



The City of Othello

500 East Main Street OTHELLO, WASHINGTON 99344 Telephone (509) 488-5686
Fax (509) 488-0102

Type III Development Review Staff Report & Recommendation

Project Name: E. Lee Road Parcel Rezone

Case Types: Zone Change and SEPA review

Location: South of Lee Road, west of 7th Avenue

Project Description: Rezone 40.2 acres from Open Space Urban Reserve to I-1 Industrial. The proposed zoning matches the Comprehensive Plan designation.

Applicant(s): Avista Utilities, Spokane

Contact Person: Todd McLaughlin
509-495-2559
Todd.mclaughlin@avistacorp.com

Property Owner(s): Parcel A
Alfred Jr. and Jodi L. Ochoa
850 N. Broadway Ave
Othello, WA 99344

Parcel B
Avista Corp.
PO Box 3727 MSC-21
Spokane, WA 99220-3727

Zoning: Currently Open Space Urban Reserve
Proposal is to rezone to I-1 Industrial

Parcel Number: Parcel A: 1529030682599 and Parcel B: 1529030682600

Recommendation: Recommend that Council approve

By: Anne Henning, Community Development Director Date issued: December 27, 2018

Agency Review

| Agency Notified | Response Date | Agency Notified | Response Date |
|---------------------------|---------------|--|--------------------|
| Building Dept | None | US Bureau of Reclamation | None |
| Public Works | None | East Columbia Basin Irrigation District | None |
| Police | None | Port of Othello | None |
| Engineering | None | Adams County Development Council | None |
| Fire Dept | None | WA Dept of Archaeology & Historic Preservation | 11-26-18 & 12-7-18 |
| County Assessor | None | WA Dept of Ecology | None |
| Health Dept | None | WA Dept of Fish & Wildlife | None |
| Avista Energy | None | WA Dept of Transportation | None |
| Big Bend Electrical Co-op | None | US Fish & Wildlife | None |
| Northland Cable | None | Yakama Nation | None |
| Cascade Natural Gas | 11-14-18 | Nez Perce Tribe | None |
| Century Link Telephone | None | Wanapum Tribe | None |

Applicable Codes: OMC 2.16 (Hearing Examiner); 13.04 (SEPA); 17.41 (I-1 Industrial District); 17.51 (Open Space Urban Reserve); 17.87 (Amendments); Title 19 (Development Code); City of Othello Comprehensive Plan; RCW 35A.63.170 (Planning and Zoning in Code Cities).

Public Notice:

- Notice of application and public hearing was emailed to agencies and departments, posted at City Hall, and posted on the City website November 13, 2018.
- The land use notice sign was posted on the subject property by the applicant on November 19, 2018.
- The notice of application and public hearing was published in the Sun Tribune on November 21, 2018.
- Notice of the public hearing was mailed to property owners within 300 feet of the site on December 24, 2018.

PUBLIC COMMENT

The following comments were submitted in response to public notice:

None as of the date of this report

PROJECT OVERVIEW

The subject property is 40.2 acres south of Lee Road between the existing I-1 Industrial Zone and 7th Avenue. The property is zoned Open Space. Parcel A is 20.1 acres and contains 2 large cold storage warehouses and vacant land between the warehouses and Lee Road. This vacant land will likely be developed for an additional warehouse eventually. Parcel B is 20.1 acres and contains an agricultural field. Parcel B has recently been purchased by Avista Utilities. Avista intends to use a portion of their property for a substation and possibly other utility-related development in the future. The substation will be a replacement for the one in a hazardous location at the west end of Lee Road. No topographic information is available for Parcel A. Parcel B slopes down from 1116' at the northeast corner to 1100' at the southwest corner. No environmentally sensitive areas have been identified on or adjacent to the site.

The zoning, Comprehensive Plan designation, and uses for the subject and surrounding properties are noted in the following table:

| Compass | Zoning | Comprehensive Plan | Current Land Use |
|---------------|--------------------------------------|---|-------------------------|
| Site Parcel A | Open Space Urban Reserve | Light Industrial (note there is a small strip of undesignated land also) | Cold Storage Warehouses |
| Site Parcel B | Open Space Urban Reserve | Light Industrial | Agriculture |
| North | I-2 Industrial | Mostly Light Industrial with the western strip Heavy Industrial | Agriculture |
| East | Open Space | Light Industrial | Agriculture |
| South | Open Space (then R-2 Residential) | Undesignated (then R-2 Residential) | Agriculture |
| West | I-2 Industrial | I-2 Industrial | McCain Foods |

ENVIRONMENTAL REVIEW

As lead agency under the State Environmental Policy Act (SEPA) Rules [Chapter 197-11, Washington Administrative Code (WAC)], the City of Othello must determine if there are possible significant adverse environmental impacts associated with this proposal. On December 7, 2018, the City issued a **DNS – Determination of Non-Significance**. No adverse environmental impacts were anticipated from the zone change, so no mitigating conditions were deemed necessary.

ZONE CHANGE REVIEW

After the SEPA review, staff then reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts could be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period.

Major Issues

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposal not discussed below comply with the applicable code requirements.

Zoning Amendment Codes, Laws, and Circumstances (Land Use):

Finding 1 – Required Findings – While the designated hearing body for a zone change has been superseded by Title 19, OMC 17.87.020(3) still contains the criteria for reviewing a zone change request: Is the zone change request in the public interest, does it benefit the public welfare of the community, and is it consistent with the city’s zoning scheme? If so, the zone change should be approved.

Finding 2 – Intent of Zone – Per OMC 17.51.010, Open Space Urban Reserve lands serve in a temporary function as open space until needed for urban development. Uses are restricted to agriculture until the full range of urban services are available.

Finding 3 – Utilities – There is a water main in Lee Road but no sewer main.

Finding 4 – Current and Planned Uses – Parcel A is already partially developed with a use (warehouses) that is more appropriate in the I-1 Zone than in the Open Space Urban Reserve Zone. No agriculture has been taking place recently on Parcel A. The proposed use of Parcel B (electrical substation) is also better suited to I-1 than to Open Space.

Finding 5 – Comprehensive Plan – The Comprehensive Plan Current Zoning & Growth Area Map shows this site as Light Industrial, which corresponds to the I-1 Industrial Zone. It is unknown why there are small portions of undesignated property. It seems likely these were mapping errors caused by extending straight lines.

Finding 6 – Rezone Process – The OMC has several internal conflicts, as well as conflicts with state law on how a site-specific rezone should be processed. Staff will work on correcting these, but for now we must deal with them as written. OMC 17.87.020 assigns the Planning Commission to hold the public hearing and make a recommendation to the City Council for all amendments and zone changes. This chapter was adopted in 1995. OMC 2.16.090(e), stating the powers of the Hearing Examiner, adopted in 2009, states that the Hearing Examiner is empowered to hear and decide any and all rezones which are not of general applicability. As a later adoption, 2.16.090 should supersede 17.87.020. In addition, OMC 19.09.050(a)(7) states that the Hearing Examiner is the hearing body for Type III quasi-judicial applications, and (b) goes on to specify the review process, including a written decision. Since OMC 19.01.020 specifically states that “This title of this code shall supersede other titles, chapters and sections of this code where conflict exists”, it should supersede the Planning Commission process in 17.87. However, per 19.09.020(b), “If this title or this code provides that a proposed development is subject to a specific type of review, **or a different review procedure is required by law**, then the application for such development shall be processed and reviewed accordingly.” Per RCW 35A.63.170(2)(c), authorizing a hearing examiner system, the decision of a hearing examiner may be given the effect of a final

decision of the legislative body, **except in the case of a rezone**. Therefore, while the Hearing Examiner rather than the Planning Commission holds the public hearing for a rezone not of general applicability, in order to comply with state law, the Hearing Examiner should issue a recommendation to the City Council, and the Council will take the final action by ordinance.

Conclusions (Land Use): Staff concludes that the proposed project can meet applicable OMCs, the City’s Comprehensive Plan, state law, and makes adequate provisions for public health, safety, and welfare as follows:

Conclusion 1 – Required Findings –By making the zoning designation consistent with the current and proposed uses, the zone change request in the public interest and it benefits the public welfare of the community. The rezone also makes the zoning consistent with the city’s zoning scheme as reflected in the Comprehensive Plan map.

Conclusion 2 – Intent of Zone – The land proposed for rezoning no longer meets the intent of the Open Space Urban Reserve zone. The land is ready or has already been developed so no longer needs to be held in reserve.

Conclusion 3 – Utilities –The existing and proposed uses do not require sewer service so can be developed even in the absence of a public sewer main.

Conclusion 4 – Current and Planned Uses – The current use of Parcel A and planned use of Parcel B are consistent with the proposed I-1 Industrial Zone and inconsistent with the existing Open Space Urban Reserve Zone.

Conclusion 5 – Comprehensive Plan – The Comprehensive Plan Current Zoning & Growth Area Map shows this site as Light Industrial, which corresponds to the I-1 Industrial Zone.

Conclusion 6 – Rezone Process – To be consistent with state law and the more recent OMC sections, the most correct process for the rezone is for the Hearing Examiner to hold the public hearing and make a recommendation to the City Council on whether to approve the rezone. The City Council will then make the final decision. If approved, the rezone must be adopted by ordinance, which can only be done by the City Council.

Washington State Department of Archaeology and Historic Preservation (DAHP):

Finding 1 – Based on DAHP review, their professional opinion is that the project area has the potential to contain archaeological resources. Further, the scale of the proposed ground disturbing actions would destroy any archaeological resources present. Identification during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resources. Therefore, they recommend a professional archaeological survey prior to ground disturbing activities. They also recommend consultation with the concerned Tribes’ cultural committees and staff regarding cultural resource issues.

If any federal funds or permits are associated with this proposal, Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR 800, must be followed. This is a separate process from both NEPA and SEPA and requires formal government-to-government consultation with the affected Tribes and the SHPO.

DAHP requests any correspondence or comments from concerned tribes or other parties concerning cultural resource issues.

Finding 2 – The applicant’s representative submitted a written response to DAHP’s comments. DAHP submitted an email in response, clarifying that there are no concerns for cultural resources being impacted at the rezone stage, only in the future with ground disturbance.

Conclusion (Department of Archaeology and Historic Preservation): The Department of Archaeology and Historic Preservations does not have concerns on the rezone, only in the future when ground disturbance is proposed. The project can address those concerns at the time of development.

Cascade Natural Gas:

Finding 1 – Cascade Natural Gas has gas mains in proximity to the subject property.

Finding 2 – The applicant’s representative submitted a written response to Cascade Natural Gas’s comments. He stated that they were aware of one of the mains and that a utility locate will be completed prior to any development on the site.

Conclusion (Cascade Natural Gas): The project can address Cascade Natural Gas concerns at the time of development.

RECOMMENDED CONDITIONS OF APPROVAL

None – Conditions are not appropriate for a rezone

PROCESS AND APPEALS

This report to the Hearings Examiner is a recommendation from the Community Development Department for the City of Othello, Washington.

The examiner may adopt, modify or reject this recommendation. The examiner will render a recommendation within 14 calendar days of closing the public hearing. The examiner’s recommendation will be forwarded to the City Council for a decision. The City will mail a copy of the Council decision to the applicant and all parties of record.

The decision may be appealed to the superior court of Adams County by the applicant or any “Party of Record”. To qualify as a party of record, you must have submitted written comments or a written request to be identified as a Party of Record prior to the closing of the record.

An accurate mailing address for those submitting comments must be included or they will not qualify as a “Party of Record” and, therefore, will not have standing to appeal the decision. An appellant must submit an appeal to the superior court of Adams County within 30 calendar days after the written decision is mailed.

Refer to OMC 19.11 for the appeal process.

| |
|-----------------|
| EXHIBITS |
|-----------------|

| | Document | Pages |
|-----------|---|-------|
| Exhibit 1 | Staff Report | 7 |
| Exhibit 2 | Land Use Application received 11-9-18 (Receipt; Application form; Appendix A: Maps, including aerial photo and location of site on Comprehensive Plan Current Zoning & Growth Area Map; Appendix B: Property Owners; Appendix C: Property Owner and Authorization; Statutory Warrantee Deed) | 11 |
| Exhibit 3 | Environmental review documents (DNS issued 12-7-18; SEPA Environmental Checklist submitted 11-9-18; DNS agency routing email; letter to proponent about DNS) | 21 |
| Exhibit 4 | Public Notice documentation (Notice of Completeness; Notice of Application document that was provided to agencies and posted onsite, at City Hall, and on the City website; agency routing email; onsite posting affidavit; newspaper notice and confirmation; screenshot of Land Use Notices page of website; public hearing notice that was mailed and list of names and addresses of owners within 300’ that the notice was mailed to) | 14 |
| Exhibit 5 | Comments received (Cascade Natural Gas 11-14-18 email; DAHP 11-26-18 letter; DAHP 12-7-18 email) | 3 |
| Exhibit 6 | Applicant responses to comments received (12-7-18 letter from Todd McLaughlin; Cultural Resources Inadvertent Discovery Plan) | 3 |
| Exhibit 7 | Zoning Map (9-26-17) | 1 |