

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
SEPTEMBER 21, 2009 – SPECIAL SESSION**

The Board of Island County Commissioners met in Special Session on September 21, 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 Restricting Discharge and Use of Firearms in the Vicinity of Deer Lagoon. John Dean, Chairman, Helen Price Johnson, Member, and Angie Homola, Member were present.

Attendance: Approximately 133 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*
- *Power Point Presentation*
- *Photograph of Deer Lagoon provided by Mike Noblet*

Chairman Dean called to order the Special Session of the Board to consider the adoption of Ordinance C-101-09/R-41-09 Restricting Discharge and Use of Firearms in the Vicinity of Deer Lagoon. He said the tentative proposal comes after many years of complaints from nearby residents and after careful consideration of what the Board of Island County Commissioners can and cannot legally do regarding firearms, according to the laws of the State of Washington. The proposed ordinance and related legal restraints surrounding the issue would be explained by Island County Public Works Director Bill Oakes, based in part on legal opinion from the Island County Prosecutor's Office. Chairman Dean asked that the audience seriously consider the hearing as a personal exercise in polite citizenship and civil discourse, adding that the purpose of the gathering is to weigh a difficult issue further complicated by legalities.

Using a Power Point presentation Mr. Oakes, as the County's Engineer and also the administrator of 379 acres of County-owned property operated as a Diking District, described the area and restrictions at issue. Firearms and hunting in general, he said, are regulated at the State level. The County cannot enact rules governing hunting and the authority to regulate in Island County is limited to the discharge of firearms. In the existing code the discharge of firearms is in general permitted on County property, outside of cities and towns, unless the area is a non-motorized trail or designated areas where the discharge of firearms is prohibited. Currently there are three lakes in the Island County Code mentioned as having restrictions on the discharge of firearms: 1) Lone Lake; 2) Goss Lake; and 3) Honeymoon Lake.

State law, Mr. Oakes added, provides that a county, city, or town may regulate the discharge of firearms but first must make a finding; that is, it must be determined that it is reasonably likely that people, property, or domestic animals would be jeopardized by the discharge of firearms. If such a finding is determined, then laws can be enacted to restrict the discharge of firearms. Additionally, a couple of State laws combine to say that the discharge of firearms cannot be restricted based solely on noise; the jeopardy must come from something other than noise.

The proposed ordinance would restrict the discharge of firearms to the center of the Lagoon, a distance of approximately 230 yards to residences. Explaining the exhibit attached to the

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ordinance, Mr. Oakes said that the discharge of firearms would be permitted in a polygon in the center of the 379 acres but prohibited on County-owned property outside the polygon. The area inside the polygon is approximately 25 acres.

Commissioner Price Johnson wondered if the hunting at Goss Lake was related at all to the State access and its ownership. Mr. Oakes indicated that those restrictions were enacted in the 70s so research would be necessary to answer that question.

After looking at the polygon Commissioner Homola asked if the document was originally drafted in 2005. Mr. Oakes said the one presented was re-drafted in August. The Commissioner then inquired if the size of the polygon now was different than that in 2005. Mr. Oakes replied that the polygon is smaller.

Concerning ballistics information Commissioner Homola asked whether any existed concerning the stated 230 yards to residences and yard. Mr. Oakes answered that the ballistics research conducted, after talking with the Sheriff's Department and its ballistic experts, concluded that the 230 yards is a reasonable stand-off distance for standard birdshot and nothing more. It is basically a distance based on the maximum fall of a standard birdshot shell.

Commissioner Homola requested that Mr. Oakes clarify whether the ballistics information received from the Sheriff was specifically for birdshot. It was her understanding that the Sheriff's study years ago was more specifically about guns that shoot bullets and not shot. She wondered how staff arrived at the polygon and the 230 feet, and whether there were any available details about wind, humidity, or related factors when the polygon was created.

In consultation with the Sheriff's office Mr. Oakes said that birdshot was considered in his review. In fact, the 230 stand-off distance was relayed to Mr. Oakes as coming from a stand-off distance for skeet shooting. If the Board enacts the proposed ordinance as written then the polygon would be delineated. Buoys would be placed at points along the polygon and signage would be needed about restricted discharge to the inside of the buoys.

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 ordinance. 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 ordinance included:

- A belief that science provided by the Sheriff is weak.
- The safety, welfare and interest of those who reside near and visit the Useless Bay Colony and Deer Lagoon should be considered. Population in the area has increased over the years.
- Noise is a factor.
- Hunting should not be considered a passive activity.
- The proposed ordinance does not address trespassing onto private property.
- With the polygon in the middle of Deer Lagoon, who will provide enforcement?
- Opposition was expressed to any restrictions placed on the rights of hunters.
- The proposed ordinance is not enforceable and approving it would lend credence to the defined area as anything other than a County park.
- Restrictions should say no discharge of rifles or pistols.

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- The Whidbey Audubon Society supports a moratorium until a number of the issues can be resolved. The Lagoon is a habitat of local importance.
- Research is necessary into the history of the land purchase by the County.
- A thorough study should be done concerning the potential impact of lead to wildlife and fish.
- Marking the area will be expensive and ineffective
- Apprehend and punish those who break the law instead of taking a broad brush in the other direction. Good, responsible hunters do not cause problems.
- Hunting should be allowed on Whidbey.
- Experts should consider the issue of ballistics in order to provide a fair representation from both sides.
- The land was sold to the County for use as a County park by way of a contractual agreement so there should be no discussion otherwise.
- Hunting is a tradition on Whidbey and should remain.
- NRA recommendation is 300 yards for shot gun
- It was believed that the proposal is a good start. A County and community effort involving both hunters and residents was suggested as a possible solution to the problem.

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

Commissioner Comments

Chairman Dean

Chairman Dean mentioned that he has concerns about the proposal as being unenforceable and also believed that the ordinance does not solve the problem of the sense of safety of those who live the neighborhood. The problem, he said, is finding a legal way to solve the dilemma. He would support a moratorium to allow time for answers to the questions and an opportunity to provide the needed science.

Commissioner Price Johnson

Commissioner Price Johnson appreciated the civil way in which the audience conducted themselves. She mentioned that she was a citizen when the purchase of the property was made through grant dollars and it was her understanding, and remains her understanding, that the property would be park. The challenges of staffing reductions in the County is such that the Parks Plan was pulled from the Planning Commission docket for consideration so that issue could not come forward as hoped; instead, the Parks Plan will be addressed in the 2010 docket.

What was not understood before, she continued, was that designating the property a park has no impact on whether hunting is permitted because hunting is a separate issue. Commissioner Price Johnson believed that to be the intent when the property was purchased because it seemed so in the documents. The classification of passive recreation in the documents was also of interest because it seemed clear that hunting is not a passive form of recreation. The Commissioner does not see hunting as a historic use since this is the first time the property, with its purchase, went into public domain; the property is now public property and therefore certain expectations about its use exist.

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When the property was accepted by Island County there was not an explicit prohibition made on hunting at the time. Commissioner Price Johnson was challenged, and staff has been challenged, when looking at the issue for two reasons: 1) determining the differences outlined about the park designation and passive recreation; and 2) the County is so short-staffed that it is attempting to operate on a skeleton crew and every issue brought forward is a challenge for the Board to address. She believes the proposed ordinance is a step forward, the best that she has been able to come up with; it did not make sense to her to continue along the same path as that followed in the past. It was incumbent upon the Board, she said, to take some action since action was not taken when the property was accepted. While Commissioner Price Johnson understood that the proposed ordinance would not be popular with those on both sides, it was the best option available and still abide by the rules of the State. She believed a moratorium is outside of the Board's legal jurisdiction so would need to obtain more information before making a decision in that regard.

Commissioner Homola

Commissioner Homola also thanked everyone for their civility. She said her job is to protect the life, welfare, health and safety of the citizens of Island County, indicating the issue to be a complicated one because of two questions: 1) can the Board support hunting; and 2) will the Board create a park. The Board has already designated the area a Habitat of Local Importance but what has not yet been done is to define that definition in terms of the parks in Island County. She, also, indicated that the issue of parks would be addressed in the 2010 docket. Safety must be considered and in that regard she mentioned that her husband grew up as a hunter and her neighbor is a hunter, both of whom would never hunt on Whidbey because of safety concerns. The Commissioner is not convinced that placing buoys in the lagoon and trying to define a trapezoidal shape would protect the safety of people in the area. The buoys could become dislodged. Such may also be confusing to hunters and enforcement would be an issue. Commissioner Homola wanted time to look into the possibility of a moratorium. She recommended that the Board extend the public comment period for about a week to make sure consideration is given to every detail and document presented and to provide an opportunity to determine whether a moratorium is possible.

Commissioner Price Johnson moved to keep the public comment period open for one week to September 28, seconded by Commissioner Homola.

Mr. Oakes indicated there is a *youth only* season according to the Department of Fish and Wildlife on September 26 and 27 so there would be no effect of the ordinance for that period. The adult season begins October 17. To enable staff any ability to place signage and buoys in the water Board action would be needed on September 28. Mr. Oakes added that the ordinance could be modified following a discussion with the Prosecuting Attorney to determine if modification to Exhibit A to a complete prohibition is an action the Board can take following the hearing.

Ms. Marlow mentioned that a change to Exhibit A would be a substantial revision to the ordinance and would require re-advertising. Her recommendation was to take the time between tonight and next Monday to seek legal advice on the best next steps to either significantly modify the ordinance or declare a moratorium.

Chairman Dean restated the motion to keep the public comment period open for one additional week to Monday, September 28, 2009, unanimously carried.

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The public hearing adjourned at 7:43 p.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

John Dean, Chairman

Helen Price Johnson, Member

Angie Homola, Member

ATTEST:

Elaine Marlow, Clerk of the Board