

Colorado Supreme Court denies request to review subdivision roads rulings

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Colorado's Supreme Court on Monday denied a request from hundreds of Boulder County subdivision homeowners for the state's high court to consider their case against the county over the rehabilitation and repaving of unincorporated residential subdivision roads.

In August, more than 300 of those property owners petitioned the Colorado Supreme Court to hear their appeal to overturn earlier Boulder District Court and state Court of Appeals decisions that ruled those homeowners didn't have the necessary legal standing to pursue their claims against the county.

Those plaintiffs have argued that Colorado law requires Boulder County to bring their subdivisions' county roads up to good condition and do the ongoing maintenance needed to keep them in good shape.

Boulder County, however, has argued that the District Court and [Court of Appeals decisions](#) against the homeowners were consistent with cases that have held that private citizens cannot use the court system to order a county how much it must budget for county road improvements.

The Supreme Court announced Monday that upon consideration of the plaintiffs' petition, "and after review of the record, briefs and the judgment" of the Court of Appeals, the Supreme Court was denying the request that it hear an appeal.

The state high court's written announcement did not detail why the Supreme Court justices decided to reject the plaintiffs' request. Boulder County Commissioner Deb Gardner said in a Monday news release that since the original lawsuit against the county was filed in Boulder County District Court in 2014, "we have been confident in our position since the start of this process, and now it is good to have a final decision."

Also releasing a statement was Chuck Wibby, the lead plaintiff in the lawsuit and a co-founder of Boulder County Fairness in Road Maintenance, which has led efforts to get the county to spend more money on rehabilitating subdivision roads. Wibby wrote that "although the Supreme Court chose not to intervene in this matter, lower courts did rule during the BoCo FIRM lawsuits that the subdivision roads belong to the county and that the county has failed to properly maintain the roads per their statutory obligations." Gardner said county officials "are ready to move forward with finding a solution to repairing subdivision roads." Gardner's statement did not, however, detail what that possible solution might be.

"Over the years we've tried several approaches to resolving this issue that have not panned out," Gardner said. "We don't know exactly what comes next, but we will continue to work with willing partners in the community to find an approach that works." Boulder County Fairness in Road Maintenance "will continue to advocate for responsible county government and will work with the county to come up with a solution to this problem," Wibby said in his organization's statement.

Wibby added: "Today, the reality remains exactly the same as when the lawsuit was first filed. The subdivision roads were built to county specifications by the residents of the subdivisions and then given to the county for free in exchange for a commitment by the county to maintain the roads," which he said "are continuing to deteriorate every day."

Boulder County officials noted in a Monday afternoon news release that a ballot measure proposed by a separate group of subdivision homeowners failed, 45.9 percent to 54.1 percent, in last month's election. The measure was a [0.785-mill property tax that would have been collected for 15 years](#), with 58 percent of the taxes collected to be earmarked for subdivision road rehabilitation and the other 42 percent for cities' and towns' transportation improvements.

However, the 80,589 Boulder County voters who favored the measure "proves that there is a desire within the community to find some sort of countywide solution to repairing subdivision roads," the county said in its news release, adding: "As always, open dialogue with the community is encouraged to find potential routes forward."

Next year's Boulder County budget includes \$955,159 for "community-use" roads in unincorporated subdivisions, according to county Transportation Department spokesman Andrew Barth. That includes paved roads that provide the general public with access to such public destinations as schools, churches, parks and trailheads or that get significant cut-through traffic connecting primary county roads outside the subdivisions.

The money budgeted for community-service road rehabilitation will fund work in the Lake Valley Estates subdivision, including Fairways Drive, Golf Club Drive, Niblick Drive and Pebble Beach Drive.

That money is in addition to the ongoing expense of annual repair and routine maintenance work the county's Road Maintenance Division does on all county roads on an as-needed basis — roads both inside and outside of subdivisions, including sealing cracks, patching potholes, cleaning ditches and culverts, replacing signs and plowing snow. That road maintenance is budgeted at about \$8.9 million for 2017.

Barth said Boulder County also has about \$693,000 left from a \$1 million "subdivision local road rehabilitation incentive fund" that the county established to share road rehab costs with participating subdivisions' property owners.

That money has been spent, or is committed to, projects in partnerships with the Lefthand, Pinebrook and Knollwood water districts to completely repair local subdivision roads after waterline replacement projects, Barth said. He encouraged subdivision property owners interested in partnering with the county to repave their local roads in the future to contact Boulder County Transportation.

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