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**STATE OF WASHINGTON  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

SPOKANE COUNTY FIRE DISTRICT NO. 10,  
a municipal corporation,

Petitioners,

v.

CITY OF AIRWAY HEIGHTS,

Respondent,

CITY OF SPOKANE,

Intervenor.

Case No. 02-1-0019

ORDER ON COMPLIANCE

**I. SUMMARY OF DECISION**

The Eastern Washington Growth Management Hearings Board (Board) held a Compliance Hearing on April 12, 2005, to determine whether or not the Respondent, the City of Airway Heights, had come into compliance with the Board's Order of July 31, 2004, concerning two issues: violation of the Countywide Planning Policies and violation of the Growth Management Act's Public Participation Plan.

After discussion with the Parties, the Board found the City of Airway Heights was in compliance with the public participation issue after they adopted their Public Participation Program, but still not in compliance with the Countywide Planning Policies. The Board was

1 asked by the Respondent to continue their compliance hearing until after the City Council of  
2 Airway Heights had a chance to repeal Ordinance No. C-517. The Board agreed to do so.

3 On April 12, 2005, the City Council of Airway Heights passed Ordinance No. C-598,  
4 which repealed Ordinance No. C517. The repeal of Ordinance No. C517 caused the City to  
5 be in compliance with the Board's Order.

6 The Board finds the City of Airway Heights in compliance with the GMA and the  
7 required Public Participation Policy.

## 8 **II. PROCEDURAL HISTORY**

9 On November 18, 2002, SPOKANE COUNTY FIRE DISTRICT NO. 10, by and through  
10 their attorney, Margaret L. Arpin, filed a Petition for Review.

11 On December 12, 2002, the Board held a Prehearing conference at 13120 W. 13<sup>th</sup>  
12 Avenue, Airway Heights, Washington. Present were D.E. "Skip" Chilberg, Presiding Officer,  
13 and Board Members Judy Wall and Dennis Dellwo. Present for Petitioner was Margaret  
14 Arpin. Present for Respondent was Stanley Schwartz. The Board issued its Prehearing Order  
15 on December 12, 2002.

16 On December 12, 2002, the Board received City of Spokane's Motion to Intervene  
17 and Brief in Support of its Motion. No objections were received. On January 8, 2003, the  
18 Board issued an Order Allowing Intervention.

19 On Jan 6, 2003, the board received a Motion and Memorandum for an Order on  
20 Standing and to Dismiss SEPA Claims.

21 On February 18, 2003, the Board received a Stipulated Motion Continuing Decision  
22 on Respondent's Motion for Order Re Standing and to Dismiss SEPA Claims. On March 12,  
23 2003, the Board issued its Order on Stipulation for Continuance and Stay.

24 On May 15, 2003, the Board issued its Order on Motion to Dismiss SEPA Issues,  
25 dismissing petitioner's SEPA issues for lack of standing.

26 On July 1, 2003, the Board received a Motion for Supplemental Evidence from the  
City of Airway Heights.

1 On July 15, 2003, the Board held the Hearing on the Merits in Airway Heights.  
2 Present were D.E. "Skip" Chilberg as Presiding Officer, and Board Members Judy Wall and  
3 Dennis A. Dellwo. Present for Petitioner was Margaret Arpin. Present for Respondent was  
4 Stanley Schwartz. Present for Intervenors was Michael Piccolo. The Board orally granted  
5 City of Airway Heights' Motion for Supplemental Evidence.

6 On July 31, 2003, the Board issued its Final Decision and Order.

7 On April 12, 2005, the Board held a telephonic compliance hearing. Present were  
8 Presiding Officer, John Roskelley, and Board Members Dennis Dellwo and Judy Wall. Present  
9 for Petitioner was Margaret Arpin. Present for Respondent was Stanley Schwartz. Present  
10 for Intervenors was Michael Piccolo.

11 On April 29, 2005, the Board received a copy of Ordinance C-598 repealing Section 1  
12 of Ordinance C-517.

### 13 III. DISCUSSION

14 On August 19, 2002, the City of Airway Heights City Council passed Ordinance C-517  
15 that established a "Planning Area" in the amended Comprehensive Plan and Land Use Map  
16 of the City of Airway Heights. A petition to the Eastern Washington Growth Management  
17 Hearings Board (Board) was timely filed by Spokane County Fire District #10 alleging the  
18 action violated the Spokane County Countywide Planning Policies (CWPP) and violated the  
19 Growth Management Act (GMA) requirements for public participation. The City of Spokane  
20 filed as an Intervenor and agreed with the arguments set forth by the Fire District.

21 The Board agreed with the Petitioner's and Intervenor's arguments. On July 31,  
22 2004, the Board found the City of Airway Heights to be in non-compliance with the GMA for  
23 failure to meet the requirements of the Spokane Countywide Planning Policies and failure to  
24 adopt a Public Participation Plan as required under the GMA [RCW 36.70A.130(2) and RCW.  
25 The City of Airway Heights was ordered to correct the deficiencies within 180 days.

26 The Board held a Compliance Hearing on April 12, 2005. The Petitioner argued that  
the City of Airway Heights had not repealed C-517, which was still in effect at the time of  
the hearing. They contend the City of Airway Heights is attempting to expand its UGA; is

1 not engaging in interjurisdictional coordination and cooperation; and is playing semantics in  
2 order to avoid "exposing its intent".

3 The Intervenor agrees with the Petitioners arguments and also contends that the  
4 process being employed by the City of Airway Heights in connection with the adoption of  
5 their new Comprehensive Plan violates the dictates of the GMA and the CWPP in many of  
6 the same ways as its initial adoption of Ordinance C-517. They also contend that the City of  
7 Airway Heights has not made any effort to contact or otherwise negotiate agreements with  
8 the special service districts, including Fire District #10.

9 The Respondent, the City of Airway Heights, argued that they had adopted a Public  
10 Participation Plan in November, so this was no longer an issue. The Respondent also stated  
11 that the City had recently sent letters to Fire District #10 and to the City of Spokane in an  
12 effort to keep those jurisdictions in the loop. The Respondent's attorney, Mr. Schwartz, said  
13 he would suggest to the City of Airway Heights at the Council's meeting that night that the  
14 City repeal C-517. This action would eliminate the issue of a violation of the GMA and the  
15 CWPP's.

16 On April 18, 2005, the City Council of Airway Heights passed Ordinance No. C-598,  
17 which repealed Ordinance No. C-517 that established the Airway Heights "Planning Area"  
18 east of the current City boundaries.

19 The Board agrees that once Ordinance No. C-517 is repealed the City is no longer  
20 out of compliance. The Board finds the City of Airway Heights in compliance with its  
21 adoption of a Public Participation Plan.

#### 22 **IV. FINDINGS OF FACT**

- 23 1. Spokane County has established urban growth area boundaries for  
24 each city in Spokane County pursuant to the Growth Management Act.  
25 The City of Airway Heights was granted a UGA boundary allowing  
26 growth to the west and north of the existing city boundary.
2. The City of Airway Heights adopted Ordinance No. C-517 on August 19,  
2002. Ordinance No. C-517, an amendment to Airway Heights

1 Comprehensive Plan, among other matters, established a "planning  
2 area" to the east of the present city boundary, encompassing  
3 approximately one square mile, within a designated urban growth area  
4 (UGA). The subject area had been designated by Spokane County as a  
5 "joint planning area." Ordinance No. C-517 was passed as a precursor  
6 to a petition to the Boundary Review Board for annexation of the area.

- 7 3. Spokane County and all cities in Spokane County, including Airway  
8 Heights, are signatories to Countywide Planning Policies (CWPP's)  
9 adopted pursuant to the Growth Management Act, RCW 36.70A.210.  
10 These CWPP's specify: "joint planning shall be accomplished pursuant  
11 to an interlocal agreement entered into between and/or among  
12 jurisdictions". Topic 2:1.  
13 4. The City of Airway Heights has adopted a public participation program  
14 (PPP) pursuant to the GMA, RCW 36.70A.130(2) and RCW 36.70A.140.  
15 5. The City of Airway Heights repealed Ordinance No. C-517 with  
16 Ordinance No. C-598.

#### 17 **V. CONCLUSIONS OF LAW**

- 18 1. The Board has jurisdiction over this case.  
19 2. The City of Airway Heights complied with the Board's FDO of July 31,  
20 2004 by adopting a Public Participation Plan and repealing Ordinance  
21 No. C-517.  
22 3. The City of Airway Heights is found in compliance with the GMA.

#### 23 **VI. ORDER**

24 The City of Airway Heights is in compliance with the FDO entered on July 31, 2004,  
25 and the GMA with the issues raised herein.

26 **Pursuant to RCW 36.70A.300(5) and RCW 34.05.542(2), this is a Final  
Order for purposes of appeal. Any appeal of this Order shall be served in person**

1 on the Board by the 30<sup>th</sup> day. Pursuant to WAC 242-02-832, a motion for  
2 reconsideration may be filed within ten days of service of this Order.

3 SO ORDERED this 16<sup>th</sup> day of May 2005.

4 **EASTERN WASHINGTON GROWTH**  
5 **MANAGEMENT HEARINGS BOARD**

6 \_\_\_\_\_  
7 John Roskelley, Board Member

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9 Judy Wall, Board Member

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11 Dennis A. Dellwo, Board Member

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