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Judge Rules Boulder County Lacked Legal Authority to Create Subdivision Paving District.

Formation of district and imposition of assessments 'invalidated' by ruling

Boulder County commissioners didn't have the legal authority to establish a Local Improvement District created to charge rural residential subdivision property owners the bulk of the costs of rehabilitating those subdivisions' paved county roads, according to a Friday Boulder County District Court ruling.

The Board of County Commissioners "exceeded its jurisdiction and abused its discretion in authorizing and forming the Subdivision Paving Local Improvement District and imposing assessments on properties within the District," Senior District Court Judge J. Robert Lowenbach wrote.

Lowenbach said in his ruling that the authorization and formation of the road paving district the commissioners formed last year — and the county's imposition of millions of dollars of assessments on the owners of about 10,900 properties in nearly 120 subdivisions — "are invalidated."

The judge further ordered Boulder County to "promptly return the assessments and/or installments collected, with interest, and remove any and all liens" imposed as part of the funding mechanism intended to help pay the costs of rehabilitating and reconstructing about 150 miles of paved roads in the county's unincorporated residential subdivisions over the coming 15 years.

Chuck Wibby, one of the subdivision homeowners who sued the county last November, said he and the other plaintiffs learned of the judge's ruling on Sunday.

"We're obviously very pleased," said Wibby, who's also chairman of Boulder County Fairness in Road Maintenance, an organization formed by some of the subdivision homeowners to fight the county's efforts to assess property owners for the costs of the road rehabilitation work that Boulder County FIRM said was the county's responsibility.

Boulder County FIRM said in a Sunday night statement that barring a county appeal of the judge's ruling, it "effectively ends the county's Subdivision Paving Local Improvement District for all 10,900 property owners."

The organization said its goal "has always been to get our subdivision roads fixed without new taxes."

This week, Boulder County FIRM said in its statement, it will present recommendations to the county commissioners and a subdivision paving advisory committee about how that might be accomplished "without new taxes or assessments."

Barb Halpin, a spokeswoman for the Boulder County commissioners, said on Sunday night that the commissioners are expected to meet with deputy county attorney David Hughes on Monday to

review the ruling.

“We’re obviously disappointed,” Commissioner Deb Gardner said later Sunday night. “We felt we were on the right side of the law with what we’ve done.”

Gardner said she and her fellow commissioners would probably meet in executive session on Monday to review the judge’s ruling and discuss the county’s options.

“It’s all up for grabs, at the moment,” Gardner said.

Judge Lowenbach agreed with the lawsuit’s plaintiffs that the work of the repairing and reconstructing and rehabilitating crumbling county roads was a form of “maintenance” that didn’t fit within state law’s provisions allowing the creation of Local Improvement Districts for “improvements.”

“It is clear that the county faced difficult financial issues that caused the neglect of its dedicated subdivision roads,” Lowenbach wrote.

“Roads that are not chip sealed and resurfaced will deteriorate. If deterioration is severe enough, the road will have to be reconstructed. These maintenance activities are necessary to the upkeep of the roads and to keep them operative, and are included in the term ‘maintenance,’ the judge said.

Lowenbach wrote that “property owners whose roads were accepted for maintenance by the county understood that term to include all activities necessary for upkeep of roads. While it clearly had the duty to maintain those roads, the county did not perform that duty.”

The judge said he’d concluded that the term “improvement” — which the county contended it was planning with its Subdivision Paving LID, rather than “maintenance” — “means the building of something that is either entirely new or constitutes an appendage or addition to an existing item of public property. None of the intended uses of the funds to be raised by the LID fall into this category.”

Last year, county officials projected that the 15-year cost of rehabilitating paved subdivision roads would total about \$72 million, with Boulder County covering about \$14.4 million of that expense from its own budgets and subdivision property owners to be assessed the remaining \$57.6 million.

Earlier this month, the commissioners approved awarding a \$4.4 million contract for the first year’s work, which is to include reconstructing about 5.5 miles of roads and applying asphalt overlays to another 7.7 miles.

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