AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Masden Lake Fork Cove Building Moratorium

Action Requested: Motion

Parties to the Agreement: Masden Lake Fork Cove

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
Resolution of the issuance of building permits in the Masden Lake Fork Cove subdivision.

Fiscal Impact:

Submitted by: Cathie Pagano **Submitter's Email Address:** cpagano@gunnisoncounty.org

Finance Review: ○ Required ● Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ● Required ○ Not Required

Comments:

I appreciate the work Russ and Community Development have done to conclude this matter with a concise and accurate memorandum. db 7/30/14

Reviewed by: Discharge Date: 7/30/2014 Certificate of Insurance Required

Yes ○ No ●

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 7/30/2014

○ Consent Agenda ● Regular Agenda ○ Worksession Time Allotted: 10 mins

Agenda Date: 8/5/2014 Follow Up Agenda Date:

Revised April 2013

Gunnison County, CO
Community Development Department
221 N. Wisconsin St. Ste. D, Gunnison, CO 81230
Phone: (970) 641-0360 FAX: (970) 641-8585
Website: www.gunnisoncounty.org
Email: planning@gunnisoncounty.org

To: BOCC

From: Cathie Pagano, Senior Planner

Date: July 29, 2014

Re: Masden Lake Fork Cove Building Moratorium

On August 8, 1995 the Gunnison County Board of Commissioners enacted a moratorium on the issuance of building permits in Masden Lake Fork Cove. Masden Lake Fork Cove is on the south side of Highway 50 near the dam. There are 78 lots that are in a circular configuration surrounded by common area and each approximately 1/3 acre. According to the Community Development office file, the lots were created and sold by the Masden family between 1964 and 1975. The lots and roads were never reviewed or approved by Gunnison County. The minutes (attached for your review) state:

> *Attorney Chuck Cliggett met with the Board and Planner II, Steve Westbay, to discuss Masden Lake Fork Cove, a subdivision near Blue Mesa Reservoir. Attorney Cliggett provided information on the development of the subdivision and of his plan to bring the lots into compliance with County regulations. Attorney Cliggett noted that he does not represent all lot owners. Building permits will not be issued until there is compliance.*

It does not appear that any documentation such as a resolution was recorded regarding the moratorium. It appears that the BOCC met after receiving a recommendation, dated July 28, 1995, from the Gunnison County Planning Commission regarding Masden Lake Fork Cove. The Planning Commission recommendation is attached for your review. The Planning Commission recommended

> *…that no building permits or septic permits be issued for proposed development on lots located within Masden Lake Fork Cove until the following conditions are met:*
>
> 1. *Water rights for the Carpenter Spring Pipeline are conveyed to an established homeowners association or any other legal means that conveys these rights in an appropriate manner to landowners.*
> 2. *Provide the County Planning Department a report addressing the capability of the spring to serve landowners. The report shall address existing demand, how many dwellings can be served by the system, water quality data, and system design description.*
> 3. *There shall be confirmation that existing geotechnical conditions are adequate to allow for development.*
> 4. *Establish an easement surveyed by a Colorado-registered Surveyor, and recorded in the office of the Gunnison County Clerk and Recorder.*
> 5. *The Planning Department shall be provided an updated as-built plan showing roads, utilities, water facilities, lots and existing buildings.*
> 6. *The Gunnison Fire Marshall shall review roads and utilities, and provide comment to the Planning Department.*
> 7. *After the first six conditions are fulfilled building permits may be issued on a case-by-case basis.*

Staff has investigated the above conditions to attempt to resolve the building moratorium.

Staff contacted the Colorado Division of Water Resources and spoke with Bob Hurford, Division Engineer; Scott King, Well Commissioner; and Kevin Rein, Deputy State Engineer, regarding the water supply at Masden Lake

Fork Cove. According to the Division of Water Resources, it appears that there are two different methods for water supply in Masden. Approximately six lots are served by individual wells and it appears that other lots may be served by the Carpenter Spring.

Rein noted in an email dated, July 25, 2014, the following:

> *It seems that your objective is to get an opinion from the Division of Water Resources regarding the physical and legal adequacy of the water supply for the subdivision. This objective is complicated due to the fact that there is no developer, HOA, or other entity proposing a specific water supply plan and some lots could conceivably be served by Carpenter Spring and some could conceivably be served by wells. Another complicating factor is that we don't have certainty for every lot whether it was created before or after 1972 (SB-35). Here are a couple of things we can count on. Although the question of physical availability, is difficult when it comes to wells, the legal availability is more certain. If the lot is pre-'72 or exempted from SB-35, we can likely issue an exempt well permit for household use only with a rebuttable presumption of non-injury. You could consider that legal adequacy. If we cannot be assured that the lot is pre SB-35, we would find that a well on the lot requires a plan of augmentation. Without that, water would not be legally available. In addition, our determination of physical and legal availability for lots relying on Carpenter Spring depends on the details of the water right for the spring and the amount of time it can divert its full amount in priority, along with the number of lots that plan to rely on the spring and their proposed uses.*
>
> *As you know, for SB-35 subdivision, we have a statutory responsibility to provide an opinion regarding the adequacy. We also are more than happy to review non SB-35 subdivisions as a courtesy, to whatever extent we can provide helpful information. So, in any event, you should feel welcome to contact us further. But in order for us to provide a meaningful opinion, I believe we will need to know which lots can be considered pre-'72/exempt, understanding the others needed to be treated as SB-35 lots, and for each lot, whether they rely on the spring or wells. We may need some follow-up information after that.*

Staff recommends that although Conditions 1 and 2 of the Planning Commission recommendation have not been met, that the subdivision be treated similarly to other older developments in Gunnison County—at the time of any building and or on-site wastewater treatment application, the applicant be required to demonstrate a legal and physically adequate supply of water. In the case of Masden Lake Fork Cove a property owner may have several options including, an exempt well permit, a well permit that requires purchase of augmentation water, and/or the use of Carpenter Spring.

Regarding Condition 3 of the Planning Commission recommendation, the Masden area is not an area that has been mapped for geologic hazards. There are a number of areas in Gunnison County that are currently unmapped. Staff recommends that geologic hazards be reviewed at the time of building and/or onsite wastewater treatment applications, similar to other areas in the County. If concerns are identified regarding geologic hazards, a geotechnical report, in compliance with the Gunnison County Land Use Resolution may be required.

Conditions 4 through 6 mainly address the road. Gunnison County staff has met with staff from the Bureau of Reclamation and the National Park Service. The Bureau of Reclamation does not want to dispute the ability of landowners in Masden Lake Fork Cove to access their parcel, however the Bureau will not provide written documentation to this effect. Staff also requested the Gunnison County Assessor's Office to review the public records related to the access road (Cove Road). The Assessor could not find any legal impediments to access to the parcels within Masden Lake Fork Cove.

Public Works Director, Marlene Crosby and Jim Kint, visited the site to review current road conditions on June 3, 2014. Crosby's memo is attached for your review. She noted that, "the purpose of this evaluation was not to evaluate the road on the basis of County standards, but rather to determine if there were safety issues that would impact the response of emergency vehicles…It is the opinion of the Public Works Department that the road is serving the needs of the residents who are primarily there in the summer, and does not compromise the safety of emergency responders."

In an email date July 30, 2014 from Dennis Spritzer, Gunnison County Fire Protection District, Fire Marshal, he noted, "after reading the memo from Marlene (Crosby), I feel the road is sufficient for our District fire apparatus and therefore there are no fire access issues."

It is staff's recommendation that the building moratorium in Masden Lake Fork Cove be lifted with the statement that although the conditions of the Planning Commission recommendation have not been expressly met, it is the opinion of staff that there are no threats to public health and safety.

TO: Board of County Commissioners
FROM: Planning Commission (staff Steven Westbay)
DATE: July 28, 1995

Re: Building Permit Issuance For Masden Lake Fork Cove

At their regular meeting of July 28, 1995, Vince Rogalski moved, Mike Peterson seconded and the Planning Commission unanimously approved the following Recommendation

BACKGROUND

During the past year the Planning Department has received three Land Use Change applications for building on 0.33-acre sites in Masden Lake Fork Cove. Masden Lake Fork Cove is located within Section 3, T48N, R4W, NMPM, and is on the south side of Highway 50, just west of the Blue Mesa Lake Fork Cove bridge. There are 78 lots, all in circular configurations, and 60 land owners are noted on the County Assessors records. Donald Masden et. al owns 16- acres of property surrounding the individual lots, and this real property has been referred to as open space. Based recording dates of some related deeds, it seems that lots were sold by the Masden Family between 1964 and 1975. These lots and roads were never reviewed or approved by Gunnison County

Access to these lots is from a 60' right-of-way intersecting with Highway 50 just of the west of the Lake Fork bridge. As noted on a Masden Lake Fork Cove Map recorded in the Gunnison County Clerk and Recorders Office (Recording Date: August 26, 1993), there is a survey description of the road and utility easement across the Masden property. There is no recorded easement across Curecanti National Recreation real property. In conversations between John Chapman (Park Superintendent) and staff planner Westbay it has been noted that the Park Service has no intention blocking access to Masden Lake Fork Cove.

Improved dwellings in the area are served by individual sewage disposal systems (ISDS), and a spring/cistern and water distribution system. The water rights for the spring (Carpenter Springs Pipeline) were conveyed to Sylvester and Edith Masden on December 1, 1970, and provide for a total of .11 cubic feet/second (cfs). These water rights are still held by the Masden family heirs, and it seems that the lot owners have no legal right to this water supply presently.

These problems were conveyed by Planning Department staff to the applicants of building permits, and other persons inquiring about building in Masden Lake Fork Cove. As result of these problems, but separate from County planning staff review, some property owners retained attorney Chuck Cliggett to look into the situation and provide guidance for future actions. Mr. Cliggett reported to the homeowners that a resurvey would be required, along with

establishing a water decree, access easement, and covenants declaration. Mr. Cliggett provided me with a letter (Date: July 7, 1995) noting that related tasks will be addressed, and he would serve as the representative for the homeowners to address problems associated with the Masden Lake Fork Cove. In a phone conversation with Mr. Cliggett (Date: July 27, 1995) it was noted that he was not hired to represent persons seeking building and ISDS permits.

POLICY REVIEW

Gunnison County needs to consider the existing situation at hand in relation to land use policies. Even without a detailed review of all County Land Use Policies there are obvious conflicts with two policies as summarized by the following:

General Land Use Policy, Section 2-101 (9)
To insure that adequate water in terms of quality, quantity and dependability is both legally and actually available to development approved within Gunnison County.

The "conflict" is that a legal source of water has not been established for lots within Masden Lake Fork Cove.

General Land Use Policy, Section 2-101 (10)
To eliminate or minimize conflicts between adjoining land uses and to prevent land use change which will result in significant adverse impact on adjoining land.

The "conflict" in this case is associated with the road utility access crossing Curecanti Recreation Area real property without a formal easement or agreement.

FINDINGS:

- The existing spring serving as the water source for lots within Masden Lake Fork Cove is not deeded to those land owners; the Masden family still retains those water rights.
- The access road/utility run to the Masden Lake Fork Cove lots crosses Curecanti National Recreation Area land but, no easement exists to recognize this road.
- Three are substantial conflicts with County Land Use Policies.
- National Park Service representatives have noted that there is no plan to consider the denial of access to Masden Lake Fork Cove.
- A survey of the area, to establish a boundary for Masden Lake

Fork Cove, needs to be conducted in order to identify what areas are considered open space.

- Some concerned property owners have initiated actions to resolve the outstanding problems of Masden Lake Fork Cove.

RECOMMENDATION:

The Gunnison County Planning Commission recommends that no building permits or septic permits be issued for proposed development on lots located within Masden Lake Fork Cove until the following conditions are met.

1) Water rights for the Carpenter Spring Pipeline are conveyed to an established homeowners association or any other legal means that conveys these right in an appropriate manner to land owners.

2) Provide the County Planning Department a report addressing the capability of the spring to serve land owners. The report shall address existing demand, how many dwellings can be served by the system, water quality data, and system design description.

3) There shall be confirmation that existing geotechnical conditions are adequate to allow for development.

4) Establish an easement surveyed by a Colorado Registered Surveyor, and recorded in the office of the Gunnison County Clerk and Recorder.

5) The Planning Department shall be provided an updated as built plan showing roads, utilities, water facilities, lots and existing buildings.

6) The Gunnison Fire Marshall shall review roads and utilities, and provide comment to the Planning Department

7) After the first six conditions are fulfilled building permits may be issued on a case-by-case basis.

THE C. F. HOECKEL CO., DENVER 36077

Library in view of the expectation that the people of Somerset enjoy its use and benefit from it and that we will be considering during the budget period a donation in the range of $500. Thank you very much. Seconded by Commissioner Santarelli. Motion passed unanimously.

SAND BAR: County Manager Tomsic reported that a sand bar is blocking the Gunnison River near Dos Rios Island. Commissioner Zanetell reported that she has visited the site and also noted the amount of rip rap that has been put on the banks across the river along the Dos Rios I road. Commissioner Santarelli suggested that the Corps of Engineers or some other expert look at the area. Chairperson Field agreed that the Board should visit the site.

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The Board adjourned for lunch, then was called back to order at 1:15 p.m. by Commissioner Santarelli as Chairperson Field was temporarily unavailable.

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201: County Manager Gary Tomsic reported on the Areawide 201 Facilities Plan for the upper East River valley in Gunnison County. The Executive Summary was reviewed by the Board. County Manager Tomsic said he also will review the plan with the County Planning Commission. Steve Glazer noted that it must be assured that Meridian Lake is included in the Mt. Crested Butte Water and Sanitation District and that the intergovernmental agreements are pursued in a timely manner. Mr. Glazer noted that the document/process helps create equity among the dischargers, thus it is very important that all four entities adopt this along with the County. County Manager Tomsic noted that unless the entities sign off on the 201 Plan, they will not be eligible for grant support.

TRAINING ADVANTAGE: Mary Layton discussed with the Board the loss of funding for Training Advantage. She said that Lisa Thompson, the local representative, may lose her Gunnison office and might have to serve Gunnison County on an itinerant basis from Montrose. Methods of solution were discussed. Combining with other programs was discussed. Also suggested was participation in needs assessment with Social Services. It was suggested that the issue be included in the budget request documents.

MASDEN LAKE FORK COVE: Attorney Chuck Cliggett met with the Board and Planner II Steve Westbay to discuss Masden Lake Fork Cove, a subdivision near Blue Mesa Reservoir. Attorney Cliggett provided information on the development of the subdivision and of his plan to bring the lots into compliance with County regulations. Attorney Cliggett noted that he does not represent all lot owners. Building permits will not be issued until there is compliance.

SAGE GROUSE: Chairperson Field, continuing discussion regarding declining populations of Gunnison sage grouse, reported that the Stockgrowers feel a need for sincere participants in this issue including the County, the Division of Wildlife, the Bureau of Land Management, the Forest Service, and the Stockgrowers. Paul

BOCC Minutes
August 1, 2006

MASDEN LAKE FORK COVE: Dan Veatch, property owner in Masden Lake Fork Cove, met with the Board to request that he be allowed to continue building an addition to an existing structure despite the building moratorium placed on that subdivision in 1995. County Attorney Baumgarten and Planning Director Joanne Williams were also present. Williams reported that a stop order was placed on Veatch's construction on June 30 as he had not obtained a County building permit prior to construction, and the moratorium prevents the issuance of a permit.

Williams and Baumgarten reported on the numerous issues and six conditions stated by the Planning Commission which caused the moratorium to be placed on building in Masden Lake Fork Cove in 1995. Although most of the issues have been resolved since then, the road access has not been. The Board, the County Attorney and property owners spent several meetings on the road issues in 2004. Road jurisdictional issues exist with the Park Service/BLM/Bureau of Reclamation, and road easement issues with neighboring property owner Bill Alexander. In addition, the property owners have not proceeded with necessary road improvements due to the cost of those. Dave Roberts of the Park Service arrived during this discussion and explained the jurisdictional issues from his viewpoint. Williams also noted that certain portions of the roads accessing some of the homes are a public safety issue and emergency vehicle access could be difficult.

County Attorney Baumgarten advised the Board that if the property owners cannot agree to resolve their own issues, one legal tool for the County to use is the creation of a special improvement district. The boundaries would be specified, the necessary improvements outlined, cost estimates developed, and the property owners would be assessed those costs. If the assessment wasn't paid the County could place a lien on the property and collect the amount like taxes. In the past the County has been reluctant to utilize this legal tool.

County Attorney Baumgarten suggested sending out letters to all of the Masden Lake Fork Cove property owners to advise them of the unresolved issues, the continued building moratorium and the special improvement district option. He will provide the Board with a report on the property owners' response at the September 5 Board meeting.

The Board advised Dan Veatch it would be unwilling to lift the moratorium on building at this time, even on the case-by-case basis requested. County Attorney Baumgarten suggested that the County might be willing to consider it further if some significant progress is made by the property owners to resolve all of their issues. At this time, however, he specifically advised Veatch to do no further work on his addition.

Commissioner Channell asked who would do the road improvements if a special improvement district is created. Interim County Manager Crosby responded that Public Works could do some of it next year, perhaps in combination with some of the work contracted out.

MASDEN LAKE FORK COVE ROAD ACCESS: County Attorney Baumgarten was present to report on issues related to disputed property owner access to the Masden Lake Fork Cove development near Blue Mesa Reservoir. *(This was previously discussed at the Board meeting of July 6, 2004).* Approximately eight interested citizens were present, as were Dave Roberts and Bill Wellman of the Park Service. Irv Cussworth, president of the Lake Fork Cove Alliance, and Bill Alexander, adjacent property owner, were present at the table. Nate Keever, attorney for the Lake Fork Cove Alliance, and Jim Dillman, attorney for Bill Alexander, were present via speakerphone.

The issue brought up by the Masden Lake Fork Cove property owners is that they have a historic and improved main access into their subdivision, which was gated by Bill Alexander in recent years. Bill Alexander constructed another road for their access, but it is deemed to be unsafe by many of the property owners. They would like continued access on the main road.

County Attorney Baumgarten reported that he has been working with the parties to discuss areas of common agreement, and to work toward potential solutions. One problem is that there are several different surveys showing different property boundaries. When Bill Alexander purchased his property adjacent to Masden Lake Fork Cove, the survey he used showed the entire new road being on private land. Based on a federal survey, there is now general agreement among the parties that a portion of the new road is on federal land.

County Attorney Baumgarten continued that Bill Alexander is concerned that the historic road crosses his meadow where he would like to put animals. He feels a cattle guard is insufficient to keep the animals in, therefore, he has constructed a gate. The homeowners say they have used that road historically and wish to continue doing so, feel the new road is not built to the same standard, and they do not know who will do continued maintenance on the new road. Baumgarten said all parties recognize that there should have been a permit from the County for the new road, and a permit from the federal government for a new road cut across their land. No permits were obtained for the new road. A solution to this would be for Bill Alexander to obtain a permit for the road he cut, with the road to be brought to County standards or an application being submitted to the County for a waiver of standards. The road would need to be permitted from Highway 50 to the terminus, and the County would not be obligated to maintain or snowplow. A requirement would be that money must be placed into a fund to insure continued maintenance. That money would come from Alexander and the property owners. Baumgarten asked that the Public Works Department walk the road and provide their best estimate for those future maintenance costs. The historic road cannot be eliminated since some property owners have been granted legal easements to access their property by it. The historic road could be gated but not locked, so persons could continue to use it. New cross easements would be needed for all property owners to use the new road, or the road would need to be deeded to the County for public use. The County would need to help the property owners gain permission for access from the federal government.

County Attorney Baumgarten stated that the option for litigation in this matter does exist, however, the affected parties generally feel it is better to continue working on this matter without litigation. The County's involvement at this point is to assist the property owners in coming up with a solution.

Dave Roberts drew the property boundaries and road locations on the board. He stated that there are five surveys for this area, with those surveys basically showing two different ownership scenarios. Roberts and Bill Alexander showed and discussed their understanding of the different surveys. Alexander stated that he still has the option of protesting the federal survey results.

Irv Cussworth suggested that Bill Alexander could fence his meadow up to the historic road location, instead of fencing off the road. He asked Alexander the value of the property which would then no longer be in the meadow and that would include the road. Chairperson Field asked if Cussworth would be interested in purchasing that portion. Cussworth responded that he is trying to find a solution. Alexander responded that he has not considered that option before.

One property owner advised the Board that the gate which currently closes off the historic road is actually the barbed-wire type rather than a standard gate. The property owners would have much less difficulty with the gate and the road if there were a standard gate installed. Irv Cussowrth provided Chief of Operations Crosby with a folder of costs the homeowners paid to upgrade the historic road.

Bill Alexander and Irv Cussworth brought up details of current litigation over water rights. Chairperson Field stated that the County is not a participant in that matter.

Commissioner Starr suggested that the property owners get an appraisal of the piece of property which Cussworth was discussing for possible acquisition, and also identify the costs for improving the new road. Bill Alexander asked if County regulations would allow for severing of the parcel with the historic road. County Attorney Baumgarten responded that he thought it would be doable. As for a permit for the road through the federal land, Bill Wellman said he would be willing to consider granting a permit, depending on the resolution of a survey issue.

Dave Roberts reported that another unresolved matter is that there is currently no legal access on record to the Masden Lake Fork Cove property owners. He suggested that the federal government might be willing to consider transferring ownership of that road to the County.

This agenda item will be scheduled for further discussion at the Board's September 21 meeting.

MASDEN LAKE FORK COVE: County Attorney Baumgarten stated that the Board is periodically asked by citizens to address roads and a building moratorium in the Masden Lake Fork Cove development. Following the discussion at the Board meeting of August 1, Baumgarten prepared information regarding the issues and one option which could be utilized to achieve the road improvements. That information along with the date and time and today's meeting was mailed out to all of the property owners identified in Masden Lake Fork Cove. Approximately 12 property owners were present along with Dave Roberts of the National Park Service.

The five issues which need to be resolved as identified in the letter from County Attorney Baumgarten are as follows:

1. Legal Access – There is a dispute over ownership of the land over which the current road accesses cross.
2. Choice of Access – There is a dispute about which of the current accesses is most appropriate.
3. Road Standards - The current accesses do not satisfy the road standards and requirements of Gunnison County and must be improved and maintained.
4. Funding - How to fund road improvements and maintenance.
5. Building Permits – The Board determined, in 1995, that building permits would not be issued in Masden Lake Fork Cove until there is compliance.

One possible option to resolve these issues, which the County could assist with, is the creation of a local improvement district. County Attorney Baumgarten reported that a local improvement district can be created by: 1) a County Commissioners resolution which would be in effect unless the owners of at least 50% of the assessed land objected; or 2) Created by at least 50% of the owners of assessed land. Through the local improvement district the cost of the improvements may be assessed in an equitable manner determined by the Board against the properties benefiting from the improvements, and the assessments are collected like taxes. The improvements are constructed under the supervision of the County.

County Attorney Baumgarten continued that at the August 1 Board of Commissioners meeting a property owner came forward to request a waiver from the current building moratorium placed on Masden Lake Fork Cove by the County. This Board affirmed that moratorium as a means to assure that new construction and development does not occur until the Masden Lake Fork roads have the appropriate legal access, route, and construction.

Commissioner Channell stated that it is not the Board's intent to force any solution on the property owners. The Board felt it would be appropriate to offer assistance in identifying the issues and one solution which the County could help with, but only if the property owners wished to participate in order to achieve the necessary solutions to lift the moratorium.

Dave Roberts summarized the original access easements granted from the Bureau of Reclamation to large parcel owners Austin and Masden, and the current status of unclear legal access to all of the Masden Lake Fork Cove property owners. A Bureau of Reclamation letter dated September 13, 2006, and confirmed by Dave Roberts, indicates their willingness to grant an easement to the County for a public road access. County Attorney Baumgarten stated that the legal access to the property owners using that road is subject to disagreement not only for the portion owned by

the federal government, but also due to the original easements granted to Austin (now owned by Bill Alexander) and the Masden portion.

Property owners present asked how allowing construction in Masden Lake Fork Cove is detrimental to the road issues, whether improved construction would bring more tax dollars into the County to improve the roads, where the improved road would be, and whether an improved road would increase public traffic trying to go beyond the development. They also commented that the homes are seasonal and typically don't have a large number in use at the same time. Another man reported that there are some homes being used more than seasonally. This comment was responded to by another owner saying the water is only for summer use. One man stated great concern with an existing road being located on his lot close to his residence and how improving that road leading to additional access could affect him negatively.

County Attorney Baumgarten responded that the existing roads do not meet the construction standards for the amount of traffic each house could generate. The County has found in recent years that developments which were previously seasonal are now being used more frequently and year-round. The use not only increases with new construction but also tends to increase as existing residences are added onto. The County is trying to make sure that the infrastructure of the road will serve the future uses. He said that the location of the improved road and where it goes is something the property owners need to decide. The Board further reported that property taxes do not fund road improvements.

In response to a question about existing roads becoming public roads after a certain number of years, County Attorney Baumgarten reported that: 1) if an individual crossing private land for over 18 years was not stopped from that access by the property owner, that individual can attempt to enforce their own personal option to cross the land; or 2) the government, on behalf of the public at large, can claim a public road across land. That option has become much more difficult due to Supreme Court requirements in the past two years.

One property owner said that although there are about 80 lots, some are owned in multiples resulting in approximately 58 owners, and would this affect the need for road improvements due to the traffic count. Another property owner feels it is a waste of money to improve the road. County Attorney Baumgarten responded that the road access needs clarified and the construction needs improved for that level of homes. Further, he suggested that the property owners consider that resolving these matters would have a positive affect on the value of their homes should they or future generations wish to sell the property.

Regarding the moratorium on issuance of building permits in this development, one property owner stated there have been several permits issued after the 1995 moratorium. Chairperson Starr responded that there were some inadvertent issuances of permits when there shouldn't have been. This does not change the need to avoid making exceptions now and to get the problems resolved for everyone's benefit.

Chairperson Starr suggested that the Board may decide it to be a worthwhile investment of taxpayers' money to hire a facilitator to help the property owners resolve the road location issues and the need to spend money on the improvements. This may involve working with the various groups of owners representing the differing opinions. It was noted that although there is not a formal property owners association, there is an informal coalition comprised of the owners of approximately 65 of the 80 lots.

County Attorney Baumgarten asked for a show of hands of those who feel the road accesses are all legal, and constructed sufficiently. A few persons raised their hands. One person did comment that an ambulance had trouble getting to or finding a residence in recent years. Baumgarten further stated he does feel there is a problem in Masden Lake Fork Cove due to the legality of access, the choice of access, the suitability of access, and the continued moratorium on building. However, the County is not forcing a solution on the property owners and perhaps the majority do not find the situation bad enough yet to move forward with a solution they are willing to pay for. The Board of Commissioners is offering their assistance in trying to resolve the problems the County feels exist.

Commissioner Channell noted that the building moratorium was placed on this development for multiple reasons, with those being mitigated except for the road issues. County Attorney Baumgarten confirmed that. Commissioner Channell continued that the legality and condition of the road access to this development is a public health and safety issue, due to difficult emergency vehicle access, which the County must consider. Commissioner Swenson added that the Board cannot force the development to bring the roads up to current standards, but this Board feels the building moratorium should stay in place.

County Attorney Baumgarten stated that the rough estimate of costs to improve the road appropriately is $155,000. This is about half of the cost of constructing a brand new road. This amount divided by 60 property owners is $2500 for improvements or $5000 for a new road. He reiterated that this amount would improve the values of each property by having a legal and appropriate road. By utilizing a local improvement district to fund these repairs and collect the money, the cost would be assessed like taxes. In addition to discussion on how to divide up the costs, there could also be discussion on whether to spread the costs out over time.

Chairperson Starr brought up the idea again of the County providing a facilitator to work with the property owners to try and reach a compromise among them. He asked County Attorney Baumgarten to get contact information from