

Boulder County subdivision roads: High court review sought for earlier rulings

Pattern of 'arbitrary and capricious abuse of authority' alleged

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Longmont Times-Call

Posted: Fri Aug 26 18:47:38 MDT 2016

Owners of properties in unincorporated Boulder County residential subdivisions have the legal right to ask the courts to force the county to step up its spending on rehabilitating their deteriorating paved county roads, more than 300 of those property owners assert.

Earlier this month, those homeowners asked the Colorado Supreme Court to consider their case and overturn Boulder District Court and state Court of Appeals decisions that ruled they didn't have the necessary legal standing to pursue their claims.

Boulder County disagrees and this week formally asked the state's high court to deny the homeowners' request to review the case. It may be several more months before the Supreme Court announces whether it's decided to hear the homeowners' appeal, according to deputy Boulder County attorney David Hughes.

On Aug. 11, Madeline Meacham, the homeowners' attorney, said in a Supreme Court filing that allowing the Court of Appeals ruling to stand would have a "severe and negative impact" on the plaintiffs' right to seek court reviews of what they contend has been Boulder County commissioners' "purposeful pattern of violation" of state laws making the county responsible for maintaining county roads.

Those homeowners, Meacham wrote, "are not asking the court to review discretionary budget decisions made by the county." Instead, she said, the homeowners "are asking the courts for redress of a pattern of arbitrary and capricious abuse of authority by the county."

Hughes, however, said in the county's Thursday filing in response to the homeowners' petition that the June 30 Court of Appeals decision was consistent with "a long line" of cases "holding that private citizens cannot use the courts to compel discretionary policy and budget decisions related to county road improvements."

Hughes wrote that court precedents have repeatedly held that private citizens such as the homeowners who sued the county "do not have a judicial remedy based on allegations of damages to county roads.

"Instead, counties' decisions about how to allocate finite tax dollars between road maintenance and other government functions is a matter for elected officials," Hughes said.

Under a policy adopted in the mid-1990s, Boulder County has taken the position that while it would continue the routine maintenance of subdivisions' county roads — plowing snow, sealing cracks and filling potholes, for example — the expenses of major future rehabilitation and repaving work would primarily be the responsibility of the owners of properties served by those internal subdivision roads.

The plaintiffs, however, have argued that Colorado law requires Boulder County to bring their roads back into good condition and do the kind of ongoing maintenance that will keep them in good shape.

Boulder County Fairness in Road Maintenance led the effort to sue the county in an attempt to get the court to order the county to budget more money toward repaving and rehabilitating about 150 miles of subdivision roads.

Earlier this week, that organization failed to get county commissioners to ask Boulder County voters' approval for a proposal that would have required the commissioners to shift funds from elsewhere in the county's annual budgets into increased spending on subdivision road rehab — a proposal the commissioners' staff said would violate state law.

However, the commissioners have agreed to put another group of subdivision homeowners' proposal on this fall's ballot, one that would increase property taxes countywide by 0.785 mills, with part of that revenue to be passed along to cities and towns for their street and bridge projects and part to be spent on subdivision road rehabilitation.

Boulder County Fairness in Road Maintenance opposes that property-tax hike and Chuck Wibby, the organization's co-chairman and the lead plaintiff in the lawsuit, has predicted voters will reject it.

But if voters approve the property-tax measure, "this controversy will be moot," Boulder County's Hughes said in his Thursday Supreme Court filing.

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