

**From:** [Gonzalez, Eileen](#)  
**To:** [Bennett, Merv](#)  
**Cc:** [Council Members](#); [Johnson, Sarah B.](#); [Massey, Wynetta](#); [Andrews, David](#); [Greene, Jeff H.](#); [Waters, Bret M.](#); [Wysocki, Peter](#)  
**Subject:** Notice of request to reconsider item 11.B. on 8/23/16 agenda, re: Tuscan Foothills Village metro district  
**Date:** Friday, August 26, 2016 11:23:02 AM  
**Attachments:** [Reconsideration of Vote 8-26-2016.docx](#)

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President Bennett:

Pursuant to City Council Rule 3-17, Councilmember Keith King hereby submits notification that he intends to move to reconsider item 11.B. on the regular City Council agenda of August 23, 2016, relating to a resolution approving a service plan prior to the creation of a Tuscan Foothills Village Metropolitan District. Please see the attached for additional information.

Eileen Lynch Gonzalez, City Council Administrator

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*Keith King – District Three  
107 North Nevada Avenue  
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To: Merv Bennett – President of City Council  
Re: Request for Motion to Reconsider Resolution Approving a Service Plan prior to the Creation of the Tuscan Foothills Village Metropolitan District  
Date: August 26, 2016

At the City Council meeting on August 23, 2016, I voted with the majority against the resolution approving a service plan prior to the creation of a Tuscan Foothills Metro District.

I voted against the proposal for the following reasons.

- 1) I did not have a comfort about the balance between what the developer was putting into the project and what was going to be financed by the homeowners. The limit was \$3,000,000 on the debt and it appeared to me that for a 17 acre district that was going to have 80 townhomes and 42 apartments that it was an excessive amount. That is almost \$25,000 per unit and over 30 years that would be almost \$50,000 in costs to the homeowners and tenants.
- 2) The operating mill levy of 10 mills as described in the write up is not the primary purpose of the district. The district needs to allow most of the maintenance to be covered on a cash basis. It should not be financed over 40 years. A Home Owners Association should be considered for this expense.
- 3) The allowable mill levy now is 30 mills on the residential but, as I understand it, 50 on the commercial. I questioned the affordability of the rental units that will be assessed \$13,350 per year and the extra \$796 the homeowners have to pay.
- 4) While I do not know what the contract price is of the property, it appears that the amount of capital improvements that can be paid for by the homeowners and tenants is excessive.

Following that vote and meeting of the City Council, I sent Peter Wysocki an email outlining 10 questions about how City Council votes on special districts. Below are the email and his answers.

Answers to your questions are in red. These are very good questions. I tried to be succinct as this topic is a bit complex. It is important to note that our current special district policy shifts the burden of proof onto the developer to justify that the district is necessary and that it will be viable. The policy is somewhat arms-length, meaning that City staff does not review pro-formas, cost estimates, mill levy projects, etc. and if the petitioner meets the policy, the Council will approve it. I know that there has been some concern with the small size of some of the districts being proposed. I am not arguing for or against metro districts, but I would like to point out that as the City and private sector embarks on infill and

redevelopment, project cost controls are paramount to make projects viable and ultimately affordable for the homebuyers or businesses. In the case of residential development, project costs are ultimately reflected in home prices if not in additional mill levy.

1. Is there any requirement that the developer put up a certain percentage of capital into the project?

Yes, the developer is obligated to pay for the improvements. The developer typically puts-up the capital to construct the improvements, and then enters into an agreement with the district for reimbursement by the district for eligible costs/improvements. Typically, the district assumes debt (loans or bonds) to reimburse the developer once projected mill levies are available and can be pledged to repay the debt. In some cases, the district reimburses on reimburse-as-you go basis. Residential districts typically reimburse less because of Gallagher and lower allowable mill levy (30 versus 50). It is important to note that the obligation of build the improvements required by the city, always fall on the developer.

2. Can the proceeds raised by the special district financing be used to pay for the land?

Yes under State Statutes Title 32, but only for public district purposes (not private development). However, this is not allowed by current City policy. Essentially, the developer does not get reimbursed for any land dedicated for the improvements or purchase of the land.

3. What is the smallest special district in size and what is the largest?

See info below. Neither the city's special district policy nor State Statues set acreage minimums or maximums.

4. Do the special districts a present a budget that can be analyzed by staff for the likely ability of it to be financially successful ?

No. As per the 2006 policy and previous Council direction, the burden of determining the viability of the district is left to the developer and the district. The City's review is for compliance with the special district policy, not whether or not the district is necessary to make the project viable. Staff does not verify the projected pledged revenues to repay the debt. However, given the relatively high degree of review by bond counsel, developers and bond holders, the lack of city review has not been an issue.

5. If so, do they do a five year forecast?

No, see above. Developers typically do a forecast to decide if they want to do a district in the first place, and staff provides the information to City Council since some Councilmembers want to see it; however, these are forecasts and often change. When they issue debt (which is often years later) they have to do the forecasts, but again do not have to share with City Council (but customarily do).

6. Can a developer be the contractor for the special district, if so, how do they establish the price they charge the district for the construction, or are they required to do a competitive process?

We believe so, but need to do further research. Most master developers are "land developers" and not necessarily construct the improvements themselves. They typically hire private

contractors through a bid/quote process, albeit, not a public bid process like government agencies.

7. Are the mills that are allowable to be charged connected to any capital requirement for the developer?

Not directly, the district can levy up to the maximum mills to pay for eligible costs set forth in the service plan either through pay as you go or debt.

8. Why do all districts allow for 10 mills regardless of size for operations?

Not all do, but this is now the standard form model, based again on the arms-length policy. "Stay within these limits, and you can manage your own detail". City purposefully at this point does not ask for budgets, projections or justification.

9. Can City Council restrict the length of time the improvements are financed for?

Per current policy, individual formal debt cannot be issued for greater than 30 year terms, and in the case of residential districts only, a debt service mill levy can only be in place for 40 or less years.

10. Can City Council mandate what the proceeds from the financing are going to use for or prohibited from being spent on?

There are some limited prohibitions already since the debt can only be issued for expenses approved in the service plan. The Council could more narrowly restrict the use as part of the service plan approval; however, this would be a departure from the current laissez faire policy.

I now understand why City Council does not do a good job of reviewing special districts. 1) Council does not receive a budget about the costs of the project. 2) The developer has not been required to show why they need operating mills. 3) Council does not know how and who will be doing the improvements to the property.

#### REQUEST FOR MOTION TO RECONSIDER

Based on the evidence that I have received from Peter Wysocki and the communications I have had with the developer, having voted in the majority, I hereby request the President of City Council to place the motion to reconsider on the next regular City Council agenda on September 13, 2016.

I plan to request a new service plan be developed that will fully inform City Council of the financial plan for the district and new limitations I believe are necessary to make the project viable.



Keith King