



# LAKE PEND OREILLE WATERKEEPER®

*Our Lake for Life*

September 10<sup>th</sup>, 2021

**TO:** City of Sandpoint Planning & Zoning Commission:

Jason Welker, John Hastings, Cate Huisman, Tom Riggs, Slate Kamp, Mose Dunkel,  
Forrest Schuck

Sandpoint City Council:

Shannon Sherman, Deb Ruehle, Joel Aispuro, John Darling, Kate McAlister, Andy Groat

City of Sandpoint Staff:

Jennifer Stapleton, Amanda Wilson

City of Sandpoint Mayor:

Shelby Rognstad

**RE: Amendments to Sandpoint City Code - Title 9, Zoning, Chapters 1 and 2**

The Lake Pend Oreille Waterkeeper (LPOW) would like to thank the City of Sandpoint Planning & Zoning Commission for postponing the decision to adopt the above referenced code modifications on September 7th.

As many of you know LPOW is a 501(c)3 non-profit organization that works to protect the water quality of Lake Pend Oreille (LPO), the Pend Oreille River and their associated waterways. While the overall water quality of LPO is considered to be in a healthy state, we all need to stay vigilant in advocating for clean water in order to prevent the degradation of our precious aquatic resources.

Unfortunately we have seen the decline of LPO's nearshore waters as indicated in DEQ's 2015 TMDL, which shows overloading of nutrients and excessive algae growth in various parts of the lake. Multiple algae blooms this summer season are also an indicator of the degradation of our lake's in water quality and an algae bloom in Sand Creek would certainly have a devastating impact on swimming at City Beach. Development along our shoreline lacking vegetative buffers and new filtration technologies for stormwater will inevitably lead to additional nutrients being added to our waterways.

The laws pertaining to what we can and cannot do with regard to development along our shoreline are critical to the protection of water quality, and should be exhaustively thought through prior to adoption. Stormwater is currently one of the largest sources of pollutants in our watershed and needs to be addressed. Taking a hard look at language and anticipating the type of development it inhibits and/or promotes can often be an arduous task. Time frame considerations can also be challenging. Most of the time we can predict with reasonable certainty what development will occur within the next 5 years, but it is increasingly difficult to understand what the ramifications of our actions will be 25-50 years into the future.

Currently, Title 9, Chapter 2, 1-4 Building Setbacks Table under Setback from Sand Creek states:

*Structures along Sand Creek shall maintain a 25 foot vegetative setback from the high water mark of the creek as established at full summertime pool elevation of 2,062 feet. Uncovered porches and pervious decks may encroach into this setback a maximum of 15 feet. Structures utilizing this encroachment shall maintain permeable erosion control material on any area encroached upon. A maximum 5 foot improved pervious sidewalk to any pedestrian pathway connecting to Sand Creek is exempt from the vegetative buffer requirement.*

As written, water quality protections appear enforceable for the entire shoreline of Sand Creek by maintaining a 25' vegetative setbacks, which we all know is critical to protecting water quality. What limited structural improvements allowed within this language would need to be constructed with permeable surfaces and those encroachments are also limited to 15'.

We have been told that the ordinance, as written, could possibly be ruled in court as a "taking" of personal property rights and presents a liability to the City. Keep in mind that this is not any different than Bonner County's 40' vegetative setback, or the average 75' vegetative setback many counties throughout the State of Idaho and the Pacific Northwest enforce. There are also setback issues restricting what you can and cannot do within them that every property is bound to, how is this different? Nonetheless, if the City feels it necessary to make modifications due to foreseen liability issues, the language developed should either maintain or increase the current level of water quality protections.

Water quality protections and enhanced stormwater technologies have been a part of the community conversation for sometime. The following excerpt is language the City used in its first \$25,000 grant that was gifted from the LOR Foundation in 2017:

*The City of Sandpoint acquired this critical piece of waterfront property in 2015 with the primary intent of managing and treating the storm water runoff from our downtown, controlling ongoing bank erosion, and to enhance bicycle and pedestrian connectivity within the area. Currently, treatment of stormwater from the downtown core is handled by one small oil-water separator, which discharges directly into Sand Creek. The primary goal of this project is to determine the best ways in which to ameliorate stormwater discharge into Sand Creek, as well as improve the overall environmental impact on the*

*area due to steady increases in population, recreational use, and economic vitality within the downtown core.*

LPOW is in full support of this effort but we are becoming increasingly concerned that the proposed language recommended for adoption is drifting from the original intent. As justification for the change, we've been told, the single most important concern from the City's perspective is the development of Farmin's Landing and that the current design is unbuildable as defined by the code above. If in fact this were the case, one possible solution may be to simply "exempt municipally owned properties". There are only two such properties within the Downtown Waterfront, owned by the City of Sandpoint and Bonner County.

If for additional reasons the City wishes to amend the code, it should at a minimum ensure 3 things:

1. In 25-50 years Sandpoint will be left with the types of development that serve our community in a sustainable manner.
2. Water quality protections are enhanced by adoption of more stringent regulations.
3. Private developers are incentivized to fund and construct public access along their waterfront.

In reviewing the proposed changes, if adopted, all of the water quality protections would be contained in item E-2:

*E. All structures, except buildings, such as: bridges, boardwalks, storm water systems, plazas, walkways, access stairways and features, moorage facilities, stream stabilization, art features, and other functionally dependent water uses as defined by FEMA:*

- 1. May be constructed below the applicable high water mark (AHWM or OHWM), as permitted by federal and state regulations and upon issuance of Conditional Use Permit;*
- 2. May be constructed above the applicable high water mark (AHWM or OHWM), as permitted by the **Sandpoint Stormwater Ordinance** to protect or enhance water quality*

By just referring to the Sandpoint Stormwater Ordinance, in it of itself does not necessarily enhance our protections regarding water quality. While the ordinance is well written and speaks to surface and groundwater protections, it is really geared towards upland construction and not necessarily focused on shoreline development. It does not speak to vegetative buffers or pervious surfaces, elements critical to protecting water quality. A recent example of this is the structural work performed at Spud's Waterfront Grill on 1st Ave. Below, you will see an entirely new structure, built **below** AHWM, with a solid concrete patio and no pervious surfaces or vegetation of any kind for filtration of runoff, all draining directly to the creek.



Public walkway along Sand Creek



New patio, no pervious surfaces or vegetation

In addition to water quality, allowing structures along the AHWL north of the Cedar Street Bridge without any design review or regulations on retaining wall heights, required landscaping, building materials, etc. leaves our community vulnerable to ill conceived projects with no recourse. There are approximately 20 individual parcels with commercial zoning between the Cedar St. Bridge and just north of the Highway 95 bridge. With the proposed language, every parcel on Sand Creek could potentially be completely denuded and left with a retaining wall of unlimited height right down to the shoreline. While it is unlikely we would be faced with this, it seems prudent to take the time necessary to develop a comprehensive strategy for properties adjacent to such a valuable amenity and resource, and to not rush through the process because a municipality needs to construct a single project that has been in the works for a number of years.



Photo looking north up Sand Creek from the Cedar Street Bridge

There are a variety of ways in which communities protect themselves from poorly designed projects adjacent to their waterways. Boise created a Waterways Overlay District to impose restrictions on different areas and types of waterways (see attached). A Conditional Use Permit (CUP), or even a Planned Unit Developments (PUD), could be implemented for projects of a certain nature, within the 25' setback, and serve as a mechanism to ensure quality projects, provide greater protections around water quality, and incentivize development of public access at developer expense.

In summary, there are a variety of methods that could, and are, being utilized by other waterfront communities to help promote sustainable shoreline development in addition to adding greater protections for water quality. We strongly believe that a simple solution is available to alleviate the perceived concerns surrounding the construction of Farmin's Landing, and a much more comprehensive effort to explore the best fit for a long standing shoreline regulation for all of Sand Creek is prudent at this time. We appreciate the City's efforts to promote public access and enhance our waterfront; however, we would strongly recommend the Sandpoint Planning commission hold several workshops on the matter to better engage the community, while simultaneously seeking the simplest solution to construct Farmin's Landing.

Feel free to contact me anytime if you have any questions or would like to discuss the matter further.

Sincerely,

**Steve Holt**

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