

Testimony to the Senate Local Government Committee regarding transparency and disclosure in Metro Districts

My name is Fayre Ruszczuk and I am a citizen/elector that lives in a metro district.

Section 1 of SB 262 regarding notices for metro District Election, says to choose 2/5 ways to inform residents of an upcoming election. None of these methods is effective. Take a look at the pictures of notices placed for public view in the packets I have provided. These are not uncommon methods of posting notices. Email should be the mandatory way of communicating this information with residents and it should be mandatory that notices be sent **to all** electors in a metro district regardless of size. The majority of metro districts have fewer than 1000 electors, so this exception to the rule would eliminate just about everybody in metro districts. Not very democratic.

There should be additional provisions requiring certain critical information to be contained in the notice. For example, conflicts of interest between the developer board members and the residents. In addition, a self-nomination form to be on the Board should be given to a resident as soon as a contract to purchase is completed.

Section 3 of the bill requires the creation of an official website for metro districts that requires certain documents be posted such as the current budget, prior year audit, the annual report, most current election results, notice of election, a map of district boundaries, notice of meetings, and whatever is deemed appropriate by the board of directors. There are significant disclosures missing. All the information that is provided on the DOLA website should be included on this website: all meeting and elections notices and results plus notes from all board meetings, all budgets and audits, DOLA reports showing debt issued and remaining debt, all conflicts of interest between the members of the board who are affiliated with the builder/developer and the residents, information that the board has the exclusive right to vote on issuing debt and that residents have the right to serve on the board as soon as they purchase property. There should be a link to a self-nominating form.

All Intergovernmental agreements should be listed, especially those signed at each end by developer board members. Nothing like signing an agreement with oneself. The original service plan and all amendments should be included. A "truth in lending" disclosure report as referenced in Section 7 (as revised below) should be included as well.

I am submitting a suggested financial disclosure for your consideration that I consider vital for potential buyers/residents in a Metro District. In addition to knowing they are buying into a metro district, they need to understand what it is, how it is governed and that they have the right to be on the Board of Directors. They need to understand that any developer/builder members of the Board of Directors have a conflict of interest with buyers/residents.

Critical information that potential buyers in a metro district need to know is as follows:

- 1.) Total amount of authorized resident debt voted on in the initial ballot,
- 2.) Total amount of outstanding debt that has actually been issued,
- 3.) The length of time for the debt,
- 4.) Anticipated schedule for future debt,
- 5.) The current total community payment for the debt,
- 6.) Average annual payment for each resident
- 7.) The interest rate for all the loans and debt
- 8.) Current mill rate for all district debt and operations/maintenance
- 9.) Current mill rate for all other property tax expenses (city/county, school, fire property taxes)
- 10.) Current amount of all property taxes
- 11.) Percentage of all property taxes paid for district debt and operations/maintenance compared with total property tax bill
- 12.) The assessed valuation of the district property and the amount of debt + interest in order to determine:
- 14.) The ratio of debt to valuation (DOLA stated in 2006 that a ratio higher than 20% raises concerns about the financial health of the district. I just evaluated a district that has a 603% ratio in your district, madame chairman.

Metro Districts are currently a big problem and it is up to you to correct it. We taxpayers are watching.

Arista, formerly Park 36 Investments—Senator Kirkmeyer’s district

<u>Original board for Metro District starting in 2005</u>	<u>Board as of 2008 bond purchase for</u>	<u>Board as of 2018 bond purchase for</u>	Joseph Zepeda of President
Mike Byrne of Byrne Realty, President	Joseph Zepeda of President	Joseph Zepeda of President	Dave Hostetler of Wiens Enterprises, Treasurer
Dave Hostetler of Wiens Enterprises, Treasurer	Dave Hostetler of Wiens Enterprises, Treasurer	Dave Hostetler of Wiens Enterprises, Treasurer	Tim Wiens of Wiens Enterprises, Director—also owner and developer of project
Tim Wiens of Wiens Enterprises, Asst. Secretary—also owner and developer of project	Tim Wiens of Wiens Enterprises, Asst. Secretary—also owner and developer of project	Tim Wiens of Wiens Enterprises, Director—also owner and developer of project	Jordan Wiens, works for retail leasing of Wiens Capital, Asst. Secretary
John Waggoner of Lowe Enterprises, Director	Eric Jonsen of , Asst. Secretary	Jordan Wiens, works for retail leasing of Wiens Capital	William Maestas, Asst. Secretary and employee of Arista Place
Edward Barsocchi of Lowe Enterprises, Director and Manager of day-to-day operations of development	Edward Barsocchi of Barsocchi Enterprises, Asst. Secretary Manager of day to day operations of development	William Maestas Director and employee of Arista Place	

Board as of 2021 until next election

“The District was established to provide financing for the design, acquisition, installation, construction and completion of public improvements and services, including water, sanitation, street, safety protection, park and recreation, transportation, television relay and translation and mosquito control improvements and services. The operation and maintenance of most District services and facilities is anticipated to be provided by other entities and not by the District. The District is authorized to operate and maintain any improvements not otherwise conveyed to the City or other entities.” This is the purpose of the district as written by the Board of Directors.

The initial estimate for completion of the above public improvements and services was \$38 million in the bond report for the 2005 Bond. In the 2018 bond report the estimate for completion of the improvements was an additional \$18.2 million. The authorization amount for infrastructure as mentioned above was \$100,000,000. \$63,116,000 was used and \$36,884,000 unused. The amount used exceeded the original estimates by about \$7,000,000. The real concern is that \$100,000,000 was authorized by the board for loan refunding and intergovernmental agreements, totaling \$200,000,000 for a total debt authorization of \$306 million, per the notes to basic financial statement, page 32, dated 12/31/2018. This is an onerous and unnecessary amount of tax debt to be thrust upon unsuspecting taxpayers. In addition, this metro district has been in effect since 2002 and is still under the control of the developer and his employees even though the project is close to build out. (See below) This developer board of directors is authorized to considerably increase the debt of the taxpayers.

Over the years there have been three bonds and one special revenue loan in the following amounts: 2005 bond \$19.54 million, 2008 bond for \$26 million, 2015 loan for \$30.97 million to pay off the 2005 bond, 2018 bond to pay off the 2008 bond and 2015 loan of \$74.209 million. To date, taxpayers have had to pay \$55.7 million in principal and interest. By the time the current bond is paid off in 30 years, the total cost to taxpayers will be \$216.4 million in principal and interest for

a \$63 million infrastructure project. Not exactly a good return on their money. This does not consider the possibility of more debt being added. Current debt to assessed value ratio is

As I was aghast that there are no homeowners on the board, I drove to Arista to see where they post information for board meetings and elections. It is in the commercial area of the district, on a small billboard. On the SDACO website it lists the posting place for meeting notices as Arista Parking Structure. The posting regarding board meetings is so small, it does not draw attention to it. It appears to be placed so that no one will read it. Here are pictures of the posting as well as one in another district, posted on a fence post. Not an effective way of informing residents of meetings or elections.



Since there are so many absentee owners in the district, it seems that the MD Board would notify them by mail or email with information regarding meetings and elections. I tried to look up how many attended these meetings. The meeting notes can only be accessed through the Special District Management Service for a "research charge" of \$34/ hour. It seems that these minutes should be posted in an accessible way for all residents to access. I intend to obtain minutes.

Quote from Tim Wiens, developer and member of the board of directors.

"Despite the disruptions caused by the COVID-19 pandemic, development in Arista is surging along. Several projects are in the works: Fairfield Residential with 386 units of multifamily housing; Steadfast Residential with 325 units; the 159 units of affordable housing at Crosswinds at Arista; four retail buildings in the Turnpike Shops retail district; a Class A office building; 60,000 square feet of medical offices.

"We are comfortable with the office space," Wiens said. "Early on in the pandemic, we really felt the future of office real estate would be impacted, but not in a dramatic way."" -----From Biz West

When complete, Arista should have more than 2,000 residential units, more than 150,000 square feet of retail, more than 200,00 square feet of medical space and close to 500,000 square feet of Class-A office space.

Thompson Crossing

Thompson Crossing is another metro district with an extremely high mill levy. It was formed in 2001 and still does not have any resident members on the board of the district. All elections have been cancelled due to no one submitting a request to run. Hmmm, wonder why. I am attaching a copy of the only notice given for this in the Johnstown Breeze. More to come later tonight.

In Douglas County there are many metro districts with significant mill levies that negatively affect taxpayers. Here is an example of one.

1. At buildout there will be 1100 homes. Per the developer, infrastructure costs will be \$89 million. In the past, builders would front this money with their own funds or a bank loan. In this market, developers should not need to pile debt onto future homeowners.
2. There are four metro districts. #1 is the master district and 2-4 are the financing districts.
3. AS of 2016, “the board” aka, the developer, authorized debt of up to \$90 million, with an initial debt service of 50 mills and 25 for ops. and maintenance, totaling 75. **(Please note that in the 2021 budget there is a reference to the initial authorized debt in 2016, but it states it as \$900 million rather than 90 million for authorized debt, a serious error).** The mill levy is already up to 83.495. An information sheet, put out by the builder, says residents will only be paying \$40 in MD assessments towards maintenance and ops. It does not mention the debt maintenance. [SolsticeFactSheet.pdf \(livesolsticeco.com\)](https://livesolsticeco.com/SolsticeFactSheet.pdf)
4. To date, there is bond debt totaling \$38,572,035.35. Total cost to homeowners will be \$92,387,168 by the time the bond is paid off in 2049. That comes to about \$84,000 per household. Unfortunately, the board is likely to increase the debt since they have authorization to do so up to \$90 million. With interest, over 30 years that could come to \$200 million + with interest or around \$182,000 per household. That is why it is imperative to replace the board with homeowners, to stop additional debt being added. The assessed value of the community at buildout is estimated to be \$53,836,000. Using that figure with the \$38.5 million in debt, the debt to assessed value is currently 71.6% and should not exceed 20% per DOLA. If you use the \$90 million figure, the ratio would be 167%. The board did not list a ratio in the bond information. (page 7 of annual report on service plan for 2019)
5. I looked for the statement regarding conflicts of interest and could not find one. It is required that they list conflicts. Check out the elections tab for 2020. None of them live in the development but they all work for developer. Big conflicts of interest.
6. The current metro district taxes on a \$699,500 home comes to \$1100 based on the cost of a lot.

Right now, it shows an assessed value for this home of \$13,170 based on an actual value of \$45,399 which is basically the cost of the lot. Based on that assessment, the MD taxes for this year are showing as \$1100, less than \$100/month. When the assessed value is recalibrated, it will be done like this:

$$\begin{aligned} \text{Real value of home} & \times \text{Assessment \% (7.15)} & = & \text{assessed value} \\ \$699,500 & \times .0715 & = & \$50,014.25 \end{aligned}$$

Once you have the assessed value, you multiply it by the mills as a percentage. For example, the mill levy for the MD tax is 83.496 or 8.3496%, shown as .083496. Metro District taxes alone will be \$4175.99.

The total mills on this home are 165 for all taxes or 16.5 %, shown as .165

Assessed value	x	mill levy as a %				=taxes for the year
\$50,014.25	x	.083496				= \$4175.99, just for the metro district tax or \$347.99 per month
\$50,014.25	x	.165				= \$8252.35, for all of your taxes. Other homeowners w/o a MD tax would be paying \$4076.36 in taxes for the year. This is a high cost to pay for builder imposed debt.

Written at the request of a friend who moved into a metro district.

Foothills Mall Redevelopment in Fort Collins, CO—Senator Gilan’s district

“The Development is expected to consist of the Renovated Mall to replace and/or renovate the Existing Mall, adjacent pad sites for restaurants and retailers, a parking garage, The Foothills Activity Center and multi-family housing.” It will “include the existing Macy’s, which will remain open for business during the construction. . . .” Knowing the precarious situation the pandemic has caused for Macy’s, this appears, in retrospect, to be more of a risk than initially stated. The aggregate mill levy of surrounding areas at the time of the bonds being issued in 2013 was 91. Consider that now, the residents living or with a business at the mall are paying an additional 91 mills, double the mills of residents in the surrounding areas.

In the bond, it states that the estimated budget for the construction of the public improvements is approximately \$53 million to be paid for with proceeds of the Bonds. The estimated budget for construction of the private improvements is approximately \$204 million. The Developer expected to fund these costs through the Construction Loan and Developer equity. In the 2015 budget, the “District voters”, aka the developers on the board

Conflicts of interest at the time of signing the bond were that all members of the Board of Directors of the District were either officers or employees of entities related to the Developer. (page 21 of bond)

Directors

2012	2014 election canc.	2016 election canc.	2018 cancelled	2020 cancelled	2021
Adam Radcliffe	none elected	Adam Frazier	Dustin Anderson	Dustin Anderson	Suni Devitt (appt.)
Donald Provost	”	Donald G. Provost	Robert L. Walter	Donald Provost	Michael Staheli(appt.)
Bryan McFarland	“	Bryan Mc Farland	Vacant	William P. Bunyard	William Bunyard
		John Gaffney	John Gaffney	Vacant	
		Steven F. Zezulak	Vacant	Vacant	

None of the above individuals lives in the Metro District. I can only assume that the changes that occurred were within the developer’s business.

I am attaching the most recent Disclosure Notice from Foothills MD that is said to be posted at 344 E. Foothills Parkway, Unit W-1, which appears to be an office unit on the periphery of the mall. It is not a prominent place for posting. Past Disclosures listed the notice locations as:

Regular meetings are scheduled for July 6th and December 7th, 2020 at 2:00 p.m. at 215 E. Foothills Parkway, Suite 220, Fort Collins, Colorado Notices of board meetings are posted at the north side of the intersection of John F. Kennedy Parkway and E Monroe Drive for meetings in 2020.

Regular meetings are scheduled for July 1st and December 2nd at 2:00 p.m. at 5750 DTC Pkwy, Suite 210, Greenwood Village, Colorado. Notices of board meetings are posted at 344 E Foothills Parkway, Unit W-1 for 2019

Regular meetings are scheduled for July 1st and December 2nd at 2:00 p.m. at 5750 DTC Pkwy, Suite 210, Greenwood Village, Colorado. Notices of board meetings are posted at 344 E Foothills Parkway, Unit W-1Regular meetings are scheduled for July 2nd and December 3rd at 2:00 p.m. at 5750 DTC Parkway, Suite 210, Greenwood Village, Colorado. Notices of board meetings are posted at 255 E. Foothills Pkwy, Unit 200 for 2018

Regular meetings are scheduled at 2:00 p.m. on February 6th, March 6th, April 3rd, May 1st, May 29th, July 3rd, July 31st, September 4th, October 2nd, November 6th and December 4th at 5750 DTC Parkway, Suite 210, Greenwood Village, Colorado. Notices of board meetings are posted at 344 E. Foothills Parkway, unit W-1. For 2017.

As you can see, it would be very difficult for anyone within the boundaries of the district to actually see the notice or know where to find it.

On November 6, 2012, the Board of Directors authorized a debt limit of \$2.425 billion with a maximum repayment cost of \$19.885 billion. To all eyes, I would assume this is an outrageous debt limit. As the board is still controlled by the developer, they could add on to the debt at any time. They took out a bond in 2014 for \$72,950,000 to be repaid by 2038. Total cost with interest is \$145,855,687. I am unable to determine the cost per business or household as I could not find that information listed in any documents. The debt to assessed value ratio is \$70,335,000 (current remaining debt) divided by the current assessed value of \$11,647,826 = 603%. The DOLA recommendation is 20%. The bond states that there is a conflict of interest in that all board members are either officers or employees of entities related to the Developer. There are 446 apartments and 60 businesses in the mall. They each owe \$288,252 over the next 25 years to repay the md taxes through the 91 mill levy imposed on them by the developer.

The Foothills Mall went into receivership on December 10, 2020. From the Coloradoan:

“In a lawsuit filed Dec. 10 in Larimer County District Court, MUFG Union Bank N.A. said mall owner Walton Foothills Holdings VI — a holding company owned by mall developers Walton Street Capital and Alberta Development Partners — still owed \$46.59 million on the original \$145 million loan as of Dec. 1.”

This appears to be a private loan in addition to the taxpayer imposed debt on the property. In addition, the City of Fort Collins gave them a \$53 million incentives package in 2014 that put no liability on the City. Hmmm. They didn't take on any liability but the city council approved the MD that put a lot of liability on the commercial and residential members of the project. It appears that a lot of bad decisions were made that put an enormous tax burden on citizens of the metro district. Mall is now being sold to another concern and the sale should be final by end of June. But what about the Metro District? The following article is a precursor to just how badly things can go.

Article in the Coloradoan in January, 2014:

WHAT'S NEXT FOR FOOTHILLS?

By Pat Ferrier

Activity at Foothills Mall should build to a frenzy in the next few weeks as the transition from a 40-year-old retail afterthought to upscale shopping center takes shape.

Fort Collins City Council on Tuesday approved a \$53 million financing agreement that clears the way for the \$313 million project to go forward. The 4-2 council vote was the final piece of the development puzzle that dragged on for 18 months and delayed the project's completion date by a year.

Now, the paperwork is done and shovels can start moving dirt.

“I expect earth-moving activity ... near College Avenue to happen very soon,” said City Manager Darin Atteberry who called Foothills the biggest public/private partnership that he’s aware of in the city’s history.

Mall owners Alberta Development Partners and Walton Street Capital razed the former Tres Margaritas building last month to make room for a new Sears store on South College Avenue. Work on moving an irrigation ditch is expected to begin Monday, so it’s complete before water starts moving again in the spring, Alberta spokesman Russ Rizzo said.

Partitioning inside the mall to make way for renovations also is coming. Stores will be shuffled around, some will stay and some will go.

Work on a new Buckle store is expected to be finished in May and Victoria’s Secret will move soon to make room for renovation of the grand corridor, Rizzo said. When it’s done, the enclosed mall will revert to its original footprint. The back hallway that included the old Mervyn’s will be razed, leaving the north/south concourse. The top will be popped off to bring in more natural light and flow from the east to west lawns.

The mall will remain open during construction.

There is still plenty of work to be done before buildings can start rising from the dirt. The Commons, The Shops and the Plaza — all retail buildings that line mall property — will come down to clear the way for new junior anchors and smaller retailers. That means Arc Thrift Store and Ross Dress for Less will need to close in the near future.

Arc will relocate within the city and its location is expected to become public in the next few days. Ross Dress for Less officials did not return emails seeking comment on its future in Fort Collins. Most of the remaining shops were vacated months ago.

Fewer than 30 stores remain at Foothills as the mall emptied out in preparation for redevelopment. Sales and sales tax revenue at the mall have slumped continually since their peak in 2000, when the mall generated more than \$170 million in sales. Last year, through November, it saw sales of less than \$70 million as stores closed and shoppers went elsewhere.

Your stories live here.

Fuel your hometown passion and plug into the stories that define it.

Once the new, “reimagined” Foothills is opened, it is expected to generate more than \$8 million in new sales tax revenue on \$117 in new mall revenue in 2016, its first full year of operation, according to city documents.

Doing nothing, Atteberry cautions, would have meant another \$3 million in lost sales tax revenue as the mall continued to decline. “The do-nothing alternative is not a viable alternative,” he said Wednesday, just hours after council approved the financing agreement.

A decade in the making

Tuesday’s vote represents the end of a decade of failed attempts to revitalize the Midtown shopping center that opened in 1973 under local ownership, The Everitt Cos. Foothills Mall thrived as the shopping hub of Northern Colorado for nearly 30 years, but started to show its age just as retail competition heated up in Denver and Loveland.

Everitt sold the mall in 2003 to General Growth Properties, one of the largest mall developers in the country. GGP promised big things for the property but fell on hard times amid an economic slump. When GGP filed for bankruptcy, it took with it any hopes the mall would get an infusion of cash and attention.

Hopes renewed in July 2012 when Alberta Development Partners of Denver purchased the property for \$40 million and put it on a development fast track with an estimated December 2014 opening date.

But little came easy for the project. The relocation of Sears, Arc Thrift Store and Foothills Activity Center all became issues stunting Alberta’s timetable.

Arc and Sears failed to go quietly, balking at vacating the aging mall despite Alberta’s contention the thrift store didn’t fit with its new upscale plans and Sears needed to move to make the site plan work.

Sears, like Macy’s, owns its building at Foothills and controls its own destiny. The developer sought the city’s cooperation in taking the property by eminent domain if necessary. City Manager Darin Atteberry stepped in to bring the parties together and in the end Sears agreed to downsize its operation to 10,000 square feet in a freestanding building along College Avenue.

Arc, similarly, negotiated a financial package of its own to move elsewhere in the city. And, after attempts to relocate the planned Foothills Activity Center off site, it will now be located near the back side of the mall.

Revitalizing Foothills has been an economic priority for the city for as long as Atteberry has been city manager and then some. “After 9½ years of work, I am very pleased council made a decision last night to support the plan,” he said.

While regaining some of the sales tax revenue that leaks toward Denver and Loveland is important, Atteberry said the mall project is more about community pride, offering choice, eliminating blight and being a catalyst for future Midtown development. “I think we will accomplish all of those things in partnership with Alberta,” he said.

Dear Members of the Senate Local Government Committee:

Having practiced securities and corporate law for decades, with a focus on corporate public finance, I have noticed the initial approach of the CO legislation with regard to regulation of metro districts has been to require “disclosure” and not necessarily “regulation.”

Historically, this approach has been utilized with success by the Securities and Exchange Commission (SEC), which mandates relevant disclosure requirements for all public offerings of securities. However, it's disclosure requirements are then ultimately determined by a large and skilled staff of attorneys who exhaustively review each corporate offering prospectus, requiring additional disclosures as deemed appropriate and necessary in order to fully apprise the investing public of all pertinent information relative to the particular offering of public securities.

Furthermore, this regulatory compliance process has been buttressed by an extremely robust and aggressive litigation bar, organized and practicing in large U.S. cities (especially NYC) that seeks to sue corporations making such offerings if such law firms determined legal cause exists to do so. Many of these legal actions are in the form of “class actions” with thousands of “plaintiffs” represented in a class of investors. It is a very lucrative area of legal practice and functions, on a defacto basis, as an adjunct “regulatory” process that at least ostensibly supports the SEC disclosure requirements.

Unfortunately the Colorado General Assembly has, as of this date, not seen fit to provided any such follow on regulatory compliance processes to with regard to metro district regulation that, in any way, would seek to assure compliance even with their currently proposed minimal disclosure requirements. Such an approach to the adoption of legislation by the General Assembly, in this particular matter, would undoubtedly result in merely an “aspirational” statement of desired expectations of behavior with regard to special metro districts. Based upon the documented and observed behaviors of many of the special districts operating in Colorado, this approach is entirely without merit. Without any actual legal regulatory authority to enforce compliance requirements, such a “legislative approach” is guaranteed to fail and thus be a colossal waste of time and resources. (see article below re: acts of a metro district)

I urge the General Assembly to get back to work and develop a comprehensive approach to the regulations of special metro district operating in Colorado in order to stop the predatory practices of many of these totally unregulated districts, which practices are all to common in this state.

COLORADO CITIZENS DESERVE BETTER REPRESENTATION FROM EACH OF OUR ELECTED MEMBERS IN THE GENERAL ASSEMBLY THAN WHAT IS CURRENTLY BEING EXHIBITED IN THIS MATTER!

Sincerely,

L. D. Gardner
Lakewood CO

Developer sues metro district over payments; district counter-sues claiming it was abused

Conflicts of interest allow for developers to pocket even greater amounts of cash, lawsuit says

Metro districts will finance infrastructure costs with bonds that future homeowners must repay, sometimes taking as much as four decades to accomplish

By **DAVID MIGOYA** | dmigoya@denverpost.com | The Denver Post

May 12, 2021 at 6:00 a.m.

2

A lawsuit by developers to force an Adams County metro district they built to pay up millions of dollars they say they're owed has led to a countersuit alleging organized crime and fraud.

Homebuilder Lennar Colorado and developer Stratus Amber Creek sued the Amber Creek Metro District in March 2021 claiming they're owed nearly \$4 million for costs they incurred making infrastructure improvements at the subdivision.

The district, in a counter-suit filed April 30, said it's been victimized by the developers, who used Colorado's metro district laws to "fleece" it out of millions of dollars and "used their control over the district as a profit center."

The lawsuit is the first in which a resident-controlled metro district is taking on the developers who sat on its board of directors and passed the laws governing how it would operate. Amber Creek was formed in 2006 and Lennar and Stratus came on board in 2014, state records show.

Lennar is one of the nation's largest homebuilders and a participant in dozens of metro districts across Colorado. Stratus is run by the Dean family, developers of several metro districts, according to records filed with the Colorado secretary of state.

In nearly every case, developers create a metro district and vote themselves, family members, or employees onto the district board of directors before any homes are built. From there they frequently make decisions that affect hundreds of future homeowners, including property tax levies to pay for the infrastructure the developers install. Many of those agreements cannot be undone.

The costs are paid for with bonds the district sells and that future homeowners repay through additional property taxes the developers establish before any homes are actually built. Repayment terms can run up to 40 years or longer.

Amber Creek residents took control of the district's board in May 2018, according to the lawsuit, but not before Lennar and Stratus representatives on the board "rushed to certify prior infrastructure costs of approximately \$15 million" in the weeks before the election to ensure they would be paid.

One of the Amber Creek bonds, issued in 2017, projected interest rate returns as high as 74%, or payments totaling "a minimum of \$25.8 million on a debt with a face value of \$1.7 million," the counter-lawsuit says. "A 1,370% return."

The counter-suit also claims Lennar and Stratus told the city of Thornton, where the development is located, that the public infrastructure they built is worth about \$7 million.

The builders valued the roads within the district at \$2.2 million but sought payment from the district totaling more than \$8 million.

“The Amber Creek Metropolitan District was formed ostensibly to facilitate the construction of public infrastructure improvements, such as roads and sewers, within ... the district,” the counter-lawsuit reads. “In reality, (Lennar and Stratus) and their accomplices managed Amber Creek as an enterprise under the Colorado Organized Crime Control Act ... engaged in serial acts of mail fraud, wire fraud, usury, (and) bribery ... to perpetrate their scheme.”

Attorneys for Lennar told The Post in an email that the company does not comment on pending litigation, as did the attorneys for Stratus.

“This will only add to the financial hardship for our community,” Amber Creek resident Jenn Barrett said about the lawsuit by Lennar and Stratus. “I am at a loss for words as to how this will impact future costs associated with our increasing property taxes, which increased 300% from last year.”

[The Post in 2019 published a comprehensive investigation](#) into the inner workings of the state’s more than 2,000 metro districts, virtually the exclusive method used to construct new homes in Colorado.

Among its findings was how some developers purchased the very bonds they had authorized while members of the metro district board they were building, not only guaranteeing high returns but, in some cases, that the profits were tax-free.

[Amber Creek was among them.](#) The district issued \$17 million in senior bonds in 2017 to investors at varying interest rates up to 7.75%. Another \$1.7 million in junior bonds went to Lennar at 10.7% with an expected payday of \$25.8 million over 30 years, The Post found. The effective interest rate: 39.6%.

In its lawsuit, Lennar claims the agreements it signed in 2014 with Stratus – each with members on the district’s board of directors – guaranteed its repayment through bond proceeds.

One of those infrastructure projects was a widening of 136th Avenue, which the Lennar/Stratus lawsuit says was “for the benefit of the district and its residents.”

The companies, however, took advantage of their position controlling the district’s construction costs and its board, according to the counter-lawsuit.

The companies sought \$2.4 million for expanding the north side of the five-lane roadway, a project, according to the counter-lawsuit, “that was originally projected by Stratus and Lennar to cost approximately \$340,000.”

Sheet1

1	A	B	C	D	E	F	G	H	I	J	K
	Senate district	Name of MD and number on DOLA	Total tax Mills/ MD mills	Estimated cost of project	total # of units	Average debt per household and debt to assessed value ratio.	Authorized debt limit	Authorized debt + interest repayment	Current debt of bonds issued	Repayment total over 30 years	
2		Foothills MD (2012) This property is now in receivership and being sold. Wonder how that affects the MD.	182/91.328	\$2.425 billion with estimated repayment of \$19.885 billion	Mixture of multi family	Approximately 60 businesses and 446 multi-family units = \$288,252 cost per unit over 25 years.	\$180 million + interest.	11/6/2012--\$2.425 billion with int. not to exceed 18% per annum-- Estimated repayment authorization \$19.885 billion	\$72.9 million	\$145,855,687	
3		Waterfield MD 1,2,3	none to date (2019)								
4		Water's Edge MD 1-5	50 to date (2019)							\$150.1 million	
5											
6	16/Boulder, Gilpin, Jeffco, Denver Sen. Story(D)	Aspen Park MD	60/25 for debt repayment (2002)								
7		Bowles MD	40 (1986)								
8		Chimney Rock MD	26.785 (19.95)								
9		Conifer MD	50 (all debt repayment) (2004)								

Sheet1

	A	B	C	D	E	F	G	H	I	J	K
100	Senate district	Name of MD and number on DOLA	Total tax Mills/ MD mills	Estimated cost of project	total # of units	Average debt per household and debt to assessed value ratio.	Authorized debt limit	Authorized debt + interest repayment	Current debt of bonds issued	Repayment total over 30 years	