



A Deal's a Deal: Protecting Taxpayers in Metro Districts

“BNC2’s practice appears to be an intentional effort to keep the operations mill levy artificially low and to take money from BNC2’s bond investors to pay for operating expenses, such as the services provided by Wolfersberger, BF Borgers, and BNC2’s general counsel. By doing so, BNC2 is misleading its taxpayers and obfuscating the full amounts those individuals charge to BNC2 for their services.”

BNC2 Metropolitan District No. 2 (“BNC2”) is responsible for local governance in a portion of the Turnberry community in Commerce City. When BNC2 was formed, there was no Turnberry community. There was simply raw land. There were no roads, sewers, parks—no public infrastructure of any kind. There were also no homes, and thus, no taxpayers to pay for the construction of the public infrastructure. So, as is common in Colorado, a metro district was formed. This local government financing mechanism allowed BNC2 to issue municipal bonds to finance the construction of public infrastructure. In exchange, BNC2 entered an agreement with bond holders to pay back the bond over 30 years, with a low rate of interest, by levying taxes on homeowners each year, and paying those taxes over to the bond trustee, UMB Bank. The bonds worked as expected. Public infrastructure was built, homes were built, and homeowners moved in. BNC2 received the benefit of the contract it signed.

Beginning in 2020, however, BNC2 reneged on its end of the bargain. Following the advice of its manager, Charles Wolfersberger, BNC2 improperly diverted the tax revenues it agreed to use to repay the bonds to instead pay its operational expenses, including Mr. Wolfersberger’s annual management fee (ranging from \$29,000 to more than \$50,000). This improper practice continued for several years. By 2023, BNC2 had diverted close to \$200,000 in bond payments.

In October 2023, UMB Bank sued BNC2 to recover the diverted bond payments. Following a week-long trial, an Adams County jury concluded that BNC2 had breached the bond contract and ordered BNC2 to repay the diverted bond payments. The presiding judge, Judge Arturo Hernandez, also entered a permanent injunction prohibiting BNC2 from diverting bond payments in the future. Judge Hernandez found that a permanent injunction was in the public interest because BNC2’s improper practices harmed BNC2’s taxpayers.

Judge Hernandez recently ordered that the taxpayers of the BNC2 Metro District—approximately 330 homes—pay \$356,292.35 in jury awards, court costs, and pre-judgment interest, as well as additional interest accruing at 8%. It is believed that these expenses will be paid through a court ordered mill levy increase for properties in the district of approximately 10 mills. Additionally, the taxpayers in the district will have to repay approximately \$800,000 in bond surplus funds that were spent on legal fees litigating the case. In total, taxpayers will be on the hook for over \$1.15M for Mr. Wolfersberger’s advice to divert funds from taxes pledged to bond payments to pay for operational expenses like his management fees. This roughly equates to \$3,500 per family.

“What this does is it basically lengthens the time period to pay the principal on those notes, and, obviously, what that does is it prolongs the time in which the bondholder is repaid. It increases interest that is being paid...and that is a specific harm not only to the bondholder, but, frankly, to the taxpayers....” – District Court Judge Arturo Hernandez

BNC2's Practice Was Contrary to Industry Standards and Government Accounting Rules

BNC2's practice of diverting taxpayer money to pay its operational expenses not only breached its bond contract—it was also, according to metropolitan district experts, contrary to industry standards and best practices. No other metropolitan district in Colorado, other than districts managed by Mr. Wolfersberger, did what BNC2 did. In doing so, BNC2 misrepresented its actual operational expenses and prolonged the time in which the bonds would be repaid—costing BNC2 taxpayers more money in accrued interest. The same experts also emphasized that Mr. Wolfersberger and BNC2's auditor, BF Borgers, violated the Colorado Rules of Professional Conduct applicable to accounting professionals. BF Borgers was Mr. Wolfersberger's hand-picked auditor for the majority of the metropolitan districts he manages. Recently, the U.S. Securities and Exchange Commission (SEC) charged BF Borgers with multiple violations of professional standards for conducting “sham audits” for its clients. To settle the charges, BF Borgers agreed to pay a multimillion dollar fine and to a permanent suspension from practicing before the SEC.

Wolfersberger's Practices Threaten Colorado's System of Public Infrastructure Financing

BNC2 is only one of 22 metropolitan districts throughout Colorado that Mr. Wolfersberger manages, and many of his other districts engage in the same diversion of taxpayer money. Residents in these other districts are exposed to the same litigation risks and adverse financial consequences that have been suffered by BNC2's residents.

Mr. Wolfersberger's practices also threaten to destabilize Colorado's market for municipal bonds, which local governments depend on to finance the construction of public infrastructure and build much-needed housing. Investors purchase bonds because they are relatively low risk, and promise a steady cash-flow stream. By advising his districts to divert taxpayer money, Mr. Wolfersberger is making bond investments riskier, and less attractive. If Mr. Wolfersberger continues down this path, fewer investors will be willing to purchase bonds, and public infrastructure in Colorado won't be built—further exacerbating the housing crisis across the state.



“Ben Borgers and his audit firm, BF Borgers, were responsible for one of the largest wholesale failures by gatekeepers in our financial markets. As a result of their fraudulent conduct, they not only put investors and markets at risk by causing public companies to incorporate noncompliant audits and reviews into more than 1,500 filings with the Commission, but also undermined trust and confidence in our markets.... Borgers and his sham audit mill have been permanently shut down.” - Gurbir S. Grewal, director of the SEC's Division of Enforcement.



About BNC2

BNC2 comprises the northern portion of the Turnberry neighborhood.

The Turnberry neighborhood is a covenant-controlled community located in the northeast corner of the intersection of 104th Avenue and Highway 2 in Commerce City. BNC2 is composed of 337 single family homes and 61 acres of undeveloped, residential-zoned land. The community is next to City Park and Turnberry Elementary School.

Turnberry's median home sale price is \$550,000, according to Realtor.com, positioning it squarely as a middle-class neighborhood within Colorado.

About Turnberry residents:

- Over 20% are immigrants and half of those are non-U.S. citizens
- Over half (53.75%) of Turnberry residents have not graduated from high school
- One-third of Turnberry residents are considered "blue collar" workers