



August 20, 2013

Douglas C. Blomgren
Bateman Seidel
888 SW Fifth Ave., Suite 1250
Portland, OR 97204

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: The Barcelona Affordable Housing Project
Requested by: Bateman Seidel Miner Blomgren Chellis & Gram, P.C.

Dear Mr. Blomgren:

On August 13, 2013, you submitted a request on behalf of Community Partners for Affordable Housing asking if the Prevailing Wage Rate law would apply to the proposed Barcelona Affordable Housing project. Sufficient information to make a determination was received on August 16, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Community Partners for Affordable Housing (“CPAH”) is planning to construct the Barcelona Affordable Housing project (the “project”). CPAH is a domestic non-profit public benefit corporation. CPAH does not exist under the laws or charter of any public agency.
2. CPAH will be forming a single-member limited liability company (the “Company”) and a limited partnership (the “Partnership”) before construction is set to start. The project will be owned by the Partnership. The Partnership will be composed of the Company and an equity investor. The Company will have a .01% interest in the Partnership’s profits, losses, gains and credits and the equity investor will have a 99.99% interest.

PORTLAND

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

SALEM

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

EUGENE

1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND

Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-4990
(541) 322-2435
FAX (541) 389-8265

Oregon Relay TTY:711

www.oregon.gov/boli

AN EQUAL OPPORTUNITY EMPLOYER

MEDFORD

Apprenticeship and Training
119 N Oakdale Ave.
Medford, OR 97501-2629
(541) 776-6201
FAX (541) 776-6284



3. In 2011, the City of Beaverton (the “City”) requested proposals for development of a square block of land bounded by Lombard, Chapman, 1st and 2nd Streets in Beaverton. CPAH submitted a proposal to develop the project on the southern half of the block.
4. CPAH will be entering into a long-term ground lease with the City for the southern half of the block. The initial term of the lease is 75 years. CPAH will have an option to extend the lease for an additional 24 years (for a total of 99 years). CPAH will pay nominal rent and CPAH will be the legal and beneficial owner of the project. CPAH anticipates assigning the lease to the Partnership.
5. An unrelated private developer submitted a proposal to the City to develop a mixed-use development with commercial space and some market-rate housing on the northern half of the block. The other development will be separately owned, separately financed, constructed on its own schedule and constructed using different contractors. The City has agreed to partition the block of land before entering into a lease for any portion of the property.
6. The project involves the new construction of one four-story apartment building. The apartment building will consist of approximately 47 residential units, one unit for the resident manager, an interior common area for use by the tenants and an exterior plaza. The exterior plaza will be primarily for use by the tenants, although it may also be used by the Partnership to host events which are open to others. CPAH contemplates that events held in the exterior plaza will be events which are of benefit/interest to the tenants – such as fire safety outreach programs, art displays or a small concert. Rent will not be charged for use of the plaza and CPAH anticipates that events will be infrequently held and seasonal.
7. All of the rental units will be for occupancy by persons with incomes at or below 60% of the area median income. Many of the units will be available only to those at or below 50% of the area median income.
8. After a 15-year tax-credit compliance period, CPAH will have an option and/or right of first refusal to acquire either the project or the interests of the equity investor.
9. CPAH and the City will also be entering into a lease of approximately seven parking spaces located in a surface parking lot owned by the City and located about one block from the project. The parking lot lease will permit tenants of the project to park in spots designated by the City over the term of the lease. The parking lease will provide that all paving, striping, surfacing and other maintenance will be performed by the City with an allocable share of the cost being charged to CPAH.

10. The total project cost will be \$10,829,000. Funding for the project includes the following sources:

- a. Funds of a public agency: \$1,300,000
 - i. Federal HOME Investment Partnership Act funds from Washington County - \$1,300,000
- b. Other funds: \$9,529,000*
 - i. Private equity investment (includes anticipated low-income housing tax credits) - \$7,829,000
 - ii. Permanent financing from commercial lender - \$1,300,000
 - iii. Deferred development fee - \$400,000

* Plus short term construction loan of \$8.2 million to be paid off using private equity investment (\$7.8 million) and permanent financing (\$1.3 million).

CONCLUSION OF LAW:

1. The Barcelona Affordable Housing project will be privately owned by the Partnership, will use private funds and will use more than \$750,000 in funds of a public agency. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) will apply to this project.
2. The prevailing wage rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. ORS 279C.810(2)(d). Here, the Barcelona Affordable Housing project is a residential construction project because the apartment building will be no more than four stories in height. Additionally, the project will be privately owned by the Partnership. Although the project will be on property owned by the City of Beaverton, a public agency, it is still a privately owned project because the property will be leased to the Partnership for 50 or more years. Finally, the project will provide affordable housing because all of the rental units will be for occupancy by persons with incomes at or below 60% of the area median income. Therefore, this exception applies and the prevailing wage rate laws will not apply to the Barcelona Affordable Housing project.
3. The Barcelona Affordable Housing project will be built on the southern half of a block of property that the City of Beaverton owns. The exemption under ORS 279C.810(2)(d) is not defeated by the fact that the City of Beaverton may lease the northern half of the block of property to another unrelated private developer for possible construction of an unrelated project.

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 proposed construction, reconstruction, major renovation and/or painting of the Barcelona Affordable Housing 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 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, OR 97232

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

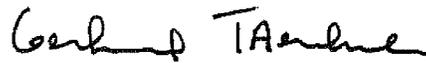
If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be

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: August 20, 2013

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



GERHARD TAEUBEL,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On August 20, 2013, I mailed the Prevailing Wage Rate Determination for the Barcelona Affordable Housing project to the requestor and affected agencies, as follows:

Douglas C. Blomgren
Bateman Seidel
888 SW Fifth Ave., Suite 1250
Portland, OR 97204

Certified Mail – Return Receipt Requested
Article #: 7012 3050 0001 7255 3007

Jennie Proctor
Washington County
Office of Community Development
328 West Main, MS #7
Hillsboro, OR 97123

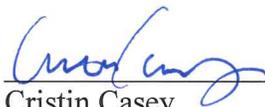
Certified Mail – Return Receipt Requested
Article #: 7012 3050 0001 7255 3045

Beaverton City Attorney's Office
Attention: Cadence Moylan
Assistant City Attorney
PO Box 4755
Beaverton OR 97076-4755

Certified Mail – Return Receipt Requested
Article #: 7012 3050 0001 7255 3052

City of Beaverton
Attention: Tyler Ryerson, Sr. Planner
PO Box 4755
Beaverton OR 97076-4755

Certified Mail – Return Receipt Requested
Article #: 7012 3050 0001 7255 3038



Cristin Casey
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries