

CHAPTER 9
COMMITTEE PROCEEDINGS ON PETITIONS
FOR INVOLUNTARY CITY DEVELOPMENT ACTION

[Prior to 12/11/02, see 263—Ch 3]

263—9.1(368) Formation of committee. Following board acceptance of a petition for boundary adjustment and the appointment of local representatives as specified in Iowa Code section 368.14 and rule 263—8.11(368), the board shall expand to a committee which shall have jurisdiction to conduct proceedings consistent with Iowa Code sections 368.16 through 368.19. If all or a portion of the petition is approved by the committee, the board retains concurrent jurisdiction to subpoena witnesses and documents for use in the proceedings and to conduct proceedings consistent with Iowa Code sections 368.19 through 368.21.

The parties shall be notified of the formation of the committee and directed to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the office of the board.

263—9.2(368) Meetings. Meetings of the committee shall be conducted in compliance with Iowa Code chapter 21.

9.2(1) Scheduling. Committee hearings shall be scheduled by the board and may be tentatively scheduled at the time the petition is accepted. Board staff shall verify the availability of local representatives to participate on the scheduled hearing date and will notify the board if the local representatives are not all available on the date initially selected by the board.

9.2(2) Quorum. A quorum of the committee consists of three board members and one local representative or, if the number of local representatives exceeds two, three board members and at least one-half of the appointed local representatives. A quorum must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the city development board, or the chairperson's designee, shall serve as chairperson of all committee proceedings.

9.2(4) Notice. Notice of the time, place, and purpose of each meeting shall be provided by regular mail to all parties, posted at the office of the city development board, and made available to all interested persons upon request. Notice of a committee public hearing will also be published as required by Iowa Code section 368.15.

9.2(5) Minutes. Minutes of all committee meetings shall be kept pursuant to Iowa Code chapter 21. The minutes of any committee meeting, but not including public hearings held pursuant to Iowa Code section 368.15, shall serve as the record of the meeting. The record of public hearing proceedings shall be in accordance with subrule 9.10(5).

9.2(6) Telephone and electronic proceedings. The committee chairperson may, on the chairperson's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The committee chairperson will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Objections, if any, shall be filed with the committee and served on all parties at least three business days in advance of the hearing.

263—9.3(368) Parties to proceedings. An individual, group, organization or governmental agency may become a party to a case by filing a separate written appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If filed after docketing, the appearance shall include reference to the applicable docket numbers. The city for which the boundary adjustment is proposed, any city whose urbanized area contains the territory, and any county or regional planning authority which contains the territory will be considered to be a party without filing an appearance.

263—9.4(368) Filing of documents. Once a party has filed an appearance, it shall serve any document that it files on the board or committee on all other parties and such filing shall contain proof of service. All parties may request reproducible documents to the proceedings that were filed on the board or committee prior to said parties' admittance and shall pay for said documents at a rate of 10 cents for each page. After a party has been admitted, any document filed on the board or committee by that party but not served on all other parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the board or committee so specifies. Any document filed on the board or committee by those who are not parties or who are not properly seeking to be admitted as parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the committee so specifies. Those who are not parties or who are not properly seeking to be admitted as parties shall receive reproducible documents to the proceedings only upon written request to the committee chairperson, and the cost of the reproduction may be charged to the requesting party at the rate of 10 cents for each page. Except as otherwise provided by law, a document is deemed filed at the time it is received by the staff of the board.

9.4(1) Form of motions.

- a. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.
- b. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the committee.
- c. In ruling on a motion, the committee may consider a failure to respond within the required time period as evidence of a lack of objection to the motion.

9.4(2) Proof of service.

- a. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert board title) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

- b. Electronic service. The committee chairperson may by order permit service or filing of a particular document by facsimile, E-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order, a facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

9.4(3) Time requirements.

- a. Time shall be computed as provided in Iowa Code subsection 4.1(34).

b. For good cause, the committee may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the committee shall afford all parties an opportunity to be heard or to file written arguments.

263—9.5(17A) Ex parte communication.

9.5(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following filing of a petition, there shall be no communication, directly or indirectly, between the board or committee members and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit committee members from communicating with each other. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to a committee member any ex parte communications they have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

9.5(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

9.5(5) Committee members in a pending contested case may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(6) The board's staff or other persons may be present in deliberations or otherwise advise the committee members without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 9.5(1).

9.5(7) Communications with the committee members involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with committee members when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(8) Disclosure of prohibited communications. A committee member who receives a prohibited ex parte communication during the pendency of a case must initially determine if the effect of the communication is so prejudicial that the committee member should be disqualified. If the committee member determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

9.5(9) Promptly after being assigned to serve as committee member, a committee member shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(10) The committee may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the committee.

263—9.6(17A) Disqualification.

9.6(1) A committee member shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

9.6(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as committee member in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 9.5(9) and 9.6(3).

9.6(3) In a situation in which a committee member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

9.6(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 9.6(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

9.6(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

263—9.7(368) Prehearing activities.

9.7(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the committee chairperson or at the request of any party prior to a hearing in any proceeding. A written request for prehearing conference or an order for prehearing conference on the committee chairperson's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date.

a. Notice of a prehearing conference shall be provided as described in 9.2(4).
b. A prehearing conference may be ordered for the purpose of formulating issues and considering:

- (1) The simplification of issues.
- (2) The necessity or desirability of amending the petition or other filings for the purpose of clarification, amplification or limitation.
- (3) The possibility of making admissions of certain averments of fact or stipulations thereof, for the purpose of avoiding unnecessary proof.
- (4) The procedure at the hearing.
- (5) The propriety of prior mutual exchange of prepared testimony and exhibits between or among the parties.
- (6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

c. Recordation. Action agreed upon at the conference shall be made a part of the record in such manner as may be prescribed by the committee chairperson at the close of the conference.

9.7(2) Discovery. Parties involved in involuntary boundary adjustment proceedings shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure. At the public hearings, such evidence may be introduced and entered into the record if the evidence would otherwise be admissible.

a. Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the committee chairperson, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the committee. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 9.4(3). The committee may rule on the basis of the written motion and any response, or may order argument on the motion.

c. Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. Evidence obtained in discovery may be used in the boundary adjustment proceeding if that evidence would otherwise be admissible in that proceeding.

9.7(3) Subpoenas. Witnesses who are subpoenaed are entitled to the same fees as are subpoenaed witnesses in the district court of Iowa. These fees shall be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

a. Subpoenas shall be issued by the board's administrator or designee upon written request. Subpoenas issued may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately.

b. A request for a subpoena shall include the following information, as applicable:

- (1) The name, address and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena shall be directed;
- (3) The date, time, and location at which the person shall be commanded to attend and give testimony;

(4) Whether the testimony is requested in connection with a deposition or hearing;

(5) A description of the books, papers, records or other real evidence requested;

(6) The date, time and location for production, or inspection and copying.

c. Each subpoena shall contain, as applicable:

(1) The caption of the case;

(2) The name, address and telephone number of the person who requested the subpoena;

(3) The name and address of the person to whom the subpoena is directed;

(4) The date, time, and location at which the person is commanded to appear;

(5) Whether the testimony is commanded in connection with a deposition or hearing;

(6) A description of the books, papers, records or other real evidence the person is commanded to produce;

(7) The date, time, and location for production, or inspection and copying;

(8) The time within which a motion to quash or modify the subpoena must be filed;

(9) The signature, address and telephone number of the board's administrator or designee;

(10) The date of issuance;

(11) A return of service.

d. The board's administrator or designee shall mail or provide the subpoenas to the requesting party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena and providing copies of the subpoena to all parties to the proceeding.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

f. Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision. The board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board may schedule oral argument or hearing by telephone or in person.

263—9.8(368) Notice of public hearings. Notices shall comply with 9.2(4).

9.8(1) Notice of the public hearing shall include:

a. A statement of the time, place and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved; and

d. A short and plain statement of the matters asserted.

9.8(2) Notice of the public hearing shall comply with Iowa Code section 362.3 and Iowa Code chapter 21.

263—9.9(368) Continuance. Hearings or proceedings relating to matters which are within the jurisdiction of the committee may be continued by the committee and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion and the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 263—9.4(368). A party may, during said hearing or proceeding, but not ex parte, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

9.9(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the party's representative.

9.9(2) An oral application for a continuance may be made if the committee waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

9.9(3) In determining whether to grant a continuance, the committee may require documentation of any grounds for continuance, and may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h.* The timeliness of the request; and
- i.* Other relevant factors.

9.9(4) The board's administrator may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, the board's administrator may deny an uncontested application for a continuance, or rule on a contested application for continuance.

9.9(5) If a hearing is continued prior to the commencement of the hearing, notice of the continued hearing will be given as required in rule 263—9.8(368).

263—9.10(368) Public hearings.

9.10(1) General provisions.

a. Public hearings shall be held on dates and locations determined by the board. However, whenever possible, the public hearings shall be held in or near the locale so affected. The hearing shall be held in a place open to the public.

b. The board shall, prior to serving notice, designate a suitable place to make the petition or plan available for public inspection. The board shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, which may include a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and shall have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and shall be free to ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. Decorum. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) *Format of public hearings.* The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing, but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

d. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee, or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) *Testimony at hearings.* At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) *Evidence.* Rules of evidence shall be those set forth in the Iowa administrative procedure Act. The committee shall observe the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

b. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The committee chairperson may rule on the objection at the time it is made or may reserve a ruling until the written decision.

c. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the committee chairperson, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. Documentary evidence. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies shall also be furnished to members of the committee. All exhibits admitted into evidence shall be appropriately marked and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) Record of public hearing.

a. Recording of oral proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters.

b. Any party requesting a certified shorthand or court reporter shall make arrangements for such attendance and expense.

c. The board administrator shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Tapes, stenographic notes, or transcription of the oral proceedings will be retained by the board for five years following the decision or until the case is resolved, whichever is later.

d. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. A reasonable amount will be charged to cover the cost of providing a duplicate tape to the requesting party. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

9.10(6) Posthearing brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4)“*i.*” The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party’s failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the board from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when in the chairperson’s discretion to do so is deemed necessary or in the public interest. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

263—9.11(368) Committee decision.

9.11(1) Deliberation. After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition. The meeting will be an open meeting pursuant to Iowa Code section 21.3.

a. Notice of the meeting will be provided pursuant to 9.2(4).

b. The committee may consider all information and arguments presented at the public hearing and in the briefs that were filed.

c. No additional oral or written testimony will be taken or considered.

d. The committee may conduct its deliberations in closed session, but shall announce its decision in open session.

e. Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record.

f. The committee may amend the petition or plan prior to approving it.

g. Decisions shall always be in writing and rendered at a time following the hearing. The decision shall include:

- (1) Identification of parties and basic issues.
- (2) Summary of findings of fact.
- (3) Summary of conclusions of law.
- (4) Ruling.
- (5) Reasons for ruling.
- (6) Order for implementation of the decision.

9.11(2) Committee decisions, orders, or rulings shall be signed by the chairperson. Any city development board staff person authorized by the chairperson may sign decisions, orders, or rulings of the board or committee after the chairperson has reviewed the decision, order or ruling and has given consent to sign. Copies of the written decision shall be transmitted to the parties by certified mail.

9.11(3) A request for a decision which seeks only a change in the effective date shall be made by motion filed, served and acted upon in a like manner as other motions.

263—9.12(368) Appeal of a committee decision.

9.12(1) An appeal of a committee decision or the legality of an election on the proposed boundary adjustment may be initiated by any party to the proceedings or any resident or owner of land in the territory or the city for which the boundary adjustment is proposed by filing a petition seeking judicial review of the decision pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) A petition challenging the committee's decision must be filed within 30 days of the date of the committee's decision to approve or disapprove the boundary adjustment. A petition challenging the legality of the election must be filed within 30 days of the publication of the election results.

9.12(3) Appeal of approval of a petition or plan does not stay the election.

9.12(4) Within 30 days of being notified of the filing of an appeal, the board's staff shall transmit a certified copy of the agency record to the reviewing court. The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

- a.* The original petition or plan and any amendment;
- b.* Proofs of service and publication of required public hearing notices;
- c.* All pleadings filed with the board and committee and any answers or rulings on the pleadings;
- d.* The public hearing transcript and all evidence received at public hearing;
- e.* All evidence received or considered and all other submissions;
- f.* All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those who are not parties;
- g.* Public documents taken note of by the board or committee;
- h.* The committee's findings of fact, conclusions of law and determination;
- i.* The board's election order;
- j.* Certification and proof of publication of election results;
- k.* The board's final order.

By stipulation of all parties to the appeal, the record of the case may be shortened.

263—9.13(368) Rehearing procedures.

9.13(1) Any party to a boundary adjustment proceeding may file an application for rehearing of the committee decision to approve or disapprove a proposed boundary adjustment.

9.13(2) The application for rehearing shall be filed within 20 days of the date of the committee decision. The date of the committee decision is the date it is mailed or the date of delivery if service is by another means, unless the date is specified in the order.

9.13(3) The party applying for rehearing shall transmit a copy of the application for rehearing to all parties to the proceeding on the date of filing with the committee. If the application does not contain a certificate of service, the board shall file copies of the application on all parties, with the time for response beginning then.

9.13(4) Contents of application.

a. An application for rehearing shall specify the findings of fact and conclusions of law claimed to be erroneous and include a brief statement of the grounds of error.

b. The application shall state whether the applicant desires reconsideration of all or part of the committee decision on the existing record and whether on the basis of paragraph 9.13(4) "c," the applicant requests an opportunity to provide additional evidence.

c. A party may request the taking of additional evidence only by establishing:

- (1) The facts or other evidence arose after the original proceeding;
- (2) The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or
- (3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

d. No further hearing will be granted when it is apparent that the added evidence will merely be cumulative.

e. Any party may object to or resist an application for rehearing by filing a resistance with the committee within ten days of the filing of the application.

f. Disposition of an application for rehearing. The committee may grant or deny an application with or without a hearing on the application.

(1) The application for rehearing shall be deemed denied unless the committee grants the application within 20 days of its filing.

(2) An order granting or denying an application for rehearing is deemed issued on the date it is mailed by the committee, or the date it is received if another method of delivery is used.

(3) If the committee grants an application for rehearing, the committee may schedule oral argument or rehearing on the application if additional evidence will be received. If additional evidence will not be received, the committee may issue a ruling without oral argument or hearing. The committee may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues.

(4) If the committee denies an application, the committee shall proceed as if no application had been filed.

These rules are intended to implement Iowa Code sections 17A.11, 17A.17 and 368.14 to 368.17.

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