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Office of the Mayor and City Council
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October 11, 2021

Dear Governor Polis:

I write for a second time, and again on behalf of the citizens of the City of Thornton, to ask for your help concerning the Thornton Shopping Center. This blighted area lies at the corner of 88th Avenue and Washington Street in Thornton, immediately adjacent to the Thornton campus of the New America School. I first wrote to you about it on July 14, 2020, and I remain grateful for your help at that time.

This 1950s-era shopping center is deteriorating, sparsely occupied, and badly in need of redevelopment. But environmental contamination effectively blocks this redevelopment and the subsequent economic revitalization of the southern portion of our City. I write today to ask you and the State agencies involved to enter into a new arrangement with the City that will allow the redevelopment of the Thornton Shopping Center to proceed.

As a preliminary matter, following my July 14, 2020 letter you asked the City to work with the Colorado Department of Public Health and Environment (CDPHE) to solve this problem. At your suggestion Thornton today enjoys a new and mutually beneficial relationship with CDPHE. The City is working closely with CDPHE, and we are grateful for CDPHE's efforts to help over these past several months.

But this problem is not solved. Significant pollution caused by historic spills of dry cleaner solvents was uncovered about 16 years ago, but no significant cleanup work occurred until 2020. Contaminated groundwater continues to migrate away from this property and under residential neighborhoods. A first phase of shopping center cleanup, addressing only this offsite contamination, and which CDPHE pursued under the State's counterpart to the federal Resource Conservation and Recovery Act (RCRA), was court-ordered in December of 2020. But the source of contamination onsite remains, and, as of today, there are no onsite source removal plans. Yet cleaning this source of onsite contamination is the most important part of solving this contamination problem.

Ongoing source contamination prevents redevelopment. It stands in the way of the economic rejuvenation of the entire southern part of the City of Thornton. It will cost several millions of dollars. But the dry cleaners that created this pollution are long gone and unavailable to pay. And the current owner of the shopping center claims to lack the resources needed to continue even with the current offsite cleanup. Most important, the current owner claims inability to pay to clean the onsite source of contamination. The fair market value of this

shopping center site today is a negative number—a value less than zero—due to the overwhelming financial burdens of required cleanup. Several private sector redevelopers have confirmed this fact. They have withdrawn their redevelopment interest after completing due diligence.

This stalemate will continue indefinitely, absent outside funding for cleanup and creative rethinking by all involved.

Thornton's redevelopment fund today holds several millions of dollars that Thornton is willing to devote to the cost of acquiring the shopping center and completing source cleanup. But Thornton today has no legal liability to clean this shopping center site, and the City cannot and will not subject its citizens to the unlimited potential environmental liabilities that would—if we are unable to obtain the assistance requested in this letter—accompany the City ownership and operation of the site that is needed for source cleanup.

Thornton has labored for several years to reach a cleanup and redevelopment arrangement with the current private owner of the shopping center, Mr. Jay Brown, and his company, Thornton LLC. Unfortunately, the City knows now that Mr. Brown is unwilling to reach such an agreement on reasonable terms the City can accept. This unfortunate fact is true even despite the active court order, secured by the State of Colorado more than a year ago, that enjoins Mr. Brown and his company to continue cleanup activities.

Thornton is therefore considering the following course of action, provided it can obtain the relief requested in this letter:

- The City, using its urban renewal authorities, would condemn the Thornton Shopping Center.
- Once the City owns this blighted site, it would voluntarily use public funds to clean onsite sources of dry cleaner solvent contamination. CDPHE and the City have discussed a proposed cleanup approach.
- The City's voluntary cleanup of source contamination at the shopping center would use City contractors and City management. The cleanup would be under CDPHE's cleanup authorities and regulatory oversight.
- Thornton would spend up to up to \$7 million in public funds to complete source contamination cleanup. This amount is available today and, according to the City's environmental consultants, should be sufficient.
- Once source cleanup is complete, the Thornton Development Authority would facilitate redevelopment of the shopping center for the benefit of the citizens of Thornton and the economic development of south Thornton.

- Under the State's existing court order, Mr. Brown's responsibility for cleanup of contamination would remain unimpeded and unchanged. Among his other responsibilities, Mr. Brown and his company would remain liable for any additional cleanup needed onsite or offsite.


But the State's agreement is necessary to pursue this voluntary City plan. Specifically, Thornton asks the State for a broad legal promise that the State will not pursue any additional costs of cleanup or other environmental damages against the City if it moves forward voluntarily. This State promise would limit Thornton's shopping center environmental liabilities under the Comprehensive Environmental Response Compensation, and Liability Act, the Resource Conservation and Recovery Act, other federal environmental statutes, and all State counterparts. The City would be liable only for its promised voluntary cleanup. This promise would be contained in a written agreement between the State and the City.

This type of "covenant not to sue" arrangement has precedent in Colorado, though it is more common in other parts of the country where the legacy of contamination and abandonment of private landholdings has been even more prevalent.

The limited liability arrangement Thornton asks you to consider would benefit the citizens of Colorado. Substantial pollution would be cleaned through an extensive and expensive voluntary cleanup that would not otherwise occur. The citizens of Thornton would benefit, too. They would have a cleaned site in their midst and, finally, a remedy for a longtime blighted area. They would gain from renewed economic vitality in the south part of Thornton.

We appreciate your continuing help with these issues. And we thank you for your consideration of Thornton's request.

Sincerely,



Jan Kulmann, Mayor

- cc: Mr. Philip Weiser, Colorado Attorney General
Ms. Jill Hunsaker Ryan, Executive Director, CDPHE
Mr. Shaun McGrath, Director of Environmental Programs, CDPHE
Ms. Jennifer Opila, Director, Hazardous Materials and Waste Management Division, CDPHE
Mr. Rob Beierle, Unit Leader, Hazardous Waste Corrective Action Unit, CDPHE
Ms. Lindsay Murl, Environmental Protection Specialist, CDPHE
Ms. Emily Splitek, Esq., Colorado Assistant Attorney General