts Nominations

Per RCW 36.93.063, the Washington State Boundary Review Board for Thurston County appoints a member to the Board from nominees brought forward by special districts. Nominations are due no later than January 31, 2019.

The Board must make its appointment from the list of special district nominees at a meeting during the month of February; a special meeting will need to be scheduled to take care of this matter.
Memo

To: Washington State Boundary Review Board for Thurston County
From: Katrina Van Every, Chief Clerk
Date: January 17, 2019
Re: Lacey Steilacoom/Marvin Rd Annexation Review Requests – Preliminary Matters

Background
On November 30, 2018, the City of Lacey submitted a Notice of Intention to the Boundary Review Board to annex 12 parcels totaling 259.1 acres in the City of Lacey Urban Growth Area. The properties are located near the corner of Steilacoom Road and Marvin Road. The city is proposing to annex the properties through the direct petition method under RCW 35A.14.120.

Preliminary Matters
The discussion for this meeting should be limited to preliminary matters such as scheduling the Public Hearing and Hearing procedures. Substantive matters and questions will be addressed during the Public Hearing process. Prior to the Hearing, the parties will be requested to provide briefs to the Boundary Review Board based on the review factors and objectives in state law on which the Boundary Review Board will base its decision. It will be up to the parties to provide sufficient information.

Thurston County Petition for Review
On January 14, 2019, Thurston County submitted to the Boundary Review Board a Petition for Review of the Steilacoom/Marvin Rd Annexation (see the attached petition). In summary, the County believes the proposed annexation is an irregular boundary, the proposed irregularity presents boundaries that are impractical, and requests that the annexation area be expanded to encompass an additional 250.2 acres.

Review may be requested by any governmental unit affected by the annexation (RCW 36.93.100(2).
Ongoing Negotiations
Thurston County has indicated they are currently engaging in good faith conversations to resolve issues brought forward in the petition for review, specifically regarding the expansion area. Boundary Review Board staff is not part of these discussions.

PFR Review Period
The Boundary Review Board has a maximum of 120 calendar days after the petition for review is submitted to hold a Public Hearing and render a decision (RCW 36.93.100). A decision is due by May 14, 2019, or 40 calendar days after the final Public Hearing, whichever comes first (RCW 36.93.100 & 36.93.160). This may be extended with the agreement of the Boundary Review Board and the City of Lacey. **Please note that staff will be unavailable April 29, 2019 through May 13, 2019.**

Date, Time, and Location of Public Hearings
Because Thurston County has requested the Boundary Review Board consider expanding the annexation area, two Public Hearings are required – a Hearing to consider the County’s request to expand the boundaries of the annexation area (RCW 36.93.150) and a Hearing to consider the annexation itself. Staff recommends the Board hold the hearing to consider the annexation itself first, and then hold the hearing to consider expanding the annexation area second.

The Boundary Review Board may hold meetings at various times and locations. The Board may want to consider holding the Public Hearings for this matter at a location closer to the annexation area given the proposed expansion. Staff has identified the following facilities that can potentially be used to host the Public Hearings, but availability of these facilities will not be known until the Hearing date(s) are identified:

- **Nisqually Middle School.** In the proposed annexation area. Rental fees are approximately $20-$25/hour and vary according to the facility (cafeteria, main gym classroom, etc.)
- **River Ridge High School.** Adjacent to the expanded annexation area. Rental fees are approximately $20-$82/hour and vary according to the facility (auxiliary gym, theater, cafeteria, etc.).
- **Lacey Community Center.** Approximately 1.5 miles from the annexation area. Rental fees are approximately $14-$25/hour and vary according to the room.
- **River Ridge Christian Church.** In the proposed expanded annexation area. Rental fees are unknown and are evaluated on a case-by-case basis. Church staff have indicated that rental fees are nominal, but availability is limited.
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- **Best Western Plus.** Approximately 1 mile from annexation area. Occupancy limited to approximately 55 people. Cost for rental is $200 per day.
- **Days Inn.** Approximately 1 mile from annexation area. No additional information available at this time on rates or meeting space.

The Boundary Review Board will need to set Public Hearing dates with sufficient time remaining to allow for additional meetings. This is to allow for follow-up questions to be answered by the parties, review the testimony, and allow staff to assist the Boundary Review Board by writing up a draft of the decision with findings. The Boundary Review Board will then need to reconvene to discuss the decision and vote on the final decision.

Staff has been working with Boundary Review Board members, the City of Lacey, and Thurston County to identify possible hearing dates. It appears that March 19th and March 21st may work for Board members and the City of Lacey. However, Thurston County has indicated they are not available until the week of March 25th.

**Withdrawal of Request**
The Boundary Review Board Rules of Practice and Procedure specify the following for withdrawing a petition for review:

3. **Withdrawal of Request:**
   A request for review filed pursuant to RCW 36.93.100 (2) by the county or an affected governmental unit may be withdrawn by the initiator of the request at any time prior to the Board setting the time, place and date for a hearing on the proposal and after that time with the consent of the Board and all affected parties.
January 14, 2019

Washington State Boundary Review Board for Thurston County
Chief Clerk Katrina Van Every
c/o Thurston Regional Planning Council
2424 Heritage Court SW, STE A
Olympia, WA 98502

SUBJECT: Proposed Annexation - 259 acre Steilacoom/Marvin Rd (ANNEX2015-5)

Dear Boundary Review Board Members,

Pursuant to RCW 36.93.100, Thurston County objects to the proposed boundary of the annexation referenced above, and requests review by the Washington State Boundary Review Board for Thurston County (BRB). The proposed annexation boundary is an irregular boundary that will create unincorporated county peninsulas leaving existing residentially developed areas outside the city boundaries. Moreover, the proposed irregularity presents boundaries that are impractical for purposes of providing consistent community services.

Thurston County seeks to have the BRB modify the proposed annexation to include additional areas pursuant to RCW 36.93.150 as shown on the attached map. The BRB may add up to 100% of the initial territory of the proposal before the BRB. The proposed annexation is 259.1 acres. The additional territory proposed to be added is approximately 250.2 acres.

Including these areas will result in a more regular boundary and further the inclusion of the City of Lacey Urban Growth Area into the city, consistent with current local comprehensive plans, and as envisioned in the Growth Management Act (Chapter 36.70A RCW). If requested by the BRB and its Chief Clerk, Thurston County is able to provide an electronic list of specific properties to assist with the public hearing process.

Sincerely,

John Hutchings

Gary Edwards, Vice-Chair

Tye Menser, Commissioner
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