



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

March 7, 2012

Ms. Heather Martin
Beery Elsner & Hammond, LLP
1750 SW Harbor Way, Suite 380
Portland, OR 97201

Mr. Joel E Morton
Office of Metro Attorney
600 NE Grand Ave
Portland OR 97232

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Privately Constructed Mixed Use Development at 350 E.
Main Street, Hillsboro
Requested by: Metro and City of Hillsboro

Dear Ms. Martin and Mr. Morton:

On February 23, 2012, you submitted a request on behalf of Metro and City of Portland asking if the Prevailing Wage Rate law would apply to the proposed Privately Constructed Mixed Use Development at 350 E. Main Street, Hillsboro project. Sufficient information to make a determination was received on February 29, 2012, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Tokola Properties, Inc. proposes to construct and operate a mixed use development at 350 E. Main Street, Hillsboro project ("project"). Tokola Properties, Inc. is a private developer. The completed project will be owned by 4th and Main, LLC, a private domestic limited liability company.

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2. The project will include a new four-story building with 71 residential apartment units, ground floor commercial space, and secure underground parking. The project will also include the renovation and adaptive reuse of an existing building for retail or restaurant use.
3. The project property was purchased by Metro and the City of Hillsboro (“City”) in 1998 for \$650,000. Both Metro and City are municipal corporations (collectively the “Agencies”). The Agencies currently own the property as tenants in common, but prior to commencing construction, Tokola Properties will purchase the property from the Agencies for \$150,000. The agreement for disposition and development of the project site includes the following development requirements and restrictions:
 - a. The property must be constructed and used as a mixed use development for at least 30 years.
 - b. The existing building on the property must be renovated and then must be leased by Tokola Properties for retail or restaurant use, approved by the Agencies. The property must be used as such for at least 30 years.
 - c. Construction plans and specifications must be submitted to the Agencies for review and approval for conformance to the Scope of Development and Development Review Plans prior to construction.
4. The Agencies obtained an appraisal of the project real property. The appraisal was conducted by Integra Realty Resources and dated May 13, 2011. The appraisal reported that the real property market-value as is would be \$1,010,000. The appraisal reported that the property would have a negative value with the proposed restrictions.
5. Tokola Properties will be solely responsible for all construction, renovation, building contracts, subcontracts and project management. The Agencies will not be a party to any of the construction contracts, nor will the Agencies manage or direct construction or engage in any other project supervision. However, the Agencies will conduct inspections to assure that Tokola Properties meets applicable time frames and completes a project that satisfies the development requirements and restrictions.
6. The total project budget is estimated at \$15,605,250. Funding for the project includes the following sources:
 - a. Funds of a public agency: \$631,551
 - i. Metro:
 1. Predevelopment Costs: \$76,625

2. Transit Oriented Development (TOD) Program Grant: \$465,000
- ii. City:
 1. Predevelopment Costs: \$76,625
 2. Geotechnical Property Survey: \$4,601
 3. ALTA Survey: \$3,700
 4. State Historic Preservation Office Plaque: \$5,000
- b. Other Funds: \$16,323,958
 - i. Tokola:
 1. Private Equity Investors: \$4,615,000
 2. Construction Loan: \$9,500,000
 - ii. Agencies:
 1. Metro:
 - a. Minor Land Partition Fee: \$1,575
 2. City:
 - a. Final Partition Plat Fee: \$790
 - b. Design Review Application Fee: \$5,775
 - c. System Development Charges: \$872,000
 3. Difference between fair market value of property as encumbered and fair market value of property if not encumbered: \$860,000
 4. Value added to real property as a consequence of the Agencies' site preparation: \$419,850.
 5. Agency Staff Resources: \$48,968

CONCLUSIONS OF LAW:

1. The proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A) because the project will not be carried on and contracted for by a public agency.
2. The proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B) because although the project will be privately owned, it will not use \$750,000 or more in funds of a public agency.

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 Privately Constructed Mixed Use Development at 350 E. Main Street, Hillsboro 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, OR 97232

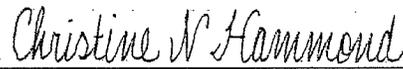
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: March 7, 2012

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



CHRISTINE N. HAMMOND,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On March 7, 2012, I mailed the Prevailing Wage Rate Determination for the Privately Constructed Mixed Use Development at 350 E. Main Street, Hillsboro project to the requestors, as follows:

Ms. Heather Martin
Beery Elsner & Hammond, LLP
1750 SW Harbor Way, Suite 380
Portland, OR 97201

Certified Mail – Return Receipt Requested
Article #: 7011 2000 0000 5450 9916

Mr. Joel E Morton
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Certified Mail – Return Receipt Requested
Article #: 7011 2000 0000 5450 9909



Cristin Casey
Compliance Specialist
Wage and Hour Division
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