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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

ROBERT PLAYFAIR,

Petitioner,

v.

CITY OF CHEWELAH,

Respondent.

Case No. 04-1-0009

ORDER ON MOTIONS

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I. PROCEDURAL HISTORY

On July 22, 2004, ROBERT PLAYFAIR, by and through his attorney, Steve Graham, filed a Petition for Review.

On August 17, 2004, the Board received from Petitioners' attorney, Steve Graham a Motion for Order Prohibiting Multiple Attorneys, and Memorandum in Support thereof, Order Prohibiting Multiple Attorneys (Proposed), and Petitioners Objections to Respondent's Index and Chronological statement, and Motion to Strike and Motion to Compel.

On August 19, 2004, the Board received Notice of Association of Council from Stanley Schwartz.

On August 19, 2004, the Board held a telephonic Prehearing conference. Present were Board Members Judy Wall and Dennis Dellwo. D.E. "Skip" Chilberg, Presiding Officer, was unavailable. Present for Petitioners was Steve Graham. Present for Respondent was Patrick Monasmith and Associated council Stanley Schwartz.

On August 27, 2004, the Board issued its Prehearing Order.

On August 30, 2004, the Board received Petitioner's Amended Statement of Issues.

On September 9, 2004, the Board received Respondent City of Chewelah's Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment.

1 On September 24, 2004, the Board received Petitioner's Response to City of
2 Chewelah's Motion for Summary Judgment.

3 On September 30, 2004, the Board received Respondent City of Chewelah's Reply
4 Memorandum in Support of Motion for Summary Judgment.

5 On October 4, 2004, the Board held a telephonic Motion Hearing. Present were John
6 Roskelley, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for
7 Petitioners was Steve Graham. Present for Respondent was Patrick Monasmith and
8 Associated council Stanley Schwartz.

8 II. DISCUSSION

9 **Issue 1:** Did the City of Chewelah enact a Public Participation Plan that comports with
10 RCW 36.70A.040? That is to ask did the City establish and broadly disseminate to the public
11 a public participation program that identified procedures for early and continuous public
12 participation in the development and amendments of comp plans and development
13 regulations? And does this plan provide for broad dissemination of proposals and
14 alternatives, opportunity for written comment, public meetings after effective notice,
15 provision for open discussion, communication programs, information services, and
16 consideration of and response to public comment?

17 The Board after reviewing the briefs and hearing oral argument of the parties finds
18 there is a Material issue of fact. Therefore, Issue 1 will be heard at the Hearing on the
19 Merits.

20 **Issue 2:** Did the City err by failing to enter findings of fact?

21 The Petitioner contends the City is required to issue Findings of Fact in support of the
22 adoption of the City's Public Participation Process, Resolution #04-02.

23 Resolution #04-02 shows 6 Findings of Fact stating as follows:

24 Whereas, the Growth Management Act requires local agencies to encourage
25 the early and continuous participation of the public in plan making and
26 decision making in matters regarding land use; and

Whereas, Stevens County is required to plan fully under the requirements of
the Growth Management Act; and

1 Whereas, the City of Chewelah is an incorporated municipality within Stevens
2 County and is therefore also required to plan fully under the requirements of
the Growth Management Act; and

3 Whereas, the City of Chewelah is committed to early and continuous public
4 participation in the planning process; and

5 Whereas, the Planning Commission of the City of Chewelah considered the
6 public participation policy at 4 workshops, making its recommendation to the
City Council on February 19, 2004; and

7 Whereas, the City Council considered the Planning Commission
8 recommendations at a duly noticed public hearing on May 5, 2004;

9 The Board, after reviewing the briefs and hearing oral argument of the parties, finds
10 there are no material issues of fact. We are not aware of a requirement that the Ordinance
11 or Resolution adopting the City's Public Participation Plan have findings or if there is such a
12 requirement, sufficient findings do exist. Issue 2 is dismissed.

13 **Issue 3:** Did the City of Chewelah err by enacting the Public Participation Plan by
14 resolution rather than ordinance?

15 The Board in Case No. 03-1-0005, Robert Playfair v. City of Chewelah, Order of
16 Dismissal, June 23, 2004, found for the City of Chewelah a Resolution and Ordinance have
17 the same effect and are both enforceable as a law.

18 Issue 3 raises the same issue and the Board has already addressed it in the above
19 referenced case. Therefore, Issue 3 is dismissed.

20 **Issue 4:** Did the City of Chewelah err by enacting the Public Participation Plan without
21 public participation or other requirements as required by RCW 36.70A.040? That is to ask,
22 did the City err by not broadly disseminating proposals and alternatives, by not providing
23 sufficient opportunity for written comments, by not holding public meetings after effective
notice by not making provisions for open discussion, communication programs, information
services, and consideration and response to public comments?

24 The Board after reviewing the briefs and hearing oral argument finds there is a
25 material issue of fact for Issue 4. The record is extensive and it is not clear if the City's
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1 Public Participation Plan was properly adopted without a complete hearing. Issue 4 is not
2 dismissed and will be heard at the Hearing on the Merits.

3 **III. ORDER**

- 4 1. The Board will not dismiss Issues 1 and 4 as addressed above and they
5 will proceed to the Hearing on the Merits re-scheduled for **November**
6 **17, 2004, immediately following the Hearing on the Merits in**
7 **Case No. 04-1-0008.** Mr. Graham will provide the Board and the
8 parties with the location for the Hearing on the Merits by **October 29,**
9 **2004.**
- 10 2. The Board dismisses Issues 2 and 3 in Case No. 04-1-0009.

11 **SO ORDERED** this 11th day of October 2004.

12 EASTERN WASHINGTON GROWTH MANAGEMENT
13 HEARINGS BOARD

14 _____
15 Judy Wall, Board Member

16 _____
17 John Roskelley, Board Member

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19 Dennis Dellwo, Board Member