

# **Explanatory Paper for Boundary Line Adjustment Model Ordinance and Affidavit Version 1.0**

**Purpose:** Identify issues with current practices. Reveal Chain of Title issues. Create better protection for the public. Current statutes are problematic with no clear guidance. Provide a model ordinance for all jurisdictions in Washington to adopt.

Current requirement in statute is:

WAC 458-61A-109 (4) **Documentation.** In all cases, an affidavit is required to record the new property line.

## **Applicable Statutes and Opinions (See Appendix A)**

RCW 58.17.04 Chapter inapplicable when (6)

RCW 58.04.007 Affected landowners may resolve dispute over location of a point or line—Procedures.

RCW 65.04.045 Recorded instruments—Requirements—Content restrictions—Form.

RCW 84.56.345 Alteration of property lines—Payment of taxes and assessments.

WAC 332-130-050 Survey map requirements.

WAC 458-61A-109 Trading/exchanging property and boundary line adjustments.

AGO 1986 No. 6 - Mar 21 1986 -- REDIVISION -- SHORT SUBDIVISION --  
ADJUSTING BOUNDARY LINES

AGO 2005 No. 2 Authority of county to impose procedural requirements on recording of property boundary disputes resolved by agreement.

## **Issues that exist:**

1. No consistency throughout the state for boundary line adjustment process.
  - a. Each jurisdiction has its own procedures.
2. No public record as a result of the process in numerous jurisdictions.
  - a. Jurisdictions may or may not file anything of importance.
3. No ability for Title Companies to pick up written/ recorded boundary changes.
  - a. Boundary line adjustments with descriptions are not typically in public record.
4. Protection of the public is not in place.
  - a. Land ownership is a paramount part of our freedoms.
  - b. Paper title should not have color of title due to poor land use actions.
  - c. Correct legal descriptions are not in title record.
  - d. The Assessor is not the place for public record of legal descriptions.
5. Lenders are generally not involved.

- a. Boundaries are changed without Deeds of Trust being modified.
  - b. Foreclosures become a title and ownership nightmare.
- 6. Surveys and or surveyors are not part of the standard process for BLA procedures.
  - a. Sketches may only be rough, performed by the public or planning department and kept in house.
  - b. Records of Surveys are not typically required.
  - c. No recorded maps for title identification or understanding of legal descriptions.

**Solution:**

- 1. Create a minimum consistency requirement for the boundary line adjustment process through a model ordinance for all of the jurisdictions in Washington State.
- 2. Require Professional Land Surveyors as part of the process in creating new land descriptions and maps at a minimum.
- 3. Assure vested parties of parcels are included in the process for approvals or releases of interest.
- 4. Create a minimum set of approved and completed Boundary Line Adjustment documents, recorded with the County Auditor as the public record to establish a more clear chain of title. This could be all part of the Affidavit currently required by WAC 458-61A-109.

## **Examples of Adjustments:**

### **Same ownerships or entities with same owner (Grantor/Grantee issues):**

- ***Joe Smith owns Lot 4 and Smith Living Estate owns Lot 5 with Joe as the Executive***
  - *Will there be at least a deed? Not in my experience.*
- ***123 LLC owns Lot 4 and ABC LLC owns Lot 5, both are owned by Mr. Johns.***
  - *There may never be a deed!*
- ***Jean Block owns Lot 4 and Lot 5***
  - *There will not be a deed*

### **Different ownerships: Obvious for owners or is it?**

#### ***Examples:***

- ***Joe Smith owns Lot 4 and Jean Block owns Lot 5***
  - *Should have a deed recorded.*
- ***456 LLC owns Lot 4 and XYZ LLC owns Lot 5, 456 LLC ownership is 3- 33% owners and XYZ LLC ownership is 3-33% owners with one owner different than 456 LLC***
  - *Confusion will persist without legal descriptions being recorded. Good luck with the Assessor and tax assessment.*
- ***Joe Smith owns Lot 4 individually and Joe Smith and wife Mary Smith owns Lot 5***
  - *Will a deed or anything get recorded for this BLA?*

***There is no mention of lenders in these examples which could complicate future deeds.***

## **Solution:**

Create a Model Boundary Line Adjustment Ordinance to provide consistency throughout the state for jurisdictions to adopt and provide an example affidavit sufficient to correct the issues that exist as required to be filed in WAC 458-61A-109 (4) .

## Appendix A

### **RCW 58.04.007 Affected landowners may resolve dispute over location of a point or line—Procedures.**

Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures:

(1) If all of the affected landowners agree to a description and marking of a point or line determining a boundary, they shall document the agreement in a written instrument, using appropriate legal descriptions and including a survey map, filed in accordance with chapter [58.09](#) RCW. The written instrument shall be signed and acknowledged by each party in the manner required for a conveyance of real property. The agreement is binding upon the parties, their successors, assigns, heirs and devisees and runs with the land. The agreement shall be recorded with the real estate records in the county or counties in which the affected parcels of real estate or any portion of them is located;

### **RCW 58.17.04 Chapter inapplicable when**

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

### **RCW 65.04.045 Recorded instruments—Requirements—Content restrictions—Form.**

(1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW [65.04.015](#), with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or

section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is imaged all text is readable. Further, all pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged. No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

(3) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:  
....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

### **RCW 84.56.345 Alteration of property lines—Payment of taxes and assessments.**

Every person who offers a document to the auditor of the proper county for recording that results in any division, alteration, or adjustment of real property boundary lines, except as provided for in RCW 58.04.007(1) and 84.40.042(1)(c), must present a certificate of payment from the proper officer who is in charge of the collection of taxes and assessments for the affected property or properties. All taxes and assessments, both current and delinquent must be paid. For purposes of chapter 502, Laws of 2005, liability begins on January 1st.

### **WAC 332-130-050 Survey map requirements.**

The following requirements apply to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county.

(1) All such documents filed or recorded shall conform to the following:

## **WAC 458-61A-109 Trading/exchanging property and boundary line adjustments.**

(1) **Trading/exchanging property.** The real estate excise tax applies when real property is conveyed in exchange for other real property or any other valuable property. The real estate excise tax is due on the true and fair value for each individual property.

(2) **Boundary line adjustments.**

(a) **Introduction.** A boundary line adjustment is a legal method to make minor changes to existing property lines between two or more contiguous parcels. Real estate excise tax may apply depending upon the specific circumstances of the transaction. Boundary line adjustments include, but are not limited to, the following:

- (i) Moving a property line to follow an existing fence line;
- (ii) Moving a property line around a structure to meet required setbacks;
- (iii) Moving a property line to remedy a boundary line dispute;
- (iv) Moving a property line to adjust property size and/or shape for owner convenience; and
- (v) Selling a small section of property to an adjacent property owner.

(b) **Boundary line adjustments in settlement of dispute.** Boundary line adjustments made solely to settle a boundary line dispute are not subject to real estate excise tax if no other consideration is present.

(c) **Taxable boundary line adjustments.** In all cases, real estate excise tax applies to boundary line adjustments if there is consideration (other than resolution of the dispute), such as in the case of a sale or trade of property.

(3) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples are provided as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) Mr. Jehnsen and Mr. Smith own adjoining parcels of land separated by a fence. During a survey to confirm the property boundary of Mr. Smith's parcel, the parties discover that the true property line actually extends five feet over on Mr. Jehnsen's side of the fence. Mr. Jehnsen does not want to move the fence. He has paved, landscaped and maintained this section of land and if he gave it up he would lose his parking area. After numerous discussions regarding the property line, Mr. Smith agrees to quitclaim the five-foot section of land to Mr. Jehnsen. Real estate excise tax does not apply since there is no consideration other than resolution of the dispute.

(b) Mr. Smith will only agree to transfer the five-foot section of land to Mr. Jehnsen if he is paid \$1,000. Mr. Smith owes real estate excise tax on \$1,000.

(c) Mr. Smith will cede the five-foot parcel only if Mr. Jehnsen gives him a narrow strip of land in exchange. Mr. Jehnsen agrees to exchange a ten-foot section of his parcel for the five-foot section of Mr. Smith's parcel solely to resolve the boundary line dispute. Real estate excise tax does not apply. It is irrelevant that the property involved in the transfer is not equal since the sole purpose of the transfer is to settle a boundary line dispute.

(d) Mr. Smith and Mr. Jehnsen are unable to resolve their dispute over the five-foot parcel. Mr. Jehnsen agrees to trade his lake front cabin for Mr. Smith's entire parcel. Mr. Jehnsen will owe real estate excise tax on the fair market value of the lake front cabin. Mr. Smith owes real estate excise tax on the fair market value of his parcel.

(e) Mr. Smith wants something in exchange for giving the five-foot parcel to Mr. Jehnsen. Mr. Jehnsen agrees to give Mr. Smith his tractor in exchange for the five-foot section of land. Mr. Smith will owe real estate excise tax on the fair market value of the five-foot section of his parcel and use tax on the value of the tractor (see WAC [458-20-178](#)).

(f) Mr. Robbins owns 18 acres of land adjacent to Ms. Pemberton's 22-acre parcel. Mr. Robbins would like to develop his 18 acres, but he needs two more acres to develop the land. Ms. Pemberton agrees to give Mr. Robbins two acres of land. In exchange Mr. Robbins agrees to pave Ms. Pemberton's driveway as part of the land development. The real estate excise tax is due on the true and fair value of the two acres conveyed to Mr. Robbins. In addition, sales or use tax may be due on the value of the paving.

(4) **Documentation.** In all cases, an affidavit is required to record the new property line.



***AGO 1986 No. 6 - Mar 21 1986***

*Attorney General Ken Eikenberry*

COUNTIES -- REDIVISION -- SHORT SUBDIVISION -- ADJUSTING BOUNDARY LINES

The dividing of a lot in a previously approved subdivision into two halves with the intent that one-half be sold and attached to an adjoining parcel outside the subdivision does not create a boundary line adjustment.

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March 21, 1986

Honorable David F. Thiele  
Island County Prosecuting Attorney  
P.O. Box 430  
Coupeville, Washington 98239

Cite as: AGO 1986 No. 6

Dear Sir:

By letter previously acknowledged, you have requested the opinion of this office on two questions which we have paraphrased as follows:

(1) If a lot in a previously approved subdivision is divided in half, with the intent that one-half be sold and attached to another adjoining parcel outside the subdivision (which will then become part of the existing subdivision) (lot 1A) and with the other one-half remaining (lot 1B) containing sufficient area to meet minimum requirements for width and area for a building site, is this a boundary line adjustment under RCW 58.17.040 and therefore not subject to the provisions of chapter 58.17 RCW?

(2) If the same lot were divided in half with the intent that one-half be removed from the subdivision, sold, and attached to another adjoining parcel outside the subdivision with the other one-half remaining in the subdivision containing sufficient area to meet minimum requirements for width and area for a building site, is this a boundary line adjustment under RCW 58.17.040 and therefore not subject to the provisions of chapter 58.17 RCW?

We answer both your questions in the negative for the reasons set forth in our analysis.

ANALYSIS

Turning to your first question, initially, it is important to note the purpose of chapter 58.17 RCW. RCW 58.17.010 provides as follows:

"The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties, throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description." (Emphasis supplied)

Additionally, RCW 58.17.020 defines a short subdivision as ". . . the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership. . . ."1/

Redivision is an additional separation into parts. As the facts you posed indicate, a lot, in a previously approved subdivision, is divided in half. It is our opinion that this action constitutes a redivision. Inasmuch as four or fewer lots are created, this would be a short subdivision rather than a subdivision (RCW 58.17.020--five or more lots). If this is a short subdivision it is subject to the provisions of chapter 58.17 RCW. RCW 58.17.060 requires cities, towns and counties to adopt regulations and procedures for the approval of short subdivisions. Therefore, the action you described would be subject to approval under your local regulations unless it falls under the exception enumerated in RCW 58.17.040(6).2/

RCW 58.17.040 lists a number of exceptions to the application of chapter 58.17 RCW. Your question specifically relates to RCW 58.17.040(6) which states as follows:

"A division made for the purpose of adjusting boundary lines which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; . . ."

The facts presented in your question indicate that a lot within an existing subdivision will be divided in half with both halves remaining within the existing subdivision. Clearly, in this situation, an additional lot is created. (Where the subdivision originally had a lot 1, it will now have a lot 1A and a lot 1B.) This creation of an additional lot removes this action from the exemption provided in RCW 58.17.040(6). Accordingly, it is our conclusion that the action described in question (1) is a redivision

subject to the provisions of chapter RCW 58.17 [chapter 58.17 RCW] and we therefore answer your first question in the negative.

Regarding your second question, the facts are similar except that the lot in question is to be removed from the existing subdivision and attached to an adjoining parcel outside the subdivision. Unlike your first question, in this situation no additional lot is created. We therefore turn to a further analysis of RCW 58.17.040(6).

The essence of your question is whether the division of a lot with each parcel containing sufficient area and dimension to meet minimum requirements for width and area for a building site constitutes a boundary line adjustment making it exempt from coverage under chapter 58.17 RCW. Unfortunately, when the legislature enacted chapter 293 in 1981<sup>3</sup> it did not provide a definition of "adjusting boundary lines." The statute does not itself further describe what a boundary line adjustment is nor is there any legislative history available which clarifies the meaning of "adjusting boundary lines." Further, this issue has never been addressed by any appellate court in this state. Thus, it is necessary for us to glean the legislature's intent from what it did say.

Black's Law Dictionary defines "adjustment" as an arrangement or settlement (citing Henry D. Davis Lumber Co. v. Pacific Lumber Agency, 127 Wash. 198, 220 Pac. 804, 805 (1923)). "Adjust" is defined as "[t]o settle or arrange; to free from differences or discrepancies; . . ." (Black's Law Dictionary). Webster's Third New International Dictionary defines "adjust" as ". . . settle, resolve . . . rectify . . ." and, "adjustment" as "the bringing into proper, exact, or conforming position or condition . . . harmonizing or settling (the adjustment of variant views) . . ."

Words in statutes must be given their ordinary meaning where no statutory definition is provided. State v. Roadhs, 71 Wn.2d 705, 708, 430 P.2d 586 (1967). Pringle v. State, 77 Wn.2d 569, 571, 464 P.2d 425 (1970). Thus, "adjusting" means settling or arranging; freeing from differences or discrepancies; rectifying. Adjusting may be necessary where some controversy exists regarding the boundary line or where arranging or rectifying is required.

The legislature recognized that boundary line disputes do occur when it enacted RCW 58.04.020 which reads as follows:

"Whenever the boundaries of lands between to [two] or more adjoining proprietors shall have been lost, or by time, accident or any other cause, shall have become obscure, or uncertain,and the adjoining proprietors cannot agree to establish the same, one or more of said adjoining proprietors may bring his civil action in equity, in the superior court, for the county in which such lands, or [[Orig. Op. Page 5]] part of them are situated, and such superior court, as a court of equity, may upon such complaint, order such lost or uncertain boundaries to be erected and established and properly marked." (Emphasis supplied)

If the parties can agree on the location of the boundary line, pursuant to RCW 58.17.040(6), then they would not be required to resort to civil action under RCW 58.04.020 to obtain a determination of the proper location of the boundary line.

An adjustment may be necessary where, for example, a boundary in an approved plat may need to be changed by a developer for proper installation of utilities to two lots. Assuming no additional lot was created and no lot was left containing insufficient area to constitute a building site, such a change in boundary line would be a rectifying or arranging pursuant to the usual and ordinary meaning of the term "adjusting." Therefore, this division would be an adjusting of boundary lines under RCW 58.17.040(6).

"In placing a judicial construction upon a legislative enactment, the entire sequence of all statutes relating to the same subject matter should be considered. . . ." Brewster Public Schools v. PUD No. 1, 82 Wn.2d 839, 843, 514 P.2d 913 (1973) citing Amburn v. Daly, 81 Wn.2d 241, 245-46, 501 P.2d 178 (1972). Legislative intent, will, or purpose, is to be ascertained from the statutory test as a whole, interpreted in terms of the general object and purpose of the act. Brewster, 82 Wn.2d at 843. As previously cited, the purpose of chapter 58.17 RCW is to assure uniformity in the process by which land is divided and to regulate the subdivision of land.

In the facts presented, the parties intend to establish a boundary line (cutting a lot in half) where none existed before. Although there is no additional lot, tract, parcel, site or division, a new plat boundary line is created. We do not believe this is in keeping with the purpose of the statute nor with our interpretation of "adjusting boundary lines."4/

It should also be noted that the definition of "short subdivision" speaks of redivision of land for the purpose of sale. Here, the lot in question is being divided so that one-half may be purchased by an adjoining landowner. For the reasons discussed herein it is our opinion that the anticipated property alteration is the creation of a short subdivision under RCW 58.17.020(6) and not an adjusting of boundary lines under RCW 58.17.040(6). Accordingly, we answer your second question in the negative.5/ We trust that the foregoing will be of some assistance to you.

Very truly yours,  
KENNETH O. EIKENBERRY  
Attorney General

MEREDITH WRIGHT MORTON  
Assistant Attorney General

\*\*\* FOOTNOTES \*\*\*

1/AGO 1980 No. 5 dealt with the provisions of chapter 58.17 RCW. In 1980 a "short subdivision" was defined as ". . . the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease." AGO 1980 No. 5 discussed an earlier recommendation to the State Legislature

that the word "resubdivision" be expressly defined. In 1981 the legislature amended chapter 58.17 RCW adding the word "redivision" to the definition of "short subdivision." "Resubdivision" was stricken from the definition of "subdivision" and substituted for "redivision."

2/There are also six other exceptions enumerated under RCW 58.17.040, however, clearly, none of them are applicable to your fact situation. So we will not provide an analysis of them.

3/Codified in part as RCW 58.17.040(6).

4/There may be counties which have adopted ordinances which would exempt this factual situation from county approval. Inasmuch as you have asked for our opinion regarding this situation, we assume no such ordinance exists in Island County.

5/In so concluding we recognize that, as we did in AGO 1980 No. 5, there is a lack of uniformity among the various local jurisdictions in actual practice throughout the state. The state legislature remains free to clarify its own intent, if we have not sufficiently done so, by expressly defining the phrase "adjusting boundary lines."

## ***AGO 2005 No. 2 - Mar 7 2005***

*Attorney General Rob McKenna*

**PROPERTY – REAL ESTATE – COUNTIES – Authority of county to impose procedural requirements on recording of property boundary disputes resolved by agreement.**

**1. RCW 58.04.007 permits property owners to resolve uncertain or disputed property boundaries when the boundary line cannot be ascertained through a reference to public records or physical landmarks, or where there is an actual dispute between landowners about the location of the boundary line.**

**2. A charter county has authority to implement and facilitate the operation of RCW 58.04.007 by prescribing procedures to be followed in recording written agreements concerning the resolution of unknown or disputed boundary lines, including requirements for county review of documents presented for recording where the county provisions are not in conflict with statutory law.**

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**March 7, 2005**

The Honorable Bill Finkbeiner  
State Senator, 45th District

**Cite As:**

C:\Users\AMS\Desktop\BLA White Paper v1.0.doc

Dear Senator Finkbeiner:

By letter previously acknowledged, you have asked for an opinion on the following questions, which we have slightly paraphrased for clarity:

- 1. May RCW 58.04.007 be used to resolve any type of boundary dispute, or is the statute only meant to resolve a certain type of boundary dispute?**
- 2. RCW 58.04.007 permits property owners to resolve a dispute about property boundary lines by a written document showing their agreement about the location of the boundary line, recorded as a real estate record. Does a charter county have authority to require county review before the written instrument can be recorded?**

#### **BRIEF ANSWERS**

RCW 58.04.007 is available to resolve disputes about property boundary lines where (1) the boundary line cannot be ascertained through a review of public records, monuments, or landmarks, or (2) there is an actual dispute between the property owners as to the location of the boundary line. A charter county has authority to facilitate the administration of RCW 58.04.007 (*original page 2*) and related statutes by imposing reasonable procedural requirements relating to the recording of written instruments establishing property boundaries.

#### **ANALYSIS**

Your questions relate to interpretation of RCW 58.04.007, a statute setting forth optional procedures for resolving questions about the boundary lines separating adjoining parcels of land. This section provides:

Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures[.]

The statute then describes two procedures for resolving boundary disputes: (1) a written agreement signed by the affected property owners documenting the location of the point or line separating the parcels, signed and acknowledged in the manner required for a conveyance of real property and recorded with the real estate records of the county where the property is located; or (2) a court

action to determine the boundary, filed under RCW 58.04.020. RCW 58.04.007 (1), (2). Your questions concern the circumstances under which the first of the two alternatives may be used.

**1. May RCW 58.04.007 be used to resolve any type of boundary dispute, or is the statute only meant to resolve a certain type of boundary dispute?**

It does not appear that the appellate courts have construed RCW 58.04.007, and our examination of the legislative history of its enactment (Laws of 1996, ch. 160, § 3) did not provide insight beyond what can be gleaned from examining the text of the statute.

Where statutory language is unambiguous, the courts derive legislative intent from the text of the statute alone, construing it as a whole and giving effect to every provision. *Schromv. Bd for Volunteer Fire Fighters*, 153 Wn.2d 19, 100 P.3d 814 (2004) (construing statutes defining eligibility of fire district employees for pension benefits). The text of RCW 58.04.007 provides a clear indication of the circumstances where this statute was intended to apply. First, the statute may be used when a “point or line” determining the boundary between two or more parcels of property cannot be identified based on existing records, monuments, and landmarks. Thus, the statute would not apply (for instance), where the boundaries of a parcel are established but the ownership of the parcel is in doubt.

Second, the statute applies when a point or line determining the boundary between two parcels is in dispute. The statute presupposes, then, an actual controversy between adjoining property owners as to the boundary line between their parcels. This point is underscored by the fact that before the enactment of RCW 58.04.007, litigation was the only way to resolve property line disputes.

(original page 3) In asking whether RCW 58.04.007 may be used to resolve any type of boundary dispute or is meant to resolve only certain kinds of disputes, your letter does not posit particular types of disputes that you may have in mind, and we can think of none other than those addressed by the statute, as discussed above. It seems apparent from the statutory language, however, that RCW 58.04.007 is limited to circumstances where a boundary line or point between parcels is objectively uncertain or where there is an actual dispute over the point or line that determines the boundary. The statute does not speak more broadly to address other circumstances that may give rise to changes in boundaries, such as subdivision of parcels, or other matters dealt with by different laws.

To illustrate these general principles, the following hypothetical cases might be considered:

*Case 1:* A and B are the owners of adjoining tracts of land. The deeds establishing the line between their property (recorded in territorial days) refer to certain

monuments (an old cedar tree, a certain rock) that either no longer exist or cannot be identified.

*Case 2:* C and D own adjoining lots in a subdivision. C contends that a survey monument placed many years ago accurately marks the boundary between the lots. D contends that the monument has been moved and that a fence built by a previous owner is on the true boundary.

*Case 3:* E and F, sisters, have jointly inherited a parcel of land from their parents. Rather than continuing in joint ownership of the whole parcel, they hire a surveyor to divide the parcel into two equal portions.

*Case 4:* G is the owner of a 10-acre parcel of land. G proposes to divide the parcel into 10 one-acre lots and to convey six of these lots to H for a residential development. G and H, by walking the land and using a map of the property, reach agreement concerning the boundaries separating the lots.

It would appear that RCW 58.04.007 was designed for the situations illustrated in Case 1 and Case 2 above. In Case 1, the recorded property description cannot be understood without reference to the landmarks, and the landmarks can no longer be identified. A and B cannot determine where the line separating their property is located. Perhaps, with the help of a surveyor or with research concerning old records, they will be able to establish a line they can agree on without going to court. Similarly, C and D might find that a new survey will establish whether the survey monument or the fence is on the line between their lots, and they could record the results of the survey instead of resorting to litigation.

By contrast, RCW 58.04.007 does not cover Case 3 or Case 4 above. In Case 3, there is no uncertain boundary between adjoining parcels, nor is a boundary line in “dispute” between two landowners. Rather, the question is where to draw a new boundary line dividing a single (*original page 4*) existing parcel. Likewise, in Case 4, there is no “dispute” between existing landowners but rather an agreement concerning the subdivision of an existing parcel. Furthermore, in Case 4 at least, a subdivision into several lots implicates the platting and subdivision laws.

The hypothetical cases cited above are not intended to address any actual situations. They merely illustrate our view of the scope of RCW 58.04.007.

**2. RCW 58.04.007 permits property owners to resolve a dispute about property boundary lines by written document showing their agreement about the location of the boundary line, recorded as a real estate record. Does a charter county have**



**authority to require county review before the written instrument can be recorded?**

Your opinion request states that King County requires review of boundary line agreements before they are recorded under RCW 58.04.007, and your second question asks whether a county may enact such a requirement.

The function of an Attorney General Opinion is to provide legal analysis of questions relating to statutory interpretation but is not to provide legal comment on specific existing disputes. Accordingly, we will address the general matter of the authority of charter counties to adopt local laws on this subject, but we do not intend our analysis as a comment on any particular dispute.<sup>[1]</sup>

A charter county has broad legislative authority, except that its action may not contravene any constitutional provision or legislative enactment. Const. art.XI, § 4. *KingCy. Coun. v. DisclosureComm'n*, 93 Wn.2d 559, 611 P.2d 1227 (1980). We could discover no constitutional provision limiting the authority of counties to legislate concerning recording boundary line agreements, so the question becomes: Is such an ordinance precluded by state statute? Since the state statute here is RCW 58.04.007 itself, the question becomes: Does this statute preempt county legislation on the subject?

County legislation is preempted if it directly contravenes some provision of RCW 58.04.007 or some other statute. As one of the cases explains it, a local regulation conflicts with a statute when it permits what is forbidden by state law or prohibits what state law permits. *Parkland Light & Water Co. v. Tacoma-Pierce Cy.Bd.Of Health*, 151 Wn.2d 420, 70 P.3d 37, (2004). Thus, for instance, a county ordinance requiring that all boundary line disputes be resolved by the courts (and prohibiting the county real estate recording office from recording written agreements under any circumstances) would contravene the language of RCW 58.04.007 and would therefore be void. Courts are reluctant to interpret a state statute to preclude local legislation unless that is clearly the legislative intent. *Wedenv. SanJuanCy.*, 135 Wn.2d 678, 958 P.2d 273 (1998).<sup>[2]</sup>

(original page 5) In our view, RCW 58.04.007 leaves room for local legislation, particularly legislation designed to implement the statute and facilitate its administration. Since RCW 58.04.007 specifies only that the agreement be in written form, for instance, a charter county could enact requirements concerning the form of the written agreement (size of the document, what information it should contain, and where on the document each item should be located, etc.). Insofar as an ordinance providing for pre-recording county review may be concerned, we simply note that counties would appear to have considerable leeway in this area so long as the local legislation does not contravene the statute itself. For instance, an ordinance providing for review to determine whether a document presented for recording meets the requirements set forth in the statute (see discussion above) (or whether accepting a document for recording would be in conflict with some

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other state statute or state or local regulatory requirement<sup>[3]</sup>) would not necessarily be inconsistent with the statute. At least where a county can show that its ordinance serves a legitimate purpose and does not frustrate or negate the application of RCW 58.04.007 or other statutes, we believe the ordinance would be upheld.

We trust the foregoing will be of assistance to you.

Sincerely,

JAMES K. PHARRIS  
Senior Assistant Attorney General

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<sup>[1]</sup> Because King County is a charter county, we will analyze the law relating to charter counties and do not reach the question whether a noncharter county would have authority to adopt an ordinance of this type.

<sup>[2]</sup> We also conclude that the State, by enacting RCW 58.04.007, did not intend to “occupy the field” of legislation on boundary disputes, thus precluding local legislation on the subject. Compare this case with *Cherry v. Mun. of Metro. Seattle*, 116 Wn.2d 794, 808 P.2d 746 (1991), where the court noted that the state had expressly preempted the field of regulation of firearms possession (RCW 9.41.290) but still found that an employer could prohibit employees from carrying firearms on the job. See also *City of Tacoma v. Naubert*, 5 Wash. App. 856, 491 P.2d 652 (1971), holding that a state statute regulating sale of erotic material to minors preempted local regulations on the same subject. Local procedural regulations on boundary disputes are neither expressly preempted, as is the case with firearms, nor inherently inconsistent with the state statutes on the subject.

<sup>[3]</sup> For instance, suppose G and H, the property owners in hypothetical Case 4 above, presented for filing a written agreement resolving their “dispute” concerning boundaries of the lots created to further their development plans. Such a document (1) would be beyond the scope of RCW 58.04.007 itself, (2) would also violate the platting and subdivision laws, and (3) might be inconsistent with local zoning or state growth management laws. Allowing such a document to be recorded could lead to confusion, at the very least, as to the status of the property in question. Thus, a county might require review to head off such potential problems.

# Boundary Line Adjustment Model Ordinance

Version 1.2

7-23-2019

*This Washington State Department of Natural Resources model is developed by the DNR Survey Advisory Board, a task force and our staff for all jurisdiction's consideration. The Model should be customized as appropriate for an individual jurisdiction's circumstances in consultation with their attorney. Our intent is to create consistency for recording Boundary Line Adjustment documents which will protect the public through proper procedures, appropriate legal descriptions, grantor/grantee documents and recording of the complete set of documents. Section 6 of this document is the imperative portion to meet the goals of the model ordinance.*



**This icon marks places where the jurisdiction must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, should be deleted from this model before use. Make other changes, as needed, to customize the model for your jurisdiction.**

**ORDINANCE NO. \_\_\_\_\_**

## **AN ORDINANCE FOR BOUNDARY LINE ADJUSTMENTS AND AGREEMENTS**

*This ordinance will provide appropriate steps and procedures to complete a boundary line adjustment or boundary line agreement with consistency throughout the State of Washington.*

### **Findings and Purpose:**

*The Boundary Line Adjustment/Agreement process without appropriate recorded documentation is harmful to the public through real estate transactions, title insurance policies, lenders, and county Assessor's. In order to protect the public through provisions of RCW 58.17.04, RCW 58.04.007 and WAC 458-61A the following provisions are adopted.*



**The \_\_\_\_\_ Council of \_\_\_\_\_, Washington ordains:**

### **Section 1. Definitions**

*Affidavit:* (a) The real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC [458-61A-101](#).

*Aggregation:* Combine two parcels with same exact owner to create one parcel.

*Boundary Line Adjustment:* A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains

insufficient area and dimension to meet minimum requirements for width and area for a building site.

*Boundary Line Agreement:* Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures: If all of the affected landowners agree to a description and marking of a point or line determining a boundary, they shall document the agreement in a written instrument, using appropriate legal descriptions and including a survey map, filed in accordance with chapter [58.09](#) RCW. The written instrument shall be signed and acknowledged by each party in the manner required for a conveyance of real property. The agreement is binding upon the parties, their successors, assigns, heirs and devisees and runs with the land. The agreement shall be recorded with the real estate records in the county or counties in which the affected parcels of real estate or any portion of them is located.

*Exhibit Map:* An 8 ½” x 11” or 8 ½” x 14” exhibit map of boundary line adjustment, prepared by a professional land surveyor which is in compliance with font size, legibility and margin requirements for recording with the County Auditor.

*Land Description:* A description of real property or of rights associated with real property also commonly known as Legal Description.

*Lender:* Any party holding a deed of trust or lien on the parcels being adjusted.

*Professional Land Surveyor:* Any person authorized to practice the profession of land surveying under the provisions of chapter [18.43](#) RCW.

*Recorded Documents:* All supporting documents will be recorded to establish a complete record of the Boundary Line Adjustment/Agreement. Such as: Approval Forms, Before and After Legal Descriptions, Survey Map; Lender Release, Modified Deed of Trust, and Deeds. All documents will meet the format required by the County Auditor to be filed in compliance with RCW 65.04.045: Recorded Instruments - Requirements


*Survey:* shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a professional land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners.

*Survey Map:* Any land boundary survey map and plan, record of surveys, plat, short plat, boundary line adjustment, and binding site plan required by law to be filed or recorded with the county prepared by a Professional Land Surveyor.

## **Section 2. Aggregation of two parcels with exact same owner in title**

Aggregation of two parcels is performed by the following:




1. Items included for Aggregation application

- 
- a. Name of Applicant
  - b. Mailing Address of Applicant
  - c. Phone Number for contact
  - d. Site Address for Each Parcel
  - e. Tax Parcel Number for Each Parcel
  - f. Signature of owner(s) acknowledging aggregation
  - g. Notary acknowledgement of owner signature(s)
  - h. Provide the current recorded deed for each parcel
  - i. Copy of Assessor Map showing existing parcels
  - j. Copy of Assessor Map showing new parcel (red line)
  - k. Copy of Plat Map if applicable
  - l. Provide proof of Lender acknowledgement or permission
  2. Provide new legal description after aggregation:
    - a. Professional Land Surveyor may combine descriptions from deeds
    - b. Applicant or non-surveyor may create the description by using exact verbiage from each deed and adding "TOGETHER WITH" between each original description.
  3. Provide proof that property taxes have been paid in full on each parcel for the current year as required by RCW 84.56.345
  4. Fees for Aggregation
  5. \_\_\_\_\_ will perform items in **Section 5**

### **Section 3. Boundary Line Adjustment between parcels with same owner in title**

Boundary Line Adjustment between the same ownership of two parcels is performed by the following:

1. Items included for Boundary Line Adjustment application
  - a. Name of Applicant
  - b. Mailing Address of Applicant
  - c. Phone Number for contact
  - d. Site Address for Each Parcel
  - e. Tax Parcel Number for Each Parcel
  - f. Signature of each owner to acknowledge line adjustment
  - g. Notary acknowledgement of owner(s) signatures
  - h. Provide the current recorded deed for each parcel
  - i. Copy of Assessor Map showing existing parcels
  - j. Copy of Assessor Map showing new parcels (red line)
  - k. Copy of Plat Map if applicable
  - l. Copy of Record of Survey if applicable
  - m. Copy of existing recorded Ingress/Egress Easement if applicable
  - n. Provide proof of Lender acknowledgement or permission
2. Provide new legal descriptions after boundary line adjustment:
  - a. Professional Land Surveyor will create descriptions from deeds
    - i. Provide new legal description for each parcel after adjustment
    - ii. Provide new legal description for each piece that will require a deed of conveyance.

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- iii. Provide new legal description for new ingress/egress Easement(s) if applicable.
  - 3. Record of Survey not required
    - a. A Record of Survey may not be required for larger parcels with few or no improvements
    - b. Requirement for the Record of Survey will be determined by \_\_\_\_\_
    - c. Exhibit Map Requirements if no Record of Survey
      - i. An 8 1/2" x 11" or 8 1/2" x 14" Exhibit Map prepared by a Professional Land Surveyor including:
        - 1. Company information title block
        - 2. Seal and Signature of Professional Land Surveyor
        - 3. Date of Exhibit Map
        - 4. Scale and North Arrow
        - 5. Indexing information quarter-quarter, Section, Township, Range, Meridian, City-County
        - 6. Plat Name, Block and Lot numbers if applicable
        - 7. After BLA boundaries with solid line
        - 8. Before BLA boundaries with dashed line
        - 9. Area in square feet or acres
      - ii. Exhibit Map must meet font size, legibility and margin requirements of County Auditor
  - 4. Provide a Record of Survey if buildings or other improvements adjacent to the line adjustment require measurement determination to meet zoning requirements.
    - a. Record of Survey will show at a minimum in addition to statutory requirements
      - i. The old boundary and new boundary of the line being adjusted
      - ii. Area of each new parcel in square feet or acres
      - iii. Any improvement located within the setback area defined in the zoning code.
      - iv. Square footage of each permanent structure on each parcel in note format to provide surface coverage area on each parcel.
      - v. Access Easement or Road Frontage for each parcel.
      - vi. A reference to record documents or original parcel legal descriptions
      - vii. Legal descriptions of parcels after adjustment
      - viii. Boundary Line Adjustment Survey Disclaimer
        - 1. Parcels as shown are not created by this survey by aggregation, segregation or line adjustment unless local ordinances are followed through the planning department, deeds are filed with the county auditor, and county treasurer and or assessor requirements are completed.
        - 2. \_\_\_\_\_(Company name) is not responsible for notification of any other parties with vested interest, (mortgage holders, lien holders etc..), who may have additional requirements or restrictive authority for completion.
  - 5. Provide proof that property taxes have been paid in full on each parcel for the current year as required by RCW 84.56.345
  - 6. Fees for Boundary Line Adjustment

7. \_\_\_\_\_ will perform items in **Section 5**
8. Upon approval by \_\_\_\_\_ appropriate deeds will be submitted.

#### **Section 4. Boundary Line Adjustment between parcels with different owners in title**

*The following section may also be applicable to the Boundary Line Agreements Per RCW 58.04.007*

Boundary Line Adjustment between ownerships of two parcels is performed by the following:

1. Items included for Boundary Line Adjustment application
  - a. Name of Applicants
  - b. Mailing Address of Applicants
  - c. Phone Numbers for contact
  - d. Site Address for Each Parcel
  - e. Tax Parcel Number for Each Parcel
  - f. Signature of each owner to acknowledge boundary line adjustment
  - g. Notary acknowledgement of owner(s) signatures
  - h. Provide the current recorded deed for each parcel
  - i. Copy of Assessor Map showing existing parcels
  - j. Copy of Assessor Map showing new parcels (red line)
  - k. Copy of Plat Map if applicable
  - l. Copy of Record of Survey if applicable
  - m. Copy of existing recorded Ingress/Egress Easement(s) if applicable
  - n. Provide proof of Lender acknowledgement or permission
2. Provide new legal descriptions after boundary line adjustment:
  - a. Professional Land Surveyor will create descriptions from deeds
    - i. Provide new legal description for each parcel after adjustment
    - ii. Provide new legal description for each piece that will require a deed of conveyance.
    - iii. Provide new legal description for new ingress/egress Easement(s) if applicable.
3. Record of Survey not required
  - a. A Record of Survey may not be required for larger parcels with few or no improvements
  - b. Determination for the Record of Survey will be determined by \_\_\_\_\_
  - c. Exhibit Map is Required if no Record of Survey
    - a. Exhibit Map Requirements
      - i. An 8 1/2" x 11" or 8 1/2" x 14" Exhibit Map prepared by a Professional Land Surveyor including:
        1. Company information title block
        2. Seal and Signature of Professional Land Surveyor
        3. Date of Exhibit Map
        4. Scale and North Arrow
        5. Indexing information quarter-quarter, Section, Township, Range, Meridian, City-County
        6. Plat Name, Block and Lot numbers if applicable
        7. After BLA boundaries with solid line
        8. Before BLA boundaries with dashed line





- 9. Area in square feet or acres
  - ii. Exhibit Map must meet font size, legibility and margin requirements for recording with County Auditor
- 4. Provide a Record of Survey if buildings or other improvements adjacent to the line adjustment require measurement determination to meet zoning requirements.
  - a. Record of Survey will show at a minimum in addition to statutory requirements
    - i. The old boundary and new boundary of the line being adjusted
    - ii. Area of each new parcel in square feet or acres
    - iii. Any improvement located within the setback area defined in the zoning code.
    - iv. Square footage of each permanent structure on each parcel in note format to provide surface coverage area on each parcel.
    - v. Access Easement or Road Frontage for each parcel.
    - vi. A reference to record documents or original parcel legal descriptions
    - vii. Legal descriptions of parcels after adjustment
    - viii. Boundary Line Adjustment Survey Map or Exhibit Map Disclaimer
      - 1. Parcels as shown are not created by this survey by aggregation, segregation or line adjustment unless local ordinances are followed through the planning department, deeds are filed with the county auditor, and county treasurer and or assessor requirements are completed.
      - 2. \_\_\_\_\_ (Company name) is not responsible for notification of any other parties with vested interest, (mortgage holders, lien holders etc..), who may have additional requirements or restrictive authority for completion.
- 5. Provide proof that property taxes have been paid in full on each parcel for the current year as required by RCW 84.56.345
- 6. Fees for Boundary Line Adjustment
- 7. \_\_\_\_\_ will perform items in **Section 5**
- 8. Upon approval by \_\_\_\_\_ appropriate deeds will be submitted.



## Section 5. Boundary Line Adjustment Approval

Boundary Line Adjustment approval process is as follows:

1. Application submittal is determined complete by \_\_\_\_\_
2. Boundary Line Adjustment is reviewed and approved by \_\_\_\_\_
3. \_\_\_\_\_ will send Letter of Approval to Applicant with instructions for completion
4. \_\_\_\_\_ determines who will record the documents required to be filed in **Section 6**

## Section 6. Boundary Line Adjustment Completion

Boundary Line Adjustment completion process is as follows:

1. Simultaneous Recording of documents with the county auditor according to RCW 65.04.045: Recorded Instruments - Requirements
  - a. Documents required for recording.
    - i. Approval Letter
    - ii. Original and New Legal descriptions
    - iii. Deeds if applicable
    - iv. Lender Release if applicable
    - v. Modified Deed of Trust if applicable
    - vi. Record of Survey or Exhibit Map



**Section \_\_\_\_ Other Considerations (to be inserted before Section 5)**

Shorelines, Tidelands, Harbor Lines, Wetlands, etc.

**Section \_\_\_\_ Repeal.** (It is customary to repeal any prior inconsistent ordinance by referring to its number, title, and adoption date.)



**Section \_\_\_\_ Penalty.** (Where a penalty is appropriate, it is customary to state it in either of the following ways.)

Alternate 1. Any person violating any provision of this ordinance shall, upon conviction, be punished by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 90 days, or both, plus, in either case, the costs of prosecution. (This is the standard penalty clause and provides for the maximum penalty authorized by law for a misdemeanor violation of a city ordinance.)

Alternate 2. Any person who violates any provision of this ordinance shall, upon conviction, be punished by a fine of not more than \$300. (This is the maximum penalty for a petty misdemeanor.)

**Section \_\_\_\_ Effective date.** The effective date is usually stated in the following manner: “This ordinance becomes effective from and after its passage and publication”; or “This ordinance becomes effective on \_\_\_\_.” (Pick any date after passage and publication of the ordinance.)

Passed by the \_\_\_\_ Council of \_\_\_\_, Washington this \_\_\_\_ day of Month, Year.

\_\_\_\_\_  
\_\_\_\_\_

Attested: \_\_\_\_\_  
\_\_\_\_\_