

<p>District Court, Boulder County, Colorado  Court Address:  Boulder County Justice Center  1777 6<sup>th</sup> Street  Boulder, CO 80302</p> <p>Plaintiffs:</p> <p><b>Charles Wibby, Janix Hogle, Maureen Crook, Richard Eggers, Peter Dente, Steve Miller, Barbara Knollenberg and Don Sherwood;</b>  v.</p> <p>Defendant:</p> <p><b>Boulder County Board of County Commissioners.</b></p>	<p><b>COURT USE ONLY</b></p>
<p>Attorneys for Plaintiffs  Madeline Meacham, #13361  Halpern Meacham  1790 30<sup>th</sup> Street, Suite 280  Boulder, Colorado 80301  Phone Number: (303) 449-6180  <a href="mailto:mmeacham@halpernllc.com">mmeacham@halpernllc.com</a></p>	<p>Case Number:</p>   <p>Division      Courtroom</p>
<p><b>COMPLAINT</b></p>	

Plaintiffs, Charles Wibby, Janet Hogle, Maureen Crook, Richard Eggers, Peter Dente, Steve Miller, Barbara Knollenberg and Don Sherwood (“Plaintiffs”), for their Complaint, state and allege as follows:

1. Boulder County is a body corporate and politic in the state of Colorado with powers especially conferred by law pursuant to C.R.S.30-11-101.
2. Plaintiffs are property owners of property in unincorporated Boulder County.
3. Venue is proper in Boulder County District Court.
4. A county is not an independent governmental entity; it is a political subdivision of the state, existing only for the convenient administration of the state government.
5. Maintenance of county roads is a statutory responsibility of counties.

6. The Boulder County Road and Bridge Fund is made up of a combination of property taxes, use taxes, state vehicle registration fees, specific ownership tax (a tax on vehicle registration) and gasoline taxes collected by the State and County. Road and Bridge funds are available for road construction and maintenance of all roads in the county.
7. Total Road and Bridge collections in 2013 are anticipated to be \$12.4 million, of which approximately \$4.2 million will be spent on planning, designing, and constructing capital projects, such as repaving roads, repairing and replacing bridges, replacing culverts, repairing sidewalks, etc. The remainder of the road and bridge fund is used by the county for road and infrastructure maintenance activities.
8. Boulder County accepted road dedications from over 100 subdivisions in the unincorporated county over a period of many decades. Roads were dedicated to the county when the subdivisions were approved and developed. Boulder County accepted many of those roads for maintenance at the time of dedication of the roads to the County. The county required that the roads be brought up to county standards before acceptance. The subdivisions complied, at the homeowners expense. On information and belief, at some point in the mid-nineties the county cut back on maintenance of county roads, and discontinued chip sealing and overlaying of county roads in subdivisions in the unincorporated county. Regular chip sealing and overlaying of roads is required to extend the life of paved roads. Without this maintenance, the roads in question deteriorated. In the last five years, the county has begun to try to address this problem. Throughout the process the county has not acknowledged its responsibilities for maintenance of county roads in subdivisions or for the problems that have resulted from its failure to maintain county roads in subdivisions.
9. The County Public Improvement District Act authorizes counties to organize public improvement districts and/or local improvement districts having the purposes and powers provided in the Act.
10. C.R.S. 30-20-603(1)(a) authorizes organization of local improvement districts for various purposes, including constructing, grading, paving, pouring, curbing guttering, lining or otherwise improving the whole or any part of any street. Maintenance is not included in this authorization. The Act requires that, in local improvement districts, the cost of improvements must be assessed against property **specially benefited** by the improvements.
11. In the Public Improvement District statute, C.R.S. 30-20-504(1)(a) authorizes acquisition, construction, installation, operation or **maintenance** of improvements. Public improvement districts must be approved by a majority vote of the electors in the proposed district.
12. On November 5, 2013, electors in the unincorporated county voted down a public improvement district organized for road maintenance purposes that would have included 10,900 properties in the unincorporated county.

13. On September 10, 2013 Boulder County, in anticipation of the possible defeat of the proposed public improvement district declared "the creation of the subdivision paving local improvement district for the purpose of rehabilitating public paved roads; a preliminary order for those improvements and ordering publication and mailing of notice of hearing" in resolution No. 2013-84.

14. On October 21, 2013 Boulder County held a hearing "authorizing the construction of certain improvements within the subdivision paving local improvement district, describing the improvement and the location of the district and setting forth the costs of the improvements and method of payment of the improvements" by resolution 2013-97. The resolution provided that "should the electors in the District approve formation of the Subdivision Paving Public Improvement District at the November General Election, the Subdivision Paving Local Improvement District shall be dissolved and be of no further force and effect."

15. Boulder County is proposing to assess taxes on 10,900 properties for the cost of chip sealing, overlaying or rehabilitating 150 miles of public county roads that serve the public, as well as county residents living in subdivisions in the unincorporated county. The work is anticipated to occur over a fifteen year period. Since the county only has responsibility for 350 total miles of paved roads, the county is seeking to impose responsibility for maintenance of almost half of paved county roads on to property owners, instead of paying for it out of the taxes in the Road and Bridge fund.

16. Boulder County estimated the current costs of chip sealing roads at \$40,000/mile and repaving at \$150,000/mile. Based on the county's own assessment of current road condition, this formula generates a cost assessment of \$13.2 million for the actual costs of chip sealing 65 miles of roads in fair condition and repaving 64 miles of road in poor condition. However, the county estimates the total estimated cost of improvements at \$72 million. The county has never produced an itemized accounting for the difference between \$13.2 million and \$72 million.

17. The roads in question often provide access for non-subdivision traffic and also provide access to regional destinations such as schools, trailheads and places of worship. The county proposed to pay \$14.4 million, or 20% of the "present estimated costs of the of the proposed improvements" to address this public use. No calculations in support of the 20% have been provided.

18. The average assessment will be \$5,756.00/property. The assessment formula is 1) 25% based on a property's value and 2) 75% based on length of road in the subdivision where the property is located. No adjustments are made for individual circumstances. Because of the flawed approach the county has taken, property owners in subdivisions that have roads in good condition do not receive a special benefit. Property owners that do not use subdivision roads for access do not receive a special benefit. Properties on roads that are heavily used by the public do

not receive a special benefit. Property owners who have already paid for road improvements through road funds, etc. do not receive a special benefit.

19. On November 18, 2013, the Boulder County Commissioners indicated they would approve a resolution assessing and apportioning the cost of public improvements upon each lot or tract of land within the subdivision paving local improvement district. Final approval is scheduled for November 21, 2013, to provide an opportunity for staff to consider excluding one subdivision from the district, based on testimony received at the November 18th hearing.

20. Boulder County included Plaintiffs property in the Local Improvement District created by Boulder County.

FIRST CLAIM FOR RELIEF  
C.R.C.P. Rule 106

21. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 20 of this Complaint. Defendant Board of County Commissioners adopted a resolution creating the local improvement district on or about October 21, 2013.

22. The resolution creating the local improvement district provided for the district to perform road maintenance services on existing roads, as opposed to constructing new roads or improvements.

23. Maintenance of and repairs to existing roads, for which the County already has responsibility, is not an authorized purpose for a local improvement district.

24. The Board of County Commissioners' actions in creating the local improvement district for road maintenance is not statutorily authorized.

25. The Board of County Commissioners therefore exceeded its authority and jurisdiction and abused its discretion in adopting the resolution creating the local improvement district.

26. Pursuant to C.R.S. §30-20-625, an action may be commenced within 30 days after the effective date of a resolution on the grounds that the improvements were not authorized by part 6 of Article 20, Title 30, C.R.S.

27. Plaintiffs are entitled to a judgment that the Board of County Commissioners exceeded its authority in adopting the resolution creating the local improvement district.

28. The assessment formula used by the county is not designed to provide a reasonable approximation of assessments to benefits.

SECOND CLAIM FOR RELIEF  
Violation of Taxpayer's Bill of Rights (Colo. Const. Art. X Sec. 20)

29. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 28 of this Complaint.
30. Boulder County is a district within the meaning of the Taxpayer's Bill of Rights, Colorado Constitution Article X, Section 20 ("TABOR"), and is subject to the requirements of TABOR.
31. The creation of the local improvement district by Boulder County and inclusion of properties within the district subjects the owners of such properties to a new tax, a tax rate increase, or an increased mill levy within the meaning of TABOR.
32. The creation of the local improvement district by Boulder County and inclusion of properties within the district to pay for road maintenance that the County previously provided out of general operating funds is a tax policy change causing a net tax revenue gain to Boulder County.
33. TABOR requires that districts such as Boulder County must have voter approval in advance for any new tax, tax rate increase, mill levy above that for the prior year, or a tax policy change directly causing a net tax revenue gain to any district.
34. Boulder County did not obtain voter approval in advance for the tax increase, tax rate increase, increased mill levy, or tax policy change resulting in a net revenue gain as a result of creation of the local improvement district.
35. The creation of the local improvement district and inclusion of property within the district without prior voter violates TABOR.
36. TABOR provides a constitutional private right of action to enforce its provisions.
37. Plaintiffs are taxpayers and owners of property within the local improvement district, who are suffering one or more injuries in fact by inclusion of their properties within the local improvement district. These injuries in fact include reduced property values from the creation of the district and an encumbrance on their title due to inclusion of their property within a taxing district. Accordingly, plaintiffs have standing to assert a private right of action under TABOR.
38. Plaintiffs are entitled to a declaration that the creation of the local improvement district and the imposition of taxes on properties within the local improvement district violates TABOR.
39. Plaintiffs are entitled to a refund of any tax revenue collected, kept or spent illegally with 10% annual simple interest.

40. Plaintiffs are also entitled to recover their costs and attorney fees in this action pursuant to TABOR.

THIRD CLAIM FOR RELIEF  
Constitutional Violation – Uniform Taxation

41. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 40 of this Complaint.

42. The Constitution of the State of Colorado, Article X, Section 3, requires that each property tax levy shall be imposed uniformly upon all non-exempt real and personal property located within the territorial limits of the authority levying the tax.

43. The creation of a local improvement district and inclusion of property within subdivisions in unincorporated Boulder County where Boulder County has the responsibility for road maintenance results in said district has the effect of imposing a higher property tax levy on properties within the district.

44. Boulder County maintains public roads that service other properties outside the district without collecting a similar tax levy from said properties.

45. The creation of the local improvement district therefore violates the principle of uniform taxation set forth in the Constitution of the State of Colorado, Article X, Section 3.

FOURTH CLAIM FOR RELIEF  
Due Process

46. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 45 of this Complaint.

47. The Board of County Commissioners included Plaintiffs' property within the boundaries of the local improvement district by their actions in adopting the resolution creating said district.

48. Special benefits equal to or greater than the assessment imposed were not conferred upon Plaintiffs' property.

49. Collecting an unauthorized assessment from Plaintiffs effects a deprivation of Plaintiffs' property without due process in violation of Article II, Section 25, of the Colorado Constitution, and Article 14, Section 1, of the United States Constitution.

50. If no special benefit has been conferred upon the property subjected to an assessment, the assessment is a deprivation of property in violation of the Federal and Colorado state constitutions.

FIFTH CLAIM FOR RELIEF  
Declaratory Judgment

51. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 50 of this Complaint.
52. Plaintiffs are taxpayers and owners of property within the local improvement district whose rights, status, and legal relations are affected by the resolutions and actions of the Board of County Commissioners in adopting the resolution creating the local improvement district.
53. A case and actual controversy exists between the parties as to whether the local improvement district created by the Board of County Commissioners: a) violates TABOR; b) exceeds the statutory authority of part 6 of Article 20, Title 30, C.R.S.; c) violates the requirements of Article X, Section 3 of the Colorado Constitution for a uniform tax; or d) violates constitutional due process.
54. Plaintiffs are entitled to a declaratory judgment pursuant to C.R.C.P. Rule 57 that the actions of the Board of County Commissioners in creating the local improvement district and including Plaintiffs' property within said district were in violation of Colorado law, and therefore neither Plaintiffs nor their property are subject to the burdens, obligations, encumbrances, and provisions of said resolution.

SIXTH CLAIM FOR RELIEF  
Injunctive Relief

55. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 54 of this Complaint.
56. Unless an injunction issues, Defendants will impose an encumbrance on Plaintiffs' property for the full tax burden of the local improvement district.
57. Inclusion of Plaintiffs' property within the local improvement district will result in an immediate reduction in property value due to the additional tax burden, even though the improvements may not be completed for years in the future. Property owners will either have to pay the entire assessment within 30 days of the Board's final assessment resolution or be held to have consented to the assessment and to have waived their right to question the jurisdiction of the county, pursuant to 30-20-613.
58. Plaintiffs lack an adequate remedy at law and will suffer irreparable harm unless an injunction issues because the existence of the tax lien during the pendency of this litigation, even if Plaintiffs ultimately prevail, will cloud title to their property in the interim, affect their credit, and have other tangible and intangible effects on their financial transactions. In addition, under current Colorado law, even if the taxes are ultimately found illegal and abated, Plaintiffs may become obligated to third party tax lien purchasers for interest and penalties paid to acquire the liens. Finally, Plaintiffs who are unable to pay their assessment in total will have been held to waive their rights.

59. The immediate and irreparable harm to Plaintiffs outweigh any damage to Defendant.

60. Granting an injunction is in the public interest because it protects the taxpayers from the likelihood that they will have no remedy or an inadequate remedy in the event the Court finds they are entitled to prevail, and protects taxpayer rights under TABOR and the Colorado Constitution.

61. Plaintiffs are entitled to a preliminary injunction to maintain the status quo, followed by a permanent injunction, enjoining the Board of County Commissioners from including property in the local improvement district.

#### SEVENTH CLAIM FOR RELIEF Breach of Contract

62. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 61 of this Complaint.

63. By accepting the roads in each subdivision, Boulder County entered into a contract with the developer of each subdivision by which the developer constructed the roads to county standards and dedicated the roads to public use, in exchange for Boulder County agreeing to maintain the roads in the future at public expense so long as they remained public roads.

64. The property owners and residents of each subdivision who would use the roads, including each of the plaintiffs, were intended beneficiaries of said contracts.

65. The contracts between Boulder County and each developer were supported by mutual consideration.

66. The developer performed its duties under the contract by constructing the roads according to county standards, dedicating the roads to public use, and conveying the roads to Boulder County.

67. All of the prerequisites to Boulder County performing its duties under the contract have been satisfied.

68. Boulder County Board of County Commissioners' actions in creating the local improvement district constitute an anticipatory breach of contract in that Boulder County is refusing to use public funds to perform maintenance on the subdivision roads in the future, and instead intends to assess property owners for the cost of maintaining the roads.

69. Plaintiffs are entitled to a declaratory judgment that Boulder County has the contractual obligation to maintain the subdivision roads without charging property owners assessments for the cost of maintaining the roads, and that assessing plaintiffs for the cost of road maintenance would breach the contract.

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment as follows:

A. Declaring that the Board of County Commissioners violated the Taxpayer's Bill of Rights, Article X, Section 20, of the Colorado Constitution, in adopting the resolution creating the local improvement district and including Plaintiffs' property within said district;

B. Declaring that the Board of County Commissioners exceeded its statutory authority and abused its discretion under part 6, Article 20, Title 30, C.R.S., in adopting the resolution creating the local improvement district and including Plaintiffs' property within said district;

C. Declaring that the Board of County Commissioners violated the requirements of Article X, Section 3, of the Colorado Constitution for uniform taxation in adopting the resolution creating the local improvement district and including Plaintiffs' property within said district;

D. Declaring that the Board of County Commissioners violated Plaintiffs' due process rights in adopting the resolution creating the local improvement district and including Plaintiffs' property within said district without providing a corresponding benefit in violation of Article II, Section 25, of the Colorado Constitution, and Article 14, Section 1, of the United States Constitution.

E. Declaring that neither Plaintiffs nor their property are subject of the burdens, obligations, encumbrances and provisions of said resolution;

F. Awarding Plaintiffs a refund of any taxes collected, with 10% annual simple interest;

G. Enjoining Defendants from including Plaintiffs' property within the local improvement district; and

H. Awarding Plaintiffs their costs, expenses of litigation, and attorney fees to the full extent allowed under Colorado law, with pre-judgment and post-judgment interest as allowed by law.

Dated this 20<sup>th</sup> day of November, 2013.

HALPERN MEACHAM

s/Madeline Meacham  
Attorney for Plaintiffs

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