

City of Othello  
Regular Council Meeting  
January 26, 2009

**CALL TO ORDER:**

Mayor McKay called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Present: Mayor Shannon McKay, Councilmembers: Eleanor Brodahl, Ken Caylor, Dan Dever, Kenneth Johnson, Mark Snyder, Marc Spohr, and Tim Wilson.

Also Present: City Administrator Ehman Sheldon; Department Heads: Mike Bailey, Police Chief Steven Dunnagan, Debbie Kudrna, Jay Van Ness; and City Attorney James Whitaker.

**CITIZEN INPUT**

Mr. Dave Sperl spoke on behalf of the Beautification Committee. He advised there is a City ordinance relevant to weed control and height of weeds. He stated that Puncture Vine never gets 12" in height and does not seem to fit the noxious weed chapter of the municipal code. He has been voluntarily trying to control weeds in alleys and lots. Mr. Sperl advised that Puncture Vine is listed as a noxious weed by Adams County. Mayor McKay stated that because Adams County defines it as a noxious weed, we may be able to address it.

**APPROVAL OF AGENDA**

Council carried a motion to approve the agenda. M/S Wilson/Brodahl.

**CONSENT AGENDA:**

- A. Approval of City Council Workshop Minutes of January 5, 2009
- B. Approval of City Council Minutes of January 12, 2009
- C. Approval of Accounts Payable Checks

Accounts Payable was audited and certified by the Auditing Officer, as required by RCW 42.24.080; and those expense reimbursement claims certified and as required by RCW 42.24.090, have been recorded on a listing that has been reviewed by the Council audit committee and is available to the Council.

Expense Claim Check No. 36058 to No. 36075 in the amount of \$6907.98 (Dec. 21, 08).  
Expense Claim Check No. 36076 to No. 36115 in the amount of \$266,467.00 (Jan. 26, 09).

Council carried a motion to approve the Consent Agenda as presented. M/S Johnson/Snyder.

**PUBLIC HEARING REGARDING PROPOSED ORDINANCE CREATING OMC CHAPTER 13.08  
ENTITLED "CRITICAL AREAS" AND REPEALING OMC 13.06 ENTITLED "CRITICAL AREAS AND  
NATURAL RESOURCE LANDS"**

Mayor McKay opened the public hearing at 7:08 p.m. City Planner Darryl Piercy presented a draft ordinance regarding critical areas. He explained that in 2002 City staff began working on the critical areas ordinance. Staff presented a draft ordinance to the Planning Commission and there were lengthy discussions on the definition of wetlands. In 2006 the Council authorized procurement of a grant from the State of Washington, which allowed the hiring of a consultant to move forward to review the critical areas ordinance. Another draft ordinance was revised, which was reviewed by the Planning Commission and the State. Based upon those comments, a new draft ordinance was discussed with the Council in April 2007. The Council forwarded the issue to the Planning Commission and they again conducted a series of workshops and a public hearing was held in July 2007. Changes were made to the draft ordinance and discussed again with the State. He has also reviewed the critical areas ordinance with City staff and State Representatives. The draft ordinance has been through a lengthy and extensive public process and the proposed ordinance brings the City into compliance with RCW 36.70A. Mr. Piercy advised that although Adams County does not fall under the Growth Management Act, we are required to adopt a critical areas ordinance under the State legislation.

City Planner, Darryl Piercy explained the ordinance provides an opportunity to set policy of key statements and important elements relevant to critical areas. It also includes a legal reference to

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best available science and a statement regarding allowable reasonable use of property. The document clearly states there currently are no critical areas within the City limits. If we were to annex property that had critical areas, the ordinance provides regulations of how that property could be developed. There is very little long term impact to current property owners because there are no critical areas within the City limits. Mr. Piercy explained that because the State has reviewed it, we believe it meets all of the State requirements. The areas that the critical ordinance covers include: frequently flooded areas; offer for recharge areas; geographically hazardous areas; fish and wildlife conservation areas and wetlands.

Mayor McKay asked for public comments. There were no comments. Mayor McKay asked for Council comments. Councilmember Caylor stated that he and several others attending tonight's meeting were on the original committee that worked on it for 2 ½ years. The proposed ordinance has been reformatted into a good package. He agreed that Othello does not have critical areas, although as areas are annexed, there is that possibility. He noted that all wetlands are clearly specified and areas that appear to be wetlands may not technically meet the classification for wetlands. Councilmember Spohr asked if the ordinance adequately protects the rights of true wetlands. Mr. Piercy stated that it does because it clearly defines a wetland and should a wetland be discovered on land being considered for development the platting process allows a thorough review and any portion of property constrained by wetlands would not be a part of the plat. Wetlands are protected and the regulations clearly favor wetlands, once they are identified. If property is completely unbuildable, based upon the critical areas provisions, there is a provision to allow reasonable use of all lands. Mr. Piercy advised that the ordinance excludes areas created from any types of irrigation systems and artificial wetlands, unless it is an artificial wetland that was created for mitigation purposes. It allows an analytical process to determine whether an area is a wetland and determine what the source of the water is. Wetland areas that are formed from a manmade occurrence would not meet the definition of a wetland. Mr. Piercy advised that a professional hydrologist would determine the source of water in a suspected wetland area and whether the land met the requirements of the definition of a wetland under the code. Based upon that determination the City would apply the appropriate regulations. Councilmember Spohr said that he feels if it's a wetland area formed from natural or irrigation, it should be maintained as a wetland area and asked that certain language be stricken from the proposed ordinance. Mayor McKay advised that it should not be stricken to protect farm land.

Bob Carlson stated that he was on the original committee and they worked hard to exclude regulation of farm land. They found an Attorney General's opinion that water from Crab Creek becomes a federal water right and we have no rights regulating federal waters. He advised that the committee wanted to not regulate any artificial wetlands. If land was wet prior to 1950 it is classified as a wetland, if it got wet after that date it is not.

City Attorney Jim Whitaker explained that people who disagree with a decision made regarding designation of wetlands will have the right to obtain an administrative appeal process.

Councilmember Spohr stated that there are areas that have wet cat tails year round, support wildlife and fish; in which he does not want those areas to be filled in by developers. Mr. Stoker explained that the committee worked hard to exempt irrigation drains, seep lakes, recreation areas, and cat tail areas that are already mapped and existing. The ones they were concerned with were areas that may become wet and were not mapped; it was a challenge to protect the property rights of those land owners. The intent was to find those areas that are already wet lands and map those, even though some of them were artificial. Councilmember Spohr asked if the area around Rodeo Lake and if the cat tails by the dog pound are mapped. Mr. Stoker noted that he can not remember all of the areas that are mapped and hypothetically a citizen could make a case that Rodeo Lake could be drained since it was dry in the 1950's. Councilmember Caylor explained that the committee reviewed the Rodeo Lake area extensively, including draining the lake. In the late 50's Rodeo Lake used to be pumped out to keep the water down. Adams County installed a drainage infrastructure to take care of the water level and it is now designated as a lake. Councilmember Brodahl asked if the areas west of the industrial area in the south city limits are

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designated wetlands. Mr. Sheldon advised that these are all areas that were reviewed by the committee and without the map it would be difficult to advise if a certain area was designated as a wetland, although there are no wetlands within the city limits. Councilmember Caylor stated that when the City installs infrastructure in the southwest area of the city; the seepage areas may disappear. Mayor McKay advised that the Bureau of Reclamation has drained most of the areas that were getting wet and there are still areas not intended to be defined as wetlands that they are still working on. Councilmember Caylor stated that the last two areas annexed into the City may have potential problems, although there is an underground drain system installed at the property east of Hwy 17. When development occurs, we need to assure that they do not plug those drain systems. Councilmember Snyder stated that when he was on the Planning Commission they discussed potential wetlands at the location east of Hwy 17 and SR 26. Mr. Stoker stated that all of the irrigation drains, head ditches, and laterals are mapped out and designated as wetlands.

Mayor McKay asked for additional staff comments. There were none. Mayor McKay closed the public hearing at 7:41 p.m.

**ORDINANCE CREATING OMC CHAPTER 13.08 ENTITLED "CRITICAL AREAS" AND REPEALING OMC 13.06 ENTITLED "CRITICAL AREAS AND NATURAL RESOURCE LANDS"**

Council carried a motion to adopt AN ORDINANCE CREATING OTHELLO MUNICIPAL CODE CHAPTER 13.08 ENTITLED "CRITICAL AREAS" AND REPEALING CHAPTER 13.06 ENTITLED "CRITICAL AREAS AND NATURAL RESOURCE LANDS". M/S Johnson/Wilson. Councilmember Spohr cast an opposing vote. This shall be known as Ordinance No. 1288.

**MODIFICATION TO BUILDING PERMIT FEE SCHEDULE**

City Planner Darryl Piercy presented a modification to the fee schedule for building plan reviews. He explained there are two fees associated with the issuance of a building permit: a fee for a plan review and a fee for a building permit. A building permit fee generally includes both components. The plan review fee is 65% of the total building permit fee. The plan review fee covers the cost for review of the application (currently performed by SAFEbuilt and billed to the City.) Upon completion of review, the applicant pays the fees for the plan review and the building permit fee. Generally, deposits are collected to cover the costs of a plan review. In the event a building permit is not issued, the deposit would cover the costs incurred by the City for the plan review. If there were additional costs, the applicant would be billed for those costs and if the costs were less than the deposit, the applicant would be refunded appropriately. Councilmember Caylor advised the plan review fee is appropriate. Mr. Piercy explained that the plan review deposit fees were developed from an average based on the best estimate of the value of the building permits issued by the City in past few years. The building permit fees are based upon the value of construction using the tables in the International Building Code.

Council carried a motion to approve A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OTHELLO, WASHINGTON ESTABLISHING A DEPOSIT FOR BUILDING PERMIT PLAN REVIEW. M/S Dever/Caylor. This shall be known as Resolution No. 2009-01.

**CONTRACT FOR SERVICES FOR CITY WIDE ELECTRICAL SYSTEMS WITH BERK'S REFRIGERATION**

Municipal Services Coordinator Jay Van Ness reported that Berks Refrigeration has had previous agreements with the City to maintain and install the City traffic telemetry system and electrical work on City property and buildings when we need the assistance of a licensed electrician. The contract includes a fee of \$70 per hour, not to exceed \$400 per task, unless approved by the City. Public Works is training an employee to maintain the traffic telemetry system.

Council carried a motion to approve the contract with Berks Refrigeration for the City's electrical needs. M/S Caylor/Snyder.

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**CONTRACT FOR WEED SPRAYING SERVICES**

Municipal Services Coordinator Jay Van Ness advised that Double R Spraying has provided the City with spray services for several years, and noted that he has received numerous comments from citizens about how good the weed control has been. The agreement for Double R Spraying is budgeted for \$21,000, with an additional \$9,000 for spraying done by our licensed staff. The only change is the cost for Round Up, which has increased to \$39.00 per gallon. The hourly spraying service rate has remained at \$66.00 per hour. Mayor McKay stated that an earlier comment from Mr. Sperl's about Puncture Vine control is a code enforcement issue.

Council carried a motion to approve the agreement with Double R Spraying for the maintenance of noxious and nuisance weeds. M/S Johnson/Dever. Councilmember Spohr cast an opposing vote.

**AN ORDINANCE AMENDING OTHELLO MUNICIPAL CODE SECTION 3.02.050 OF CHAPTER 3.02 ENTITLED “UTILITY-OCCUPATION TAX AND LICENSING”**

Finance Officer Mike Bailey explained that he received a call from a representative from Qwest relevant to the language in OMC 3.02.050(a). Based upon that discussion, staff recommends adoption of the ordinance, which clearly defines that a utility tax will be imposed upon the gross income upon a list of certain persons and businesses.

Council carried a motion to approve AN ORDINANCE AMENDING OTHELLO MUNICIPAL CODE SECTION 3.02.050 OF CHAPTER 3.02 ENTITLED “UTILITY-OCCUPATION TAX AND LICENSING”. M/S Wilson/Brodahl. This shall be known as Ordinance No. 1289.

**UNFINISHED BUSINESS**

Councilmember Spohr asked if Council could receive a report from GWMA relevant to their philosophy of where the water for our aquifers originates from. Mayor McKay advised that Mr. Stoker will be asked to attend a Council workshop to discuss this in detail.

**NEW BUSINESS**

Mayor McKay made the following announcements:

- The Othello Chamber banquet is Thursday, January 29<sup>th</sup> at the High School Corridor. Kristi Spohr has been named teacher of the year.
- The Fire Department banquet is Saturday, January 31<sup>st</sup> at the Eagles Lodge and Mayor Pro Tem Wilson will represent the City.

**ADJOURNMENT**

With no further items to discuss, Mayor McKay adjourned the Council meeting at 8:02 p.m.

By: \_\_\_\_\_  
SHANNON MCKAY, Mayor

ATTEST:

By: \_\_\_\_\_  
DEBBIE L. KUDRNA, City Clerk