

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

City of mill creek, a Washington)	No. 65408-0-1
municipal corporation,)	
)	DIVISION I
Appellant,)	
)	
v.)	
)	
washington state boundary)	UNPUBLISHED OPINION
review board for snohomish)	
county; City of lynnwood, a)	
Washington municipal corporation;)	
snohomish county, a Washington)	
municipal corporation; city of)	
mukilteo, a Washington municipal)	
corporation; snohomish county)	
fire district No. 7, a Washington)	
municipal corporation; snohomish)	
county fire district No. 1, a)	
Washington municipal corporation;)	
opus northwest, llc; GORDON)	
NESS; CLINT OLSON; and MARK)	
BEALES,)	
)	
Respondents.)	FILED: November 28, 2011

Schindler, J. — The City of Mill Creek (Mill Creek) appeals from a decision of the Washington State Boundary Review Board for Snohomish County (BRB). The BRB approved the proposed annexation by the City of Lynnwood (Lynnwood) of an unincorporated area located to the north, east, and south of the City. Mill Creek

challenges the decision only to the extent the BRB approved annexation of the unincorporated area located east of Interstate 5 (I-5) and north of Interstate 405 (I-405). Mill Creek also claims the BRB decision violates the appearance of fairness doctrine. We affirm.

FACTS

Lynnwood is located in south Snohomish County. The City has a population of approximately 35,500, and includes business districts, residential developments, and a number of commercial developments including Alderwood Mall. The current boundaries of the City include areas to the east and west of I-5. Lynnwood is the only city in Snohomish County that is designated as a regional growth center. Mill Creek has a population of approximately 18,500, and is located in Snohomish County northeast of Lynnwood and east of I-5.

In 1995, Lynnwood adopted a comprehensive plan. The comprehensive plan proposes annexing unincorporated areas located to the north, east, and south of the City. In 2002, Lynnwood also included the proposed annexation areas in the “Municipal Urban Growth Area” (MUGA) designation.

In July 2003, Mill Creek designated I-5 and I-405 as part of its MUGA. The unincorporated area Mill Creek designated on the east side of I-5 overlaps with the area designated by Lynnwood in its MUGA.

An annexation study analyzed the fiscal, governance, and strategic implications of the proposed annexation by Lynnwood, as well as the feasibility of providing police, fire, and utility services. The final report was issued on January 14, 2009. On

February 9, the Lynnwood City Council adopted a resolution to initiate an election-method annexation of an approximately 5.7 square-mile unincorporated area located to the north, east, and south of the City's current boundaries.¹

The proposed annexation area would nearly double the size of the City and add approximately 27,800 new residents.² The annexation area contains primarily residential developments, but also commercial developments that straddle I-5 in the 164th Street corridor near Ash Way. The 164th Street corridor "offers a range of economic development opportunities in the future," including the possible "future siting of a light rail station in the area that would further drive commercial and residential development."

On March 5, Lynnwood filed a "Notice of Intention to Annex for the Lynnwood North-East-South Annexation" (NOIA) with the BRB. The NOIA states that the proposed annexation "is the culmination of more than two years of planning, feasibility studies, public outreach and negotiations with Snohomish County, adjoining cities, and Fire District 1."

Snohomish County supported the proposed annexation, subject to execution of an interlocal agreement with Lynnwood. On April 22, the Snohomish County Council adopted "Amended Motion No. 09-173 Concerning the County Council's Position on a Proposed Election Method Annexation to the City of Lynnwood BRB 01-2009 – City of Lynnwood North-East-South Annexation." Amended Motion 09-173 states that the annexation is consistent with the statutory objectives, adopted countywide planning

¹ See RCW 35.10.217(1).

² The disputed Larch Way area, however, contains only 2,169 persons.

policies, and the county's "Growth Management Act Comprehensive Plan."

Mill Creek opposed Lynnwood's annexation of the area that extends east of I-5, north of I-405, and south of 164th Street. Mill Creek also opposed using Larch Way instead of I-5 as the eastern boundary. Mill Creek claimed that annexation did not meet the statutory objectives necessary for annexation. Mill Creek argued that the proposed annexation (1) "artificially bisects" the existing neighborhood and community east of I-5, (2) "bypasses and ignores the natural boundary" formed by I-5, (3) carves up "logical service" areas, (4) "creates an abnormally irregular boundary by not following the well-recognized dividing line of Interstate 5," and (5) "exacerbates impractical boundaries" by using "minor collector roads" east of I-5 to establish City limits. Mill Creek asked the BRB to deny or modify the proposed annexation.

At the May 12 hearing, the BRB heard testimony from representatives of Lynnwood, Mill Creek, Snohomish County, the City of Mukilteo, Snohomish County Fire District No. 1, and Snohomish County Fire District No. 7. Members of the public were also given an opportunity to address the proposed annexation.

At the beginning of the hearing, BRB chairman Alison Sing disclosed that he lives in Lynnwood and that he worked for the Lynnwood Planning Commission 10 years ago. Neither the Mill Creek attorney nor the Mill Creek planning director objected to Chairman Sing's participation in the hearing.

After considering the testimony and other evidence presented at the hearing, and the statutory factors and objectives, the BRB approved the proposed annexation by Lynnwood. The BRB issued a written decision on June 2. The written decision states

that the BRB “considered all of the factors identified in RCW 36.93.170 and the objectives of RCW 36.93.180, and determined that its decision is consistent with the growth management act pursuant to RCW 36.93.157.” In addressing the factors set forth in RCW 36.93.170, the BRB decision states, in pertinent part:

The proposed annexation has logical boundaries and municipal services are planned for and addressed. Sufficient evidence was provided to ensure that public safety services, both police and fire, would be provided even lacking interlocal agreements for those services. Lynnwood has provided evidence that service levels would not decline and would possibly improve, particularly in the level of police and fire prevention services. Insufficient evidence exists that the City of Mill Creek could provide the same level of services to the “overlap” area east of Interstate 5 and west of Larch Way. The City of Lynnwood has demonstrated the ability to plan and develop the urban center on 164th. One municipality should plan and develop this area.

The City of Lynnwood has carefully considered the impact on citizens in the proposed annexation area and those currently residing in the City of Lynnwood. The City of Lynnwood’s Notice of Intention filed herein evidences its economic and fiscal responsibility to provide urban level services to the proposed area.

Mill Creek appealed the decision affirming the proposed annexation to superior court. The City argued the decision was contrary to five of the statutory objectives and violated the appearance of fairness doctrine. The superior court affirmed the decision of the BRB.

The “Order and Judgment Dismissing City of Mill Creek’s Notice of Appeal” states, in pertinent part:

4. After a thorough review of the record and arguments by the parties, this Court is convinced that there is sufficient evidence in the record to convince a fair minded person that overall the objectives of RCW 36.93.180 would be furthered by approval of Lynnwood’s Annexation, in its entirety. The parties agree that Objective (8) is furthered by this Annexation, and the Objectives (5), (6), and (9) are not applicable.

5. The record contains sufficient evidence to support the

Board's findings and Decision that approval of the Annexation furthers Objectives (1), (2), (3), (4), (7) and (8). The Board's Decision is supported by substantial evidence in view of the entire record, was not affected by error of law, is not clearly erroneous, and was not in excess of the Board's statutory authority or jurisdiction.

Mill Creek appeals.

ANALYSIS

Mill Creek contends that the BRB erred in interpreting and applying the statutory objectives for annexation. Mill Creek also argues that the BRB violated the appearance of fairness doctrine.

The stated purpose of the statute establishing the boundary review board, chapter 36.93 RCW, is to avoid the "increased problems [that] arise from rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries" by providing "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." RCW 36.93.010.

The BRB may approve a proposed annexation, modify the proposal by adjusting the boundaries, or reject the annexation if there is evidence from the record that the annexation is inconsistent with the BRB's statutory objectives. RCW 36.93.150 provides, in pertinent part:

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) . . . [M]odify the proposal by adjusting boundaries to add or delete territory. . . .
-

(5) Disapprove the proposal

. . . .

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.

In deciding whether to approve, modify, or reject a proposed annexation, the BRB must consider the statutory factors and objectives set forth in RCW 36.93.170 and RCW 36.93.180, as well as whether the proposal is consistent with the Growth Management Act under RCW 36.93.157.

RCW 36.93.170 sets forth the factors the BRB must consider. RCW 36.93.170 states the BRB shall consider the following nonexclusive factors:

(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.

No. 65408-0-1/8

RCW 36.93.180 sets forth the objectives the BRB “shall attempt to achieve.”
The objectives “are more than simply aspirational,” and a decision that “fails to achieve
the objectives is reversible.” King County v. Wash. State Boundary Review Bd. for
King

County, 122 Wn.2d 648, 673, 860 P.2d 1024 (1993). RCW 36.93.180 states:

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.

Judicial review of a decision of the BRB is limited to the record from the BRB hearing and the statutory factors and objectives. RCW 36.93.160(6) governs review of a decision of the BRB. RCW 36.93.160(6) provides, in pertinent part:

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.

On appeal of a decision of superior court addressing a challenge of the BRB, we apply the same standards set forth in RCW 36.93.160(6) to the record before the BRB. King County, 122 Wn.2d at 671-72.

Here, Mill Creek does not challenge the BRB's determination that the annexation is consistent with the factors set forth in RCW 36.93.170 and the Growth Management Act. Mill Creek's primary argument is that the BRB erred in interpreting RCW 36.93.180(2) and approving the proposed eastern annexation boundary line between Mill Creek and Lynnwood at Larch Way. Mill Creek asserts the statute requires using I-5 instead of Larch Way as the boundary line. We review issues of law and the meaning of a statute de novo. RCW 36.93.160(6)(d); Interlake Sporting Ass'n, Inc. v. Wash. State Boundary Review Bd. for King County, 158 Wn.2d 545, 551, 146 P.3d 904 (2006); City of Spokane v. Rothwell, 166 Wn.2d 872, 876, 215 P.3d 162 (2009); Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

In determining the meaning of a statute, our primary objective is to ascertain and carry out the intent of the legislature. Arborwood Idaho, L.L.C. v. City of Kennewick, 151 Wn.2d 359, 367, 89 P.3d 217 (2004). If the plain language of the statute is unambiguous, we must give effect to that language as an expression of legislative intent. Dep't of Ecology, 146 Wn.2d at 9-10. In giving effect to the language of the statute, we must not render any portion meaningless. Prison Legal News, Inc. v. Dep't of Corr., 154 Wn.2d 628, 644, 115 P.3d 316 (2005). We must also avoid an interpretation that would produce an unlikely, absurd, or strained result. Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). If a statute is unambiguous, we do not inquire further. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526-27, 243 P.3d 1283 (2010). The BRB's "construction of its own statute, while not controlling, is ordinarily given great weight in determining legislative intent." Stewart v. Wash.

State Boundary Review Bd., 100 Wn. App. 165, 174, 996 P.2d 1087 (2000).

RCW 36.93.180(2) states that the BRB “shall attempt” to use “physical boundaries, including but not limited to bodies of water, highways, and land contours.” Mill Creek asserts that RCW 36.93.180(2) unambiguously requires the BRB to use a highway such as I-5 as the boundary line, and asserts the BRB ignored the “natural boundary” established by I-5. In support, Mill Creek points to the language of the statute and the dictionary definition of “highway” to argue that I-5 meets the definition of a highway, and use of a residential street such as Larch Way does not.³

We disagree with Mill Creek’s interpretation of the statute. Mill Creek ignores the language “including but not limited to.”⁴ RCW 36.93.180(2) states the BRB shall attempt to use “physical boundaries, including but not limited to” bodies of water, highways, and contours of land.⁵ Where the legislature uses the language “including but not limited to,” the term indicates the legislative intent to include alternatives not listed in the statute. State ex rel. Graham v. Northshore Sch. Dist. No. 417, 99 Wn.2d 232, 238, 662 P.2d 38 (1983); Sherman v. Kissinger, 146 Wn. App. 855, 868, 195 P.3d 539 (2008). Case law also supports the decision of the BRB to approve the use of Larch Way as a physical boundary. See Spokane County Fire Prot. Dist. No. 9 v. Spokane County Boundary Review Bd., 97 Wn.2d 922, 927, 652 P.2d 1356 (1982) (approving boundaries based on existing roads); Snohomish County v. Hinds, 61 Wn.

³ “Highway” is not defined in chapter 36.93 RCW. Black’s Law Dictionary defines highway as:
1. Broadly, any main route on land, on water, or in the air. **2.** A free and public roadway or street that every person may use. . . . **3.** The main public road connecting towns or cities.

Black’s Law Dictionary 798 (9th ed. 2009).

⁴ RCW 36.93.180(2).

⁵ (Emphasis added.)

No. 65408-0-1/12

App. 371, 381, 810 P.2d 84 (1991) (deciding that use of lot lines “rather than roads or

physical features” did not advance Objective 2).

City of Richland v. Franklin County Boundary Review Board, 100 Wn.2d 864, 676 P.2d 425 (1984), does not support Mill Creek’s argument that RCW 36.93.180(2) required the BRB to use I-5 as the eastern annexation boundary. In Richland, the City of Pasco (Pasco) filed a notice of intent to annex the area between the northern border of the City and the Columbia River. Pasco and Franklin County had previously adopted comprehensive plans that addressed the anticipated commercial and residential growth for the area. Richland, 100 Wn.2d at 866-67. The City of Richland (Richland) then filed a notice of intent to annex the same area. Richland is directly across the Columbia River from the annexation area. Richland, 100 Wn.2d at 866. Richland planned to provide water and sewer services to the annexation area across the Columbia River “by extending sewer and water lines across the river.” Richland, 100 Wn.2d at 871.

The BRB approved Pasco’s request to annex the proposed area. Richland, 100 Wn.2d at 867. On appeal, the supreme court held substantial evidence supported the BRB’s decision to approve the Pasco annexation. The court states the record showed Pasco represented the soundest growth pattern and was the most logical municipality to provide the annexation area with services. Richland, 100 Wn.2d at 871. While the court notes that the Columbia River is a physical boundary, the court did not analyze Objective 2. In determining whether substantial evidence supported the decision of the BRB, the court addresses the Columbia River only in the context of Richland’s plan to provide services. Richland, 100 Wn.2d at 870-72. We conclude the BRB did not err in

interpreting RCW 36.93.180(2).

Mill Creek also asserts the BRB erred in applying RCW 36.93.180(2) and the objectives set forth in RCW 36.93.180(1), (4), (7), and (3).⁶ Review of the BRB's application of the objectives is limited to determining whether substantial evidence in the record supports the BRB's decision that the objectives of RCW 36.93.180 were furthered by the approval of the proposed annexation. King County, 122 Wn.2d at 675 ("Review for support by substantial evidence is an extremely limited form of judicial review."). The decision of the BRB is supported by substantial evidence if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. King County, 122 Wn.2d at 675. Consequently, we review whether the BRB decisions meet the statutory objectives, as well as whether the boundary at Larch Way does not further the statutory objectives as a whole, for substantial evidence. King County, 122 Wn.2d at 675.

Mill Creek argues that Objective 1 and Objective 2 are not met because Larch Way is a minor residential collector street and establishing the boundary line at Larch Way bisects an established neighborhood. In addressing Objective 1 and Objective 2, the BRB decision states:

1. Preservation of Natural Neighborhoods and Communities. This objective is furthered. Specifically, the proposal maintains natural neighborhoods and communities. Larch Way, as the eastern boundary, did not split a natural neighborhood or community.
2. Use of Physical Boundaries, Including But Not Limited to

⁶ Mill Creek does not dispute that Objectives 5, 6, and 9 do not apply and does not challenge the BRB's determination that the proposed annexation furthers Objective 8. In addressing Objective 8, the BRB states:

Annexation to Cities of Unincorporated Areas Which Are Urban in Character. This objective is furthered. The area is already urban in character. Further, 164th Street is designated as an "urban center" which the City of Lynnwood is prepared to address. Urban level services should be provided by municipalities.

Bodies of Water, Highways, and Land Contours. This objective is furthered. Several Washington cities are divided by Interstate 5. The proposal includes all of Swamp Creek and its tributaries within the boundaries of the City of Lynnwood. The boundaries make logical sense particularly as it pertains to Interstate 5 by having only the City of Lynnwood work in conjunction with the Washington State Department of Transportation.

Contrary to Mill Creek's assertion, the record shows that Larch Way is not a minor residential collector street and using Larch Way as the boundary does not divide an existing neighborhood. "Natural neighborhoods" has been construed to mean "either distinct geographical areas or socially and locationally distinct groups of residents." Spokane County Fire Prot. Dist. No. 9, 97 Wn.2d at 927, n.2. The record shows that Larch Way runs along the entire length of the eastern boundary of the annexation area and serves both residential and commercial areas. The record also supports the BRB finding that the boundary at Larch Way ensures that the Ash Way Urban Center and the Swamp Creek drainage basin will be located within one city. Mill Creek does not point to any evidence that the disputed area is a distinct community.

Mill Creek also asserts the BRB's approval of the boundary at Larch Way is clearly erroneous. RCW 36.93.160(6)(f). Mill Creek argues that interstate highways are the "best physical boundary" and "intensely logical" to use when fixing boundaries because they are prominent and more consistent with the statutory objectives. Mill Creek claims there is no evidence in the record as to why a boundary at I-5 is impractical. Because we are not "firmly convinced that a mistake has been committed," we reject Mill Creek's argument. Spokane County Fire Prot. Dist. No. 8 v. Spokane County Boundary Review Bd., 27 Wn. App. 491, 498, 618 P.2d 1326 (1980).

As to Objective 4 and Objective 7, Mill Creek argues that the boundary at Larch Way “creates an unnatural projection and an impractical shape.” In addressing Objective 4 and Objective 7, the BRB decision states:

4. Prevention of Abnormally Irregular Boundaries. This objective is furthered. The proposal corrects several irregular boundaries in the area of Gateway, Swamp Creek, Alderwood Manor, and Alderwood Mall Parkway.

7. Adjustment of Impractical Boundaries. This objective is furthered. Use of Larch Way as the eastern boundary is a more practical boundary than the existing boundary.

The focus of Objective 4 and Objective 7 is “not on whether the annexation boundaries are straight or crooked, but rather whether a proposed annexation causes or prevents unnatural projections or odd, impractical shapes.” King County, 122 Wn.2d at 678. The record supports the BRB’s determination that the proposed annexation boundary at Larch way is more practical and corrects a number of irregular boundaries.

As to Objective 3, Mill Creek argues that the BRB did not analyze whether Lynnwood’s proposed annexation would preserve or create logical service areas, and that the decision to approve a boundary line east of I-5 divides an existing service area and creates an illogical service area in its place. In addressing Objective 3, the BRB decision states:

3. Creation and Preservation of Logical Service Areas. This objective is furthered. The City of Lynnwood has demonstrated its ability to provide police and fire services at a level comparable to current service levels. There is sufficient evidence of a long range plan to deal with service needs associated with the annexation area as well as financial capacity to meet those needs.

Whether service levels are increased or maintained is relevant to Objective 3. King

County, 122 Wn.2d at 676 (improving police response times furthers RCW 36.93.180(3)). Substantial evidence in the record shows that Lynnwood will provide improved services to residents in the annexation area, and there is no evidence in the record to show that I-5 will confuse or hinder service providers.⁷ The record also shows that the fire district serving the area already straddles I-5 and that Lynnwood plans to add dedicated police on the east side of I-5.

Based on an independent review of the record, substantial evidence supports the BRB decision to approve the annexation and use of Larch Way as the eastern boundary line. Sufficient evidence convinces us that “overall the objectives of RCW 36.93.180 would be furthered rather than hindered” by approval of the proposed annexation. King County, 122 Wn.2d at 680.

Appearance of Fairness

Mill Creek also asserts that the BRB decision violates the appearance of fairness doctrine and chapter 42.36 RCW.

Under the appearance of fairness doctrine, “ ‘[m]embers of commissions with the role of conducting fair and impartial fact-finding hearings must, as far as practical, be open-minded, objective, impartial, free of entangling influences, capable of hearing the weak voices as well as the strong and must also give the appearance of impartiality.’ ”

Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation

Council, 165 Wn.2d 275, 313, 197 P.3d 1153 (2008)⁸ (quoting Narrowview Pres. Ass'n v. City of Tacoma, 84 Wn.2d 416, 420, 526 P.2d 897 (1974)); King County Water Dist.

⁷ Unlike in Hinds, the disputed annexation area is not like an “inverted T.” Hinds, 61 Wn. App. at 374.

⁸ (Brackets in original.)

No. 65408-0-1/18

No. 54 v. King County Boundary Review Bd., 87 Wn.2d 536, 541, 554 P.2d 1060 (1976). Quasi-judicial hearings must be conducted so as to give the appearance of fairness. Org. to Pres. Agric. Lands v. Adams County, 128 Wn.2d 869, 889-890, 913 P.2d 793 (1996).

A party must raise the claim that the appearance of fairness doctrine has been violated as soon as the party has information supporting the allegation. Failure to do so waives the right to assert an appearance of fairness claim in a later proceeding. RCW 42.36.080 (barring individuals from raising appearance of fairness claims when known and not raised prior to issuance of a decision); City of Bellevue v. King County Boundary Review Bd., 90 Wn.2d 856, 863, 586 P.2d 470 (1978). “A party with such information may not sit back, hoping to achieve a desirable result from the board despite the perceived unfairness, and then use that information to challenge an adverse result.” Bellevue, 90 Wn.2d at 863.

Mill Creek does not dispute that at the beginning of the hearing, it had information to support raising a claim of appearance of fairness. However, Mill Creek argues that it did not have the opportunity to object. The record does not support Mill Creek’s argument.

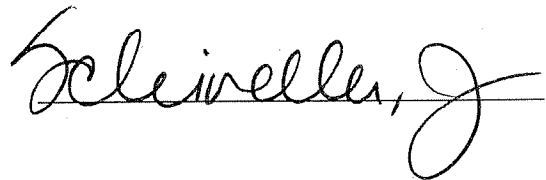
The record shows that at the beginning of the hearing, Chairman Sing states that he lived in Lynnwood and had previously worked for the Lynnwood Planning Commission. Chairman Sing stated, in pertinent part:

My name is Alison Sing and my family and I live in the City of Lynnwood and we have continuously lived there since the summer of 1985. I served on the Lynnwood Planning Commission from 1989 to 1999. Since my departure I have not been involved with the City of Lynnwood in any planning or discussion regarding the annexation proposal before

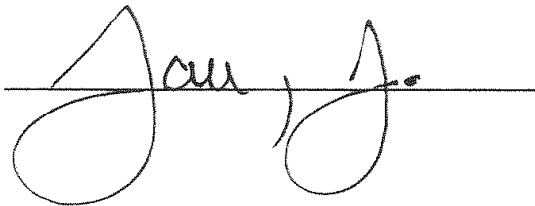
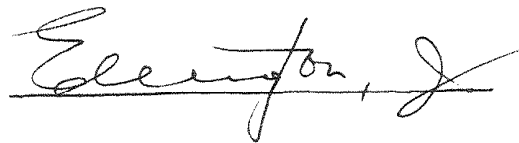
this body tonight. Having made these two disclosures, I believe I'm capable of participating and rendering an impartial decision of the matter before this body. Thank you.

Nonetheless, Mill Creek did not raise any objection to Chairman Sing's participation in the BRB hearing at any time during the hearing, or at any time before the BRB issued its written decision. RCW 42.36.080; Bellevue, 90 Wn.2d at 863. We conclude Mill Creek waived the right to assert an appearance of fairness claim for the first time on appeal.

We affirm.

Handwritten signature of Scheiveller, J. in cursive script, written over a horizontal line.

WE CONCUR:

Handwritten signature of Jan, J. in cursive script, written over a horizontal line.Handwritten signature of Eberly, J. in cursive script, written over a horizontal line.