

Fixing Subdivision Roads Without New Taxes

Boulder County Fairness in Road Maintenance
www.BoCoFIRM.org

For the
Pine Brook Hills Subdivision
April 28, 2015

BoCoFIRM Focus is on Forcing the County To Perform Its Statutory Duties

The court noted that:

A county is not an "independent governmental entity existing by reason of any inherent sovereign authority of its residents; rather, it is a political subdivision of the state, existing only for the convenient administration of the state government, created to carry out the will of the state."

quoting *Board of County Comm'rs v. Love*, 470 P.2d 861, 862 (1970); accord *Bowen/Edwards Assocs.*, 830 P.2d at 1055.

Overview

- * **BoCo FIRM**
 - * Our goals and accomplishments
- * **Road Conditions in Pine Brook Hills**
- * **A Brief History of Subdivision Roads**
- * **The Road & Bridge Fund – Where did it go?**
- * **Discretionary vs. Statutory Spending**
- * **Lawsuit Status**
- * **HUTF Fraud Allegation**
- * **Pursuits**

Who is BoCo FIRM?

- * Citizen's Committee - 12 active members
- * Formed in Sept 2013 with 3 distinct goals
- * Composed of residents of subdivisions in unincorporated Boulder County
- * This is our 20th month serving subdivisions
- * Supported in nearly all subdivisions
- * Represented by Halpern Meacham, LLC

Our Goals and Accomplishments



☒ **Goal #1** – Defeated the PID at the ballot box



☒ **Goal #2** – Defeated the LID in court

- * Saved taxpayers over \$72M in assessments over 15 years
- * Returned assessments with 8% interest
- * Removed liens on 10,900 properties



☐ **Goal #3** – Get roads fixed without new taxes

- * Force the County to perform statutory duty to maintain subdivision roads

[CRS 43-2-111] County assigned [responsibility for] both primary and **SECONDARY** [ROAD] construction and **MAINTENANCE**.

Lawsuits Re-enforced BoCoFIRM Position

- * The duty to maintain subdivision roads **belongs to the county** and not to those who live in the subdivisions. [Judges Lowenbach and Williams]
- * The court wrote “**Proper maintenance of subdivision streets and roads requires periodic resurfacing, chip and seal, and overlay work.**” [Judges Lowenbach and Williams]
- * **Subdivision roads are public roads** available to all who might use them [Boulder County in MTD]
- * County acknowledged it made budget decisions **knowing that subdivision roads would eventually fail** [Boulder County in MTD]
- * County cannot tax **subdivision property owners ONLY** for subdivision roads - **they are a public interest**

How Bad Are Pine Brook Hills Roads?

8.42 miles/ Weighted Mean PQI = 4.2



Road Conditions: 2012 County Data

0.8 miles Fair: $.6 < PQI > 8$
0.55 miles Fair: $5 < PQI > 6.5$
7.1 miles Poor: $PQI < 5.0$
Pavement Quality Index: 0-10

Linden Drive As It Connects to Timber Lane



Subdivision Road Neglect Began Long Ago

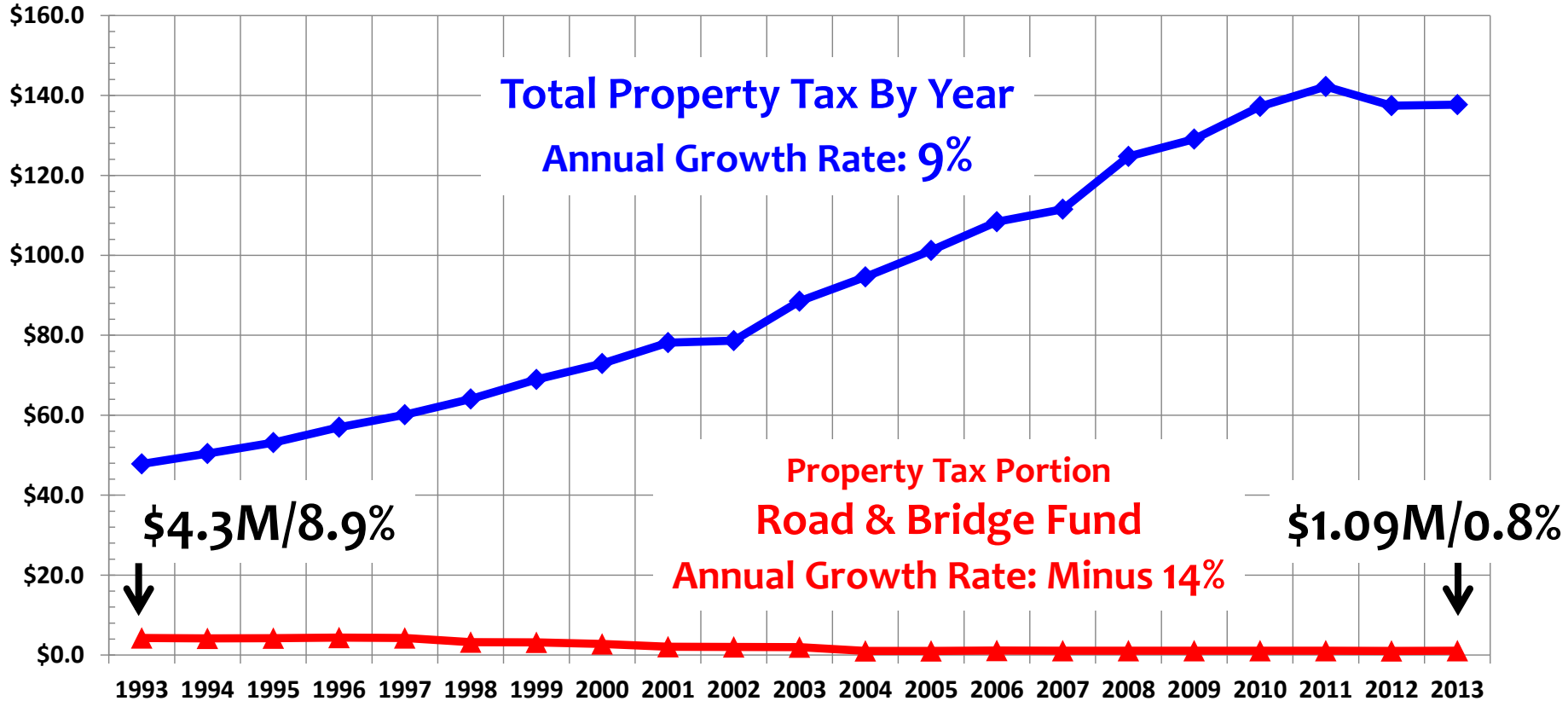
Raven Court
Paul Nor Estates

- * Road maintenance abandoned deceitfully in early 80's - part of a hidden agenda.
- * Roads deteriorated rapidly without treatment.
- * Funding policy for subdivision roads hidden from property owners until 2009.
- * Policy clearly violates state law
- * 2009 policy revisions were “indicators” for the PID/LID funding strategy.
- * Maintenance non-existent on most subdivision roads for >25 yrs.
- * County wants to pin the cost of **their neglect** of subdivisions roads on property owners.



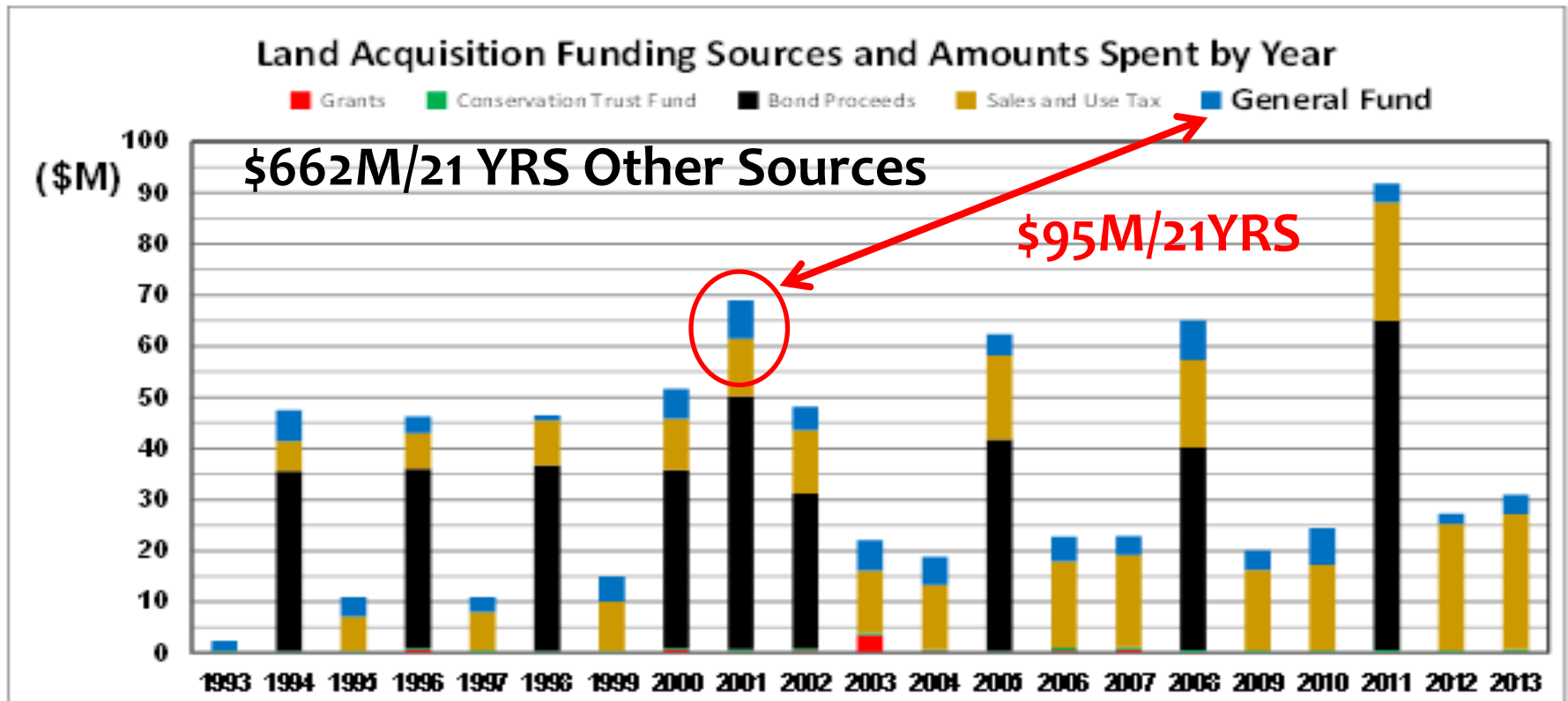
The Road & Bridge Fund Was Raided From 1997 to 2004

Millions



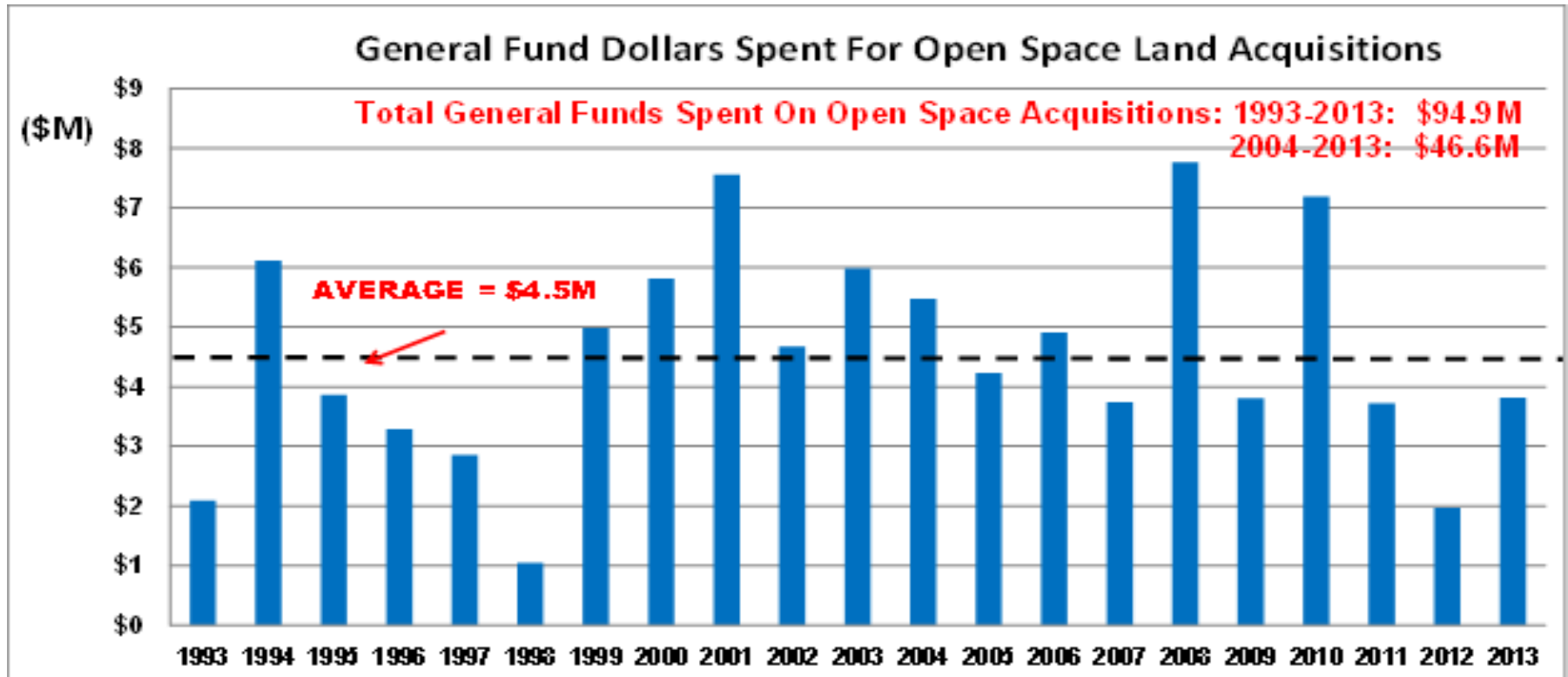
Open Space Funds Include Small Portion From General Fund

General Fund Portion is Entirely Discretionary



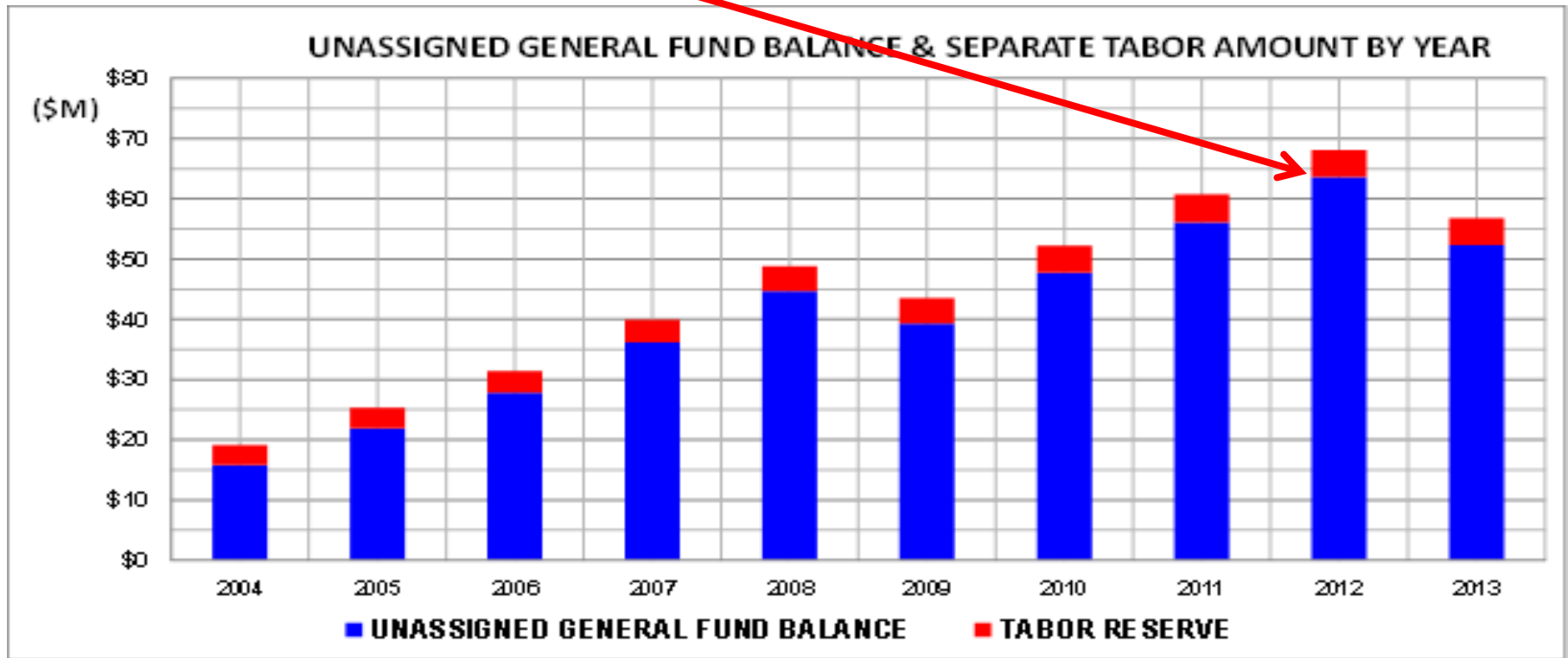
Discretionary Spending Shows Ample Budget Available For Roads

\$4.6M/Year Available For Roads



Discretionary Funds Used to Boost Unassigned Fund Balance

\$63M Balance in 2012



More Than Enough Revenue

- * BoCo FIRM's contention is \$4,000,000 can be found in a \$459,000,000 budget
- * Commissioner's Unassigned General Fund Balance grew from \$39,311,612 in 2009 to \$63,603,614 in 2012
- * In other words, the County collects so much revenue each year they can't spend it all and yet they still refuse to fix our roads

Lawsuit Summary

- * Oct 13 - 1st Amended Complaint Filed - Breach of Contract
- * Dec 30 – Judge Williams Granted County Motion to Dismiss
- * Feb 9 – 2nd Amended Complaint Filed - Abuse of discretion, arbitrary and unreasonable in prioritizing budget for maintenance of subdivision roads
- * Feb 13 – County’s Motion to Dismiss Filed
- * Apr 2 – Judge Williams Granted County Motion to Dismiss citing lack of standing

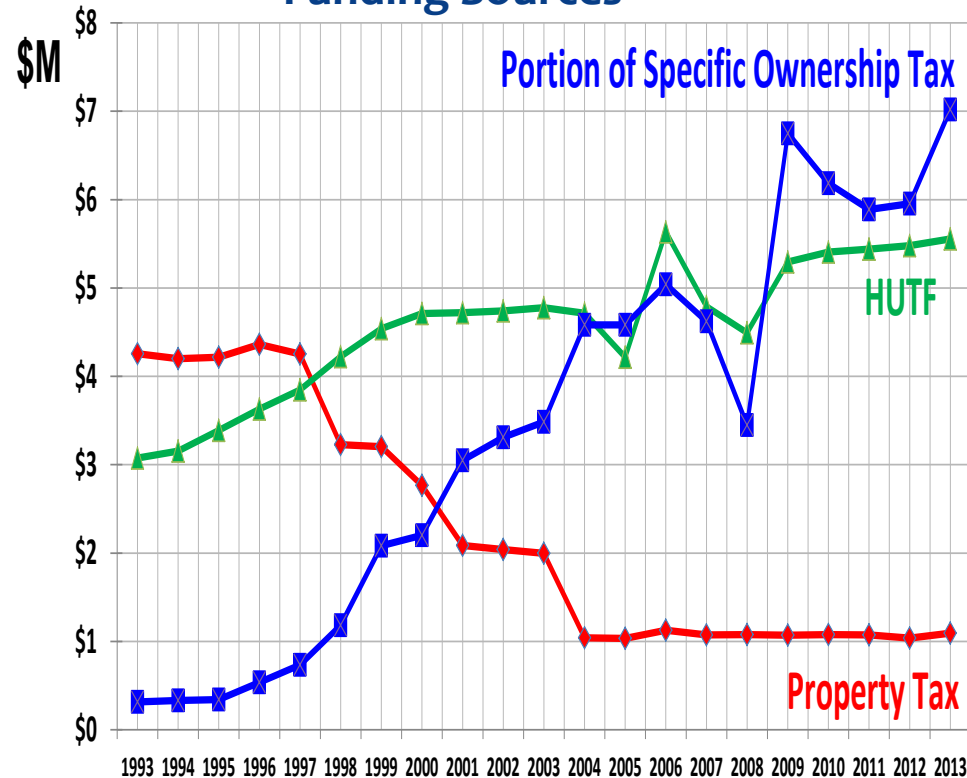
We Will Appeal

May 21 - BoCoFIRM will file a Notice of Appeal to the Colorado Court of Appeals to include review of the following court decisions:

- 1) Dismissal of contract claims on the basis that there could be no maintenance contracts between developers of subdivisions who improved roads and dedicated them to the County and the County that accepted those roads.
- 2) Dismissal of a mandamus claim on the grounds that it was based on contract and not, as alleged, on the County's statutory duty to maintain county roads.
- 3) Dismissal of the claim that the County's failure to perform statutorily required road maintenance was arbitrary and unreasonable on the grounds that property owners lacked standing - did not have a protected legal interest in maintenance of the roads they use for access and did not suffer an injury in fact that is not common to all county property owners.

Boulder County Has Defrauded Colorado for More Than 25 Years on HUTF

Major Road Maintenance
Funding Sources



Highway Users Tax Fund - HUTF
Over \$100M in funding received

- * HUTF governed by statute
- * Counties receive 63% of HUTF funds after state allocation
- * Roads must be open, used, & **maintained** to receive allocation.
- * Boulder County claims 143 miles of **maintained** paved subdivision roads for HUTF purposes.
- * False mileage certifications and road reports were submitted yearly since before 1990.
- * County has **defrauded** Colorado for over 25 years.

Exposing HUTF Fraud Via State Officials and Media

- * **Jan 8th** – Letter to Governor Hickenlooper, CDOT and AG requesting meeting
- * **Feb 12th /Mar 12th** follow-up with Governor - Mike Rosen show
- * **Mar 13th** - Received letter from CDOT Legal claiming no fraud exists and no authority to audit
- * **Mar 26th** – BoCoFIRM response letter to CDOT
- * **May 7th** – Meeting with CDOT

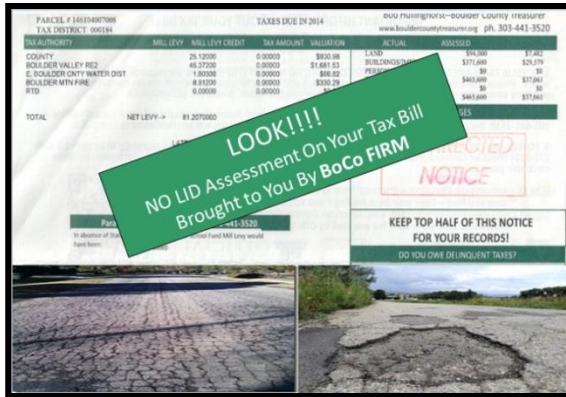
Active Pursuits

Lawsuit Could Be Lengthy & Costly

ATTENTION

**Boulder County
Abandoned Maintenance
of these Paved Roads**

Support **www.BoCoFIRM.org**
For Maintenance Without New Taxes



- * Remain vigilant of County activity on roads
- * Neighborhood meetings
 - * Keep subdivisions connected & informed
 - * Increase representation & support
- * Increase citizen involvement
- * E-mail blasts
- * Signs at subdivision entrances
- * Direct mailer to property owners
- * Articles to media

WE NEED YOUR SUPPORT \$

How You Can Help Us

- * Become a neighborhood representative
- * Help organize a neighborhood meeting
- * Sign up for BoCoFIRM e-mail and encourage your neighbors to do so.
- * Support us financially: **We ALL benefitted from the \$72M dollar savings from the LID Defeat**

Donate by check to: OR Online @ www.BoCoFIRM.org

BoCoFIRM

P.O. Box 11275

Boulder CO 80301

We are UNPAID Volunteers

Donations Pay Our Legal Costs

**We are working for YOU to get subdivision roads fixed
without new taxes**

To Offer Your Support and Donate Go To:

www.BoCoFIRM.org

You may send donations to:

**BoCo FIRM
P.O. Box 11275
Boulder CO 80301**

Back Up:

Pine Brook Hills Road Condition Data

UniqueID	Street Name	PQI 2009	PQI 2012	Delta PQI	Subdivision	FUNCTIONAL CLASS	Centerline (ft)	D*H Product	- d(wt avg)	J*2 * H	
144	ALDER LN	2	2	0	PINE BROOK HILLS	LS	342.5	684.91	-2.21	1,665.15	
572	TIMBER LN	2.3	2.3	0	PINE BROOK HILLS	L	346.4	796.69	-1.91	1,257.16	
569	TIMBER LN	3.6	2.8	-0.8	PINE BROOK HILLS	L	2,000.0	5,600.00	-1.41	3,948.49	
709	WILD HORSE CIR	2.9	2.9	0	PINE BROOK HILLS	L	2,000.0	5,800.00	-1.31	3,406.46	
493	LINDEN DR	3.6	3.1	-0.5	PINE BROOK HILLS	L	2,000.0	6,200.00	-1.11	2,442.40	
568	TIMBER LN	3.3	3.3	0	PINE BROOK HILLS	L	2,000.0	6,600.00	-0.91	1,638.34	
431	LINDEN DR	4.4	3.4	-1	PINE BROOK HILLS	L	1,879.0	6,388.48	-0.81	1,217.85	
570	TIMBER LN	3.7	3.4	-0.3	PINE BROOK HILLS	L	2,000.0	6,800.00	-0.81	1,296.30	
191	ALPINE WAY	3.5	3.5	0	PINE BROOK HILLS	L	1,772.0	6,202.00	-0.71	880.93	
726	WILD HORSE CIR	5	3.6	-1.4	PINE BROOK HILLS	L	1,280.7	4,610.58	-0.61	468.90	
396	LINDEN DR	4.6	3.8	-0.8	PINE BROOK HILLS	L	2,000.0	7,600.00	-0.41	328.18	
236	BEAVER WAY	5.7	3.9	-1.8	PINE BROOK HILLS	LS	361.8	1,411.15	-0.31	33.68	
70	BRISTLECONE WAY	5.9	3.9	-2	PINE BROOK HILLS	L	1,072.8	4,183.92	-0.31	99.85	
632	PINE TREE LN	4	3.9	-0.1	PINE BROOK HILLS	LS	2,821.9	11,005.47	-0.31	262.64	
492	LINDEN DR	4.4	4	-0.4	PINE BROOK HILLS	L	1,830.1	7,320.36	-0.21	76.97	
566	TIMBER LN	4.2	4.2	0	PINE BROOK HILLS	L	2,000.0	8,400.00	-0.01	0.05	
571	TIMBER LN	4.2	4.2	0	PINE BROOK HILLS	L	1,653.6	6,945.17	-0.01	0.04	
442	LINDEN DR	4.3	4.3	0	PINE BROOK HILLS	L	2,000.0	8,600.00	0.09	18.02	
495	HAWK LN	5.7	4.5	-1.2	PINE BROOK HILLS	LS	892.4	4,015.75	0.29	77.62	
96	ACORN LN	4.6	4.6	0	PINE BROOK HILLS	LS	500.9	2,304.04	0.39	78.12	
269	NORTH CEDAR BROOK RD	5.7	4.6	-1.1	PINE BROOK HILLS	L	2,000.0	9,200.00	0.39	311.93	
128	SOUTH CEDAR BROOK RD	4.6	4.6	0	PINE BROOK HILLS	LS	2,407.3	11,073.58	0.39	375.45	
441	LINDEN DR	6.9	4.7	-2.2	PINE BROOK HILLS	L	824.3	3,874.21	0.49	201.91	
567	TIMBER LN	4.9	4.9	0	PINE BROOK HILLS	L	1,355.3	6,641.17	0.69	654.51	
341	NORTH CEDAR BROOK RD	5.7	5.1	-0.6	PINE BROOK HILLS	L	2,000.0	10,200.00	0.89	1,601.77	
719	LINDEN DR	6.9	5.2	-1.7	PINE BROOK HILLS	L	913.3	4,749.10	0.99	904.04	
252	BALSAM LN	6.8	6.8	0	PINE BROOK HILLS	L	1,284.5	8,734.42	2.59	8,649.15	
753	LINDEN DR	7.7	6.9	-0.8	PINE BROOK HILLS	L	94.3	650.71	2.69	684.91	
385	NORTH CEDAR BROOK RD	7.2	7.2	0	PINE BROOK HILLS	L	2,831.0	20,383.04	2.99	25,392.61	
						Subtotal	44,464.0	feet	-		
						Subtotal	8.42	Miles	-		
						Weighted Mean PQI	4.21				
						Weighted St. Deviation	1.16				
						68% of Roads in PQI Rang	3.04	5.37		5.73	Miles
						Road Segments	29				

