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Thornton metro district faces another lawsuit, stiff legal bill after resident takeover

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<https://businessden.com/2023/02/27/thornton-metro-district-faces-another-lawsuit-stiff-legal-bill-after-resident-takeover/ambercreek/>

The Amber Creek Metro District in Thornton is made up of 332 homes. *(Helen H. Richardson/The Denver Post)*

Five years after residents in an Adams County subdivision wrested control of a metropolitan district board from a developer and homebuilder they accused of racketeering, the board is facing a possible \$800,000 legal bill, two lawsuits and more years of litigation.

The Amber Creek Metro District in Thornton is made up of 332 homes. It was developed by Stratus, an Oregon firm, and Lennar, a massive national homebuilding company.

In what is a common arrangement at metro districts, Amber Creek's board was made up entirely of Stratus and Lennar employees in the years just before and after houses in the subdivision were built in 2015. That board approved \$18.7 million in bonds to Lennar and Stratus that homeowners must repay through 2057, according to court documents.

In the spring of 2018, Amber Creek residents campaigned for three of the five seats on the board. Two weeks before the election, the board met at a Lennar office 27 miles away from Amber Creek and approved another \$15 million in payments to Lennar and Stratus, according to an attorney for Amber Creek. Residents won the three races and control of the board.

But what followed was a series of costly legal setbacks, with still more likely to come.

Lennar and Stratus sued the metro district in March 2021, accusing its resident-controlled board of refusing to pay them \$4 million they are owed. Amber Creek countersued (<https://www.denverpost.com/2021/05/12/metro-district-amber-creek-sues-developer-lennar/>), accusing Lennar and Stratus of using “fraud, usury and bribery” as part of a scheme to turn the district into a racketeering “profit center” in violation of the Organized Crime Control Act.

Adams County District Court Judge Kyle Seedorf sided with the developers and threw out nearly the entire countersuit in December 2022. He determined that Lennar and Stratus followed the law and that he, as a judge, has “a very limited role” in the metro district process.

Amber Creek is appealing Seedorf's ruling to the Colorado Court of Appeals, which hasn't yet decided whether to hear it. Meanwhile, Stratus and Lennar are asking Judge Roberto Ramirez, who has taken over the case, to make Amber Creek repay them \$800,000 that they spent defending against the countersuit. Ramirez has not yet ruled on the request.

As that case moves toward a spring 2024 trial, Amber Creek must contend with another.

On Feb. 3, the metro district was sued by UMB Bank, which accuses the resident-controlled board of renegeing on contracts that were signed by the board when developers ran it. Specifically, the bank alleges Amber Creek collected property taxes but didn't send that money to UMB to pay off its bonds and instead spent it on lawyers and other costs.

Most alarmingly for Amber Creek, UMB is asking Ramirez, who is also the judge in this case, to appoint a receiver to collect taxes from homeowners and give them to UMB. Amber Creek's board, which opposes the idea, met at an emergency meeting Tuesday night to discuss options with their lawyer, Paul Rufien, who represents several resident-controlled boards.

Rufien and the manager of Amber Creek declined to comment on the ongoing litigation.

Amber Creek's setbacks come at a time when the Colorado General Assembly is considering reforms to metro district laws and resident-run boards are in courtrooms challenging the legality of agreements that were signed by developer-controlled boards.

"These cases are striking because the residents are attempting to ignore or alter previous, existing debt repayment agreements," Brownstein Hyatt Farber Schreck, the powerhouse Denver law firm that represents some developers, wrote to clients (<https://www.bhfs.com/insights/alerts-articles/2023/metro-district-legislation-lawsuits-could-radically-impact-new-development-in-colorado>) Feb. 13.

"If these resident-controlled metropolitan districts are successful, these lawsuits could not only shift how districts repay developers in the future but also leave developers holding the bag for debt they have already acquired to fund district infrastruc-

ture,” the firm warned.



(<https://businessden.com/2022/12/12/developer-sues-lakewood-metro-districts-for-32m-after-resident-board-takeover/solterra5/>)

Solterra is a master-planned community in Lakewood. *(YouTube)*

But so far, the resident-controlled metro districts have been far from successful.

Two resident-controlled boards at the Reunion Metro District in Commerce City were sued (<https://businessden.com/2023/01/03/lawsuits-could-force-changes-to-metro-districts-in-2023/>) by the developer Shea Homes in December and accused of refusing to pay Shea tens of millions of dollars. Rufien, who is also representing the boards in that case, is currently trying to convince Ramirez not to appoint a receiver to oversee the boards.

In Lakewood, three resident-controlled boards at the Solterra community are being sued by the developer Brookfield, which accuses them of not paying \$31.9 million Brookfield is owed. The boards, which have denied wrongdoing, have been unable to get the case dismissed.

And in December, a Broomfield judge rejected a lawsuit (<https://businessden.com/2022/12/19/judge-throws-out-eagle-county-metro-district-lawsuit-against-vail-resorts/>) by a resident-controlled board near Vail that accused Vail Resorts of developing Red Sky Ranch and then saddling homeowners there with \$36 million in unnecessary debt. Judge Sean Finn determined that he had no power to nix agreements that Red Sky Ranch's board signed when it was controlled by Vail Resorts.

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