



HOUSE  of CASH

Colorado Ethics Watch

Money in politics used to be considered just a national problem. Then, big money started showing up in state elections, and more recently has moved even to local elections. Why do businesses spend money on elections? It has to be a business decision – something that is going to improve the bottom line. The saga of how homebuilders are using the affordable housing crisis to pursue an unrelated agenda of making it harder for homeowners in high-end condominium complexes to seek redress for construction problems that may show up years after a purchase is a case study of using local election spending to help promote a statewide agenda.

In October 2010, a Denver jury awarded the homeowners' association representing condominium owners at 40 Madison Street in Denver's Cherry Creek North neighborhood over \$3.1 million for construction defects at the complex.¹ That jury award, plus a court award for litigation costs, resulted in an award of approximately \$4 million.² The suit, filed in 2008, alleged that construction defects caused water damage to several condominium units, including the collapse of several decks in the complex.³

Units in the 40 Madison complex, built in 2001, have been selling in the \$400,000-\$500,000 range. These prices may be on the low end for Cherry Creek North, but they are far higher than Denver's estimate of what constitutes "affordable housing" for a family of four: a home priced at \$233,569 or less.⁴ They are also higher than the average home price of \$354,580 for the Denver metro area in March 2015.⁵

A better-known condominium construction defect case settled before trial in 2011. The high-end Beauvallon condominiums at 9th Avenue and Lincoln Street needed \$18 million to repair water damage allegedly due to defective construction of the exterior wall system and replace the exterior with one that actually kept water out of the building.⁶ Units in the Beauvallon currently start at \$425,000 and some are on sale for over \$1 million.

Even though these large construction-defect cases involve condominium buildings on the high end of the market, proposed changes to Colorado's construction defect law are being sold as a fix for the affordable housing crisis. One bill (Senate Bill 91) would reduce the time for homeowners to file a construction defect lawsuit from eight years to four years. That change alone would have been enough to force the 40 Madison homeowners to pay for their own repairs. Another bill (Senate Bill 177) would require homeowners' associations to jump over numerous procedural hurdles before filing a construction defect claim, including hiring a third party to prepare estimates of the cost of litigation and the possible impact on property values and submit them to all homeowners – before hiring any experts

¹ Special Verdict Form, *40 Madison Homeowners Ass'n, Inc. v. Madison Gardens, LLC*, Denver District Court Case No. 2008-cv-2212 (October 18, 2010).

² *Denver condo-complex HOA wins judgment for defects*, The Denver Post, November 18, 2010.

³ *Id.*

⁴ City and County of Denver, *Housing Denver: A Five Year Plan 2015-19* (October 6, 2014), at p. 7.

⁵ Aldo Svaldi, "Colorado home prices rising at fastest rate in country," The Denver Post, April 7, 2015.

⁶ *Mile High Megamess: The True Story of an Epic Building Rescue Mission*, Durability and Design Magazine, March 19, 2012, posted at <http://www.durabilityanddesign.com/blog/?fuseaction=view&blogID=84> (accessed April 6, 2015).

or consultants to evaluate the possible claim. The bill would also allow homebuilders to require construction defect suits to be submitted to arbitration before a private judge, with extremely limited rights of appeal.

What do these high-end condominium lawsuits have to do with the affordable housing crisis? Not much, according to Peter Blake of the conservative website The Complete Colorado. Blake interviewed an insurance industry representative who said Senate Bill 177 “would do little or nothing to solve the problem.”⁷ Blake himself observed that the bill “may be a popular, albeit ineffective, bill.”⁸

Harsher words for the bills came from Dave Perry, editor of the *Aurora Sentinel*. Saying that the bills “do nothing but protect unscrupulous or incompetent homebuilders,” Perry pointed directly at campaign contributions to Denver Mayor Michael Hancock as an example why local elected officials were showing up at the legislature to support a crackdown on homeowner lawsuits as a fix for the affordable housing problem.

Perry is correct to observe that elected officials at the municipal level have embraced legal changes designed to make it harder for homeowners to seek redress for shoddy construction as a way to address the affordable housing crisis. For example, in his 2014 State of the City address, Denver Mayor Michael Hancock called on the legislature to “recognize the chilling effect the construction defects law has on the for sale condo market” as part of his discussion of Denver’s affordable housing crisis.⁹ This March, Hancock testified in favor of Senate Bill 177 before a state Senate committee, saying the bill offered a “substantive solution to a pressing impediment to construction of for-sale affordable multifamily housing.”¹⁰ He was joined by Lakewood Mayor Bob Murphy, whose city passed a builder-supported ordinance last year that weakened protections found in state law.¹¹

Without question, homebuilders and homeowner advocates have both given large amounts of money to legislative candidates. The legislative debate in 2015 has brought to light that the homebuilders’ lobby has taken the extra step of working at the municipal level to pass builder-friendly ordinances in home-rule cities and cultivate allies in municipal governments. These investments have

⁷ Peter Blake, “Foundation eroding between developers, insurance companies,” *The Complete Colorado*, March 30, 2015, posted at <http://completecolorado.com/pagetwo/2015/03/30/blake-foundation-eroding-between-developers-insurance-companies/> (accessed April 6, 2015).

⁸ *Id.*

⁹ City and County of Denver, “Text of Mayor Hancock’s 2014 State of the City Address,” July 14, 2014, posted at <https://www.denvergov.org/mayor/MayorsOffice/Newsroom/tabid/442244/mid/504977/newsid504977/8912/Text-of-Mayor-Hancocks-2014-State-of-the-City-Address/Default.aspx> (accessed April 3, 2015).

¹⁰ City and County of Denver, “Mayor Hancock Testifies In Favor Of Senate Bill 177,” March 18, 2015, posted at <http://denvergov.org/mayorhancock/MayorsOffice/Newsroom/tabid/442244/mid/504977/newsid504977/9754/Mayor-Hancock-Testifies-in-Favor-of-State-Senate-Bill-177/Default.aspx> (accessed April 6, 2015).

¹¹ John Aguilar, “Construction-defects issue gets lengthy hearing in state Senate,” *The Denver Post*, March 18, 2015, posted at http://www.denverpost.com/news/ci_27739800/construction-defects-issue-gets-lengthy-hearing-colorado-senate (accessed April 6, 2015); John Aguilar, “Lakewood passes measure, takes on Colorado’s construction-defects law,” October 14, 2014, posted at http://www.denverpost.com/news/ci_27739800/construction-defects-issue-gets-lengthy-hearing-colorado-senate (accessed April 6, 2015).

paid off both in stricter ordinances in home-rule cities Lakewood and Lone Tree and in support from municipal elected officials for legislation aimed at cracking down on suits by condominium owners against homebuilders.

Ethics Watch looked at the political spending in five Denver metro area municipal elections by companies and individuals who actively supported the 2014 Lakewood construction defect ordinance.¹² Figures from Denver's May 2015 election are revealing. Homebuilder advocates have contributed \$28,500 to Denver candidates as of the April 6, 2015 reporting deadline. Of that \$28,500 contributed to Denver candidates, \$16,200 was given to Mayor Hancock's re-election campaign. This compares to only \$5,000 given to Mayor Hancock by homebuilder advocates in his 2011 campaign, when he was not running as the incumbent.

Early reports from Aurora, whose municipal election will not be held until November, show an additional \$1,750 to Aurora municipal candidates. Figures from November 2015 elections in Lakewood and Centennial and Lone Tree's May 2016 election are not available at this time.

At the state level, Ethics Watch found \$158,000 in direct contributions from these same homebuilder advocates to candidates and political committees during 2014. In contrast, the Colorado Trial Lawyers, presumed to be opposed to the bills, contributed \$69,200 that year. Both sides are presumably spending heavily on lobbying, however, due to the timing of disclosures no realistic estimate of this spending will be possible until the June 15 reporting deadline.

Dave Perry's suspicion seems borne out by the facts: money talks, and smart spending by homebuilder advocates has bought them valuable allies in municipal governments. Political spending was once a national issue, now it has seeped down to the state and even local levels, where a little money can go a long way. We can expect the spending arms race to intensify at the local level as interest groups study and learn from the homebuilders' success in political spending in municipal elections.

¹² Minutes of the Regular Meeting of the Lakewood City Council, October 13, 2014.