

HLWA 5/9/23 Code Enforcement Workshop Meeting Notes, by Jan Wilkins, President, HLWA

In the last few years, there have been repeated events where building or development projects have dumped tons of runoff sediment into Hayden Lake. Erosion and sedimentation threaten adjacent properties, degrade property values, wash sediments off property and into the waterways, compromise drinking water systems, accelerate trophic evolution, and set up chain reactions leading to toxic algal blooms.

It is a failure by the county to recognize inadequate sediment control plans, as well as a failure by the county, the DEQ, and IDL to enforce existing codes meant to protect water quality and shoreline integrity.

The purpose of the workshop was to discuss code enforcement issues in Kootenai County, in particular reducing shoreline degradation. We also wanted a clearer understanding of the multi-jurisdictional responsibilities, where and when state or other county agencies supplant or support county enforcement responsibilities. We hoped to explore citizen and business support to improve outcomes.

There were 23 attendees from governmental agencies, the construction and engineering sectors, and members of county-wide citizen organizations.

A PowerPoint presented by VP Will Neal, graphically illustrated recent examples of chronic problems. They included photos of a neighbor's home sliding into the open pit of a construction site which was excavated too close to the property line, a failed development stormwater plan that resulted in dense sediment plumes reaching a mile down lake, and stream re-routing resulting in damage to downhill lots. In addition, the group reviewed photos of a driveway for a new build putting sediment directly into the lake, intrusion into the lakeshore buffer area with permanent structures, boat wake caused erosion and dock damage, and prolific weed blooms in the north arm and elsewhere around the lake.

HLWA identified 5 major problems for discussion:

- 1.) Violations are identified only through public reporting. Neighbors are sometimes threatened if they report or complain.
- 2.) Matters of jurisdiction complicate reporting violations. Situations fall through the cracks between and within agencies.
- 3.) Contractors and Developers are not held accountable. There should be exacting consequences that compel compliance, swift and stiffer penalties.
- 4.) Plans are not reviewed by folks with relevant expertise, and plans are approved that should not be.
- 5.) Poor communication, follow-through, and lack of transparency have eroded trust in enforcement.

Kootenai County Director of Community Development David Callahan commented that there is a 30-year history of the county's inadequate enforcement practices. He is hopeful that the decision makers are willing to listen to a change of approach. The problems as he sees them:

- 1.) Plans approved are not always truthful. (He estimates this is the case 5-10% of the time). Whether it is ineptitude or dishonesty, the consequences can cause a lot of damage, and waste valuable resources. To alleviate this problem, he would like to hire a professional engineer or landscape architect for his staff to review site disturbance plans before they are approved. This individual would also do site inspections to confirm compliance.

Attendees Input:

- 1.) Why do we allow these folks to keep operating? Can't the county revoke their privileges?
- 2.) For repeat offenders have a higher expense built into to the permit fee for an independent review by a county selected engineer than for non-repeat offenders. If the county is able to hire a full-time engineer, that person's salary could be paid in part by these fees.
- 3.) Whether it is a county selected consultant, or a county employed engineer, there should be a review fee built into the permit fees to offset this additional review, for all applications, not just repeat offenders.
- 4.) Build progress inspections costs into the permitting fees of repeat offenders. "Flagged offenders need closer ongoing scrutiny."
- 5.) Require that the PE who signs off on the plans has actually been to the site. Require that owners pay for occasional visits by the PE to the worksite once the contractor takes over to be sure that plans are being followed.
- 6.) Design Professionals submitting these plans should be licensed for site disturbance contracting.

2) Mr. Callahan also observed that the financial penalties for non-compliance are so minor that many builders build them into their construction costs, fully intending to ignore red tags or enforcement efforts. They then "beg forgiveness" when they need the C.O. and pay the fines. The maximum fine is \$20,000, His solution would be to create a new fine structure of \$1,000.00 a day. (With no maximum.). He feels that word would get out on the street that failure to comply will be much more costly, and it would lead to greater compliance.

Attendees input:

- 1.) Have an escalating fine structure; example: week one, \$1,000/day, week two, \$1500/day, etc. Also, with no maximum.
- 2.) Consider requiring performance bonds for repeat offenders. (The director of the Lakes Highway District has this authority and has used it on occasion.)

3) Mr. Callahan is going to make recommendations for changes in the minor subdivision policy that was changed in 2016 to make minor subdivisions easier. Now developers are cobbling together as many as 14 minor subdivisions and avoid the planning and engineering that would be required for a major subdivision.

4) Mr. Callahan expressed disappointment that the building department has no policing authority. Severe violations that lead to a lawsuit need to be heard in District court, rather than a municipal court, (which would be faster.) The county attorney has a full docket and code violations are not given precedence. He estimates that there are 500 legitimate complaints a year, and about 100 are BIG problems, but there is no arm of the county equipped to stop them.

Attendees input:

- 1.) Can the fines be tied directly to the owner, not the owner's agents?
- 2.) Add language to permitting process that states that county legal fees will be paid by applicant in the event that legal action is required to ensure compliance.
- 3.) Do we need more than one county attorney at the rate this county is growing?
- 4.) Is there a way to pre-qualify contractors that is less onerous than a performance bond? (i.e., SEEP training, etc.)

Other Suggestions from the Attendees:

- 5.) Create Overlay zones for all areas of the county to show sensitive areas, due to slope, proximity to waterways or riparian areas, etc. If an overlay zone is applicable during the application process, Professional Engineers with extra area of licensing expertise would be required. Apparently, this idea has been considered by planning commissions in the past - maybe it's an idea that could get some traction now. DEQ made the commitment to supply them - were they ever sent? It may also mean that there would be higher initial fees for oversight.
- 6.) David C also observed that hazardous areas are not currently identified and should be one of the overlays. He thinks the time may be right to ask for these things now. The highway district said that they have the NS4, which is their version of sensitive area overlay used in the road approval process.
- 7.) Create a method for reporting violations that can be anonymous and protect neighbors from retribution. Could it be done on-line? Could the WID or another agency be the entity launching the complaint, and protect the identity of the reporter?