Good Afternoon,

We would appreciate the opportunity to present the rebuttal to your blog posts re the proposed addendum to the 2009 Development Agreement. Perhaps you can post this on your blog rather than us leaving it as a comment.

We have three main points in addressing the arguments posited in the posts and will address each in more detail below. We will also avoid any bombast and hyperbole for the sake of meaningful, fact-based discussion. First, the City entered into a vested rights agreement with the property owner in 2009. Second, the addendum discussed at the July 13 meeting was not an exemption (the opposite, actually) and does not give the property owner any additional rights. Third, the clarification was requested by both the City and the property owner as to this impact/effect of the Strategic Growth Initiative (SGI).

1. The posts on this issue repeatedly omit the most important fact: the 2009 Development Agreement entered into and passed by City Council. We have attached the Agreement here in hopes you may do the same on your blog entry so everyone can read it for themselves (note: it was also part of the published July 13 packet on page 8, https://www.lakewood.org/files/assets/public/city-clerks-office/city-council-meetings/2020/packets/city-council-meeting-agenda-packet-07-13-2020.pdf The Agreement purports to vest certain rights, for a period of 25 years, to the owner of the property to build in accordance with the agreed-upon site development plan. Provisions in the Agreement include, among other things, the following:

> 3. Remedies; Referendum.
>
> Any zoning or land use action by the City **or pursuant to an initiated measure** which would alter, impair, prevent, diminish, impose a moratorium on development or otherwise delay the development or use of the Property as set forth in the Site Specific Development Plan . . . shall entitle the Owners to an action for injunction or specific performance and/or monetary damages . . . provided, however, that Owners agree to first pursue specific performance, and if granted, shall have no right to pursue damages. [Emphasis added]

   This Agreement was signed in 2009 by the property owner and City, and passed at that time as an ordinance by City Council. Again, the above is only a portion of the language in the Agreement which is why I've attached the entire document for review. The language contemplates any land use action, whether unilateral by Council or through an initiative. In this case, the land use action is the SGI. Both the 1% growth limit and the review of qualifying projects with forty or more units are central tenets of the SGI. Yet those provisions also seem to be at odds with the 2009 Agreement. In the case of the 1% limitation, there could be an instance where not enough allocations would be available for the number requested at that time by the owner. In the case of the forty-plus hearing, the process (and potential denial) could lead to the impairment, prevention, delay, etc. of the requested permits. Either of those outcomes would seem to be in conflict with the Agreement, as its provisions provide for injunction, specific performance, and/or monetary damages in such an event.

2. The addendum is primarily comprised of two main concepts: (1) to make clear that any units requested by the owner pursuant to the Agreement will count towards the 1% residential growth cap, and (2) require year-to-year estimates from the owner so that we know approximately how

many remaining allocations are available in a given year. **This means the addendum is the *opposite* of an exemption by formally stating the 1% applies.** It also means we can lessen the uncertainties and provide opportunities for others in the city who may be seeking permits in a particular year. This is especially important to note given that the blog is apparently very concerned other developers won't get to build in our community.

3. When the issue of vested rights came up as part of a broader conversation about SGI clarifications, a recommendation by staff was to exempt these types of properties from the 1% limitation. At that time of Council discussion, Councilor Franks and I did not agree that there should be an exemption and moved to have the issue tabled. Since that time, we've been told the property owner has sought clarification so that they could potentially sell the land. Such a request would not be unusual by any property owner (big or small) or buyer facing uncertainty. The fact that we are even having this debate shows that uncertainty and underscores the need for clarity.

   We will not intentionally "hide the ball" from any property owner as to how this or any enacted law impacts their property. It doesn't matter if it's the owner of a single-family home or a 25-acre piece of land. **This is especially true when the City is a party to an agreement with that owner.** Moreover, our job as Councilors is to make these decisions and certainly not to leave the question open for a future Council to handle, one that most assuredly would not have benefit of all the background and community discussions/outreach. That future Council could determine the property is exempt, an outcome which is not a "boogeyman" or far-fetched. After all, that was an original recommendation by city staff. Barb and I disagreed with that recommendation, as I believe the majority of our community do, and support getting final clarity on the issue that is consistent with the SGI's 1% limitation.

<u>Other Inaccurate/Misleading Statements:</u>

The blog claims Councilor Franks said "This is good for the citizens to grant this exemption…"

Response: She did not refer to the proposed addendum as "an exemption." In fact, we repeated several times that this proposal was **not** an exemption and was meant to avoid such a result.

The blog claims there is a "Skilling/Franks scenario 1" where "Big Sky/CDN get to build whatever they want whenever they want AND the number of permits for each home they get from the City DOES NOT COUNT AGAINST THE OTHER DEVELOPERS 1% cap."

Response: This statement is literally the opposite of what the proposed addendum states. Those permits would count against the cap.

The blog claims Big Sky/CDN gets "special preferential treatment" and that we should treat Big Sky/CDN like any other developer. It also claims that in "Skilling/Franks scenario 2" other developers will have to fight for what's left (after deducting the CDN units from the cap).

Response: This argument pretends there is no 2009 Agreement, a document which does provide for certain rights to this particular property. The proposed addendum neither expands those rights nor creates new ones. Most other developers do not have similar agreements. It is true that per the SGI and the addendum, CDN units would **not** be exempt and therefore would reduce the number of allocations available to others. That's a central point of the addendum, to make sure the 1% is not skirted because of a vested rights agreement.

The blog claims "Skilling is leading the effort" and "promoting the deal he has apparently brokered with Big Sky/CDN."

Response: Councilor Franks and I *are* leaders. We have been at the forefront of many issues, big and small, controversial and mundane. The issue at hand specifically involves Green Mountain, and as such it is not a surprise we are involved in this proposed legislation. In response to the City and property owner's request for clarification, we explained our position that any units for this property must be deducted from the city-wide total (per the SGI) and any addendum would need to state as such. It was also proposed that the requirement that the owner provide the forecasting each year of estimated permits, a provision which helps the entire city. There isn't a "deal" in this proposed addendum; the owner was not given anything except clarification on how we proposed to treat the units eventually applied for on the property, if that eventuality comes to pass. It is a proposed legislative clarification and determination of the vested rights issue.

The above rebuttal is not exhaustive, as there are other inaccurate statements and insinuations made throughout the blog post. To be clear, we have great respect for dissenting opinion and rational disagreement on policy. Yet this post goes well beyond that in both the glaring omissions of fact (e.g. the existence of the 2009 Development Agreement) and the implication that somehow Councilor Franks and I have anything but the community's interest in mind as we carry out our responsibilities as elected officials.

Sincerely,

David Skilling & Barb Franks

City Council, Ward 4