

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
OCTOBER 12, 2009 – SPECIAL SESSION**

The Board of Island County Commissioners met in Special Session on October 12, 2009 beginning at 6:00 p.m. at the Freeland Hall, 1515 Shoreview Drive, Freeland, Washington. The purpose of the Special Session was to consider adoption of Ordinance C-101-09/R-41-09 or Ordinance C-118-09/R-47-09, both of which concern restricting discharge and use of firearms on Island County-owned Deer Lagoon property. John Dean, Chairman, Helen Price Johnson, Member, and Angie Homola, Member were present.

Attendance: Approximately 71 members of the public and press

County Staff: Bill Oakes, Public Work Director; Steve Marx, Assistant Public Works Director; Elaine Marlow, Clerk of the Board; Debbie Thompson, Executive Assistant

The following, as a result of the proposed ordinance and public hearing, are on file with the Clerk of the Board:

- *Attendance sheets*
- *Special Session Notice*
- *Public comments received via e-mail and mail*
- *Power Point Presentation*
- *Public hand-outs and written statements*

Chairman Dean called to order the Special Session of the Board to consider the adoption of Ordinance C-101-09/R-41-09 or Ordinance C-118-09/R-47-09, both of which concern restricting discharge and use of firearms on Island County-owned Deer Lagoon property. The Special Session, he said, follows one held on September 21 on a first proposal, Ordinance C-101/09, which would restrict the discharge and use of firearms to an area generally in the center of Deer Lagoon. The Board of County Commissioners took no action on September 21 and kept the record open until tonight.

In addition to that ordinance, the Board will also consider a new proposal, Ordinance C-118/09, which would prohibit the discharge and use of firearms on the Island County-owned Deer Lagoon property, so delineated in the proposed ordinance by legal description.

Bill Oakes, Public Works Director, provided a Power Point presentation which included an aerial photograph of Deer Lagoon showing County property as 379 acres, extending into tidelands, and including the two dikes.

Firearms regulations related to hunting, he said, are controlled by the State. The County is provided a very narrow authority to control the discharge of firearms. There is an existing section of Island County Code, Chapter 9.06, which addresses the issue and sets out restrictions for the discharge of firearms. The discharge of firearms is generally allowed on County property, outside of cities and towns, unless it is designated as a non-motorized trail or is specifically regulated; i.e., there are three lakes in the existing code where the discharge of firearms is restricted: 1) Lone Lake, 2) Goss Lake, and 3) Honeymoon Lake.

Under State law, the test the Board must make to find that it can restrict the discharge of firearms is that people, property or domestic animals are reasonably likely to be jeopardized by the discharge of firearms. If that can be determined then the Board can restrict the discharge of firearms.

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Additionally, a couple of State laws combine to limit the application of noise in the restriction of firearms. If the Board were to make a determination of jeopardy, it cannot make a determination of jeopardy based solely on noise.

At the September 21 Public Hearing, according to Mr. Oakes, the Board considered Ordinance C-101-09 to restrict the discharge of firearms in Deer Lagoon primarily to the center of the Lagoon with a minimum distance to residences and property of about 230 yards. In explaining the attachments to the ordinance Mr. Oakes said reflected is a polygon in the center of the property (about 25 acres) where the discharge of firearms would be allowed under the regulation; the cross-hatched area represents an area where discharge would be prohibited.

The newly-proposed Ordinance C-118-09 in its structure prohibits the discharge of firearms on the County-owned property (entire 379 acres).

At this point Chairman Dean invited to the microphone, in order of the attendance sheets on file with the Clerk of the Board, those who wished to comment for or against the proposed ordinances. Each speaker was allowed approximately two minutes in order to provide everyone an equal opportunity to address the Board. Concerns and opinions by those who support and did not support the proposed ordinances included:

- Hunting precludes the use of the lagoon by others. The property was purchased with taxpayer money so taxpayers are entitled to use the Lagoon without risk.
- Taxpayers include hunters
- There is reasonable likelihood of jeopardy to people, animals, and property
- The area is a Habitat of Local Importance
- No one has been hurt by hunting in the area, actual facts cannot be determined
- Litigation is likely if the ordinance is adopted and the ordinance could not stand up to a court challenge.
- The real issue is noise
- A 230-yard buffer around the perimeter of the Lagoon is excessive
- People and homes have been hit by birdshot
- When the County purchased the land it was to be used as a park
- Passive recreation does include hunting
- Hunters can police themselves
- There now are too many residences in the area to provide for hunting
- Consider the grant applications and what they say for the purchase of the property
- The decision of the Board cannot be based on fear
- It is reasonable and prudent to provide a 100 yard buffer
- Laws need to be based on fact instead of concerns and undocumented claims
- Hunting is an invaluable lesson for children to learn responsibility
- The dike has had continuous hunting for 50 years without incident
- State agencies require firearms safety classes for hunters
- It is expected that if people are being threatened they would contact the Sheriff and the Sheriff would act
- Suggestion to speak with State Fish and Wildlife and the Sheriff before taking action.

Chairman Dean closed the public comment portion of the hearing, thanking everyone for their time and remarks.

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Commissioner Comments

Chairman Dean

Chairman Dean said there are a number of changes occurring in the County that are based on population and feels it his job to look at the issue objectively from a safety standpoint. He recognizes the fact that he may be able to stand within 100 yards of a shotgun and be fine. What he has a difficult time living with, however, is the reality that a neighborhood is mixing with firearms. The Chairman does not believe the issue to be an agenda to erode Constitutional rights but rather, a concern for people who live in the neighborhood and who want to use their canoes or walk on the dikes. As mentioned at the last hearing, he feels the County is at a time where the change is one that needs facing as a community. He believes that firearms and the neighborhood in the Deer Lagoon area can no longer co-exist.

Commissioner Price Johnson

Commissioner Price Johnson remarked that the Board has been looking into the issue for some time. When she was first elected she spoke to a number of people who made a compelling case that Island County had purchased the property with the intent of making it a park, that that intent was clear in the documents, and there was County code that would clearly ban any firearms discharge in parks. It seemed straight forward to her until she began investigating and determined that Island County does not have the right to restrict firearms in parks but that the Board can only restrict the discharge of firearms where there is a reasonable likelihood of jeopardy.

The Commissioner explained that the property was private property prior to the time it was acquired in 2004. She read the letter from H & H Properties written to dispel any misconception about the hunting available there. The letter indicated that H & H Properties began to develop the lots on their property 25 years ago and posted the no hunting and no trespassing signs. Additionally, as part of the agreement, passive recreation seemed to be a clear description of something that could not possibly include hunting, when in fact according to the State agencies, hunting is part of passive recreation. Commissioner Price Johnson also reviewed the grant award from the Department of Ecology and other state agencies and investigated the need for the use of the dollars to go for hunting. It was clear from the documents they neither prohibited nor expressly allowed hunting and interested parties were asked to look to the local jurisdictions for their interpretation of what was best for their area. She also noted that the previous Sheriff, in a note of December 2004, felt that it was time to ban shooting on the public property.

Commissioner Price Johnson said that she did the best she could to look at every different way that perhaps the community could come together to address the issue. Some people directed her to a Penn Cove study that was done in 2005; a group of hunters and community members got together with the Department of Fish and Wildlife to try to address the co-use of the area around Penn Cove. One idea put forth was the *safety zone* which was the intent of the original ordinance and a worthy start to the conversation. Clearly, she said, a safety zone is a well-known tactic for communities to address safety issues in their areas. Concerning to the Commissioner, as determined by the Penn Cove group, was with the safety zone having to go over water that it would be difficult to enforce.

The Commissioner believes there to be three options: 1) do nothing and continue the five-year pilot project with the disagreement between the property owners and hunters (has not proven to

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be successful for either side); 2) determine that jeopardy exists (when she looked up the word *jeopardy* in the dictionary as part of her due diligence, she found that it does not just concern the injury but also vulnerability and that is something she has heard loud and clear from the residents); or 3) provide a safety zone though she does not believe the Board has been able to demonstrate an ability to enforce any of the laws thus far (it has been heard that over the last five years it has been difficult to obtain a response in a timely manner to address issues of irresponsible behavior. To say that hunters will police themselves is a worthy goal but that does not account for the events that have been reported). Commissioner Price Johnson believes there is a reasonable likelihood of jeopardy and would therefore support Ordinance C-118-09.

Commissioner Homola

Commissioner Homola added that many e-mails and comments were received, they were read without bias, and the Board in every way attempted to understand what the comments meant from both sides. For her the issue comes down to density, the area is not what it once was and the question is whether the Board can be sure that people who live in the vicinity are safe. She does not oppose hunting, her husband was raised a hunter and her next door neighbor is a hunter though he would not hunt on Whidbey because of concerns for safety. The Board, she said, has a job to do and has the latitude to do that job under RCW 9.41.300 when there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; she believes that jeopardy does exist. The Commissioner also believes it would be difficult for the Board to regulate or enforce a polygon in the middle of the Lagoon, having given that some thought as well. It would not be easy to keep the buoys in place and would be tough for the sheriff to get out to the area when requested to come. By the time he arrived it may be too late.

There have been studies, she said, about shot not having a lot of velocity, that it could just be gravity impacting the ocular portion of the eyes; one need not be at point blank range, it can be dangerous. Commissioner Homola would support Ordinance C-118-09.

Commissioner Price Johnson made a motion to approve Ordinance C-101-09 restricting hunting to the center of Deer Lagoon but that motion died for lack of a second.

By unanimous motion the Board approved Ordinance C-118-09, restricting discharge and use of firearms in the vicinity of Deer Lagoon.

The public hearing adjourned at 8:17 p.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

John Dean, Chairman

ATTEST:

Helen Price Johnson, Member

Elaine Marlow
Clerk of the Board

Angie Homola, Member