

John Ruiz, Director
Urban Renewal Agency of the City of Eugene
777 Pearl St. #105
Eugene, OR 97401-2793

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*
Project: Mulligan's Addition to the West
Requested by: Urban Renewal Agency of the City of Eugene

Dear Mr. Ruiz:

On December 23, 2008, you submitted a request on behalf of the Urban Renewal Agency of the City of Eugene ("Agency") asking whether a proposed project, referred to as Mulligan's Addition to the West, is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received on January 12, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. On November 25, 2008, the Agency entered into a purchase and sale agreement with W & G Development Co. ("W & G"). The agreement stipulates that W & G will purchase property currently owned by the Agency, at Olive Street and 10th Avenue, for \$500,000, and will develop this property in accordance with the requirements of the Redevelopment Proposal.
2. The Redevelopment Proposal requires W & G build a structure that will be a mix of commercial and residential uses, with the ground floor and second floor for offices or other commercial use, and the top three floors for residential use. There will be underground parking under part of the structure. The project must include approximately 80 residential units and a 6,000 square foot plaza generally open for use by the public. The Redevelopment Proposal specifies the materials out of which the structure will be made, and limits the above-surface height of the structure to not more than 80 feet. The gross building area will be approximately 200,080 square feet, with approximately 160,606 square feet of total rentable space.
3. The Agency will pay the building and development permit fees for the project, which are estimated to be \$300,000.

4. The fair market value of the property is approximately \$1,870,000. The restrictions and requirements placed on the property by the Agency reduce the value of the property. The Agency will contribute less than \$750,000 to the project through the sale of the property.
5. The Agency will lease back approximately 25,600 square feet of property for use as a parking lot for a one-year period beginning April 1, 2009.

CONCLUSIONS OF LAW

1. The mixed-use construction project as described above is intended to be privately owned, and funds of a private entity will be used. Therefore, the definition of “public works” in ORS 279C.800(6)(a)(B) and (C) are potentially applicable to this project.
2. ORS 279C.800(6)(a)(B) states privately-owned construction projects are “public works” if they will use \$750,000 or more of funds of a public agency. ORS 279C.810(1)(a)(B) stipulates that “funds of a public agency” does not include building and development permit fees paid or waived by the public agency. Additionally, ORS 279C.810(1)(a)(E) stipulates that “funds of a public agency” does not include: “The difference between:
(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and
(ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this paragraph.” Therefore, less than \$750,000 of funds of a public agency will be used on this project, and it will not meet the definition of “public works” in ORS 279C.800(6)(a)(B).
3. ORS 279C.800(6)(a)(C) states privately-owned construction projects are “public works” if the public agency will occupy or use 25 percent or more of the square footage of the completed project. If the public agency continues to use the leased space after the project is completed, the total leased space will be less than 25 percent of the square footage of the completed project. Therefore, the project will not meet the definition of “public works” in ORS 279C.800(6)(a)(C).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do not apply to the proposed project referred to as Mulligan’s Addition to the West.

This determination is based on the agency's file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division
Bureau of Labor and Industries
800 NE Oregon St., Suite 1045
Portland, Oregon 97232

If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: March 4, 2009

Brad Avakian, Commissioner
Bureau of Labor and Industries

Christine N. Hammond

Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On March 4, 2009, I mailed, by certified mail, the Prevailing Wage Rate Determination for the Mulligan's Addition to the West project to the requestor associated with this project, as follows:

John Ruiz, Director
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777 Pearl St. #105
Eugene, OR 97401-2793

Susan Wooley, PWR Technical
Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries