Ted Michelsen is a Director on the Solterra Board (District 2). He wrote the following "in his defense" regarding the campaign by residents to restore their right to vote on tax and bond debt.

My reply to each paragraph is in red type. This is a significant event. This is the first time that the board has stepped out of its secret meetings and revealed its sources, or lack of sources, its reasoning as well as the basis for its conclusions. This should have happened 4 years ago. But now that we have it we can finally begin to look it over in the light of day and fresh Colorado mountain air - and decide how to move forward as a community, together.

In my Defense. As a FRMD 2 Board Member being recalled I wanted to bring my case to the community. I also believe that I am being slandered by misrepresentations in statements by the group doing the recall.

The first amendment to the United States Constitution and the comparable provision in the Colorado Constitution permits strong criticism of elected officials.

Nothing slanderous has been stated or published regarding any of the board members.

And even if any statement made did rise to that extremely high level applicable to public officials, truth is always a defense.

I am speaking for myself and not my fellow Board Members. It is not common for FRMD Board Member to post on NextDoor, however, because of Colorado laws, I am not permitted to use District resources (like the website) to defend myself, leaving me limited options. This is long but please read the first 4 paragraphs and paragraph 6.

I (as well as the other Board Members being recalled) are accused of violating my (our) fiduciary responsibility by not implementing positions that have been promoted by Mr. Henderson.

No, that is not accurate. Here is what the petitions state:

General statement of grounds for recall:

1. Ted Michelsen violates his fiduciary duty to the residents by refusing to restore the residents' right to vote on future tax and bond debt.

2. Ted Michelsen violates his fiduciary duty to the residents by refusing to secure an independent forensic audit of Brookfield's finances regarding the costs of each lot and the infrastructure income and expenses, prior to reaching a deal with Brookfield to pay Brookfield additional money through bond debt.

3. Ted Michelsen violates his fiduciary duty to the residents by failing to contest the unenforceable agreements Brookfield relies upon to claim payments are owed to Brookfield by the electors of District.
4. Ted Michelsen violates his fiduciary duty to the residents by having the board approve more bond debt through a vote of the board, not the residents, on August 3, 2020 based upon three days notice to the residents.

First off that is impossible because FRMD 2 (as well as FRMD 3) are responsible for determining and approving the mill levy to support FRMD's i.e. the Solterra community's, needs to meets its operations and obligations. Only FRMD 1 has the authority to issue policies, enter into contracts or file lawsuits for FRMD, all activities that would be needed to implement Mr. Henderson's positions.

No. The Directors on the Boards for District 2 and 3 are the only directors who have the power of the purse strings - to collect money, assess taxes, issue bond debt. Look no farther than the bonds. The last bond issued in 2016 was issued by. . . District 3.

In addtion, the 8 Brookfield employees took away the right of the residents to vote on tax/bond debt as to Districts 2 and 3. You and your colleagues have the power to restore that right voluntarily and also have the right to put the question on the ballot.

So, as to each of the reasons for your recall:

Brookfield took away District 2 residents' right to vote on taxes and bond debt. You have a fiduciary obligation to restore our constitutional right to vote. You have refused and have violated your fiduciary duty to the residents.

You have refused to conduct an independent forensic financial audit to determine whether or not we owe Brookfield any money. You have violated your fiduciary duty to the residents to hold Brookfield accountable.

There are two offending single party agreements. One between District 1 and Brookfield (they were both Brookfield and the signature is the same Brookfield employee).

A second agreement between District 2 and 3 - and District 1. The same Brookfield employee signed on behalf of District 2 and 3 - and also signed for District 1. You have failed to challenge whether or not this agreement between Brookfield as District 1 and Brookfield as Districts 2 and 3 is valid and enforceable. You have violated your fiduciary duty to the residents to contest these obviously unenforceable agreements.

You voted to approve bond debt on three days notice to the residents without putting the question to a vote of the residents as provided for in the Colorado Constitution. You have violated your fiduciary duty to the residents by failing to restore the residents' right to vote on tax/bond debt and by making that vote as a board member instead of deferring to the residents, consistent with the Colorado Constitution.

In summary , you not only have that fiduciary duty, but your duty is even greater than the directors for District 1 - because you control the money - you impose taxes - you issue bond debt; not District 1.

Even if I believed (which I do not) those positions promoted by Mr. Henderson were in FRMD's best interest I could not legally implement them. I am being recalled because I do not agree with Mr. Henderson, not because I did anything wrong, or anything even under my control.

No, you are subject to the recall because you refuse to restore the right of the District 2 residents to vote on tax/bond debt, refuse to have an independent forensic financial audit, refuse to challenge the single party District 2/3 agreement with District 1 and are voting to issue bond debt without a vote of the residents. A breach of your fiduciary duty to the residents.

Second I have investigated those positions, because if doable, they could be beneficial to Solterra. Myself and the Boards have asked Mr. Henderson about why these actions would be legal or have a reasonable chance of winning in court.

No. No one on any of the Boards has ever asked me about the legal foundation for these issues or an evaluation of the likelihood of success. I have asked numerous times over the past 4 years to talk with the Board about these issues. I have published over 100 blogs on the subject and until this note from Mr. Michelsen, the response to my requests from the Board has been complete silence.

Not only silence, but members of the board have taken efforts to censor my postings on Next Door - simply because they disagree with the information. The Board has also obstructed the flow of information - it took at least a year to obtain the board packets before the meetings without a freedom of information request. The financial committee meetings are closed. The board meets for at least an hour before every meeting in secret executive session, then discusses and makes decisions in those closed meetings. Then some of those decisions are are simply announced at the public portion of the meeting.

I still welcome the opportunity to have a public discussion of all these issues so the community will have the benefit of all sides of the issues - with equal time for all the speakers. Then the residents will be in the best position to make an informed and thoughtful decision about what is in the best interests of the community.

Mr. Henderson has only provided vague concepts.

:). There is nothing vague about the statutes, documents and facts that have been presented in over 100 blogs during the past 4 years. If we ever have an opportunity to

actually have an open and public discussion about the issues, with reference to actual statutes and documents, we can clarify anything that the board believes is "vague".

From what I have learned and believe, (see below), these positions will not survive a court challenge.

Again, not only will the right to vote, the independent forensic financial audit and a challenge to the agreements survive a court challenge, but we have absolutely nothing to lose by standing up to Brookfield.

If Brookfield sues, we take two years of the $500,000 per year the Board wants to just give to Brookfield and spend it on having the legal issues decided. And, as I expect will be the case, we will not have to pay Brookfield another penny.

All Board Members take an oath of office that requires us to uphold the laws and Constitution of the State of Colorado and the United States. I firmly believe that I have done that and will continue to do so if not recalled.

The Colorado Constitution gives all the residents the right to vote on tax/bond debt. Residents in the district where Brookfield's attorney lives (Ken Caryl) vote on tax/bond debt.

Why aren't you upholding the Colorado Constitution and restoring the residents' right to vote on tax/bond debt?

Additionally, not spending community funds on imprudent lawsuits is doing one's fiduciary responsibility.

Standing up to Brookfield, restoring the right to vote and having an independent forensic financial audit is not an "imprudent lawsuit". Failing to do these however is a breach of your fiduciary duty.

And where was your allegiance to the residents and your obligation not to spend our tax money on imprudent lawsuits when you secretly met with Big Sky's attorneys - through your attorney - and conspired to join Big Sky in a frivolous lawsuit against our sanitation provider?

And never said a word to the residents for 7 months until after it was exposed in one of my blogs. Exposed only because I obtained an email - pursuant to a freedom of information act request - setting up the meeting 7 months before.

You withdrew the proposed lawsuit after it was exposed - and you were reminded that the sanitation district you were about to sue only provides our sewer service pursuant to an agreement - that expires in three years. As a result of your imprudent litigation against our sanitation provider they are seriously considering not renewing our contract.

I would ask that you do your own investigation so you are prepared when asked about signing the petitions.

The documents, statutes, and other data are readily available. Lets co-sponsor a series of zoom town halls to present and debate each issue with questions from the residents.

If they tell you something that does not fit what you know, definitely do not sign the petition, if they tell you something that is new to you, ask them to come back after you do more research.

The same advice applies to messages from the board - particularly messages which provide no author, no documents, no references to statutes and no opportunity for questions and answers. Again, lets co-sponsor a series of town halls and address these issues one at a time.

You should also ask them to cite the law that supports their claims, and check it out.

See the legal citations, copies of statutes, copies of documents in over 100 blogs the past 4 years. You will not find them in the Board's anonymous "updates".

The recall will cost the community (you) lots of money.

Applying the rule above. What statutes or other authority should residents consult to verify this statement you just made? What does "lots" mean.

Again, it will be helpful to use the town hall forum. Forcing this debate out in the open will discipline all the participants to know what they are talking about and back it up with authority and specific data.

Just so you know, it is too late to get on the November ballot, so the election alone will cost in the $60 to 70 thousand range.

Because the board purposefully waited until it was too late to put it on the ballot.

So, our next potential ballot will be in May or next November.

Between now and then, refinance the $29 million in current bonds. Under the Constitution you don't need a vote of the residents to refinance the old bonds.

Restore the right of the residents to vote on any new tax/bond debt issue.

Retain an independent firm to conduct an independent forensic financial audit, including the evaluation of the cost of the lots.

Hold one to three town halls to discuss the issues.

Then vote in May or November on whether or not to issue more bonds to pay Brookfield more money.

What's the rush.

Inconvenient Facts Ignored by the recall group:General
There are estimated to be over 1,800 Metro Districts and $1.7 Trillion in authorized debt from developer controlled Metro Districts (Denver Post).

Not sure how this is relevant.

There are bank robberies in every state every day. That doesn't make them "normal" or acceptable.

And each of these districts which are in a position to stop the abuse in their districts are waking up to the fact that they have many opportunities to stand up to their developers and take back control of the financial management of their districts.

The Denver Post articles woke up many communities. In addition, many cities are taking action.

Longmont now prohibits metro districts for residential construction. Lakewood is looking at a new reform ordinance aggressively regulating metro districts if not prohibiting them altogether. Aurora and Brighton are looking at taking action. Denver is under pressure to enact reforms. There will be reform legislation at the state level as well.

This is why Colorado law favors Metro Districts, they cannot allow a default of this size, nor would the developers have taken that much monetary risk unless it was ironclad and they were assured of being paid back.

Colorado law does not favor metro district abuse.

Colorado law provides a mechanism for cities and counties to create this additional form of government - subject to regulation by the city or county that creates the district.

But to be clear, Colorado law absolutely does not favor metro district abuse.

There is nothing in Colorado law that will enforce a single party agreement by a developer - who has an express conflict of interest with future residents - to require payment of money the developer is not owed.

Simply no law or authority to support that abuse.

Special district law says districts can enter into contracts. It does not say they can enforce invalid contracts.

Here again is what the attorney for Lakewood said in 2006 about Solterra's very agreements: "the city assumes no responsibility for the validity,enforceability, or any other aspect of these agreements."

There is no default. There is no risk that Brookfield is taking that hasn't been or won't be compensated.

First, the data is clear that the Solterra residents have already paid for the infrastructure. Brookfield told Lakewood it would cost $37.8 million. The infrastructure cost is included in the cost of the developed lots Brookfield sold to the builders. Solterra residents paid Brookfield, through the cost of their homes at least $118 million for the developed lots. The recent research report based upon the Jefferson County Assessor's data makes this clear. We also know that the cost of the land, also included in the cost of the lots, was $4.3 million. So, we paid and Brookfield recieved, at least $118 million which paid for the infrastructure ($37.8 million), the land ($4.3 million) and profit ($75.9 million to Brookfield).

So, Brookfield was well compensated for developing the lots - $75.9 million profit - at least. No risk there.

Second, even if Brookfield was able to somehow establish that in fact they have not been paid for the infrastructure and we still owe them money, then they can prove it through an independent forensic financial audit - not a developer engineer "review".

An audit that includes an evaluation of the cost of the lots.

And once that is done, if we still owe Brookfield money, we wil pay Brookfield. But given the uncontroverted data from the Jefferson County Assessor's office, I expect that Brookfield will owe the residents money instead.

At the ULI seminar this past Spring, the special district industry speakers explained that when they revised the special district laws in the 1980's their primary goal was to shift the risk of financial loss to the homeowners to avoid, in the future, the wave of bankruptcys experienced by developers in the 1980's. The homeowners have all the risk right now - not the developers.

Colorado law provides checks and balances on metro districts. Beginning with the right to vote. We need to restore a fundamental check and balance by returning our right to vote and require a full accounting from Brookfield through an independent forensic financial audit.

State law SB 16-211 makes past Boards and their decisions untouchable, unless contested before April 21, 2016, which was not done in the case of FRMD. I strongly urge everyone to download and read this law, it is only about 5 pages.

This is another reason we need to have a Town Hall on these issues. There is a lot of fog swirling around these issues and this is a perfect example.

As I have explained before, the Colorado Supreme Court in the Landmark Towers case

held that developer directors were not legal voters and their decision to issue bond debt was therefore invalid.

So the industry panicked and the Colorado legislature passed a new law within weeks of that decision to put a finger in the dike that was about to explode - but it was very limited.

https://leg.colorado.gov/sites/default/files/2016a_211_signed.pdf

The new statute simply said that any director elected prior to the date of the new law was deemed to be a legal voter even if they weren't.

The law simply said a decision by a board may be attacked for many reasons, but it can't be attacked because the board member was not a legal voter at the time the board member voted.

There is no claim as a part of the campaign to return the residents' right to vote that the 8 Brookfield employees "vote" is legally invalid. It was wrong, but it is a legal vote.

The campaign to restore our right to vote simply says, a vote of the 2000 residents in 2020 who actually live here and are all legal voters is just as valid as the vote of 8 Brookfield employees in 2006.

There is nothing about the 2006 vote that can't be changed in 2020 with a new vote. Legislatures and voters do this all the time. The Colorado voters in November will be asked to repeal the Gallagher Amendment. Same thing. Voters vote to change the law all the time and this is no different than a vote on whether or not to repeal the Gallagher Amendment.

SB 16-211 doesn't somehow prevent the 2000 residents in 2020 from repealing what the 8 Brookfield employees did in 2006. SB16-211 only says - whatever they did in 2006 they did as legal voters. Not relevant. 2000 residents are also legal voters. Doesn't affect the voters ability to change the law.

Brookfield changed the law in 2006 by eliminating our right to vote. We can just as easily change it back in 2020 to the way it was before Brookfield's vote in 2006.

It is also important to note that this campaign to restore our right to vote has nothing to do with reversing the Brookfield board's decisions between 2006 and 2017 to issue bond debt. We are stuck with the $29 million in bond debt they passed.

But we can surely vote as residents on whether or not to issue any more bond debt to pay Brookfield any more money.

So, this issue about SB16-211 is also irrelevant to Solterra right now because no one is trying to reverse the board's decision to issue bond debt (now totaling $29 million). Simply not an issue.

What we are saying is that we should not issue any additional debt. The debt won't be issued until the board votes (more properly under the Constitution it should be a vote by the residents, not the board) to issue the debt.

SB16-211 also has nothing to do with issuing new debt because no board has voted yet to issue new debt. And SB16-211 would not apply in any case because all the current board members are legal voters. It only applied to decisions by developer boards to issue debt where the directors (employees of the developer) were not legal voters.

Here is another important point. Someone, perhaps Ms. Neil, has so confused the issue that folks like Mr. Michelsen are confusing the vote by the 8 Brookfield employees to give the board permission to issue bond debt with the actual vote to issue bond debt. Two very very different animals.

The 2006 ballot issue only gave the board permission to vote as if it was a vote of the residents. The Solterra Board can very easily say, "we are not going to use that power. We believe it should be returned to the residents. No bonds will be issued unless approved by a majority of the voters pursuant to the Colorado Constitution."

Right to Vote on Bonds by the Community
The $70 million bonding maximum was approved by qualified electors and Board Members about 2006. There were not many if any residents then, but Colorado law says it is acceptable (SB 16-211). Once bonds are approved future qualified electors cannot reduce the amount.

This is wrong at many levels. First, there were absolutely no residents. Saying "there were not many if any residents then" (2006) is terribly misleading. No one lived here then.

Second, this statement continues to confuse: the permission to issue bonds - with - the decisions to actually issue bonds.

The Brookfield boards from 2006 - 2016 had to vote to issue bonds. The bonds were not issued in 2006. There were three bonds issued by the Brookfield boards totaling $29 million - all issued after the 2006 vote by the 8 Brookfield employees giving the board permission to issue bonds sometime in the future.

The limit in the Service Plan of $70/$91 million is a cap on the principal of the debt that a board can issue, without going back to the City of Lakewood to get permission for more.

It is like a maximum on a credit card. You have permission to charge up to the maximum limit - say $10,000.

But until you actually spend the money - until the board actually issues the bonds and spends the money - there is no debt obligation - nothing to default on. If we don't owe any money, there is no reason to spend money.

The boards (should be the voters) have permission from the City of Lakewood to incur a

maximum of $70/$90 million in debt principal. But they don't have to go into debt at all and don't have to go into debt that high.

It is only when they do go into debt and spend money that they have an obligation to pay it back.

And no one is saying right now we don't have to continue to pay on the $29 million of bonds issued by the Brookfield board (at over $2 million each year for at least another 30 years)

The boards (should be voters) can't go higher than $70/$90 million but they sure can go lower - by simply not issuing any bonds.

Again, the only reason to issue bonds is to pay back the cost of infrastructure.

But if we have already paid for it, there is no basis for issuing bonds.

The $70/$90 million is a limit - no debt has been issued in that amount - only $29 million and according to Brookfield $21 million of that amount was not for debt principal - it was only for interest.

So, according to Brookfield they have only issued $7 million of the $70/$90 million in debt principal.

FRMD is only obligated to issue bonds to cover amounts Brookfield can demonstrate as qualified expenses, but cannot exceed $70 million regardless of how much Brookfield spent.

Again. Not sure what the point is here. The $70/$90 million is for debt principal. According to Brookfield we have only paid $7 million principal even though we went into debt for $29 million. $7 million was principal and $21 million was interest (there was about another $1 million in administrative costs to issue the bonds - bond attorneys, bond underwriters - it is a big industry).

The board is either missing or deliberately misleading the issue by failing to acknowledge that the only limit on the amount of interest is in the ballot issue - also passed in 2006 - of $4.9 billion. There is a limit on the interest rate in the Service Plan, but no limit in the Service Plan on the total amount of interest that may be paid - that limit is in the ballot - $4.9 billion.

From what I know,

Again it would be helpful to know what this means - what is the source of what you know - what is the source of your knowledge - documents, statutes, conversations with someone else?

if the position on community voting on issuing bonds was adopted, the first time that the community decided not to issue necessary bonds, FRMD would be sued by Brookfield and

the court would find the community vote at best unenforceable.

This is a new argument. So, lets understand what this is saying.

A court is going to find that a vote by 8 employees of Brookfield taking away our right to vote is enforceable, but a vote by 2000 residents and voters of the district to repeal the 2006 vote is "at best unenforceable"? Really? What possible authority is the board relying upon for that conclusion? Why is the vote of 8 Brookfield employees parading as "electors" in 2006 enforceable and the vote of 2000 actual residents and voters "at best unenforceable".

One fact that is beyond dispute is that if an election is held and the voters of this community vote to repeal the 2006 vote, the 2020 vote will be just as legal as the 2006 vote, if not more so.

There is simply no authority to even begin to question the fact that a vote of the residents will be upheld.

To be even clearer. Putting aside procedural defects or fraud, no court will have the power to overturn a vote of the residents because the Court decides the decision was wrong. By definition, whatever the voters decide at an election is the "right" decision. The power of the ballot box is the supreme power.

If the voters, after an independent audit and full discussion of the issue decide not to issue bond debt to pay Brookfield more money, thats the end of it. No court will ever be able to tell you or me how to vote. The Court has no legal authority from the United States or Colorado Constitution to veto a vote of the citizens because a judge thinks its the wrong decision.

Indeed, one reason Brookfield worked so hard to stop the recall in 2017 was revealed during the mediation sessions in May and June of 2017. At that time the attorney for Brookfield said to me, in the presence of 7 other people, if the voters voted not to issue bonds, there was no legal way for Brookfield to change that vote. That is why he would not allow his employees to leave the boards voluntarily.

And that statement was true. A court cannot tell you or me how to vote.

And that my friends, is why Brookfield took away our right to vote and gave it to their boards in 2006 - to guarantee that their request to issue bonds would always be approved. Even if Brookfield wasn't owed any money.

They know that no court can ever overturn a vote by the residents. Will never happen.

Costs of the election and legal fees would be spent and we would still be liable for the bonds. Funds for the lawsuit would come from the entire community.

Again, it would be helpful to have more than these vague statements with no authority for whatever might not be vague.

We will have an election in May or next November. So no extra cost. If we didn't have another election until next November, there is also no reason we couldn't wait until next November to have an election on whether or not to pay Brookfield more money. Piggy back on the next election - either in May or November - no extra cost.

Again, we have nothing to lose.

We will save $500,000 per year for the next 30 years by refinancing the $29 million debt. Do it. Now.

Return our right to vote on tax/bond debt. Have an independent forensic financial audit. Vote on whether or not we owe Brookfield any more money. Vote on whether or not it is in our best interest to use bonds to pay it back - or some other way that doesn't cost so much interest.

If Brookfield sues, then they get paid two years less $500,000 than the 30 years they would have been paid if we paid them now. We have nothing to lose by spending two years of that $500,000 at most on us instead of just throwing it away to Brookfield.

There is no Colorado law that allows for the placement of initiatives on Metro District ballots.

That is precisely why you have left us with no alternative to doing a recall.

If, however, you voluntarily return our right to vote, do not issue any bonds without a vote of all the residents, (and conduct an independent forensic financial audit) the recall goes away.

Removing “Unenforceable” Agreements with Brookfield
These agreements are legal under Colorado law (see SB 16-211).

No they are not. There is absolutely no statute or case law that says a single party agreement where the single party has an express conflict of interest with the third party is enforceable against that third party. It is fundamental contract law. I cannot enter into an agreement with myself that my neighbor has to pay for my landscaping.

SB16-211 says absolutely nothing about these agreements. SB16-211 simply says you can't invalidate a vote by a board member just because they were not legal voters. Nothing more; nothing less.

SB16-211 doesn't say that you have to pay money you don't owe.

SB16-211 does not say that an agreement by a single party to force another party that doesn't know anything about the agreement, and who has a conflict of interest with the other party, is valid and enforceable.

The agreements are not based upon whether or not the single Brookfield signing the

agreements was a legal voter in the district. No one is suggesting that the agreements are invalid and unenforceable because the person who signed the agreements was not a legal voter - which is what SB16-211 was about. The voting status of the signer is totally irrelevant to whether or not the agreements are enforceable.

The agreements are invalid because they are not legally enforceable contracts - because I can't enter into a contract with myself to force my neighbor to pay for my landscaping. No privity of contract, no arms length relationship, a profound conflict of interest because there is no way that an employee of Brookfield is going to act in the best interests of the residents by deciding how much taxes the residents should pay Brookfield for Brookfield's profits.

Even if they were removed it would not affect much. All the important items are part of the Service Plan, which is the Charter for FRMD and is only between FRMD and the City of Lakewood. It includes the $70 million in bonds, the de-Gallagherize 50 mill maximum and the need to pay Brookfield interest on the developer advances.

Again. Not sure what the point is here. The Service Plan prepared by Brookfield and approved by Lakewood gives the district (also Brookfield at the time) permission to do things and sets limits on how much principal debt they can impose.

Just like a credit card - the Service Plan has a limit of how much you can spend and it has an interest rate. But the credit card is not a contract to pay the limit. It gives permission to spend up to that limit in principal (interest is separate).

Same with the Service Plan - it does not issue debt. It is a plan, giving permission to issue debt principal (if there is any) within limits. There is only a cap limit on the debt principal, not a cap limit on how much interest.

There is no obligation to spend the limit anymore than there is an obligation to spend the credit card limit - it is permission to go that high but you don't have to.

And there has to be a good reason to spend any of that debt - we have to owe the money. If we have already paid the money, there is no justification for going into debt. There is no obligation to issue bond debt just based upon how much you can issue - the limit. You have to owe the money to begin with.

The Service Plan is almost impossible to cancel because Colorado law (Title 32, Special Districts Statue, which covers Metro Districts) requires that all debt be repaid before a Metro District is closed, which cancelling the Service Plan would do. FRMD as of the 2019 Auditor’s Report (7/22/20), has almost $28 million in debt.

Again, what is the point here. No one is proposing to "cancel" the Service Plan.

Returning the residents right to vote is not cancelling the Service Plan. It has nothing to do with the Service Plan.

Conducting an independent forensic financial audit is not cancelling the Service Plan.

Requiring a responsible evaluation as to whether or not we owe any money is not cancelling the Service Plan

The Service Plan has nothing to do with the recall issues.

The Service Plan is not cancelled by rejecting invalid and unenforceable agreements. Remember again what the attorney representing Lakewood said about those agreements - ""the city assumes no responsibility for the validity,enforceability, or any other aspect of these agreements."

Approving More Bond Debt Without approval from the Community
The community approval for Bond Issuance is a nonstarter, as discussed above in the Right to Vote on Bonds section.

What does that mean "is a nonstarter"? Why?

This lengthy dissertation has failed to answer the fundamental question of why the board will not voluntarily return the residents' right to vote on tax/bond debt.

Why won't you follow the Colorado Constitution instead of a vote of 8 Brookfield employees in 2006?

If you won't return the right to vote voluntarily, why wont' you at least put it to a vote and let the residents decide whether or not they want their right to vote back - by repealing the 2006 ballot issue with a 2020 ballot issue by real residents?

Why won't you defend the residents instead of defending Brookfield?

The Boards and Finance Committee have done their due diligence and believes FRMD owes the $10 million in new bonds.

So, show us how you reached that conclusion. The board is discussing these issues in secret. The finance committee meetings are closed. Everyone on the board either opposed the first recall to remove Brookfield from our boards or believes it was a mistake. The board is in the minority. 749 residents signed the petition to remove Brookfield from our boards in 2017. As I collected signatures in 2017 only about 5% declined to sign the petition to recall Brookfield employees off of our boards.

Every time the audit issue comes up there is a different reason from the board for not doing one (independent forensic financial audit). The only consistent position by the finance committee and the board has been "since we will owe so much interest (up to $4.9 billion total principal and interest), we should pay because if we don't Brookfield will sue us."

That is by definition a breach of your fiduciary duty. You have a duty to return our right to vote. You have a duty to have an independent forensic financial audit. Spending $10 million (with no idea how much of that is for principal or interest) and virtually guaranteeing no limit to how much Brookfield will ask for next time and next time and the time after that, is fiscally irresponsible.

The Service Plan projected the issuance of Bonds in 2020.

The Service Plan had appended to it a proposed financial plan. The proposed schedule for paying back debt, assuming all of it was ever issued, was simply an example of what the payments might look like.

The suggested schedule, assuming there was any debt, has never been followed to this day. The bonds issued by Brookfield did not follow this proposed schedule. It is simply false and misleading to say this proposed plan attached as an example to the Service Plan is somehow obligatory and contractually binding.

With the refinancing of the existing Bonds and increases in the assessed valuation, they can be issued without increasing the mill levy.

But there are many other more important things we can spend the savings from refinancing the $29 million bonds than immediately paying it to Brookfield.

And we need to have a community conversation first about how to spend that money.

Invest in large capital improvement projects in Solterra (drainage, recreational facilities, reserve for sewer replacement and repair).

Reduce taxes and increase personal savings.

Use one or two years of savings to pay an attorney to defend against any lawsuit by Brookfield and find out whether or not we owe any money.

What is the rush?

We can refinance the $29 million. Save $500,000 a year for 30 years. Restore the vote. Find out whether or not we actually owe any money. And if we do owe, decide how to pay it back.

We can easily take another year to decide whether or not to issue more bonds to pay Brookfield more money - and it will be done in an responsible manner - not based on three days notice with no questions allowed from the residents as was done in this case.

There is only a few months window to refinance the bonds, if not done during that time it cannot be done and FRMD would continue paying double the interest rate vs. refinancing.

Again. What is the source for this information. The bond rates could go up and they could go down. What we need to do right now is refinance the $29 million in current bonds. That

is easy.

It is irresponsible to throw away $500,000 a year for at least 30 years simply because the interest rate might be a little better now than a year from now.

When we get back the right to vote and find out if we really owe any money, then we can decide on whether or not to issue more bonds to pay Brookfield more money.

There is nothing about refinancing the $29 million in current bonds that demands we automatically spend that money on Brookfield.

We can use a small part of the money we will save by the bond refinancing to stand up to Brookfield if they don't walk away as they did in 2017. We can use it to invest in Solterra. We can use it to allow residents to increase their own personal savings.

We need to have a community discussion about how to spend that savings from refinancing the $29 million bonds. Three days notice with no questions alllowed by the resident is by definition a breach of your fiduciary duty.

Saying no to new bonds does not make the obligation go away.

The obligation goes away if we don't owe the money.

There is no obligation if we don't owe the money. There is no obligation if we don't owe the money and the "obligation" is based upon invalid and unenforceable agreements.

And we, the voters, have the constitutional right to make that decision. Not Brookfield and not the board.

Why won't you return the right to vote? Why is it, as you announce, a "non-starter"? How did you reach that conclusion? It sounds like you are saying it is a "non-starter" just because you say so? That is not prudent financial decision making.

A Forensic Audit
An audit would not provide much information. An audit, only follows a limited number of items through the accounting system, mainly to confirm that the required procedures are followed.

A forensic audit will begin with the money the residents paid for the lots. It will confirm the cost of the infrastructure - as represented by Brookfield to be $37.8 million. It will confirm the cost of the land - $4.3 million. It will confirm the profit to Brookfield. It will, independently, evaluate all the variables.

And with that information we, the residents, will then be able to make a decision about whether or not we owe any money.

Brookfield of course has the burden to prove that we owe them any more money and the audit will certainly take any information provided by Brookfield into consideration as well.

If Mr. Henderson's idea was that we could audit Brookfield's books he is sadly mistaken. They would not open their books and FRMD would not have standing to make them. Brookfield is a publicly traded company in the US, thus is audited annually anyway. Brookfield has to provide information to demonstrate the amount of funds eligible for reimbursement.

This information is also wrong for several reasons.

First, if Brookfield sues us, the Court will order them to produce all these records. If Brookfield sues us, Brookfield absolutely and automatically opens the the door to their financial records.

Second, Brookfield was the district - a government entity at all relevant times. Just as any other government entity, Brookfield as the district will have to produce all the records that support their claim for the costs incurred by the district government to build the infrastructure.

They are a government entity and all the records that are relevant to the cost of the land, the cost of the infrastructure and their profits will absolutely have to turned over.

Third, at the end of the day, if they don't prove up their costs with independently verifiable data to our independent forensic auditor, then there will be no basis upon which to pay them any more money.

The burden is theirs to prove we owe the money. It is not our burden to prove we don't.

A forensic audit implies fraud.

No. Forensic audits are standard practice in large construction projects. That is why there are many national firms that do this work.

An audit implies sound fiscally responsibility. Failing to conduct an independent forensic audit is by definition a breach of a fiduciary duty.

That would automatically increase tensions between FRMD and Brookfield and hurt any future negotiations.

The board is not negotiating - they are conceding. Brookfield wants $41 million to begin with. No idea how much of that will be interest and how much will be principal. Interest builds every day according to Brookfield.

Brookfield will not negotiate if you concede.

And of course, there is nothing to negotiate until we know we actually owe any money.

The cost of the lots research and report establishes that we have already paid for the infrastructure and that Brookfield owes us $29 million plus interest.

The Board investigated an independent audit, it was very expensive and only included the information FRMD already has or was due, not an audit of Brookfield's books.

That is not accurate. Even the brief interview of the one firm that made a presentation to the board in 2017 outlined an analysis of all the income to Brookfield (income from the cost of the lots), analysis of the costs of the infrastructure, beginning with Brookfield's statement the cost would be $37.8 million, an analysis of the cost of the land (including the Mt. Carbon component. There was much more to the proposed evaluation and the cost was not "very expensive" - probably less than what the board spent on legal fees for the proposed lawsuit against our sanitation provider or new furniture and improvements on the Retreat.

In lieu of an audit, FRMD is analyzing all the supplied expenses from Brookfield as well as confirming that the amounts are reasonable. This is much more detailed and complete than any audit would do and because it is using community expert volunteers and our District Engineer, it will cost much less.

No. The board stated three years ago that they don't need an audit because we owe so much in interest and are afraid of Brookfield.

The board does not have anything approaching the expertise that forensic financial auditors have - who do this for a living on a nationwide basis.

And neither the board nor the developer oriented engineer will be independent.

We already know that it will not be comprehensive and independent because the board has stated that it will not consider the income spent on the cost of the lots which already includes the cost of the infrastructure.

And, we will have more than enough money to spend on this important evaluation from the savings realized by refinancing the $29 million bonds.

Thank you for reading through this. I apologize for the length but these are complex issues.

I too thank you all for reading through this material. It is important to understand that we have choices. To this point the board had not given us any choices and they refuse to return our right to vote.

They leave the residents with this choice by default - either go along with what the board decided with no transparency and based on three days notice of a "hearing" where no questions were allowed to be answered

- or -

recall the board so we can restore the right of the residents to vote on tax/bond debt and, after an independent forensice financial audit, as well as a community dialogue on

whether or not we owe any money and if so how to pay it back, decide whether or not to issue more bond debt to pay Brookfield more money.

We can refinance the $29 million bonds now.

Once the board returns the right to vote to the residents that Brookfield took from us in 2006, retains an independent forensic financial auditor to complete an analysis of whether we owe Brookfield or Brookfield owes us, and we have a community conversation about whether we owe any money and if so how to pay it, then and only then will we be in a position to make a responsible decision about issuing more bond debt to pay Brookfield more money.

This is the first time in 4 years that the board has come out of their secret meetings to actually discuss the issue. Exposing their thinking and basis for their decisions to the light of day is very important. Now that we, and they, can see what they are saying and why, measured against the actual statutes and documents, the choices emerge and more informed decision making lies ahead.

John Henderson