

NOTICE OF PUBLIC MEETING

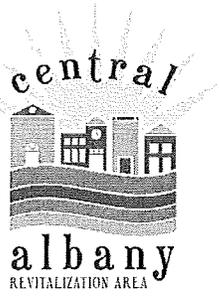
CENTRAL ALBANY REVITALIZATION AREA ADVISORY BOARD
City Hall Council Chambers
Wednesday, September 17, 2014
5:15 p.m.

AGENDA

1. CALL TO ORDER (Chair Rich Catlin)
2. ROLL CALL
3. APPROVAL OF MINUTES
➤ July 16, 2014. [Pages 2-5]
Action: _____
4. SCHEDULED BUSINESS
 - a. Business from the Public
 - b. Public Safety Facilities Funding. [Pages 6-22] (Porsche/Delapoer)
Action: _____
 - c. Staff updates and issues. [Verbal] (Porsche)
Action: _____
5. BUSINESS FROM THE BOARD
6. NEXT MEETING DATE: *Thursday, September 18, 2014*
7. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net

The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, advance notice is requested by notifying the City Manager's Office at 541-917-7508, 541-704-2307, or 541-917-7519.



APPROVED: **DRAFT**

CITY OF ALBANY
Central Albany Revitalization Area Advisory Board
City Hall Council Chambers, 333 Broadalbin Street SW
Wednesday, July 16, 2014

MINUTES

Advisory Board Members present: Russ Allen, Rich Catlin, Floyd Collins, Loyd Henion, Bessie Johnson, Rich Kellum, Sharon Konopa (left at 6:30 p.m.), Ray Kopczynski, Danon Kroessin, Dick Olsen

Advisory Board Members absent: Bill Coburn (excused), Kevin Manske (excused), Mark Spence (excused), Maura Wilson (excused)

CALL TO ORDER

Chair Rich Catlin called the meeting to order at 5:15 p.m.

APPROVAL OF MINUTES

June 18, 2014

MOTION: Ray Kopczynski moved to approve the June 18 minutes. Rich Kellum seconded the motion, and it passed 10-0.

SCHEDULED BUSINESS

Business from the Public

There was no business from the public.

SBDC Small Business Management Scholarship Request

Economic Development & Urban Renewal Director Kate Porsche drew attention to the written staff report. She reviewed the request from the Linn-Benton Community College (LBCC) Small Business Development Center (SBDC) for a scholarship program for their Small Business Management (SBM) course. A sponsorship amount of \$2,100 per person was requested to cover the cost of the \$2,300 program except for a \$200 fee, which would be paid by the participant. Staff and the SBDC proposed that CARA create a fund for the current budget year in the amount of \$42,000, which would allow 20 businesses from within the CARA boundary to participate. Funds would be paid on a reimbursement basis as people signed up and participated in the program. Porsche said the proposal met the goals of CARA Objective #50, Business Retention & Recruitment.

Porsche said that questions had come forward regarding other funding that the SBDC receives from the City. She distributed and briefly reviewed a memo from Planner Anne Catlin, regarding Community Development Block Grant (CDBG) funds allocated to the SBDC in FY2013-14 and FY2014-15.

Marc Manley, SBDC Director, thanked the CARA Advisory Board for its courage in making decisions that have resulted in beautiful buildings downtown, as well as additional businesses that have brought new jobs into the City's core. He expressed appreciation for the City's support of the SBDC's programs. He said that since last year, the SBDC has helped 374 businesses in Linn and Benton Counties, many in Albany. The organization measures performance by feedback from the businesses regarding how much capital they were able to raise to help them grow their businesses, how much they were able to increase revenues, and how many

jobs they were able to create. Since last year, the program helped these companies raise \$4 million in new capital which resulted in increased sales in the amount of \$8 million and the creation of 82 new jobs. He reviewed the backgrounds and experiences of some of the business advisors in the SBM program, as well as success stories of some of the program's participants. He said that many people who start businesses are good at what they do but often do not know everything about running a business successfully; the SBM program helps to close those gaps. Manley reviewed the request as detailed in his written proposal and the written staff report.

Kellum agreed that business owners have expertise in their area but often don't know much about business; the challenge is to know when to pay someone else to do certain work. He said that small businesses are always underfunded. He thought that the correct venue for this request was not the CARA Advisory Board. He felt that it should be a citywide program and that it should be a loan rather than a gift.

Russ Allen said that the request appeared to meet the CARA goal of business development and retention. He said it would be great if every business in the City could participate in the program, but the Advisory Board's job is to redevelop the area within the CARA boundaries. He asked Porsche to speak further to how the request supports the CARA goal. Porsche said the request was for support of an educational program that has had pretty robust results for the people of Albany who have participated. She felt it was a strong candidate that would directly meet CARA Objective #50.

Allen asked if any thought had been given to the question of need. Porsche said that was an excellent question, but it had not been discussed.

Floyd Collins asked how many people had said they couldn't afford to participate in the program. Manley said that the organization often receives pushback on pricing and they do what they can to identify help. He explained a similar scholarship partnership that the SBDC had developed with the Oregon Department of Transportation (ODOT). He felt that the program provided benefits to both the businesses and the community.

Collins said that the program should be considered for all of Albany rather than just the CARA district. He felt that any assistance should be on a loan basis and payable only upon successful completion of the course. He asked if this would be an ongoing request. Manley said it was a one-time request at this time; however, if the program was found to be valuable, the Advisory Board might consider funding it again. In response to further inquiry, Manley reviewed other partnerships and funding for the program.

Kopczynski said that business owners may not have the background that is needed to make a business grow. He noted that CARA funding may only be used for businesses within the CARA boundaries. He said this is a phenomenal program which meets one of the CARA goals. He asked if it would be possible that ODOT and CDBG funding could be used for businesses outside of the CARA boundary with CARA funds to be used for businesses inside the CARA boundary. Manley said that was an interesting idea; he deferred to staff as to whether it would be possible.

Kopczynski said there should be a methodology to recoup and reuse the money if someone dropped out of the program. However, if they passed the program and were successful in retaining or building their business, then he thinks it was money well spent. Manley agreed that business retention is very important and that access to this program could help to keep existing businesses afloat. He said he would be willing to work with staff on some of these issues.

Kellum said he didn't think it was reasonable to give somebody something that they had the ability to give themselves over time. Manley said that business owners would get some benefits but the community would also benefit from having businesses grow and additional jobs in the community. Discussion followed.

Sharon Konopa said she had a few concerns, mostly over timing. She reviewed the history of City funding for the SBD program. The City was originally asked for a one-time contribution to keep the program afloat, and the Council said at the time that it did not want the City to fund the program ongoing. Subsequent requests

were made for continued support and the decision was made to fund the SBM and the Micro-Enterprise Program out of CDBG funds. She said Council had not yet had any updates regarding the results of that funding. She said that it may be possible for CARA to assist with this program with some conditions, perhaps assisting distressed businesses within the CARA district.

Manley said that he would see to it that Council receives an update. He said that business owners in distress typically need more intensive assistance than this program could provide. The real impact to the community from this program would come from helping businesses to grow.

MOTION: Collins moved to deny the application and instruct staff to work with the applicant on a citywide approach that would not be a scholarship program but a revolving loan program. Kellum seconded the motion.

Allen said that he supported the first part of the motion but felt that the scholarship/loan issue would be addressed by the governing body that ultimately considers the request. Collins said the intent of the second part of the motion was to give guidance to staff.

Dick Olsen agreed with the idea that this should be a loan program or a revolving loan fund that could proceed into the future. He thought the CARA Advisory Board was the right body to consider the request if it was limited to the CARA area. Brief discussion followed.

Loyd Henion agreed that a citywide venue should probably consider this request, including the decision of whether it should be a scholarship or a loan program.

Catlin said that he felt the City should fully embrace the work of the SBDC. If the City was willing to commit to funding the program with economic development funds, he would be in favor of the motion. He suggested that the applicant bring this back to the Advisory Board if there did not appear to be citywide support for funding the program at the amount requested. Regarding the issue of loan vs. grant, he didn't know that it would be worth the administrative costs to have a loan program for these small amounts.

The motion passed 6-4:

Yes: Collins, Henion, Johnson, Kellum, Konopa, Kroessin

No: Allen, Catlin, Kopczynski, Olsen

Minimum Thresholds for Funding Requests

Porsche recalled previous discussions about creating a minimum threshold that applicants would have to meet before a request was brought forward to the Advisory Board. She drew attention to the Project Evaluation Grid in meeting packets. She proposed that projects be required to meet three of six key criteria: remedy blight, historic preservation, vitality/people attractor, geographic threshold, residential component, and new business/job creation. She reviewed examples of previous and potential applications and how they would have fared under the proposed guidelines. She requested feedback.

Kopczynski reviewed his criteria ranking as follows: attract new private investment/retain and enhance the value of existing investment; blight and preservation; vitality/people attractor.

Konopa said that having a minimum threshold would be very helpful. She thought that any appeal by an applicant should be heard by the CARA Advisory Board. In discussion, Porsche said that a minimum threshold would be very helpful to staff. She clarified that if an amazing project was proposed, staff would bring that forward even if it did not meet the minimum threshold. Brief discussion followed.

Konopa left at 6:30 p.m.

Catlin said that the role of CARA is to provide gap funding. He wondered if financial impacts should be one of the key criteria to be met before projects are brought forward. Collins suggested that financial impacts be added as a seventh key criteria, three of which must be met in order for a project to be brought forward.

There was general consensus to direct that staff bring back a draft policy for additional review.

August Meeting Date

Porsche said that she would be attending an economic development training course the week of the next regularly scheduled meeting. She offered potential alternative August meeting dates. Discussion followed regarding upcoming agenda items and related timing issues. It was agreed that staff would do an e-mail poll of the Advisory Board members to determine the next meeting date.

Staff Updates and Issues

Porsche provided the following updates:

- Innovative Housing, Inc., is nearly ready to close on their construction loan for the Woodland Square project.
- The Novak's are now working with a different bank on their funding package and say they are very close to approval.
- Scott Lepman has gone before the Landmarks Advisory Commission and has been working through design issues.
- A request for proposals is being finalized for the wayfinding signs project.

BUSINESS FROM THE BOARD

There was no additional business from the Board.

NEXT MEETING DATE

The next meeting of the CARA Advisory Board is to be determined.

ADJOURNMENT

Hearing no further business, Chair Catlin adjourned the meeting at 6:58 p.m.

Submitted by,

Reviewed by,

Teresa Nix
Administrative Assistant

Kate Porsche
Economic Development & Urban Renewal Director



TO: CARA Advisory Board

FROM: Kate Porsche, Economic Development & Urban Renewal Director
Jim Delapoer, City Attorney

VIA: Wes Hare, City Manager

DATE: September 12, 2014, for September 17, 2014, CARA Advisory Board Meeting

SUBJECT: Public Facilities Funding

Background

As you may be aware, the City Council appointed the Public Safety Facilities Review Committee (Committee) to review and analyze need, location, design, and funding for the new police and fire facilities (Fire Station 11 located on Lyon Street).

At different points in their process, the use of urban renewal funds has been discussed as one possible piece of the funding equation. Other funding components include the traditional means of issuing a general obligation bond to the voters of Albany, which was done in November 2013 and defeated, as well as the potential use of some of the Pepsi economic development funds.

At the May 20, 2014, Committee meeting, attorney Jeannette Launer, who specializes in urban renewal, attended the meeting, answered questions, and discussed urban renewal funding. Then at the June 10, 2014, Committee meeting, City Attorney Jim Delapoer and I were present and further discussed the potential for urban renewal funding and answered some specific questions raised by the Committee.

After much discussion and deliberation, the outcome of that meeting was a 10-2 recommendation in favor of using the maximum dollars allowable under a *minor amendment* of the CARA Plan. The action requested by the Committee was that the CARA Advisory Board initiate a minor amendment to the CARA Plan to include the Police station and Fire Station 11 as new projects and allow for the use of urban renewal funds for those projects.

As further background, it is important that we review information and details that may shape your decision:

Can CARA funds be used to fund the police and fire stations?

The short answer to this question is, yes. However, the answer becomes complicated when looking into the details of how much money is to be used and for what purpose.

Are the police and fire stations identified in the CARA Plan?

No. While there is a line item in the Cara Plan labeled "public facilities," new public facilities such as the proposed police and fire stations were not envisioned in the CARA Plan. Staff conducted a thorough analysis of the plan to determine the correct answer to this question. Our answer to this question, and others posed by the Committee, were outlined in a memo dated June 5 from City Attorney Jim Delapoer and me (please see Exhibit A). Our assessment was independently confirmed by Jeannette Launer in the second paragraph of her letter dated July 1, 2014 (see Exhibit B). The fact that the police and fire stations were not envisioned in the original plan does not completely preclude them from receiving some funding but does place constraints on our funding alternatives.

Below is part of Section 6 of our plan discussing what kinds of facilities were envisioned under the "Public Facilities" heading:

COMMUNITY FACILITIES		
47	Public Facilities	Establish and enhance public facilities such as libraries, museums, performance areas, parks and the arts.

A careful review of the plan itself may cause someone who is opposed to the use of urban renewal funding to argue that these types of facilities were never envisioned for CARA. When a community creates an urban renewal plan, it must outline and document the types of projects authorized for funding.

Attachment D of the urban renewal plan discusses the public facilities that were envisioned and which became the basis for authorized plan activities eligible for urban renewal funding. While that attachment is three pages long, a number of public facilities were specifically listed. An excerpt of Attachment D listing those public facilities is set forth below:

RECREATION, LEISURE & CULTURE	
Carnegie Library	Restoration and renovation of the Downtown Carnegie Library.
Museums	Establish additional museums in Downtown including acquire & renovate site, inventory & displays.
Library Development	Acquire land, design & construct a main library facility including related infrastructure.
Monteith House & Regional Museum	Provide planning & financing to expand tourism efforts at Albany Regional Museum & Monteith House.
Monteith Riverpark Stage	Refurbish stage at Monteith Riverpark. Partnership potential.
Swanson Pool	Redevelopment of an aquatic facility at Swanson Park.
Whitespires Restoration	Restore & renovate Whitespires Church at Washington & 5th for community use. Acquisition potential.
Community Playgrounds	Provide playground equipment and site amenities for neighborhoods in the area.

There is no mention of public safety facilities, police, fire, or other facilities or buildings that don't relate to recreation, leisure, and culture.

Another concern is the failure of the urban renewal plan to identify the funding of public safety facilities as an activity that would further the Comprehensive Plan goals. An urban renewal district is required to identify, in its plan, the Comprehensive Plan goals that will be met by plan expenditures. If we had envisioned construction of public safety facilities with urban renewal monies, one would anticipate that we would have highlighted the funding of these important facilities in demonstrating compliance with our Comprehensive Plan. Unfortunately, Section 3 of the CARA Plan, "Relationship to Local Plans," contains no reference to these facilities even though Goal 11 of the Comprehensive Plan contains a specific subheading "Police and Fire Protection Services." If the CARA Plan envisioned using urban renewal money for these types of facilities, one would have expected the projects to be called out specifically and there would be a direct relationship to the Comprehensive Plan.

Section 6 also outlines the following (page 11):

Activity Profiles: The project activities outlined on the following pages are directed at treating and improving the substandard blighting conditions in the CARA. They are consistent with the goals and policies contained in the Albany Comprehensive Plan and other adopted City policy documents. These project activities were developed through a community-based process that resulted in a larger list of potential activities, included as Attachment D to this Plan. All activities will be located within the boundary of the CARA.

The public facilities that are authorized in the plan will draw public patronage in a way that would be an economic boost to the surrounding area and, thus, would likely increase tax increment (TI). Replacement public safety facilities, while unquestioningly needed, are not likely to have the same property value enhancement characteristics.

Unless new public safety facilities proportionately generate additional TI, our taxing district partners, (Linn County, GAPS, LBCC, etc.) may feel that their tax money has been misused to build the city's new police and fire stations.

The takeaway on this point is twofold:

1. Funding of the Police and Fire Stations was not envisioned in the urban renewal plan.
2. Use of funds from line item #47 "Public Facilities" would not be appropriate for general construction of either facility. However, one possible contribution that could fit in this line item would be the potential relocation of the Fire Museum to Station 11, since museums are called out, and meet the intended purpose of this line item as a public facility that focuses on recreation, leisure, or culture as envisioned in the plan. Costs for the museum could be estimated when location and scope are determined.

Minor vs. Substantial Amendment

For your deliberation on Wednesday night, it will be important to understand the thresholds associated with minor vs. substantial amendments to the plan. These thresholds are defined in each urban renewal district's plan and outline specifically when each should apply. Our plan outlines and defines amendments to the plan in section 9, page 18 (see Exhibit C).

Substantial Amendment Determination: The part of the substantial amendment section applicable to this discussion includes the third and fourth bullets under the Substantial Amendments section.

The third bullet is written as, "The addition of improvements or activities which represent a substantial change in the purpose and objectives of this Plan, and which cost more than \$500,000 (2000 dollars), shall be a substantial amendment requiring approval per ORS 457.095, but not requiring notice as provided in ORS 457.120. The \$500,000 amount will be adjusted annually from the year 2000 according to the "Engineering News Record" Construction Cost Index for the Northwest."

Staff has performed the analysis of this annual adjustment, and the \$500,000 equates to \$709,839.31 in 2014 dollars. See chart below.

ENR Analysis

Seattle Construction Cost Index	
Jun-00	7156.50
May-14	10159.93
Ratio	1.419678614
CARA Plan	
Substantial Change Threshold - Original value	\$ 500,000.00
2014 value	\$ 709,839.31

In addition to the noticing required by the ORS, substantial amendments to our urban renewal district now require a vote of the citizenry of Albany due to the ballot initiative approved in 2013.

As to language applicable to the policy question at hand, the critical language in the first bullet is ***“Activities which represent a substantial change in the purpose and objectives of this Plan, and which cost more than \$500,000...”*** The first half of this language refers to a substantial change in the purpose and objectives. As outlined above, public safety facilities were not envisioned in the plan; therefore, staff believes, and Jeannette Launer confirms, that funding of public safety facilities would be a substantial change in the purpose and objectives of the plan, meeting this criterion. The second piece of the statement refers to a cost more than \$500,000, which, as outlined above equates to \$709,839 in 2014 dollars. This means that should you decide to fund the project, which is a substantial change in the purpose and objectives, and should the amount exceed \$709,839, it would constitute a substantial amendment to the plan.

However, a contribution less than or equal to \$709,839 would be only a minor amendment (outlined in the Minor Amendment section, below). Additionally, discussion about whether this applies to each facility or both facilities can be found in the aptly named, “Each or Both” section below.

The fourth bullet in the Substantial Amendments section refers to, “The addition of improvements or activities that substantially alter the Goal and Objectives of this Plan.” For your reference and consideration, I have copied the Goals and Objectives of the plan below. The question of whether or not these, or any projects, meet the goals and objectives of our plan is an important one. As policy makers, you must ask yourselves, what is your charge, and does the funding proposal before you meet the goals of our plan?

CARA Goal: To revitalize the Central Albany Revitalization Area by implementing the Town Center Plan developed through the Central Albany Land Use & Transportation Study (CALUTS) using a citizen-driven process.

CARA Key Objectives:

- Attract new private investment to the area.
- Retain and enhance the value of existing private investment and public investment in the area.

CARA Additional Objectives:

- Provide a safe and convenient transportation network that encourages pedestrian and bicycle access to and within the town center.
- Preserve the Historic Districts, historic resources, and existing housing in the area.
- Create a readily identifiable core that is unique and vibrant with a mixture of entertainment, housing, specialty shops, offices, and other commercial uses.
- Increase residential density in the area.
- Encourage the development of new forms of housing and home ownership.
- Enhance and protect the community and environmental values of waterway corridors in the area.
- Provide an enriching environment and livable neighborhoods

Substantial Amendment Process: The process for approval of a substantial amendment which includes applicable administrative, citizen involvement, land-use requirements, as well as an affirmative vote of the people, is outlined here:

- a) Comply with Citizen Involvement requirements (notice, consultation, hearings).
- b) Preparation of the amendment: The plan must be amended to address project specifics.
- c) Findings must be adopted supporting the inclusion. The projects must meet goals and objectives of local plans. The amendment must address the impact on the plan's budget and its effect on the funding for other projects. **Unless we intend to defund other projects, we will need to consider increasing the plan's maximum indebtedness to reflect the additional contribution to these public safety facilities.**
- d) Planning Commission review.
- e) Notice to taxing jurisdictions including the impact on them of the substantial amendment.
- f) Presentation to County Commission(s).
- g) Hearing by City Council.
- h) Vote of the people of Albany (under the City Charter this action is required).
- i) Nonemergency ordinance.
- j) Notice of amendment adoption.
- k) Record amendment.
- l) Possible appeal to LUBA, if challenged.

Timing: The timing for a substantial amendment generally takes 4-6 months when there is not an election involved. (The time difference depends on the amount of public involvement you plan.) An election lengthens that time period. The amount of time it is lengthened depends on when you hold the election, during a regularly scheduled election or a special election. In addition, a substantial amendment is a land-use process which can be appealed to LUBA. A LUBA appeal could easily add 6-12 months to the process.

Special Note: Legislation passed in 2009 (HB 3056) provides that an increase in maximum indebtedness of more than 20 percent of the initial maximum indebtedness of the plan, adjusted for inflation, requires approval of three-quarters of the taxing districts and triggers a "revenue-sharing requirement," wherein a percentage of TI of the district is shared back with the taxing districts should revenues reach a certain threshold.

Minor Amendment Determination: Minor amendments are also outlined in section 9. The applicable language on minor amendments related to this policy question is outlined in the third bullet under the “Other Minor Amendments” section and reads as follows:

- “Addition of a project substantially different from those identified in Section 6 of this Plan or substantial modification of a project identified in Section 6 if the addition or modification of the project costs less than \$500,000 in 2000 dollars.”

Again, the \$500,000 equates to \$709,839 in 2014 dollars.

Minor Amendment Process: *The process for approval of this type of minor amendment is simply approval by the Agency by Resolution.*

After wading through this background on minor versus substantial amendments, you can begin to understand the framework within which the Committee came to their 10-2 decision to recommend that you consider funding the maximum amount allowable under a **minor amendment of the plan**. Other concerns cited by the Committee included the confusion that voters would encounter if faced with both a bond measure and a vote on a substantial amendment to the CARA Plan. Additionally, staff believes a third measure might even be necessary, which would be an alternate bond measure in the full amount of funding needed, should the UR measure fail—creating even more confusion for voters.

Each or Both Facilities

When we discuss threshold amounts, the question arises as to whether the \$709K threshold for a minor amendment applies to each of or both of the facilities (Fire Station 11 and new Police Station on Highway 99) or if it applies to each project. Please see Exhibit D for a map of the proposed police station location.

Staff’s original analysis of this question can be found in Exhibit A under Question 2, section (a). In our review of the CARA Plan and ORS, we conservatively concluded in reading the language that defines a substantial amendment to be, “the addition of **improvements** or **activities** which represent a substantial change...” and the plural form of those words to mean that the \$709K threshold would apply to *both* facilities, that is, if you chose to stay under a minor amendment threshold, the total CARA contribution to *both* facilities could not exceed \$709K total.

We asked Jeannette Launer to specifically review this item, and I would again direct you to her letter dated July 1, Exhibit B. She eloquently outlines her findings on page two of that letter, finding that our language is inconsistent. She goes on to assert that, “the application of the minor amendment process to **both** or **each** of these projects will be a choice based essentially on the assessment of the risk of a challenge to the process.”

If you are comfortable assuming more risk, you could recommend that the Agency interpret the plan text as allowing both public facilities by minor amendment, thereby increasing the CARA contribution to \$1,418,000. Again, the question of “each or both” is one of risk assessment and tolerance, “both” is more vulnerable to challenge; but thus far, staff is unaware of any serious opposition to enhanced CARA funding.

The Substitution Question

The final background item has to do with a question that was asked by Committee member Tom Cordier about whether or not the public safety facilities could simply be “substituted” in place of other public projects in the plan—that is, could you remove, say \$5 million of other public projects listed in the plan and substitute the public facilities projects for that same \$5 million amount without requiring a substantial amendment?

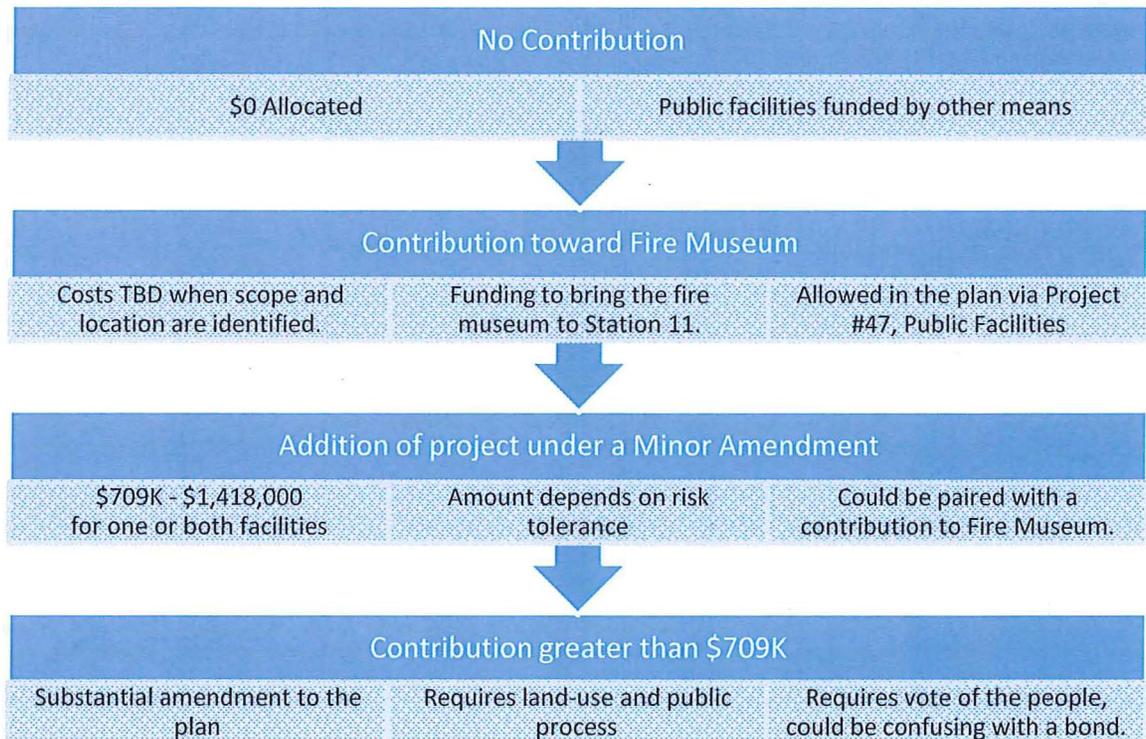
Staff’s opinion of this is that the Plan is specific and clear in its definition of what constitutes a substantial amendment; and because the public safety facilities were not envisioned in the original plan, and should the funding amount exceeded \$709K, it then is a substantial amendment to the plan.

We asked Jeannette Launer to address this very question; please find her response as Exhibit E, in the form of a memo dated September and 4, 2014. In this memo, Ms. Launer agrees with staff and says, “whether or not other projects are subtracted from the CARA Plan when another is added is irrelevant to the definition of “substantial amendment.”

Summary

With this information about thresholds, allowable projects, and a better understanding of substantial vs. minor amendments, I would direct your attention back to the questions before you: should CARA contribute urban renewal funds to the construction of the new police and/or fire stations? And, if so, what amount should be contributed and for what purpose?

The Committee’s recommendation to you was to use the *maximum allowable dollars while staying under the threshold of a minor amendment to the plan*. As staff sees it, here are the options before you:



Budget Impact

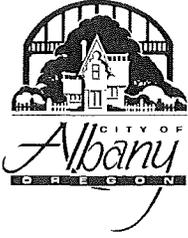
Impact to the CARA budget will depend on the funding amount you approve. Even if you approve the minor amendment language for each facility and the museum (estimated costs approximately \$1,668,000), this amount could be taken out of cash-on hand in the appropriate budget year. Estimated timing for the general obligation bond is May 2015. CARA funds would not likely be needed until fiscal year 2015-2016, and staff would work to budget to ensure the funds were available when needed. This means that the potential borrowing that has been discussed would not need to be used for this purpose.

City Attorney Jim Delapoer, as well as the Police and Fire Chiefs, will be on-hand at Wednesday's meeting.

KCP:ldh

Attachments: Exhibits A, B, C, D, E

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TO: Public Safety Facilities Review Committee

FROM: Kate Porsche, Economic Development & Urban Renewal Director
Jim Delapoer, City Attorney

DATE: June 5, 2014

SUBJECT: Answers to Committee Questions about Possible Urban Renewal Funding of Police and Fire Stations

This memo seeks to outline answers to the questions raised about the possible use of urban renewal funds for funding of Police and Fire stations. Jim will explain at the June 10 meeting his strong desire that the committee make its recommendations concerning the use or nonuse of urban renewal monies in general terms.

Question 1: Are the new police and fire stations in the CARA Plan?

Ultimately, the use of urban renewal funds for these projects is a policy decision for the Agency, the City Council, and, potentially, the city electorate. Our plan identifies "Public Facilities" as an appropriate subject for urban renewal and sets a maximum dollar allocation. The original amount \$550,000, adjusted for inflation using the "Engineering News Record" (ENR) Construction Cost Index for the Northwest, as outlined in the plan, equals \$780,823.24 in 2014 dollars.

Before considering funding for these projects, we must make a determination of whether these public facilities are the types of facilities envisioned for funding in the CARA Plan. The starting point for the analysis is to recognize that the fundamental purpose for the plan is to eliminate blight. Blight, as used by our plan, means conditions which are a barrier to development. Elimination of these barriers, through the use of urban renewal monies, is intended to generate tax increment (TI) to make the participating taxing districts whole.

Below is part of Section 6 of our plan discussing what kinds of facilities were envisioned under the "Public Facilities" heading:

COMMUNITY FACILITIES	
47	Public Facilities Establish and enhance public facilities such as libraries, museums, performance areas, parks and the arts.

Section 6 also outlines the following (page 11):

Activity Profiles: The project activities outlined on the following pages are directed at treating and improving the substandard blighting conditions in the CARA. They are consistent with the goals and policies contained in the Albany Comprehensive Plan and other adopted City policy documents. These project activities were developed through a community-based process that resulted in a larger list of potential activities, included as Attachment D to this Plan. All activities will be located within the boundary of the CARA.

An argument can be made that facilities of the type listed above will likely draw public patronage in a way that would be an economic boost to the surrounding area and, thus, would likely increase TI. One could also argue that replacement public safety facilities are not likely to have the same property value enhancement characteristics.

On the other hand, perhaps new facilities can be expected to generate an increase in area property values. However, unless these expenditures proportionately generate additional TI, our taxing district partners, (Linn County, GAPS, LBCC, etc.) may feel that their tax money has been used to build our new police and fire stations.

In addition to this concern, a careful review of the plan itself may cause an opponent to argue that these types of facilities were never envisioned for urban renewal funding. In Attachment D, the plan discusses the public facilities that were considered for urban renewal funding. While that attachment is three pages long, a number of public facilities were specifically listed. An excerpt of Attachment D listing those public facilities is set forth below:

RECREATION, LEISURE & CULTURE	
Carnegie Library	Restoration and renovation of the Downtown Carnegie Library.
Museums	Establish additional museums in Downtown including acquire & renovate site, inventory & displays.
Library Development	Acquire land, design & construct a main library facility including related infrastructure.
Monteith House & Regional Museum	Provide planning & financing to expand tourism efforts at Albany Regional Museum & Monteith House.
Monteith Riverpark Stage	Refurbish stage at Monteith Riverpark. Partnership potential.
Swanson Pool	Redevelopment of an aquatic facility at Swanson Park.
Whitespires Restoration	Restore & renovate Whitespires Church at Washington & 5th for community use. Acquisition potential.
Community Playgrounds	Provide playground equipment and site amenities for neighborhoods in the area.

There is no mention of public safety facilities, police, fire, or other facilities or buildings that don't relate to recreation, leisure, and culture.

Another concern that needs to be considered is the failure of the urban renewal plan to identify the funding of public safety facilities as an activity that would further the Comprehensive Plan goals. An urban renewal district is required to identify, in its plan, the Comprehensive Plan goals that will be met by plan expenditures. If we had envisioned construction of public safety facilities with urban renewal monies, one would anticipate that we would have highlighted the funding of these important facilities in demonstrating compliance with our Comprehensive Plan. Unfortunately, Section 3 of the CARA Plan, "Relationship to Local Plans," contains no reference to these facilities even though Goal 11 of the Comprehensive Plan contains a specific subheading "Police and Fire Protection Services." If the CARA Plan envisioned using urban renewal money for these types of facilities, one would have expected the projects to be called out specifically and there would be a direct relationship to the Comprehensive Plan.

Question 2: If the Agency wants to participate in the funding of these facilities, how do we do it?

This is staff's analysis of options based on close review of the CARA Plan and Oregon Revised Statutes (ORS).

- a) If we spend less than \$709,839.31 on general construction costs on *both* facilities, we can find authority (subject to the possible challenges noted above) to do so in our existing plan because a Substantial Amendment is only required by "the addition of improvements or activities which represent a substantial change in the purposes and objectives of this Plan and which cost more than \$500,000 (adjusted to \$709,839.31 using the ENR index)...."
- b) If we spend more than \$709,839.31, staff believes voter approval of a substantial amendment will be required.
- c) If elements of the facilities are construed to be envisioned by the current plan (i.e., Fire Department Museum, community rooms, street improvements), those elements can be easily be funded using the 2014 indexed value of \$780,823.24 for the line item of "Public Facilities," or other project activities in the plan.

Question 3: Process and timing for substantial amendment?

Process: A substantial amendment must be completed in the same manner as the original adoption of the urban renewal plan (ORS 457.220(2)). Our plan provides that the notice provisions of 457.120 are not required for this amendment. The substantial amendment process includes the following steps:

- a) Comply with Citizen Involvement requirements (notice, consultation, hearings).
- b) Preparation of the amendment: The plan must be amended to address project specifics.
- c) Findings must be adopted supporting the inclusion. The projects must meet goals and objectives of local plans. The amendment must address the impact on the plan's budget and its effect on the funding for other projects. **Unless we intend to defund other projects, we will need to consider increasing the plan's maximum indebtedness to reflect the additional contribution to these public safety facilities.**
- d) Planning Commission review.
- e) Notice to taxing jurisdictions including the impact on them of the substantial amendment.
- f) Presentation to County Commission(s).
- g) Hearing by City Council.
- h) Vote of the people of Albany (under the City Charter this action is required).
- i) Nonemergency ordinance.
- j) Notice of amendment adoption.
- k) Record amendment.

Timing: The timing for a substantial amendment generally takes 4-6 months when there is not an election involved. (The time difference depends on the amount of public involvement you plan.) An election lengthens that time period. The amount of time it is lengthened depends on when you hold the election, during a regularly scheduled election or a special election. In addition, a substantial amendment is a land use process which can be appealed to LUBA. A LUBA appeal could easily add 6-12 months to the process.

Special Note: Legislation passed in 2009 (HB 3056) provides that an increase in maximum indebtedness of more than 20 percent of the initial maximum indebtedness of the plan, adjusted for inflation, requires approval of three-quarters of the taxing districts and triggers a "revenue-sharing requirement."

Final Note: Unless urban renewal funding generates TI revenue, the financial stability of the plan may be impaired. Even if we limit the urban renewal contribution to no more than \$709,839.31 for general construction, unless the public safety facilities have a substantial TI generating effect, the funding for other plan projects may be impacted.

KP:JVBD:ldh
Attachments 2
CARA Urban Renewal Plan
CARA Report

JEANNETTE M. LAUNER
ATTORNEY

Exhibit B

July 1, 2014

Ms. Kate Porsche
Economic Development Director
City of Albany
P.O. Box 490
Albany, OR 97321-0144

RE: Review of June 5, 2014 Memorandum from Porsche and Delapoer
to Public Safety Facilities Review Committee

Dear Ms. Porsche,

At your request, I have reviewed the Memorandum dated June 5, 2014 that you and Jim Delapoer, City Attorney, prepared and distributed to the Public Safety Facilities Review Committee. The following are my comments.

First, I agree with your answer to Question 1, finding that the new police and fire stations are not projects in the current CARA Plan. I believe your analysis is complete and unassailable.

Second, I will defer to Mr. Delapoer on the appropriate process for a substantial plan amendment as answered in Question 3, since Albany's City Charter has special requirements for such an amendment.

Third, as to Question 2, I support the concept that some elements of the proposed police and fire facilities could be funded with urban renewal dollars allocated from other projects listed in the Plan.

Finally, the CARA Plan does not require a substantial Plan amendment to add the police and fire facility projects to the Plan unless the urban renewal contribution to the project(s) is more than \$709,839.31¹. If the Agency decides to avoid a substantial amendment process for adding these projects, there is a question as to whether that dollar limit on

¹ Or if the Plan amendment increases the Plan's maximum indebtedness, which is not considered in this memo.

the addition of new projects to the CARA Plan using a minor amendment applies to **both** proposed projects together (police facility and fire facility) or whether that dollar limit applies to **each** project.

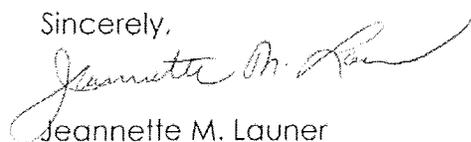
In answering Question 2, you have applied the limit to **both** projects together. This analysis is consistent with the portion of Section 9 of the CARA Plan which defines "substantial amendment" as including the "addition of improvements or activities [*plural*] which represent a substantial change in the purpose and objectives of this Plan, and which cost more than \$500,000 [*as adjusted*]." However, the definition of "minor amendment" later in Section 9 includes the addition of "a project [*singular*] substantially different from those identified in Section 6 of this Plan ... if the addition or modification of the project costs less than \$500,000 in 2000 dollars."

I believe these two parts of Section 9 create an inconsistency that could create the risk of a challenge to the minor Plan amendment(s) if the Agency chooses to apply the limit to **each** project, resulting in two projects each costing up to \$709,839. I note that if the limit is applied to **each** project, the Agency could serially add multiple projects to the Plan that each cost less than \$709,839.31 using a minor amendment process so long as the Agency does not increase the Plan's maximum indebtedness. Theoretically, the Agency could add and delete projects in this manner, resulting in a significantly different Plan, with different goals, objectives and outcomes than in the Plan that was adopted, without ever going through a substantial amendment.

The Agency's choice about the application of the minor amendment process to **both** or **each** of these projects will be a choice based essentially on the assessment of the risk of a challenge to the process. Particularly given the voters' recent adoption of the Charter amendment requiring voter approval of certain Plan amendments, I would suggest that there is some real risk in adopting the broader view of the scope of a minor amendment. Such an approach could be viewed as the Agency's attempt to circumvent clear voter intent.

Please let me know if you have any questions.

Sincerely,



Jeannette M. Launer

9. AMENDMENTS TO THE PLAN

It is anticipated that this Plan will be reviewed periodically during the execution of the project. The Plan may be changed, modified, or amended as future conditions warrant. Types of Plan amendments and the procedure to be followed for each are outlined below.

Substantial Amendments: Substantial amendments consist of:

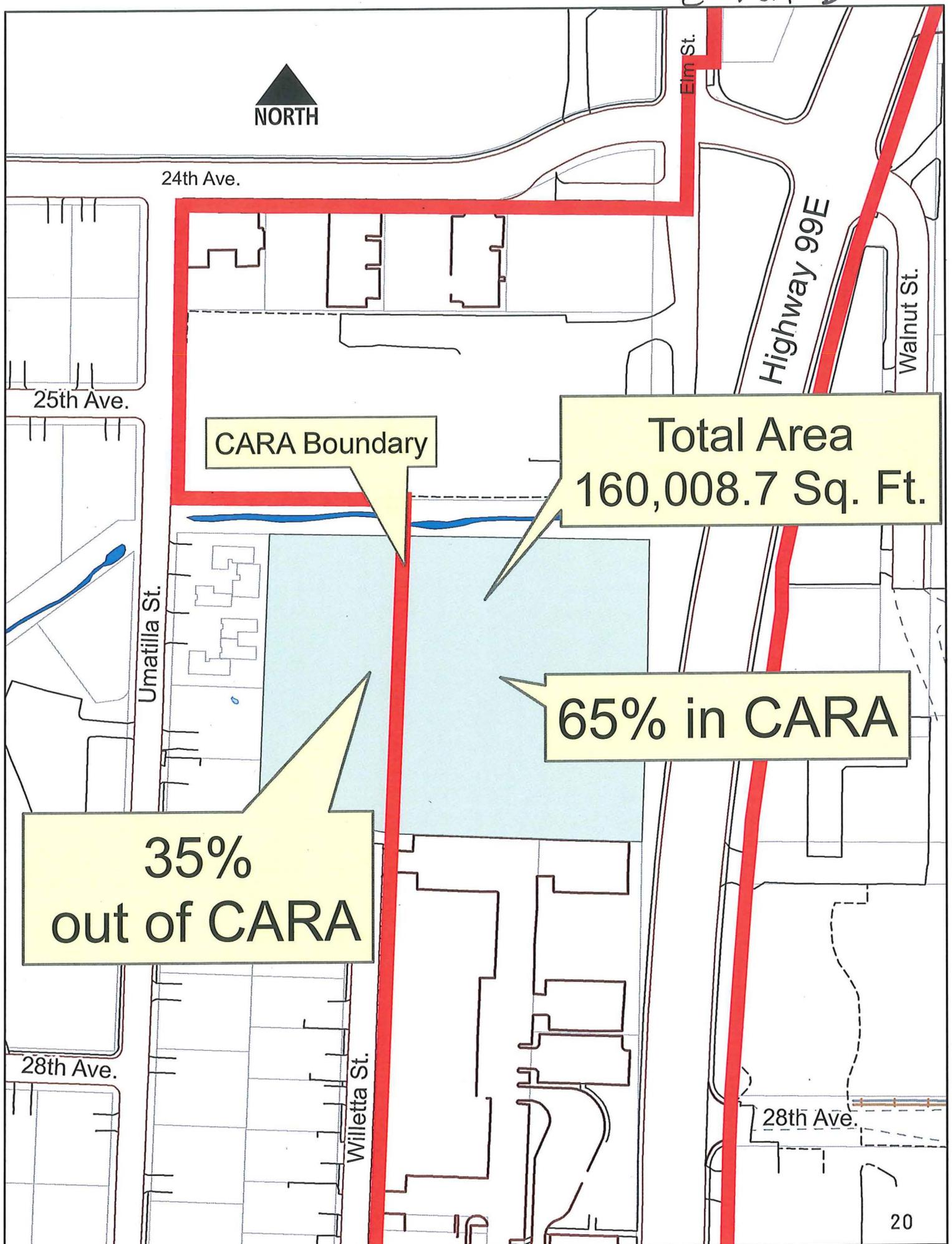
- ♦ Increases in the CARA boundary in cumulative excess of 1% shall be substantial amendments requiring approval per ORS 457.095, and notice as provided in ORS 457.120.
- ♦ Increasing the maximum amount of indebtedness to be issued under the Plan shall be a substantial amendment requiring approval per ORS 457.095, and notice as provided in ORS 457.120.
- ♦ The addition of improvements or activities which represent a substantial change in the purpose and objectives of this Plan, and which cost more than \$500,000, shall be a substantial amendment requiring approval per ORS 457.095, but not requiring notice as provided in ORS 457.120. The \$500,000 amount will be adjusted annually from the year 2000 according to the "Engineering News Record" Construction Cost Index for the Northwest.
- ♦ The addition of improvements or activities that substantially alter the Goal and Objectives of this Plan.

Minor Amendments Requiring Approval by City Council: Amendments to the Plan defined in this Section shall require approval by the Agency by Resolution, and approval by the City Council by Ordinance. Such amendments are defined as:

- ♦ Acquisition of property for purposes specified in Section 7 of this Plan under "Acquisitions Requiring City Council Ratification."

Other Minor Amendments: Minor amendments may be approved by the Agency by Resolution. Such amendments are defined as:

- ♦ Amendments to clarify language, add graphic exhibits, make minor modifications in the scope or location of improvements authorized by this Plan, or other such modifications which do not change the basic planning or engineering principles of this Plan.
- ♦ Acquisition of property for purposes specified in Section 6 of this Plan.
- ♦ Addition of a project substantially different from those identified in Section 6 of this Plan or substantial modification of a project identified in Section 6 if the addition or modification of the project costs less than \$500,000 in 2000 dollars.
- ♦ Increases in the CARA boundary not in cumulative excess of 1%.



CARA Boundary

Total Area
160,008.7 Sq. Ft.

65% in CARA

35%
out of CARA

Exhibit E

JEANNETTE M. LAUNER
ATTORNEY

September 4, 2014

Mr. James Delapoer, City Attorney
Long Delapoer PC
201 W. First Ave., Ste B
Albany, OR 97321

RE: Request for Opinion
Substantial Amendment to CARA Urban Renewal Plan

Dear Mr. Delapoer,
But if

At your request, I am providing my answer to the following question from the Albany City Council:

"Assume the ARA/Council made a decision to remove several non-TIF public projects from the current plan and substituted a project to fund \$5M for the construction of the replacement fire hall as a Minor Amendment. The maximum indebtedness of \$56M would be unchanged."

"The legal question is: If that decision were legally challenged as a violation of the Substantial Amendment definitions on p.18 of the plan--what would the Court likely decide?"

In my opinion, adding a project to the CARA Plan that represents a substantial change in the purpose and objectives of the CARA Plan, and which commits more than \$709,839.31, is a substantial plan amendment. Section 9 of the CARA Plan defines "substantial amendment" as including the "addition of improvements or activities which represent a substantial change in the purpose and objectives of this Plan, and which cost more than \$500,000." The plain language of this Section does not make an exception for substituting projects for other projects that are deleted from the Plan. It refers only to "addition." The Section also does not distinguish between projects funded by tax increment funds (TIF) and those that may not be. Therefore, whether or not other projects are subtracted from the CARA Plan when another is added is irrelevant to the definition of

"substantial amendment."

If a court properly applied the law, I believe that it would find that the addition of a new project that meets the criteria stated in Section 9, even if existing project(s) in the Plan are deleted, is a substantial plan amendment.

Please let me know if you have any questions about this letter. Thank you.

Sincerely,

/s/ Jeannette M. Launer

Jeannette M. Launer