

RCW 36.93

(Keep in mind we are not representing ourselves as legal experts on RCW 36.93 nor are we attempting to give anyone any legal advice. The comments below are provided solely by Craig McLaughlin who readily acknowledges he is not, despite being a retired attorney, a person with any expertise in this area of the law)

RCW 36.93.010

Purpose.

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.

Comment: We may be able to support our request before the Boundary Review Board using the highlighted language.

RCW 36.93.020

Definitions.

As used herein:

- (1) "**Governmental unit**" means any incorporated city or town, metropolitan municipal corporation, or **any special purpose district** as defined in this section.
- (2) "**Special purpose district**" means any water-sewer district, fire protection district, drainage improvement district, drainage and diking improvement district, flood control zone district, irrigation district, **metropolitan park district**, drainage district, or public utility district engaged in water distribution.
- (3) "Board" means a boundary review board created by or pursuant to this chapter.

Comment: Clearly, a "Metropolitan Park District" is a "Special Purpose District" which is, for purposes of RCW 36.93, a "Governmental Unit."

RCW 36.93.030

Creation of boundary review boards in counties with populations of two hundred ten thousand or more—Creation in other counties.

(1) There is hereby created and established in each county with a population of two hundred ten thousand or more a board to be known and designated as a "boundary review board".

(2) A boundary review board may be created and established in any other county in the following manner:

(a) The county legislative authority may, by majority vote, adopt a resolution establishing a boundary review board; or

(b) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within

thirty days after the filing of such petition, the county auditor shall transmit the same to the county legislative authority, together with his or her certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the county legislative authority shall submit the question of whether a boundary review board should be established to the electorate at the next primary or general election according to RCW 29A.04.321. Notice of the election shall be given as provided in RCW 29A.52.355 and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established.

Comment: Pierce County's current population is 938,652 so subsection (1) clearly applies to Pierce County.

RCW 36.93.040

Dates upon which boards in counties with populations of less than two hundred ten thousand deemed established.

For the purposes of this chapter, each county with a population of less than two hundred ten thousand shall be deemed to have established a boundary review board on and after the date a proposition for establishing the same has been approved at an election as provided for in RCW 36.93.030, or on and after the date of adoption of a resolution of the county legislative authority establishing the same as provided for in RCW 36.93.030.

Comment: Not relevant to this matter

RCW 36.93.051

Appointment of board—Members—Terms—Qualifications.

The boundary review board in each county with a population of one million or more shall consist of eleven members chosen as follows:

- (1) Four persons shall be appointed by the county appointing authority;
- (2) Four persons shall be appointed by the mayors of the cities and towns located within the county; and
- (3) Three persons shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and two initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and two initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The county appointing authority shall designate one of its initial appointees to serve a term of two years, and two of its initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one of its initial appointees to serve a term of one year, and two of its initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The mayors making the initial city and town appointments shall designate two of their initial appointees to serve terms of two years, and one of their initial appointees to serve a term of four years, if the appointments are made in an odd-numbered year, or two of their initial appointees to serve terms of one year, and one of their initial appointees to serve a term of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The board shall make two initial appointments from the nominees of special districts, with one appointee serving a term of four years and one initial appointee serving a term of two years, if the appointments are made in an odd-numbered year, or one initial appointee serving a term of three years and one initial appointee serving a term of one year if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof.

Comment: Not relevant to this matter

RCW 36.93.061

Boards in counties with populations of less than one million—Members—Terms—Qualifications.

The boundary review board in each county with a population of less than one million shall consist of five members chosen as follows:

- (1) Two persons shall be appointed by the governor;
- (2) One person shall be appointed by the county appointing authority;
- (3) One person shall be appointed by the mayors of the cities and towns located within the county; and
- (4) One person shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and one initial appointee to serve a term of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and one initial appointee to serve a term of three years, if the appointments are made in an even-numbered year, with the length of a term being calculated from the first day of February in the year that the appointment was made.

The initial appointee of the county appointing authority shall serve a term of two years, if the appointment is made in an odd-numbered year, or a term of one year, if the appointment is made in an even-numbered year. The initial appointee by the mayors shall serve a term of four years, if the appointment is made in an odd-numbered year, or a term of three years, if the appointment is made in an even-numbered year. The length of the term shall be calculated from the first day in February in the year the appointment was made.

The board shall make one initial appointment from the nominees of special districts to serve a term of two years if the appointment is made in an odd-numbered year, or a term of one year if the appointment is made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof.

Comment: Pierce County has a five member Boundary Review Board. Currently, there are two vacancies and three active members. One of the two appointed by the Governor is vacant and the one appointed by the County is also vacant. From the Boundary Review Board website: [Pierce County Boundary Review Board | Pierce County, WA - Official Website \(piercecountywa.gov\)](https://www.piercecountywa.gov/boundary-review-board)

Board Member	Term Date	Appointed By
VACANT-Fill	01/31/2023	Governor
Donald Erickson	01/31/2025	Governor
VACANT-Fill	01/31/2023	County
Kent Boyle (Fill)	01/31/2023	Mayors
Bob Skaggs	02/28/2021	Special Purpose Districts

RCW 36.93.063

Selection of board members—Procedure—Commencement of term—Vacancies.

The executive of the county shall make the appointments under RCW 36.93.051 and 36.93.061 for the county, if one exists, or otherwise the county legislative authority shall make the appointments for the county.

The mayors of all cities and towns in the county shall meet on or before the last day of January in each odd-numbered year to make such appointments for terms to commence on the first day of February in that year. The date of the meeting shall be called by the mayor of the largest city or town in the county, and the mayor of the largest city or town in the county who attends the meeting shall preside over the meeting. Selection of each appointee shall be by simple majority vote of those mayors who attend the meeting.

Any special district in the county may nominate a person to be appointed to the board on or before the last day of January in each odd-numbered year that the term for this position expires. The board shall make its appointment of a nominee or nominees from the special districts during the month of February following the date by which such nominations are required to be made.

The county appointing authority and the mayors of cities and towns within the county shall make their initial appointments for newly created boards within sixty days of the creation of the board or shall make sufficient additional appointments to increase a five-member board to an eleven-member board within sixty days of the date the county obtains a population of one million or more. The board shall make its initial appointment or appointments of board members from the nominees of special districts located within the county within ninety days of the creation of the board or shall make an additional appointment of a board member from the nominees of special districts located within the county within ninety days of the date the county obtains a population of one million or more.

The term of office for all appointees other than the appointee from the special districts shall commence on the first day of February in the year in which the term is to commence. The term of office for the appointee from nominees of special districts shall commence on the first day of March in the year in which the term is to commence.

Vacancies on the board shall be filled by appointment of a person to serve the remainder of the term in the same manner that the person whose position is vacant was filled.

Comment: Not relevant to this matter

RCW 36.93.067

Effect of failure to make appointment.

Whenever appointments under RCW 36.93.051 through * 36.93.065 have not been made by the appointing authority, the size of the board shall be considered to be reduced by one member for each position that remains vacant or unappointed.

Comment: This statute reduces the size of the Boundary Review Board to three people meaning we'd need two votes to approve our request to remove Fox Island from PenMet's Park District boundaries.

RCW 36.93.070

Chair, vice chair, chief clerk—Powers and duties of board and chief clerk—Meetings—Hearings—Counsel—Compensation.

The members of each boundary review board shall elect from its members a chair, vice chair, and shall employ a nonmember as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business and shall provide by resolution for the time and manner of holding all regular or special meetings: PROVIDED, That all meetings shall be subject to chapter 42.30 RCW. The board shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him or her to testify before the board and produce public records, papers, books or documents. The chief clerk may invoke the aid of any court of competent jurisdiction to carry out such powers.

The board by rule may provide for hearings by panels of members consisting of not less than five board members, the number of hearing panels and members thereof, and for the impartial selection of panel members. A majority of a panel shall constitute a quorum thereof.

At the request of the board, the state attorney general, or at the board's option, the county prosecuting attorney, shall provide counsel for the board.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

Each member of the board shall be compensated from the county current expense fund at the rate of fifty dollars per day, or a major portion thereof, for time actually devoted to the work of the boundary review board. Each board of county commissioners shall provide such funds as shall be necessary to pay the salaries of the members and staff, and such other expenses as shall be reasonably necessary.

Comment: Not relevant to this matter

RCW 36.93.080

Expenditures—Remittance of costs to counties.

Expenditures by the board shall be subject to the provisions of chapter **36.40** RCW and other statutes relating to expenditures by counties. The *department of community, trade, and economic development shall on a quarterly basis remit to each county one-half of the actual costs incurred by the county for the operation of the boundary review board within individual counties as provided for in this chapter. However, in the event no funds are appropriated to the said agency for this purpose, this shall not in any way affect the operation of the boundary review board.

Comment: Not relevant to this matter

RCW 36.93.090

Filing notice of proposed actions with board.

Whenever any of the following described actions are proposed in a county in which a board has been established, **the initiators of the action shall file within one hundred eighty days a notice of intention with the board:**

PROVIDED, That when the initiator is the legislative body of a governmental unit, the notice of intention may be filed immediately following the body's first acceptance or approval of the action. **The board may review any such proposed actions pertaining to:**

(1) **The:** (a) Creation, incorporation, or **change in the boundary**, other than a consolidation, **of any** city, town, or **special purpose district**; (b) consolidation of special purpose districts, but not including consolidation of cities and towns; or (c) dissolution or disincorporation of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter **36.96** RCW: PROVIDED, That the change in the boundary of a city or town arising from the annexation of contiguous city or town owned property held for a public purpose shall be exempted from the requirements of this section; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water-sewer district pursuant to RCW **57.08.065**; or

(4) The extension of permanent water or sewer service outside of its existing service area by a city, town, or special purpose district. The service area of a city, town, or special purpose district shall include all of the area within its corporate boundaries plus, (a) for extensions of water service, the area outside of the corporate boundaries which it is designated to serve pursuant to a coordinated water system plan approved in accordance with RCW **70A.100.050**; and (b) for extensions of sewer service, the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter **36.94** RCW and RCW **90.48.110**.

Comment: We, through the petition we will be filing will be the "Initiators of the action." We have 180 days from the date we file our petition (see RCW 36.93.100((3), below) to file our "Notice of Intention," as mentioned in this statute. This statute also clearly states that the Boundary Review Board can address a requested "change in the boundary...of any...special purpose district."

RCW 36.93.093

Copy of notice of intention by water-sewer district to be sent officials.

Whenever a water-sewer district files with the board a notice of intention as required by RCW **36.93.090**, the board shall send a copy of such notice of intention to the legislative authority of the county wherein such action is proposed to be taken and one copy to the state department of ecology.

Comment: Not relevant to this matter

RCW 36.93.100

Review of proposed actions by board—Procedure.

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 forty-five days of the filing of a notice of intention:

(1) Three members of a five-member boundary review board or five members of a boundary review board in a county with a population of one million or more files 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:

(a) The incorporation of any special district or change in the boundary of any city, town, or special purpose district;

(b) The extension of permanent water service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of water mains of six inches or less in diameter or (ii) 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

(c) The extension of permanent sewer service outside of its existing corporate boundaries by a city, town, or special purpose district if (i) the extension is through the installation of sewer mains of eight inches or less in diameter or (ii) 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;

(2) 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 the specific action;

(3) A petition requesting review is filed and is signed by:

(a) 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

(b) An owner or owners of property consisting of five percent of the assessed valuation within such area;

(4) The majority of the members of boundary review boards concur with a request for review when a petition requesting the 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.

Comment: The Boundary Review Board has 45 days to make a decision on our request to remove Fox Island from the PenMet Park District. Our action would commence under RCW 36.93(3), by us filing a petition signed by 5% of the registered voters on Fox Island. We will not be seeking to meet the owners of 5% of the total assessed value requirement as we feel that option is discriminatory. Every Fox Island resident has a say in this matter.

RCW 36.93.105

Actions not subject to review by board.

The following actions shall not be subject to potential review by a boundary review board:

- (1) Annexations of territory to a water-sewer district pursuant to RCW **36.94.410** through **36.94.440**;
- (2) Revisions of city or town boundaries pursuant to RCW **35.21.790** or **35A.21.210**;
- (3) Adjustments to city or town boundaries pursuant to RCW **35.13.340**; and
- (4) Adjustments to city and town boundaries pursuant to RCW **35.13.300** through **35.13.330**.

Comment: Our request is not one of those listed above so this statute does not apply.

RCW 36.93.110

When review not necessary.

Where an area proposed for annexation is less than ten acres and less than two million dollars in assessed valuation, the chair of the review board may by written statement declare that review by the board is not necessary for the protection of the interest of the various parties, in which case the board shall not review such annexation.

Comment: Not relevant to this matter

RCW 36.93.116

Simultaneous consideration of incorporation and annexation of territory.

A boundary review board may simultaneously consider the proposed incorporation of a city or town, and the proposed annexation of a portion of the territory included in the proposed incorporation, if the resolution or petition initiating the annexation is adopted or filed ninety or fewer days after the petition proposing the incorporation was filed.

Comment: Not relevant to this matter

RCW 36.93.120

Fees.

A fee of fifty dollars shall be paid by all initiators and in addition if the jurisdiction of the review board is invoked pursuant to RCW **36.93.100**, the person or entity seeking review, except for the boundary review board itself, shall pay to the county treasurer and place in the county current expense fund the fee of two hundred dollars.

Comment: We will pay the \$50 filing fee. And the \$200 additional fee.

RCW 36.93.130

Notice of intention—Contents.

The notice of intention shall contain the following information:

(1) The nature of the action sought;

(2) A brief statement of the reasons for the proposed action;

(3) The legal description of the boundaries proposed to be created, abolished or changed by such action: **PROVIDED**, That the legal description may be altered, with concurrence of the initiators of the proposed action, if a person designated by the county legislative authority as one who has expertise in legal descriptions makes a determination that the legal description is erroneous; and

(4) A county assessor's map on which the boundaries proposed to be created, abolished or changed by such action are designated: **PROVIDED**, That at the discretion of the boundary review board a map other than the county assessor's map may be accepted.

Comment: Our Notice of Intention will contain all of the above requested information. The Board also has a "Notice of Intention Format" document on its website which we will be using in drafting our Notice of Intention. The Board's website also has a "BRB Organization and Rules of Practice and Procedure" document which provides guidance on how to work with the Board. We are aware of the contents of both of these documents.

RCW 36.93.140

Pending actions not affected.

Actions described in RCW **36.93.090** which are pending July 1, 1967, or actions in counties with populations of less than two hundred ten thousand which are pending on the date of the creation of a boundary review board therein, shall not be affected by the provisions of this chapter. Actions shall be deemed pending on and after the filing of sufficient petitions initiating the same with the appropriate public officer, or the performance of an official act initiating the same.

Comment: Not relevant to this matter

RCW 36.93.150

Review of proposed actions—Actions and determinations of board—Disapproval, effect.

The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this chapter:

(1) Approve the proposal as submitted.

(2) Subject to RCW **35.02.170**, modify the proposal by adjusting boundaries to add or delete territory.

Subject to the requirements of this chapter, a board may modify a proposal by adding territory that would increase the total area of the proposal before the board. A board, however, may not modify a proposal for annexation of territory to a

city or town by adding an amount of territory that constitutes more than one hundred percent of the total area of the proposal before the board. Any modifications shall not interfere with the authority of a city, town, or special purpose district to require or not require preannexation agreements, covenants, or petitions. A board shall not modify the proposed incorporation of a city with an estimated population of seven thousand five hundred or more by removing territory from the proposal, or adding territory to the proposal, that constitutes ten percent or more of the total area included within the proposal before the board. However, a board shall remove territory in the proposed incorporation that is located outside of an urban growth area or is annexed by a city or town, and may remove territory in the proposed incorporation if a petition or resolution proposing the annexation is filed or adopted that has priority over the proposed incorporation, before the area is established that is subject to this ten percent restriction on removing or adding territory. A board shall not modify the proposed incorporation of a city with a population of seven thousand five hundred or more to reduce the territory in such a manner as to reduce the population below seven thousand five hundred.

(3) Determine a division of assets and liabilities between two or more governmental units where relevant.

(4) Determine whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district.

(5) Disapprove the proposal except that the board shall not have jurisdiction: (a) To disapprove the dissolution or disincorporation of a special purpose district which is not providing services but shall have jurisdiction over the determination of a division of the assets and liabilities of a dissolved or disincorporated special purpose district; (b) over the division of assets and liabilities of a special purpose district that is dissolved or disincorporated pursuant to chapter **36.96** RCW; nor (c) to disapprove the incorporation of a city with an estimated population of seven thousand five hundred or more, but the board may recommend against the proposed incorporation of a city with such an estimated population.

Unless the board disapproves a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW **35.13.130** or **35A.14.120**. When the board, after due proceedings held, disapproves a proposed action, such proposed action shall be unavailable, the proposing agency shall be without power to initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such action may be reinitiated after a period of twelve months from date of disapproval and shall again be subject to the same consideration.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. The board may not increase the area of a city or town annexation unless it holds a separate public hearing on the proposed increase and provides ten or more days' notice of the hearing to the registered voters and property owners residing within the area subject to the proposed increase. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record.

Comment: The Board may approve, modify, or deny our request. Additional research is need to determine if the public vote mentioned in RCW 36.93(5) is required if our request is approved. The key language in this statute is the last comment in bold stating the Board cannot modify or deny our request unless the Board has evidence that granting our request would violate the provisions of RCW 36.93.180 which is discussed in more detail below.

RCW 36.93.153

Review of proposed incorporation in county with boundary review board.

The proposed incorporation of any city or town that includes territory located in a county in which a boundary review board exists shall be reviewed by the boundary review board and action taken as described under RCW **36.93.150**.

Comment: Not relevant to this matter

RCW 36.93.155

Annexation approval—Other action not authorized.

Boundary review board approval, or modification and approval, of a proposed annexation by a city, town, or special purpose district shall authorize annexation as approved and shall not authorize any other annexation action.

Comment: Not relevant to this matter

RCW 36.93.157

Decisions to be consistent with growth management act.

The decisions of a boundary review board located in a county that is required or chooses to plan under RCW **36.70A.040** must be consistent with RCW **36.70A.020**, **36.70A.110**, and **36.70A.210**.

Comment: We don't see how our request would be inconsistent with the Gig Harbor Growth Management Plan.

RCW 36.93.160

Hearings—Notice—Record—Subpoenas—Decision of board—Appellate review.

(1) When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days' advance written notice of the date, time and place of the hearing 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 area and to the proponent of the change. Notice shall also be given by publication in any newspaper of general circulation in the area of the proposed boundary change 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 ten public places in the area affected for five days when the area is ten acres or more. When the area affected is less than ten acres, five notices shall be posted in five public places for five days. Notice as provided in this subsection shall include any territory which the board has determined to consider adding in accordance with RCW 36.93.150(2).

(2) A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of the testimony shall be provided to any person or governmental unit.

(3) The chair upon majority vote of the board or a panel may direct the chief clerk of the boundary review board to issue subpoenas to any public officer to testify, and to compel the production by him or her of any records, books, documents, public records or public papers.

(4) Within forty days after the conclusion of the final hearing on the proposal, the board shall file its written decision, setting forth the reasons therefor, with the board of county commissioners and the clerk of each governmental unit directly affected. The written decision shall indicate whether the proposed change is approved, rejected or modified and, if modified, the terms of the modification. The written decision need not include specific data on every factor required to be considered by the board, but shall indicate that all standards were given consideration. Dissenting members of the board shall have the right to have their written dissents included as part of the decision.

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within thirty days from the date of the action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal.

The filing of the notice of appeal within the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board.

(6) The superior court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or**
- (b) In excess of the statutory authority or jurisdiction of the board, or**
- (c) Made upon unlawful procedure, or**

- (d) Affected by other error of law, or
- (e) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (f) Clearly erroneous.

An aggrieved party may seek appellate review of any final judgment of the superior court in the manner provided by law as in other civil cases.

Comment: This statute requires that certain notices be given before the hearing can be held. The Board may also issue subpoenas to any "Public Officer" which, in this case,, would be the PenMet Commissioners and possibly others such as the Executive Director. The Board can also require certain documents or records be brought to the hearing. No public record request required.

RCW 36.93.170

Factors to be considered by board—Incorporation proceedings exempt from state environmental policy act.

In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

(1) Population and territory; population density; land area and land uses; comprehensive plans and zoning, as adopted under chapter **35.63**, 35A.63, or **36.70** RCW; comprehensive plans and development regulations adopted under chapter **36.70A** RCW; applicable service agreements entered into under chapter **36.115** or **39.34** RCW; applicable interlocal annexation agreements between a county and its cities; per capita assessed valuation; topography, **natural boundaries** and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) 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 provisions of chapter **43.21C** RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter **35.02** RCW.

Comment: This is an important statute as it sets forth what the Board needs to consider when making its decision. You'll notice that "natural boundaries" is a factor which certainly applies to Fox Island as it's surrounded by water and our request covers the entire island. It also mentions the "...need for municipal services..." and "...prospects of governmental services ..." and "...probably future needs..." This is also critical when you take into account the potential impact of the Fox Island Bridge and the budgetary restraints that prevents Fox Island from having a fully staffed fire department. Our argument here would be we need more control over how the money that is taken from us is spent to address our needs.

RCW 36.93.180

Objectives of boundary review board.

The decisions of the boundary review board shall attempt to achieve the following objectives:

- (1) Preservation of natural neighborhoods and communities;**
- (2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;**
- (3) Creation and preservation of logical service areas;**
- (4) Prevention of abnormally irregular boundaries;
- (5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;
- (6) Dissolution of inactive special purpose districts;
- (7) Adjustment of impractical boundaries;**

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

(9) Protection 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.

Comment: This is a very important statute as mentioned previously under RCW 36.93.150, above. The very first objection is to the “preservation of natural neighborhoods and communities.” Fox Island is a natural neighborhood with easily identifiable boundaries. It is a community that has learned to help itself with minimal services being provided by Pierce County. The second item is the “use of physical boundaries, including but not limited to bodies of water...” This describes Fox Island so well one would think it was written with Fox Island in mind. Fox Island is also a “logical service area” much more amenable to the providing of necessary services especially when compared with PenMet. PenMet’s Park District is huge in terms of the boundaries required to include all of its properties. It’s clear to us that properly maintaining and managing its Fox Island properties has been a task PenMet has simply given no real attention to over the years.

RCW 36.93.185

Objectives of boundary review board—Water-sewer district annexations, mergers—Territory not adjacent to district.

The proposal by a water-sewer district to annex territory that is not adjacent to the district shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the territory is not adjacent to the water-sewer district. The proposed consolidation or merger of two or more water-sewer districts that are not adjacent to each other shall not be deemed to be violative of the objectives of a boundary review board solely due to the fact that the districts are not adjacent.

Comment: Not relevant to this matter

RCW 36.93.190

Decision of board not to affect existing franchises, permits, codes, ordinances, etc., for ten years.

For a period of ten years from the date of the final decision, no proceeding, approval, action, or decision on a proposal or an alternative shall be deemed to cancel any franchise or permit theretofore granted by the authorities governing the territory to be annexed, nor shall it be deemed to supersede the application as to any territory to be annexed, of such construction codes and ordinances (including but not limited to fire, electrical, and plumbing codes and ordinances) as shall have been adopted by the authorities governing the territory to be annexed and in force at the time of the decision.

Comment: Not relevant to this matter

RCW 36.93.200

Rules and regulations—Adoption procedure.

Each review board shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter. Such rules may state the qualifications of persons for practice before the board. Such rules shall also include rules of practice before the board, together with forms and instructions.

To assist interested persons dealing with it, each board shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the board shall file notice thereof with the clerk of the court of the county in which the board is located. So far as practicable, the board shall also publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views either orally or in writing. Such notice shall include (1) a statement of the time, place, and nature of public rule-making proceedings, (2) reference to the authority under which the rule is proposed, and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

This paragraph shall not apply to interpretative rules, general statements of policy, or rules of internal board organization, procedure or practice.

Comment: The Board has issued its BRB Rules of Organization and Practice and Procedure and we will follow the requirements set forth in that document.

RCW 36.93.210

Rules and regulations—Filing—Permanent register.

Each board shall file forthwith with the clerk of the court a certified copy of all rules and regulations adopted. The clerk shall keep a permanent register of such rules open to public inspection.

Comment: Not relevant to this matter

RCW 36.93.220

Provisions of prior laws superseded by chapter.

Whenever a review board has been created pursuant to the terms of this chapter, the provisions of law relating to city annexation review boards set forth in chapter **35.13** RCW and the powers granted to the boards of county commissioners to alter boundaries of proposed annexations or incorporations shall not be applicable.

Comment: Not relevant to this matter

RCW 36.93.230

Power to disband boundary review board.

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.

Comment: Not relevant to this matter

RCW 36.93.800

Application of chapter to merged special purpose districts.

This chapter does not apply to the merger of irrigation districts authorized under RCW **87.03.530(2)** and **87.03.845** through **87.03.855** or to the merger of a drainage improvement district, joint drainage improvement district, or consolidated drainage improvement district into an irrigation district authorized by RCW **87.03.720** through **87.03.745** and **85.08.830** through **85.08.890**.

Comment: Not relevant to this matter

RCW 36.93.900

Effective date—1967 c 189.

The effective date of this chapter is July 1, 1967.

Comment: Not relevant to this matter