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

ROBERT PLAYFAIR & HARVEY SAVITZ,

Case No. 04-1-0008

Petitioner,

ORDER ON MOTIONS

v.

CITY OF CHEWELAH,

Respondent.

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I. PROCEDURAL HISTORY

On July 22, 2004, ROBERT PLAYFAIR & HARVEY SAVITZ, by and through their attorney, Steve Graham, filed a Petition for Review.

On August 13, 2004, the Board received Notice of Association of Council from Stanley Schwartz.

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

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 26, 2004, the Board received Petitioner's Amended Statement of Issues and Statement of Standing.

On September 9, 2004, the Board received Respondent City of Chewelah's Revised Index of Record, Respondent City of Chewelah's Motion for Summary Judgment Pursuant to

1 CR 56 and Board Rule, Memorandum of Authorities in Support of Motion for Summary
2 Judgment and Dismissal, and Respondent City of Chewelah's Motion to Submit
3 Supplemental Evidence.

4 On September 16, 2004, the Board received Petitioner's Motion to Allow, and Motion
5 For Dispositive Order Finding Chewelah Out of Compliance and Declaration and
6 Memorandum in Support.

7 On September 21, 2004, the Board received Respondent City of Chewelah's
8 Response to Petitioner's Motion for Dispositive Order.

9 On September 24, 2004, the Board received Petitioner's Motion for More Time to
10 Respond to Motion for Summary Judgment.

11 On September 28, 2004, the Board received Petitioner's Memorandum in Response
12 Chewelah's Motion for Summary Judgment and Dismissal.

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

15 On October 1, 2004, the Board received Petitioner's Reply Brief in Support of Motion
16 to Dismiss.

17 On October 1, 2004, the Board received Respondent City of Chewelah's
18 Supplemental Response to Petitioner's Reply Brief in Support of Motion to Dismiss.

19 On October 4, 2004, the Board received Petitioner's Reply to Chewelah's
20 Supplemental Response.

21 On October 4, 2004, the Board held a telephonic motion hearing in this matter.
22 Present were Board Members Judy Wall, John Roskelley and Dennis Dellwo. Present for
23 Petitioners was Steve Graham. Present for Respondent was Patrick Monasmith and
24 Associated council Stanley Schwartz.

25 II. FINDINGS

26 A. The Amended Statement of Issues is set forth below.

1 **Issue One:** Did the City of Chewelah fail to include the public, or fail to
2 have a **Public Participation Policy (that complies with RCW 36.70A.140)** in effect
3 when all enactments were voted into place, and if so, does that failure invalidate
4 all the enactments?

5 **Issue Two:** Is the City of Chewelah in non compliance with the GMA
6 (particularly 36.70A.040(3)(4)(5), 36.70A.060(3), 36.70A.070, 36.70A.210(2)
7 for having enactments that contradict one another or that are inconsistent?

8 **Issue Three:** Is the City of Chewelah non compliant with RCW 36.70A.070
9 and 90.58.100(3) for creating text changes in the enactments without reflecting
10 them on the maps?

11 **B.** The Board treats a dispositive motion as similar to a Motion for Summary
12 Judgment or a Motion on the Merits in the Appellant Courts according to WAC 242-02-530.
13 Where a motion is brought pursuant to CR 56 the non-moving party is required to submit
14 material issues of fact through affidavit or citation to the record.

15 **C. Issue Number One:** the Board finds that the Petitioner has failed to set
16 forth material issues of fact with respect to the adoption of the City of Chewelah 2003, and
17 2004 Transportation Improvement Program pursuant to RCW 35.77.010 and the City
18 Ordinance 766 relating to an eminent domain proceeding.

19 **D. Issue Number Two:** The Petitioners failed to set forth material issues of
20 fact stating the conflict or inconsistencies between the challenged enactments. Further with
21 respect to Issue Number Two the Board finds that the Issue has been abandoned because
22 the briefing is not adequate pursuant to WAC 242-02-570(1).

23 **E. Issue Number Three:** the Board finds that there is no requirement to adopt
24 a map commensurate with a text amendment. Further, Petitioner did not raise material
25 facts in order to oppose Respondent's Motion for Summary Judgment.

26 **F.** With respect to the 2001 Amendment to the Comprehensive Plan and the
1997 Comprehensive Plan, the Board finds there are material issues of fact concerning
whether or not the amendment and the plan were adopted according to public participation

1 requirements of the Growth Management Act. Accordingly, this issue will be reserved for
2 Hearing on the Merits.

3 III. ORDER

4 Based upon the above Background and Findings it is hereby ordered as follows:

- 5 1. The claims relating to the adoption of the 2003 and 2004
6 Transportation Improvement Plan and Ordinance 766 are hereby
7 dismissed.
- 8 2. The claims under Issue Number One relating to the adoption of the
9 2001 Comprehensive Plan Amendment and the 1997 Comprehensive
10 Plan according to public participation standards set forth in the Growth
11 Management Act are preserved for the Hearing on the Merits.
- 12 3. Claims related to Issue Number Two are dismissed.
- 13 4. Claims related to Issue Number Three are dismissed.
- 14 5. The Hearing on the Merits is re-scheduled for **November 17, 2004,**
15 **at 10:00 a.m.** Mr. Graham will provide the Board and the parties with
16 the location for the Hearing on the Merits by **October 29, 2004.**

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

18 EASTERN WASHINGTON GROWTH MANAGEMENT
19 HEARINGS BOARD

20 _____
21 John Roskelley, Board Member

22 _____
23 Judy Wall, Board Member

24 _____
25 Dennis Dellwo, Board Member