

Judge throws out Boulder County subdivision paving lawsuit

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A senior district judge today dismissed the rural Boulder County homeowners' lawsuit that sought to have the court order the county commissioners to spend more money on rehabilitating and repaving residential subdivision roads.

Judge Dave Williams, in a ruling filed this morning, said the plaintiffs who had sued Boulder County's commissioners — about 300 individuals and families owning properties in subdivisions in unincorporated parts of the county — did not have the legal standing necessary to pursue their claims.

Williams granted Boulder County's motion to dismiss the lawsuit.

"We're extremely disappointed that the judge decided not to intervene in this dispute," said Chuck Wibby, the lead plaintiff and co-chairman of the organization Boulder County Fairness in Road Maintenance.

Wibby said in an interview that the plaintiffs haven't decided whether to appeal Williams' ruling, but that he expects that if they do, they'll file that appeal within the coming month.

Commissioners Deb Gardner, Elise Jones and Cindy Domenico said in a joint statement that they're "pleased that the court recognized it was improper for the plaintiffs to ask the legal system to resolve a dispute that is clearly political in nature."

The commissioners said the lawsuit had sought "to divert funding from other county programs" to repave the roads.

They said they viewed Williams' dismissal of the lawsuit "as an opportunity to get back to the business of solving the subdivision paving issue in a less adversarial forum, and we are committed to moving forward with unincorporated county residents to seek a permanent solution to addressing their deteriorating subdivision roads."

The plaintiffs had contended that state law requires the county to pay road maintenance costs and that the Boulder County commissioners could shift money within the county's overall budget in order to cover the multimillion-dollar expense of fixing those crumbling paved roads.

The judge wrote that state law gives the county the power "to exercise discretion in making the choices necessary to assemble a budget that encompasses all of the county's departments."

But Williams said no statute or precedent in case law "sets any standard that must be met by the county in maintaining the roads and streets. Nor does any statute or case law require that roads and streets be funded to the satisfaction of any particular organization or group, whether because a statutory duty is involved or under any other theory.

"All of which factors demonstrate the political nature of the (budgeting) process and the wisdom of the principle that courts should become involved only if a legally protected right is being violated," Williams wrote.

Wibby said he and the other plaintiffs still feel that maintaining the paved roads "is a clear statutory responsibility of the commissioners."

Said Wibby: "The county owns the roads," and regardless of the judge's dismissal of the lawsuit, "the roads continue to deteriorate. What are they going to do to fix them? It remains a central issue."

Wibby said if the plaintiffs don't pursue further legal action, such as by appealing Williams' ruling, there still are political options open to the subdivision homeowners and their supporters.

He noted that two of the county commissioners' seats, those now held by Gardner and Jones, will be up for election next year. Domenico won re-election to her latest four-year term last November.

Another possible political option, Wibby said, would be to petition for an election to recall of one or more of the sitting commissioners.

In the commissioners' joint statement, they said that they and their staff "are working diligently on finding an equitable solution for paving subdivision roads that includes a partnership between subdivision residents and Boulder County taxpayers as a whole.

"We are committed to continuing that dialogue with all residents until a permanent solution to the problem of aging subdivision roads is found," the commissioners said.

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