



# FARMINGTON CITY

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## City Council Memo

To: Honorable Mayor and City Council  
From: Dave Millheim, City Manager  
Date: October 24, 2016  
SUBJECT: **QUESTIONS RELATED TO PROPOSED SAA**

### BACKGROUND

At the Council meeting a few weeks ago, a public hearing was held as one of the early steps in the potential formation of a Special Assessment Area. Many folks spoke and protest forms have begun to come in to the City from the residents. The protest period runs for 60 days at which point those protests will be tabulated and an update provided to the Council.

Council members said they have various questions related to grants, funding and various SAA options which they wanted staff to address. Staff asked for those questions in writing which the Council have recently provided. What follows are the answers we have prepared to the questions. Some of the questions and comments received from the Council were vague and some contained quite bit of narrative. Rather than assume what the individual Council members meant, we are including the questions and narrative verbatim as we received them and then immediately following the comment or question provided the answer as best we could. There will likely be more questions as we hear back from the residents but this first group was pretty inclusive.

Additionally, as per our past practice with the SAA, we are posting this document to the City web page to make sure residents can see the questions and the answers.

Respectfully Submitted

Dave Millheim  
City Manager

## SAA QUESTIONS FROM COUNCILMEMBERS as of 10-24-16

**NOTE:** The question or comment is as received verbatim from the Council member. All answers provided by staff or the City attorney *are in italics following the question.*

1. Legal precedent for application of SAA to major road improvements on a collector

*From the City Attorney: I'm not sure if this question is asking about the nature of the road, or the nature of the improvements. The collector status of the road is, in my opinion, not the controlling issue. The nature of the improvements are likely more relevant. The general law regarding assessments requires that the improvements provide a benefit to the assessed property. There is some law, not specific to Utah, which suggests that where the benefit is generally for the public, then the assessment on private property is not permitted. Counsel assisting the City on the bonding issues has opined that the private benefit in this case is sufficient. The collector status of a road, while likely not controlling, could be a factor in the benefit analysis.*

2. Legal precedent for application of SAA to curb, gutter, and sidewalk

*From the City Attorney: Referring to the answer above, I believe the application of the SAA for curb, gutter and sidewalk is well within the private benefit analysis.*

3. Does Utah have a presumption of validity for an SAA (some states do)

*From the City Attorney: I do not see a presumption of validity in Utah law. There is law from other states that holds that the benefit issue is a question of fact, with no presumption of validity for the City's determination. I did not find controlling Utah case law. There is a 1975 Utah case which states that the formation of an SAA (the SID) is a legislative act "which is conclusive in the absence of any evidence that it was procured by fraud or of proof that it is manifestly arbitrary or unreasonable." Standard Optical v. SLC, 535 P.2d 1150 (Utah 1975).*

4. Did someone remove the website links to the minutes of prior meetings relating to the SAA.

*No, all Council minutes from all meetings since 2010 are on the City's web page. Nothing has been removed. The only specific meetings related to the SAA have been very recently. The Council has not approved those minutes yet so those are not on the web page. Those will be on the web page once the Council approves the minutes which is scheduled for the upcoming Council meeting.*

5. City Ordinance that control the use of impact fees

*From the City Attorney: The use of impact fees is a matter of state law. The City can use those fees on any improvement which the City has classified as a system improvement, and which is included in the City's impact fee facilities plan, or a preceding capital facilities plan.*

6. Is there a legal definition for "street improvement" versus "asphalt tie-in"

*From the City Attorney: I don't believe there is a legally standard definition. I believe a Court looking at this issue will look at the meaning of those terms in the context of the agreement.*

7. What grants have strings tied to usage (e.g., just sidewalks, etc.)

*ALL of the grants have strings attached to them.*

*At this point we have only one grant awarded tied to this project. It is the UTA TIGER grant and it is specifically for sidewalks, ADA ramps and bike lanes along 650 West and Glovers Lane. The total grant award was \$694,002. UTA still has not clarified timelines nor contracting rules associated with this grant. 28 cities are involved and we do not expect a quick answer from UTA on when the funds will be available. All we know at this time is we got the grant.*

*The UTA TIGER grant is also a Federal program with Davis Bacon act strings attached. Said another way, the total grant award will not go as far as it could without those strings but it is a choice between accepting the funds or not. It is in the City's best interest to take the funds and apply them to their required purpose.*

*We have also applied for a safe route to school grant through UDOT. That grant application covers specifically sidewalk, curb and gutter for a portion along the south side of 500 South per the elementary school's routing plans. We do not know yet if we have received the grant or what the amount will be. We are told grant awards will be announced in mid November. We expect the high limit of the grant award to be around \$100,000 but that is a guess based on past awards.*

8. 4 foot versus 5 foot sidewalk

*The current City sidewalk standard is four feet on local streets, five feet on non local streets. We have a six foot standard for minor arterials but no such streets exist in the proposed SAA.*

9. Park strip size (what are the sizes throughout the city (smallest to largest))

*Park strips in Farmington range from 6.5 feet to 11.5 feet based on the functional class of the road. In this area the functional class requires a 6.5 foot park strip for Glovers Lane and 1100 West (major collector) and a 7 foot park strip for 650 West and 500 South (minor collector).*

10. Per Utah Code 11-42-208, a municipality can except/delete property from an SAA; accordingly, what is the criteria for deleting a property from SAA.

*According to Randy Larsen, there are no criteria. He did add that proposed improvements can be deleted as long as the deletion does not negatively impact the remaining areas such that the costs up and the assessments go up as a result of the change. He also said we cannot randomly leap frog if we start deleting improvements in some areas and not in others. Said another way, you could delete one whole side of the street or both sides at some logical dividing point.*

11. Utah Code 11-42-407 requires the City to pay for ½ of certain types of street improvements—does our proposed SAA implicate this statute?

*According to the City Attorney, the answer is NO since this statute specifically relates to changing the grade of a street. In this case, the streets stay in the same locations with the same relative grades.*

12. Utah Code 11-42-409(3)(a)(iii) states that the benefit to the property does not need to be reflected in the increase in fair market value—is there legal precedent interpreting direct versus indirect benefit to a property

*From the City Attorney: There is a significant body of case law on the issue of private v. public benefit, and to some extent, it touches on this question, but there is no direct Utah case law of which I am aware.*

13. Does the statute allow us to effectuate a “line item” review of the proposed scope of the SAA and, if so, when can we do so?

*See questions #25 and #26*

14. Sidewalk on both sides versus some trails?

*At the end of the day, this is a decision of the Council. You need to be mindful of the answers in #7 and #10 above. You should also be mindful of the guiding principles of the general plan and master transportation plans in these areas. There have been in the past and may be in the future where the respective Council's at the time of approvals have not followed the general plan and master transportation plans as to location or type.*

15. Does Utah Code 11-42-208 allow us to exempt/except a property based on financial wherewithal of the owner.

*From the City Attorney: Utah law does not allow the City to except property based on an owner's ability to pay an assessment.*

16. Can we waive the 60 day protest cut off (e.g., make longer or accept a withdrawal of a protest after the 60 day cut-off)

NO

17. What is the statute that permits extension/development agreements

*From the City Attorney: There is no specific statutory authority for the use of extension or deferral agreements. Those agreements have relied on the ordinance authority to impose improvement requirements with "development" of a lot.*

18. Can you exempt from an SAA all properties that do not have an extension agreement (in effect, create an SAA only for properties that have an extension agreement)

NO

19. At the end of the day, what controls the actual footage by which an owner's assessment is calculated (legal description on deed or rough measurements by the contractor)?

*The legal description on file in the County Recorder's Office. These were the same descriptions sent out to the respective property owners with the notice following the adoption of the Notice of Intent Resolution.*

20. What is the classification of the following streets: 650 W, 1100 W, 500 S, and Glover?

*650 West and 500 South are minor collectors. 1100 West and Glovers Lane are major collectors.*

21. Is there legal precedent that evaluates the benefit to the owner versus the cost imposed on the owner?

*From the City Attorney: I haven't seen any case law that makes an evaluation on this line of thinking. However, I do think the cost related to benefit analysis may be part of the overall consideration of whether or not the benefit is public or private.*

22. Does the proposed SAA require the city to "take" any property through eminent domain?

*NO it should be noted there are four small property frontages required along the south side of 500 South for fulfillment of the UDOT safe route to school grant requirements. Staff has meant with all three property owners who appear willing to a voluntary sale of those property slivers. If we do not come a voluntary sale agreement with those three, it would either require the use of eminent domain OR not being able to accept the UDOT sidewalk grant if awarded.*

*Additionally, there are approximately 35 parcels of varying widths required for the proposed road construction. Staff would not advise using eminent domain for the*

*acquisition of these slivers but that would require the cooperation of the affected property owners.*

23. What obligation do we have to follow the master plan?

*You are under no legal obligation to follow the master plan. Common sense says you should but plans change over time and you have the authority to either change the plan OR decide there is a legitimate reason to not follow the plan. We would always advise when not following the plan to state the reasons for doing so when that decision is made to avoid the potential challenge of being arbitrary and capricious.*

24. Can we use grant money to the fullest extent if the SAA fails and still call on an extension agreement? (For example if the grant money only good for sidewalks or other line items...)

*Yes, but in that scenario it would likely mean the required extension agreement portion would go down if the improvement were already being installed through the grant revenue source. You could not “double dip” in the extension agreement charge to the respective resident. We also have a matching grant requirement which the remaining portion of the extension agreements helps to satisfy.*

25. After the SAA is approved can we amend the extent of the side treatments? (Sidewalk on only one side of the road for example) or do we need to do that before?

*NO*

26. Do we have time to do that before?

*NO. The SAA as proposed sinks or swims in its current form. You could potentially take things out of the SAA out at a future date (after the 60 day protest period lapses) and prior to adoption. If you significantly modify what is already included in the proposed SAA, both our Zion’s financial advisor and bond counsel with Ballard Spar have advised us that it would mean starting a new SAA notice process over with whatever proposed changes you came up with.*

27. What is the worst case delta after grants, extension agreements, prop 1 money, the impact fee money we were already planning on spending, and the school district contribution? Can we cover that remaining cost with impact fees money or do we need to use general funds? (Again I am only talking worst case if the SAA is shut down).

*There are too many assumptions one must make to definitively answer the first part of the question. As to the second part, including the best case scenarios for grants, extension agreements Prop One funds and impact fees, there will still be required a large general fund contribution to do what is in the current proposed project parameters. Impact fees deserve special note – These amounts are limited to the amount in the estimations as that is the maximum that can be spent from impact fees for this project.*

28. Do we have any other Minor or Major Arterial [and collector] roads in the City that have curb/gutter and sidewalk on both sides of the road?

*Yes, examples include Clark, Main, portions of Shepard Lane, Park Lane, Burke Lane, portions of 1525 West to name a few.*

29. Is there any legal precedent for upholding the extension agreements in regards to the language that stated an SID versus our proposed SAA?

*Not that we can find.*

30. Does the language in the extension agreements define what the "road tie in" is?

*NO but any tie in needs to be installed per city standards which does require sub grade, road base and 4 inches of asphalt at a minimum.*

31. Can we get a short brief on the "Master Plan" trails and roads for the proposed SAA area?

*Yes, this was provided by Mr. Petersen in the Council packet of 10-18-16.*

32. If the SAA is defeated by protest is the City under any obligation to use potential grant and other non City funds in any predetermined way?

*Yes. With the Tiger Grant or any other grant, they may only be used as specified. Any Prop One funds from the County would not have any obligations other than they would need to be spent for road improvements.*

33. The first question that needs to be answered is are we going to be able to have constructive discussion on SAA points of contention and concern, and make meaningful changes that can then be communicated out to the participants?

*We believe that dialogue is taking place at the Council level, with staff, individual residents and a citizen committee.*

A). If the answer is yes, then perhaps we can make adjustments and get it to a palatable stage that can stay viable.

*Maybe but this will be up to the residents at the end of the day because they will vote to protest the SAA or not based on how they believe it will affect them and whether or not they have an extension agreement.*

B). If the answer is no, we might as well pull the plug and end the current proposal, before we waste any more Staff and Council time, and continue to add to the angst in the community. We could then re-start a more do-able proposal. If we cannot openly and

constructively discuss and alter the SAA now, rather than having to wait until after the 60 day window closes, the SAA will be voted down by unhappy participants, and we will have wasted everyone's time, and done even more irreparable damage to resident views of the city Staff and Council, than has been done to this point.

*More comment than question but probably accurate. As stated before, the current SAA proposal has to run its course by statute according to the legal Counsel we have received.*

C). We need to come up with a solution to this situation that is equitable and fair. We can't ignore extension agreements and let those with such agreements get by without participating. By so doing we would totally negate any future extension agreements. On the other hand, the implementation of extension agreements cannot be so onerous that we force people out of their homes, force landowners to sell or develop in order to pay the bill, or put the city into the role of forcing people out of their homes on tax liens.

*There is no question enforcement of the extension agreements will be onerous to all involved.*

34. The Elephant in the room is the price. To have the price per LF over \$200 is outrageous, and is not passing the court of public opinion in any forum. A couple of points to discuss:

A). To quote Keith; excavation from 2-4 feet, underground pipe(infrastructure) work, re-building roadbase to finished grade, power pole movement, meter and hydrant movement, etc. were all part of the cost estimate. These are all System (COMMUNITY) improvements that should not be in the SAA extension agreement numbers borne by the residents in the local neighborhood. These should be borne by the community as a whole, or even the larger, south county, community as the high school and station park are benefitting the larger community as well as bringing the impacts.

*We believe the system improvements are being borne by the greater community and the School District. This information was broken out in detail in the proposal that Council asked us to present to the residents on 10-18-16. Based on a combination of sources, the general fund is paying for a large portion of this project.*

B). The SAA resident numbers need to be based on what is in the extension agreements. In all forms of the ex. Agreement, and by historical accepted practice, the items in the agreements are all surface treatments. Curb, gutter, sidewalk, and even asphalt tie in, are all typically constructed with minimal excavation. Just a finishing touch. This is a very different concept than the road improvement demands we put on developers. ( Apples to apples)

*B. This comment needs more specific clarification as it contains some open ended assumptions some of which are problematic. For example, in this case there would be much more than minimal excavation associated with the asphalt tie-ins since tests holes we have dug show no sub base or road base along 650 West. With the high water table*

*in the area and inferior existing road subgrade, staff believes a minimal tie in without proper excavation and fill would doom that road to a quick failure and waste those dollars.*

35. Each property owner should not be limited to one curb cut. This is a question, as I don't know what the language in the SAA specifies. This is to say, if a property owner has a barn access, field access etc. in addition to their primary driveway access, these need to have curb cuts applied to them as well during the construction process so they can continue to utilize their facilities.

*We would agree that any existing curb cuts or driveway accesses should be replaced where they now exist.*

36. There is an element of "Fairness" that we should probably discuss. The SAA concept allows us (city) to force participation (ala extension agreement) onto property owners who, for whatever reason, (typically that they predate the concept), do not have the extension agreement in place against their property. Without the SAA, they are not obligated to participate, until the day they divide, develop, or otherwise alter their property. There is a fairness argument to be had on both sides of this concept, but the biggest one in my book, is it fair to force this on those with no agreement in place?

*Well stated but that "forcing" is exactly what the SAA statute contemplated to insure the fairness of all assessments since it is very unlikely all residents will agree with the SAA. It is also why the statute requires a high degree of citizen support via the protest threshold.*

37. As Councilman B. Anderson pointed out, (and he will have to cite the specific statute), the statute calls for local entities to cover the first 50% of community improvements, this before other calculations can even start.

*Per the City Attorney, the statute Councilmember Anderson is referring to is not applicable in this case.*

#### **General Comments received from Council but not with an associated question:**

*The current Transportation Master Plan in place cannot be ignored. As a body (Staff and council) we have made mistakes over the last few years that have gone counter to the west Farmington portion of the Trans. Master plan. We can still comply with the spirit of the plan if we plan and implement correctly. Ironically, the correct implementation of the plan on the streets currently in question could result in some cost savings. This plan is spelled out in ordinance 96-46, chapter 8, subsection 9. This was quoted at the meeting of Oct. 4, and calls for Sidewalk on one side of the streets and equestrian/multi-purpose trail on the other side. We can still create an equestrian/multipurpose trail connecting the ranches trail system and fairgrounds on the west, to the mountain on the east, by*

*finishing what has already been started along 1100 W, 500 S, 650 W, and Glovers lane. As a council and Staff, we cannot blatantly and arbitrarily ignore sections of our various master plans out of expediency or because it doesn't fit our current concept.*

*Absolute clarity on legality of extension agreements. Not so much the ability to enter in to extension agreements, but the manner in which it has been done. Example: Ken miller vs Greg Bell- refusal to sign and argument that city could not compel. Are we legal and proper to require signing in order to get building permit for example. Or is this borderline extortion and not legally defensible?*