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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 MOTION FOR  
RECONSIDERATION**

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**I. PROCEDURAL HISTORY**

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

On August 17, 2004, the Board received from Petitioners' attorney, Steven 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 Judy Wall, The Presiding Officer, and Board Member Dennis Dellwo. Board Member D.E. "Skip" Chilberg was unavailable. Present for Petitioners was Steven 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 October 4, 2004, the Board held a telephonic Motion Hearing. Present were Judy  
2 Wall, Presiding Officer, and Board Members John Roskelley and Dennis Dellwo. Present for  
3 Petitioner was Steven Graham. Present for Respondent was Patrick Monasmith and  
4 Associated council Stanley Schwartz.

5 On October 11, 2004, the Board issued its Order on Motions dismissing Issues Nos. 2  
6 and 3 from the Petition for Review.

7 On November 19, 2004, The Board held the Hearing on the Merits in Chewelah.  
8 Present were Judy Wall, Presiding Officer, and Board Members Dennis Dellwo and John  
9 Roskelley. Present for Petitioner was Steven Graham. Present for Respondent was Stanley  
10 Schwartz.

11 On December 27, 2005, the Board issued its Final Decision and Order.

12 On January 6, 2005, the Board received Respondent's Motion and Memorandum in  
13 Support of Motion for Reconsideration.

14 On January 7, 2005, the Board received Respondent's Addendum to Motion for  
15 Reconsideration.

16 On January 11, 2005, the Board sent a letter to the parties advising any response to  
17 the Motion, Memorandum, and Addendum for Reconsideration be filed with the Board no  
18 later than January 28, 2005.

19 On January 28, 2005, the Board received Petitioner's Memorandum in Response to  
20 City's Motion for Reconsideration.

## 21 **II. DISCUSSION**

22 The Respondent has requested reconsideration of two parts of the Board's Final  
23 Decision and Order in EWGMHB Case No. 04-1-0009. The portions objected to are as  
24 follows:

- 25 1. The City does not believe it should be required to determine when a  
26 meeting date, time or place is "convenient".
2. The City does not believe it should be "required" to develop innovative  
techniques.

1 The Respondent also requested the Board to take official notice of Spokane County's  
2 Public Participation Policy guidelines, which include similar language to that objected to.

3 The Hearings Boards have repeatedly found that if a plan or policy is a requirement,  
4 then the language used must include mandatory language such as the words "shall and  
5 will". "Use of the word 'should' in a plan does not create a GMA duty; on the contrary, it  
6 provides for non-compulsory guidance, and establishes that a jurisdiction has some  
7 discretion in making decisions." [*Green Valley*, 8308c FDO, at 11. CPSGMHB].

8 The Hearings Board in its December 27, 2005, Decision and Order found that words  
9 such as "may" and "should" were not strong enough in certain places. The language  
10 suggested in that Order was just that, a suggestion. If the City wishes to change the  
11 wording in a different way than that suggested by the Board, they may do so as long as the  
12 words they choose have a mandatory meaning.

13 In Policy D, requirement No. 2 the Board suggested the words "should be  
14 convenient" be changed to "shall be convenient". The City could choose to change these  
15 words to read "the scheduled date, time and place shall be as convenient as possible to  
16 encourage the greatest number of people to attend." This would give the City the discretion  
17 to plan meetings when they feel it would work. The City might even go so far as to set  
18 meetings at different times so that if some cannot come at a specific time, they would have  
19 an opportunity to choose which meeting to attend. This would be an innovative way of  
20 making it work. The Hearings Board does not mean this is what the City must do. Rather,  
21 this is only one of the options that may be considered.

22 Where the City lists "requirements" in their policies, those requirements must be  
23 mandatory.

24 Policy E, Requirement No. 2 of the City of Chewelah's Public Participation Policy  
25 states:

26 Innovative techniques, as appropriate to a specific planning task, should be  
developed and implemented to solicit and document the public's concerns,  
suggestions, or visions for the community. Techniques may include, but are

1 not limited to, surveys, interactive displays, or the innovative use of electronic  
2 communication technologies.

3 The Respondent claims neither RCW 36.70A.140 nor WAC 365-195-600(2) require a  
4 city to adopt innovative techniques or that innovative techniques always be implemented.  
5 The Respondent also claims the City should have the discretion to determine how they plan  
6 for and manage growth, including when and what innovative techniques should be  
7 developed and implemented.

8 The Board agrees. But the City listed as a requirement Policy E, Requirement No. 2.  
9 This "requirement" provides for innovative techniques, as appropriate, which to this Board  
10 means the City does have discretion to decide when and if the action is appropriate. When  
11 the City does decide an innovative technique is appropriate, then the City must follow their  
12 own requirement.

13 The Respondent has further requested the Board to take official notice of Spokane  
14 County's Policy 4 and 5 as they used words such as "may" and "should", and this Board  
15 found their Public Participation Policy compliant. The question of the words "may" and  
16 "should" was never an issue in the cases mentioned. City and County ordinances are  
17 presumed valid unless they are challenged. Since the words "may" and "should" were never  
18 challenged in the case mentioned by the Respondent, they should not be considered  
19 precedence.

20 Because the Hearings Board often takes official notice of other jurisdictions policies  
21 and ordinances it will take official notice of Spokane County Public Participation Plan  
22 guidelines. The Board will, however, decide how much weight it should be given.

23 **Conclusion:**

24 The Hearings Board concludes that the City has the discretion to develop appropriate  
25 language in Policy D, Requirement 2, which would avoid the claimed burden mandatory  
26 language would impose. The City, under Policy E, Requirement 2, is able to develop

1 innovative techniques, as appropriate, thereby again avoiding the perceived burden such  
2 mandatory language would cause.

3 The Hearings Board can take official notice of Spokane County's Public Participation  
4 Policy guidelines.

5 **III. ORDER**

- 6 1. The Hearings Board does not find it necessary to modify the Final  
7 Decision and Order entered December 27, 2005 regarding Policy D,  
8 Requirement 2 and Policy E, Requirement 2. The Respondent's Motion  
9 for Reconsideration is denied.
- 10 2. The Board takes official notice of Spokane County's Public Participation  
11 Policy guidelines.

12 Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of appeal.  
13 Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within 10 days of  
14 service of this Final Order.

15 **SO ORDERED** this 15<sup>th</sup> day of February 2005.

16 EASTERN WASHINGTON GROWTH MANAGEMENT  
17 HEARINGS BOARD

18 \_\_\_\_\_  
19 Judy Wall, Board Member

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21 John Roskelley, Board Member

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23 Dennis Dellwo, Board Member