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7 **BEFORE THE BOUNDARY REVIEW BOARD**
8 **FOR LEWIS COUNTY**

9 In re: THE WINLOCK NOTICE OF INTENT
10 TO ANNEXATION,

Case No. MSC22-1027

11 **MOTION TO:**

12 Moving Party: City of Winlock.

13 **RECOGNIZE THE WINLOCK**
14 **ANNEXATION AS APPROVED BY**
15 **OPERATION OF LAW**

16 CITY OF WINLOCK, a Washington Municipal
17 Corporation,

18 Movant,
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29 COMES NOW, the Moving Party, the CITY OF WINLOCK, a Washington Municipal
30 Corporation (hereinafter referred to as "Winlock"), through its attorneys of record, BUZZARD
31 O'ROURKE, P.S., and respectfully moves the BOUNDARY REVIEW BOARD FOR LEWIS
32 COUNTY (hereinafter referred to as the "BRB") to: recognize the Winlock annexation as approved
33 by operation of law.



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A. INTRODUCTION

1. It is the position of the City of Winlock that according to law, the BRB does not possess jurisdiction or authority to review the Winlock annexation. This position is based on statute and case law which mandates the 45-day period commences upon the Effective Filing Date as set forth in the BRB Rules. In this matter, the Effective Filing Date is December 1, 2022, and accordingly, the 45-day period expired on January 15, 2023 with no person or entity invoking the jurisdiction of the BRB on or before January 15, 2023.
2. At the Superior Court hearing on April 14, 2023, the Court stated it did not have sufficient information to determine whether the Chief Clerk of the BRB filed and assigned the Winlock Notice of Intent on December 1, 2022 (which would have triggered the 45-day period). The information the Court had at the time was that a county employee who was not the BRB Chief Clerk took action on December 1, 2022. Without additional information the Court assumed the BRB Chief Clerk only took action on January 12, 2023, and declared the 45-day period to commence on January 12, 2023 and expire on February 27, 2023. Because the Court lacked knowledge of the material fact that the BRB Chief Clerk did file and assign MSC22-1027 to the Winlock NOI on December 1, 2022, the Court could not determine, at that time, the time period to invoke BRB jurisdiction expired on January 15, 2023. Thus, the Court ruled that Winlock may address this matter to the BRB.
3. Following the hearing on April 14, 2023, it has been newly realized that Karen Witherspoon was the Chief Clerk of the BRB on December 1, 2022. This is a material fact the Court did not know at the April 14, 2023, hearing. As a result of this material fact now being known, it is absolutely clear the 45-day period commenced on December 1, 2022 and expired on



January 15, 2023, and the actions of the new BRB Chief Clerk on January 12, 2023, were completely erroneous.

B. JURISDICTION AND VENUE

4. Jurisdiction and venue are appropriate before the BRB by virtue of the Lewis County Superior Court ruling on April 14, 2023.

C. PARTIES

5. Movant, City of Winlock, is a Washington Municipal Corporation.
6. The Washington State Boundary Review Board for Lewis County is local agency organized pursuant to Chapter 36.93 RCW.

D. EVIDENCE RELIED UPON

7. This motion is based on the files and records herein, the declarations of David Toyer, and Lewis County Superior Court Cause No. 23-2-00253-21.

E. FACTS

8. Winlock submitted a “Washington State Boundary Review Board for Lewis County Notice of Intention” (hereinafter referred to as “NOI”) to the BRB Chief Clerk on September 28, 2022, in accordance with RCW 36.93.090. Attached hereto as Exhibit A and incorporated herein by this reference as if fully set forth is a true and correct copy of said “NOI.”
9. In compliance with RCW 36.93.130, the Winlock NOI contains the nature of the action sought, to wit: Annexation of approximately 1,354.86 acres to the City of Winlock.
10. In compliance with RCW 36.93.130, the Winlock NOI contains a brief statement of the reasons for the proposed action, to wit: “The City has received petitions seeking annexation to the City, which boundaries the City Council has determined shall include most of the urban growth area (UGA).”



- 1 11. In compliance with RCW 36.93.130, the Winlock NOI contains the legal description of the
2 boundaries proposed to be created, abolished or changed by such action. Please see Exhibit
3 A – Winlock NOI, Exhibits A through K.
- 4 12. In compliance with RCW 36.93.130, the Winlock NOI contains a Lewis County Assessor’s
5 map on which the boundaries proposed to be created, abolished or changed by such action
6 are designated. Please see Exhibit A – Winlock NOI, Exhibits A through K.
- 7 13. The NOI was deemed legally sufficient on November 28, 2022. Attached hereto as Exhibit
8 B and incorporated herein by this reference is a true and correct copy of an email string
9 between individuals on behalf of the City of Winlock, Lewis County, and the BRB. See
10 page 2, email from BRB Chief Clerk Karen Witherspoon dated November 28, 2022, at
11 11:49 a.m.
- 12 14. The statutory filing fee of \$50.00, paid by Winlock, was acknowledged as paid on December
13 1, 2022. See Exhibit B, page 2, email from Tammy Martin dated December 1, 2022 at 4:25
14 p.m.
- 15 15. The BRB Chief Clerk, Karen Witherspoon, directed Bradley Clark to assign a BRB file
16 number to Winlock’s NOI. At the direction of the BRB Chief Clerk, Bradley Clark assigned
17 BRB file number MSC22-0127 to Winlock’s NOI on December 1, 2022. BRB Chief Clerk,
18 Karen Witherspoon, on the same day acknowledged and accepted the assignment of BRB
19 file number MSC22-0127. See Exhibit B, Page 1, email from Bradley Clark dated December
20 1, 2022 at 4:56 p.m.
- 21 16. Pursuant to RCW 36.93.200, the BRB adopted Rules of Practice and Procedure on March
22 2, 2006. Attached hereto as Exhibit C and incorporated herein by this reference is a true
23 and correct copy of the BRB’s “Rules of Practice and Procedure dated March 2, 2006”
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(hereinafter referred to as the “BRB Rules”) provided to Winlock’s counsel by Tammy Martin. Tammy Martin is the BRB Administrative Assistant.¹

17. Pursuant to the BRB Rules, Article III, Section B, Subsection 1 (Page 4), the “Effective Date of Filing” is determined by: (i) the NOI being deemed legally sufficient; (ii) the \$50.00 filing fee being paid; and (iii) the BRB Chief Clerk assigning a BRB file number to the NOI.

18. The “Effective Filing Date” of the Winlock NOI is December 1, 2022.

19. Pursuant to RCW 36.93.100, jurisdiction of the BRB may only be invoked within 45 days of the filing of the NOI.

20. The statutory 45-day period mandated in RCW 36.93.100 commenced as of the Effective Filing Date on December 1, 2022, and expired on January 15, 2023.

21. Consistent with RCW 36.93.100, the BRB Rules state jurisdiction of the BRB may only be invoked within 45 days of the filing of the NOI. See BRB Rules, Article IV, Section B, Subsection 2 (Page 6).

22. Pursuant to RCW 36.93.100, if jurisdiction of the BRB is not invoked within the statutory 45-day period, the annexation is approved by operation of law.

23. Consistent with RCW 36.93.100, the BRB Rules state if jurisdiction of the BRB is not invoked within the 45-day period, the annexation is approved as prescribed in RCW 36.93.100. See BRB Rules, Article III, Section C, Subsection 3 (page 5).

24. As stated herein above, the Effective Filing Date of Winlock’s NOI is December 1, 2022. The 45-day period to invoke the jurisdiction of the BRB expired on January 15, 2023.

25. No Person or entity invoked jurisdiction of the BRB on or before January 15, 2023.

¹ <https://www.wsabrb.org/lewis.html> searched March 12, 2023.



- 1 26. The BRB did not invoke its own jurisdiction on or before January 15, 2023.
- 2 27. Even though the jurisdiction of the BRB was not invoked on or before January 15, 2023,
- 3 the BRB has not recognized Winlock's annexation as approved by operation of law pursuant
- 4 to RCW 36.93.100 and the BRB Rules.
- 5
- 6 28. On January 12, 2023, the new BRB Chief Clerk, Preston Pinkston, issued a "Notice of
- 7 Winlock's Intent to Annex" to "Affected Government Agencies and Interested Parties."
- 8 Attached hereto as Exhibit D and incorporated herein by this reference is a true and correct
- 9 copy of the BRB's Notice.
- 10
- 11 29. Preston Pinkston's Notice on January 12, 2023 erroneously establishes a 45-day period, in
- 12 which the jurisdiction of the BRB may be invoked, commencing January 12, 2023 and
- 13 expiring on February 27, 2023.² The commencement date of January 12, 2023 is completely
- 14 unconnected to the establishment of the Effective Filing Date on December 1, 2022.
- 15
- 16 30. On February 24, 2023, Interested Citizens purport to invoke the jurisdiction of the BRB.
- 17 Attached hereto as Exhibit E is a true and correct copy of: (i) a "Certificate of Sufficiency"
- 18 dated February 28, 2023 from Larry E. Grove, Lewis County Auditor; and (ii) Interested
- 19 Citizen's petition dated February 23, 2023 and received by the BRB on February 24, 2023.
- 20
- 21 31. On February 27, 2023, Lewis County purports to invoke the jurisdiction of the BRB.
- 22 Attached hereto as Exhibit F is a true and correct copy of correspondence dated February
- 23 27, 2023 from Erik Martin, Lewis County Manager, and addressed to the "Boundary Review
- 24 Board Lewis County Development."
- 25
- 26
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28 ² January 12, 2023 to February 27, 2023 is 46 days. February 27, 2023 is a Sunday, see RCW 1.12.040.



32. After the passage of the statutory 45-day period commencing December 1, 2022 and expiring January 15, 2023, with no person, entity, or the BRB itself invoking jurisdiction on or before January 15, 2023, the BRB has no authority, power or jurisdiction to take any action whatsoever to review Winlock's annexation, excepting to recognize the annexation approved by operation of law.

F. LAW

33. RCW 36.93.130 – Notice of Intention – Contents states:

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.

34. RCW 36.93.090 – Filing of Proposed Actions with the Board states:

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



- 1 (2) The assumption by any city or town of all or part of the assets, facilities, or
2 indebtedness of a special purpose district which lies partially within such city or
3 town; or
4 (3) The establishment of or change in the boundaries of a mutual water and sewer
5 system or separate sewer system by a water-sewer district pursuant to
6 RCW 57.08.065; or
7 (4) The extension of permanent water or sewer service outside of its existing service
8 area by a city, town, or special purpose district. The service area of a city, town, or
9 special purpose district shall include all of the area within its corporate boundaries
10 plus, (a) for extensions of water service, the area outside of the corporate boundaries
11 which it is designated to serve pursuant to a coordinated water system plan approved
12 in accordance with RCW 70A.100.050; and (b) for extensions of sewer service, the
13 area outside of the corporate boundaries which it is designated to serve pursuant to
14 a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW
15 and RCW 90.48.110.

16 35. RCW 36.93.100 – Review of Proposed Actions by Board – Procedure states (Emphasis
17 added):

18 The board shall review and approve, disapprove, or modify any of the actions set
19 forth in RCW 36.93.090 when any of the following shall occur **within forty-five**
20 **days of the filing of a notice of intention:**

- 21 (1) Three members of a five-member boundary review board or five members of a
22 boundary review board in a county with a population of one million or more files a
23 request for review: PROVIDED, That the members of the boundary review board
24 shall not be authorized to file a request for review of the following actions:
- 25 (a) The incorporation of any special district or change in the boundary of any
26 city, town, or special purpose district;
 - 27 (b) The extension of permanent water service outside of its existing corporate
28 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:
- i. (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
 - ii. (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.

36. RCW 36.93.200 – Rules and Regulations – Adoption Procedure states:

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.

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.”

37. *City of Bellevue v. King County Boundary Review Bd.*, 90 Wn.2d 856, 586 P.2d 470 (1978).

This case decided by the Washington Supreme Court, en banc, establishes Boundary



1 Review Boards are authorized to establish an “Effective Filing Date,” which commences
2 the running of the statutory 45-day period to invoke jurisdiction. The Court states:

3 RCW 36.93.100 provides that an annexation proposal is “deemed approved” by the
4 board if no action contesting the annexation is taken within [45] days³ of the time of
5 filing. Bellevue’s request for review of Redmond’s annexation proposal came more
6 than [45] days after the date that Redmond initially filed its notice of intention to
7 annex, but less than [45] days after the “effective filing date” assigned to the
8 proposal by the board. Redmond contends that the board’s practice of assigning an
9 effective filing date is illegal and outside the board’s statutory authority, and that
because no request for review was made within the [45] days following the original
filing, the Redmond annexation is irrevocably accomplished and the board no longer
has any jurisdiction to consider that annexation.

10 We do not agree. Under RCW 36.93.200 the board is granted the power to “adopt
11 rules governing the formal and informal procedures” relating to its duties and
12 powers. Under that authority, the board has a long-standing rule that a filing date
13 shall be assigned to a notice of intention to annex as of the date that a “legally
14 sufficient” notice is filed. This rule is presumptively valid, and is reviewed only for
15 abuse of discretion or rule making exceeding statutory authority. *Weyerhaeuser v.*
Department of Ecology, 86 Wn.2d 310, 545 P.2d 5 (1976); *Lindsay v. Seattle*, 86
Wn.2d 698, 548 P.2d 320 (1976).

16 We find no abuse of discretion or action exceeding the board’s statutory power. In
17 light of the purposes of the [45]-day period, the administratively adopted rule
18 appears to be a particularly rationale procedural rule. The [45] day period serves
19 two purposes: (1) It provides those initiating annexation proposals with a specific
20 date upon which they can proceed on the knowledge of an approved annexation, and
21 (2) it provides notice to those interested in the annexation, and allows such persons
to challenge the annexation. The board’s rule advances the latter purpose without
compromising the former. The notice purpose is not fully carried out until the
annexation proposal accurately describes the territory to be annexed in compliance
with RCW 36.93.130.

22 38. *Leer v. Whatcom Cnty. Boundary Review Bd.*, 91 Wn. App 117, 957 P.2d 251 (1998). “A
23 boundary review board is a local agency, not a state agency, and as such, the Administrative
24 Procedure Act does not apply to appeals of its decisions.”

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28 ³ Substitute House Bill No. 37 (1967) established 60-day period. 60-day period amended to 45-day period by way
of Senate Bill No. 5335 (1987). “45-day period” substituted to avoid confusion.



1 39. *Snohomish Cnty. Fire Prot. Dist. No. 1 v. Washington State Boundary Review Bd. for*
2 *Snohomish Cnty.*, 121 Wn. App. 73, 82 (2004) aff'd, 155 Wn.2d 70 (2005). "Under RCW
3 36.93.160(6)(b), the superior court has the authority to reverse a BRB decision 'in excess
4 of the statutory authority or jurisdiction of the board.'"

5
6 **G. ANALYSIS**

7 40. The BRB is entirely governed by statute and its own BRB Rules with respect to its
8 jurisdiction and powers to entertain and conduct hearings on annexations.

9 41. The Washington State Association of Boundary Review Boards publishes resources and
10 materials online available to the public at www.wsabrb.org. Attached hereto as Exhibit G
11 and incorporated herein is a true and correct copy of the Washington State Association of
12 Boundary Review Board published "Notice of Intention Process."⁴ This publication is
13 helpful as a resource for demonstrative purposes.

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15 42. The following material facts in this matter are not in dispute:

- 16 a. The NOI in this matter was submitted to the BRB on September 28, 2022.
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18 b. The BRB Chief Clerk, Karen Witherspoon, deemed the NOI legally sufficient on
19 November 28, 2022.
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21 c. The BRB Chief Clerk, Karen Witherspoon, assigned BRB File No. MSC22-0127 to
22 the NOI on December 1, 2022.
23
24 d. The requisite NOI filing fee was acknowledged as paid on December 1, 2022.
25
26 e. Pursuant to the BRB Rules, the "Effective Filing Date" of the NOI is December 1,
27 2022.

28 ⁴ Published by the Washington State Association of Boundary Review Boards at <https://www.wsabrb.org/noi-process.html>. This document was searched for and downloaded on March 13, 2023.



- 1 f. No person or entity invoked the jurisdiction of the BRB on or before January 15,
2 2023.
- 3 g. The new BRB Chief Clerk, Preston Pinkston, issued his own "Notice of Winlock's
4 Intent to Annex" on January 12, 2023, unconnected from the events establishing the
5 Effective Filing Date of December 1, 2022.
- 6
- 7 h. The new BRB Chief Clerk, Preston Pinkston, established his own 45-day period to
8 invoke the jurisdiction of the BRB commencing January 12, 2023 and expiring
9 February 27, 2023.
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- 11 i. Interested Citizens submitted a petition to invoke jurisdiction on February 24, 2023,
12 and the Lewis County Auditor certified the same on February 27, 2023 in a letter
13 dated February 28, 2023.
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- 15 j. Lewis County submitted correspondence to invoke jurisdiction on February 27,
16 2023.
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- 18 k. The BRB has acknowledged and accepted jurisdiction.
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- 20 43. Pursuant to RCW 36.93.100, the statutory 45-day period in which jurisdiction of the BRB
21 may be invoked commences when the NOI is filed with the BRB. Here, the NOI was filed
22 with the BRB on September 28, 2022.
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- 24 44. Pursuant to *City of Bellevue v. King County Boundary Review Bd.*, 90 Wn.2d 856, 586 P.2d
25 470 (1978), a boundary review board may adopt rules relating to its duties and powers.
26 However, a boundary review board may not adopt a rule that is not in compliance with
27 statute.
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1 45. The BRB has adopted a rule interpreting when the NOI is deemed filed, and hence when
2 the 45-day period in which jurisdiction may be invoked commences. BRB Rules, Article
3 III, Section B, Subsection 1 (Page 4 of Exhibit C) states:

4 a. "Effective Filing Date. Upon determination by the Boundary Review Board Chief
5 Clerk that according to RCW 36.93 and the Board's Rules of Practice and Procedure,
6 the Notice of Intention is sufficient and the filing fee is paid, the Chief Clerk shall
7 file the Notice of Intention and assign a file date number."
8

9 46. Pursuant to RCW 36.93.100, the 45-day period in which jurisdiction may be invoked
10 commenced on September 28, 2022 (the date the NOI was actually filed), and would have
11 expired on November 12, 2022. Because the BRB modified when an NOI is deemed "filed,"
12 the NOI in this matter is deemed filed on December 1, 2022 (the Effective Filing Date). It
13 is undisputable the Effective Filing Date of the NOI is December 1, 2022.
14

15 47. BRB Rules, Article IV, Section B, Subsection 2 (Page 6 of Exhibit C) states: "In accordance
16 with RCW 36.93.100, the Board shall review and approve as submitted; modify; or
17 disapprove as submitted any of the actions set forth in RCW 36.93.090 when any of the
18 following shall occur **within 45 days of the filing of a Notice of Intention....**" (Emphasis
19 added). Here, the Effective Filing Date of the NOI is December 1, 2022. Pursuant to BRB
20 Rules and in compliance with RCW 36.93.100, the 45-day period to invoke jurisdiction
21 commenced December 1, 2022 and therefore expired on January 15, 2023.
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23 48. It is undisputable no person or entity invoked the jurisdiction of the BRB on or before
24 January 15, 2023.
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- 1 49. RCW 36.93.100 (4) states: “If a period of forty-five days shall elapse without the board’s
2 jurisdiction having been invoked as set forth in this section, the proposed action shall be
3 deemed approved.”
- 4 50. BRB Rules, Article III, Section C, Subsection 3 (Page 5 of Exhibit C) restates RCW
5 36.93.100(4): “If forty-five days have elapsed without the Board’s invoking its jurisdiction
6 or having had it invoked, the proposed action shall be deemed approved as prescribed in
7 RCW 36.93.100.”
- 8 51. Chapter 36.93 RCW is silent on (and therefore is not required by law) whether the BRB
9 must provide a copy of the NOI to the public or affected agencies. However, the BRB has
10 adopted a rule concerning this item. BRB Rule, Article III, Section B, Subsection 2 (Page
11 4 of Exhibit C) states: “Upon assigning a file date and number to a Notice of Intention, the
12 Chief Clerk shall route the Notice of Intention and required exhibits to the appropriate
13 agencies for review and comment as per 36.93, other applicable statutes, and Board policy.”
14 Said rule does not determine the Effective Filing Date and when the 45-day period
15 commences. Rather said rules only require the Chief Clerk to send out notice “upon
16 assigning a file date and number” (upon establishment of the Effective Filing Date).
- 17 52. On January 12, 2023, just three (3) days prior to the expiration of the 45-day period in which
18 to invoke jurisdiction, the new BRB Chief Clerk, Preston Pinkston, issued his own Notice
19 of Intent, unconnected from the events establishing the Effective Filing Date of December
20 1, 2022, and therein established an erroneous 45-day period in which jurisdiction may be
21 invoked commencing January 12, 2023 and expiring February 27, 2023. There is absolutely
22 no statutory authority or BRB Rule which authorizes the BRB Chief Clerk to: (i) issue the
23 Chief Clerk’s own Notice of Intent; or (ii) establish the Chief Clerk’s own 45-day period
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1 which is not connected to the Effective Filing Date. The new BRB Chief Clerk, Preston
2 Pinkston (and therefore the BRB) exceeded statutory authority by establishing a
3 commencement date of the 45-day period which did not commence on the Effective Filing
4 Date.

5
6 53. On February 24, 2023 and February 27, 2023, the Interested Citizens and Lewis County,
7 respectively, requested to invoke jurisdiction. These attempts to invoke jurisdiction are
8 ineffective by the plain reading of RCW 36.93.100 and by the BRB Rules.

9
10 54. Once the 45-day period to invoke jurisdiction which commenced on December 1, 2022 and
11 expired on January 15, 2023 passed with no person or entity invoking jurisdiction, the BRB
12 does not possess the authority to accept jurisdiction to review the NOI. By operation of
13 law, the NOI is deemed approved.

14 55. The new BRB Chief Clerk, Preston Pinkston, obviously failed by not following Chapter
15 36.93 RCW, not adhering to the BRB Rules, and not providing notice of the NOI until
16 January 12, 2023, only three (3) days prior to expiration of the 45-day period which expired
17 on January 15, 2023. The new BRB Chief Clerk, Preston Pinkston, is not legally authorized
18 to cover up his failure or his predecessor's failure by erroneously sending out a new Notice
19 of Intent and establishing his own 45-day period to invoke jurisdiction.

20
21 56. BRB Rules, Article III, Section B, Subsection 1 (Page 4 of Exhibit C) uses the word "upon"
22 as the operative point in time when an action is required. In addition, said rule uses the
23 word "shall" to direct the Chief Clerk to take action.

24
25 a. "Effective Filing Date. **Upon** determination by the BRB Chief Clerk that according
26 to RCW 36.93 and the Board's Rules of Practice and Procedure, the Notice of
27



Intention is sufficient and the filing fee is paid, the Chief Clerk **shall** file the Notice of Intention and assign a file date number.” (*emphasis added*).

57. Consistent with the BRB Rule establishing the Effective Filing Date, BRB Rule, Article III, Section B, Subsection 2 (Page 4 of Exhibit C) also uses the word “upon” and “shall”:

a. “**Upon** assigning a file date and number to a Notice of Intention, the Chief Clerk **shall** route the Notice of Intention and required exhibits to the appropriate agencies for review and comment as per 36.93, other applicable statutes, and Board policy.” (*emphasis added*).

58. The definition of “**upon**” is “immediately or very soon after”⁵ or “imminent”⁶ or “immediately after doing something or after something happens”⁷ or “at once, immediately”⁸ or “in immediate consequence of.”⁹ “Upon” is also described as: “You use ‘upon’ when mentioning an event that is followed immediately by another event.”¹⁰ In reference to time, “upon” means “immediately”¹¹ or “at a prescribed point in time”¹² or “at the time or occasion of.”¹³

59. When interpreting a statute or rule, use of the word “shall” means mandatory.

⁵ <https://www.dictionary.com/browse/upon> searched April 12, 2023; <https://www.infoplease.com/dictionary/upon> searched April 12, 2023.

⁶ <https://www.thefreedictionary.com/upon> searched April 12, 2023.

⁷ <https://www.macmillandictionary.com/us/dictionary/american/upon> searched April 12, 2023.

⁸ https://quod.lib.umich.edu/m/middle-english-dictionary/dictionary?utf8=%E2%9C%93&search_field=hnf&q=upon searched April 12, 2023.

⁹ <https://johnsonsdictionaryonline.com/views/search.php?term=upon> searched April 12, 2023.

¹⁰ <https://www.collinsdictionary.com/us/dictionary/english/upon> searched April 12, 2023.

¹¹ <https://www.wordreference.com/es/translation.asp?tranword=upon> searched April 12, 2023.

¹² <https://www.yourdictionary.com/upon> searched April 12, 2023.

¹³ <https://kids.wordsmyth.net/we/?ent=upon> searched April 12, 2023.



1 60. Here, the BRB Chief Clerk, Karen Witherspoon, deemed the Winlock NOI legally sufficient
2 on November 28, 2022.¹⁴ This email was sent to several employees involved with the
3 County and the BRB, as well as the City of Winlock.

4 61. Immediately upon determination of legal sufficiency of the Winlock NOI, the BRB Chief
5 Clerk told Winlock to pay the filing fee of \$50.00. The \$50.00 filing fee was acknowledged
6 as paid on December 1, 2022. As stated by the BRB: "The filing fee was received today
7 and has been processed. Please see the attached receipt for the filing fee."¹⁵ This email was
8 sent to several employees involved with the County and the BRB, including the BRB Chief
9 Clerk Karen Witherspoon, as well as the City of Winlock.

10 62. Fourteen (14) minutes after the filing fee was acknowledged as paid, the BRB Chief Clerk,
11 Karen Witherspoon, directed the Winlock NOI be assigned a BRB File No. As stated by
12 Karen Witherspoon: "Brad, please assign a new MSC number with the subtype Boundary
13 Review Board."¹⁶ This email was sent to several employees involved with the County and
14 the BRB, as well as the City of Winlock.

15 63. Seventeen (17) minutes after the BRB Chief Clerk, Karen Witherspoon, directed the
16 Winlock NOI be assigned a BRB File No., Bradley Clark assigned BRB File No. MSC22-
17 0127.¹⁷ This email was sent to several employees involved with the County and the BRB,
18 including Karen Witherspoon, as well as the City of Winlock.

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¹⁴ Exhibit B to Winlock's Motion, Karen Witherspoon email dated November 28, 2022 @ 11:49 a.m.

¹⁵ Exhibit B to Winlock's Motion, Tammy Martin email dated December 1, 2022 @ 4:25 p.m.

¹⁶ Exhibit B to Winlock's Motion, Karen Witherspoon email dated December 1, 2022 @ 4:39 p.m.

¹⁷ Exhibit B to Winlock's Motion, Bradley Clark email dated December 1, 2022 @ 4:56 p.m.



1 64. One (1) minute later, the BRB Chief Clerk, Karen Witherspoon, acknowledged the Winlock
2 NOI being filed with the BRB and assigned MSC22-0127.¹⁸ This email was sent to several
3 employees involved with the County and the BRB, as well as the City of Winlock.

4 65. Then, forty-three (43) days later, the new Chief Clerk of the BRB, Preston Pinkston, issues
5 his own Notice of Intent and erroneously sets the effective filing date of January 12, 2023.
6 No rationale is provided as to why the BRB Rules were disregarded. In the pleadings before
7 the Court on April 14, 2023, no rationale is provided by the attorneys for the County and
8 the BRB as to why the new Chief Clerk arbitrarily waited forty-three (43) days other than
9 “the rule does not require the Chief Clerk to do so at or within a particular period of time.”¹⁹

10 The assertion of the County/BRB that no time requirement is applied flies in the face of use
11 of the word “upon” and “shall” in the BRB Rule, and is completely contrary to the
12 immediacy of which Karen Witherspoon, the Chief Clerk of the BRB on December 1, 2022,
13 acted “upon” determination of legal sufficiency on November 28, 2022, and is completely
14 contrary to Court decisions authorizing the 45-day period to commence upon “legal
15 sufficiency.” The assertion further contradicts RCW 36.93.100 and the holding in *Bellevue*
16 of when the statutory 45-day period begins. Neither RCW 36.93.100 nor *Bellevue*
17 authorizes the BRB to determine commencement of the 45-day period when the BRB feels
18 like it. Both *Bellevue* and RCW 36.93.100 speak to a specific identifiable event which
19 triggers the commencement of the 45-day period, and neither *Bellevue* nor RCW 36.93.100
20 allows for a completely undefined, arbitrary date, which in this case was forty-three (43)
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28 ¹⁸ Exhibit B to Winlock’s Motion, Karen Witherspoon email dated December 1, 2022 @ 4:57 p.m.

¹⁹ County/BRB Opposition Briefs, Page 11, Lines 11-12. See L.C. Superior Court Cause No. 23-2-00253-21.



1 days past, and unconnected from, the events establishing the Effective Filing Date on
2 December 1, 2022.

3 66. At the April 14, 2023 hearing, the County/BRB asserted there is no particular time period
4 of when the 45-day period commences, and the BRB is free to commence the 45-day period
5 when it feels like it. This is absolutely incorrect. Such a position exceeds the mandate of
6 RCW 36.93.100 to commence the 45-day period upon the initial filing of the NOI, and later
7 modified by *Bellevue* to commence upon determination of legal sufficiency of the NOI.
8 Both the statute and the Court point to an identifiable event upon which the 45-day period
9 commences, and the County/BRB is engaging in an abusive practice of discretion by
10 arbitrarily issuing its own second NOI and arbitrarily establishing a 45-day period that
11 commences at a period in time totally unconnected to the events establishing the Effective
12 Filing Date.
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15 H. CONCLUSION

16 67. The BRB has no jurisdiction, power, or authority to proceed with review of Winlock's
17 annexation and has acted, and continues to act, in disregard of the statutory limits of its
18 authority under the law. (Chapter 36.93 RCW, the *Bellevue* case, and the BRB Rules).
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20 68. The BRB should recognize and acknowledge the 45-day period commenced on December 1,
21 2022 and expired on January 15, 2023, and thereby deem the Winlock annexation approved
22 by operation of law because no person or entity invoked the jurisdiction of the BRB on or
23 before January 15, 2023.
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25 69. The members of the BRB are appointed officers of a government entity. Each member of
26 the BRB has an ethical duty to make informed decisions. The BRB members should not
27 automatically take as truth something that is advised to them by a member of the County.
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1 For example, at the BRB Special Meeting on April 18, 2023, an agenda item was to
2 “Establish quarterly meeting schedule.” Counsel for the City of Winlock urged the BRB to
3 follows its own rules and hold monthly meetings on the first Thursday of the month.²⁰ The
4 BRB members were advised that historically the BRB has disregarded its rules and held
5 quarterly meetings instead of monthly meetings, that the BRB does not have the ability to
6 change its own rules, and that only the Board of County Commissioners can change the BRB
7 rules. On the advice of the BRB advisors, the BRB passed an oral resolution to request the
8 Board of County Commissioners to change the BRB Rules to require only quarterly
9 meetings. This advice was and continues to be incorrect. The BRB is governed by Chapter
10 36.93 RCW. RCW 36.93.070 states: “*The board shall determine **its own** rules and order of*
11 *business and shall provide by resolution for the time and manner of holding all regular or*
12 *special meetings: PROVIDED, That all meetings shall be subject to*
13 *chapter 42.30 RCW.”* RCW 36.93.200 further states: “*Prior to the adoption of any rule*
14 *authorized by law, or the amendment or repeal thereof, the board shall file notice thereof*
15 *with the clerk of the court of the county in which the board is located. So far as practicable,*
16 *the board shall also publish or otherwise circulate notice of its intended action and afford*
17 *interested persons opportunity to submit data or views either orally or in writing. Such notice*
18 *shall include (1) a statement of the time, place, and nature of public rule-making*
19 *proceedings, (2) reference to the authority under which the rule is proposed, and (3) either*
20 *the terms or substance of the proposed rule or a description of the subjects and issues*
21 *involved. This paragraph shall not apply to interpretative rules, general statements of*
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28 ²⁰ BRB Rules, Article IV, Section A, Subsection 1 (page 5).



1 *policy, or rules of internal board organization, procedure or practice.”* The purpose of
2 including this is that the BRB advisors were incorrect in informing the BRB members that
3 only the Board of County Commissioners can change BRB Rules. The advisors on the issue
4 presently before you are incorrect in advising the BRB it has jurisdiction over the Winlock
5 annexation. The key material fact that was unknown to the Court on April 14, 2023, is that
6 Karen Witherspoon was, in fact, the Chief Clerk of the BRB on December 1, 2022 and Karen
7 Witherspoon did establish the Effective Filing Date thereby triggering the commencement
8 of the 45-day period which expired on January 15, 2023.
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11 **I. RELIEF REQUESTED**

12 WHEREFORE, Petitioner requests relief as follows:

- 13 70. Determination that the Effective Filing Date of Winlock’s NOI was established on
14 December 1, 2022 by the BRB Chief Clerk, Karen Witherspoon.
15 71. Determination that the statutory 45-day period in which to invoke the jurisdiction of the
16 BRB began to run on December 1, 2022, the Effective Filing Date.
17 72. Determination that the statutory 45-day period in which to invoke the jurisdiction of the
18 BRB expired on January 15, 2023.
19 73. Determination that no person or entity invoked the jurisdiction of the BRB on or before
20 January 15, 2023.
21 74. Determination that the BRB did not invoke its own jurisdiction on or before January 15,
22 2023.
23 75. Determination that the Winlock annexation is deemed approved by operation of law.
24 76. Strike the public hearing set for June 20, 2023, on the Winlock annexation.
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1 DATED this 25 day of April, 2023.

2 BUZZARD O'ROURKE, P.S.

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4 
5 JAMES M.B. BUZZARD, WSBA No. 33555
6 Attorney for Movant

7 **CERTIFICATION**

8 I declare under penalty of perjury under the laws of the State of Washington that the
9 following is true and correct:

10 I, BRANDON SVENSON, Mayor of the City of Winlock, a Washington Municipal
11 Corporation, and Movant herein, have read the foregoing *Motion to: Recognize the Winlock
12 Annexation as Approved by Operation of Law*, know the contents thereof, and verify that I believe
13 the same to be true and accurate.

14 DATED this 25th day of April, 2023, at Lewis County, State of Washington.

15 
16 BRANDON SVENSON,
17 Mayor, City of Winlock, WA

