



November 9, 2015

Daniel Kearns
Reeve Kearns PC
621 SW Morrison Street, Suite 125
Portland, OR 97205

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Block 137
Requested by: Reeve Kearns PC

Dear Mr. Kearns:

On September 28, 2015, we received your request on behalf of Reeve Kearns PC, asking if the Prevailing Wage Rate laws would apply to the proposed construction project referred to as Block 137. Sufficient information to make a determination was received on November 4, 2015, and therefore, the commissioner issues the following determination:

FINDING OF FACT

1. In 1986, the Lake Oswego Urban Renewal Agency ("LORA"), a public agency under ORS 279C.800(5), prepared an East End Redevelopment Plan (the "East End Plan"), which the City of Lake Oswego (the "City") then adopted. The East End Plan lists projects to be completed within the district boundaries, and has been amended several times since being adopted.
2. The East End Plan includes the redevelopment of Block 137, located in downtown Lake Oswego between First and Second Streets, and between A Avenue and Evergreen Road. The Plan calls for the area to be redeveloped to enhance the "compact shopping district" near the intersection of First Street and A Avenue. According to the Plan, the "preferred project shall be mixed-use with retail fronting on 1st Street. Along with the retail frontage on 1st Street the site could be developed with a public library overlooking Millennium Plaza Park, a 30 to 70-unit hotel or housing. The mix of uses will need to provide sufficient on-site parking to satisfy the demand for all proposed uses. New or remodeled structures shall be designed to complement structures located on Block 138, Millennium Plaza Park (south) and the townhouses on Block 136 (west)." According to information on LORA's website, the redevelopment of Block 137 has been a high priority project for the LORA Board for a number of years.

PORTLAND
800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

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3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

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Eugene, OR 97401-2158
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FAX (541) 686-7980

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3. The property at Block 137 is owned by Wizer Properties, LLC (“Wizer”). On December 21, 2012, Wizer entered into a ninety-nine year ground leased agreement with Evergreen Group, LLC (the “Developer”), the developer of the Block 137 project.
4. As currently proposed, the Block 137 project is a mixed use development that will consist of 200 residential units, 42,891 square feet of commercial space, and 430 underground parking spaces, 135 of which will be leased to the City and will be dedicated public parking. The components are referred to as the Residential Component, the Retail Component, and the Parking Component. Demolition of the existing property was scheduled to begin the week of October 19, 2015, and the project is estimated to last for 24 months. The total project cost is estimated to be approximately \$93,000,000.
5. The square footage of the parking spaces to be leased by the City will be approximately 19,500 square feet. The total square footage of the Block 137 project will be approximately 464,000.
6. Because the Block 137 project is part of the East End Plan, the project is eligible for public financial assistance using urban renewal funds. LORA has agreed to pay \$4,700,000 in building development and permit fees that are attributable to the proposed project. LORA will also pay the Developer \$749,000 as a Construction Payment. According to the Development Agreement between LORA and the Developer, this Construction Payment will be made “within ten (10) days after the City’s issuance of a Temporary Certificate of Occupancy for the final component of the Project to be constructed, and upon receiving the report required pursuant to Section 6.6.5 evidencing that more than half of the Retail Component is leased.” Payment will not occur until both conditions are met.
7. In LORA meetings on August 27, 2013 and December 10, 2013, discussions were held about the need to re-grade Second Street between A Avenue and Evergreen Road. This portion of Second Street abuts one side of the Block 137 project. The meeting minutes indicate the re-grading work is needed because of a steep cross-slope; the street drops several feet from the west to the east side. Re-grading had not been done to date because the grade would have been raised in front of the businesses that were operating in the lower level of the existing building, making their space inaccessible. It was noted that “the ideal time to fix the grades on Second Street would be when the Wizer block redevelops.”
8. According to LORA’s adopted budget for fiscal year 2015-2016, the cost to re-grade Second Street will be approximately \$150,000. LORA will administer and pay for this work, will contract for the construction, and will treat this work as a public works project. LORA anticipates doing this work in mid-2017.
9. Pursuant to the Block 137 project land use approval, the Developer is required to construct new curb, sidewalk and landscaping on Second Street abutting the Block 137 project site. The Developer will administer and pay for this work, and will contract for the construction.

10. Second Street is currently a functional street, despite the cross-slope, and the Block 137 project could proceed whether or not the re-grading is done. Initially, the Block 137 project was designed to be built to the existing street grades. Once LORA decided to re-grade Second Street, the Developer had to redesign the Block 137 buildings along Second Street so that the doorways and entrances would match the final grades of the street. If LORA were to decide not to re-grade Second Street, the Developer would revert back to the original building elevations to match the existing street grade.

CONCLUSIONS OF LAW

1. The redevelopment of Block 137 will not be carried on or contracted for by any public agency, and therefore the project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).
2. Under ORS 279C.810(1)(a)(B), building and development permit fees paid or waived by the public agency are not “funds of a public agency.” Therefore, the \$4,700,000 in building development and permit fees that LORA will pay for this project will not be funds of a public agency used on the project.
3. Under ORS 279C.827(1)(a), a public agency is prohibited from dividing a public works into more than one contract for the purpose of avoiding compliance with the Prevailing Wage Rate laws. In making determinations under this subsection, the bureau considers the following factors:
 - a. The physical separation of the project structures. The portion of Second Street to be re-graded abuts one side of the Block 137 project.
 - b. The timing of the work on project phases or structures. The work on the Block 137 project has already begun and will continue for approximately 24 months. The re-grading of Second Street is expected to be done in mid-2017, near the expected completion of the Block 137 project.
 - c. The continuity of project contractors and subcontractors working on project parts or phases. Lease Crutcher Lewis will act as the general contractor for the Block 137 project. It is not known yet which contractor or contractors will perform the curb, sidewalk and landscaping work for the Block 137 project, or which contractor or contractors will perform the re-grading work on Second Street.
 - d. The manner in which the public agency and the contractors administer and implement the project. The work on Block 137 will be administered and implemented by the Developer. The re-grading of Second Street will be administered and implemented by LORA.
 - e. Whether a single public works project includes several types of improvements or structures. The Block 137 project is a large, mixed-use development that will include residential space, retail space, and parking. As part of the project, the Developer will

be required to construct curb, sidewalk and landscaping on Second Street, but will not do any street reconstruction. The re-grading project is limited to street reconstruction and related utilities.

- f. Whether the combined improvements or structures have an overall purpose or function. Both the Block 137 project and the Second Street project could proceed without the other being done; if one project was not done, it would have little, if any, effect on the other project.

Considering these factors, the re-grading work on Second Street to be done by LORA will not be part of the Block 137 project. As such, the public funds to be used for the re-grading of Second Street will not be funds of a public agency used on the Block 137 project.

- 4. The Block 137 project is a privately owned construction project and will use private funds, but it will not use \$750,000 or more in funds of a public agency. Therefore, the project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B).
- 5. A public agency will occupy or use less than 25 percent of the square footage of the project, and therefore the project does not meet the definition of “public works” under 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, will not apply to the Block 137 project.

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

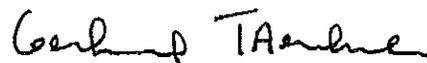
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 order 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.

Date: November 9, 2015

Brad Avakian, Commissioner
Bureau of Labor and Industries



Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On November 9, 2015, I mailed the Prevailing Wage Rate Determination for the Block

137 project to the requestor and associated public agency, as follows:

Daniel Kearns
Reeve Kearns PC
621 SW Morrison Street, Suite 125
Portland, OR 97205

Brant Williams, Redevelopment Director
City of Lake Oswego
PO Box 369
Lake Oswego, OR 97034



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